

**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

**THIRD SUPPLEMENTARY MOTION RECORD
OF WEST FACE CAPITAL INC. AND GREGORY BOLAND**

(RE: Catalyst Defendants' Partial Anti-SLAPP Motion returnable May 17-21, 2021)

VOLUME 1 of 4

May 12, 2021

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Defendant to the Counterclaim

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B E T W E E N:

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Defendants

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Third Party

A N D B E T W E E N:

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Plaintiffs by Counterclaim

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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

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Court File Number: CV-17-587463-CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Catalyst Plaintiff(s)
AND
West Face Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows): _____

S.F. DOWPHY J.

There ~~is~~ ^{are} two motions to strike a
 long statement of defence and counterclaim.
 The facts as alleged in the attacked
 pleadings are indeed extraordinary and,
 if proved, justify the five central
 issues pleaded being (i) a conspiracy,
 (ii) defamation; (iii) malice; (iv) punitive
 damages and (v) s. 1410 vexatious
 litigant.

June 15 / 2018
Date

[Signature]
Judge's Signature

Additional Pages 174

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

While it is true that one could take issue with various paragraphs and indeed one could likely pare it down by ten or fifteen pages, the facts pleaded all are relevant to the extraordinary narrative alleged. The interests of judicial economy will not be served by prolonging the pleadings stage of this litigation without material benefit. Yes, the pt. by counterclaim has anticipated ~~before~~ defences yet-to-be-pleaded and replied to them. Nothing will ~~be~~ be served by striking portions now only to have them back in reply.

The parties have chosen to litigate in the commercial court and I expect them to apply the three-C's in a pragmatic fashion to move forward or

Judges Initials ASD

Court File Number: CV-17-587463-CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

find the means to resolve this
ever-broadening struggle.

The pl. by counterclaim has
agreed to amend its pleading
by deleting references to the
Weinstein matter. This was not
relevant and shall be struck.

The allegations re the Justice
Newbold affair are clearly relevant
not only relating to punitive damages
and malice but also to the
alleged efforts to maintain the
currency of the reputational part
the defamation efforts are alleged
to have cast upon the pl. by counterclaim
and its business.

Judges Initials Li-DL

Court File Number: CV-17-087463-CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Re pt by counterclaim has explained the inelgance in its conspiracy pleading re two pre-2017 actions in furtherance in para. 43 of its factum. I see no need to strike anything to achieve a hypothetical standard of perfection.

This pleading is long because the history is large, long & complex and there is an allegation of a persistent campaign to destroy a competitor by means more foul than fair. I would not strike it apart from the conceded portions re Mr. Weinstein.

The motions are both dismissed with costs.

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

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Defendants

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and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

AFFIDAVIT OF NEWTON GLASSMAN
(Affirmed November 24, 2020)

I, Newton Glassman, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

Introduction

1. I am the Managing Partner of Catalyst Capital Group Inc. ("**Catalyst**") and was formerly the Executive Chairman and Chief Executive Officer of Callidus Capital Corporation ("**Callidus**").
2. This affidavit has been prepared in response to a motion brought by West Face Capital Inc. ("**West Face**") and Gregory Boland ("**Boland**") to:
 - (a) obtain access to privileged documents, information and communications relating to B.C. Strategy Ltd. d/b/a Black Cube and B.C. Strategy UK Ltd. d/b/a Black Cube (collectively "**Black Cube**"), and,
 - (b) to enable West Face and Boland to utilize information, documents and communications relating to Invop Ltd. d/b/a Psy Group ("**Psy**") that purport to be with Catalyst and Callidus.
3. In both instances, Black Cube and Psy were acting on behalf of the Catalyst Defendants by Counterclaim, for the dominant purpose of litigation support and to facilitate the provision of legal advice. In swearing this affidavit I do not intend to nor do I waive any solicitor-client or litigation privilege.

Catalyst and Callidus

4. I am the founder of The Catalyst Capital Group Inc. (**‘Catalyst’**). Catalyst is a private equity management firm which over the years has established and manages seven private equity funds that specialize in “distressed for control,” comprising over US\$4 billion of initial Committed Capital (the **“Catalyst Funds”**).

5. One of the portfolio companies that in the aggregate are majority owned by a number of the Catalyst Funds is Callidus Capital Corporation (**“Callidus”**). Callidus is a Canadian company that specializes in providing financial solutions for companies unable to obtain adequate financing from conventional or other lenders, typically in the past due to their mismanagement and/or poor financial health. During the relevant period, Callidus was a publicly traded company listed on the TSX.

6. The retainers in issue on this motion arise as a result of a series of events involving a large number of parties, many of whom are already named as Defendants in this lawsuit. While I will attempt to address the salient issues in this affidavit, now shown to me and marked as **Exhibits A to D** are the affidavits of James Riley, sworn on December 5, 2019 (the **“First Riley Affidavit”**); two affidavits sworn on May 29, 2020 (the **“Second and Third Riley Affidavits”**); and a further affidavit sworn on August 20, 2020 (the **“Fourth Riley Affidavit”**) to provide further background.

Background to the Retainers

7. The key facts relating to the retainer of Black Cube are set out in an affidavit affirmed by Brian Greenspan dated November 10, 2018 (the **“Greenspan Affidavit”**), the

contents of which I adopt for the purpose of this motion. Mr. Greenspan is a partner at the law firm Greenspan Humphrey Weinstein (“GHW”). The Greenspan Affidavit was prepared in response to a prior motion by West Face challenging the privileged nature of the information, documents and communications generated by Black Cube and is being filed in connection with West Face’s current motion. In particular I confirm that Black Cube’s retainer was limited to investigative work and inquiries which were to be used to obtain legal advice and for litigation support, and did not include providing security services nor any media or public relations advice.

8. As set out in the Greenspan Affidavit, and as described in the Riley affidavits, at the time of Black Cube’s retainer, Catalyst and/or Callidus were parties to the following litigation:

- (a) *The Catalyst Capital Group Inc. v. Moyse and West Face Capital Inc.*, Court File No. CV-16-11272-00CL (the “**Moyse Action**”): Catalyst commenced the Moyse Action on June 25, 2014 against West Face and Brandon Moyse, who was formerly a financial analyst employed by Catalyst. Catalyst alleged that Moyse had transmitted certain confidential information to West Face that he had obtained about Catalyst’s investment strategy to purchase WIND Mobile Corp. (“WIND”) in breach of his obligations as an employee of Catalyst. The trial had been completed, Mr. Newbould had dismissed this action, and an appeal was pending in the Court of Appeal which was initially scheduled to be heard on September 24, 2017.
- (b) *The Catalyst Capital Group Inc. et al. v. Veritas Investment Research Corporation et al.*, Court File No. CV-15-530726 (the “**Veritas Action**”): Catalyst and Callidus commenced the Veritas Action on June 18, 2015 against West Face and Veritas Investment Research Corporation alleging

they each intentionally published negative and defamatory reports about Callidus to drive down its share price in support of a “short and distort” campaign carried out by West Face in 2015. In its defence to the Veritas Action, West Face admits to shorting Callidus’ stock, but falsely asserted that its internal research memoranda and deck had not been circulated to the media.

- (c) *The Catalyst Capital Group Inc. v. VimpelCom Ltd. et al.*, Court File No. CV-16-553800 (the “**VimpelCom Action**”): Catalyst commenced the VimpelCom Action on May 31, 2016 against a consortium of investors, including West Face, that ultimately purchased WIND (the “**West Face Consortium**”), for breach of confidence and breach of contract for transmitting the confidential information obtained during negotiations regarding the WIND transaction.

9. In addition, as of August 2017, active steps were underway with legal counsel regarding the within action and a second action against Dow Jones et al., which were then commenced on November 7, 2017.

10. Between late June 2017 and early September 2017, several things happened that caused me to conclude that I, my family, my partners and their families, and Catalyst and Callidus were under attack by persons who held very strong animus against me personally and who were intent on destroying Catalyst’s and Callidus’ businesses. These events raised serious safety concerns, including for me and my family, but equally regarding my two (then very young) children. These attacks were also detrimental to Catalyst and Callidus as well as to the interests of the Catalyst Fund investors to whom Catalyst then owed and continue to owe fiduciary duties.

The Attacks

11. Through the spring and summer of 2017, there were a series of factually false tweets and other social media communication and media posts adverse to the Plaintiffs. These and other events made it clear that there were persons who were trying to improperly undermine the credibility of Callidus and Catalyst, to damage their businesses, and to attack me both personally and physically. Specific threats were made against me and my family. Events that occurred during the above period included the following:

- (a) In late June and early July 2017, Catalyst and Callidus were contacted by reporters at Thomson Reuters who advised that they were about to publish a story alleging that Callidus and Catalyst were the subject of active police investigations concerning alleged accounting fraud and other criminal offences. This attempted story later proved to be untrue.
- (b) It was (or later became, as the case may be) apparent that the sources of the Thomson Reuters allegations included one or more guarantors of Callidus loans who were in litigation with Callidus to avoid obligations under the guarantees, as well as Nathan Anderson, a now confessed “professional short seller,” who repeatedly premeditatedly “shorted” the stock based on his expectations of the impact of media reports which he himself generated, helped to generate, and/or attempted to generate.

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- (c) Catalyst and Callidus initially hired GHW and Lax O'Sullivan to investigate and respond to this threatened false story, which would have caused serious harm if published.
- (d) Attached as **Exhibit E** are copies of correspondence exchanged between Lax O'Sullivan (Rocco DiPucchio thereof) and counsel for Thomson Reuters regarding this threatened story. As indicated in this correspondence, the Thomson Reuters allegations that were to be the basis of the story about fraud investigations were completely false.
- (e) Catalyst's Annual General Meeting took place on or about June 29, 2017. While I was on my way to this meeting, I received a call indicating that Thomson Reuters intended to publish a false story at approximately noon that day about active fraud investigations into Callidus. Over the next two or so hours, it became clear that there was a strategy of attempting to "plant" individuals at the AGM to ask damaging questions based on these false allegations so as to enable media reporting on such questions. In fact, immediately after our presentation at the AGM, two individuals indicated they wanted to ask questions, and objected when they were informed there would be no "Q&A" at that time. One of those individuals took a photo of me without my consent that was later published in March 2018 as part of a different inaccurate article attempting to disparage the monetization of a number of Catalyst and Callidus' portfolio investments that were in process at the time.

- (f) On August 9, 2017, Dow Jones published an article referring to, among other things, alleged fraudulent accounting practices, whistleblower complaints and alleged police investigations (the “**WSJ False Fraud Article**”). The WSJ False Fraud Article was published under a lurid headline about alleged fraud and was accompanied by a photograph of a Toronto Police Service patrol car, believed to be in front of the TPS headquarters. Attached hereto and marked as **Exhibit F** is a true copy of this version of the WSJ False Fraud Article.
- (g) The WSJ False Fraud Article caused great concern to Catalyst, Callidus and to numerous limited partners of the funds managed by Catalyst. Paragraphs 39 to 57 of the First Riley Affidavit detail some of the concerns and questions received in the immediate aftermath of this story.
- (h) The August 9, 2017 WSJ False Fraud Article also caused the Callidus share price to drop precipitously. The damaging and widely circulated nature of the attack by a publication with the then reputation of the Wall Street Journal required a public response to address the falsity of the WSJ False Fraud Article as well as the damages caused to Callidus and Catalyst. Attached hereto and marked as **Exhibit G** is a copy of the Press Release issued by Catalyst and Callidus at that time.
- (i) In addition, it was clear that Catalyst and Callidus would need assistance and legal advice about these matters and that the situation was escalating

given the attacks and threats (detailed herein). This included assistance and advice with respect to the commencement of litigation on account of the WSJ False Fraud Article and obviously improper activity by others related thereto and what appeared to be a sophisticated and coordinated conspiracy against the Plaintiffs.

- (j) As a result, after publication of the WSJ False Fraud Article, Catalyst and Callidus instructed Lax O'Sullivan to prepare and deliver a notice under the *Libel and Slander Act*, a copy of which is attached as **Exhibit H** hereto. In addition, Lax O'Sullivan was instructed to begin drafting Statements of Claim to be issued on account of the WSJ False Fraud Article and to seek remedies against the wrongful parties conspiring for an improper purpose to damage, amongst others, Catalyst and Callidus.
- (k) On August 11, 2017, I received an email from a person purporting to be "Vincent Hanna," referring to a "cabal" of conspirators who had caused the publication of the WSJ False Fraud Article. The Vincent Hanna email is attached as **Exhibit I**, and reads as follows:

Dear Mr. Glassman.

This letter is to inform you that you have been targeted by a group of funds in Canada and abroad whose sole goal is to bring down your public vehicle Callidus and you personally. They are acting in concert to short your stock and to spread false rumors in the market place mostly through Bruce Langstaff at Canaccord but through any broker who will listen. The Wall Street Journal is a prime example of this coordinated effort. The "cabal" does have private investigators following you and most likely have Russians [sic] hackers attacking your office emails and servers/cloud. The RCMP and FBI are aware

-10-

of this “cabal” from a criminal investigation but that doesn’t help you in the short term. I am sure you are not surprised but the funds are:

Greg Boland – WestFace Capital.

Roland Keiper – Clearwater Capital.

Sunny Puri/Moez Kassam – Anson Partners.

Shawn Kimmel – K2 Partners

Principals – MMCAP

Marc Cohodes – US Short Seller and his huge global network.

I am disgusted that this acting in concert is going on and happening to you and other participants in the Canadian Capital Markets and I write this letter to inform you of such.

If I were you I would sue the above groups and from that you will garner access to all their trading records and communications between them. From this you will then be fed additional information. This will lead the perpetrators down a rabbit hole they will not escape from. But in the end that is up to you. You now have this information. There will be more to come. Stay tuned. [Underlining added.]

- (l) I did not know who “Vincent Hanna” was (but I later came to understand he was Danny Guy), but the contents of this email seemed credible in light of the events which had just occurred. As discussed below, such included cyber-attacks containing Cyrillic characters (not then knowingly published), the prior attempts to cause the publication of a false article by Reuters in June 2017, and the publication of the WSJ False Fraud Article.
- (m) As a result of what I believed to be an attack on Catalyst and Callidus, I expanded the retainer of GHW to assist in addressing the threats as well as the outstanding litigation and to assist in determining who was involved in

the short attack(s) so that we might obtain legal and other advice on our options and to assist in the preparation of litigation.

12. Concurrent with or shortly after the above events, several things happened which caused me to fear for my safety, and for the safety of my family, my partners (Gabriel de Alba and James Riley) and their families, and the employees of Catalyst and Callidus:

- (a) On or about July 22, 2017, Callidus' computer system was subjected to a sophisticated cyber attack by unknown persons, which included infecting the system with a ransomware virus. This attack appeared to originate in Russia, based on the Cyrillic coding used to create the virus. Callidus had never previously experienced any such cyber attack, and had no known involvement with anything or anyone Russian in nature.
- (b) In about mid-August, I was told by our lake house maintenance person that he had caught and chased off a person rummaging through the garbage containers at our Muskoka property, who we were told was apparently looking for documents. These containers are located on our private property accessible only via private (lengthy) road, and could only have been accessed by trespassers, without any legitimate purpose or right to be present on our property, without invitation or notice but to cause us some kind of harm.
- (c) In early September 2017, it was discovered that the generator at our Toronto home, which provides back up power to, among other things, our

home security system, had been allegedly compromised. Consequently, our home security system was left without any power during an extended power outage that occurred over Labour Day weekend of September 2017. Security consultants I hired believed and informed us that this was an attempt to either access or sabotage our home security system.

- (d) In addition, further investigation of my home security revealed that someone had allegedly manipulated the system to enable the control panels found throughout our house, including the master bedroom, to be tuned into audio and video recording devices for potential surreptitious surveillance / spying.
- (e) In or about September 2017, I was subjected to the first of two “brush pass” verbal threats. This happened while I was walking along the south sidewalk on Wellington St. just east of Bay Street in Toronto. A man walking toward me threatened that I and my then 2+ year old son (whom the passerby referred to by name) would be “gotten to” shortly. I took this to mean, at worst, murdered. A similar brush pass threat that specifically named my son was made to me a month or so later by a different person, while I was walking north on the east side of Bay, just north of the Bay/Wellington intersection.

13. The above facts and events were unlike anything I had ever experienced. In combination, these unique circumstances caused me to conclude that a more serious defensive approach was needed to ensure that I, my partners, our families and Catalyst

and Callidus could obtain assistance and especially legal advice necessary to address and respond to these matters appropriately. In order to obtain, and for our legal advisors to formulate, a legal strategy and litigation plan on a fully informed and effective basis, I believed that it was essential to obtain and understand the best information possible, to conduct a thorough legal investigation, and to understand the impact of these matters and strategies necessary to deal with the existing and potential litigation.

14. At all times I intended and understood that the retention of Tamara Global and any subcontractors engaged by said Tamara Global (as described below) pursuant to its retainer would be part of an integrated team and would be confidential and subject to privilege. From my and the Plaintiffs' perspective, external and internal legal counsel could not properly advise me, Catalyst, or Callidus, or develop an appropriate and effective litigation plan, without input from Tamara Global and the results of the services undertaken by any subcontractors they engaged.

Tamara Global

15. I reached out to Yossi Tanuri. I had known Mr. Tanuri for many years, during which he and I had visited each other and had become friends. In particular, Mr. Tanuri had assisted me and my charitable foundation in numerous philanthropic activities, including the development of a PTSD specific hospital in Jerusalem in honour of my (by then) deceased father. The hospital always intended to assist all suffering from PTSD. I was also of the belief that Mr. Tanuri had apparently been a member of an elite commando unit in the Israeli Defence Forces known as "Matka". I was also made aware that

amongst Mr. Tanuri's business interests, he operated an investigation and security company. I believed Mr. Tanuri was the ideal person to assist in responding to our various concerns, in large part due to the trust between us developed over the years.

16. Consequently, Mr. Tanuri flew to Toronto on an urgent basis in late August of 2017. He did so, accompanied by Mr. Gadi Ben Efraim, whom Mr. Tanuri introduced to me as a soon to be former agent in one of the Israeli intelligence services.

17. The resulting retainer arrangements and communications, both with Tamara Global and with the subcontractors engaged by Tamara Global, are the subject of the privilege issues which are in dispute herein. Accordingly, I refrain from detailing the facts relating to these matters in this affidavit, except to state that as a result of my meetings with Mr. Tanuri and Mr. Ben Efraim in late August 2017, I was of the view that in particular the inclusion of media advice and assistance was an integral part of any litigation plan and any legal advice going forward. This is due to the fact that both social and traditional media were being improperly weaponized against us and being used to disseminate false stories.

18. It was apparent that the totally untrue social media and traditional media attacks were designed to harm me, Callidus and Catalyst. These attacks not only caused damage to Callidus but also were intended to improperly destroy the reputations of myself, my partners, Callidus and Catalyst. I decided that combatting these attacks required strategic litigation advice and planning, but especially an immediate need to be responsive to the negative and false media about Callidus and Catalyst in order to protect

the best interests of our investors in as timely a manner as possible so as to mitigate the resulting damage.

19. It was my view that any litigation plan had to include and be coordinated with a positive media strategy to counteract and mitigate the immediate and short term effects of the numerous false social media attacks, as well as the WSJ False Fraud Article, and to inform and set the record straight with the public (including Catalyst's LPs) about the businesses of Catalyst and Callidus, about the falsity of the WSJ False Fraud Article, and about the attacks against Catalyst and Callidus by persons adverse to their interests. This was believed to be particularly important given the time litigation takes combined with the immediacy of the damage being inflicted, and attempted at that time.

20. I intended that all of the work, services and communications provided by Tamara Global and anyone retained by them would be conducted on a strictly confidential basis and would be subject to privilege in light of the intended purpose of such work, services and communications. This was and remains my belief: neither I nor anyone with authority at Catalyst or Callidus ever authorized Tamara Global or anyone retained by them to depart from these principles or to waive any privilege. Nor were Tamara Global or any other sub-contractors ever engaged to—or with the expectation that they would—violate the law. Indeed, it was known and I understood that their engagements to support litigation could be undermined by intentionally improper conduct.

Black Cube

21. At Mr. Tanuri's insistence, I attended a meeting in London, England on September 6, 2017 to meet with what was prior to such described to me as a team of investigators Tamara Global had chosen to provide litigation support. I came to learn at that meeting that these persons were employees of Black Cube.

22. Under the Tamara Global retainer, I believed then and now that Tamara Global hired sub-contractors (like Black Cube) to gather evidence both in relation to pending litigation Catalyst had against West Face and also in litigation I anticipated would be commenced against those responsible for some or all of the attacks referred to above.

23. As indicated in the Greenspan Affidavit, Black Cube was required to undertake its investigative work in its best professional judgment and in compliance with local laws. I now am told and understand that Black Cube's activities in Canada were carried out under the supervision of licensed Ontario private investigators.

24. On or about September 18, 2017, I was contacted again by Mr. Tanuri. Mr. Tanuri said that it was important that I immediately travel to London, England, on or about September 19, 2017, to be briefed on the work undertaken by up to that point. Prior to that meeting, I did not know what the investigators had done, either in connection with Mr. Frank Newbould or any of the other investigative activities which later came to light. I was very reluctant to drop everything and go to London as this was essentially on the eve of an important Jewish holiday. Mr. Tanuri urged me to attend and stated that it was important

for me to hear what steps had been undertaken and what evidence had been obtained by the investigators.

25. Upon arrival in London, I met with Mr. Ben Ephraim and representatives of the investigators. I was presented with the results of a recorded “meeting” between a Black Cube operative and Mr. Newbould, who had, as the former Chief Justice of the Ontario Commercial List, presided over the trial of the Moyse Action (and dismissed Catalyst’s claim). A Black Cube operative had apparently posed as an individual requiring the services of an arbitrator and approached Mr. Newbould, who had by then retired early from the bench.

26. I did not know before the fact that Black Cube had phoned or met with Mr. Newbould or record any meetings with him. As reported and actually heard by me, what Newbould said during the meeting was very troubling, particularly given his prior role as a judge, and his then new quasi-judicial role as an arbitrator.

27. Immediately after the above attendance in London, Catalyst obtained copies of draft extracts from the Newbould tapes (but not the full transcripts). I was shocked by what I read and believed that the statements they revealed were relevant and important for two reasons, but I was concerned about how they were obtained.

28. First, regardless of how the evidence had been obtained, I believed that the extracts provided potential support for an enlargement of the existing grounds of appeal in the pending Moyse appeal and that the Court should be aware of these materials for the purpose of that appeal (material “new evidence”).

29. Second, I believed that there was a substantial public interest in a broader publication of the comments made by Mr. Newbould which in my view were (and are) relevant to the administration of justice. I believe that this public interest is more important today having regard to appropriate recent societal developments demanding more transparency and accountability with respect to the administration of Justice, the allegations of systemic racism and the need for confidence in our judiciary. In holding these views or actions taken by Tamara, I never intended that there would be any waiver of any privilege associated with Tamara Global, Black Cube, or any other persons or parties.

30. I have read the affidavit of Mr. Elwood. I do not recall Mr. Elwood but I recall attending a meeting at the request of Mr. Tanuri in New York. I do not recall being told that the people were from Psy, but I understood they were assisting with executing the retainer of Tamara Global as was Black Cube.

31. To the best of my recollection, I do not recall having heard of PSY prior to such time and certainly do not believe was ever involved in their being retained, other than being told by Mr. Tanuri and Mr. Ben Ephraim that due to the litigation time constraints more than one firm may be needed. I was never provided a retainer involving Psy. Assuming there is a retainer, I do not see how it could have been effected but through Tamara Global.

32. I understood and believed that, in addition to personal security services, Tamara Global was providing and/or arranging for a wide array of services with respect to litigation and related media relations. I do not recall a great deal of detail about that meeting in New

York, but I do recall matters relating to litigation support, investigative work, and media relations were the primary subjects discussed.

33. Given the privilege asserted by Catalyst and Callidus with respect to the work and services performed by Psy, I will not provide further comment in this affidavit about the meeting deposed to by Mr. Elwood, except to say that:

- (a) I do not agree with the details he recalls about the meeting;
- (b) I understood the meeting to be private and confidential, for the purposes described herein;
- (c) I never waived or authorized any waiver of privilege by Psy or Mr. Elwood or anyone else, and,
- (d) I understood the meeting in New York to be part of, and integral, to the overall litigation strategy to investigate these attacks and address the harm that was caused to Catalyst and Callidus. The most critical part of that litigation strategy was to in a timely manner address the intentionally false public accusations made against Catalyst and Callidus.

34. I now understand that West Face obtained copies of confidential information that is subject to solicitor-client and litigation privilege from Phil Elwood, (the “**Elwood Documents**”), who I now believe was working with or for Psy. I did not authorise any waiver of privilege in respect of the Elwood Documents. No one else at Catalyst or

Callidus had such authority and certainly not without my prior approval. None such was ever sought or given.

35. In late September 2019, counsel for West Face and Boland (“**Davies**”) obtained copies of the Elwood Documents and with them, amongst other things, a privileged memo written by Naomi Lutes of GHW regarding her work on behalf of Catalyst and Callidus. I am told and believe Davies did not advise my current lawyers they were in possession of these documents or seek to return them. Davies listed “a document from a third party” that they “intend to submit... to the Court for a determination of privilege”, but did not disclose any further details about the document or that it was the privilege of the Catalyst Parties in issue.

36. I am told that instead, and in spite of their recognition that at least one of the documents was *prima facie* privileged, Davies without our or our counsel’s knowledge or consent gave several documents to a retired Judge, Stephen Goudge, to seek an opinion from Mr. Goudge as to the privilege.

37. I am further told that Davies also used other information obtained from the Elwood Documents that contains privileged information and may have improperly filed copies of some of the Elwood Documents on a motion in this proceeding.

38. Until delivery of the Elwood affidavit dated May 29, 2020, I did not know the extent or proposed use of any documentation apparently provided to Elwood and/or Psy. Until this was purported to be made clear in unilateral and then unknown correspondence sent by Davies in June 2020, I also certainly did not know that West Face’s counsel had

obtained a privileged memo or that the memo and other documents had been provided to Mr. Goudge without my or any of the Plaintiffs' consent. I still do not know when or how the exchange of documents and/or information occurred between Elwood and West Face.

39. I am advised by Ms. Lutes and I believe her when she states that she provided the memo which I now understand to be the document listed in Schedule C of West Face's affidavit of documents to Mr. Tanuri on the basis that this memo was privileged and confidential. The memo was clearly marked with the GHW letterhead. I further understand and believe that at no time did she agree to a waiver of that privilege, and that Ms. Lutes never gave that material to anyone other than Mr. Tanuri and Catalyst/Callidus. It remains unclear how in fact Davies or others came into possession of this and/or other documents and the propriety of said means of possession.

40. I believe the production and potential privilege of other documents relating to Psy has been the subject of a motion for Letters of Request which was heard by Justice Hainey on November 20, 2019. Attached hereto as **Exhibit J** is the resulting order and Letters of Request, which contain provisions for an independent review of any Psy documents resulting from this order, to ensure that no privileged documents are produced. I am informed by counsel and verily believe that this vetting process has not occurred because the issuance of a subpoena for the documents from Psy is still before the Courts in Israel.

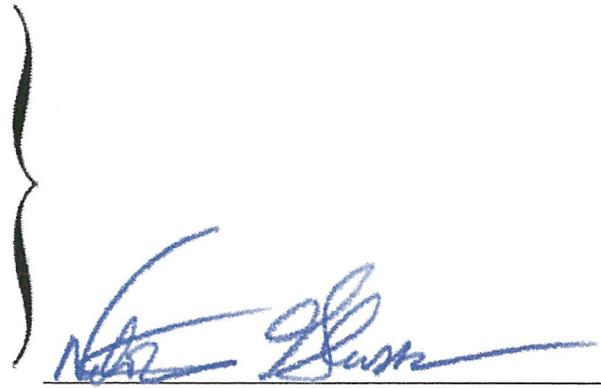
41. I am informed by counsel for Catalyst and Callidus and I believe that the normal practice on motions of this type is to provide the Court with copies of documents regarding

the privileged claims in issue, so that such documents can be reviewed as the Court deems appropriate. Catalyst and Callidus have instructed counsel to prepare a brief of such documents for review by this Court and will cooperate with any requests by the Court for access to additional documents as may be deemed necessary.

AFFIRMED REMOTELY by Newton Glassman, at the City of Nassau, in the Commonwealth of The Bahamas, **BEFORE ME** at the City of Toronto, in the Province of Ontario on November 24, 2020, in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits



Newton Glassman

Catalyst v West Face et al.

Greg Boland
on Wednesday, December 9, 2020



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Toronto, Ontario M5K 1A1

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1 let me know, and I will rearrange the mic.

2 108 Q. No, I'm as old as you are. We are
3 having trouble all sorts of ways. So that is
4 November 10th. So you lost the motion in front of
5 Lederer, and I don't see you make reference to it
6 anywhere in your affidavits. Is that -- had you
7 forgotten it, or you just didn't think to mention
8 it?

9 A. I didn't forget it. I don't know
10 what the relevance of that is to these proceedings,
11 but we arranged my affidavit as we thought would be
12 pertinent to these proceedings.

13 109 Q. All right. And then you say in
14 your May 29th affidavit that you had been told by
15 some people that in late 2014 that Mr. Glassman was
16 purported to have said that he would destroy West
17 Face and you; is that right?

18 A. Yes.

19 110 Q. All right. And so it is fair to
20 say by the fall of 2014 they are attacking your
21 largest transaction. You have lost in front of
22 Lederer. And you had this comment by Glassman.
23 What was your -- you must not have liked
24 Mr. Glassman much by then; correct?

25 A. I have never met Mr. Glassman, and

1 I have no malice towards Mr. Glassman. I at the
2 time assumed that the Wind litigation was sort of
3 an opportunistic piece of litigation where he was
4 attempting to leverage sort of some faint hope to
5 potentially get a larger windfall.

6 The Lederer decision I didn't see as
7 meaningful. I mean, you know, it is unfortunate
8 the way things transpired, but other than the --
9 you know, the findings of the Court, you know, I
10 didn't see it as -- you know, it was embarrassing,
11 but I didn't see it as being, you know, material in
12 the context of the broader court case.

13 And frankly, Mr. Glassman's statements,
14 I found them a little bit bemusing at the time.
15 You know, he was talking openly at dinner
16 parties --

17 111 Q. You didn't --

18 MR. MILNE-SMITH: Let him finish.

19 BY MR. CALLAGHAN:

20 112 Q. You didn't hear -- I want to
21 clarify --

22 A. I am not finished my answer. I am
23 not finished my answer. And Mr. Glassman was
24 making these proclamations at dinner parties about
25 how he had a master plan to destroy West Face and,

1 you know, I had no idea that he would go to the
2 extent that he did, and I found it, you know, a
3 little bit bemusing, you know, so I didn't take the
4 threat seriously, unfortunately.

5 But with the benefit of hindsight, I
6 see he did have a Project Maple Tree and was
7 hatching a plan.

8 113 Q. Let me suggest to you, sir, that
9 you did take this issue of losing Wind seriously,
10 and you began at a campaign to attack Mr. Glassman,
11 isn't that what happened, and you started in the
12 fall of 2014; correct?

13 A. No, that is not correct.

14 114 Q. All right. You went after
15 Mr. Glassman's reputation, did you not? Isn't that
16 what you were going to do from the fall of 2014 on?

17 A. Can you take me to the
18 documentation supporting that assertion?

19 115 Q. Can't you answer yes or no?

20 A. Is there something you want to
21 point me to because that is a pretty broad
22 question.

23 116 Q. I will. I just want an answer to
24 the question.

25 A. Can you please repeat the

Catalyst v West Face et al.

Newton Glassman
on Monday, May 3, 2021



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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 -

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

--- This is the Cross-Examination of NEWTON
GLASSMAN pursuant to Rule 39.03, on his affidavit
sworn November 24, 2020, taken via Zoom
Videoconferencing with all participants attending
remotely, on the 3rd day of May, 2021.

1 A P P E A R A N C E S:
2 DAVID C. MOORE, Esq., for the Plaintiffs,
3 & MARCO ROMEO, Esq., (Defendants to the
4 & MATTHEW KARABUS, Esq., Counterclaim), The
5 & KEN JONES, Esq., Catalyst Capital Group
6 Inc. and Callidus
7 Capital Corporation
8 and the Defendants to
9 the Counterclaim,
10 Gariel De Alba, James
11 Riley and Newton
12 Glassman
13
14 KENT THOMSON, Esq., for the Defendants
15 & MATTHEW MILNE-SMITH, Esq., (Plaintiffs by
16 & MAURA O'SULLIVAN, Esq., Counterclaim), West
17 & ANDREW CARLSON, Esq., Face Capital Inc. and
18 Gregory Boland
19
20 LINDA PLUMPTON, Esq., for the Defendants,
21 M5V Advisors Inc.
22 c.o.b. Anson Group
23 Canada, Admiralty
24 Advisors LLC, Frigate
25 Ventures LP, Anson

1		Investments LP, Anson
2		Capital LP, Anson
3		Investments Master
4		Fund LP, AIMF GP,
5		Anson Catalyst Master
6		Fund LP, ACF GP, Moez
7		Kassam, Adam Spears
8		and Sunny Puri
9		
10	REBECCA SHOOM, Esq.,	for the Defendants,
11		ClaritySpring Inc. and
12		Nathan Anderson
13		
14	DIMITRI LASCARIS, Esq.,	for the Defendant,
15	& A.J. FREEDMAN, Esq.,	Bruce Livesey
16		
17	DEVIN JARCAIG, Esq.,	for the Defendant
18		(Plaintiff by
19		Counterclaim), Bruce
20		Langstaff
21		
22	DARYLL LEVITT	Self-Represented
23		
24	KEVIN BAUMANN	Self-Represented
25		

1 JEFFREY McFARLANE Self-Represented

2

3 Also Present: Greg Boland, CEO, West Face Capital

4 Philip Panet, General Counsel, West

5 Face Capital

6 Tanya Barbiero, Law Clerk,

7 Davies Ward

8 Bruce Livesey

9 Nathan Anderson

10 Bruce Langstaff

11

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

13

14

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16

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I N D E X

WITNESS: NEWTON GLASSMAN

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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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NO.	DESCRIPTION	PAGE/LINE NO.
1	Electronic brief of documents for the cross-examination of Newton Glassman.....	7:16

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

2

3 NEWTON GLASSMAN; AFFIRMED.

4 CROSS-EXAMINATION BY MR. THOMSON:

5 1 Q. Good morning, Mr. Glassman.

6 A. Good morning, Mr. Thomson.

7 MR. THOMSON: So, David, just before we
8 start with the exam, just two preliminary matters.

9 Number one, as we discussed off the
10 record, let's start by marking my cross-examination
11 brief as Exhibit 1, and with the understanding that
12 we will extract from the cross-examination brief
13 documents that are not referred to as part of the
14 examination.

15 MR. MOORE: Yes, that is fine.

16 EXHIBIT NO. 1: Electronic brief of
17 documents for the cross-examination of
18 Newton Glassman.

19 MR. THOMSON: Thank you. And then
20 finally --

21 MR. MOORE: Will you file that as one
22 document, as like one omnibus brief, or as
23 individual exhibits?

24 MR. THOMSON: My intention is one
25 omnibus brief rather than marking individual

1 exhibits, David.

2 MR. MOORE: I think that makes sense.
3 I agree with that.

4 BY MR. THOMSON:

5 2 Q. Okay. And then finally,
6 Mr. Glassman, one ground rule that David and I have
7 agreed to at the start of this process, which is
8 that although this is technically not a
9 cross-examination on an affidavit for trial, we
10 have agreed that you will not communicate with
11 others concerning your evidence from now until the
12 time your examination has been completed at the end
13 of the day tomorrow.

14 MR. MOORE: That's right. That's
15 right. That is the usual practice. That is fine.

16 [Court Reporter intervenes for
17 clarification.]

18 BY MR. THOMSON:

19 3 Q. Mr. Glassman, let me start by
20 honing in on April of 2017, and then we'll move
21 forward quickly into the events that are a little
22 more pertinent.

23 Am I right that in early April of 2017,
24 Catalyst held a joint annual meeting for investors
25 in Funds III, IV and IV-PP?

1 A. I know that we held a 2016 annual
2 general meeting in 2017. I am not sure of the
3 date.

4 4 Q. All right. So let's start with
5 our first adventure, which is a foray into the
6 documents. I'm going to ask Tanya, our law clerk,
7 to pull up - I'm just going to refer to tab numbers
8 if I may - my tab 10, and you will see,
9 Mr. Glassman, what Tanya has pulled up on screen is
10 a document entitled "2016 Annual Meeting, the
11 Catalyst Funds III and IV/IV-PP Joint Annual
12 Meeting", presented by The Catalyst Group, and you
13 will see the date is in the top, right-hand corner?

14 A. I see that.

15 5 Q. Which is Tuesday, April 4, 2017?

16 A. Yes, sir.

17 6 Q. And I took it from this that this
18 meeting was in fact held on April 4th of 2017; fair
19 enough?

20 A. I assume so.

21 7 Q. And look at the next page, please,
22 page 2. You'll see the heading at the top of the
23 page. So Tuesday April 4, 2017, at 1:30 p.m. at
24 the offices of Fasken Martineau Dumoulin. I'm
25 assuming the meeting was held then at the offices

1 of Faskens in Toronto?

2 A. It appears so, yeah.

3 8 Q. And just so we have it by way of
4 the background, Mr. Levin, Jon Levin, is a senior
5 partner of the Faskens law firm?

6 A. I assume so.

7 9 Q. All right. And by April 2017, he
8 had acted in a number of matters as corporate
9 counsel for Catalyst; correct?

10 A. I think so.

11 10 Q. Okay. And if we look at page 5 of
12 the document you will see that the Introductory
13 Comments are, first, that:

14 "This presentation focuses
15 exclusively on matters related to
16 Funds III, IV, and IV-PP."

17 And then below that:

18 "This AGM format is new for
19 Catalyst and is in part the result
20 of requests by investors to shorten
21 our AGM process:"

22 And then the last bullet on the page:

23 "[...] it is our goal to
24 provide investors as granular
25 information as possible, and

1 specifically such regarding explicit
2 and implicit risk in the Funds they
3 own."

4 I take it all of that was accurate at
5 the time of the meeting in April of 2017?

6 A. I hope so.

7 11 Q. And then if we look at page 13,
8 there is a reference to "Litigation Claims", and it
9 goes on to say:

10 "Have 'contingent assets' of
11 PanAm claim (Fund III only) and WIND
12 (1/3 Fund III and 2/3 Fund IV."

13 Of course, I don't care about PanAm. I
14 do care about the WIND litigation. Am I right that
15 the allocation of that litigation in terms of
16 possible beneficial results from the litigation was
17 divided between Fund III and Fund IV?

18 A. I would have to go back and check
19 or have our finance department check.

20 12 Q. All right. Will you do that,
21 please, and confirm my understanding from this
22 document that the allegation was one-third of the
23 benefit allocated to Fund III and two thirds of the
24 benefit allocated to Fund IV?

25 U/T A. We can check for you.

1 13 Q. Thank you. It goes on to say:
2 "Wind litigation in particular
3 is extremely material."

4 And the document then goes on to create
5 a bit of financial analysis about the litigation.

6 But just so we have it for our record,
7 as of April of 2017, the WIND litigation consisted,
8 as I understand it, of two different pieces of
9 litigation. One was the so-called Moyse action;
10 correct?

11 A. I think so.

12 14 Q. And the second was a case that
13 David and I have come to call the VimpelCom action,
14 an action against VimpelCom, West Face, and others
15 commenced shortly before the start of trial in the
16 Moyse case; correct?

17 A. I think so.

18 15 Q. And by the time of this meeting in
19 early April of 2017 - I'm sure you'll confirm this
20 quite easily - the Moyse action had been dismissed
21 by Justice Newbould following a trial in the
22 Commercial List in Toronto?

23 MR. MOORE: That's right.

24 BY MR. THOMSON:

25 16 Q. Okay. As of April 2017,

1 Catalyst's appeal from the decision of Justice
2 Newbould was pending before the Ontario Court of
3 Appeal but had not yet been argued; fair enough?

4 MR. MOORE: That's right.

5 BY MR. THOMSON:

6 17 Q. And then finally, motions had been
7 brought by West Face and other Defendants in the
8 VimpelCom action to stay or dismiss that action on
9 the grounds of abuse of process, issue estoppel,
10 cause of action estoppel, but the decision of
11 Justice Hailey on those motions had not yet been
12 rendered?

13 U/T MR. MOORE: There were a number of
14 motions. Whether they were all brought by -- or
15 had been all instituted by April of 2017, I don't
16 recall, but we can let you know if we take any
17 issue with the premise in your question.

18 BY MR. THOMSON:

19 18 Q. Thank you, David.

20 Now, let me take you to page 28 of the
21 document, and see if Tanya can maybe expand that a
22 little bit in size so you can read that easily, but
23 you'll see this is a page entitled:

24 "2016 Review:

25 a) Financial Review.

1 (2) Position Review - Cumulative
2 Fund Investment Returns",
3 and so on.

4 The part that I'm interested in is
5 about the fifth entry from the bottom of the page
6 entitled "Wind Litigation Claim". Do you see that
7 line? There it is. Just beside the cursor.

8 A. I do.

9 19 Q. And as I read the chart, there is
10 a heading -- if you read the horizontal columns, it
11 is about four or so from the right, "Total Value".
12 If you then look at the horizontal line "Wind
13 Litigation Claim", this appears to be attributing a
14 value to the WIND litigation of \$148.9 million as
15 of the date of this chart. And I believe this is
16 referable to Fund III; is that how you read this?

17 A. I can't see which fund it is, but
18 I see that. I also see a footnote beside the WIND
19 litigation.

20 20 Q. Do you see the top left-hand
21 corner of the page "Fund III in US\$?"

22 A. Yes, you are correct, but I also
23 see a footnote beside the "Wind Litigation Claim".

24 21 Q. Which is referable to what?

25 A. I don't know, a footnote. It must

1 have some commentary beside it.

2 22 Q. All right.

3 MR. MOORE: And there is also a
4 footnote --

5 BY MR. THOMSON:

6 23 Q. You are referring to footnote 18?

7 A. I can't see it because my eyesight
8 is not good enough.

9 24 Q. Okay. So blow that up a little
10 bit. You will see it is footnote 18?

11 A. Yes.

12 MR. MOORE: There is also, just to --
13 there is a footnote generally applicable to the
14 column "Unrealized Value". I think that is
15 footnote 6. I don't know if that has any relevance
16 to this or not, but there is potentially two
17 footnotes that might apply.

18 BY MR. THOMSON:

19 25 Q. Let me just show Mr. Glassman
20 footnote 18, which is the one that he was
21 referring to, and ask you to turn, please, to page
22 51. Scroll down, please. Scroll down. No, sorry,
23 maybe it is just me a bit. The pictures of Davie
24 and Newton and so on are showing up so they are
25 blocking out footnote 18. Tanya, can you scroll it

1 up. Just show me footnote 18 on the page. There
2 it is.

3 So footnote 18 says:

4 "The 'Unrealized Value' for the
5 Wind Litigation Claim is based on
6 damages in the Wind Litigation."

7 Do you see that?

8 A. I do. And what is footnote 4?

9 26 Q. Footnote 6.

10 MR. MOORE: No, footnote 6.

11 BY MR. THOMSON:

12 27 Q. Footnote 6 says:

13 "The 'Unrealized Value' is
14 based on audited valuations in
15 accordance with the Catalyst Funds'
16 valuation criteria or policies as
17 described in footnotes 8 - 19."

18 And it goes on to talk about how you
19 calculate actual realized returns. So let me,
20 against that backdrop, now take you back to -- we
21 have already looked at page 28. Look at page 29.
22 And page 29 is now the same chart but for Fund IV
23 and Fund IV-PP in U.S. dollars; do you see that in
24 the top, left-hand side of the page?

25 A. Yes, sir.

1 28 Q. And if you look at the same line,
2 "Wind Litigation Claim", under the same heading
3 "Total Value", the value attributed to the claim
4 appears to be \$297.9 million?

5 A. Yes.

6 29 Q. And so the total estimated value
7 associated with the WIND-related litigation, at
8 least as of April 4, 2017, was roughly -- I just
9 added them up on my calculator, roughly 446 or \$447
10 million U.S.?

11 A. That sounds like your addition is
12 correct. I would have to read the commentary and
13 the presentation at same time.

14 30 Q. All right. I'm not going to take
15 the time now, but if you have any difficulty with
16 that proposition, you'll let me know?

17 U/T MR. MOORE: Yes, we will.

18 BY MR. THOMSON:

19 31 Q. Thank you. Am I right that there
20 was no updated or different estimates of value
21 associated with the WIND litigation provided by
22 Catalyst to investors in Funds III and IV prior to
23 September of 2017?

24 A. I don't know.

25 32 Q. All right. None that you are

1 aware of --

2 A. We would have to check.

3 33 Q. I'm sorry --

4 A. We would have to check the
5 quarterly reports, and we would have to check our
6 other correspondence.

7 34 Q. All right. Can you please just
8 check and let me know whether I am right, and I am
9 not --

10 U/A MR. MOORE: I'll take that under
11 advisement, Kent. Not that I am necessarily
12 disagreeing with that, I just want to be mindful of
13 what the logistics might entail, but I hear you.

14 MR. THOMSON: And, David, I'm not
15 trying to create work for anyone here. I'm not
16 aware of any other estimate. So if there is not
17 another estimate, don't worry about it. If there
18 is, just tell me what the other estimate was and
19 when it was issued?

20 MR. MOORE: No, I understand. It is
21 just that, you know, an estimate consists of a
22 number, but there may be other communications that
23 will be germane to the context, that's all. So,
24 again, I'm not saying --

25 THE DEPONENT: Sorry. Sorry to

1 interrupt. If you also look at the last line --
2 the last two lines, in order to make sure that
3 people could evaluate it, both tables have
4 calculations with and without the litigation
5 claims.

6 BY MR. THOMSON:

7 35 Q. Understood. All I'm interested in
8 is if there was a different estimate of value of
9 those claims before September of 2017, just let me
10 know what the additional or different estimate was
11 and when it was issued?

12 U/A MR. MOORE: I understand. You have my
13 position.

14 MR. THOMSON: Yes. Thank you very
15 much.

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

17 BY MR. THOMSON:

18 36 Q. Let me turn to a different
19 subject, and that is Danny Guy and Vincent Hanna.
20 Am I correct, Mr. Glassman, that on August 11 of
21 2017, you received an email from someone who
22 identified himself as Vincent Hanna?

23 A. On or about August 11th.

24 37 Q. Okay. Let's turn it up to make
25 this easy for you, please, and I would ask Tanya to

1 pull up my tab 23. So at tab 23 of my
2 cross-examination brief, you will find an email
3 from someone who described himself as Vincent
4 Hanna, August 11 of 2017, to you, entitled "Attacks
5 on Callidus"; do you see that?

6 A. I do see that.

7 38 Q. And am I right that prior to
8 receiving this email on August 11 you had had no
9 contact with anyone that was named Vincent Hanna or
10 called themselves Vincent Hanna?

11 A. Not to the best of my memory.

12 39 Q. And to your knowledge, am I right
13 that no one else at Catalyst, including Mr. Riley
14 or Mr. de Alba, had had contact with someone who
15 held themselves out to be Vincent Hanna?

16 A. Not to the best of my knowledge.

17 40 Q. There was, of course, no
18 supporting evidence and documents attached to this
19 email? This is what you received on the 11th;
20 correct?

21 A. I think that is correct.

22 41 Q. And am I right that shortly after
23 you received this email, you and others at Catalyst
24 Googled his name? In other words, Googled the name
25 Vincent Hanna in an effort to figure out who this

1 person was?

2 A. I did not.

3 42 Q. Right. Mr. Riley has testified
4 that he did, and also said that when he Googled the
5 name, he discovered that Vincent Hanna was the name
6 of a fictional character played by Al Pacino in a
7 movie called Heat. Did he, "he" Mr. Riley, relay
8 that information on to you?

9 A. I believe he did.

10 43 Q. All right. The following day on
11 April 12th of 2017, you responded to this email.
12 Let me show you your response, which is at tab 24.

13 MR. MOORE: I think you mean August
14 12th.

15 MR. THOMSON: Yes. I'm sorry. What
16 did I say?

17 MR. MOORE: April.

18 BY MR. THOMSON:

19 44 Q. I apologize. Thank you, David.
20 It is August 12th. And Tanya has pulled up now on
21 the screen a series of emails that were exchanged
22 around this time of the 12th, 13th, 14th. The one
23 I'm interested in is on the second page of the tab,
24 and it is your email of August 12th at 22:26; do
25 you see that where you say:

1 "Mr. Hanna. Thanks so much for
2 the below. Indeed, as much
3 information as possible and anything
4 u may know or have in your
5 possession would be deeply
6 appreciated. Thank U for thinking
7 of us. Hope all is well."

8 So that is an email you sent to this
9 person who described himself as Vincent Hanna on
10 August 12th?

11 A. Yes.

12 45 Q. And when you were asking him for
13 as much information as possible, anything that he
14 might have in his possession, what you were really
15 looking for, am I right, was documentation or
16 information that would corroborate the allegations
17 he had made in the first email of August 11th?

18 A. I was look for any and all
19 information that he had pertaining to his email.

20 46 Q. All right. Can we agree on this,
21 that you are asking for backup documentation and
22 information because you knew that it would be
23 irresponsible to rely upon this sort of allegation
24 in an email --

25 A. That is not --

1 47 Q. -- in an email --

2 A. That is not --

3 48 Q. Let me finish --

4 MR. MOORE: One at a time, one at a
5 time.

6 THE DEPONENT: Sorry.

7 BY MR. THOMSON:

8 49 Q. Let me just finish my question.

9 Sorry. And it is a bit hard because we are on
10 Zoom, so I'm not faulting you at all. Let me
11 finish my question.

12 You were asking for backup
13 documentation and information because you knew that
14 it would be irresponsible to rely upon this sort of
15 allegation in an email from someone you had never
16 heard of and never met, to then rely upon those
17 allegations in turn in making serious allegations
18 of wrongdoing against third parties; is that fair
19 to say?

20 A. That is not correct. We were --

21 50 Q. You were --

22 A. We were asking for backup
23 information because there were elements of the
24 email that no one publicly could possibly know as
25 well as some other experiences that no one, I don't

1 think -- I know for one piece for sure nobody could
2 possibly know, and for others I didn't think
3 anybody could possibly know. And I was looking for
4 the confirmatory elements so that we could figure
5 out whether in fact other evidence we had was being
6 further substantiated.

7 So, for example, in his email, if you
8 scroll back to it, he refers to Russian hackers.
9 It had not been publicly known - in fact, I don't
10 think anybody outside of our firm knew - that we
11 had been hacked in July in a very serious way and
12 subject to ransomware with Cyrillic writing in it.

13 It was also probably not publicly known
14 that we had been having other issues related to, if
15 I remember correctly -- and I don't remember the
16 timing exactly, but right around that time, we were
17 experiencing other difficulties that related
18 possibly to his reference to private investigators.
19 And we had already been the subject of social media
20 attacks, and we had already become the subject of,
21 right before this, The Wall Street Journal article,
22 which we knew was factually not correct.

23 And we had already been approached by a
24 number of other conventional media sources all
25 asking similar questions that clearly had been

1 orchestrated.

2 So we were looking for whatever
3 information we could in order to confirm what we
4 already had, some of which was alluded to in that
5 email.

6 51 Q. All right. Let's go back to his
7 email. Go back -- it is in the same tab, Tanya, if
8 you scroll down to the last page, page 3. And,
9 Mr. Glassman, in fairness to you, just take a
10 moment and read the email and show me what you are
11 referring to when you say he was alleging you were
12 the victim of Russian hackers.

13 A. [Witness reviews document.]

14 Well, we can do it sentence by
15 sentence. The first sentence told us that we were:

16 "[...] targeted by a group of
17 funds in Canada and abroad whose
18 sole goal is to bring down your
19 public vehicle Callidus and you
20 personally."

21 We already had experiences where that
22 was occurring. We already knew that there was a
23 group. We didn't know who the group was, but we
24 already knew that there was a group attacking us.
25 We had already been approached. We had been

1 attacked in social media. We had been attacked
2 already with The Wall Street Journal false fraud
3 article. We had been approached by other media
4 sources with similar questions that were factually
5 not correct. It was obvious it was being
6 orchestrated.

7 And --

8 52 Q. Okay. Is the sentence you are
9 referring to -- just to make this simple, is the
10 sentence you are referring to, it is about two or
11 three down from that:

12 "The 'cabal' does have private
13 investigators following you and most
14 likely have Russian hackers
15 attacking your office [...]"

16 A. No, I'm doing it sentence by
17 sentence. So the first sentence says:

18 "This letter is to inform you
19 that you have been targeted by a
20 group of funds in Canada and abroad
21 whose sole goal is to bring down
22 your public vehicle [...]"

23 That is the first part, and I had
24 answered that already.

25 53 Q. All right.

1 A. The second sentence which is:

2 "They are acting in concert to
3 short your stock and to spread false
4 rumors in the market place mostly
5 through Bruce Langstaff [...]"

6 We already knew there were false
7 rumours in the marketplace. We were monitoring
8 social media, and we knew most of it was factually
9 incorrect. And we had just had a false fraud
10 article in The Wall Street Journal. We didn't know
11 if it is through Bruce Langstaff at the time, which
12 turns out to be correct, but we knew that there was
13 somebody coordinating it on the street.

14 The third line:

15 "The Wall Street Journal is a
16 prime example of this coordinated
17 effort."

18 Well, obviously we had experienced that
19 article two days before.

20 The next sentence:

21 "The 'cabal' does have private
22 investigators following you and most
23 likely have Russian hackers
24 attacking your office emails and
25 servers/cloud."

1 Well, yes, I am referring to the fact
2 that we had discovered - I think it is two, not one
3 at that time - hacks at both Callidus and Catalyst
4 with Cyrillic writing in it that nobody knew. We
5 had never publicly disclosed it.

6 In terms of private investigators, we
7 knew then or we knew after that -- I can't remember
8 the exact time, but we knew people were dumpster
9 diving. I know for a fact after that other issues
10 occurred, including breaking into our security
11 system and generator at my house.

12 The comment:

13 "The RCMP and FBI are aware of
14 this 'cabal' from a criminal
15 investigation but that doesn't help
16 you in the short term."

17 Was obviously an important question to
18 us. We had already met with members of the RCMP -
19 I can't remember if it is technically called IMET
20 or JSOT - earlier in August, and we knew just by
21 their body language that they were aware of that.
22 Nobody knew that we had met with them. That was an
23 internal-only discussion we had sent, I think, Jim
24 Riley.

25 54

Q. I'm not sure what question you

1 think you are answering. I was asking specifically
2 about Russian hackers. That was my question.

3 A. Well, and --

4 55 Q. And the sentence you referred to
5 is the one that starts with the words "The
6 'cabal'":

7 "The 'cabal' does have private
8 investigators following you and most
9 likely have Russians hackers
10 attacking your office emails and
11 servers/cloud."

12 I just want to try to connect the dots
13 here. In relation to that particular sentence, am
14 I right that around this time you and others at
15 Callidus had retained someone named Marty Musters
16 to look into that issue? Do you recall that?

17 A. Well, I'm getting a little bit
18 confused, so if you don't mind, I would ask you to
19 slow down. Your original question asked me whether
20 I thought -- something to the effect of whether I
21 thought it would be irresponsible to not demand or
22 do due diligence on their comment, and my answer is
23 no, that is not really why we were asking for the
24 information. We already knew some of the things
25 that were in this, including the Russian hackers,

1 and I was trying to go through for you why we
2 already were looking for confirmatory evidence.
3 I'm not relying on --

4 56 Q. I'm asking you a different
5 question now, which is on the Russian hacker issue,
6 which is something you mentioned in your answer.
7 And all I'm asking you -- I'm just trying to
8 connect two dots. On the Russian hacker issue, do
9 you recall that in around this time, August of
10 2017, Catalyst had retained someone named Marty
11 Musters to look into the issue of Russian hacking
12 or hacking?

13 A. I think Marty Musters had already
14 been hired in July.

15 57 Q. All right. And let me just show
16 you his report, if I may, that deals with that
17 particular issue, and I would ask Tanya to pull up
18 my tab 33 where you'll find a copy of an email from
19 Mr. Musters to Mr. Riley of August 18, 2017?

20 A. I see that.

21 58 Q. It's entitled "Callidus Cyber
22 Breach Report" where he says:

23 "Jim,
24 Please find attached my report
25 with respect to the incident and how

1 it happened. You are the only
2 person that has this report."

3 And I'm not going to take the time to
4 go through the report, but I took it from that that
5 Mr. Musters had given the report to Mr. Riley. Mr.
6 Riley had not conveyed this report to third
7 parties. Is that consistent with your
8 understanding?

9 A. My understanding is that if that
10 is the --

11 MR. MOORE: Just hold on. Just a
12 moment. Let's get the timing right. This is
13 August 18th.

14 MR. THOMSON: Yes.

15 MR. MOORE: So that is a week after the
16 date of the Vincent Hanna email.

17 MR. THOMSON: Agreed.

18 MR. MOORE: Okay.

19 BY MR. THOMSON:

20 59 Q. My understanding, just from
21 reading the email, my understanding is that this
22 report was kept in confidence within Catalyst.
23 Let's start there; is that a fair assumption?

24 A. My understanding -- my
25 understanding is multiple fold. My understanding

1 is that in order to have produced a report by the
2 18th, he must have been hired significantly before
3 that.

4 60 Q. Right.

5 A. And I just don't know the date. I
6 have no idea without getting somebody to go look it
7 up. I know the hack occurred in July. I know that
8 it was reported to me in July that there was
9 Cyrillic writing in that hack, and I have to
10 believe that you are correct that that report
11 remained with Jim Riley. I have never actually
12 read the full report.

13 61 Q. All right. And you would be
14 surprised if either Mr. Musters or Mr. Riley were
15 conveying information about this hack to third
16 parties, including the person who described himself
17 as Vincent Hanna; fair enough?

18 A. I would be extremely disappointed.

19 62 Q. All right. Now, let me just
20 follow through on what then happens with this
21 exchange and take a look at that list.

22 So I am going to take you back now to
23 the email exchanges at my tab 24 and look at the
24 original Vincent Hanna email, and you will see that
25 the list of people that he was accusing of

1 wrongdoing are in the middle of that page. You
2 are, of course, aware that in November of 2017
3 Catalyst and Callidus ultimately did commence an
4 action alleging a Wolfpack conspiracy?

5 A. Yes, I am.

6 63 Q. And am I right that in that
7 action, the one commenced in November of 2017, no
8 claims were asserted against Roland Keiper or
9 against Clearwater Capital?

10 MR. MOORE: That's right.

11 THE DEPONENT: That's correct.

12 MR. MOORE: Well, there were -- I mean,
13 there were a bunch of John Does, but those were not
14 named parties, you are right.

15 BY MR. THOMSON:

16 64 Q. All right. And let's use David's
17 phrase "named parties". Shawn Kimmel and K2
18 Partners were not named parties in the Wolfpack
19 action?

20 A. That's correct.

21 65 Q. MMCAP and its principals were not
22 named parties in the Wolfpack action?

23 A. That's correct.

24 66 Q. Marc Cohodes was not a named party
25 in the Wolfpack action; correct?

1 A. I think it was our expectation
2 that Marc Cohodes would be one of the John Does.

3 67 Q. All right, answer my question.
4 Marc Cohodes was not a named party in the Wolfpack
5 action?

6 A. Marc Cohodes was not a
7 specifically named party, that's correct.

8 68 Q. All right. Now, am I correct that
9 in the period following this first email, the one
10 of August 11 of 2017, that you and others at
11 Catalyst asked repeatedly for corroborating
12 documentation and information concerning the
13 allegations made in this email; is that fair?

14 A. That is extremely fair.

15 69 Q. All right. And is it fair to say
16 that when Vincent Hanna and Snowdy were slow to
17 produce the corroborating documentation and
18 information, you became increasingly skeptical
19 about the allegations made in this email?

20 A. No, that is not correct.

21 70 Q. All right. Let me show you what
22 happens next and take you to August 13th, and I am
23 now on the emails at tab 24. Scroll to the first
24 page. Actually, to put this in context, scroll to
25 the top of the second page where you'll find an

1 email at the top of the page on August 13th at
2 11:53 a.m. from the person who called himself
3 Vincent Hanna to you where he asked you whether you
4 would be open to a face-to-face meeting; do you see
5 that?

6 A. I do see that.

7 71 Q. And then your response is at the
8 bottom of the next page, the first page, the same
9 day at 6:38 p.m. where you say:

10 "We r for sure open to a 'face
11 to face'. However, we think some
12 documentation or hard evidence in
13 advance of such would be most
14 helpful. Assuming such is
15 avail[able] in advance, I can make
16 myself avail[able] at our offices
17 tomorrow in the early afternoon. If
18 u prefer a different location, so
19 long as it's public and downtown, we
20 can likely make it work. We will of
21 course treat this confidentially and
22 meeting w[ith] me and/ jim riley
23 directly is not a problem."

24 Now, so that is an email you sent on
25 August 13th at 6:38 p.m.; correct?

1 A. Correct.

2 72 Q. And am I right that you didn't
3 receive an email, that you did not receive an email
4 back from this person describing himself as Vincent
5 Hanna that attached all the documentation or hard
6 evidence that he alleged he had on August 13th,
7 14th, or indeed in the next week or so; correct?

8 A. We did not receive the hard
9 evidence that I requested.

10 73 Q. All right. So that then leads to
11 a meeting that takes place on August 23rd of 2017,
12 and let me take you to the notes of that meeting
13 and you will find those at my tab 37. And here
14 you'll find handwritten notes which we understand
15 were prepared by Naomi Lutes of a meeting, and
16 you'll see the date of the meeting in the top
17 right-hand corner of August 23, 2017; do you see
18 that?

19 A. I do.

20 74 Q. And this is a meeting that took
21 place at a law firm in Toronto called Waddell
22 Philips, and you will see that is the second entry
23 at the top of the page?

24 A. I do.

25 75 Q. And you understood then or you

1 certainly came to understand shortly thereafter
2 that John Philips of that firm was acting as the
3 lawyer for the person who described himself as
4 Vincent Hanna; correct?

5 A. I do. I do. I'm sorry, I have a
6 question.

7 76 Q. Yes.

8 A. Did you refer to this as the first
9 meeting, because I don't think it is the first
10 meeting. I might be wrong --

11 77 Q. No.

12 A. -- but I don't think it was.

13 78 Q. No, I didn't. The first meeting
14 you attended.

15 A. The first meeting I attended is
16 correct, that's right.

17 79 Q. Yes. So as I understand it, just
18 looking at the notes, you attended this meeting
19 together with Mr. Riley, Brian Greenspan and Naomi
20 Lutes?

21 A. I believe that to be correct.

22 80 Q. And just below your name, so this
23 is now the fourth entry at the top of the first
24 page, you'll see it says "'Vincent Hanna' on
25 phone".

1 A. Yes.

2 81 Q. "Wants to maintain anonymity for
3 now". I took it from these notes that the person
4 who described himself as Vincent Hanna did not
5 attend the meeting in person, but rather dialled
6 in?

7 A. I believe that to be correct.

8 82 Q. And dialled in for the purposes of
9 maintaining his anonymity at least at that time;
10 correct?

11 A. I can't speak to his reasons.

12 83 Q. Okay. Am I correct that this was
13 the one meeting you attended in which Vincent Hanna
14 participated?

15 U/T MR. MOORE: There has been a bunch of
16 notes and documents, and rather than -- we can let
17 you know if the answer to that is different, Mr.
18 Thomson.

19 BY MR. THOMSON:

20 84 Q. Thank you, David.

21 Mr. Glassman, sitting here today, you
22 don't recall attending an in-person meeting with
23 this person who described himself as Vincent Hanna;
24 correct?

25 A. That's correct.

1 85 Q. And am I right that there was no
2 documentation or hard evidence provided to you in
3 advance of this meeting of August 23?

4 A. To the best of my recollection,
5 there was no hard evidence provided ahead of the
6 meeting.

7 86 Q. All right. And am I also correct
8 that during the course of this meeting on August
9 23, you learned that this person who called himself
10 Vincent Hanna was working with a private
11 investigator named Derrick Snowdy?

12 A. I don't know if that is correct.
13 We may have known or been told ahead of the meeting
14 clearly by Naomi's notes something about Derrick in
15 the margin, but I don't remember how we came to
16 know about Derrick Snowdy.

17 87 Q. And look at page 7 of the notes,
18 if Tanya can pull that up. Sorry, it is page 7 in
19 the handwriting; it is page 13 of the production,
20 if that helps. There we go. Do you see at the
21 very end of that page it says "PI = Derrick
22 Snowdy"?

23 A. Yes.

24 88 Q. And I took it from that that you
25 were advised during this meeting, whether or not

1 you knew before, but you were certainly advised
2 during the meeting that this person who described
3 himself as Vincent Hanna had a private investigator
4 named Derrick Snowdy working on the matter?

5 A. I can't speak to how or why Naomi
6 wrote it that way. I don't remember when or how we
7 were informed of Derrick's engagement, Derrick
8 Snowdy's engagement, but we obviously became aware
9 of it.

10 89 Q. You would accept that certainly by
11 the time of this meeting on August 23 you were
12 aware of the involvement of Derrick Snowdy?

13 A. I would say it differently. By no
14 later than the end of that meeting we were aware of
15 it. I just don't remember when or how.

16 90 Q. That is fine. Am I right that
17 Mr. Snowdy did not participate in this meeting on
18 August 23?

19 A. You are correct, to the best of my
20 memory, because I don't think I have ever met
21 Mr. Snowdy.

22 91 Q. All right. And am I also correct
23 that during the course of this meeting on August 23
24 you told the person who identified himself as
25 Vincent Hanna that at some point he would need to

1 tell you who he was to make sure that you were on
2 the same playing field?

3 A. That would not be correct. I
4 believe my position was he would have to tell us
5 much sooner rather than later, and that I am not
6 going to play this game.

7 92 Q. All right. Turn to page 13 in the
8 production. Do you have that? It's the same note
9 that we are on. And look at the top of the page.
10 So "N" in all the notes indicate that "N" is you.

11 "N - aligned with you - need to
12 go away and think.

13 - at some point you need to tell
14 me who you are so we are on the same
15 playing field."

16 A. Yes.

17 93 Q. And Vincent Hanna then responds:

18 "- at some point I will just
19 don't torch me."

20 And I take it that is an accurate note
21 of what happened during the course of the meeting?

22 A. I have no idea if it is accurate
23 or the language. My memory is my being even more
24 forceful than that.

25 94 Q. Right. And am I correct that

1 during the course of this phone call you knew and
2 Ms. Lutes knew and Mr. Greenspan knew that the name
3 Vincent Hanna was a pseudonym? That is why it is
4 in quotes; correct?

5 A. For sure.

6 95 Q. Now, am I correct that during this
7 call the person who identified himself as Vincent
8 Hanna told you and the others that he thought there
9 might be a taped call of a meeting involving the
10 so-called takedown of Catalyst?

11 A. My memory is that that is one
12 of -- that is possibly one of a number of
13 conversations he said may have been taped or have
14 evidence of, if not taped.

15 96 Q. All right. And what I am
16 referring to is page 5 of the production or page 3
17 of the handwritten notes. At the top of the page:

18 "V", which stands for Vincent
19 Hanna, "- need big capital to take
20 down Valiant.

21 - Russian mob.

22 The dry run for valiant was
23 Concordia."

24 And it then goes on to say:

25 "- thinks there might be a

1 taped call of meeting involving take
2 down of Catalyst."

3 And I take it, again, that is an
4 accurate note of what this person who called
5 himself Vincent Hanna said during the course of
6 this meeting?

7 A. I have no idea. I just don't know
8 if that is accurate.

9 97 Q. You have no basis to dispute the
10 accuracy of Ms. Lutes' notes three or four years
11 after the fact; fair enough?

12 A. My memory is that it is not the
13 only piece of evidence or tape or evidence of a
14 conversation that was alluded to, so -- and I have
15 no idea. It has been a number of years, as you
16 have said.

17 98 Q. You asked --
18 U/T MR. MOORE: Mr. Thomson, generally I
19 think it is fair to say that so far as we know, Ms.
20 Lutes, whether it be these notes or other notes,
21 was taking down her interpretation or recollection
22 or hearing of what was being said to the best of
23 her ability. And you know, if there is something
24 in respect of any particular passage of this or any
25 other notes that we take material issue with in

1 term of its accuracy, we'll let you know.

2 BY MR. THOMSON:

3 99 Q. Thank you, David. That is very
4 helpful.

5 Mr. Glassman, am I right that you asked
6 Vincent Hanna to provide you with that tape and
7 other tapes that he had?

8 A. I assume I did.

9 100 Q. All right. And no such tape was
10 ever provided to you, was it?

11 A. Its existence was confirmed
12 numerous times to us and yet it still has not been
13 produced.

14 101 Q. Now, let me take you back one week
15 before this meeting. So this is now August 23 of
16 2017, and let me take you back to August 16 of
17 2017, one week before. Am I right that on August
18 16th of 2017, Catalyst issued its Q2 2017 quarterly
19 letter to investors?

20 A. I do not have in front of me the
21 actual date. I assume that we -- I know that we
22 issued our Q2 letter. I don't know when.

23 102 Q. Let me ask Tanya to pull up,
24 please, my tab 26.

25 A. David, you said you had to leave

1 at 5 to 11:00.

2 MR. MOORE: Yes, and I'm watching the
3 clock.

4 MR. THOMSON: Just tell me, David. Do
5 you want to leave now or do you want --

6 MR. MOORE: Yes, this is a convenient
7 point to take a break. And I don't know if that
8 call is going to last the full half hour, but we'll
9 send an email, I guess, when we are ready to get
10 back on.

11 MR. THOMSON: Yes, that is fine.

12 MR. MOORE: All right.

13 MR. THOMSON: Thank you.

14 MR. MOORE: Thank you.

15 -- RECESSED AT 10:55 A.M.

16 -- RESUMED AT 11:40 A.M.

17 BY MR. THOMSON:

18 103 Q. So, Mr. Glassman, just before we
19 broke, I had taken you to the August 2017 investor
20 letters, and you had asked about the -- sorry, we
21 have an echo now again. Which was August 16, 2017.
22 So let me ask you to turn to -- Tanya, turn up tab
23 26.

24 Now you have got to go back. There is
25 a covering email. There it is. So you'll see,

1 Mr. Glassman, here is a covering email from
2 "Catalyst Notifications" of August 16, 2017.

3 A. I see it.

4 104 Q. "Please see attached Q2 2017
5 Quarterly letter."

6 This one is, as I understand it,
7 from -- this is for Fund III.

8 So again, I am just trying to establish
9 the date, Mr. Glassman, of these Q2 quarterly
10 letters to investors, and I think you can now agree
11 the date was August 16, 2017?

12 A. It appears so.

13 105 Q. And the quarterly letters to
14 investors were accompanied by a letter from you?

15 MR. MOORE: Do we have that?

16 THE DEPONENT: I don't remember.

17 BY MR. THOMSON:

18 106 Q. So turn to the next document in
19 the same tab. You'll see a letter from you, again
20 to the investors in Fund III, starting with the
21 phrase:

22 "Catalyst continues to be
23 excited about the existing Canadian
24 distressed opportunity set and
25 believes all of the work undertaken

1 on behalf of its LPs will be
2 rewarded handsomely."
3 So this is a letter over your
4 signature?

5 A. Yes.

6 107 Q. And you will see that the second
7 paragraph of this version of the quarterly letter
8 is blacked out. It is redacted.

9 A. I see that.

10 108 Q. Now, just so we have it for
11 terminology, am I right that when we see that
12 phrase "Catalyst Fund Limited Partnership III",
13 that is sometimes known as Fund III?

14 A. Sure.

15 109 Q. Correct?

16 A. Yes.

17 110 Q. And am I right that as of August
18 2017, Catalyst was administering Funds II, III, IV,
19 and V?

20 A. Amongst others, yes.

21 111 Q. Okay.

22 A. And I don't think "administering"
23 is the right word. "Managing" probably is the
24 better word.

25 112 Q. Managing. Okay, let's use your

1 word, "managing". And am I right that on August
2 16, 2017, similar Q2 2017 quarterly letters were
3 sent to investors in Funds II, IV, and V?

4 A. I wouldn't know if it was the
5 exact same date, but I would assume that is
6 generally in the same time period.

7 113 Q. So look at, as an example --
8 Tanya, pull up tab 27, and you will see the same
9 covering email of August 16, 2017, and this time
10 for investors in Fund IV; correct?

11 A. I don't see the Fund IV. Yes, IV
12 and IV-PP.

13 114 Q. Right. And then if we look at my
14 tab 29, you will see the same covering email from
15 Catalyst Notifications. The date is August 16,
16 2017, this time for investors in Fund V?

17 A. Yes.

18 115 Q. So the same date is my simple
19 point for these Q2 quarterly letters to investors,
20 August 16, 2017; correct?

21 A. It appears so.

22 116 Q. Now, we have also obtained
23 unredacted versions of the quarterly letters sent
24 to investors in Funds II and V on August 16, 2017.
25 So if we look at the Fund II letter, you'll find

1 that at my tab 32.

2 [Court Reporter intervenes for
3 clarification.]

4 BY MR. THOMSON:

5 117 Q. That seemed to fix the problem.

6 So, Mr. Glassman, here you'll find the
7 same Fund II letter, but this time the paragraph
8 that was redacted is included, and just to help
9 you, this version was attached to an affidavit that
10 Mr. Riley swore in December of 2019, and you'll see
11 that the paragraph that had been redacted from the
12 earlier versions says:

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

21 Do you see that paragraph?

22 A. I do.

23 118 Q. If you look at the letter for Fund
24 V -- pull up, Tanya, please, tab 31. You will see
25 that the letter -- your covering letter to

1 investors in Fund V contains the identical
2 paragraph?

3 A. Yes.

4 119 Q. And am I right that the same
5 paragraph appeared in the covering letter to
6 investors in Funds III and IV?

7 A. I don't know.

8 120 Q. David, will you please provide us
9 with the unredacted version of the Q2 letter to
10 investors in Funds III and IV also sent August 16,
11 2017?

12 MR. MOORE: Let me just consider that
13 position. Without providing it in an unredacted
14 form, I assume what you are look for is
15 confirmation that the same paragraph appeared in
16 those letters?

17 MR. THOMSON: Yes.

18 U/T MR. MOORE: All right. We'll let you
19 know.

20 [Court Reporter intervenes for
21 clarification.]

22 [Discussion Off the Record to Resolve
23 Technical/Audio Issues.]

24 BY MR. THOMSON:

25 121 Q. All right. I guess we are ready

1 to resume. Just a couple of, I hope,
2 uncontroversial propositions to you, Mr. Glassman.
3 By the time these investor letters were sent on
4 August 16th of 2017, of course you had never met or
5 spoken to the person who identified himself as
6 Vincent Hanna; correct?

7 A. We had had obviously communication
8 from them.

9 122 Q. No, my question was you had never
10 met or spoken to the person who identified himself
11 as Vincent Hanna; correct?

12 A. I had never met. I don't remember
13 when the first meeting for anybody else was.

14 123 Q. Am I correct that you had never
15 met with or spoken to --

16 A. I had never met, that's correct.
17 Sorry, I misunderstood the question. I had never
18 met. I personally had never met. That's correct.

19 124 Q. Thank you. Am I correct that you
20 had never met with or spoken to his private
21 investigator Derrick Snowdy by August 16, 2017?

22 A. That is for sure correct.

23 125 Q. By August 16 of 2017, you had not
24 yet determined who Vincent Hanna was; correct?

25 A. Correct.

1 126 Q. And also by August 16 of 2017, you
2 had received no corroborating documentation or
3 evidence from the person who identified himself as
4 Vincent Hanna; correct?

5 A. It is correct that we had not
6 received any new evidence from Vincent Hanna or
7 whoever that was, that's correct.

8 127 Q. Can you tell me how many investors
9 these Q2 quarterly letters addressed to investors
10 in Funds II, III, IV, and V were sent to?

11 A. We can find out for you.

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

13 BY MR. THOMSON:

14 128 Q. Will you please do that and let me
15 know?

16 MR. MOORE: We will. To the best of
17 our ability, we'll let you know.

18 BY MR. THOMSON:

19 129 Q. And will you please also give us a
20 list of those investors?

21 U/A MR. MOORE: We'll take that under
22 advisement. There may be some confidentiality
23 restrictions in the underlying contractual
24 documentation, but we'll consider that, and we'll
25 take that under advisement.

1 BY MR. THOMSON:

2 130 Q. Okay. Now, let me take you back
3 one last time to Naomi Lutes' notes of this meeting
4 on August 23 of 2017 at the offices of Mr. Philips,
5 and that is at tab 37 of my documents. And I'm
6 just situating you in a moment in time to show you
7 what happened next. But this, again, is a note I
8 have already taken you to.

9 If you turn to page 13 of the
10 production, please, page 7 of the notes. This is
11 part of the top of the page I have already read to
12 you where the note says beside your name:

13 "- at some point you need to
14 tell me who you are so we are on the
15 same playing field."

16 And the person who called himself
17 Vincent Hanna said:

18 "At some point I will just
19 don't torch me."

20 Shortly after this meeting - and this
21 is now in the afternoon of August 23 - you have
22 another email exchange with this person who called
23 himself Vincent Hanna. So let me then take you to
24 tab 35 of my documents where there are a bunch of
25 emails around this time, August 23/24. And I am

1 interested in the email on the second page of the
2 production. Toward the top of the page, you'll
3 find an email from Vincent Hanna addressed to you
4 of August 23 at 7:19 p.m.; do you have that?

5 A. I do.

6 131 Q. Where he says:

7 "Dear Mr. Glassman,

8 Would you be kind enough to

9 provide me your cell phone in

10 confidence? The client would like

11 to speak with you directly. Also,

12 do you use WhatsApp?"

13 And then if you turn to the first page,

14 you respond the same day at 23:27, where you say:

15 "Of course. 416-302-6303."

16 I take it that is your normal cell

17 phone number?

18 A. It is.

19 132 Q. And you then say:

20 "Yes, am on WhatsApp".

21 You then say:

22 "Also have another # that we

23 know for sure is ok."

24 A. Yeah, my backup phone.

25 133 Q. I'm sorry, I didn't hear that.

1 A. My backup phone. I have two
2 phones.

3 134 Q. Right. So you have two phones.
4 One you normally use. What is the purpose of the
5 second phone?

6 A. In case the first phone ever
7 breaks. I can give you the number. It has been
8 produced to you guys already.

9 135 Q. What is the number of the other
10 phone?

11 A. I'm looking it up for you. The
12 other number is 647-802-4154.

13 136 Q. And was that number used to
14 communicate with Mr. Guy in respect of this letter?

15 A. I don't believe so. We have given
16 you the whole WhatsApp conversation.

17 137 Q. Was that other number, the 647
18 number, used to communicate with anyone concerning
19 West Face, Mr. Boland, or Justice Newbould,
20 including Psy Group, Black Cube, Tanuri, Mr. Ben
21 Efraim?

22 A. No. No, to the best of my
23 knowledge, everything on the two phones is synced.
24 So if my email shows up, it shows up on both. If a
25 WhatsApp shows up, I'm told -- or at least I

1 believe, if anything is used on the other phone, it
2 shows up here. They are mirrors of each other with
3 a different number. It is a backup phone.

4 138 Q. Do you know whether that phone,
5 the second number, the 647 number, has that number
6 been searched for documents that relate to the
7 matters at issue in this case?

8 A. I know for a fact that people were
9 instructed to search it.

10 139 Q. All right. Do you know --

11 U/T MR. MOORE: Kent, I'll verify that. My
12 understanding is that it was indeed searched as
13 part of the protocol we went through recently, but
14 I'll verify that. I'll verify that.

15 BY MR. THOMSON:

16 140 Q. Thank you. Now, I'm still on
17 these emails at my tab 35, and if you look at the
18 email just above the one I took you to a moment
19 ago, you'll find one in the middle of the page of
20 August 23, 2017, at 8:10 p.m., from Vincent Hanna
21 to you; do you have that?

22 A. I do.

23 141 Q. Where he says:

24 "Thank you for the
25 information".

1 Again, the time may matter. It is 8:10
2 p.m. He says:

3 "Thank you for the information.
4 If you feel comfortable, please send
5 me the alternate # as well if you
6 would like to communicate through
7 that instead. WhatsApp is also an
8 avenue to communicate."

9 And then, again, just make a mental
10 note of that time, 8:10 p.m. Now go to the
11 WhatsApp text messages, and they are at my tab 36.
12 And I believe you'll find at the top of the page
13 the first message that is sent is the same day,
14 August 23 at 8:27 p.m.

15 A. I see that.

16 142 Q. So roughly 17 minutes after the
17 email exchange we just looked at. Am I right that
18 when we look at these messages, that you are in
19 green on the right and Danny Guy is in gray on the
20 left?

21 A. I think so.

22 143 Q. And am I correct that you
23 discovered either then or shortly thereafter that
24 Vincent Hanna was in fact Danny Guy?

25 A. I think if you go down, it says

1 that it is him.

2 144 Q. Okay.

3 A. But I don't remember exactly the
4 time or the day, but it would have been in this
5 general time frame.

6 145 Q. Okay.

7 MR. MOORE: At the top of this document
8 is where the number is referred to, Danny Guy's
9 name appears. Whether that is the first indication
10 or it was something else around the same time, but
11 then or approximate to this, Danny Guy's name and
12 identity would have become apparent I think it is
13 fair to say.

14 BY MR. THOMSON:

15 146 Q. That is good enough for me. I
16 don't need the precise date. Just so we have it,
17 Mr. Glassman, am I right that Danny Guy was an
18 investor who lived in Bermuda at the time?

19 A. That is my understanding.

20 147 Q. And was it also your understanding
21 that Guy had done battle for some period of time
22 with short sellers over a company called Concordia
23 Health Care?

24 A. It was my understanding -- or it
25 is now my understanding, but I think I discovered

1 somewhere around that time that there was an issue
2 for him. I thought it was under Nobili
3 Pharmaceutical, not Concordia, but I might get the
4 name of the company mixed up. There were a whole
5 bunch of biopharma companies that were apparently
6 attacked.

7 148 Q. Okay. Were these messages
8 exchange over WhatsApp?

9 A. I believe so.

10 149 Q. And are you able to tell, either
11 by looking at this or perhaps just make an inquiry,
12 as to what phone number you used to communicate on
13 WhatsApp with Mr. Guy?

14 A. I'm virtually certain it is this
15 number, but we can make sure. I know that it is on
16 this phone -- or was this on phone.

17 150 Q. Sorry, when you say "this number"
18 and "this phone", what phone are you referring to?

19 A. 302-6303, my main cell phone.

20 151 Q. All right. If you could please
21 confirm that for me, I would appreciate it.

22 U/T MR. MOORE: All right. Assuming we
23 can.

24 BY MR. THOMSON:

25 152 Q. Yes. Thank you. I appreciate it.

1 Now, am I right that right at the
2 beginning of this series of messages with Danny Guy
3 that he was trying to persuade you to meet with and
4 hire Snowdy as an investigator?

5 A. Can I take a moment to read it?

6 153 Q. Yes. What I am looking at is --
7 it is the very first substantive text from Danny
8 Guy to you. It is on the first page. It is about
9 an inch from the top of the page.

10 MR. MOORE: Mr. Glassman and
11 Mr. Thomson, my guess is that Mr. Thomson may have
12 a number of questions about this WhatsApp document,
13 which goes on for tens and tens of pages. So as we
14 go along, Mr. Glassman, if you feel a need to stop
15 and read the texts to properly consider the
16 question, you should do so, and we'll move along as
17 best we can.

18 BY MR. THOMSON:

19 154 Q. I'm at the text -- it is 20:31 on
20 August 23.

21 A. I see it.

22 155 Q. Where he says:

23 "Ok, I think you should meet
24 with the PI and hire him."

25 That was my simple question. So that

1 was the proposition put forward by Danny Guy at the
2 start of these messages; correct?

3 A. I think so, yes.

4 156 Q. And am I right that you insisted
5 along the way that the first meeting with Snowdy
6 should be private investigator to private
7 investigator?

8 A. I don't remember. If you want me
9 to read more of it, I can look in the email.

10 157 Q. It is a --

11 A. But I can't remember if the first
12 meeting that I insisted on was private investigator
13 to private investigator or if it was Snowdy to
14 counsel --

15 158 Q. Look at --

16 A. -- or some --

17 159 Q. Look at the second page of the
18 production in the first green box on the page,
19 Thursday, August 24th, at 7:55, where you say:

20 "Good morning. Lawyers r
21 requiring that it be done pi to pi."
22 I took that to mean private
23 investigator to private investigator?

24 A. It appears so. Could I read it
25 for a second?

1 160 Q. Yes. Sure.

2 A. [Witness reviews document.]

3 Okay.

4 161 Q. So am I right that that exchange
5 led to a meeting that took place a couple of days
6 later between Mr. Snowdy on one side and a fellow
7 named Tom Klatt on the other; do you remember that?

8 A. I don't know. I don't know,
9 because a couple of boxes down he talks about:

10 "I would put Jim and your
11 lawyer in that meeting u if u can."

12 162 Q. Okay. Let me show you what
13 happened. First of all, do you remember the name
14 Tom Klatt?

15 A. Yes.

16 163 Q. So Klatt, as I understand it, is a
17 former homicide detective who was acting as a
18 private investigator for a number of people but
19 including Brian Greenspan?

20 A. I believe that is correct, but I
21 wouldn't swear my life on it, but that is my
22 recollection.

23 164 Q. And do you recall as well that
24 there was another gentleman named Peter Barakett
25 from a firm called Due Diligence Consulting who was

1 also brought into the matter?

2 A. Yes.

3 165 Q. Okay. And if we look at my tab
4 44, you'll find a covering memo from Jim Riley to
5 Brian Greenspan about -- asking approval to send an
6 attachment to Peter Barakett and Dan Gagnier of
7 Gagnier Communications. What I am interested in is
8 the attachment which is behind -- in my documents,
9 behind a blue sheet of paper. You'll find a Memo
10 to File. Do you see that? It is a Memo to File of
11 Saturday, August 26, 2017, 10:00 a.m., Derrick
12 Snowdy:

13 "Meet with Derrick SNOWDY and
14 Peter BARAKETT".

15 And my understanding - and I'm sure
16 David will confirm this - these are Tom Klatt's
17 notes prepared following the meeting he attended
18 with Snowdy and Peter Barakett on the morning of
19 Saturday, August 26th?

20 MR. MOORE: That is our understanding
21 as well. The witness may not remember that
22 specifically, but I think you are accurate in that
23 summary, yes.

24 BY MR. THOMSON:

25 166 Q. Thank you, David.

1 Mr. Glassman, did you receive a copy of
2 this memo shortly after it was prepared by
3 Mr. Klatt?

4 A. I don't remember.

5 167 Q. Okay. Do you recall receiving a
6 debrief concerning the meeting -- forgetting the
7 memo, but a debrief concerning the meeting from
8 Mr. Klatt or Mr. Greenspan after it occurred?

9 A. I remember getting a debrief. I
10 can't remember who debriefed me. I would have
11 thought it would have been Jim Riley or possibly
12 Brian.

13 168 Q. Okay.

14 A. But my -- I can't tell you for
15 sure who debriefed me.

16 169 Q. Let me take you then back to the
17 text messages, which are at my tab 36, and I'm
18 interested in the third page of this production,
19 several of your messages, text messages on August
20 26th, so the day the meeting takes place, but later
21 in the day. So the first one I'm interested in is
22 halfway down the page. There is a text from you
23 August 26th at 18:51. Scroll down, please. Scroll
24 down. Where you see you say:

25 "Got the debrief.

1 That's just a fact."

2 And Guy then responds:

3 "Define proves himself?"

4 And you say:

5 "Obviously as credible with
6 actionable intel. He likely failed
7 on both counts. The only possible
8 thing of value he alluded to was a
9 taped conversation but said he may
10 or may not have it and if he had it,
11 he wasn't sure if he could provide
12 it or even let them hear it. He
13 came across allegedly very poorly
14 and completely unprofessional and
15 lacking in credibility. I wasn't
16 there so have no comment, but was
17 hopeful until I heard the debrief.
18 Very/extremely beyond
19 disappointing."

20 Then you go on to say at 19:09:

21 "His background and research in
22 him did not help his cause one iota.
23 As a professional or w[ith]
24 direction from u/your team, he
25 should have known to just play it

1 straight, be honest and as
2 forthcoming as humanly possible.
3 Bizarre in my opinion since I would
4 have thought YOU own the info/intel,
5 he works or worked for u, and would
6 therefore have been at least
7 forthright and co-operative given
8 the alignment of interests.
9 Disappointing to say the least."

10 And I take it that is a fair summary of
11 where matters stood from your perspective and the
12 perspective of your investigators as of August 26,
13 2017; fair enough?

14 A. Not quite. Not quite. I think
15 the more fair assessment would be we had been
16 pushing and we continued to push for hard evidence
17 and confirmatory evidence of what we already knew,
18 and we needed and wanted whatever hard evidence he
19 or anybody else had. And I wanted Mr. Guy,
20 assuming that he owned the information and paid for
21 it, to use his influence to make it forthcoming.
22 It would obviously be way better for us if we had
23 the hard evidence.

24 170 Q. But isn't it fair to say that by
25 August 26th, certainly at the end of the day your

1 guys did not trust Snowdy or anything related to
2 him one iota?

3 A. It is fair to say that we had
4 received some information that was surprisingly
5 accurate -- or maybe not accurate, but in line with
6 other things that we knew already, and we wanted
7 more, but we wanted hard evidence, not just talk.

8 171 Q. Well, look at your text to Danny
9 Guy at 19:14, so 7:14 p.m., on Saturday, August 26,
10 the same page that we are on about two inches from
11 the bottom of the page. There it is:

12 "Make excuses all u want. He
13 has set this relationship back
14 immensely. My guys do not trust him
15 or anything related to him one iota
16 now. Very badly damaged the
17 situation."

18 That was a fair and accurate statement
19 of where things stood on your side of the table as
20 of the end of the day on August 26; correct?

21 A. No, I suspect it was intentionally
22 overstated in order to put pressure on Mr. Guy to
23 deliver goods.

24 172 Q. Well, isn't it fair to say that
25 when you learned that Snowdy was involved in this

1 matter, you had your lawyers prepare a briefing
2 note for you concerning Snowdy and his background?

3 A. Somebody gave me research on
4 Mr. Snowdy, which is one of the reasons why I
5 wanted hard evidence and backup, not just talk.

6 173 Q. So if you look at the text at the
7 bottom of that page, August 26th at 19:19, you say:

8 "That's simply intellectually
9 dishonest. Your guys knows his own
10 reputation and what he has done in
11 the past. I read the briefing note
12 on him last wk. whatever 'history'
13 he has, I was 'expecting' a
14 professional w[ith] self awareness.
15 I was expecting honesty and
16 forthrightness."

17 And it goes on and on.

18 May we please have a copy of that
19 briefing note?

20 U/T MR. MOORE: I'm not sure that there is
21 anything other than that Tom Klatt note that you
22 referred to. I'm not aware sitting here this
23 morning of any distinct briefing note beyond that.
24 But we'll make some further inquiries.

25 BY MR. THOMSON:

1 174 Q. Yeah, David, it can't be the Klatt
2 note because the Klatt note was sent on August
3 26th, which is the date of this exchange. What Mr.
4 Glassman is referring to in the note is a briefing
5 note he read on him "last week", i.e., before
6 August 26th.

7 So will you make an inquiry, please,
8 and let us know if there was a briefing note that
9 dealt with Snowdy's background and, if so, please
10 produce it to us.

11 U/T MR. MOORE: We'll make inquiries and
12 let you know.

13 MR. THOMSON: Thank you.

14 MR. MOORE: I mean, I'm not saying
15 there is a note. Sitting here this morning, I
16 don't purport to have a hundred percent
17 instantaneous recollection of every single document
18 in this case. I'm not -- nothing comes to mind.
19 If there is such a note upon further inquiry, we
20 can consider whether it is, you know, covered by
21 any legitimate ongoing privilege or not, and we'll
22 let you know in any case, A, is there such a note,
23 what is our position, et cetera, and we'll follow
24 up in that regard.

25 BY MR. THOMSON:

1 175 Q. All right. And can you let me
2 know one more thing, which is who was the briefing
3 note shared with? Was it shared not only with
4 Mr. Glassman but also with Mr. Riley?

5 U/T MR. MOORE: I understand.

6 BY MR. THOMSON:

7 176 Q. Now, am I right, Mr. Glassman,
8 that when you read that briefing note or certainly
9 were briefed about Snowdy, you learned that he had
10 been declared bankrupt back in 2009?

11 A. I don't actually know when I
12 discovered and how I discovered that there were
13 some good things and some questionable things about
14 Mr. Snowdy.

15 177 Q. But you certainly learned at some
16 point along the way he had been declared bankrupt?

17 A. Yes.

18 178 Q. Okay. And did you also learn
19 about a case Snowdy had been involved in decided by
20 a Justice of the Ontario Superior Court, Justice
21 Thorburn, in the case called CN Rail v Holmes; do
22 you know?

23 A. I don't remember.

24 179 Q. Let me just ask Tanya to pull it
25 up. So it is at my tab 37 -- sorry, 36A. And,

1 Mr. Glassman, without going through the detail of
2 the case, there is no point doing that, but it is a
3 case where, if you turn to paragraph 40, at the end
4 of the decision, you'll see Justice Thorburn - who
5 is now, by the way, a judge of the Court of
6 Appeal - at paragraph 40 in which she issues an
7 order restraining Snowdy from:

8 "[...] assisting any person to
9 disclose any documentary or oral
10 discovery in these proceedings or
11 the content of any such documentary
12 or oral discovery."

13 Does that refresh your recollection at
14 all as to whether this case was brought to your
15 attention at the time?

16 A. No, this does not. I don't
17 remember reading this or seeing this.

18 180 Q. Okay. If we go back to the text
19 messages at tab 36, and look at page 6 of the
20 messages. I'm interested in the last little bit of
21 your text at the top of that page at 19:22 on
22 August 26, again, where you say:

23 "Now u are being intellectually
24 dishonest or manipulated by your
25 guy. There r legitimate legal and

1 structural reasons to have it done
2 pi to pi. It's your and my job to
3 manage our teams -- including our
4 respective pi's. [Please] hear me:
5 there is no basis or way j can
6 currently [...]" -- I think you say
7 "[I] can currently imagine where
8 ibor my team." I think you meant to
9 say, "[I or] my team will allow me
10 or Jim to meet w[ith] your guy.
11 It's likely YOUR guy just looking
12 for a bigger paycheck. [His]
13 reputations and previous work done
14 by the 2 guys speak for themselves.
15 Your own guy's court record etc
16 speaks for itself as well."

17 Do you know what court record you are
18 referring to?

19 A. I do not.

20 181 Q. Is there a way to make an inquiry
21 and let us know what you were referring to in that
22 message?

23 U/T MR. MOORE: We'll follow up and see if
24 there is anything further that can be added.

25 BY MR. THOMSON:

1 182 Q. Thank you. And you will see the
2 same thing, Mr. Glassman, if you turn to the next
3 page, page 7.

4 MR. MOORE: Sorry, Mr. Thomson, just
5 while we are on that topic, what was the date of
6 the Klatt memorandum again?

7 MR. THOMSON: August 26th.

8 MR. MOORE: Okay.

9 MR. THOMSON: The same date as these
10 emails.

11 MR. MOORE: Yes, I understand.

12 BY MR. THOMSON:

13 183 Q. You'll see -- go to page 7,
14 Mr. Glassman, and you'll see a text from you in the
15 middle of the page the same day, August 26th at
16 20:13, and the part I'm interested in is right in
17 the middle of that, but you say:

18 "Acting together means he has
19 to share ALL information. Asap. We
20 r moving fwd w[ith] or [without] him
21 etc. Money not an issue.
22 Credibility and actionable
23 intelligence is all that matters. U
24 need to do better research on him
25 for your own sake. He has been

1 involved personally in some very
2 dubious lawsuits. He has been
3 declared bankrupt. He has had
4 testimony thrown out for lack of
5 credibility. All unrelated to the
6 RCMP issue. I read the file and
7 it's all publicly avail[able]."

8 And what I am interested in is what you
9 are referring to; what is the file; what was this
10 litigation; where has Snowdy been tossed out, and
11 so on.

12 So, David, if you can make an inquiry
13 on that front, that is what I am interested in.

14 U/T MR. MOORE: Yeah, no, I understand.
15 We'll look at the Klatt memo and see whatever else
16 there is. There may be some reference to this in
17 that Klatt memo, but in any event, I understand
18 your inquiry, and we'll make further inquiries.

19 BY MR. THOMSON:

20 184 Q. Thank you. Now, if we
21 fast-forward to September 6th, just trying to cut
22 through this. Flip forward to page 15 of these
23 texts, and again, I'll just skip forward blocks of
24 time just to save time. What I am interested in
25 here now is the messages being sent September 6th

1 of 2017, so ten days or so later. And you see the
2 text -- your text at the top of that page, so
3 September 6th at 22:42, where you say:

4 "We believe and have real
5 reason for such that your pi may be
6 a very real problem".

7 And below that:

8 "He needs to prove his bona
9 fides or u need to force him to do
10 so. The fact it's taken so long and
11 no progress whatsoever does not bode
12 well".

13 I took it from this that by September 6
14 of 2017, you still had not received the
15 corroborating evidence that you had been asking for
16 from the time you first engaged with Danny Guy
17 several weeks before; fair enough?

18 A. I don't know that. I don't know
19 if that is true. I know that we hadn't received
20 what we wanted or all of what we wanted. I have no
21 idea what we received in the intervening ten days
22 or what was disclosed in those ten days by reading
23 this text.

24 185

25 Q. Will you make an inquiry and let
us know whether you had received corroborating

1 evidence from Snowdy or Danny Guy by the time this
2 text is sent on September 6th?

3 U/A MR. MOORE: We'll take that under
4 advisement.

5 BY MR. THOMSON:

6 186 Q. All right. And that leads to a
7 meeting that takes place about six days later
8 involving Mr. Riley and others. Let me show you
9 the notes of that and ask Tanya to pull up, please,
10 tab 69 of my documents.

11 And so here you'll see, Mr. Glassman,
12 again, handwritten notes of Naomi Lutes concerning
13 a meeting that takes place on September 12th of
14 2017, at the offices of John Philips, the lawyer
15 for Danny Guy, that Jim Riley attended with Naomi
16 Lutes and Derrick Snowdy and John Philips.

17 To make this easy for you, there is
18 also a typewritten version of the same notes, and
19 you will find those at tab 75. So you'll see it is
20 the same date, same notes, but someone has typed
21 these up. I assume Ms. Lutes may have done so.

22 Am I right you were not at this
23 meeting?

24 A. I was not at that meeting.

25 187 Q. But you did receive a report about

1 the meeting from Mr. Riley; correct?

2 A. Almost certainly.

3 188 Q. And you also received a copy of
4 the handwritten notes taken by Ms. Lutes. So if we
5 now turn back to the text at my tab 36 --

6 A. Actually, I don't know if I
7 received a copy of the handwritten notes.

8 189 Q. I'm going to show you that you
9 did. Go to my tab 36, which are the text messages
10 with Danny Guy, and look at page 18. And in
11 particular -- and you will see that these are texts
12 now on September 12th, the same day of the meeting.
13 Look at your text in the middle of the page.
14 Scroll down a bit, please. It is your text that is
15 at 19:44 on September 12th. Scroll down.

16 A. Hold on one second. Whoa, whoa,
17 can you stop scrolling? I want to read the box
18 before it so I know the background. Can you scroll
19 up? Thank you.

20 [Witness reviews document.]

21 190 Q. Just so we all have it, you are
22 looking at a text now at 19:40 on September 12,
23 which is the same day of this meeting, where you
24 say:

25 "U clearly got a very different

1 report than I did. My guys think
2 snowy is playing games. Tried to
3 give just an appetizer and then
4 likely looking for \$\$\$ for the real
5 meat. We r close to telling him to
6 fuck off. We r going to give him
7 one last chance. We will offer him
8 some tiny 'kiss' amount now. If
9 info proves valuable and real--and
10 it's all of it---then a much larger
11 amount after he discloses such and
12 stops playing games. If he's not
13 willing to go along w such, we want
14 nothing to do w[ith] him anymore."

15 Did you actually make payments to
16 Snowdy?

17 A. Not to the best of my knowledge,
18 certainly not approved by me.

19 191 Q. Okay.

20 A. This was all a method of trying to
21 put as much pressure on Danny Guy and Snowdy to
22 give us hard evidence, not just talk.

23 192 Q. And what I am interested in is the
24 next message from you at 19:44 where you say:

25 "I have in my hand the lawyers

1 hand written notes and reviewed same
2 myself already."

3 I took it from that -- again, this is
4 the very same date as the meeting we just looked
5 at, September 12th. I took it from your text that
6 you had in your hand Naomi Lutes' handwritten notes
7 concerning the meeting? Is that a fair assumption?

8 A. I think it is, but if you read the
9 whole thing, it says:

10 "Other stuff already moving.
11 Virtually everything he thinks he
12 told us as 'new' we either already
13 have, have under oath from others,
14 is not as valuable as he thinks, or
15 is irrelevant".

16 So, for example, I believe that a
17 number of former guarantors, including the
18 individuals from either Fortress or Esco, but I
19 think Fortress, had already been giving us material
20 that -- what they were alleging would be
21 confirmatory of.

22 So, for example, my recollection is
23 that the Fortress guys had disclosed a number of
24 parties that had been in communication and
25 conspiring, that they had disclosed it wasn't for a

1 proper purpose. They had disclosed their
2 involvement. They had told us about a meeting that
3 somebody else - and I can't remember who, it was
4 Snowdy or somebody else - had told us had happened
5 or was going to happen.

6 So we were trying the best we can --
7 and you can even see it in this text, that stuff
8 that he thinks we don't know, we already know. And
9 some of it we are not going to disclose to them
10 that we know because we want to check the veracity
11 of what Snowdy may provide.

12 193 Q. Right, and --

13 A. So for example --

14 194 Q. I'm sorry. I'm sorry, I didn't --

15 A. So, for example, it says -- for
16 example, in the bubble, it says:

17 "For example, his alleged
18 evidence re Levitt etc we already
19 have".

20 And I think Levitt is one of the
21 parties in Fortress:

22 "---and we have more /better
23 than what he disclosed."

24 And that really meant disclosed
25 verbally.

1 "Result is that instead of
2 proving his credibility, it makes us
3 question it more.

4 I am at a dinner. Can not type
5 anymore."

6 195 Q. So look at the top of the next
7 page, page 19. The top of page 19, very top, where
8 you say at 19:46:

9 "Jim thought snowy is full of
10 shit and falling in value."

11 A. Yes. That is just me putting more
12 pressure on them to prove their bona fides.

13 MR. MOORE: Just -- that is back on
14 September 12th, that one, right?

15 BY MR. THOMSON:

16 196 Q. Yes, the same day as the meeting.

17 A. Can you scroll to the previous
18 bubble? I just want to make sure that it is the
19 same conversation.

20 197 Q. I can't tell if it is the same
21 text or not, but there is a text at 19:46 on
22 September 12th from you saying:

23 "Email was Levitt, not Lloyd.

24 We knew about it [...]"

25 A. Yeah, I don't know what that --

1 I'm trying to figure out if this is still the same
2 conversation or not.

3 198 Q. Okay. But in any event, what I am
4 interested in is the note at the top of page 19
5 where you say:

6 "Jim thought snowy is full of
7 shit and falling in value. Gotta
8 go."

9 I take it that was a fair summary of
10 Mr. Riley's assessment of Snowdy having met him
11 that day on September 12th?

12 A. Probably a little bit exaggerated.
13 The bubble before I start talking about stuff that
14 we already have so that they know that they have to
15 produce more. This was an exercise in trying to
16 get them to divulge hard evidence so that it would
17 confirm what we have. We obviously know about
18 Levitt, Cohodes. I am referring to it already. So
19 we wanted confirmatory hard evidence.

20 199 Q. Six days later on September 18th
21 of 2017, Riley meets, again, with Snowdy and with
22 Ms. Lutes, and if you turn now to my tab 95, you'll
23 find another set of Ms. Lutes' handwritten notes
24 concerning that meeting. You'll see the date in
25 the top, right-hand corner is September 18, 2017, a

1 meeting with Jim Riley and Derrick Snowdy at
2 Greenspan Humphrey?

3 A. Yes.

4 200 Q. There is one part of this I want
5 to take you to, which is page 7.

6 A. I can't read that handwriting.

7 201 Q. Yeah, no, it is hard to read.

8 David, do you know whether there are typewritten
9 versions of these documents?

10 A. Sorry, Kent, can I ask for 30
11 seconds to go --

12 MR. THOMSON: Yes, sure.

13 [DISCUSSION OFF THE RECORD.]

14 U/T MR. MOORE: I was just saying that
15 Mr. Thomson is asking about typewritten version of
16 these notes, and I just asked generally if --
17 because there are a bunch of notes, and so we don't
18 miss any and avoid having to repeat it every time,
19 just to send me a list of the typewritten notes --
20 or the handwritten notes that he would ask if there
21 are typewritten versions, and we'll let him know.

22 MR. THOMSON: Yes, that is fine. I
23 think you'll find, David, that there are probably
24 five or six sets of handwritten notes of Naomi
25 Lutes. There is one typewritten version of one of

1 the notes, the one on September 12th, and the rest,
2 we only have that, but we'll send you a list of
3 them.

4 MR. MOORE: That is fine. And that may
5 well be the only typewritten version, but we can --
6 we'll verify that one way or the other.

7 MR. THOMSON: Okay.

8 MR. MOORE: All right.

9 BY MR. THOMSON:

10 202 Q. If there aren't typewritten
11 versions, can you ask Naomi Lutes if she can give
12 us a typewritten transcription of her notes?

13 U/A MR. MOORE: Let me take that under
14 advisement. I'm not saying no, but I'm not saying
15 yes.

16 MR. THOMSON: Okay. Understood.

17 MR. MOORE: I'm just going to excuse
18 myself for a minute as well. I'll be right back.

19 [DISCUSSION OFF THE RECORD.]

20 BY MR. THOMSON:

21 203 Q. So, Mr. Glassman, I just want to
22 take you to one passage of these handwritten notes
23 concerning the meeting on September 18th of 2017.
24 Again, this is the meeting that was attended by
25 Mr. Riley and Naomi with Snowdy, and it is at page

1 13 of the production or page 7 of the notes.

2 And it is about the third line from the
3 top of the page:

4 "DS never met Boland."

5 Which I took it to mean Derek Snowdy
6 confirmed that he had never met Greg Boland. Do
7 you know whether that information was conveyed on
8 to you by Ms. Lutes or by Mr. Riley?

9 A. No idea.

10 204 Q. Do you know whether these notes
11 were provided -- did you receive copies of all of
12 Naomi Lutes' handwritten notes along the way when
13 she had the meetings?

14 A. No, not necessarily.

15 205 Q. Okay. If we then look at the text
16 messages that correspond with these moments in
17 time, we'll look back at tab 36, and you'll see
18 right in the middle, I guess toward the top of the
19 page, actually, it is a text from you Sunday,
20 September 24th, 2017, at 8:18 where --

21 A. I'm still -- I can't -- I didn't
22 follow you and what is going on on the screen at
23 the same time. Can you repeat what you were
24 saying?

25 206 Q. Yes, sorry about that. So it is

1 the top of page 19 in the production, and there is
2 a text from Guy at 18:09 where he says:

3 "Do u still think --"

4 Sorry, it is above that. What he says
5 in the text above it, he says:

6 "You feeling more comfortable
7 now?"

8 Do you see that? There it is.

9 A. Yes.

10 207 Q. And you say on Sunday, September
11 24th at 8:18:

12 "Good morning. Actually, no.

13 A lot of talk but virtually no
14 substantiating evidence etc from
15 your guy."

16 So I took it that as of September 24th
17 you are still putting pressure on Snowdy and on Guy
18 to produce whatever substantiating evidence Snowdy
19 had in his possession; fair enough?

20 A. I think the way you said it is
21 exactly right. We were putting as -- I was trying
22 to put as much pressure as possible for additional
23 evidence.

24 208 Q. And am I right that one of the
25 stories that Snowdy told others but was either

1 unwilling or unable to substantiate involved the
2 allocation of cases on the Commercial List; do you
3 remember that topic being raised?

4 A. Sorry, can you repeat it? It is a
5 little distracting on the screen because I
6 automatically started reading the next bubble,
7 which I shouldn't have. I apologize.

8 209 Q. Yes, that is fine. Let's look at
9 your next text, the one that begins with the words:

10 "We know a story is literally
11 currently scheduled for sat."

12 This is now September 25th of 2017 at
13 18:22, and the part that I am interested in is
14 about halfway down that text where you say --

15 A. Sorry, one second.

16 210 Q. Yes. I'm sorry.

17 A. Sorry, just let me read the whole
18 thing.

19 211 Q. Yes, go ahead.

20 A. [Witness reviews document.]

21 Okay.

22 212 Q. So the part that I am interested
23 in is halfway down that text where you say:

24 "For example, we now have
25 direct evidence on a judge etc."

1 And now, just to situate you in time,
2 this is September 25th of 2017 and the sting on
3 Justice Newbould had taken place on September 18,
4 so a week before.

5 A. All right.

6 213

7 Q. So when you say:

8 "For example, we now have
9 direct evidence on a judge etc.
10 Therefore, snowy's comment re \$5mm
11 for the right judge and right
12 decision from the commercial list
13 from a partner in a downtown law
14 firm is a quickly wasting asset --
15 let alone his failure to even say
16 what law/law firm which then makes
17 all of the statement worthless
18 unless the lawyer in question is
19 literally a person that could in
20 fact reasonably be expected to know
21 such a thing (something snowy would
22 never have the ability to assess);
23 otherwise it's just ass-talk.
24 Unless he gets us substantiating/
25 corroborating evidence in next few
 days, as well as disclose who

1 exactly the lawyer that allegedly
2 made the statement, even the value
3 of that approaches zero now."

4 And you then go on to say:

5 "[By the way], we even have our
6 own independent evidence of
7 involvement of organized crime on
8 TWO levels. This is done."

9 Danny Guy writes back and says:

10 "Ok that's great. 5mm? He
11 wants 5mm?"

12 And you say:

13 "Who? [Please] read more
14 carefully. Snowy alleges he was at
15 a [meeting] where a partner from a
16 downtown law firm alledgedly said
17 that for 5mm, the lawyer can get the
18 right judge to oversee the case and
19 provide the right decision. It's
20 One of his completely
21 unsubstantiated and 'hearsay'
22 statements that he has not even
23 named the lawyer. It's shit like
24 that by snowy that has destroyed
25 his -- and therefore your --

1 credibility w[ith] the authorities
2 and others. The result in [turn] is
3 that he has actually caused delays
4 in the process instead of helping
5 it. We now know that [to be] true
6 because of certain things the
7 authorities and others have
8 shown/shared w[ith] us. If u want
9 to help the process and expedite it,
10 then go back to what I told u last
11 month: tell snowy and John
12 Phillips to stop playing bs games
13 and either provide HARD
14 substantiating evidence for the
15 allegations as well as specific (not
16 just general) details. Otherwise,
17 [t]he info is not actionable and
18 people just feel like he -- and
19 therefore possibly u as a result but
20 likely unintentionally -- r wasting
21 people's time and everyone wants to
22 get on w[ith] this already."

23 And I took that to mean that as of
24 September 25th of 2017, you still had not received
25 substantiating, credible, corroborating evidence

1 from Snowdy or from Danny Guy; is that fair enough?

2 A. That is not completely accurate.

3 We had found out that some information from Snowdy

4 was being confirmed and corroborated separately

5 with other pieces of evidence that we had; so for

6 example, the examinations that were going on I

7 think in New York, et cetera. We were pushing very

8 hard -- I was pushing very hard to get whatever

9 they had. Snowdy was making some very serious

10 statements and some very serious allegations, and

11 there was no chance we were going to take just his

12 word for it and we weren't going to make a

13 statement without confirmatory evidence from him.

14 214 Q. Is it fair to say that by

15 September 25th of 2017 that Brian Greenspan thought

16 very little of Snowdy?

17 A. I don't think very little. I

18 don't --

19 U/A MR. MOORE: Well, wait. We'll take

20 that under advisement.

21 BY MR. THOMSON:

22 215 Q. Well, let me show you your text to

23 see whether this helps you out. Look at page 20.

24 About halfway down the page you'll find a text from

25 you of 20:12 September 25th where you say:

1 "Jim is a crazy polite wasp. I
2 love him dearly but snowy is
3 clearly not great at his job if he
4 can't read [between] the lines
5 w[ith] jim. Jim is furious that
6 snowy keeps wasting his time and
7 not producing any real substantive
8 back up."

9 Pausing there for a moment, I take it
10 that was an accurate statement as of that time?

11 A. Yeah, it might have been -- it
12 might be a little bit exaggerated, but Jim and I
13 wanted substantive collaborative information.

14 216 Q. You go on to say:

15 "I keep forcing him to go back.
16 Jim now wants [B]rian Greenspan at
17 the next [meeting] or so. Brian
18 clearly thinks very little of snowy
19 and told me [point] blank last
20 [week] that snowy needs to 'put up
21 or shut up' in a very big way right
22 now."

23 And I take it that was also an accurate
24 statement?

25 A. Yeah, it might have been slightly

1 exaggerated, but we all knew that they had to put
2 up or shut up. We already had our own stuff, and
3 we were dealing with our own intellectual dilemmas
4 about certain things at that point.

5 217 Q. Let me take you to the top of the
6 next page, page 21, a text that you sent at 20:49
7 on September 25th, where Guy asked you for Jim
8 Riley's contact information and you sent it on to
9 him, so "jriley@catcapital.com" and the office
10 number and so on. You say:

11 "There is nothing to get to the
12 bottom of."

13 And you say:

14 "jim and I speak a dozen times
15 per day and r beyond close. I am
16 giving u the blunt truth that he
17 will be too polite to say [...]"

18 I take it those were roughly accurate
19 statements? Forgetting the dozen times a day, but
20 you spoke regularly to Riley --

21 A. Oh, yeah.

22 218 Q. -- and had a close relationship
23 with him?

24 A. Yes, and it is also true that I am
25 more blunt than Jim.

1 219 Q. Okay. Let me fast-forward in time
2 now to October 3. So on October 3, as these notes
3 foreshadowed, Brian Greenspan now meets with Snowdy
4 personally together with Ms. Lutes. And let me
5 take you to the notes of that meeting, and that is
6 at tab 135.

7 So here you'll have Ms. Lutes'
8 handwritten notes of this meeting on October 3rd,
9 and you will see the people who attend this meeting
10 are Snowdy, Brian Greenspan and Ms. Lutes. I take
11 it from these notes that, again, you were not at
12 this meeting?

13 A. I was not.

14 220 Q. And is it fair to say that before
15 this meeting occurred, you warned Danny Guy about
16 the need for Snowdy to be candid and forthright and
17 provide everything that he had concerning this
18 alleged scheme to short-sell Callidus?

19 A. I don't know if "warned" is the
20 right word, but I suspect, given the emails we have
21 just read, I suspect I continued to pound on the
22 fact that he has to prove his bona fides.

23 221 Q. So let's go back then to the texts
24 at tab 36 --

25 MR. MOORE: And I would just make --

1 sorry, I don't want to interrupt, but I would just
2 make this general observation. I mean, Mr.
3 Glassman is aware of these texts. He hasn't read
4 them all. They go on for I think 23 pages.

5 In this particular example, if there is
6 something in the text that in fact mirrors what you
7 just said, let's just take the witness to that and
8 we can go more smoothly in the chronology. But the
9 fact that he doesn't necessarily remember
10 extemporaneously that there is something in the
11 text that relates to your question, you know, let's
12 go through the texts if need be.

13 BY MR. THOMSON:

14 222 Q. So turn to page 23 of the texts --

15 A. Sorry, could I interrupt you for
16 one more second, Kent?

17 223 Q. Yes.

18 A. At some point I need some time to
19 go have lunch.

20 224 Q. Yes. Yes, we'll be done with
21 these texts shortly.

22 A. I have a condition where I can't
23 go very long without eating.

24 225 Q. Yes, understood. Thank you for
25 raising that. Look at page 23, and what I am

1 interested in is the substantive text at the top of
2 the page, your text at 10:24 where you say:

3 "Snowdy allegedly [meeting]
4 w[ith] [B]rian Greenspan today.
5 U/John Phillips better make it 100%
6 clear to snowdy that this is
7 literally his very last chance. Ask
8 Philips about who brian is; suffice
9 to say that brian has the ability to
10 pressure and speed up jsot and
11 others. Snowdy MUST be extremely
12 candid, forthright, provide
13 everything and no games. Otherwise
14 not only will we throw snowdy on the
15 trash heap, I am told so will
16 jsot/police/osc. Brian can either
17 help snowdy and his credibility or
18 decide we and everyone else has to
19 get as far away as humanly possible
20 from him. This is a favor to u and
21 snowdy. He better understand that
22 and fact he only gets this one shot.
23 NO GAMES OR BS. Direct snowdy to
24 give brian literally everything he
25 has. If brian is happy w[ith] such,

1 we will make sure snowy gets [paid]
2 properly etc. If not, he's done
3 forever on this stuff. Read
4 [between] the lines: we r not the
5 only people empowering brian in this
6 re snowy."

7 And so I take it from that that you are
8 sending a clear, unmistakable signal to Danny Guy,
9 which was to light a fire under Snowdy and have him
10 be forthcoming and candid and provide everything
11 that he had in that meeting with Brian Greenspan
12 later that day; is that fair enough?

13 A. Well, I think that is one element
14 of it, yes. I don't think it is the only element.

15 226 Q. And you also at the same time took
16 the opportunity to remind Danny Guy - and we'll
17 just go through this and then we'll stop for
18 lunch - but reminded Danny Guy that Snowdy's
19 previous meetings with Jim Riley have not gone
20 terribly well.

21 So if you look now at the same page,
22 page 23, and just it is really your next text. So
23 you say in your text at 10:29 on October 3:

24 "His conversations w[ith] jim
25 were disastrous."

1 And then below that you say:

2 "Danny, u r stubborn and not
3 listening. It was DISASTROUS w[ith]
4 jim. Period. Snowy clearly has no
5 self perception or self judgment.
6 Others find him to be both not
7 credible and likely double dealing.
8 Jstot and others refuse to rely on
9 ANYTHING he says and have proof as
10 to why he is not credible. They r
11 letting brian meet w[ith] him as a
12 favor and because they trust and
13 rely on brian. U need to stop
14 arguing w[ith] me, u don't know all
15 the facts, and I am trying to do YOU
16 a favor. FUCK!!!!!!" with I think
17 six or seven exclamation points.

18 And then at the top of the next page,
19 you tell him to -- you tell Danny Guy to stop being
20 so defensive and to be objective. You say:

21 "U r beyond pissing me off and
22 I have had it w[ith] u guys. You
23 literally don't know what the fuck u
24 r talking about on this now. Snowy
25 has his one last chance. If he

1 blows it, u r severely damaged
2 w[ith] him. Period. U linked
3 yourself far too intimately w[ith]
4 him. His resurrection is, in my
5 opinion, literally an imperative FOR
6 U AND YOUR CREDIBILITY. Fuck u r
7 thick!!!!"

8 So again, the same messages to Danny
9 Guy that the previous meetings had not gone well.
10 This meeting was crucial. And at this meeting
11 Danny Guy had -- sorry, Snowdy, rather, had one
12 last chance to make it right by delivering the
13 goods to Brian and to Naomi Lutes. Is that a fair
14 summary of what is there --

15 A. No, I don't think that is a fair
16 summary because they keep hanging out a carrot in
17 front of us. Read even the next bubble from Danny:

18 "Newton. What would u have me
19 do? He has two years of stuff.
20 Tapes emails etc. what's valuable
21 to you I don't know. Let him go
22 through it with Brian. Why don't u
23 tell me what's going on so I can
24 help.

25 U want to chat on this?"

1 They clearly believed and Danny in
2 particular believed that they had some very serious
3 material. It is now October. It started in
4 August. Have got more and more material and
5 evidence in the interim, and this guy doesn't pony
6 up. And we had met with JSOT obviously a number of
7 times. JSOT had a view. JSOT clearly -- and they
8 didn't say it directly in my memory, but they
9 clearly had some stuff from Mr. Guy and Mr. Snowdy
10 and were also frustrated that they weren't
11 producing more.

12 My view was if Danny Guy was paying
13 them, it is his property. And you can see I even
14 write it in the next paragraph. It's his job to
15 deliver it. I wanted to put as much pressure as
16 quickly as possible because we had a ton of
17 evidence already and Snowdy allegedly had
18 confirmatory evidence. It is very simple. These
19 guys were not producing it when they promised they
20 would.

21 227 Q. And there is just one passage in
22 the notes that I wanted to take you to before we
23 break. These are the notes now of the meeting of
24 October 3 of 2017 that Brian Greenspan and Naomi
25 Lutes attended with Snowdy. This is my tab 135.

1 And the part I want to take you to is page 33 of
2 the production, and you will see toward the bottom
3 of the page, after there is some reference to some
4 lawyer about to be disbarred, he says -- or the
5 note says:

6 "does not have much direct
7 intelligence on West Face but may
8 [after] this conference."

9 Was that portion of these notes brought
10 to your attention, that Snowdy had confirmed during
11 the meeting of October 3 of 2017 with Mr. Greenspan
12 and Ms. Lutes that he did not have much direct
13 intelligence concerning West Face?

14 A. I'm sorry, what is your question?

15 228 Q. Was that brought to your attention
16 following this meeting? Did Mr. Greenspan or Ms.
17 Lutes tell you that Snowdy had confirmed during the
18 meeting that he did not have much direct
19 intelligence concerning West Face?

20 A. What I remember vaguely is the
21 importance of the phrase, quote, "direct
22 intelligence" and people talking to me about the
23 difference between direct and indirect. I don't
24 think they used that language, but the same concept
25 of direct or indirect, et cetera. But I don't

1 remember reading that note, no.

2 229 Q. And just to finish the thought, if
3 we could then go back to the text messages one last
4 time before we break about this meeting, and this
5 is now my tab 36 and look at page 25. Toward the
6 bottom of the page there is a text from Danny Guy
7 at 15:56 where the question he puts is:

8 "Let me know your thoughts on
9 today's meetings."

10 And this is October 3, the same day as
11 the meeting we just looked at, where you write back
12 and say:

13 "Here is Brian's direct quote:
14 'Two and a half hours of interesting
15 but unusable bullshit - and two and
16 a half minutes of food for thought.'
17 Fucking blew it. U have no idea.
18 [Please] thank snowy for wasting
19 everyone's time and blowing his one
20 chance at redemption -- and putting
21 u on the soup. I warned u."

22 And you then go on to say:

23 "Brian was instructed to make
24 sure he gave snowy every imaginable
25 opportunity. He blew it big time."

1 Guy says:

2 "John spoke to Brian. You are
3 right he didn't do what we wanted
4 him to do. Now I am pissed off. He
5 was told to give him everything.
6 Why didn't he is the question."

7 And then you say at the top of the
8 page:

9 "He's playing both sides of the
10 street. And u have been suckered by
11 him."

12 So I took it that that meeting with
13 Brian Greenspan on October 3 of 2017 did not go
14 well and that Snowdy yet again failed to produce
15 the corroborating evidence that he maintained he
16 had; fair enough?

17 A. I don't think that is accurate. I
18 don't think that is accurate. Read the bubble.
19 There was two and a half minutes -- by his own
20 description to me, there was two and a half minutes
21 of, quote, "food for thought". I suspect that
22 there was some stuff, but we still needed and
23 wanted confirmatory evidence.

24 Our whole approach to Danny Guy and
25 Snowdy and Vincent Hanna was we know way more than

1 they thought we knew. We had way more evidence
2 than they thought we had both before talking to
3 them, during talking to them and after talking to
4 them, and we just wanted the confirmatory evidence,
5 period. It is not that -- I personally didn't
6 think it was that complicated.

7 230 Q. And your assessment was that
8 Snowdy "fucking blew it", to use your words, that
9 he wasted everybody's time and "He blew it big
10 time". That was your assessment as of October 3,
11 2017, at 21:51 and at 22:27; correct?

12 A. That is not quite accurate. That
13 is what I said to Danny Guy, hoping to put more
14 pressure on him. To this very day, I suspect that
15 if Snowdy has material, there is a chance that it
16 will come forward. We would love to get it.

17 231 Q. Well, here we are and it is now
18 May of 2021 and you still don't have it; correct?

19 A. That is true.

20 MR. THOMSON: All right. Could we
21 break there for lunch.

22 MR. MOORE: Yes.

23 [DISCUSSION OFF THE RECORD.]

24 -- RECESSED AT 1:09 P.M.

25 -- RESUMED AT 2:03 P.M.

1 BY MR. THOMSON:

2 232 Q. So, Mr. Glassman, I just want to
3 go back to the Danny Guy saga one last time and
4 just finish that off quickly, and I will move to a
5 different topic.

6 And, again, I'm just taking it forward
7 in time. We are at October 3. Let's fast-forward
8 to October 5th of 2017, and I will show you one
9 more document and ask Tanya to pull up my tab 136.
10 Yes. So tab 136, you'll find Naomi Lutes'
11 handwritten notes of October 5th of 2017 concerning
12 your call, which she appears to have had that day
13 with John Philips, the lawyer for Danny Guy, re
14 Snowdy, and the part that I am interested in, it is
15 about three inches from the top of the page. You
16 will see that she says:

17 "- no we do not yet have usable
18 evidence.

19 - did not get any audio
20 recordings or anything."

21 And then it goes on for a number of
22 pages thereafter.

23 You'll see that that's October 5th, and
24 then you have your own dialogue with Danny Guy the
25 same day. So if you turn now to tab 36, which are

1 the text messages, and you skip forward a day or
2 two to the -- well, actually on the same day,
3 October 5th, and look at page 29 in the top,
4 right-hand corner.

5 So there is a text at the top of the
6 page where -- it is page 29, at the top of the
7 page.

8 MR. MOORE: Should we go back to the
9 bottom of the prior page for context?

10 BY MR. THOMSON:

11 233 Q. You know what, David? It is my
12 own fault. I have a note that went right through
13 the number. I thought it was 29. It is actually
14 28. That is why I couldn't find it.

15 Yes, it is at -- what I am look for,
16 Mr. Glassman, is October 5th at 20:47 where you
17 say:

18 "That is not what I said. I
19 suspect Naomi or Brian [...]" This
20 is October 5th, by the way, 20:47:

21 "I suspect Naomi or Brian have
22 tried to get specifics and back up
23 from him. I know [t]hat he
24 repeatedly either peddles backward
25 or proves to be outright full of

1 shit. He is for sure not providing
2 'specifics' and for sure so far has
3 not added one cent of litigation
4 value etc. I have instructed them
5 to cut off all communications as of
6 tomorrow night unless something of
7 substantial value. For example, he
8 allegedly told Naomi today that 4
9 people were fired from ny office if
10 canaccord and RCMP served production
11 order. That's simply not accurate
12 or what happened and a massive
13 exaggeration. Typical of bullshit
14 snowy. One once if possible thread
15 of truth, 999,999 grams of complete
16 exaggeration and bullshit that is
17 beyond easily shot down."

18 So at that point in time, again,
19 looking at just dates, October 5th of 2017, Snowdy
20 had still yet to produce the corroborating evidence
21 and information that you had been looking for since
22 August 11th; fair enough?

23 A. Can you scroll up? I just need to
24 understand the context above it. So to be clear,
25 what is from Derrick? I don't understand. So can

1 you scroll more so I can read it?

2 234 Q. Yeah, you can go and look at the
3 top of the page. Well, if you want to see the
4 context, go to the bottom of page 27. This is the
5 same day as the meeting. Go to the bottom of that
6 page. So -- yes, that one.

7 So you'll see --

8 A. No, no, I don't understand the
9 context. I need to start reading from a little bit
10 before that. I don't know what this was referring
11 to.

12 235 Q. It is referring to the meeting
13 that was held -- sorry, it is referring to a call
14 that takes place between Naomi Lutes and John
15 Philips on October 5 where she is complaining we
16 still don't have anything from this guy and where
17 is it.

18 A. I get that, but what is above?
19 Can you scroll up more, like to -- there is a
20 thread here of an issue that I don't understand.

21 236 Q. Well, look, I just can't spend the
22 time. I mean, you would have to go back pages and
23 pages into this thing. It is a very simple point
24 I'm trying to make, which is as of that date you
25 still were not happy with what you had received

1 from Snowdy, that's all, and I assume you can
2 easily confirm that?

3 A. Okay. So can you scroll up so I
4 can read the 7:57?

5 237 Q. No, hang on. We just can't --
6 hang on. Just stop. We can't keep going back and
7 back. We are just going to take up the whole
8 examination in going through these messages.

9 A. No, I wasn't saying to go back. I
10 just want to understand the context of the text
11 that you are suggesting that I read.

12 238 Q. It is -- go to page 28. It is not
13 27. Go to 28.

14 A. So I'm trying to figure out why
15 the gray box says:

16 "So to be clear. He and Brian
17 didn't speak after the meeting and
18 he and Naomi didn't speak or even
19 exchange emails. Please verify."

20 I can't understand what that is
21 referring to. I know what I am talking about -- or
22 I think I understand what I am talking about, but I
23 don't understand the conversation.

24 239 Q. Not to worry. He is referring way
25 back to the meeting that took place on October 3

1 that we went through before the lunch break, so I'm
2 past that now.

3 Anyway, let me skip forward because I
4 want to get through this and then we'll turn to a
5 different subject. Let me show you one last note
6 that you sent on October 7th which, is at page 29,
7 and it is a note toward the bottom of the page that
8 begins with -- it is October 7th at 12:39 where you
9 are debating with Danny Guy, How long have you been
10 dealing with this guy. And you say:

11 "No. Months." You say:

12 "Convenient memory u have there
13 so let me remind u. This started
14 for us late in June. By 3rd [week]
15 of July 'vjncent Hanna' had already
16 had [meetings] w[ith] Jim. B4 aug
17 01 u and I were speaking."

18 Can I just pause there for a moment?
19 I'm going to suggest to you that your recollection
20 of the dates may not have been correct. I believe
21 the first contact you had with Vincent Hanna was
22 the email of August 11th; is that possible?

23 A. It is.

24 240 Q. Okay.

25 A. Yeah. No, August 11th -- it was

1 immediately after The Wall Street -- well,
2 immediately. Within days of The Wall Street
3 Journal false fraud article coming out.

4 241

Q. Yeah. Okay. So:

5 "We told u from the first mtng
6 that disclosed snowy (b4 actually
7 any mtngs w[ith] him) that he may be
8 a problem that u need to proactively
9 manage. U failed/refused/dismisses
10 [us]. Our pi's met w[ith] snowy in
11 aug. THAT IS MONTHS since we r now
12 mid oct. what he has given us is
13 less valuable than what my dogs left
14 for me on our lawn this am. Thanks
15 a ton. U and he have wasted
16 enormous time and is one of the key
17 reasons the authorities r so
18 resentful. They actually told us
19 that u and snowy may well have a
20 deliberate plan to misdirect people
21 and waste time/resources so as to
22 help the bad guys. Guess what? U
23 and snowy have given them ammo to
24 say 'told you so' - at a minimum."
25 I take it although the language is

1 colourful, that is a fair summary of where matters
2 stood as of Saturday, October 7th; fair enough?

3 A. But he also knows I'm trying to
4 manage him and push him. Look at his response. He
5 clearly knows I'm trying to push him.

6 242 Q. Am I correct that there were no
7 further meetings with either Danny Guy or Snowdy
8 before the Wolfpack action was commenced by
9 Catalyst and Callidus in early November of 2017?

10 A. I don't know.

11 243 Q. Sitting here today, you are not
12 aware of one, I take it; correct?

13 A. We can check.

14 244 Q. All right. David, let me --

15 U/T MR. MOORE: We'll check and let you
16 know. I think that is right, Kent, but we'll let
17 you know if we can.

18 BY MR. THOMSON:

19 245 Q. Okay. That is fine. Thank you.
20 One last reference for you, which is if we -- in
21 these texts, if we now go to page 37 -- sorry, page
22 33, rather, of the texts, and, Mr. Glassman, just
23 for your reference, the Wolfpack action was
24 commenced on November 7th, so this is now after the
25 case has been commenced. And the references I

1 wanted to show you are on page 33. About
2 two-thirds of the way down the page, you'll find a
3 text from you of November 9, so two days after the
4 case was commenced, at 13:42.

5 A. Sorry, what do you want me to
6 read? The green bubble:

7 "Snowdy would have to prove his
8 credibility and reliability. He has
9 failed repeatedly."

10 246 Q. Yes, just two quick references.

11 So you say there:

12 "Snowdy would have to prove his
13 credibility and reliability. He has
14 failed repeatedly. In addition,
15 authorities don't trust him either
16 so anything he does to 'help' will
17 be viewed by authorities
18 suspiciously."

19 And then the next you can skip. Go
20 down to the next text where you say:

21 "U r missing the point. The
22 concern is that he leaks it to them
23 or helps them prepare ahead of
24 time."

25 A. Sorry, one second. I have to

1 read. I want to read the full thing.

2 247 Q. Okay.

3 A. [Witness reviews document.]

4 248 Q. You can stop at that last message
5 on this page, November 9 at 14:00.

6 A. Okay.

7 249 Q. It is a simple point, which is
8 even after the Wolfpack action was commenced, you
9 are telling Danny Guy that no one trusts Snowdy,
10 that most times he causes more damage than good;
11 fair enough?

12 A. Well, I'm trying to continue to
13 pressure him.

14 250 Q. And these text messages come to an
15 end on November 17. Am I right in assuming we have
16 it all? There were no further communications of
17 this nature with Danny Guy in the period after
18 November 17?

19 A. We can look at the last
20 conversation I had with Danny, but pretty much what
21 happened was I passed him off and refused to
22 communicate with him. So I gave him to Jim Riley.
23 I can't attest to what level of communication there
24 was between Jim Riley and Danny Guy or anyone else
25 after I passed it off and refused to be involved

1 with him anymore.

2 251 Q. Okay.

3 A. I think they had further
4 communications after that.

5 252 Q. Okay. That has already been
6 covered with Riley, so let me take you to one other
7 reference in these texts and then we can move away
8 from them. It is on a slightly unrelated topic,
9 but I would ask you to turn to page 8 of the texts.

10 A. Yes.

11 253 Q. And what I am interested in is at
12 the top of that page. Yes. So you'll see at
13 August 28, at 17:22, Guy says:

14 "What email can I send you
15 something on."

16 And you send him back a note saying,
17 "n_gzglassman@catcapital.com".

18 And he then --

19 A. Yes.

20 254 Q. -- says:

21 "Ok that's a different one than
22 where others were sending correct.

23 Just a couple I could find that I
24 sent Imet. There are tons more from
25 me I need to go through then with my

1 tech guys. But wanted to send u
2 something. First one was when the
3 WSJ article came out. The second is
4 on Veritas writing a negative report
5 for the cabal."

6 Ask then he says:

7 "Why the fuck did u copy
8 everyone?"

9 And you say:

10 "That's all lawyers. All
11 privileged. From a crazy secure
12 account."

13 And I took this to mean and my
14 interpretation was that you are referring to the
15 email account "n_gzglassman@catcapital.com" is a
16 crazy secure account?

17 A. Yes.

18 255 Q. Can you tell me what that account
19 is and what it is used for?

20 A. Yes. It is an account that has
21 been on our servers since either right when our
22 firm started in 2002 or shortly thereafter. It is
23 an account that one else in our firm has access to,
24 which is why I call it a crazy secure account from
25 that perspective. It is used for internal

1 discussions between the partners about HR issues or
2 medical issues for me or family issues with my
3 wife. It is basically so that my assistants or
4 other assistants and nobody else in the firm has
5 access to it.

6 256 Q. So why would you have provided
7 that email address to Danny Guy?

8 A. Because Danny didn't want, I got
9 the sense -- and I would have to read the whole
10 issue, but he clearly didn't want a lot of people
11 seeing things, so I sent him an account that only I
12 internally get to see.

13 257 Q. And is that email -- this is
14 really for David. Has that email address been
15 searched and have all documents that relate to the
16 matters at issue in this case from that account
17 been produced?

18 U/T MR. MOORE: So I'll tell you my
19 understanding and belief, which is not just -- the
20 short answer is yes, and I will confirm that. But
21 in fact, I believe there are a small number of
22 documents that have been produced that bear
23 reference to that account, not a large number, but
24 a small number, that are in the productions
25 already.

1 And so it is not -- you know, dating
2 back to -- well, I'll verify that and let you know,
3 but yes, it has been searched to the best of my
4 knowledge.

5 THE DEPONENT: And furthermore --

6 BY MR. THOMSON:

7 258 Q. And David, just --

8 A. And furthermore, I know with near
9 a hundred percent certainty that our IT guys were
10 told to search that account.

11 259 Q. Yeah. The reason I asked the
12 question is because we searched for this particular
13 exchange and could not find it in the productions.
14 So it looks like what happened here is he says:

15 "What email can I send you
16 something on."

17 You give him that email address, the
18 crazy secure account email address. He then sends
19 you something. It looks like what he sent to that
20 email address were documents he had sent on to
21 IMET, and you --

22 A. I don't think -- I don't remember
23 him sending me anything, but if he did, it will
24 still be on the servers.

25 260 Q. All right. Well, anyway, no point

1 debating it. David, can you --

2 MR. MOORE: Kent, what you are saying
3 is -- no, no, let me make sure I understand. What
4 you are saying, Kent, is you read this as
5 potentially indicating that something may have
6 found its way into that account related to this
7 exchange, and I understand -- I think that is what
8 you are saying.

9 MR. THOMSON: Yes, and see that --

10 U/T MR. MOORE: And we'll go back and
11 double-check.

12 MR. THOMSON: I say it, David, just
13 because of Danny Guy's message at the top of that
14 page where he says:

15 "Just a couple I could find
16 that I sent Imet."

17 And I took it from that that he had
18 sent to that email address documents he had sent on
19 to IMET, because he then sent a text message
20 saying:

21 "Why the fuck did u copy
22 everyone?" And Newton says:

23 "That's all lawyers. All
24 privileged. From a crazy secure
25 account."

1 And let me tell you my interpretation,
2 which is that on August 28, Danny Guy sent Newton
3 some documents on that crazy secure email account.
4 Newton then forwarded those documents on to a bunch
5 of lawyers and copied Guy in the email. Guy then
6 looks at that and says, Why in the world would you
7 copy everyone on this email, and Newton responds,
8 Because they are all lawyers, and it is all
9 privileged, and it is from a secure account. So
10 that was my interpretation, but I may be wrong, so
11 if you could just check that.

12 MR. MOORE: Yeah, I hear you. No, no,
13 we'll check that. I wasn't involved --

14 THE DEPONENT: No, no, but -- sorry.
15 If you read --

16 MR. MOORE: Hold on, let me deal with
17 this, Newton. Let me deal with this. I wasn't
18 involved at the time, but to the best of my
19 knowledge, everything has been done that can be
20 done to check every account known to anybody,
21 including this one, and not just by Gowlings or
22 myself or our firm, but including through the IT
23 folks at Catalyst, and to the extent that those
24 searches turn up anything such as some
25 communication to IMET or of that nature, you know,

1 anything of relevance or even marginal relevance,
2 we would have listed.

3 U/T But I hear you. We'll make a further
4 inquiry about this specific time period, and from
5 the looks of this, if in fact -- which he probably
6 didn't, but if in fact Danny Guy sent something of
7 any relevance to IMET and passed that on to some of
8 the lawyers or Newton passed it on to some of the
9 lawyers, we would have come across that long before
10 now. But we'll look and see and verify.

11 BY MR. THOMSON:

12 261 Q. Thank you.

13 A. That is not what -- sorry, but
14 that is not what the gray bubble above it says. He
15 said that he had already sent stuff to the
16 "nglassman", the normal email. That is a different
17 one than where others were sending. That talks
18 about a bunch of stuff that he sent I think he
19 means to the other one and is talking about maybe
20 he wants to go through them with his tech guys.
21 "Wanted to send u something". That means he hasn't
22 sent it.

23 "First one was when The Wall
24 Street Journal [article] came out.
25 The second is on Veritas writing a

1 negative report for the cabal."

2 So he must have seen that I copied
3 others, because how else would he know that, and it
4 must have been from the other account, meaning
5 "nglassman", not "n_".

6 262 Q. So let me turn to a different
7 subject now, and that is the retention of Yossi
8 Tanuri and others in relation to this matter. Am I
9 right that by August of 2017 you had known Yossi
10 Tanuri of Tamara Global for many years?

11 A. Yes.

12 263 Q. And am I also correct that you had
13 visited with each other and you had become friends?

14 A. I'm sorry, you got muffled. I
15 couldn't hear you.

16 264 Q. Am I also correct that you had
17 visited with each other and you had become friends?

18 A. Yes.

19 265 Q. And am I right that Mr. Tanuri had
20 been a member of an elite commando unit in the
21 Israeli Defence Forces known as -- I think it is
22 Matkal?

23 A. Matkal. That is my understanding.
24 I don't know it for a fact.

25 266 Q. All right. You reached out to

1 Mr. Tanuri in late August of 2017?

2 A. Yes.

3 267 Q. And if we to my tab 38, you'll see
4 a series of text messages, and it appears that what
5 has happened is that on Thursday, August 24th of
6 2017, Mr. Tanuri creates an encrypted text
7 messaging group involving you and a guy named Gadi
8 Ben Efraim, that he calls Chaverim; do you see
9 this?

10 A. Yeah, I think that is a WhatsApp
11 group.

12 268 Q. All right. And in late August of
13 2017, I believe it is August 29, Mr. Tanuri flies
14 to Toronto from Israel with this person Gadi Ben
15 Efraim; do you recall that?

16 A. I do.

17 269 Q. And he -- you did not know --

18 MR. MOORE: Mr. Thomson, sorry --

19 MR. THOMSON: Yes.

20 MR. MOORE: -- before we leave this
21 document, what was the tab again in your -- this is
22 tab 38?

23 MR. THOMSON: 38, yes.

24 MR. MOORE: And is that one of our
25 productions, I believe? Or do you know?

1 MR. THOMSON: It is, yes. That's
2 right.

3 MR. MOORE: Oh, I see the number on the
4 right. Yes. Okay. Thank you.

5 BY MR. THOMSON:

6 270 Q. Am I right that you did not know
7 Gadi Ben Efraim before this exchange in late August
8 of 2017?

9 A. That is correct. I didn't know
10 him until -- I don't know what "knows" means, but I
11 had not met him electronically or in person prior
12 to the introduction by Yossi.

13 271 Q. If you scroll down, please, if you
14 scroll down in these texts, you'll see -- right
15 there. You'll see Mr. Tanuri, who is in the white,
16 seems to say:

17 "Natan meet gadi... Gadi meet
18 natan..."

19 And then you say:

20 "Nice to meet u, Gadi. I hear
21 u may be coming to Canada. If so,
22 we would love to host u for a bit".

23 So I took it this is when you met Gadi
24 Ben Efraim at least electronically; fair enough?

25 A. Correct.

1 272 Q. And am I correct that when
2 Mr. Tanuri came to Toronto, he did so accompanied
3 by Gadi Ben Efraim, who he introduced to you as a
4 soon to be former agent in one of the Israeli
5 intelligence services?

6 A. Well, I don't know if he
7 accompanied him. I know that there was a meeting
8 where he introduced me to Gadi in the manner that
9 you just described. I don't know if they came
10 together. I don't know if they travelled together.
11 I don't know if they came from different --

12 273 Q. Yeah, it is not --

13 A. -- places --

14 274 Q. It is not a trick question. I'm
15 reading from your affidavit. Paragraph 16 of your
16 affidavit --

17 MR. MOORE: Yeah, I was going to say,
18 my recollection is -- you know, there has been a
19 lot going on over the past six or seven months, is
20 that some of this detail and background is set out
21 in Mr. Glassman's November 24 affidavit, which
22 presumably being part of this record.

23 So, I mean, don't get me wrong. You
24 are not intending to have Mr. Glassman say
25 something because he doesn't have his affidavit in

1 front of him. I just wonder if he should have it,
2 that's all.

3 BY MR. THOMSON:

4 275 Q. That is fine. Let me read you
5 paragraph -- this is not very controversial. In
6 paragraph 16, he says:

7 "Consequently, Mr. Tanuri flew
8 to Toronto on an urgent basis in
9 late August of 2017. He did so,
10 accompanied by Mr. Gadi Ben Efraim,
11 who Mr. Tanuri introduced to me as a
12 soon to be former agent in one of
13 the Israeli intelligence services."

14 I take it that is a fair statement?

15 A. No, no, that is accurate. I was
16 just trying to be very specific.

17 276 Q. Yeah, no worries. That is fine.
18 Now, let me show you then the emails that take
19 place around that time. I would ask you to turn
20 up, please, tab 47, Tanya, where you'll see a
21 series of emails that were exchanged with Brian
22 Greenspan and you and Yossi Tanuri and others
23 around this time of late August/early September.
24 And the one I'm interested in in particular is at
25 the top of the second page of these emails.

1 There is an email from Yossi Tanuri to
2 Lauren Oberson. Is Lauren Oberson your assistant?

3 A. No.

4 277 Q. Who is she?

5 A. Lauren Oberson was Jim Riley's
6 assistant at the time.

7 278 Q. Okay.

8 A. Just so you know, "Newton
9 Glassman2" -- do you see where it says "Newton
10 Glassman2"?

11 279 Q. Yes.

12 A. That is the "n_gzglassman"
13 account.

14 280 Q. Okay. That is helpful. Thank
15 you. So these are just a bunch of emails --

16 A. So wherever you see our internal
17 stuff, "Newton Glassman2", that is "n_".

18 281 Q. Okay. That is helpful. Thank
19 you. This is just setting up a date is all I'm
20 interested in. You'll see the email at the top of
21 that page, it is from Yossi Tanuri to Lauren
22 Oberson, copied to Jim Riley, Brian Greenspan, and
23 you, where Tanuri says:

24 "Lets meet at [the] delta hotel
25 at 75 lower simcoe road. At noon.

1 Will meet u at lobby and will take u
2 upstairs to a private area."

3 I take it from this that you did meet
4 with Mr. Tanuri, Mr. Ben Efraim, Brian Greenspan,
5 and Jim Riley on the 29th of August at the Delta
6 Hotel on Simcoe Street?

7 A. I know that we met with them. I
8 can't remember specifically if it was the times or
9 not, but I know we met with them.

10 282 Q. Can you tell me what was discussed
11 at that meeting on the 29th?

12 A. Well, I don't know if the meeting
13 was the 29th, but at the meeting, we discussed two
14 issues fundamentally, personal and corporate
15 security, which was a big problem and a growing
16 problem for us, or at least we perceived it to be,
17 and litigation support.

18 283 Q. Were there any discussions during
19 this meeting concerning the retention of Black
20 Cube?

21 A. Absolutely not. I didn't even
22 know who Black Cube was.

23 284 Q. Were there any discussions during
24 this meeting about the retention of Psy Group?

25 A. Absolutely not. I had no idea who

1 they were. This was literally a meeting to start
2 the process, and probably, although I can't bet my
3 life on it, I would bet that most of that
4 conversation was about corporate and personal
5 security. We had had a bunch of episodes in the
6 last few days or a week leading up to that which
7 were the most important to us - at least to me - at
8 that point, and we needed help.

9 285 Q. So let me fast-forward two days to
10 August 31 and show you the documents at tab 52. So
11 at tab 52, you will find covering emails going back
12 and forth between Mr. Greenspan on one side and
13 Mr. Tanuri on the other. So Brian Greenspan sends
14 Tanuri a Letter of Engagement on September 1, and
15 Tanuri sends the signed engagement letter back on
16 September 4th. Do you see that? It says:

17 "Thanks for your patience. Pls
18 find the letter signed".

19 And then if you go into the document
20 past -- in mine, I have got a blue piece of paper,
21 but what I am looking for is the actual Letter of
22 Engagement. There you have it. There you'll find
23 a Letter of Engagement of August 31, 2017, and you
24 will see the first paragraph says:

25 "Further to our meeting and

1 discussions on August 29 [...] "

2 A. Yes.

3 286 Q. I took it from that that was the
4 date of the meeting that took place at the Simcoe
5 hotel that we have just looked at?

6 A. I assume that is correct.

7 287 Q. Okay. And he says:

8 "I am writing to confirm the
9 basis upon which our firm is
10 retaining you and your firm to act
11 as consultants with respect to the
12 client/clients verbally identified
13 to you."

14 And I think you'll easily confirm the
15 client or clients verbally identified to Mr. Tanuri
16 were you and Catalyst; is that fair?

17 A. Well, me, the other partners,
18 Catalyst, because if you read the Scope of
19 Retainer, which is the paragraph below it --

20 288 Q. Yes.

21 A. -- the first part of that confirms
22 what my understanding was, so:

23 "The scope of the assignment
24 authorized pursuant to this Retainer
25 Agreement relates to a qualitative

1 property, personnel and equipment
2 assessment of the current needs and
3 future requirements of our
4 clients/clients in order to more
5 effectively and lawfully carry out
6 their business objectives. The
7 assignment may be expanded or
8 modified [...]"

9 And that is when I think the litigation
10 stuff got more, but right now, at that time, I was
11 quite worried about my family and my partners. And
12 then it says later:

13 "In addition to retaining your
14 firm, we understand that you may
15 employ subcontractors and additional
16 consultants [...]"

17 289 Q. And can you tell me why is it that
18 you were not -- not just you personally, but you,
19 your partners, Catalyst and Callidus, why were you
20 not identified in this retainer agreement, do you
21 know?

22 A. I don't know. You would have to
23 ask Mr. Greenspan.

24 290 Q. Was there an effort made to
25 conceal your involvement with Tanuri and Tamara

1 Global and the others in relation to the events we
2 are about to discuss?

3 A. I can't imagine that would be the
4 case.

5 291 Q. Was there a separate retainer
6 agreement entered into at the time with Gadi Ben
7 Efraim?

8 A. Not that I know of.

9 292 Q. Do you know whether Gadi Ben
10 Efraim --

11 MR. MOORE: I am not aware of any such
12 document. If there is any -- sorry.

13 MR. THOMSON: Go ahead, David.

14 MR. MOORE: I was going to say --

15 THE DEPONENT: I need 30 seconds.

16 MR. MOORE: I was just going to say, to
17 the best of my knowledge and understanding -- go
18 ahead.

19 MR. THOMSON: Newton, you go ahead.

20 THE DEPONENT: I need to run to the
21 bathroom.

22 MR. THOMSON: Sorry, David, just finish
23 your thought. What were you saying?

24 MR. MOORE: Yeah, no, I was saying --
25 and I will say it again when he comes back -- I

1 should remember he had asked me over the weekend to
2 kind of take periodic breaks for a health reason
3 that he needs, and I tend to forget about breaks
4 for everybody and keep going.

5 MR. THOMSON: Right. Yes.

6 MR. MOORE: But I'll say it now and I
7 will say when he comes back, that to the best of my
8 understanding and belief, we looked wherever we can
9 to find whatever documents there are relating to
10 these or any other retainers, and I am not aware of
11 any other Gadi-related retainers, certainly none
12 that is in our possession or under our control.

13 There may be something between Gadi and
14 Tanuri, but, you know, it is not as if we have got,
15 Oh, here is a file full of other retainers.

16 BY MR. THOMSON:

17 293 Q. Okay.

18 A. Thanks.

19 294 Q. Tanya, can you pull up the last --
20 for some reason, these pages were produced
21 separately, but it is the last page of the retainer
22 agreement, the signature page.

23 And so here, Mr. Glassman, I'm just
24 showing you the signature page of this retainer
25 agreement involving Tamara Global and

1 Mr. Greenspan, and you will see that Mr. Greenspan
2 signs at the top of the page, and Mr. Tanuri
3 appears to have signed at the bottom on September
4 4th of 2017; do you see that?

5 MR. MOORE: That appears to be the
6 case.

7 BY MR. THOMSON:

8 295 Q. Now, am I right that that same
9 day, Mr. Glassman, September 4th -- Monday,
10 September 4th of 2017, you travelled to London,
11 England, to meet with Mr. Tanuri? Let me show you
12 your calendar to help you out on that and ask Tanya
13 to turn up tab 45.

14 [Court Reporter intervenes for
15 clarification.]

16 BY MR. THOMSON:

17 296 Q. Sorry, I didn't realize you were
18 cut off.

19 A. Sorry, something disconnected me
20 while I went to the bathroom.

21 297 Q. That is all right. Just
22 establishing a chronology. So David just confirmed
23 that the retainer agreement with Tanuri and Tamara
24 Global was signed by him on September 4th, and I
25 was just suggesting to you, if you look at your

1 calendar now and look at the date of September 4th,
2 2017 -- and scroll down, please. Just expand that
3 entry at 5 o'clock -- 5:15. Do you see that,
4 Mr. Glassman? It appears from what I can tell that
5 the same day that the retainer agreement was
6 signed, September 4th, you travelled from -- the 17
7 Ardworld Gate, is that your home?

8 A. Yes.

9 298 Q. And travelled "To: Sky Service, NG
10 driving", and if you look at the next page, it
11 appears that there was a flight to England that day
12 or possibly arriving the following morning in
13 England on September 5th. Was this your trip to
14 England where you met with people on September 6th?

15 A. Yeah, but I don't know why it is
16 that --

17 MR. MOORE: The --

18 THE DEPONENT: Sorry?

19 MR. MOORE: Go ahead.

20 THE DEPONENT: I see the entries. I
21 don't know why they are formatted that way, because
22 it looks to me like it was on the 6th, not on the
23 5th, because it is at the bottom of the day. But
24 in that time frame, I went to London, yes.

25 BY MR. THOMSON:

1 299 Q. Okay.

2 MR. MOORE: And I just would add that I
3 think we -- well, it is not I think. I know we
4 produced some flight logs which would indicate when
5 the plane left and went to the UK and came back.

6 BY MR. THOMSON:

7 300 Q. Okay. And am I right that on
8 September 6th you attended a meeting with
9 Mr. Tanuri and with representatives of Black Cube?

10 A. Whatever the flight logs say are
11 the dates, which I think is the 6th. But somewhere
12 in that two- or three-day time frame I was in
13 London, and yes, I attended a meeting which I now
14 know was introduced to a group of people who
15 purported to be from a firm called Black Cube who I
16 had never met before.

17 301 Q. So, again, I'm not trying to trip
18 you up here, but I'll just read it to you. This is
19 paragraph 21 of your affidavit sworn on the Boswell
20 motion where you said:

21 "At Mr. Tanuri's insistence, I
22 attended a meeting in London,
23 England on September 6, 2017 to meet
24 with what was prior to such
25 described to me as a team of

1 investigators Tamara Global had
2 chosen to provide litigation
3 support. I came to learn at that
4 meeting that these persons were
5 employees of Black Cube."

6 So I take it --

7 A. Yeah.

8 302 Q. I'm sorry. You go ahead.

9 A. I'm sorry. I said, yeah, that is
10 exactly right. I just don't know the dates without
11 having them confirmed.

12 MR. MOORE: No, let me just pause for a
13 second here. I think Mr. Glassman should have in
14 front of him, whether we mark it as an exhibit or I
15 do so on re-examination or whatever, a copy of that
16 affidavit so that, you know, he can follow along
17 specifically with the chronology in the
18 previously-sworn materials. Do you have that
19 affidavit handy, Mr. Glassman?

20 THE DEPONENT: I do not. I'll --

21 BY MR. THOMSON:

22 303 Q. Tanya, can you pull it up? There
23 it is.

24 A. Okay.

25 304 Q. So it is paragraph 21 that I was

1 interested in. I have just read this to you. So
2 the affidavit says that:

3 "At Mr. Tanuri's insistence, I
4 attended a meeting in London,
5 England on September 6, 2017, to
6 meet with what was prior to such
7 described to me as a team of
8 investigators Tamara Global had
9 chosen to provide litigation
10 support. I came to learn at that
11 meeting that these persons were
12 employees of Black Cube."

13 And I think you have now confirmed that
14 that is an accurate statement?

15 A. Yes, it is.

16 305 Q. Now, the meeting in London on
17 September 6th, are you able to help us as to who
18 from Black Cube attended that meeting?

19 A. I don't remember. I remember that
20 there was one guy, heavy set, who I think his name
21 is Avi. Another guy, a thinner guy, and I am
22 trying to remember his name. Avi was described as
23 running the business side of things. The other guy
24 was described as basically what we would call in
25 finance the person responsible for executing the

1 tasks.

2 306 Q. Right.

3 A. And then there was a whole bunch
4 of other people that came in and out of what I
5 would describe as a pitch meeting.

6 307 Q. And does that mean --

7 A. And they were pitching their
8 services.

9 308 Q. Was that meeting held at the
10 offices of Black Cube?

11 A. I think so, certainly offices that
12 they purported to be theirs.

13 309 Q. Okay. And did Mr. Burstien of Psy
14 Group attend that meeting as well?

15 A. I don't think Mr. Burstien worked
16 or works for Black Cube, and I definitely do not
17 believe he was at that meeting.

18 310 Q. Did you attend a separate meeting
19 with him during that trip to London in September
20 of --

21 A. Not to my recollection. Not to my
22 recollection. And in fact, my recollection is that
23 they weren't -- there were other people later that
24 had to be retained as further subcontractors, and I
25 think he was one of those.

1 311 Q. And when you say that this was a
2 pitch meeting, tell me what was discussed in that
3 meeting? What was the pitch made by Black Cube?

4 A. I remember them making a
5 presentation about their expertise, their
6 sophistication, their experience in litigation
7 support, their understanding of legal processes,
8 their being licensed in numerous jurisdictions. It
9 is a pitch. It was a pitch. This is who we are
10 kind of thing.

11 312 Q. And when you say "this is who we
12 are", did they tell you that they were a select
13 group of veterans of elite units in the Israeli
14 intelligence community?

15 A. They -- yeah, they told me that
16 they are a bunch of people that have experience and
17 some of the experience for many of them was in the
18 intelligence services of the State of Israel.

19 313 Q. Did they explain the way in which
20 they operated in terms of identifying targets and
21 using pretexts and false stories, meeting with
22 their targets and surreptitiously recording their
23 discussions with them? Did they describe that
24 element of what they do and how they carry on?

25 A. In fact, they did the opposite.

1 They described to me that they had proprietary
2 methods that many have relied on. They quoted a
3 whole bunch of cases that they had been involved
4 with where the information had been used in court.
5 To the best of my memory, one of them was some
6 famous case for a Russian oligarch, which for some
7 reason stands out in my head. And there were many
8 assurances that their approach, methods, and
9 experience is proprietary, and we have to rely on
10 them.

11 314 Q. And gave you no information as to
12 actually how they gather the information that is
13 relied upon in court proceeding; is that what you
14 are saying?

15 A. I'm sorry?

16 315 Q. They didn't tell you how they
17 gathered the information they rely upon in court
18 proceedings? You had no idea when you left that
19 meeting on September 6th that they used pretexts,
20 they used fake LinkedIn profiles, fake companies,
21 fake websites, approached targets, surreptitiously
22 recorded them; you had no idea they would do any of
23 that?

24 A. Absolutely no idea.

25 316 Q. And am I right that no one else

1 from Catalyst attended that meeting in London on
2 September 6th? It was only you?

3 A. I'm sorry, Mr. Thomson, I'm
4 actually having trouble hearing you. It is
5 becoming muffled. Can you say the question again,
6 please?

7 317 Q. Yeah. Am I right that no one else
8 from Catalyst attended that meeting in London on
9 September 6th? Mr. Riley didn't attend, de Alba
10 didn't attend? It was only you?

11 A. Yeah, it was only me.

12 318 Q. All right. And similarly, none of
13 your external counsel --

14 A. Only me from Catalyst.

15 319 Q. I understand. None of your
16 external counsel attended that meeting either?
17 Mr. DiPucchio, Mr. Greenspan, Mr. Moore, they were
18 not present; correct?

19 A. They did not attend.

20 320 Q. And if we look at one document.
21 Pull up, please, tab 78. At tab 78 is a Psy Group
22 document entitled "Project: Maple Tree", and you
23 will see the date of the email at the top of the
24 page is Thursday, September 14th, at 9:31 a.m.
25 This is from Mr. Abraham Ronen of Psy Group to Phil

1 Elwood, who we'll talk about in a minute. But if
2 you scroll to the bottom of the page, you'll find
3 an email from Royi Burstien. And pause there for a
4 second. I take it we can agree that you either
5 knew then or you certainly came to understand that
6 Mr. Burstien was the CEO of Psy Group; correct?

7 A. Later. Later on.

8 321 Q. Okay. And you will see his email
9 Wednesday, September 13th, 2017, at 1:45 p.m.,
10 written to a bunch of different people at Psy
11 Group, including Emmanuel Rosen and others. It
12 says:

13 "Enclosed highlights and
14 comments from client meeting last
15 week."

16 And if we just pull out a trusty
17 calendar, and we look at Wednesday, September 13th,
18 the preceding week was the week of Monday,
19 September 4th, which is the week that you were in
20 London, and that is why I suggested to you that
21 Burstien had attended your meeting with Psy Group.
22 If not that meeting, he attended a separate meeting
23 with you in London during the week of September
24 4th.

25 A. I don't think so. That "client"

1 may mean Tanuri or somebody on behalf of Tamara
2 Global. I don't know.

3 322 Q. Okay.

4 A. That is not my memory. It doesn't
5 mean my memory is perfect, but that is not how I
6 currently remember it.

7 323 Q. Okay. We'll talk about this memo
8 in a little bit when we talk about the meeting you
9 did attend in New York with representatives of the
10 Psy Group on September 14th, which is the day of
11 this memo. So I'll come back to that.

12 Now, just to cover this off
13 chronologically, let me show you a couple of
14 additional documents in terms of what led up to the
15 meeting on September 6th, and I will take you,
16 please, to tab 51 of my documents. So here you'll
17 find an email at the bottom of the page that gets
18 sent to you by a fellow named Peter Gilgan on
19 September 3 of 2017. You know Mr. Gilgan?

20 A. I know Peter quite well.

21 324 Q. He is a long-standing friend of
22 yours, as I understand it?

23 A. That would be true.

24 325 Q. Is he the CEO of Mattamy Homes?

25 A. He is.

1 326 Q. And he writes to you at the bottom
2 of the page and says:

3 "Hey brother:

4 Heath laid my new duds on me
5 [...]", and so on.

6 Skipping past that to the next
7 paragraph, he says:

8 "BTW happen to have a lady up
9 here this weekend... Very
10 circumstantial... Just a complete
11 fluke... Her boss is a guy Who runs
12 some Ricky asked company called West
13 face capital... Ever heard of it?"

14 You received this email from Mr. Gilgan
15 on or around September 3 of 2017?

16 A. Correct.

17 327 Q. And then if we look at what
18 happens next, turn now to tab 54, Tanya, you'll
19 find now further emails from you about that
20 paragraph I just showed you. So on September 4th,
21 Mr. Gilgan writes to you and copies his email to
22 Bei Huang and says:

23 "Newton, allow me to introduce
24 you to Bei. She has been employed
25 at West Face Capital for several

1 years and would like to stay in that
2 industry. However, she no longer
3 feels the atmosphere at WFC is
4 conducive to a productive future for
5 her. I believe she has held various
6 rolls at West Face, including
7 analyst early in her tenure there
8 and more recently a 'back office'
9 roll in finance. Perhaps Bei can be
10 more specific.

11 Of course I can't speak to her
12 technical skills but I can attest to
13 the fact that's she a patient
14 fisherman."

15 And then at the top of the page, he
16 says she's "an energetic cyclist".

17 You also received these emails on
18 September 4th and 5th of 2017; correct?

19 A. It looks that way.

20 328 Q. And then the following day, if you
21 turn to tab 55, you'll see that Ms. Huang writes to
22 Peter Gilgan and copies you thanking him for the
23 introduction to you and says:

24 "Great to meet you here Newton.

25 I have been working in West Face

1 before we launched the funds,
2 covered most of the areas in
3 financial analyst, Operation, risk
4 reporting, financial reporting,
5 compliance. Please find my resume
6 attached."

7 And then she says she would appreciate
8 meeting with you in person in order to give you a
9 more detailed description of what she has been
10 doing at West Face.

11 So as of September 5th, she appeared to
12 be looking for a new job. Mr. Gilgan, your friend,
13 has introduced her to you, and you understood that
14 she was looking for other employment; fair enough?

15 A. I thought that was a trap.

16 329 Q. Well, you didn't think that
17 Mr. Gilgan was setting you up for a trap, did you?

18 A. No, no, Peter could have been
19 manipulated, though.

20 330 Q. And am I right that you then
21 respond? Turn to tab 56. The email at the bottom
22 of the page, you actually respond, I believe, while
23 you are in London. On September 6th at 8:41, you
24 say:

25 "Good morning, bei. Sorry for

1 the delayed response but I am
2 travelling."

3 And of course, I am right, you were
4 travelling in London, England, at that point. This
5 is the same day as the meeting with Black Cube on
6 your itinerary; correct?

7 A. This is the same day I was in
8 London, yes.

9 331 Q. And then you say you are:

10 "Happy to help, and happy to
11 meet."

12 And you say not sure if there is a role
13 with Catalyst, but if not, you are happy to help
14 her elsewhere.

15 And then she gets back to you at the
16 top of the page the same day at 7:45 p.m. and
17 thanks you for responding, says she has looked at
18 her employment contract, found that there is a
19 non-compete covenant in her employment contract.
20 She says:

21 "I would not think this would
22 be a problem if West Face is not in
23 a lawsuit with Catalyst. Greg",
24 meaning Greg Boland, "will probably
25 not [be] happy if I shift the ship

1 to Catalyst."

2 And asks you to keep an eye out for --
3 am I right that after that exchange you provided
4 her name to the Black Cube people as someone they
5 may look at?

6 A. Are you okay?

7 332 Q. Yeah. Thank you. Am I correct?

8 A. Well, as the email shows, I
9 directed her back to her own employment, told her
10 that I don't think it -- it may not work for our
11 firm. As I said earlier, I was concerned it was a
12 bit of a trap, and I don't remember the exact
13 mechanics, but my memory is I told Yossi or Gadi
14 about being contacted by her and that I thought it
15 was too big a coincidence.

16 333 Q. So you did provide her name then
17 to the Black Cube people?

18 A. No, I provided it to the Tamara
19 Global people.

20 334 Q. All right.

21 A. That is my memory.

22 335 Q. Was she mentioned during a meeting
23 with the Black Cube people on September 6th?

24 A. Pardon me?

25 336 Q. Was she mentioned during a meeting

1 with the Black Cube people on September 6th?

2 A. I have no idea. I have no idea --
3 I have no idea. The time looks like it might have
4 been possible, but I don't know.

5 337 Q. Did you ever tell Mr. Gilgan that
6 you had provided her name to Tanuri or to Black
7 Cube or to anyone else?

8 A. I told Mr. Gilgan that I was quite
9 suspicious of the coincidence.

10 338 Q. Was Avi Yanus the most senior
11 representative of Black Cube that you interacted
12 with in respect of this matter?

13 A. I have no knowledge of the actual
14 seniority structure at Black Cube.

15 339 Q. Okay.

16 A. I have no idea.

17 340 Q. But you would be aware that on the
18 day after your meeting in London on September 6th,
19 he emailed to you a proposed Letter of Engagement.
20 Let me take you to that and ask you to turn up,
21 please, tab 57. If you could just scroll to the
22 bottom of the page, you will see he sends this
23 actually on to -- when I look at it, to Yossi
24 Tanuri on September 7th at 9:50, and says:

25 "Dear Yossi,

1 I am pleased to e*meet you.
2 Following your discussion with my
3 colleague, I am pleased to attached
4 to this email the Letter of
5 Engagement for project Camouflage,
6 and the company's T&C for your
7 review and confirmation."

8 Pause there for a moment. Black Cube
9 assigned the name "Project Camouflage" to the
10 project being undertaken -- or were undertaking,
11 rather, for you or for Catalyst; correct?

12 A. I have no idea. The recent
13 reading material was the first time I saw the
14 project name Camouflage.

15 341 Q. Well, I am going to suggest to you
16 that that's not correct, but let me -- I'll show
17 you why I say it is not correct in a moment.

18 MR. MOORE: Sorry, you are saying it is
19 not correct, Mr. Thomson, or you are --

20 BY MR. THOMSON:

21 342 Q. I'm suggesting to you your memory
22 is failing you, but in fact you received a series
23 of written presentations made by Black Cube on a
24 series of dates starting in September, September
25 19, again early October, again in November, all of

1 which had Project Camouflage all over the
2 presentations.

3 A. I don't remember that.

4 343 Q. Okay. Well --

5 A. I don't --

6 MR. MOORE: Sorry, what is the first
7 date of those? I know there are some in the Black
8 Cube --

9 MR. THOMSON: September 19th is the
10 first one.

11 MR. MOORE: Okay.

12 MR. THOMSON: And they go on from
13 there.

14 MR. MOORE: All right.

15 MR. THOMSON: I'll show you those
16 momentarily.

17 MR. MOORE: No, that is fine. I take
18 it those are some of the documents contained in the
19 Black Cube productions ordered by Justice Boswell.

20 MR. THOMSON: They are. That is
21 exactly right.

22 MR. MOORE: All right.

23 BY MR. THOMSON:

24 344 Q. So if we take a look at the
25 attachment to this email that was sent by Tanuri --

1 sorry, sent to Tanuri, rather, by Yanus on
2 September 7th, you'll see there is a draft
3 engagement letter attached to it. So it is
4 addressed to Tamara Global Holdings in Israel, and
5 you will see at paragraph 4, it says:

6 "This proposal was specially
7 prepared following a discussion with
8 the client. Based on the
9 information provided, Black Cube
10 have structured an approach that
11 will provide the best chances of
12 achieving the client's goals and
13 aiding their efforts."

14 And if you look at the basic structure
15 of the agreement in terms of fees and so on, look
16 at the third page of the document, paragraphs 21
17 and following. So they say:

18 "The price for this project
19 will be 1,500,000 USD, inclusive of
20 all costs.

21 The first payment in the sum of
22 250,000 USD will be due upon the
23 signing of this letter, and the
24 second payment in the sum of
25 1,250,000 USD will be due before the

1 15th of September."

2 And then paragraph 23 says:

3 "Black Cube will be paid a
4 success fee should the Client decide
5 to use the intelligence gathered in
6 the project, and when certain
7 results will be achieved. The exact
8 sums and results will be agreed upon
9 before the second payment, and will
10 be considered as part of this
11 letter."

12 And then finally paragraph 24 says:

13 "The payment of the success fee
14 will be independent from, and in
15 addition to, any other fee paid
16 according to this agreement."

17 Was that basic structure of the
18 arrangement discussed with you during the meeting
19 of September 6th in London?

20 A. I guess so. I would suspect so.
21 I'm sorry to do this, but I have to go to the
22 bathroom again. I drank a lot of iced tea at
23 lunch. Give me a minute and a half.

24 MR. MOORE: Let's take 5 minutes. It
25 is 3 o'clock. Let's take five minutes.

1 [DISCUSSION OFF THE RECORD.]

2 -- RECESSED AT 3:01 P.M.

3 -- RESUMED AT 3:03 P.M.

4 BY MR. THOMSON:

5 345 Q. So, Mr. Glassman, I have just
6 shown you the draft letter of engagement. Let me
7 show you what happens next, and ask you to turn up,
8 Tanya, tab 59. So scroll down, please.

9 So you'll see -- no, too far down.
10 Stop there. No, back. No, stop. Don't do a
11 thing.

12 Okay. Now you are being malevolent.

13 All right. So just stay there. So
14 you'll see what happens, Mr. Glassman, is the same
15 day that that draft is sent on September 7th,
16 Mr. Tanuri reaches out to Mr. Greenspan on
17 September 7th at 10:57 p.m. and says:

18 "Brian

19 I need your legal advise on
20 this one.

21 Can you pls call me [...]"

22 And so on. And if you scroll up,
23 Mr. Greenspan -- sorry, scroll up just a little
24 bit. And Mr. Greenspan writes back shortly
25 thereafter and says:

1 "Seems acceptable although
2 vague in its description of services
3 or goals to be achieved."

4 I believe he is referring to that
5 success fee paragraph I have just shown you, and
6 then Tanuri writes back the same day and says:

7 "[That's] my take as well.

8 Thats why i [asked] my friend
9 to put in writing exact expectations
10 and deliverables. Gadi will put
11 team list so it's clear.

12 Thanks.

13 Pls share your thoughts with my
14 friend."

15 I took it that what happened here is on
16 September 7th Tanuri reached out to you and said,
17 Look, Newton, it is important you put in writing
18 your exact expectations and deliverables,
19 particularly in respect of the success fee? Is
20 that a fair assumption on my part?

21 A. Yeah, it also makes me wonder how
22 much specificity was in the meeting. You asked me
23 before I went to the bathroom - for which I
24 apologize, by the way - whether it was discussed in
25 the meeting. It couldn't have been too specific in

1 the meeting because, just piecing it together, it
2 looks like they spent -- Yossi sent Brian the draft
3 that you just showed, and then sometime thereafter,
4 they are asking me to fill in some of the
5 generalities, which is what happened, and I did.

6 346

Q. And then the draft is sent on by
7 Greenspan -- well, I'll just show you what
8 happened. Go back to tab 57 now, and I should tell
9 you that the times of these emails are all screwed
10 up because people are using UTC time, so you
11 can't -- I rather doubt that Mr. Greenspan was
12 actually sending an email to his assistant at 1:10
13 in the morning about this, so you can't really
14 place much weight on the actual time of the day.

15 So either late on September 7th or
16 early morning of September 8th, Mr. Greenspan sends
17 a note on to his assistant Sharon Timlin and says:

18 "Please print the email and
19 attachments and put in sealed
20 envelope for pick up by or on behalf
21 of Newton Glassman - and then
22 confirm that it is ready to me by
23 email."

24 So a quick question to you. Can you
25 help us as to why this was being placed in a sealed

1 envelope for pickup by you? Why was this not
2 simply emailed to you at one of the email addresses
3 that you were using at the time; do you know?

4 A. I literally have no idea.

5 347 Q. Now, let me show you what happens
6 next, which is -- turn to -- I guess in sequence,
7 you have got to take this one step at a time. Turn
8 to the next event, which is my tab 59, just to give
9 you the reference point that we have just taken you
10 to so you can see how this played out.

11 The email I have just shown you where
12 Tanuri says, toward the top of the page:

13 "[...] i [asked] my friend to
14 put in writing exact expectations
15 and deliverables." And so on.

16 The next document that we see in time
17 appears to be an email from Mr. DiPucchio, so let
18 me just take you to that. And that is tab 61. We
19 are on the same day as that email exchange we just
20 looked at at 5:15 p.m. And Mr. DiPucchio sends you
21 an email, copied to Jim Riley, where he says in the
22 first paragraph:

23 "Newton, as requested, here is
24 a list of evidence/information that
25 I would classify as most important

1 in the prosecution of the various
2 Catalyst/Callidus pieces of
3 litigation or contemplated
4 litigation. This is not a complete
5 list by any means, but it reflects
6 the key items that I have been able
7 to think of given the brief window
8 of time within which you have
9 requested the list."

10 So I took it from this that following
11 that exchange with Mr. Tanuri, that you reached out
12 to Mr. DiPucchio and asked him to set out a list of
13 the key evidence or information that he would
14 regard as the most important in prosecuting the
15 various Catalyst/Callidus pieces of litigation or
16 contemplated litigation; is that a fair summary of
17 what happened?

18 A. I think that is right.

19 348 Q. Okay. And --

20 A. That is certainly my assumption as
21 well.

22 349 Q. Okay. That is fine. Did you tell
23 Mr. DiPucchio, when you had that discussion with
24 him about this list, did you tell him about the
25 meeting you had attended in London the day before

1 with representatives of Black Cube?

2 A. I don't know. I have no idea. I
3 don't remember.

4 350 Q. Did you tell Mr. DiPucchio you
5 intended to use his memo to finalize the terms of
6 the retainer of Black Cube? Did you explain the
7 purpose to him?

8 A. I have no idea. I don't remember.

9 351 Q. Did you share this with Mr. Riley?

10 A. Well, Mr. Riley had the list.

11 352 Q. All right. But my question is did
12 you share with Mr. Riley the fact that you intended
13 to use the list to finalize the retainer of Black
14 Cube?

15 A. Well, Mr. Riley knew that I had
16 been in London. Mr. Riley knew that we were
17 looking for litigation support. I don't know if I
18 told him, but I assume that he knew that I was
19 trying to figure out what we needed.

20 353 Q. And did you tell him when you got
21 back that you had met with operatives of Black Cube
22 in London?

23 A. I don't know. I may have. I may
24 not have. He knew I was going to London. I assume
25 he knows why -- or knew why.

1 354 Q. Okay. Now just in terms of
2 dates --

3 A. But that is an assumption. I
4 don't know. I don't remember the context of that.

5 355 Q. In terms of --

6 A. Or the timing of it.

7 356 Q. Just to explain why there are
8 certain dates in Mr. DiPucchio's email, so we have
9 it for our record, at the time that this email was
10 sent on September 7th of 2017, Catalyst's appeal to
11 the Court of Appeal in the Moyse action was
12 scheduled to be heard on September 26th and 27th;
13 do you recall that?

14 A. Yes. Well, I recall it now
15 because I know it.

16 357 Q. And Mr. DiPucchio then separates
17 various topics in his email by subject matter
18 headings and by days. So you will see there are
19 five headings in his email. So "General - by
20 October 31, 2017", "Mose - by September 19, 2017",
21 "VimpelCom - by September 19, 2017", and on the
22 next page, "Veritas - by October 31, 2017", and
23 "WSJ - by October 31, 2017". The dates for
24 VimpelCom and Moyse were sooner obviously than the
25 other dates that he put in the memo; correct?

1 A. It appears that way.

2 358 Q. And that is so because there was
3 particular urgency associated with obtaining the
4 evidence or information associated with the Moyse
5 and VimpelCom proceedings because of the
6 fast-approaching date of Catalyst's appeal to the
7 Court of Appeal in the Moyse case; is that a fair
8 assumption?

9 A. I think that is one of the
10 reasons.

11 359 Q. Okay. And if you then look at
12 what happens next to finalize the Letter of
13 Engagement, the next step I'm going to suggest to
14 you in finalizing the Black Cube Letter of
15 Engagement involved your creation of a bonus scheme
16 that would be applicable under the contract which
17 you then did in your own handwriting. So I'm going
18 to get Maura to pull up --

19 MR. MOORE: Just before you leave this
20 document that you've been -- you have it on the
21 screen, this was what tab number in your compendium
22 or set of materials?

23 MR. THOMSON: 61.

24 MR. MOORE: All right. So my
25 understanding -- and this is, I think,

1 non-contentious. The writing on this document is
2 Mr. Glassman's handwriting, and we'll see it in the
3 next document, likely. My recollection is there is
4 an unedited or unannotated version of the email
5 that exists as well.

6 BY MR. THOMSON:

7 360 Q. Yeah, there may be. I'm
8 interested in how this retainer agreement was
9 finalized. So let me show you the next -- and I am
10 going to come back to this document, Mr. Glassman,
11 in a minute, but to make sense of this, you have to
12 see the second document first.

13 So, Tanya, pull up pages 3 and 4 of
14 this document. There should be an enhanced
15 version -- sorry, a yellow -- no, go back to the
16 original document. There should be pages 3 and
17 4 -- okay. There should be an enhanced version of
18 this document.

19 MR. MOORE: There is a document that I
20 think is what you are referring to, being the
21 attachment to an email that you sent to my office
22 last week saying here is an enhanced version
23 because --

24 MR. THOMSON: There it is.

25 MR. MOORE: -- because of -- and that

1 is what you are meaning to come to, I take it.

2 MR. THOMSON: Yes, there it is.

3 MR. MOORE: Yes. Okay.

4 BY MR. THOMSON:

5 361 Q. So here is the -- all we did,
6 Mr. Glassman, is take your handwritten document and
7 just enhanced the writing so you can actually read
8 this thing. And we actually -- then to take one
9 more step, we put together a written transcription
10 of this document that David has, and, David, I take
11 it up until now you have not spotted any errors in
12 the typewritten transcription?

13 MR. MOORE: No, there may be a few
14 minor differences, but I don't think there are any
15 material disagreements. And I believe that, as I
16 was saying -- I can't remember if Mr. Glassman had
17 excused himself at that point, I believe
18 Mr. Glassman has a copy of the document that you
19 sent that I anticipated you would be referring to
20 during this examination.

21 BY MR. THOMSON:

22 362 Q. Right. Okay. Well, that is
23 helpful.

24 So, Mr. Glassman, a couple of things.
25 First of all, this handwritten document is in your

1 handwriting?

2 A. Yes, it is.

3 363 Q. Okay. And am I right that what
4 you did is you created a five-tier bonus legend
5 with varying amounts ranging from a high of
6 \$500,000 per item to a low of \$20,000 per item?

7 A. Yes, it appears that way.

8 364 Q. And am I right these are all U.S.
9 dollars?

10 A. Yeah, and then a whole bunch of
11 explanations underneath it.

12 365 Q. Right.

13 A. The explanations are there too.

14 366 Q. And just so we have it for our
15 record, so the bonuses payable under this bonus
16 legend or bonus scheme range from a low of \$20,000
17 per item U.S. for level E items, up to \$500,000 per
18 item for level A items; correct?

19 A. Sure. Yes.

20 MR. MOORE: I mean, it says what it
21 says.

22 BY MR. THOMSON:

23 367 Q. And having come up with that bonus
24 scheme, you then went back -- now let me take you
25 back to Mr. DiPucchio's typewritten memo of

1 September 7th, so back to the first page of this
2 production, and am I right that this document also
3 contains your handwriting?

4 A. It does.

5 368 Q. And what you have done is, using
6 the bonus scheme we have just looked at, you have
7 then assigned a letter to each of the items listed
8 by Mr. DiPucchio in his memo of September 7th?

9 A. Yeah, with the odd words added by
10 me.

11 369 Q. Correct. And if we wanted to show
12 the Court an example of a level A item that could
13 trigger the payment of a \$500,000 bonus, we could
14 look under the heading "Moyse", just to pick an
15 example, and the second item under "Moyse is:

16 "Evidence of what was deleted
17 by Moyse from his personal devices."

18 And then there is a handwritten
19 notation beside that that says:

20 "A if admissible in Court, C if
21 not admissible."

22 A. Yes.

23 370 Q. In other words, what you are
24 saying, as I understand it based on the bonus
25 scheme, is that if evidence or information was

1 provided to show what was deleted by Moyse from his
2 personal devices, if that was admissible in court,
3 the bonus that would be paid would be \$500,000, and
4 if the evidence was not admissible in court, that
5 the bonus payable would be \$100,000 per item?

6 MR. MOORE: Let me just stop you there.
7 My recollection is that there was a September 11
8 version of the engagement letter and the terms of
9 engagement that may have made some reference to
10 this, and that there may be some explanatory
11 linkage there that would connote success.

12 In other words, it wouldn't -- I'm
13 going from memory now, I don't have the other pages
14 in front of me, but it may be you have to look at
15 the other page to see how it fully works together.
16 Whether the admissible evidence in and of itself
17 would be sufficient, I am not sure. You would have
18 to look at both I think.

19 MR. THOMSON: Yeah, I'm going to come
20 to that in a second, David.

21 MR. MOORE: Okay.

22 BY MR. THOMSON:

23 371 Q. If you wanted to show the Court,
24 Mr. Glassman, an example of a level B item that
25 would trigger the bonus payment of \$250,000 per

1 item, again, if we look under Moyses, and we look at
2 the -- we take the, you know, first item under
3 Moyses:

4 "Any evidence that Moyses took
5 information from Catalyst about Wind
6 or any other Catalyst confidential
7 information when he left Catalyst."

8 So you ascribed the letter B to that
9 item; correct?

10 A. Yes.

11 372 Q. If you wanted to show the Court an
12 example of a level C item that could trigger the
13 payment of a bonus of \$100,000 per item, if we look
14 under the heading "General" near the top of the
15 page and look about five entries down, you will see
16 a reference to:

17 "- Correspondence or
18 information linking the Wolf Pack to
19 West Face and/or Greg Boland and
20 other West Face representatives."

21 And you have inserted the word
22 "evidence".

23 A. Right.

24 373 Q. So to read:

25 "- Correspondence, [evidence],

1 or information linking the Wolf Pack
2 to West Face and/or Greg Boland and
3 other West Face representatives."

4 And if we wanted to show the Court an
5 example of a level of D item that would be -- that
6 would trigger the payment of a bonus --

7 A. Not completely. To be more
8 accurate, I suspect I really meant evidence. In
9 other words, it has to be admissible.

10 374 Q. Okay.

11 A. If you read the whole engagement
12 letter, they say that they have the sole exclusive
13 right to determine how they are going to do
14 something and what they are going to do and that we
15 have to rely on them in order to make sure that it
16 is litigation support that we can use.

17 So I was trying to make sure that they
18 understood, and that is why I wrote "evidence" all
19 over the place, and I tried other places to make it
20 clear that it has no real fundamental value in that
21 they would be incentivized to make sure that we can
22 use it in court. If you want us to rely on you, it
23 has to be admissible.

24 375 Q. If you wanted to show the Court an
25 example of a level D item that was capable of

1 triggering a payment of a bonus of \$50,000 per
2 item, you could look under the heading "General"
3 and look at the second entry where it says:

4 "- names [and evidence] of
5 those individuals who have been
6 leading the activities of the Wolf
7 Pack."

8 Correct?

9 A. Yes.

10 376 Q. And then finally, if we wanted to
11 show the Court an example of a level E item that
12 could trigger the payment of a bonus of \$20,000 per
13 item, you could look to the very first item listed
14 under the heading "General" where you have now
15 written into that, but:

16 "- [evidence of] names of the
17 parties comprising the Wolf Pack".

18 Correct?

19 A. Yes, sir.

20 377 Q. Now, in addition to categorizing
21 the various matters identified by Mr. DiPucchio in
22 his memo of September 7th as items A, B, C, D, or E
23 to correspond with your bonus legend, am I right
24 that you also came up with additional categories of
25 information and evidence for the purposes of the

1 bonus scheme with Black Cube?

2 A. Well, it was whatever is on the
3 yellow -- I think what you are referring to is
4 whatever is on the yellow page beneath the legend
5 and stuff.

6 378 Q. I am. So can you pull back up
7 again, Tanya, the enhanced version of -- there.
8 Okay. Now scroll down. And keep scrolling down.
9 So stop there.

10 I'm happy to work, Mr. Glassman, either
11 with this handwritten version or with the
12 typewritten transcription. Either works for me.
13 But let me just read into the record what we
14 understand this to say. So 1(i):

15 "Also if find proof positive of
16 Moyse downloading Wind and/or
17 Callidus material from our servers
18 to his personal devices and from
19 such to Dropbox account US
20 \$250,000."

21 Correct?

22 A. That is what it says.

23 379 Q. And then below that:

24 "If proof/trace such to West
25 Face: Additional US \$250,000."

1		Correct?
2		A. Yes.
3	380	Q. And below that, the next one:
4		"Evidence of our Wind material
5		and West Face servers especially
6		from April - August 2014, US
7		\$250,000 so long as not same as ii";
8		correct?
9		A. Right.
10	381	Q. And then below that:
11		"Direct confession from Moyse,
12		US \$250,000"?
13		A. Yes.
14	382	Q. Correct? Below that:
15		"Confession plus copy from
16		Moyse of Wind or Callidus material
17		given to West Face, additional US
18		\$500,000"?
19		A. No.
20	383	Q. What do I have below?
21		A. It says "additional US \$250,000."
22	384	Q. Sorry, look at --
23		A. Sorry?
24	385	Q. Look at (ii).
25		A. Yes.

1 386 Q. Does it not say --

2 A. It says 250. You said 500. Or at
3 least I thought you said 500.

4 387 Q. I did. You say that says 250 and
5 not 500?

6 A. I think that says 250, yes.

7 388 Q. All right. And then below that,
8 (iii):

9 "Evidence of financial deal
10 between Moyse/West Face or evidence
11 of West Face paying Moyse currently
12 employer or evidence West Face
13 subsidizing Moyse income US
14 \$100,000."

15 Correct?

16 A. Yes.

17 389 Q. And then below that:

18 "Evidence of Lorne
19 Creighton/other Catalyst employee
20 provided information of West Face
21 hands - \$20,000/person."

22 A. Yes.

23 390 Q. And below that item 3 "Justice
24 Frank Newbould", so (i):

25 "Evidence/reasons for:

1 A bias against Catalyst/N
2 Glassman

3 B anti-Semitism.

4 C deal with West Face for
5 decision.

6 D inappropriate
7 communication/dealings with West
8 Face or Boland

9 E deal/move to Thornton Grout
10 U.S. \$75,000 --"

11 A. I don't think you read that
12 correct. I don't think you read that correctly.

13 391 Q. What did I not read correctly?

14 A. I don't think it says "D
15 inappropriate communication". I think it says
16 "inappropriate connection" or "dealings with West
17 Face or Boland".

18 392 Q. Thank you. So "inappropriate
19 connection/dealings with West Face or Boland."

20 And then below that:

21 "E deal/move to Thornton Grout
22 U.S. \$75,000 per item above by
23 deadline of Sept 20/17."

24 And then below that:

25 "If received after Sept 20/17,

1 depends on strength of evidence, if
2 criminal in nature, same US \$75,000
3 per item. If not criminal, depends
4 on evidence/opinion of counsel."

5 Do I have that correct?

6 A. Yes, you do.

7 393 Q. And below that, number 4:

8 "West Face

9 Evidence of other criminality not
10 related to us, US \$25,000/item."

11 Below that:

12 "Confirmation of assets under
13 management US \$20,000."

14 And below that:

15 "Confirmation of current
16 notices of redemption."

17 Scroll down, please. Tanya, scroll
18 down in the handwritten notes. Scroll down.

19 So below that, one more below that.

20 Just scroll down a little bit. It is blocked out
21 by the picture of the people on mine. Scroll down.

22 MR. MOORE: Mine isn't blocked.

23 BY MR. THOMSON:

24 394 Q. It is not blocked? Then maybe you
25 can read that.

1 A. It is blocked on mine, but if you
2 just make it --

3 MR. MOORE: Smaller.

4 BY MR. THOMSON:

5 395 Q. Shrink it.

6 A. It is cut off on the bottom of
7 mine.

8 396 Q. Okay. Scroll up, Tanya, or down.
9 I just want to see the last entry on that page.
10 No. Just shrink it.

11 MS. O'SULLIVAN: It is cut off in the
12 produced version, so that the page ends with the
13 text partially cut off.

14 BY MR. THOMSON:

15 397 Q. I believe what it says is:

16 "Confirmation of current
17 notices of redemption."

18 And I guess the email, it is not cut
19 off.

20 So, Mr. Glassman, to summarize this --
21 this is all, of course, in your handwriting. It is
22 the bonus scheme that you arrived at before this
23 agreement was sent back to the people at Black
24 Cube; correct?

25 A. Yeah.

1 398 Q. And if we look at what happens
2 next, am I right that you took your handwritten
3 notations on the DiPucchio memo of September 7th,
4 coupled with your handwritten description of the
5 bonus scheme that we have just looked at, you
6 provided those to your assistant Stephanie Wright
7 and had her scan them and send them back to Tanuri?

8 A. I believe that is what happened,
9 yes.

10 399 Q. Okay. And the Black Cube Letter
11 of Engagement - this is David's point - is then
12 modified accordingly to reflect this five-tier
13 bonus scheme that you had created. So now turn,
14 please, to my tab 60 where you'll find now an
15 updated version of the Letter of Engagement from
16 Black Cube of September 11, 2017. And look now,
17 please, at page 3 of this version of the Letter of
18 Engagement where there are a couple of new
19 provisions that are inserted.

20 And look in particular at paragraph 23:

21 "Black Cube will be paid a
22 success fee according to the
23 definitions in Annex A, with a
24 maximum cap of 11,000,000 USD and in
25 accordance with the following

1 scale:"

2 And again, the same scale, A \$500,000
3 U.S. per item, B 250,000 U.S. per time, C \$100,000
4 U.S. per item, D 50,000 U.S. per item, and E
5 \$20,000 U.S. per item.

6 And that, of course, corresponds with
7 the bonus scale that you had arrived at in your
8 handwritten document; correct?

9 A. Well, not quite correct. It
10 incorporates the reference of evidence that I used
11 repeatedly, probably should have used more, in my
12 handwriting because "evidence" was intended to
13 imply it has to be in accordance with our ability
14 to use it, as in evidence for a Court, and it is
15 tied to the other language in this schedule and in
16 this agreement, which includes all of the stuff
17 that is before this and after this, which also
18 includes warranty of them acting legally, a
19 warranty of them doing things properly, an
20 assurance to us that they would use their
21 proprietary methods, that they are the experts, and
22 that we were relying on them to do it in a manner
23 that was appropriate and usable in court.

24 400 Q. And --

25 A. We can't read it by itself. We

1 have to read the whole agreement.

2 401 Q. My point, it is a very simple,
3 small, itty-bitty point, which is this: That the
4 five-tier bonus scheme that you had arrived at in
5 the written document we looked at ten seconds ago
6 was then incorporated into the written Letter of
7 Engagement of Black Cube dated September 11 of
8 2017; correct?

9 A. Well, I think it was intended to
10 incorporate more than that.

11 402 Q. All right. But that at least was
12 done in the written Letter of Engagement of
13 September 11; correct?

14 A. I personally believe more than
15 that was done, but, you know, it is --

16 403 Q. Well --

17 A. So, for example, it leaves out --
18 to make your point, it leaves out the other stuff
19 that is handwritten, but it also -- and I would
20 assume that they would argue that it was intended
21 to be included, and I would argue that the language
22 that I used, perhaps not very well, but it was
23 pretty clear that it was intended to be included,
24 not just the schedule.

25 404 Q. Yeah, I think you are going to

1 find that it was included. So let me just stay one
2 at a time. So just one little bitty question.
3 This is how we build a house, brick by brick. So
4 number one, the five-tier bonus scheme that you
5 came up with in your handwritten document is
6 incorporated into the written agreement at
7 paragraph 23; correct? Just the five tiers, A, B,
8 C, D, and E. We have gone through this.

9 A. Yes, the reference to the five
10 tiers is clearly inside paragraph 23.

11 405 Q. Okay. And then the next change is
12 made is paragraph 24, and you will see:

13 "20% of the final amount of the
14 success fee, as determined according
15 to article 23, will be reduced due
16 to internal management costs of the
17 client."

18 What that was about was, as I
19 understand it from the documents, Tanuri and Black
20 Cube agreed to an 80/20 split of any success fees,
21 any bonuses paid under the arrangement. So Black
22 Cube kept 80 percent, Tanuri kept 20 percent; is
23 that consistent with your understanding?

24 A. No, I don't think -- I actually
25 don't think that is exactly right. To be more

1 specific, I think Tanuri was getting 20 percent of
2 everything, no matter what it was, not just success
3 fees.

4 406 Q. Okay.

5 A. In fact, I know that to be the
6 case.

7 407 Q. And then -- and this is where I
8 wanted to take you back to that reference, so
9 hopefully we can do this in one fell swoop. But
10 you'll see in paragraph 23 it refers to:

11 "Black Cube will be paid a
12 success fee according to the
13 definitions in Annex A [...]"

14 Do you see that?

15 A. I see that.

16 408 Q. That then begs the question, of
17 course, what is Annex A? Now you have to go back
18 to tab 61. Go back to the first page of tab 61.
19 No, the first page of tab 61. There you go. No,
20 the first page. No. You just had it. There.
21 Stop.

22 So you'll see what has happened is that
23 someone has written on the top of Mr. DiPucchio's
24 typewritten note of September 7th, 2017, at 5:15
25 p.m., the one that includes your handwritten

1 notations, someone has written on the top of that
2 document "Annex A - LOG - 11/9/2017".

3 A. Yes.

4 409 Q. Do you see that?

5 A. I think it is the person whose
6 initials is right beside that who wrote that.

7 410 Q. Right, precisely, and those
8 initials are those of Avi Yanus, and I am going to
9 take you back to that in a minute. But you will
10 see what has happened now is Annex A is your
11 handwritten markup of DiPucchio's memo of September
12 7th. That is the first page. Go to the next page,
13 you will see that that's also initialed by Avi
14 Yanus in the top, right-hand corner at page 2. And
15 then if you go to your handwritten note creating
16 the bonus scheme and go to the next page, page 3 --
17 no, go back. Sorry, Tanya, use the original
18 version of this, please.

19 Okay. Scroll to the top of the page,
20 the very top of the page. You will see that
21 Mr. Yanus has initialled this page, and then go to
22 the next page, he has also initialled the next
23 page.

24 And so Annex A to the Letter of
25 Engagement of Black Cube is the DiPucchio memo

1 containing your handwritten annotations that
2 incorporate the letters that correspond to the
3 bonus scheme, as well as your handwritten note, if
4 you will, that creates the bonus legend and then
5 contains the additional matters that we have just
6 discussed; fair enough?

7 A. Sure.

8 411 Q. And if we go back now one last
9 time to the Letter of Engagement at tab 60 and
10 scroll to the bottom of the page, the very bottom
11 of that page. The very bottom. Scroll down all
12 the way to the bottom. Maybe you can't go any
13 further.

14 MR. MOORE: The document I have on my
15 screen has some signatures or initials and the name
16 of Tamara Global, et cetera, so I'm not sure if
17 there is anything more there. Maybe it is cut off.

18 BY MR. THOMSON:

19 412 Q. Yeah, I think that Mr. Glassman is
20 suffering from the same problem I have, which is
21 that the pictures of the people cut off the bottom
22 of the page, but Mr. Moore will confirm that
23 Mr. Yanus's initials appear at the bottom
24 right-hand corner of each page of the Letter of
25 Engagement as well, and it is then signed. If you

1 go to the signature page, page 3 of the Letter of
2 Engagement, you will see that it is signed by Yossi
3 Tanuri and by it appears to be Yanus on September
4 11 of 2017.

5 So to summarize this, the Letter of
6 Engagement includes both documents we have just
7 looked at and one additional document that is at
8 tab 57 of my cross-examination brief. And
9 unfortunately, these are produced in a way that
10 each document seems to be a separate document, but
11 this is behind two or three blue sheets of paper on
12 mine. If this helps, it is the twelfth page of
13 this document, and it is the Terms and Conditions
14 of Black Cube.

15 So scroll through this tab -- scroll
16 through tab 57 until you find the terms of
17 engagement -- sorry, Terms and Conditions, rather,
18 Tanya. There, pause there. So I think David will
19 confirm this. David has referred to this in a
20 previous examination. So the Terms and Conditions
21 of Black Cube also formed part of the Letter of
22 Engagement.

23 MR. MOORE: We can have an offline
24 conversation and just avoid any confusion.
25 Independent of when each piece of this was or was

1 not in Mr. Glassman's possession, we can, I think,
2 confirm through informal discussion and then we can
3 memorialize that, here are the ultimate components
4 of the agreement, if you will.

5 BY MR. THOMSON:

6 413 Q. Okay. Now, Mr. Glassman, as of
7 September 11 when this Letter of Engagement was
8 finalized, including Annex A that includes your
9 handwritten bonus scheme and so on, you I'm sure
10 recognized at the time that you were incentivizing
11 Black Cube to find evidence of misconduct by
12 Justice Newbould; correct?

13 A. Yes, "evidence" being the key
14 word.

15 414 Q. And, again, what you were looking
16 for was either evidence/reasons for bias against
17 Catalyst or against you, anti-Semitism, deal with
18 West Face for decision, inappropriate
19 communications/dealings -- or inappropriate contact
20 or whatever with -- dealings with West Face and
21 Boland, and deal/move to Thornton Grout.

22 So some of these matters related to the
23 Moyse case in particular, and some dealt with other
24 misconduct more generally; correct?

25 A. Well --

1 MR. MOORE: Well, let's have that piece
2 of it just in front of the witness so we have it.

3 BY MR. THOMSON:

4 415 Q. Sure. That is fine. So go to tab
5 61 and maybe pull up the typewritten transcription
6 to make this simple for all of the rest of us.

7 A. I think a number of things had
8 occurred long before, seven, eight months before,
9 that forced us to question whether there was bias.
10 We had even had a discussion of bringing a motion
11 of recusal in January of -- I can't remember if it
12 was January 16 or 17 regarding Mr. Newbould.

13 We had found ourselves a whole bunch of
14 information in the public domain that worried us,
15 and yes, we needed to know if there was evidence
16 for the basis of a claim of bias that we could
17 bring forward.

18 416 Q. And --

19 A. But long, long, long before this
20 we had very serious issues, and I can give you some
21 examples, including an in-chambers meeting on
22 January the 26th. I can't remember if it was
23 January the 26th of '16 or '17, where
24 Mr. Newbould's behaviour caused many people in the
25 meeting to be extremely worried about his

1 impartiality.

2 417 Q. And you were not in chambers;
3 correct?

4 A. No, but Mr. Riley was, and if
5 memory serves, we went to possibly two -- in fact,
6 I know it was two now that I think about it, two
7 outside sources and discussed how to deal with it.
8 One was -- I guess it was Ian Binnie, I guess
9 Justice Binnie, and the other was a lawyer by the
10 name of Pope, and sought advice on what to do.

11 418 Q. And to be clear, no motion for
12 recusal was ever brought, was it?

13 A. That is true, but we never stopped
14 thinking about it. We were very worried.

15 419 Q. Now, let me ask you this,
16 Mr. Glassman. Here you are entering into a
17 contract that provided for the payments of amounts
18 to Black Cube of over \$10 million U.S. I think
19 that the total amount would be somewhere like
20 \$13,500,000 U.S. if all these bonuses had been
21 earned and payable. Can you tell me this. Why was
22 no typewritten version of this Letter of Engagement
23 prepared that included not only the body of the
24 Letter of Engagement but also Annex A? Why was
25 that not done?

1 A. Well, three things. First of all,
2 it is not quite right to say 13 or so million
3 dollars. Every single one of them was conditional.
4 Every single one of them required certain
5 preconditions to be completed, including the
6 execution of their own agreement, which required
7 them to perform in a manner that it was admissible
8 in court. It was unlikely, almost impossible - and
9 in fact, I don't think it is possible if you go
10 through all the items - for them to have earned all
11 of them because I think some of them conflict as
12 between them or are duplicative.

13 The second is some of it is in writing.
14 So when you look at even the document you gave me,
15 the legend of A, B, C, D, and E is typed into it.

16 The third is, I don't know why somebody
17 else didn't type it into the agreement. Just like
18 they did with the legend, I don't know why they
19 didn't, and they probably should have.

20 420 Q. And let me ask you this. Did you
21 share this entire Letter of Engagement, including
22 the appendix to it, your markup of the DiPucchio
23 memorandum as well as your handwritten bonus
24 scheme? Was that shared with Mr. Riley and Mr.
25 de Alba?

1 A. I don't know if the specifics of
2 it was shared. I am fairly certain that, just like
3 it is normal course in business, to have an
4 incentive system that aligns people's interests,
5 I'm certain that I would have -- certain is not a
6 hundred percent, but I'm fairly certain that I
7 would have told them, yeah, like we are not just
8 going to pay these guys a million and a half dollar
9 retainer with nothing to show up for it. I expect
10 them to legally and appropriately deliver stuff
11 that we can use in the court case, and I structured
12 it accordingly.

13 I have no idea if I gave them the
14 specifics of it. And clearly -- not clearly, but I
15 would assume that Mr. Greenspan knew about it
16 because he would have gotten the final executed
17 copy from Yossi and was telling me I'm going to
18 come pick it up or send somebody to pick it up.

19 421 Q. So your evidence is that
20 Mr. Greenspan was aware of this bonus scheme?

21 MR. MOORE: No, that is not what he
22 said. He made an assumption.

23 THE DEPONENT: That is what I assumed.

24 BY MR. THOMSON:

25 422 Q. All right. And isn't it more

1 likely than not, Mr. Glassman, to be fair to a
2 senior and distinguished counsel, you did not share
3 this with Mr. Glassman, and you didn't share it
4 with Mr. Moore, and you didn't share it with
5 Mr. DiPucchio; isn't that fair?

6 U/A MR. MOORE: Well, let's be clear. I
7 wasn't acting at the time, so it doesn't deal with
8 me. If you want to ask whether we'll inquire of
9 Mr. Greenspan to see if he knew about it, I'll take
10 that under advisement.

11 BY MR. THOMSON:

12 423 Q. All right. Will you please do
13 that and let me know whether Mr. Greenspan and/or
14 Mr. DiPucchio received at the time a copy of this
15 completed Letter of Engagement with Black Cube,
16 including the handwritten bonus scheme?

17 A. Yeah --

18 U/A MR. MOORE: Hold on, hold on.
19 Mr. DiPucchio was outside counsel as well at the
20 time, so I have noted your question, and I have
21 taken both requests under advisement.

22 BY MR. THOMSON:

23 424 Q. And, Mr. Glassman, I'm going to
24 suggest to you that you did not share the completed
25 Letter of Engagement, coupled with the Annex A and

1 the bonus scheme, with Mr. Riley because you knew
2 that if you had, Mr. Riley would have put his hands
3 in the air and said, Stop, you can't be doing; you
4 just cannot march down this path? Isn't that a
5 fair statement, to be fair to Mr. Riley?

6 A. I have no idea. I don't know if
7 it is a fair statement. I don't know if it is
8 appropriate. It certainly wasn't the intent. It
9 is much easier for everybody to look backwards with
10 20/20 hindsight. I was relying on that engagement
11 letter where they said that they would do things
12 that were admissible in court and that they are the
13 professionals and they knew whether something would
14 be admissible in court or not. They certainly made
15 it clear in writing that they were not going to
16 break laws, that we were absolutely -- and it is
17 very clear in that engagement letter that we were
18 relying on them not to break laws and to do things
19 in a manner that we could use in court.

20 So I think in retrospect all of us are
21 not happy with the way certain things were done,
22 but it wasn't our expectation, just like we rely on
23 other experts to perform their tasks properly as
24 well. We are clearly not happy with them. We have
25 sued them in England.

1 425 Q. Well, I am going to suggest to you
2 that what you did in reality is you kept everyone
3 in the dark. You kept Greenspan in the dark. You
4 kept Naomi Lutes in the dark. You kept DiPucchio
5 in the dark. You kept Riley in the dark. You kept
6 de Alba in the dark. None of them knew about this
7 completed Letter of Engagement and the bonus scheme
8 that you had conferred upon Black Cube, including
9 the targeting of Justice Newbould. They didn't
10 know because you didn't tell them. Isn't that
11 true?

12 U/A MR. MOORE: Well, I take it, based on
13 the Lutes, under advisement. You didn't ask about
14 Lutes because that is outside legal counsel, ditto
15 DiPucchio. We'll consider that. I just want to
16 consider any potential privilege issues about that.

17 But I have your question. You asked
18 about Riley and de Alba. I don't know if the
19 witness can add to what he said already or not.

20 But go ahead, and to the extent that
21 you can, if you can add anything to what you have
22 said, please do so.

23 THE DEPONENT: It would be normal
24 course for the partners to have a discussion
25 generally about the mechanics but not the

1 specifics. It is highly likely that I told them
2 that I didn't like the engagement letter, that it
3 wasn't tied to specifics, and that we need certain
4 deliverables that we can use in court.

5 It is highly likely, but I can't swear
6 my life on it, nor can I swear my life on the
7 opposite. It would have been our normal
8 procedure --

9 BY MR. THOMSON:

10 426 Q. So you --

11 A. -- to take care of our own
12 responsibilities.

13 427 Q. Again, you knew Jim Riley very
14 well. You knew that he was a senior and very
15 distinguished lawyer; fair enough?

16 A. And I then and still to this day
17 respect him immensely.

18 428 Q. And you knew that he had been a
19 senior partner at all of Goodmans and Stikemans and
20 the Ogilvy Renault firm in Toronto, he was someone
21 of considerable stature in the legal community; is
22 that fair?

23 A. For sure.

24 429 Q. And I'm just going to suggest to
25 you, because I'm obliged to under our rules, that

1 you knew fully well that if Mr. Riley had known
2 that you were incentivizing Black Cube to attack
3 the honour and the integrity and the conduct of
4 Justice Newbould, who had been the trial judge in
5 the Moyse case, Mr. Riley would have said, You
6 can't be doing this, you must stop? You knew that,
7 didn't you?

8 MR. MOORE: Just a minute --

9 THE DEPONENT: First of all --

10 R/F MR. MOORE: Hold it. I'm just
11 objecting to the form of that question and the
12 attack reference. What the incentive was, what the
13 precondition was, is in writing, and it speaks for
14 itself. The --

15 BY MR. THOMSON:

16 430 Q. Let's take it in bit-sized chunks.
17 You were incentivizing Black Cube to find evidence
18 of the most grave impropriety by Justice Newbould;
19 can we agree on that?

20 A. We had evidence that the judge had
21 already breached his oath of office.

22 431 Q. Can you answer my question?

23 A. You do understand this is after
24 the CJC had been -- formally announced that they
25 were going to investigate Mr. Newbould, and

1 Mr. Newbould resigned from the bench early in order
2 to avoid that investigation? You do understand
3 that?

4 432 Q. And what is the answer to my
5 question? You were incentivizing Black Cube to try
6 to find evidence of the most grave impropriety of
7 Justice Newbould? Are you not able to accept that,
8 Mr. Glassman?

9 A. I don't -- I believe your
10 characterization is incorrect.

11 433 Q. All right.

12 A. We were incentivizing them to
13 discover, if it existed, elements of bias which we
14 were very concerned about.

15 434 Q. Sorry, not just bias. One of the
16 bonuses was "evidence, reasons for deal with West
17 Face for decision". That is an allegation of
18 corruption, out and out corruption, that there was
19 a deal with West Face, they bought the decision;
20 correct?

21 A. Sorry, could I ask you -- sorry, I
22 think you have the timing -- one of us has the
23 timing wrong. Is it not true that before this
24 Snowdy had told us that he has a tape of a judge
25 for \$5 million being able to manipulate a case on

1 the Commercial List?

2 435 Q. You mean the story from Snowdy
3 that you described as "ass-talk", that story?

4 A. Yeah, without the tape. We wanted
5 the tape, which we kept asking for. There were
6 other elements of what Snowdy told us that had
7 proven to be correct already by that time.

8 436 Q. I'll say it one last time and give
9 you one last chance to respond. You kept Jim Riley
10 in the dark because you knew fully well he would
11 have put his hands in the air and said, Stop this,
12 you can't be doing this?

13 A. That is not accurate. That is not
14 accurate.

15 437 Q. So let me move forward in time.
16 Well, let's just show you what happens next. So
17 this contract is signed apparently on September 11
18 of 2017. Turn up tab 62. So here are text
19 messages sent, as I understand it, on September 11.
20 And I say that because look at the box. Look at
21 your note, your text message, to Mr. Tanuri:

22 "To confirm, u mean tues sept
23 19, NOT tomorrow sept 12."

24 I take it from that this text was sent
25 on September 11th; fair enough?

1 A. I assume so.

2 438 Q. And you'll see what this is about.

3 At the top of the page:

4 "Tuesday schedule". This is
5 now Tanuri.

6 "Tuesday schedule London:

7 1300 lunch us 3.

8 1600 tea party.

9 1930 all free."

10 And you write below that. You say:

11 "To confirm u mean tues sept

12 19, NOT tomorrow sept 12. Also, I

13 likely need to [be in] the air by

14 1900 so better if we start earlier.

15 Best if finished by 1700."

16 And then below that, Mr. Tanuri writes:

17 "Yes sept 19. I will check

18 again retiming... They wanted a few

19 extra hours... We are running an

20 operation on minutes... By wed a.m.

21 all nets will be thrown into

22 water... Gadi is coordinating

23 between parties to ensure no cross

24 fire... This is [turning to] be way

25 bigger than we thought when

1 started..."

2 I took from this that what was
3 happening here is Tanuri was reaching out to you on
4 September 11th to confirm a meeting in London on
5 September 19th; fair enough?

6 A. I think so.

7 439 Q. And when he says at 1600 there is
8 going to be a tea party, he is talking about a
9 meeting with Black Cube; correct?

10 A. I think so. I didn't --

11 440 Q. And --

12 A. Yeah.

13 441 Q. And then when he says:

14 "By wed a.m. all nets will be
15 thrown into water... Gadi is
16 coordinating between parties to
17 ensure no cross fire..."

18 What he is saying is Gadi is
19 coordinating -- Gadi Ben Efraim is coordinating as
20 between Psy Group on one side and Black Cube on the
21 other to ensure that they don't trip across each
22 other; correct?

23 A. I don't know if I knew that at the
24 time. I think he is implying or suggesting,
25 whichever is more accurate factually, that Gadi is

1 coordinating between subcontractors. I may not
2 have known who Psy was by then. I just don't
3 remember when I was told about Psy.

4 442 Q. And this is an example of
5 something we see repeatedly in the productions, but
6 you will see that this exchange between you and
7 Mr. Tanuri ends up being produced by Black Cube; do
8 you see the numbers in the top right-hand corner,
9 BC002513?

10 A. Okay.

11 MR. MOORE: I see that, yeah.

12 BY MR. THOMSON:

13 443 Q. And no copy of these texts was
14 produced by Catalyst or by you. Are you able to
15 explain why that is?

16 MR. MOORE: Let me just -- before you
17 answer that question -- and I don't want to
18 interfere with your question, but I disagree with
19 the proposition "we see this repeatedly in the
20 productions".

21 MR. THOMSON: Well, you are going to
22 see -- I am going to show you, David, about 20
23 examples as we move through this. So just put that
24 stake in the ground, and I am going to show you why
25 I say that in a minute.

1 MR. MOORE: Okay.

2 BY MR. THOMSON:

3 444 Q. But my simple question is can you
4 tell me why this text would be produced by Black
5 Cube but not by Mr. Glassman and not by Catalyst?

6 A. My understanding is that group
7 chat Chaverim is WhatsApp, and my WhatsApp is
8 available and has always been available. I have
9 instructed our IT people to deliver everything.
10 There is nothing else I can say or do. There is --
11 that is my device. Here is my device. I gave it
12 to them. In fact, they have been instructed every
13 time in the interim, when we have had new phones,
14 to make sure that all the stuff is moved over.

15 As a separate example, we had no email
16 access for a period of three weeks, and I still,
17 until as of the end of last week, couldn't access
18 some of my email for a period of months as a result
19 of a hack.

20 So I can't tell you why. I can tell
21 you what instructions we provided, and I can tell
22 you that our IT department knows that if they
23 didn't produce everything, it would be very, very
24 serious for them.

25 445 Q. All right. So, David, will you

1 try to find out for us why is it that this text --
2 I am going to show you a bunch of others, but why
3 has this text not been produced by Mr. Glassman or
4 by Catalyst?

5 U/T MR. MOORE: Well, I can tell you
6 generically that to the best of our knowledge and
7 ability all of the available documents have been
8 produced. If there are some missing documents and
9 if there is a further explanation we can provide,
10 we will do so.

11 I don't believe that there is a large
12 number of documents. If you want to specify what
13 you believe falls under that category, that is
14 fine. We are aware of this being an issue,
15 clearly, and we have attempted to identify whatever
16 gaps there may be and determine why certain
17 documents are missing or not produced.

18 And if we can provide any further
19 information about that, we'll use our best efforts
20 to do so.

21 BY MR. THOMSON:

22 446 Q. Thank you. Mr. Glassman, what
23 device were you using in September of 2017 to send
24 these sorts of text messages?

25 A. A predecessor to this iPhone,

1 which we keep as a firm. Well that may not be
2 accurate. We keep as a firm or gets handed down to
3 a member of my family but has had access, and the
4 instructions always and remain and always will
5 remain in our firm that when I or anybody else
6 moves to another device or a next generation
7 device, everything has to be preserved and moved
8 with it.

9 447 Q. Okay.

10 A. And to the best of my knowledge,
11 those instructions are followed.

12 448 Q. Did Black Cube provide you with a
13 phone or other device?

14 A. No, not to my memory.

15 449 Q. Now --

16 MR. MOORE: And in fairness -- I mean,
17 I am not aware -- and I know this issue came up in
18 informal conversations. I lose track of which
19 weekend it is, two weekends ago, I think, with
20 Mr. Carlson on the eve of the exchange of the phone
21 materials.

22 I have looked -- and I don't want to be
23 the witness here, but I don't recall there being
24 anything in the Black Cube productions which are
25 more extensive than the Catalyst productions, that

1 would refer to the phone or anything like that.

2 But if there is something that I have
3 overlooked or we have overlooked that would provide
4 some record or specifics of any such so-called
5 phone, point it out to us, and we'll make some
6 further inquiries. So I make that general
7 invitation.

8 THE DEPONENT: David, while you were
9 talking, I went to WhatsApp, typed in the search
10 Chaverim, which is the name of that, and it pulls
11 it up, and I don't know if the camera can see it.
12 But we are not hiding it. If -- that chat group is
13 on my phone, and they were instructed to give it to
14 you.

15 BY MR. THOMSON:

16 450 Q. That is helpful. So, David, will
17 you please then redouble the inquiries then of
18 Mr. Glassman's materials to --

19 U/T MR. MOORE: Yes, I believe we produced
20 that WhatsApp chat, but yes, I have your question,
21 and we'll follow up and make some more inquiries.

22 BY MR. THOMSON:

23 451 Q. Are you able to assist me with
24 this, Mr. Glassman. Why would Mr. Tanuri be
25 writing to you on September 11 referring to a

1 meeting with Black Cube as tea party? Why would he
2 not just be clear and say we are meeting with Black
3 Cube on September 19th?

4 A. Do you want my view as of today or
5 my view as of then? They are different.

6 452 Q. Well, okay, give me the different
7 views. Why was he -- what was your understanding
8 in September of 2017? Why would he be referring to
9 a meeting with Black Cube as "tea party" and not
10 just be straight up about it?

11 A. So I think that was an attempt --
12 I thought or I would believe at that time that it
13 was an attempt at humour, trying to be funny and
14 trying to be cute.

15 453 Q. Well, isn't it more likely than
16 not that he was attempting to avoid leaving
17 footprints? He was trying to cover tracks. Isn't
18 that the simplest explanation?

19 A. I don't think so because there is
20 already evidence by then of an engagement letter.
21 There is nothing to be ashamed of by anybody up to
22 that point or even after that point. So there is
23 enough stuff. Like we have people -- by that time,
24 we have people crawling -- I think by that time we
25 have security consultants at the properties and

1 doing evaluations. We have security -- if not
2 then, then very shortly close to that time, we have
3 body guards. We have security at the office. We
4 have a whole bunch of other stuff going on that
5 there is nothing to be secretive about.

6 We are in full-on fear at that point.
7 I don't remember the date, but this is right around
8 when I got the first of two death threats against
9 my then two year old son. So I think it was just
10 trying to be cute, and he knew that I was
11 incredibly upset and worried, and I think every
12 once in awhile he tried to make me smile and tried
13 to be funny. That is what I would have thought at
14 that time.

15 454 Q. Did you know at the time that
16 Black Cube intended to put Justice Newbould under
17 surveillance?

18 A. No, I did not.

19 455 Q. And if we pull up tab 111 of my
20 documents.

21 A. Mr. Thomson, I hate to do this to
22 you, I'm obviously getting old or drinking too
23 much, my medication interferes. If you give me 30
24 seconds.

25 MR. THOMSON: Let's take five minutes.

1 MR. MOORE: Okay.

2 MR. THOMSON: Okay.

3 [DISCUSSION OFF THE RECORD.]

4 -- RECESSED AT 4:04 P.M.

5 -- RESUMED AT 4:13 P.M.

6 BY MR. THOMSON:

7 456 Q. So, Mr. Glassman, I was taking you
8 to tab 111 of my documents, and you'll find here a
9 report from a group called InfoTactic Group to
10 Black Cube in London of September 22, 2017, and
11 what it relates to is surveillance that was
12 conducted on Justice Newbould the day after the day
13 we just looked at, which is September -- we just
14 looked at September 11. Here is the next day,
15 September 12. And you will see at the bottom of
16 that first page, they say:

17 "The target was observed on one
18 day. On Tuesday, September 12,
19 2017, the target departed from his
20 residence in his known vehicle [...]
21 stopped to drop off his dry cleaning
22 and then continued on to his
23 workplace, 'Thornton Grout [...]' "

24 If you go into it, you'll see
25 photographs at page 3, as an example, a photograph

1 of Justice Newbould's car. At page 5, a photograph
2 of Justice Newbould leaving his vehicle. And then
3 the photograph of his vehicle at tab 6 and so on.

4 I take it from your evidence you were
5 not aware that they were -- they intended to place
6 Justice Newbould under surveillance?

7 A. Absolutely not.

8 457 Q. Were you told that they had placed
9 him under surveillance after the surveillance took
10 place?

11 A. The first time I ever knew of
12 anything regarding Justice Newbould was when --
13 occurred when I heard or saw, however you want to
14 describe it, the tape for the first time.

15 458 Q. Okay. When you -- well, just to
16 be clear about it, did you learn that they had
17 placed him under surveillance?

18 A. This is the first time I'm seeing
19 this or know about this, but when you say
20 "surveillance", what we all refer to as "the
21 sting" could be construed as surveillance. That is
22 the first I knew -- when I found out about the
23 sting, that was the first time I knew about it.

24 459 Q. I mean, to be clear, placing
25 investigators outside his personal residence and --

1 A. I had no idea.

2 460 Q. Okay.

3 A. I had no idea. We relied on their
4 expertise. We were relying on them what we thought
5 was litigation support. We did not know this was
6 happening or that it would happen.

7 461 Q. Am I right --

8 MR. MOORE: Hold on. What Mr. Thomson
9 is asking is -- I think, is that -- so you have
10 answered that question. When, if you can remember,
11 did you first learn that, independent of what some
12 people call "a sting", independent of any of that,
13 when did you first learn that Black Cube or someone
14 engaged by Black Cube had put some form of
15 surveillance following Justice Newbould around or
16 looking at his car or that kind of thing? You have
17 indicated that you didn't know about it at the
18 time. When did you first learn that that had even
19 happened is the question, I think.

20 BY MR. THOMSON:

21 462 Q. Yes.

22 A. I have no idea when I found out
23 about the possibility. This is the first time I'm
24 seeing confirmation that I can remember. Maybe
25 somebody told it to me or wrote me something about

1 it and I have forgotten, but this is the first time
2 I'm actually seeing anything substantive about it.

3 463 Q. Let me take you forward in time, a
4 total of two days, to Thursday, September 14 of
5 2017. Maybe one day, as it turns out, to September
6 13th and ask you to turn up, Tanya, Mr. Glassman's
7 calendar for September of 2017, which is my tab 45.

8 And turn, please, to September 13,
9 which is the day after Justice Newbould was placed
10 under surveillance, and I believe what you will see
11 here, Mr. Glassman, is on September 13th of 2007
12 you flew to New York?

13 A. Yes.

14 464 Q. And am I correct, if you look at
15 the next page, the page for September 14th, 2017,
16 that you attended a meeting on September 14th with
17 Gadi Ben Efraim at WeWork office space at 110 Wall
18 Street in New York?

19 A. I think that is right.

20 465 Q. And I understand from your
21 affidavit filed in the proceedings before Justice
22 Boswell, you attended a meeting that day not only
23 with Gadi Ben Efraim but also with representatives
24 of Psy Group; correct?

25 A. Well, with the group of --

1 MR. MOORE: Well, let's have the
2 affidavit. I think the affidavit should be marked.

3 MR. THOMSON: Yes. Well, look, I
4 agree. Well, it has been referred to, so it will
5 be part of my documents.

6 MR. MOORE: Okay.

7 BY MR. THOMSON:

8 466 Q. And in fairness to you, let me
9 explain the --

10 MR. MOORE: No, but Mr. Glassman,
11 Mr. Thomson is quite entitled to ask you whatever
12 questions he wants germane to this affidavit. I'm
13 just suggesting when he does so, you should have
14 the affidavit in front of you so you can follow
15 along with what he is putting to you. That's all.

16 BY MR. THOMSON:

17 467 Q. Yes, and in fairness to you,
18 Mr. Glassman, your affidavit was sworn in response
19 to another affidavit of a gentleman named Phil
20 Elwood; do you remember that affidavit?

21 A. Well, yeah, I remember it. I have
22 read it.

23 468 Q. And so in his affidavit,
24 Mr. Elwood describes in considerable detail what
25 happened at this meeting in New York on September

1 14, and you then responded with your own affidavit
2 about that meeting.

3 So pull up paragraph 30 of this
4 affidavit, Mr. Glassman's affidavit, where you say:

5 "I have read the affidavit of
6 Mr. Elwood. I do not recall
7 Mr. Elwood but I recall attending a
8 meeting at the request of Mr. Tanuri
9 in New York. I do not recall being
10 told that the people were from Psy,
11 but I understood they were assisting
12 with executing the retainer of
13 Tamara Global as was Black Cube.

14 To the best of my recollection,
15 I do not recall having heard of PSY
16 prior to such time and certainly do
17 not believe was ever involved in
18 their being retained, other than
19 being told by Mr. Tanuri and by Mr.
20 Ben Ephraim that due to the
21 litigation time constraints more
22 than one firm may be needed. I was
23 never provided a retainer involving
24 Psy. Assuming there is a retainer,
25 I do not see how it could have been

1 effected but through Tamara Global."
2 And then with respect to the meeting,
3 at paragraph 32:

4 "I understood and believed
5 that, in addition to personal
6 security services, Tamara Global was
7 providing and/or arranging for a
8 wide array of services with respect
9 to litigation and related media
10 relations. I do not recall a great
11 deal of detail about that meeting in
12 New York, but I do recall matters
13 relating to litigation support,
14 investigative work, and media
15 relations were the primary subjects
16 discussed."

17 So you certainly did attend a meeting
18 on September 14 in New York; correct?

19 A. Yes.

20 Q. And with respect to this issue of
21 Psy Group, Mr. Elwood deposes that there were any
22 number of people from Psy Group in attendance,
23 including Mr. Burstien. Now you eventually did
24 meet Mr. Burstien; correct?

25 A. Yes.

1 470 Q. And did you meet another gentleman
2 named Emmanuel Rosen?

3 A. Yes.

4 471 Q. Now, with respect to this issue of
5 the retention of Psy Group, as I understand your
6 affidavit, the retention of Psy Group occurred
7 through Mr. Tanuri; correct?

8 A. That is my understanding. I --

9 472 Q. Is Mr. Tanuri still a friend of
10 yours?

11 A. I don't think that that's an easy
12 answer. It is -- I respect Yossi. I care for
13 Yossi. I do not believe we are anywhere near as
14 close as we used to be.

15 473 Q. All right.

16 A. And I would say the friendship is
17 strained at minimum.

18 474 Q. Have you ever asked Mr. Tanuri for
19 a copy of the retainer agreement with Psy Group?

20 MR. MOORE: Mr. Glassman personally?

21 MR. THOMSON: Yes.

22 MR. MOORE: Hold on.

23 BY MR. THOMSON:

24 475 Q. Yes, Mr. Glassman personally.

25 Have you ever asked Mr. Tanuri for a copy of the

1 retainer agreement with Psy Group?

2 A. I have not spoken to Mr. Tanuri in
3 years. I have communicated to wish him a happy new
4 year, I think, once or twice. Whatever
5 communications I have had with Mr. Tanuri would be
6 on my WhatsApp, so we can get that to you if you
7 want it.

8 476 Q. Yeah, I do.

9 U/T MR. MOORE: Well, I am not sure that
10 there is anything more beyond what you have, but
11 we'll make inquiries and find out.

12 BY MR. THOMSON:

13 477 Q. So what is the --

14 A. Although, to be fair, David, to be
15 fair to Mr. Thomson, there is probably another
16 WhatsApp conversation specifically with Yossi.

17 MR. MOORE: All right.

18 THE DEPONENT: And I just don't know if
19 that was produced or not. But if it wasn't and it
20 should have been, then it needs to be given to
21 them.

22 U/T MR. MOORE: All right, well, we'll
23 follow up on that, you can be sure.

24 BY MR. THOMSON:

25 478 Q. So, Mr. Glassman, what is the

1 answer to my question? Have you ever asked Tanuri
2 for a copy of the retainer arrangements with Psy
3 Group?

4 A. I have asked other people to ask
5 for that engagement letter.

6 479 Q. All right. And have you ever
7 asked Tanuri?

8 A. I have not personally asked for
9 it.

10 480 Q. All right. Will you do so?

11 MR. MOORE: Well, no, inquiries have
12 been made on an ongoing basis, and that -- I am not
13 going to get into the whole nine yards of that
14 because counsel was involved, but the culmination
15 of that were the documents that were received in
16 mid-February or thereabouts, after the decision of
17 Justice Boswell was released, and those documents,
18 such as they are, were included and have been
19 included in the productions, the Black Cube and
20 Psy-related productions that you have.

21 BY MR. THOMSON:

22 481 Q. All right. I just need a very
23 clear and specific answer to a clear and specific
24 question. Has Tanuri refused to produce documents
25 that set out the retainer of Psy Group, either a

1 contract, a Letter of Engagement, a retainer
2 agreement? Has he refused to produce that?

3 MR. MOORE: Let me put it this way.
4 Mr. Tanuri, from my perspective, has not been
5 particularly co-operative in requests that have
6 been made. He would have a different -- well, I
7 don't know if he would have a different view of
8 that or not.

9 MR. THOMSON: All right.

10 MR. MOORE: But attempts have been made
11 directly, indirectly, et cetera, to obtain
12 documentation, and I can assure you if we had that
13 documentation that we got in mid-February that I
14 have just alluded to at an earlier point in time,
15 it would have been produced when it was available.

16 And that was a culmination of various
17 efforts, both direct and indirect, to get what he
18 was deeming appropriate or willing to give us.

19 BY MR. THOMSON:

20 482 Q. And who paid the accounts of Psy
21 Group? When they rendered an account, who paid the
22 account?

23 A. I'm sorry, are you asking me?

24 483 Q. Yes. Yes.

25 A. I would assume the Greenspan

1 Humphrey law firm. I would assume it was part of
2 the bills that went forward to us from them.

3 484 Q. So then --

4 MR. MOORE: Hold on. Let's not assume
5 anything.

6 THE DEPONENT: To be accurate --

7 MR. MOORE: Hold on. Hold on. Time
8 out here, okay.

9 And, Kent, if you would be more
10 comfortable if Mr. Glassman excused himself for a
11 minute while I discuss this issue with you, I am
12 perfectly okay with that.

13 MR. THOMSON: No, I am happy to have
14 you discuss it with me right with him sitting here,
15 because I'm sure I'm going to have some follow-up
16 questions. So --

17 MR. MOORE: All right, so --

18 MR. THOMSON: -- what I want to know is
19 who --

20 MR. MOORE: So --

21 MR. THOMSON: Go ahead.

22 MR. MOORE: We don't have specific
23 knowledge. Like there is no -- to the best of my
24 recollection, there is no funds transferred from
25 Mr. Greenspan's office or anybody directly that we

1 know of to Psy or any related company or entity
2 such as organized knowledge or anyone else.

3 So whether Mr. Yossi Tanuri paid Psy or
4 who paid Psy, I am not sure that we know.

5 BY MR. THOMSON:

6 485 Q. Well, Mr. Glassman, you are not
7 going to suggest that Mr. Tanuri paid Psy out of
8 his own pocket and never sought reimbursement from
9 you or from Greenspan, are you?

10 MR. MOORE: We are not suggesting that.
11 All I'm saying -- I'm trying to be responsive, or
12 maybe I am and maybe I am not being responsive to
13 what I perceive to be your question which is that
14 do we have specific knowledge of who and how Psy
15 was paid whatever they were paid. And the short
16 answer is we don't, to the best of my knowledge.

17 BY MR. THOMSON:

18 486 Q. All right. So look, let me tell
19 you what I want, and you can, David, take this
20 under advisement. What I want is a schedule that
21 shows us all payments that were made to Tanuri, to
22 Tamara Global, to Gadi Ben Efraim, to Black Cube,
23 to Psy Group either directly or indirectly, and I
24 don't care whose accounts the payments were routed
25 through, whether they went through Greenspan's

1 account, a Catalyst account, someone else's
2 account. What I want to find out is who was paid,
3 what were they paid and when were they paid?

4 MR. MOORE: I understand.

5 BY MR. THOMSON:

6 487 Q. And if Psy Group billed Tanuri and
7 Tanuri passed the account on to Greenspan or on to
8 Catalyst or on to Mr. Glassman, I need to know that
9 too.

10 U/A MR. MOORE: I understand. So I think a
11 similar request or substantively a similar request
12 arose during the cross-examination of Mr. Riley,
13 and my recollection is I took that under advisement
14 at the time and I will do the same now.

15 And I hear -- I heard you then, or Mr.
16 Milne-Smith I guess it was then, and I hear you
17 now, and I'll get back to you as to our position on
18 that. But I understand the question.

19 BY MR. THOMSON:

20 488 Q. And, Mr. Glassman, let me ask you
21 this. We just went through half an hour ago your
22 very detailed and extensive involvement in settling
23 the terms of the retainer of Black Cube, including
24 creating handwritten schedules and so on. Tell me
25 this. Why were you not involved in settling the

1 terms of the retainer of Psy Group?

2 A. Well, number one, I don't believe
3 that your description of my involvement with Black
4 Cube is correct. I was fixing one piece of the
5 agreement. I didn't mark up any other part of the
6 agreement. I am not even sure I had any ability to
7 mark up any other part of the agreement. I was
8 asked for a specific piece of work. I did that
9 work. I wasn't even on the agreement. So I don't
10 really think I agree with your characterization.

11 In terms of Psy, my recollection was
12 that Tanuri Global by that time had been fully
13 engaged. Tanuri Global -- or Tamara Global's
14 engagement included them engaging contractors and
15 subcontractors at their own discretion in order to
16 get the mandate filled, and I think by then the
17 relationship had evolved to the point where I
18 wasn't involved anymore. It was delegated to our
19 experts, meaning Tamara Global.

20 489 Q. And did you tell your partners,
21 Mr. Riley and Mr. de Alba, that Psy Group had been
22 retained in this matter?

23 A. I don't even remember when I was
24 told that Psy Group was retained.

25 490 Q. Well, I am going to show you a

1 bunch of your text messages that will demonstrate
2 that you did know, but we'll pause on that for a
3 moment. The question is did --

4 A. I said I don't remember --

5 491 Q. My question is did you tell Riley
6 and/or de Alba that Psy Group had been retained?

7 A. They knew that we were getting
8 media relations assistance, so I don't know if I
9 named it by name. I don't even know if I knew or
10 when I knew the name, but they knew that we needed
11 media relations help so they knew that somebody was
12 helping on the media relations side as part of the
13 litigation strategy.

14 492 Q. And what did you tell them that
15 Psy Group had been retained to do?

16 MR. MOORE: Well, he doesn't know if he
17 named Psy Group, but to the extent -- let's just be
18 clear. To the extent you had discussions with
19 either of Riley or de Alba that you can remember,
20 and don't guess, but tell Mr. Thomson what you can
21 remember in any conversations with Riley or de Alba
22 about a media relations consultant, whoever the
23 identity may have been, substantively.

24 THE DEPONENT: Substantively, we all
25 knew that we were under a major attack both on the

1 web and in the conventional media, and we all knew
2 that we needed more help than Dan Gagnier. And we
3 all knew that as part of the engagement from Tamara
4 Global, we were to have assistance in what
5 Mr. Elwood described as a "White" campaign.

6 BY MR. THOMSON:

7 493 Q. Right. And did you ever
8 communicate directly with representatives of Psy
9 Group, including Mr. Burstien or Mr. Rosen or
10 Mr. Ronen or Mr. Amir or others, either by text, by
11 email, phone calls? Did you communicate directly
12 with them?

13 A. Well, to be clear, you said
14 "communications", so I met Mr. Burstien when he
15 came to visit the office once or twice.

16 494 Q. Yes.

17 A. I don't remember if I had known
18 then which subcontractor he was associated with. I
19 just don't remember when it became obvious to me.
20 And I believe that one of their what turned out to
21 be, and I am not sure we knew -- well, that is not
22 true. We knew it was somebody that was working on
23 the media relations side had stayed in our office
24 for a period of time. I can't even remember how
25 long. I think her name was Sharon.

1 So obviously, people knew that a media
2 professional was trying to help us if she was
3 sitting in our office for a few days.

4 495 Q. All right. And so what is the
5 answer to my question? Did you communicate
6 directly with, as an example, Burstien?

7 A. Oh, sorry, I was trying to point
8 out that obviously I communicated with Mr. Burstien
9 when he was at our office and met at the office. I
10 obviously communicated with that employee who I
11 believe her name was Sharon when she was at the
12 office.

13 Other than that, we would have to
14 search my emails and look for other forms of
15 communication for you.

16 496 Q. And that is my question, isn't it.
17 When I scour the documents - and believe me we have
18 been through them with a fine-toothed comb - we
19 don't find any written communications between you
20 and Mr. Burstien, you and Mr. Rosen, you and others
21 at Psy Group, and I am wondering why that is?
22 Where are they? There is no text messages, no
23 emails, no other written communications?

24 A. Well, I don't know. I can give
25 you two hypotheses. The first --

1 MR. MOORE: No, no, no, we are not
2 going to -- no. Stop. Stop. We are not going to
3 get into assumptions or hypotheses.

4 We have searched, to the best of our
5 ability and to the best of my knowledge, all the
6 records that are available to us to locate whatever
7 written communications there may be between the
8 representatives of Psy, Burstien, whoever, that you
9 have named, and we have produced what has been
10 located.

11 And in fact, as recently as the week
12 before last, we realized there was another document
13 that should have been included in our schedule that
14 we provided to Mr. Milne-Smith about two weeks ago.

15 So it is not as if, to best of our
16 knowledge, based upon due inquiry, that there is
17 some, you know, treasure troves of Psy-related
18 communications or emails or anything like that
19 anywhere, and it is not for want of trying or want
20 of trying to locate them. I guess one doesn't have
21 to be a rocket scientist to figure out that you are
22 going to ask these questions and say, Well, how
23 come there is no communications, whether there is
24 some big, pardon the pun, black hole here.

25 So we have made extensive efforts to

1 locate whatever we could find through whatever
2 devices we are aware of and to identify and produce
3 such communications.

4 BY MR. THOMSON:

5 497 Q. Did you ever use an encrypted
6 messaging app known as Signal to communicate with
7 Mr. Tanuri or with people from Psy Group?

8 A. Somebody, and I can't remember
9 who, asked me to download Signal on my phone. It
10 is on my phone. It has never been erased. And I
11 don't remember ever using it, and that is why you
12 can see the WhatsApp conversations that are during
13 this period of time. But anybody who wants to is
14 entitled to and I'm more than open to letting them
15 look at Signal.

16 498 Q. All right, so let me show you a
17 document that deals with that. Turn to tab 72 of
18 my documents. And this is just before you meet
19 with Psy Group in New York on September 14, and
20 here you'll find a text message sent to you on
21 September 13 by Mr. Tanuri and you will see it
22 says:

23 "Let's use this to text in case
24 we need text messages:"

25 And he refers to Signal.

1 And you send him back a text saying:

2 "I just installed it and sent u
3 a [message] for test. [Please]
4 confirm when u can."

5 And he says "Thank u".

6 And you say, "Xoxo".

7 Do you see that?

8 A. Yes, and then I also see a ton of
9 conversations on WhatsApp long after that.

10 499 Q. And will you please, David, make
11 an extra effort to search Mr. Glassman's devices to
12 see what messages were actually sent using the
13 Signal app?

14 U/T MR. MOORE: Yeah, without accepting the
15 premise that there are some, I hear you, and
16 without in any way implying that we haven't already
17 made inquiries, including through IT professionals,
18 et cetera, without getting into the whole nine
19 yards of those efforts, yes, we will make a further
20 inquiry on top of the extensive inquiries we have
21 already made.

22 BY MR. THOMSON:

23 500 Q. Okay, thank you. So let's take
24 you then to the meeting in New York that you attend
25 on September 14th. Sitting here today, do you have

1 a particular recollection of what was discussed at
2 that meeting?

3 A. I have a general recollection.

4 501 Q. And what is it?

5 A. I think Mr. Elwood exaggerated,
6 but we did spend a fair amount of time providing
7 background of the history, especially about the
8 litigation. I remember there was a conversation
9 about why there was a bodyguard with me, and I
10 remember a conversation about our treatment in
11 conventional media and in social media.

12 502 Q. Okay.

13 A. The treatment of us, to be more
14 accurate grammatically.

15 503 Q. Let me show you a document I
16 promised I would take you back to and ask you to
17 turn, please, to tab 78.

18 And just before we do this, just to
19 connect one other dot, if you go back -- and just
20 before we do that, pull up Mr. Glassman's calendar
21 for September of 2017, and that is at tab 45, and
22 look at September 14.

23 And you'll see that the meeting that
24 you attended with Gadi started at 9:30 am on
25 September 14 at 110 Wall Street at the WeWork

1 office space; do you see that?

2 A. It was scheduled to start at 9:30.

3 504 Q. Right. So against that backdrop,
4 go back to the email we were just on at my tab 78,
5 and you will see what happened.

6 So at 9:31 a.m., so one minute after
7 that meeting was scheduled to start on September
8 14, Mr. Ronen of Psy Group sends this email from
9 Burstien on to Phil Elwood; do you see that?

10 A. I do.

11 505 Q. And then look at the bottom of the
12 page. So Mr. Burstien's email of Wednesday,
13 September 13 has the heading:

14 "Enclosed highlights and
15 comments from client meeting last
16 week."

17 Mr. Elwood's evidence is that this note
18 that follows summarizes in large part what happened
19 during the meeting of September 14th, and so I
20 wanted to walk you through it.

21 MR. MOORE: Well, hold it. Hold it.
22 Hold it. Let's go to that. No, you are mistaken
23 in that regard, with all due respect.

24 MR. THOMSON: Am I? Tell me how.

25 MR. MOORE: Because the document in

1 question consists of or purports to consist of
2 notes of a meeting the week before, in other words,
3 prior to September 14th.

4 MR. THOMSON: Yes.

5 MR. MOORE: And it couldn't be notes of
6 the meeting that took place the following week on
7 September 14th.

8 MR. THOMSON: That is not what I said.

9 MR. MOORE: And --

10 MR. THOMSON: That is not what I said.

11 MR. MOORE: Well, that is not what he
12 said in his affidavit, you are quite right. In
13 cross-examination -- hold on. In cross-examination
14 he acknowledged that likely -- you know, he
15 acknowledged what I just said, that when he swore
16 his affidavit, he wasn't sure of the exact meeting
17 date in New York. He didn't know it was September
18 14th.

19 The reason September 14th was pinned
20 down is because when we realized the allegations in
21 September arising from Mr. Elwood's affidavit, we
22 searched Mr. Glassman's schedule again. We didn't
23 attach any particular meaning to the entries for
24 September 14th, but we saw it married up with the
25 We Wood or the We Hotel [sic], or whatever it is

1 called --

2 MR. THOMSON: WeWork.

3 MR. MOORE: -- and that was the meeting
4 in New York.

5 And so that is how the meeting date of
6 September 14th got pinned down. In fairness to
7 Mr. Elwood, he didn't know that at the time he
8 swore his affidavit. So when he identified, as he
9 did, one of the exhibits as being the minutes of
10 that meeting, he was in error. Those were minutes
11 of an earlier -- or notes of an earlier meeting.
12 And I think that was acknowledged by all when we
13 had the cross-examination last Friday or the Friday
14 before.

15 I'm not sure that anything in
16 particular turns on it except that that exhibit did
17 not constitute notes of the September 14th meeting.

18 MR. THOMSON: No, I am not suggesting
19 they do, but what he says is that the email is an
20 accurate summary of what was discussed at the
21 meeting he attended on the 14th. In other words,
22 the subject matter that is set out in the email of
23 September 13 was discussed again with him during
24 the meeting of September 14th, and that is why it
25 was given to him one minute after the meeting

1 started. That is what I take from this.

2 In any event, let me see if this jogs
3 your memory.

4 MR. MOORE: In any event, I didn't read
5 his affidavit that way, but I hear you. Let's keep
6 going.

7 BY MR. THOMSON:

8 506 Q. So, Mr. Glassman, take a look then
9 at the email from Mr. Burstien of September 13 at
10 1:45 a.m. and scroll to the second page. At the
11 top of the second page, you will see that it says:

12 "Mission 1 -

13 a. Target Audience - appellate
14 bench + Chief Justice George
15 Strathy. Residing on appeal against
16 target's ruling on the Brandon Moise
17 case.

18 b. Timeframe - 6 weeks (hearing
19 begins Sep. 20" -- it was actually
20 September 26 -- "bench takes 1-3
21 months to make decision.)

22 c. Target - Frank Newbold.

23 d. Messages -

24 a. Not professional and
25 biased.

1 i. Disregarded facts in the
2 case.

3 ii. Protected Westface from
4 3rd party intervention [...]

5 iii. Approved destruction of
6 evidence -

7 1. Brandon Moise scrubbed his
8 cellphone a day before he was
9 ordered to present it to court
10 (different court than Newbold).
11 Newbold disregarded this.

12 iv. is a racist and
13 anti-Semite.

14 v. Court cannot accept bias by
15 judge [...]

16 vi. Newbold harms the system
17 and causes breach of confidence in
18 system [...]"

19 So was this subject matter discussed
20 during the meeting with representatives of Psy
21 Group on September 14th at the meeting in New York?

22 A. Well, first of all, I don't know
23 who he means -- I don't know who Burstien means
24 when he says the "client", if you read the header.
25 The client could have been a meeting with Yossi,

1 not with me.

2 And I don't know what meeting the week
3 before he is referring to because I don't believe I
4 met with Psy the week before.

5 Third is this isn't my memo or notes or
6 whatever. This is factually some of the stuff, but
7 not necessarily entirely this way, that came up in
8 the conversation. We factually went through some
9 issues in the litigation, factually went through,
10 for example, Brandon Moyse did scrub his cell phone
11 the day before he was ordered to present it to
12 court. It is factually true that certain, in our
13 opinion and in fact, certain facts were disregarded
14 by Newbould, including the entire letter or
15 decision.

16 So I can't tell you that this was the
17 agenda that was followed. I can't tell you what
18 somebody else wrote or what they are saying
19 happened in a meeting that I don't believe I
20 attended the week before.

21 I can tell you -- if you ask me, I can
22 tell you what I remember was discussed in the
23 meeting.

24 507 Q. So let me try to help you with the
25 issue of who the client is. Turn to the fifth page

1 of the memo. Pull up page 5 and look at the
2 heading at the bottom of that page "HUMINT mission
3 1"; do you see that? It says:

4 "a. Target - Bei Heung -
5 controller at Westface. Hooks up
6 with client's close and very rich
7 friend, Peter Gilgen, and tells him
8 that (1) Westface is imploding (2)
9 partners fighting."

10 I take it you would agree with me that
11 Peter Gilgan is not a close friend of Yossi Tanuri;
12 correct?

13 A. Yeah, so?

14 508 Q. He is your close friend, isn't he?
15 You just confirmed that.

16 A. Yes.

17 509 Q. This is why I took you through the
18 Bei Huang emails just before we broke.

19 A. But this is an internal -- this is
20 an internal short form memo. The guy is saying
21 "client". He may mean the direct client. He may
22 mean the indirect client. So?

23 510 Q. You asked the question, When he is
24 referring to the client, who is he referring to?
25 And I am suggesting to you he was referring to you.

1 You are the client; correct?

2 A. You can suggest that. That
3 doesn't mean that that's correct. He may mean
4 "client" colloquially, which is Tamara Global,
5 Catalyst, me. It may mean very different things in
6 different sentences.

7 511 Q. And that --

8 A. In fact, that is what I suspect.

9 512 Q. And let me take you to another
10 reference, just to ease your burden and show you
11 who he is referring to. Look at the top of page 3,
12 trying to make sense of it, or at the bottom of
13 page 2, look at "Mission 3 - Westface and Greg
14 Boland".

15 MR. MOORE: So where are we here, I'm
16 sorry?

17 MR. THOMSON: At the bottom of page 2.

18 MR. MOORE: I am not -- okay, I'm not
19 following this, I'm sorry.

20 MR. THOMSON: It's at the bottom of
21 page 2.

22 MR. MOORE: "Mission 3 - Westface and
23 Greg Boland?"

24 MR. THOMSON: Yes, can you see that?

25 MR. MOORE: Yes.

1 BY MR. THOMSON:

2 513 Q. So it is a line just below that,
3 so it says:

4 "[West Face] performance poor,
5 returns low, and excluding WIND -
6 negative. Client assumes they
7 manage \$1B, down from \$2B."

8 And then at the top of the next page,
9 at page 3:

10 "Pressure on them increasing,
11 assets under management -
12 decreasing, investors leaving them
13 and they are being sued by client
14 [...]"

15 I take it West Face was not being sued
16 by Tanuri; correct?

17 A. Well, no, but if you read the
18 whole thing, there is nothing that indicates that
19 this isn't my talking to Yossi, Yossi having kept
20 notes and repeating it to other people.

21 514 Q. Here is my question, which is were
22 the topics that are referred to in this note at tab
23 78 of my cross-examination brief, the memo from
24 Burstien of September 13th, were these topics
25 discussed during your meeting with Psy Group in New

1 York on September 14th? That is the question.

2 MR. MOORE: Can I just -- again, when
3 you say "topics", do you mean line by line or more
4 generally?

5 BY MR. THOMSON:

6 515 Q. The various matters referred to in
7 this memo. So I have already given you, as an
8 example, was there a discussion about "Mission 1"?

9 Well, let me take a step back. Was
10 there a discussion at all ever in your presence
11 involving something called "Project Maple Tree"?
12 Was that phrase ever used?

13 A. I don't remember the phrase "Maple
14 Tree". I know that -- I know now that this
15 subcontractor was focussed on media and media
16 relations. If you want me to go through every one
17 of these subjects, I'll tell you whether I
18 remember -- I don't remember things being called a
19 "mission". I don't remember it being organized
20 during the meeting this way. Elwood doesn't
21 remember it being organized this way because he
22 even says in his affidavit that he was confused by
23 the first half of the meeting where I was giving
24 effectively history.

25 So no, I don't think the meeting was

1 organized this way. I don't think that your strict
2 use of the word "client" is what was intended or is
3 even meant here.

4 516 Q. Well, let me --

5 A. I mean, the ultimate -- that
6 doesn't mean that the ultimate client was in any
7 meeting.

8 517 Q. Well, let me just suggest this to
9 you, because I don't have time to go through the
10 entire memo. I am going to suggest to you, Mr.
11 Glassman, that you did in fact discuss with Psy
12 Group targeting Justice Newbould; do you accept
13 that?

14 A. I do not.

15 518 Q. Do you accept that you discussed
16 with Psy Group targeting West Face and targeting
17 Greg Boland?

18 A. I accept that on that specific
19 issue I accept the fact that one of the media
20 relations issues was related to West Face and Mr.
21 Boland because we were in the public domain in an
22 adversarial situation.

23 519 Q. And what you discussed in the
24 meeting of September 14 was a White campaign and a
25 Black campaign; fair enough?

1 A. For sure the White campaign. Not
2 entirely correct I don't think about a Black
3 campaign. I think there is a nuance about a Black
4 campaign.

5 520 Q. The White campaign involved
6 generating positive publicity about you and about
7 Catalyst; correct?

8 A. Yes.

9 521 Q. The Black campaign involved
10 generating stories about a Wolfpack conspiracy
11 among West Face and various other hedge funds and
12 others to harm Callidus; correct?

13 A. Factually based.

14 522 Q. The Black campaign involved
15 portraying Justice Newbould as corrupt and
16 anti-Semitic; correct?

17 A. Only if they had evidence of it
18 and only if it was later to come out through our
19 court process.

20 523 Q. And the Black campaign involved
21 publishing negative information about West Face and
22 about Mr. Boland; correct?

23 A. Again, only if factually accurate.

24 524 Q. And am I right that no one else
25 from Catalyst attended that meeting in New York on

1 September 14th; correct?

2 A. Yeah, that is correct.

3 525 Q. You took no notes or created no
4 memos summarizing what happened in that meeting;
5 correct?

6 A. If I did, they have been produced.

7 526 Q. Well, none have been produced.

8 There is no --

9 MR. MOORE: No, we are not aware of any
10 notes.

11 BY MR. THOMSON:

12 527 Q. There is no reporting email, no
13 reporting text message, and no report back to your
14 partners as to what happened with Psy Group in the
15 meeting in New York on September 14th; correct?

16 A. We have produced whatever was in
17 writing. If I wrote a report about it, then you
18 guys should have it.

19 528 Q. And so --

20 MR. MOORE: So to the best of our
21 knowledge, there is no such report and none has
22 been produced.

23 BY MR. THOMSON:

24 529 Q. Right. And nor, I am going to
25 suggest to you, did you report back on what

1 happened in this meeting of September 14th to any
2 of your counsel, including DiPucchio, Greenspan,
3 Lutes, and Mr. Moore says he wasn't involved then.
4 You reported back to no one about what happened,
5 did you?

6 A. I don't know --

7 MR. MOORE: Well, just a minute. You
8 know, this is a Psy-related area, so you know, I am
9 trying to navigate in my head through the different
10 elements of the decisions.

11 Yeah, if you recall having any
12 discussion about the meeting with Psy in that
13 context, go ahead and give Mr. Thomson your best
14 recollection. If you don't think there was, tell
15 him that. If you don't know, don't guess.

16 THE DEPONENT: I don't know.

17 BY MR. THOMSON:

18 530 Q. Well, let me show you what happens
19 next, Mr. Glassman. This is now two days after the
20 meeting in New York on September 14th. Turn up my
21 tab 83. So here you have got another email from
22 Mr. Burstien, and this is Saturday, September 16th
23 at 10:15 a.m. to Elwood and Emmanuel Rosen and
24 others where he says:

25 "Hello again team."

1 And by the way, the title of the email
2 is "Client's immediate expectation from us", and he
3 says:

4 "Hello again team.

5 As you saw from my last
6 correspondence from client, things
7 are unfolding FAST. As such - this
8 is client's new request from us - it
9 falls mainly on Ori and Yossef's
10 depts.

11 From client - however I think NOW
12 or VERY SOON is the perfect time to
13 hear/see 'chatter' on social media
14 etc. of rumors of an alleged
15 Wolfpack, rumors of west face/anson
16 partners involvement therein, rumors
17 of 8 or more victims, rumors of
18 boland being looked at (not yet
19 criminal investigation) for
20 criminality etc."

21 Now, that is the text of a message you
22 sent to Burstien following your meeting in New
23 York; correct?

24 A. I don't know if that is correct.
25 I believe it is my text. I don't know if I sent it

1 to Burstien.

2 MR. MOORE: Well, hold on. Hold on.
3 Wait a minute. Let's slow down here. This
4 document is an email from Burstien to Elwood.

5 MR. THOMSON: Yes, and he is quoting
6 from Mr. Glassman's text or email or message in the
7 middle of the page, which is the client --

8 MR. MOORE: Sorry, where is -- what do
9 you say -- well, what are you suggesting is the
10 quote?

11 MR. THOMSON: Right where it says "From
12 client -". The rest of it is from Mr. Glassman,
13 which I believe he has just confirmed.

14 And the question is how did you --

15 MR. MOORE: I am not -- let's go slowly
16 here. Keep going.

17 BY MR. THOMSON:

18 531 Q. The question is how did you convey
19 that message and to whom? Was that sent to Tanuri
20 or to Black Cube directly, or do you know?

21 A. Well, I thought you said this was
22 Psy.

23 532 Q. Yes, it is Psy.

24 A. So --

25 533 Q. You just said you think it might

1 have gone to Tanuri. Did this go from you to
2 Tanuri or you to Psy Group?

3 A. So I'm assuming that it was
4 written by me. I don't even know that it was
5 written by me. Our own production will prove
6 whether it was written by me or not.

7 I assume that this was from me to
8 Yossi, but I don't know, and this was on the basis
9 of our having a whole bunch of new evidence at
10 September 16th. We received confirmatory evidence
11 under oath from parties like Fortress and
12 individuals as partners of a deal, including I
13 believe by then, but I may not be right, but I
14 believe by then including others at Esco, so
15 multiple sources, about the Wolfpack, about some
16 members of it, about West Face's involvement, about
17 Anson's involvement.

18 And from others we had evidence of what
19 ended up being eight or more victims, and we had
20 heard from --

21 MR. MOORE: Okay, time out. Time out.
22 What Mr. Thomson is asking you, and he is entitled
23 to an answer, is with reference to this portion of
24 the email from Mr. Burstien starting with "From
25 client -", and the rest of that paragraph "However

1 I think NOW [...]", etc., is that something that
2 you wrote or an extract of something you wrote or a
3 conversation that you had? What do you say about
4 that paragraph is the focus of this question.

5 THE DEPONENT: And as I have said, we
6 have produced everything. It does look like
7 something I may have written. I'm assuming, maybe
8 incorrectly, that I wrote it; and if I did, I wrote
9 it to one of the parties involved. I would expect
10 it to have been written to Yossi. I don't know
11 who. Somebody else has to go through the records
12 and find it.

13 BY MR. THOMSON:

14 534 Q. Well, we don't have that text or
15 that email, whatever it was, anywhere. So my
16 question is why don't we?

17 MR. MOORE: Well, hold on. There is an
18 assumption built into that question that there is
19 such a thing, and I don't think that is a fair
20 assumption based upon this record.

21 I can tell you that if through the
22 various efforts, and they have not been
23 insignificant, that we have made to try to find
24 written communications, whether it be by text, by
25 email, by whatever, we have not come across an

1 email or any other form of written communication
2 that is the quote that is in that paragraph
3 starting "From client -", and if we had found such
4 a document, if such existed on any of the devices
5 through any of the inquiries that have been made to
6 locate such communications, that document would
7 have been listed and produced. And the reason it
8 hasn't been produced is because we are not aware of
9 any such document.

10 BY MR. THOMSON:

11 535 Q. Well, because you haven't found
12 it.

13 Let me show you another example, Mr.
14 Glassman, while we are at it. Turn to my tab 86.
15 And you will find here another Psy Group email.
16 This is from Burstien on Saturday, September 16th,
17 2017, "Information Received From Client". He says:

18 "Hi Again.

19 Enclosed all the information
20 client has sent us to date.

21 The 3 documents include -

- 22 1. Bei's CV - for Avi Ronen's
23 project.
24 2. Under-the-oath interview of
25 Andrew Levy and Richard jaross from

1 Esco Marine.

2 3. Testimony/information from
3 Snowdy the PI hired by Danny Guy."

4 And it then sets out:

5 "Client's take on
6 Westface/Boland/Wolfpack."

7 And then in bold print a message

8 saying:

9 "Ha. We just found out the
10 principal of Bluberi has historical
11 ties to the mafia. We r providing
12 to court monitor on Monday. He will
13 likely rollover and give us info on
14 Wolfpack. Wednesday fortress
15 resources guys being examined under
16 oath and swear as part of the deal
17 [...]" and so on.

18 "This proves Boland up to his
19 eyeballs in criminal conspiracy."
20 You wrote that message, didn't you?

21 A. It looks like it.

22 536 Q. And so again I have the same
23 question. And it goes on, by the way, on to the
24 next page, the full page. Just read on. You will
25 see that at the top of the next page:

1 "The esco sworn statements, the
2 Levitt Email to cohedes, the now
3 documentary evidence emails/w[ith]
4 boland and cohedes and esco r very
5 [...]"

6 MR. MOORE: Sorry, Kent, which page are
7 you on?

8 MR. THOMSON: At the top of the second
9 page, David, above the --

10 MR. MOORE: The page I see on the
11 screen starts with:

12 "[...] authorities may even
13 begin investigating [...]"

14 MR. THOMSON: Yes, and I'm just
15 skipping down to the start of the next sentence, so
16 "The esco sworn statements [...]"; do you see that?

17 MR. MOORE: Yes.

18 MR. THOMSON: It's one inch from the
19 top of the page.

20 MR. MOORE: I see it.

21 BY MR. THOMSON:

22 **Q.** "The esco sworn statements, the
23 Levitt Email to cohedes, the now
24 documentary evidence emails/w[ith]
25 boland and cohedes and esco r very

1 good for us/bad for them.
2 Definitely a 'paralyzing shot'. But
3 not yet a death shot. We may have
4 more debilitating or even a Death
5 shot in [Wednesday] examinations.
6 But that may be a day too late."
7 And then it refers to Boland's
8 involvement in a criminal conspiracy in the middle
9 of the next paragraph:

10 "However, no matter what the
11 Bluberi/mafia connection will be
12 public next [week] some time and
13 Boland's involvement in a criminal
14 conspiracy will be public when we as
15 a team choose to make it public for
16 max impact. We r told that the
17 Wolfpack article in the Financial
18 Post will for sure be out tues[day]
19 or wed[nesday]. Confirmed to me by
20 the CEO of the paper."

21 That is Paul Godfrey who you were
22 having discussions with at the time; correct?

23 **A.** Sorry, I'm still reading.

24 537 **Q.** Go ahead.

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

1 538 Q. And to finish that thought, the
2 last part of that:

3 "Confirmed to me by the CEO of
4 the paper. Allegedly it's already
5 been edited and in layout etc. I
6 think the best time for the boland
7 involvement in a criminal conspiracy
8 to manipulate the [market] to come
9 out is right after the Wolfpack
10 article and where it's disclosed
11 he's part of the Wolfpack. However
12 I think NOW or VERY SOON is the
13 perfect time to hear/see 'chatter'
14 on social media etc. of rumors of an
15 alleged Wolfpack, rumors of west
16 face/anson partners involvement
17 [...]"

18 A. So I don't understand -- well,
19 first of all, I don't remember your question.
20 Second of all, I don't know why the font would
21 change. That is not something I would do.

22 539 Q. Sorry, you don't understand what?
23 Say that again.

24 A. I don't remember your question,
25 number one. Number two, I don't know why the font

1 has changed. That is not something I would do
2 normally. Like I don't know if I have ever done
3 that to that extent or of that nature.

4 540 Q. Right. My question for you was
5 where it says just above that last part of that
6 paragraph:

7 "We r told that the Wolfpack
8 article in the Financial Post will
9 for sure be out tues[day] or
10 wed[nesday]. Confirmed to me by the
11 CEO of the paper."

12 My question was at the time you were
13 dealing with Paul Godfrey, who was the CEO of the
14 National Post; correct?

15 A. I don't know if Paul is the CEO or
16 the Chairman.

17 541 Q. Well, whatever. He is the most
18 senior executive responsible for the National Post,
19 correct, and you were dealing with him at the time?

20 A. Yes, I assume -- I'm friendly with
21 Paul.

22 542 Q. Right. And --

23 MR. MOORE: So just before we go on,
24 and we'll see how much further this goes, how does
25 this relate to the anti-SLAPP motions that we have

1 pending?

2 MR. THOMSON: Oh, believe me, it does.
3 It goes directly.

4 MR. MOORE: Well, I --

5 MR. THOMSON: I'm not about to explain
6 my legal theory to you in this cross-examination,
7 that is not an appropriate question, but it relates
8 directly - directly - to our theory of the case.

9 MR. MOORE: Well, I think I'm entitled
10 to a little more than that, but we'll see how much
11 further this goes.

12 BY MR. THOMSON:

13 543 Q. Not in a cross-examination you are
14 not.

15 Mr. Glassman, am I right that that is a
16 message or maybe more than one message written by
17 you and provided to Psy Group either directly or
18 indirectly; isn't that fair?

19 A. No. I would say that it appears
20 that it is a message that contains elements that I
21 wrote but also manipulated by somebody else. I
22 would never -- I can't imagine my changing the font
23 and doing that.

24 544 Q. Okay, forget the font.

25 A. That --

1 545 Q. Forget the font. Every word is
2 yours, isn't it? Every word?

3 A. I don't know that. I don't know
4 if other words are missing. I don't know what was
5 manipulated in that email.

6 546 Q. And you are not able to explain to
7 us why we don't have any production from you or
8 from Catalyst of the email or the text message that
9 is embedded in this note from Burstien? I mean,
10 where are they?

11 A. I didn't say it was to Burstien.
12 I don't believe it was. I believe it was --

13 547 Q. Or to Tanuri.

14 A. -- to Yossi.

15 548 Q. Or Tanuri, or to anybody else.
16 Why do we not have that?

17 A. I don't know. You also have tens
18 of thousands that are produced.

19 549 Q. And then look at the next page.

20 A. I think why are --

21 MR. MOORE: We don't believe it is an
22 email that was written, but we can debate that at
23 another time and place.

24 BY MR. THOMSON:

25 550 Q. Well, Mr. Glassman, let's just hit

1 this nail right on the head. You concede, do you
2 not, that this is your writing? Forget the font.
3 These are your words; correct?

4 **A.** It looks like some of it. I don't
5 know if all of it is. But yeah, it looks like at
6 least elements of it are mine, for sure.

7 551 **Q.** And then look at the next page.
8 Look at page 3:

9 "Information from Snowdy (Danny
10 Guy's PI working on the case) -
11 Possible corruption on Newbould.

12 Client - Just reviewed Naomi's
13 typed notes."

14 I just took you to text messages
15 between you and Danny Guy where you said the same
16 thing, that you just reviewed Naomi's typed notes.
17 Those are the notes of September 12; correct?

18 **A.** I --

19 **Q.** "I certainly would like to
20 know,

21 1. which partner at what law
22 firm alleges he could get a case on
23 the commercial list to the right
24 judge - and how - for \$5mm.

25 2. Why is newbould allegedly

1 terrified of snowy?

2 Client - Guys, we need both
3 teams to understand the following.

4 On Naomi's typed notes snowy
5 alleges a partner at a law firm said
6 that for \$5mm he can get the right
7 judge from the commercial list on
8 the case."

9 Those are your words and this is your
10 writing; correct?

11 A. I think it is.

12 552 Q. And again, the same question,
13 David. Why do we not have from Mr. Glassman or
14 Catalyst the messages that are embedded in
15 Burstien's memo of September 16, 2017?

16 MR. MOORE: Because we don't know or we
17 don't know for a certainty that they are a message
18 that he wrote to anybody. I can tell you, and it
19 is not for want of looking and wherever we thought
20 we could look, I can tell you that the last
21 paragraph on this page, the one that starts with
22 "Client - Guys [...]", that whole paragraph is
23 verbatim --

24 MR. THOMSON: Well --

25 MR. MOORE: Hold on -- is verbatim

1 contained in a document authored by Guy Fikhte that
2 has been produced by Black Cube, and I will give
3 you the Black Cube production number.

4 We have looked for these documents. We
5 have looked every place we can to see if there are
6 text messages, emails, whatever, authored by Mr.
7 Glassman. And I recognize the language, and I
8 understand the thrust of your questioning. We have
9 looked to see are there such documents authored by
10 him in any of those devices, and there are none.

11 And as I say, I can tell you and I'll
12 give you the Black Cube document reference where
13 you can see this exact paragraph is in a document
14 authored by Guy Fikhte.

15 BY MR. THOMSON:

16 553 Q. And let me give you a couple of
17 other examples just to illustrate the point, and
18 then we'll move to a related subject?

19 Look at my tab 73. So at tab 73 you'll
20 see a whole series of chats. These were produced
21 to us, by the way, by Black Cube. It is a whole
22 series of chats involving people at Black Cube and
23 Yossi Tanuri that start on September 13th of 2017
24 and go all the way through -- and the last ones are
25 blacked out, unfortunately, but they go through to

1 November 25 of 2017. And embedded in these texts
2 are, again, Mr. Glassman, a number of your messages
3 or emails.

4 So look, as an example, just to pick
5 the same one, look at page 12 of this production.

6 MR. MOORE: Is this the Abu-Gosh
7 WhatsApp chat?

8 MR. THOMSON: I don't know, David, I
9 don't know what that means when you say "Abu-Gosh".

10 MR. MOORE: Well, there is a bunch of
11 chat groups that are comprised within the documents
12 produced by Black Cube.

13 MR. THOMSON: Yeah, but I don't know --
14 I just don't recognize that "Abu-Gosh" reference --

15 MR. MOORE: Yeah, that's what I call
16 it.

17 BY MR. THOMSON:

18 554 Q. -- but others may.

19 But look at page 12, as an example, the
20 text is exactly the same one I have just shown you.
21 Look at September 16, 2017. Do you see again the
22 same thing:

23 "Ha. We just found out the
24 principal of Bluberi has historical
25 ties to the mafia. [...]

1 [...] This proves Boland up to
2 his eyeballs in a criminal
3 conspiracy."

4 **A.** But it says --

5 555 **Q.** Pardon me?

6 **A.** It says Yossi Tanuri is saying
7 that.

8 556 **Q.** Yeah, and that is why my theory is
9 that you sent this to Tanuri. Tanuri sends it on
10 to our friends at Psy Group, and that is how it
11 becomes embedded in a Roy Burstien email dated two
12 or three days later. That is what I am putting to
13 you.

14 And then if you want just one more
15 example, look at now my tab 225.

16 **MR. MOORE:** No, but hold it. Hold it.
17 That is a theory.

18 **MR. THOMSON:** Yes.

19 **MR. MOORE:** That is a fair way of
20 putting it, that that's a theory.

21 **MR. THOMSON:** Yes.

22 **MR. MOORE:** But it is Yossi Tanuri who
23 is -- and Mr. Glassman, to my understanding, and
24 your people would know this probably better than
25 you or I, was not a party to this WhatsApp chat

1 room, or whatever it's called, and --

2 MR. THOMSON: No, but his messages were
3 being forwarded by one to the other. That is why
4 Tanuri is the -- he is the -- this is a wheel in a
5 spoke and he is at the centre of the wheel and the
6 spokes are going in different directions.

7 MR. MOORE: Well --

8 BY MR. THOMSON:

9 557 Q. So, Mr. Glassman, isn't it the
10 case that you communicated with Mr. Tanuri with the
11 expectation that he would send your messages on as
12 appropriate either to Black Cube or to Psy Group;
13 isn't that how you worked?

14 A. Well, not quite. Mr. Tanuri and
15 Mr. Ben Efraim were responsible and being paid 20
16 percent, as you previously proved, to quarterback
17 and manage this.

18 558 Q. Right.

19 A. So yeah, I would communicate with
20 Yossi or Gadi, often with Gadi. And all of it,
21 whatever I have we have made available. Maybe
22 people didn't look in the right place. Maybe they
23 didn't look in the right name. Maybe they have to
24 go back. I don't know. But nothing has been
25 deleted. Nothing has been omitted. We have

1 obviously produced tens of thousands, if not more,
2 of pages of stuff.

3 I can only tell you what I know and
4 what I am looking at, and some of this does look
5 like it is my writing, yes. Some of it. I don't
6 know if all of it is. And that looks like Yossi is
7 writing something or forwarding something that I
8 may - and "may" being the operative word - have
9 written obviously either to him or to some source
10 close to him.

11 559 Q. And if we want to see one more
12 example of how this gets embedded in these various
13 texts, look at tab 225 and pull that up for a
14 minute.

15 And, David, I think I have now answered
16 your question. This has become clear to me.

17 MR. MOORE: Okay.

18 BY MR. THOMSON:

19 560 Q. So, David, you will see at the
20 start of this document, the first line of it is
21 September 11, 2017:

22 "You created a group called
23 'Hummus Abu-Gosh'?"

24 MR. MOORE: Yes.

25 MR. THOMSON: So that is what you were

1 probably referring to in --

2 MR. MOORE: I know it is, because there
3 is several WhatsApp chats, and Abu-Gosh, to my
4 recollection, there is a Hebrew version and an
5 English translation in the Black Cube
6 documentation, and I think there are several
7 WhatsApp exchanges with their own name. Abu-Gosh,
8 to my recollection, is the longest of them all. It
9 goes on for like 200 pages or some such.

10 MR. THOMSON: Yes.

11 MR. MOORE: That is why the name, you
12 know, sticks in my mind probably more than the
13 others.

14 BY MR. THOMSON:

15 561 Q. Right.

16 A. But I am not in that. David, I am
17 not in that group.

18 562 Q. No, you are not.

19 MR. MOORE: No, you are not, no.

20 BY MR. THOMSON:

21 563 Q. This one -- the one I have just
22 showed you involved Tanuri. This one involved just
23 Black Cube people, as I read it. And again, we
24 haven't examined Black Cube people yet, but I'm
25 assuming these people are all Black Cube.

1 But in any event, I just wanted to show
2 you one similar passage. If you look at page 29 of
3 this document, at the very bottom of the page, page
4 29, the last entry where it says:

5 "Guys, we need both teams to
6 understand the following. On
7 Naomi's typed notes [...]", and so
8 on.

9 And I have shown you that passage
10 before, but if you go on and just read the top of
11 the next page.

12 MR. MOORE: In fact, that is identical
13 to the passage that is in that email --

14 MR. THOMSON: Right.

15 MR. MOORE: -- or that document we just
16 looked at word for word.

17 MR. THOMSON: Exactly.

18 MR. MOORE: And that is --

19 THE DEPONENT: Avi --

20 MR. MOORE: No, hold on. It is
21 attributed to Avi Yanus. As I said, you'll also
22 find it -- it is Black Cube 447, I think. I'll
23 give you the number. But you'll find these words
24 in different places identically, and the reason I'm
25 telling you that or I can tell you that is because

1 we have searched wherever we could think of to try
2 to find the origin of them.

3 MR. THOMSON: Right. And that is why
4 I'm being so dogged in terms of Mr. Glassman's
5 communications with Tanuri because I believe it was
6 routed all through Tanuri.

7 MR. MOORE: Well, I am not objecting to
8 your questions. I am just trying to -- you are
9 entitled to ask these questions. I get it. That
10 is fine.

11 BY MR. THOMSON:

12 564 Q. Okay. So, look, let's just then
13 move forward. Let me tell you why, Mr. Glassman, I
14 suggest that you might have received a phone, an
15 actual separate phone from Black Cube, and it is in
16 this same document we are on right now, tab 225.
17 Look at page 31.

18 A. Where do you want me to start
19 reading?

20 565 Q. Just at the top of the page. It
21 is a simple little reference where it is about two
22 from the top, so Yanus says:

23 "I have no direct contact with
24 the customer. None of us does."

25 Then Guy Fikhte says:

1 "I have, if the device has
2 reached him."

3 **A.** Yeah, "if" being the operative
4 word.

5 566 **Q.** Yes.

6 **A.** I can undertake -- David can
7 undertake that we will have a search at the office,
8 my house, all the properties to see if somehow
9 there is something that we missed. I don't believe
10 there is, but he says "if". I assume that --

11 567 **Q.** Yeah.

12 **A.** But if it did, if it did, and I
13 don't remember, it would have to be with all the
14 other stuff that we keep. We don't throw any of
15 this stuff out. And it would most likely be at the
16 office. We can have somebody go in during COVID
17 and go search again both in the safe and in my
18 office all the drawers and in my assistant's area.

19 568 **Q.** Do you remember at one point a
20 little bit later, and maybe several weeks later,
21 having a problem with your phone and you couldn't
22 get into it because it was locked?

23 **MR. MOORE:** Is there a reference to --

24 **THE DEPONENT:** I don't remember --

25 **MR. MOORE:** Hold on.

1 THE DEPONENT: I don't remember --

2 MR. MOORE: Hold it. Is there a
3 reference that could fairly be put to the witness
4 to refresh his memory?

5 BY MR. THOMSON:

6 569 Q. Yeah, I just can't lay my fingers
7 on it, David. We'll find it. But just do you
8 remember that, any situation, sir, where you --
9 well, I'll show you. Here it is right here. In
10 the same text message you can look at the top of
11 page 86.

12 A. No, but I remember being locked
13 out of a predecessor to this phone.

14 MR. MOORE: Yeah, like here -- hold it.

15 BY MR. THOMSON:

16 570 Q. So it says at the top of page 86:

17 "The telephone is locked.. The
18 codes are not working... What to
19 do?"

20 Ran Shacham says, "From Yossi."

21 Fikhthe says:

22 "We'll buy him a new one,
23 transfer it with the lawyer."

24 MR. MOORE: What does that -- like,
25 here's the deal. Like what does that mean?

1 MR. THOMSON: That is my question.

2 MR. MOORE: That is a rhetorical
3 question, just like some of your questions are.
4 But "transfer it with the lawyer", who?
5 Mr. Greenspan or Black Cube's lawyer or what
6 lawyer?

7 MR. THOMSON: And I am actually --

8 MR. MOORE: Like what gives? You know,
9 this issue arose, as you probably know -- well, let
10 me back up.

11 The Black Cube documentation, as it
12 were, was produced a few weeks ago, and I forget
13 the exact date, after the leave to appeal
14 applications were dismissed or application was
15 dismissed.

16 And as I'm sure you know, in the course
17 of arranging for the exchange of searches of phones
18 with Mr. Milne-Smith and Mr. Carlson, this issue
19 got raised, that there is another phone and did he
20 give you a phone, et cetera.

21 So I don't know what to make of it.
22 "Transfer it with the lawyer", we are not aware of
23 any lawyer anywhere being involved in any such
24 phone. And we asked when this issue arose because
25 it was a stumbling block to -- well, not a

1 stumbling block. It was an issue as the exchange
2 was about to take place with Mr. Carlson. Okay, is
3 there some phone that we are not aware of that has
4 been missed? And we are not aware of any such
5 thing, let alone any involvement of a transfer by a
6 new phone being bought and transferred with the
7 lawyer, whatever that means.

8 I should also tell you for what it's
9 worth, and everyone can make their own inquiries
10 and draw their own conclusions, that I tried to see
11 if in the Black Cube productions there was any
12 reference to any conveyance of any phone or
13 anything like that, and we have not come across
14 anything. Now, granted, some of that stuff still
15 is in Hebrew, but we have not seen anything.

16 And I'll just add, and maybe this is a
17 convenient time to break, but I'll just add that
18 these are not like rocket science questions, okay.
19 We know you are going to ask these questions, and
20 it behooves us to do our best to find out what else
21 there might have been or not might have been, And
22 we have done our best so far to do so. If there is
23 additional inquiries that we can and should make,
24 we will.

25 BY MR. THOMSON:

1 571 Q. And so the last question before we
2 finish for the --

3 A. So, sorry, Mr. Thomson, you asked
4 me if I remember a phone being locked. I remember
5 an iPhone, my usual phone, 302-6303, being locked
6 and our having to get it serviced and replaced.

7 572 Q. And did you raise that with anyone
8 from Black Cube?

9 A. I remember raising it with our IT
10 guys.

11 573 Q. All right, that is not my
12 question. Did you raise that issue with anyone
13 from Black Cube?

14 A. I don't think so. I think I
15 raised it with my IT guys. I don't remember. Why
16 would I go -- I remember having a problem, and I
17 actually remember it being pretty serious that I
18 couldn't get into my own phone.

19 574 Q. All right. Well, look, believe
20 me, we will end up examining people from Black Cube
21 as we move forward with this case, but my question
22 for you is very simple. Did you ever obtain a
23 device, a phone or other electronic device from
24 Black Cube? Was that phone ever used to
25 communicate with Black Cube or with Tanuri or with

1 anyone from Psy Group? That is my question.

2 **A.** I do not believe so.

3 575 **Q.** All right. And then my final
4 question, and then we can break for the day. We
5 have already gone through at some length this
6 morning your reservations about Snowdy in your
7 communications with Danny Guy. Did you make
8 Tanuri, Gadi Ben Efraim and/or Psy Group aware of
9 your reservations about Snowdy, and if so, when did
10 you do so and how?

11 **MR. MOORE:** Don't guess. Do you
12 remember? Do you know?

13 **THE DEPONENT:** No, I have no idea.

14 **BY MR. THOMSON:**

15 576 **Q.** So sitting here today, you have no
16 recollection of having done so; correct?

17 **A.** I don't remember one way or the
18 other. I don't want to guess.

19 577 **Q.** All right. If I ask you to tell
20 me what you said to them about your concerns about
21 Snowdy, you can't tell me because you have no
22 recollection; correct?

23 **A.** I do not want to guess. I have --
24 I just don't remember.

25 **MR. THOMSON:** Okay, why don't we stop

1 there for the day.

2

3 -- Adjourned at 5:21 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 3rd day of May, 2021.



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PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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THE CATALYST CAPITAL GROUP INC. et al. -and- WEST FACE CAPITAL INC. et al. -and- CANACCORD GENUITY CORP.
Plaintiffs Defendants Third Party
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs by Counterclaim Defendants to the Counterclaim

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

**THIRD SUPPLEMENTARY MOTION RECORD
OF WEST FACE CAPITAL INC. AND GREGORY BOLAND
VOLUME 1 OF 4**

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