

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL  
CORPORATION

Plaintiffs

and

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

Defendants

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

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

**(RE: Defendants' Anti-SLAPP Motions returnable May 17-21, 2021)**

**VOLUME 2 of 4**

May 5, 2021

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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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# Catalyst v West Face et al.

James Riley  
on Thursday, April 22, 2021



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

2 ONTARIO  
3 SUPERIOR COURT OF JUSTICE  
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6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS  
7 CAPITAL CORPORATION  
8 Plaintiff

9 - and -

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11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,  
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21 Defendants

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

25 - and -

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B.C. STRATEGY UK LTD. d/b/a BLACK CUBE  
and INVOP LTD. d/b/a PSY GROUP  
Defendants to the Counterclaim

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RILEY, on his affidavits sworn December 5, 2019,  
May 29, 2020 and August 20, 2020 respectively,  
taken via Zoom Videoconferencing with all  
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3           & KEVIN JONES, Esq.,           (Defendants to the  
4           & MATTHEW KARABUS, Esq.,           Counterclaim), The  
5    Catalyst Capital Group  
6    Inc. and Callidus  
7    Capital Corporation  
8    and the Defendants to  
9    the Counterclaim,  
10    Gariel De Alba, James  
11    Riley and Newton  
12    Glassman  
13  
14           MATTHEW MILNE-SMITH, Esq.,   for the Defendants  
15           & ANDREW CARLSON, Esq.,       (Plaintiffs by  
16           & MAURA O'SULLIVAN           Counterclaim), West  
17    Face Capital Inc. and  
18    Gregory Boland  
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	JOHN ADAIR, Esq.,	for the Defendants to
18		the Counterclaim, BC
19		Strategy Ltd. d/b/a
20		Black Cube and BC
21		Strategy UK Ltd. d/b/a
22		Black Cube
23		
24	DEVIN JARCAIG, Esq.,	for the Defendant
25		(Plaintiff by

1 Counterclaim), Bruce  
2 Langstaff

3  
4 DARYLL LEVITT Self-Represented

5  
6 KEVIN BAUMANN Self-Represented

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

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

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I N D E X

WITNESS: JAMES RILEY

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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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8	Compendium of documents.....	891:22
9	Letter of Engagement dated September 11, 2017, between Tamara Global Holdings and B.C. Strategy UK Ltd.....	1055:25
10	Email from Mr. DiPucchio to Mr. Glassman, copying Mr. Riley, dated September 7, 2017.....	1060:6

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

2

3 JAMES RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH

5 (CONT'D):

6 2564 Q. All right. Good morning,

7 Mr. Riley. This is a continued cross-examination,

8 and so the first thing I would like to do - and I

9 have discussed this with Mr. Moore in advance - is

10 to mark for the purposes of the record as Exhibit

11 5 [sic] the compendium of documents that I am going

12 to be using during this examination. I'm just

13 going to put on the record the agreement I worked

14 out with Mr. Moore in advance, and he will correct

15 me if I have got anything wrong.

16 What I have done in this compendium is

17 I have included documents, and in some cases, just

18 for ease of the witness, I have excerpted and I

19 have highlighted some documents, but I think we are

20 all agreed that what should go into the record are

21 the documents that I actually take Mr. Riley to,

22 and it should be the unexcerpted and unhighlighted

23 versions of those documents.

24 So when we put together our motion

25 record, and we put documents in, we won't be using

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

6 So are we all agreed on that?

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

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

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

22 EXHIBIT NO. 8: Compendium of  
23 documents.

24 BY MR. MILNE-SMITH:

25 2565

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 BY MR. MILNE-SMITH:

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

25 A. I would have to look at each piece

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

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

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

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

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

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

23 A. Yes.

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

1 correct?

2 A. Yes.

3 2570 Q. And --

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

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

8 A. Thank you.

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

13 A. Yes.

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

19 A. That is correct.

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

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

25 2575 Q. Yes.

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

6                   MR. MOORE:  Read it in context.

7                   THE DEPONENT:  Yeah.

8                   BY MR. MILNE-SMITH:

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

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

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

17                  A.    Which Defendants?  All of them?

18   2578            Q.    All of them.

19                  A.    Okay.

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

24                  A.    Yes, conspiracy.  Thank you.

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

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

5 A. Yes.

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

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

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

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

1 the West Face counterclaim.

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

6 A. Yes.

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

9 BY MR. MILNE-SMITH:

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

18 A. Yes.

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

24 MR. MOORE: I understand.

25 BY MR. MILNE-SMITH:

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

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

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

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

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

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

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

10 Do you recall that incident?

11 A. I do.

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

17 A. Yeah --

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

25 BY MR. MILNE-SMITH:

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

8 A. Yes.

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

14 A. August -- dated -- yes.

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

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

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

22 A. Yes.

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

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

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

5 A. Yes.

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

8 A. Yes.

9 2594 Q. And forward to the next page.

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

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

22 A. Yes.

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

1 A. Correct.

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

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

12 2597 Q. And --

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

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

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

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

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

5 2599 Q. Yes.

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

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

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

23 A. Yes.

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

1 ahead of us?

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

4 2602 Q. Yes.

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

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

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

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

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

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

24 2605 Q. Right.

25 A. But I will take it that there was

1 a meeting that was prospective at that time.

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

6 A. That is correct.

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

9 A. Correct.

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

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

19 2609 Q. Okay.

20 A. I believe.

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

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

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

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

13                      BY MR. MILNE-SMITH:

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

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

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

10                           BY MR. MILNE-SMITH:

11   2611

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

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

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

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

6 A. Yes.

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

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

14 2613 Q. Yes.

15 A. In chronological.

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

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

25 2615 Q. Okay.

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

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

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

9                   MR. MOORE:   Okay.

10                  BY MR. MILNE-SMITH:

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

15                  A.    Yes.

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

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

25                                So that meeting happened on August

1 23rd; correct?

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

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

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

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

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

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

24 And he asks if he uses WhatsApp.

25 It is my understanding - and tell me if

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

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

13 2620 Q. Okay.

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

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

20 A. That is correct.

21 2622 Q. Okay. And he says:

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

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

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

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

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

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

16                   A.    That is correct.

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

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

24    2626                Q.    Yes, it's --

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

1 yes. She was taking notes at that meeting.

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

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

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

9 A. Yes.

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

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

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

19 A. Yes.

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

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

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

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

7 BY MR. MILNE-SMITH:

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

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

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

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

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

11 MR. MOORE: All right.

12 THE DEPONENT: Thank you.

13 BY MR. MILNE-SMITH:

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

19 A. She was my EA.

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

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

4                           A.    Yes.

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

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

9   2636                   Q.    Yes.

10                          A.    This is Klatt's memo?

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

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

20   2638                   Q.    Okay.  So --

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

23   2639                   Q.    But on behalf of Catalyst?

24                          A.    Yes, we were the client.

25   2640                   Q.    Understood.

1 A. We were Brian's client.

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

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

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

11 A. Yes, I have.

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

15 A. Yes.

16 2644 Q. And --

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

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

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

1 myself.

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

8 A. Yes.

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

10 A. You said Mr. Guy?

11 2648 Q. Yes.

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

14 2649 Q. I believe so, because --

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

17 2650 Q. Yes.

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

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

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

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

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

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

18 MR. MILNE-SMITH: 12.

19 MR. MOORE: All right.

20 BY MR. MILNE-SMITH:

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

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

5 MR. MOORE: They're frozen.

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

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

10 Deana, you can hear me, right?

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

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

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

17 BY MR. MILNE-SMITH:

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

24 So Mr. Glassman says:

25 "Got the debrief.



1 in the underlined portion:

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

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

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

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

21 2656 Q. All right.

22 A. Based on subsequent dealings with  
23 Snowdy.

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

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

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

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

11                   A.    Yes.

12    2659                   Q.    Okay.  And then --

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

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

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

25                                And then he says:

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

8 Do you see that?

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

11 2661 Q. Yes.

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

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

14 "Look man. My guy had a  
15 history with one of your guys. I  
16 don't think he trusted them to pull  
17 his pants down. What were u  
18 expecting from this first meeting"

19 So that is Mr. Guy's explanation, and  
20 Mr. Glassman says that is simply intellectually  
21 dishonest. So he is not accepting the excuses from  
22 Mr. Guy; correct?

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

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

2                         THE DEPONENT: It is a bit of a  
3           heated --

4                         BY MR. MILNE-SMITH:

5     2663                 Q. That is fine.

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

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

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

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

17                        THE DEPONENT: Other than the Klatt  
18          note.

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

25                        BY MR. MILNE-SMITH:

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

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

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

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

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

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

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

1 proceedings involving CN Railway?

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

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

9 A. No.

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

15 A. No.

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

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

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

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

1           referencing.

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

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

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

16                      MR. MOORE: Yes.

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

20                      MR. MOORE: That is fine.

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

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

9                   So that is what I was referring to.

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

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

16                  MR. MOORE: Yes.

17                  BY MR. MILNE-SMITH:

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

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

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

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

11 A. No.

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

14 MR. MOORE: Thank you.

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

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

17 BY MR. MILNE-SMITH:

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

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

1 And then skipping down a bit:

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

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

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

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

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

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

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

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

18 BY MR. MILNE-SMITH:

19 2674

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

1 facts?

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

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

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

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

15 A. Yes.

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

18 A. Yes.

19 2678 Q. And for what purpose --

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

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

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

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

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

17 BY MR. MILNE-SMITH:

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

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

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

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

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

11                                   A.    No.

12                                   MR. MOORE:  Mr. Riley personally?

13                                   MR. MILNE-SMITH:  Yes.

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

16                                   MR. MILNE-SMITH:  Yes.

17                                   MR. MOORE:  That is fine.

18                                   BY MR. MILNE-SMITH:

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

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

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

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

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

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

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

17 A. Yes.

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

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

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

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

9                   MR. MOORE: All right. Thank you.

10                   BY MR. MILNE-SMITH:

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

14                   A. Yes.

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

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

24                   A. Yes.

25                   2687            Q. That is consistent with your

1 understanding of the purpose of the retainer?

2 A. Yes.

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

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

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

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

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

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

23 BY MR. MILNE-SMITH:

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

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

3 A. Yes.

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

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

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

16 2691 Q. Yes.

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

23 2692 Q. So --

24 A. It expanded over time.

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

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

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

15 BY MR. MILNE-SMITH:

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

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

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

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

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

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

14 MR. MOORE: Keep going, keep going.

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

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

24 BY MR. MILNE-SMITH:

25 2695 Q. Okay. I was trying to ask the

1 next question, and you interrupted it. So let me  
2 ask it.

3 Mr. Riley, I'm trying to throw you a  
4 lifeline here. I'm giving you an opportunity to  
5 disavow and say it was inconsistent with your  
6 understanding of the purpose of the retainer for  
7 Black Cube to engage in the conduct that it did.  
8 Are you prepared to do that? Are you prepared to  
9 disavow Black Cube's conduct as being inconsistent  
10 with this retainer that you approved, or do you  
11 think it is consistent with the retainer you  
12 approved?

13 R/F MR. MOORE: Stop. Don't answer that  
14 question. That is such a broad question. Black  
15 Cube's conduct is quite a different premise or a  
16 different question than you were purporting to get  
17 into before. What you were getting into before  
18 was, you know, was it consistent with this retainer  
19 to conduct investigations of third parties,  
20 et cetera.

21 If you are talking about conduct broad  
22 brush now, which is a very, very broad way of  
23 putting it, I think that is way too broad.

24 BY MR. MILNE-SMITH:

25 2696 Q. Was it inconsistent with the

1           retainer for Black Cube to run a sting on Justice  
2           Newbould?

3                         MR. MOORE: Hold on. The retainer  
4           doesn't refer to a sting, nor does the retainer of  
5           Black Cube, as you well know. And as you well  
6           know, the retainer of Black Cube -- which I presume  
7           we are going to get to or maybe that will be with  
8           Mr. Glassman, the retainer of Black Cube expressly  
9           provides that Black Cube is to have the sole  
10          authority to decide how to go about their  
11          investigative activities, and it has several  
12          provisions in there that alludes to their expertise  
13          and experience and proprietary methods, et cetera,  
14          et cetera, et cetera.

15          R/F                 So I really think that that's an unfair  
16          way of putting it, and it is way too broad. So I  
17          object.

18                         BY MR. MILNE-SMITH:

19          2697                 Q. Okay. That is not responsive to  
20          anything that I asked, but I'll try a slightly  
21          different question and see if I get a better  
22          answer. If you just want to refuse them all, then  
23          I'll take that, and I will rely on it.

24                         Mr. Riley --

25                         MR. MOORE: I don't agree with that



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

2 MR. MOORE: So --

3 BY MR. MILNE-SMITH:

4 2701 Q. Sorry, Mr. Moore, I'm going to  
5 read my question again, and it doesn't refer to  
6 Black Cube. Here is my question:

7 "Mr. Riley, would you agree  
8 with me that it was inconsistent  
9 with the purposes of your retainer  
10 as you approved it with Tamara  
11 Global for parties retained by  
12 Tamara Global to conduct a sting on  
13 Alex Singh, former general counsel  
14 of West Face?"

15 A. Yes, and I think that Brian  
16 Greenspan at one point told them not to do any  
17 activities like that.

18 2702 Q. Okay. So you agree with me on  
19 that. Do you agree with me that it was  
20 inconsistent with the purposes of your retainer as  
21 you approved it with Tamara Global for parties  
22 retained by Tamara Global to conduct a sting on  
23 Justice Newbould?

24 A. Yes.

25 2703 Q. And do you agree with me that it

1 was inconsistent with the purposes of your retainer  
2 as you approved it with Tamara Global for parties  
3 retained by Tamara Global to conduct a sting on  
4 anyone related to West Face or litigation between  
5 West Face and Catalyst?

6 MR. MOORE: Well, just before you  
7 answer that question, you have my objection. I  
8 think you are lumping together different concepts,  
9 so I object to that. But the witness can answer.  
10 Why don't you repeat your question.

11 BY MR. MILNE-SMITH:

12 2704 Q. Do you agree with me that it was  
13 inconsistent with the purposes of your retainer as  
14 you approved it with Tamara Global for parties  
15 retained by Tamara Global to conduct a sting on  
16 anyone related to West Face or litigation between  
17 West Face and Catalyst?

18 A. Yes.

19 2705 Q. Thank you. Tab 19. So this is  
20 another letter from Mr. Greenspan on September the  
21 11th, 2017, to a bank in Israel. Did you receive a  
22 copy of this letter at the time? Are you familiar  
23 with this letter?

24 A. Scroll down, please.

25 [Witness reviews document.]

1 Scroll down, please.

2 Whether I recall the specific letter, I  
3 do recall the arrangements with Tamara Global.

4 2706 Q. And you recall Mr. Greenspan  
5 writing to an Israeli bank to essentially approve  
6 the payments that were going to be made pursuant to  
7 this retainer?

8 A. I will have to say yes, because  
9 I'm sure I would have seen this because I would  
10 have helped to organize getting the wire transfers  
11 to Greenspan.

12 2707 Q. Right, and this was sent for  
13 purposes of banking and making the necessary  
14 payments; correct?

15 A. Yes, and I'm guessing that it has  
16 something to do with compliance with the money  
17 laundering and AML-type legislation in Israel.

18 2708 Q. Right, and obviously, given that  
19 purpose, this is an important letter, and to your  
20 knowledge, Mr. Greenspan would have been as  
21 accurate as possible with respect to his  
22 understanding of the purposes of the retainer as  
23 described in his letter; correct?

24 A. Yes.

25 2709 Q. Okay. And the bottom of the first

1 page describes the scope of the retainer as  
2 Mr. Greenspan understood it; is that fair?

3 A. Yes, and I think that is  
4 consistent with what I said earlier.

5 2710 Q. Right. And all of these are what  
6 I would call defensive measures; correct?

7 MR. MOORE: Well, it is not an  
8 exclusive list. It doesn't purport to be an  
9 exclusive list.

10 THE DEPONENT: Yes, including but not  
11 limited to.

12 BY MR. MILNE-SMITH:

13 2711 Q. That is not my question. My  
14 question is the four items --

15 A. You should highlight the lead-in,  
16 which is --

17 2712 Q. That is fine, Mr. Riley, but that  
18 is not my question. My question is that the four  
19 items listed here could all be characterized as  
20 defensive measures; correct?

21 THE COURT REPORTER: I think he frozen,  
22 Matt.

23 [Discussion Off the Record to resolve  
24 technical issues.]

25 BY MR. MILNE-SMITH:

1           2713                   Q.    Okay.  Good.  We'll go back on the  
2                                    record.  So, Mr. Riley, we were looking at tab 19,  
3                                    the September 11th -- I'll call it the banking  
4                                    letter, for lack of a better term --

5                                    A.    Yes.

6           2714                   Q.    -- from Mr. Greenspan to the  
7                                    Israeli bank.

8                                    Now, I certainly accept what you said,  
9                                    which is that the language of the letter is  
10                                  including but not limited to.  And let me just  
11                                  confirm, again, your understanding, at least, about  
12                                  the purposes of the retainer that Mr. Greenspan is  
13                                  referring to in this letter.  So I'm not asking  
14                                  about what Mr. Greenspan said.  I'm asking about  
15                                  your understanding of the purposes of the retainer  
16                                  that Mr. Greenspan is describing.

17                                  Your understanding of the purposes of  
18                                  that retainer does not include any stings or  
19                                  surveillance on anybody, frankly?

20                                  MR. MOORE:  Well, hold on.  You are  
21                                  lumping together two different things.

22                                  MR. MILNE-SMITH:  All right.  Is the  
23                                  question refused?

24                                  MR. MOORE:  I think you need to be  
25                                  clearer in your questions.  Like you know -- hold

1           it. You know what the date is of the Black Cube  
2           retainer.

3                         MR. MILNE-SMITH: We are getting there.  
4           Don't worry, we are getting there. I'm just doing  
5           this one step at a time.

6                         MR. MOORE: No, but no one has all  
7           these dates memorized. Maybe I do and maybe you  
8           do, but not everybody has all these dates  
9           memorized. So, you know, I really think there  
10          needs to be some basic -- I think we are echoing  
11          because I took you off mute, Matthew.

12                        MR. MILNE-SMITH: That is better.

13                        MR. MOORE: I think there needs to be  
14          some basic recognition of that in the way these  
15          questions are put, and as you know, the September  
16          11th Black Cube retainer had pretty clear and  
17          strong confidentiality provisions. It was not  
18          intended to be a public investigation. It was  
19          intended to be a private and confidential  
20          investigation.

21                        Anyway, let's go. I just would ask you  
22          to try not to lump together separate concepts and  
23          to bear in mind the dates that maybe you and I are  
24          the ones best familiar with them at this juncture,  
25          but not everyone has them consigned to memory.

1 BY MR. MILNE-SMITH:

2 2715 Q. Let me make this very, very easy  
3 for everybody, Mr. Moore, because I don't want the  
4 witness to be confused.

5 Mr. Riley, the time frame that we were  
6 referring to is September 11th, 2019. Now, I don't  
7 expect you -- sorry, 2017.

8 I don't expect you to remember the  
9 dates, but in terms of signposts of what had  
10 happened and what had not happened, The Wall Street  
11 Journal article had been published. You had  
12 retained Tamara Global. But you had not yet  
13 received the results because the sting hadn't  
14 occurred. The sting on Justice Newbould hadn't  
15 occurred. You hadn't received the results, and  
16 therefore, to the best of my knowledge, you were  
17 unaware of any of these Black Cube activities going  
18 on.

19 So that is the time period that we are  
20 talking about. Fair?

21 A. Yes.

22 2716 Q. And am I correct that until the  
23 results of the sting on Justice Newbould were  
24 provided to Catalyst, you were unaware that Black  
25 Cube was conducting stings against various parties,

1 including Justice Newbould; correct?

2 A. That is correct.

3 2717 Q. So we are in that time frame. As  
4 of that time frame, before you were aware that the  
5 stings had happened, you did not understand the  
6 scope of Tamara Global's retainer or anybody  
7 retained by Tamara Global to conduct the stings or  
8 surveillance on people?

9 MR. MOORE: Well, you can't lump  
10 together stings and surveillance. You know, that  
11 really is not a fair way of putting the question.

12 BY MR. MILNE-SMITH:

13 2718 Q. Well, one at a time then. Stings.  
14 Did it include stings?

15 MR. MOORE: If you want to be clear and  
16 fair in your questions, you should ask about, you  
17 know, at a certain point and when to the witness's  
18 knowledge was a third party contractor retained to  
19 do investigative work. That is a fair question.  
20 But to lump things together that are disparate in  
21 nature is not fair.

22 MR. MILNE-SMITH: Mr. Moore --

23 R/F MR. MOORE: I object to the form of  
24 that question for that reason, for the second time  
25 at least now, and I would ask you to rephrase it.

1 BY MR. MILNE-SMITH:

2 2719 Q. We'll do it one at a time, and I  
3 am dealing with Mr. Riley's mindset at this time  
4 before he was aware the stings were taking place.  
5 So obviously you didn't know at this point that  
6 Black Cube had been retained; correct?

7 A. To the best of my memory, yes, I  
8 did not.

9 2720 Q. Correct. So you didn't believe  
10 that the scope of the retainer that Mr. Greenspan  
11 is referring to here extended to conducting stings?

12 MR. MOORE: You are lumping -- he said  
13 he didn't know they were retained, so how can he  
14 comment further?

15 BY MR. MILNE-SMITH:

16 2721 Q. You didn't understand that it  
17 extended to anyone? You didn't know about Black  
18 Cube, but you didn't believe that -- under the  
19 auspices of this retainer, you did not understand  
20 that anyone would be conducting stings; correct?

21 A. That is correct.

22 2722 Q. You didn't understand that --  
23 under the auspices of this retainer, you didn't  
24 understand that anybody would be conducting  
25 surveillance on individuals?

1                   A.    That -- and I am hesitating  
2                   because at this point we had retained -- or sorry,  
3                   during this time frame, whether it was at this time  
4                   or subsequent, we hired people that -- as, for lack  
5                   of a better word, body guards who also did some  
6                   kind of checks to make sure that everything was  
7                   secure. So I would take that to perhaps involve  
8                   surveilling.

9   2723            Q.    Okay, but for the purposes of  
10                   providing --

11                  A.    Sorry, and I'm not trying to  
12                   quibble. It is just Nir and his team had a  
13                   responsibility to ensure a degree of physical  
14                   safety.

15   2724            Q.    And any surveillance would be  
16                   limited to those purposes of providing physical  
17                   safety; correct?

18                  A.    By Nir and those, yes.

19   2725            Q.    Okay. And certainly the scope of  
20                   the retainer, as you understood it, would not  
21                   extend to promoting negative stories about West  
22                   Face or Greg Boland or Justice Newbould?

23                  A.    Yes.

24   2726            Q.    And if you look at the second page  
25                   here, it authorized payment of up to \$5 million;

1           you knew about that?

2                           A.    Yes.

3   2727                   Q.    And that sum was to be paid by the  
4           Catalyst Funds; correct?  It wasn't being paid by  
5           Mr. Glassman personally or by the management  
6           company.  It was being paid out of the resources of  
7           the funds?

8                           A.    No, no, I believe that was paid  
9           for by the Catalyst Capital Group Inc., i.e., the  
10          manager, us.

11   2728                  Q.    Okay.  If we could go to tab 20.  
12          So just very quickly, this indicates a payment of  
13          just over \$1 million by Greenspan, Humphrey, Lavine  
14          to Tamara Global.  You were aware of this when it  
15          happened; correct?

16                          A.    Whether I received a copy -- did I  
17          receive a copy of this document, the wire transfer?

18   2729                  Q.    That is a very fair question.  
19          Pull up tab 21.  So you will see Mr. Greenspan down  
20          below is saying:

21                                 "[...] find confirmation of the  
22                                 transfer".

23                                 And then up at the top:

24                                 "Will confirm receipt of funds  
25                                 once in our account."



1           2734                   Q.    Okay.  So that is the page we are  
2                                   on.  It starts on August 31st, and it goes through  
3                                   to September the 4th.

4                                   MR. MOORE:  All right.

5                                   BY MR. MILNE-SMITH:

6           2735                   Q.    And I am looking at the underlined  
7                                   passage in the middle:

8                                   "We r delivering a few things  
9                                   to the authorities tomorrow.  We r  
10                                  also pushing the media."

11                                  Do you see that, Mr. Riley?

12                                  A.    Yes.

13                                  MR. MOORE:  Can you just help me for a  
14                                  second?  I have got a hard copy of this tab 12.

15                                  MR. MILNE-SMITH:  Yes.

16                                  MR. MOORE:  And in the upper right-hand  
17                                  corner - this will just help me follow along - it  
18                                  has got a CAT number.

19                                  MR. MILNE-SMITH:  Yes.

20                                  MR. MOORE:  And the last two digits on  
21                                  the one you have got there is 11.

22                                  MR. MILNE-SMITH:  Those are the page  
23                                  numbers.

24                                  MR. MOORE:  And I'm assuming that is  
25                                  page 11, and it is all in sequence after that.

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

2 MR. MOORE: So if you refer to a page  
3 number with reference to those last two digits,  
4 that will make it easier for me at least to figure  
5 out exactly where we are in this document.

6 MR. MILNE-SMITH: That is what I have  
7 been doing and will continue to do throughout.

8 MR. MOORE: Okay. So then page 14?  
9 Let's go back to that, because I'm not sure I was  
10 on the same page 14 as you were.

11 MR. MILNE-SMITH: No, no, we were never  
12 on page 14. We have always been on page 11. I'm  
13 sorry if I misspoke.

14 MR. MOORE: Well, I may have misspoken.  
15 I may be misunderstanding. Okay. Page 11. Fine.

16 BY MR. MILNE-SMITH:

17 2736 Q. Okay. So this refers on September  
18 the 4th to delivering things to the authorities and  
19 pushing the media. Am I correct in understanding  
20 that what Catalyst was pushing to the media and  
21 authorities was about activities of the alleged  
22 Wolfpack?

23 A. Well, it was relating to the short  
24 attack and evidence that we were starting to  
25 discover, yes.

1 2737 Q. And you will see --

2 A. That is what I --

3 [Court Reporter intervenes for  
4 clarification.]

5 THE DEPONENT: Sorry. I apologize.

6 BY MR. MILNE-SMITH:

7 2738 Q. And you'll see the next  
8 highlighted passage at 20:37, it states that:

9 "[...] jsot asked us to move it  
10 fwd if we could w[ith] the media."

11 JSOT is -- I can't remember the  
12 acronym, but it is a police service essentially;  
13 correct?

14 A. JSOT is Joint Serious Offences  
15 Task Force, which is a joint task force between  
16 essentially the RCMP through IMET and the OSC.  
17 There may be others involved in there. And they  
18 are housed at the OSC's offices.

19 2739 Q. And you were aware that this was  
20 happening in early September of 2017?

21 A. I would have been in meetings with  
22 JSOT.

23 2740 Q. Yes. And the reason that you  
24 were, as Mr. Glassman says, delivering things to  
25 the authorities, is because if you have evidence of

1           what you believe to be improper behaviour, it is  
2           important to take it to the relevant authorities;  
3           correct?

4                   A.    Well, could I put it in context?  
5           The reason we reached out to JSOT in the first  
6           place was because Reuters had indicated that we  
7           were under investigation.  So we met with JSOT to  
8           ask the question, Are we under investigation?  As a  
9           result of that, they said, No, you are not under  
10          investigation, which I found unusual, and also  
11          authorized us to state that publicly if we were  
12          asked.

13                   So that is the context.  And then there  
14          was interaction between us and JSOT as we evolved  
15          in our investigation of the conspiracy.

16   2741           Q.    So I'm not sure that answered my  
17          question, so let me ask it again.

18                   If you have evidence of improper  
19          behaviour, it is appropriate to take it to the  
20          authorities?  That is what was happening here;  
21          correct?

22                   A.    We had activity -- as we were  
23          uncovering things, we had activity that we thought  
24          was relevant to their assessment of  
25          short-and-distort cases.

1           2742                   Q.    Okay.  And it is also appropriate,  
2                                   on your view of matters, with this being one  
3                                   example, it is also appropriate, if you think you  
4                                   have evidence of unlawful behaviour, it is  
5                                   appropriate to take it to the media?

6                                   A.    Well, I think we were trying to  
7                                   achieve some balance in the media so that they  
8                                   would be looking at short-and-distort as a general  
9                                   topic.

10                                  MR. MOORE:  I think that is a very  
11                                  broad question.  I think it depends on the  
12                                  circumstances, but as a general proposition, for  
13                                  all purposes, for all parties, I think that is a  
14                                  very, very broad question.

15                                  BY MR. MILNE-SMITH:

16           2743                   Q.    As long as you are not saying  
17                                   anything false, it is appropriate to take matters  
18                                   of interest to the public, to the media, so that  
19                                   they can publicize it?

20                                  MR. MOORE:  Not necessarily, not if it  
21                                  is subject to some form of confidentiality, not if  
22                                  doing so might be inconsistent with obligations to  
23                                  your own investors.  I mean, there could be all  
24                                  kinds of circumstances that would bear upon the  
25                                  appropriateness of taking materials to the media.

1 You ought not to be taking what is supposed to be a  
2 confidential whistleblower complaint and taking it  
3 to the media for the purpose of stirring up strife  
4 and helping with a short-and-distort.

5 You would have to look at the  
6 circumstances that existed with respect to any  
7 potential disclosure to the media, and so I think  
8 that question is way too broad.

9 MR. MILNE-SMITH: Mr. Moore, if you  
10 object to my question, I prefer that you simply  
11 object to it and refuse it, rather than to give the  
12 answer yourself.

13 R/F MR. MOORE: Well, I'm not giving the  
14 answer. I'm objecting to it, and I think I'm  
15 entitled to give an explanation for my objection.  
16 I think I'm supposed to give an explanation for my  
17 objection. So that is my objection. I think your  
18 question is way too broad.

19 MR. MILNE-SMITH: Justice McEwen can  
20 decide on what exactly happened here. Let's move  
21 on.

22 MR. MOORE: That is fine. That is  
23 fine.

24 BY MR. MILNE-SMITH:

25 2744 Q. Go over to page 12. So this is

1 Mr. Glassman saying:

2 "[...] they said pt blank" --  
3 and this is referring to JSOT from  
4 the previous page. "[...] they said  
5 pt blank to jim riley and a lawyer  
6 of ours beginning of last wk."

7 So was it correct that JSOT instructed  
8 you to take your information about the alleged  
9 Wolfpack to the media?

10 A. I don't have a recollection of  
11 that. I think that we had broad-ranging  
12 discussions with JSOT about what was -- what the  
13 activities were there.

14 2745 Q. And it was Stephen Fraser and  
15 Jonathan Yu, Y-u, that you were interacting with at  
16 JSOT?

17 A. And Faiz Ahmed.

18 2746 Q. Could you spell that last one,  
19 please?

20 A. Can I make sure that I spell --  
21 may I look at my phone to make sure I spell it  
22 correctly?

23 2747 Q. Sure.

24 A. F-a-i-z, last name Ahmed,  
25 A-h-m-e-d.

1 2748 Q. Okay. So you don't recall any of  
2 Mr. Ahmed, Mr. Fraser, or Mr. Yu instructing you to  
3 take your information to the media?

4 A. I don't recall. Can we take a  
5 break for a minute, please?

6 2749 Q. Yes.

7 A. Thank you.

8 MR. MILNE-SMITH: In fact, why don't we  
9 take -- this is obviously going to take longer than  
10 I had anticipated. We have already taken a morning  
11 break.

12 [DISCUSSION OFF THE RECORD.]

13 -- RECESSED AT 11:48 A.M.

14 -- RESUMED AT 12:20 P.M.

15 BY MR. MILNE-SMITH:

16 2750 Q. Okay. We had a conversation off  
17 the record clarifying names of some of the people  
18 that were referred to this morning. Mr. Riley, at  
19 one point you referred to a gentleman by the name  
20 of Nir, N-i-r, as sort of the head security  
21 individual --

22 A. Yes.

23 2751 Q. -- that was assigned to Catalyst  
24 or Mr. Glassman, and I think you said his last name  
25 is Maman, M-a-m-a-n, correct?

1 A. Correct.

2 2752 Q. Okay. And so picking up where we  
3 left off, Mr. Riley, you wanted me to take you to  
4 this text in the middle of the page in tab 12 at  
5 page 12, September 4th. I had taken you to the  
6 point where it said:

7 "[...] they said pt blank to  
8 jim riley and a lawyer of ours  
9 beginning of last wk."

10 And then you wanted me to take you  
11 to -- in the middle of the page where it says:

12 "We r driving fwd." This is  
13 Mr. Glassman speaking. "We r  
14 driving fwd. w[ith] jsot blessings  
15 and helping them."

16 So that was your understanding as well  
17 at the time; correct?

18 A. Well, I want to actually -- it is  
19 in the time frame -- and it was probably in July  
20 when we first met with JSOT.

21 2753 Q. Yes.

22 A. And at the end of the meeting, we  
23 discussed a couple of things, and you have to  
24 appreciate that JSOT very rarely told us anything.  
25 They just listened carefully and took notes.

1 2754 Q. Yes.

2 A. But when we -- when I asked them  
3 point blank what should we do with this apparent  
4 Wolfpack behaviour that we were seeing at that time  
5 leading up to the Reuters -- potential Reuters  
6 article, and I basically asked them, should we, in  
7 effect, roll over, do nothing and just take it, or  
8 should we fight back, their advice to us was to  
9 fight back as hard as we could.

10 So that is the overall context I think  
11 of that period of time.

12 2755 Q. Okay. So tab 22. So just zoom  
13 out a bit. Mr. Riley, this is an email that was  
14 sent to you -- sorry, sent to Mr. Glassman by  
15 Mr. DiPucchio at a time when he was external  
16 counsel at Lax O'Sullivan on September 7th, and you  
17 were copied, and he describes what the subject line  
18 indicates as a "Wish list of Evidence/Information".  
19 Now, obviously you received this email in its  
20 original form; correct?

21 A. Yes.

22 2756 Q. Now, what has happened to this is  
23 that somebody has printed out this document and  
24 then sort of annotated it with handwriting. And  
25 what I would like to know is whether you ever saw

1 this handwritten annotated version of the document  
2 as it is presented on the screen now?

3 A. And --

4 2757 Q. And, sorry, let me clarify. When  
5 I say "whether you ever saw", during the  
6 contemporaneous events in, say, September through  
7 November of 2017, had you seen this version of the  
8 document?

9 A. Not that I recall.

10 2758 Q. Okay. So the first time you  
11 recall seeing this version of the document would  
12 have been in more recent months preparing for the  
13 litigation?

14 A. I'm not even sure that I -- I'm  
15 not even sure that I have seen this until now. I  
16 may have because, as you know, there are a lot of  
17 documents in this case.

18 2759 Q. Okay.

19 A. A lot of pieces of paper.

20 2760 Q. Okay. And certainly, it is not  
21 your handwriting on the page?

22 A. No. It appears to be Newton.

23 2761 Q. Okay. That was our understanding  
24 as well. And this is a Black Cube production. I  
25 take it that you were certainly not aware of this

1 document as handwritten and as marked up -- oh,  
2 sorry, it is a Catalyst production, but we are  
3 going to come to something where you see it gets to  
4 Black Cube.

5 You certainly were not aware of this  
6 document or anything like it being provided to  
7 Black Cube; correct?

8 A. Correct.

9 2762 Q. Okay. So if we can go to page 4  
10 of this document --

11 MR. MOORE: So, Mr. Milne-Smith, let me  
12 just -- the record will be what it is, but I'm not  
13 sure that this is -- or certainly all of it is a  
14 Catalyst production. I believe that this document  
15 or at least part of this document, certainly the  
16 yellow pages, but perhaps the whole annotated email  
17 as well - I may be mistaken in my recollection - is  
18 a Black Cube production, and it is alluded to in  
19 Schedule C to the recent affidavit of documents  
20 dealing with Black Cube documents.

21 MR. MILNE-SMITH: Well, it is in Black  
22 Cube's productions, but the version we are using  
23 here, as you can see from the Bates stamp at the  
24 top of the page that is on the screen, indicates  
25 that it was also produced by Catalyst.

1 MR. MOORE: Okay.

2 MR. MILNE-SMITH: In the most recent  
3 round of productions following the Justice Boswell  
4 motion.

5 MR. MOORE: Fair enough.

6 MR. MILNE-SMITH: Okay.

7 MR. MOORE: All I'm telling you is --  
8 well, okay. That is fair. It may be included  
9 because we got it from Black Cube. I'm not sure.  
10 But in any event, I see what you are saying.

11 BY MR. MILNE-SMITH:

12 2763 Q. Okay. So you were not aware of  
13 this document. You have already given that  
14 evidence. I just want to bring your attention to  
15 the fact that on the page we brought up, which is  
16 page 4 of the production, it refers to Justice  
17 Frank Newbould, and it says then:

18 "Evidence/reasons for:

19 A bias against Catalyst/N.

20 Glassman;

21 B, anti-Semitism;

22 C, deal with West Face for  
23 decision;

24 D, inappropriate

25 conversation/dealings with West Face

1 or Boland;

2 E, deal/move to Thornton

3 Grout".

4 And then it indicates "U.S. \$75,000 per  
5 item above".

6 A. I apologize. I'll take what you  
7 are saying. I actually can't read this as it is.

8 U/T MR. MOORE: We'll get the transcript,  
9 Matt, and if we disagree with your interpretation  
10 of the writing -- it is pretty faint on the  
11 document on the screen, but if we disagree with  
12 your recital of the words, we'll let you know.

13 BY MR. MILNE-SMITH:

14 2764 Q. That is fine. So I just want  
15 to -- look, I understand, Mr. Riley, that you have  
16 given evidence, which I accept, that you weren't  
17 aware of this document at the time and certainly  
18 hadn't seen it at the time and maybe hadn't seen it  
19 at all until I put it on the screen. I just wanted  
20 to give it to you for context because what I would  
21 like now to ask you, Mr. Riley -- if we could bring  
22 up on the screen the Justice Boswell decision,  
23 paragraph 354. This isn't part of my compendium  
24 because it is not evidence. It is a prior judicial  
25 decision, so it is not a tab of the compendium, and

1 I am not proposing to mark it as an exhibit, but I  
2 would like to bring up this judgment and  
3 specifically go to paragraph 354.

4 So at paragraph 354 of Justice  
5 Boswell's decision, he writes as follows:

6 "There was nothing in the  
7 judgment of Justice Newbould [...]"

8 Sorry, before I read this, I take it  
9 you received, are aware of, and read the decision  
10 of Justice Boswell; fair?

11 A. I skimmed it. I didn't read it in  
12 detail.

13 2765 Q. Okay. Well, let me read this  
14 paragraph to you then.

15 A. Yes.

16 2766 Q. "There was nothing in the judgment  
17 of Justice Newbould", and this is  
18 referring to the decision in the Moyse  
19 action, "that would suggest he was  
20 biased, a racist or a depraved  
21 anti-Semite. The sting perpetrated on  
22 him was unvarnished random virtue  
23 testing or worse."

24 You would agree with Justice Boswell's  
25 conclusions in that regard, wouldn't you?

1 MR. MOORE: Just a minute. I don't  
2 think that is -- no, we don't agree with that for  
3 this reason -- or there may be parts of it we  
4 agree, part we don't agree.

5 As you know, during the argument I made  
6 it clear to Justice Boswell that I was not asking  
7 His Honour to make any judgments or findings or  
8 conclusions whatsoever about Justice Frank  
9 Newbould. Some of the confidential material that  
10 was filed before him alluded to some prior issues  
11 that had arisen with Justice Newbould in connection  
12 with the Mid-Bowline action and therein certain of  
13 those confidential materials.

14 So there was prior context that gave  
15 rise to a potential recusal application that  
16 Catalyst had been considering in the aftermath of  
17 that January session with Justice Newbould.

18 So these statements, they are what they  
19 are, but they don't reflect a full record or  
20 articulation or debate in terms of all of the  
21 history leading up to that point in time.

22 BY MR. MILNE-SMITH:

23 2767 Q. Mr. Riley, you are an officer of  
24 the court. You are a lawyer. And I want to give  
25 you the opportunity, if your lawyer will let you,

1 to agree with what Justice Boswell has written here  
2 in paragraph 354, which I read into the record. Do  
3 you agree with it, and if you disagree with it,  
4 please tell me why?

5 MR. MOORE: Well, I don't -- you know,  
6 I don't see what the relevance is or purpose is or  
7 legitimacy is of asking this witness to agree or  
8 disagree with some observations by Justice Boswell.  
9 They are what they are. We sought leave to appeal.  
10 We were not successful.

11 MR. MILNE-SMITH: That is fine.

12 MR. MOORE: So --

13 MR. MILNE-SMITH: We can rely on that  
14 refusal moving forward.

15 MR. MOORE: What I am saying to you,  
16 which is not part of the debate or record or  
17 argument before Justice Boswell, was some of the  
18 underlying circumstances that preceded that, and I  
19 am not talking about in relation to a sting. I'm  
20 not talking about racial issues. I'm talking about  
21 what had been a potential recusal application some  
22 months earlier.

23 So my observations are not intended to  
24 suggest there was evidence of racial bias. My  
25 position or what I am saying now is not commenting

1           upon a sting. All I'm saying is that the entire  
2           prior history in context of the matters that  
3           Mr. Greenspan and I gave advice about was not fully  
4           before Justice Boswell. That is all.

5                           BY MR. MILNE-SMITH:

6   2768                   Q. Mr. Riley, I'll give you one last  
7           chance. If you want to refer to any of this  
8           evidence that your counsel is referring to that you  
9           say is inconsistent with Justice Boswell's  
10          conclusion here that you want to rely on to say he  
11          was wrong, here is your opportunity. Give it to  
12          me.

13                       MR. MOORE: No, I think that is an  
14          improper question, and I refuse -- or I'll take  
15          that under advisement, but I don't want to open up  
16          the record. The record before Justice Boswell was  
17          what it was. Maybe you have got to order the  
18          transcript of that argument and it will make it  
19          clear to you what I am saying.

20                       BY MR. MILNE-SMITH:

21   2769                   Q. That is fine. I don't want an  
22          advisement. I don't want something prepared by  
23          counsel. I withdraw the question.

24                       Mr. Riley -- okay. You can take that  
25          off the screen and go back to tab 22. If you just

1 go down to the bottom of the page, it states:

2 "West Face [...]"

3 And again, Mr. Moore, you can advise me  
4 if you take any issue with my reading of this  
5 document on the page. It says:

6 "West Face, evidence of other  
7 criminality not related to us U.S.  
8 \$25,000/item."

9 And then number (ii):

10 "confirmation of assets under  
11 management U.S. \$20,000."

12 And then:

13 "confirmation of current  
14 notices of Redemption."

15 And then the amount, which I guess was  
16 under there, has been cut off.

17 You would agree that none of this  
18 relates to any ongoing litigation between Catalyst  
19 and West Face as of September 2017? So criminality  
20 not --

21 MR. MOORE: Sorry, not --

22 BY MR. MILNE-SMITH:

23 2770 Q. Hang on. Criminality not related  
24 to us, assets under management, and notices of  
25 redemption, none of that relates to any ongoing

1 litigation between Catalyst or Callidus and West  
2 Face; correct?

3 MR. MOORE: What? Currently?

4 BY MR. MILNE-SMITH:

5 2771 Q. No, I said as of September 2017.  
6 That is when this was taking place.

7 A. This appears to be more in the  
8 nature of background information.

9 2772 Q. Right, but not directly related to  
10 any issues in litigation?

11 A. Well, again, you are asking me  
12 about a document that, to the best of my knowledge,  
13 I have never seen until now, and I can barely read  
14 it. Unfortunately, there is not a lot of contrast  
15 between the ink and the yellow page, or at least  
16 not sufficient on this computer screen.

17 2773 Q. Forget what is on the page,  
18 Mr. Riley. I'm going to ask --

19 A. I am not trying to argue with you,  
20 Mr. Milne-Smith. I'm just saying I'm having  
21 trouble reading it. I think it is more in the  
22 context of -- this is in the context of the ongoing  
23 investigation by us into the Wolfpack and the  
24 short-and-distort attack.

25 2774 Q. Would you agree with me that what

1 is -- that the notion of seeking evidence -- forget  
2 about what is on the page. I'm going to put it to  
3 you as a general proposition, all right.

4 A. Okay. Thank you.

5 2775 Q. Would you agree with me that  
6 looking for these three things, number one,  
7 evidence of criminality not related to Callidus or  
8 Catalyst; number two, confirmation of assets under  
9 management; and number three, confirmation of  
10 current notices of redemption; would you agree with  
11 me that those three items have no relation to  
12 existing litigation by Catalyst or Callidus as of  
13 September 2017, and in fact, constituted random  
14 virtue testing?

15 A. No, I disagree with that.

16 2776 Q. And you would agree with me that  
17 confirmation of current notices of redemption would  
18 be prejudicial information about West Face and, if  
19 public, would be harmful to West Face; do you agree  
20 with that?

21 A. It would depend on what the facts  
22 were, but I think that what is relevant is what was  
23 the state of its business at the time.

24 2777 Q. And if there was evidence of  
25 notices of redemption, that would be negative

1 information about West Face; correct?

2 A. Well, it wouldn't be good  
3 information -- it wouldn't be good facts from West  
4 Face's point of view.

5 2778 Q. Right, and so if someone -- let me  
6 ask this question more generally. When you were --

7 MR. MOORE: It depends how many there  
8 were. If there were none --

9 MR. MILNE-SMITH: I haven't asked my  
10 question yet, Mr. Moore.

11 MR. MOORE: I thought you had. Sorry.  
12 Go ahead.

13 BY MR. MILNE-SMITH:

14 2779 Q. Were you aware in September of  
15 2017 of whether or not Catalyst or anyone on its  
16 behalf had engaged someone to look for evidence of  
17 West Face receiving notices of redemption? Were  
18 you aware of that going on in September 2017?

19 A. I think that generally I was aware  
20 that people -- we were trying to figure out what  
21 the state of West Face's business was and what kind  
22 of -- why they might be involved in a short attack,  
23 what might --

24 2780 Q. And if they were receiving notices  
25 of redemption, the goal then was to publicize that

1 and to harm their public reputation; correct?

2 A. No, not necessarily. That could  
3 be relevant to ongoing litigation, potential.  
4 Excuse me, potential litigation in connection with  
5 the short-and-distort attack.

6 2781 Q. Okay. Okay.

7 A. To also put it in context, we were  
8 operating in a vacuum at this time. We were trying  
9 to gather information. So, for example, having  
10 Levy under oath helped us get to a number of issues  
11 to go forward with. Similarly -- and although we  
12 were skeptical of Snowdy, we were trying to garner  
13 from him documentary evidence or taped evidence  
14 that would help us understand the facts as they  
15 might exist.

16 So that is why, when you go back to  
17 some of Newton's texts, he is talking about the  
18 need for Snowdy to come up with evidence, and  
19 evidence in that context, not being what Snowdy  
20 said, a piece of paper or a tape, because Snowdy  
21 liked to tape conversations.

22 2782 Q. We'll come back to Snowdy in just  
23 a moment. Before we leave this subject matter, you  
24 have told me that you weren't aware of this  
25 document. You have told me about -- that you

1 weren't aware of the various bounties relating to  
2 Justice Newbould. If you had been aware of  
3 something like this going on, you would have tried  
4 to put a stop to it, right, because you know it is  
5 wrongful?

6 MR. MOORE: That is a totally  
7 hypothetical question. What is the relevance of  
8 that?

9 BY MR. MILNE-SMITH:

10 2783 Q. It is not hypothetical, Mr. Moore.  
11 It actually happened. We know that Black Cube  
12 conducted stings on Justice Newbould in trying to  
13 fulfil these bounties. Mr. Riley has said he did  
14 not know about it, and I want to give him the  
15 opportunity to disavow this conduct completely if  
16 he so chooses.

17 So, Mr. Riley, had you known that this  
18 was, in fact, going on, you would have tried to put  
19 a stop to it, wouldn't you?

20 MR. MOORE: I'll object to that  
21 question on the grounds of relevance, but you can  
22 go ahead and answer the question.

23 THE DEPONENT: I think it was  
24 subsequent that Mr. Greenspan tried to ensure that  
25 there were no stings carried out by Black Cube.

1 BY MR. MILNE-SMITH:

2 2784 Q. No, but that is what happened. I  
3 want to find out from your perspective. If you had  
4 known this was going on prior to September 18 or  
5 19, whenever it was discovered, you would have  
6 tried to put a stop to it; correct?

7 A. I think so.

8 2785 Q. Yes. Thank you. I would have  
9 been shocked if you gave a different answer quite  
10 frankly, so thank you.

11 Let's go back to Mr. Snowdy.

12 MR. MOORE: I don't think any of this  
13 is particularly relevant. We did try to put a stop  
14 to it, but let's get on with it.

15 BY MR. MILNE-SMITH:

16 2786 Q. Yes. Can you please bring up tab  
17 25. So these are notes that Ms. Lutes is sending  
18 to Yossi Tanuri on September the 12th, 2017, and as  
19 I'm shortly going to show you, my understanding is  
20 that these are notes of a meeting that you and  
21 Ms. Lutes had with Derrick Snowdy on or about  
22 September 12. Do you recall that meeting as a  
23 general matter?

24 A. I do.

25 2787 Q. Okay. So let's go to the notes at

1 tab 26.

2 A. Is there a typed version of these  
3 notes?

4 2788 Q. This one -- yes. So why don't we  
5 go right to that. Tab 27.

6 A. Yes, if we could, please. Thank  
7 you.

8 2789 Q. So, Mr. Moore, I'm going to ask  
9 that these two tabs, 26 and 27, be incorporated  
10 into the previous undertaking you gave in respect  
11 of any inaccuracies in the notes from Mr. Riley's  
12 perspective?

13 U/T MR. MOORE: I understand. That is  
14 fine.

15 BY MR. MILNE-SMITH:

16 2790 Q. And certainly we have not seen,  
17 and so let me just confirm with you, Mr. Riley, you  
18 don't recall contemporaneously writing an email, a  
19 letter, putting anything on paper indicating that  
20 you disagreed with the contents of this memo or any  
21 other notes memorializing a meeting that you  
22 participated in; correct?

23 A. In other words, do I take this --  
24 sorry, it is only because that was a very long  
25 question. My understanding of your question is, do

1 I think this is an accurate transcript of what  
2 occurred at the meeting, generally speaking?

3 2791 Q. No, so I apologize. Let me ask  
4 again because I have got that general undertaking  
5 from Mr. Moore, which certainly makes things  
6 easier.

7 MR. MOORE: So we are not aware of any  
8 document from Mr. Riley when he received this,  
9 either the handwritten notes or the typed version,  
10 writing back and saying, you know, page 2 is wrong.  
11 We are not aware of any such document. But I think  
12 your question was even broader than that, or may  
13 have extended to any meeting ever. So that is  
14 the -- again, I think I can safely say I'm not  
15 aware of any other documents like that either, but  
16 that is subject to Mr. Riley correcting me, or us  
17 discovering something different, that is the answer  
18 to that question.

19 BY MR. MILNE-SMITH:

20 2792 Q. Okay. That is exactly what I  
21 expected. Go back to tab 12, please, and I would  
22 like to go to page 19 --

23 A. I apologize. Why are we not  
24 finishing this document?

25 2793 Q. Because I don't have any questions

1 about it other than making sure that there aren't  
2 any inaccuracies. I think the document speaks for  
3 itself.

4 A. Okay. Thank you.

5 MR. MOORE: So tab 12, yes.

6 BY MR. MILNE-SMITH:

7 2794 Q. And page 19. That is, again, the  
8 page numbering in the top right-hand corner.

9 MR. MOORE: Yes.

10 BY MR. MILNE-SMITH:

11 2795 Q. So we established that that  
12 meeting took place on or about September 12th, so  
13 now we are looking at what Mr. Glassman says to  
14 Mr. Guy about that meeting. So you see -- this is  
15 Tuesday, September 12th, 2017, 19:46, and  
16 Mr. Glassman says:

17 "Jim thought snowy is full of  
18 shit and falling in value. Gotta  
19 go."

20 Now, I'm not going to try and put  
21 Mr. Glassman's colourful language into your mouth,  
22 but is it safe to say that his assessment there is  
23 an accurate representation of the general  
24 impressions of Mr. Snowdy?

25 MR. MOORE: Well, wait a minute. Wait

1 a minute.

2 THE DEPONENT: You are putting words in  
3 my mouth.

4 MR. MOORE: That is exactly what you  
5 are doing.

6 THE DEPONENT: Sorry, I want to answer  
7 that.

8 MR. MOORE: Okay. Yes, go ahead. I'm  
9 sorry. Go ahead.

10 THE DEPONENT: Newton was trying to  
11 pressure Danny and Snowdy to come up with  
12 documentary proof. If you go through the context  
13 of -- we had I would call a healthy skepticism  
14 about Snowdy, and we were not prepared to move  
15 forward on anything that Snowdy said without a  
16 piece of paper. That is why we shifted away from  
17 Snowdy and towards getting Levy under oath and then  
18 trying to get Levitt under oath, because we thought  
19 that was a richer source of information.

20 But for all --

21 BY MR. MILNE-SMITH:

22 2796 Q. Okay --

23 A. Sorry, can I finish, please?

24 2797 Q. Go ahead.

25 A. For all of Snowdy's whatever,

1           however you want to characterize Newton's  
2           skepticism, the ironic part about Snowdy is Snowdy  
3           would give us little pieces of information that  
4           were helpful. For example - and just by way of one  
5           example - the email that he had from Levitt to  
6           Cohodes, was it a helpful thing. Some parts of  
7           what he said helped inform how to look at other  
8           facts and events; for example, how they used social  
9           media.

10                         So there were nuggets -- and I think  
11           there is an email or a text from Brian Greenspan  
12           reflecting on the meeting he had -- a meeting he  
13           had with Snowdy where he said it was two and a half  
14           hours of interesting but irrelevant information and  
15           two minutes of, I can't -- whether he said it was  
16           helpful or relevant information, and Snowdy is -- I  
17           mean, he is not someone that I would ever rely upon  
18           for everything he said, but where he could come up  
19           with a piece of documentary evidence or a tape of  
20           something or anything that could verify what he was  
21           saying, I took it -- not that I proceeded on it,  
22           but that it was indicative of something we should  
23           look into; i.e., verify.

24   2798

                       Q.   And ultimately, you chose not to,  
25           for example, obtain an affidavit from Derrick

1 Snowdy?

2 A. No.

3 2799 Q. And you didn't choose to obtain an  
4 affidavit from Danny Guy?

5 A. No.

6 2800 Q. And if you go over to the next  
7 page of this document, page 20. It is not  
8 underlined, but keep going down. So yes, the one  
9 near the bottom of the page here at 20:12. It  
10 says -- no, go up a little bit. There. So you see  
11 Danny Guy says:

12 "Ya he", being Snowdy, "tells  
13 me he is making progress with Jim.  
14 He trusts him."

15 And Mr. Glassman replies:

16 "Jim is a crazy polite wasp. I  
17 love him dearly but snowdy is  
18 clearly not great at his job if he  
19 can't read btwn the lines w[ith]  
20 jim. Jim is furious that Snowdy  
21 keeps wasting his time and not  
22 producing any real substantive back  
23 up. I keep forcing him to go back."

24 This was an accurate summary of your  
25 assessment of the meetings to date as of September

1 25th?

2 A. First of all, I don't agree with  
3 that I'm a "crazy polite wasp".

4 2801 Q. Fine. Put that --

5 A. That is obviously a sense of -- I  
6 think that may have been Newton's interpretation of  
7 what I fed back to him. My frustration with Snowdy  
8 at that time was that Snowdy -- Snowdy had a  
9 narrative that he would keep going back to. So you  
10 would meet with him a second meeting -- let's say  
11 you had meeting one, and then you had the second  
12 meeting. He would start off where he started on  
13 the first meeting. So you tended to be -- it was  
14 not iterative. So it took time to pry out from him  
15 facts and information, and you had to sort of work  
16 with him.

17 So that was my frustration. And you  
18 know, frankly, Snowdy -- Snowdy is an interesting  
19 character, but at that time did have some -- he  
20 clearly had a relationship with Cohodes and that  
21 was helpful to understanding the overall  
22 short-and-distort and how it worked.

23 2802 Q. Tab 28. This is an email from  
24 Mr. Glassman to you and some other lawyers and  
25 Mr. de Alba on September 13th, subject "Naomi's

1 notes". Now, this document was not produced, as  
2 far as we can tell, by Catalyst. It was produced  
3 by Black Cube, and Black Cube isn't one of the  
4 recipients of Mr. Glassman's September 13th, 2017,  
5 email. What we see instead is that above it is  
6 forwarded by Yossi Tanuri to Avi Yanus, which is  
7 how Black Cube presumably gets it.

8 My interpretation of this - and tell me  
9 if you have any reason to think I'm wrong - is that  
10 Mr. Glassman blind-copied Mr. Tanuri, which is how  
11 he got it to forward it on to Avi Yanus. Is that  
12 consistent with your understanding of how  
13 Mr. Glassman would have communicated with  
14 Mr. Tanuri?

15 MR. MOORE: Do you know?

16 THE DEPONENT: I don't know that. I  
17 can't -- there is -- I always thought that when you  
18 do a bcc, it shows up on the email, but I'm not a  
19 tech guy, but I always thought that is the way it  
20 worked.

21 BY MR. MILNE-SMITH:

22 2803

23 Q. Okay. The reason I'm interested  
24 in this is because it didn't show up in Catalyst's  
25 productions. Did Catalyst at any time since, say,  
September 1, 2017, take any steps to erase from its

1 servers this or any other email relating to these  
2 matters in issue?

3 A. No.

4 2804 Q. Have you taken steps to search  
5 Mr. Glassman's emails for anything that was  
6 blind-copied to Tanuri?

7 A. I was not running the document  
8 production. That was Rocco.

9 2805 Q. Okay. If there is any --

10 A. And I'm not -- I'm just deferring  
11 that I didn't handle the production of documents.

12 2806 Q. That is fine. If any explanation  
13 can be provided as to why this document was not  
14 produced, and if any efforts can be made to produce  
15 any other documents like this that may have been  
16 missing, I would like an undertaking to do that?

17 U/A MR. MOORE: All right. We'll take that  
18 under advisement. I mean, I'm speculating, so --  
19 well, I don't want to speculate. I'll take that  
20 under advisement. Let me put it this way. I don't  
21 agree with the underlying premise that it wasn't  
22 produced in the sense that it may have been listed  
23 in the continuing or current Schedule B, I want to  
24 check that, but if there is some omission with  
25 respect to this document, we'll make inquiries.

1 BY MR. MILNE-SMITH:

2 2807 Q. Thank you. Tab 29.

3 A. Sorry, could I just read this  
4 email?

5 2808 Q. Sure.

6 A. Can you just scroll down?

7 "Levitt of fortress clearly was  
8 part of it and according to notes  
9 reached out to cohodes to help  
10 orchestrate etc."

11 So that is the Snowdy email that I  
12 referred to.

13 2809 Q. Yes.

14 A. And:

15 "Then boland is connected to  
16 Levitt at fortress [...]"

17 Okay.

18 And then Alex Spears. So this is all  
19 in the context of information that we were getting  
20 from Snowdy.

21 2810 Q. Yes. Tab 29. So this is what is  
22 described on its face as a "First Presentation" of  
23 September 13, 2017, by Black Cube in regards to  
24 Project Camouflage. It is an 84-page PowerPoint  
25 presentation. Did you receive this document either

1 at a meeting with Black Cube or in any other manner  
2 contemporaneously in September of 2017?

3 A. No.

4 2811 Q. So you were completely unaware of  
5 this document until it was produced in this  
6 litigation; fair?

7 A. To the best of my knowledge,  
8 yes -- or best of my memory, yeah. In fact, could  
9 you scroll down? Because it is not a document --  
10 even the cover page --

11 2812 Q. Well, let me take you to a couple  
12 of indicative pages. So go to page 35. So, for  
13 example, this is a profile that had been prepared  
14 by Black Cube, on its face, at least, of Brandon  
15 Moyse's wife, and it describes who the agent is,  
16 who is going to approach her, and what the proposed  
17 approach is. You never saw anything like this;  
18 correct?

19 A. That is correct.

20 2813 Q. Okay.

21 A. Is that Brandon Moyse's wife, a  
22 picture of her?

23 2814 Q. Yes, it is.

24 A. Okay.

25 2815 Q. And there is pictures of any

1 number of targets and family members that are in  
2 this document. You certainly -- I'll give you this  
3 opportunity, again, Mr. Riley, in fairness. If you  
4 had known that Black Cube or anybody purporting to  
5 be acting under Catalyst's authority was targeting,  
6 surveilling, and stinging family members of people  
7 related to litigation somehow with Catalyst, you  
8 would not have approved that, and you would have  
9 tried to put it to a stop; correct?

10 R/F MR. MOORE: Don't answer the question.  
11 You are lumping together targeting, whatever that  
12 means --

13 MR. MILNE-SMITH: That is fine.

14 MR. MOORE: -- surveilling, whatever  
15 that means, and stinging. So you can't lump  
16 together all of those subjects, and I think the  
17 question is improper.

18 BY MR. MILNE-SMITH:

19 2816 Q. That is fine. Tab 30. I am just  
20 going to give you the opportunity, Mr. Riley, and  
21 if Mr. Moore wants to refuse, that is perfectly  
22 fine with me.

23 MR. MOORE: Well, I'm inviting you to  
24 put your questions properly so you don't mix  
25 together a number of separate concepts. So if you

1 don't choose to do that, that is your prerogative.

2 BY MR. MILNE-SMITH:

3 2817 Q. Okay. Mr. Riley, if you had been  
4 aware of parties purporting to act on Catalyst's  
5 behalf surveilling people, like, Sari Richter, you  
6 would not have approved of that?

7 A. I would need more information to  
8 make that assessment.

9 2818 Q. So in some circumstances, it could  
10 be okay to approach Sari Richter under the auspices  
11 of a phony NGO?

12 R/F MR. MOORE: No, no, that is not the  
13 same question. That is the whole point. You are  
14 not listening to my objection. You just asked a  
15 question about surveilling, and now you have asked  
16 a follow-up question that is equating that with  
17 some form of sting that you start going on about.  
18 That is lumping different concepts together. That  
19 is not a proper way to do it, so I repeat my  
20 objection.

21 BY MR. MILNE-SMITH:

22 2819 Q. If you want to do this -- all  
23 right. If you want to get into this, let's get  
24 into it. Go back to tab 29, please, and let's go  
25 to page 35. So let's ask this one at a time. What

1           this document indicates is that an agent, being a  
2           45 year old female, under the cover of an NGO  
3           program coordinator, is going to approach Ms. Sari  
4           Richter with the following story:

5                            "An NGO for developing  
6                            countries that aids with education  
7                            for kids is looking for teachers.  
8                            Brandon's wife is an art therapist  
9                            and she will help with our plan in  
10                           Toronto, which is a friendship city  
11                           of Rio de Janeiro, from an art  
12                           perspective."

13                           That is describing the proposed sting  
14           on Ms. Richter, and through her, Brandon Moyse.  
15           Had you been aware --

16                           MR. MOORE:   Apparently.

17                           THE DEPONENT:  Was there a sting  
18           conducted on Sari Richter?

19                           BY MR. MILNE-SMITH:

20   2820

21                           Q.    Yes, there was.  Yes, there was.  
22           There is an affidavit that Brandon Moyse swore to  
23           this effect, and it is available in the record of  
24           these proceedings if you want.  Had you been aware  
24           of --

25                           A.    Sorry, I just --

1 MR. MOORE: Sorry, go ahead with --

2 BY MR. MILNE-SMITH:

3 2821 Q. Had you been aware of this --

4 MR. MOORE: But I am going to --

5 BY MR. MILNE-SMITH:

6 2822 Q. Had you been aware of this -- let  
7 me ask the question. Had you been aware of this  
8 happening at the time before it happened, you would  
9 have tried to put a stop to it; correct?

10 MR. MOORE: I am going to object to the  
11 question, but go ahead and answer.

12 THE DEPONENT: I most likely would  
13 have.

14 BY MR. MILNE-SMITH:

15 2823 Q. So we'll come back to some  
16 examples of surveillance in future examples of  
17 this. I think that is enough for now.

18 Tab 30. So this is another invoice.  
19 This is a second payment of \$1.25 million by Tamara  
20 to Black Cube. The funds for this would have been  
21 provided by the Catalyst Capital Group management  
22 company, as you said before; correct?

23 A. Correct.

24 2824 Q. And --

25 A. So I can't read -- I should follow

1 up. Most likely, but is there another -- this is  
2 from Tamara to the correspondent bank for whoever  
3 it is.

4 2825 Q. Yes.

5 A. For B.C. Strategy UK Ltd., but is  
6 there another corresponding wire transfer for USD  
7 \$1,250,000 from us to Tamara?

8 2826 Q. This is all I have.

9 A. Okay. Then -- I mean, on its face  
10 it says that it is for "Service, Litigation Support  
11 - Second Payment", to B.C. Strategy UK.

12 2827 Q. Okay.

13 MR. MOORE: Just to interject,  
14 Mr. Milne-Smith, I believe the earlier invoice --  
15 or maybe it is a wire transfer that you alluded to  
16 was I think on September 5 to Tamara Global for a  
17 million dollars and -- 1.25 million, I think.

18 MR. MILNE-SMITH: Yes.

19 MR. MOORE: But rather than you and I  
20 trying to discuss this on the record like this,  
21 maybe you and I can informally discuss it, but I  
22 believe that that invoice related to the original  
23 funds paid to Tamara Global but wasn't related to  
24 Black Cube. That is my recollection. But rather  
25 than debate that, we can perhaps try to clarify

1 that, you and I.

2 BY MR. MILNE-SMITH:

3 2828 Q. Here is -- let me try and  
4 short-circuit this. Can I get a schedule --  
5 because we have got these bits and pieces, and it  
6 is very hard to put together, can I get a schedule  
7 of payments made by Catalyst to Tamara Global  
8 during the period from September to November of  
9 2017?

10 U/A MR. MOORE: I'll take that under  
11 advisement.

12 BY MR. MILNE-SMITH:

13 2829 Q. Okay. Tab 31.

14 A. Can I ask, again, is there a typed  
15 version of this?

16 2830 Q. There is not.

17 A. Okay. Thank you.

18 2831 Q. At least not that has been  
19 provided to us.

20 A. And this is --

21 2832 Q. So --

22 A. May I just -- sorry. Can I  
23 just -- can I read -- Meeting with Jim Riley and  
24 Derrick Snowdy at Greenspan's offices.

25 2833 Q. Correct.

1                   A.    Okay.  Yes, I just wanted to get a  
2                   context.

3    2834            Q.    So this is September 18, 2017, and  
4                   again, I would just like to flag this as following  
5                   under the previous undertaking, to advise us if  
6                   there are any errors, omissions, inaccuracies,  
7                   Mr. Moore?

8    U/T            MR. MOORE:  Yes, subject to the caveat  
9                   that there may be parts of this we have difficultly  
10                  reading, but subject to that, yes.

11                  BY MR. MILNE-SMITH:

12    2835            Q.    That is fine.  So this was  
13                   September 18 of 2017.  Let's then go back to tab  
14                   12, the text chain, to see Mr. Glassman's account.

15                  MR. MOORE:  What page?

16                  BY MR. MILNE-SMITH:

17    2836            Q.    So we have already looked at some  
18                   of this.  Let's go to page 21.  We already looked  
19                   at page 20 before.  So on page 21, Mr. Glassman  
20                   says that he speaks with you "a dozen times per day  
21                   and r beyond close."  Now, I understand there may  
22                   be some element of hyperbole here, but is this a  
23                   fair representation, as a general matter, that you  
24                   and Mr. Glassman were in regular communication and  
25                   had a close working relationship ?

1 A. Yes.

2 2837 Q. Go to page 23, please. So this  
3 is -- now you'll see it is October 3rd, and  
4 Mr. Glassman is saying, in the middle of the page  
5 there, that he is anticipating a meeting with Brian  
6 Greenspan that day. And we'll come to  
7 Mr. Greenspan's notes of that. But I want to just  
8 confirm that your understanding was consistent with  
9 Mr. Glassman's where he says, at the bottom of the  
10 page, at 10:29, where he says:

11 "His", meaning Snowdy's,  
12 "conversations w[ith] jim were  
13 disastrous."

14 That is consistent with your reports to  
15 Mr. Glassman in terms of the meeting?

16 A. I didn't tend to use the word  
17 "disastrous". I -- again, it was the frustration  
18 of not -- of how long it took to get a fact, a fact  
19 being a document or something that you could say  
20 was credible from Snowdy.

21 2838 Q. And if you -- we read along there,  
22 it says --

23 A. I think it is fair to say that  
24 Newton was pretty upset by that conversation.

25 2839 Q. Yes. He says:

1 "It was DISASTROUS w[ith] jim.  
2 Period. Snowdy clearly has no self  
3 perception or self judgment. Others  
4 find him to be both not credible and  
5 likely double dealing. Jsot and  
6 others refuse to rely on ANYTHING he  
7 says and have proof as to why he is  
8 not credible. They r letting brian  
9 meet w[ith] him as a favor", this  
10 being Brian Greenspan, "and because  
11 they trust and rely on brian. U  
12 need to stop arguing w[ith] me, u  
13 don't know all the facts, and I am  
14 trying to do YOU a favor.

15 Fuck!!!!!!"

16 A. That is what it says, plus five  
17 exclamation marks -- six exclamation marks. So I  
18 this it is fair to say - and it is all in caps -  
19 that he was quite upset with Danny.

20 2840 Q. With Danny and with Snowdy;  
21 correct?

22 A. Well, his conversations with Danny  
23 in saying that Snowdy is not bringing forward the  
24 information that he purported to have.

25 2841 Q. Right, and go down to the next

1 page, page 24, and stop there. So there is some  
2 personal comments which I'll skip over. The  
3 underlined portion says:

4 "Snowdy has his one last  
5 chance. If he blows it, u r",  
6 meaning Danny Guy, "severely damaged  
7 w[ith] him. Period. U linked  
8 yourself far too intimately w[ith]  
9 him." Being Snowdy. "His  
10 resurrection is, in my opinion,  
11 literally an imperative FOR U AND  
12 YOUR CREDIBILITY. Fuck u r  
13 thick!!!!"

14 2842 Q. So putting aside --

15 A. But it is not in caps and there is  
16 less exclamation marks.

17 2843 Q. Putting aside the emotion and the  
18 hyperbole, you certainly would agree with  
19 Mr. Glassman's message here that the credibility of  
20 Guy was linked to the credibility of Snowdy?

21 A. That would be Newton's impression,  
22 yes.

23 2844 Q. And --

24 A. Danny is a different character.  
25 Like sometimes I could not understand what Danny

1 was, but he had -- he had a view on the overall  
2 short-and-distorts that were going on and seemed to  
3 have interesting -- he had views.

4 2845 Q. Over to the next page, page 25.  
5 Keep going down. There. Mr. Glassman writes in  
6 the underlined passage:

7 "That's why your credibility is  
8 so tied to snowy and so damaged  
9 along w[ith] him."

10 You would agree with Mr. Glassman's  
11 assessment that Mr. Guy's credibility was damaged  
12 by problems with Mr. Snowdy's credibility?

13 A. I'm not sure I would go so far as  
14 to say that. I would say that Danny was impacted  
15 obviously because he kept putting forward Snowdy,  
16 but I think they are two different characters, but  
17 again, both very complex in terms of dealing with  
18 them.

19 2846 Q. And putting aside the degree of  
20 damage it did, you may not have gone as far as  
21 Mr. Glassman did, but you would accept, of course,  
22 the obvious point that to the extent Guy put  
23 forward Snowdy as the person with relevant  
24 information and Snowdy's credibility was harmed,  
25 that reflected negatively on the credibility of

1 Mr. Guy as well?

2 A. Only insofar as Snowdy was not  
3 able to come up with a document that helped inform  
4 us, and I think I have said this before - and maybe  
5 I wasn't clear - my view on Snowdy, my personal  
6 view, was that he was helpful in painting a  
7 picture, but you could only rely on that picture to  
8 the extent that you could find a piece of paper or  
9 some other documentary proof of what he had to say.  
10 And sometimes we could do that and sometimes we  
11 could not.

12 2847 Q. And in fact, he provided very  
13 little in the way of documentary evidence. You  
14 have pointed to an email between Levitt and  
15 Cohodes. I'm not aware of anything else that you  
16 attached to one of your affidavits that was  
17 provided by Danny Guy -- sorry, by Derrick Snowdy;  
18 correct?

19 A. Whether it was attached to my  
20 affidavits or not -- after four or five affidavits,  
21 you tend to forget what was attached, but there  
22 were emails from Cohodes to Snowdy and Adam Spears  
23 where he introduces them to each other. And I  
24 would have to go back. I had a separate file that  
25 I kept of -- kind of as we were evolving the

1           Wolfpack, and you have seen probably my childish  
2           drawings where I kept adding facts to try and  
3           figure out what the pattern was.

4           2848                   Q.    So I would like to be advised of  
5           which affidavits -- sorry, which exhibits to any of  
6           your affidavits in this proceeding were provided by  
7           Derrick Snowdy?

8           U/A                   MR. MOORE:  Well, I'll take that under  
9           advisement.

10                           BY MR. MILNE-SMITH:

11           2849                   Q.    Okay.  Page 26.  Right there.  And  
12           Mr. Glassman says -- again, referring to Snowdy and  
13           speaking to Guy, he says:

14                                    "He has hurt your reputation  
15                                    and credibility, likely  
16                                    irreparably."

17                           That was consistent with your  
18           understanding of Mr. Glassman's view of the matter?

19                           A.    I would say that the relationship  
20           between Danny and Newton was going downhill, and at  
21           one point they stopped dealing with each other.  
22           And I know there is a prior email where -- or prior  
23           text, rather, where Newton provides my contact  
24           details to Danny.

25                           So at some point Newton stopped dealing

1 with Danny Guy, and I dealt with Danny Guy and  
2 Snowdy on a go-forward basis. I was always -- not  
3 always, but I was probably the most interactive  
4 with Snowdy.

5 2850 Q. And that is why -- and that was  
6 because Mr. Glassman concluded that Mr. Guy's  
7 credibility had been harmed, likely irreparably, as  
8 he states here? That is why he handed off Snowdy  
9 to you?

10 A. No, I think that -- no, I think he  
11 was frustrated with Danny and the inability to come  
12 up with hard evidence, if I can use that term  
13 colloquially.

14 2851 Q. That is fine. Go to page 29. So,  
15 first of all, I want you to just help me with the  
16 timing of this. So I'm going to read what it says  
17 and then I'm going to ask you about the timing. So  
18 there is communications between Mr. Guy and  
19 Mr. Glassman about how long they have been going at  
20 this, and Mr. Glassman says:

21 "No. Months. Convenient  
22 memory u have there so let me remind  
23 u. This started for us late in  
24 June. By 3rd wk of July 'vincent  
25 Hanna' had already had mtngs w[ith]

1 Jim. B4 aug 01 u and I were  
2 speaking. That's months."

3 Pause there. The evidence we have seen  
4 is that the first contact was in August and that is  
5 also when the meetings were. So are we missing  
6 something, or is Mr. Glassman just getting his  
7 dates wrong?

8 A. Well, is 12:39 at night or in the  
9 morning; do you know?

10 2852 Q. This is military time, so it is --  
11 I believe that is afternoon.

12 A. Okay. There was no contact -- the  
13 first contact with Vincent Hanna was the email that  
14 came out of the blue on September -- or sorry,  
15 August --

16 2853 Q. 11th.

17 A. -- 11th. Late in June, that  
18 sounds about the time frame when Reuters approached  
19 us with basically the story that evolved into The  
20 Wall Street Journal story. I think that is roughly  
21 the time frame.

22 2854 Q. Okay. So you had not --

23 A. I had no -- that is dead wrong, by  
24 third week Vincent had already had meetings with  
25 Jim.

1 2855 Q. Okay. That is fine.

2 A. And also, "B4 aug 01 u and I were  
3 speaking", that is wrong.

4 2856 Q. Okay. That is fine.

5 A. The first interaction with  
6 Snowdy/Danny Guy/ --

7 MR. MOORE: Vincent Hanna.

8 THE DEPONENT: Vincent Hanna. But your  
9 internet connection is unstable. Can you hear us  
10 all right? Okay. Thank you. That didn't occur  
11 until that date in August.

12 [Court Reporter intervenes for  
13 clarification.]

14 BY MR. MILNE-SMITH:

15 2857 Q. So we are all on the same page  
16 then, Mr. Riley.

17 A. Some of these things make no sense  
18 to me. Now, it is also pretty easy to get confused  
19 on time frames here.

20 2858 Q. That is fine. I agree. So let me  
21 just go to the summary then. You see the all  
22 capped words in the middle of the paragraph. I'm  
23 just going to start reading:

24 "THAT IS MONTHS since we r now  
25 mid oct. what he has given us is

1 less valuable than what my dogs left  
2 for me on our lawn this am. Thanks  
3 a ton. U and he", being Snowdy,  
4 "have wasted enormous time and is  
5 one of the key reasons the  
6 authorities r so resentful."

7 Do you see that passage that I have  
8 just read?

9 A. Yes, I do.

10 2859 Q. Now, Mr. Riley, we have gone  
11 through in some exhaustive detail pages and pages  
12 like this between Mr. Glassman and Mr. Guy  
13 complaining about Mr. Snowdy and telling him that  
14 Mr. Guy's own credibility is tied to that of  
15 Mr. Snowdy; do you recall all of that that we have  
16 gone through in exhaustive detail?

17 A. I do.

18 2860 Q. Now, you didn't disclose any of  
19 those concerns about the reliability of Snowdy and  
20 Guy in communications to Catalyst investors, did  
21 you?

22 A. No.

23 2861 Q. And you didn't tell the Court in  
24 your affidavits, nor did you tell your investors in  
25 your investor letters, that what Snowdy gave to

1 Catalyst was worth less than what Mr. Glassman's  
2 dogs left on his lawn?

3 A. I disagree with that, because by  
4 that point, we had the Levy transcript and Levy's  
5 documents that were leading us to understand  
6 Levitt's role, and also the possible roles that  
7 West Face, Langstaff, and others played in the  
8 piece. So we had -- although there may have been a  
9 time frame when we were skeptical about Snowdy and  
10 only saw small bits of documentary as opposed to  
11 oral evidence, we started to improve up in what we  
12 got from Levy and what we were discovering on  
13 Levitt, and the Cohodes email and --

14 2862 Q. Mr. --

15 MR. MOORE: Because there was this --  
16 the reference to what was left on the lawn,  
17 et cetera, was set out in some investor letter, if  
18 that is your question, I think he has answered it.  
19 The answer is no.

20 THE DEPONENT: Yeah, I think that it is  
21 fair to say that as we were moving forward, we  
22 didn't see a reason to deviate from where we  
23 thought we had communicated with investors but  
24 wanted to get more information.

25 BY MR. MILNE-SMITH:

1 2863 Q. Mr. Riley, the interview with  
2 Mr. Levy was done at the end of August of 2017;  
3 correct?

4 A. That is -- I don't remember the  
5 exact date, but I think that is probably when it  
6 occurred.

7 2864 Q. It was before these email -- these  
8 text exchanges that I just read to you in October  
9 of 2017, certainly?

10 A. Yes.

11 2865 Q. Putting aside the language about  
12 what the dogs leave on the lawn, you, Catalyst,  
13 never disclosed to its investors that there were  
14 serious credibility concerns about Vincent Hanna;  
15 i.e., Danny Guy?

16 A. First of all, I don't think we  
17 ever -- I want to try -- and maybe I'm -- I  
18 apologize if I'm not being articulate enough. In  
19 this time frame, we were trying to obtain as much  
20 information as we could from any source that we  
21 could. Although we didn't find Hanna/ -- well, let  
22 me distinguish. I found Danny Guy more credible  
23 than Snowdy. The problem with Snowdy was you  
24 weren't sure exactly what he was telling you was  
25 always the truth or whether he was skewing it, and

1           that is why we insisted on documentary or oral  
2           proof.

3                           And if you go back, you'll see the  
4           theme that Newton is playing through is show us,  
5           you know, in a sense, tangible proof.

6           2866                   Q.    Mr. Riley, I am not asking you  
7           whether you had any evidence to support your case.  
8           That is not my question. Please listen very  
9           carefully to the question I'm asking you.

10                           We have looked through pages upon pages  
11           of Mr. Glassman excoriating Danny Guy about the  
12           credibility of Mr. Snowdy and, by association,  
13           Mr. Guy. Putting aside whether you agree with  
14           Mr. Glassman or not, you agree with me that we have  
15           seen that correspondence; correct?

16                           A.    Yes. And I think that Newton was  
17           trying to get Danny Guy to come up with tangible  
18           proof.

19           2867                   Q.    And, Mr. Riley, you would also  
20           agree with me that Catalyst never disclosed to its  
21           investors that the source of the information cited  
22           in the first investor letter of August 14th was  
23           considered to have serious credibility problems by  
24           Newton Glassman, the Chairman of Catalyst Capital?  
25           You never disclosed that to your investors?

1                   A.    That is because by the time we had  
2                   further investor communications, we were finding  
3                   more information that made what had been said by  
4                   Vincent Hanna less relevant because we were finding  
5                   other evidence of behaviour.

6    2868                Q.    Well, we'll let record decide  
7                   that.  And, Mr. Riley, you swore three affidavits  
8                   that I took you to at the outset of this  
9                   examination today where you relied on and trumpeted  
10                  the importance of the Vincent Hanna email, but you  
11                  would agree with me, I trust --

12                   MR. MOORE:  Well, hold on.  That is not  
13                  an accurate statement whatsoever.  That email was  
14                  referred to in a couple of paragraphs here and  
15                  there that comprised maybe 1 percent, if that, of  
16                  those affidavits.  So let's just keep to the record  
17                  and not gild the lily here.

18                   BY MR. MILNE-SMITH:

19    2869                Q.    In three different affidavits, Mr.  
20                   Riley, you relied on the Vincent Hanna email;  
21                   correct?

22                   MR. MOORE:  The affidavits speak for  
23                  themselves.

24                   THE DEPONENT:  Yeah, I think that -- I  
25                  would say the affidavits speak for themselves,

1 unless we want to go back and look at them.

2 MR. MOORE: No, we are not going to go  
3 back.

4 THE DEPONENT: Okay.

5 R/F MR. MOORE: I object to that. The  
6 affidavits speak for themselves. You can argue if  
7 they were trumpeted or they were this or they were  
8 that or they were the next thing. The record is  
9 what the record is, and the affidavits speak for  
10 themselves.

11 BY MR. MILNE-SMITH:

12 2870 Q. And, Mr. Riley, in your  
13 description of the Vincent Hanna email in those  
14 three different affidavits, at no point did you  
15 disclose to the Court that there were credibility  
16 issues with Mr. Hanna - i.e., Danny Guy - held by  
17 Newton Glassman?

18 R/F MR. MOORE: The affidavits speak for  
19 themselves.

20 BY MR. MILNE-SMITH:

21 2871 Q. And you never disclosed to the  
22 Court that there were major credibility issues with  
23 Derrick Snowdy, whose credibility was intimately  
24 linked to the credibility of Mr. Guy? You never  
25 disclosed that either in your affidavits, did you?

1 MR. MOORE: Well, the affidavits speak  
2 for themselves. Whether we argue the case now or  
3 argue it later, the affidavits say what they say  
4 and, you know, let's leave it at that.

5 BY MR. MILNE-SMITH:

6 2872 Q. That's fine. And instead of  
7 disclosing these credibility problems to your  
8 investors, to West Face, or to the Court, you  
9 fought a motion up to the Divisional Court to  
10 prevent disclosure of this correspondence with  
11 Mr. Guy in which Mr. Glassman excoriated his  
12 credibility; that is what happened, isn't it?

13 MR. MOORE: No, what happened was that  
14 we advanced -- the client advanced what we believed  
15 to be legitimate privilege issues, common interest  
16 privilege issues, with respect to the Danny Guy --  
17 Vincent Hanna or Danny Guy communications, and as  
18 the notes indicated on their face, there was  
19 reference to joint common interest privilege being  
20 asserted from time to time. Justice Boswell  
21 rejected that, so be it. That was the Court's  
22 ruling. But I don't agree with your  
23 characterization.

24 BY MR. MILNE-SMITH:

25 2873 Q. Tab 32.

1                   A.     Just before we move on, the way  
2     you have asked the question, I think I have to add,  
3     even though there is question -- you'll see that  
4     the actual questions of credibility are by Newton,  
5     and he puts -- he characterizes what I communicated  
6     to him in a certain way. To the extent that  
7     subsequent events and subsequent documentation gave  
8     better colour to what Snowdy was saying or proved  
9     up what Snowdy was saying, I think that is  
10    important.

11   2874                Q.     We'll let the record reflect  
12    whether Catalyst has anything to support its --  
13    we'll have plenty of argument about that, don't you  
14    worry. Tab 32 --

15                   MR. MOORE: We are not worried. Let's  
16    keep going. Let's keep going.

17                   BY MR. MILNE-SMITH:

18   2875                Q.     Tab 32 is a September 19th, 2017,  
19    presentation prepared by Black Cube about Project  
20    Camouflage. Am I correct --

21                   A.     What was the -- sorry.

22                   MR. MOORE: It is a document.

23                   MR. MILNE-SMITH: Let me ask the  
24    question.

25                   MR. MOORE: And it is what it is.

1           Whether it is a presentation -- just like the other  
2           document, it has got some words on it. There is no  
3           indication that that's a presentation, per se. But  
4           we are looking at the document, BC679/1. So what  
5           are you referring to?

6                         THE DEPONENT: And this is a  
7           subsequent -- sorry, the other one was what date?

8                         BY MR. MILNE-SMITH:

9           2876           Q.    December 13th.

10                        A.    Okay. So it's -- this is a  
11           different document. I should have asked it that  
12           way. I apologize.

13           2877           Q.    Just let me ask the question,  
14           Mr. Moore. Please don't interrupt me while I'm  
15           asking my question.

16                        My only question about this, did you  
17           ever see this document?

18                        A.    Not to my knowledge.

19           2878           Q.    Okay. And just for the sake of  
20           the record, because, Mr. Moore, you took issue with  
21           me calling it a presentation, the name of the  
22           document from the metadata is "Final client  
23           presentation.ptx"?

24                        MR. MOORE: That is this particular  
25           document?

1 MR. MILNE-SMITH: That is this  
2 particular document.

3 MR. MOORE: Okay. Fine.

4 BY MR. MILNE-SMITH:

5 2879 Q. So you never saw this document,  
6 Mr. Riley?

7 A. No. As I said, I think I have  
8 already said, not to my knowledge. The first time  
9 I think I have seen it was today.

10 2880 Q. So --

11 MR. MOORE: So if you think you are  
12 clarifying that, Mr. Milne-Smith, then I would  
13 suggest that whatever preceded it was a draft of  
14 some kind that apparently I guess West Face -- or  
15 not West Face, Black Cube had been working on, it  
16 appears, from what you have just described from the  
17 metadata. So what is the next question?

18 BY MR. MILNE-SMITH:

19 2881 Q. Page 9. So, for example,  
20 Mr. Riley, you were unaware that Black Cube had  
21 conducted apparently physical surveillance of the  
22 West Face offices?

23 A. I have never seen this picture  
24 before, and I'm not aware of the surveillance.

25 2882 Q. Okay. That is the answer to my

1 question. And had you been aware that there were  
2 ex-Mossad agents conducting physical surveillance  
3 on West Face offices, you would have put an end to  
4 something like that; correct?

5 A. I don't know.

6 2883 Q. Okay. Page 11. I really can't  
7 make out what the screenshot is, but the title of  
8 the slide is "Surveillance on Frank Newbould". Had  
9 you been aware that Black Cube was conducting  
10 covert surveillance on Justice Frank Newbould, you  
11 would have put a stop to it; correct?

12 A. Yes.

13 2884 Q. And page 53.

14 MR. MOORE: Well, I don't know -- is  
15 that the best copy that we have of that?

16 THE DEPONENT: What is -- I'm trying to  
17 actually find -- I'm actually trying to understand.  
18 Sorry, can you just go back? I can't even see what  
19 the picture is. Maybe it is a bad picture.

20 BY MR. MILNE-SMITH:

21 2885 Q. Neither can I. It is not  
22 important. I can't tell either, Mr. Riley, but it  
23 is not important. The question is -- which you  
24 have answered, is about the issue of surveillance  
25 on Justice Frank Newbould.

1 MR. MOORE: I just don't know what that  
2 surveillance is. But anyway, keep going. Let's  
3 keep going. Page 53, is that where you are at?

4 MR. MILNE-SMITH: Yes.

5 MR. MOORE: Okay.

6 BY MR. MILNE-SMITH:

7 2886 Q. Page 53 is -- I'm guessing that  
8 the person in the middle of the page with a  
9 backpack on is Brandon Moyse. The title of the  
10 slide is "Brandon Moyse Surveillance". Had you  
11 been aware that Black Cube was conducting physical  
12 surveillance of Brandon Moyse, you would have put a  
13 stop to it?

14 A. I'm not so sure on that because  
15 Brandon Moyse to me was a very problematic fellow.

16 2887 Q. All right. Tab 33. Were you  
17 aware that Black Cube prepared a profile of Andrew  
18 Willis, the journalist for The Globe and Mail?

19 A. No.

20 2888 Q. And am I correct that Catalyst has  
21 in the past successfully lobbied The Globe and Mail  
22 to prohibit Mr. Willis from writing about Catalyst  
23 or Callidus?

24 A. Yes.

25 2889 Q. Tab 34.

1 MR. MOORE: Well, lobbied The Globe and  
2 Mail, I think the Globe and Mail -- whatever  
3 decisions were made or not made by the Globe and  
4 Mail about Mr. Willis's role or lack of role or  
5 whatever in any ongoing reporting, I'm quite sure  
6 that the Globe and Mail was -- whatever they  
7 decided, they decided in their own right in  
8 accordance with what they thought was appropriate,  
9 whatever that may be.

10 MR. MILNE-SMITH: Mr. Moore, you do  
11 whatever you want, but I am putting you on notice  
12 that I will rely on the fact that after a witness  
13 has given an answer, you then purport to come in  
14 and give a different answer. So --

15 MR. MOORE: No, it is not a different  
16 answer. I just take issue with the kind of  
17 connotation of "lobbying". You know, the Globe and  
18 Mail, whatever they decided to do, they decided to  
19 do.

20 BY MR. MILNE-SMITH:

21 2890 Q. Well, the witness didn't take  
22 issue. He answered yes. So I'm going to ask my  
23 next question. Tab 34.

24 MR. MOORE: Let's keep going.

25 THE DEPONENT: Sorry, I was not

1 involved in that, but there was interaction with  
2 the Globe and Mail where the Globe and Mail decided  
3 to not have Andy cover Callidus/Catalyst issues,  
4 but I wasn't involved in that. I'm only giving you  
5 what I have been told.

6 BY MR. MILNE-SMITH:

7 2891 Q. Tab 34. This is an email from  
8 Mr. Glassman to you on September 20th. It attaches  
9 a contact card for Virginia Jamieson.

10 A. Yes.

11 2892 Q. And Mr. Glassman says:

12 "This is the person they want U  
13 to contact. Allegedly needs to talk  
14 w[ith] u around 9:45am and  
15 recommended not from your own cell  
16 or our office landline etc."

17 A. Yes.

18 2893 Q. Well, who did you understand  
19 "they" to be that Mr. Glassman was referring to?

20 A. Gadi.

21 2894 Q. And Gadi is Gadi Ben Efraim?

22 A. Yes.

23 2895 Q. And he was an associate of Tamara  
24 Global?

25 A. I had met Yossi and Gadi at the

1 same time. It was never clear to me what their  
2 actual relationship was, but I think Gadi  
3 retained -- sorry, Yossi retained Gadi to perform  
4 for --

5 2896 Q. And when did you meet them?

6 A. We met them in late August, early  
7 September, at a hotel.

8 2897 Q. Okay.

9 A. In Toronto.

10 2898 Q. And what --

11 MR. MOORE: I think the date was August  
12 31st. We can verify that, but I think it was  
13 August 31st, to my recollection.

14 BY MR. MILNE-SMITH:

15 2899 Q. Okay. And what did you understand  
16 the nature of Mr. Ben Efraim's retainer to be?

17 A. That he would help with the  
18 physical -- like the survey of our computers,  
19 surveys of our security arrangements, and as it  
20 evolved, help with the litigation.

21 2900 Q. And clearly, the --

22 A. Not at that time. At that time,  
23 we had -- we met them, and the caution that Brian  
24 Greenspan had was, I hope they are not  
25 over-promising and under-delivering.

1 2901 Q. So as of September 20th, your  
2 understanding of the nature of Mr. Ben Efraim's  
3 retainer was that it was related to security?

4 A. No, by this time, this involves  
5 the Newbould tape.

6 2902 Q. Yes.

7 A. That is Rosh Hashanah.

8 2903 Q. Okay. So you understood then that  
9 the purpose of meeting with Virginia Jamieson was  
10 to publicize the content of the Newbould sting?

11 A. Yes -- no, publicize what was on  
12 the tape.

13 2904 Q. Publicize what was on the tape,  
14 and what was on the tape came from the Newbould  
15 sting?

16 A. Correct.

17 2905 Q. Okay. You knew what was on the  
18 tape? You had seen it or heard it?

19 A. No, I had only heard extracts at  
20 that time. I have never seen the full tape. I was  
21 given highlights.

22 2906 Q. Okay. So you knew that what was  
23 on the tape was the contents or excerpts from a  
24 meeting between Justice Newbould and an operative  
25 of Black Cube operating under false pretenses?

1                   A.    The only thing -- whether false  
2                   pretense is the right word or not, I'm not sure,  
3                   but yes, I was aware of the source at the  
4                   Scaramouche dinner.

5   2907                Q.    Operating under a pretext, if you  
6                   prefer?

7                   A.    Thank you.  Yes, that is the word  
8                   I was trying to remember.

9   2908                Q.    Okay.  And it was recommended to  
10                   you not to use your cell or office landline.  That  
11                   was because you were trying not to leave a digital  
12                   trace of contact with her?

13                   A.    I did use my cell.

14   2909                Q.    Yes.

15                   A.    I believe.

16   2910                Q.    But you understood that the reason  
17                   why you were advised not to use your cell or office  
18                   landline was because somebody, whether it is  
19                   Mr. Ben Efraim or Mr. Glassman, thought it  
20                   appropriate not to leave a digital trace of your  
21                   contact with her; correct?

22                   A.    I would take -- whether I took  
23                   that at the time or not, I don't recall.

24   2911                Q.    Okay.

25                   THE COURT REPORTER:  I'm sorry, did you

1 say you did use your cell or you didn't?

2 THE DEPONENT: I did use my cell.

3 BY MR. MILNE-SMITH:

4 2912 Q. And just to confirm that, tab 36.

5 So there are two -- these are from Virginia  
6 Jamieson's phone records. It indicates two  
7 incoming calls, the morning of September 21st, from  
8 416-302-6040, which is your cell phone number;  
9 correct?

10 A. That is correct.

11 2913 Q. And --

12 A. And is her number -- what is the  
13 917 number? Is that hers?

14 2914 Q. No, that is just --

15 A. Because it is just a partial  
16 number.

17 2915 Q. That is just another incoming  
18 number to Ms. Jamieson.

19 A. Okay.

20 2916 Q. And perhaps we'll redact that from  
21 anything that goes in the Court file. I don't know  
22 who that is, but there is no need to put someone  
23 else's --

24 A. Yeah, I was just going to say --  
25 is 917 a New York area code?

1 2917 Q. Yes.

2 A. I don't know what it is. Okay.

3 2918 Q. And you understood that the  
4 purpose of meeting Ms. Blatchford and providing her  
5 with a USB stick containing the excerpts from the  
6 sting or pretext interview, if you prefer, with  
7 Justice Newbould was for her to provide those  
8 transcripts and the story surrounding it to  
9 Christie Blatchford and other journalists?

10 A. Yes.

11 2919 Q. Tab 37. This is a -- just zoom  
12 out so we can see the whole page. We have -- so  
13 what is in red here is our translation that we have  
14 obtained. Mr. Moore, you can let us know if you  
15 disagree with our translation in any way from the  
16 Hebrew.

17 U/T MR. MOORE: Yes.

18 BY MR. MILNE-SMITH:

19 2920 Q. What we understand this to be is a  
20 text exchange between Yossi Tanuri and Avi Yanus.  
21 So it is from the phone of Mr. Yanus. So what is  
22 in green on the right is Mr. Yanus; what is in  
23 white on the left is Mr. Tanuri. And if you have  
24 any evidence to the contrary, you are welcome to  
25 give it to us by way of undertaking.

1                   So what Mr. Tanuri says is -- I have  
2                   underlined it:

3                   "The hoped for strategy is that  
4                   the public pressure from an article  
5                   makes it impossible for the court to  
6                   ignore and they have [...]" -- it  
7                   should say "the means".

8                   Or I'm not sure what it says. I'll  
9                   read it verbatim:

10                   "[...] they have to means the  
11                   case back to lower court."

12                   So --

13                   A.    Okay.

14                   MR. MOORE: Well, and I also -- I see  
15                   that that -- you know, whether it will make any  
16                   difference, I'm not sure, but -- so that appears to  
17                   be a partial rendition of the translation the way  
18                   it is cut off. But we'll let you know whether we  
19                   disagree with that translation. I think I had  
20                   raised it some time ago that we could compare notes  
21                   on translations of some of these documents.

22                   BY MR. MILNE-SMITH:

23                   2921            Q.    Yes. Just to be clear, just to be  
24                   clear, what I read to you is -- that is original  
25                   English. The text thread skips between English and

1 Hebrew, so that is not a translation. That is the  
2 original.

3 My first question, Mr. Riley, is you  
4 have never seen this text exchange before; correct?

5 A. No.

6 2922 Q. Okay. So let me ask -- I provided  
7 that to you by way of context just in case you had  
8 seen it and to be fair to you, but I'm not asking  
9 you now -- I want you to accept this as a general  
10 proposition, not tied to this document which you  
11 hadn't seen before. You would agree with me, as an  
12 officer of the court, that attempting to apply  
13 pressure to a court by extra-legal means by way of  
14 news articles would be an abuse of process and  
15 improper?

16 R/F MR. MOORE: Well, I think that is a  
17 legal question. I don't think the witness can  
18 properly answer that question, whether it is an  
19 abuse of process or not.

20 BY MR. MILNE-SMITH:

21 2923 Q. All right. Well, let me separate  
22 it from the legal question. You would agree with  
23 me, as an officer of the court, Mr. Riley, that  
24 conduct like this would be improper and unworthy of  
25 a litigant before the courts of Ontario?

1                   A.    Sorry, what context am I saying,  
2                   as an officer of the court?  I think then to the  
3                   extent that there was evidence of possible  
4                   inappropriate abuse, that that's relevant to the  
5                   courts, relevant to the judicial system.  So I  
6                   think there is a tension between what the effect of  
7                   it would be and the existence of it.

8   2924                Q.    So, Mr. Riley, let's examine that  
9                   a little bit then.  If there is evidence of  
10                  improper influence or improper conduct by a  
11                  judicial officer, the proper way for a litigant to  
12                  resolve a manner -- issues like that, is to bring  
13                  it before the Court in proper proceedings; correct?

14                   A.    Yes.

15   2925                Q.    And the wrong way to do it is not  
16                  to bring it before the Court but to bring it to the  
17                  news outlets and to attempt to use public pressure  
18                  on the courts by extra-judicial means; namely,  
19                  media articles to put pressure on the Court.  That  
20                  is the wrong way to do it, right?

21                   A.    Yeah, I think the bigger issue is,  
22                  should the Court be aware of the facts.

23   2926                Q.    But we just covered that.  The way  
24                  to make the Court aware of the fact is to bring the  
25                  appropriate motion and proceeding; correct?

1 A. Yes.

2 2927 Q. The wrong way to do it is to get  
3 stories into news articles and hope that that will  
4 apply indirect pressure on the Court to reach a  
5 particular outcome. That is the wrong way to do  
6 it; correct?

7 A. This is a very tough issue for me  
8 because what is on that tape I find offensive, but  
9 I also respect the judiciary, and having the  
10 background -- some of my relatives were judges in  
11 the Alberta court, so I have always been torn  
12 between respect for the judiciary and the proper  
13 functioning and what is on that tape.

14 2928 Q. Given the chance to do it over  
15 again, sir, you would have either brought it to the  
16 Court in a judicial proceeding, or you would have  
17 done nothing? Given the chance to do it over  
18 again, you wouldn't have taken those tapes to  
19 Ms. Jamieson to give to Ms. Blatchford, would you?

20 A. Yeah, I would not do that.

21 2929 Q. Okay. Tab 38. This is just to  
22 nail down the events. I'm not sure we have quite  
23 covered it off yet. This is a text message  
24 exchange. You can see your phone number at the  
25 top, and it is sent by Virginia Jamieson, who

1 describes herself as "the woman that you met about  
2 the USB key for Christie Blatchford"; correct?

3 A. Yes.

4 2930 Q. Okay. So you agree with me that  
5 you met with Ms. Jamieson the morning of September  
6 21st, which was the date of those phone calls that  
7 we saw, and you provided her -- you provided  
8 Virginia Jamieson with a USB stick containing --

9 A. No, I did not. I'm going to cut  
10 you off there. I did not provide her with a USB  
11 stick.

12 2931 Q. What did you provide her with?

13 A. Coordinates given to me by Gadi as  
14 to where she could find the Newbould tape in the --  
15 on the internet.

16 2932 Q. Okay. So you provided her with --  
17 was it a piece of paper, or was it just something  
18 you had memorized and told her where to look?

19 A. No, it was coordinates on a piece  
20 of paper, which I subsequently took back from her  
21 and then threw away.

22 2933 Q. Okay. So the way this arrangement  
23 was worked out is that -- so who provided you with  
24 this piece of paper? It was Gadi Ben Efraim?

25 A. No, Gadi gave me the coordinates

1 orally, and I wrote them down on a piece of paper.

2 2934 Q. Okay. And as part of your  
3 operational security, you then showed her the piece  
4 of paper. She wrote it down. And then you threw  
5 away the piece of paper?

6 A. No, she went to another park bench  
7 in whatever the park is that is across from the  
8 Rosedale subway station where I met her, and she  
9 went and did whatever she did on her computer and  
10 decided that she had what she needed.

11 2935 Q. And at that time, you threw away  
12 the piece of paper?

13 A. I did.

14 2936 Q. So that no trace was left at  
15 Catalyst of having provided this information to  
16 Ms. Jamieson?

17 A. I'm not sure what the piece of  
18 paper would have told, but it was a sticky, and I  
19 didn't want to put it in my pocket.

20 2937 Q. Okay. Tab 40. So this -- the  
21 first email in this chain is from Sharon, who I  
22 understand -- and you can see from the email  
23 signature, it is Sharon Kisluk, who was an  
24 individual employed by Psy Group; correct?

25 A. Yes.

1 2938 Q. So you had understood that Psy  
2 Group had been retained by Tamara Global on  
3 Catalyst's behalf?

4 A. I don't know who retained --  
5 sorry, when I say that, I don't know whether Tamara  
6 Global retained Psy or whether Gadi retained Psy.  
7 I don't know who the retainer was with. Sharon  
8 was --

9 2939 Q. You understand --

10 A. Sorry. I apologize.

11 2940 Q. You understood that someone on  
12 Catalyst's behalf had retained Psy Group; correct?

13 A. Yes, by this time. When I first  
14 met Sharon in our offices in Toronto, I didn't know  
15 she was with Psy. I didn't know who Psy was.

16 2941 Q. And when did you first meet Sharon  
17 at your offices in Toronto?

18 A. I believe sometime in September,  
19 but I can't recall the date.

20 2942 Q. And when did you learn that  
21 someone on behalf of Catalyst had retained Psy  
22 Group?

23 A. Through Gadi, I guess.

24 2943 Q. And do you know when that was?

25 A. No.

1 2944 Q. Was it before or after the  
2 adjournment of the Moyse appeal?

3 A. I don't know.

4 2945 Q. Okay. But before October 23rd,  
5 the email we are looking at here?

6 A. Yes.

7 2946 Q. And you understand that the  
8 purposes of Psy Group's retainer was to create  
9 positive narratives in the media about Catalyst and  
10 negative narratives in the media about West Face,  
11 Greg Boland, and Justice Newbould?

12 A. I don't know about that, but I'm  
13 reading here:

14 "[...] with Virginia, a PR  
15 specialist who is in touch with  
16 Rachel Levy from Business Insider.  
17 The subject is [West Face] [...]"

18 2947 Q. Yes. So you understand that the  
19 purpose of Sharon's communication was to convince  
20 Rachel Levy of Business Insider to write an  
21 article, the subject of which was West Face and its  
22 poor financials?

23 A. That is what I would take it to  
24 mean.

25 2948 Q. And you agree with me that pushing

1 a story about West Face's poor financials had  
2 nothing to do with any ongoing litigation?

3 A. I think it is fair to say we were  
4 under attack by the press, and I think that  
5 originated in large part by -- directly or  
6 indirectly by West Face. So I would --

7 2949 Q. Well, that is --

8 A. -- say this is a pushback.

9 2950 Q. We will see if you can prove that  
10 case on May 17th, Mr. Riley. Tab 41.

11 [Court Reporter intervenes for  
12 clarification.]

13 THE DEPONENT: I apologize. I thought  
14 I was taking long enough. Is it Matt, or is it me,  
15 or it both of us? Sorry, I'm not looking to assign  
16 blame. I'm trying to pause before I answer, so I  
17 apologize if I'm not.

18 BY MR. MILNE-SMITH:

19 2951 Q. I will do the same.

20 So tab 41 is a November 30th email --  
21 [Discussion off the record to resolve  
22 audio interference.]

23 BY MR. MILNE-SMITH:

24 2952 Q. Back on the record. Mr. Riley,  
25 this is a November 30th, 2017, email from Brian

1 Greenspan to you. The subject line is "Letter of  
2 Engagement", and then it has certain attachments.

3 You will see that the second email in  
4 the chain from Yossi Tanuri to Brian Greenspan  
5 refers to:

6 "Mobile security systems for  
7 both Catalyst Helicopter and Jet  
8 Plane".

9 A. Yes.

10 2953 Q. And that is part of what  
11 Mr. Tanuri or Mr. Ben Efraim was providing?

12 A. He arranged for that, yes, which  
13 systems didn't work. They were inappropriate for  
14 our aircraft.

15 2954 Q. And if you go to tab 43 --

16 MR. MOORE: Now, just before we leave  
17 this document, my recollection is - and I may be  
18 mistaken - that this is one of the documents  
19 recently obtained from Mr. Tanuri that we included  
20 in our recent affidavit of documents.

21 MR. MILNE-SMITH: Yes.

22 MR. MOORE: In terms of the provenance  
23 of the document.

24 MR. MILNE-SMITH: Yes.

25 MR. MOORE: Okay.

1 [Court reporter intervenes for  
2 clarification.]

3 MR. MOORE: In terms of the provenance  
4 or the source of the document. Okay. Sorry, go  
5 ahead. Go ahead.

6 BY MR. MILNE-SMITH:

7 2955 Q. Tab 43 is a financial statement  
8 dated as of November 30th, 2017, which if I'm  
9 reading this correctly - and tell me if I'm wrong -  
10 indicates that Catalyst to date had paid Mr. Tanuri  
11 or his company just under \$4.2 million U.S. and had  
12 been invoiced for \$26,000 less than that,  
13 indicating that you had a balance on your account.

14 A. I see that.

15 2956 Q. Are you familiar -- is this the  
16 kind of invoice that would have come across your  
17 desk?

18 A. No, not that I recall.

19 2957 Q. Were you aware as of the end of  
20 November 30th that Catalyst had paid to Mr. Tanuri  
21 approximately \$4.2 million?

22 A. Whether I knew the total or not, I  
23 would have to -- in there you break it down into  
24 the work that they had done to survey the  
25 computers, the security devices, and a large -- a

1 significant amount of that would be I think the  
2 security arrangements with Nir.

3 So without having to break down -- I  
4 would not do it by total. I would do it by  
5 breakdown as to function.

6 MR. MOORE: But, again, just in terms  
7 of the source and timing, this is I believe one of  
8 the recent documents we have added that was  
9 received finally sometime in mid to late February  
10 2021.

11 THE DEPONENT: And what is the source  
12 of this document? From Yossi?

13 MR. MOORE: This is from Yossi.  
14 Eventually, after -- without getting into all the  
15 details, after various requests and whatnot - and  
16 I'm not going to go down that road - that he sent  
17 certain documents, a package of documents, around  
18 the middle or end of February, of which this was  
19 one of the documents, and we included those  
20 documents in our -- in the recently delivered  
21 affidavit of documents.

22 BY MR. MILNE-SMITH:

23 2958 Q. Tab 46. This is what we have  
24 called the Dalton report?

25 A. Yes.

1           2959                   Q.    It is stamped "Draft", but I don't  
2                                   believe we received any copy that was not stamped  
3                                   "Draft".  If there was some other final copy, I'm  
4                                   sure, Mr. Moore, you'll provide it or point me to  
5                                   it in the productions?

6                                   MR. MOORE:  Yes.  Mr. Milne-Smith, my  
7                                   recollection is that the final version that we are  
8                                   aware of is still marked "Draft".  My recollection  
9                                   is that there was a segment added to it on the eve  
10                                  of the board meeting in question, on or about  
11                                  February 27th.  And I am assuming that what you  
12                                  have attached here is what you have received as the  
13                                  last or latest version of that document?

14                                  MR. MILNE-SMITH:  Yes.

15                                  U/T           MR. MOORE:  All right.  So I'll verify  
16                                  this, but assuming all that is correct, I'll verify  
17                                  that this is the final version and that there is no  
18                                  other superseding version.  That is my  
19                                  understanding.

20                                  MR. MILNE-SMITH:  I can make it even  
21                                  easier for you, Mr. Moore, if you want.  I'm going  
22                                  to refer to certain passages of this document, and  
23                                  if you want to advise me that there is a later  
24                                  version where any of the passages I refer to are  
25                                  changed, then I think that would suffice for our

1 purposes.

2 U/T MR. MOORE: No, that is fine. I'm just  
3 telling you that my recollection is that the  
4 document had a section added to it fairly shortly  
5 before the board meeting and that reference to it  
6 as a "Draft" and the date on the document may not  
7 have been completely updated, that's all.

8 But to the best of my knowledge, we  
9 have given you the final version of the document as  
10 it was ultimately provided to the board.

11 MR. MILNE-SMITH: That is fine.

12 MR. MOORE: You know, that's all.

13 BY MR. MILNE-SMITH:

14 2960 Q. That is fine. Thank you. If we  
15 could go to the last page, 31. You will see I have  
16 highlighted the disclaimer there. It states that  
17 it was:

18 "[...] prepared by Patrick  
19 Dalton at the request of the  
20 Independent Directors of Callidus  
21 Capital Corporation ('Callidus') in  
22 connection with the Consulting  
23 Agreement between Callidus and  
24 Patrick Dalton dated October 29,  
25 2018. Nothing contained herein

1 (including Mr. Dalton's views,  
2 opinions, or recommendations)  
3 constitutes investment, legal, tax  
4 or other advice nor is it to be  
5 relied on in making any decision."

6 Do you see that disclaimer by

7 Mr. Dalton?

8 A. I have to. It is there.

9 2961 Q. Okay. And following receipt of  
10 this report by Callidus and Catalyst, neither  
11 Callidus nor Catalyst fired Mr. Dalton?

12 A. No.

13 2962 Q. He quit because his mandate at  
14 that time was completed; correct?

15 A. Correct, although he subsequently  
16 became CEO of Callidus and FrontWell.

17 2963 Q. Yes. We are coming to that  
18 momentarily.

19 A. All right. I do apologize. I got  
20 ahead of myself. The only other thing I would  
21 point out is that:

22 "The information contained in  
23 the document is intended for the  
24 Board of Directors of Callidus  
25 Capital and their respective

1 Counsel."

2 There is another part to that, and I am  
3 not sure of the origin of this disclaimer, but it  
4 looks to me like it was primarily drafted by  
5 Mr. Dalton's counsel.

6 2964 Q. Understood. Following receipt of  
7 this report, obviously, Callidus and Catalyst  
8 didn't sue Mr. Dalton over the contents?

9 A. But I don't think we had that  
10 ability.

11 2965 Q. And there is --

12 A. No, we did not, and I don't think  
13 we would have had the ability to do so.

14 2966 Q. Okay. And the independent  
15 directors -- let me rephrase. There is no  
16 contemporaneous evidence of the independent  
17 directors of Callidus rejecting or disagreeing with  
18 the views set out in this report?

19 A. Well, the only thing I remember is  
20 that in the information circular that was put  
21 forward -- produced for the going-private  
22 transaction, there were additional thoughts that  
23 were expressed that I think were -- have to be  
24 attributed to the Board of -- the Independent  
25 Committee because the Independent Committee was

1 running that process, and the --

2 2967 Q. So in terms of contemporaneous  
3 views of the Independent Committee, that is it;  
4 correct?

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

6 2968 Q. Okay. If you could go to page 12  
7 of this document.

8 A. Could you expand it? It is hard  
9 to read. Sorry, maybe --

10 2969 Q. No, hang on. I'm actually not  
11 going to take you into the chart. I'm just looking  
12 at the text at the bottom.

13 A. Okay. Thank you.

14 2970 Q. Can you see that on your screen,  
15 the two highlighted lines?

16 A. I do.

17 2971 Q. Okay. It says:

18 "Due to poor performance,  
19 access to third party debt funding  
20 has virtually vanished for CBL."

21 You understand CBL to be the stock  
22 ticker reference for Callidus?

23 A. Correct.

24 2972 Q. And:

25 "Since CBL has not produced

1 positive cash flow for several  
2 years, it has relied on unnatural  
3 sources of liquidity from Catalyst."

4 Do you see that?

5 A. I don't know what an unnatural  
6 source of liquidity means. I just don't -- I don't  
7 know what he meant by that.

8 2973 Q. So let's take out that. If we  
9 rephrase that to say:

10 "Since CBL has not produced  
11 positive cash flow for several  
12 years, it has relied on [...]   
13 liquidity from Catalyst."

14 You would agree with that statement?

15 A. I agree with that.

16 2974 Q. Okay. So as someone with years of  
17 experience in this industry, Mr. Riley, help me  
18 out. Would you agree that a business like Callidus  
19 makes money by lending money and then by either  
20 earning interest or some other form of economic  
21 return on its investment?

22 A. Yes, and also by managing -- you  
23 have to have a combination of two parts to the  
24 business. One is producing, producing new loans  
25 and new sources of revenue, and managing any

1 positions that have gone sideways.

2 So to the extent that you can't create  
3 new business, you run into liquidity problems.

4 2975 Q. All right. And so if you can't  
5 make new loans, that impairs your ability to earn  
6 income?

7 A. Yes, and you have to look at why  
8 you can't get new loans, and part of it is when you  
9 are labelled as a fraudster in the public and  
10 privately -- or social media, it is problematic.

11 2976 Q. So, Mr. Riley, you would agree  
12 with me that there is not one word in Mr. Dalton's  
13 report -- since you brought the issue up, there is  
14 not one word in Mr. Dalton's report about Callidus  
15 being labelled as a fraudster?

16 A. Yes, and I don't think that is  
17 because he understood the effect and the overall  
18 effect also of the various securities reviews we  
19 had been under in the period -- in the relevant  
20 period.

21 2977 Q. And what Mr. Dalton attributes the  
22 poor performance to is a lack of positive cash flow  
23 for several years and poor performance? That is  
24 what he says; correct?

25 A. But then you have to dig deep --

1           what I am saying, with respect, is you have to dig  
2           deeper and look at the ability to create new  
3           business.

4   2978                   Q.    Okay.  So you disagree with  
5           Mr. Dalton's -- the opinions expressed by  
6           Mr. Dalton?

7                        A.    I respect Patrick, but I wasn't  
8           impressed by the report.

9   2979                   Q.    And you would agree with me, as  
10          you have said before, that regardless of what your  
11          views were, the independent directors of Callidus  
12          and in fact the entire Board of Directors of  
13          Callidus has chose to retain Mr. Dalton, again, as  
14          the President or Chief Executive Officer of both  
15          Callidus and FrontWell Capital; correct?

16                       A.    Correct.

17   2980                   Q.    And FrontWell Capital essentially  
18          took over the new business of Callidus in terms of  
19          generating new loans?

20                       A.    It is -- yes, I'm not quibbling,  
21          Mr. Milne-Smith.  It is -- FrontWell is an  
22          independent company which has carried on the  
23          business -- the type of business that Callidus  
24          carried on.

25   2981                   Q.    Right.  Callidus --

1                   A.    I'm not trying to quibble.  I'm  
2                   just saying it is a separate entity.  There was no  
3                   transfer of assets and even a minimal transfer of  
4                   people.

5   2982                   Q.    Just so we are clear, Callidus  
6                   continues to manage its existing portfolio?

7                   A.    Yeah.

8   2983                   Q.    But it no longer tries to initiate  
9                   new loans?

10                   A.    That is correct.

11   2984                   Q.    FrontWell does that?

12                   A.    That is correct.  I agree with  
13                   that a hundred percent.

14   2985                   Q.    Okay.  And Mr. Dalton is at the  
15                   head of both companies?

16                   A.    Yes.

17   2986                   Q.    Tab 47.  Now, if we could go to  
18                   answer to undertaking number 38, which is the  
19                   second page of this tab.  So, Mr. Riley, on your  
20                   previous examination I asked you whether Callidus  
21                   accused West Face of involvement in stock  
22                   manipulation to the Securities Commission in the  
23                   period leading up to the July 25, 2017, letter from  
24                   Rocco DiPucchio to me, and the answer provided is  
25                   that it was refused on the basis of relevance, but

1 without prejudice to that position, Callidus did  
2 not; in other words, Callidus did not accuse West  
3 Face of involvement in stock manipulation in the  
4 period leading up to July 25, 2017. Do you see  
5 that?

6 A. Yes.

7 2987 Q. Could you go to tab 48, please.  
8 This is an email that you sent to an R. Sanchioni  
9 of the OSC in the period leading up to July 25,  
10 2017; correct?

11 A. Yes.

12 2988 Q. And you list four parties, Marc  
13 Cohodes, West Face, Kevin Baumann, Nathan Anderson  
14 of ClaritySpring; correct?

15 A. Yes.

16 2989 Q. And these are parties that you are  
17 accusing of manipulating the market for securities  
18 of Callidus; correct?

19 A. Well --

20 MR. MOORE: Read what it said.

21 "These are the names we  
22 mentioned as possibly involved."

23 BY MR. MILNE-SMITH:

24 2990 Q. And what you are saying possibly  
25 involved in is manipulating the market for

1 securities of Callidus; correct?

2 A. Yes.

3 2991 Q. So your answer to undertaking was  
4 incorrect?

5 A. I --

6 MR. MOORE: Well, we can debate that.  
7 I think to say that these -- at the outset, that to  
8 say that these are names as being possibly  
9 involved -- and in fact, as I recall, that is  
10 before the actual article, but let's not get into  
11 the weeds. I'm not sure that I would equate that  
12 with an allegation of stock manipulation. But in  
13 any event, you have the two documents.

14 MR. MILNE-SMITH: Mr. Moore, I'm going  
15 to read to you the transcript here. I asked the  
16 question:

17 "What you are saying possibly  
18 involved in is manipulating the  
19 market for securities of Callidus;  
20 correct?

21 Answer: Yes."

22 So, Mr. Moore, I don't appreciate you  
23 coming in and then trying to correct the record on  
24 that. I asked a clear question. I got a clear  
25 answer. The answer to the undertaking was

1 incorrect.

2 MR. MOORE: No, what I am saying to you  
3 is to say to somebody that it is possible that they  
4 may have been involved I think is somewhat  
5 different than the question that was the subject of  
6 the undertaking. Like was an accusation made?  
7 Yes, they were involved. No, you may think that is  
8 splitting hairs, we can debate that, but the record  
9 is what it is.

10 MR. MILNE-SMITH: Mr. Moore, the  
11 witness agreed to what he was referring to as being  
12 possibly involved was possibly involved in  
13 manipulating the market for securities of Callidus.

14 MR. MOORE: I'm drawing a distinction  
15 between saying someone may be possibly involved and  
16 the kind of -- the actual allegation they were  
17 involved that, given the wording of the  
18 undertaking, was what I think was being referenced.

19 But we can debate that at another time  
20 and place if you want.

21 MR. MILNE-SMITH: All right. That is  
22 fine. I'll let you make that argument.

23 Mr. Riley, subject to the answers,  
24 advisements, refusals, undertakings given,  
25 et cetera, and any additional documentation that

1 may come through in the period between now and  
2 Tuesday, those are my questions for today.

3 MR. MOORE: So shall we take a lunch  
4 break? Mr. Lascaris, I understand you have -- you  
5 are going to go next in the batting order here?

6 MR. LASCARIS: Yes. Do you need a  
7 lunch break, because I thought that is what we took  
8 around 12 o'clock?

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

10 [DISCUSSION OFF THE RECORD.]

11 -- RECESSED AT 2:00 P.M.

12 -- RESUMED AT 2:15 P.M.

13 CROSS-EXAMINATION BY MR. LASCARIS

14 (CONT'D):

15 2992 Q. So we are continuing your  
16 cross-examination today, Mr. Riley, and I would  
17 like to begin -- I have sent eight documents that  
18 were produced by Black Cube to your counsel this  
19 morning, and I am going to ask you about those  
20 documents.

21 And I would like to begin with  
22 BC002320, which is up on the screen currently, and  
23 I am pretty sure that Mr. Milne-Smith earlier today  
24 was asking you questions about this. This is a  
25 Letter of Engagement between Tamara Global Holdings

1 and B.C. Strategy UK Ltd., the owner of the Black  
2 Cube brand in certain countries; do you see that  
3 document?

4 A. I see it, but you said I may have  
5 seen this earlier today. I don't recall. Did we  
6 go through this with Mr. Milne-Smith?

7 MR. MOORE: No, we did not.

8 BY MR. LASCARIS:

9 2993 Q. You know, I'm referring -- you  
10 know what I'm talking -- my mistake. I'm referring  
11 to the email from Mr. DiPucchio which was marked up  
12 apparently with the handwriting of Mr. Glassman.

13 A. Okay.

14 2994 Q. That was the document --

15 A. That one we did go through.

16 2995 Q. Yes.

17 A. Yes.

18 2996 Q. Having said that, sir, have you  
19 seen this document before today?

20 A. I don't recall, but it is possible  
21 I saw it. I do not recall.

22 2997 Q. Can we mark this as an exhibit,  
23 please?

24 MR. MOORE: That is fine.

25 EXHIBIT NO. 9: Letter of Engagement

1                   dated September 11, 2017, between  
2                   Tamara Global Holdings and B.C.  
3                   Strategy UK Ltd.

4                   BY MR. LASCARIS:

5           2998           Q.     So I'm going to take you to  
6                   section 22 of the Letter of Engagement between  
7                   Tamara Global Holdings and B.C. Strategy UK, and  
8                   you will see there there is certain fixed payments  
9                   that are stipulated, and then there are what I will  
10                  call contingent payments that are dependent upon  
11                  success in the following section, section 23.

12                         So do you know, sir, what the total  
13                         amount paid to B.C. Strategy UK Ltd. under this  
14                         agreement was in the end ultimately?

15                         A.     I do not know.

16           2999           Q.     And you see that section 23 refers  
17                   to an Annex A?

18                         A.     Yes.

19                         MR. MOORE:   So you are referring to  
20                         BC002320, right?

21                         MR. LASCARIS:   Correct.

22                         MR. MOORE:   Okay.

23                         THE DEPONENT:   Could you just scroll  
24                         down for a minute and tell me who the signatories  
25                         to this agreement are?

1 BY MR. LASCARIS:

2 3000 Q. So it looks like Dr. Avi Yanus  
3 signed this agreement and Yossi --

4 A. Tanuri.

5 3001 Q. Tanuri, yes. So, again, you'll  
6 see that there is a reference in paragraph 23 to  
7 Annex A.

8 A. Uhm-hmm.

9 3002 Q. I am going to come back to that in  
10 a moment. I just want to draw that to your  
11 attention for the time being.

12 A. Sure.

13 MR. MOORE: Just a minute. Can I just  
14 say that my recollection is, in addition to these  
15 three pages, there is also a document that has been  
16 produced called "Terms and Conditions".

17 MR. LASCARIS: Yes. I don't have  
18 questions about those Terms and Conditions today,  
19 but that is true.

20 MR. MOORE: Okay. All right.

21 BY MR. LASCARIS:

22 3003 Q. So, again, I'm going to come back  
23 to this Annex A reference in paragraph 23. Now as  
24 I understand - and I just want to make sure I have  
25 got this correct - what happened was Catalyst

1 retained Tamara Global Holdings. Tamara Global  
2 Holdings retained Black Cube or, as it is referred  
3 to here, B.C. Strategy UK Ltd., the owner of the  
4 Black Cube brand in certain countries. And --

5 A. I'm sorry, just -- and I don't  
6 mean to interrupt your question, but you said that  
7 Catalyst had retained Yossi. I think technically  
8 Yossi's -- whatever the name of his company is, was  
9 retained by the Greenspan firm.

10 3004 Q. Okay. And ultimately, though, is  
11 it correct that payments made by Tamara to B.C.  
12 Strategy UK under this agreement were reimbursed to  
13 Tamara by Catalyst or Callidus?

14 A. Reimbursed by Greenspan, and we  
15 reimbursed Greenspan.

16 3005 Q. Right. So the ultimate --

17 A. Yes, ultimately we paid the money.

18 3006 Q. Right. Okay. Yes, now,  
19 Mr. Riley, I'm sure you know, there are many firms  
20 out there that provide corporate investigative  
21 services of the type, broadly speaking, that are  
22 provided by Tamara and Black Cube; is that fair?

23 A. I mean, I'm not an expert in the  
24 field, if there are other firms, I guess.

25 3007 Q. Okay. Well, why in particular, if

1           you know, was a decision made to hire Tamara?

2                   A.    I don't know why that decision  
3           was -- Tanuri? Did you say Tanuri?

4    3008           Q.    Tamara Global Holdings.

5                   A.    Tamara? Yes, Tamara -- Yossi  
6           Tanuri was a very close friend of Newton, and they  
7           worked together on joint projects in Israel  
8           relating to charitable matters, so there was a  
9           relationship there.

10   3009           Q.    Is it your understanding the  
11           decision to choose this particular firm was based  
12           entirely on that relationship, or would it also  
13           have been based upon the skill and proficiency of  
14           Tamara in the field in which it provides services?

15                   A.    I can't unpack that. So, I mean,  
16           it was a total package, so it was Yossi and his --  
17           what he could bring to the table.

18   3010           Q.    Okay. Let's put this document  
19           aside for now. I'm going to take you now to  
20           BC002322, and this was the document which you were  
21           discussing for some time this morning with  
22           Mr. Milne-Smith. It is an email from Mr. DiPucchio  
23           to Mr. Glassman on which you were copied, dated  
24           September 7, 2017. Again, I would like to mark  
25           this as an Exhibit.

1 MR. MOORE: Again, to be clear, it is  
2 an annotated version of that email.

3 MR. LASCARIS: Correct.

4 MR. MOORE: It appears to be dated  
5 September 11th.

6 EXHIBIT NO. 10: Email from  
7 Mr. DiPucchio to Mr. Glassman, copying  
8 Mr. Riley, dated September 7, 2017.

9 BY MR. LASCARIS:

10 3011 Q. Well, I'm looking at the "Sent"  
11 line under "Stefanie Wright" at the top of the  
12 first page.

13 A. Sorry, I think what we are  
14 pointing out is, at the top of Annex A, it says  
15 "11/9/2017" and then it has "AV" initials.

16 3012 Q. Right. Okay, but the email was  
17 sent to you and Mr. Glassman it appears on  
18 September 7th, right?

19 A. Yes.

20 3013 Q. And subsequently, apparently it  
21 was Mr. Glassman who printed this out and wrote on  
22 it and added two pages to your -- the pages. That  
23 was, as I understood your testimony this morning,  
24 apparently his handwriting?

25 A. Yes.

1           3014                   Q.    Okay.  And you see at the top of  
2                                   the first page of the email the words "Annex A -  
3                                   LOE" have been written?

4                                   A.    Yes.

5           3015                   Q.    And I take it "LOE" stands for  
6                                   Letter of Engagement?

7                                   A.    I think that seems logical to me.

8           3016                   Q.    Yes, and so is it your  
9                                   understanding that this would be the Annex A that  
10                                  was referred to in paragraph 22 of the Letter of  
11                                  Engagement we just looked at together?

12                                  A.    I also believe that is logical.

13           3017                   Q.    In the upper right-hand corner of  
14                                  each of these pages in this document, this email  
15                                  that has been printed out, it appears to be  
16                                  somebody's initials.  Do you know whose initials  
17                                  those are?

18                                  A.    Yeah, I would be speculating, but  
19                                  I think it is whoever was representing -- whoever  
20                                  was signing for Black Cube.  If you go back, what  
21                                  was his name?

22           3018                   Q.    I don't have that name at the top  
23                                  of my head, but you would be speculating --

24                                  MR. MOORE:  Well, if you go to the last  
25                                  document we looked at, the same initials appear on

1 that document, and then at the end of that  
2 document, it is signed by Avi Yanus. So if you put  
3 all that together, logic would dictate that it is  
4 Avi Yanus' initials in the upper right-hand corner.

5 THE DEPONENT: But, again, I don't know  
6 Mr. Yanus, but that would be my conclusion --

7 BY MR. LASCARIS:

8 3019 Q. Okay.

9 A. -- based on what --

10 3020 Q. Right. Now, in the left-hand  
11 column of this email, there are certain items. So  
12 what has happened here is that Mr. DiPucchio has  
13 identified various categories of information or  
14 evidence that he would hope the investigators can  
15 acquire, and they have been -- each of those items  
16 of information or evidence, there is a letter in  
17 caps in the left-hand column that apparently  
18 Mr. Glassman assigned to each item, right?

19 A. Yes.

20 3021 Q. Now, on the DiPucchio email -- and  
21 I can take you back there if you want to look at  
22 it. Well, why don't we just go there quickly. In  
23 paragraph 23 -- so we are back now at the Letter of  
24 Engagement, and you will see that in paragraph 23  
25 there are certain payments stipulated for

1 categories of items (a), (b), (c), (d), and (e)?

2 A. Yes.

3 3022 Q. So my question to you is, is it  
4 your understanding that those letters that appear  
5 in the left-hand column of the email correspond to  
6 the letters in paragraph 23 of the Letter of  
7 Engagement?

8 A. That I can't say. I mean, it is  
9 an inference, but I can't say for sure.

10 3023 Q. All right. Let's just scroll  
11 down. You may very well have the same answer for  
12 my next question, but just to cover it off. Again,  
13 in the email you will see -- if you go down to  
14 about two-thirds of the way under the heading  
15 "General - by October 31, 2017", you will see:

16 "evidence of dealings between  
17 West Face and Bruce Livesey relating  
18 to Callidus/Catalyst and any payment  
19 for services by Livesey."

20 A. Yes.

21 3024 Q. And you see that Mr. Glassman has  
22 put a "C" in caps beside that item of evidence or  
23 information, right?

24 A. Yes.

25 3025 Q. And so you don't know whether that

1 "C" corresponds to the (c) in paragraph 23 of the  
2 Letter of Engagement?

3 A. I can't say that with certainty.

4 3026 Q. All right. Do you know whether  
5 Black Cube was adjudged to have been successful in  
6 acquiring evidence of dealings between West Face  
7 and Bruce Livesey relating to Callidus/Catalyst and  
8 any --

9 A. I do not know.

10 [Court reporter intervenes for  
11 clarification.]

12 BY MR. LASCARIS:

13 3027 Q. So my question was, do you know  
14 whether Black Cube was adjudged to be successful in  
15 finding evidence of dealings between West Face and  
16 Bruce Livesey relating to Callidus/Catalyst and --

17 A. I do not.

18 3028 Q. I'm sorry, if I could finish.

19 A. Yes. I apologize.

20 3029 Q. Okay. Thank you. Any payment for  
21 services by Livesey; that was my question.

22 A. I do -- are you finished?

23 3030 Q. Yes.

24 A. I do not know.

25 3031 Q. Would you expect that Mr. Glassman

1 would know the answer to that question?

2 A. You will have to ask Mr. Glassman.

3 3032 Q. Are you in a position to say  
4 whether Black Cube was adjudged to be successful,  
5 you know, for purposes of the Letter of Engagement,  
6 in acquiring any of the evidence particularized in  
7 Mr. DiPucchio's email?

8 A. I do not know.

9 3033 Q. Let's go to the third document.  
10 This is BC00168.

11 A. Who is the author of this  
12 document, please?

13 3034 Q. I was going to ask you that  
14 question, Mr. Riley. I have not been able to glean  
15 from the document who the author is. Evidently,  
16 you don't know.

17 MR. MOORE: What does Black Cube say in  
18 their affidavit of documents who -- do they  
19 describe would the author is?

20 MR. LASCARIS: I can't tell you off the  
21 top of my head as I sit here.

22 MR. MOORE: All right.

23 BY MR. LASCARIS:

24 3035 Q. But in any event, it appears  
25 Mr. Riley doesn't know the answer to that question.

1                   A.    The only thing that I would say --  
2                   and this is not on any kind of expertise, but there  
3                   is an odd phrasing by saying:

4                                "There is an unofficial  
5                   Canadian ('Bay street', as the  
6                   Toronto 'Wall street') entity called  
7                   'the wolf pack' [...]"

8                   It is an odd way to phrase something.

9    3036            Q.    All right.

10                   MR. MOORE:   Subject to checking the  
11                   affidavit of documents, my guess is -- you know  
12                   what?  I shouldn't guess.  I shouldn't guess.

13                   MR. LASCARIS:  We'll do that.  We'll  
14                   check and see.

15                   MR. MOORE:   All right.

16                   BY MR. LASCARIS:

17    3037            Q.    And presumably you don't know  
18                   either, sir, when this document was generated?

19                   A.    No.  No.

20    3038            Q.    All right.

21                   A.    Could you scroll down?  Is this  
22                   the whole of the document?

23    3039            Q.    Well, it is one page.  Okay.  I  
24                   take it you still don't know who the author is  
25                   and/or the date on which it was generated, the

1 document?

2 A. I -- no, I do not.

3 3040 Q. Okay. Let's go to the next  
4 document. We are going to finish sooner than I had  
5 anticipated. BC000447.

6 A. Is this part of the same document,  
7 or is this a different document.

8 MR. MOORE: No, it looks like to be a  
9 different document.

10 BY MR. LASCARIS:

11 3041 Q. This has been produced as a  
12 separate document.

13 A. Okay.

14 3042 Q. So have you seen this document  
15 before, sir? And if you want me to scroll through  
16 it, I can do that.

17 A. No. You can scroll down, but  
18 there is nothing --

19 [Witness reviews document.]

20 There is a lot of typos in here.

21 3043 Q. So that is it. I believe that is  
22 the end of the document -- oh, no, there is more.  
23 So does this refresh your recollection at all,  
24 Mr. Riley?

25 A. No, I don't recognize this

1 document.

2 3044 Q. Okay. Let's go to the next one.

3 A. What is -- anyways.

4 3045 Q. Sorry, you had a question?

5 A. Well, what is -- sorry, scroll way  
6 up. What does "RFI" mean? Do you have any idea?

7 3046 Q. I would be guessing.

8 A. Okay. I just -- I was trying to  
9 understand, but anyways, I don't recognize this  
10 document.

11 3047 Q. Okay. I am going to take you to  
12 the next document, and this would be BC000679. It  
13 is possible that Mr. Milne-Smith took you to this  
14 document today, but I'm not --

15 A. Yes, he did. He did.

16 3048 Q. Yes. So just refresh my  
17 recollection, sir. Was this a document you had  
18 seen before Mr. Milne-Smith took you to the  
19 document?

20 A. Not to my recollection. I think  
21 whatever I said to Mr. Milne-Smith I repeat to you.  
22 And I think I said that not to my recollection have  
23 I ever seen this before, before today.

24 3049 Q. The next document, BC000919. This  
25 is another document entitled the same as the prior

1 document, "Camouflage", but apparently generated  
2 later in time, in November --

3 A. Did we see this this morning?

4 MR. MOORE: No, we didn't.

5 THE DEPONENT: We didn't look at this  
6 one this morning.

7 BY MR. LASCARIS:

8 3050 Q. Right. So I take it that you have  
9 not seen this document either ever -- prior to  
10 today?

11 A. Can you scroll down?

12 3051 Q. Sure.

13 A. Just so I -- it is a thick  
14 document from what I can see.

15 3052 Q. Yes. It is 197 pages.

16 A. Is this an iteration of the same  
17 document?

18 3053 Q. Well, the dates are different, so  
19 presumably this document incorporates investigative  
20 findings that weren't available when the prior  
21 document was generated.

22 A. I have not seen this document, to  
23 my knowledge.

24 3054 Q. Okay. Now, I just want to take  
25 you to one particular page of this document.

1           Sorry, bear with me for one second. Sorry, it is  
2           scrolling very slowly, unfortunately. So this is  
3           page -- or it is the PDF page 169 of BC000919, and  
4           you can see that here there is a profile of my  
5           client, Mr. Livesey, and under "Relation to the  
6           Case", it states:

7                               "Livesey is an investigative  
8                               journalist accused of being bribed  
9                               and providing false information of  
10                              the Catalyst Capital Group."

11                             Do you see that?

12                             A. I do.

13   3055                     Q. Sir, you understand that  
14           Mr. Livesey is an investigative journalist with  
15           decades of experience?

16                             MR. MOORE: Well --

17                             BY MR. LASCARIS:

18   3056                     Q. He is a career journalist --

19                             A. He has had a career of some years.

20   3057                     Q. And would you agree with me that  
21           an accusation that Mr. Livesey took a bribe to  
22           write a false article about Catalyst or any other  
23           subject would be potentially highly damaging to  
24           Mr. Livesey's career and his standing in the  
25           journalistic community?

1 MR. KARABUS: Dimitri, I'm sorry to  
2 interrupt. It is Matthew Karabus. David's  
3 computer has frozen again.

4 MR. LASCARIS: Okay.

5 MR. KARABUS: So just give us a moment.

6 MR. LASCARIS: Sure.

7 [DISCUSSION OFF THE RECORD.]

8 BY MR. LASCARIS:

9 3058 Q. So, again, my question to you,  
10 sir, was -- you know, I just pointed out to you  
11 that in this document, BC000919, on PDF page 169,  
12 there is an accusation -- or it is stated that  
13 there is an accusation that Mr. Livesey was bribed  
14 to provide false information relating to the  
15 Catalyst Capital Group, right?

16 A. I see that.

17 3059 Q. And my question to you is, would  
18 you agree with me that that accusation,  
19 particularly if it became publicly known, could  
20 potentially be highly damaging to Mr. Livesey's  
21 career and his reputation within the journalistic  
22 community?

23 A. I think there is a different  
24 response to that than the question you have asked.  
25 And I am not trying to duck the question, so let me

1 do it into two parts.

2 Mr. Livesey has in effect two principal  
3 aspects to his life. One is the so-called  
4 investigative journalist, but the other is where he  
5 does due diligence work, and I forget the name of  
6 his current company, but throughout this piece, we  
7 have seen two instances where in one instance Levy  
8 said that he was ostensibly working on behalf of  
9 West Face, and then subsequently we saw something  
10 that said he was working on behalf of Voorheis.

11 So I think when you talk about it --  
12 the problem I have in answering your question  
13 directly is that I can't separate what Livesey  
14 learned in his private -- or in his investigative  
15 side, his due diligence investigative side, and his  
16 journalistic side.

17 3060 Q. Okay. I understand the  
18 distinction you are making, but, you know, one  
19 would not normally refer to this compensation to an  
20 investigator to acquire information about an  
21 investigative target as a bribe. So I think it is  
22 fair, would you not agree with me, that the use of  
23 that term suggests that what is being alleged is  
24 that Mr. Livesey, in the course of writing an  
25 article about Catalyst, which allegedly contained

1 false information, took money for the purpose of  
2 doing that, not a payment from a media  
3 organization, a legitimate media organization, but  
4 somebody actually gave him a payment to write a  
5 false article. Isn't that what is being alleged  
6 here, and the payment was made to him in his  
7 capacity as a journalist?

8 A. Well, I think -- I can't divine  
9 that from that one sentence, but we do know that  
10 Livesey was being compensated by someone, either  
11 West Face or Voorheis, while he was in the course  
12 of this story.

13 3061 Q. That is your allegation.

14 A. Well, that is the evidence we  
15 have.

16 3062 Q. Well, let's assume that what is  
17 being alleged here is that he took a bribe in his  
18 capacity as a journalist to write a false article  
19 about Catalyst. Would you --

20 MR. MOORE: Just hold on. Before you  
21 answer that question, let's get this straight.  
22 This is not a Catalyst document.

23 THE DEPONENT: Yeah.

24 MR. LASCARIS: Right.

25 MR. MOORE: This is a Black Cube

1 document, not a Catalyst document.

2 BY MR. LASCARIS:

3 3063 Q. Well, it is the allegation of  
4 Catalyst and Callidus, is it not, that Mr. Livesey  
5 took payments from West Face or Mr. Boland in  
6 order -- for the purpose of inducing him to write  
7 false and disparaging articles about Catalyst?

8 A. I think it has never been clear to  
9 me what Mr. Livesey's role was when he was writing  
10 that article.

11 3064 Q. Right. But in the Statement of  
12 Claim, sir, it is alleged, is it not, that  
13 Mr. Livesey took payments from West Face and/or  
14 Mr. Boland for the purpose of writing false and  
15 disparaging articles about Catalyst or Callidus?

16 A. And that I think was -- stemmed  
17 from what we had found with Levy at the time.

18 3065 Q. Right.

19 A. That is the basis for that I  
20 think.

21 MR. MOORE: Well, the Statement of  
22 Claim is quite a lengthy document. I don't know if  
23 there is a paragraph that makes that allegation in  
24 that form. You know, the Statement of Claim will  
25 speak for itself. It is alleged that he was hired

1 by certain people, but I don't believe the  
2 Statement of Claim mirrors the language that is  
3 contained in this page of the Black Cube document.

4 BY MR. LASCARIS:

5 3066 Q. All right. Let's park this for a  
6 moment, and maybe I'll, you know, pull up the  
7 Statement of Claim shortly so we can -- we'll take  
8 a little break, and I can find it for you, and I  
9 will ask you then, because that is, I assure you,  
10 what the allegation is in the claim.

11 So let's go now to BC001124.

12 MR. MOORE: We have it.

13 BY MR. LASCARIS:

14 3067 Q. Again, have you seen this document  
15 before today, sir?

16 A. No.

17 3068 Q. So you wouldn't know who authored  
18 it or when it was generated?

19 A. Well, I can only tell from the top  
20 that it may have been authored by Black Cube.

21 3069 Q. Right. I'm talking about the  
22 individual.

23 A. Sorry, who is the individual?

24 3070 Q. Presumably a human being actually  
25 prepared this.

1                   A.    Oh, well, then I don't know who  
2                   that was.  Sorry, sorry.  You don't believe in  
3                   artificial intelligence?

4    3071            Q.    Who knows, maybe Black Cube is --

5                   A.    We have evolved from time machines  
6                   to artificial intelligence.

7    3072            Q.    Right.  In any event, you don't  
8                   know what human being, if any, authored this?

9                   A.    No, I do not.

10   3073            Q.    Right, nor do you know when it was  
11                   generated?

12                   A.    No, I do not.  What are the -- can  
13                   you scroll down?  This is the first time I'm seeing  
14                   this, so --

15   3074            Q.    Sure.

16                   A.    What are the footnotes referring  
17                   to?

18                                [Witness reviews document.]

19                   Oh, I see.

20   3075            Q.    It refers to various --

21                   A.    These are just searches on the  
22                   internet.

23   3076            Q.    Right.

24                   A.    Okay.

25   3077            Q.    Okay.  So this is going to end

1 quickly. I'm going to take you to the last  
2 document, BC002476, and if you would like, I can  
3 scroll through this for you.

4 A. [Witness reviews document.]

5 3078 Q. Again, does this document look  
6 familiar to you? Have you seen this document prior  
7 to today?

8 A. Do you know who the author is?

9 3079 Q. No.

10 A. So there is the reference to Polar  
11 and to West Face up there, MMCAP.

12 3080 Q. So I was going to ask you if you  
13 knew who the author was and if you knew when it was  
14 generated, the documents?

15 A. Can you scroll down? Some of this  
16 information is kind of ringing a bell - for  
17 example, the chicken farmer - but I don't -- you  
18 know, where -- maybe I have seen it in something  
19 else, but I don't recall seeing this document.

20 MR. LASCARIS: Okay, so let's just take  
21 a quick break. I'm going to find that language in  
22 the Statement of Claim and come back and ask you  
23 that one question, and then we'll be done.

24 MR. MOORE: Okay.

25 MR. LASCARIS: Just give me five

1 minutes.

2 MR. MOORE: Sure.

3 MR. LASCARIS: Thanks.

4 -- RECESSED AT 2:46 P.M.

5 -- RESUMED AT 2:51 P.M.

6 BY MR. LASCARIS:

7 3081 Q. So unfortunately, Mr. Riley, I  
8 don't have the last iteration of the Statement of  
9 Claim saved on this laptop. I had a laptop issue a  
10 couple of weeks ago. What I do have saved on my  
11 laptop is the April 2019 version of the claim.

12 A. Do you have -- what was pleaded  
13 above?

14 3082 Q. Oh, let me just scroll up. So  
15 this is the beginning under the heading  
16 "Conspirators Endeavour to Publish Existence of the  
17 Complaints and Other Articles Critical of Callidus  
18 and Catalyst".

19 So you will see here it's -- now, the  
20 word "bribe" is not used, but what is alleged is  
21 that a private party, not a media organization, but  
22 either Mr. Boland and/or West Face engaged  
23 Mr. Livesey, a journalist, to write a negative  
24 story targeting Callidus, Catalyst, and their  
25 principals, and that West Face and Mr. Boland

1           agreed to compensate Mr. Livesey for his writing of  
2           a negative story.

3                   A.    And what was the date of this  
4           document?

5    3083           Q.    You mean this version of the  
6           claim?

7                   A.    This version of the claim, yes.

8    3084           Q.    April 2019.

9                   MR. MOORE:   Okay.

10                  THE DEPONENT:   Okay.   Thank you.

11                  BY MR. LASCARIS:

12    3085           Q.    So that allegation remained in the  
13           subsequent and most recent version of the pleading,  
14           and my question to you is -- now, again, what is  
15           being alleged here is that a private equity firm  
16           and one of its principals hired a journalist to  
17           write a negative story -- not a media organization,  
18           but a private equity firm and one of its principals  
19           hired a journalist to write a negative story.

20                   And my question to you is, that  
21           allegation, do you agree with me that it would have  
22           the potential to seriously damage Mr. Livesey's  
23           standing within the journalistic community?

24                   MR. MOORE:   Just a minute.   Just a  
25           minute.   How does that question arise out of the

1 purpose of this re-attendance, and that is to deal  
2 with the documents or questions over which  
3 privilege had been asserted and subsequently dealt  
4 with by Justices Boswell and McEwen? I mean, isn't  
5 that a question of law and --

6 MR. LASCARIS: That was not -- it was  
7 not my intention to go to the claim. I was  
8 focussing on the document produced by Black Cube  
9 where they used the word "bribe".

10 MR. MOORE: Okay. Well, that's why --  
11 you know, "bribe" is not referred to in the claim.  
12 It is referred to in that document.

13 MR. LASCARIS: Well, I took us to this  
14 claim because you were contesting that this had  
15 been an allegation that had been made by the  
16 Plaintiffs, and the fact that the word "bribe" is  
17 not used here I would suggest to you doesn't alter  
18 the fundamental substance of the allegation. It is  
19 an allegation that ended up in a Black Cube  
20 document that West Face and Mr. Boland paid  
21 Mr. Livesey to write an article, a negative  
22 article, about Callidus and Catalyst.

23 MR. MOORE: All right. Well, we can  
24 agree to disagree. I think the use of the word  
25 "bribe" has a somewhat different connotation. It

1 is certainly not something that is put that way in  
2 the Statement of Claim. In my view, at least. But  
3 back to your -- I think your question was would the  
4 publication of that line in the -- whatever page it  
5 is of that document you were looking at earlier,  
6 would that be -- if it was made public, be damaging  
7 to Mr. Livesey? I think that was your question?

8 MR. LASCARIS: Well, the allegation,  
9 yes, which appears there and elsewhere, not  
10 necessarily with the use of the word "bribe", but  
11 the allegation was that private parties hired a  
12 journalist to write a negative article about  
13 Catalyst.

14 MR. MOORE: Okay. If you want to put  
15 the question again to the witness would the  
16 publication of that phrase and wherever it was in  
17 that document be potentially damaging, I don't know  
18 if the witness can answer that or not.

19 THE DEPONENT: I'm not sure I have that  
20 skill set.

21 MR. MOORE: Let's go back --

22 THE DEPONENT: Sorry --

23 MR. MOORE: I'm sorry, let's not go off  
24 on to the pleading. Let's go back to where your  
25 question originated. Put the question again. I

1 may voice an objection and just have the witness  
2 answer the question.

3 MR. LASCARIS: All right. So I'm back  
4 to the --

5 MR. MOORE: Let's go back to the  
6 document. Repeat your question, and we'll deal  
7 with it that way.

8 BY MR. LASCARIS:

9 3086 Q. Okay. Let me just make sure I  
10 have got the right document up on the screen here.

11 Okay. There it is. So this is, again,  
12 BC000919, and it is PDF page 169 of the document.  
13 And you will see there that it is asserted that:

14 "Livesey is an investigative  
15 journalist accused of being bribed  
16 and providing false information of  
17 the Catalyst Capital Group Inc."

18 So my question to you, sir, is do you  
19 agree with me that that accusation, were it to  
20 become known to the public, could potentially be  
21 very damaging to Mr. Livesey's career and his  
22 standing in the journalistic community?

23 MR. MOORE: Just a minute. I'm going  
24 to object to that question, but under the rules, I  
25 can register the objection, and the witness can go

1 ahead and answer subject to that. So go ahead.

2 THE DEPONENT: My answer is perhaps,  
3 but it is also -- there are some facts in here that  
4 I don't think are apparent on this document.  
5 Livesey held himself out as a -- and I think  
6 currently, as doing due diligence for money or for  
7 compensation. So I don't know how you can separate  
8 that kind of activity that he undertakes from his  
9 investigative journalist side.

10 And I also -- what was not known to us  
11 at the time of that drafting of the pleadings was  
12 the relationship that he had with Voorheis.

13 So there is some reason to believe he  
14 had a relationship with West Face and some reason  
15 to believe he had a relationship with Voorheis for  
16 which he is being compensated for doing due  
17 diligence activities. What those activities were,  
18 I don't think we know at this time, except that he  
19 did interact with Esco, Esco Marine.

20 MR. LASCARIS: All right. No need for  
21 us to go around in circles. Thank you, sir, for  
22 your time, and I'll turn it over to Mr. Baumann.

23 THE DEPONENT: Okay. Thank you.

24 MR. MOORE: Thank you.

25 THE DEPONENT: Can we take a brief

1 pause, or do we want to go straight into Baumann?

2 MR. BAUMANN: Oh, absolutely,  
3 Mr. Riley, go ahead.

4 (DISCUSSION OFF THE RECORD.)

5 -- RECESSED AT 2:58 P.M.

6 -- RESUMED AT 3:05 P.M.

7 CROSS-EXAMINATION BY MR. BAUMANN

8 (CONT'D):

9 3087 Q. Before we jump into anything, I'm  
10 just going to talk a bit of stuff this morning.  
11 Could you tell me who you spoke with in meetings or  
12 discussions relating to JSOT, the OSC or police?

13 A. Yes, we spoke with -- primarily  
14 with Ahmed Faiz, and what is Stephen's last name?  
15 Stephen...

16 MR. MOORE: Fraser.

17 THE DEPONENT: Fraser, Stephen Fraser.

18 BY MR. BAUMANN:

19 3088 Q. Okay. And who are they both with,  
20 sir?

21 A. They are with JSOT.

22 3089 Q. Okay.

23 A. And IMET, they are both.

24 [Court Reporter intervenes for  
25 clarification.]

1                   Sorry, let me back up. There are two  
2 parts to who they are. One is that they are IMET,  
3 which is the Integrated Market Enforcement Team  
4 which is primarily an RCMP-focussed group, and they  
5 are also part of the JSOT, which is the Joint  
6 Serious Offences Task Force.

7                   So now, in their capacity, I believe  
8 their business cards read as being JSOT, but I  
9 would have to go back and look.

10   3090            Q. Mr. Riley, how many times were you  
11 allowed to meet with each one of them individuals?

12                   A. We met on several occasions, but I  
13 don't know the actual number and I don't have any  
14 notes from the meetings.

15   3091            Q. Would it be more than six?

16                   A. Probably. Probably.

17   3092            Q. So a fair amount of meetings. How  
18 long would the duration be of the meetings, a half  
19 an hour, an hour?

20                   A. Probably an hour.

21   3093            Q. At least an hour, okay. Great,  
22 that is good.

23                   Darla, if you could go to Mr. Willis'  
24 profile and workup, please. Mr. Riley, can you  
25 tell me why -- and this goes back. What brought it

1 up to me is you mentioned in a previous  
2 cross-examination that Mr. Willis will never do  
3 another story on Callidus. Can you explain to me  
4 why Andrew Willis was --

5 MR. MOORE: First of all, that is not  
6 what he said.

7 THE DEPONENT: Well, I would have to  
8 look back at what I said to answer that properly.  
9 You are referring -- do you have the actual wording  
10 from the transcript?

11 BY MR. BAUMANN:

12 3094 Q. Okay, we'll dig that out. I can't  
13 do that right now. But there was a reference to  
14 you believed -- I thought that comment was you  
15 didn't think Mr. Willis would be doing another  
16 story, but you know, we'll leave that aside.

17 The true question is, why would Black  
18 Cube do a story on a journalist? Like was he on  
19 the hit list or was --

20 A. I don't know what you mean by  
21 that. I think this is just --

22 3095 Q. Was he trying to be discredited --

23 A. Before today, I hadn't seen this  
24 document. This looks to me like just a profile of  
25 a columnist who wrote about us.

1 3096 Q. It is a Black Cube profile.

2 A. Well, it came from a Black Cube  
3 document, yes.

4 3097 Q. Okay, that's all. You have never  
5 seen it prior to this obviously.

6 MR. MOORE: Let's be clear, that is  
7 Black Cube 001196.

8 BY MR. BAUMANN:

9 3098 Q. Yes. Mr. Riley, I want to jump  
10 back to the JSOT/IMET meetings. Was Norton Rose  
11 ever there to represent you, Mr. Glassman or any  
12 companies you are involved in? Were they ever  
13 there with you or was Walied Soliman ever there?

14 A. No, no, no.

15 3099 Q. No, okay.

16 THE COURT REPORTER: I'm sorry, can you  
17 repeat that? Did you say Mr. Soliman?

18 THE DEPONENT: Walied Soliman, he the  
19 Chairman of Norton Rose.

20 BY MR. BAUMANN:

21 3100 Q. Okay, my assistant, Darla, is  
22 going to jump to the police report. Just prior to  
23 that is Mr. Karabus' email to me, and we'll see  
24 what the response was to me. Keep scrolling.

25 Okay, right there.

1                   So, Mr. Riley, when I was allowed to  
2                   question you last time, I said that the police  
3                   report that you submitted to the Black Falls RCMP  
4                   in Alberta was two years after the event. Would  
5                   you agree that that was actually just over four  
6                   years?

7                   MR. MOORE: Sorry, which document are  
8                   we referring to here?

9                   BY MR. BAUMANN:

10                  3101                Q. We are now going to flow to the  
11                   next document when Beresh's police report came out  
12                   of Edmonton.

13                   A. Okay, I'm not sure I understand  
14                   the question, Mr. Baumann.

15                  3102                Q. Oh, sorry, you -- I touched on it  
16                   in my questioning that your police complaint came  
17                   two years after the alleged event. Actually, it  
18                   was four years.

19                   A. But the two years is your wording.

20                  3103                Q. Yes, that's correct.

21                   A. Okay.

22                  3104                Q. The true number is --

23                   A. Without going back to the  
24                   document, I'll go with your four years, if you  
25                   prefer that.

1 MR. MOORE: No, let's just -- just a  
2 minute. Let us know what document you are  
3 referring to as the police complaint or, you know,  
4 what is the document by which you are measuring the  
5 timeline, the two years or four years?

6 MR. BAUMANN: Yes, Mr. Moore, Darla is  
7 going right to the Beresh complaint right now.

8 MR MOORE: Okay.

9 BY MR. BAUMANN:

10 3105 Q. It's right there. So July 10,  
11 2019, is when the police complaint went in, and it  
12 was relating to alleged conduct in '15, the spring  
13 of '15, April of '15.

14 So, Mr. Riley, I'll ask you again. Why  
15 would you bring a police complaint four years after  
16 an alleged event? Can you please explain that to  
17 me?

18 A. It was a decision made internally  
19 at Catalyst. Why we did it is I think subject to  
20 our discretion.

21 3106 Q. Was that yours and Mr. Glassman's  
22 doing?

23 A. No, I was -- I think it was  
24 primarily Rocco's determination that it was  
25 appropriate.

1 3107 Q. Rocco DiPucchio?

2 A. Yes, I believe.

3 MR. MOORE: It was a Catalyst or a  
4 Callidus decision, a corporate decision.

5 BY MR. BAUMANN:

6 3108 Q. Okay. You don't consider that  
7 uncommon, though, or strange four years after an  
8 event?

9 A. No, I do not.

10 3109 Q. No? Okay.

11 So we are going to go to the witness  
12 statement. It is right behind this document,  
13 please, Darla.

14 Mr. Riley, can you tell me why you  
15 would not sign this witness statement, which is a  
16 serious statement and should be considered serious.  
17 It is alleging fraud to the police. Can you tell  
18 me why this was not signed?

19 A. Because that was what I was asked  
20 to provide to Brian Beresh's private investigator.  
21 That is what he asked me to -- he helped us prepare  
22 it in conjunction with counsel, and I wasn't asked  
23 to sign it.

24 3110 Q. Do you believe the contents are  
25 true and correct, Mr. Riley?

1                   A.    I believe the contents were based  
2                   on the pleadings and facts that we are aware of,  
3                   and I think we were pretty careful in that.

4    3111            Q.    Mr. Riley, are you considering  
5                   signing this and re-submitting it to the police?

6                   A.    Why would we re-submit it?

7    3112            Q.    Well, if you think I'm a fraud and  
8                   you think I stole money from you, why don't you  
9                   bring it forward?

10                  A.    Well, it has been -- it is in the  
11                  hands of the RCMP, and they'll do with it what they  
12                  choose to do.

13    3113            Q.    Okay. So, Mr. Riley, would you  
14                  agree that Alken was obviously put through a  
15                  process by Callidus?

16                  A.    Through a receivership process,  
17                  yes.

18    3114            Q.    Yes.

19                  A.    Court-supervised. Through a  
20                  court-supervised process, yes.

21    3115            Q.    Would you be surprised or would  
22                  you agree that during Callidus' operating of my  
23                  business, Sinclair for Callidus incurred between  
24                  700- and \$800,000 of additional payables with no  
25                  communication with me at all? Would you be

1 surprised by that?

2 MR. MOORE: Now, just a minute. Just a  
3 minute. I mean, that question -- just give me a  
4 minute.

5 I'm not sure that that at all arises  
6 out of anything that has been produced or ordered  
7 by Justice McEwen. That sounds to me very much  
8 like something to do with the allegations in the  
9 Amended Statement of Claim that you wanted to file  
10 but were not permitted to file.

11 It also sounds to me that it parallels  
12 some allegations that I believe are contained in  
13 the Alberta proceedings before the Alberta Court of  
14 Queen's Bench, and it also sounds to me like  
15 something or a subject matter that Justice McEwen  
16 specifically said that the witness did not have to  
17 re-attend to answer.

18 R/F So on all those grounds, I object to  
19 getting into this area.

20 BY MR. BAUMANN:

21 3116 Q. Okay, I may get a similar answer  
22 for the next question.

23 Mr. Riley, would you be surprised that  
24 I have located between 15 and 20 million dollars  
25 worth of supplier payables scattered throughout the

1 country relating to Callidus-controlled  
2 receiverships whereby the payables were incurred  
3 while Callidus controlled them companies? Would  
4 that number surprise you?

5 R/F MR. MOORE: The same position.

6 BY MR. BAUMANN:

7 3117 Q. It's a simple question. Would  
8 that number surprise you?

9 R/F MR. MOORE: It is not a simple question  
10 in any way, shape or form, and it is not a proper  
11 question for the purpose of this re-attendance. So  
12 for the reasons I just articulated, and others  
13 which I won't clutter up the record with, I'm  
14 objecting to that question.

15 BY MR. BAUMANN:

16 3118 Q. Okay. Mr. Riley, as a lawyer,  
17 would you consider that a risk to the economy if  
18 there is a lending firm out there controlling many,  
19 many receiverships and incurring a lot of bills?  
20 Would that not be a risk to the economy,  
21 unsuspecting parties in good faith doing work and  
22 never getting paid?

23 MR. MOORE: I don't think that question  
24 has anything to do with this case or this  
25 re-attendance, and it is such a broad question. I

1 am going to object to the question, but Mr. Riley,  
2 if you feel you can answer it, you can answer it,  
3 but otherwise, I think it is just completely out of  
4 bounds in terms of this examination.

5 BY MR. BAUMANN:

6 3119 Q. Okay, we'll leave it at that.

7 Darla is going to go to the credit  
8 agreement, Mr. Riley, because you referenced it and  
9 you attached it to your police complaint, and we  
10 have reason to go there.

11 So, Mr. Riley, would you agree that  
12 Callidus could refuse any funding whatsoever at its  
13 sole discretion?

14 MR. MOORE: Just a minute. Let us get  
15 to the document.

16 MR. BAUMANN: Okay.

17 MR. MOORE: Is this the document that  
18 is Exhibit A to the affidavit, your affidavit of  
19 June 25, 2018, I assume in Alberta?

20 BY MR. BAUMANN:

21 3120 Q. This document my assistant pulled  
22 out of Mr. Riley's police complaint.

23 A. But this is from your affidavit,  
24 right? If we could go to the top of the document,  
25 please?

1 3121 Q. It is Callidus' loan agreement.

2 A. But this is taken from your  
3 affidavit, correct?

4 3122 Q. Yeah -- well, actually, it was  
5 taken by Callidus and put into your police  
6 complaint.

7 A. No, no, scroll down. Scroll down,  
8 please -- or scroll up to the top. This document  
9 is Exhibit A referred to in the affidavit of Kevin  
10 Baumann sworn the 25th day of July, 2015.

11 MR. MOORE: So, Mr. Baumann, as far as  
12 I can see, the fact of the police complaint was  
13 something that was deemed to be an appropriate  
14 question and we produced the document. I'll see  
15 where you are going with this, but if it is the  
16 first of a series of questions that are going to  
17 try to litigate or re-litigate or debate the  
18 meaning, application, et cetera, of this credit  
19 agreement, in my view that is not what this witness  
20 was ordered to answer.

21 So like let's have your next question.  
22 We have identified the document as something that  
23 was attached to one of your affidavits in the  
24 Alberta courts. So what is the question that you  
25 have --

1 MR. BAUMANN: No, ask your colleague,  
2 Mr. Karabus. It came in the disclosure to me  
3 relating to the police report from Mr. Riley.

4 MR. MOORE: Okay, so what is your  
5 question?

6 BY MR. BAUMANN:

7 3123 Q. Would you agree that Callidus  
8 could withhold funds for any reason whatsoever at  
9 its sole discretion?

10 R/F MR. MOORE: Well, don't answer that  
11 question. That is completely parallel with what  
12 has been litigated or you are attempting to  
13 litigate in the Alberta Queen's Bench in which you  
14 challenged by various ways and means, so far as I  
15 can tell without any success whatsoever, before the  
16 courts in Alberta about the receivership and  
17 various other issues in connection with your loan  
18 in Alberta.

19 MR. BAUMANN: Don't give me that crap,  
20 Mr. Moore. We haven't even started, neither have  
21 all the other borrowers.

22 I have a question for you, Mr. Riley.

23 MR. MOORE: You know what, Mr. Baumann,  
24 if you are going to --

25 MR. BAUMANN: If --

1 MR. MOORE: Hold on, just a minute.  
2 You are entitled to ask your questions.

3 MR. BAUMANN: What do you mean when  
4 you --

5 MR. MOORE: Just a minute. Just a  
6 minute. Just a minute. You are entitled to ask  
7 your questions, and I am entitled to object if I  
8 think it is appropriate to object.

9 MR. BAUMANN: Well, don't --

10 MR. MOORE: Just a minute. What I  
11 don't have to do is sit here and listen to you talk  
12 like that. So if you keep that kind of language  
13 up, this examination is going to be over very  
14 quickly. Now, we are probably going to be over  
15 very quickly anyway if we can give any credence to  
16 what you said earlier that you would be no more  
17 than 20 minutes, but please don't clutter the  
18 record with your interjections and conclusions  
19 along those lines because it is not appropriate.

20 What is your next question?

21 BY MR. BAUMANN:

22 3124 Q. Mr. Riley, is it just sheer  
23 coincidence that the majority, if in fact not all,  
24 of the borrowers in this claim are saying that  
25 Callidus withheld funds at their sole discretion

1 and abused the sole discretion clause? Are they  
2 not saying that?

3 R/F MR. MOORE: We are not litigating the  
4 guarantee actions in this proceeding, so I object  
5 to that question.

6 BY MR. BAUMANN:

7 3125 Q. The guarantee action is why this  
8 action is started, sir.

9 Okay, we'll carry on.

10 Mr. Riley, you are a lawyer. Have you  
11 ever researched the sole discretion clause? Have  
12 you ever researched precedent in Canada relating to  
13 the abuse of the sole discretion clause? Have you  
14 ever done that?

15 A. You are asking two questions.  
16 Have I looked at it? Probably. Do I recall what  
17 the conclusion was? No.

18 3126 Q. You should. We are just about  
19 done. We have a couple more questions, Mr. Moore,  
20 and you can get out of there.

21 Mr. Riley, would you agree that when a  
22 company's relationships with its suppliers and  
23 customers are strained, whether that company be  
24 Alken or Callidus or any company, when them  
25 relationships are strained and they are destroyed,

1 would you agree that that would affect the value of  
2 them companies?

3 MR. MOORE: Well, you know, it would be  
4 easier to let the witness -- that question has got  
5 nothing to do with this re-examination or  
6 re-attendance. It has got nothing to do with the  
7 order of Justice McEwen. It has got nothing to do  
8 with any proper question, but it is easier to  
9 just -- Mr. Riley, can you answer that question?

10 THE DEPONENT: Would you ask the  
11 question -- Deana, could you read the question  
12 back, possibly?

13 BY MR. BAUMANN:

14 3127 Q. Mr. Riley, if a company's  
15 relationships with its suppliers and its customers  
16 were destroyed, would it not affect that company's  
17 value?

18 MR. MOORE: Okay, I am going to object  
19 to the question but, Mr. Riley, go ahead and answer  
20 if you can.

21 THE DEPONENT: I'm not sure I can  
22 answer that question. It depends on -- there is  
23 all sorts -- you want me to conclude -- that is not  
24 a question. That is a conclusion on your part.  
25 And I am not trying to be argumentative, Mr.

1           Baumann. I am trying to be responsive.

2                         In any insolvency situation, okay,  
3           there is always some impact on the supplier where  
4           in some cases they are preserved and in some cases  
5           they are not. As you are aware of in insolvency  
6           cases, there are classes of creditors that are  
7           absolutely necessary to the business and others  
8           that are not, and that is part of the process.

9                         And the people that chose to extend  
10          credit on an unsecured basis rank lower than people  
11          who chose to advance credit on a secured basis.

12                         So your question is a conclusion that  
13          you want me to reach that I can't reach for you.

14                         BY MR. BAUMANN:

15          3128                 Q. I guess Mr. Dalton can give you a  
16          report on that one.

17                         So, Mr. Riley, I seen this morning Mr.  
18          Glassman's emails between Mr. Guy. So on that  
19          date, a mere two months prior to the filing of this  
20          Wolfpack claim, Mr. Glassman obviously had no faith  
21          or confidence in the evidence.

22                         MR. MOORE: Well, what is the question?  
23          What is the question?

24                         BY MR. BAUMANN:

25          3129                 Q. So he highly questioned it;

1 correct?

2 A. He questioned what Snowdy said  
3 based on not getting a particular document. But I  
4 think your premise, as I'm understanding it, is  
5 that everything we did was premised on the  
6 Snowdy/Danny Guy. I think my evidence this morning  
7 was it was quite the contrary. We were looking for  
8 subsequent proof, and we got that from Levy and to  
9 a lesser extent Levitt, and we were doing it based  
10 on evidence that we had seen. Remember, this is a  
11 conspiracy case, so we can only go on the stuff  
12 that we can find in our process.

13 3130 Q. What was the Cadbury moment that  
14 made you guys decide to bring this --

15 A. Sorry --

16 MR. MOORE: What is that?

17 BY MR. BAUMANN:

18 3131 Q. Because you weren't going there --  
19 you guys were not there.

20 R/F MR. MOORE: Don't answer the question.

21 The Cadbury moment? Don't answer the question.

22 THE DEPONENT: What is a Cadbury  
23 moment?

24 MR. MOORE: Don't answer the question.

25 BY MR. BAUMANN:

1 3132 Q. What was the point where you  
2 determined we are filing this claim, that we have  
3 enough evidence AND we are not wasting everybody's  
4 time and resources?

5 R/F MR. MOORE: Don't answer the question.

6 BY MR. BAUMANN:

7 3133 Q. What was the determining factor?  
8 Going by Brian Greenspan's email and Glassman's own  
9 text, he wasn't there two months prior to it. What  
10 was the changing factor? What was it?

11 R/F MR. MOORE: Just a moment. We are not  
12 getting into that kind of debate with you. It is  
13 not a proper question. I'm instructing the witness  
14 not to answer the question.

15 What is your next question?

16 MR. BAUMANN: It should be a proper  
17 question. This is a claim --

18 MR. MOORE: What is your next question?

19 [Court Reporter intervenes for  
20 clarification due to cross-talk and  
21 audio issues.]

22 BY MR. BAUMANN:

23 3134 Q. To finish off, Mr. Riley, did you  
24 ever look at the fundamentals of Callidus' business  
25 to try and say could this be us internally instead

1 of it being everyone else's fault? Did you think  
2 to maybe go down to the accountant or accounting  
3 department to see what the state of the company  
4 was?

5 MR. MOORE: You know, that is -- just a  
6 minute.

7 MR. BAUMANN: All these parties did not  
8 wreck your company. It was done. It was done  
9 before the claim was brought.

10 MR. MOORE: The allegations in this  
11 case are not predicated upon the allegation that  
12 all of the difficulties of Callidus and all of the  
13 problems with the loans are all the fault of  
14 everyone else. That is not the allegation we have  
15 made in this case, and I am not going to get into a  
16 big long debate about that with you.

17 R/F In my view, that is not a proper  
18 question arising out of Mr. Riley's re-attendance.

19 BY MR. BAUMANN:

20 3135 Q. So was the big determining factor  
21 that, hey, we are losing our ability to raise more  
22 money and more funds and continue to play this?

23 R/F MR. MOORE: Don't answer that question.

24 MR. BAUMANN: Thank you for your time,  
25 and I surely thank Mr. Dalton. He was about the

1           only honest one I have seen in this mess so far.

2                   Thank you.

3                   MR. MOORE: Thank you.

4                   So I think we stand adjourned until  
5 Tuesday at 10:00 o'clock.

6                           [Discussion Off the Record.]

7

8           -- Adjourned at 3:27 p.m.

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1 REPORTER'S CERTIFICATE

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

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

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

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

16  
17  
18 Dated this 23rd day of April, 2021.

19  
20 

21  
22 \_\_\_\_\_  
23 NEESONS, A VERITEXT COMPANY

24 PER: DEANA SANTEDICOLA, RPR, CRR, CSR  
25

# Catalyst v West Face et al.

Philip Panet  
on Tuesday, December 8, 2020



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

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1 facility, a central app of some description,  
2 whereby information would be retained about  
3 contacts with third parties, for example?

4 U/A MR. MILNE-SMITH: Counsel, we'll take  
5 that under advisement, but I can tell you,  
6 certainly based on my technical knowledge, this is  
7 almost certainly just an internal Microsoft sort of  
8 gobbledegook spit out by the computer system. It  
9 doesn't refer to any substantive thing that exists  
10 in real life, but I'll take that under advisement  
11 to confirm.

12 THE DEPONENT: Mr. Moore, before we go  
13 on, can I correct the record for something I said  
14 before? Because I partially answered a question  
15 that I am worried the record is not going to be  
16 accurate.

17 BY MR. MOORE:

18 87 Q. Go ahead.

19 A. Just it is a very small thing.  
20 You had asked me -- you listed out a variety of  
21 people.

22 88 Q. Yes.

23 A. And you were asking if I knew  
24 them, and I think I answered one that I have met,  
25 and I didn't give a complete answer because I don't

1 want the record to be wrong. I had said that I had  
2 met Mr. Voorheis. I meant that I had met him,  
3 after the current litigation was initiated, for ten  
4 seconds. In the underground, I introduced myself  
5 to him, and that is it. I have never talked to him  
6 before or after. So, sorry, I just didn't want to  
7 have the record say that I had met him and leave it  
8 at that. So sorry to interrupt you.

9 89 Q. All right. Mr. Milne-Smith has  
10 referred to the Veritas case, and you are familiar  
11 with that litigation, right?

12 A. Yes. This is the claim that was  
13 initiated in July of 2015, I think.

14 90 Q. And that case involves, among  
15 other things, allegations with respect to reports  
16 and statements. I am not going to -- it is not  
17 meant to be a loaded question in terms of securing  
18 an admission regarding the substance of the case,  
19 but it relates to claims by my clients that West  
20 Face defamed Callidus and/or Catalyst with respect  
21 to certain issues surrounding their businesses, if  
22 I could put it in those terms; fair?

23 A. That is my understanding of the  
24 allegation.

25 91 Q. And that was also a live issue in

1 the motion that was heard by Justice Glustein in  
2 the spring of 2015; do you recall that?

3 A. No, that is not correct.

4 92 Q. Well, didn't Mr. Griffin file a  
5 lengthy affidavit in that proceeding in which he  
6 referred to various issues from West Face's  
7 standpoint regarding what West Face perceived to be  
8 inaccuracies in Callidus's continuous disclosure?

9 A. So maybe I am misunderstanding  
10 your question, and I apologize for that. The  
11 Veritas action was initiated in July. I think it  
12 is July of 2015. That was about a month after  
13 Justice Glustein rendered his decision in the  
14 interlocutory proceeding. So at the time of that  
15 Glustein motion, the Veritas action had not been  
16 initiated, and we were not aware of Callidus -- or,  
17 I guess, Callidus or Catalyst's plans in respect to  
18 that action.

19 93 Q. I understand, but issues had been  
20 raised in the proceedings before Justice Glustein  
21 to the effect that West Face was saying  
22 inappropriate things about Callidus and  
23 Mr. Griffin's affidavit of March, I believe, 2015,  
24 had a very lengthy section detailing, you know,  
25 what West Face said were its concerns and internal

1 research and the reasons for them, et cetera. Do  
2 you remember that?

3 A. Yeah, I don't think that is a  
4 correct description of what happened, though. So  
5 in January, right -- so this is some six weeks  
6 after I started, January 2015, there was an  
7 interlocutory proceeding that was initiated -- I  
8 think it was about January 15th in the Moyse  
9 proceeding, okay?

10 And so in the Moyse proceeding, you'll  
11 recall there were these allegations that Mr. Moyse  
12 had given confidential information to West Face.  
13 So Catalyst had amended the claim in October 2014,  
14 I think. So it was initially a claim that  
15 Mr. Moyse had violated the terms of employment  
16 agreement. So, you know, a garden variety  
17 employment dispute perhaps. Maybe your client  
18 wouldn't agree, but something along those lines.

19 It was significantly ramped up in about  
20 October of 2015. I can't remember the timing, but  
21 I'm assuming it is after the closing of the Wind  
22 deal, to allege that Mr. Moyse provided  
23 confidential information about Wind, and then it  
24 was ramped up yet again in December, late December  
25 of 2014, with an allegation about the constructive

1 trust and so on.

2 And then so in mid-January there was an  
3 interlocutory proceeding that was perhaps, I would  
4 say, primarily directed at interfering with our  
5 ability to manage the Wind position, but as part of  
6 that interlocutory proceeding, my recollection was  
7 that there was an allegation that in addition to  
8 passing confidential information about the Wind  
9 transaction that Mr. Moyse passed confidential  
10 information about Callidus, and that was the  
11 allegation that we were responding to.

12 So Mr. Griffin, in the affidavit that  
13 he did -- I think it was early March of 2015 --  
14 provided information exactly about how he had done  
15 the research on Callidus and what the sources were,  
16 where it came from and, you know, tried to  
17 exhaustively demonstrate that all the information  
18 had come from public sources and did not come from  
19 Mr. Moyse.

20 94 Q. And that was -- there was a  
21 lengthy section in that affidavit in which  
22 Mr. Griffin went on about issues that West Face  
23 believed existed regarding Callidus and its  
24 business; correct?

25 A. That is not --

1           95                   Q.    Listed a large number of loans in  
2                                    which he said they were subject to signs of  
3                                    impairment and had a very lengthy set of exhibits  
4                                    about where that information came from and  
5                                    ultimately that was followed by the Veritas  
6                                    defamation action; correct?

7                                    A.    So my recollection of the  
8                                    affidavit, okay -- and I haven't reviewed it  
9                                    recently. My recollection is that it was  
10                                    responding to the allegation that Mr. Moyses had  
11                                    provided information about Callidus, and so it was  
12                                    sourcing -- it was explaining where we got the  
13                                    information from and basically demonstrating that  
14                                    it came from public sources, from searches of --  
15                                    different litigation searches, from searches of  
16                                    public records, things like that, and explaining  
17                                    it.

18                                    And in the context of it, I think  
19                                    Mr. Griffin's affidavit included the deck, the  
20                                    research deck, and so he used that as a basis to  
21                                    outline how he sourced each of the pieces of  
22                                    information.

23           96                    Q.    And that material contained a  
24                                    large number of negative conclusions about  
25                                    Callidus; correct?

1                   A.     Sorry, Mr. Griffin's affidavit  
2                   included negative -- sorry, let me back up.  You  
3                   are asking whether Mr. Griffin's affidavit included  
4                   negative information about Callidus?

5     97                   Q.     Yes.

6                   A.     Yes, it did, because it included  
7                   the deck, and the deck --

8     98                   Q.     All right.  And the context was  
9                   that at that point in time West Face had taken a  
10                  short position in Callidus; correct?

11                  A.     Yes, there was a short position.  
12                  I can't remember exactly when it was initiated.  It  
13                  would have been in the fall of 2014, and it was  
14                  taken off in about April of 2015.  So during that  
15                  period, there was a short position.

16     99                  Q.     And that led to the Veritas action  
17                  in which my clients contend that some of the  
18                  information being circulated about it, West Face's  
19                  report, et cetera, were defamatory; correct?  I am  
20                  summarizing.  I am not getting into the whole nine  
21                  yards of it, but that was then the subject of the  
22                  Veritas lawsuit; correct?

23                  A.     The deck was the subject of the  
24                  Veritas lawsuit, but can I -- I just want to make  
25                  clear one thing here is, you know, if the

1 suggestion is that putting the information in  
2 Mr. Griffin's affidavit was somehow indirectly  
3 harmful to Callidus, you need to recall -- and  
4 Mr. Milne-Smith --

5 100 Q. I'm not suggesting -- sir, don't  
6 worry what I am suggesting. I have got some  
7 questions, okay? Don't worry about is there some  
8 hidden suggestion or agenda or anything else.

9 A. Okay, but I would just like to  
10 finish my answer.

11 101 Q. All right. Well, it is not  
12 responsive to any question I have asked is why I'm  
13 interjecting, but you go ahead and say whatever you  
14 think you need to say.

15 A. I was just going to say that I  
16 believe Mr. Milne-Smith made an offer to  
17 Mr. DiPucchio to withdraw the affidavit if  
18 Mr. DiPucchio withdrew Callidus's allegation that  
19 Mr. Milne-Smith had -- sorry, Mr. Moyse had passed  
20 information about Callidus to us and that was never  
21 accepted.

22 102 Q. All right. So shortly after that,  
23 the Veritas litigation starts, and Callidus is  
24 taking issue in that litigation with several things  
25 that West Face had said or had to say about its

1 business; correct? In general terms. It is not a  
2 trick question about a --

3 A. No, no, fair enough. That is a  
4 fair summary of the allegations.

5 103 Q. All right. So at that juncture,  
6 West Face had its own views about how and why  
7 Callidus's business had some difficulties and  
8 alleged that the loan losses weren't being taken  
9 sufficiently, that it was over-optimistic in terms  
10 of growth. There was a series of things in that  
11 material, I am not going to go through it all, and  
12 Callidus had a very different view; fair?

13 A. Yes, that is fair.

14 104 Q. All right. And in that context,  
15 would you agree with me that it would be beneficial  
16 to West Face if Callidus's business had ongoing  
17 difficulties and ran into financial problems? That  
18 would be a favourable event or events for the  
19 purposes of West Face's position in that Veritas  
20 litigation; do you agree?

21 A. So you are not -- okay. So just  
22 to be clear, it doesn't sound like you are  
23 referring to the short position, which had been  
24 taken off by the time --

25 105 Q. I am not referring to the short

1 position. I am just --

2 A. Okay. No, no, I just want to make  
3 sure I understand. So for the purpose -- I guess  
4 the response would be that, you know, if the things  
5 that we had anticipated in our research -- that we  
6 anticipated about Callidus, if those had actually  
7 been realized, then it would be -- it would prove  
8 the thesis right, and it would be helpful for the  
9 defence of the Veritas litigation.

10 106 Q. So, for example, it would be  
11 the -- thank you. So it would be in the interests,  
12 in that context, of West Face's position if, for  
13 example, Callidus was not able to grow its loan  
14 book at the predicted rate? That would be a  
15 beneficial fact for West Face in the Veritas  
16 litigation; correct?

17 A. I mean, I guess to the extent it  
18 validated the thesis, to the extent the thesis was  
19 proven to be correct, it would be helpful to our  
20 position in the Veritas litigation.

21 107 Q. So is that a yes?

22 A. I guess so, yeah.

23 108 Q. Yeah, I guess so. I guess so.  
24 Thank you. And in general terms, Callidus -- or  
25 sorry, West Face was saying, from our standpoint,

1 for a bunch of reasons, the stock price of Callidus  
2 is overvalued. The market hasn't properly  
3 understood or recognized the risks and problems  
4 with this new business, relatively new public  
5 issuer. The stock price is overvalued. That was  
6 one of the theses that was out there that Callidus  
7 took exception to; correct?

8 A. Yes, the thesis was that the --  
9 yeah, that the stock price was overvalued.

10 109 Q. And in defending itself from  
11 Callidus's contention that West Face was defaming  
12 it by making such allegations, it would be  
13 beneficial to West Face if the stock price of  
14 Callidus cratered over a period of time? That  
15 would be a beneficial fact to West Face in  
16 defending that lawsuit; correct?

17 A. I guess, as I said before, it  
18 would be a validation of the thesis that we had the  
19 stock price was overvalued so --

20 110 Q. No, this is a different question.  
21 I'm asking about the stock price, not the growth in  
22 the loan book. That would be a beneficial thing.  
23 It is not much of a guess, is it? That would be  
24 beneficial to West Face if that happened, isn't  
25 that right?

1                   A.    Well, I guess at some level it  
2                   would depend why it happened, right?  So, you know,  
3                   if -- you know, if Callidus got hit by a meteor,  
4                   and the whole company disappeared, it wouldn't be a  
5                   validation of the thesis, but the stock price would  
6                   still go to zero.  To the extent the stock price  
7                   went to zero for reasons that were linked to the  
8                   thesis then reflected in the deck, then it would be  
9                   a validation of the thesis, and it would help us in  
10                  the defence of the Veritas litigation.

11   111            Q.    Yes.  Thank you.  Well, we know  
12                  there was no meteorite that hit Callidus, right?

13                  A.    No.  I mean, I think what happened  
14                  over time was the realization of the things that we  
15                  pointed into the thesis, more I think than we even  
16                  expected.  I mean, the loan losses were the thing.  
17                  You have read the thesis -- sorry, you have read  
18                  the deck.  The deck outlined concerns with a number  
19                  of the loans, that they ultimately had significant  
20                  risks attached to them, and over a period of time,  
21                  those loan losses over the next couple of years  
22                  kept hitting the company.

23   112            Q.    And if the company was not able to  
24                  grow its book by adding new loans to its portfolio  
25                  that were profitable, that would be a beneficial

1 thing for the position of West Face; isn't that  
2 true?

3 A. See, this is the thing that I  
4 think --

5 113 Q. If you need to explain, or you  
6 don't understand the answer, go ahead, but can I  
7 have an answer to that question first?

8 A. Sorry, can you repeat the  
9 question?

10 114 Q. If it turned out that Callidus was  
11 not able to grow its loan book and couldn't replace  
12 expiring loans or loans that might have difficulty  
13 with positive loans and profitable loans, that  
14 would be a beneficial thing for West Face in its  
15 defence of the Veritas case; isn't that right?

16 A. I guess so, but I kind of need to  
17 provide an explanation here, which is my sense of  
18 it is the size of the loan losses were so  
19 significant that they were the things that  
20 significantly impaired the company rather than the  
21 growth of the loan book. I mean, the growth of the  
22 loan book was important, I guess, to show the  
23 company was becoming bigger, but the size of the  
24 loan losses dwarfed -- was -- my understanding was  
25 the size of the loan losses dwarfed other things

1           that were going on in the company, you know, that  
2           led up to --

3       115                   Q.     Whether they dwarfed them or  
4           not -- sorry, I don't mean to interrupt. Let me  
5           know when you are finished.

6                   A.     I was going to say that just led  
7           up to -- I think there was that huge losses related  
8           to the Horizontal Well Drillers loan that had a  
9           significant, meaningful, large impact on the book  
10          value of the company.

11       116                   Q.     And absent other loans in an  
12           expanded loan book that were profitable in  
13           generating good returns, absent such other loans,  
14           the financial results would be that much worse;  
15           correct? It is not a big guess.

16                   A.     Correct.

17       117                   Q.     It is not rocket science. Isn't  
18           that correct?

19                   A.     I answered. I said yes.

20       118                   Q.     All right. Thank you. So when  
21           did West Face first learn that there were some  
22           guarantors out there who were at odds with  
23           Callidus? When did that first happen, to your best  
24           recollection?

25                   A.     So I don't know the answer to that



1 was being sued by -- at least my understanding of  
2 this, he was being sued by Callidus. I think I  
3 remember the claim. I think it was a claim against  
4 Opus Resources and against him and I think -- was  
5 it Gary Smith and Mr. Molyneux? But vis-à-vis  
6 Mr. Levitt, he was in litigation with a common  
7 party on issues that were relevant.

8 So, for example, in terms of the  
9 research that we did that was the subject of  
10 Mr. Griffin's affidavit, you know, it was  
11 understanding the nature of what was going on at  
12 Callidus.

13 BY MR. MOORE:

14 133 Q. Yes. So do you say as a factual  
15 matter that the common interest was just, like,  
16 sharing information, comparing notes about the  
17 company; is that what the interest was according to  
18 you or according to your understanding?

19 A. Well, sorry, defending litigation  
20 against a common party where the nature, for  
21 example, of the loans were relevant to us, and they  
22 were clearly relevant to Mr. Levitt.

23 134 Q. Well, do you say that that common  
24 interest extends or extended to assisting -- we'll  
25 get to this in due course, to assisting Mr. Levitt

1 in filing complaints alleging fraud with the  
2 Ontario Securities Commission? Was that falling  
3 within the common interest, according to your  
4 understanding of the facts?

5 A. No. And I didn't know that  
6 Mr. Levitt was filing a whistleblower report.

7 135 Q. Really. We'll get to what you  
8 knew or didn't know in a minute -- or a few  
9 minutes. Did it extend -- the common interest, to  
10 your understanding, did it extend to providing  
11 assistance to someone like Mr. Levitt in filing  
12 complaints alleging criminal wrongdoing with the  
13 police? Was that part of the common interest  
14 according to your understanding?

15 A. No.

16 136 Q. Did it extend to assisting  
17 Mr. Levitt or others similarly situated to file  
18 whistleblower complaints in the United States? Was  
19 that part of the common interest?

20 A. No.

21 137 Q. Did it assist -- when did you  
22 first hear of Mr. Anderson? We'll get back to  
23 these details, and it is not a memory contest. But  
24 when do you first recall hearing of the name Nathan  
25 Anderson?

1           A.    I think that was significantly  
2           later.  I don't remember dates for Mr. Anderson,  
3           but that was much --

4   138           Q.    Sometime later on.  Sometime later  
5           on.  All right.

6           A.    I don't know, like a year-plus  
7           later, but I am -- I just don't -- I don't --

8   139           Q.    All right.  But ultimately his  
9           name came to your attention, and you came to  
10          understand who he was, I take it; is that right?

11          A.    Yes.

12   140           Q.    And did you come to understand  
13          that Mr. Anderson was an individual in the United  
14          States who was interested in short-selling?  My  
15          description.  I just don't -- does that --

16          A.    I had no knowledge that  
17          Mr. Anderson was involved in short-selling.  So we  
18          are kind of jumping time periods a fair bit here,  
19          but for Mr. Anderson, my knowledge about him was  
20          based on -- I think Mr. Boland referred him to me.  
21          I can't remember exactly, but my knowledge of  
22          Mr. Anderson was limited to what Mr. Boland had  
23          told me and to looking at his website.  They had a  
24          different website then.  He had a ClaritySpring  
25          website.  That website described him as a -- I

1 guess I would say then advisor to people who  
2 invested in investment funds to help them do due  
3 diligence. It was some sort of platform about some  
4 analytical tool that he was building.

5 So my knowledge was derived on that.  
6 Plus, I believe Mr. Boland had referred to him as  
7 someone who had filed whistleblower reports. The  
8 only one that I was made aware of was there was a  
9 Platinum Partners whistleblower report that I think  
10 he had filed previously, and I think collected a  
11 whistleblower award on. That I am not sure about.  
12 That is the limit of my involvement.

13 The first time I found out about  
14 Mr. Anderson being involved in short-selling was  
15 when the productions came, and I believe there was  
16 some form of agreement or syndicate or something  
17 like that that he was trying to form for the  
18 purposes of short-selling. I had no knowledge that  
19 he was involved in short-selling, and it wasn't --  
20 it was different than the business model that I  
21 understood both from his website and how he had  
22 been described as someone who filed whistleblower  
23 reports and collected rewards for those  
24 whistleblower reports.

25 141

Q. All right. Well, I am jumping



1 was he was well up the curve already, and I didn't  
2 get the feeling he found my -- anything I had to be  
3 of particular assistance to him. I can remember a  
4 few specific details, but I think in general it was  
5 mostly, you know, what are the pieces of  
6 litigation; you know, what are the theories on the  
7 two sides for the pieces of litigation; where can  
8 you find the filings. He seemed more interested, I  
9 think, in reviewing documents than anything I had  
10 to say anyways.

11 BY MR. MOORE:

12 154 Q. All right. And I take it he  
13 contacted you; you didn't contact him? Or have I  
14 got that wrong?

15 A. I don't recall. I don't recall  
16 who initiated it.

17 155 Q. All right.

18 A. I think I did -- I may have called  
19 him once, but --

20 156 Q. All right.

21 A. I have a recollection of looking  
22 up his phone number on the website, so I might have  
23 called him.

24 157 Q. In any event, without getting into  
25 legal advice, the direction you were given by

1 Mr. Boland was to provide whatever assistance you  
2 could to Mr. Anderson in whatever he was doing; is  
3 that right?

4 A. I mean, the basic answer is yes.  
5 Just to be clear, I think that the assistance was  
6 just in terms of providing him with information  
7 about, you know, our litigation in terms of where  
8 the documents were, what the theories of it were,  
9 and other information that we collected in the  
10 course of it.

11 I mean -- and I don't think this is the  
12 intention of your question, but just to be clear,  
13 it was not to provide him any assistance in  
14 preparing his whistleblower report or anything like  
15 that. I never saw -- the first time I saw his  
16 whistleblower report was when the productions came,  
17 so I don't think that is what you are implying with  
18 your question, but just to be clear.

19 158 Q. But you had -- just let's not  
20 worry about the implication of my question. Let's  
21 just -- I'll do the same. Just try to -- just  
22 stick with the question, don't worry about the  
23 implication.

24 You understood he was in all likelihood  
25 preparing a whistleblower complaint in connection

1 with either Catalyst or Callidus; correct?

2 A. I think that is fair.

3 159 Q. And you knew what a whistleblower  
4 complaint was, I presume, right?

5 A. Yes.

6 160 Q. And you knew then that he was  
7 preparing something that he was intending to file  
8 with a security regulator either in the United  
9 States or Canada, right?

10 A. That is fair, but I guess I have  
11 to qualify. I didn't know he was actually going to  
12 file it, right? I mean, my presumption was that he  
13 was doing the research to assess about whether he  
14 was going to file something, so I didn't -- I  
15 didn't know that he had made a conclusion when I  
16 spoke to him. I understood him to be --

17 161 Q. Well, he was -- sorry, go ahead.  
18 Go ahead.

19 A. I understood him to be collecting  
20 information and then he was going to make his own  
21 assessment about what he did with that information.  
22 So it would not surprise me to find that he had  
23 filed a whistleblower report, but at the same time,  
24 he might have decided that it wasn't appropriate to  
25 file them, or he didn't have enough information to

1 do a whistleblower report.

2 162 Q. And do you remember exactly what  
3 Mr. Boland told you about where he was at and what  
4 you were to do? Do you remember anything more  
5 about that?

6 A. No. I mean, I think he just  
7 referred Mr. Anderson to me to see if I could -- I  
8 mean, I presume to assist with navigating  
9 litigation in the sense of where the documents  
10 were, what the cases were about. I don't think it  
11 was anything more than that. Mr. Boland didn't  
12 give me -- just to be clear, he didn't --  
13 Mr. Boland didn't give me directions saying, you  
14 know, please help Mr. Anderson get his  
15 whistleblower report done or anything like that.  
16 It was just a question of trying to find out if he  
17 had information that would be helpful to us. And,  
18 you know, the way these things go, you have to be  
19 helpful to the other person if you want to get some  
20 information that is going to be of assistance. So  
21 I pointed him out --

22 163 Q. Wasn't it clear to you, sir, that  
23 West Face would have been quite happy if  
24 Mr. Anderson had filed a negative whistleblower  
25 complaint against Callidus and/or Catalyst; wasn't



1 are attachments to a lead date document, the parent  
2 document, that the attachments would be the same  
3 date or at an earlier date than the parent that is  
4 sending them out. That is logical.

5 U/T MR. MILNE-SMITH: Yeah, we'll get back  
6 to you --

7 THE DEPONENT: Well, the --

8 MR. MILNE-SMITH: Just hang on, Phil.  
9 We'll get back to you with a fixed-up Schedule B  
10 and sort out whatever went wrong here in the  
11 coding.

12 MR. MOORE: All right. So the lead  
13 date -- for the purpose of trying to go through the  
14 chronology, though, you know, subject to  
15 corrections, I understand that may be necessary,  
16 but the lead date would be the -- presumptively at  
17 least at this point indicative of the sequence of  
18 events of these communications; is that -- should  
19 we operate on that assumption?

20 MR. MILNE-SMITH: Presumptively, yes.

21 BY MR. MOORE:

22 243 Q. All right. And so let me just ask  
23 you just in this time frame, without a specific  
24 document of November 22nd or email of December 3rd  
25 or whatever, in late November 2016, early December

1           2016, were you aware that Mr. Levitt and others  
2           were in the process of going to the OSC and making  
3           complaints about Callidus?

4                   A.    You know, without refreshing, I  
5           don't recall.

6    244                   Q.    What would you do to refresh your  
7           memory?  Would you just have to go back and look at  
8           these documents, I guess?

9                   A.    I think so.

10   245                   Q.    I am asking.  I am not trying to  
11           put words in your mouth.

12                   A.    Yeah, yeah.  I think that might be  
13           of assistance.  I mean, I don't remember the  
14           documents, so I can't guarantee I am going to be  
15           able to give you an answer, but that would be  
16           helpful.

17   246                   Q.    All right.  Well, then could you  
18           do that, you know, for this time frame?  You know,  
19           if we just took these documents on page 10 out of  
20           12, West Face 32607 through to -- over the next  
21           page, West Face 32620, some of them we have looked  
22           at specifically -- well, looked at in the sense  
23           that we have looked at the descriptions on the  
24           schedule.

25                           Can you undertake to go back and review

1           that material and let us know what your  
2           understanding and state of mind was as to -- about  
3           complaints that were underway with the OSC?

4           U/A           MR. MILNE-SMITH: We'll take that under  
5           advisement.

6                       BY MR. MOORE:

7           247           Q.     In that same area, there is a  
8           document back on page 3, which is the third cell  
9           down, 32560, and then there is another one over the  
10          next page, 32563, and it says "Filed Friday"; do  
11          you remember what that was about?

12                    A.     I don't. I cannot -- there seems  
13          to be an attachment to both documents, but beyond  
14          what is listed on the Schedule B, I can't really  
15          speculate. And I know that it is not helpful to  
16          speculate, so...

17          248           Q.     Yeah, the attachments appears to  
18          be the "Esco Callidus opposition".

19                    A.     That is what the description says.  
20          Sorry, I can't help you. I mean, the doc type says  
21          "Court Document", and the doc title says what you  
22          have just listed.

23          249           Q.     And from 32560 on page 3, it looks  
24          like you are sending that to Mr. Boland.

25                    A.     Sorry, you said 32560?



1 is, West Face 32567, 32568, and 32569 -- they refer  
2 to documents apparently sent to you by Mr. Levitt  
3 on different dates it would seem.

4 MR. MILNE-SMITH: Well, I wouldn't say  
5 they are documents sent by Mr. Levitt. The  
6 Schedule B indicates that they are emails sent by  
7 Mr. Levitt, but there is no reference to an  
8 attachment.

9 BY MR. MOORE:

10 260 Q. Yes. I'm sorry, I didn't mean to  
11 say -- they are emails sent by Mr. Levitt, and it  
12 looks like he has got three different email  
13 addresses; do you see that?

14 A. So one of them is Norton Rose  
15 Fulbright, so I understood at a point in time he  
16 was partner, counsel, at Norton Rose.

17 261 Q. Yeah.

18 A. The other ones -- I mean, you are  
19 correct, when I read them, they are different. I  
20 don't -- I mean, like people often put their birth  
21 year in their email. I would guess perhaps he was  
22 born in 1971, but I don't -- that is complete  
23 speculation on my part. I don't remember these  
24 emails. Again, I haven't reviewed them, so...

25 262 Q. All right. Without -- like

1           between your Schedule B and Mr. Levitt's  
2           productions and the exhibits to the Riley  
3           affidavits, especially the May 29th conspiracy  
4           affidavit but to some degree the later one as well,  
5           there was quite a lot of communication. I haven't  
6           counted them to give you an exact number, but quite  
7           a lot of communication from Levitt to yourself;  
8           would you agree with that?

9                       MR. MILNE-SMITH: Don't agree with the  
10            characterization. It is what it is. I don't want  
11            to get into a comparative exercise about what  
12            counts as "quite a lot".

13                   BY MR. MOORE:

14   263            Q.    Well, would it be more than the  
15            other individuals who were Defendants, let's say?

16                   A.    Sorry, I am just thinking through.  
17            I mean, obviously there is some that I have never  
18            spoken to or communicated in any fashion with, like  
19            McFarlane or Baumann. Langstaff was a broker who  
20            covered us, so there was a transaction completely  
21            unrelated to this that we worked on. There would  
22            have been numerous emails with him, so -- but that  
23            has nothing to do with this litigation.

24                    Let's see who else. I mean -- sorry,  
25            the group that you are talking about is, I guess,

1 the co-Defendants?

2 264 Q. Yeah.

3 A. Okay. So I don't think I have any  
4 email with Anson. I don't think I have ever dealt  
5 with them. I don't have the claim in front of me,  
6 so let's go through the list. Who am I missing?  
7 So we said Anson. We said Langstaff. We said  
8 McFarlane. We said Baumann. Nathan Anderson, I  
9 don't think -- I am not sure. I don't think I have  
10 any email with him, to my recollection, the best of  
11 my recollection. You know what? Maybe I have got  
12 a style of cause here. I am just looking at the  
13 style of cause, and that is all I am looking at.

14 Molyneux, I don't think -- I don't have  
15 any recollection of ever dealing with him.

16 Copeland, I don't think I have any recollection of  
17 dealing with him. I think that is it.

18 So other than Langstaff, who on a  
19 number count I would probably guess -- particularly  
20 since there was this transaction that is completely  
21 unrelated again, there would be more emails. So I  
22 guess Mr. Levitt might be the next most -- I  
23 guess -- I don't know. That is -- am I missing a  
24 Defendant?

25 265 Q. Well, we could -- you know, there



1 on, 32618, doc title "Callidus Catalyst fraud  
2 outline"; the next one, 32620. I mean, these are  
3 headings of documents that have -- okay. You say  
4 you didn't open it and read the document, but that  
5 you would see from the subject matter of the email  
6 what was going on.

7 So didn't --

8 A. Well --

9 289 Q. I just want to know, did you or  
10 did you not tell Mr. Boland that, by the way, these  
11 people are in the process of making fraud  
12 allegations at the Securities Commission?

13 A. Sorry, that presumes that I had  
14 knowledge they were doing so. I don't recollect --  
15 look, I don't remember -- I don't remember seeing  
16 any whistleblower -- so let's do this in order. I  
17 don't remember seeing any whistleblower reports  
18 until the productions were made. Obviously, when  
19 the Wall Street Journal article came out, I knew  
20 there was, at least call it, an allegation by the  
21 Wall Street Journal that they had been filed.  
22 Before that, did I know that people were preparing  
23 a whistleblower report or had prepared one or had  
24 filed one? I don't remember.

25 I would like to refresh myself from

1           those documents. I can't do that now. I haven't  
2           reviewed those documents in some time. I think Mr.  
3           Milne-Smith took it under advisement to do so. I  
4           just -- the problem is I can't agree with the  
5           proposition because I don't have the information at  
6           this point to --

7           290           Q. My question was simply did you or  
8           did you not advise Mr. Boland about some of these  
9           people going to the OSC with this type of  
10          allegation at the time, and --

11          A. That presumes -- but sorry, that  
12          presumes I had knowledge that they were doing so.

13          291           Q. All right. But having said that,  
14          you are going to review these documents and refresh  
15          your memory. I take it your current recollection  
16          is you don't remember whether you told Mr. Boland  
17          that or not?

18          A. No, but, you know, as with Mr. --

19          292           Q. Did you ever -- did you ever have  
20          a conversation with Mr. Boland about Mr. Levitt or  
21          any other of these individuals? You know,  
22          ultimately Mr. Anderson. Did you ever have any  
23          conversation with Boland about people complaining  
24          to the Securities Commission at any time?

25          A. Well, certainly once the Wall



1           that he didn't send everything on to Mr. Livesey.  
2           He explicitly -- you have exactly what was sent.  
3           You know what was sent, and you know it wasn't the  
4           full file, so don't try and get the witness into --  
5           slipping into overlooking that fact.

6                       MR. MOORE: You have made that  
7           allegation before. It is 5 to 4:00. Let's take a  
8           very short break, and we'll come back and finish.

9                       (DISCUSSION OFF THE RECORD.)

10                      -- RECESSED AT 3:53 P.M.

11                      -- RESUMED AT 4:08 P.M.

12                      BY MR. MOORE:

13   431                Q. Mr. Panet, just to follow up on  
14           the last subject I was asking you about, do you  
15           recall or do you know when it was that Ms. Tedesco  
16           had made reference to the court case that you were  
17           describing earlier?

18                      A. It was in a discussion she had  
19           with Mr. Boland, so my sense was that it was prior  
20           to my arrival at West Face, but I just -- I really  
21           don't know. You'll have to ask him.

22   432                Q. All right. I am going to ask you  
23           about interactions you may have had with  
24           Ms. McNish, and we don't have the document  
25           immediately available to pull up, but let me

1 suggest this to you. And I can circulate the  
2 extract to Mr. Milne-Smith and then you can advise  
3 if you are not able to now, and that is, is it  
4 correct that you had discussions with Ms. McNish in  
5 which you raised the topic or provided information  
6 about the litigation between Mr. Glassman's spouse  
7 and her husband? It wasn't just -- it was to  
8 McNish as well. Does that ring a bell at all with  
9 you?

10 A. No, I have no recollection of -- I  
11 mean, to the best of my recollection, I don't  
12 remember passing that information to her.

13 433 Q. All right. Mr. Milne-Smith, just  
14 to expedite matters, I can send you some notes or  
15 an extract of some notes from Ms. McNish that I  
16 believe were made part of her transcript, her  
17 examination recently, which has a reference to this  
18 case and a reference to CanLII, and I would ask you  
19 to review that with this witness, and he can advise  
20 whether he raised that with McNish or not with  
21 reference to those notes.

22 A. And sorry, just to be --

23 434 Q. Instead of bringing it up on the  
24 screen right now.

25 A. Sorry, just to be specific here,

1 maybe I misunderstood, I thought you said your  
2 question was about the litigation between  
3 Ms. MacDonald and her former spouse, but then you  
4 referenced --

5 435 Q. Yes, that is right.

6 A. But then you referenced CanLII,  
7 which I think is the litigation between  
8 Mr. Glassman and his father.

9 436 Q. Well, I have looked -- I just  
10 looked at these notes, and that is what the notes  
11 appear to refer to, so -- but I don't have them in  
12 a form I can put them up on the screen.

13 So what I propose to do is just send  
14 the page or page and a half or so to  
15 Mr. Milne-Smith and ask him to advise whether you  
16 recall discussing either of those cases with  
17 Ms. McNish with reference to the notes.

18 MR. MILNE-SMITH: And, Mr. Panet, you  
19 can advise what you recall. We certainly have  
20 reviewed those notes, Mr. Moore, in preparation for  
21 this, and I think the important thing you have to  
22 understand is that Ms. McNish's notes are, shall we  
23 say, non-linear and difficult to decipher, as you  
24 found out on the cross-examination. I can't  
25 remember whether it was you or whether --

1 THE DEPONENT: It was Dearden.

2 MR. MILNE-SMITH: Yes, when Mr. Dearden  
3 cross-examined her. So you should not necessarily  
4 assume that Ms. -- that simply because an  
5 individual's name appears on a page that everything  
6 that follows comes from that individual.  
7 Ms. McNish's evidence was quite to the contrary, as  
8 I understood it.

9 But you know, Mr. Panet, I am happy for  
10 you to give your recollection. You know, we have  
11 looked at those notes, and I am happy for you to  
12 give your recollection of your conversations with  
13 Ms. McNish.

14 BY MR. MOORE:

15 437 Q. And I will do that by letter and  
16 with the attachment rather than break and bring it  
17 up on the screen and do it now, if that is  
18 satisfactory.

19 U/T MR. MILNE-SMITH: Okay.

20 BY MR. MOORE:

21 438 Q. All right. And as I understand  
22 it, you had some contact with Mr. Brimm, and again,  
23 I don't have this affidavit to put up on the screen  
24 either, but in his affidavit he indicates that he  
25 had a call with you regarding the affidavit that he

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

and

CANACCORD GENUITY CORP.

Third Party

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- 2 -

and

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

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

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

**UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS**

**given at the Cross-Examination of Philip Panet held on December 8, 2020**

**(cross-examination by counsel to the Catalyst Parties)**

Table 1: From the Cross-Examination of Philip Panet held on Tuesday, December 8, 2020

No.	Page	Question(s)	Category (ADV/REF/UT)	Specific Question	West Face Parties' Answer or Precise Basis for Refusal delivered Sunday, January 3, 2021	Catalyst Parties' Position Asserted Friday, February 5, 2021	West Face Parties' Supplemental Answers and Positions delivered Wednesday, February 10, 2021
1.	13-14	26	ADV	To advise of the effective date of the common interest agreement that West Face relies upon in asserting common interest privilege in this matter.	<p>With respect to any given document listed in Schedule B to the Affidavit of Documents of West Face and Mr. Boland over which a common interest privilege is claimed, West Face and Mr. Boland rely upon the common interest privilege that arose at common law the moment that West Face and/or Mr. Boland and the relevant third party shared a common interest in litigating and defending claims made against them by one or more of the Catalyst Parties.</p> <p>West Face and Mr. Boland anticipated potential litigation concerning Callidus since no later than when they received David Hausman's letter of December 15, 2014, which alleged that West Face had prepared, caused to be prepared, or had possession of a report concerning Callidus and requesting a copy of the report.</p> <p>All of West Face's and/or Mr. Boland's communications after that date disclosed on Schedule B to their Affidavit of Documents were for the purposes of defending that anticipated litigation, which manifested first in Catalyst's motion within the Moyse Action commenced in January 2015 (and amended in February 2015), and then subsequently in the Veritas and Wolfpack Actions.</p> <p>The written Common Interest and Confidentiality Agreement between West Face, Opes Resources Inc., Richard Molyneux, Darryl Levitt and their counsel, was fully executed on November 10, 2016 but had no "effective date" and indeed expressly applied to any of the parties' previous communications on issues of common interest.</p>	<p>The answer is not entirely responsive to the question.</p> <ol style="list-style-type: none"> <li>1. Who are the parties to the common law common interest asserted by West Face?</li> <li>2. When this common interest or interests arose?</li> <li>3. What is the specific scope of the common law common interest?</li> <li>4. Is the common law common interest subject to an express (written or verbal) agreement between West Face and those Parties?</li> <li>5. When were the express agreement(s) made?</li> <li>6. Is there a definition of the common interest expressed in the agreement dated November 10, 2016 and if so please provide the wording of that definition?</li> </ol>	<p>The answers provided were entirely responsive to the questions asked.</p> <p>Without prejudice to that position and in the spirit of cooperation, the West Face Parties provide the following supplemental answers and positions:</p> <ol style="list-style-type: none"> <li>1. As indicated on Schedule B to the West Face Parties' Affidavit of Documents, the West Face Parties have asserted common interest privilege over certain litigation privileged communications between and among themselves and two other sets of parties who were and remain in litigation against the Catalyst Parties: (i) Opes Resources Inc., Richard Molyneux, Darryl Levitt, and their counsel (including Symon Zucker of the Bond Street Law firm) (the "<b>Opes Parties</b>"); and (ii) Gerald Duhamel, the founder and former director of Bluberi Gaming Technologies Inc. ("<b>Bluberi</b>"), and his counsel (including Roger Simard of the Dentons firm) (the "<b>Duhamel Parties</b>").</li> </ol> <p>To be clear, the West Face Parties have and have had a "common interest" with parties other than the Opes Parties and the Duhamel Parties, however, the West Face Parties have not asserted common interest privilege over any other relevant communications or other documents, including where such communications or other documents were not solicitor-client privileged and/or litigation privileged to begin with.</p> <ol style="list-style-type: none"> <li>2. The common interests: (i) between the West Face Parties and the Opes Parties, and (ii) between the West Face Parties and the Duhamel Parties, both arose well before the dates of the communications disclosed in Schedule B to the West Face Parties' Affidavit of Documents over which the West Face Parties have asserted common interest privilege.</li> </ol>

						<p>In that regard, as previously advised, West Face and Mr. Boland anticipated potential litigation concerning Callidus since no later than when they received David Hausman's letter of December 15, 2014, which alleged that West Face had prepared, caused to be prepared, or had possession of a report concerning Callidus and requesting a copy of the report. This litigation manifested first in Catalyst's motion within the Moyse Action commenced in January 2015 (and amended in February 2015), and then subsequently in the Veritas Action commenced in June 2015 (and then subsequently again in the Wolfpack Action commenced November 2017).</p> <p>As indicated on Schedule B to the West Face Parties' Affidavit of Documents, the communications between them and the Opes Parties over which the West Face Parties have asserted common interest privilege commenced in and around early November 2016. By that time, Callidus had sued the Opes Parties in the matter of <i>Callidus Capital Corporation v. Opes Resources Inc., Richard George Molyneux, and Darryl Levitt</i> (Superior Court of Justice Court File No. CV-16-544639) (the "<b>Opes Action</b>") (namely, by Statement of Claim issued January 18, 2016).</p> <p>Similarly, as indicated on Schedule B to the West Face Parties' Affidavit of Documents, the communications between them and the Duhamel Parties over which the West Face Parties have asserted common interest privilege commenced in or around late August 2016. By that time, Callidus was litigating against the Duhamel Parties within the matter of <i>Re: Bluberi Gaming Technologies Inc. et. al.</i> (Superior Court of Quebec (Commercial Division) No. 405-11-002902-151) (the "<b>Bluberi CCAA Proceedings</b>") (Callidus's initial contestation within the Bluberi CCAA proceedings was made November 16, 2015).</p> <p>To be clear, the common interest between the West Face Parties and the Opes and Duhamel Parties may well have arisen <u>before</u> the aforementioned dates, but it had most certainly arisen <u>by</u> the dates of the communications over which the West Face</p>
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							<p>Parties have asserted common interest privilege.</p> <p>3. As the Catalyst Parties are aware, common interest privilege is not an independent privilege. Rather, it is a doctrine that allows parties with a common interest in anticipated or ongoing litigation to share solicitor-client privileged and/or litigation privileged materials and to engage in solicitor-client privileged and/or litigation privileged communications without precluding, waiving, or otherwise negating such privileges.</p> <p>In the case at bar, the West Face Parties shared materials and engaged in litigation privileged communications with the Opes Parties and the Duhamel Parties, in which they shared documents and information, for the dominant purpose of assisting the parties and their counsel in defending themselves from the claims and allegations made against them by Callidus.</p> <p>4. &amp; 5. As previously advised, the common interest between the West Face Parties and the Opes Parties was expressly confirmed in a written Common Interest and Confidentiality Agreement between the West Face Parties, the Opes Parties, and their counsel, on November 10, 2016.</p> <p>6. As previously advised, the concept of common interest privilege is "defined" by the relevant jurisprudence. The West Face Parties shared a common interest with the Opes Parties and the Duhamel Parties in defending various pieces of litigation commenced against them by Callidus concerning Callidus's business practices.</p> <p>Without in any way waiving privilege or intending to waive privilege over the written Common Interest and Confidentiality Agreement between the West Face Parties and the Opes Parties, that agreement did not expressly define the "common interest" between the parties. Rather, it acknowledged the existence of the various ongoing litigation between the West Face Parties and the Opes Parties, on the one hand, and the Catalyst</p>
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							Parties, on the other, and identified the parties' common interest in "the business methods and public disclosure of Callidus", and confirmed the existing privileged and confidential nature of communications between and among the parties with respect to that subject matter.
2.	14	28	ADV	To advise who the parties are to the common interest agreement referred to in question no. 1.	Please see the response to question no. 1 above.	See no. 1 above.	Please see the supplemental response to question no. 1 above.
3.	18	35	ADV	To advise if it is West Face's position that there was an oral or common law common interest agreement extending prior to the date of the written common interest agreement and, if so, how far back that agreement extends.	Please see the response to question no. 1 above.	See no. 1 above.	Please see the supplemental response to question no. 1 above.
4.	18	36	REF	To confirm that West Face is not prepared to produce any documents covered by common interest privilege.	Confirmed. West Face is not prepared to produce any documents over which a common interest privilege exists.  West Face has not waived or agreed to waive the common interest privilege that exists over the common interest privileged documents disclosed in the Schedule B to its Affidavit of Documents.  Moreover, West Face cannot unilaterally waive privilege over such documents.	See no. 1 above.	The answer provided was entirely responsive to the question asked. The answer has not changed.  All of the relevant and privileged communications and other documents over which the West Face Parties have asserted common interest privilege are disclosed on Schedule B to their Affidavit of Documents. Notably, as set out in the supplemental response to question no. 1 above, all of these documents are dated well after the dates that the relevant common interest arose.
5.	18-19	36-37	ADV	To produce any written common interest agreements, including any and all drafts of such agreements.	The question is refused on the basis of common interest privilege.	See no. 1 above.	Please see the supplemental response to questions no. 1 and no. 4 above.
6.	20-21	43	UT	To review and determine whether Mr. Panet has any text messages with Mr. Levitt.	West Face is not aware of and does not have possession, control or power over any text messages between Mr. Panet and Mr. Levitt for the time period before the Wolfpack Action was commenced. West Face asserts litigation and common interest privileges over text messages, if any, exchanged with any	The answer is not responsive to the question.  Please confirm that appropriate searches have been conducted and no such text messages exist or have existed.	The answer was entirely responsive to the question asked.  Without prejudice to that position and in the spirit of cooperation, the West Face Parties re-confirm that appropriate searches have been conducted and that they have no relevant text messages between Mr. Panet

					Defendant after the Wolfpack Action was commenced.		<p>and Mr. Levitt in their possession, control or power.</p> <p>Mr. Panet confirms that, to the best of his knowledge, he did not exchange any text messages with Mr. Levitt whatsoever in the time period before the Wolfpack Action was commenced.</p> <p>To be clear, commencing in late February 2019, more than 16 months after the Wolfpack Action was commenced and long after any time period relevant to the Catalyst Parties' allegations in these proceedings, Mr. Panet exchanged a total of 4 <b><i>irrelevant</i></b> text messages with Mr. Levitt. The first text was a message from Mr. Levitt to Mr. Panet attaching a publicly filed court document. The next two texts were of a personal nature (namely, an inquiry by Mr. Panet into Mr. Levitt's well-being, and Mr. Levitt's response). The fourth text was another message from Mr. Levitt to Mr. Panet attaching a public court document. None of these texts messages are relevant, and, in any event, the first and fourth are litigation and common interest privileged communications between two Defendants to these proceedings. To the best of Mr. Panet's knowledge, these are the only text messages he has ever exchanged with Mr. Levitt, and they were collected, reviewed, and determined to be not relevant in advance of the December 31, 2019 production deadline.</p>
7.	20-21	43	ADV	To review and determine what, if any, of the text messages referred to in Question 6 should be produced.	Not applicable. Please see the response to question 6 above.	n/a	n/a
8.	32-33	86	ADV	With reference to the "Exchange Administrator Group" referred to in West Face's Schedule B listing, to inquire if there was a central facility or central app of some description whereby information would be retained about contacts with third parties.	With respect to why some of the emails listed on Schedule B to West Face's Affidavit of Documents included the words "Exchange Administrator Group" in the "Author" field of those emails, West Face and its counsel understand that this was simply the output of the e-discovery software that West Face's counsel used to collect and review potentially relevant documents.	n/a	n/a

					<p>West Face's counsel understands that this is not a rare occurrence in e-discovery. See, for example, the following website, which provides a (technical) explanation of why this may have occurred:</p> <p><a href="https://www.meridiandiscovery.com/articles/why-we-see-strange-exchange-e-mail-addresses-in-e-discovery/">https://www.meridiandiscovery.com/articles/why-we-see-strange-exchange-e-mail-addresses-in-e-discovery/</a></p> <p>More generally, West Face does have a compliance application that archives emails sent to/from/cc/bcc external (i.e., non West Face) email addresses. All relevant emails from this archive were disclosed on West Face and Mr. Boland's Affidavit of Documents.</p>		
9.	50-51	130	ADV	To advise as to the definition of "common interest" as among the Defendants, including any definition in the Common Interest Agreement.	<p>The concept of common interest privilege is "defined" by the relevant jurisprudence.</p> <p>West Face and Mr. Boland shared a common interest with the other Defendants in defending various pieces of litigation commenced against them by Callidus concerning Callidus's business practices.</p>	See no. 1 above.	Please see the supplemental response to question no. 1 above.
10.	82	228	ADV	To advise as to what Mr. Panet is replying to in respect of his email to Mr. Levitt with the subject line: "Re: IMET - Integrated Market Enforcement Team" listed as WFC032581 in Schedule B to West Face's and Mr. Boland's Affidavit of Documents	Answering this question would reveal communications that are subject to a common interest privilege with Mr. Levitt.	n/a	n/a
11.	85	235	REF	To advise whether Mr. Panet took advice from current counsel for West Face or independent counsel, with respect to and prior to deleting the document referred to as WFC032618 of West Face's Schedule B listing.	The advice was from West Face's counsel at the Davies law firm.	n/a	n/a
12.	90-92	242	UT	To provide a "fixed-up" Schedule B to the Affidavit of Documents of West Face and Mr. Boland addressing the discrepancy	West Face and Mr. Boland have delivered a revised Schedule B to their Affidavit of Documents with these discrepancies corrected.	n/a	n/a

				between the LeadDates and DocDates.			
13.	92-94	243-246	ADV	To review the documents referred to as WFC032607 through to WFC032620 of West Face's Schedule B listing and advise whether, in late November 2016 / early December 2016, Mr. Panet was aware Mr. Levitt and others were in the process of going to the OSC and making complaints about Callidus.	Mr. Panet has not reviewed WFC032618 to refresh his memory, because as he stated during his cross-examination, he never opened or reviewed that document, and instead deleted it at the time.  Having reviewed the other documents listed on West Face's Schedule B, Mr. Panet understood that Mr. Levitt was in contact with the OSC. However, Mr. Panet was not aware that Mr. Levitt was making or intended to make a formal "whistleblower" complaint about Callidus and/or Catalyst. Moreover, neither Mr. Panet, nor anyone else at West Face, contributed to the substance or content of, or reviewed a draft of, any of Mr. Levitt's communications or complaints to the OSC.  Finally, Mr. Panet was not aware based on these communications of whether any "others were in the process of going to the OSC and making complaints about Callidus".	n/a	n/a
14.	109-110	294-295	ADV	To advise what Mr. Panet understood Mr. Levitt was doing from late 2016 on through the spring of 2017.	Mr. Panet understood that Mr. Levitt was defending a lawsuit brought against him by Callidus, and collecting relevant and public information that might assist him in defending that lawsuit. Any further communications with Mr. Levitt, and understandings arising from such communications, are subject to common interest privilege.  However, to be clear, Mr. Panet had no knowledge of any of Mr. Levitt's short-selling of Callidus shares, no knowledge of Mr. Levitt's communications with any members of the media, and no knowledge that Mr. Levitt was making a formal whistleblower complaint to the OSC concerning Catalyst and/or Callidus.	n/a	n/a
15.	110	295	ADV	To advise of West Face's position in respect of the documents produced by Mr. Levitt which are supposedly subject to some form of common interest privilege.	West Face never waived or agreed to waive the common interest privilege that exists over its communications with Mr. Levitt. Indeed, West Face was not even advised that such production was sought or made.	n/a	n/a

					West Face does not waive common interest privilege over any other communications with Mr. Levitt.		
16.	118-120	309-310	REF	To confirm that by January 2017, Mr. Panet knew that Mr. Levitt and others were doing “whatever they could” to “disparage” the Catalyst Parties.	<p>This question was asked and answered repeatedly by Mr. Panet during his cross-examination.</p> <p>As noted by Mr. Panet, he and West Face do not agree with the premise of the question. Mr. Panet denies that any of the other Defendants were doing “whatever they could” to “disparage” the Catalyst Parties. On the contrary, Mr. Panet’s understanding was that the other Defendants were defending themselves against serial litigation by Callidus and Catalyst.</p> <p>While West Face cannot speak to the merits of claims not involving West Face, Mr. Panet’s own experience is that one or more of Catalyst and Callidus had repeatedly brought unmeritorious litigation against West Face, which cast doubt on the merits of their litigation against the other Defendants.</p>	n/a	n/a
17.	138-139	365	REF	To confirm that in Mr. Panet’s mind, the existence of a lawsuit by Mr. Glassman against his father would just be too good to be true.	<p>As Mr. Panet explained during his cross-examination, when he first heard (long before he joined West Face) that Mr. Glassman had sued his father, he was skeptical about whether that story was true or not. He described the story as being “apocryphal”, in the sense that it was of doubtful authenticity, though widely circulated as being true.</p> <p>When Mr. Moore asked Mr. Panet to define the term “apocryphal”, Mr. Panet stated expressly that he was “not talking about [Mr.] Glassman”, but noted that the term may refer to a story that is “too good to be true” in the sense that it is of doubtful authenticity, though widely circulated as being true.</p> <p>In any event, as it turns out, Mr. Glassman did, in fact, sue his father. Mr. Panet was able to corroborate this fact precisely because he had previously sought to confirm whether this fact was true or not.</p>	n/a	n/a

18.	145-146	384-386	REF	To advise whether Mr. Panet discussed with Mr. Boland what should be done with respect to telling Catherine Dowling about the lawsuit by Mr. Glassman against his father.	No. Mr. Panet did not discuss that with Mr. Boland.	n/a	n/a
19.	151-152	400-401	ADV	To advise whether Mr. Panet has cell phone records that would reflect contacts with the other Defendants from 2015 to present, and to produce same.	<p>Refused on the basis of irrelevance and disproportionality to the issues on the Anti-SLAPP Motions.</p> <p>Mr. Panet had thousands of calls on his cell phone over the 6-year period from 2015 to present. It would take extensive time and effort to try to reconstruct which of his cell phone records pertain to calls with the many other Defendants to this action.</p> <p>Furthermore, Mr. Panet has answered all questions concerning his communications with other Defendants, including concerning his telephone conversations with them, and he advises that he does not believe his recollection of the content or substance of his telephone communications with the other Defendants, if any, will be refreshed by reference to any phone records that might exist.</p> <p>The Catalyst Parties have not disclosed or produced copies of any of their telephone records with each other or with the other parties to these proceedings. If West Face is compelled to produce such phone records, it will similarly expect the Catalyst Parties to produce complete telephone records with all Counterclaim Defendants from 2017 to 2020 in connection with the upcoming examination of Mr. Glassman.</p>	<p>Please provide Mr. Panet's cell phone and other phone records from Nov 2016 to August 2017 with the following persons:</p> <ol style="list-style-type: none"> <li>1. whistleblowers (Anderson, Levitt);</li> <li>2. Copeland and McNish;</li> <li>3. other anti-SLAPP defendants; and</li> <li>4. the defendants to the action.</li> </ol>	<p>The answer and position of the West Face Parties has not changed. The refusal is maintained on the basis of irrelevance and disproportionality to the issues on the Anti-SLAPP Motions.</p> <p>As previously advised, Mr. Panet has answered all questions concerning his communications with other Defendants, including concerning his telephone conversations with them, and he advises that he does not believe his recollection of the content or substance of his telephone communications with the other Defendants, if any, will be refreshed by reference to any phone records that might exist.</p> <p>The Catalyst Parties have not disclosed or produced copies of any of their telephone records with each other or with the other parties to these proceedings, including none of their phone records with:</p> <ol style="list-style-type: none"> <li>1. Virginia Jamieson;</li> <li>2. Emmanuel Rosen;</li> <li>3. Black Cube;</li> <li>4. Psy Group; and</li> <li>5. Yosef (Yossi) Tanuri and/or Tamara Global,</li> </ol> <p>including over the (narrower) time period from August 1, 2017 to December 29, 2017 (inclusive).</p> <p>The West Face Parties should only be compelled to produce the requested phone records once the Catalyst Parties (including each of Catalyst, Callidus, and Messrs. Glassman, Riley, and De Alba), produce their complete cell/mobile phone and other phone records with the above-noted parties during</p>

							the (narrower) time period from August 1, 2017 to December 29, 2017.
20.	165-167	430	REF	To verify whether Mr. Panet or someone else from West Face gave the material from the family law file to Mr. Livesey, "whether it was a difficult part or in between part", in furtherance of a further article.	To the best of Mr. Panet's knowledge, including based on discussions with Mr. Boland, no one from West Face provided any part of the publicly available materials from the family law litigation proceedings between Ms. Glassman's spouse (Ms. MacDonald) and her ex-husband (Mr. DeWerth) to Mr. Livesey other than via the email that Mr. Panet sent to Mr. Livesey on November 24, 2016, from which Mr. Panet deliberately omitted "the more difficult exchanges" so as to limit the material "to showing an email that has a Catalyst Capital email signature" (WFC000437).	n/a	n/a
21.	167-170	432-437	UT	To advise whether Mr. Panet had discussions with Ms. McNish in which Mr. Panet raised the topic or provided information about either of the following two cases: (i) the litigation between Mr. Glassman's spouse (Ms. MacDonald) and her ex-husband (Mr. DeWerth), and/or (ii) the litigation between Mr. Glassman and his father reported on the CanLII website.	As Mr. Panet stated during his cross-examination, he does not recall discussions with Ms. McNish in which he raised or provided information to her about either of the two public litigation proceedings involving Mr. Glassman referred to by Mr. Moore.  In preparing this answer, Mr. Panet has reviewed DOW001020-0001, and in particular page 53 of that document.	n/a	n/a
22.	174-177	449; 451	ADV	To produce any emails, notes, or other records of any communications with Mr. Brimm between November 12, 2017 and December 21, 2017 about his Affidavit or, if they will not be produced, to specify what they are so they can be properly identified for the purposes of the Schedule B.	These documents are litigation privileged and will not be produced.  No party (including the Catalyst Parties) has listed on the Schedule B to its Affidavit of Documents all of its emails with its Affiants regarding their Affidavits, let alone produced such communications.  Similarly, no party (including none of the Catalyst Parties) has listed on the Schedule B to its Affidavit of Documents all of its emails, notes, or other documents concerning the preparation of Affidavits delivered in these proceedings, let alone produced such communications.  Please also see the Affidavit of Philip Panet dated December 16, 2020.	n/a	n/a

23.	178-179	452	ADV	To advise whether there are additional facts pertaining to Mr. Brimm's statement in his Affidavit that he "didn't or would never have said that the transaction was poisoned" and to make them available if they exist.	<p>There are no additional facts pertaining to the statements made by Mr. Brimm in paragraph 38 to 49 of his Affidavit regarding his conversation of with Mr. Rob Gillies of the Associated Press.</p> <p>Please see the Affidavit of Peter Brimm dated December 21, 2017.</p> <p>Please also see the Affidavit of Philip Panet dated December 16, 2020.</p>	n/a	n/a
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# Catalyst v West Face et al.

Philip Panet  
on Tuesday, April 20, 2021



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1 -- Upon commencing at 10:30 a.m.

2

3 PHILIP PANET; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. MOORE

5 (CONT'D):

6 489 Q. So the first document I have some  
7 questions about is the order of Justice McEwen and  
8 specifically Appendix A to that order, which is the  
9 larger document -- or largest document that was  
10 circulated earlier this morning.

11 So if we could mark that as Exhibit 1,  
12 that would be appropriate, I think.

13 MR. MILNE-SMITH: Yes, that is fine.

14 EXHIBIT NO. 1: Order of Justice  
15 McEwen, with attached Appendix A.

16 BY MR. MOORE:

17 490 Q. And, Mr. Panet, do you recall  
18 being interviewed by Jacquie McNish?

19 A. I recall speaking to her a couple  
20 of times. I don't remember the dates, but I do  
21 recall talking to her a couple of times.

22 491 Q. So in this Exhibit 1, at tab 28,  
23 page 53, there is some handwritten notes.

24 A. I think -- so bear with me. This  
25 is 53 of the PDF?

1 492 Q. Yes, the --

2 A. So I'm looking -- okay. Just to  
3 clarify, when I am looking away from you, I am just  
4 looking at my other screen with the document open.

5 493 Q. That's fine. Don't worry. I have  
6 no issues about that whatsoever.

7 A. No, no, it just helps if we both  
8 understand each other. Okay. So that is not --  
9 which tab did you say it is?

10 494 Q. It is tab 28.

11 A. Okay. So I am just getting there.  
12 Okay. 24, okay.

13 MR. MILNE-SMITH: Just while you are  
14 going there, I will give you a friendly reminder,  
15 Mr. Panet, to make sure you let Mr. Moore finish  
16 his question for the sake of our reporter.

17 THE DEPONENT: I apologize in advance,  
18 Deana. I know I was actually pretty bad about that  
19 last time. And I apologize to Mr. Moore too. I'm  
20 sure I'll do it again, but I'll try not to.

21 So, David, I'm on page 53 now.

22 BY MR. MOORE:

23 495 Q. All right. And these are  
24 handwritten notes with your name at the top and a  
25 date of August 8, 2017?

1 A. I can see that, and I presume that  
2 these are Ms. McNish's notes?

3 496 Q. That is my understanding.

4 A. They seem to be -- they are part  
5 of -- okay. I guess the point is they are not my  
6 notes.

7 497 Q. No, my understanding is that these  
8 are McNish's notes, and so that August 8th was just  
9 as The Wall Street Journal article was about to be  
10 published, just to give you the timing.

11 A. Okay.

12 498 Q. So if you could just have that  
13 date in mind, and then if I could ask you, just in  
14 terms of some date parameters, to go to tab 32.

15 A. Sorry, I'm just scrolling. Sorry,  
16 I'm still scrolling. I'm just trying to find -- do  
17 you have the number in the PDF?

18 499 Q. Yes, 131, page 131 in the upper  
19 right-hand corner.

20 A. Okay. Still getting there. The  
21 PDF numbering is different. So you said -- okay.  
22 I'm at 31. 32, okay.

23 500 Q. Page 131 is a steno book cover, if  
24 you will. It is in the upper right-hand corner.

25 A. Yes.

1 501 Q. "Catalyst/Callidus July 2017", and  
2 then over the page, 132.

3 A. Yes, I see that.

4 502 Q. It says "July 20"? Do I read it?  
5 I'm just drawing these dates to your attention to  
6 give you some parameter of what I am going to ask  
7 you about in a minute. If you go to --

8 A. Thank you.

9 503 Q. -- page 145 -- and let me add,  
10 from my interpretation, these are not notes of an  
11 interview with you. They are notes of an interview  
12 with someone else, in my reading of it, okay. And  
13 I say that because when I get to page 145 in the  
14 upper right-hand corner --

15 A. Okay, getting there. Sorry, I'm  
16 almost there. Okay.

17 504 Q. You'll see your name appears near  
18 the bottom of page 145?

19 A. Correct.

20 505 Q. With a contact reference, general  
21 counsel, phone numbers, et cetera?

22 A. Correct.

23 506 Q. All right. So, again, just to put  
24 all this in context, the inference I draw from what  
25 I have just taken you to is that McNish would have

1 contacted you sometime between July 20th up to and  
2 including August 8th, being the notes we looked at  
3 a moment ago, and that is to say two- to three-week  
4 period preceding the publication of The Wall Street  
5 Journal article.

6 So my question is, does that accord --  
7 and I am not asking do you remember the specific  
8 date like it was yesterday, this was the exact  
9 date, but does that generally accord with your  
10 recollection of when those contacts would have  
11 been?

12 A. So I think I testified last time,  
13 and I do recall - I don't remember a date - but a  
14 conversation with her some period of time, weeks, a  
15 week or two, before The Wall Street Journal  
16 article. This is the one where she had asked  
17 whether someone had filed a regulatory submission  
18 or a whistleblower report, and we weren't able to.

19 So I think I have already testified to  
20 that. That is the only one I recall. I can't say  
21 there weren't others, but that is the only one I do  
22 recall in the period leading up to The Wall Street  
23 Journal article. I think that was maybe in person,  
24 but I don't know.

25 507 Q. Okay. And then -- well, I'll go

1 back to page 153 in the upper right-hand corner,  
2 and that is tab 28. The date there appears to be  
3 August 8th, 2017, for that particular set of  
4 interview notes. And this is not a memory contest.  
5 It is not as if you have memorized a poem or  
6 something. I'm just trying to pin down the dates.  
7 Like I draw --

8 A. So you want me to go back to --

9 508 Q. She spoke to you -- I think the  
10 article was published on August 9th, if I'm not  
11 mistaken. She spoke to you, based on this, within  
12 a day or so of the article actually being  
13 published. Is that -- does this refresh your  
14 memory at all about that, or can you help me with  
15 that?

16 A. So I don't recall talking or  
17 meeting with her that close to the article. I do  
18 remember a conversation. It might have been a few  
19 days or a week or two before the one I just  
20 mentioned about her asking us to be able to  
21 corroborate the whistleblower filing or something  
22 to that effect, which we weren't able to do because  
23 we didn't know anything about it.

24 But I do not recall talking to her, you  
25 know, that close to the article. And then I think

1 she has testified that her -- I mean, I think when  
2 you cross-examined her, she had difficulty reading  
3 her own notes and interpreting them. So I hesitate  
4 to be too definitive about what exactly her notes  
5 are saying and when they were -- I mean, we can  
6 both read what it says, but you would have to ask  
7 her about it.

8 509 Q. Well, looking at these notes  
9 starting at page 53, leaving the date to one side,  
10 which on my reading of it, on the face of it, is  
11 August 8th, 2017, it appears that she is making  
12 notes about legal proceedings and some of the  
13 history of the Moyse case and appeal proceedings  
14 and other matters. I'm not going to go through  
15 every line, but if you look at the bottom of page  
16 53, do you see that subject coming up?

17 A. I do. I mean, I guess -- look,  
18 these are her notes, so one thing I can't tell is  
19 if these are notes of one conversation. I mean, I  
20 see the date as well as you do. I can't really  
21 speak to that. But I don't know if this is notes  
22 from one conversation or multiple conversations. I  
23 don't know that these are notes just with me. I  
24 mean, there are -- there is some parts in here that  
25 use some language that I have used before, but



1           might have suggested that she check, to look at the  
2           bulletin board also.

3           585                   Q.     Now, I may be missing something,  
4           but these are the only notes that I found in this  
5           Appendix A that appear to relate to a conversation  
6           with you, putting aside what the exact date is.  
7           But I did take you to the point where it would seem  
8           logical to assume that whatever contacts she had  
9           with you would likely have been after she was given  
10          your phone number, et cetera, back on July 20th.

11                            So what I would ask you to tell me if  
12          you can is what is your best estimate of how many  
13          times you talked to her? Is it twice or three  
14          times, or can you help at all with that? Your best  
15          estimate.

16                            A.     What period of time are you  
17          talking about?

18          586                   Q.     From July 20th to the date --

19                            A.     Sorry, I over-talked you.

20          587                   Q.     July 20th, 2017, through August  
21          9th, 2017.

22                            A.     Once during that period from July  
23          20th, 2017, to August -- was it August 9th or 10th,  
24          2017? There is one.

25          588                   Q.     And was that an in-person meeting,

1 or was it a --

2 A. I mean, it could have --

3 589 Q. Sorry.

4 A. I don't think it could have been  
5 more than twice. I can only think of once. I do  
6 remember -- okay. And, look, four years ago,  
7 memories are hazy. It is not a memory contest.  
8 But to the best of my recollection, I think we met  
9 with her in person. She came to our offices, and  
10 she was looking for corroboration of there having  
11 been a whistleblower report filed. That would have  
12 been sometime in the two weeks before the article  
13 being published, and as we testified before, we  
14 weren't able to corroborate. I don't remember any  
15 other conversation.

16 Can I guarantee you that there wasn't  
17 one? Four years ago, I just -- I can't remember,  
18 but I do remember there being one contact around  
19 this question of corroboration, that we were unable  
20 to corroborate.

21 590 Q. And when you say "we", who are you  
22 referring to?

23 A. Greg Boland and me.

24 591 Q. All right.

25 A. So my -- to the best -- just to

1 finish, to the best of my recollection, it was an  
2 in-person meeting at West Face with Greg and me, no  
3 one else at West Face. I could be wrong, but that  
4 is just the best of my recollection. And it was  
5 solely on this question of corroboration.

6 Now, Greg maybe had a different  
7 discussion when she was there, but the part that I  
8 participated in was only on this question of were  
9 we able to corroborate these whistleblower reports  
10 that she suggested were filed, or other regulatory  
11 communications. I don't think she said  
12 "whistleblower reports". I think it was more of a  
13 question about regulatory contacts.

14 592 Q. And do I understand from what you  
15 just said that you were present for part of the  
16 time that she met with Mr. Boland but not all of  
17 the time?

18 A. I don't recall. I'm saying it is  
19 possible that she had met with Greg separately. I  
20 just don't recall, like before or after we met.  
21 And I'm sorry, Mr. Moore, again, but as you say, it  
22 is not a memory contest on these things, and it is  
23 almost four years ago.

24 MR. MOORE: And does West Face have any  
25 internal records to indicate what the date of that

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

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

Defendants

and

CANACCORD GENUITY CORP.

Third Party

AND BETWEEN:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- 2 -

and

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

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

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

**UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS**

**given at the Cross-Examination of Philip Panet held April 20, 2021**

**(cross-examination by counsel to the Catalyst Parties)**

**Table 1: From the Cross-Examination of Philip Panet held on Tuesday, April 20, 2021**

No.	Page(s)	Question(s)	Category	Specific Question	Documents Referenced in Transcript	Answer or Precise Basis for Refusal

1.	250	616	UT	To advise if the West Face Parties are aware of any evidence to the contrary regarding whether the documents listed on Exhibit 2 (for identification) to Mr. Panet's cross-examination were not provided to Mr. Livesey by West Face.	Exhibit 2 for identification to Mr. Panet's cross-examination described as a "Two-page document entitled List of Documents Bruce Livesey Received from West Face".	The West Face Parties are not aware of any evidence to the contrary.
2.	271	666	REF	Undertakings and answers to questions taken under advisement were given by the Catalyst Parties in respect of questions 147, 148 and 149 of the cross-examination of Mr. Riley held on October 26, 2020 relating to the timing of production of documents in the Moyse Action. To advise whether the West Face Parties agree or disagree with those answers.		<p>Without prejudice to the position that the refusal was proper because it is not the West Face Parties' job to proofread or validate the Catalyst Parties' answers to undertakings and questions taken under advisement, the answer given appears to be inaccurate.</p> <p>In their answers in respect of questions 147, 148 and 149 of the cross-examination of Mr. Riley held October 26, 2020, the Catalyst Parties wrote that "None of the documents were disclosed by West Face until approximately 18 months after the Moyse litigation".</p> <p>This answer is false insofar as it suggests to an uninformed but reasonable reader that the documents in question were produced after the Moyse litigation <i>had ended</i>.</p>

						<p>The only way the above-quoted sentence would be true is if the sentence had ended with the additional words “was commenced”, so that the answer read: “None of the documents were disclosed by West Face until approximately 18 months after the Moyses litigation <i>was commenced</i>”.</p> <p>Indeed, the Moyses Action was commenced in late June 2014 and the documents were produced in early January 2016, some 18 months later. This was months <i>before</i> the trial of the Moyses Action in June 2016, and months before Catalyst produced its own documents.</p> <p>West Face has not confirmed the specific production dates of the specific documents referred to in the answer but notes that the rest of the answer reflects that every document referred to by Mr. Riley in “The Additional Evidence” section of his Affidavit dated December 5, 2019 was not “additional evidence” at all – it was all evidence produced well in advance of the trial of the Moyses Action.</p>
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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

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PROCEEDING COMMENCED AT  
TORONTO

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

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