

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES
CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM
HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS
LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS
COMMUNICAITONS INC., WEST FACE CAPITAL INC. and
MID-BOWLINE GROUP CORP.

Defendants

**MOTION RECORD OF THE DEFENDANT/MOVING PARTY
WEST FACE CAPITAL INC.
(VOLUME 18 OF 19)**

December 7, 2016

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**ONTARIO
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IN THE MATTER OF

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

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CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM
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Defendants

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Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Perseud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of proceedings in the above matter held at the Superior Court of Ontario, Courtroom 8-1, 330 University Avenue, Toronto, Ontario, on the 10th day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

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1 questions left. I'm in your hands.

2 THE COURT: Go ahead.

3 BY MR. MILNE-SMITH:

4 Q. Did you ever have any reason to
11:03 5 believe that West Face possessed confidential
6 information about Catalyst's bid?

7 A. No.

8 Q. When did you first learn that West
9 Face had hired a former Catalyst analyst?

11:03 10 A. I first learned and anyone at
11 Globalive first learned of that fact in late
12 November of 2014 when one of our lawyers emailed us
13 a newspaper story describing the litigation.

14 MR. MILNE-SMITH: Thank you, Mr.
11:03 15 Lockie, those are my questions.

16 THE COURT: All right, so why don't we
17 take the morning break.

18 -- RECESSED AT 11:04 A.M.

19 -- RESUMED AT 11:27 A.M.

11:28 20 THE COURT: Mr. Winton?

21 CROSS-EXAMINATION BY MR. WINTON:

22 Q. Thank you, Your Honour.

23 Mr. Lockie, my friend went through with
24 you in some detail I think the different roles you
11:28 25 played in the difference between Globalive Capital

1 and Wind, and so I'm not going to do that again
2 other than I want to clarify that you held
3 executive positions at both companies, right?

4 A. That's right, and actually, if I
11:28 5 can just take the opportunity to clarify, I think I
6 was a little discombobulated when I first sat down
7 and I conflated events. I actually left Wind as
8 Chief Regulatory Officer shortly after closing the
9 deal to take out VimpelCom, not up until the point
11:28 10 Shaw acquired the company.

11 Q. Thank you, you just saved me some
12 questions.

13 And the consortium that Globalive ended
14 up teaming up with, prior to entering into the
11:29 15 support agreement, you testified there were
16 discussions between Globalive and the consortium as
17 to whether or not there could be a transaction to
18 just take out VimpelCom; fair?

19 A. Correct.

11:29 20 Q. And during those discussions, the
21 principals of the consortium members who
22 participated in those discussions were Mr. Leitner
23 on behalf of Tennenbaum?

24 A. Correct.

11:29 25 Q. Mr. Guffey on behalf of LG

1 Capital?

2 A. With the active involvement of
3 Hamish Burt, yes.

4 Q. But the principal, the primary
11:29 5 person engaged in the discussions was Mr. Guffey?

6 A. I would say most of my
7 interactions were with Hamish Burt. Most of my
8 chairman's interactions were probably with
9 Mr. Guffey.

11:29 10 Q. When you are referring to your
11 chairman, you are referring to Mr. Lacavera?

12 A. I am.

13 Q. All right. And then just on
14 behalf of West Face was Mr. Boland?

11:30 15 A. Again, certainly we recognize that
16 Mr. Boland was the head of West Face, but there
17 were interactions on what I will call the same
18 level with Peter Fraser at that time as well.

19 Q. So Peter Fraser and Mr. Boland on
11:30 20 behalf of West Face?

21 A. As I recall.

22 Q. And Mr. Lacavera was leading the
23 discussions for Globalive; fair?

24 A. Certainly Mr. Lacavera is our call
11:30 25 it directing mind, but Brice Scheschuk and myself

1 would have been actively involved in discussions as
2 well.

3 Q. I understand you would be
4 assisting him, but the directing mind is the
11:30 5 concept I'm trying to get at. The directing mind
6 in those negotiations was Mr. Lacavera?

7 A. Correct.

8 Q. The directing mind of LG Capital
9 would have been Mr. Guffey?

11:30 10 A. Absolutely.

11 Q. And you are not, and this is
12 self-evident but just to make sure we are clear
13 here, you don't have a role at VimpelCom in an
14 executive capacity?

11:31 15 A. No.

16 Q. And are not a participant in board
17 meetings or supervisory board meetings?

18 A. Not at all.

19 THE COURT: And I assume what you mean
11:31 20 by -- you have asked him in the present tense. You
21 asked him in the present tense, but I assume your
22 question related to 2014?

23 BY MR. WINTON:

24 Q. I meant to say "you were", so if
11:31 25 it didn't come out right in the transcript, I

1 apologize, Your Honour. I meant to say "you were
2 not", but if I did say "you are", I misspoke.

3 So in 2014, you were not a member of
4 the VimpelCom board or supervisory board?

11:31 5 A. I was not.

6 Q. Thank you. And thank you, Your
7 Honour.

8 And in your affidavit, and I am happy
9 to bring it to you if you would like, but I think
11:32 10 you may recall that in your affidavit you testified
11 that you understood from evidence filed by Catalyst
12 that on August 11th, 2014, Catalyst and VimpelCom
13 engaged in a courtesy call with Industry Canada,
14 and this is at paragraph 32, if we can pull it up,
11:32 15 page 15, the bottom of page 15, and then going on
16 to -- I think this is the wrong affidavit. This is
17 your January affidavit. Do we have Mr. Lockie's
18 June affidavit? I'm getting the one-second notice
19 from my tech support.

11:33 20 Okay, the doc ID number, my friend is
21 assisting me, is WFC0112436, and we are up, okay.

22 So if we could turn to the bottom of
23 page 15, it is paragraph 32, and it continues on to
24 the top. You state here that you understood only
11:34 25 from the evidence -- well, it doesn't say "only",

1 but that you understood from evidence filed by
2 Catalyst that on August 11, 2014, Mr. de Alba and
3 representatives of VimpelCom had a courtesy call
4 with Industry Canada. You weren't a participant on
11:34 5 that phone call; correct?

6 A. I was not.

7 Q. And so whatever you report in your
8 affidavit about that call is information from -- it
9 is out-of-court statements from --

11:34 10 THE COURT: Well, isn't that what it
11 says right in the first sentence of the paragraph?

12 MR. WINTON: The first sentence says --

13 THE COURT: He says he understands from
14 evidence filed that there was this call, so clearly
11:34 15 he wasn't on the call.

16 BY MR. WINTON:

17 Q. Right. And then the next
18 sentence, Your Honour, and what I am trying to
19 establish here is that what is present in the next
11:35 20 sentence, your understanding, that is from what
21 Mr. Saratovsky told you; correct?

22 THE COURT: That is what it says,
23 "based on discussions" with Saratovsky.

24 BY MR. WINTON:

11:35 25 Q. I'm just trying to establish that

1 is the source of -- all of the source of your
2 information about what happened on the call?

3 A. Well, if I can clarify, what I say
4 in the next sentence just has to do with what is
11:35 5 going on at the same time as the call, nothing to
6 do with what the call was about.

7 Q. All right, thank you.

8 At paragraph 36, I understood from your
9 evidence this morning and also from this paragraph
11:35 10 in your -- from the first sentence of paragraph 36
11 that Globalive only joined forces with the new
12 investors after August 18th; is that right?

13 A. I think it depends on what you
14 mean by "joined forces". We certainly had
11:36 15 negotiations with them individually and in
16 different contexts for a long time. After the
17 exclusivity period expired, the group sort of
18 reconvened with a view to trying to get an
19 agreement as between themselves and also to get
11:36 20 VimpelCom to take it seriously.

21 Q. But if I understood your evidence
22 in-chief from this morning correctly, you were
23 saying that as of August 7th you had not formed an
24 agreement with the consortium?

11:36 25 A. That is correct.

1 Q. And so were not bound to them in
2 any way to whatever proposal they were making to
3 VimpelCom?

4 A. Yeah, we weren't part of that at
5 all.

6 Q. You weren't part of that at all?

7 A. No.

8 Q. Can we turn up then -- and, Your
9 Honour, part of this is on the fly, but if we can
10 go to the --

11 THE COURT: Let me just ask you a
12 question. Was there a time limit to the support
13 agreement or was it limited to -- what was --

14 THE WITNESS: I don't recall
15 specifically, but there was some discussion around
16 that. I think it did expire at some point, but not
17 in the relevant period.

18 THE COURT: All right.

19 BY MR. WINTON:

20 Q. And the support agreement was
21 entered into on August 7th, 2014; correct?

22 A. Correct.

23 Q. So if we can go to the Griffin,
24 back to the Griffin cross-examination folder, Your
25 Honour -- we'll get to it. It has got to be in one

1 of them.

2 THE COURT: Yes, I have it. Which tab?

3 MR. DiPUCCHIO: It will be tab 29, Your
4 Honour.

11:38 5 BY MR. WINTON:

6 Q. There we go, all right, tab 29,
7 please, in this, and this is WFC0051622. The
8 second email in this chain, I just want to direct
9 your attention to this and give you an opportunity
10 to read it, Mr. Lockie.

11 A. Just the section right there
12 starting with "Tony is nervous [...]?"

13 Q. Yes, it is the email from Mr.
14 Leitner to Mr. Guffey, Mr. Boland and Mr. Fraser
15 sent August 7th.

16 A. (Witness reviews document.)
17 Okay.

18 Q. And during this time period, you
19 and Mr. Lacavera were working closely on whatever
20 options Wind has or Globalive has in terms of what
21 the next -- what it is going to look like through
22 the sales process; fair?

23 A. We were.

24 Q. And so Mr. Leitner is reporting
11:39 25 back to the directing minds you identified earlier,

1 and in the first sentence:

2 "Tony is nervous with the risk
3 he is bearing. He will push, but
4 he's doing so gently. He won't push
11:39 5 to the breaking point short of us
6 backstopping his risks (which we
7 won't do)."

8 So pausing there, were you aware of any
9 discussions between Mr. Lacavera and the consortium
11:40 10 regarding pushing the proposal with VimpelCom?

11 A. I'm not sure I would say -- I was
12 part of those discussions certainly. I'm just not
13 sure I would say that that is what he is talking
14 about when he is saying pushing.

11:40 15 We had come to, by that time, an
16 agreement on what the support agreement would say,
17 what it would provide for us in terms of economics,
18 and his not agreeing to that, releasing his
19 signature to that support agreement was something
11:40 20 that I think he is referring to when he says
21 "push".

22 Q. I see. So the "push" is the
23 support agreement that the consortium was asking
24 him to sign?

11:40 25 A. That VimpelCom was asking us to

1 sign.

2 Q. I see, this is in regards to the
3 VimpelCom support agreement?

4 A. Correct.

11:40 5 Q. Okay.

6 A. To the -- I'm just reading the
7 email, but that is how I read it.

8 Q. And then what is the risk that
9 Mr. Lacavera is referring -- or that is being
11:41 10 referred to here where it says "Tony is nervous
11 with the risk he is bearing"?

12 THE COURT: Well, if he understands. I
13 mean --

14 MR. WINTON: He just said he was a
11:41 15 participant in the conversations, Your Honour.

16 THE COURT: Well, you go ahead, but --

17 MR. WINTON: I understand we have a
18 global overriding hearsay concern, so I'm --

19 MR. MILNE-SMITH: Well, my concern is
11:41 20 that you didn't ask him about the conversation.
21 You asked him about the email.

22 THE COURT: You go ahead, Mr. Winton.

23 BY MR. WINTON:

24 Q. Do you have an understanding as to
11:41 25 what risk, if any, Mr. Lacavera was nervous about

1 bearing during his conversations with the
2 consortium participants?

3 A. I do.

4 Q. What was that?

11:41 5 A. We had, as I mentioned, we had
6 negotiated the best deal we felt we could get from
7 VimpelCom in terms of our economics and a desired
8 outcome from VimpelCom, and that was reflected in
9 the support agreement.

11:42 10 His concern was that if we failed to
11 deliver the support that VimpelCom wanted, then we
12 would lose that deal and those economics and that
13 we would be in an adversarial situation with
14 VimpelCom and they would seek to push the company
11:42 15 into CCAA notwithstanding our objection and that we
16 would lose -- that we would be essentially casting
17 our fate to a process like that.

18 Q. But if I understood your evidence
19 this morning, you, under your unanimous
11:42 20 shareholders agreement, you had to consent to a
21 CCAA proceeding, right?

22 A. That is correct.

23 Q. And you also had to consent to a
24 sale if it involved the Globalive interests?

11:42 25 A. Correct.

1 Q. So the risk he is bearing is a
2 risk of what happens if you don't consent? That is
3 what you are saying that is the risk that
4 Mr. Lacavera --

11:43 5 A. I'll go into as much detail on it
6 as I can. But over the course of VimpelCom's
7 ownership, indirect ownership of its interest in
8 Wind, the idea of -- and with them having decided
9 to exit, the idea of them doing that by way of an
11:43 10 insolvency as sort of a restructuring type process
11 had come up many times, and as I mentioned, we had
12 refused to agree to that process.

13 So it was a point of some contention
14 between us. The principal sort of arguments we had
11:43 15 is if they were to try and, for example, encourage
16 the vendors to have a creditor-led process, that
17 perhaps we would argue minority oppression, we
18 would argue that their 1.5 billion in debt was in
19 fact equity. You know, so we were doing anything
11:44 20 we could to avoid litigation with them. They felt
21 they had arguments that they could force the
22 outcome without our consent, and we didn't agree
23 with them.

24 So when I say he was nervous, what I am
11:44 25 speaking to specifically is that they would proceed

1 to that more adversarial litigious push to put the
2 company into bankruptcy or insolvency.

3 THE COURT: Could I just ask a
4 question. When you say "they", are you talking
11:44 5 about VimpelCom?

6 THE WITNESS: Yes, I am.

7 THE COURT: Thank you.

8 BY MR. WINTON:

9 Q. Now, back to your affidavit, so if
11:44 10 we can exit this, and at paragraph 21, which is on
11 page 10, you refer to section 6.3(d) of the
12 VimpelCom draft SPA as a "hell or high water"
13 clause; do you see that?

14 A. I do.

11:45 15 Q. And by this, you are saying it is
16 meant to prevent a purchaser from taking steps that
17 would prevent or delay the obtaining of consents or
18 approvals required; is that what you mean by that?

19 A. Yes.

11:45 20 Q. But you'll agree with me that even
21 in the VimpelCom draft SPA, there is terms that
22 make any closing conditional upon receipt of
23 Industry Canada approvals?

24 A. Yeah, which I think is why you
11:45 25 have the provision saying the parties will do their

1 best to get those approvals.

2 Q. Right, so when you describe it
3 colloquially as "hell or high water", it is not to
4 suggest that VimpelCom was asking parties to waive
11:46 5 regulatory approval?

6 A. Now, do you mind calling up the
7 actual provision? You don't have to certainly, but
8 when I think of the "hell or high water" clause, it
9 goes beyond simply making the applications. It
11:46 10 says if you are asked to make an undertaking,
11 you'll agree to make it. It is asking you to go
12 further than simply sort of mechanically checking
13 the boxes in an application.

14 Q. Right, we'll take you to it if you
11:46 15 feel it is necessary, but I think the question I'm
16 asking may be a little less than that, which is
17 just to say "hell or high water" does not suggest a
18 waiving of a regulatory approval condition?

19 A. No.

11:46 20 Q. When the consortium made a
21 proposal to purchase VimpelCom's interest on August
22 7th, 2014, and you are with me there, that
23 timeframe, the proposal that you had not formally
24 supported?

11:47 25 A. When you say "consortium", you are

1 referring to those three parties?

2 Q. Correct, the West Face,
3 Tennenbaum, LG Capital consortium.

4 A. Yes.

11:47 5 Q. And at that point, Globalive is
6 not formally bound or in any way obligated to
7 support that proposal, right?

8 A. Correct.

9 Q. Okay. And at the time they made
11:48 10 that proposal, it is to step into the shoes of
11 VimpelCom, as you understood it?

12 A. That is how I understand it, yes.

13 Q. And to purchase from VimpelCom
14 VimpelCom's interests in Wind, right?

11:48 15 A. Yes.

16 Q. And then at that point, once they
17 stepped into VimpelCom's shoes, then they would be
18 seeking any regulatory approvals to change around
19 equity or voting control in Wind, right?

11:48 20 A. I don't know what they would have
21 done after that.

22 Q. Okay, because they didn't have
23 your support at that point to do anything like
24 that?

11:48 25 A. No, if they stepped into

1 VimpelCom's shoes, it just -- that is all that
2 would have happened, so we would have been dealing
3 with them instead of VimpelCom.

4 Q. Right, and then they would have to
11:48 5 deal with you in order to pursue any further
6 re-organization of Wind?

7 A. Yes.

8 Q. And if they could reach an
9 agreement with you, then the four of you would go
11:49 10 to Industry Canada and you would have to seek
11 regulatory approval if it involves a change of
12 control?

13 A. Yes.

14 Q. And when you go to Industry
11:49 15 Canada, you make a proposal for the change of
16 control, right? It is like an application?

17 A. Yes, so you are talking about the
18 spectrum -- I'm sorry, I'm having a little bit of
19 troubling following you, but you are saying if
11:49 20 hypothetically we were to seek approval of a change
21 of control, part of that would be to -- it would be
22 considered a deemed transfer of the spectrum and we
23 would require Ministerial approval, and we would do
24 that by way of a written application.

11:49 25 Q. Right, and Industry Canada

1 approves the application or it denies the
2 application?

3 A. Correct.

4 Q. And as I understand from your
11:49 5 evidence this morning regarding VimpelCom's efforts
6 in I think you said 2012, there may be some
7 discussions amongst the parties while it is being
8 considered to give a party an opportunity to
9 withdraw the application before it is formally
11:50 10 denied?

11 A. No, in 2012 I don't recall much
12 discussion, if any, around spectrum transfer
13 because there was no change in concentration. It
14 really wasn't -- they didn't already have spectrum
11:50 15 that they were adding to.

16 The ability to withdraw the
17 application, I was referring specifically to
18 Investment Canada Act approval.

19 Q. And that is the approval they
11:50 20 withdrew?

21 A. Yes.

22 Q. And that is because there was some
23 foreign ownership concerns? Sorry, the Investment
24 Canada approval was necessary because there were
11:50 25 foreign ownership concerns about the application,

1 right?

2 A. My understanding, based on
3 conversations with VimpelCom, is that there had
4 been foreign ownership concerns raised, yes.

11:50 5 Q. But I don't necessarily need your
6 understanding from VimpelCom. The application was
7 necessary because it involved a foreign ownership
8 of spectrum?

9 A. Sorry --

11:51 10 THE COURT: Which application are you
11 talking about?

12 BY MR. WINTON:

13 Q. The application to Investment
14 Canada.

11:51 15 A. Yes, the Investment Canada Act, if
16 you are above certain financial thresholds,
17 requires government approval and then the
18 government has the ability to also require its
19 approval if it identifies certain concerns with a
11:51 20 transaction. But it all stems from the fact that
21 it is a non-Canadian; that is the threshold
22 question.

23 Q. Right. And those applications are
24 accepted or denied by the regulator?

11:51 25 A. We are talking about Investment

1 Canada again?

2 Q. Yes.

3 A. Yeah, I believe it is a
4 Ministerial approval.

11:51 5 Q. All right. And if denied, then
6 you've got -- it is denied in total. It is not
7 sort of partially denied; it is wholly denied,
8 right?

9 A. Correct.

11:52 10 Q. Just one second, Your Honour, I
11 think I'm almost done.

12 I believe you testified this morning
13 that you were in contact with Industry Canada
14 throughout 2014 to discuss I guess the sale options
11:52 15 for Wind and the potential buyers?

16 A. I was in contact with
17 representatives of Industry Canada, so the
18 bureaucratic department of Industry Canada. I
19 would say I kept them updated about our efforts to
11:53 20 secure investment or for VimpelCom to exit, but
21 primarily my interface with them, which pre-dated
22 any sales process and continued during it, although
23 with additional urgency, was to convey our views on
24 what was required for a viable company, so the
11:53 25 regulatory changes that we had been requesting.

1 Q. And were you, as an executive at
2 Wind, and maybe it is in your capacity as an
3 executive at Globalive, were you keeping yourself
4 informed as to other parties' efforts to meet with
11:53 5 Industry Canada and give Industry Canada a chance
6 to become comfortable with those potential
7 purchasers as approved purchasers of Wind?

8 A. Sorry, I'm sorry to do it, but
9 could you repeat the question? I'm not sure I
11:54 10 follow it.

11 Q. So as an executive at Wind or as
12 an executive at Globalive, were you keeping
13 yourself informed as to other parties' efforts to
14 meet with Industry Canada and give Industry Canada
11:54 15 a chance to become comfortable with those potential
16 purchasers as approved purchasers of Wind?

17 A. No.

18 Q. You were testifying this morning
19 about the licence restrictions on the AWS1 spectrum
11:54 20 that Wind acquired back in the set-aside auction of
21 approximately 2008; is that right?

22 A. Yes.

23 Q. And there was a five-year
24 restriction on transfer of that spectrum to an
11:55 25 incumbent, right?

1 A. Yeah, well, technically it was to
2 anyone who didn't meet the definition of "new
3 entrant", which, as I explained, effectively meant
4 Bell, Rogers and Telus.

11:55 5 Q. Bell, Rogers and Telus, and we
6 have been referring and you are comfortable with
7 the term or you are familiar with the term
8 "incumbent"?

9 A. I am all too familiar with the
11:55 10 term.

11 Q. Right. And that expressed the per
12 se restriction, as you called it this morning, that
13 it was a five-year limit; correct?

14 A. Yes.

11:55 15 Q. And is it fair to say that the
16 expectation at the time the restriction, the per se
17 restriction was imposed was that after five years
18 there was potential for the sale of or transfer of
19 that spectrum to an incumbent?

11:55 20 A. I mean, frankly, it is sort of a
21 loaded question, and I want to make sure I'm
22 answering it correctly.

23 It was clear when the rules of the AWS1
24 set-aside were announced that they were creating
11:56 25 this set-aside and mandatory roaming and tower

1 sharing because they felt there was a competition
2 issue, and in furtherance of that, they said we are
3 not going to permit any transfer of spectrum for
4 five years. And they also said, you know, we'll
11:56 5 build requirements with respect to roaming, and if
6 you wanted to have mandatory roaming extended, you
7 had to meet them.

8 But I recall very clearly from
9 discussions that I had with respect to the
11:56 10 investors back in 2007 and 2008 that you certainly
11 couldn't take for granted that an exit to an
12 incumbent would be available given that the
13 government had stated a policy objective; they
14 would do what they had to do to achieve it.

11:56 15 And I also mentioned that there were
16 potentially other obstacles to a sale like that,
17 for example, the Competition Act or, as we saw,
18 with the Investment Canada Act, depending on the
19 buyer.

11:57 20 So when you say there was an
21 expectation, I would say not on my part.

22 MR. WINTON: All right. No further
23 questions.

24 THE COURT: Thank you, Mr. Winton. Any
11:57 25 re-examination?

1 MR. MILNE-SMITH: No, Your Honour.

2 THE COURT: Thank you very much, Mr.
3 Lockie.

4 THE WITNESS: Thank you. Sorry, I
11:57 5 thought the mic was on when I first sat down.

6 THE COURT: No, it is just there for
7 show.

8 -- WITNESS EXCUSED --

9 MR. THOMSON: Our next witness will be
11:57 10 Tom Dea.

11 THOMAS DEA: SWORN.

12 EXAMINATION IN-CHIEF BY MR. THOMSON:

13 Q. Mr. Dea, the acoustics are bad in
14 this courtroom, so if you could speak up loudly and
11:59 15 clearly.

16 A. Can you hear me okay?

17 Q. Yes, thank you. Justice Newbould
18 just said before you walked in that it is an
19 illusion, the microphone doesn't work.

11:59 20 A. It does not work, okay.

21 Q. So you don't have to lean into it.

22 A. Okay.

23 Q. Mr. Dea, you have sworn two
24 affidavits in this proceeding, one on July 7 of
11:59 25 2014 and the second on June 3 of 2016?

This is Exhibit "73" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

2

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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1 MR. MILNE-SMITH: No, Your Honour.

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14 this courtroom, so if you could speak up loudly and
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17 Q. Yes, thank you. Justice Newbould
18 just said before you walked in that it is an
19 illusion, the microphone doesn't work.

11:59 20 A. It does not work, okay.

21 Q. So you don't have to lean into it.

22 A. Okay.

23 Q. Mr. Dea, you have sworn two
24 affidavits in this proceeding, one on July 7 of
11:59 25 2014 and the second on June 3 of 2016?

1 A. That's correct.

2 Q. And do you adopt those affidavits
3 as your evidence in this proceeding?

4 A. I do.

11:59

5 Q. Now, let me deal very briefly with
6 your background. You are currently a partner of
7 West Face Capital Inc.?

8 A. That's correct.

12:00

9 Q. And you have been with West Face,
10 as I understand from your affidavit, since 2006?

11 A. That's correct.

12:00

12 Q. Briefly, with respect to your
13 educational background, you have got an
14 undergraduate degree from Yale University and an
15 MBA from Harvard University?

16 A. That is correct.

12:00

17 Q. Prior to joining West Face in
18 2006, you worked at Onex, CIBC, GE Capital and
19 Paloma Partners?

20 A. That is correct, yes.

21 Q. Now, I'm going to discuss with you
22 briefly five matters that relate to Mr. Moyse and
23 then finally briefly the Wind transaction at West
24 Face.

12:00

25 So let me start with the hiring of Mr.

1 Moyse. First, when and how did you first come
2 across Mr. Moyse?

3 A. In about 2012, in or around that
4 timeframe, I was reached out to by a personal
12:00 5 friend, Thomas Mercein, who was the global head of
6 debt capital markets at Credit Suisse in New York,
7 and he was calling on behalf of Mr. Moyse and said
8 that he had heard that we were looking for analysts
9 and then gave a glowing recommendation at the time
12:01 10 and direction to Mr. Moyse.

11 Q. Did you hire him at that time?

12 A. We did not.

13 Q. Did you maintain contact with
14 Moyse after 2012?

12:01 15 A. After 2012, I did. He contacted
16 me through email. It was in I think December of
17 2013.

18 Q. Okay. Now, I understand that West
19 Face launched something called an Alternative
12:01 20 Credit Fund on December 31, 2013?

21 A. Yes, that is correct.

22 Q. And at a high level, what is the
23 nature of that fund?

24 A. At a high level, the Alternative
12:02 25 Credit Fund provides debt capital in privately

1 negotiated credit investments. It makes
2 investments in illiquid credit for a term longer
3 than two years.

12:02 4 Q. Was the launch of the fund
5 publicized at that time?

6 A. It was known in the public, yes.

7 Q. Did you hear from Mr. Moyse
8 following the launch of that fund?

9 A. Yes, I did.

12:02 10 Q. Can we pull up, please, Exhibit 1
11 to Mr. Dea's affidavit, and can we scroll to page 2
12 of this document. This is WFC0031084, which are
13 emails of March 24th -- or of March 2014.

14 And, Mr. Dea, can I take you to the
12:03 15 email at the bottom of the second page of this
16 exhibit. This is from Mr. Moyse to you, and you
17 will see the date is Friday, March 14th of 2014,
18 where he says:

19 "I saw you launched an
12:03 20 alternative/illiquid credit fund a
21 couple months ago. Not sure what
22 your needs are but I wanted to let
23 you know that I'm starting to look
24 at exploring other opportunities and
12:03 25 this is something that would

1 definitely be of interest", and so
2 on.

3 And then if you look at the next page,
4 he talks about getting together to chat, and he
12:03 5 then says:

6 "Appreciate your keeping this
7 in confidence and hope we can
8 discuss further."

9 Did you receive that email from Mr.
12:03 10 Moyse around March 14th of 2014?

11 A. Yes, I did.

12 Q. As a result of that email of March
13 14th, did you arrange to meet with Mr. Moyse?

14 A. I did. He was fairly persistent,
12:04 15 and yes, I did.

16 Q. Where and when did you meet with
17 him?

18 A. I met with him at a coffee shop
19 downtown Toronto.

12:04 20 Q. Okay. And if you go to the first
21 page of the emails at Exhibit 1, you will find an
22 email from Mr. Moyse on March 26th of 2014. Do you
23 see that, two or three emails down, saying:

24 "Sure, there is an Aroma Coffee
12:04 25 in the Standard Life building."

1 A. I do see that.

2 Q. And then at the top email of the
3 chain, at 1:45 p.m. on March 26th you say:

4 "I'm sitting in the concourse
5 area next to escalator."

6 And am I right in assuming that the
7 meeting took place on March 26th?

8 A. You are correct.

9 Q. Will you please describe for
10 Justice Newbould what happened during that meeting
11 with Mr. Moyse?

12 A. So that meeting was a fairly
13 standard interview where I wanted to get a sense of
14 his experience. I asked general type questions
15 about what he was doing. He clearly had a very
16 strong academic record. He had an undergraduate
17 degree from Penn in math. He had worked for a top
18 Wall Street firm and a Canadian Bay Street firm.
19 And I was trying to get a sense for his background,
20 you know, what his interests were and in general
21 the types of things that he wanted to do and in
22 general what kinds of things he was working on
23 there.

24 Q. Were there any discussions during
25 that meeting concerning Catalyst's involvement in a

1 Wind Mobile transaction?

2 A. No, there were not.

3 Q. Were there any discussions during
4 that meeting concerning West Face's involvement in
12:06 5 a transaction involving Wind Mobile?

6 A. No, there were not.

7 Q. Was Wind Mobile mentioned in any
8 way during that meeting?

9 A. It was not.

12:06 10 Q. For that matter, were there any
11 discussions during that meeting about any current
12 transaction Moyse was working on at Catalyst?

13 A. Definitely not.

14 Q. And why do you say "definitely
12:06 15 not"?

16 A. It would be extreme -- it just
17 wouldn't happen. We just would not discuss a
18 current transaction with a prospective candidate.
19 It just doesn't happen.

12:06 20 Q. Following the meeting with Mr.
21 Moyse, did you report on the meeting to your
22 partners at West Face?

23 A. Yes, I did.

24 Q. I would ask you to turn, please,
12:06 25 to Exhibit 2 to the affidavit. And, Your Honour,

1 this is WFC0079574.

2 And you will find at the very bottom of
3 the page, if you can please scroll down, and Mr.
4 Dea, you'll find an email there of March 26th, so
12:07 5 that is the day you met with Moyse, and your email
6 is at 4:59 p.m. to Mr. Boland, Mr. Griffin and
7 Mr. Fraser, and I understand they are your partners
8 at West Face?

9 A. They are, yes.

12:07 10 Q. And the first part deals with Sun
11 Life, so I'll skip past that.

12 And then you have a heading "Brandon
13 Moyse", talking about him working at Catalyst,
14 promoted to associate, been there 1.5 years, and
12:07 15 you talk about why he is looking around and his
16 background and so on.

17 Does this email summarize accurately at
18 least some of the topics you discussed with Mr.
19 Moyse on that day, on March 26th?

12:07 20 A. Yes, it does.

21 Q. Okay. Now, let me turn to a
22 related subject, which is the so-called writing
23 samples, and ask you to turn, please, to tab 3 of
24 your affidavit where you'll find -- and this is
12:08 25 WFC0075126. And you will find an email at the

1 bottom of the page written later that day or
2 perhaps really early in the morning the following
3 day at 1:47 a.m. on March 27th, an email from Mr.
4 Moyse to you entitled "Update" where he says:

12:08 5 "As discussed, please see
6 attached for my CV and deal sheet,
7 and a few investment write-ups I've
8 done at Catalyst."

9 And just for His Honour's benefit, if
12:08 10 you scroll through to page 204 of the attachment,
11 204 -- there you are, and we can stop. At page 204
12 of the attachment, do you recognize that as Mr.
13 Moyse's resumé?

14 A. Yes, I do.

12:09 15 Q. And then the following page, page
16 205, do you recognize that document as Mr. Moyse's
17 so-called deal sheet?

18 A. Yes, I do.

19 Q. Okay. So if we then go back to
12:09 20 the first page of Exhibit 3 to your affidavit, that
21 is Mr. Moyse's email of March 27th where he refers
22 to attaching "a few investment write-ups I've done
23 at Catalyst." During your meeting with Mr. Moyse
24 on March 26th, did you ask him to send you
12:10 25 anything?

1 A. Yes, I did.

2 Q. What did you ask for?

3 A. I asked him to send me a copy of
4 his CV, a deal sheet and a writing sample.

12:10 5 Q. And why would you have asked him
6 for a writing sample? Was that an unusual request
7 for you to make?

8 A. No, not at all. That is a very
9 standard request to ask of a prospective employee
12:10 10 who is going to be prospectively working on new
11 investments to see their ability to logically put a
12 description together and make a case, and so it
13 would be logical, and particularly in his
14 background with a strong math background,
12:10 15 particularly important to see how his writing
16 skills were.

17 Q. And did you have any discussions
18 with Mr. Moyse concerning the confidentiality of
19 the writing samples you were asking for?

12:11 20 A. Absolutely. I made it
21 extraordinarily clear that he was not to send me
22 anything that was confidential or proprietary in
23 nature, and I specifically said that he should
24 redact anything if it did contain that or to
12:11 25 re-characterize it. And so I made that very clear.

1 He had fairly -- it was fairly
2 open-ended to his choosing what he would send me.

3 Q. Okay. And what expectation did
4 you have --

12:11 5 THE COURT: Mr. Dea, I have to just
6 tell you, I have a strong math background too. So
7 I understood the purport of your question.

8 MR. THOMSON: And we know about your
9 writing skills.

12:11 10 BY MR. THOMSON:

11 Q. Mr. Dea, what expectation, if any,
12 did you have concerning Mr. Moyse's compliance with
13 his confidentiality obligations to Catalyst?

14 A. What...?

12:12 15 Q. What expectation, if any, did you
16 have concerning Mr. Moyse's compliance with his
17 obligations to Catalyst?

18 A. In our business, it is -- I had
19 the highest expectation. It is -- I assumed that
12:12 20 he would act responsibly. I have been in the
21 business almost 30 years, and I have found people
22 are very good and observe it and it almost goes
23 without saying.

24 Q. Now, I take it, if you just look
12:12 25 at the email then that we saw on the screen, you'll

1 see his email at the bottom of the page at 1:47
2 a.m. on March 27th.

3 And if you scroll up, please, you'll
4 find an email at the top of the page from you to
12:12 5 Mr. Boland, Mr. Fraser, Mr. Griffin and Yu-jia Zhu?

6 A. Yu-jia Zhu, yes.

7 Q. And we have talked a lot about
8 Boland, Griffin and Fraser. Just tell His Honour
9 who Yu-jia Zhu is?

12:13 10 A. Right, so Mr. Boland, Mr. Fraser
11 and Mr. Griffin and I are partners at West Face,
12 and Yu-jia Zhu would be the most senior of the
13 non-partners at West Face.

14 Q. Okay, and why were you copying
12:13 15 this email to him?

16 A. Mr. Zhu, because of that position,
17 has been involved in assessing analyst candidates
18 in the past, and was in this case. Therefore, it
19 was appropriate to include him.

12:13 20 Q. Just try to keep your voice up,
21 please.

22 A. I'm sorry.

23 Q. No, that is fine.

24 A. Would you like me to repeat that?

12:13 25 Q. You are leaning into the

1 microphone as if it works.

2 A. Okay. Would you like me to repeat
3 that?

4 Q. Did you hear that, Your Honour?

12:13 5 THE COURT: Sure, I got it, don't
6 worry.

7 BY MR. THOMSON:

8 Q. Okay, thank you.

9 Now, he sends his email to you at 1:47
12:13 10 a.m. on March 27th, and you send the email along to
11 Mr. Boland, Griffin, Fraser and Zhu. And why were
12 you sending the materials you received from Mr.
13 Moyse along to those people on the morning of March
14 27th?

12:14 15 A. Right, so I met with him the 26th.
16 I gave a summary of the meeting at the end of the
17 day on the 26th. I arrived at work the next
18 morning. He had sent the materials in the middle
19 of the night. You have to understand in the
12:14 20 morning there's a number of things to do. You have
21 to assess the news that comes in, and it is fairly
22 busy until markets open at about 9:30. And then
23 you take care of emails that you would receive. I
24 would receive hundreds of emails a day. And so I
12:14 25 would have been taking a cursory review of this and

1 passed it on as a package to my partners.

2 Q. Did you review the writing samples
3 before you did so?

4 A. I certainly -- you know, it is a
12:15 5 couple of years ago. I don't remember absolutely
6 precisely what I did. I certainly would have
7 reviewed the cover of this, the body of the email,
8 and I would have -- but I think I opened it and
9 reviewed it, but it would have been in a very
12:15 10 cursory form. I mean, there was I think 150, 200
11 pages. There is absolutely no way that I reviewed
12 all of that, the contents of that email. And I
13 passed it on.

14 Q. When you reviewed the writing
12:15 15 samples at least in part either then or perhaps a
16 bit later, what was your assessment of the samples?

17 A. Well, I -- my assessment of the
18 samples were that they were fairly perfunctory
19 assessments of companies based on public
12:15 20 information. I think there were three of the
21 samples were based entirely, as he notes in the
22 covering email, based on public information, and
23 one was based on a prior transaction, it was kind
24 of a description. And I really paid very little
12:16 25 attention to that one in particular because it was

1 very far away from anything that we would be
2 involved in. It was in Europe and it involved real
3 estate, which we had very little to do with.

4 And so I looked at them, but quite
12:16 5 frankly, I didn't find them very helpful.

6 Q. Did you or your colleagues use any
7 of the information contained in these writing
8 samples to make investment decisions at West Face?

9 A. Absolutely not, we did not.

12:16 10 Q. Now, after you met with Mr. Moyse
11 on the 26th, was he interviewed by the other
12 partners at West Face and by Mr. Zhu?

13 A. Yes, he was, he was interviewed.

14 He came twice. The first time he came to our
12:17 15 offices, he was reviewed by Mr. Fraser, Mr. Griffin
16 and Mr. Zhu, and at a second visit he was
17 reviewed -- interviewed by Mr. Boland.

18 Q. And did you hear back from your
19 colleagues after they interviewed Mr. Moyse?

12:17 20 A. Yes, I did. Yes, I did.

21 Q. Okay. And did anyone ever suggest
22 to you that Mr. Moyse had mentioned an involvement
23 in a Wind transaction with Catalyst during those
24 interviews?

12:17 25 A. No, certainly not, no.

1 Q. Did you take steps to check Mr.
2 Moyse's references?

3 A. Yes, I did.

4 Q. Were the references positive or
12:17 5 negative?

6 A. They were very favourable.

7 Q. If we turn, please, to Exhibit 5
8 to your affidavit, you will find document
9 WFC0109171, several emails you exchanged on May
12:18 10 15th of 2014 with a fellow named Thomas R. Mercein
11 of Credit Suisse. Did you have a personal
12 relationship with Mr. Mercein?

13 A. Yes, Mercein. We were friends
14 together at college, at Yale. He was a football
12:18 15 player, and I was a hockey player; we were good
16 friends.

17 Q. Did you trust his judgment?

18 A. Absolutely.

19 Q. And in the middle of the page, the
12:18 20 middle of the first page, you'll find an email from
21 Mr. Mercein to you of May 15th at 11:03 a.m. "Re:
22 Brandon Moyse", where he says:

23 "Great kid, very smart and
24 hardworking. He was the guy that
12:18 25 did all my stuff when he was in my

1 group. I was consistently impressed
2 with his work. You are the man,
3 Tommy."

4 My favourite email.

12:19 5 THE COURT: I'm sure there is a story
6 there, but we don't need to hear it.

7 MR. THOMSON: When you have a football
8 player and a hockey player, I don't think we should
9 hear the story in open court.

12:19 10 BY MR. THOMSON:

11 Q. Was that review significant to
12 you?

13 A. Yes, it was, yes.

14 Q. Why?

12:19 15 A. Well, to put this into context, it
16 was unsolicited him reaching out to me to endorse
17 him, so I had a direct endorsement of the
18 candidate. You get these sometimes from senior
19 people, but they have worked, you know, three or
12:19 20 four or five levels down. This was an individual
21 who reported directly to him, so he had personal
22 knowledge of what he was like to work with. You
23 know, I had a high degree of confidence he wasn't
24 going to set me astray, so I put a lot of weight to
12:19 25 his endorsement.

1 Q. Okay. And then if we turn to
2 Exhibit 6, please, you will find another series of
3 emails, and this is WFC0109186, of May 16th now of
4 2014, with someone named Rich Myers at Credit
5 Suisse.

6 And the one I want to take you to, if I
7 could, sir, is at the very top of the page, the
8 first page, at 13:25 p.m. where Mr. Myers says:

9 "Sounds good, nothing negative
10 at all to say about Brandon. Quite
11 the opposite. He was among the very
12 best analysts we have had and was
13 given the lead on several high
14 profile internal projects with
15 senior management focus."

16 What was your reaction to receiving
17 this reference from Mr. Myers?

18 A. Obviously I found it to be a very
19 favourable review. Again, you know, Credit Suisse
20 is one of the biggest Wall Street firms in credit
21 origination, so it is a firm that the
22 recommendations mean something. And they have a
23 very large pool of analysts that come through every
24 single year, and so to say that he was among the
25 very best is very high endorsement and his --

1 further, his comments agreed with what Mr. Mercein
2 had said in that he had some very high-level
3 projects. Mr. Mercein had described a project with
4 the very senior-most people at Credit Suisse in
12:21 5 Europe and that he had helped him significantly on
6 some of that stuff.

7 Q. So after you received these
8 recommendations, what decision, if any, did you
9 make concerning the hiring of Mr. Moyse?

12:21 10 A. I'm sorry, I didn't --

11 Q. After you received these
12 recommendations, what decision, if any, did you
13 make concerning the hiring of Mr. Moyse?

14 A. So I essentially recommended him
12:21 15 to my partners and suggested that we make a
16 decision.

17 Q. Can you turn, please, to Exhibit 7
18 to the affidavit. And, Your Honour, this is
19 WFC0109181, emails from Mr. Dea to his colleagues
12:22 20 on Friday, May 16th of 2014.

21 And can you please scroll down to the
22 email at the bottom of the page. Can you shrink
23 that so it is on one page for Justice Newbould's
24 benefit. Can you read that?

12:22 25 THE COURT: I've got it all here, don't

1 worry.

2 MR. THOMSON: Okay, thank you.

3 THE COURT: Do you have your iPad
4 there, Mr. Thomson?

12:22 5 MR. THOMSON: No, Your Honour, it is
6 all right up here. Right up here.

7 MR. DiPUCCHIO: It is a very small
8 iPad.

9 THE COURT: It is small.

12:22 10 MR. THOMSON: Very, very small.

11 BY MR. THOMSON:

12 Q. Mr. Dea, is this the email that
13 you are referring to where you recommended the
14 hiring of Mr. Moyse?

12:22 15 A. Yes, it is.

16 Q. And no need to go through a lot of
17 this. Just so His Honour has it for his notes, you
18 refer in the third paragraph of the email -- and
19 perhaps you could expand that a bit -- so at the
12:23 20 third paragraph of the email you say:

21 "The DCM position at CS was not
22 as demanding analytically as other
23 areas", and so on.

24 Just without the acronyms, what are you
12:23 25 saying?

1 A. Okay, so what I meant by that,
2 debt capital markets is a function that sits
3 between investment banking and sales and trading,
4 so you would have an opportunity to work on a lot
12:23 5 of different transactions, but you might not have
6 as in-depth an analytical experience as if you
7 worked in, say, leverage finance on the investment
8 banking side.

9 And so I was just highlighting the fact
12:23 10 that the debt capital markets position at Credit
11 Suisse was not as demanding, as I say, as M&A or
12 leverage finance in that regard, but he was here to
13 take things on.

14 Q. Now, I want to take you to the
12:24 15 third-last paragraph on that page. It says:

16 "We need someone now to help
17 process debt pipeline more
18 effectively."

19 Can you please explain that statement
12:24 20 to Justice Newbould?

21 A. Yes. So we had a critical need
22 for some additional analytical work to assist us in
23 reviewing opportunities for the Alternative Credit
24 Fund, and we -- well, that is the only way I can
12:24 25 put it, that we had a critical need for that

1 function.

2 Q. Okay. As of the date you made
3 this recommendation on May 16th of 2014, were you
4 aware of Mr. Moyses's involvement in a Wind
12:24 5 transaction at Catalyst?

6 A. No, no, I was not.

7 Q. Did the hiring of Mr. Moyses have
8 anything at all to do with his involvement in a
9 Wind transaction at Catalyst?

12:24 10 A. No, certainly it was not.

11 THE COURT: I'm waiting for you.

12 MR. THOMSON: Oh, I'm sorry, I was
13 waiting for you. We could have sat here all day.

14 BY MR. THOMSON:

12:25 15 Q. Will you please turn to Exhibit 11
16 to the affidavit. And, Your Honour, this is
17 WFC0109149.

18 And, Mr. Dea, these are emails that you
19 exchanged with your partner Mr. Griffin on April
12:25 20 24th of 2014, which is before you make the
21 recommendation and before you hire Mr. Moyses.

22 So you'll see at the bottom of that
23 email chain an email from you to Mr. Griffin of
24 April 24th at 9:24 a.m. where you say:

12:26 25 "Brandon going to come in for a

1 coffee with Greg."

2 I take it that would be Mr. Boland?

3 A. Yes.

4 Q. And then you say:

12:26 5 "I asked Graeme to quietly ask

6 around his peers who are the top E&P

7 analysts", and so on.

8 Does that last sentence have anything

9 to do with Mr. Moyse, or was that hiring other

12:26 10 people?

11 A. No, that has nothing to do with

12 Mr. Moyse. As I said, we had a critical need for

13 analytical support. Mr. McLellan, Graeme McLellan,

14 is one of the junior analysts, and I had asked him

12:26 15 to ask around his peers within the investment banks

16 for who among his peers were top E&P, that is

17 exploration and production, that is energy company

18 analysts at Goldman Sachs, RBC, et cetera, to

19 increase the pool size of candidates for the

12:27 20 analyst position.

21 Q. Okay. Mr. Griffin writes to you

22 on the 24th, the same day, about two minutes later

23 and he says:

24 "Do you have any concerns about

12:27 25 Brandon's decision to share those

1 internal memos with us - lack of
2 judgment in terms of privy nature of
3 information?"

4 And you write back the same day,
12:27 5 apparently seconds later, actually, and you say:

6 "I guess that is a concern.
7 I'm not committed to him, but we
8 need someone."

9 Just explain to the Court what the
12:27 10 discussion was around the writing samples with Mr.
11 Griffin around April 24th of 2014?

12 A. Yeah, sure. So this follows a few
13 informal discussions passing in the hallway with
14 Mr. Griffin where we discussed this. We noted that
12:27 15 it contained the internal materials, and the
16 quandary was whether this was reflective of a
17 serious character flaw on this individual, that it
18 did get to his true character, or was it sort of a
19 one-off, because the rest of his credentials were
12:28 20 very strong, as we have discussed. His
21 endorsements were strong. He had rounded out his
22 experience, and he had sent this over, which was a
23 lapse of judgment.

24 And I simply acknowledged that it is a
12:28 25 concern, pointed out that I was not particularly

1 committed to him, if he wished, implicitly, if Tony
2 wished to press it, but I just highlighted that we
3 do need someone, again, reinforcing the critical
4 requirement for analytical support at that time.

12:28 5 Q. So why did you hire Mr. Moyses in
6 the face of these concerns? What conclusion did
7 you draw?

8 A. So again, to sort of repeat what I
9 just said, the judgment that we had to make was
12:29 10 acknowledging that he had sent this over, sent us
11 over some internal materials, and did that event
12 cause us to conclude that this was a person that
13 had a flawed character, which would clearly
14 disqualify him as a candidate, or was this a case
12:29 15 of him doing something on a one-off basis that
16 didn't get to character and was -- that we could
17 look at the entire package of the individual and
18 conclude that he would be a suitable candidate.

19 Q. So what conclusion did you draw?

12:29 20 A. Well, we concluded that,
21 obviously, that he was a suitable candidate and
22 would be a productive member of the team.

23 Q. Okay. Now, let me turn to the
24 second issue I wanted to chat with you briefly
12:29 25 about and that is precautions taken with respect to

1 Mr. Moyses before he joined West Face later in June.

2 So when the decision was made in May of
3 2014 to make a job offer to Mr. Moyses, did you take
4 any steps to raise with him his confidentiality
12:30 5 obligations to Catalyst?

6 A. Yes, I did. I thought it was a
7 very serious matter, and I went to our general
8 counsel at the time and said I wanted him to
9 approach Mr. Moyses and to essentially impress upon
12:30 10 him as a legal professional the importance of this
11 matter, the duty that he had both to our
12 confidential information and to the confidential
13 information of where he was previously employed,
14 and to essentially scare him a little bit, that
12:30 15 this is a really important issue and to hear it
16 from someone other than me.

17 Q. And what was the general counsel's
18 name?

19 A. Mr. Singh.

12:30 20 Q. And if we pull up not Exhibit 3
21 but rather tab 3 of the examination folder, this is
22 WFC0075056, and you will find here an affidavit of
23 Mr. Singh sworn July 7 of 2014. I just wanted to
24 take you to the fourth paragraph of the affidavit
12:31 25 where Mr. Singh says:

1 "On or about May 22, 2014, the
2 same day that West Face provided
3 [...]"

4 THE COURT: Sorry, just wait.

12:31 5 MR. THOMSON: I'm sorry.

6 THE COURT: All right.

7 BY MR. THOMSON:

8 Q. It is paragraph 4, Your Honour.

9 So Mr. Singh says:

12:31 10 "On or about May 22, 2014, the
11 same day that West Face provided a
12 written offer of employment to
13 Brandon, I spoke with Brandon and
14 advised him that West Face takes
12:32 15 matters of confidentiality very
16 seriously and that he was not to
17 disclose any information belonging
18 to Catalyst. I pointed out to
19 Brandon that this obligation was
12:32 20 also included as part of his
21 employment contract with West Face,
22 which states that he must not use
23 any property in the course of his
24 employment with West Face which is
12:32 25 confidential or proprietary

1 information of any other person,
2 company, group or organization,
3 which I told him would include
4 Catalyst."

12:32 5 Was this the discussion you had asked
6 Mr. Singh to have with Mr. Moyse?

7 A. Yes, it is.

8 Q. Now, let me take you forward in
9 time, and this was May 22nd, and I understand that
12:32 10 Mr. Moyse actually started his employment with West
11 Face on Monday, June 23?

12 A. Correct, yes, that is my
13 understanding as well.

14 Q. And before you get to him joining
12:33 15 West Face, there is one event I wanted to discuss
16 with you briefly. Turn up, please, tab 5 of the
17 examination in-chief binder. And, Your Honour,
18 this is WFC0075125. It is a letter from the
19 Dentons firm to my friend Mr. DiPucchio of June
12:33 20 19th of 2014.

21 And, Mr. Dea, I wanted to take you to
22 the third paragraph of the letter where Mr. Miedema
23 of the Dentons firm says to my friend Mr.
24 DiPucchio:

12:34 25 "You mentioned yesterday that

1 Catalyst is particularly concerned
2 about Mr. Moyse's involvement in a
3 'telecom deal'. The writer has
4 discussed that point with West Face.
12:34 5 West Face has implemented a
6 confidentiality wall that prevents
7 Mr. Moyse from having any
8 involvement in that potential
9 transaction or from discussing any
12:34 10 confidential information relating to
11 that potential transaction with
12 anyone at West Face, and vice versa.
13 Mr. Moyse has not had, and will not
14 have, any involvement with that
12:34 15 potential transaction at West Face."
16 So taking this one step at a time, was
17 the concern of Catalyst pertaining to Mr. Moyse's
18 involvement in a telecom file brought to your
19 attention on June 18 or 19, 2014?
12:34 20 A. I don't recall exactly that
21 timeframe, but yes, come to think of it, yeah, they
22 would have brought it to my attention.
23 Q. And were you involved in the
24 setting up of the confidentiality wall at West
12:35 25 Face?

1 A. Yes, I was.

2 Q. Who was the -- who was I guess and
3 still is the Chief Compliance Officer of West Face
4 at that time?

12:35 5 A. Mrs. -- Supriya is her first name.

6 Q. Kapoor? Supriya Kapoor?

7 A. Kapoor, yes, I apologize.

8 Q. And, Your Honour, I believe she'll
9 be the next witness for West Face, so you'll hear
10 from her directly. So we'll skip past that, sir.

11 Let me then turn to the third timeframe
12 I wanted to speak with you about briefly, and that
13 is the period that Mr. Moyse actually worked at
14 West Face. So you have confirmed he began work
15 four days later on Monday, June 23 of 2014. To
16 your knowledge, did Mr. Moyse comply with the
17 confidentiality wall during the period that he was
18 employed by West Face?

19 A. Yes.

12:36 20 Q. And to your knowledge, did other
21 employees at West Face also comply with that
22 confidentiality wall?

23 A. Yes.

24 Q. And by way of example, just for
12:36 25 His Honour's benefit, where was Mr. Moyse actually

1 stationed in the offices of West Face during the
2 three weeks that he worked at the firm?

3 A. He was stationed in the common
4 working area that we have. He was maybe -- you
12:36 5 know, the common area is sort of down halfway in
6 the middle of the room.

7 Q. And when you and other members of
8 the West Face deal team responsible for the Wind
9 transaction discussed that transaction at West
12:36 10 Face, did you do so in the presence of Mr. Moyse?

11 A. No, certainly not.

12 Q. Where did you have those
13 discussions?

14 A. We would have any discussions off
12:36 15 of that common working area. There are a number of
16 breakout rooms where the doors close and we would
17 have those discussions there. That is in fact very
18 common practice, not just on that file but any
19 file. Our common work area is actually very, very
12:37 20 quiet. People generally take even phone calls in
21 the private rooms to keep it quiet.

22 Q. Now, Mr. Dea, during the entire
23 period that Mr. Moyse worked at West Face, did he
24 ever convey to you information of Catalyst
12:37 25 concerning either Wind or VimpelCom?

1 A. No, he did not.

2 Q. And to your knowledge, did Mr.
3 Moyse convey to anyone else at West Face
4 information of Catalyst concerning either Wind or
12:37 5 VimpelCom?

6 A. He did not, to my knowledge.

7 Q. Let me turn to the fourth period I
8 wanted to chat with you about briefly, and that is
9 the period after Moyse leaves West Face on July
12:37 10 16th of 2014.

11 And no need to turn this up, but there
12 was a consent order issued by a judge named Justice
13 Firestone on July 16 of 2014 that had the effect of
14 separating Moyse from West Face, which you have all
12:38 15 agreed to.

16 Moyse leaves on July 16th. Does he
17 ever return to West Face after July 16?

18 A. He does not.

19 Q. Did you have any further contact
12:38 20 with Moyse in the period after July 16?

21 A. I did not.

22 Q. And to your knowledge, did the
23 other members of the Wind deal team have any
24 substantive discussions with Moyse in the period
12:38 25 after July 16th?

1 A. To my knowledge, no one did.

2 Q. Okay. Finally, Mr. Dea, with
3 respect to your involvement in the Wind
4 transaction, I understand from your affidavit that
12:38 5 due to a serious personal issue that arose in June
6 of 2014, you had little to no involvement in the
7 Wind transaction in the period from June to
8 September --

9 A. That is correct.

12:38 10 Q. -- 2014?

11 A. That is correct.

12 MR. THOMSON: All right. Your Honour,
13 those are all of my questions.

14 CROSS-EXAMINATION BY MR. DiPUCCHIO:

12:39 15 Q. Good afternoon, Mr. Dea.

16 A. Good afternoon, Mr. DiPucchio.

17 Q. I know that I had previously
18 cross-examined you, so I'm not going to try and
19 retread old ground. We'll rely on my transcript of
12:39 20 your cross-examination from a previous occasion in
21 the course of the trial. But let me just address a
22 few matters that you gave evidence on this morning
23 and in your trial affidavit in-chief.

24 First of all, in relation to the
12:39 25 meeting that you had with Mr. Moyse on March 26th

This is Exhibit "74" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

2

3

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

5

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7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

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14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

18

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1 A. To my knowledge, no one did.

2 Q. Okay. Finally, Mr. Dea, with
3 respect to your involvement in the Wind
4 transaction, I understand from your affidavit that
12:38 5 due to a serious personal issue that arose in June
6 of 2014, you had little to no involvement in the
7 Wind transaction in the period from June to
8 September --

9 A. That is correct.

12:38 10 Q. -- 2014?

11 A. That is correct.

12 MR. THOMSON: All right. Your Honour,
13 those are all of my questions.

14 CROSS-EXAMINATION BY MR. DiPUCCHIO:

12:39 15 Q. Good afternoon, Mr. Dea.

16 A. Good afternoon, Mr. DiPucchio.

17 Q. I know that I had previously
18 cross-examined you, so I'm not going to try and
19 retread old ground. We'll rely on my transcript of
12:39 20 your cross-examination from a previous occasion in
21 the course of the trial. But let me just address a
22 few matters that you gave evidence on this morning
23 and in your trial affidavit in-chief.

24 First of all, in relation to the
12:39 25 meeting that you had with Mr. Moyse on March 26th

1 at Aroma, you discussed in that meeting Mr. Moyse's
2 interest in West Face?

3 A. I did, yes.

4 Q. And specifically, you recall
12:40 5 having discussions about the Alternative Credit
6 Fund at West Face?

7 A. Yes, I did.

8 Q. And you discussed, I take it, the
9 reason why Mr. Moyse or the reasons why Mr. Moyse
12:40 10 was looking for a new job?

11 A. Yes, I did.

12 Q. And you asked him, I suggest to
13 you, what types of files he was working on at
14 Catalyst?

12:40 15 A. I had a very general discussion
16 with him. I would have asked him about his
17 background, as I said earlier, and the type of work
18 he was doing. I did not ask him specifically about
19 any files.

12:40 20 Q. Were there any specifics at all
21 discussed with respect to Catalyst's interest in
22 any particular transaction or company?

23 A. I don't recall any specific
24 discussion. It is possible that I had asked him
12:41 25 about -- I just don't recall any specific

1 discussions of investments at that time.

2 Q. And indeed, I think when you were
3 giving your evidence in-chief this morning, you put
4 it quite emphatically that that just simply would
12:41 5 not be done?

6 A. What would not be done?

7 Q. That you would never seek to
8 discuss any ongoing interest in any transaction
9 with a candidate?

12:41 10 A. Yes, I think what I said was that
11 I absolutely would not discuss any live transaction
12 with a candidate.

13 Q. Okay. Now, I want to take you to
14 a couple of the communications that occur right
12:41 15 after your meeting with Mr. Moyse or close to the
16 time you met with Mr. Moyse.

17 So let's go, first of all, to the
18 document that Mr. Thomson referred you to, Exhibit
19 2 of your affidavit. This is WFC0079574. And if
12:42 20 you scroll down, you'll recall Mr. Thomson taking
21 you to this particular email chain, which was sent
22 by you to your partners very close to the time
23 after you met Mr. Moyse, right?

24 A. That's correct.

12:42 25 Q. And just go down and we'll see

1 what you said about Mr. Moyse. So, first of all,
2 you say he is:

3 "Looking around because focus
4 shifting from new business to
12:42 5 current ops."

6 This is bullet point 4; do you see
7 that?

8 A. Yes.

9 Q. And then you say:

12:43 10 "Deal pipeline 'not great'."

11 And do you see that?

12 A. Yes.

13 Q. And is it your evidence, Mr. Dea,
14 that notwithstanding the reference to the fact that
12:43 15 Mr. Moyse was discussing with you the deal pipeline
16 at Catalyst, that you did not have any discussions
17 whatsoever with respect to the specifics of that
18 deal pipeline?

19 A. To be honest, I really don't
12:43 20 recall a discussion about the deal pipeline at all.

21 Q. Well, it must have been discussed,
22 I suggest to you, because you referred to it in a
23 note to your partners immediately thereafter?

24 A. Well, I think what the note says
12:43 25 is that Brandon was not happy with what he was

1 doing and that he wanted to shift to new business
2 and that he was working on current existing
3 investments.

12:43 4 Q. Well, I suggest to you it is a
5 little bit more than that. He says -- or what you
6 wrote is "deal pipeline 'not great'"?

12:44 7 A. Yeah, and it is not clear, you
8 know, he may have been referring to for him
9 personally. I just don't recall the specifics. I
10 do recall that he just was unhappy about the type
11 of work he was doing.

12:44 12 Q. Okay. Well, I'll ask you again,
13 and we'll get your evidence on this and then we'll
14 move on. Is it your evidence that notwithstanding
15 that you made a note to your partners that the
16 "deal pipeline 'not great'", that you did not
17 discuss any specifics about that deal pipeline with
18 Mr. Moyse?

12:44 19 A. Yes, that is exactly what I am
20 saying, yes.

21 Q. All right. And then the last
22 bullet point is:

23 "Will send updated CV, deal
24 sheet, sample internal output."

12:44 25 Do you see that?

1 A. I do.

2 Q. All right. So I know your counsel
3 has continually referred to these as "writing
4 samples".

12:44 5 A. Uhm-hmm.

6 Q. But you haven't called them
7 "writing samples". You have called them "sample
8 internal output", right?

9 A. In this email, yes.

12:44 10 Q. Right. So it is not a short story
11 that Mr. Moyse has written or anything like that
12 that you're interested in to assess his writing
13 ability. You are saying to your partners that you
14 have asked him for a sample internal output;
12:45 15 correct?

16 A. I think what I said was that I had
17 asked him for a CV, a deal sheet, and I wanted
18 something -- in the discussion that I had with Mr.
19 Moyse, I wanted something that would indicate his
12:45 20 writing ability, and I left it very open-ended of
21 what he could provide for me. And I had made it
22 excruciatingly clear when I was speaking to him to
23 redact if necessary or re-characterize, and that is
24 exactly what I asked him.

12:45 25 Q. All right, we'll come to that

1 point in a minute, but when you refer to it to your
2 partners just very shortly after you meet with Mr.
3 Moyse, you don't say any writing sample; you say
4 "sample internal output", right?

12:45 5 A. What I say here, Mr. DiPucchio,
6 I'm giving a summary, a very quick summary of an
7 interview, and I'm listing all the points and I'm
8 noting what he is going to provide as a follow-up,
9 and I think the emphasis is on sample output. What
12:46 10 I provide in shorthand to my partners is not what I
11 asked Mr. Moyse to provide me.

12 Q. All right. Well, it is
13 interesting to me that you have just referred to
14 sample and output, but you have left out the word
12:46 15 "internal". Was that something that you just did
16 deliberately?

17 A. I can only tell you what I did. I
18 was summarizing the interview. I have told you
19 what I asked Mr. Moyse. And I can read the email,
12:46 20 and I can tell you what I was trying to convey.

21 Q. All right. I'm going to suggest
22 to you, sir, that this contemporaneous document
23 records exactly what you asked Mr. Moyse for, which
24 was sample internal output that he prepared on
12:47 25 behalf of Catalyst? That is what I am suggesting

1 to you.

2 A. As I said, I asked him to provide
3 me with a writing sample and he had a broad
4 latitude. I certainly did not ask for anything
12:47 5 approaching 200 pages of material. He could have
6 provided me, if he wished, with, you know, a four-
7 or five-page summary of anything. It was really
8 entirely up to him.

9 Q. And this conversation that you say
12:47 10 you had with Mr. Moyse which made it
11 extraordinarily clear, I think were your words,
12 that he shouldn't share with you anything that was
13 confidential and that, if necessary, he should
14 redact anything that was confidential, this, I take
12:47 15 it, was a conversation that you say occurred at
16 Aroma?

17 A. That's correct.

18 Q. And I take it from that that if
19 you did in fact have that conversation with him,
12:47 20 you expected him to provide internal output,
21 because what else would be confidential?

22 A. What I asked him, again, to
23 provide me was a written sample that indicated his
24 ability to write clearly and to make a point, and
12:48 25 he had a great latitude of what he could provide

1 me, Mr. DiPucchio.

2 Q. And when you made it
3 extraordinarily clear to Mr. Moyse that he should
4 not deliver anything that was confidential to you,
12:48 5 and if he was going to do that, he should redact
6 it, I take it you thought that Mr. Moyse understood
7 you in that regard?

8 A. Yes, I assumed that he understood
9 me, and I also expected that as a professional in
12:48 10 the industry that it shouldn't have to be said,
11 that he certainly would. But I did take the extra
12 steps and ensure that he did if he were to send me
13 anything.

14 Q. Your instructions were certainly
12:48 15 crystal clear?

16 A. I believe my instructions were
17 very clear in that we needed to see a CV, a deal
18 sheet and a sample of his writing studies to
19 complement the rest of the information and the
12:49 20 references that we had on him.

21 Q. So I take it from that
22 conversation then that when Mr. Moyse was sending
23 you material that was responsive to your request,
24 you would have immediately expected to see if there
12:49 25 was anything that was confidential about those

1 documents, redactions, consistent with your
2 instructions?

3 A. Actually, I simply expected to
4 receive what I had asked for, which was the CV, the
12:49 5 deal sheet and the sample output and the sample
6 writing, the writing sample, and I received an
7 email and the email looked rather benign in the
8 body of the email.

9 Q. So let's talk about that email
12:49 10 that you did receive in response from Mr. Moyse,
11 and that is actually tab 1 in my cross-examination
12 brief, Your Honour, and that might be the easiest
13 place to find it.

14 THE COURT: I'll just stick with what
12:50 15 you have got here.

16 MR. DiPUCCHIO: Where are you, Your
17 Honour?

18 THE COURT: In the chief.

19 MR. DiPUCCHIO: Exhibit 3 I guess of
12:50 20 the in-chief binder, if you want to stick to that,
21 Your Honour.

22 THE COURT: Thank you.

23 BY MR. DiPUCCHIO:

24 Q. WFC0075126. So this is ultimately
12:50 25 what comes through to you from Mr. Moyse in

1 response to your request, right?

2 A. Yes, it is.

3 Q. And obviously, having requested it
4 and the need being acute for a new analyst, you are
12:50 5 going to review what has been requested, right?

6 A. Yeah, I think, as I said just a
7 little earlier, that, you know, I think you have to
8 think of the context of the morning. I had had the
9 meeting with him. He had sent this over in the
12:50 10 middle of the night.

11 THE COURT: Mr. Dea, all he is asking
12 is, having asked for it, you were going to review
13 it? That was the simple question.

14 THE WITNESS: I'm sorry, Your Honour.
12:51 15 Yes, yes, I was going to review it.

16 BY MR. DiPUCCHIO:

17 Q. Okay. And it is clear from the
18 email itself that Mr. Moyses sends to you, I mean,
19 you don't have to open these things, it is clear
12:51 20 from the very first line of the email that he tells
21 you directly that what he is sending you are
22 investment write-ups he has done at Catalyst,
23 right?

24 A. I can -- he sent me a package of
12:51 25 information. I scanned over the contents of the

1 body of the email, and I passed it on.

2 Q. Okay, well, just stick with me,

3 though, okay. What I have asked you is, and I

4 think you said it to your counsel, that what you

12:51 5 would have done definitively is read the email,

6 right? So what I am suggesting to you is the

7 second you read that email, it didn't take you very

8 long to get through the first line --

9 A. Uhm-hmm.

12:52 10 Q. -- which pointed out to you that

11 what was being sent were investment write-ups that

12 Mr. Moyses had done at Catalyst; correct?

13 A. Yes, sir, that is what it says.

14 Q. All right. And then what he also

12:52 15 says to you is he kept the deal sheet to one page:

16 "[...] limited to the two deals

17 I've done from beginning to end and

18 which are closing shortly."

19 Right?

12:52 20 A. It says that, yes.

21 Q. So these were active deals that

22 were closing shortly; is that what you understood

23 from that?

24 A. That is not what I understood,

12:52 25 because I look further down the email and I see

1 information on three companies that are based
2 entirely on public information and a summary of a
3 prior transaction.

12:52 4 Q. No, no, no, follow me. We are
5 talking now about the deal sheet that he has
6 attached, not the investment memos. We are talking
7 about the deal sheet.

8 A. Uhm-hmm.

12:53 9 Q. So the deal sheet that he attached
10 was limited to the two deals he has done from
11 beginning to end and which are closing shortly?

12 A. Uhm-hmm.

13 Q. So I'm suggesting to you that you
14 understood from that, from the second line in the
12:53 15 email, that he was also sending you a copy of a
16 deal sheet that reflected deals that he was working
17 on, live deals that were closing shortly?

18 A. I can only say that I read this
19 very quickly and --

12:53 20 Q. Yes, because you had hundreds of
21 emails coming in a day?

22 A. Correct.

23 Q. Right? And then, Mr. Dea, I want
24 to get your evidence on this. Do you say that at
12:53 25 some point, and I think you said at some point you

1 would have opened up the attachments?

2 A. Correct.

3 Q. Okay. So now you are actually
4 looking at this 200-some-odd pages of attachment,
12:54 5 knowing, because Mr. Moyses told you, that what you
6 were going to be looking at was investment memos
7 that he had prepared on behalf of Catalyst, right?

8 A. I knew that he was providing me
9 with writing samples, yes.

12:54 10 Q. And in fact, in the email that he
11 sends to you, the cover email, he names names,
12 Homburg, NSI, Rona, Arcan, right? Right off the
13 bat he is naming names; correct?

14 A. Yes, he is naming names.

12:54 15 Q. Okay. So when you look at this,
16 quite clearly you would have expected that the
17 memos were going to contain confidential
18 information because they are investment memos,
19 right?

12:54 20 A. Actually, no. I assumed that they
21 were going to contain information based solely on
22 public information.

23 Q. Sir, you understand what an
24 investment memo is, right?

12:55 25 A. I do.

1 Q. You have written them and you have
2 read them hundreds of times, I suggest to you, in
3 your career and certainly while at West Face?

4 A. Uhm-hmm.

12:55 5 Q. Correct?

6 A. Yes, I have.

7 Q. And I'm suggesting to you that by
8 definition an investment memo, which sets out your
9 thesis for an investment, is proprietary and
10 confidential; you understand that?

11 A. You have asked me what my view of
12 an investment memo is. I don't know what his view
13 is of what he is sending me. I wouldn't know that
14 until I actually go through and read them.

12:55 15 Q. Well, let's just back up for a
16 second. What I asked you was you understand that
17 an investment memo by definition is confidential
18 and proprietary because it sets out an investment
19 thesis for an investment?

12:55 20 A. It could.

21 Q. West Face certainly considers its
22 investment memos confidential?

23 A. Some of them for sure.

12:56 24 Q. And those some that you consider
25 confidential might actually contain public

1 information?

2 A. Yes, but I think, and going back
3 to our prior cross-examination, you could have a
4 summary, a rather benign summary of a memo that
12:56 5 contains information on a public company based
6 entirely on that public information that could be
7 rather benign.

8 Q. Well, who is making the
9 determination that something is benign at this
12:56 10 stage? Is that a determination for you to make or
11 for the company that has had the memo prepared for
12 it?

13 A. In what context?

14 Q. Well, benign, what does "benign"
12:56 15 mean?

16 A. Well, by "benign" what I mean is
17 there is a spectrum of confidential information.
18 If someone were to pass on information a day ahead
19 of a public takeover and it went up 50 percent the
12:57 20 next day, that would be one end of the spectrum.
21 At the other end you could have an internal memo
22 that contains a summary of a company based on a few
23 hours of work that summarizes information from
24 their publicly disclosed financial documents.
12:57 25 There is a spectrum to these things.

1 Q. Okay. Well, let me ask you, for
2 example, your investment memo that was prepared for
3 the Wind opportunity in this case, right, that is
4 not a takeover or anything like that, right, that
12:57 5 is occurring, that is going to be announced the
6 next day or anything like that, right?

7 A. It was not a public company.

8 Q. Right. And would you have
9 considered the investment memo that was prepared in
12:57 10 relation to the Wind opportunity to be proprietary
11 and confidential to West Face?

12 A. Yes, it contained information that
13 was subject to a confidentiality agreement.

14 Q. And did you have any understanding
12:57 15 at all when you read through these -- did you read
16 through all the memos, or did you just read part of
17 them? What did you do exactly?

18 A. I recall scanning these over. At
19 the time, I really didn't go through them in too
12:58 20 much depth. As I said, a couple of them were in
21 areas that were far beyond anything we would be
22 involved in --

23 Q. Could I just stop you there for a
24 second, because I heard you say that in your
12:58 25 examination in-chief. What would it have mattered

1 to you whether they were areas that you were
2 involved in at West Face? These were writing
3 samples --

4 A. Well, it just means that --

12:58 5 Q. -- not an analysis of whether you
6 would be interested?

7 A. Sorry.

8 Q. I'm sorry, we just can't talk over
9 each other.

12:58 10 A. I'm sorry, I'll just wait for your
11 question.

12 Q. What would it have mattered to you
13 whether these were opportunities that West Face was
14 potentially interested in? This was supposed to be
12:58 15 a writing sample to assess whether he could write
16 English.

17 A. Right. Well, it would be
18 difficult for me to have a useful assessment of his
19 ability to summarize a situation if I wasn't
12:59 20 familiar with the industry at all.

21 Q. Well, hold on a second here. Your
22 evidence was all you wanted, you weren't even
23 requesting investment memos, that all you wanted
24 was evidence that the person could put together a
12:59 25 sentence because he had a math background?

1 A. Right.

2 Q. So I'm suggesting to you it
3 wouldn't matter not one whit what the writing
4 sample was about. You were interested in whether
12:59 5 he could write, not about whether this was an
6 opportunity that West Face was potentially
7 interested in?

8 A. Right, and, you know, there was
9 150 or 190 pages of material. I certainly didn't
12:59 10 intend to review all of it. I wanted to look and,
11 you know, use my time effectively and review
12 something to, as you say and as I said, to see how
13 his writing was, how he could put together an
14 argument.

12:59 15 Q. Okay. So the very first page you
16 must have reviewed was page 71, which is the first
17 memo, and I take it that the moment you opened it
18 up, you will see that it says, "Catalyst Capital
19 Group (For Internal Discussion Purposes Only),
01:00 20 Confidential - Initial Review", right?

21 A. It says that, yes.

22 Q. Right, so you must have stopped
23 right there? I mean, you made it very clear,
24 extraordinarily clear to Mr. Moyse that he was not
01:00 25 to send you confidential information, so you must

1 have stopped right there?

2 A. Well, look, I'll concede, in
3 hindsight, you know, it would have been preferable
4 if I had deleted this immediately, but you know,
01:00 5 hindsight is a wonderful thing. The fact is I
6 viewed the fact that he had sent this over was not
7 as I requested, and I reviewed it, I reviewed it
8 quickly, and I passed it on. I didn't pay too much
9 attention to it.

01:00 10 Q. And I think you have given
11 evidence previously to me that you weren't -- it
12 didn't immediately concern you that you were
13 reading internal confidential investment memos
14 that, by the way, hadn't been redacted at all,
01:01 15 right? You didn't see one redaction?

16 A. Correct.

17 Q. It didn't initially concern you
18 that you had seen this information because, in your
19 view, it was a pedestrian analysis, those were the
01:01 20 words you used, a pedestrian analysis?

21 A. I think the key point to make is
22 the error was made in sending it over the wall. I
23 probably should have deleted it at the time, but
24 since the error was committed, I had a duty to not
01:01 25 misuse this information.

1 Q. All right, just stick with me. So
2 you get it. You immediately recognize, I suggest
3 to you, that a mistake has been made, as you say,
4 right?

01:01 5 A. It would have been preferable if I
6 had deleted it.

7 Q. Well, or at the very least written
8 back to Mr. Moyse and said, "I don't want to see
9 this, send me something else", right?

01:02 10 A. Look, again, in hindsight it would
11 have been preferable to have deleted it, I concede
12 that, and just sent it back immediately and say
13 send something else. I felt the error was done and
14 on his part and that we had a duty not to misuse
01:02 15 any of this information that he had sent over.

16 THE COURT: Is this a convenient time
17 for lunch?

18 MR. DiPUCCHIO: It is, Your Honour,
19 yes.

01:02 20 -- RECESSED AT 1:03 P.M.

21 -- RESUMED AT 2:23 P.M.

22 THE COURT: Mr. DiPucchio.

23 BY MR. DiPUCCHIO:

24 Q. Mr. Dea, let's try to cut this as
02:25 25 short as we can, okay, so we can get you out of

1 here.

2 After you received these memos that we
3 were discussing earlier today, you forward them on
4 to your partners; correct?

02:26 5 A. That's correct.

6 Q. And you acknowledge that that is
7 and was a mistake?

8 A. As I said, it would have been far
9 preferable not to have done so, in hindsight.

02:26 10 Q. All right. You acknowledge, I
11 take it, that what should have happened is you
12 should have either destroyed the email that you
13 received with the documents or reached out to
14 Catalyst to let them know that confidential
02:26 15 information had been imparted?

16 A. As I said, it would have been
17 preferable for sure to have simply deleted it, with
18 the benefit of hindsight, with the actions that Mr.
19 Moyse took sending it over. I knew that I wouldn't
02:26 20 misuse it, any information, and I knew and I had
21 confidence in my partners, I have known them for
22 many, many years, worked with them for many years,
23 and I knew that they wouldn't misuse any of the
24 information.

02:26 25 Q. And you actually -- we don't need

1 to go to it in the record, but do you recall that
2 you actually forwarded it on twice to your
3 partners?

02:27 4 A. I think I do recall that, and I
5 think the second one was probably in relation to a
6 follow-up interview or something like that.

7 Q. Okay. So after you sent it along
8 the first time, you saw fit to send it along a
9 second time just before the interview process?

02:27 10 A. I think that, as I said, I think
11 the error was sending it over. It would have been
12 preferable had I deleted it and I acknowledge that.
13 I knew that I wouldn't misuse the information.

02:27 14 THE COURT: Mr. Dea, it is just better
15 to just deal with the question.

16 THE WITNESS: I'm sorry.

17 MR. DiPUCCHIO: I'm sorry, Your Honour,
18 I'm trying to do it as quickly as I can.

02:27 19 THE COURT: You are not the only person
20 in the witness box who tries to do that. Just
21 answer the question. We have very capable lawyers
22 trying this case.

23 THE WITNESS: All right.

24 BY MR. DiPUCCHIO:

02:27 25 Q. And the simple question was, you

1 saw fit to send it along another time to your
2 partners?

3 A. Yes, that is true.

4 Q. Now, you told me previously that
02:28 5 you don't recall having discussed any particular
6 names with Mr. Moyse during your interview, and so
7 I want to bring up a document which is at tab 3 of
8 my brief and have you take a look at this.

9 This is an email that was sent to Mr.
02:28 10 Moyse from you I gather a few hours, at most, after
11 you met with him for the interview at Aroma, right?

12 A. Yes.

13 Q. Okay. And again, I'm going to do
14 this, Your Honour, just because, it is WFC0031090.
02:28 15 And what you do here is you say:

16 "Hey Brandon. Thanks. What is
17 the name of the Cerberus entity that
18 Callidus is modelled after?"

19 Right? That is the question you put to
02:29 20 him?

21 A. Yes, that is the question.

22 Q. And Callidus, just so we are all
23 on the same page, Callidus was a company that
24 Catalyst controlled; correct?

02:29 25 A. Correct.

1 Q. And that must have been something
2 that Mr. Moyse told you during the interview?

3 A. No, that was common knowledge.

4 Q. It was common knowledge at that
02:29 5 time?

6 A. That Callidus was owned by or
7 controlled by Catalyst?

8 Q. Yes.

9 A. It was known? Is that what the
02:29 10 question is?

11 Q. I'm asking you whether that was
12 known at the time?

13 A. Yes, it was known.

14 Q. Okay, and you were having some
02:29 15 kind of discussion, I take it, with Mr. Moyse in
16 this interview about Callidus?

17 A. I was having a discussion with him
18 about -- a general discussion about the types of
19 things he worked on.

02:29 20 Q. All right.

21 A. And so I believe I asked him, you
22 know, had you ever worked on anything that --
23 Callidus is a lender, and I asked him if he had
24 worked on anything with Callidus.

02:30 25 Q. Right. So you did specifically

1 discuss with him, I'm going to suggest to you, at
2 least one name, which was Callidus?

3 A. I asked him if he had worked on
4 anything that -- so Callidus was a provider of
02:30 5 capital. To my understanding, it was created by
6 Catalyst and extends loans, and so I asked him if
7 he had worked on anything to do that Callidus had
8 extended, and I believe the answer was no. And it
9 didn't go any further than that.

02:30 10 Q. Well, it must have gone somewhat
11 further than that because you must have had some
12 kind of discussion in relation to what Callidus was
13 modelled after?

14 A. No, not really. It was -- I
02:31 15 knew -- I had heard that Callidus was modelled
16 after Cerberus's lending entity, and that is why I
17 asked Brandon if he had -- that is not why but --
18 and I knew that Callidus out in the marketplace was
19 extending loans, and I just asked if he was working
02:31 20 on anything that they were doing. And the answer
21 was no. And it didn't go any further, as I recall.

22 Q. Did Mr. Moyse, to your
23 recollection, respond to your email?

24 A. To this one? I think -- I think
02:31 25 he may have. I believe he said it was Ableco. In

1 any event, I think, as we discussed in the last
2 cross, the purpose of this was I was going down to
3 meet -- either had just recently been or was going
4 to see a friend of mine who was a co-founder of
02:32 5 Cerberus, and I simply couldn't remember the name
6 of the entity.

7 Q. Right, but the response that you
8 received, and I am going to suggest to you that Mr.
9 Moyse, who has just interviewed with you, is going
02:32 10 to certainly respond to an email that you just send
11 to him a few hours after, right? I mean, he wasn't
12 going to ignore you after he had just interviewed
13 with you, so he must have responded to this email?

14 A. I just don't recall. It was a
02:32 15 couple of years ago. I think he did.

16 Q. Okay, and so we have never seen a
17 response to that email --

18 THE COURT: Well, Mr. Dea, if you don't
19 recall, just say you don't recall.

02:32 20 THE WITNESS: I don't recall.

21 THE COURT: Guessing isn't going to
22 help anybody.

23 THE WITNESS: Okay, I just don't
24 recall, I'm sorry.

02:32 25 BY MR. DiPUCCHIO:

1 Q. And we haven't seen a response to
2 this email in either Mr. Moyses's records or in the
3 West Face records. Do I take it that if there was
4 a response, it has been deleted?

02:32 5 A. I am not aware of anything that
6 was deleted, as you suggest, like that.

7 Q. And your interest in Callidus,
8 West Face's interest in Callidus I'm going to
9 suggest to you was more than a passing interest?

02:33 10 A. This was -- this specific
11 reference was absolutely in passing.

12 Q. Well, you and I can agree that
13 subsequent to this email, at a period in time in
14 2014, and I think it was maybe the September
02:33 15 timeframe, West Face took a short position in
16 Callidus; do you agree with that?

17 A. I believe we did.

18 Q. So you had -- at some stage, West
19 Face had more than a passing interest in Callidus?

02:33 20 A. That is correct. But just to
21 clarify, this specific request to Brandon was a
22 passing interest. It was in reference to a meeting
23 with a friend of mine who was a co-founder of
24 Cerberus, and I just simply couldn't remember the
02:34 25 name of the --

1 Q. And all I'm suggesting to you, Mr.
2 Dea, is it is just another coincidence that at some
3 point after this West Face takes a short position
4 in Callidus?

02:34 5 A. I really couldn't comment on that.
6 I was not involved with that.

7 Q. You weren't involved in that on
8 behalf of West Face?

9 A. I was not, no.

02:34 10 Q. Who was? Mr. Griffin?

11 A. A number of other parties -- a
12 number of other partners were involved with that.

13 Q. Well, we had heard earlier in this
14 proceeding that in terms of investments that are
02:34 15 made at West Face, all of the partners participate
16 in investment decisions?

17 A. That is generally true.

18 Q. So you would have known that West
19 Face was taking a short position in Callidus?

02:34 20 A. I would have known that we were
21 considering it. It is possible that there are
22 investments that go on and are executed and the
23 particularities of execution which occur without my
24 knowledge; it is not every single thing is within
02:35 25 my knowledge.

1 Q. So your level of knowledge in
2 relation to the Callidus short was what?

3 A. My knowledge of it?

02:35 4 Q. Yes, what was your knowledge as a
5 partner at West Face?

6 A. Well, my knowledge of it was a
7 little bit more in reviewing some of the work that
8 some of the other members of the team had done in
9 relation to it.

02:35 10 Q. And then subsequently, we know
11 that your firm exited the short position in
12 Callidus --

13 THE COURT: Well, how is all of this
14 relevant?

02:35 15 MR. DiPUCCHIO: Well, you are going to
16 hear submissions at the end, Your Honour, about a
17 course of conduct. I won't be -- I'll be about
18 another minute, Your Honour, not even, on this
19 subject.

02:35 20 THE COURT: Okay.

21 BY MR. DiPUCCHIO:

22 Q. Subsequently, we know that West
23 Face exited its short position in Callidus, right?

02:36 24 A. Yeah, just to be clear, I really
25 don't recall a lot about the Callidus trade. I was

1 really not very involved with it. I'm really not
2 too familiar when it went on and when it went off.

02:36 3 Q. Do you know that there has been
4 evidence given that West Face's position resulted
5 in a profit?

6 A. Did I know that there was evidence
7 given to that?

02:36 8 Q. Well, I didn't assume that you
9 knew what resulted financially from it. Maybe you
10 do. Do you know that your firm profited as a
11 result of its taking a short position in Callidus?

12 A. As I said, it is probable. I
13 don't know all the particularities about that
14 particular trade.

02:36 15 Q. Now, I think you have given
16 evidence already, and I just want to confirm this
17 with you, that at some point in time you spoke to
18 Mr. Moyse about whether he had worked on Mobilicity
19 while he was at Catalyst?

02:37 20 A. Yes, I do recall, because at the
21 time it was known publicly and publicly disclosed
22 that Mobilicity -- that Catalyst was involved with
23 Mobilicity. I think I may have asked him, you
24 know, did you work on that, and as I recall, I
02:37 25 think the answer was no.

1 Q. Okay. So that was another name
2 that was discussed with Mr. Moyse, Mobilicity?

3 A. Well, when you say "discussed", I
4 think I asked the question, and it's in the public
02:37 5 domain, did you work on that? You know, I think if
6 you put the context of an interview, you know, what
7 kinds of things did you work on.

8 Q. All right. So what you are
9 suggesting to me is that you threw it out as just a
02:37 10 general question, are you working on Mobilicity?

11 A. No, I think -- first off, I don't
12 recall precisely, but I believe because it was in
13 the public domain, like I just said, you know, did
14 you work on that?

02:38 15 Q. Do you recall you gave some
16 evidence earlier today about the confidentiality
17 wall that was established, and Mr. Thomson took you
18 to a letter that was written to my firm on June
19 19th; do you recall that?

02:38 20 A. I do.

21 Q. And that letter referenced concern
22 about a telecom deal, right?

23 A. I do recall that, yes.

24 Q. And then in response to that
02:38 25 letter, apparently, your evidence is that there was

1 a discussion about immediately setting up a wall in
2 relation to Wind; correct?

02:38 3 A. Well, I think I had -- I think the
4 record, the cross shows -- and this is a couple of
5 years ago, so I don't remember this precisely, but
6 I'm pretty certain that I had stood up internally
7 and said, look, no one is to have any discussions
8 with Brandon Moyse with regards to Wind.

02:39 9 Q. Right. And the wall itself, I
10 think we are going to hear evidence on this very
11 shortly, was a wall that was established in
12 relation to Wind, right?

02:39 13 A. After, after I had stood up and
14 said that, I believe the -- well, the wall, I don't
15 know that it was specifically set up with regards
16 to Wind. I don't remember the exact dates.

02:39 17 Q. Okay. Well, we'll see evidence I
18 assume very shortly about exactly what the wall
19 says. But my question to you, Mr. Dea, is your
20 evidence was that in response to the suggestion
21 that there was a concern in relation to a telecom
22 deal, the immediate reaction is let's set up a wall
23 in relation to Wind, right?

02:40 24 A. Well, as I said, I believe I had
25 stood up and said no one is to have any discussions

1 with Brandon preceding that. The wall -- the wall
2 went up after or concurrent with receipt of that
3 letter that you are referring to.

02:40 4 Q. Yeah, I'm not so interested -- I'm
5 not quibbling about the timing right now, okay. I
6 think you are discussing the timing of it. I'm not
7 concerned about the timing. What I'm asking --

8 A. I'm just trying to answer, sorry.

02:40 9 Q. No, I'm with you. What I am
10 asking you is the response to the concern on the
11 telecom deal was Wind, right? It was Wind, that
12 was the response to it?

02:40 13 A. Well, as you say, there was a
14 reference to a telecom deal. As you had pointed
15 out, I had asked Brandon if he had worked on
16 Mobilicity, and he said no.

17 Q. Just keep your voice up.

18 A. Sorry, I lost my train of thought
19 when you said that.

02:41 20 Q. You had asked Mr. Moyse about
21 Mobilicity and he had said no.

22 A. Right, and so whether the wall
23 went up specifically in reference to Wind, yeah, I
24 guess it did.

02:41 25 THE COURT: Well, guessing isn't going

1 to help you at all. If you can't remember, you say
2 so. If you don't -- you are not here to guess or
3 argue or anything. Just tell him what you remember
4 and what you don't remember.

02:41 5 THE WITNESS: The wall went up in
6 reference to Wind.

7 BY MR. DiPUCCHIO:

8 Q. Well, let me help you out here for
9 a second. Are you honestly telling us that you
02:41 10 have no recollection even about what this wall went
11 up for?

12 A. No, I believe, yes, it went in
13 with reference to wall -- or to Wind, I'm sorry.

14 Q. And what I am going to suggest to
02:41 15 you, Mr. Dea, is that in response to a concern
16 expressed about a telecom deal, the first
17 inclination, as it was for you when you met Mr.
18 Moyse, would have been to think about Mobilicity,
19 because Catalyst had a public position in
02:42 20 Mobilicity, not Wind? I'm going to suggest to you
21 that you would have thought naturally that the
22 telecom deal was Mobilicity?

23 A. No.

24 Q. No?

02:42 25 A. No.

1 Q. Well, then why were you asking Mr.
2 Moyse about Mobilicity?

3 A. I would have to go back and look
4 at the sequencing of events, but as I recall,
02:42 5 asking Mr. Moyse about Mobilicity was in reference
6 of the interview; I think it was in reference to
7 the interview.

8 Q. Yes, well, that is exactly my
9 point. My point is when you are interviewing Mr.
02:42 10 Moyse, you are asking him about Mobilicity because
11 you know that Catalyst is involved in Mobilicity,
12 right?

13 A. It was in the public domain, yes.

14 Q. Correct. So when there is a
02:42 15 concern expressed to you -- and when I say "you", I
16 mean West Face -- in June about a telecom deal that
17 Catalyst is concerned about, I'm going to suggest
18 to you the natural inference that you would have
19 drawn is Mobilicity, not Wind?

02:43 20 A. No, the -- now I understand your
21 question. It would have been because we were
22 working on Wind, and since it was in the public
23 domain that Catalyst was working on Mobilicity, was
24 involved with Mobilicity, whether they were or not,
02:43 25 it would have been prudent to assume that they

1 possibly were, and since we were looking at Wind,
2 that it would be appropriate, wholly appropriate,
3 to put the wall up.

02:43 4 Q. All right, well, I'm going to
5 suggest to you, Mr. Dea, that it is something a
6 little different than that. I am going to suggest
7 to you that the reason that you default to a belief
8 that the telecom deal was Wind is because you had a
9 discussion with Mr. Moyses prior to that time about
02:44 10 his involvement in Wind?

11 A. That is categorically not true.

12 Q. And this Mobilicity issue, I take
13 it you agree with me that your interest in Wind
14 even at that time, and I am talking now June of
02:44 15 2014, wasn't confined to Wind; the Wind opportunity
16 necessarily involved Mobilicity in your own mind?

17 A. No, that is incorrect.

18 Q. Was Mobilicity in any way wrapped
19 up in the Wind matter, in your mind?

02:44 20 A. We had a position sometime earlier
21 and had exited Mobilicity, and we were not involved
22 with Mobilicity at that time at all.

23 Q. Do you recall giving evidence to
24 me in your previous cross-examination, and I will
02:45 25 take you to it in a second, but do you recall

1 giving evidence to me previously that, in your
2 mind, any concern about Wind would have naturally
3 meant a concern about Mobilicity as well because it
4 is telecom and it is all interrelated?

02:45

5 A. I do recall that.

6 Q. You recall that evidence?

7 A. Yes, I do.

02:45

8 Q. And in fact, you made a big deal
9 in one of your cross-examinations about the fact
10 that when we asked you about the wall and whether
11 it prevented any discussion on Mobilicity, your
12 evidence was, well, in my mind, Mobilicity
13 included -- or sorry, Wind included Mobilicity?

02:45

14 A. Yes, I think what I said is by
15 inference it would include Mobilicity and that we
16 weren't to discuss anything and none of the team
17 members were to discuss anything with regard to
18 Wind with Brandon.

19 Q. Right.

02:46

20 A. And I think the question was would
21 that include Mobilicity, and I believe I said yes.

22 Q. Right, because and the reason you
23 said yes, and again, we can go to the evidence but
24 I'm trying to short-circuit this, and we'll go to
02:46 25 it if we need to, but the reason you said yes to

1 that question was because you said that, in your
2 mind, it was all telecom, and if there was an
3 interest in Wind, there would naturally be an
4 interest in Mobilicity?

02:46 5 A. Well, the reason was out of an
6 abundance of caution and that we certainly should
7 not talk to Brandon Moyse about Wind, and if you
8 are not talking to him about Wind, you should not
9 talk to him about Mobilicity.

02:46 10 Q. And I'm going to suggest to you
11 the reason that you said that is because at that
12 point in time, i.e., June of 2014, what was in West
13 Face's contemplation was a potential combination of
14 Mobilicity and Wind?

02:46 15 A. Mr. --

16 Q. DiPucchio.

17 A. DiPucchio, I'm sorry.

18 Q. It's okay, it is not the first
19 time.

02:47 20 A. That is not the reason. The
21 reason is, as I said, it was out of an abundance of
22 caution. The wall was set up. Don't talk to
23 Brandon about having anything to do with Wind. And
24 the question came up, did that include Mobilicity?
02:47 25 And the answer was yes. It was out of an abundance

1 of caution, don't talk to him about anything to do
2 with wireless and telecom.

3 Q. Let's go to another area of
4 examination. At tab 4 of my cross-examination
02:47 5 brief --

6 THE COURT: Just a second,
7 Mr. DiPucchio.

8 MR. DiPUCCHIO: Yes.

9 THE COURT: Go ahead.

02:48 10 BY MR. DiPUCCHIO:

11 Q. Tab 4, Your Honour, should be that
12 log of telephone calls.

13 And just before I ask you about this
14 particular document, Mr. Dea, let me just cover off
02:48 15 one little point.

16 Do you recall that in one of the email
17 chains that you looked at earlier today with Mr.
18 Thomson, you expressed to your partners that Mr.
19 Moyse could be useful in terms of processing your
02:48 20 debt pipeline; do you remember words to that
21 effect?

22 A. Yes, I remember the words being to
23 the effect of he would be helpful in grinding
24 through, you know, prospective debt investments for
02:48 25 the Alternative Credit Fund.

1 Q. Right. And at the time that you
2 were making that statement to your partners, and I
3 believe that email was in the April 2014
4 timeframe -- and just for the record, it is Exhibit
02:49 5 7 to Mr. Dea's affidavit -- in that timeframe, am I
6 correct that West Face was actively pursuing the
7 Wind opportunity and it was pursuing the Wind
8 opportunity at that time as a debt transaction?

9 A. I don't -- this is a couple of
02:49 10 years ago. I don't recall precisely the dates,
11 but, you know, I do remember, as you say, making
12 the comment that it would be useful to grind
13 through debt --

14 Q. You are just going to have to keep
02:49 15 your voice up.

16 A. It would be useful to grind
17 through debt opportunities.

18 Q. Yeah, no, that is not what I asked
19 you. What I in fact asked you was, am I not
02:49 20 correct that at that point in time, April of 2014,
21 West Face was actively pursuing the Wind
22 opportunity as a debt transaction?

23 A. We were pursuing the Wind
24 transaction. And I don't know if that statement is
02:50 25 entirely correct. It was in many -- it could have

1 proceeded in many different forms, and I just don't
2 recall precisely how we were proceeding at that
3 point.

02:50 4 Q. You don't recall that the April
5 proposal that was made to VimpelCom contemplated a
6 debt transaction? You just don't recall that?

7 A. I do recall that, yes.

8 Q. You do recall that?

02:50 9 A. I do recall the debt component,
10 yes.

11 Q. And that debt transaction was
12 going to require your investors in the Alternative
13 Credit Fund to participate in that opportunity if
14 you were successful in it, right?

02:50 15 A. That's correct.

16 Q. So one of the things that you may
17 have been contemplating for Mr. Moyse in April of
18 2014 was assisting in the pursuit of Wind?

19 A. No.

02:50 20 Q. Now, let's go back to what I was
21 going to ask you about, which was this call log at
22 tab 4 of my cross-examination brief. And, Mr. Dea,
23 what we see here is a log of certain calls that
24 were either outgoing or incoming to Mr. Moyse, as
02:51 25 between Mr. Moyse and West Face.

1 And there is reference to you in the
2 second call which was placed by Mr. Moyse on his
3 mobile to you on May 23rd, 2014; do you see that?

4 A. I do.

02:51 5 Q. And I am going to suggest to you,
6 sir, that in that call Mr. Moyse was conveying
7 information to you about the Wind transaction that
8 he was actively working on for Catalyst?

9 A. That is categorically false.

02:51 10 Q. And, Mr. Dea, you cannot assist
11 us, I take it, with any evidence in relation to the
12 content of the calls that are reflected with Mr.
13 Moyse in June and July of 2014?

14 A. I recall -- in June and July?

02:52 15 Q. Yes.

16 A. Yeah, I do not recall those calls,
17 no. So I guess to answer your question, I cannot
18 assist you.

02:52 19 Q. And by that point in time, at
20 least as of -- well, let's just leave it.

21 And, Mr. Dea, you testified earlier
22 today that, in your view, after you conducted your
23 due diligence in regards to Mr. Moyse, you were
24 prepared to overlook his having ignored your
02:53 25 instructions in relation to confidentiality

1 because, in your view, he was a suitable candidate;
2 correct?

3 A. That is correct.

4 Q. And I gather, notwithstanding the
02:53 5 fact that Mr. Moyse worked for you or worked for
6 West Face for a period of approximately three weeks
7 before he was subject to the injunction and then
8 never came back to work at West Face ever again,
9 that that view changed at West Face such that Mr.
02:53 10 Moyse was ultimately -- you and Mr. Moyse
11 ultimately reached an arrangement for a parting of
12 the ways in August of 2015?

13 A. That is my understanding, yes.

14 Q. And what changed with regards to
02:54 15 your view that he was a suitable candidate and a
16 good analyst?

17 A. What changed?

18 Q. Yes, what changed? I mean, you
02:54 19 have a person that you are prepared to take a
20 chance on after he has not followed your
21 instructions, hasn't worked for you but for three
22 weeks and then as of August 2015 you part ways.

23 A. Right, so he only worked for us
24 for a very short period of time, and we didn't
02:54 25 really have a basis to judge what he could confirm

1 to us. And let's be frank, there was a lot of
2 water under the bridge, and we felt it was
3 appropriate.

4 Now, to be clear, I actually wasn't
02:54 5 involved with the parting of the ways. That was
6 really dealt primarily with our legal people. In
7 fact, I'm not sure I was even consulted.

8 MR. DiPUCCHIO: Thank you, sir, those
9 are my questions.

02:55 10 THE COURT: Any re-examination?

11 MR. THOMSON: I have none, Your Honour.

12 THE COURT: Thank you very much, Mr.
13 Dea.

14 MR. THOMSON: You are free to go.

02:55 15 -- WITNESS EXCUSED --

16 MR. THOMSON: Your Honour, I believe
17 our next witness is Ms. Kapoor.

18 SUPRIYA KAPOOR: AFFIRMED.

19 EXAMINATION IN-CHIEF BY

02:56 20 MR. MILNE-SMITH:

21 Q. Ms. Kapoor, you swore an affidavit
22 in this proceeding; correct?

23 A. That's correct.

24 Q. Could we just bring that up,
02:56 25 please. So this time it is tab 00, Your Honour.

This is Exhibit "75" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

2

3

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

5

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7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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03:07 1 experience at West Face, in my experience in the
2 industry, given the tone at the top and the
3 significance of compliance at West Face, I had no
4 reason to believe or feel a lack of confidence that
5 the wall had been breached, and based on my
6 discussions with Mr. Moyse himself.

03:07 7 Q. But that wasn't my question. My
8 question to you was, short of the technical
9 restriction, there is nothing you can do to monitor
10 or enforce the wall to prevent employees from
11 speaking to Mr. Moyse about Wind; correct?

12 A. That's correct.

13 MR. WINTON: All right. That's it.

14 THE COURT: Any re-examination?

03:08 15 MR. DiPUCCHIO: Seven or eight
16 questions --

17 MR. MILNE-SMITH: I thought long and
18 hard on it, Your Honour, but I will pass.

19 THE COURT: Thank you, Ms. Kapoor.

03:08 20 THE WITNESS: Thank you.

21 -- WITNESS EXCUSED --

22 MR. MILNE-SMITH: So our next witness
23 is Mr. Yu-jia Zhu.

24 YU-JIA ZHU: AFFIRMED.

03:09 25 EXAMINATION IN-CHIEF

1 BY MR. MILNE-SMITH:

2 Q. Can we just bring up the first
3 tab, please. So, Mr. Zhu, you swore an affidavit
4 in this proceeding dated June the 3rd, 2016; is
03:10 5 that correct?

6 A. Yes.

7 Q. And do you adopt that affidavit as
8 your evidence in-chief in this matter?

9 A. I do.

03:10 10 Q. Could you please just describe for
11 me the circumstances that gave rise to your
12 affidavit?

13 A. Sure. I was approached by my
14 General Counsel, Phil Panet, last week and he
03:10 15 informed me that Catalyst Capital was intending to
16 use notes that I took during an interview of
17 Brandon Moyse as evidence that we had discussed
18 Wind Mobile with him.

19 Q. Did you discuss Wind Mobile with
03:10 20 Brandon when you interviewed him?

21 A. I did not.

22 Q. Did you ever discuss Wind Mobile
23 with Brandon?

24 A. I did not.

03:10 25 Q. When did you meet Mr. Moyse?

1 A. On April 15th of 2014.

2 Q. And did you meet him alone or in a
3 group?

4 A. I met him by myself.

03:11 5 Q. And did you take notes of that
6 meeting?

7 A. I did.

8 Q. Okay, if we could bring up tab 1,
9 please. Are these your notes?

03:11 10 A. They are.

11 Q. Okay, and if we could just go to
12 the next tab. So, Mr. Zhu, in the course of
13 preparing your affidavit, were you able to confirm
14 that this typewritten page is a correct
03:11 15 transcription of your handwritten notes?

16 A. That's correct.

17 Q. Sitting here today, do you have an
18 independent recollection or memory of your
19 interview with Mr. Moyse?

03:11 20 A. I do.

21 Q. What do you recall?

22 A. I recall that I asked him why he
23 wanted to leave Catalyst after spending two years
24 there. He stated that he was working on existing
03:12 25 live deals there as well as existing positions held

1 by the firm, but he didn't feel that his career was
2 advancing to his satisfaction and he was
3 unsatisfied with the lack of responsibility given
4 to him, and therefore, he was looking for a new
03:12 5 position where he could work more on new
6 investments.

7 I also gave him a public company to
8 hypothetically analyze, and I also asked him about
9 which particular sectors or industries might
03:12 10 interest him.

11 Q. And just looking at the
12 transcription that is up on the screen here -- and,
13 sorry, I should mention that is WFC0112456. Do you
14 see the reference to the public company you asked
03:12 15 him to hypothetically analyze?

16 A. Yes.

17 Q. And what is that reference?

18 A. That is Tembec.

19 Q. Did he refer to the names of any
03:12 20 companies that Catalyst had an existing position
21 in?

22 A. He did. He mentioned Homburg and
23 Advantage Rent a Car.

24 Q. What did he tell you, if anything,
03:13 25 about them?

1 A. Just that he was involved in their
2 acquisition and ongoing management.

3 Q. And you will see just below the
4 reference to Homburg and Advantage, it says "live
03:13 5 deals". What did you take that note in reference
6 to?

7 A. Just that he stated that he worked
8 on both live deals and existing positions in his
9 current role, but he was looking for a new job
03:13 10 which would allow him the opportunity to work more
11 on new deals, which was his interest, and to
12 execute on them.

13 Q. Did he identify or indicate what
14 those live deals were?

03:13 15 A. He did not.

16 MR. MILNE-SMITH: Thank you, those are
17 my questions.

18 THE COURT: Any cross-examination?

19 CROSS-EXAMINATION BY MR. WINTON:

03:14 20 Q. Mr. Zhu, do you recall the
21 circumstances in which your note from Mr. Moyse's
22 interview was provided to West Face's litigation
23 counsel?

24 A. At some point our counsel had
03:14 25 requested I send in my notebook, so I did.

This is Exhibit "76" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, s/c,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

2

3

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

18

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1 A. Just that he was involved in their
2 acquisition and ongoing management.

3 Q. And you will see just below the
4 reference to Homburg and Advantage, it says "live
03:13 5 deals". What did you take that note in reference
6 to?

7 A. Just that he stated that he worked
8 on both live deals and existing positions in his
9 current role, but he was looking for a new job
03:13 10 which would allow him the opportunity to work more
11 on new deals, which was his interest, and to
12 execute on them.

13 Q. Did he identify or indicate what
14 those live deals were?

03:13 15 A. He did not.

16 MR. MILNE-SMITH: Thank you, those are
17 my questions.

18 THE COURT: Any cross-examination?

19 CROSS-EXAMINATION BY MR. WINTON:

03:14 20 Q. Mr. Zhu, do you recall the
21 circumstances in which your note from Mr. Moyse's
22 interview was provided to West Face's litigation
23 counsel?

24 A. At some point our counsel had
03:14 25 requested I send in my notebook, so I did.

1 Q. Right, and those notes were
2 produced to us approximately one week or so, a week
3 to ten days before you were told that you were
4 going to be testifying; are you aware of that?

03:14 5 A. I can't remember the exact dates,
6 but that sounds about right.

7 Q. Right, so it was in late May or
8 mid to late May that your notes were provided to
9 counsel; correct?

03:14 10 A. Right.

11 Q. And not before then?

12 A. Like I said, I can't remember the
13 exact dates.

03:14 14 Q. But it was within the past few
15 weeks; you agree with me on that?

16 A. Yes.

17 Q. Okay. You were on the Wind deal
18 team from its outset and all the way through to the
19 completion of the transaction?

03:15 20 A. That's correct.

21 Q. You were the analyst on the team?

22 A. That's right.

23 Q. On March 27th Mr. Dea forwarded
24 you an email from Mr. Moyse that attached memos and
03:15 25 a deal sheet and Mr. Moyse's CV; do you recall

1 that?

2 A. I do.

3 Q. And you reviewed those documents?

03:15 4 A. I reviewed his CV, and I recall
5 opening one of the memos that he had attached.

6 Q. Right. And you noticed that when
7 you opened the memo, it was marked "private and
8 confidential, for internal discussion purposes
9 only"?

03:15 10 A. I do.

11 Q. Did you continue reading?

12 A. I skimmed through it briefly. I
13 recall that I did not think that they were of any
14 significance. They were primarily summaries of
03:16 15 publicly available information about this
16 particular company, and I can't even recall which
17 particular one I opened, a description of the
18 company and what they did and their revenues and
19 such.

03:16 20 Q. So notwithstanding the fact it is
21 marked "private and confidential", you kept
22 reading?

23 A. I briefly skimmed through it.

24 Q. And your skim was sufficient for
03:16 25 you to satisfy yourself that there was nothing

1 confidential; is that what you are telling us?

2 A. The purpose of my skimming through
3 it wasn't to determine whether anything was
4 confidential. Rather, I was just seeing what kind
03:16 5 of work Brandon did, and frankly, I was looking
6 more forward to the interview.

7 Q. So you were evaluating his writing
8 ability?

9 A. Correct.

03:16 10 Q. So you had to read what he was
11 writing in order to determine whether what was
12 being written was written well; do you agree with
13 me?

14 A. I skimmed through it, I did, yeah.

03:17 15 Q. Did you express any concern to Mr.
16 Dea about the fact that he had distributed
17 confidential memos or memos marked "confidential"
18 to you and to his partners at West Face?

19 A. I did not.

03:17 20 Q. During your interview with Mr.
21 Moyse, you gave him a hypothetical exercise to
22 analyze a public company, and that is Tembec;
23 correct?

24 A. Correct.

03:17 25 Q. That was not an exercise that

1 involved any written analysis, right?

2 A. Correct.

3 Q. So there was no written work
4 product arising from that analysis?

03:17 5 A. That's correct.

6 Q. So the purpose of the Tembec
7 exercise was not to evaluate Mr. Moyse's writing
8 ability; fair?

9 A. That is correct. I was more
03:18 10 interested, rather than his writing ability, which
11 may have been more interesting to one of the
12 partners, I was more interested in his analytical
13 ability. So I gave him a hypothetical scenario to
14 analyze, and that was Tembec, and my recollection
03:18 15 and my notes indicate that he did fairly well.

16 Q. If we could turn up those notes,
17 which are Exhibit 1 to your affidavit, and I
18 believe it is at tab number 5 in the
19 cross-examination folder. And this is document
03:18 20 WFC0109978.

21 And just looking at what you have
22 written, and we didn't have the transcribed version
23 for our file, but looking at what you wrote, there
24 is the reference to Homburg and Advantage and those
03:19 25 were deals that Mr. Moyse was actually working on

1 while he was at Catalyst; correct?

2 A. That's right.

3 Q. And then you also discussed other
4 "live deals", which is why you wrote that down;
03:19 5 correct?

6 A. We did not discuss other live
7 deals. The context of the term "live deals" was
8 that Mr. Moyse had stated that he worked on both
9 live deals and existing positions but he preferred
03:19 10 to work on new investments, which was why he was
11 seeking new employment.

12 Q. Well, I'm going to suggest to you
13 that there is not really a distinction between a
14 live deal and an existing position. They are both
03:19 15 deals that have been -- that are underway by
16 Catalyst?

17 A. The way I define it is that a live
18 deal is something that is yet to occur versus an
19 existing position which is a portfolio company that
03:19 20 a firm such as Catalyst would own in their existing
21 portfolio.

22 Q. I'm going to suggest to you, sir,
23 that during the interview, Mr. Moyse told you that
24 he was working on a Wind deal at Catalyst; do you
03:20 25 agree?

1 A. No, he did not mention Catalyst.
2 We did not discuss Catalyst -- or, sorry, Wind at
3 all. We did not discuss Wind at all.

03:20 4 Q. I'm going to suggest to you, sir,
5 that before Mr. Moyse even started at West Face and
6 long before he started at West Face, you were aware
7 that he was working on the Wind deal; do you agree?

8 A. I was not aware that Mr. Moyse was
9 working on the Wind deal.

03:20 10 Q. Can we turn up back to tab 8 in
11 the binder. Sir, do you recognize this document,
12 which the doc ID is WFC008192?

13 A. Yes.

03:20 14 Q. All right. If we could scroll
15 down, halfway down the page there is a heading
16 "Call with Tennenbaum Group" dated July 30th, 2014;
17 do you see that?

18 A. Yes.

03:21 19 Q. And I'm going to suggest to you
20 that these are your notes of a call between West
21 Face and the Tennenbaum Group held on that day; is
22 that fair?

23 A. Yes.

03:21 24 Q. And your style is to keep a
25 numbered list of what is being discussed on a call;

1 that is generally your note-taking style, right?

2 A. That's right.

3 Q. So you are keeping a record of
4 what is being discussed, but you don't record who
03:21 5 says what, right?

6 A. That's right.

7 Q. So looking through this list, the
8 first item:

9 "No differences in terms of
03:21 10 what we are doing...just how good we
11 are doing that."

12 Is that a comparison between the
13 Tennenbaum analysis and the West Face analysis of
14 Wind?

03:21 15 A. I do not recall, frankly.

16 Q. Okay, let's go down to paragraph
17 8, number 8, and let's try and get that all on the
18 screen there. Thank you.

19 So starting on this page, you see the
03:21 20 reference to "Mobi". That is a reference to
21 Mobilicity, right?

22 A. That's right.

23 Q. Right, and:

24 "Wanted to give them something
03:22 25 that feels like par."

1 That is the West Face analysis or
2 intention for Mobilicity at the time?

3 A. I do not recall who said that.

4 Q. Okay, let's go down to item "D":

03:22

5 "Non-Catalyst lenders:

6 Catalyst will get cash, everybody
7 else would subscribe for the Newco."

8 That is what was discussed as the
9 intention for how to deal with the Mobilicity debt?

03:22

10 A. I do not recall.

11 Q. Okay. Going down to the next
12 page, and if you go to "K":

13 "Mobi bankruptcy council [...]"

03:23

14 And that is a reference to the lawyers
15 for Mobilicity in the CCAA, right? Is "council"
16 meant to be c-o-u-n-s-e-l, and it is just a typo?

17 A. Correct.

03:23

18 Q. " [...] has advised us that you
19 cannot have different consideration
20 going to different creditors."

21 And do you recall whether that was a
22 Tennenbaum comment or a West Face comment on the
23 call?

24 A. It is difficult for me to recall.

03:23

25 Q. "We did not want to have

1 Catalyst as a stockholder in our
2 company. Maybe noteholder but not
3 stockholder."

03:23 4 I'm going to suggest to you that by
5 using the pronoun "we", you are referring to West
6 Face; is that fair?

7 A. No, I think it was whoever was
8 speaking of this entire section, and I don't
9 recall.

03:23 10 Q. So you don't recall whether it was
11 Tennenbaum or West Face making that comment?

12 A. No.

13 Q. Okay. So going down to item 10:

03:24 14 "Catalyst has been there the
15 whole time at \$150 million. We were
16 not there on process timing, and
17 they were."

18 That, sir, I'm going to suggest is a
19 reference to the Wind transaction?

03:24 20 A. I don't recall.

21 Q. Knowing what you did -- you were
22 the analyst working on the West Face telecom file,
23 right?

24 A. Correct.

03:24 25 Q. Okay. And so you analyzed, in

1 addition to Wind, you also analyzed Mobilicity,
2 right?

03:24 3 A. We never had an investment in
4 Mobilicity, so I did not perform any analysis for
5 that purpose.

6 Q. You didn't study Mobilicity as a
7 potential wrap-up together with Wind? Wasn't that
8 part of the contemplation of building the fourth
9 carrier?

03:24 10 A. At certain points in the
11 investment process, which was, as you know, spanned
12 a very long period of time, there were certain
13 periods which we considered potentially acquiring
14 Mobilicity as well.

03:25 15 Q. All right. I'm going to suggest
16 to you, sir, that if you had understood how the
17 Mobilicity process worked, you would agree that the
18 reference to Catalyst being there the whole time at
19 150 million was not a reference to anything to do
03:25 20 with Mobilicity and could only be a reference to
21 Wind?

03:25 22 A. I disagree with that. It could
23 very well be, as I said previously, I don't recall,
24 but it could very well be relating to Mobilicity as
25 well. I think it was quite well known in the

1 public context that Catalyst had an interest in
2 Mobilicity and was interested in purchasing the
3 rest of Mobilicity and combining it with Wind.

4 Q. And turning to number 9:

03:25 5 "Oakhill has not gone to IC
6 yet."

7 And "IC" is a reference to Industry
8 Canada; fair?

9 A. No, I believe that refers to
03:26 10 Investment Committee.

11 Q. Investment Committee?

12 A. Correct.

13 Q. I see. So Oakhill has not gone to
14 its Investment Committee yet to discuss the Wind
03:26 15 transaction that you were all starting to ramp up
16 for; fair?

17 A. Correct.

18 Q. Oh, I see. So by the time you get
19 to paragraph 9, you have now transitioned to
03:26 20 talking about where Oakhill is on the Wind deal,
21 right? They haven't even gone to their Investment
22 Committee as of July 30th, right?

23 A. Correct.

24 Q. So logically, the next point in
03:26 25 your notes is a reference to the Wind transaction,

1 and you are off the Mobilicity topic?

2 A. Like I said, I don't particularly
3 recall who said item number 10 and what it was
4 referring to.

03:26 5 MR. WINTON: Okay, I have no further
6 questions.

7 MR. MILNE-SMITH: I have no
8 re-examination, Your Honour.

9 And subject to a read-in brief, which
03:27 10 we'll be --

11 THE COURT: Just one thing at a time.
12 Okay, thank you, Mr. Zhu.

13 -- WITNESS EXCUSED --

14 THE COURT: Yes?

03:27 15 MR. MILNE-SMITH: Subject to our
16 read-in brief, which we expect to deliver on Monday
17 morning, that is our case.

18 THE COURT: Thank you.

19 Mr. Centa?

03:27 20 MR. CENTA: Your Honour, we are ready
21 to call our first witness, Kevin Lo. Would you
22 like to take the afternoon break?

23 THE COURT: Sure, that makes sense.
24 Why don't we take it now for 15 minutes.

03:27 25 -- RECESSED AT 3:27 P.M.

1 -- RESUMED AT 3:46 P.M.

2 THE COURT: Mr. Centa.

3 MR. CENTA: Good afternoon, Your

4 Honour. We would like to call Kevin Lo as the next
03:46 5 witness.

6 KEVIN LO: SWORN.

7 MR. CENTA: Justice Newbould, we have
8 provided to you a bound copy of the brief of expert
9 evidence of Mr. Lo. I'll be primarily referring to
03:47 10 that.

11 I also have some documents from
12 Mr. Musters' evidence that you will find on your
13 iPad in one of two places, either in your iPad
14 under our examination folder or in Mr. Musters'
03:47 15 bound copy provided by my friend Mr. Winton.

16 THE COURT: Thank you.

17 MR. CENTA: And in the brief of expert
18 evidence for Mr. Lo, you will find an affidavit
19 from Mr. Lo dated April 2nd, 2015, a second
03:47 20 affidavit dated May 12th, 2015, a transcript of his
21 cross-examination on May 14th, 2015, as well as
22 some answers to undertakings.

23 EXAMINATION IN-CHIEF BY MR. CENTA:

24 Q. Mr. Lo, I understand you are the
03:48 25 Managing Director of Froese Forensic Partners?

1 A. Yes, that is correct.

2 Q. And do you recall swearing two
3 affidavits in this matter?

4 A. Yes, I do.

03:48 5 Q. And except as how the second
6 affidavit corrected -- or as your affidavits have
7 been corrected; do you adopt them as your evidence?

8 A. Yes, I do.

03:48 9 Q. And I understand from my friend
10 that there is no dispute as to the qualifications
11 of Mr. Lo, subject to the same caveat that some
12 issues may be raised in the submissions at the end
13 of the day.

03:48 14 Mr. Lo, you were retained by our firm
15 in this proceeding?

16 A. Yes.

17 Q. And for the purposes of your
18 review, you were provided with a copy of the report
19 of the Independent Supervising Solicitor dated
03:49 20 February 17th, 2015?

21 A. Yes.

22 Q. And you were provided with
23 affidavits and reports of Mr. Musters?

24 A. Yes, that's correct.

03:49 25 Q. And your first affidavit that you

1 swore in this proceeding dated April 2nd you will
2 find at tab 1 of the brief that is before you; do
3 you see that?

4 A. Yes, I do.

03:49 5 Q. And, Mr. Lo, you were asked to
6 analyze and assess the report of the Independent
7 Supervising Solicitor and the reports and
8 affidavits of Mr. Musters?

9 A. That's correct.

03:49 10 Q. In this affidavit, how many issues
11 did you primarily address?

12 A. There were two -- well, aside for
13 giving my analysis and opinion on the ISS reports
14 and also Mr. Musters' report, I was asked to
03:49 15 analyze two separate issues. One issue has to do
16 with this program called Secure Delete.

17 Q. Let's talk about that first. And,
18 Justice Newbould, you'll find Mr. Lo's affidavit,
19 the Secure Delete issue is addressed between
03:50 20 paragraphs 7 --

21 THE COURT: I have it right in front of
22 me. I understand that. I have read it.

23 BY MR. CENTA:

24 Q. Perfect.

03:50 25 Mr. Lo, what did the ISS conclude about

1 the Secure Delete program that prompted or that you
2 then analyzed?

03:50 3 A. According to the ISS report, they
4 reported that they found a folder called "Secure
5 Delete" on Mr. Moyse's computer, and also, however,
6 on paragraph 9 they cannot determine whether or not
7 the Secure Delete function was actually used on
8 that computer.

03:50 9 Q. And you are referring to paragraph
10 9 of your affidavit that contains an excerpt from
11 paragraph 48 of the report of the Independent
12 Supervising Solicitor?

13 A. That's correct.

03:51 14 Q. And did Mr. Musters also reach
15 some conclusions about the Secure Delete folder
16 that he set out in his affidavits?

17 A. Yes, it appears so.

18 Q. And what conclusion did he reach?

03:51 19 A. He -- to summarize, he made a
20 reference that the folder Secure Delete was found
21 on the computer, so therefore, the user runs the
22 Secure Delete feature, and I'm quoting from his
23 paragraph here on paragraph 10(a):

03:51 24 "The folder is only created
25 when a user runs the Secure Delete

1 feature to delete a file folder from
2 his computer."

3 Q. And did you come to a conclusion
4 about Mr. Musters' conclusion?

03:51 5 A. Yes, I have.

6 Q. What conclusion did you reach?

7 A. We found that Mr. Musters'
8 conclusion is wrong.

9 Q. What steps did you take to assess
03:52 10 or analyze the findings of Mr. Musters?

11 A. Mostly there were two major steps
12 that we took.

13 Number one, we obtained a forensic
14 image of Mr. Moyse's computer. Then we made a
03:52 15 backup copy of it. So we retained the original one
16 as best evidence, and we only worked on the backup.

17 After we achieved the backup copy of
18 that forensic image, we mounted it as a virtual
19 machine, so therefore, we can operate that machine
03:52 20 as if we are sitting in front of Mr. Moyse's
21 computer.

22 Then the second part is we also created
23 a clean Windows environment computer, so basically
24 a computer with a cleanly installed operating
03:52 25 system and we used it as a test machine.

1 Q. Okay. And let's talk now about
2 the steps you took on the test machine.

3 A. Yes.

4 Q. What did you do to assess Mr.

03:53 5 Musters' conclusion that the presence of the Secure
6 Delete folder meant that the Secure Delete program
7 had been used to delete a file or a folder?

8 A. So, as mentioned before, this is a
9 computer with a cleanly installed operating system,
03:53 10 after which we acquired a copy of the program
11 Advanced System Optimizer, we call it ASO, and step
12 by step we installed the application on the test
13 machine and then we observed its behaviour.

14 Q. And what steps did you take in
03:53 15 that environment?

16 A. We were monitoring what kind of
17 files will get created and so on. So one of the
18 steps we took was we launched one of the features,
19 one of the programs within the program ASO called
03:53 20 Secure Delete, and we observed that a folder called
21 "Secure Delete" get created once someone launched
22 the program and nothing else.

23 Q. When you say "nothing else", what
24 do you mean?

03:54 25 A. We simply click on the feature

1 Secure Delete and open up the program, and we did
2 not proceed to do anything else after that.

3 Q. And that was sufficient to create
4 the Secure Delete folder?

03:54 5 A. That is our observation, yes.

6 Q. What conclusion then could you
7 draw from the presence of a Secure Delete folder
8 created in your test environment?

9 A. We -- the only conclusion I can
03:54 10 have is the Secure Delete folder is created just by
11 the mere action of launching the program Secure
12 Delete.

13 Q. Is it evidence that files were
14 deleted?

03:54 15 A. No, it was not.

16 Q. Are there any other features of
17 Secure Delete that may provide evidence regarding
18 whether or not the program was used to delete files
19 or folders?

03:55 20 A. Yes, we noticed that the Secure
21 Delete application also tracks the number of files,
22 for example, that were deleted or also it tracks
23 the last time that the program was actually used.

24 Q. Could you please turn up Exhibit
03:55 25 "C" to your affidavit dated April 2, 2015, so tab

1 1-C of the brief?

2 A. Yes.

3 Q. And what are we looking at here?

03:55

4 A. We are looking at a screen shot of
5 the program Secure Delete, and as you look, focus
6 towards the bottom part of the screen, and we see
7 something, an entry called "system summary" and --

8 Q. Yes, sorry, "system summary" in
9 the bottom left?

03:55

10 A. No, right in the middle here.

11 Q. I see, thank you.

12 A. And then down below you see that
13 the system, the program actually tracks a number of
14 entries, so the first one is called "last wiped".

03:56

15 To me that is the last time that the program
16 actually deleted some files or folders.

17 Then after that, we also get an entry
18 called "items wiped", and that appears to be the
19 number of files that were deleted by the program.

03:56

20 And then the third entry is "space
21 recovered", and that appears to be the volume, the
22 data volume, the data size that were recovered from
23 the deletion.

03:56

24 And the very last one says "items wiped
25 to date", and that appears to be an entry that

1 tracks, like a tally, of total files that were
2 deleted by this program.

3 Q. And is this a screen capture?

4 A. Yes, it is.

03:56 5 Q. And how was it generated?

6 A. This particular screen was
7 generated from our test machine, so as I said
8 before, we ran a simulation; after we installed the
9 program on our test machine, we ran a simulation of
03:57 10 deleting files with this program, and we used it to
11 observe any behaviour by this program.

12 Q. Okay. Having taken those steps
13 and made these observations, did you have an
14 occasion to examine the forensic image you had of
03:57 15 Mr. Moyse's computer?

16 A. Yes, I had.

17 Q. And could you turn to Exhibit "D"
18 in your affidavit sworn on April the 2nd. What is
19 this?

03:57 20 A. This is a screen shot that we took
21 from Mr. Moyse's forensic image. As I said before,
22 we mounted this forensic image as a virtual
23 machine, so we were able to run his computer as if
24 we were in front of his computer. And this is what
03:57 25 we observed, and so we took a screen shot here.

1 Q. And how does this screen shot
2 compare to the test environment before you took the
3 steps of deleting the test files?

4 A. Can you repeat that question?

03:58 5 Sorry.

6 Q. How does this screen shot compare
7 to the Secure Delete log in your test environment
8 before you took the step of deleting the files?

9 A. It appears to be the same.

03:58 10 Q. In your opinion, is there any
11 evidence on Mr. Moyse's computer that a Secure
12 Delete program was used to delete files or folders?

13 A. No, we do not have any evidence
14 showing that Mr. Moyse has used this program to
03:58 15 delete anything.

16 Q. What conclusions, if any, can you
17 draw from the fact that the Secure Delete log on
18 Mr. Moyse's computer looks like Exhibit "D" to your
19 affidavit?

03:58 20 A. It appears that nothing was
21 deleted with the use of this program Secure Delete.

22 Q. Can you be certain of that?

23 A. Not a hundred percent, no.

24 Q. Is it possible to alter the Secure
03:59 25 Delete log to make it appear as if the program has

1 not deleted files or folders?

2 A. Yes, there is a possibility.

3 Q. And we'll come back to that in
4 your next affidavit.

03:59

5 Now, the second issue that you
6 addressed in your April 2nd affidavit is found
7 starting on page 7 of your affidavit at tab 1, and
8 it is under the heading of "The use of RegClean Pro
9 Software."

04:00

10 And, Mr. Lo, if I could remind you to
11 speak slowly and keep your voice up to help the
12 reporter and to help all of us.

13 A. Yes.

04:00

14 Q. What analysis were you asked to do
15 regarding the RegClean Pro Software?

16 A. It is twofold.

04:00

17 Number one is to observe the behaviour
18 of this program RegClean Pro, and the second task
19 that we were asked to do is to determine whether or
20 not it is possible to use this program RegClean Pro
21 to alter the registry entry of this computer.

22 Q. So let's just take the first issue
23 first. What did you conclude about whether or not
24 the program had been run?

04:00

25 A. Based on the forensic evidence, we

1 found that this program was indeed run on Mr.
2 Moyse's computer.

3 Q. And when was that run?

4 A. It was on July 12th of 2014.

04:01 5 Q. And on the second issue, what did
6 you conclude about whether the RegClean Pro
7 Software could be used to amend or alter the Secure
8 Delete logs?

9 A. No, we found no evidence that --
04:01 10 we were not able to use RegClean Pro to alter or
11 delete the Secure Delete log.

12 Q. Now, you said earlier that it was
13 possible to alter a Secure Delete log. Mr.
14 Musters, in his April 30th, 2015 affidavit, opined
04:01 15 that Mr. Moyse could have used the computer's
16 registry editor to delete the Secure Delete logs.
17 Do you remember that opinion that he provided?

18 A. Yes, I do.

19 Q. And do you now accept that opinion
04:01 20 as correct?

21 A. Yes, I do.

22 Q. Did you always accept it as
23 correct?

24 A. No.

04:01 25 MR. CENTA: And, Your Honour, the

1 evidence of the back and forth on that is in the
2 affidavits, but we now have agreement between the
3 experts that Mr. Moyses could have used the registry
4 editor to delete the Secure Delete log.

04:02 5 THE COURT: This is the evidence Mr.
6 Musters gave at the trial, was it not?

7 MR. CENTA: I'm sorry, Your Honour, I
8 couldn't hear you.

9 THE COURT: This was the evidence that
04:02 10 Mr. Musters gave at the trial?

11 MR. CENTA: Yes, in part, and also
12 contained in his affidavits. And in fact, the
13 experts came to a meeting of the minds in their
14 affidavits in cross-examinations, I believe, before
04:02 15 trial. This is no longer in dispute; is that fair?
16 My friend and I agree. Go ahead.

17 MR. WINTON: Well, Your Honour, I think
18 you'll hear some submissions on it in closing, but
19 as far as where we are at today, there is no longer
04:02 20 a dispute on that fact.

21 MR. CENTA: That's right, thank you.

22 BY MR. CENTA:

23 Q. And based on your assessment of
24 the forensic image taken of Mr. Moyses's computer,
04:02 25 is there any evidence one way or the other as to

1 whether or not Mr. Moyse may have used the registry
2 editor to alter the Secure Delete log?

3 A. No, we don't -- we haven't found
4 any evidence to show it one way or the other.

04:03

5 Q. Mr. Musters in his evidence opined
6 that resetting the Secure Delete log using the
7 registry editor was a relatively simple matter. Do
8 you agree with his opinion?

9 A. No, I disagree.

04:03

10 MR. CENTA: Justice Newbould, I'm going
11 to turn to some information that was contained in
12 Mr. Musters' brief. If that is convenient for you,
13 I can direct you there, or I can direct you to --

04:03

14 THE COURT: Just hang on, I'm making a
15 note here.

16 Sorry, where are you now?

17 MR. CENTA: I can direct you to the
18 document I'm going to take the witness --

19 THE COURT: That is fine.

04:04

20 MR. CENTA: -- either in the written
21 brief --

22 THE COURT: That's fine.

23 BY MR. CENTA:

04:04

24 Q. Okay, so in the written brief, it
25 is tab 8 of Mr. Musters' brief behind a letter from

1 my friends at Lax O'Sullivan, and if you look at
2 the top right-hand corner of the pages, they are
3 paginated, and you can either go to page 213 or
4 page 3207.

04:04 5 And, Mr. Lo, I think you said you
6 disagreed with Mr. Musters' opinion that it was a
7 relatively simple matter, and why do you say that?

8 A. That is because a Windows registry
9 is a pretty hidden, obscure part of a Windows
04:04 10 operating system. A regular computer user would
11 really have no reason why he or she would need to
12 visit that place to make any alteration or even to
13 look at it.

14 So in order for someone to go and make
04:05 15 changes, especially pertaining to this Secure
16 Delete program, one ought to know or have pretty
17 good computer knowledge to know exactly where to
18 go, to know exactly what to alter or to make the
19 change to make that proposed changes.

04:05 20 Q. Mr. Musters has identified some
21 publicly available information that in his opinion
22 would make it easier for a person to do that, and
23 this is found in tab 8 of his brief, the page I
24 directed you to, Your Honour, but it is also found
04:05 25 in our examination brief at tab 9, bearing document

1 number TR --

2 THE COURT: Just a second. I'm in the
3 middle of making a note.

4 MR. CENTA: Sorry.

04:06 5 THE COURT: Go ahead.

6 MR. CENTA: Thank you, Your Honour.

7 The document number I'm referring to is labelled
8 TRAN0003 --

9 THE COURT: And what are we looking at?

04:07 10 MR. CENTA: -- 391.

11 THE COURT: Where are we looking at?

12 MR. CENTA: This is page -- if you are
13 looking -- are you looking at your iPad, sir, or
14 the hard copy brief?

04:07 15 THE COURT: At the hard copy.

16 MR. CENTA: The hard copy brief, it is
17 page 213 or 3207.

18 BY MR. CENTA:

19 Q. And the heading just above the
04:07 20 text, Mr. Lo, reads "Remove and uninstall advanced
21 system optimizer", and then a series of digits,
22 "completely from Windows"; do you see that?

23 A. Yes, I do.

24 Q. How would you describe generally
04:07 25 the bundle of information that starts on page 3207

1 and runs through page 3212; what is this?

2 A. Well, this appears to be an
3 article pointing to the reader on how to uninstall
4 or remove the program ASO.

04:08 5 Q. Does this article refer
6 specifically to the Secure Delete log?

7 A. No, I don't think they made any
8 specific reference to that at all.

9 Q. I'm going to walk you through the
04:08 10 steps that are set out in this article, and I am
11 going to ask you to explain to us what this covers.

12 Down towards the bottom of the first
13 page, there is a heading "Manually uninstall
14 advanced system optimizer via add or remove
04:08 15 programs"; do you see that?

16 A. Yes, I do.

17 Q. And the text under that, what does
18 that describe?

19 A. In summary, it is an article, it
04:08 20 appears to be a paragraph to point the reader as to
21 how to remove the ASO program by using the add or
22 remove programs within the Windows operating
23 system.

24 Q. And when you observed the forensic
04:09 25 image of Mr. Moyse's computer, had he taken this

1 step?

2 A. No, the program ASO is there on
3 his computer, on Mr. Moyse's computer.

4 Q. And then over the next page on
04:09 5 3208 is a series of step-by-step instructions that
6 explain to do what you have just described?

7 A. Yes, I believe so.

8 Q. And then turning to page 3209, or
9 the fourth -- sorry, the third page of the image,
04:09 10 there is a heading that says "Manually uninstall
11 advanced system optimizer with its own
12 uninstaller"?

13 A. Yes.

14 Q. And what is described under that
04:09 15 text?

16 A. It appears to be another article
17 to -- this is an alternative way to delete the
18 software ASO by instead of using the add and remove
19 program, like the one we spoke earlier, now this is
04:10 20 actually teaching the reader how to uninstall this
21 particular program by using its own built-in
22 uninstaller.

23 Q. And that is built into the ASO
24 software?

04:10 25 A. Yes.

1 Q. And when you reviewed --

2 THE COURT: Well, he has already said
3 it hadn't been removed. I mean, the first one, you
4 just go to the control panel and do it. The second
04:10 5 one you go to the program, but the witness already
6 said that the ASO program was not defaulted or
7 taken out of the computer.

8 BY MR. CENTA:

9 Q. And there is no evidence, Mr. Lo,
04:10 10 that the uninstall program that is resident in the
11 ASO was used to delete the program by Mr. Moyse?

12 A. No.

13 Q. On page 3210, which is image four
14 in the document, there is a heading "Manually
04:11 15 delete the remnant files of Advanced System
16 Optimizer". What is explained under that heading?

17 A. Well, according to this paragraph,
18 the writer of this paragraph stated that by using
19 the previous two methods, i.e., using the control
04:11 20 panel add or remove program, or using this built-in
21 uninstaller, there could still be files remaining
22 on the computer system, and this appears to be a
23 way to teach the reader how to remove those remnant
24 files.

04:11 25 Q. And could the Secure Delete log be

1 one of those so-called remnant files?

2 A. It could be.

3 Q. Is it referred to specifically in
4 this section?

04:11 5 A. No --

6 Q. By name, sorry?

7 A. No, I don't see any reference to
8 the Secure Delete folder here.

9 Q. If one followed the steps set out
04:12 10 on the page and the following page, could one use
11 these steps to delete the Secure Delete log?

12 A. It could, but it would be pretty
13 difficult, because even though the direction -- it
14 gives you a general direction of where the registry
04:12 15 entry is, one first of all has to know the
16 existence of the Secure Delete folder; then
17 secondly, one has to know exactly where on the
18 registry entry to go to; and thirdly, the person
19 have to know what value or what changes should be
04:12 20 made to quote/unquote get rid of the Secure Delete
21 folder, or the Secure Delete log, sorry.

22 Q. Mr. Lo, if I could just stop you
23 there, I believe you said one first of all has to
24 know the existence of the Secure Delete folder?

04:13 25 A. That's correct.

1 Q. Did you mean folder or log?

2 A. Log.

3 Q. And at the bottom of page 311,
4 which is the fifth page of image 000391, the text
04:13 5 reads:

6 "Some programs may have files
7 in other locations, therefore
8 manually editing registry could be
9 very time-consuming and risky.

04:13 10 Please know that Windows registry is
11 the most important central base of
12 your computer, so you should be
13 extremely careful when deleting
14 entries there. Otherwise, your
04:13 15 system will be crashed."

16 Do you agree with that text?

17 A. I do.

18 Q. Based on your expert review of the
19 forensic image taken of Mr. Moyse's computer --

04:14 20 THE COURT: Mr. Centa, I'm making a
21 note.

22 MR. CENTA: I'm sorry, Your Honour. I
23 tell the witness to slow down and really the
24 admonition should be against me.

04:15 25 THE COURT: Go ahead.

1 BY MR. CENTA:

2 Q. Thank you, Your Honour.

3 Mr. Lo, based on your expert review of
4 the forensic image taken of Mr. Moyse's computer,
04:15 5 is there any evidence on that computer that
6 indicates that he followed the instructions we just
7 went through and that he took steps to alter or
8 delete the Secure Delete log?

9 A. No, I do not see any evidence of
04:15 10 that.

11 THE COURT: Could I just ask you a
12 question?

13 THE WITNESS: Yes, Your Honour.

14 THE COURT: If he had taken those
04:15 15 steps, are you able to say that there would be
16 evidence of that?

17 THE WITNESS: Well, because this
18 instruction here is specific about removing the
19 program, the mere fact the program is still on the
04:15 20 image, that tells me that he did not do so.

21 THE COURT: I understand he didn't
22 remove the program.

23 THE WITNESS: Yes.

24 THE COURT: But I thought you were now
04:15 25 talking about this system to remove remnant files.

1 I thought that is what you were being asked.

2 THE WITNESS: Yes.

3 THE COURT: If he had removed remnant
4 files, would there be evidence on the computer that
04:16 5 he had done so?

6 THE WITNESS: Yes, because then the
7 registry keys and the values we got would be
8 removed, would be gone. So therefore, that to me
9 would be a good example that it had been altered.

04:16 10 THE COURT: Okay.

11 BY MR. CENTA:

12 Q. Mr. Lo, the ISS in its report
13 identified that the Secure Delete folder existed on
14 Mr. Moyse's computer?

04:16 15 A. That's correct.

16 Q. And you gave evidence that
17 launching the Secure Delete software, just
18 launching caused the creation of the Secure Delete
19 folder?

04:17 20 A. Yes, that is correct.

21 Q. With your expertise, can you offer
22 any opinion on why someone would have launched the
23 Secure Delete program?

24 A. No, I do not have the knowledge of
04:17 25 why someone would do that, no.

1 MR. CENTA: Those are my questions,
2 Your Honour, thank you.

3 THE COURT: Okay.

4 CROSS-EXAMINATION BY MR. WINTON:

04:17 5 Q. Good afternoon, Mr. Lo.

6 A. Good afternoon.

7 Q. Starting with, and let's walk
8 through it, in your first affidavit one of the
9 tasks for which you were engaged was to attempt to
04:18 10 determine whether you could conclude whether Mr.
11 Moyse had used Secure Delete to delete files or
12 folders, right?

13 A. Yes, that was one of the tasks,
14 yes.

04:18 15 Q. And you concluded he had not,
16 right?

17 A. That is correct, yes.

18 Q. And you based that conclusion on
19 the fact that there was no information in the
04:18 20 system summary and no Secure Delete log present on
21 the software on Mr. Moyse's computer, right?

22 A. That is correct, yes.

23 Q. And those are the only two facts
24 upon which that conclusion was based, right?

04:18 25 A. No, it is not.

1 Q. Well, those are the only two you
2 referenced in your affidavit, so if there were
3 other facts, you would have included them in your
4 affidavit, right?

04:19

5 A. As I stated before during the
6 cross-examination, we have looked at a number of
7 factors, but that is the primary factors and why we
8 determined that Secure Delete wasn't run.

04:19

9 Q. All right, let's do this. Can we
10 turn up the cross-examination transcript for Mr. Lo
11 and let's go to -- it is tab 3 of the
12 cross-examination brief on your iPad, Your Honour,
13 or it will be on the big screen, going to page 44.

14 THE COURT: Slow down.

04:19

15 MR. WINTON: And I want to pull up
16 question 198.

17 THE COURT: Just a second.

18 MR. WINTON: Yes.

19 THE COURT: Which page?

04:20

20 MR. WINTON: It is page 44, Your
21 Honour, of the Lo cross-examination transcript from
22 2015, and the question I'm going to start reading
23 from is question 198.

24 BY MR. WINTON:

04:20

25 Q. Mr. Lo, do you recall last year I

1 cross-examined you prior to a motion after you
2 swore two affidavits? Do you remember that?

3 A. Yes, I do remember.

4 Q. Right, and you swore an oath to
04:21 5 tell the truth at that cross-examination?

6 A. That is correct.

7 Q. And in fact, you were attempting
8 to tell the truth at that cross-examination?

9 A. Yes.

04:21 10 Q. And in fact, you believe you were
11 telling the truth at that cross-examination?

12 A. Yes, I do.

13 Q. All right. Well, let's start
14 looking at what I asked you and what you said. At
04:21 15 question 198:

16 "Question: And it was based on
17 the absence of a Secure Delete log
18 and the information in the system
19 summary that led you to reach the
04:21 20 conclusion set out in paragraph
21 20(b) of your affidavit?

22 Answer: That's correct."

23 And if necessary, we can go to page
24 20(b) of your affidavit to show you what it says,
04:21 25 but let's just do the questions --

1 THE COURT: I thought Mr. Lo had
2 already acknowledged that to you on the cross.

3 BY MR. WINTON:

4 Q. Okay.

04:21 5 "Question: And in your
6 affidavit, those are the only facts
7 that you rely upon to support that
8 conclusion?"

9 And Mr. Borg-Olivier says:

04:21 10 "There's the balance of the
11 affidavit.

12 By Mr. Winton:

13 Question [200]: Right. But I --
14 the balance of the affidavit sets
04:22 15 out what he did, but I just want to
16 make sure I understand the basis --

17 Answer: Can you repeat that
18 statement, then.

19 Question [201]: -- the basis for
04:22 20 your conclusion, the only basis for
21 the conclusion, was the absence of
22 the Secure Delete log and the
23 information in the system summary?

24 Answer: Yes."

04:22 25 Were you asked those questions and did

1 you give those answers?

2 A. Yes, I did.

3 Q. And they were true then, right?

4 A. They were.

04:22 5 Q. And they remain true today?

6 A. Yes, they were.

7 Q. Now, you have acknowledged --

8 THE COURT: Go ahead.

9 BY MR. WINTON:

04:22 10 Q. Thank you, Your Honour.

11 You acknowledge today, and to be fair
12 to you, during your cross-examination last year,
13 that it is possible to reset the Secure Delete log
14 by deleting the registry keys from the computer
04:23 15 registry; correct?

16 A. Or to alter it, yes. Yes, it is
17 possible -- it is a possibility, yes.

18 Q. It is not altering them. It is
19 deleting them, the act of deleting them which
04:23 20 resets the registry key -- or sorry, the log, it
21 resets the log, right?

22 A. That is a possibility, yes.

23 Q. It is not just a possibility.
24 That is how one can do it, right?

04:23 25 A. Once again, it is a possibility.

1 Q. All right, let's ask you this.
2 Did you at any point prior to your
3 cross-examination last year, did you attempt to
4 replicate the exercise Mr. Musters carried out to
04:23 5 reset a Secure Delete log by deleting registry
6 keys?

7 A. I believe that was one of the
8 exercises, yes, that we have done.

9 Q. All right. Well, let's just see.
04:23 10 Let's go to page 45, and let's go down to question
11 205:

12 "Question: And starting at
13 paragraph 8 of Mr. Musters' April
14 30th affidavit, continuing to
04:23 15 paragraph 19, Mr. Musters sets out a
16 sequence of steps that a user can
17 take to delete the Secure Delete log
18 from one's registry, right?

19 Answer: That's -- yes.

04:24 20 Question [206]: And in doing so,
21 essentially reset the system summary
22 for Secure Delete, correct?

23 Answer: Yes.

24 Question [207]: And you agree
04:24 25 with me that a user who takes those

1 steps --", and I'm rephrasing, "you
2 don't disagree with the steps that
3 Mr. Musters says he took and the
4 data -- it had that cause and effect
04:24 5 on the Secure Delete?"

6 That could have been more elegantly
7 put, but the answer, you seem to understand what I
8 was getting at:

9 "Answer: I believe so. I did
04:24 10 not replicate his exercise, but I
11 believe -- I have no -- yeah, I have
12 no reason to doubt what he said."

13 And once again, Mr. Lo, were you asked
14 those questions and did you give those answers?

04:24 15 A. Yes, I did.

16 Q. And you were telling the truth at
17 the time?

18 A. Yes, I did.

19 Q. So that refreshes your memory now
04:24 20 that you in fact did not replicate the exercise Mr.
21 Musters took to reset the Secure Delete log?

22 A. Yes, that's correct.

23 Q. Thank you. And as I believe you
24 acknowledged during your examination in-chief
04:25 25 today, if the Secure Delete data was deleted from

1 the registry, then the facts you rely upon to reach
2 your conclusion in your April 2nd affidavit, that
3 is, the lack of information in the log, that
4 doesn't assist us in determining conclusively
04:26 5 whether Mr. Moyse in fact ran Secure Delete; is
6 that fair?

7 A. Yes, that is fair.

8 Q. And if the Secure Delete log has
9 in fact been reset, then it would appear as if
04:26 10 Secure Delete had not been run, right?

11 A. Hypothetically, yes.

12 Q. Yes, hypothetically.

13 A. Yes.

14 Q. Now, you as part of your exercise
04:26 15 of testing out how Secure Delete operated, you had
16 to install Advanced System Optimizer on a clean
17 computer, right?

18 A. That is one way, yes.

19 Q. And then you explored how it
04:26 20 operated by running the software on that clean
21 computer?

22 A. That is correct.

23 Q. Right. And you agree with me that
24 the version of the software you ran was not the
04:27 25 same version of the software that was installed on

1 Mr. Moyse's computer?

2 A. That I'm not sure.

3 Q. Well, I think we can be sure. Why
4 don't we look at your affidavit, and I don't know
04:27 5 if we have the exhibits to the affidavit on our --
6 I'm going off what I told our clerk we would load,
7 but in the hard copy, Your Honour, of Mr. Lo's
8 brief, do you have a copy of your hard copy brief?

9 A. Yes, I do.

04:27 10 Q. You do, okay. So if you look at
11 the log on the test computer, that is tab 1-C.

12 A. 1-C.

13 Q. This document here, Mr. Lo, this
14 is the screen shot from the version of Advanced
04:27 15 System Optimizer that was loaded onto the test
16 clean computer; correct?

17 A. That is correct.

18 Q. And if we just look at just the
19 screen shot, the bottom right corner says
04:28 20 "SysTweak", and that is the name of the publisher
21 of the software?

22 A. That is correct, yes.

23 Q. And then Advanced System Optimizer
24 is the name of the whole suite of programs;
04:28 25 correct?

1 A. That is correct.

2 Q. And Secure Delete is one of the
3 functions within the program; correct?

4 A. That is correct.

04:28 5 Q. At the bottom left corner, you see
6 it says "ASO", and then something that is illegible
7 to me --

8 THE COURT: "Version".

9 BY MR. WINTON:

04:28 10 Q. "Version", and then there is a
11 series of digits, 3.9.111.16491; do you see that?

12 A. Yes, I do.

13 THE COURT: You left one "1" out, but
14 it doesn't matter.

04:28 15 BY MR. WINTON:

16 Q. Okay. Just to complete the
17 exercise, if we turn over to the next tab, tab "D",
18 this screen shot here is the screen shot you took
19 from the image of Mr. Moyse's computer that you
04:29 20 launched onto a virtual computer of some sort?

21 A. Yes, that's correct.

22 Q. So this is the software that was
23 installed on Mr. Moyse's computer in 2014; correct?

24 A. Yes.

04:29 25 THE COURT: Tab "C", which one was

1 that?

2 MR. WINTON: Tab "C" was the clean
3 computer that Mr. Lo used as a test as to how the
4 software worked.

04:29 5 THE COURT: Okay, it was the test
6 computer, all right.

7 MR. WINTON: Correct. And tab "D",
8 Your Honour, is the version on Mr. Moyse's
9 computer.

04:29 10 BY MR. WINTON:

11 Q. And, Mr. Lo, you notice in the
12 bottom left corner there is a different version
13 number for the Advanced System Optimizer software,
14 right?

04:29 15 A. Yes, I do.

16 Q. So in fact, now you acknowledge
17 that it was a different version of the software
18 that you were testing to see how it functioned?

19 A. That is correct.

04:29 20 Q. Okay. When you were testing the
21 software out, in order to get to the Secure Delete
22 program, do you recall that you had to open
23 Advanced System Optimizer, right?

24 A. Yes.

04:30 25 Q. And Secure Delete was not one of

1 the functions on the open -- the first screen on
2 the software, right; do you recall that?

3 A. I need to look back to my notes
4 for that.

04:30 5 Q. Okay. So sitting here today, you
6 can't recall whether that is accurate or not?

7 A. Can you repeat that question? Can
8 you repeat that simulation of that screen, so I can
9 picture it in my head?

04:30 10 Q. Sure. You launched Advanced
11 System Optimizer, the suite of programs, and I'm
12 going to suggest to you that when you do so, what
13 you have are a series of options going down the
14 left side of the screen, one of which says
04:30 15 "security and privacy", and you click on that
16 button to get to a second window which then has the
17 Secure Delete button. Does that accord with your
18 recollection?

19 A. Your description appears to be
04:30 20 consistent with what I remember, how I remember it,
21 yes.

22 Q. Great. And when you see the
23 Secure Delete button on that second screen,
24 underneath the word "Secure Delete" there is a
04:31 25 small description of what that feature did if you

1 launched the button, right; it says that this is
2 how you permanently delete files?

3 A. I believe so, yes.

4 Q. Right. Now, you testified today
04:31 5 in-chief that the Windows registry is, I think in
6 your words, obscure and it is hidden from the
7 regular computer user, or words to that effect?

8 A. Yes, that's correct, yes.

9 Q. And a regular computer user would
04:31 10 have no reason to visit or look at their registry,
11 right?

12 A. That is my opinion, yes.

13 Q. In fact, the very existence of the
14 registry is probably hidden from the average
04:32 15 computer user?

16 A. That is -- yeah, that is a correct
17 statement.

18 Q. The average computer user doesn't
19 even know there is a registry on their computer; is
04:32 20 that fair?

21 A. I would phrase it that most
22 computer users do not need to know the existence of
23 a computer registry.

24 Q. But in your experience as a
04:32 25 forensic computer expert, the average user doesn't

1 even know there is such a thing as a registry on a
2 Windows computer; is that fair?

3 A. That is a generalization that I
4 would say yes, I agree.

04:32 5 Q. But you are aware of the fact that
6 in this case Mr. Moyse was aware that a registry
7 exists on his computer, right?

8 A. I don't know what he knows or he
9 doesn't know.

04:32 10 Q. Well, let's see. Part of the
11 second task when you were retained and that you
12 refer to in your affidavit on April 2nd, 2015, was
13 to determine whether RegClean Pro affected the
14 Secure Delete log; do you recall that?

04:33 15 A. That -- I do recall that, yes.

16 Q. Right. And the downloading and in
17 fact the using of a registry cleaner demonstrates
18 that a user has knowledge that the registry exists
19 on their computer; is that fair?

04:33 20 A. I do not know that, because I
21 never interviewed Mr. Moyse and I don't know why he
22 bought a software or he did not buy a software.

23 Q. Okay, you never spoke with Mr.
24 Moyse as part of your exercise for which you were
04:33 25 engaged?

1 A. No.

2 Q. And in fact, you have no
3 appreciation sitting here today as to Mr. Moyse's
4 ability to use or not use his computer? That
04:33 5 didn't form part of your opinion?

6 A. That's correct.

7 Q. And in fact, you have no opinion
8 sitting here today or no insights into Mr. Moyse's
9 intelligence and general sophistication; is that
04:33 10 fair?

11 A. That is a fair statement, yes.

12 Q. If you can --

13 THE COURT: Just wait, wait, wait.

14 MR. WINTON: Sure. Sorry, Your Honour.

04:34 15 THE COURT: I want to make sure that it
16 is the RegClean Pro --

17 MR. WINTON: Yes, well, we are going to
18 go to Mr. Lo's affidavit --

19 THE COURT: Just wait a minute.

04:34 20 MR. WINTON: Sorry, Your Honour, I
21 apologize.

22 THE COURT: I just want to make sure I
23 understand what Mr. Lo just said. You don't know
24 why Mr. Moyse bought that program called RegClean
04:34 25 Pro; is that what you said?

1 THE WITNESS: Yes.

2 THE COURT: Thank you. Go ahead.

3 BY MR. WINTON:

4 Q. Thank you. Sorry, Your Honour.

04:34 5 So if we could turn to paragraph 24 of
6 the April 2nd affidavit, it is on page -- it is at
7 the bottom of page 7.

8 As part of your analysis of Mr. Moyses's
9 computer, you had determined that RegClean Pro
04:35 10 optimized Mr. Moyses's registry on July 2nd, 2014 --
11 or July 12th, 2014, thank you, and it performed a
12 scan on July 20th, 2014; do you see that?

13 A. Yes, I do.

14 Q. Right, and you agree with me July
04:35 15 20th, 2014, is the same date that the Secure Delete
16 folder was created on Mr. Moyses's computer?

17 A. Yes, I agree.

18 THE COURT: Can I ask you a question.
19 What do you mean by the word "optimized"?

04:35 20 THE WITNESS: Your Honour, a lot of
21 this software, when they sell it as advertisement,
22 once they sell a product, they would often use the
23 word "optimization" or "cleaning", that type of
24 words to sell the product.

04:35 25 So a user in this case buying this type

1 of software for a variety of reasons, one of the
2 reasons is they read it and they might think my
3 computer is slow, my computer is not running as
4 fast as it was, so therefore, I bought, purchased
04:36 5 some software and it promised to optimize my
6 computer.

7 So that is what the -- the term
8 "optimization" of a computer is very loose.

9 THE COURT: But do you mean by this
04:36 10 that he downloaded it on his computer? What do you
11 mean by the verb "optimized"? You say that it
12 appears he optimized the registry, that the
13 RegClean Pro optimized the registry. What does
14 that mean?

04:36 15 THE WITNESS: So this is -- I put it in
16 quotes there for a reason, and it is because the
17 product -- actually, I believe it was on the
18 website it described the product as "to optimize".

19 So from an I/T point of view, when you
04:37 20 optimize a registry, it means to clean out maybe
21 the old records, the old entries of a computer
22 registry, but to the layperson that is too
23 difficult to understand.

24 So oftentimes a product, a software
04:37 25 product will simply use the term "to optimize" or

1 "maintenance" or "to clean", that type of wordings
2 to describe. It is a very generic term. It is not
3 exactly a technical term, Your Honour.

04:37 4 THE COURT: You are not understanding
5 my question.

6 THE WITNESS: Sorry, I apologize.

7 THE COURT: What does it appear that he
8 did? Did he download it or what? What does it
9 appear he did?

04:37 10 THE WITNESS: So on paragraph 24 on my
11 affidavit it said that, based on the records on the
12 computer, he ran this software, that he ran this
13 program called RegClean Pro on July 12th, 2014.

14 THE COURT: Okay, he ran the program?

04:37 15 THE WITNESS: Pardon me?

16 THE COURT: When you say "optimize",
17 you mean he ran the program?

18 THE WITNESS: He ran the program,
19 that's correct, yes. Sorry for the confusion, Your
04:38 20 Honour.

21 THE COURT: Thank you.

22 Okay, thank you.

23 BY MR. WINTON:

04:38 24 Q. Mr. Lo, you'll agree with me that
25 cleaning your registry would not affect the

1 deletion of a computer user's web history from
2 their computer?

3 A. Yes, I agree.

4 Q. Right, so if someone was looking
04:38 5 to permanently delete their web history, a registry
6 cleaner won't help them, right?

7 A. Yes, that is correct.

8 Q. Would you say that is common
9 knowledge within or amongst your profession of
04:39 10 forensic investigators?

11 A. Well, amongst my profession, yes,
12 it is common knowledge, yes.

13 Q. Right. But you agree that when
14 you delete your web history, you are deleting the
04:39 15 searches that a user performed on their computer?

16 A. That would be one aspect of it,
17 yes.

18 Q. Right. You are also deleting
19 access to web-based software programs such as
04:39 20 DropBox?

21 A. If DropBox were accessed by a web
22 browser, that could be one of the things that you
23 could delete that way, yes, one of the ways you use
24 to delete, yes.

04:39 25 Q. Earlier today you reviewed the

1 information that was attached at tab 8 to Mr.
2 Musters' brief, and I just want to ask you a
3 question. You agree with me that if you uninstall
4 a program, the presence of that program on your
04:40 5 computer is still detectable to a forensic
6 investigator, right?

7 A. In most cases, yes.

8 Q. That's right, because when you
9 uninstall a program, you don't normally overwrite
04:40 10 the data that shows the program was there; it is
11 just not visible to the user on their computer?

12 A. Generally speaking, yes.

13 Q. Right, and so let's try and put it
14 colloquially. You'll agree with me you cannot
04:40 15 Secure Delete Secure Delete? You can't run Secure
16 Delete to delete itself? In other words, you can't
17 overwrite and delete the presence of the program
18 that way, right?

19 A. The reason I hesitated to answer
04:40 20 that question is let's say I delete -- I have one
21 copy of Secure Delete and I delete and I uninstall
22 this program.

23 Q. Yes.

24 A. Now I install another copy of
04:40 25 Secure Delete to delete itself basically. So I

1 think it is a hypothetical. I don't think I'm
2 comfortable commenting on that.

3 Q. Okay, but if you -- in the
4 scenario you just told me about, if you re-install
04:41 5 Secure Delete, it is back on the system and it is
6 detectable again?

7 A. Exactly, yeah.

8 Q. So you can't --

9 A. But -- yeah, Sorry.

04:41 10 Q. Okay, that is fine. Now, to your
11 knowledge, does the Secure Delete --

12 THE COURT: Just a moment. I'm making
13 a note.

14 MR. WINTON: Sorry?

04:41 15 THE COURT: I'm making a note.

16 MR. WINTON: Oh, I'm sorry, Your
17 Honour, I apologize.

18 THE COURT: When I was in your shoes
19 down there, I always kept one eye on the witness
04:41 20 and I kept one eye on the judge.

21 MR. DiPUCCHIO: In fairness, I was
22 tugging on his gown.

23 MR. WINTON: I had one eye on the
24 witness and one on Mr. DiPucchio, which was
04:41 25 obviously not worthwhile.

1 THE COURT: Go ahead.

2 BY MR. WINTON:

3 Q. Thank you, Your Honour.

4 Mr. Lo, to your knowledge, does the

04:42

5 Secure Delete function on Advanced System Optimizer
6 serve any other function than to permanently delete
7 files from a user's computer in a fashion that they
8 would not be detectable to a forensic review?

9 A. Can you repeat that question

04:42

10 again, please?

11 Q. Sure. To your knowledge, does the
12 Secure Delete function on Advanced System Optimizer
13 serve any other function than to permanently delete
14 files so that they could not be recovered through a
15 forensic review?

04:43

16 A. I agree to the first part of that
17 question, where the program is used with the
18 intention that the file or the deletion is not
19 recoverable. However, whether or not it is
20 detectable by a forensic exercise, I believe that
21 is a different story.

04:43

22 Q. All right. Well, let's go to Mr.
23 Musters' brief. Do you have that in front of you?

24 A. I don't. I do not have it.

04:43

25 Q. You don't. Do we have Mr.

1 Musters' entire brief?

2 MR. THOMSON: You can borrow ours.

3 BY MR. WINTON:

4 Q. Thank you.

04:43

5 I'm going to hand you a copy of the

6 expert brief of Mr. Musters so that you can follow

7 along with me. And I'm going to ask, sir, that you

8 turn up tab 3-E in the brief, and you will see this

9 is promotional material for Advanced System

04:44

10 Optimizer.

11 THE COURT: Just a moment.

12 MR. WINTON: I'm sorry, Your Honour,

13 I'm having a bad run of it this afternoon.

14 THE COURT: Well, if you want me to

04:44

15 follow this, don't just get your nose down and

16 start running, because you'll lose me.

17 MR. WINTON: I don't want to do that.

18 THE COURT: Okay, now where are you?

19 MR. WINTON: On the fourth page of this

04:45

20 tab.

21 THE COURT: Of what tab?

22 MR. WINTON: It was 3-E, Your Honour,

23 in the Musters brief.

24 THE COURT: Yes.

04:45

25 BY MR. WINTON:

1 Q. If you see starting about halfway
2 down the page the description of Secure Delete,
3 looking at the promotional material underneath the
4 line "Did you know that whenever you delete a file
04:45 5 [...]"; do you see where that is written, Mr. Lo?
6 If you look at the second paragraph, do you see
7 where I am?

8 A. Yes, I see it now, yes.

9 Q. Great, Thank you. So in the
04:46 10 second paragraph where it says what happens:

11 "Secure Delete keeps the
12 privacy and security of your system
13 intact. By implementing a secure
14 deletion method developed by the
04:46 15 United States Department of Defence,
16 Secure Delete ensures that no tool
17 can ever recover your deleted files
18 and folders! By using Secure Delete
19 to securely remove your sensitive
04:46 20 files, deleted items are permanently
21 removed from your system."

22 Do you see that there?

23 A. I do see it, yes.

24 Q. So do you agree with me then that
04:46 25 when you run software of this nature, that it is

1 run for the purpose of ensuring a file is not only
2 deleted but cannot be recovered once the software
3 is run?

04:46 4 A. That is the intention of the
5 software, yes.

6 MR. WINTON: Okay, thank you.

7 I'm done, Your Honour, no further
8 questions.

04:46 9 THE COURT: I took your answer a minute
10 ago just to agree with that, but you said it was a
11 different story whether it was detectable what had
12 been done; that is what you said?

13 THE WITNESS: That is what I said, yes,
14 Your Honour.

04:47 15 THE COURT: Any re-examination?

16 MR. CENTA: No, re-examination, Your
17 Honour.

18 THE COURT: Thank you very much, Mr.
19 Lo.

04:47 20 THE WITNESS: Thank you.

21 THE COURT: You can go.

22 -- WITNESS EXCUSED --

23 THE COURT: Yes, Mr. Centa?

04:47 24 MR. CENTA: Given that it is now eleven
25 minutes to 5:00 on a Friday, I would propose, with

1 Your Honour's permission, to call Mr. Moyse
2 starting Monday morning.

3 THE COURT: That makes sense to me.

4 MR. DiPUCCHIO: He is not going to be
04:47 5 eleven minutes in cross-examination, Your Honour.

6 THE COURT: So 9 o'clock Monday
7 morning.

8

9 -- Adjourned at 4:48 p.m.

04:48

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This is Exhibit "77" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

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3

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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1 to us. And let's be frank, there was a lot of
2 water under the bridge, and we felt it was
3 appropriate.

02:54 4 Now, to be clear, I actually wasn't
5 involved with the parting of the ways. That was
6 really dealt primarily with our legal people. In
7 fact, I'm not sure I was even consulted.

8 MR. DiPUCCHIO: Thank you, sir, those
9 are my questions.

02:55 10 THE COURT: Any re-examination?

11 MR. THOMSON: I have none, Your Honour.

12 THE COURT: Thank you very much, Mr.
13 Dea.

14 MR. THOMSON: You are free to go.

02:55 15 -- WITNESS EXCUSED --

16 MR. THOMSON: Your Honour, I believe
17 our next witness is Ms. Kapoor.

18 SUPRIYA KAPOOR: AFFIRMED.

19 EXAMINATION IN-CHIEF BY

02:56 20 MR. MILNE-SMITH:

21 Q. Ms. Kapoor, you swore an affidavit
22 in this proceeding; correct?

23 A. That's correct.

24 Q. Could we just bring that up,
02:56 25 please. So this time it is tab 00, Your Honour.

1 And we see you swore that affidavit on
2 June 2nd; correct?

3 A. Yes.

4 Q. And do you adopt that affidavit as
02:57 5 your evidence in-chief for this proceeding?

6 A. I do.

7 Q. Ms. Kapoor, what is your position
8 at West Face?

9 A. I'm the Chief Compliance Officer.

02:57 10 Q. How long have you held that
11 position?

12 A. I started on June 2nd, 2014.

13 Q. Ms. Kapoor, just by way of
14 overview at the outset, did you play any role
02:57 15 whatsoever in the negotiation or other work
16 associated with West Face's acquisition of an
17 interest in Wind Mobile?

18 A. Not at all.

19 Q. As Chief Compliance Officer, could
02:57 20 you please give a high-level overview of your
21 responsibilities?

22 A. My responsibilities include
23 maintaining policies and procedures to assess the
24 compliance with securities legislation of the firm
02:57 25 and its individuals that act on behalf of that

1 firm. My responsibilities include monitoring and
2 assessing the compliance with securities
3 legislation of that firm and the individuals that
4 act on behalf of that firm. And they also include
02:58 5 reporting any instances of non-compliance that I
6 may become aware of to Greg Boland, our CEO.

7 Q. And perhaps it may sound like a
8 silly question for you, but just so we have it for
9 the record, do you take your responsibilities
02:58 10 seriously?

11 A. Very seriously.

12 Q. What are potential compliances to
13 West Face of non-compliance with matters within
14 your bailiwick? Sorry, what did I say? Or what
02:58 15 are the potential consequences to West Face of
16 non-compliance with matters within your bailiwick?

17 MR. WINTON: The reason I rise, Your
18 Honour, is because this question was asked in Mr.
19 Singh's cross-examination and it was refused, the
02:58 20 question of non-compliance within an ethical wall
21 was asked and it was refused by West Face, and so I
22 don't believe it would be appropriate for the
23 witness to answer that question now at trial.

24 MR. MILNE-SMITH: I think it is a
02:59 25 different question, but it is not terribly

1 important to me.

2 THE COURT: I don't think this is
3 necessary. I think we can all understand that if
4 you don't comply with the legislation, you are in
02:59 5 trouble.

6 MR. MILNE-SMITH: That is the only
7 point.

8 THE COURT: Well, I think I do know
9 that. We have got the OSC in here all the time for
02:59 10 people who have decided they didn't want to comply
11 with the securities legislation.

12 MR. MILNE-SMITH: I'm just thinking of
13 the record, Your Honour, but I take your point.

14 THE COURT: Well, I think that even the
02:59 15 judges at the Court of Appeal would know that.

16 MR. MILNE-SMITH: We'll take judicial
17 notice of that one, thank you, Your Honour.

18 BY MR. MILNE-SMITH:

19 Q. Ms. Kapoor, you described your
02:59 20 responsibilities just a moment ago. Could you
21 please describe how a confidentiality wall fits
22 within your responsibilities?

23 A. So a confidentiality wall would be
24 considered a control procedure to ensure compliance
03:00 25 with securities law, as well as to mitigate any

1 risks associated with the flow of confidential or
2 non-public information to individuals or parties
3 that shouldn't have that information. So it is an
4 important aspect of compliance.

03:00 5 It is also -- and the confidentiality
6 or the maintenance of non-public information is a
7 very important part of securities legislation, and
8 so the erection of a confidentiality wall would be
9 considered a prudent business practice.

03:00 10 Q. Ms. Kapoor, your affidavit
11 describes your efforts to establish and implement a
12 confidentiality wall in June 2014. Could you
13 please describe how that came about?

03:00 14 A. I was approached by Mr. Alex
15 Singh, our previous GC.

16 Q. And without disclosing any legal
17 advice he may have given you, what, if anything,
18 did he ask you to do?

03:01 19 A. He instructed me to set up a
20 confidentiality wall.

21 Q. And did you do so?

22 A. Yes.

03:01 23 Q. And if we could go to tab 2 of
24 your affidavit, please -- sorry, tab 1 of your
25 affidavit. This is WFC0000049. So this is an

1 email dated Thursday, June 19th of 2014 from you.
2 It is sent to Mr. Moyses, and then it lists a number
3 of other individuals, some of whom we have heard
4 about and some of whom we have not. So there is
03:01 5 Mr. Boland, Mr. Dea, Mr. Griffin, Mr. Fraser, and
6 we know who they are. Who is Peter Brimm?

7 A. He was an investment analyst at
8 West Face.

9 Q. And Aland Wang?

03:02 10 A. An investment analyst at West
11 Face.

12 Q. And Nandeep Bamrah and Graeme
13 McLellan?

03:02 14 A. Both are investment analysts at
15 West Face.

16 Q. And we know who Mr. Zhu is and we
17 are going to be hearing from him shortly. Norah
18 Nester?

19 A. She is our tax controller.

03:02 20 Q. And Chap Chow?

21 A. He is the head of our I/T group.

22 Q. And there is a reference there to
23 "compliance"; is that just you?

03:02 24 A. No, that is actually a
25 distribution list which includes our Chief

1 Operating Officer, myself, the Chief Financial
2 Officer of our funds, the General Counsel and some
3 support staff.

03:02 4 Q. Great. So if you turn over to the
5 next page of this tab, please, is this the memo
6 describing the confidentiality wall you have just
7 referred to?

8 A. Yes.

03:02 9 Q. In your own words, could you
10 please describe the terms or scope of this
11 confidentiality wall?

03:03 12 A. So Brandon was not permitted -- or
13 sorry, Mr. Moyse, was not permitted to discuss any
14 information that he may have had regarding Wind
03:03 15 with anybody at West Face. He was not to actively
16 take steps regarding Wind. He was not to make any
17 inquiries about Wind, and no one at West Face was
18 permitted to discuss anything regarding Wind or
19 make inquiries of Wind. And then we went and
03:03 20 established securities controls to make sure that
21 Mr. Moyse was restricted.

03:03 22 Q. And in addition to circulating
23 this memorandum by email, as we just saw, did you
24 have a direct discussion with Brandon about this
03:03 25 confidentiality wall?

1 A. I did.

2 Q. And when did you have that
3 conversation?

4 A. On the evening of June 19th.

03:03 5 Q. Why did you have that
6 conversation?

7 A. Because I wanted to reiterate the
8 importance, in fact, to emphasize the importance of
9 ensuring that he understood the terms of the
03:03 10 confidentiality wall.

11 Q. Can you describe what you told
12 him?

13 A. I reviewed the contents of the
14 memo with him, and then I had a very brief
03:04 15 discussion but emphatic discussion with him that
16 under no circumstances was he to talk to anybody
17 about Wind, questions or otherwise. There was to
18 be no conversation about Wind while he was here.

19 Q. And did Mr. Moyse have any
03:04 20 response to that?

21 A. My sense was that he completely
22 understood. He seemed in agreement with it, and he
23 said I understand.

24 Q. And how long did the call last?

03:04 25 A. It was very short, maybe a minute

1 or two.

2 Q. Do you have any information as to
3 whether the I/T department, and we have heard
4 reference to Mr. Chow, do you have any information
03:04 5 as to whether the I/T department implemented the
6 restrictions you had prescribed?

7 A. Yes, I received a confirmation
8 from him.

9 Q. If we could turn to tab 2, please,
03:05 10 this is WFC0000054, and is this the email you just
11 referred to?

12 A. Yes.

13 Q. Do you recall if you have any
14 other contemporaneous record of the confidentiality
03:05 15 wall being established?

16 A. I took some notes on June 25th.

17 Q. Okay, can we go to tab 3. This is
18 WFC0111141. Is that your handwriting?

19 A. Yes, it is.

03:05 20 Q. Could you just read your note to
21 the Court?

22 A. Number 1:

23 "BM injunction notification
24 today. Conflict wall has been set
03:05 25 up already per last week's memo. We

1 don't want to know what he did
2 before. Alex had been dealing with
3 this."

03:06 4 Q. Do you have any reason to think
5 that anyone at West Face did not comply with your
6 confidentiality wall?

7 A. No.

8 MR. MILNE-SMITH: Thank you, Ms.
9 Kapoor, those are my questions.

03:06 10 THE COURT: Any cross-examination?

11 MR. WINTON: Just very, very brief.

12 CROSS-EXAMINATION BY MR. WINTON:

13 Q. In your evidence in-chief, Ms.
14 Kapoor, you described the wall as a control
03:06 15 procedure?

16 A. Yes.

17 Q. And that is a reference to the
18 fact that from the technical point of view, what
19 the wall does is it restricts Mr. Moyse's access to
03:06 20 the Wind file on the West Face server; correct?

21 A. That is part of it.

22 Q. Right, but the wall doesn't --
23 there is no categorical way to prevent employees of
24 West Face from speaking to Mr. Moyse about Wind?

03:07 25 A. That is correct, but in my

This is Exhibit "78" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Provinces of Ontario, while a Student-at-Law.
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 5
June 10, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 5/Volume 5 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 10th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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1 don't want to know what he did
2 before. Alex had been dealing with
3 this."

03:06 4 Q. Do you have any reason to think
5 that anyone at West Face did not comply with your
6 confidentiality wall?

7 A. No.

03:06 8 MR. MILNE-SMITH: Thank you, Ms.
9 Kapoor, those are my questions.

10 THE COURT: Any cross-examination?

11 MR. WINTON: Just very, very brief.

12 CROSS-EXAMINATION BY MR. WINTON:

03:06 13 Q. In your evidence in-chief, Ms.
14 Kapoor, you described the wall as a control
15 procedure?

16 A. Yes.

03:06 17 Q. And that is a reference to the
18 fact that from the technical point of view, what
19 the wall does is it restricts Mr. Moyse's access to
20 the Wind file on the West Face server; correct?

21 A. That is part of it.

22 Q. Right, but the wall doesn't --
23 there is no categorical way to prevent employees of
24 West Face from speaking to Mr. Moyse about Wind?

03:07 25 A. That is correct, but in my

03:07 1 experience at West Face, in my experience in the
2 industry, given the tone at the top and the
3 significance of compliance at West Face, I had no
4 reason to believe or feel a lack of confidence that
5 the wall had been breached, and based on my
6 discussions with Mr. Moyses himself.

03:07 7 Q. But that wasn't my question. My
8 question to you was, short of the technical
9 restriction, there is nothing you can do to monitor
10 or enforce the wall to prevent employees from
11 speaking to Mr. Moyses about Wind; correct?

12 A. That's correct.

13 MR. WINTON: All right. That's it.

14 THE COURT: Any re-examination?

03:08 15 MR. DiPUCCHIO: Seven or eight
16 questions --

17 MR. MILNE-SMITH: I thought long and
18 hard on it, Your Honour, but I will pass.

19 THE COURT: Thank you, Ms. Kapoor.

03:08 20 THE WITNESS: Thank you.

21 -- WITNESS EXCUSED --

22 MR. MILNE-SMITH: So our next witness
23 is Mr. Yu-jia Zhu.

24 YU-JIA ZHU: AFFIRMED.

03:09 25 EXAMINATION IN-CHIEF

This is Exhibit "79" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 6
June 13, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 6/Volume 6 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 13th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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1 iPad you should have a folder of documents for the
2 examination of Mr. Moyse.

3 THE COURT: I have it.

4 MR. CENTA: It contains his trial
5 affidavit as well as the earlier affidavits that
6 have been filed in this proceeding.

7 THE COURT: Okay.

8 EXAMINATION IN-CHIEF BY MR. CENTA:

9 Q. Mr. Moyse, except as your evidence
10 has been corrected from prior affidavits, do you
11 adopt that evidence today?

12 A. I do.

13 Q. How old are you today?

14 A. 28.

15 Q. Where do you work?

16 A. I work for Stornoway Portfolio
17 Management.

18 Q. When did you start there?

19 A. In mid-December of 2015.

20 Q. Prior to that, when did you start
21 working at Catalyst?

22 A. I started around November 1st of
23 2012.

24 Q. When did you stop working at
25 Catalyst?

1 A. My last day in the office was May
2 26th of 2014.

3 Q. When did your employment
4 officially cease?

5 A. I believe it was June 22nd of
6 2014.

7 Q. After leaving Catalyst, where did
8 you work next?

9 A. I worked for West Face Capital.

10 Q. What was your first day on the
11 job?

12 A. June 23rd, 2014.

13 Q. And if your first day on the job
14 was June 23rd, 2014, when was your last day working
15 in the office at West Face?

16 THE COURT: Well, the transcript says,
17 and it may be a mistake but I didn't hear it, but
18 it says you worked at Catalyst Capital starting
19 June 23rd. I don't think that is right.

20 BY MR. CENTA:

21 Q. No, your first day on the job at
22 West Face?

23 A. West Face, June 23rd, 2014.

24 Q. And when was your last day working
25 at West Face in the office?

1 A. My last day in the office was July
2 15th of 2014.

3 Q. Mr. Moyse, did you ever provide in
4 writing or verbally any confidential Catalyst
5 information regarding Wind, Mobilicity, Catalyst
6 regulatory strategy or its telecommunications
7 industry strategy to any of the following people:

8 Greg Boland?

9 A. No.

10 Q. Anthony Griffin?

11 A. No.

12 Q. Thomas Dea?

13 A. No.

14 Q. Peter Fraser?

15 A. No.

16 Q. Yu-jia Zhu?

17 A. No.

18 Q. Alex Singh?

19 A. No.

20 Q. Supriya Kapoor?

21 A. No.

22 Q. Anyone else at West Face that I
23 have not named?

24 A. No.

25 Q. Lawrence Guffey?

1 A. No.

2 Q. Hamish Burt?

3 A. No.

4 Q. Anyone else affiliated with LG
5 Capital Investors LLC or its special purposes
6 investment vehicles that I have not named?

7 A. No.

8 Q. Michael Leitner?

9 A. No.

10 Q. Anyone else affiliated with
11 Tennenbaum Capital Partners LLC that I have not
12 named?

13 A. No.

14 Q. Did you ever provide in writing or
15 verbally any confidential Catalyst information
16 regarding Wind, Mobilicity, Catalyst's regulatory
17 strategy or its telecommunications industry
18 strategy to any of the following people: Tony
19 Lacavera, Simon Lockie, or anyone at any of the
20 Globalive entities?

21 A. Well, as part of the diligence
22 process, it is possible that Catalyst exchanged
23 information with those parties. I don't recall
24 doing that, and subsequent to my leaving Catalyst
25 Capital, no.

1 Q. Did you ever intentionally delete
2 or destroy any evidence relevant to the matters at
3 issue in this case with the intention of
4 frustrating Catalyst's ability to pursue its case?

5 A. I did not.

6 Q. Did you ever use a software
7 program called Secure Delete to delete any
8 documents, files or data from your computer?

9 A. No.

10 Q. Did you ever alter, modify or
11 tamper with the Secure Delete log that is resident
12 on your computer?

13 A. No.

14 Q. Mr. Moyse, I would like to ask you
15 some questions about -- in general about your job
16 search.

17 A. Sure.

18 Q. You testified that you started
19 work at Catalyst Capital on or about November 1st,
20 2012?

21 A. That's right.

22 Q. What were your goals when you
23 started working at Catalyst?

24 A. At the time, prior to my starting
25 there, I was working in investment banking. I

1 wanted to transition from working on the call it
2 sell side as an agent to being more of a principal.

3 As a part of doing that, I wanted to
4 improve my fundamental financial analysis skill-set
5 and also get exposure to the deal-making process
6 and the thought behind why firms do the deals they
7 do.

8 Q. Having started at Catalyst on or
9 around November 1st, 2012, when did you start
10 looking for a new job?

11 A. It would have been in late 2013,
12 probably around December of 2013 is when I started
13 to seriously think about it.

14 Q. Why did you start looking for a
15 new job a little over a year after you started at
16 Catalyst?

17 A. There's a couple of reasons.

18 One, I found that I wasn't getting at
19 that point the learning opportunities that I had
20 set out to achieve in the first place.

21 I found the -- secondly, I found the
22 work environment to be somewhat oppressive.

23 Those would be the two main reasons.

24 Q. I would like to ask you some
25 questions about the first reason that you gave.

1 Can you describe the type of work you
2 were doing at Catalyst between the fall of 2013 and
3 the end of April of 2014?

4 A. Sure. My work over that period of
5 time was focussed almost exclusively on helping
6 with the management of two Catalyst portfolio
7 companies, which are companies that Catalyst owned.
8 The first was Natural Markets Food Group, and we
9 can call that NMFG, and then the second was
10 Advantage Rent a Car.

11 Q. And is that what you expected you
12 would be doing at Catalyst?

13 A. I certainly expected that that
14 would be part of the job. I was surprised by how
15 much of my time it began to consume over such a
16 long period of time, and I was also disappointed by
17 the fact that even though I was involved with the
18 management of these companies on a day-to-day
19 basis, I had no real power or responsibility when I
20 was on the ground with them.

21 So just as a quick example, Advantage
22 Rent a Car had a \$127 invoice that I needed to send
23 to Gabriel de Alba for approval. I had no power to
24 simply say, okay, you can pay this for \$127.

25 Q. The second issue you identified is

1 what you described I believe in your testimony as
2 an oppressive culture?

3 A. Yes.

4 Q. Please describe the working
5 environment and why it was not satisfying?

6 A. There is a lot of incidents I can
7 draw on, but just to sum it up, it was not what I
8 would call a place that had very much common
9 decency or respect for the individuals working
10 there.

11 Q. If you would turn to tab 60 in the
12 folder, Justice Newbould, this is document
13 BM0004968. Mr. Moyse, do you recognize this
14 document?

15 A. I do.

16 Q. What is it?

17 A. It is an email exchange between
18 myself and my girlfriend at the time. She is my
19 fiancée now. Just to be clear, it is not somebody
20 else; it is my fiancée now.

21 Q. I'll bring that to her attention.

22 There is an email from Ms. Richter to
23 you in the middle of the page sent at 15:52 that
24 says, she writes:

25 "I think the culture of the

1 place is probably very important.
2 As Mr. Reese said, Catalyst is an
3 oppressive environment. You'll feel
4 lots better no matter where else you
5 go probably."

6 And you reply:

7 "None of the other places seem
8 oppressive. But anything is
9 probably an improvement culturally,
10 so I don't care a whole lot."

11 Did that accurately reflect your
12 feelings at the time?

13 A. Yes.

14 Q. How surprised were you about the
15 work culture that you found at Catalyst?

16 A. I knew beforehand that it had a
17 reputation for being an intense and difficult place
18 to work. I was surprised again by just how -- I
19 guess how much on a daily basis it lacked the
20 respect and common decency that I mentioned before.

21 Q. In his evidence, Mr. de Alba
22 described the Catalyst culture as cohesive and
23 transparent, with the goal to empower junior
24 employees. Do you agree with that characterization
25 of the Catalyst culture?

1 A. No, not at all.

2 Q. Mr. de Alba in his evidence said,
3 quote:

4 "We also offer basically our
5 younger members of the team, we
6 pursue for them to have a career
7 path to evolve not only promotions
8 from associate or VP, but most
9 likely to be able to build a career
10 and become partners at Catalyst."

11 How accurately, Mr. Moyse, does that
12 describe your sense of the career prospects of
13 junior employees?

14 A. Not at all.

15 Q. When you commenced your -- when
16 you started looking for a new job in late 2013, as
17 you testified, to whom did you send applications?

18 A. I was in touch with a number of
19 parties, a couple of headhunters. I sent
20 applications directly to West Face, to a firm
21 called Hanson Group, to Mackenzie Financial, and
22 then I reached out to some connections I had, I
23 remember in particular at the Canada Pension Plan,
24 CPP.

25 Q. Leaving aside meetings with West

1 Face that we'll come back to, how many meetings or
2 interviews did you have?

3 A. It was -- I met with people at
4 West Face three different times.

5 Q. Leaving aside West Face, how many
6 meetings or interviews did you have with other
7 prospective companies?

8 A. It would be the three or four I
9 mentioned, plus probably another two or three
10 through headhunters.

11 Q. Other than West Face, how many job
12 offers did you receive as part of this job search?

13 A. I voluntarily withdrew from the
14 final round at Mackenzie, but the West Face job
15 offer was the only one I received.

16 Q. By early May 2014, how frustrated
17 were you with your job at Catalyst?

18 A. Very.

19 Q. If you could turn up tab 70, this
20 is document BM0004976. Mr. Moyse, do you recognize
21 this document?

22 A. I do.

23 Q. What is it?

24 A. It is another email exchange
25 between myself and my now fiancée.

1 Q. On May 10th you write an email
2 that reads:

3 "Got a bunch of work to do.
4 Went in early so I hope to finish
5 early afternoon. When are you home?
6 How are you getting home? I think
7 I'm going to quit this week. Maybe
8 today or tomorrow."

9 At the time you wrote that message, did
10 that fairly reflect your view?

11 A. I was giving it very serious
12 thought, yes.

13 Q. At the time you wrote that
14 message, did you have another job offer in hand?

15 A. I did not.

16 Q. Ms. Richter replies:

17 "Are you? I will support and
18 be happy for you no matter what you
19 do. Because I love you. Don't quit
20 on Newton's birthday."

21 Do you recall why she would have said
22 that?

23 A. I think she shares a birthday with
24 Newton, and that was coming up that week.

25 Q. And you replied saying:

1 "I'm just bored of what I'm
2 doing, and they're going to give me
3 shit for going on vacation because
4 there's too much work this week.
5 And there's still the West Face and
6 Mackenzie jobs. And other jobs I
7 can at least apply to. I have
8 enough money that I can live the way
9 I live now and not work for at least
10 a year or two."

11 Does that fairly reflect your views on
12 May the 10th, 2014?

13 A. I was hoping I could get back to
14 work sooner than that, but yes.

15 Q. Mr. Moyse, I would now like to ask
16 you some questions about the job search that you
17 engaged in with West Face. When did you first meet
18 with West Face looking for employment?

19 A. I first met with them in the
20 summer of 2012, I believe, while I was still
21 employed at Credit Suisse.

22 Q. If we could call up tab 63,
23 please. And, Your Honour, this is the -- it is a
24 large bundle of material, but it also includes the
25 email that attaches the writing samples that we'll

1 hear about. This is tab 63, Your Honour.

2 But for now I want to focus on the
3 first four pages of this tab. If you could turn to
4 page 4, and scroll down just a little bit. There
5 we go. This is an email, Mr. Moyses, from you to
6 Mr. Dea on September 25th, 2012?

7 A. It is.

8 Q. And do you recall that email?

9 A. I do.

10 Q. And what was its purpose?

11 A. Well, I had met with Mr. Dea prior
12 to that date. That was set up -- that meeting was
13 facilitated by my boss at Credit Suisse, so I just
14 wanted to let Mr. Dea know what had happened with
15 me. I didn't want to completely close the loop. I
16 felt that was rude to not follow up.

17 Q. Mr. Dea responds to that message
18 in a message above, and Mr. Dea writes to you on
19 September 25th:

20 "Hey Brandon, congratulations.
21 I agree that it will be an excellent
22 place to learn. To be clear, I am
23 very careful about granting either
24 praise or red flags. So for the
25 record, I do not have any firsthand

1 experience with Catalyst. My
2 caution is based on second hand
3 information from professional
4 advisors and others who have worked
5 with them. The comments related to
6 how they were treated and what they
7 were like to work with."

8 And it goes on from there to talk about
9 the Catalyst business.

10 Mr. Moyse, if we turn back and go up
11 the email chain to the next page, 3, there is an
12 email from you to Mr. Dea dated December 11, 2013?

13 A. Yes.

14 Q. Do you recall that email?

15 A. I do.

16 Q. Why did you send it?

17 A. At that point, I had started to
18 think about finding new employment and I wanted to
19 get back in touch with people with whom I had met
20 before.

21 Q. And in this email you forward a
22 news article about Catalyst Capital winning the
23 bidding for Advantage Rent a Car?

24 A. That's right.

25 Q. Is that one of the portfolio

1 companies you referred to earlier?

2 A. Correct.

3 Q. Do you recall whether or not Mr.
4 Dea responded to the December 11, 2013 email you
5 sent?

6 A. I believe he did not.

7 Q. When did you reach out again?

8 A. In March of 2014.

9 Q. And is that the email we see at
10 the top of page 3?

11 A. It is.

12 Q. And why did you reach out at this
13 time?

14 A. By this time, I had fully decided
15 to and had gotten my job search into call it full
16 gear and simply wanted to be even more direct about
17 what I was looking for.

18 Q. Why did you not mention your
19 concerns about the Catalyst work culture in this
20 email to Mr. Dea?

21 A. I didn't think it was necessary.
22 The email reflects why I was interested in West
23 Face in particular.

24 Q. There is a back-and-forth over the
25 next page or so trying to set up a meeting. Did

1 you eventually meet with Mr. Dea?

2 A. I did.

3 Q. On what date?

4 A. It was March 26th of 2014.

5 Q. At approximately what time?

6 A. It was 1:30 or 1:45.

7 Q. Where?

8 A. At Aroma Coffee in the financial
9 district.

10 Q. How long did the meeting last?

11 A. Maybe 45 minutes, maybe an hour.

12 Not more than an hour for sure.

13 Q. What did you and Mr. Dea talk
14 about?

15 A. We spoke about why I was
16 interested in -- why I wanted to leave Catalyst,
17 what I was interested in doing with my career, why
18 West Face in particular interested me, what sort of
19 skills, what kind of my skills, my skill-set was
20 that I could bring to West Face, and he told me a
21 little bit about what they might need from an
22 analyst.

23 Q. Did you talk about Wind?

24 A. No.

25 Q. Did you talk about the

1 telecommunications industry?

2 A. No.

3 Q. Did you talk about any specific
4 deals or projects that you were working on at
5 Catalyst at that time?

6 A. No.

7 Q. On page 1 of tab 63 there is an
8 email from you to Mr. Dea on March 27th at 1:47
9 a.m.; do you see that message?

10 A. I do.

11 Q. Do you recall sending this
12 message?

13 A. I do.

14 Q. Your message begins:

15 "As discussed, please see
16 attached for my CV and deal sheet,
17 and a few investment write-ups I've
18 done at Catalyst."

19 Stopping there, can you explain the
20 discussion that you were referring to when you used
21 the words "as discussed"?

22 A. Sure. At the end of our meeting,
23 we left it that I should send him my resumé, a deal
24 sheet that just says some of the work I did on
25 completed deals, and then he said he wanted to see

1 writing samples that were with no confidential
2 information.

3 Q. He asked you for writing samples
4 with no confidential information. Did he ask you
5 for those writing samples to reflect any particular
6 type of writing?

7 A. No.

8 Q. What did you send to him?

9 A. I sent him these four memos that I
10 had, that I had helped work on while I was at
11 Catalyst.

12 Q. Did any of the memos relate to
13 Wind?

14 A. No.

15 Q. Did any of the memos relate to
16 Mobilicity?

17 A. No.

18 Q. Did any of the memos relate to the
19 telecommunications industry?

20 A. No.

21 Q. How would you describe these memos
22 today?

23 A. I would describe them as
24 confidential, definitely proprietary to Catalyst,
25 and my sending them was a serious, serious error in

1 judgment. I was tired; it was late at night; it
2 was a busy day. I wanted to be responsive to his
3 request. I should have taken more time to think
4 about what I could do.

5 Q. How did you come to select those
6 four writing samples?

7 A. I specifically chose these
8 because, in my mind at the time, they were -- they
9 represented other analyses based on completely
10 public information, or dead, stale, inactive,
11 inactionable ideas. It doesn't change the fact
12 they were confidential and I shouldn't have sent
13 them.

14 Q. When did you realize that you had
15 made a mistake by sending these four confidential
16 writing samples?

17 A. Shortly thereafter.

18 Q. What did you do?

19 A. I deleted this email from my email
20 account.

21 Q. How would you describe that
22 decision?

23 A. It was another -- it was
24 compounding poor decisions.

25 Q. Did you tell anyone at Catalyst at

1 that time either that you had sent the memos or
2 that you had deleted the email message?

3 A. No, I didn't.

4 Q. Did anyone at West Face raise with
5 you the issue relating to you sending these memos?

6 A. Yes, at least two different people
7 on two different occasions did.

8 Q. Let's take them one at a time.
9 What was the first occasion?

10 A. I can't remember which came first.
11 They were within a couple of days of each other at
12 most.

13 Q. Who spoke to you about it?

14 A. It was Alex Singh, the general
15 counsel at the time, and Tom Dea.

16 Q. Let's start with Mr. Singh. When
17 did he speak to you?

18 A. Sometime while I was on vacation,
19 probably around between I would say May 20th and
20 May 23rd.

21 Q. What did he say?

22 A. One, he gave me an outline of the
23 employment agreement, but he impressed upon me that
24 West Face takes matters of confidentiality very
25 seriously, that I should uphold my confidentiality

1 obligations to Catalyst with the same high
2 standard, and that they were seriously -- they were
3 very, very concerned by the memos I had sent over.

4 Q. How would you describe the tone of
5 that conversation?

6 A. Serious.

7 Q. You also testified that you spoke
8 with Mr. Dea about this issue?

9 A. It was one of the things that came
10 up when I spoke to him, yes.

11 Q. When did that conversation take
12 place, approximately?

13 A. Around the same time. I think it
14 was around when they had sent me the first draft of
15 my employment agreement, so maybe about May 22nd.

16 Q. Do you recall what he said to you?

17 A. He said the same thing, that they
18 were very concerned by that and that they take
19 matters of confidentiality very seriously.

20 Q. How would you describe the tone of
21 your conversation with Mr. Dea on that issue?

22 A. It was also very serious.

23 Q. Moving back in time, after you met
24 with Mr. Dea on March the 26th, did you meet with
25 anyone else at West Face as part of the recruitment

1 effort?

2 A. I did.

3 Q. With whom did you meet and when?

4 A. So there were two more meetings.
5 One was with Peter Fraser, Tony Griffin and Yu-jia
6 Zhu. Those were in the same day, three successive
7 individual meetings. And then a couple of weeks
8 later I met with Greg Boland.

9 Q. I want to ask you about the
10 meetings not involving Mr. Boland first. Do you
11 recall what day those meetings took place?

12 A. Not exactly, but it would have
13 been -- it was mid-April, early to mid-April.

14 Q. How were the meetings organized?

15 A. It was just one-on-one meetings
16 with each of the partners and Yu-jia.

17 Q. How long did those meetings last?

18 A. Each one was 15 to 30 minutes.

19 Q. What did you discuss?

20 A. The same topics of conversation as
21 my first meeting with Tom Dea, so why I wanted to
22 leave Catalyst, what I was interested in doing,
23 what the environment at West Face was like, what --
24 generally what type of work they do and what they
25 might be looking for from an analyst.

1 In the case of my meeting with Mr. Zhu,
2 he also gave me a hypothetical investment problem
3 that he wanted me to think out loud about.

4 Q. During those meetings with any of
5 those individuals, at any time did you discuss Wind
6 Mobile?

7 A. No.

8 Q. Did you discuss Mobilicity?

9 A. No.

10 Q. Did you discuss anything about
11 Catalyst's regulatory concessions that they were
12 seeking from the government?

13 A. No.

14 Q. You also gave evidence that you
15 met with Mr. Boland?

16 A. I did.

17 Q. Turn up tab 68. Do you recognize
18 this message?

19 A. Yes.

20 Q. What is it?

21 A. I'm writing a thank-you note to
22 Mr. Boland after meeting him and he just replies
23 briefly.

24 Q. When did you meet with Mr. Boland?

25 A. I believe in the morning on that

1 day, so the morning of the 28th.

2 Q. How long did that meeting last?

3 A. Less than ten minutes.

4 Q. What did you discuss?

5 A. He just wanted to know why I was
6 leaving and what I was interested in doing.

7 Q. Did you discuss Wind Mobile?

8 A. No.

9 Q. Did you discuss Mobilicity?

10 A. No.

11 Q. Did you discuss anything about
12 Catalyst's regulatory posture with respect to the
13 Federal Government?

14 A. No.

15 Q. In your job search, if you turn to
16 tab 69, there is a series of back-and-forth emails
17 with Mr. Dea following -- I guess the chain starts
18 at the bottom with Mr. Dea setting up the meeting
19 with Mr. Boland.

20 Just briefly, after meeting with Mr.
21 Boland, can you describe the contact that you had
22 with West Face and what happened next in the job
23 search?

24 A. There was some back and forth with
25 Tom Dea about matters such as compensation and

1 references, and then another two -- another call it
2 one or two weeks later I spoke on the phone with
3 Mr. Dea and he informed me that they would like to
4 make me an offer.

5 Q. If you could turn up tab 72, there
6 is an email in the middle of the page from Mr. Dea
7 to you on Friday, May 16th, 2014 at 14:54?

8 A. That's right.

9 Q. Do you recall receiving that
10 email?

11 A. I do.

12 Q. And did you call Mr. Dea?

13 A. I did.

14 Q. What did you discuss on that call?

15 A. He just informed me again that
16 they would like to make me an offer. I expressed
17 my sincere thanks. And I was just starting my
18 vacation at that point, so that was about the
19 extent of the call.

20 Q. What day did your vacation start?

21 A. It started on Friday, May 16th; my
22 flight was at 1:30 in the morning on the 16th.

23 Q. So where were you when you had
24 this call?

25 A. I was in the Taipei airport on a

1 layover.

2 Q. On the call on May 16th with Mr.
3 Dea, did you discuss Wind?

4 A. No.

5 Q. Did you discuss anything about
6 Catalyst?

7 A. No.

8 Q. When you received the verbal offer
9 from Mr. Dea, did you tell anyone that you had
10 received this -- did you tell anyone at Catalyst
11 that you had received this offer?

12 A. I did. So I -- sorry, when,
13 before or after I spoke with -- after I spoke with
14 Mr. Dea, yeah --

15 Q. Let me ask that question again.
16 After you spoke with Mr. Dea, did you tell anyone
17 at Catalyst that you had received the offer?

18 A. Yes, I spoke to Zach Michaud, who
19 was a Vice President at Catalyst.

20 Q. If you could turn to tab 87,
21 please. Do you recognize this message?

22 A. I do.

23 Q. It says:

24 "Hi, Zach, As discussed, let me
25 know if you can put me in touch with

1 your friend. Appreciate all your
2 help and understanding."

3 What did you say to Mr. Michaud in the
4 discussion that this email references?

5 A. Well, I called him from the
6 airport where I was on a layover. I let him know
7 that I had received a job offer from West Face and
8 was leaning towards accepting it.

9 But I was also aware that he had had a
10 friend who had in the past worked at West Face, and
11 I was wondering if he could put me in touch with
12 his friend so I could do some diligence on whether
13 or not I would want to accept the job.

14 Q. When you told him you had received
15 an offer from West Face and, as you said, were
16 leaning towards accepting it, did he say anything
17 to you about West Face being a competitor to
18 Catalyst on the Wind transaction?

19 A. No.

20 Q. Did he say that he had to tell
21 anyone else your news, did he have to tell anyone
22 else at Catalyst the news you had told him?

23 A. No.

24 Q. Did he remove you from any email
25 distribution chains relating to the Wind

1 transaction?

2 A. I don't think he did, given I
3 continued to receive emails.

4 Q. If you could turn up tab 49, page
5 2. This is an email from Zach Michaud to you on
6 May 19th, 2014, and that is roughly three days
7 after you told him you had received a job offer
8 from West Face?

9 A. That's right.

10 Q. He writes to you and
11 Mr. Creighton:

12 "Please take a look and provide
13 me your comments by early afternoon.
14 Lorne can you please insert these
15 into the memo where appropriate."

16 What was attached to this message?

17 A. It was an early draft of an
18 operating model for Wind that Morgan Stanley, who
19 was Catalyst's financial advisor at the time, had
20 started to put together.

21 Q. And turning back to page 1 of that
22 document, there is an email from you to
23 Mr. Creighton and Mr. Michaud in response dated May
24 19th?

25 A. Yes.

1 Q. Did that email contain your
2 response to Mr. Michaud's question?

3 A. It does. It did.

4 Q. If you could turn to tab --

5 THE COURT: Sorry, which email?

6 MR. CENTA: The email I was referring
7 to, Your Honour, is at the very top of tab 49. It
8 is an email from Mr. Moyse dated May 19th, 8:39
9 p.m.

10 THE COURT: All right, well, where is
11 the question?

12 MR. CENTA: The question is over on
13 page 2 of that tab.

14 THE COURT: Could I see it?

15 MR. CENTA: Can you call that up,
16 please, page 2. And there is an email from
17 Mr. Michaud on May 19th at 8:55 a.m. to Mr. Moyse
18 and Mr. Creighton.

19 THE COURT: All right, thank you.

20 BY MR. CENTA:

21 Q. In addition to Mr. Michaud, did
22 you tell anyone else working at Catalyst that you
23 had received Mr. Dea's verbal offer of a job at
24 West Face?

25 A. I told Lorne Creighton who was an

1 analyst at Catalyst as well. I actually, before
2 leaving on my vacation, I indicated to him that I
3 may be receiving a job offer while I was on
4 vacation and would not be returning, or may not be
5 returning.

6 Q. If you turn to tab 50, two-thirds
7 of the way down the page below the redacted
8 passage, there is an email dated May 16th, 2014 at
9 6:20 p.m. where you write:

10 "Got an offer from West Face.
11 Will likely send G an email over the
12 weekend."

13 A. That's right.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. Is that how you communicated with
17 Mr. Creighton?

18 A. It is.

19 Q. After you told him that you had
20 received a verbal job offer from West Face that you
21 were leaning towards accepting, did Mr. Creighton
22 say anything to you about West Face being a
23 competitor to Catalyst on the Wind transaction?

24 A. No.

25 Q. Did Mr. Creighton tell you that

1 Mr. Creighton felt that he had to tell anyone else
2 at Catalyst the news you had shared?

3 A. He did not.

4 Q. When did you tell Mr. de Alba that
5 you were resigning?

6 A. I sent him an email on I think the
7 24th -- yeah, the 24th of May 2014.

8 Q. If you could turn to 52. At the
9 time you sent this email to Mr. de Alba, did you
10 have a signed employment agreement with West Face?

11 A. No.

12 Q. Did you tell him that you were
13 going to West Face in this email?

14 A. I did not.

15 Q. Why not?

16 A. Well, one, I have always been
17 under the assumption that it is best practices to
18 keep resignation letters as short as possible.

19 Two, I wanted to be able to have that
20 discussion with him in person.

21 And three, because I didn't have a
22 signed offer at the time, I didn't want to say I
23 was going to work somewhere that I may not, in the
24 end, end up working.

25 Q. On May 24th, 2014, when you sent

1 this resignation email, did you know that West Face
2 was a competitor to Catalyst on the Wind deal?

3 A. No.

4 Q. Did you eventually sign an
5 employment contract with West Face?

6 A. I did.

7 Q. If you could turn, please, to tab
8 76. Do you recognize this document?

9 A. I do.

10 Q. What is it?

11 A. It is -- I'm not sure if this is a
12 draft or the final, but it is my employment
13 agreement with West Face.

14 Q. If we flip quickly to the last
15 page of this document, I can show you the
16 signature.

17 A. Yes, that is the final one.

18 Q. Now, can we turn to page 3 of the
19 document, please. Article 1.05(d), as in "dog",
20 reads:

21 "As a material inducement to
22 the corporation to employ the
23 employee, the employee represents
24 and warrants to the corporation
25 that:

1 The employee will not use any
2 property in the course of the
3 employee's employment which is
4 confidential or proprietary
5 information of any other person,
6 company, group or organization."

7 You saw that?

8 A. Yes.

9 Q. Did you comply with that term?

10 A. I did.

11 Q. When did you speak to Mr. de Alba
12 about the resignation email you had sent to him?

13 A. It was the morning of May 26th.

14 Q. Did you speak to anyone else at
15 Catalyst about your resignation that day?

16 A. I spoke also with Mr. Riley and I
17 was spoken to by Mr. Glassman.

18 Q. What did Mr. Glassman say to you?

19 A. He told me that if I left for West
20 Face, they would seek to enforce my employment
21 agreement with Catalyst.

22 Q. When you spoke to Mr. Riley, do
23 you recall approximately when that discussion took
24 place?

25 A. Yes -- well, I spoke with him a

1 couple of times, once with Mr. de Alba and Mr.
2 Riley in the mid-morning, and then again just with
3 Mr. Riley at 12:30, because the Monday meeting was
4 happening concurrently.

5 Q. And what happened during the
6 second meeting with Mr. Riley?

7 A. He had asked -- he informed me who
8 Catalyst's counsel would be. He asked for contact
9 information for my counsel. He reiterated that I
10 should go home and potentially work on what he
11 called less sensitive projects for the balance of
12 my notice period. And that was essentially it.

13 Q. After you left that meeting with
14 Mr. Riley, did you receive any further Catalyst
15 confidential information about Wind?

16 A. I don't think so. It stopped very
17 quickly, the emails.

18 Q. After that meeting with Mr. Riley,
19 did anyone provide you with any confidential
20 information about Catalyst's regulatory strategy or
21 its attempts to acquire Wind after May 26th?

22 A. No.

23 Q. Before your employment ultimately
24 ended at Catalyst, did you return items to
25 Catalyst?

1 A. I returned a BlackBerry that had
2 been issued to me by Catalyst, yes.

3 Q. What did you do before you
4 returned it?

5 A. I wiped the BlackBerry, which
6 means just deleting basically everything on it.

7 Q. And why did you do that?

8 A. I had used the BlackBerry for
9 personal texts and photos and didn't just want to
10 hand that over to Catalyst. That was also a
11 mistake.

12 Q. How many email accounts were set
13 up on that BlackBerry?

14 A. Just one, the Catalyst email
15 account.

16 Q. In hindsight, how would you
17 describe your decision to wipe the BlackBerry?

18 A. Like I said, it was a poor
19 decision and I should have -- there was another way
20 to handle things, I'm sure.

21 Q. Please turn up tab 78. This is
22 document WFC0000050. Do you recognize it?

23 A. I do.

24 Q. What is it?

25 A. It is a memo from Supriya Kapoor,

1 who was the Compliance Officer at West Face,
2 informing me and many, many people at West Face and
3 everybody on the investment team that they have set
4 up a confidentiality wall regarding Wind Mobile.

5 Q. Did you comply with the terms of
6 this wall?

7 A. I did.

8 Q. Did anyone at West Face ever
9 discuss the Wind file or the potential Wind
10 transaction with you?

11 A. No, not at all.

12 Q. How did you learn that West Face
13 had successfully acquired Wind?

14 A. I read about it on Twitter after
15 it was reported in the news on, I think, September
16 15th was the date.

17 Q. If you could turn up tab 55, this
18 is an email from you to someone named Ben Matlin?

19 A. It is an email chain between us,
20 yes.

21 Q. Who is Ben Matlin?

22 A. He is a friend of mine from
23 Montreal.

24 Q. In your email at the top of the
25 page, which was sent at 3:18 on September 16th,

1 2014, you write:

2 "Haha - think they [...]"

3 And "they", in that email "they" refers
4 to West Face?

5 A. Yes, that's correct.

6 Q. "[...] think they're just
7 backing them financially (my guess
8 is they are lenders to the new
9 company and maybe have some equity
10 or warrants). Sounds like Lacavera
11 will probably be the largest equity
12 holder and majority owner."

13 On September 16, 2014, did that
14 accurately set out your understanding of the
15 transaction?

16 A. Based on the few details that had
17 been reported in the news, yes.

18 Q. How accurate was your
19 understanding based on what had been reported in
20 the press?

21 A. My understanding now is that it
22 was not accurate at all.

23 Q. What day did you start at West
24 Face?

25 A. June 23rd, 2014.

1 Q. If you could turn up tab 90,
2 please. This is an email from Tony Griffin to Tony
3 Griffin, Brandon Moyse and Pat McGuire with the
4 subject line "Arcan" sent on June 23rd at 10:41
5 p.m.; do you see that?

6 A. I do.

7 Q. Do you recall receiving this
8 message?

9 A. I do.

10 Q. When did you first hear about
11 Arcan that day?

12 A. So it was in the -- I think the
13 early evening, definitely after market close.
14 Arcan had announced that it was -- Arcan had
15 announced that it was entering into a Plan of
16 Arrangement to be bought by a company called
17 Aspenleaf Financial.

18 Tony Griffin, who was sitting a couple
19 of seats over from me in the big open kind of
20 trading floor style environment at West Face, just
21 kind of said out loud, "Arcan is doing a deal."
22 Given the time, there were fewer people around than
23 usual, and I started to read about what was
24 happening.

25 Q. When Mr. Griffin said that out

1 loud after the market had closed, did he ask you to
2 do any work on Arcan at that time?

3 A. No.

4 Q. What did you do?

5 A. Like I said, I started to read
6 about the transaction. I started to model it out
7 for myself with a bit of the analysis around the
8 transaction, just in case I was called upon to do
9 anything, given that there were fewer people at
10 West Face than usual at the time Tony said that.

11 Q. And when was that that you started
12 to work on Arcan?

13 A. Sometime after the deal was
14 announced, so Monday evening.

15 Q. Do you recall whether you started
16 work before or after you received the email from
17 Mr. Griffin at 10:41 p.m.?

18 A. Well, I definitely started reading
19 about the transaction to get smart on it before. I
20 don't recall if I started my Excel file before or
21 after. But it was around the same time.

22 Q. Did you recall at the time, that
23 is June 23rd, after the market closed and through
24 10:41 p.m. when you received that message, did you
25 recall at that time that you had sent a memo on

1 Arcan to West Face as part of your employment --
2 application for employment on March 27th?

3 A. Yeah, I remembered.

4 Q. Did you use any of the information
5 that you learned during your time at Catalyst for
6 the work you did on June 23rd?

7 A. No, not at all.

8 Q. Why not?

9 A. This was really a discrete
10 situation where Arcan -- the analysis I did at
11 Catalyst had no bearing on this Plan of
12 Arrangement. So just to clarify a little bit,
13 under the Plan of Arrangement, Aspenleaf was coming
14 in with a bag of money and saying that the
15 debenture holders in Arcan would get 82 and a half
16 cents on the dollar for their bonds and the equity
17 holders would get I think it says 43 cents.

18 But essentially, that shouldn't happen.
19 The debenture holders should get paid in full
20 before the equity gets anything. So you could
21 simply just look at this deal in a vacuum and say
22 it is not about the size of the pie; it is about
23 how it should be cut.

24 Q. What happened the next day,
25 Tuesday, June 24th?

1 A. At some point that day Alex Singh,
2 the general counsel, called me into his office. He
3 asked me what I was working on. I told him I was
4 working on Arcan, and he told me to stop working on
5 Arcan.

6 Q. Do you know why Mr. Singh called
7 you into his office?

8 A. No, I don't.

9 Q. Did you do any more work on Arcan
10 after you spoke to Mr. Singh?

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

12 Q. Did you provide the work that you
13 had already done on Arcan to Mr. Griffin?

14 A. No.

15 Q. I would like to ask you some
16 questions now about what we have heard described as
17 the Monday morning meetings at Catalyst.

18 A. Okay.

19 Q. In your time at Catalyst, how
20 often or how frequently did the Monday morning
21 meetings take place?

22 A. Sure. At first, so for the first
23 while that I was there, they did occur almost every
24 Monday, unless the partners were travelling, but it
25 was call it 80 percent of the time. But that

1 started to become much less frequent in late 2013
2 and 2014.

3 Q. Could you please describe a
4 typical Monday morning meeting at Catalyst?

5 A. Yes. So it happened -- it
6 involved the Catalyst investment professionals, so
7 that would be Mr. Glassman, Mr. Riley, Mr. de Alba,
8 whoever the vice presidents, associates, analysts
9 were, the CFO of Catalyst, Chester Dawes, was
10 there, and also the President of Callidus, David
11 Reese, was attending the meeting.

12 And the first part of the meeting,
13 which would last anywhere between call it 30
14 minutes to an hour, would be a question and answer
15 period between the partners and the vice presidents
16 around macro-economic events, notable news items,
17 political news, stuff of that nature.

18 If the meeting continued beyond that,
19 we would discuss operating companies, so companies
20 that were owned by Catalyst, and to a lesser extent
21 we would discuss new deals and pipeline deals.

22 Q. In your time at Catalyst that ran
23 from -- or during your time at Catalyst, how often
24 did you speak at a Monday morning meeting, to the
25 best of your recollection?

1 A. Very few times. I can remember
2 maybe three times off the top of my head, but it
3 was very infrequently.

4 Q. When you spoke very infrequently,
5 about what did you speak?

6 A. In one instance, I was called
7 upon, I remember, to give an update on the status
8 of NMFG, one of the portfolio companies.

9 In another instance, I gave a summary
10 of a potential investment situation relating to a
11 real estate company in Europe.

12 Those are two I remember clearly. I'm
13 sure there were maybe a couple more, but those are
14 the two I remember.

15 Q. Can you recall a specific instance
16 when the Catalyst strategy for the Wind deal was
17 discussed at a Monday morning meeting?

18 A. Specifically, no.

19 Q. Were the discussions at Monday
20 morning meetings self-contained or did they rest on
21 other information that was in discussion among the
22 people at Catalyst?

23 A. Well, the news items were
24 certainly self-contained, but a lot of the
25 discussion around operating companies and potential

1 or new deals seemed to be pieces of bigger
2 conversations, so they seemed to be picking up on
3 conversations that they had had either with
4 external advisors or between themselves. But the
5 general sense was that the analysts always didn't
6 necessarily have the correct context for everything
7 that was being discussed.

8 Q. How did that affect your ability
9 to understand what was being discussed at the
10 Monday morning meetings?

11 A. I mean, it was frustrating. I
12 could certainly understand some of it, but most of
13 it not well.

14 Q. Did you attend the Monday morning
15 meeting on May 26th, 2014, which was the day you
16 spoke to Mr. de Alba and Mr. Riley about your
17 resignation?

18 A. No, I was speaking with Mr. Riley
19 at the time separately.

20 Q. I would like to ask you some
21 questions about your involvement in a
22 telecommunications file at Catalyst before May 6th,
23 2014. From your perspective, when did you become a
24 member of the Catalyst telecommunications team?

25 A. It would have been in late

1 February or early March, after Andrew Yeh, who was
2 the associate on the telecom file, gave his notice
3 of resignation.

4 Q. And why were you added to the
5 team?

6 A. They just needed somebody to
7 replace him, but there really wasn't much work
8 going on at the time in that file.

9 Q. From your perspective, prior to
10 late February 2014, how much involvement did you
11 have on Catalyst's telecommunications files?

12 A. Aside from helping grab a data
13 point for Andrew on a couple of occasions, none.

14 Q. Prior to March 7th, 2014, and that
15 is the -- just to help you with that date, that is
16 the date I'm going to take you to where you
17 prepared something called a combined pro forma.
18 But prior to March 7th, 2014, from your
19 perspective, did you do any analysis on any aspect
20 of the telecommunications industry for Catalyst?

21 A. No.

22 Q. If you could turn up exhibit --
23 sorry, tab 18, please, and if we could go to page 2
24 of tab 18. Do you recognize this document?

25 A. I do.

1 Q. What is it?

2 A. It is a table summarizing some
3 data for Mobilicity and Wind and what a combined
4 entity might look like if you add them together.

5 Q. Who gave you this assignment?

6 A. I believe it was Zach Michaud.

7 Q. Do you recall what the assignment
8 was?

9 A. Not specifically, but this table
10 would reflect the assignment, so he told me that he
11 wanted to see this table and I had produced it.

12 Q. To the best of your recollection,
13 did he tell you the specific data inputs he wanted
14 to assess the combined entity, or was that left to
15 you to select the inputs that would produce this
16 picture?

17 A. I am pretty sure he told me.

18 Q. To the best of your recollection,
19 when would Mr. Michaud have assigned this to you?

20 A. Not long before I sent him this
21 email, so probably earlier in the day on Friday the
22 7th.

23 Q. In carrying out the assignment
24 given to you by Mr. Michaud earlier that day, how
25 much judgment or discretion were you exercising in

1 creating this table?

2 A. Aside from formatting, none.

3 Q. How complex is the analysis you
4 are carrying out in this table relative to the
5 other analysis work you were doing at Catalyst?

6 A. It was I would say
7 uncharacteristically simple.

8 Q. Why do you say that?

9 A. Because in my experience at
10 Catalyst, when we looked at analysis, we -- there
11 just seemed to be no thought beyond adding "A" and
12 "B" together here, there is no nuance to it.

13 Q. At the time Mr. Michaud gave this
14 assignment to you, how much background in the
15 telecommunications industry did you have?

16 A. None.

17 Q. From your perspective, how much
18 background was required for you to complete this
19 assignment successfully?

20 A. None.

21 Q. If you could turn up tab 27,
22 please. This is the email that attaches a
23 PowerPoint presentation and the PowerPoint
24 presentation itself is found at tab 28.

25 Mr. Moyse, please describe your level

1 of knowledge of Catalyst and its regulatory
2 strategy in relation to a potential acquisition of
3 Wind, your level of knowledge as of March 26, 2014?

4 A. I was definitely aware that
5 Catalyst had the desire to combine Mobilicity and
6 Wind. Beyond that, I can't think of what else I
7 may have known at that time.

8 Q. Who assigned you to work on the
9 PowerPoint?

10 A. Some combination of Jim Riley,
11 Gabriel de Alba and Zach Michaud.

12 Q. On what day did you receive this
13 assignment?

14 A. The day -- sorry, it is the day I
15 sent the email, so March 26th.

16 Q. And when was it to be completed?

17 A. They needed it for a meeting the
18 next morning, so it was to be completed that day.

19 Q. You testified earlier that you met
20 with Mr. Dea for coffee or soup for 45 minutes to
21 an hour on March 26th starting at about 1:30 or
22 1:45 p.m.; do you recall that?

23 A. Yes, that's right.

24 Q. Do you recall whether you received
25 the assignment to create the PowerPoint

1 presentation before or after your meeting with Mr.
2 Dea?

3 A. Given the pace of work, given the
4 pace of work on the presentation and the urgency of
5 it, I think it is very unlikely that I started
6 working on this before the meeting with Tom Dea,
7 because there is just no way I could have left for
8 45 minutes to an hour while this was going on.

9 Q. In his evidence, Mr. Glassman
10 testified as follows regarding the length of time
11 it took to do the lead-up work on the PowerPoint
12 presentation.

13 And, Your Honour, there is no need to
14 turn up the transcript, but for your notes, this is
15 found at page 320 of the transcript, starting at
16 line 23:

17 "Question: What is your
18 recollection as to the length of
19 time it took to do the lead-up work
20 that you have just described?"

21 And he is describing the lead-up work
22 on the PowerPoint presentation.

23 "Answer: Well, that is a
24 difficult question. All of the
25 lead-up work would have been months,

1 if not years, in the making. The
2 lead-up work, once we knew there was
3 going to be a meeting but probably
4 didn't know the date, probably would
5 have required weeks of work, and
6 then there would have been a push at
7 the very end to get the final
8 version once we knew the date and
9 the time and hopefully the
10 attendees. And I don't remember if
11 we knew all the attendees ahead of
12 time."

13 Mr. Moyse, do you agree with Mr.
14 Glassman that the lead-up work probably would have
15 required weeks of work?

16 A. I don't know. I'm not doubting
17 that there was lead-up work, but I wasn't involved
18 in any of that.

19 Q. Please describe the workflow
20 process to generate the PowerPoint presentation?

21 A. Sure. I remember Mr. de Alba,
22 Riley and Michaud working together in an office
23 creating slide mock-ups of exactly what the slides
24 should say and what it should contain, and then
25 usually Mr. Michaud would hand them over to me so I

1 could create those in PowerPoint.

2 Q. From your perspective, did you
3 create or generate any of the content contained in
4 the PowerPoint presentation?

5 A. I think there is a table or two
6 that I created.

7 Q. Please turn to page 3 of the
8 PowerPoint presentation, please. And Mr. Moyse,
9 from your perspective, did you generate any of the
10 content on this slide?

11 A. Yes. So the table in the middle,
12 the left with the headline "Canadian Wireless
13 Incumbents", I created that table, as well as
14 the -- I think it is part of the same table, but
15 the one below that says "Wind Canada and Mobilicity
16 Estimates."

17 Q. Please turn to page 6. Do you see
18 any work on this page that from your perspective
19 you generated?

20 A. Yeah, it looks like the same table
21 we discussed before, the one I had made on March
22 7th. Maybe I think maybe a row or two has been
23 eliminated, I don't know.

24 Q. Is there any other work or data or
25 text in this PowerPoint presentation other than

1 what we have just looked at on slide 3 and slide 6
2 that from your perspective you generated the
3 content?

4 A. I don't believe so.

5 Q. Who generated the rest of the
6 content?

7 A. The people writing the slides, so
8 de Alba, Riley, Michaud, and I'm sure Mr. Glassman
9 had some input at some point.

10 Q. How would you describe your role
11 in the creation of the PowerPoint presentation?

12 A. I would say it was clerical.

13 Q. And is that statement excluding
14 the two tables that you generated?

15 A. Yes. I mean, I had generated one
16 of the tables beforehand. I don't know when I
17 created the other one.

18 Q. Would you agree with the statement
19 that some people have made that you led the
20 creation of the PowerPoint presentation?

21 A. Other than creating a new
22 PowerPoint file, no.

23 Q. What happened to the notes that
24 the Catalyst partners and Mr. Michaud had provided
25 to you that had the mock-ups that you described?

1 A. They were destroyed.

2 Q. Do you recall being briefed by Mr.
3 Glassman or Mr. Riley following the meeting with
4 the Federal Government representatives on what
5 happened at those meetings?

6 A. Not specifically, no.

7 Q. Do you recall Mr. Glassman ever
8 sharing with you his thoughts on the body language
9 of the government representatives at the March 26th
10 meeting?

11 A. No.

12 Q. Did he share with you what he
13 thought that body language meant?

14 A. No, not that I remember.

15 Q. When did you first learn that
16 Catalyst would be actively pursuing a transaction
17 in Wind?

18 A. I think it was around May 6th or
19 7th that we got an email.

20 Q. When did you leave on vacation?

21 A. On May 16th.

22 Q. So your last day in the office was
23 May 15th?

24 A. That's correct.

25 Q. Did you work full-time on Wind

1 between May 6th and May the 15th?

2 A. No, I believe until the initial
3 diligence meeting with the company on May 9th, I
4 was travelling.

5 Q. Where?

6 A. It was in New Jersey for Advantage
7 Rent a Car.

8 Q. Please describe your involvement
9 in the Wind deal team from the time you returned
10 from New Jersey on May 9th to the end of business
11 on May 15th?

12 A. Sure. As an analyst that was
13 focussed on the due diligence, the business due
14 diligence specifically, and so I helped create
15 checklists; I took notes at the meeting that we
16 attended on May 9th; and I used basically the
17 diligence work that we were doing at the analyst
18 level, the business due diligence, to contribute to
19 the investment memo that we were creating.

20 Q. On May 12th -- please turn up tab
21 35. Do you recognize this email?

22 A. I do.

23 Q. What is it?

24 A. Well, that is an email from
25 Gabriel to Newton, Zach Michaud and Jim Riley with

1 an updated version of the Industry Canada
2 presentation that I had sent to Gabriel.

3 Q. How similar was the process of
4 creating this PowerPoint to the prior PowerPoint
5 presentation?

6 A. The process was essentially
7 identical. We started with the hard copy of the
8 previous presentation, but it was the same; changes
9 were made and given to me to input or new slides
10 were created and given to me to create.

11 Q. Do you know who had the hard copy
12 of the original, of PowerPoint presentation number
13 one?

14 A. I don't remember.

15 Q. Was it you?

16 A. No.

17 Q. Do you recall being briefed by Mr.
18 Glassman or Mr. Riley on the outcome of the May
19 12th meeting with the government?

20 A. Definitely not.

21 Q. Do you recall Mr. Glassman ever
22 sharing with you his thoughts on the body language
23 of the government representatives at the May 12th
24 meeting?

25 A. No.

1 Q. I would like to ask you some
2 questions about the preservation of documents
3 related to this litigation. Do you recall that on
4 June 30th, 2014, that your counsel gave an
5 undertaking to preserve the status quo with respect
6 to certain relevant documents?

7 A. I do.

8 Q. And do you recall that on July
9 16th Justice Firestone issued his consent order?

10 A. I remember that.

11 Q. That order, which I don't think we
12 need to turn up, Your Honour, but it is found at
13 tab 81, required you to turn over your computer for
14 forensic imaging?

15 A. Yes.

16 Q. When did you do that?

17 A. I turned it over on July 21st.

18 Q. What concerns, if any, did you
19 have about turning over your computer?

20 A. I was concerned about what would
21 happen to my personal information, specifically my
22 internet browsing history.

23 Q. Why?

24 A. I had what I considered to be
25 potentially embarrassing results in there.

1 Q. What did you decide to do, given
2 the potentially embarrassing results in your
3 browser history?

4 A. I decided to delete my browser
5 history and also look into whether or not simply
6 deleting it through the browser program would
7 achieve the permanent deletion.

8 Q. And how did you look into that?

9 A. I did some internet searches.

10 Q. And what was your understanding
11 based on those searches regarding how to accomplish
12 your goal?

13 A. My understanding was that simply
14 deleting it through the browser program would not
15 make the history irrecoverable and that I should
16 run a registry cleaner after doing that.

17 Q. If you could turn up tab 88,
18 please. We are at tab 88, and I believe, Mr.
19 Moyse, you had testified that you had decided to
20 clean the registry?

21 A. That is correct.

22 Q. Do you recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It is a receipt for my payment for

1 the registry cleaner.

2 Q. Where was this receipt delivered
3 to?

4 A. My hotmail account.

5 Q. Where was the receipt when you
6 turned over your computer and your email passwords
7 to the Independent Supervising Solicitor?

8 A. Still in my hotmail account.

9 Q. What part of your hotmail account?

10 A. My inbox.

11 Q. If you turn to tab 89, do you
12 recognize this document?

13 A. I do.

14 Q. What is it?

15 A. It is a receipt for the Advanced
16 System Optimizer program.

17 Q. And how was this receipt delivered
18 to you?

19 A. By email.

20 Q. And where was this email located
21 when you turned over your computer for the forensic
22 images to be taken?

23 A. In my inbox.

24 THE COURT: Was it in your hotmail
25 account?

1 THE WITNESS: Yes.

2 BY MR. CENTA:

3 Q. Having purchased these pieces of
4 software, please describe what you did on July
5 20th, 2014?

6 A. Only July 20th I deleted my
7 internet browsing history, I ran the registry
8 cleaner, and I also opened Advanced System
9 Optimizer and noodled around in it.

10 Q. On July 20th, 2014, did you use
11 Secure Delete to delete any files or folders from
12 your computer?

13 A. I did not.

14 Q. Did you delete or alter the Secure
15 Delete log that is on your computer?

16 A. No.

17 Q. Did you intend to delete any
18 Catalyst documents or Catalyst confidential
19 information when you deleted your browser history?

20 A. No.

21 Q. Did you intend to destroy any
22 evidence relevant to this litigation?

23 A. No.

24 Q. Did you intend to destroy any
25 evidence in order to affect the outcome of this

1 litigation?

2 A. No.

3 Q. Also pursuant to the terms of the
4 Firestone order, you were required to produce an
5 affidavit of documents that were in your
6 possession?

7 A. That's correct.

8 Q. Did you do that?

9 A. I did, a few, but I did.

10 Q. And did you locate a number of
11 Catalyst documents on your computer?

12 A. Yes.

13 Q. How did you become aware of the
14 existence of those documents --

15 THE COURT: You'd better just look up
16 once in awhile.

17 MR. CENTA: I'm so sorry, Your Honour.
18 I thought I was doing better today.

19 THE COURT: You had been, but you are
20 starting to revert.

21 MR. CENTA: Old habits die hard.

22 THE COURT: Okay, Go ahead.

23 BY MR. CENTA:

24 Q. I think I also, because of your
25 intervention, just lost a bet with Ms. Cooney,

1 which is unfortunate.

2 How did you become aware that there
3 were Catalyst documents on your computer?

4 A. When I performed a closer
5 inspection of all the files and folders on my
6 computer, I found that the -- when I had worked on
7 Catalyst files from home, I would email them from
8 my Catalyst account to my hotmail account. I would
9 then download them and work on a local copy, save
10 that in the new folder, a Catalyst folder, and then
11 send it back or -- yeah, send it back.

12 I remembered to delete all of those new
13 folders that I had created where I saved the copies
14 but forgot that the original copy of everything was
15 saved in my downloads folder.

16 Q. Mr. Moyse, how has this proceeding
17 affected you?

18 A. Very negatively.

19 Q. In what ways?

20 A. Well, one, I haven't been able to
21 work for what was at the time my first choice
22 employer. I have had to sit off -- I had to sit
23 out work for almost a year and a half, which
24 represents about a quarter of my career. And I
25 mean, Catalyst was seeking for over a year to have

1 me put in jail, which was obviously very stressful.

2 Q. How has the media attention
3 associated with this story affected you?

4 A. It has not been helpful, and
5 actually, in my job search last year, following my
6 departure from West Face, several firms were put
7 off by the fact that I was involved in this.

8 Q. Who is paying your legal bills in
9 this proceeding?

10 A. West Face is.

11 Q. Did West Face indemnify you
12 against any damage award that may be made in this
13 proceeding?

14 A. They did not.

15 MR. CENTA: Those are my questions,
16 Your Honour.

17 THE COURT: Is there any questioning of
18 this witness by you, Mr. Thomson?

19 MR. THOMSON: There is not, Your
20 Honour, thank you.

21 THE COURT: Mr. DiPucchio?

22 MR. DiPUCCHIO: Thank you, Your Honour.

23 CROSS-EXAMINATION BY MR. DiPUCCHIO:

24 Q. Mr. Moyse, your counsel didn't ask
25 you any questions about your educational

This is Exhibit "80" referred to in the Affidavit of Andrew
Carlson sworn December 7, 2016



Commissioner for Taking Affidavits (or as may be)

Meera Amanda Pereaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.

In the Matter Of:
The Catalyst Capital Group Inc. v.
Brandon Moyse, et al.

VOL 6
June 13, 2016

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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is Day 6/Volume 6 of the transcript of
proceedings in the above matter held at the
Superior Court of Ontario, Courtroom 8-1, 330
University Avenue, Toronto, Ontario, on the 13th
day of June, 2016, commencing at 9:00 a.m.

B E F O R E: The Honourable Justice F. Newbould

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

2

3

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

5

6 Rocco DiPucchio, Esq.,

7 & Andrew Winton, Esq., for the Plaintiff.

8 & Brad Vermeersch, Esq.

9

10 Robert A. Centa, Esq., for the Defendant,

11 & Kris Borg-Olivier, Esq., Brandon Moyse.

12 & Denise Cooney, Esq.

13

14 Kent Thomson, Esq.,

15 & Matthew Milne-Smith, Esq.,

16 & Andrew Carlson, Esq., for the Defendant,

17 West Face Capital Inc.

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I N D E X

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1 me put in jail, which was obviously very stressful.

2 Q. How has the media attention
3 associated with this story affected you?

4 A. It has not been helpful, and
5 actually, in my job search last year, following my
6 departure from West Face, several firms were put
7 off by the fact that I was involved in this.

8 Q. Who is paying your legal bills in
9 this proceeding?

10 A. West Face is.

11 Q. Did West Face indemnify you
12 against any damage award that may be made in this
13 proceeding?

14 A. They did not.

15 MR. CENTA: Those are my questions,
16 Your Honour.

17 THE COURT: Is there any questioning of
18 this witness by you, Mr. Thomson?

19 MR. THOMSON: There is not, Your
20 Honour, thank you.

21 THE COURT: Mr. DiPucchio?

22 MR. DiPUCCHIO: Thank you, Your Honour.

23 CROSS-EXAMINATION BY MR. DiPUCCHIO:

24 Q. Mr. Moyse, your counsel didn't ask
25 you any questions about your educational

1 background, but I take it you'll agree with me that
2 you have a degree from a prestigious Ivy League
3 university?

4 A. Sure. I try not to say that, but
5 that is --

6 Q. Well, let me flatter you at least
7 for my first question. You do, don't you?

8 A. Yes.

9 Q. And you have a math degree; is
10 that right?

11 A. That's right.

12 Q. I believe I have seen somewhere in
13 this voluminous record that you scored near perfect
14 on your SATs when you took your SATs?

15 A. That's right. You haven't seen my
16 GPA.

17 Q. You scored near perfect on your
18 SATs?

19 A. Yes.

20 Q. I'm going to suggest to you, you
21 are a pretty intelligent guy?

22 A. With certain things, yes.

23 Q. You do high-level analysis for a
24 living, financial analysis?

25 A. I do.

1 Q. You work well with computers as
2 well, don't you?

3 A. What do you mean "work well with
4 computers"?

5 Q. You use computers in your
6 day-to-day work?

7 A. Yeah, limited functions, but yes.

8 Q. You understand how to operate
9 PowerPoint, as an example?

10 A. Yes.

11 Q. And you understand what a registry
12 is?

13 A. Not really.

14 Q. Really? You don't understand what
15 a registry is? I thought we just heard evidence
16 about how you cleaned your registry.

17 A. I understood from my searches that
18 I would have to clean my registry. All I did was
19 download a registry cleaner to do that. I don't
20 really know what the registry is.

21 Q. We'll come back to that one.

22 You have taken an oath, by my count,
23 approximately nine times already in this
24 proceeding; is that right?

25 A. I'll trust you.

1 Q. All right. And each time you took
2 that oath, you acknowledged the importance of being
3 completely honest and forthright to the Court,
4 right?

5 A. I did.

6 Q. And certainly you weren't
7 attempting to mislead the Court when you were
8 swearing your oath, were you?

9 A. No.

10 Q. And is it fair to say that
11 notwithstanding that you have taken an oath
12 approximately nine times in this proceeding, that
13 we have had numerous instances now where you have
14 had to come back, after having been confronted with
15 indisputable evidence, and admit that you were
16 incorrect in testimony that you gave to this Court?

17 A. I have corrected earlier
18 statements, yes.

19 Q. Earlier lies?

20 A. I didn't know they were not true
21 at the time I swore them.

22 Q. I see. Well, let me take you --
23 what I want to do with you, if you don't mind, I
24 would like to go to your very first affidavit that
25 you swore in this proceeding, and let's take a look

1 at the story you were telling at that point to the
2 Court. And this is at tab 2 of my
3 cross-examination brief, Your Honour.

4 You recall this affidavit, Mr. Moyse?
5 It is on the screen. You swore this affidavit on
6 July 7th, 2014; correct?

7 A. Correct.

8 Q. And again, you were being
9 completely honest and forthright to the Court when
10 you swore this affidavit?

11 A. At the time, I believed that
12 everything I was saying was true.

13 Q. All right. So let's look at some
14 of the things you said in this affidavit at the
15 time when you were doing your utmost to tell the
16 truth.

17 And on page 2, paragraph 5, here is one
18 of the things you said to the Court at a time when
19 you knew that what Catalyst was seeking was an
20 order that, "A", you would return to it
21 confidential information in your possession, and
22 "B", that you would be restricted from taking
23 employment at West Face, right?

24 A. Yes.

25 Q. Okay, so let's see what you say to

1 the Court at that time in paragraph 5 when you are
2 describing your duties as an analyst at Catalyst,
3 and I am looking at the last two sentences where
4 you say:

5 "I would normally review
6 publicly available information, such
7 as financial statements and provide
8 analysis regarding the company's
9 potential value to Catalyst. From
10 time to time, I would also meet with
11 management groups of various
12 companies as part of my due
13 diligence activities."

14 Right?

15 A. Yes.

16 Q. And you made a conscious decision
17 in that paragraph to portray your duties as only
18 requiring you to review publicly available
19 information?

20 A. I say "normally", and that was the
21 case, that normally I did review only publicly
22 available information.

23 Q. And you didn't mention to the
24 Court, when you were trying to be honest, that on
25 many occasions you would review non-public

1 information as well?

2 A. That's right.

3 Q. You neglected to mention that?

4 A. I think there is some discussion
5 later on about the types of non-public information
6 I was exposed to.

7 Q. I don't care about discussions
8 later on. I'm saying when you are swearing an
9 affidavit to the Court where you know the issue is
10 confidential information, what you try to do right
11 up front is portray to the Court that you review
12 publicly available information?

13 A. That is what it says.

14 Q. And in fact, this was such a
15 glaring lie, I'm going to suggest to you, that you
16 felt it necessary to correct your statement in your
17 trial affidavit? Do you remember doing that?

18 A. I did correct the statement, yes.

19 Q. Yeah, you corrected that
20 statement, didn't you?

21 A. I believe so.

22 Q. Because it was a lie?

23 THE COURT: Well, where are you looking
24 at now?

25 MR. DiPUCCHIO: Okay, I'm going to take

1 you, Your Honour, to his trial affidavit.

2 THE COURT: And may I remind you there
3 is no jury here.

4 MR. DiPUCCHIO: No, I understand, Your
5 Honour.

6 THE COURT: Well, I'm not sure.

7 MR. DiPUCCHIO: It is
8 cross-examination, Your Honour.

9 THE COURT: I understand that.

10 BY MR. DiPUCCHIO:

11 Q. So if you go to your affidavit,
12 trial affidavit, rather, it is at tab 1, Your
13 Honour, of my cross-examination brief if you want
14 to find the most convenient reference to it.

15 And if you go to paragraph 15 of what
16 you swore at trial now, so now this is the same
17 paragraph that we saw in your affidavit of June the
18 7th -- or July the 7th, rather, of 2014, but on
19 this one you say:

20 "I would normally review
21 publicly available information such
22 as financial statements and analyze
23 the company's potential value to
24 Catalyst."

25 And then you say, and this is the new

1 part just down on the next page:

2 "From time to time, I would
3 also review information provided to
4 Catalyst pursuant to non-disclosure
5 agreements [...]"

6 Do you see that?

7 A. I do.

8 Q. That is a new addition to your
9 affidavit evidence now?

10 A. It is.

11 Q. And that was just as true back in
12 July 2014 as it is today?

13 A. Yes.

14 Q. So now if we can go back to where
15 I was, Your Honour, which is his July 7th, 2014
16 affidavit, let's go through some of the other
17 statements you made to the Court in that affidavit.

18 Let's go down now to paragraph 10. So
19 the first thing you do here in paragraph 10, Mr.
20 Moyse, is you reveal to the public at large that
21 Catalyst was actively involved in the pursuit of
22 Wind Mobile?

23 A. Correct.

24 Q. And you did that even though you
25 understood both in the written communications

1 between counsel that pre-dated this affidavit and
2 in fact in Mr. Riley's affidavit that great pains
3 were being taken at that time to not publicly
4 disclose the identity of the telecommunications
5 company, right?

6 A. Yes.

7 Q. But in your judgment, in paragraph
8 10 it was appropriate for you to reveal to the
9 public at large that Catalyst was pursuing,
10 actively pursuing Wind Mobile at that time?

11 A. I remember it being some topic of
12 discussion with my counsel about whether -- about
13 how we should put this information in.

14 Q. All right, I don't want to get
15 into discussions with your counsel. The fact of
16 the matter is you publicly stated it in your
17 affidavit?

18 A. Yes.

19 Q. And not only did you publicly
20 state it, but you then went on to make a point of
21 saying in paragraph 10 that contrary to Mr. Riley's
22 assertion that the opportunity was highly
23 confidential, it is well-known in the industry that
24 Catalyst is interested in purchasing Wind Mobile?

25 A. I say that.

1 Q. So therefore, there was absolutely
2 no, I guess, feeling on your part that you should
3 retain that information confidentially?

4 A. Well, again, it was --

5 THE COURT: Well, what he has done is
6 he has put two newspaper articles in.

7 BY MR. DiPUCCHIO:

8 Q. Well, no, Your Honour, but there
9 is a distinction, in my respectful submission, in
10 the newspaper articles which indicated an interest
11 in pursuing Wind Mobile and in your affidavit in
12 which you categorically state that Catalyst was in
13 the process of pursuing Wind Mobile; correct?

14 A. I state that, yes.

15 Q. Okay. And then you say in
16 paragraph 11:

17 "In response to the allegations
18 at paragraph 30 of Mr. Riley's
19 affidavit, while I had been working
20 on the Wind Mobile file prior to
21 giving my notice of resignation, I
22 was privy to very little, if any,
23 confidential information about the
24 transaction [...]"
25 Right?

1 A. That's right.

2 Q. And that is false?

3 A. Having seen all of the productions
4 now, yes, I was privy to much more confidential
5 information.

6 Q. Well, are you trying to tell us
7 that mere weeks after you left Catalyst -- this is,
8 what, approximately two weeks after you left
9 Catalyst?

10 A. Well, a month and a half after I
11 stopped working there, but sure.

12 Q. Okay, but approximately two weeks
13 after you ceased working at Catalyst, right?

14 A. Yes.

15 Q. Two weeks after you cease working
16 at Catalyst, you have no recollection that you
17 reviewed a huge amount of confidential information
18 in relation to Wind?

19 A. I remember going through the data
20 room and contributing to the diligence lists, but I
21 don't -- I didn't really remember anything else.

22 Q. You didn't remember receiving an
23 offer?

24 A. Sorry?

25 Q. A draft offer?

1 A. No.

2 Q. You didn't remember that?

3 A. No.

4 Q. You didn't remember looking at an
5 operating model for Wind?

6 A. I do remember that, and that was
7 part of the analysis, I would say.

8 Q. You didn't remember doing your
9 analysis that we looked at in March, the one in
10 relation to the combination of Wind and Mobilicity?
11 You didn't remember doing that?

12 A. Not at all.

13 Q. You didn't remember working on the
14 regulatory presentations?

15 A. I had mentioned the regulatory
16 presentations here in the next -- well, in one of
17 the next paragraphs.

18 Q. Where is that? Can you show me
19 that?

20 A. Can I have a second to --

21 Q. Sure.

22 A. Keep scrolling down, please.

23 (Witness reviews document.)

24 Keep going. Keep going.

25 (Witness reviews document.)

1 Q. Take your time to read it, Mr.
2 Moyse, and tell me where you refer to the
3 regulatory presentation.

4 A. I could be wrong. I thought I
5 did, but if it is not in there, it is --

6 Q. So you didn't refer to the
7 regulatory presentations in this one?

8 A. I don't think I have had a chance
9 to go through it fully.

10 Q. You haven't had a chance to review
11 this affidavit fully?

12 A. I just want to double-check.

13 Q. Well, go ahead, read it.

14 A. Keep scrolling, please, or sorry,
15 whoever is in charge of doing this.

16 (Witness reviews document.)

17 MS. COONEY: I would refer you to
18 paragraph 12.

19 BY MR. DiPUCCHIO:

20 Q. 12? Okay. Is this the paragraph
21 you are referring to?

22 A. That is correct, and I did correct
23 that the presentation did not solely relate to
24 Mobilicity, and my recollection was wrong.

25 Q. All right, so let's back up one

1 second. You didn't reveal to the Court that you
2 had done any regulatory presentations in relation
3 to Wind, did you?

4 A. I did not. I didn't remember
5 that.

6 Q. Right. What you were telling the
7 Court back in July of 2014 is that you had done a
8 regulatory presentation in relation to Mobilicity,
9 right?

10 A. That is what I had remembered.

11 Q. Right. So you were telling the
12 Court back in July of 2014, don't worry about Wind;
13 there is no concern about Wind; I did some
14 regulatory work in relation to Mobilicity, not
15 Wind?

16 A. That is what I remembered, yes.

17 Q. All right, and that was false?

18 A. Having seen them now, that was
19 incorrect.

20 Q. And I suggest to you, Mr. Moyse,
21 the reason you were suggesting that the
22 presentation was in relation to Mobilicity and you
23 felt safe saying that to the Court is because you
24 didn't think anybody would be able to challenge you
25 on that because you thought everything had been

1 destroyed in relation to that presentation?

2 A. No, I disagree. I knew that I
3 destroyed the soft copies, but I assumed the
4 partners still had hard copies.

5 Q. And even when you describe the
6 Mobilicity, what you say was the Mobilicity
7 regulatory presentation, all you say in relation to
8 that is that you were simply updating three or four
9 charts in the presentation using publicly available
10 information?

11 MR. CENTA: Could you read the whole
12 sentence to him, please?

13 BY MR. DiPUCCHIO:

14 Q. It says:

15 "[...] on two occasions
16 updating 3-4 charts in the
17 presentation using publicly
18 available information."

19 A. Well, I say that I typed their
20 handwritten notes and did that.

21 Q. Yes, but I'm saying that is what
22 you were saying. You were trying to convince the
23 Court that all you were doing in relation to this
24 presentation was transposing publicly --

25 THE COURT: That is not what the

1 sentence says.

2 MR. DiPUCCHIO: He is saying he updated
3 three to four charts in the --

4 THE COURT: But he said more than that
5 in the sentence. If you are going to be fair to
6 him, read the whole sentence.

7 BY MR. DiPUCCHIO:

8 Q. Yes, he says:

9 "I fulfilled a purely clerical
10 or administrative role typing Mr.
11 Riley, Mr. de Alba, and
12 Mr. Michaud's handwritten notes into
13 a PowerPoint presentation [...]"
14 I get that, Your Honour.

15 What I am suggesting is you were trying
16 to make it appear to the Court that that
17 presentation was really only based on publicly
18 available information?

19 A. No, I don't -- that is not the
20 impression I was trying to convey. The charts were
21 that I remembered; the handwritten notes, I don't
22 think that is what I am trying to say.

23 Q. And in relation -- going back to
24 paragraph 11, which is where we were originally,
25 you say that in relation to Wind that your role was

1 minor. Do you see this now in the first part of
2 that paragraph, that you played a minor role
3 essentially limited to contributing to a memo?

4 A. I see that.

5 Q. And that wasn't true?

6 A. My -- I believe that everything I
7 did, so the diligence was for the purpose of
8 contributing to the memo.

9 Q. So you classified the work that
10 you performed in relation to Wind as being a minor
11 role essentially limited to contributing to one
12 memo?

13 A. Correct. All -- I agree that
14 there was a diligence process and I helped with
15 many diligence checklists and created many charts,
16 but that was all for the purpose of creating this
17 memo.

18 Q. And you did nothing else?

19 A. Specifically on Wind, not that I
20 remember.

21 Q. And then let's look at what else
22 you said in your first affidavit. If you go to
23 paragraph 36, in that paragraph you say:

24 "It is noteworthy that neither
25 Mr. Riley nor Mr. Musters [...]"

1 And Mr. Musters was the forensic expert
2 that had been retained by Catalyst, right?

3 A. Right.

4 Q. You say:

5 "It is noteworthy that neither
6 Mr. Riley nor Mr. Musters provide
7 any actual evidence that I
8 transferred any information,
9 confidential or otherwise, from
10 Catalyst's servers to my DropBox or
11 Box accounts or other personal
12 devices. Instead, Mr. Riley and
13 Mr. Musters rely solely on
14 unsupported speculation and
15 innuendo."

16 Right?

17 A. That is what it says.

18 Q. And the reason you were saying
19 that was you were trying to point out to the Court
20 that, look, there has been no evidence presented
21 against me that I actually copied anything to my
22 DropBox account that was confidential to Catalyst,
23 right?

24 A. That is what it says.

25 Q. And as it turns out, that

1 statement was also wrong? In other words -- well,
2 your statement may not have been wrong in the sense
3 that you were making a statement as to what
4 evidence Catalyst had, but you were, in my
5 suggestion to you, Mr. Moyse, you were misleading
6 the Court because in fact there was information
7 that you had transferred via DropBox to your
8 personal computer?

9 A. I did transfer information to
10 DropBox, yes.

11 Q. Right. So rather than telling the
12 Court that, what you did was you suggested to the
13 Court that Mr. Riley and Mr. Musters were relying
14 purely on unsupported speculation and innuendo?

15 A. Well, I do say that I transferred
16 at the very least the Stelco files to my DropBox.

17 Q. Well, there was a heck of a lot
18 more than just the Stelco files that were on your
19 personal computer, right?

20 A. Right, and I deleted -- I believe
21 that I deleted all of those prior to leaving
22 Catalyst.

23 Q. Right.

24 A. And my understanding was that this
25 was being call it positioned in a way to make the

1 activity seem nefarious, when in fact I was using
2 it for work purposes.

3 Q. Well, no, you go further than that
4 in paragraph 36. You are accusing Mr. Riley and
5 Mr. Masters of relying on unsupported speculation
6 and innuendo in a circumstance where we later find
7 out that there is 850-some-odd documents belonging
8 to Catalyst that are on your personal computer?

9 A. And at the time, I had no idea
10 they were there.

11 Q. So prior to making that statement
12 in paragraph 36, you made no efforts to try to
13 figure out what in fact you may have had on your
14 computer before accusing Mr. Riley and Mr. Masters
15 of unsupported speculation and innuendo?

16 A. Well, I said before that my
17 practice was to save the work I was doing on my
18 local computer in a new folder, and I know that I
19 had deleted all those folders prior to leaving
20 Catalyst, so I just didn't think about the copies
21 that were retained in the downloads folder.

22 Q. You didn't think of them at all
23 prior to making that accusation?

24 A. No.

25 Q. And you do it again at paragraph

1 38 in this affidavit. Rather than making a
2 statement to the Court that I do not have any
3 Catalyst confidential information on my computer,
4 what you say instead in this paragraph again is Mr.
5 Riley has provided no evidence that I have used my
6 personal DropBox account to store Catalyst files,
7 right? Again, it is a no-evidence statement by
8 you?

9 A. That is what it says.

10 Q. And again, you made that statement
11 before even checking your computer in order to make
12 sure that you were confident that you hadn't taken
13 Catalyst confidential information with you?

14 A. Again, I checked where I knew that
15 I had kept the files. I couldn't check where I
16 didn't know I had kept the files.

17 THE COURT: Is this a convenient time
18 for the morning break?

19 MR. DiPUCCHIO: It would be, Your
20 Honour.

21 -- RECESSED AT 11:00 A.M.

22 -- RESUMED AT 11:25 A.M.

23 THE COURT: Mr. DiPucchio.

24 BY MR. DiPUCCHIO:

25 Q. Thank you, Your Honour.

1 We were looking at Mr. Moyse's initial
2 affidavit, Your Honour, at tab 2 of my
3 cross-examination brief.

4 Mr. Moyse, can I take you to paragraph
5 48 of that affidavit, just to look at some of the
6 other statements you made to the Court back in July
7 of 2014. Here you talk about having reviewed the
8 Stelco documents prior to your departure from
9 Catalyst, right?

10 A. Yes.

11 Q. And you say to the Court that you
12 were doing so simply out of personal curiosity and
13 to learn more about the transaction, right?

14 A. Right.

15 Q. And I think what you said, either
16 in this affidavit or in some other affidavit, is
17 that you would frequently as a learning experience
18 access unrelated files to what you were doing at
19 Catalyst in order to sort of learn a little bit
20 about how deals were structured and what kind of
21 opportunities were being pursued, et cetera, et
22 cetera?

23 A. Typically, I would look at past
24 deals, not other in-progress deals, but yes.

25 Q. For that purpose, though?

1 A. Yes.

2 Q. To learn more about how deals were
3 being structured and about what kinds of
4 opportunities had been pursued, how they were being
5 analyzed, that kind of thing?

6 A. Yeah, how they had been analyzed,
7 but yes.

8 Q. And in relation to Stelco
9 specifically, what you say at the bottom is:

10 "While I do admit transferring
11 one Stelco file to DropBox to read
12 at home, I deleted the file after
13 reading it and did not provide the
14 information to West Face or any
15 other parties."

16 And as it turns out, that statement as
17 well is incorrect, right, because we know now that
18 it was more than one Stelco file that was on your
19 computer?

20 A. That is what I had remembered, but
21 if there were more, then there were more.

22 Q. So do you acknowledge now that
23 that statement was also incorrect?

24 A. Yes.

25 Q. And then if we go to paragraph 56,

1 and this is in the context of your discussion of
2 telecom files, you say this in paragraph 56 in July
3 of 2014:

4 "As mentioned above, as a
5 low-level employee, I was not privy
6 to any internal discussions about
7 the strategy behind Catalyst's
8 potential acquisition of Wind Mobile
9 or how Catalyst planned to structure
10 a potential deal."

11 And just stopping there, do you
12 acknowledge today that that statement is incorrect?

13 A. I don't remember specific
14 discussions around either of those, but I probably
15 was a part of some.

16 Q. Well, probably or you were, now
17 that you have been confronted with all of the
18 evidence in this case?

19 A. I certainly was part of some
20 discussions, yes.

21 Q. Okay. And not only were you part
22 of at least some discussions which you now
23 acknowledge, I put it to you that you were aware of
24 the strategy behind Catalyst's potential
25 acquisition of Wind and you were aware of details

1 as to how it planned to structure the deal; do you
2 acknowledge that today?

3 A. In terms of the strategy, again, I
4 know that they had wanted to combine it with
5 Mobilicity. I didn't remember at the time any of
6 the details of the PowerPoints, given how frantic
7 the pace of work was. And in terms of structuring,
8 I'm still not sure I really knew anything about
9 that.

10 Q. Well, we'll come to an email that
11 you send in late May --

12 A. Sure.

13 Q. -- about your understanding as to
14 how the deal was going to be structured. Do you
15 remember the email I'm referring to?

16 A. Yes, I do.

17 Q. We'll come to it later. Right?

18 A. Yeah, I remember it.

19 Q. Your counsel took you to it this
20 morning where you talk about the 300 million
21 dollars and how it was going to be structured,
22 right?

23 A. Sure. I mean, that is one aspect,
24 but sure.

25 Q. No, but my only point to you, Mr.

1 Moyse, is that when you were testifying in July of
2 2014 that you were not privy to any internal
3 discussions about the strategy or how Catalyst
4 planned to structure a potential deal, we can all
5 agree now, with the benefit of the evidence that
6 has been produced in this case, that that was
7 wrong?

8 A. Yeah, partially wrong, yes.

9 Q. And then if you go to paragraph 62
10 and on, this is where you were discussing in your
11 original affidavit the investment research memos,
12 the investment memos that you sent along to West
13 Face as part of the interview process; do you
14 remember that --

15 A. I do.

16 Q. -- in this original affidavit?
17 And at that time, i.e., July of 2014 when you swore
18 this affidavit, you believed that there was no
19 record of what you had sent to West Face, right?

20 A. I didn't believe I had a record.
21 I had no idea what West Face had.

22 Q. Right, but you believed that there
23 was no record of what had been sent to West Face?

24 A. I assumed that they had retained
25 all of their emails.

1 Q. And what you say in relation to
2 this is you say:

3 "I do admit that early in my
4 interview process with West Face,
5 via one email, I provided West Face
6 with four company research pieces I
7 created at Catalyst between November
8 2012 and January 2014."

9 You go on to describe why.

10 And then if you look at paragraph 64,
11 which is the paragraph I wanted to draw your
12 attention to, you said this to the Court back in
13 July of 2014:

14 "Three of these research pieces
15 did not contain any confidential
16 information or information
17 proprietary to Catalyst; it was also
18 my understanding that Catalyst was
19 not actively pursuing an investment
20 in any of these companies."

21 Now, did I understand your evidence
22 this morning to finally acknowledge that in fact
23 the memos you did send to West Face were
24 confidential and were proprietary to Catalyst?

25 A. Yes.

1 Q. So that statement that you made in
2 paragraph 64 of your original affidavit to the
3 Court was wrong?

4 A. It was incorrect.

5 Q. Is there a distinction between
6 incorrect and wrong?

7 A. No, but --

8 Q. Okay.

9 A. -- again, I have had the benefit
10 of time and having now reviewed all the documents
11 in full.

12 Q. Yes, that is exactly the point I
13 am trying to make here, Mr. Moyse, is that when you
14 swore your affidavit in July of 2014, your
15 attitude, I suggest to you, was unless you can
16 point me to a document that is going to contradict
17 what I have to say, I can pretty much say whatever
18 I want, whether it is true or not?

19 A. I don't agree. I knew that West
20 Face would be producing these.

21 Q. It doesn't matter, I mean, whether
22 you knew or didn't know that West Face was going to
23 be producing them. The fact of the matter is you
24 took the position to the Court back in July of 2014
25 that those research pieces weren't confidential or,

1 for that matter, proprietary to Catalyst?

2 A. And that was incorrect.

3 Q. And when did you come to the
4 realization that that was incorrect?

5 A. Well, I think I acknowledged when
6 you cross-examined me on this that it was
7 definitely proprietary and, I mean, an analysis,
8 and that was certainly confidential, so just
9 because they were -- just even if they were based
10 on publicly available information, they were
11 confidential and I shouldn't have sent them.

12 Q. Well, as a matter of fact, Mr.
13 Moyse, when I initially cross-examined you on that
14 affidavit of July 2014, the position you took in
15 that cross-examination was that you didn't even
16 understand what made those pieces confidential; do
17 you remember that exchange?

18 A. I do remember that, and I think in
19 some cases it is a bit -- it can be complicated,
20 but there is no doubt that at least parts of the
21 memos and the memos themselves were confidential.

22 Q. Well, we had an extensive
23 discussion, and I'm not going to take you to it
24 because it covers pages of transcript and His
25 Honour will have that transcript available to him,

1 but part of it was actually reproduced by Justice
2 Lederer in his injunction decision; do you remember
3 that?

4 A. I do.

5 Q. Where he explicitly pointed out
6 that even after you were confronted with these
7 memos, you still would not acknowledge that there
8 was anything confidential, and you went a step
9 further and took the position before the Court that
10 you didn't understand what confidentiality was?

11 A. That wasn't my position. My
12 position was I couldn't pick out particular lines.
13 It doesn't change the fact that I do think the
14 memos as a whole were confidential.

15 Q. Oh, no, you think that now, right?

16 A. They were definitely proprietary,
17 and I knew from the start I never should have sent
18 them.

19 Q. Well, I know, but you say now that
20 you knew from the start that you never should have
21 sent them. My question to you is why would you
22 take the position in July of 2014 and when I
23 initially cross-examined you that they weren't
24 confidential and that you had no idea what made
25 them confidential?

1 A. It was a mistake.

2 Q. So then if I could take you very
3 briefly to the second affidavit in the sequence of
4 events that you filed, and this is your affidavit
5 of July 16th, 2014. It is at tab 3 of my
6 cross-examination brief, Your Honour.

7 And this affidavit, Mr. Moyse, was made
8 in response to certain affidavits that had been
9 filed by Catalyst and, in particular, an affidavit
10 by Mr. Musters that analyzed the cell phone that
11 you had turned in to Catalyst, a BlackBerry, prior
12 to leaving the firm, right?

13 A. I remember that.

14 Q. And we saw in your first affidavit
15 that you did not come clean to the Court about the
16 fact that you had wiped your BlackBerry prior to
17 giving it back to Catalyst, right?

18 A. I didn't think there was any
19 relevant information on it.

20 Q. Right. And then in this
21 affidavit, in response to the affidavit from Mr.
22 Musters that brought that to the attention of the
23 Court, you then try to explain why you wiped that
24 BlackBerry, right?

25 A. Correct.

1 Q. And as far as we can tell, you
2 wiped that BlackBerry at some point between June
3 the 17th and June the 19th, as I recall; is that
4 fair?

5 A. That is fair.

6 Q. Okay. And by June 17th, I'm going
7 to suggest to you that you knew that there was a
8 possibility that Catalyst would be litigating with
9 you in relation to your having accepted a position
10 at West Face; is that fair?

11 A. It may have been a possibility.

12 THE COURT: You are not being asked to
13 guess here. Just say what you remember or what you
14 don't remember.

15 THE WITNESS: It was a possibility.

16 BY MR. DiPUCCHIO:

17 Q. You were aware -- so I guess let
18 me just reframe your answer so we are all
19 understanding what you are trying to say. You were
20 aware by June 17th that there was at least a
21 possibility that Catalyst would be bringing an
22 action against you?

23 A. Yes.

24 Q. Because by that point in time
25 there had been a lot of correspondence, and we have

1 seen some of it in the record, between counsel in
2 relation to your departure?

3 A. Well, I think we were hopeful to
4 avoid it, but it was still possible.

5 Q. Right. And so what you say in
6 this affidavit, and I am looking specifically at
7 paragraph 4 now, you say:

8 "I 'wiped' the data from my
9 BlackBerry prior to returning it to
10 Catalyst, not to 'destroy evidence',
11 but to remove my personal
12 information from the device."

13 And you go on to say some other things,
14 but what I want to do is I want to go right to the
15 last sentence:

16 "In any event, I did not use my
17 BlackBerry device or my Catalyst
18 email account to communicate with
19 West Face so this information was
20 not deleted when I wiped the device
21 prior to returning it to Catalyst."

22 Now, let's just pause there for a
23 second. That, sir, we know now is not true?

24 A. Are you referring to the fact that
25 I took a couple of phone calls on it?

1 Q. Exactly right. You in fact did
2 and had used your personal BlackBerry for the
3 purpose of communicating with West Face?

4 A. Yes, I had two phones. I didn't
5 remember at the time which one I had used.

6 Q. But, sir, if you don't remember
7 things at the time, is it just simply your attitude
8 that you should be fast and loose with what you are
9 telling the Court in a sworn affidavit?

10 A. No. I didn't think I had used it
11 for that.

12 Q. Sorry?

13 A. I didn't think I had used it for
14 that purpose.

15 Q. But if you were not sure about it,
16 I suggest to you that you ought not to have made
17 this statement in an affidavit sworn to the Court?

18 A. It was wrong. It was a wrong
19 statement, but I thought it was true.

20 Q. So we can all agree now that you
21 did, in the process of wiping your BlackBerry,
22 destroy evidence of your communications with West
23 Face?

24 A. I don't agree. That evidence is
25 call logs. That is not destroyed on the

1 BlackBerry.

2 Q. What call logs, sir? The call
3 logs are exactly what you destroyed?

4 A. But evidence of those calls has
5 been produced.

6 Q. No, no, sir, listen, follow me.
7 Your BlackBerry would have a history of calls that
8 were made between you and West Face?

9 A. Sure, but Catalyst gets the bills.
10 They could have gotten the list of calls I had made
11 and received.

12 Q. Sir, do you know whether the bills
13 that Catalyst would have received would have
14 contained that level of detail?

15 A. I don't.

16 Q. So can you and I, just taking a
17 step back, agree that evidence that existed on your
18 BlackBerry in relation to the call log, at minimum,
19 would have contained evidence of your
20 communications with West Face in this critical
21 period?

22 A. The information on the BlackBerry,
23 yes, would have been deleted.

24 Q. And in addition to whatever call
25 logs may have existed on the BlackBerry, your

1 BlackBerry also would have contained a record of
2 text messages as an example?

3 A. Correct.

4 Q. And any evidence of any text
5 messages that you sent using your BlackBerry was
6 also deleted?

7 A. I don't know.

8 Q. You don't know that?

9 A. Well, again, I don't know if the
10 text messages can be recovered in some other way.

11 Q. Sir, your evidence was, and I can
12 take you to it in paragraph 3 of this affidavit,
13 that the reason you wiped your BlackBerry was
14 precisely because you wanted to remove evidence of
15 text messages?

16 A. That was the best I could do, was
17 delete it from the device. That doesn't mean I
18 didn't think there was a possibility it could be
19 recovered elsewhere.

20 Q. And how did you think that was all
21 going to work? How did you think your text
22 messages were going to magically be recovered?

23 A. I'm not a technical expert. I
24 don't know.

25 Q. It is safe to say, is it not, sir,

1 that by the time July of 2014 rolls around, you
2 understand and understood full well, both through
3 the affidavits that had been filed and the
4 cross-examinations that had occurred by that point
5 in time, that there was a significant issue around
6 your having, "A", deleted the March 27th email to
7 West Face and, "B", having wiped your BlackBerry;
8 can we agree with that?

9 A. Yes.

10 Q. So you knew by that time, as early
11 as July of 2014, that Catalyst was going to be
12 making certain submissions to the Court about the
13 fact that you had been deleting evidence?

14 A. Yes, it seemed like it.

15 Q. And you also acknowledged to me in
16 your cross-examination that took place in July of
17 2014 that you had been deleting information from
18 your personal computer throughout the March, April
19 and May 2014 timeframe, right?

20 A. Correct.

21 Q. Do you recall that?

22 A. Yes.

23 Q. And I suggested to you that the
24 only way we were going to be able to determine what
25 it was that you had deleted from your computer in

1 March, April and May of 2014 was through a forensic
2 examination, right?

3 A. Yes.

4 Q. And you well understood that?

5 A. Yes.

6 Q. Now, you'll agree with me with
7 respect to your role at Catalyst and your work at
8 Catalyst, Mr. Moyse, that there were approximately,
9 by my count, seven people working at Catalyst at
10 the time you were there, seven investment
11 professionals?

12 A. Seven or eight. Lorne joined
13 about halfway while I was there, and then Mark left
14 a little later, so between seven and eight, I
15 think.

16 Q. And by March of 2014, you were one
17 of only six investment professionals working at
18 Catalyst; I believe there were three partners, one
19 vice president and two analysts at that time?

20 A. Yeah, Andrew left sometime in late
21 March, but after he left, there were only six.

22 Q. Right. So as of I'm going to
23 suggest to you the date is March 26th, but let's
24 just say March of 2014, okay? As of March 2014,
25 you are one of six investment professionals at the

1 firm?

2 A. That's right.

3 Q. And I am going to suggest to you
4 that that's quite a small team?

5 A. Sure.

6 Q. That was a smaller team than the
7 team that you were going to be joining at West
8 Face?

9 A. Yes.

10 Q. Now, at the time that you meet
11 with Mr. Dea, and I believe it was March 26th,
12 2014, I think your evidence this morning was that
13 Mr. Dea asks you in that meeting to send him
14 samples of your writing?

15 A. Correct.

16 Q. Correct?

17 A. Yes.

18 Q. And I think you said that he said
19 to you that you should make sure not to send any
20 confidential information?

21 A. He made that clear.

22 Q. And notwithstanding his having
23 said that to you, you went ahead and produced to
24 him what you now acknowledge were confidential
25 research pieces?

1 A. Yes.

2 Q. And is it the case, sir, that the
3 reason you sent those pieces to Mr. Dea at that
4 time was because, as you said in your
5 cross-examination in July, that you didn't believe
6 they were confidential and therefore you were at
7 liberty to send them to him?

8 A. No, the first -- I specifically
9 chose stale, dead, old, inactionable analysis. I
10 did also, secondarily, at the time I believed that
11 they didn't contain confidential information. I
12 drew the line in the wrong place.

13 Q. Right. So what I was suggesting
14 to you, sir, is did you feel that you were okay to
15 send Mr. Dea that kind of work because you were
16 drawing a line in the sand about confidentiality
17 that somehow allowed you to conclude that those
18 research pieces were not confidential?

19 A. At that time, it was a lapse in
20 judgment that I almost immediately regretted.

21 Q. Okay, but we'll get to that in a
22 second. I'm trying to come to another point. I am
23 suggesting to you or I'm putting to you that it
24 wasn't a lapse in judgment. You understood at the
25 time that you were drawing a line in the sand about

1 confidentiality that allowed you to send that kind
2 of memoranda to Mr. Dea?

3 A. No, I never should have sent it to
4 him.

5 Q. And you knew that right at the
6 time?

7 A. It was a lapse in judgment. I
8 immediately regretted it.

9 Q. Okay. And you regretted it to the
10 point that you decided that the appropriate way to
11 address the matter was to delete any evidence that
12 you had sent those memos to Mr. Dea?

13 A. That is what I did.

14 Q. You certainly didn't tell anybody
15 at Catalyst that you had had this lapse in judgment
16 and that you had sent the firm's confidential
17 information to another firm?

18 A. I did not.

19 Q. Is it your recollection sitting
20 here today, Mr. Moyse, that you sent that email
21 from your hotmail account while you were at home?

22 A. That is correct.

23 Q. So you were not at work when you
24 sent that email to Mr. Dea', you were at home?

25 A. That's correct.

1 Q. And I am going to suggest to you
2 that you had copies of the investment memo on your
3 personal computer at home?

4 A. I must have had them, if I sent
5 them from home.

6 Q. Well, in fact, when you swore an
7 affidavit of documents subsequent to our appearance
8 before Justice Firestone, you included in your
9 affidavit of documents the investment memos that
10 were sent?

11 A. Yes, I know those were included,
12 yes.

13 Q. Right. So in fact, you had those
14 investment memos, together with about another 840
15 documents, on your personal computer at the time?

16 A. Correct.

17 Q. And just so we have it for the
18 record in case it becomes relevant in our closing
19 submissions, if you would turn to tab 12 of the
20 cross-examination brief, this is a letter of July
21 22, 2014 from your former lawyer, and then attached
22 to that, Mr. Moyse, if you go to the attachment, is
23 the affidavit of documents that you produced to us
24 subsequent to our appearance before Justice
25 Firestone, right?

1 A. Right.

2 Q. Where you were essentially
3 compelled to produce this affidavit of documents,
4 right?

5 A. Right.

6 Q. And we can see, just to bring this
7 point home, at page 12 of this document, you will
8 see right there, and keep going down, in the middle
9 of the page 424 "Homburg Investment Memo.pdf";
10 right?

11 A. That's correct.

12 Q. That is one of the investment
13 memos that was sent on to West Face?

14 A. That's right.

15 Q. And the others are there as well.
16 I'm not going to take your time going through it,
17 Mr. Moyse, but they are on pages 13 and 19 of this
18 document and we can review those later.

19 But while we are on this particular
20 document, if you go to page 17, there is a
21 reference in numbers 653 and 654 to a "Project
22 Turbine - Preliminary Diligence Request List", and
23 there's two of them, two preliminary diligence
24 request lists in relation to a Project Turbine,
25 right?

1 A. Yes, one is an Excel and one is a
2 PDF. They are the same, I think.

3 Q. And Project Turbine, just so we
4 have that for the record, was an internal code name
5 at Catalyst for the Wind opportunity, right?

6 A. That's right.

7 Q. And if you go to page 20 of this
8 document, and I am looking now at the reference to
9 number 760, we see a document that resided on your
10 personal computer entitled "Turbine V2", and it
11 looks to be an Excel spreadsheet; is that correct?

12 A. That's right, I believe that is
13 the model I reviewed on vacation.

14 Q. Okay. So that was the operating
15 model for Wind that you were working on?

16 A. I think that is what -- not
17 looking at it, I think that is what it was.

18 Q. Okay, and that also was on your
19 personal computer?

20 A. Yes.

21 Q. And just to take you through some
22 of the other documents, other kinds of documents
23 that are in this affidavit of documents, for
24 example, if you go to page 9, and I apologize for
25 flipping around here a little bit, page 9, entry

1 268 to 272, you see a number of references there to
2 various versions of a "Catalyst FTC Presentation";
3 do you see that?

4 A. Yeah, I remember what that is
5 clearly.

6 THE COURT: Wait, just wait for the
7 question. All he asked you was do you see that.

8 THE WITNESS: Sorry.

9 THE COURT: Either the answer is yes or
10 no.

11 THE WITNESS: Yes, I did see that.

12 BY MR. DiPUCCHIO:

13 Q. And I am going to suggest to you
14 that what that is, Mr. Moyse, is those were drafts
15 of a presentation to the Federal Trade Commission
16 that you prepared on behalf of a portfolio company
17 that you were managing called Advantage?

18 A. That's correct.

19 Q. And we see that you had various
20 iterations of that presentation on your personal
21 computer?

22 A. That's correct.

23 Q. And that was a regulatory
24 presentation that was being made by you or prepared
25 by you?

1 A. Yes.

2 Q. In regards to Advantage?

3 A. Yes.

4 Q. And am I correct that in that
5 particular case where you made that regulatory
6 presentation to the -- or when you prepared that
7 regulatory presentation to the FTC, that you
8 actually presented that to the FTC?

9 A. I did?

10 Q. Yes, did you?

11 A. No, I was not there.

12 Q. Okay. Were you responsible
13 primarily for putting together that presentation?

14 A. I remember having a big hand in
15 it. I was certainly taking instruction from
16 Gabriel, but I definitely did have input.

17 Q. So that particular regulatory
18 presentation you do recall having played a role in?

19 A. Yes.

20 Q. An active role?

21 A. More active than the other, yes.

22 Q. Well, that is my point. You
23 played an active role in that particular
24 presentation?

25 A. Yes.

1 Q. To the point where when you were
2 meeting with Mr. Dea and sending him your deal
3 sheet, you actually mentioned to Mr. Dea that you
4 had taken the lead in making a regulatory
5 presentation to the FTC on behalf of Advantage?

6 A. If that is what it says, then yes.

7 Q. And you also had, for example, on
8 page 6 of this document on your personal computer,
9 tabs 163 -- sorry, 161 to 163, as an example, you
10 had business plan models for Advantage on your
11 personal computer?

12 A. Yes.

13 Q. Those were business plan models
14 that you were primarily responsible for drafting in
15 relation to Advantage, right?

16 A. Yes, I had a big part in those.

17 Q. Right. And do you agree with me
18 that all of the documents we just reviewed, Mr.
19 Moyse, were confidential?

20 A. Yes.

21 Q. Now, in relation to the Homburg
22 memo specifically, Mr. Moyse, this being the memo
23 that you sent to Mr. Dea and that we just looked at
24 was on your personal computer at the time, right?

25 A. Yes.

1 Q. In relation to the Homburg memo
2 specifically, do you acknowledge today that the
3 Homburg memo included information that Catalyst had
4 received pursuant to a non-disclosure agreement
5 entered into with Homburg?

6 A. It did.

7 Q. And yet you elected to send that
8 document to Mr. Dea, notwithstanding that there was
9 an NDA in place in relation to the information
10 contained in that document?

11 A. Well, I don't know the terms of
12 the NDA, but certainly the information provided in
13 it was under an NDA.

14 Q. And do you agree with me, sir,
15 that your providing that information to a third
16 party was in contravention of the understanding
17 under the NDA?

18 A. That is why I said I haven't seen
19 it, so I don't know when it expired or what the
20 different provisions were.

21 Q. So you had no concern one way or
22 the other in sending that memo to Mr. Dea that you
23 may have been putting your employer, Catalyst, in a
24 position of having breached the NDA with Homburg?

25 A. It wasn't that I had no concern,

1 but I just -- I did not think of that.

2 Q. Do you have a concern now at
3 least? Can we acknowledge that that ought to have
4 been something in your contemplation at the time?

5 A. Yes.

6 Q. I want to talk a little bit about
7 Arcan, which is, as you know, another one of the
8 memos that you sent to Mr. Dea in March, right?

9 A. Yes.

10 Q. And if you go to, and this is in
11 the cross-examination brief, tab 11-B, this is a
12 copy of the internal investment memorandum that you
13 prepared for Catalyst in or around January of 2014,
14 it appears?

15 A. That is what it looks like.

16 Q. Well, is that what it is?

17 A. I believe it is, yes.

18 Q. And am I correct that your
19 analysis of Arcan would have obviously pre-dated
20 January 2014? You would have been doing work on
21 Arcan for some period of time before producing this
22 investment memo?

23 A. Yeah, I remember doing it over
24 mostly the Christmas break, so it would have been
25 December, but not really any time before that.

1 Q. But am I correct that Catalyst had
2 been following Arcan for some period of time before
3 that, to your knowledge?

4 A. Not to my knowledge.

5 Q. And in this memorandum that you
6 send along to Mr. Dea, I'm sure that you and I can
7 agree now that it presents your investment thesis
8 for Arcan?

9 THE COURT: When you say "your", do you
10 mean --

11 MR. DiPUCCHIO: Authored by Mr. Moyse.

12 THE COURT: Well, when you say it's
13 "your" thesis, do you mean it is Mr. Moyse's
14 thesis? What's your question? Or was it
15 Catalyst's thesis?

16 MR. DiPUCCHIO: Well, ultimately, I
17 guess it becomes Catalyst's.

18 THE COURT: I just want to make sure
19 that we all understand the question.

20 BY MR. DiPUCCHIO:

21 Q. No, I understand, Your Honour.
22 What I am suggesting is you developed
23 the investment thesis?

24 A. In this instance, yes.

25 Q. Which then became Catalyst's

1 investment thesis, right?

2 A. As the memo was the property of
3 Catalyst, yes, but I never discussed it with the
4 partners there.

5 Q. And one of the conclusions you
6 reached in the investment memo, and I'm referring
7 specifically, Your Honour, to page 3, you will see
8 it there in bold right in the middle of that page:

9 "Arcan currently trades at a
10 significant discount to its peer
11 average on all key valuation
12 metrics."

13 Right?

14 A. Yes.

15 Q. And I take it fundamentally your
16 investment thesis which you submitted to the
17 partners at Catalyst was that Arcan was an
18 opportunity that merited some consideration?

19 A. I'm sorry, I never said I
20 submitted it to the partners.

21 Q. Well, that you prepared and then
22 did what with it?

23 A. I discussed it with Zach Michaud,
24 and I never followed up on some small comments that
25 he had had.

1 Q. Okay, but you were presenting it
2 to the Vice President at the time, Mr. Michaud,
3 right?

4 A. We discussed it together, yes.

5 Q. And this analysis you understood
6 would be taken to presumably the Chief Investment
7 Officer at Catalyst?

8 A. No, I don't agree.

9 Q. Okay. What did you think was
10 going to be done with this?

11 A. He had some comments that he
12 wanted -- he wanted me to make some small changes,
13 small changes. I never got around to making them.
14 And it just kind of died.

15 Q. No, but what did you think at the
16 time that you were preparing this was going to be
17 done with it?

18 A. I was hoping maybe that is what
19 might be done with it, but my experience had told
20 me that that was highly unlikely.

21 Q. So is it your evidence, and I want
22 to understand this, Mr. Moyse, is it your evidence
23 that this was an investment opportunity that you
24 were presenting or hoped to present?

25 A. Yes.

1 Q. To the Catalyst partners?

2 A. Yes.

3 Q. So this was research that you were
4 doing in relation to an opportunity that you hoped
5 to present to the Catalyst partners or to the team,
6 I guess, in order to convince the team that it
7 should pursue this opportunity?

8 A. Hoped, yes.

9 Q. So this is an example of a
10 situation in which an analyst like you was
11 attempting to bring an opportunity forward for
12 consideration to the partners?

13 A. I mean, it never got there, so --

14 Q. That is not what I asked you.

15 A. I have always said that I took
16 this project on independently and that would have
17 been my hope, but it was an independent project.

18 Q. Right. So my question quite
19 simply was that this is one example of your
20 undertaking research on your own in order to
21 present a potential investment opportunity to the
22 rest of the team, including the partners?

23 A. And I just let it die because I
24 was discouraged.

25 Q. No, no, just listen to my question

1 and then give an answer. Was it or was it not an
2 opportunity that you researched on your own in
3 order that you could present it to the team and the
4 partners as a potential investment opportunity?

5 A. Yes.

6 Q. Now, let's leave aside the fact
7 that in July of 2014 you took the position that
8 none of that was confidential. Let's leave that
9 aside. You recall that when I cross-examined you
10 in July of 2014, I specifically asked you what you
11 were working on in your first three weeks at West
12 Face; do you remember that?

13 A. I do.

14 Q. And do you remember your answer to
15 me was "Not much"?

16 A. That's right.

17 Q. What you didn't tell me, Mr.
18 Moyse, I suggest to you, was that on your very
19 first day on your job at West Face, you were
20 analyzing Arcan?

21 A. That is what I did and, yeah, in a
22 few hours on my first day, yes.

23 Q. Yes, and my question is to you
24 what you did not tell me in your cross-examination
25 was that you were working on Arcan while you were

1 at West Face?

2 THE COURT: Well, the problem with this
3 line of questioning is I don't know what the
4 transcript said. We don't have it in front of us,
5 so the witness doesn't have it. And as you know,
6 ordinarily, transcripts get used from a previous
7 examination if the witness gives evidence different
8 from what he said beforehand. So --

9 MR. DiPUCCHIO: Yes, Your Honour, the
10 difficulty in this case is, of course, we are not
11 dealing with a discovery transcript, and I would
12 totally agree with Your Honour that discovery
13 transcripts --

14 THE COURT: What is the difference? If
15 it is the transcript of a cross-examination, it is
16 no different.

17 MR. DiPUCCHIO: Well, it is evidence in
18 this proceeding, though, Your Honour. We have
19 agreed as part of the trial protocol that all
20 previous --

21 THE COURT: That may be, but all I'm
22 saying is that you are now saying to the witness he
23 gave some different evidence before or gave
24 evidence about something or other, and it is not
25 very helpful to me because I don't know what he

1 said before.

2 MR. DiPUCCHIO: Okay, well, all right,
3 let me just short-circuit that a little, Your
4 Honour, and break it down.

5 I had asked him that his evidence prior
6 in July of 2014 when he was cross-examined was in
7 response to the question, "What did you do during
8 your first three weeks of work?" was "Not much."
9 That is not -- I'm not challenging him on that. He
10 acknowledges that was his evidence.

11 And now what I am asking him is a
12 slightly different question, Your Honour, which is
13 to say you didn't mention in your evidence in July
14 of 2014 that you had done work at Arcan. So there
15 is nothing to impeach him on there. It is simply a
16 statement of what he didn't tell me in July of
17 2014.

18 So we can go to the transcript. I can
19 show you the answer he gives where he says "Not
20 much", but it is not for the purpose of impeaching
21 him, because he acknowledges that that's what his
22 evidence was.

23 THE COURT: Well, you can go ahead.

24 BY MR. DiPUCCHIO:

25 Q. All right. So what you didn't

1 tell me, Mr. Moyse, in July of 2014 was that in
2 fact you had done work on Arcan in your first day
3 at West Face?

4 A. That is right.

5 Q. And we only became aware of that
6 fact, Mr. Moyse, when we find out from West Face in
7 the course of the motion to appoint an ISS that
8 there was some work product performed by you in
9 relation to Arcan, right?

10 A. Correct.

11 Q. And you say, Mr. Moyse, in your
12 evidence here this morning that you worked on the
13 Arcan file at West Face without having been
14 instructed by anybody to do that?

15 A. Correct.

16 Q. You simply became interested in it
17 when Mr. Griffin yelled out on the trading floor
18 that there was something happening in relation to
19 Arcan?

20 A. He said it out loud. I wouldn't
21 say yelling, but yes, he made it clear to everybody
22 there.

23 Q. Right, and you said, well, since
24 there was generally fewer people at West Face there
25 than would ordinarily be the case, you started to,

1 of your own initiative, look into the Arcan
2 opportunity?

3 A. Correct.

4 Q. And of course, at that point in
5 time you had only been working there for
6 approximately a few hours, right?

7 A. That is right.

8 Q. And then if I understood your
9 evidence correctly this morning, you are doing some
10 kind of analysis in relation to Arcan and then Mr.
11 Singh reaches out to you the following morning?

12 A. I believe it was the following
13 day. I can't remember the exact time, but yes.

14 Q. All right, the following day Mr.
15 Singh reaches out to you and asks you what you are
16 working on, right?

17 A. Yes.

18 Q. And you tell him you are working
19 on Arcan?

20 A. Yes.

21 Q. And Mr. Singh tells you stop
22 working on Arcan?

23 A. Yes.

24 Q. Did he tell you why you needed to
25 stop working on Arcan?

1 A. Well, he had asked is that one of
2 the four memos, and I said yes. So he didn't say
3 exactly why but -- no, he didn't say why.

4 Q. Did Mr. Singh express to you that
5 you ought not to have been working on Arcan?

6 A. He just made it clear that I
7 should not be working on Arcan, and to me that I
8 should have taken that as I should not have been
9 working on it in the first place, but he did not
10 specifically express that.

11 Q. And this conversation with Mr.
12 Singh that occurs the day following the email from
13 Mr. Griffin and your having heard Mr. Griffin say
14 something about Arcan on the trading floor, that
15 conversation with Mr. Singh occurs after you say
16 you had a very serious conversation with him about
17 confidentiality?

18 A. Correct.

19 Q. And yet that conversation that you
20 had with Mr. Singh that you characterized as a
21 serious one in relation to confidentiality did not
22 in your mind raise any red flags at all with
23 respect to your working on an opportunity that you
24 had previously analyzed for Catalyst?

25 A. Because I was not referring to any

1 of the work I had done at Catalyst and because this
2 situation had nothing to do with it other than the
3 same company, no, it didn't.

4 Q. Yes, so you were using your own
5 judgment at that stage as to the boundaries that
6 were being placed upon you in relation to the
7 activities you were performing at West Face insofar
8 as they touched upon activities that you had worked
9 on at Catalyst? You used your own judgment?

10 A. I wasn't referring to anything
11 confidential, yes, I used my own judgment.

12 Q. Now, just in terms of your role
13 generally at Catalyst, Mr. Moyse, you'll agree with
14 me that you did perform during the course of your
15 tenure at Catalyst some very high-level,
16 sophisticated work?

17 A. Yes.

18 Q. For example, you built waterfall
19 models in relation to various investments?

20 A. Correct.

21 Q. You led due diligence activities
22 in relation to various investments?

23 A. I think we agreed before leading
24 was an overstatement, but I certainly contributed a
25 lot to some, yes.

1 Q. Well, I'm just reading, quite
2 frankly, from your CV --

3 A. No, I know.

4 Q. -- that you sent along to Mr. Dea
5 where you described yourself as having led due
6 diligence activities. Was that an exaggeration in
7 your CV?

8 A. It was a bit of an exaggeration,
9 yes.

10 Q. I see. You certainly were
11 involved in negotiations as it related to several
12 transactions?

13 A. Yes.

14 Q. In relation to some of the
15 investments that had been made at Catalyst, you
16 were the day-to-day team leader?

17 A. For periods of time, yes.

18 Q. So for example, with respect to
19 Advantage, which we have discussed already, you
20 were and described yourself openly as being the
21 day-to-day team leader in relation to Advantage?

22 A. Yeah, I was the face of Catalyst
23 on the ground with the company.

24 Q. Yes, and in fact, in relation to
25 Advantage specifically, Mr. Moyse, you were the one

1 that conducted the initial analysis of the
2 investment opportunity, right?

3 A. In conjunction with Mark Horrox
4 and Lorne Creighton, yes.

5 Q. Now, I had understood -- when did
6 Mr. Creighton join Catalyst?

7 A. It was in late July or early
8 August of 2013.

9 Q. Okay. And you did a number of
10 tasks, performed a number of tasks in relation to
11 Advantage specifically, one of which was that your
12 analysis was used in order to make a decision to
13 close 30 concessions?

14 A. That was part of the company's
15 business plan, but our analysis helped refine it,
16 sure.

17 Q. Right. Your analysis, as a result
18 of your analysis, the decision was made by
19 management to close 30 concessions?

20 A. No, they had already decided to
21 close a lot of concessions, and then the analysis
22 helped refine exactly which ones. But ultimately,
23 they made the decision independent of what some of
24 the numbers said.

25 Q. Right, using your analysis?

1 A. In part, yes.

2 Q. As we have already looked at, you
3 created a presentation for the FTC, right?

4 A. Yes.

5 Q. You were responsible for preparing
6 the company's go-forward plan?

7 A. Maybe to some extent, yes.

8 Q. You actually participated in
9 interviewing candidates for senior management
10 positions at Advantage?

11 A. I interviewed some CFO candidates,
12 yes.

13 Q. I'm going to suggest to you that
14 at least insofar as it relates to Advantage,
15 Catalyst was giving you a lot of responsibility at
16 that time?

17 A. Again, I had a lot of things -- I
18 had a lot of responsibility in terms of tasks. I
19 had no responsibility in terms of any ability to
20 make a decision.

21 Q. Well, are you suggesting that you
22 had no input at all into the making of decisions?

23 A. I'll tell you for one, our input
24 was to not make the investment at all, and that was
25 ignored.

1 Q. All right. Whose input was?

2 A. The investment team, Mark Horrox,
3 Lorne Creighton and myself.

4 Q. Right, and then what happened with
5 that investment analysis?

6 A. We were told to tweak the numbers
7 in a way that made it look like a positive
8 investment, and then Catalyst went ahead and made
9 the investment.

10 Q. Okay. And do you disagree with me
11 that you were given a lot of responsibility in
12 relation to Advantage, for example?

13 A. Again, I agree I had a lot of
14 tasks. I don't ever -- I didn't ever feel as if I
15 had true responsibility.

16 Q. So you make a distinction between
17 tasks that you were being asked to perform and
18 responsibility?

19 A. I think there is a difference,
20 yes.

21 Q. And in fact, you considered
22 yourself to have been worthy of promotion to the
23 role of an associate at Catalyst in 2014?

24 A. Well, I mean, I was told that they
25 would be promoting me, yes.

1 Q. Right, so they were impressed
2 enough at Catalyst with your carrying out your
3 duties over the last year that you were there that
4 they had told you that they were going to be
5 promoting you to the role of associate?

6 A. Correct.

7 Q. And in fact, in your description
8 to potential employers that you were sending your
9 resumé out to in the early part of 2014, you
10 described yourself as an associate at Catalyst?

11 A. It seemed that the promotion was
12 all but finalized, yes.

13 Q. Right, but whether it was or
14 wasn't, you described yourself to your potential
15 employers in the early part of 2014 as an associate
16 at Catalyst?

17 A. Correct.

18 Q. And you described yourself as an
19 associate to West Face when you sent your CV along
20 to Mr. Dea?

21 A. Correct.

22 Q. And if you want to look at that,
23 Mr. Moyse, it is at tab 11-E of the
24 cross-examination brief.

25 A. And again, at that time I was

1 being introduced as an associate to external
2 parties and --

3 Q. Just a second. I don't recall my
4 having asked you a question. But if you look at
5 the resumé, do you see that you describe yourself
6 to Mr. Dea as a "Distressed Debt Associate" and
7 "Distressed Debt Analyst"?

8 A. I do.

9 Q. And you describe yourself as a
10 "Distressed Debt Associate" as of February 2014?

11 A. Correct.

12 Q. And yet it is your evidence today
13 that despite the fact that you had been told you
14 were going to be promoted to the position of
15 associate and that you were describing yourself as
16 an associate to prospective employers, that you had
17 very little knowledge of Catalyst's potential
18 investments and its strategies for those
19 investments?

20 A. Correct.

21 Q. That is your evidence?

22 A. Well, and the distinction between
23 analyst and associate is -- it is the same job,
24 just a different title.

25 Q. But titles were very important to

1 you, Mr. Moyse, weren't they?

2 A. I just wanted to be on fair ground
3 with everybody else.

4 Q. No, no, but titles were quite
5 important to you, because your evidence in this
6 proceeding was that you actually had a discussion
7 with Mr. Dea at the time that you were offered a
8 job at West Face because you were concerned that
9 West Face was going to be referring to you as an
10 analyst and not as an associate?

11 A. Well, it was my understanding that
12 there was somebody else at West Face with
13 approximately as much experience as me who had the
14 title of associate, so I just wanted to be put on
15 the same footing. I don't really care what my
16 title is. I just don't want to be treated like a
17 very, very junior person.

18 Q. Right. And again, your evidence
19 to this Court is that after a year and a half at
20 Catalyst, where you are about to be promoted to the
21 position of an associate at Catalyst, that you had
22 very little information or knowledge of Catalyst's
23 potential investments and its strategies for those
24 investments; that is your evidence?

25 A. Yeah, I never felt I was getting

1 that insight.

2 Q. Not what you felt. That you never
3 had that knowledge?

4 A. I had some of that knowledge, yes.

5 Q. If would bear with me, Your
6 Honour, we have just covered off some areas, and so
7 I'm just going through my notes here.

8 Now, I want to talk to you a little bit
9 about your evidence in relation to RegClean Pro and
10 the scrubber, the Advanced System Optimizer program
11 that we have been talking about in this proceeding,
12 okay?

13 A. Okay.

14 Q. And first of all, let's just
15 establish some facts. And I think we have already
16 covered this in your evidence, but you and I agree
17 that you acknowledged deleting files from your
18 computer in the March to May 2014 timeframe, right?

19 A. Correct.

20 Q. And when you were cross-examined
21 back in 2015 and you acknowledged that you had
22 deleted files in March, April and May of 2014, you
23 didn't tell me that you had also deleted your web
24 browsing history?

25 A. When was this? When did I say

1 that?

2 Q. When I cross-examined you prior to
3 the ISS issuing its report.

4 A. Correct, I didn't say that.

5 THE COURT: Well, just wait a second.
6 You see, this raises the same issue. I don't know
7 whether you asked him that or not. Maybe you
8 didn't ask him.

9 BY MR. DiPUCCHIO:

10 Q. That is fair, Your Honour. Let's
11 just move forward. I was just trying to establish
12 something, but it is not terribly important for the
13 purposes of this line of questioning.

14 You acknowledge now, Mr. Moyse, that at
15 minimum what you did was you deleted your web
16 browsing history?

17 A. Yes.

18 Q. Okay. And you did that after
19 Mr. Justice Firestone had made his preservation
20 order?

21 A. Correct.

22 Q. And you did it prior to your
23 turning over your personal computer to your counsel
24 for the purposes of having that computer imaged?

25 A. Yes.

1 Q. And what you did, if I understand
2 correctly, what you did is you read Mr. Justice
3 Firestone's order and you made the decision on your
4 own that your web browsing history wasn't relevant
5 to this proceeding?

6 A. Correct.

7 Q. And I believe your evidence has
8 been in this proceeding that you had -- that you
9 were in a state of confusion in respect of exactly
10 what this request for an ISS was all about?

11 A. I don't think exactly confusion.
12 I think it was more that I had no understanding of
13 what the process would be.

14 Q. Okay, you had no understanding as
15 to what an ISS process entailed?

16 A. No.

17 Q. And I believe it has been your
18 evidence that you didn't ask your counsel how the
19 process would play out?

20 A. No, I --

21 THE COURT: Well, I don't know, but you
22 are now getting into what may be privileged.

23 MR. DiPUCCHIO: I don't think I am,
24 Your Honour. We have asked these questions before
25 and they have been answered, and I am not going to

1 go much further than that, Your Honour.

2 THE COURT: All right.

3 BY MR. DiPUCCHIO:

4 Q. But you didn't ask your counsel to
5 give you some direction as to how this ISS process
6 would play out?

7 A. No, I don't think that was my
8 evidence. I think my evidence is that I asked them
9 to explain how the process might work, and I found
10 their answer to be dissatisfying in terms of detail
11 and improving my understanding.

12 Q. Okay, so you asked your counsel
13 how that process would work, and you weren't
14 satisfied with their answer to you?

15 A. Correct.

16 Q. And you know, for example, that in
17 April of this year, i.e. --

18 THE COURT: Just before you do that,
19 was your counsel at the time you were talking
20 about, was your counsel the Grosman firm?

21 THE WITNESS: It was.

22 THE COURT: Thank you.

23 BY MR. DiPUCCHIO:

24 Q. And just to close that particular
25 line, Your Honour, because you might be thinking

1 it, I'll ask this question.

2 You were asked at the time to produce
3 evidence of the advice that was given by your
4 counsel, and you refused to produce evidence of
5 that advice, right?

6 A. I don't know what ended up
7 happening. I thought we ended up saying that there
8 is no evidence of that advice.

9 Q. Okay, we'll let the record --

10 A. But I don't know what was produced
11 for that.

12 Q. All right, we'll let the record
13 speak for itself when we look at the refusals that
14 were given in this case.

15 But coming back very briefly to April
16 of this year, Mr. Moyse, do you recall in April of
17 this year that you made further production in this
18 case?

19 A. I do.

20 Q. You produced several dozen emails
21 from your hotmail account in April of this year,
22 right?

23 A. Correct.

24 Q. And these were emails, if I
25 understood your explanation correctly as to why

1 they hadn't been produced until very recently,
2 these were emails that you said you didn't believe
3 were relevant to the litigation?

4 A. Well, I was given -- when we did
5 all the initial searches, I was given, again,
6 parameters by counsel and these emails at the time
7 did not fit those parameters.

8 Q. Right, so because they didn't fit
9 the parameters, you didn't produce them?

10 A. Correct.

11 Q. Now, one of the emails that you
12 didn't produce -- and I am just going to give His
13 Honour an example of one of the emails that was
14 produced in April.

15 If we go to tab 25 of my brief, this
16 was one of the emails from your hotmail account
17 that was recently produced, and it is an email
18 chain between you and Mr. Creighton on May 23rd and
19 May 24th of 2014. And we'll come to the
20 significance of the dates in just a moment.

21 But in this email chain, Mr. Moyse, one
22 of the things you do, and I am looking at the first
23 page now, Your Honour, right down to the bottom,
24 one of the things you do on Friday, May 23rd, 2014,
25 while you are on vacation in Asia, I believe, is

1 you specifically ask Mr. Creighton whether Catalyst
2 had made a bid for Wind; do you see that?

3 A. I do.

4 Q. And then Mr. Creighton responds to
5 you and he says:

6 "Yes, I think so. That was
7 Dan's email to George, asking George
8 to send UBS the share purchase
9 agreement."

10 Right?

11 A. That is what he says.

12 Q. And that was the share purchase
13 agreement that had been sent to you in draft as
14 well, right?

15 A. Correct, but I wasn't aware of it.

16 Q. Well, clearly you were aware of
17 it, because Mr. Creighton was discussing it with
18 you?

19 A. That is why I asked. After he
20 said it, then yes, I did become aware of it.

21 Q. Right, but you reached out to
22 Mr. Creighton on May 23rd, 2014, while you were on
23 vacation, you reached out to Mr. Creighton and
24 asked him the question, "Did we make a Wind bid?"

25 A. I did.

1 Q. And if I'm not mistaken, Mr.
2 Moyse, that is I believe either the same day or the
3 day after you have a conversation while you are on
4 vacation with Mr. Dea?

5 A. That is about the timeframe, yes.

6 Q. And we'll come to that transcript
7 of calls so that we can nail it down, but you
8 recall the two -- you recall Mr. Dea calling you
9 and then you recall sending an email to
10 Mr. Creighton, your colleague at Catalyst, to ask
11 him while you were on vacation whether Catalyst had
12 actually proceeded to make a Wind bid?

13 A. Yes.

14 Q. And this was one of the emails,
15 Mr. Moyse, that if we are relying on your judgment
16 to tell us what is relevant and what is not
17 relevant in this case, you chose not to disclose
18 until April of this year?

19 A. I can't say specifically why a
20 certain email didn't get produced. That was
21 generally the reason for the productions.

22 Q. Right, and the only reason we got
23 this email was because we asked you to go
24 double-check your hotmail account and to produce to
25 us everything in your hotmail account that related

1 to this proceeding?

2 A. Well, you specifically said
3 anything including Lorne Creighton or Catalyst
4 employees.

5 Q. Okay. And getting back to the
6 issue of the scrubber, I'm going to suggest to you,
7 sir, that July 16th, 2014 was a very significant
8 day in your life; do you agree with me?

9 A. It was an important day.

10 Q. Right, it was an important day
11 because you were about to go to Court in a
12 situation where an injunction was being sought
13 against you that sought to have you, amongst other
14 things, cease working for your new employer at West
15 Face?

16 A. For a period of time, yes.

17 Q. And there had been serious
18 allegations levelled against you at that point of
19 misuse of confidential information by Catalyst,
20 right?

21 A. Yes.

22 Q. Catalyst, as you knew, was seeking
23 to have a forensic image made of your hardware
24 devices through that motion?

25 A. Correct.

1 Q. Now, I'm going to suggest to you,
2 Mr. Moyse, that you had never been through anything
3 like that before?

4 A. No.

5 Q. And at the time, on July 16th,
6 2014, you knew that you were being criticized for
7 having wiped your BlackBerry without telling anyone
8 beforehand?

9 A. Yes.

10 Q. You knew by that point in time
11 that you were being criticized for having sent
12 confidential memos to West Face and then having
13 deleted your email in an effort to cover your
14 tracks?

15 A. Right.

16 Q. So what happens on July 16th and
17 the morning of July 16th, let's run it down.

18 The motion before Justice Firestone was
19 scheduled to begin at 10:00 a.m., right?

20 A. Correct.

21 Q. And you, as I recall, were at the
22 courthouse the morning of the motion?

23 A. I was.

24 Q. You arrived obviously at some
25 point earlier than 10:00 a.m.?

1 A. Yes.

2 Q. What time did you leave your house
3 that morning; do you remember?

4 A. I don't remember.

5 Q. Now, just before you left your
6 house, I put it to you, in the face of this
7 significant event that is happening in your life,
8 you purchase Advanced System Optimizer?

9 A. I did.

10 Q. We see from the receipt that
11 Mr. Centa took you to earlier in your evidence that
12 you purchased it that morning?

13 A. Yes, I agree.

14 Q. And we also know from the ISS's
15 report that you installed that software on your
16 computer at 8:53 a.m. on July 16th?

17 A. Okay.

18 Q. Well, do you remember doing that,
19 sir?

20 A. I did it. I must have done it. I
21 don't specifically remember the installation
22 process, but I'm not disputing that I did that.

23 Q. I'm going to suggest to you the
24 morning of this very significant event in your
25 life, just before you leave your house to attend

1 Court, you are installing on your computer Advanced
2 System Optimizer; that is what you are doing?

3 THE COURT: Well, he has already
4 acknowledged that.

5 BY MR. DiPUCCHIO:

6 Q. Okay, fair enough.

7 And you knew at the time that you
8 installed Advanced System Optimizer on your
9 computer that morning that it included a military
10 grade scrubber?

11 A. I don't think I knew that at the
12 time.

13 Q. You didn't know that at the time?

14 A. I don't think so.

15 Q. That was just a coincidence as it
16 turns out that that software suite included that
17 functionality?

18 A. It had many functions.

19 Q. You also purchased and installed
20 that morning, just before you left for Court, I
21 suggest to you, RegClean Pro?

22 A. I don't think that is right. I
23 think I installed it a few days earlier.

24 Q. Well, you purchased it a few days
25 earlier, Mr. Moyse. My suggestion to you is you

1 installed it at 8:50 a.m. that morning?

2 A. Okay, then I did.

3 Q. You don't recall doing that, as
4 you are sitting here today?

5 A. Specifically, no.

6 THE COURT: Well, again, this isn't
7 helpful if you don't recall these things.

8 The question was put to you that you
9 installed it at 8:50 a.m. that morning, and so you
10 said, "Okay, then I did." You are taking his word
11 for it. He may be right, I don't know, but if you
12 don't remember, don't say something if you don't
13 recall because it is not helpful.

14 THE WITNESS: Thanks.

15 BY MR. DiPUCCHIO:

16 Q. So in light of His Honour's
17 admonition, is your evidence that you don't recall?

18 A. I don't recall that.

19 Q. And as I understood your evidence
20 in-chief, and correct me if I am wrong, you
21 purchased RegClean Pro because you thought that
22 RegClean Pro would assist you in deleting your web
23 history so that it couldn't be forensically
24 recovered; is that fair?

25 A. Yes.

1 Q. So in other words, just to break
2 that down a little bit, in other words, you
3 understood that there were ways that you could
4 delete your web history that would involve, for
5 example, simply going into your web browser and
6 saying "delete history"?

7 A. Yes, I knew that was an option.

8 Q. But you knew more than that, Mr.
9 Moyse. You knew that doing that wouldn't protect
10 that information from being discovered in a
11 forensic examination of your computer?

12 A. I don't know if I knew that or if
13 I checked online to see if that was the case.

14 Q. Okay, so let's again back up and
15 see if we can unpack this a little bit. You say
16 that you are not aware whether you knew that just
17 out of your general knowledge or whether you might
18 have done some internet research in order to
19 determine whether in fact that was the case; is
20 that fair?

21 A. That is fair.

22 Q. It could have been one or the
23 other?

24 A. I may have thought that -- I may
25 have thought that and then did some searching to

1 verify it. I don't remember.

2 Q. So one of the possibilities, just
3 so I understand, one of the possibilities is that
4 you actually knew that deleting your browser
5 history simply by using the built-in functionality
6 in the web browser wouldn't be sufficient to
7 protect that information from being discovered
8 again in a forensic examination? That is one of
9 the possibilities?

10 A. No, I don't think there is any way
11 I could have known that, because I'm not a
12 technical expert. So that would have been a belief
13 of mine.

14 Q. All right, so if you didn't know
15 that, then I guess we are left with possibility
16 number two, which is that you actually researched
17 it?

18 A. Yes.

19 Q. Okay. And do you actually recall,
20 Mr. Moyse, going onto Google or going onto some
21 other search engine and performing research as to
22 how to delete things in the face of a potential
23 forensic examination?

24 A. I think what -- well, sorry, I
25 didn't search for that, but I did -- I do remember

1 searching for how to permanently erase your
2 internet browsing history.

3 Q. Okay. So that would have been
4 something then, that was something then that you
5 have an active recollection searching for using one
6 of your search engines on your computer?

7 A. Yes, because I remember doing it a
8 couple of times.

9 Q. Now, will you agree with me, Mr.
10 Moyse, can you and I agree that when you deleted
11 your browser history, scrolling forward, when you
12 permanently deleted your browser history, that
13 evidence of those kinds of searches that you would
14 have performed was permanently lost to us?

15 A. I don't know what was recovered or
16 recoverable.

17 Q. No, no, sir, we have just been
18 through a five-minute chat where we talked about
19 the fact that what you were trying to do was
20 permanently delete that evidence so that it
21 couldn't be recovered via forensic examination?

22 A. If that was successful, then yes,
23 it would not be able to be recovered.

24 Q. Well, I'm going to suggest to you
25 that you were successful because it hasn't been

1 recovered?

2 A. Okay.

3 Q. Right?

4 A. I guess it wasn't. I guess not.

5 Q. So getting back to my original
6 question, would you agree with me that when you
7 deleted your internet browser history on the
8 evening of June -- July 20th, 2014, rather, that
9 you permanently deleted evidence of your internet
10 browsing activity as it related to --

11 THE COURT: Well, just a minute.

12 MR. CENTA: I don't see how this
13 witness can answer the question that has been asked
14 about whether he permanently deleted anything.
15 That is in the purview of the experts. There has
16 been evidence about that.

17 THE COURT: I understand. The witness
18 has already said, Mr. DiPucchio, that he doesn't
19 know.

20 MR. DiPUCCHIO: Okay.

21 THE COURT: You are --

22 BY MR. DiPUCCHIO:

23 Q. All right. All right, fair
24 enough. We'll move on from that.

25 Now, do you agree with me, Mr. Moyse,

1 that from time to time, and I believe we have seen
2 evidence of this, you would have used your browser
3 to access DropBox?

4 A. Among other methods, yes.

5 Q. Okay. So one of the methods that
6 you would have used and did use in order to access
7 documents, Catalyst documents, via DropBox was your
8 web-based DropBox?

9 A. Sometimes, yes.

10 Q. Okay. Now, in relation to
11 Advanced System Optimizer, as I understood your
12 evidence, Mr. Moyse, is that on the evening of July
13 20th, 2014, which was the day before counsel had
14 agreed you would be turning over your computer to
15 your counsel for the purposes of the forensic
16 imaging, right?

17 A. Yes.

18 Q. That on the evening of July 20th,
19 2014, you elected to delete your internet browser
20 history, right?

21 A. Yes.

22 Q. And you did so?

23 A. Yes.

24 Q. And then you ran RegClean Pro,
25 which was the piece of software that you had

1 purchased a few days prior?

2 A. Correct.

3 Q. Correct?

4 A. Yes.

5 Q. And I believe your evidence is,
6 again correct me if I'm wrong, that you ran
7 RegClean Pro for the purpose of doing what?
8 Modifying the registry so that there would be no
9 trace that you had deleted your internet browser
10 history?

11 A. Well, I didn't really know what
12 RegClean Pro did. I just believed that that would
13 clean up the traces.

14 Q. How did you form that belief, sir?

15 A. Through internet searches.

16 Q. All right. So through your
17 internet searches, you would have come to the
18 understanding that RegClean Pro would assist in
19 your stated goal of permanently deleting your
20 browser history?

21 A. Correct.

22 Q. So you had some idea what it did?

23 A. Yes, I knew that that could be a
24 function.

25 Q. And then after you do that, I

1 believe your evidence is, and I think I may have
2 taken it down verbatim, that you noodled around
3 with the Advanced System Optimizer program?

4 A. That's right.

5 Q. And your evidence is that that
6 would have included simply clicking buttons to try
7 to figure out what kind of functionality it had?

8 A. Yeah. Yes.

9 Q. And if I understand correctly,
10 what you are saying to this Court is that
11 notwithstanding that we all now know that Advanced
12 System Optimizer includes a function called Secure
13 Delete, that your noodling around with Advanced
14 System Optimizer on that very evening was purely
15 coincidental?

16 A. Yes.

17 THE COURT: I'm going to break a bit
18 early for lunch --

19 MR. DiPUCCHIO: That is fine.

20 THE COURT: -- so whenever it is
21 convenient for you.

22 MR. DiPUCCHIO: That is as good a place
23 as any, Your Honour.

24 THE COURT: Okay.

25 All right, 2:15.

1 -- RECESSED AT 12:45 P.M.

2 -- RESUMED AT 2:15 P.M.

3 BY MR. DiPUCCHIO:

4 Q. Mr. Moyse, I just wanted to cover
5 off one little area of examination that we were
6 speaking of before the break, and that is the ISS
7 report. And I wanted just to take the Court to the
8 ISS report for one brief moment. It is at tab 26,
9 Your Honour, of the cross-examination folder, and I
10 am looking specifically on page 41 at paragraph 45.

11 So you see here, Mr. Moyse, that the
12 ISS is giving some information in relation to the
13 software that you had purchased, the RegClean Pro
14 and Advanced System Optimizer pieces of software,
15 and if you scroll down, the ISS says here in its
16 report --

17 THE COURT: Just a second. I'm trying
18 to find paragraph 45.

19 MR. DiPUCCHIO: Paragraph 45 is on page
20 40, Your Honour. Do you see it, Your Honour? It
21 is paragraph 45 on page 40 of the ISS report.

22 THE COURT: Yes.

23 BY MR. DiPUCCHIO:

24 Q. And then going over to page 41,
25 Your Honour, is really where I was reading from,

1 and I am doing this more for Your Honour's benefit
2 because there was some questions about this. But
3 do you see the ISS indicates in its report:

4 "Based on the creation date of
5 the associated folders, RegClean and
6 Advanced System Optimizer 3 were
7 installed on July 16, 2014 at 8:50
8 and 8:53 a.m. respectively."

9 And sitting here today, Mr. Moyse, I
10 take it you have no evidence to contradict what the
11 ISS has said in relation to when those pieces of
12 software were installed?

13 A. I do not.

14 Q. And then in that same paragraph,
15 right at the bottom, Mr. Moyse, the ISS says:

16 "On July 20, 2014, at 8:09 p.m.
17 a folder entitled 'Secure Delete'
18 was created, which suggests that a
19 user of Moyse's computer took steps
20 to make the use of that function
21 available at that point in time."

22 Now, I take it, Mr. Moyse, that sitting
23 here today, you have absolutely no explanation for
24 the ISS finding a Secure Delete folder on your
25 computer?

1 A. Well, I mean, I understand that --
2 what the technical experts have found. I have no
3 explanation other than that I clicked on it.

4 Q. Well, you have no explanation?

5 A. No.

6 Q. Right. And so just to recap your
7 evidence, Mr. Moyse, because I want to put it to
8 you in fairness, what you are suggesting to the
9 Court is that it was simply a coincidence that you
10 purchased Advanced System Optimizer approximately
11 one hour before the hearing on July 16th, is
12 that -- or installed it, purchased and installed it
13 approximately one hour before the hearing on July
14 16th, that is a coincidence?

15 A. Yes.

16 Q. And it is also a coincidence that
17 a Secure Delete folder was created at 8:09 p.m. on
18 your computer on July 20th, 2014? That is also a
19 second coincidence; is that fair?

20 A. I know I never used it, so I can't
21 explain that, so yes, it is a coincidence.

22 Q. And I am going to put it to you,
23 Mr. Moyse, that in fact the reason there is a
24 Secure Delete folder on your computer at 8:09 p.m.
25 is because you ran the Secure Delete program at

1 that time?

2 A. I did not.

3 Q. And I put it to you, Mr. Moyse,
4 that when you realized that the Secure Delete
5 program had a record of how many files you had
6 deleted using that program, that you then took
7 steps to alter the registry of your computer in
8 order to reset that counter?

9 A. I was neither aware of that log,
10 nor did I delete that log.

11 Q. And I suggest to you, Mr. Moyse,
12 that that behaviour is exactly consistent with what
13 you did when you wiped your BlackBerry in June of
14 2014 before returning it?

15 A. No.

16 Q. And similarly, Mr. Moyse, I
17 suggest to you that the fact that you purchased the
18 Advanced System Optimizer program one hour prior
19 to -- or installed it, I should say, one hour prior
20 to attending Court on July 16th is not
21 coincidental. The reason you did that was because
22 you wanted to be prepared and have the tools
23 available to you to be prepared to delete
24 information should Justice Firestone have made an
25 order against you? I suggest that is what you were

1 doing that morning?

2 A. No, I don't agree.

3 Q. Now, Mr. Moyse, I want to take you
4 to some of your evidence in relation to your
5 involvement on the telecom team at Wind, and we
6 looked at your affidavits that were filed with the
7 Court early in July of 2014 where you indicated you
8 had limited involvement in Wind, right?

9 A. Correct.

10 Q. And we can all look at your
11 affidavits and we can see how much description you
12 put in there, but in your most recent trial
13 affidavit, am I correct that you now have from
14 pages 7 to 38 of that affidavit attempted to run
15 through everything that you did as part of your
16 involvement on the telecommunications team and on
17 the Wind opportunity?

18 A. That's correct.

19 Q. You have done that in 30 pages of
20 affidavit material now?

21 A. Well, I have had the benefit of
22 seeing productions and a lot of them pertained to
23 individual charts that I created, but yes.

24 Q. Yeah, that is my point, Mr. Moyse.
25 At a time when you didn't have access to the

1 productions and when nobody had access to the
2 productions, your explanation of your involvement
3 in Wind encompassed a couple of paragraphs in the
4 affidavit, and we looked at that, right?

5 A. That is what I remembered.

6 Q. Right. And, sir, I'm going to
7 suggest to you that despite your evidence now that
8 you were only assigned to Wind I think you said
9 back in July on May 9th, 2014, and that is
10 incorrect, right?

11 A. I don't agree with that.

12 Q. Is it May 6th that you say you
13 are --

14 A. Well, sometime between May 6th and
15 May 9th, yes.

16 Q. Okay. Despite that evidence, I'm
17 going to suggest to you that in fact, based on the
18 record we have now available to us, you were
19 involved with Wind far before May 9th or May 6th of
20 2014; do you agree with me?

21 A. No, I don't.

22 Q. You knew, sir, I suggest to you,
23 that Catalyst was interested in acquiring Wind as
24 early as February 2014?

25 A. I knew as part of the fourth

1 carrier strategy, yes, that was part of it.

2 Q. You knew that they had an interest
3 in acquiring Wind at least as early as February
4 2014, right?

5 A. Yeah, I think there were news
6 stories from mid-2013, but yeah.

7 Q. Well, you didn't know it from news
8 stories, Mr. Moyse. Let's be fair. Are you
9 actually suggesting to the Court that despite the
10 fact that you are one of seven or eight investment
11 professionals at Catalyst, that you became aware of
12 an interest in acquiring Wind through news stories?

13 A. I don't remember how it came
14 about.

15 Q. Well, I'm going to put it to you,
16 Mr. Moyse, that the far more logical explanation
17 for your awareness is because you worked at the
18 place and you had discussions?

19 A. I don't know.

20 Q. And you have just said, Mr. Moyse,
21 that as of February of 2014 you had knowledge of
22 Catalyst's plan to build a fourth wireless carrier
23 through a combination of Mobilicity and Wind; fair?

24 A. I think so, yes.

25 Q. And that was a topic, I'm going to

1 suggest to you, that was discussed at the Monday
2 meetings?

3 A. It may have come up, yes. I don't
4 remember.

5 Q. Just come up?

6 A. I don't remember specific
7 discussions about combining Wind and Mobilicity.

8 Q. So you can't say one way or the
9 other, because you have no precise recollection,
10 whether the evidence that has been given in this
11 Court by others at Catalyst that that was a
12 frequent topic of conversation at Monday meetings,
13 you have no way of telling us one way or the other
14 whether that evidence is correct or incorrect?

15 A. The fact I can't remember
16 specifics tells me it wasn't a frequent occurrence.

17 Q. Well, Mr. Moyse, I'm not sure we
18 can rely on your recollection for a whole heck of a
19 lot, can we?

20 THE COURT: Well, that is really for me
21 to decide.

22 BY MR. DiPUCCHIO:

23 Q. All right, that is fine. The fact
24 of the matter is, Mr. Moyse, you didn't recall any
25 involvement in Wind or certainly not the extent of

1 your involvement in Wind until you were confronted
2 with documents?

3 A. It was such a compressed period of
4 time working so frantically, that I couldn't
5 remember the individual things I had done for it,
6 no.

7 Q. Sir, these Monday meetings -- and
8 I'm going to call them Monday meetings, not Monday
9 morning meetings -- these Monday meetings would
10 involve all of the investment professionals at
11 Catalyst; is that correct?

12 A. Usually, yes.

13 Q. Okay. And in addition, they would
14 involve, as you have testified, a gentleman by the
15 name of David Reese at Callidus, which was a
16 portfolio company of Catalyst; is that fair?

17 A. Correct.

18 Q. And you have said, I think quite
19 fairly in your evidence, that one of the things
20 that would be discussed in the Monday meetings was
21 the deal pipeline?

22 A. Sometimes, but yes, it did come
23 up.

24 Q. Well, it was one of the topics
25 that was generally on the agenda, right?

1 A. Whether or not we got to it was
2 another story, but yes, it would have been a topic
3 of discussion had we made it to it in that meeting.

4 Q. And I took from some of the
5 evidence that we have seen in this proceeding that
6 one of your concerns was that the deal pipeline at
7 Catalyst in 2014 was slow?

8 A. It seemed to be to me, yes.

9 Q. Okay, I hate to quibble, but what
10 do you mean "it seemed to be"?

11 A. Well, I can't compare it to what
12 the pipeline was before my arrival or what a normal
13 pipeline is, but it certainly seemed slow to me.

14 Q. And when you say or when you have
15 given evidence now that it seemed slow to you, what
16 does that mean, that there were relatively few
17 deals in the pipeline?

18 A. There were very few deals that we
19 were working actively on in the pipeline, yes.

20 Q. Okay. And I'm going to suggest to
21 you, Mr. Moyse, that when these Monday meetings
22 were occurring and when there were discussions of
23 the deal pipeline in early 2014, Wind would have
24 very clearly been one of the matters that was being
25 discussed?

1 A. I don't remember Wind being
2 discussed in early 2014.

3 Q. Do you mean to say that you have
4 no recollection, or do you mean to say that
5 positively you can say it wasn't discussed?

6 A. I have no recollection.

7 Q. How many other deals were in the
8 pipeline at that time?

9 A. I mean, it depends what you mean
10 by "pipeline".

11 Q. Well, those were your words. You
12 said the deal pipeline was slow.

13 A. People wrote down a lot of things
14 but nobody ever worked on most of them, so I would
15 say in early 2014 nothing was in the pipeline.

16 Q. Nothing at all?

17 A. No.

18 Q. So that if Wind was being actively
19 pursued by Catalyst at that time, that would have
20 been the only deal in the pipeline, according to
21 you?

22 A. In early 2014, prior to May, I was
23 not aware that Catalyst was pursuing Wind.

24 Q. Not that you were aware. That if
25 Catalyst was in fact pursuing Wind at that time,

1 that would have been the only deal in the pipeline
2 according to you?

3 A. From what I remember, yes.

4 Q. And, sir, I think we can agree
5 that you joined or were made a part of formally the
6 telecom deal team in March of 2014; correct?

7 A. Yes.

8 Q. Now, what did you understand the
9 telecom deal team to be doing as the telecom deal
10 team?

11 A. At that time, there was nothing
12 going on because the telecom deal team had really
13 been focussed on Mobilicity, and I believe at that
14 point in time there was a lull in the CCAA
15 proceedings.

16 Q. So Mr. Yeh, and we have heard
17 about Mr. Yeh, he was a vice president or an
18 analyst at Catalyst?

19 A. He was an associate.

20 Q. An associate. I got it wrong both
21 times. Mr. Yeh, the associate, leaves Catalyst at
22 some point in March of 2014, right?

23 A. That's correct.

24 Q. And then you are immediately
25 appointed as his replacement?

1 A. That's right.

2 Q. Yet you are saying to the Court,
3 notwithstanding that you are immediately appointed
4 as his replacement at that time, that there was
5 actually nothing going on?

6 A. Correct.

7 Q. And you actually by that point had
8 gone so far as to send some articles to people that
9 were part of the telecommunications deal team,
10 right?

11 A. I did.

12 Q. And we have seen some of those
13 articles. One of the articles you sent, Mr. Moyse,
14 was on March 6th of 2014, and I am going to ask you
15 to turn it up. It is at tab 19 of the
16 cross-examination brief.

17 And do you see on your screen, Mr.
18 Moyse, there is a copy of an article that you
19 forwarded on on March 6th, 2014 to Mr. de Alba,
20 Mr. Michaud and Mr. Yeh?

21 A. I see that.

22 Q. And the article that you were
23 forwarding was in relation to the fact that
24 VimpelCom had written down its Canadian investment
25 in Wind Mobile, right?

1 A. That's right.

2 Q. And the reason, I suggest to you,
3 that you were forwarding this article to the other
4 members of the telecommunications deal team in
5 March is because you knew that they would be
6 interested in receiving news relative to Wind
7 Mobile?

8 A. I knew they were interested in
9 news about the Canadian telecom industry generally,
10 and this certainly fit the profile.

11 Q. Well, I'm suggesting to you that
12 the reason you specifically knew that they were
13 interested in receiving news tidbits about Wind is
14 because you understood by that point in time that
15 Catalyst had an active interest in acquiring Wind?

16 A. I probably knew that by that time,
17 yes.

18 Q. Oh, okay, so by March, by March
19 you knew that?

20 A. Well, I said I did know that
21 beforehand.

22 Q. All right. And you recall also
23 sending an article about Wind to the members of the
24 deal team in January of 2014, right?

25 A. That's right.

1 Q. And we have all seen that article.
2 And I'm going to suggest to you again that the
3 reason that you were sending that article at that
4 time was even as early as January, notwithstanding
5 that you weren't formally on the telecommunications
6 deal team, you knew that Catalyst had an interest
7 in Wind?

8 A. Sure.

9 Q. All right. So now we can
10 establish that you knew that they had that interest
11 even in January of 2014?

12 A. Well, I knew as part of the fourth
13 carrier strategy, yes.

14 Q. Well, how early did you know about
15 the fourth carrier strategy?

16 A. I know that the earliest news
17 articles go back to mid to early 2013, so at least
18 as early as that.

19 Q. Right, but certainly your
20 understanding would not have come only from news
21 articles that you had subsequently read?

22 A. I'm not arguing it only came from
23 that. I just don't know where I first heard that
24 strategy articulated.

25 Q. Okay. Is it fair to assume that

1 you would have had knowledge of the fourth carrier
2 strategy and therefore Catalyst's interest in Wind
3 probably as early as 2013?

4 A. Yes.

5 Q. And it is fair to assume that that
6 would have been actively discussed?

7 A. Again, in the -- I can't remember
8 specifics about that combination being discussed.
9 I remember many other specifics, but not that being
10 discussed.

11 Q. And you also received from
12 Mr. Michaud a copy of a Wind management
13 presentation in February of 2014, and I am going to
14 ask you to turn it up. It is at tab 17 of my
15 cross-examination binder. It is actually tab 17
16 and 18. Tab 17 is the email. Do you see that, Mr.
17 Moyse?

18 A. I see that.

19 Q. And then if you turn to tab 18,
20 you will see the document itself, the "Wind
21 Operational Review, Strategy Update and Revised
22 Business Plan", right?

23 A. That's right.

24 Q. And you understood that this was
25 an internal Wind document?

1 A. I think I did, yeah.

2 Q. And you understood that that
3 internal Wind document had been provided to
4 Catalyst by the management of Wind?

5 A. I don't know how it got to
6 Catalyst.

7 Q. All right. And, sir, did you have
8 any understanding whatsoever as to why Mr. Michaud
9 was sending you the Wind operational review in
10 February of 2014?

11 A. I can't remember for sure.

12 Q. And then, Mr. Moyse, on March 7th,
13 2014, as you have testified in-chief, you were
14 working on a combined pro forma analysis of
15 Mobilicity and Wind, and that is at tab 35 of my
16 cross-examination brief.

17 We see here the email chain between you
18 and Mr. Michaud in relation to the report, and then
19 we see right at the very second page, we see set
20 out there your analysis with respect to the
21 combined pro forma analysis of Mobilicity and Wind,
22 right?

23 A. Right.

24 Q. And I think you gave evidence in
25 your examination in-chief that really what you were

1 doing was simply adding and subtracting or
2 dividing?

3 A. I think it is addition and
4 division, yeah.

5 Q. Yes, addition and division, you
6 were almost functioning as a human calculator in
7 this particular exercise?

8 A. I also had to go get the values
9 from the reports as well.

10 Q. Right. And some of what you
11 extracted for the purposes of this particular pro
12 forma, I suggest to you, came from information that
13 was not in the public domain?

14 A. I think that is true, yes. I
15 think this is sourced, so we can see.

16 Q. Sorry, I didn't catch that last
17 part.

18 A. The footnotes I think indicate
19 where the sources come from.

20 Q. Fair enough. For Mobilicity, as I
21 understand your evidence, and again correct me if
22 I'm wrong, for Mobilicity your evidence is that the
23 data would have come primarily from filings that
24 were made in the CCAA process; is that fair?

25 A. That's correct, I think it came

1 all from that.

2 Q. Okay, but from the Wind
3 perspective, I suggest to you that much of what you
4 put into this presentation came from non-public
5 sources?

6 A. I don't remember. It seems --
7 reading the footnote it seems like it could have
8 come from that management presentation, but I don't
9 remember.

10 Q. But the management presentation,
11 assuming you are correct, Mr. Moyses, you and I will
12 agree was a non-public document?

13 A. Yes.

14 Q. Now --

15 A. Well, sorry, I don't know how it
16 got to Catalyst.

17 Q. Well, let's put it this way.
18 Those aren't the kinds of documents that are
19 disseminated publicly; you understand that?

20 A. I agree with that.

21 Q. And do I take your evidence to be,
22 Mr. Moyses, that notwithstanding that you were
23 accessing non-public information about Wind for the
24 purpose of putting together this presentation -- or
25 sorry, this combined pro forma, rather, that you

1 still had no knowledge whatsoever that Catalyst was
2 in active discussions to potentially acquire Wind?

3 A. Not at all, not at this point.

4 Q. You never asked that question?

5 A. No.

6 Q. A curious fellow like you, who is
7 going around reading investment memos and all the
8 rest that don't relate to any work you are doing
9 for the purpose of educating yourself, you never
10 bothered to ask that question in relation to an
11 actual piece of work that you were doing?

12 A. Voicing one's curiosity was not
13 encouraged.

14 Q. I see. And did you at least
15 understand, Mr. Moyse, that what you were doing
16 here was setting out an analysis that would have
17 allowed Catalyst to assess relative value of a
18 Wind/Mobilicity combination?

19 A. It might be a starting point, but
20 you would have to do a lot more work.

21 Q. Well, I didn't ask you whether it
22 was a starting point or an end point. What I did
23 ask you was did you at least understand that in
24 preparing --

25 THE COURT: Well, look --

1 MR. DiPUCCHIO: You get the point, Your
2 Honour?

3 THE COURT: Well, you may not like the
4 way he was answering it, but he was answering your
5 question.

6 MR. DiPUCCHIO: Well, I think my
7 question was -- and if he did answer it, Your
8 Honour, I will move on. I thought my question was
9 did you understand that what it was doing was
10 providing a value or a relative value --

11 THE COURT: You said it set out an
12 analysis, and he said it might be a starting point
13 and you have to do a lot more work.

14 BY MR. DiPUCCHIO:

15 Q. Right, okay.

16 And, sir, do you know whether in fact
17 there was ever any more work done on this analysis?

18 A. I think it is the same analysis
19 that is in the PowerPoints, and I don't remember
20 ever doing any other work on this analysis that I
21 know.

22 Q. So, so far as you are aware, this
23 was the analysis that ended up being used by
24 Catalyst?

25 A. So far as I am aware.

1 Q. And you then send that analysis, I
2 take it you'll agree with me, and it is in the
3 record at tab 20 of my brief, you then send that
4 analysis to Mr. de Alba --

5 A. Yes.

6 Q. -- on March 8th? Do you see that?

7 A. Yes.

8 Q. And is it your evidence that you
9 never had any other conversation or touch point
10 with Mr. de Alba in relation to this particular
11 piece of work?

12 A. That's correct.

13 Q. Now, I noted in your recent
14 affidavit, Mr. Moyse, I think you basically use the
15 words "I do not recall" several dozen times in
16 relation to why you were doing certain things at
17 certain points in time. And we are all going to be
18 able to read your affidavit, so I don't intend to
19 take you to every example, but do I take it that,
20 sitting here today, you do not have a very good
21 recollection of the type of work you were doing or
22 why you were doing it?

23 A. I don't think that is fair. In
24 many cases where I was involved more deeply with
25 something, I think I have a very good memory. In

1 other cases where I was asked to do specific tasks
2 in short periods of time, no, I don't have a good
3 memory of that.

4 Q. Well, we'll come to some of those
5 examples in a second.

6 Let's talk about March 26th
7 specifically, and March 26th, Mr. Moyse, was a busy
8 day for you because in addition to preparing the
9 slide presentation for Industry Canada, you were
10 also meeting with Mr. Dea?

11 A. Correct.

12 Q. And do you recall that morning
13 being asked by Mr. Michaud to join a call with him
14 and the telecom industry consultant that Catalyst
15 had retained or was retaining?

16 A. I don't remember specifically, but
17 I have seen that I was invited to a call.

18 Q. All right. So again, consistent
19 with His Honour's previous admonition, just answer
20 the question whether you have any recollection of
21 that today?

22 A. No.

23 Q. And so you can't assist us with
24 why you were participating in the call with the
25 telecom industry consultant at that time?

1 A. I can only assume.

2 Q. Yeah, we don't want you to do
3 that.

4 And do you have any recollection -- and
5 I'll take you to tab 22 of my cross-examination
6 brief, just so you have it in front of you, in
7 fairness. Do you have any recollection of having
8 received a copy of this particular PowerPoint
9 presentation from the consultant to review for the
10 purposes of the call?

11 A. No.

12 Q. And I believe that your evidence
13 was that on March 26th, 2014, the workplace was
14 somewhat frantic because of the fact that there was
15 a lot of work being done to prepare the PowerPoint
16 presentation for Industry Canada?

17 A. Yes.

18 Q. Is that fair?

19 A. Yes.

20 Q. And am I right, Mr. Moyse, that
21 what we have now in the record as being the
22 PowerPoint presentation wasn't the only draft of
23 that presentation that was circulated throughout
24 the course of that day?

25 A. That's correct, we had multiple

1 drafts.

2 Q. Do you recall how many drafts of
3 that presentation would have been circulated before
4 settling on the final copy?

5 A. Not specifically. It would have
6 been more than just a couple, though.

7 Q. And each of those drafts were
8 shared with you? In other words, you received each
9 of the drafts and you reviewed each of the drafts?

10 A. I don't remember if I reviewed
11 them, but I certainly would have received them as
12 being the person typing them into PowerPoint.

13 Q. All right, I'll come to that in a
14 second. And your evidence in-chief, I believe, was
15 that you recall all of the notes and all of the
16 drafts having been destroyed as a result of an
17 instruction received by Mr. Riley; is that fair?

18 A. Yes.

19 Q. And so back in 2014, when you were
20 giving evidence in your affidavits in relation to
21 these telecom -- in relation to these regulatory
22 presentations, that is what you understood, that in
23 fact everything had been destroyed, all the drafts,
24 all the notes?

25 A. Correct.

1 Q. And you described it, and I think
2 we have reviewed this and so I'm not going to go
3 over it comprehensively, but you described it in
4 your original affidavit as having been a
5 presentation in relation to Mobilicity?

6 A. That is -- the March one, that is
7 what I remembered, yeah.

8 Q. And you and I can agree that
9 that's wrong; in other words, it is about Wind?

10 A. I think it is a bit about both,
11 but it is not just about Mobilicity, I agree.

12 Q. Okay. And just coming back to the
13 evidence you gave to Mr. Centa, what you are asking
14 this Court to accept is that your role in relation
15 to the presentation, other than preparing a few, as
16 I understand it, tables, two tables I think you
17 described for inclusion in the presentation, was
18 simply to act as a scribe for the purpose of
19 inputting other people's original thought?

20 A. That's right.

21 Q. So you were nothing more, and I
22 think in fact you describe it this way in your
23 affidavit, you were nothing more than an
24 administrative assistant for the purpose of putting
25 together this PowerPoint presentation?

1 A. In this case, yes.

2 Q. And just on that point, does
3 Catalyst have administrative assistants, by the
4 way?

5 A. It does.

6 Q. You, as I understand it, now do
7 not deny that the presentation itself constituted
8 highly confidential and sensitive information?

9 A. I agree.

10 Q. So that now in your trial
11 affidavit you have acknowledged, at least in
12 relation to knowing about the information, that you
13 knew highly sensitive and confidential information
14 as it related to what appears in the slides?

15 A. I don't know if I -- I was
16 certainly made aware of it as a result of typing it
17 in, but I don't know how much of the information I
18 retained or knew.

19 Q. Well, is it your evidence that
20 despite having worked on various drafts of the
21 presentation and then finally preparing the final
22 version of it, you didn't retain any of it?

23 A. Some of it, but I --

24 Q. What parts did you retain?

25 A. I don't remember.

1 Q. Is it your evidence to this Court,
2 Mr. Moyse, that you did not understand any of the
3 presentation?

4 A. I'm not saying I didn't understand
5 any of it. I'm saying I didn't really retain any
6 of it.

7 Q. Well, you just said you don't
8 recall what you retained and what you didn't
9 retain, in fairness, right?

10 A. Understanding and retaining is
11 different.

12 Q. Okay. Well, what do you mean?

13 A. Well, I can understand what it
14 means as I'm typing it in, but because I'm just
15 fulfilling this administrative task, I don't
16 necessarily remember what I typed in a day or a
17 week or two months later.

18 Q. Right, but I'm trying to be a
19 little more precise, Mr. Moyse. Let's get away
20 from I don't necessarily this or I don't
21 necessarily that. What I am asking you is, sitting
22 here today, did you retain any of that work?

23 A. I don't know.

24 THE COURT: When you talk about
25 retaining, are you talking about --

1 BY MR. DiPUCCHIO:

2 Q. In his head, Your Honour, in his
3 head.

4 You don't know?

5 A. No. I can't separate out what I
6 may or may not know from what was in only the
7 presentation or multiple sources.

8 Q. And again, I'm going to ask you,
9 and I apologize if you have answered this already,
10 but is it your evidence that you didn't understand
11 any of what you were being asked to input?

12 A. No, I don't think that is fair.

13 Q. So what did you understand?

14 A. Do you want like on a line-by-line
15 basis?

16 Q. Well, do you want to go through it
17 line by line and see what you understood?

18 A. I understood parts of it, and
19 there are parts I wouldn't have understood.

20 Q. Okay, so what parts, sitting here
21 today, can you assist us with what parts you
22 understood?

23 A. I understood --

24 Q. Do you want to bring it up?

25 MR. CENTA: Yes.

1 BY MR. DiPUCCHIO:

2 Q. Okay, well, let's bring it up. I
3 think we are looking at tab 23 of my brief. This
4 is the email, and I am hoping the attachment is
5 here. Maybe it is in the next one. It's 23-A,
6 Your Honour. This is the presentation, right?

7 A. Yes.

8 Q. Okay, so let's go through the
9 overview. Maybe we'll do it this way. Did you
10 understand anything on this page?

11 A. I mean, I certainly understand
12 all -- I mean, I certainly understand all the
13 sentences. I didn't at the time and even now today
14 don't understand what was necessarily a Catalyst
15 position to the government versus its own internal
16 views. And I don't know what any of this
17 litigation was about.

18 Q. Well, hold on a second. What are
19 you talking about, bullet point number two?

20 A. Yeah.

21 Q. You didn't know what the reference
22 to potential litigation in the Mobilicity context
23 was?

24 A. Yeah, I knew Mobilicity was in a
25 CCAA process and that entails a lot of litigation,

1 but not specifically, no.

2 Q. And you couldn't understand the
3 sentence there, I take it, is what you are telling
4 us, that Mobilicity and its creditors, other than
5 Catalyst's support for Court using its statutory
6 power to approve a transfer of spectrum without
7 regard to government policy; you couldn't
8 understand that?

9 A. That I understand.

10 Q. Okay, so you understood that part?

11 A. But I don't really know what the
12 impact of any of that is. I don't know the
13 consequences.

14 Q. Well, what about the third point?

15 A. I mean, that is --

16 Q. "Catalyst has been and will
17 continue to be fully supportive of
18 the government's policy."

19 A. I understand all of that, but
20 again, I can't tell the difference between
21 Catalyst's positioning and what Catalyst was
22 actually prepared to do internally.

23 Q. I haven't actually asked you about
24 any positioning or negotiation. I'm just asking
25 you to tell us what you understood versus what you

1 didn't understand.

2 A. Yes, I would have understood that.

3 Q. Okay, go to the next slide. You
4 hopefully would have understood some of this,
5 because this is what you contributed to the memo,
6 right?

7 A. I can understand the charts, what
8 they are getting at, yes.

9 Q. All right. And go over to the
10 next slide, "Current Government Policy and Goals",
11 did you understand the two points on that page?

12 A. I understand the main points. I
13 don't necessarily understand some of those
14 sub-bullets, so I don't know what "Arbitration
15 process to enforce policy mandates" means.

16 I don't really know what "Introduce
17 innovation back into an oligopolistic market"
18 means.

19 I mean, I understand what "Initiation
20 of discussion" means, but I don't really know what
21 the details of those discussions would have been.

22 Q. Let's go to the next slide,
23 "Current Environment/Landscape"; did you understand
24 any of what was contained in this slide?

25 A. I think it is more of the same,

1 where I understand that the incumbents have a lot
2 of the market. I don't necessarily understand what
3 the operational tactics and legal loopholes are,
4 what the arbitration process means.

5 Q. Did you understand the last point,
6 Mr. Moyses, that there had been "limited traction in
7 establishing a strong fourth carrier in every major
8 market"?

9 A. I understand what that means. I
10 don't know if that was true or not. I hadn't
11 really done the analysis of all the different
12 telecom markets in Canada.

13 Q. Well, you knew points one and two
14 in that heading, right?

15 A. I'm not sure what "Court solution
16 likely to be inconsistent with the government's
17 policy" necessarily means.

18 Q. You had no knowledge of what that
19 meant, even though you were on the Mobilicity deal
20 team?

21 A. I just don't know what the
22 solution would have been and how that would be
23 inconsistent. I could certainly imagine some
24 solutions that might be and some that might not be.

25 Q. The next page, how about

1 "Economics of Creating the 4th Wireless Network",
2 did you understand at least what was set out in
3 this slide?

4 A. I can understand the math, but
5 I -- actually, I remember this very clearly where
6 they revised these numbers several times, it seemed
7 somewhat arbitrarily.

8 Q. So you recall some back and forth
9 on these numbers?

10 A. I do.

11 Q. The next page, the "Strategic
12 Options: Option 1":

13 "Combination of Wind
14 Canada/Mobilicity to create a 4th
15 national carrier focussed on the
16 retail market."

17 And I take it for sure you understood
18 what was set out here?

19 A. That top bullet, yes, seems pretty
20 clear.

21 Q. Anything else you didn't
22 understand on this slide?

23 A. Well, I mean, again, I understand
24 "Negotiations with VimpelCom are well advanced",
25 but I didn't -- that was the first I ever heard of

1 it, so yes, I understand the phrase, but that
2 wasn't my understanding of the situation.

3 Q. The next page, "Strategic Options:
4 Option 2", did you understand that the "Combination
5 of Wind Canada/Mobilicity to create a 4th national
6 carrier focussed on the wholesale market" was an
7 option?

8 A. I mean, from this, yes, I
9 understood it was an option. I don't necessarily
10 understand what the economics and how that changes
11 the strategy, but yes, I understand it was an
12 option.

13 Q. And you understood the
14 requirements? No issue in understanding that?

15 A. In concept, yes.

16 Q. The next slide, "Strategic
17 Options: Option 3":

18 "CCAA Mobilicity Court process
19 sale to Telus without (or with)
20 government support."

21 Did you understand that?

22 A. Not really.

23 Q. You didn't really understand that?

24 A. A lot of the bullet points even
25 now, having read a lot more production than I have

1 ever seen on this, are very vague to me.

2 Q. So you didn't understand that what
3 was being set out here as option number 3 was
4 potential litigation?

5 A. Well, I mean, as part of CCAA,
6 people tend to fight over things, so I knew that
7 was the case.

8 Q. But did you not know that what was
9 being discussed here was the fact that if the
10 government didn't support the sale to an incumbent,
11 that there would very likely be litigation that
12 would result from that? Surely you understood that
13 from this slide?

14 A. Well, yeah, the second bullet
15 seems to say that.

16 Q. Then you understood it?

17 A. I don't know what I understood at
18 the time.

19 Q. The next page, and then you have a
20 variety of appendices, and I am not going to go to
21 those.

22 Now, Mr. Moyse, do you recall Mr.
23 Glassman discussing with the investment
24 professionals at Catalyst the regulatory
25 environment for telecom?

1 A. Not specific discussions, but it
2 did come up.

3 Q. Okay. And again, those kinds of
4 answers I'm not sure are very helpful. When you
5 say I don't recall specific discussions but it did
6 come up, are you saying that you recall that those
7 topics were discussed but you can't give us
8 specifics of those discussions today?

9 A. That's correct.

10 Q. And do you recall that Mr.
11 Glassman had discussions with the investment
12 professionals at Catalyst about a certain case that
13 he was involved in in the U.S. called NextWave?

14 A. No, not at all.

15 Q. You don't recall Mr. Glassman
16 suggesting that you read NextWave?

17 A. No, not at all.

18 Q. Now, when you met Mr. Dea for
19 coffee at Aroma that day, I think you said in your
20 evidence in-chief that your assumption is that
21 because you recall the preparation of this
22 presentation being a frantic exercise, that most
23 likely you would not have been preparing it at the
24 time that you went to meet Mr. Dea for coffee; is
25 that a fair characterization of your evidence?

1 A. I think so.

2 Q. But you can't recall, sitting here
3 today, one way or the other?

4 A. I know it would have been
5 uncharacteristic, but no, I can't recall.

6 Q. And so when you met with Mr. Dea,
7 I'm going to suggest to you, Mr. Moyse, that in
8 fact you did discuss with Mr. Dea certain work that
9 you were doing while at Catalyst?

10 A. I did not, not specifically.

11 Q. You didn't mention any companies
12 whatsoever to him?

13 A. No. That I was working on? No.

14 Q. Do you remember mentioning
15 Advantage to him?

16 A. No.

17 Q. Do you remember mentioning
18 Callidus to him?

19 A. I remember that came up.

20 Q. That one you remember?

21 A. Yes.

22 Q. And is the reason you remember
23 Callidus because we now have an email from Mr. Dea
24 which reflects that you were discussing something
25 about Callidus in the course of that interview? Is

1 that why you remember it?

2 A. Well, I remembered it before, and
3 I remember what I replied to him.

4 Q. So Callidus was discussed, but you
5 can't remember any other company specifically being
6 discussed?

7 A. No.

8 Q. And I am going to suggest to you,
9 Mr. Moyse, that as you were involved in having
10 discussions with the regulatory advisor or the
11 telecom advisor to Catalyst the morning of June
12 26th -- or sorry, I said June 26th, but March 26th,
13 and as you were tasked with this exercise of
14 preparing this PowerPoint, that you did mention to
15 Mr. Dea in this interview that you were working on
16 Wind?

17 A. I did not.

18 Q. And the reason you mentioned it to
19 him, I suggest to you, Mr. Moyse, is because you
20 didn't see anything confidential about your
21 involvement in Wind?

22 A. I didn't mention it to him.

23 Q. But did you see anything
24 confidential about your involvement in Wind?

25 A. At that time, I didn't even think

1 I was involved in Wind.

2 Q. Even as you were preparing this
3 PowerPoint presentation, you still didn't feel that
4 you were involved in Wind?

5 A. I was certainly involved in
6 Catalyst's telecom team, but we had done no work on
7 Wind to that point, so I didn't think of it that
8 way.

9 Q. And, sir, when you say that you
10 recall a response to Mr. Dea in relation to
11 Callidus; do you remember that?

12 A. I do.

13 Q. We know in the record, and I don't
14 have it at my fingertips but we have seen it
15 before, we know that Mr. Dea sends you an email
16 shortly after your interview asking you a question
17 about Callidus, right?

18 A. That's right.

19 Q. And you say you recall responding
20 to Mr. Dea, right?

21 A. Yes.

22 Q. And you would have responded to
23 him by email?

24 A. Yes.

25 Q. And we haven't seen any record

1 either in your productions or in the West Face
2 productions of any email response; is that fair?
3 You haven't seen one, have you?

4 A. I haven't seen one, no.

5 Q. And is that because, Mr. Moyse,
6 you deleted your response to Mr. Dea?

7 A. Yes.

8 Q. You recall deleting your response
9 to Mr. Dea?

10 A. No, not specifically. I can't
11 explain why it is not there, but --

12 THE COURT: Well, look, I want you to
13 be careful about how you are answering. You say
14 you can't explain why it is not there, but 30
15 seconds ago you said you deleted your response.

16 THE WITNESS: That is the only
17 explanation I can --

18 THE COURT: Well, you have got to
19 listen carefully and answer carefully.

20 BY MR. DiPUCCHIO:

21 Q. Sitting here today, I gather, Mr.
22 Moyse, you can't tell us why that email doesn't
23 appear in either your productions or the West Face
24 productions?

25 A. I can't.

1 Q. Now, there is the next
2 presentation that you assisted in preparing, and
3 that is the one in May of 2014. This is at tab 27.
4 I'm not going to take you through this one, Mr.
5 Moyse. I think, in fairness, we can all agree that
6 in substance it sort of echos what was said in the
7 first presentation, largely, right?

8 A. Sure.

9 Q. Okay. And you understood that it
10 was being prepared for the purposes of a meeting
11 with Industry Canada the following day?

12 A. Correct.

13 Q. And, sir, what did you understand
14 was actually being discussed with Industry Canada?
15 Did you have any understanding, or were you just in
16 the dark?

17 A. Aside from what is in the
18 presentation, I didn't know what was being
19 discussed with Industry Canada.

20 Q. But did you have any understanding
21 as to why Catalyst had met with Industry Canada in
22 March and was meeting again with Industry Canada in
23 May?

24 A. I have a -- I can make a good
25 guess.

1 Q. Don't guess.

2 A. No, I'm saying I can't -- nobody
3 articulated it to me.

4 Q. And you didn't ask anybody? You
5 just were content to stay in the dark?

6 A. Well, I made my own assumption
7 that I was comfortable with.

8 Q. And that is why you didn't ask
9 anybody?

10 A. Right.

11 Q. And was the assumption that you
12 made at the time that Catalyst was meeting with
13 Industry Canada in March and then again in May of
14 2014 in an attempt to have Industry Canada
15 understand its regulatory strategy in the event of
16 a combination of Wind and Mobilicity?

17 A. That would be part of -- I
18 wouldn't necessarily go that far.

19 Q. Well, how far should I go, Mr.
20 Moyse?

21 A. Just that it is important to keep
22 a dialogue with the regulator if you have an
23 interest in a highly regulated industry.

24 Q. And what is the importance of
25 maintaining a dialogue, for what reason?

1 A. To help accomplish your goals.

2 Q. And what were the goals that
3 Catalyst was seeking to accomplish, to your
4 understanding?

5 A. The one I knew was building a
6 fourth wireless carrier.

7 Q. Right, and what was it needing to
8 discuss with Industry Canada with respect to
9 building a fourth wireless carrier?

10 A. Whatever is in these
11 presentations.

12 Q. So you understood everything that
13 was in the presentations then?

14 A. No, but I understood that was the
15 point of the document.

16 Q. And again, Mr. Moyse, your
17 evidence to this Court is that in relation to the
18 second PowerPoint presentation, your role was
19 purely clerical or administrative in nature?

20 A. It was the same process as the
21 first one, essentially.

22 Q. Right, and therefore purely
23 clerical and administrative in nature?

24 A. Correct.

25 Q. Now, you are copied on an email

1 chain that I would like to take you to at tab 28 of
2 my cross-examination brief. This is an email chain
3 that takes place over the course of two days, May
4 6th and May 7th, 2014.

5 So if you go to the bottom of the
6 chain, Mr. Moyse, because you are copied on all of
7 this -- well, this part here, no, just go up.

8 So right here is a copy of an email
9 from Mr. Glassman on May 6th, 2014 in response to
10 some information from UBS, and Mr. Glassman says:

11 "Technically not \$300 million
12 in cash (although it could be) --
13 \$300 million in total value and we
14 get to choose between replacing
15 current vendor financing or
16 re-negotiating with them etc...

17 Also, I think due diligence can
18 be confined primarily to spectrum
19 ownership and opinions thereon etc.
20 since we are buying way below
21 spectrum value. Need a condition of
22 government approval..."

23 So stopping right there for a moment,
24 Mr. Moyse, I take you understood the discussion
25 here in relation to value and the economics of the

1 deal?

2 A. Well, I don't really know, I
3 didn't know what the vendor financing was at Wind.
4 I understand 300 million of value, though.

5 Q. And the vendor financing, though
6 you may not know -- may not have known it on May
7 6th, you certainly would have figured that out
8 relatively quickly when you had access to the data
9 room shortly thereafter, right?

10 A. Yes.

11 Q. Okay. So you had all of the tools
12 available to you on or about May 6th or shortly
13 thereafter to understand the economics of the deal?

14 A. Yes.

15 Q. And then in relation to the
16 paragraph below where Mr. Glassman is expressing
17 the opinion that:

18 "[...] due diligence can be
19 confined primarily to spectrum
20 ownership and opinions thereon since
21 we are buying way below spectrum
22 value."

23 You understood that to be a reference
24 to the fact that the due diligence process was
25 actually going to be substantially more confined in

1 this case?

2 A. That is what he was saying here,
3 but in the end that is not -- that wasn't what
4 happened.

5 Q. Okay, but do you understand that
6 is what Mr. Glassman was saying? You had no
7 problems understanding that?

8 A. Yeah, I understand what he is
9 saying.

10 Q. Okay. And when he says "because
11 we are buying way below spectrum value", what he is
12 relying upon, I suggest to you, in order to make
13 that statement was the assignment of value that you
14 had made in your pro forma?

15 A. I can't say what he was relying on
16 when he said that.

17 Q. Well, were you aware of any other
18 assessment of spectrum value that was performed
19 prior to this email chain?

20 A. Am I aware? No.

21 Q. And the "need a condition of
22 governmental approval", did you have any problems
23 understanding that?

24 A. "Government approval" can mean a
25 lot of things, so I didn't really know what that

1 meant.

2 Q. All right. And now if you go up
3 in the chain, you will see an email from Mr. de
4 Alba, and again you are copied on it, and it says:

5 "The vendor financing is in the
6 default notice period."

7 Did you know that, Mr. Moyse?

8 A. Not prior to this email.

9 Q. "We can negotiate to keep it but
10 I suspect one of the reasons why the
11 vendors did not roll over (for a
12 large equipment buyer such as Wind)
13 or are playing hardball is because
14 without clarity on who, how and when
15 the spectrum can be sold their
16 collateral package is very weak."

17 Do you see that?

18 A. I see that.

19 Q. And did you understand that? Did
20 you have any problems understanding that, that
21 there was an issue with respect to the
22 transferability of the spectrum, and therefore,
23 there could be an issue with respect to how weak or
24 strong their collateral was?

25 A. I understand that is Gabriel's

1 view, yes.

2 Q. And you understood it at the time?
3 You had no issue understanding it at the time, I
4 suggest to you?

5 A. I would have understood that,
6 yeah.

7 Q. And then he goes on to say:
8 "This can be positioned to our
9 advantage with the government to get
10 the required clarity on the ability
11 to sell spectrum and/or monetize the
12 investment."

13 And then he goes on to actually quote
14 verbatim what the argument to the government would
15 be, right?

16 A. He does.

17 Q. And you had no issue, I suggest to
18 you, Mr. Moyse, understanding any of this because
19 this was entirely consistent with the regulatory
20 presentation that you had helped prepare?

21 A. A month and a half later, almost a
22 month and a half later, I don't know if I would
23 have connected this -- I did not connect this to
24 the regulatory presentation.

25 Q. But apart from whether it was

1 connected to the regulatory presentation or not, I
2 take it you had no trouble understanding that the
3 argument to the government was going to be we want
4 the ability to sell the spectrum in order to
5 monetize the investment?

6 A. Gabriel is saying that that's what
7 they can present to the government.

8 Q. And subsequent to that, as we have
9 just seen, a few short days later, you are
10 assisting again in preparing the presentation to
11 Industry Canada, right?

12 A. Right.

13 Q. Where this precise kind of
14 language appears again?

15 A. Right.

16 Q. So you would have then connected,
17 I'm assuming, for the purposes of preparing that
18 presentation you would have known full well why
19 that presentation was being prepared, because Mr.
20 de Alba signals it to you right in this email?

21 A. I don't know what I connected at
22 the time.

23 Q. And then if you scroll up, Mr.
24 Glassman then says:

25 "Government has told us today

1 via Bruce D that they will not give
2 us in writing the right to sell
3 spectrum in 5 years. My response is
4 that such takes option 1 off the
5 table and we would only be willing
6 to build a wholesale/leasing
7 business specifically with
8 incumbents as the customers. They
9 know this. We are going to Ottawa
10 early next week. They also asked
11 for our help to understand who
12 really is controlling VimpelCom's
13 decision-making and to get our input
14 prior to next week's Mobilicity
15 mediation."

16 There again, Mr. Moyse, I'm going to
17 suggest to you that that is all pretty plain
18 English and you would have understood exactly what
19 Mr. Glassman was saying to you?

20 A. I understand the sentence. I
21 don't necessarily understand the consequences, the
22 economic strategy associated with the wholesale
23 leasing business.

24 Q. But you understood the reference
25 to option 1 being the reference to the retail

1 carrier?

2 A. I understand that for sure now.
3 At that time, I don't know if I would have made
4 that connection.

5 Q. And I just want to take you for
6 one brief moment to your April 2015 affidavit, just
7 to see what you said in April 2015, and this is at
8 tab 4 of the brief, Your Honour.

9 It is on the screen, Mr. Moyse, and I
10 am looking specifically at paragraph 18 of that
11 particular affidavit, and you say this to the
12 Court:

13 "The junior employees,
14 including me, spent those early days
15 learning about Wind, primarily by
16 reviewing information made available
17 by the company through a data room.
18 The only regulatory risk related to
19 Wind of which I was aware, was
20 whether or not the Federal
21 Government would allow a new
22 wireless entrant to sell its
23 spectrum and/or be purchased by an
24 incumbent. I learned about this
25 regulatory issue through the

1 extensive media coverage it received
2 in both the general and business
3 news. I did not do any analysis on
4 that subject or any other regulatory
5 issues facing Wind, and if anyone at
6 Catalyst did such an analysis before
7 I left, I was not informed of and
8 was not aware of it."

9 Now, I take it, Mr. Moyse, given what
10 we have just looked at, that you and I can agree
11 that this concept that you only were aware of the
12 regulatory risk via your having read it in the
13 media wasn't true?

14 A. Well, once I became aware of it
15 through the media, I'm not sure what significance
16 further mentions of it have, once I know it.

17 Q. Oh, I'll tell you the significance
18 of it, Mr. Moyse. The significance of it, quite
19 frankly, was you were putting forward a position to
20 the Court in April of 2015 that any discussion in
21 relation to regulatory risk was only brought to
22 your attention through the media. That is the
23 impression you were trying to convey?

24 A. I said that is where I learned
25 about it. I don't say that --

1 MR. CENTA: Objection. I don't think
2 it is helpful to re-characterize a paragraph in an
3 affidavit and put it back to a witness and ask him
4 to agree that that's what he was attempting to
5 convey to the Court. The paragraph says what it
6 says.

7 BY MR. DiPUCCHIO:

8 Q. All right, can you and I at least
9 agree to this, Mr. Moyse, that not only did you
10 learn about it through the media, but in fact, you
11 did have discussions within Catalyst about these
12 regulatory issues?

13 A. There were discussions about
14 regulatory issues at Catalyst, yes.

15 Q. And when you say in your affidavit
16 that:

17 "I did not do any analysis on
18 that subject [...], and if anyone at
19 Catalyst did such an analysis before
20 I left, I was not informed of and
21 was not aware of it."

22 I take it that you would agree with me
23 that the presentations that you were involved in
24 certainly contradict your statement there?

25 A. I don't agree with that, because

1 the presentations were Catalyst's positioning to
2 the Federal Government, not necessarily Catalyst's
3 analysis of the issues internally.

4 Q. Okay. So you make the distinction
5 between an analysis and what it was saying to the
6 Federal Government?

7 A. I just didn't know what was a
8 position and what wasn't.

9 Q. And just by the by, Mr. Moyses,
10 when you look at this same affidavit, in paragraph
11 24 specifically, in the sentence starting "Moreover
12 [...]", in that paragraph:

13 "Moreover, as described above,
14 any information that I had access to
15 prior to my departure from Catalyst
16 was extremely preliminary. If
17 anyone at Catalyst had begun to
18 develop negotiation plans by the
19 time of my departure, which would
20 surprise me given the preliminary
21 stage of our work, I was not
22 included in any discussions, nor did
23 I ever see any documents concerning
24 such plans, including drafts."

25 And we know now, Mr. Moyses, would you

1 agree with me, that in fact you were the recipient
2 of a draft?

3 A. A draft what?

4 Q. A draft offer.

5 A. I was included on that email. I
6 did not read the draft offer.

7 Q. Right, but what you are saying
8 here to the Court, are you saying here to the Court
9 that although you received it, you didn't see it
10 because you never opened it?

11 A. That's correct.

12 Q. I see.

13 A. I was on vacation and I didn't
14 open it.

15 Q. I see. Now, as we have just
16 discussed, Mr. Moyse, you went on vacation on May
17 16th, 2014, right?

18 A. Yes.

19 Q. And it was in the middle of the
20 Wind deal; correct?

21 A. It was after the deal -- we had
22 gotten started on the deal, yes.

23 Q. And did you tell Mr. de Alba that
24 the purpose of your trip was you were taking a
25 vacation with your girlfriend in order to propose

1 to her?

2 A. Absolutely not.

3 Q. You didn't say that?

4 A. In fact, I actively discouraged
5 that speculation, and I only bought a ring over a
6 year later.

7 Q. Okay. Was there speculation about
8 that?

9 A. They like -- people liked to make
10 jokes about it, and I told them to stop and that is
11 not what I was doing.

12 Q. And if we go to tab 29 of the
13 cross-examination brief, this is one of the emails
14 I think you and I can agree that was sent to you
15 while you were on your trip; correct?

16 A. Scroll down. But I recognize it,
17 yes.

18 Q. And am I right, Mr. Moyse, that
19 what is happening in this email chain is that you
20 are being sent a working model for Project Turbine?

21 A. Correct, so -- well, keep
22 scrolling down. I can't remember who sent it.

23 Right, that is what I thought, so
24 Morgan Stanley, who was working on the model, sent
25 it to us.

1 Q. Okay. And you then, I take it,
2 were asked to give your comments?

3 A. Yeah, Zach Michaud forwarded it to
4 myself and Lorne Creighton asking us to pass
5 comments on it.

6 Q. And so Mr. Creighton, we see in
7 the email chain that comes after Mr. Michaud's
8 email, gives a couple of high-level comments,
9 right?

10 A. He does.

11 Q. And then you chime in and you say:

12 "In the 'LBO' tab [...]"

13 And I assume that is a reference to the
14 leveraged buyout tab?

15 A. Correct.

16 Q. "[...] aren't we buying this
17 debt-free? I thought \$300 million
18 buys out all the vendor financing
19 and the shareholder loans go away as
20 well. But the current case is
21 keeping them in place and
22 subtracting those from EV to
23 calculate equity returns. Unless
24 I'm misunderstanding, they should
25 run a 2nd base case which better

1 reflects how the transaction would
2 actually be structured (maybe a 1a
3 and 1b depending on if we roll
4 vendor financing or not)."

5 And I suggest to you, Mr. Moyse, that
6 by May 19th, 2014, you certainly had a fairly
7 in-depth knowledge of the economics of the
8 transaction?

9 A. Well, I knew the price was 300
10 million, and my assumption was that that buys
11 everything in the company, and that is all I knew.

12 Q. Well, it wasn't an assumption.
13 That is what you had been told by Mr. Glassman?

14 A. No, that is what I believed based
15 on our discussion in the management meeting with
16 Wind.

17 Q. Okay. So that is a discussion you
18 recall having during the management meeting that
19 you had with the individuals at Wind?

20 A. It came up, yeah.

21 Q. And that was a meeting that you
22 participated in on May 9th, I believe?

23 A. That's correct.

24 Q. And in any event, regardless of
25 where you obtained this knowledge, you agree that

1 you had a fairly good understanding of the
2 economics of the deal at this point in time?

3 A. I'm not trying to characterize my
4 understanding. I'm saying I understood the price
5 was 300 million and that that buys out the vendor
6 financing and shareholder loans.

7 Q. Now, despite the fact that you say
8 that you were on vacation and you were only really
9 responding to emails on an as-requested basis, I'm
10 going to suggest to you, Mr. Moyse, that in fact
11 you were reviewing your emails to keep yourself
12 apprised as to what was going on in relation to
13 Wind?

14 A. No.

15 Q. And I suggest to you that in fact
16 you were looking at things like the offer that came
17 through to you?

18 A. No.

19 Q. And in fact, you were so curious,
20 Mr. Moyse, about the status of the deal, as we have
21 looked at earlier today, that notwithstanding you
22 being on vacation, you asked Mr. Creighton what the
23 status of the deal was?

24 A. I was curious enough to ask him,
25 but I didn't really want to look through all the

1 emails and documents.

2 Q. All right. That is just curiosity
3 on your part?

4 A. Yeah, pretty idle curiosity.

5 Q. And, Mr. Moyse, I'm going to
6 suggest to you, I'm going to suggest to you that
7 the reason you were asking Mr. Creighton on May
8 23rd to tell you about the status of the deal was
9 not idle curiosity, but it was because you were
10 going to pass that information along to Mr. Dea?

11 A. Absolutely not.

12 Q. And, Your Honour, just for your
13 reference, the emails we are talking about with
14 Mr. Creighton are the one I took you to earlier,
15 and then there is one at tab 31 of the brief. And
16 I think our agreement is we have to refer to these
17 emails in order for them to form part of the
18 record.

19 So, Mr. Moyse, is this one of the
20 emails you sent to Mr. Creighton on May 20th, 2014,
21 asking him what is the story with Wind?

22 A. Sorry, I think it is in the middle
23 of the --

24 Q. It is right on the first page, in
25 the middle of the first page; do you see that?

1 A. Yes, I sent him that.

2 Q. And then Mr. Creighton responds to
3 you and says as far as he knows, the plan is to
4 submit the offer on Friday, right?

5 A. That's right.

6 Q. Give me one second, as I find a
7 document.

8 I'll come back to it in a second, as I
9 find it.

10 Am I right, Mr. Moyse, that you gave
11 some evidence earlier today about the fact that you
12 started looking for a job, another job in December
13 2013, right?

14 A. Yes.

15 Q. And that you had essentially
16 determined to leave Catalyst even in the absence of
17 receiving any offer, right?

18 A. Yes.

19 Q. You were very unhappy there,
20 right?

21 A. That's right.

22 Q. And I think you described it as
23 being very frustrated this morning?

24 A. Yes.

25 Q. And am I right that at this time

1 you developed a certain animus towards Catalyst?

2 A. I don't agree.

3 Q. You didn't develop a certain
4 animus towards the partners at Catalyst?

5 A. I disliked working there, but I
6 didn't develop any animus towards them.

7 Q. Did you joke with your friends in
8 a derogatory way about Catalyst?

9 A. Yes.

10 Q. Did you joke with people at West
11 Face in a derogatory way about Catalyst?

12 A. Yes.

13 Q. Do you recall joking with the
14 people at West Face or the people at West Face in
15 June of 2014 referred to Mr. Glassman as a fatter,
16 shorter Kim Jong Il to you?

17 A. Yes, I recall that.

18 Q. And do you recall passing along
19 that joke to your friends?

20 A. I do.

21 Q. And I suggest to you the reason
22 you were joking about people at Catalyst in a
23 derogatory way is precisely because you had
24 developed a certain animus towards them?

25 A. I don't agree.

1 Q. And even in your very first
2 affidavit, Mr. Moyse, part of what you decided to
3 file in the public record were statements that you
4 were making in an attempt to embarrass Catalyst?

5 A. I was making --

6 THE COURT: I'm having problems with
7 this kind of -- you go ahead, Mr. Centa. I suspect
8 I know why you are on your feet.

9 MR. CENTA: Partly because the
10 affidavit was responsive to an allegation that a
11 restrictive covenant was to be imposed and there is
12 a legal part of the test that deals with the good
13 faith departure of an employee, and the reasons
14 that an employee is choosing to leave are squarely
15 relevant to their ability to enforce the
16 restrictive covenant. And I don't think it is open
17 to Mr. DiPucchio to inquire into the mala fides of
18 a pleading filed in a proceeding.

19 THE COURT: What I was going to say,
20 Mr. DiPucchio, is we are all aware that witnesses
21 usually don't make decisions as to what tactically
22 is going to be in an affidavit, and I have seen
23 affidavits today that clearly contain argument that
24 had no business being in an affidavit and --

25 MR. DiPUCCHIO: Well, that is fair,

1 Your Honour.

2 THE COURT: And the problem with
3 putting to the witness why something is in an
4 affidavit probably gets into privilege because the
5 lawyers call that shot, usually.

6 MR. DiPUCCHIO: Well, I take your point
7 on that, except for the fact that I was going to
8 ask a question, and maybe we don't need to go to
9 it, Your Honour, but there is actually an email
10 exchange with one of his friends where says he is
11 going to respond in a way that's going to embarrass
12 Catalyst --

13 THE COURT: Well, that's different --

14 MR. DiPUCCHIO: But, in any event, I'm
15 not going to spend time on this, Your Honour. We
16 can move on.

17 BY MR. DiPUCCHIO:

18 Q. Let me ask you about a call log
19 that was produced to us --

20 THE COURT: You are now being called
21 "Mr. Milne-Smith" in the transcript.

22 MR. DiPUCCHIO: I'm sure
23 Mr. Milne-Smith won't appreciate that, Your Honour,
24 so we'd better get that corrected. I'll speak for
25 him. Mr. Thomson hasn't risen yet.

1 MR. THOMSON: He would treat it as a
2 compliment, I assure you.

3 BY MR. DiPUCCHIO:

4 Q. I want to take you, Mr. Moyse, to
5 a record of some phone calls --

6 THE COURT: Is this a convenient time
7 for the afternoon break?

8 MR. DiPUCCHIO: It is, Your Honour,
9 yes.

10 -- RECESSED AT 3:37 P.M.

11 -- RESUMED AT 3:53 P.M.

12 BY MR. DiPUCCHIO:

13 Q. Mr. Moyse, before we took the
14 break, I was just about to refer you to a telephone
15 call log that we received a few weeks back from my
16 friends representing West Face. This is at tab 13
17 of the cross-examination brief, Your Honour.

18 Mr. Moyse, we have talked a little bit
19 about the call that occurred on May 23rd with Mr.
20 Dea, which was the same day that you were emailing
21 Mr. Creighton about the status of the Wind deal,
22 right?

23 A. Correct.

24 Q. And I took from your evidence that
25 you are not able to give us any explanation

1 whatsoever for the calls that are recorded on June
2 19th, July 8th and July 15th of 2014?

3 A. No.

4 Q. Now --

5 THE COURT: Does your question involve
6 both calls on June 19th or just one of them?

7 MR. DiPUCCHIO: Sorry, Your Honour, you
8 are quite right, there is the one call from Supriya
9 Kapoor which I took it Mr. Moyse had described in
10 his evidence in-chief, Your Honour, in the
11 affidavit that has been filed. So really my
12 question was only in relation to the second call,
13 and then the two calls in July.

14 THE COURT: Thank you.

15 BY MR. DiPUCCHIO:

16 Q. Mr. Moyse, I want to take you to
17 the email chain that your counsel took you to
18 earlier today. It is found at tab 32 of my brief.
19 Do you recall this chain, Mr. Moyse, between you
20 and your friend Mr. Matlin?

21 A. That's right.

22 Q. And one of the things you said
23 this morning in response to your counsel's question
24 was that you actually know now that the information
25 you were giving to Mr. Matlin was incorrect in

1 relation to the West Face deal?

2 A. Correct.

3 Q. And the information, just so we
4 understand, that you give to Mr. Matlin on
5 September 16th, 2014, is that you thought that West
6 Face was just backing Wind financially:

7 "(My guess is they are lenders
8 to the new company and maybe have
9 some equity or warrants)."

10 Now, Mr. Moyse, you haven't produced
11 any article contemporaneous with this September
12 email that reflects that having been reported as
13 the transaction?

14 A. I thought I had produced articles.
15 If I didn't, then I didn't.

16 Q. Okay. And I'm going to suggest to
17 you, Mr. Moyse, that this wasn't just a bad guess,
18 as counsel are portraying it now. In fact, what
19 you are telling Mr. Matlin is consistent with what
20 West Face was proposing back in April and May of
21 2014?

22 A. I neither knew that at this time,
23 at the time I sent this email, and I don't even
24 know the terms of their proposals now.

25 Q. And I'm going to suggest to you,

1 Mr. Moyse, that in fact you did know that back in
2 April of 2014 and May of 2014 that West Face was
3 proposing to simply lend to the company and take
4 equity or warrants later on, and that is why, that
5 is why you make an educated guess as to the
6 structure of the transaction in September?

7 A. No.

8 Q. And I'm going to put to you, Mr.
9 Moyse, that in fact you did have discussions in the
10 April, May, June timeframe with people at West Face
11 with respect to the Wind transaction?

12 A. Not at all.

13 Q. And I am going to suggest to you,
14 Mr. Moyse, that you passed along the information
15 you had in relation to that transaction which you
16 learned at Catalyst, including the regulatory
17 structure or the regulatory risks that Catalyst was
18 outlining in the presentation to Industry Canada?

19 A. I didn't do that.

20 Q. And I am going to suggest to you
21 further, Mr. Moyse, that you had in your possession
22 information on your personal computer that
23 reflected that information, that regulatory
24 strategy, and that the reason you installed Secure
25 Delete and opened the program was for the purpose

1 of deleting evidence of that information?

2 A. No.

3 MR. DiPUCCHIO: Thank you, Your Honour,
4 those are my questions for this witness.

5 THE COURT: Any re-examination?

6 RE-EXAMINATION BY MR. CENTA:

7 Q. Very brief, Your Honour.

8 If I could turn up in Mr. DiPucchio's
9 book of cross-examination tab 28. If we could
10 scroll down to the bottom of that. Thank you,
11 right there.

12 Do you recall, Mr. Moyse, that
13 Mr. DiPucchio asked you some questions about the
14 email from Mr. Glassman sent at 4:04 p.m. on May
15 6th?

16 A. I do.

17 Q. And in the second -- in the
18 paragraph that begins "Also [...]", the text of the
19 email reads:

20 "Also, I think due diligence
21 can be confined primarily to
22 spectrum ownership and opinions
23 thereon [...]"

24 Do you recall Mr. DiPucchio asking you
25 some questions about that?

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

Court File No. CV-16-11595-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF
PROCEEDING COMMENCED AT
TORONTO**

**MOTION RECORD OF THE DEFENDANT/MOVING
PARTY WEST FACE CAPITAL INC.
(VOLUME 18 OF 19)**

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