#### Divisional Court File No. 648/15 Superior Court of Justice Court File No. CV-14-507120

## ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

#### BETWEEN:

#### THE CATALYST CAPITAL GROUP INC.

Plaintiff/ Moving Party

- and -

#### BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/ Responding Parties

### MOTION RECORD OF THE DEFENDANT/RESPONDING PARTY, BRANDON MOYSE

Motions to Extend Time for Leave to Appeal and Leave to Appeal Returnable January 21, 2016

January 18, 2016

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| 2       | Letter from Andrew Winton to Matthew Milne-Smith and Robert A. Centa, May 21, 2015, enclosing answers to question taken under advisement and corrections arising out of Cross-Examination of Martin Musters on May 19, 2015 | 38 – 57 |

## **TAB 1**

Court File No. CV-14-507120 1 2 ONTARIO 3 SUPERIOR COURT OF JUSTICE 4 5 BETWEEN: 6 8 THE CATALYST CAPITAL GROUP INC. Plaintiff 10 - and -11 12 BRANDON MOYSE and WEST FACE CAPITAL INC. Defendant 13 14 15 16 17 18 --- This is the Cross-Examination of MARTIN MUSTERS, on 19 his affidavits sworn February 15, April 30, and May 13, 20 2015, taken at the offices of Davies Ward Phillips & 21 Vineberg LLP, 40th Floor, 155 Wellington Street West, 22 Toronto, Ontario, on the 19th day of May, 2015. 23 24 25

| MOC      | STERS, MARTIN on May 19, 2                                       |                           |      |  |
|----------|--|---------------------------|------|--|
| 1        | APPEARANCES:   | Page 2                    | 1    | Pag<br>INDEX OF EXHIBITS                             |
| 2        |  |                           | 2    | NUMBER/DESCRIPTION PAGE N                            |
| 3        | Andrew Winton, Esq.  | for the Plaintiff.        | 3    | None.  |
| 4        |  |                           | 4    |  |
| 5        | Kristian Borg-Olivier, Esq.                                      | for the Defendant         | 5    |  |
| 6        |  | Brandon Moyse             | 6    |  |
| 7        |  |                           | 7    |  |
| 8        | Matthew Milne-Smith, Esq.  | for the Defendant         | 8    |  |
| 9        | & Andrew Carlson, Esq.   | West Face Capital         | 9    |  |
| 10       |  | Inc.                      | 10   |  |
| 1.1.     |  |                           | 1.1. |  |
| 12       | REPORTED BY: Terry   | Wood, RFR, CSR            | 12   |  |
| 1.3      |  |                           | 13   |  |
| 14       |  |                           | 14   |  |
| 1,5      | •  |                           | 1.5  |  |
| 16       |  |                           | 16   |  |
| 1.7      |  |                           | 17   |  |
| 18       |  |                           | 18   |  |
| 19       |  |                           | 19   |  |
| 20       |  |                           | 20   |  |
| 21       |  |                           | 21   |  |
| 22       |  |                           | 22   |  |
| 23       |  |                           | 23   |  |
| 24       |  |                           | 24   |  |
| 25       |  |                           | 25   |  |
|          |  | Page 3                    | -    | Pa   |
| 1.       | INDE   |                           | 1    | Upon commencing at 2:05 p.m.                         |
| 2        |  |                           | 2    |  |
| 3        | WITNESS:   |                           | 3    | MARTIN MUSTERS, SWORN;                               |
| 4        |  | Page:                     | 4    | CROSS-EXAMINATION BY MR. BORG-OLIVIER                |
| 5        | MARTIN MUSTERS   | 4                         | 5    | 1 Q. Good afternoon, Mr. Musters.                    |
| 6        | Cross-Examination By Mr. Borg-                                   | Olivier 5                 | 6    | A. Hi.   |
| 7        | Cross-examination by Mr. Milne                                   | -Smith 71                 | 7    | 2 Q. You have sworn four affidavits i                |
| 8        | Re-Examination by Mr. Winton                                     | 89                        | 8    | this proceeding, I believe. And I can just walk you  |
| 9        | ***The following list of under                                   | takings, advisements and  | 9    | through them just to make sure that we have them all |
| 10       | refusals is meant as a guide o                                   | nly for the assistance of | 10   | A. Sure.   |
| 11       | counsel and no other purpose**                                   | *                         | 11   | 3 Q. There was one dated June 26, 201                |
| 12       | •  | •                         | 12   | which is attached as Exhibit A to your February 15,  |
| 1.3      | INDEX OF RE  |                           | 13   | 2015, affidavit in your in Catalyst's motion reco    |
| 14       | The questions/requests refused                                   |                           | 14   | A. Yes.  |
| 1.5      | appear on the following pages/                                   | lines: 46/11, 56/14.      | 15   | Q. Then the second one is that                       |
| 16       |  |                           | 16   | February 15, 2015, affidavit?                        |
| 1.7      | INDEX OF UNDE  |                           | 17   | A. Uhm-hmm.  |
| 18       | The questions/requests underta                                   |                           | 18   | 5 Q. And, subsequently, you put in an                |
| 1.9      | appear on the following pages/                                   | lines: None.              | 19   | April 30, 2015, affidavit?                           |
| 20       |  |                           | 20   | A. Yes,  |
|          | INDEX OF UNDER   |                           | 21   | 6 Q. And, most recently, just last we                |
| 21       |  | ndar advisament are noted | 22   | there was a short affidavit dated May 13th, 2015?    |
| 21<br>22 | The questions/requests taken u                                   |                           |      |  |
| l        | The questions/requests taken u<br>by U/A and appear on the follo |                           | 23   | A. Yes.  |
| 22       |  |                           | 1    | A. Yes.  |

|  | STERS, MARTIN OII May 19, 2015  |  | Pages 0–9  |
|--|---|--|--|
| 1  | Page 6 that they be used in a pending court proceeding?   | 1  | Page 8 expert's duty, you sign and you acknowledge that it's   |
| . 2  | A. Correct.   | 2  | your duty to provide opinion evidence that's fair,   |
| 3  | 8 Q. That they will be reviewed by a  | 3  | objective, and nonpartisan, and I take it you  |
| 4  | judge perhaps along with the transcript of your   | 4  | understand what those terms mean?  |
|  | cross-examinations?   | 5  | A. I understand what those terms mean.   |
| 5  |   | 6  |  |
| 6  |   | ļ  | 2  |
| 7  | 9 Q. And you understand, I take it,   | 7  | effort to see both sides of the situation that you are   |
| 8  | that, among other things, on its most recent motion,  | 8  | analyzing?   |
| 9  | Catalyst is seeking a contempt order against Mr. Moyse?   | 9  | A. Absolutely.   |
| 10   | A. I wasn't aware, but  | 10   | 19 Q. And when the facts point in a  |
| 11   | 10 Q. Okay. So I take it you are not  | 11   | particular direction, to state that the facts are in   |
| 12   | aware, then, that among the relief that Catalyst is   | 12   | that direction even though they may be contrary to, in   |
| 13   | seeking is an order that Mr. Moyse be sent to jail?   | 13   | this case, the position of Catalyst?   |
| 14   | That's not something you are aware of?  | 14   | A. I'm I just sorry, I missed  |
| 15   | A. I was not aware of that.   | 15   | the last part of your question, but if the if my   |
| 16   | 11 Q. Okay. On the February 15, 2015,   | 16   | answer is I acknowledge that I'm fair and impartial  |
| 17   | affidavit, at tab F and I don't think it's necessary  | 17   | regardless of where the facts sorry, regardless of   |
| 18   | that you turn this up unless you or your counsel would  | 18   | whose side I'm working on I do work for the Crown, I   |
| 19   | like to you signed an acknowledgment of expert's  | 19   | do work for defence counsel I understand very  |
| 20   | duty form. You're familiar with that form?  | 20   | clearly the need to be to give fact-based evidence   |
| 21   | A. For sure.  | 21   | and to help the Court understand what I would consider   |
| 22   | 12 Q. And I imagine you have signed it in   | 22   | sometimes difficult concepts from a Court's  |
| 23   | a number of different proceedings?  | 23   | perspective. I mean no disrespect to the Court by  |
| 24   | A. Correct.   | 24   | saying that.   |
| 25   | 13 Q. Even though this acknowledgment   | 25   | 20 Q. I think the lawyers would have   |
|  | <u> </u>  |  |  |
|  | Page 7  | 1  | Page 9   |
| 1  | Page 7 form was not attached to all four of your affidavits, I  | 1  | Page 9 equivalent difficulty, I'd have to say. But I think   |
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|  | form was not attached to all four of your affidavits, I   |  | equivalent difficulty, I'd have to say. But I think  |
| 2  | form was not attached to all four of your affidavits, I take it that this acknowledgment governs all your   | 2  | equivalent difficulty, I'd have to say. But I think the point here is just that, when the facts point in a   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                               | form was not attached to all four of your affidavits, I take it that this acknowledgment governs all your affidavits and this cross-examination?  A. Absolutely.  14 Q. I don't propose to go to your CV and talk about your experience, but I noted in your cross-examination transcript from last summer your evidence that you had been involved throughout your career in something like 1200 or 1300 of these sorts of forensic cases. Is that about right?  A. We as a company, we do 3 to 400 cases a year, so, yes.  15 Q. And that number probably has gone up since last summer?  A. Yes.  16 Q. And what you said at the time, and I take it it remains true, is that probably half of those cases would generally fall into this type of  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                                     | equivalent difficulty, I'd have to say. But I think the point here is just that, when the facts point in a direction different from the position of the party that retained you, it's not your duty to hide those facts or run from those facts; you acknowledge them and they form a part of your opinion?  A. Absolutely.  21  Q. A couple of additional propositions that I will put to you which don't arise out of the acknowledgment of expert's duty but may be noncontroversial. I take it you'd agreed with me, Mr. Musters, that it is important when preparing an affidavit to be clear and precise in the language of your affidavits?  A. I agree with that.  22  Q. And, in part, that's because the Court will review these affidavits and will need to   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20                   | form was not attached to all four of your affidavits, I take it that this acknowledgment governs all your affidavits and this cross-examination?  A. Absolutely.  14 Q. I don't propose to go to your CV and talk about your experience, but I noted in your cross-examination transcript from last summer your evidence that you had been involved throughout your career in something like 1200 or 1300 of these sorts of forensic cases. Is that about right?  A. We as a company, we do 3 to 400 cases a year, so, yes.  15 Q. And that number probably has gone up since last summer?  A. Yes.  16 Q. And what you said at the time, and I take it it remains true, is that probably half of those cases would generally fall into this type of litigation, namely, civil litigation involving some sort of forensic analysis of computers?  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20                   | equivalent difficulty, I'd have to say. But I think the point here is just that, when the facts point in a direction different from the position of the party that retained you, it's not your duty to hide those facts or run from those facts; you acknowledge them and they form a part of your opinion?  A. Absolutely.  21 Q. A couple of additional propositions that I will put to you which don't arise out of the acknowledgment of expert's duty but may be noncontroversial. I take it you'd agreed with me, Mr. Musters, that it is important when preparing an affidavit to be clear and precise in the language of your affidavits?  A. I agree with that.  22 Q. And, in part, that's because the Court will review these affidavits and will need to understand what it is that you are saying?  A. Clearly.  23 Q. And the Court may rely on your   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21             | form was not attached to all four of your affidavits, I take it that this acknowledgment governs all your affidavits and this cross-examination?  A. Absolutely.  14 Q. I don't propose to go to your CV and talk about your experience, but I noted in your cross-examination transcript from last summer your evidence that you had been involved throughout your career in something like 1200 or 1300 of these sorts of forensic cases. Is that about right?  A. We as a company, we do 3 to 400 cases a year, so, yes.  15 Q. And that number probably has gone up since last summer?  A. Yes.  16 Q. And what you said at the time, and I take it it remains true, is that probably half of those cases would generally fall into this type of litigation, namely, civil litigation involving some sort of forensic analysis of computers?  A. Hmm, just to clarify, probably a   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21             | equivalent difficulty, I'd have to say. But I think the point here is just that, when the facts point in a direction different from the position of the party that retained you, it's not your duty to hide those facts or run from those facts; you acknowledge them and they form a part of your opinion?  A. Absolutely.  21 Q. A couple of additional propositions that I will put to you which don't arise out of the acknowledgment of expert's duty but may be noncontroversial. I take it you'd agreed with me, Mr. Musters, that it is important when preparing an affidavit to be clear and precise in the language of your affidavits?  A. I agree with that.  22 Q. And, in part, that's because the Court will review these affidavits and will need to understand what it is that you are saying?  A. Clearly.  23 Q. And the Court may rely on your affidavit evidence to reach a finding, including, in  |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | form was not attached to all four of your affidavits, I take it that this acknowledgment governs all your affidavits and this cross-examination?  A. Absolutely.  14 Q. I don't propose to go to your CV and talk about your experience, but I noted in your cross-examination transcript from last summer your evidence that you had been involved throughout your career in something like 1200 or 1300 of these sorts of forensic cases. Is that about right?  A. We as a company, we do 3 to 400 cases a year, so, yes.  15 Q. And that number probably has gone up since last summer?  A. Yes.  16 Q. And what you said at the time, and I take it it remains true, is that probably half of those cases would generally fall into this type of litigation, namely, civil litigation involving some sort of forensic analysis of computers?  A. Hmm, just to clarify, probably a little more slanted towards criminal investigations as  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | equivalent difficulty, I'd have to say. But I think the point here is just that, when the facts point in a direction different from the position of the party that retained you, it's not your duty to hide those facts or run from those facts; you acknowledge them and they form a part of your opinion?  A. Absolutely.  21  Q. A couple of additional propositions that I will put to you which don't arise out of the acknowledgment of expert's duty but may be noncontroversial. I take it you'd agreed with me, Mr. Musters, that it is important when preparing an affidavit to be clear and precise in the language of your affidavits?  A. I agree with that.  22  Q. And, in part, that's because the Court will review these affidavits and will need to understand what it is that you are saying?  A. Clearly.  23  Q. And the Court may rely on your affidavit evidence to reach a finding, including, in this case, for example, to send somebody to jail?                                     |

| MUS      | STERŠ, MAŘTIN (    | on May 19, 2015                        |       | Pages 10-13   |
|----------|--------------------|--|-------|---|
| 1        | 24 Q.              | Page 10 Exactly.                       | 1     | Page 12<br>34 Q. That's fine. Maybe I can place it      |
| 2        | A.                 | that's exactly the case.               | ͺ2    | in time this way. You will recall that, prior to you    |
| 3        | 25 Q.              | And it's important as well in          | 3     | swearing this affidavit, you were provided a copy of a  |
| 4        | arriving at your o | conclusions or your findings to be     | 4     | draft ISS report?                                       |
| 5        | careful and thorou | igh?                                   | 5     | A. Let me just think. Yes, yes. Yes,                    |
| 6        | A.                 | Absolutely.                            | 6     | yes. Yes, yes, yeah.                                    |
| 7        | 26 Q.              | And not to reach conclusions rashly    | 7     | 35 Q. Let me put it this way. Why don't                 |
| 8        | or without due can | ce?                                    | 8     | we go to paragraph 9 of your affidavit so there is no   |
| 9        | A.                 | I agree.                               | 9     | mystery in all this, because it's not meant to be       |
| 10       | 27 Q.              | And, finally, this is language that    | 10    | difficult.  |
| 11       | I found in a brock | nure online advertising a talk that    | 11    | A. Yes, yes.  |
| 12       |                    | and it said that you strive to let the | 12    | 36 Q. So at paragraph 9, you note that:                 |
| 13       | -                  | story, and I take it that continues    | 13    | "This affidavit concerns information                    |
| 14       |                    | nat governs your approach to these     | 14    | set out in paragraphs 44 to 48 the draft                |
| 15       | kinds of cases?    |  | 15    | ISS report."  |
| 16       | A.                 | Absolutely.                            | 16    | Do you see that?  |
| 17       | 28 Q.              | Can we turn up, please, the            | 17    | A. Yes.   |
| 18       | -                  | affidavit, which is at page 23 of      | 18    | 37 Q. Okay. So in leading up to your                    |
| 19       |                    | on record. That's tab 2.               | 19    | swearing of this affidavit, at paragraph 5, you note    |
| 20       | Α.                 | Yes.                                   | 20    | that you reviewed the order of Justice Firestone and    |
| 21       | 29 Q.              | So you had previously, as you note     | 21    | the order Justice Lederer. Do you see that?             |
| 22       | ~                  | een retained by Lax O'Sullivan in      | 22    | A. Yes.   |
| 23       | connection with th | <del>-</del>                           | 23    | 38 Q. And you recall doing that?                        |
| 24       | A.                 | Yes.                                   | 24    | A. Yes.   |
| 25       | 30 Q.              | And, initially, as you note in         | 25    | 39 Q. Paragraph 6, you make mention of                  |
| 23       | 20 2.              | And, initially, as you note in         | 25    | of ratagraph of you make meneron or                     |
| Γ,       | 1 4                | Page 11                                | 1     | Page 13   |
| 1        |                    | g the tasks that you were asked to     | 1     | the document review protocol, the DRP.                  |
| 2        |                    | ensic analysis of the desktop computer | 2     | A. Yes.  40 O. That's something that you reviewed       |
| 3        | that had been used |  | 4     | 2   |
| 4        | Α.                 | Yes.  And in or around this time of    | 5     | as well?  |
| 5        | 31 Q.              |  | 6     | A. Yes. 41 O. And, finally, at paragraph 7, you         |
| 6        | <del>-</del>       | 5, or I presume in the weeks leading   | 7     | 2,  |
| 7        |                    | e contacted again by Lax to conduct    | 8     | note the draft ISS report dated February 1, 2015. And   |
| 8        | another affidavit  | ther analysis and perhaps prepare      | 9     | you recall reviewing that?                              |
| 1 .      |                    |  | 10    | A. Yes. And, just for the record,                       |
| 10       | A.                 | Hrm                                    | 1     | forgive me. I didn't realize we were looking at         |
| 11       | 32 Q.              | And I should be clear. I'm not         | 11 12 | February 15th affidavit as opposed to the one in June.  |
| 12       |                    | technical question of when you were    | 1     | 42 Q. Understood.                                       |
| 13       | -                  | ing like that. The point is just       | 13    | A. So, yes.   |
| 14       |                    | er developed, you were asked to review | 14    | 43 Q. Okay. So was there anything else                  |
| 15       |                    | mation and provide further opinion     | 15    | besides the documents that you have set out here that   |
| 16       | evidence?          | The first trade of                     | 16    | you reviewed in preparation of this affidavit?          |
| 17       | Α.                 | I'm forgive me, I'm just trying        | 17    | A. Not that I can recall at this time.                  |
| 18       | -                  | steps. Clearly, I was retained by      | 18    | 44 Q. And I take it you were taking                     |
| 19       |                    | d a computer that belonged to Brandon  | 19    | instructions in regards to this affidavit from          |
| 20       |                    | trying to be evasive at all. I just    | 20    | Mr. Winton or one of his colleagues?                    |
| 21       | don't recall the   | · .                                    | 21    | A. Well, I remember the ISS was                         |
| 22       | 33 Q.              | Okay.                                  | 22    | Mr. Neijenhuis Brendon. Let's call him "Brendon".       |
| 23       | Α,                 | Andrew and I have had communication    | 23    | 45 Q. Well, "Brendon" might not be the                  |
|          | with respect to th | nings, so I can't give you a date off  | 24    | best one since we've got Brandon Möyse, so why don't we |
| 24<br>25 | the top of my head |  | 25    | just call it the ISS.                                   |

Pages 14–17

| IVIOC  | STERS, MARTIN OIL May 19, 2015   |  | Pages 14-17   |
|--|--|--|---|
| 1  | Page 14  A. The ISS, yes. So I recall a few  | 1  | Page 16 the retainer?   |
| 2  | conversations with the ISS as well.  | 2  | A. Your statement is correct with   |
| 3  | 46 Q. Okay. But in terms of where your   | 3  | respect to the ASO program.   |
| 4  | instructions were coming from, I take it those   | 4  | 55 Q. Yes. I understand you are   |
| 5  | continued to come from Lax O'Sullivan? In other words,   | 5  | obviously bringing to bear your various forensic skills   |
| 6  | it wasn't the ISS who contacted you and said,  | 6  | and experience, and I'm not suggesting that wasn't the  |
| 7  | Mr. Musters, we need you to prepare another affidavit?   | 7  | case.   |
| 8  | A. No.   | 8  | A. Right.   |
| 9  | 47 Q. That was Lax?  | 9  | 56 Q. And you mentioned what your   |
| 10   | A. That was Lax.   | 10   | instructions were and, I take it, from looking at   |
| 11   | 48 Q. Okay. And I'd like you to tell me,   | 11   | paragraphs 12 and 13, that one aspect of your inquiry   |
| 12   | if you would, what your instructions were. What were   | 12   | was looking into the fact that there was a Secure   |
| 13   | you asked to do in this portion of your retainer?  | 13   | Delete folder found on Mr. Moyse's computer?  |
| 14   | A. Okay. Let me reflect on that for a  | 14   | A. That was mentioned in the ISS  |
| 15   | minute.  | 15   | report/D  |
| 16   | 49 Q. Please do.   | 16   | 57 Q. DEI?  |
| 17   | A. Sorry, I'm just trying to be  | 17   | A, DEI.   |
| 18   | thoughtful in the response.  | 18   | 58 Q. Right.  |
| 19   | 50 Q. No rush at all.  | 19   | A. DEI had mentioned that, which the  |
| 20   | A. I'm going by recollection, so my  | 20   | ISS had mentioned in his report.  |
| 21   | recollection was that the draft ISS report included a  | 21   | 59 Q. Right. And among the things that  |
| 22   | mention by is it DEA?  | 22   | you were seeking to determine and that you report on  |
| 23   | MR. WINTON: DEI.   | 23   | here at paragraphs 12 and 13 is the issue of how the  |
| 24   | THE WITNESS: DEI. So we will call them   | 24   | Secure Delete folder can end up on a user's computer,   |
| 25   | DEI?   | 25   | correct?  |
| 20   | Dur  | 1 -0   | 0011331.  |
|  |  |  |   |
| 1  | Page 15  | 1  | Page 17   |
| 1  | BY MR. BORG-OLIVIER:   | 1 2  | A. Not only how but when and under  |
| 2  | BY MR. BORG-OLIVIER: 51 Q. Yes.  | 2  | A. Not only how but when and under what circumstances.  |
| 2 3  | BY MR. BORG-OLIVIER:  51 Q. Yes. A. Included a mention of a program  | 2 3  | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was   |
| 2<br>3<br>4  | BY MR. BORG-OLIVIER:  51 Q. Yes. A. Included a mention of a program called Secure Delete, and if I recall, my instructions   | 2<br>3<br>4  | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  |
| 2 3 4 5  | BY MR. BORG-OLIVIER:  51 Q. Yes.  A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this  | 2<br>3<br>4<br>5   | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  A. It did note a date and time, yes.  |
| 2<br>3<br>4<br>5<br>.6   | BY MR. BORG-OLIVIER:  51 Q. Yes.  A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if  | 2<br>3<br>4<br>5<br>6  | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  A. It did note a date and time, yes.  61 Q. Correct. So what you were   |
| 2<br>3<br>4<br>5<br>6<br>7   | BY MR. BORG-OLIVIER:  51 Q. Yes. A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if anyone deleted documents using that program or how the  | 2<br>3<br>4<br>5<br>6  | A. Not only how but when and under what circumstances. 60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time? A. It did note a date and time, yes. 61 Q. Correct. So what you were particularly tasked with, looking at these paragraphs,   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | BY MR. BORG-OLIVIER:  51 Q. Yes. A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if anyone deleted documents using that program or how the program works or how it relates to the deletion of   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | A. Not only how but when and under what circumstances. 60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time? A. It did note a date and time, yes. 61 Q. Correct. So what you were particularly tasked with, looking at these paragraphs, is how? How and under what circumstances does a Secure  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | BY MR. BORG-OLIVIER:  51 Q. Yes. A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if anyone deleted documents using that program or how the program works or how it relates to the deletion of documents.  | 2 3 4 5 6 7 8 9  | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  A. It did note a date and time, yes.  61 Q. Correct. So what you were particularly tasked with, looking at these paragraphs, is how? How and under what circumstances does a Secure Delete folder end up on someone's computer?   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | BY MR. BORG-OLIVIER:  Q. Yes.  A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if anyone deleted documents using that program or how the program works or how it relates to the deletion of documents.  52  Q. Okay. At paragraph 11 of your affidavit, you talk about downloading the Advanced System Optimizer 3 software and installing it on your personal computer. I will refer to that as the ASO software, okay?  A. Sure.  53  Q. I take it this is the first time that you had occasion to use the ASO software?  A. That is correct.  54  Q. So at paragraph 12 and at paragraph 13 and you are obviously welcome to read those paragraphs when you make reference to your own experience using the software and using the Secure  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  A. It did note a date and time, yes.  61 Q. Correct. So what you were particularly tasked with, looking at these paragraphs, is how? How and under what circumstances does a Secure Delete folder end up on someone's computer?  A. I want to broaden that just slightly in terms of you are correct, but I want to broaden that slightly to not disclude that's a poor choice of words. To not  62 Q. Exclude?  A exclude thank you. To not exclude the when, because there has been an issue with respect to last access dates and times, and so the question in my mind as an investigator would be does that date get updated, how does that date get updated, and does the creation modified and last access dates represent or tell us anything or not again, this is an investigation in terms of how this program works   |
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| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | BY MR. BORG-OLIVIER:  Q. Yes.  A. Included a mention of a program called Secure Delete, and if I recall, my instructions were what information can I give with respect to this program; and can I tell how the program works; and if anyone deleted documents using that program or how the program works or how it relates to the deletion of documents.  52  Q. Okay. At paragraph 11 of your affidavit, you talk about downloading the Advanced System Optimizer 3 software and installing it on your personal computer. I will refer to that as the ASO software, okay?  A. Sure.  53  Q. I take it this is the first time that you had occasion to use the ASO software?  A. That is correct.  54  Q. So at paragraph 12 and at paragraph 13 and you are obviously welcome to read those paragraphs when you make reference to your own experience using the software and using the Secure  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | A. Not only how but when and under what circumstances.  60 Q. Right. I think the when was covered in the ISS report, correct? It noted the time?  A. It did note a date and time, yes.  61 Q. Correct. So what you were particularly tasked with, looking at these paragraphs, is how? How and under what circumstances does a Secure Delete folder end up on someone's computer?  A. I want to broaden that just slightly in terms of you are correct, but I want to broaden that slightly to not disclude that's a poor choice of words. To not  62 Q. Exclude?  A exclude thank you. To not exclude the when, because there has been an issue with respect to last access dates and times, and so the question in my mind as an investigator would be does that date get updated, how does that date get updated, and does the creation modified and last access dates represent or tell us anything or not again, this is an investigation in terms of how this program works   |

|   | STERS, MARTIN on May 19, 2015   |  | Pages 18–21   |
|---|---|--|---|
|   | Page 18   |  | Page 20   |
| 1   | now read paragraphs 12 and 13, if you would.  | 1  | 8:09 p.m. That was the conclusion that you drew?  |
| 2   | A. Yes.   | 2  | A. That is correct.   |
| 3   | Q. And, again, my question for you is   | 3  | 72 Q. And the conclusion at paragraph 13,   |
| 4   | one of the critical things that you were investigating  | 4  | I take it, with respect to Mr. Moyse's actions follows  |
| 5   | and reporting on here was how/under what circumstances  | 5  | naturally from the conclusion at paragraph 12? In   |
| 6   | does a Secure Delete folder end up on a user's  | 6  | other words, if a Secure Delete folder only appears   |
| 7   | computer?   | 7  | when a user uses the program to delete a file or  |
| 8   | A. Correct.   | 8  | folder, then the presence of such a folder on   |
| 9   | 65 Q. That was one of the focuses of your   | 9  | Mr. Moyse's computer can only mean that he used the   |
| 10  | inquiry?  | 10   | software to delete files or folders. Is that a fair   |
| 11  | A. That was one of the focuses, yes.  | 11   | reading?  |
| 12  | 66 Q. Okay. And in paragraphs 12 and 13,  | 12   | A. Can you forgive me, can you  |
| 13  | you were reporting on your findings in that regard?   | 13   | repeat it.  |
| 14  | A. Correct.   | 14   | 73 Q. Sure.   |
| 15  | 67 Q. And the reason this was important.  | 15   | A. Because there's one little piece in  |
| 16  | is because the ISS had identified that Secure Delete on   | 16   | there that I didn't know if I wanted to comment on.   |
| 17  | Mr. Moyse's computer and everybody was wondering what   | 17   | 74 Q. So at paragraph 12  |
| 18  | implications could be drawn from that fact?   | 18   | A. Yeah.  |
| 19  | A. I can't speak to everyone, but,  | 19   | 75 Q we have got a conclusion that  |
| 20  | yes, I wanted to understand what implications could be  | 20   | the folder is only created when Secure Delete is used   |
| 21  | drawn from that fact, yes.  | 21   | to delete files and folders?  |
| 22  | 68 Q. Okay. And in paragraph 12, you  | 22   | A. Correct.   |
| 23  | refer to your own experience, but you would agree with  | 23   | 76 Q. Paragraph 13, we've got a   |
| 24  | me that you don't set out here in a step-by-step basis  | 24   | conclusion that someone using Mr. Moyse's computer  |
| 25  | what it was that you did to draw the conclusions that   | 25   | deleted files and folders?  |
|   |   |  | 101100 0110 0110  |
|   |   |  |   |
| ١,  | Page 19 you report on in these paragraphs, correct?   | 1  | Page 21   |
| 1 2   | you report on in these paragraphs, correct?   | 1 2  | A. Correct.   |
| 2   | you report on in these paragraphs, correct?  A. I didn't set out in a step-by-step  | 2  | A. Correct.  77 Q. And I'm saying that the conclusion   |
| 2   | you report on in these paragraphs, correct?  A. I didn't set out in a step-by-step basis in this affidavit, no.   | 2 3  | A. Correct.  77 Q. And I'm saying that the conclusion at paragraph 13 flows naturally from the conclusion at  |
| 2<br>3<br>4   | you report on in these paragraphs, correct?  A. I didn't set out in a step-by-step basis in this affidavit, no.  69 Q. Okay. But the conclusion that you  | 2<br>3<br>4  | A. Correct.  77 Q. And I'm saying that the conclusion at paragraph 13 flows naturally from the conclusion at paragraph 12?  |
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|   | TENO, WARTIN ON Way 19, 2010  |  |   |
|---|---|--|---|
| 1   | Page 22 launched, the Secure Delete program sorry the   | 1  | Page 24 but, yes, I do recall.  |
| 2   | Secure Delete folder is created. Should the user  | 2  | 91 Q. Sure.   |
| 3   | choose at that moment to not run, as in not run files   | 3  | A. Yes.   |
| 4   | or folders or not run anything else, the folder   | 4  | · · · · · · · · · · · · · · · · · · ·   |
|   | -   | l  | 2 1 1 1   |
| 5   | Secure Delete folder will still exist.  | 5  | affidavit, nowhere in there do you advise the Court   |
| 6   | 83 Q. Okay.   | 6  | that your conclusion in paragraph 12 was incorrect or   |
| 7   | A. So the correction that I would like  | 7  | had been revisited in light of Mr. Lo's affidavit of  |
| 8,  | to make for the record is that launching the that   | 8  | April 2nd. Am I reading that correctly or am I  |
| 9   | the existence of the Secure Delete folder means that  | 9  | missing something?  |
| 10  | the program was the Secure Delete program was   | 10   | A. I would like to state that, based  |
| 11  | launched, but it doesn't yet speak to whether or not  | 11   | on my experience, that it was not my intention to   |
| 12  | files or folders were deleted.  | 12   | mislead the Court. Based on my experience, someone  |
| 13  | 84 Q. Okay. And can I ask you,  | 13   | running the Secure Delete program would run it for a  |
| 14  | Mr. Musters, how you came to this realization that your   | 14   | purpose, and, hence, my conclusion my conclusion  |
| 15  | initial conclusion was incorrect?   | 15   | stands.   |
| 16  | A. I read Mr. Lo's affidavit, and I   | 16   | You are asking if I if I should have  |
| 17  | forgive me, the date, but his   | 17   | clarified that. Technically, yes, but at the same   |
| 18  | 85 Q. Yes. It's April 2nd, 2015, I  | 18   | time, it didn't change my opinion of the facts. I'll  |
| 19  | believe.  | 19   | agree with you that 12 and 13 wasn't worded as well as  |
| 20  | MR. WINTON: Let me show it to you and   | 20   | I should have.  |
| 21  | see if that's the one.  | 21   | 93 Q. Well, it's let's be fair. It's  |
| 22  | BY MR. BORG-OLIVIER:  | 22   | not about whether they are worded as well as it should  |
| 23  | 86 Q. Yes.  | 23   | have. That statement at paragraph 12, you have  |
| 24  | A. Do you mind if I take a quick look?  | 24   | conceded to me, I think, today, is incorrect. In other  |
| 25  | 87 Q. Please do.  | 25   | words, that folder is not only created when a user runs   |
|   |   |  |   |
|   | Page 23   | <del>                                     </del>   | Page 25   |
| 1   | Page 23 A. Yes. So I did some more  | 1  | Page 25<br>the feature to delete a file or folder? That was   |
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| 2<br>3<br>4<br>5<br>.6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21             | A. Yes. So I did some more investigation, or, to answer your question specifically, after reviewing the affidavit of Mr. Lo, which is dated April 2nd.  88 Q. Okay. And I take it, upon reading Mr. Lo's affidavit, you didn't simply accept his evidence as gospel; you actually went and tried to replicate the analysis that he had done?  A. Well, correct, and I agree with you that the way that items 12 and 13 read in my affidavit sworn February 15th draws a conclusion that isn't exactly correct. I made an assumption which I didn't document here, which, basically, the assumption was if you go to run a program, you are going to use it. So, therein, I didn't — I drew that inference in my mind and, hence, that's why you see number 12 and 13 the way they are written, but Mr. Lo — how do I put it? — brought some clarity to that, if that makes sense to you.  89 Q. Okay. And on April 30th, you swore a supplementary affidavit in response to Mr. Lo's                                      | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21             | the feature to delete a file or folder? That was incorrect?  A. As stated, that is incorrect.  94 Q. Okay. And you understood that the Court would be referring to your affidavit and Mr. Lo's affidavit and all the other evidence in the case to determine, among other things, whether Mr. Moyse had acted in ways that constituted contempt of the Firestone order. You understood that, right?  A. Clearly.  95 Q. And, again, I think you have told me that you don't understand the consequences or the relief being sought, but the Court was relying on that, among other things, to determine whether Mr. Moyse should be jailed for his contempt. That was the conclusion that was going to be drawn on the basis of these affidavits, potentially?  MR. WINTON: I don't think that's a fair question given the questions previously asked and the answers previously given about the consequences.  BY MR. BORG-OLIVIER:  |
| 2<br>3<br>4<br>5<br>.6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | A. Yes. So I did some more investigation, or, to answer your question specifically, after reviewing the affidavit of Mr. Lo, which is dated April 2nd.  88 Q. Okay. And I take it, upon reading Mr. Lo's affidavit, you didn't simply accept his evidence as gospel; you actually went and tried to replicate the analysis that he had done?  A. Well, correct, and I agree with you that the way that items 12 and 13 read in my affidavit sworn February 15th draws a conclusion that isn't exactly correct. I made an assumption which I didn't document here, which, basically, the assumption was if you go to run a program, you are going to use it. So, therein, I didn't — I drew that inference in my mind and, hence, that's why you see number 12 and 13 the way they are written, but Mr. Lo — how do I put it? — brought some clarity to that, if that makes sense to you.  89 Q. Okay. And on April 30th, you swore a supplementary affidavit in response to Mr. Lo's affidavit of April 2nd.              | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | the feature to delete a file or folder? That was incorrect?  A. As stated, that is incorrect.  94 Q. Okay. And you understood that the Court would be referring to your affidavit and Mr. Lo's affidavit and all the other evidence in the case to determine, among other things, whether Mr. Moyse had acted in ways that constituted contempt of the Firestone order. You understood that, right?  A. Clearly.  95 Q. And, again, I think you have told me that you don't understand the consequences or the relief being sought, but the Court was relying on that, among other things, to determine whether Mr. Moyse should be jailed for his contempt. That was the conclusion that was going to be drawn on the basis of these affidavits, potentially?  MR. WINTON: I don't think that's a fair question given the questions previously asked and the answers previously given about the consequences.  BY MR. BORG-OLIVIER:  96 Q. Okay. You understood that the   |
| 2<br>3<br>4<br>5<br>.6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | A. Yes. So I did some more investigation, or, to answer your question specifically, after reviewing the affidavit of Mr. Lo, which is dated April 2nd.  88 Q. Okay. And I take it, upon reading Mr. Lo's affidavit, you didn't simply accept his evidence as gospel; you actually went and tried to replicate the analysis that he had done?  A. Well, correct, and I agree with you that the way that items 12 and 13 read in my affidavit sworn February 15th draws a conclusion that isn't exactly correct. I made an assumption which I didn't document here, which, basically, the assumption was if you go to run a program, you are going to use it. So, therein, I didn't — I drew that inference in my mind and, hence, that's why you see number 12 and 13 the way they are written, but Mr. Lo — how do I put it? — brought some clarity to that, if that makes sense to you.  89 Q. Okay. And on April 30th, you swore a supplementary affidavit in response to Mr. Lo's affidavit of April 2nd.  A. Correct. | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | the feature to delete a file or folder? That was incorrect?  A. As stated, that is incorrect.  94 Q. Okay. And you understood that the Court would be referring to your affidavit and Mr. Lo's affidavit and all the other evidence in the case to determine, among other things, whether Mr. Moyse had acted in ways that constituted contempt of the Firestone order. You understood that, right?  A. Clearly.  95 Q. And, again, I think you have told me that you don't understand the consequences or the relief being sought, but the Court was relying on that, among other things, to determine whether Mr. Moyse should be jailed for his contempt. That was the conclusion that was going to be drawn on the basis of these affidavits, potentially?  MR. WINTON: I don't think that's a fair question given the questions previously asked and the answers previously given about the consequences.  BY MR. BORG-OLIVIER:  96 Q. Okay. You understood that the issue of the creation of the Secure Delete folder and |

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| MUS  | STERS, MARTIN on May 19, 2015  |  | Pages 20–28  |
|--|--|--|--|
| 1  | Page 26 contempt motion against Mr. Moyse, did you not?  | 1                                      | Page 28 indeed clarify what you are seeking me to clarify.   |
| 2  | A. Clearly, but if you are asking me   | 2                                      | 106 Q. Point to that paragraph or sentence   |
| 1  | is it my professional opinion that Mr. Moyse deleted   | 3                                      | in which you made that clarification.  |
| 3  |  | 4                                      |  |
| 4  | something  | 5                                      | A. When we talk about paragraph 6, 7, 8, 9, 10, 11, 12, and so on, they are all talking about  |
| 5  | 97 Q. That's not if that was my  | 6                                      | <del>_</del>   |
| 6  | question, I would ask you that question.   | 7                                      | how the Secure Delete program works, and if I recall   |
| 7  | A. Okay.   | 1                                      | one second. I'm looking for a specific line. Hold on.  |
| 8  | 98 Q. My question is you understood, did   | 8                                      | I thought in my February sorry, my   |
| 9  | you not, that the question of how the Secure Delete  | 9                                      | April 30th affidavit that I had made a reference to  |
| 10   | folder was created and what implications could be drawn  | 10                                     | when the Secure Delete folder was created. It's either   |
| 11   | from that was going to be a critical part of the   | 11                                     | not here or I can't put my finger on it at this moment.  |
| 12   | Court's analysis in determining whether Mr. Moyse had  | 12                                     | 107 Q. Okay. I can tell you I haven't  |
| 13   | engaged in contempt?   | 13                                     | found it either.   |
| 14   | A. Clearly, yes, to your answer, but   | 14                                     | A. Okay.   |
| 15   | the conclusion in the conclusion that we have drawn  | 15                                     | 108 Q. If you or your counsel find it  |
| 16   | is not incorrect.  | 16                                     | after the fact, perhaps you can point it out to me.  |
| 17   | 99 Q. Well   | 17                                     | A. I will believe me, I thought I  |
| 18   | A. In my opinion.  | 18                                     | had put a reference in here to say this is when this   |
| 19   | 100 Q. Okay. So sitting here today, if I   | 19                                     | folder was created.  |
| 20   | put the following proposition to you, would you agree  | 20                                     | 109 Q. Okay. Let's go back to your   |
| 21   | with me or disagree with me? You should, in responding   | 21                                     | February 15 affidavit, if you don't mind.  |
| 22   | to Mr. Lo's affidavit, have noted for the Court that   | 22                                     | A. Okay.   |
| 23   | the conclusion you had drawn with respect to the   | 23                                     | 110 Q. So read paragraph 16 to yourself,   |
| 24   | creation of the Secure Delete folder was wrong.  | 24                                     | if you would.  |
| 25   | A. I'm just going to read my   | 25                                     | A. Yes.  |
|  | Page 27  |  | Page 29  |
| 1  | affidavit, my supplementary affidavit  | 1                                      | 111 Q. Okay. And in paragraph 16,  |
| 2  | 101 Q. Please.   | 2                                      | you've and I'm not going to call it a maybe it's   |
| 3  | A to see if I  | 3                                      | unfair to call it a conclusion, but you provide the  |
| 4  | 102 Q. Sure.   | 4                                      | opinion that, in a case like this, it's your experience  |
| 5  | A. Would you allow me the  | 5                                      | that deletion of data in such circumstances is done to   |
| 6  | 103 Q. I absolutely would.   | 6                                      | hide evidence that a person took confidential  |
| 7  | A. Okay.   | 7                                      | information from a former employer and communicated it   |
| 8  | I'm going to say that well, if you   | 8                                      | to their new employer, right? That's the what would  |
| 9  | re-ask the question. Forgive me. I have just read  | 9                                      | you like to call that, your opinion or your conclusion?  |
| 10   | some material, and I would like to   | 10                                     | A. Let's call it an opinion.   |
| 11   | 104 Q. Sure. I'll be rephrasing my   | 11                                     | 112 Q. Okay. And the basis of that   |
| 12   | question, I guess.   | 12                                     | opinion, if I read the beginning of paragraph 16, is   |
| 13   | A. Okay.   | 13                                     | the fact that you had encountered evidence that:   |
| 14   | 105 Q. But the question that I'm asking is   | 14                                     | "Someone used a Secure Delete tool to  |
| 1  | was it not incumbent on you as an objective, fair, and   | 15                                     | delete data."  |
| 15   | impartial expert to advise the Court after reading   | 16                                     | Correct?   |
|  | THE POLICE CANCELL AN EUVINE LIKE COMER TO ALLEL TEQUING   | 1 + 0                                  |  |
| 16   |  | 17                                     |  |
| 17   | Mr. Lo's affidavit and realizing that he was correct,  | 17                                     | A. It is my yes, correct.  |
| 17<br>18                                     | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect  | 18                                     | 113 Q. And the evidence that you say you   |
| 17<br>18<br>19                               | Mr. Lo's affidavit and realizing that he was correct,<br>to advise the Court that your conclusion with respect<br>to the creation of the Secure Delete feature in  | 18<br>19                               | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete  |
| 17<br>18<br>19<br>20                         | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  | 18<br>19<br>20                         | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the  |
| 17<br>18<br>19<br>20<br>21                   | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  A. My responding affidavit sworn  | 18<br>19<br>20<br>21                   | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the creation of a Secure Delete folder can only be evidence  |
| 17<br>18<br>19<br>20<br>21<br>22             | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  A. My responding affidavit sworn April 30th dealt with the issue of whether or not  | 18<br>19<br>20<br>21<br>22             | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the creation of a Secure Delete folder can only be evidence of deletion of data, correct?  |
| 17<br>18<br>19<br>20<br>21<br>22<br>23       | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  A. My responding affidavit sworn April 30th dealt with the issue of whether or not Secure Delete was used to delete files, folders, or  | 18<br>19<br>20<br>21<br>22<br>23       | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the creation of a Secure Delete folder can only be evidence of deletion of data, correct?  A. If you're in okay. Sorry, I was  |
| 17<br>18<br>19<br>20<br>21<br>22<br>23<br>24 | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  A. My responding affidavit sworn April 30th dealt with the issue of whether or not Secure Delete was used to delete files, folders, or other data from the hard drive, so I'm going to answer | 18<br>19<br>20<br>21<br>22<br>23<br>24 | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the creation of a Secure Delete folder can only be evidence of deletion of data, correct?  A. If you're in okay. Sorry, I was going to say something, but I'm correcting myself. |
| 17<br>18<br>19<br>20<br>21<br>22<br>23       | Mr. Lo's affidavit and realizing that he was correct, to advise the Court that your conclusion with respect to the creation of the Secure Delete feature in paragraph 12 of your affidavit was incorrect?  A. My responding affidavit sworn April 30th dealt with the issue of whether or not Secure Delete was used to delete files, folders, or  | 18<br>19<br>20<br>21<br>22<br>23       | 113 Q. And the evidence that you say you had that someone used a Secure Delete tool to delete data is the evidence at paragraphs 12 and 13 that the creation of a Secure Delete folder can only be evidence of deletion of data, correct?  A. If you're in okay. Sorry, I was  |

| 1   | Page 30 what I see, that the Secure Delete program was not only | 1  | Page 32 124 Q that you were relying on to draw          |
|-----|---|----|---|
| 2   | launched but run, and that's the distinguish that's             | 2  | the conclusion or the opinion that you have at          |
| 3   | the that's the distinguishing part that we're making            | 3  | paragraph 16 is set out in this report?                 |
| 4   | here.   | 4  | A. Yes.   |
| 5   | So in number 13, I say I agree with                             | 5  | 125 Q. Okay. And at paragraph 13, which                 |
| 6   | you I have already stated on the record I agree with            | 6  | is where you conclude that somebody used Mr. Moyse's    |
| 7   | you that simply launching the program creates a                 | 7  | computer to delete files, you say:                      |
| 8   | Secure Delete folder, but what I'm really saying is             | 8  | "Based on my experience using the                       |
| 9   | that it is my belief, based on what I know, based on            | 9  | software, there is no other explanation                 |
| 10  | what I have seen, and based on what I have read, that           | 10 | as to why a Secure Delete folder would                  |
| 11  | the Secure Delete program was indeed run.                       | 11 | be created on Moyse's personal computer                 |
| 12  | 114 Q. Okay.  | 12 | on that date."  |
| 13  | A. So based on that, I draw that                                | 13 | So that is the evidence that you are                    |
| 14  | conclusion in number 16.  | 14 | relying on to conclude that the Secure Delete folder    |
| 15  | 115 Q. Okay. And at paragraph 16, you                           | 15 | that the Secure Delete program was used to delete files |
| 16  | refer to evidence that someone used a Secure Delete             | 16 | and folders, isn't it? If there was any other           |
| 17  | tool to delete that. I'm reading that correctly, am I           | 17 | evidence, you would tell us what it was?                |
| 18  | not?  | 18 | A. Correct, and let me just clarify.                    |
| 19  | A. Correct. And if you're                                       | 19 | So the evidence I have before me is that the I know     |
| 20  | 116 Q. Sorry. Let me ask the question.                          | 20 | how the program works, because I analyzed the program,  |
| 21  | A. Sure.  | 21 | and I know that it was launched, and, yes, I drew the   |
| 22  | 117 Q. Here, you are not talking about                          | 22 | conclusion from that and stand by the conclusion from   |
| 23  | your feelings or your intuition; you're referring to            | 23 | that, that it was run to delete files and folders. I    |
| 24  | evidence?   | 24 | stand by that.  |
| 25  | A. Uhm-hmm.   | 25 | I don't have the image, so you are                      |
| -   | Page 31   |    | Page 33   |
| 1   | 118 Q. And to the extent that you had                           | 1  | asking me my opinion based on what I know. My           |
| 2   | evidence, you would have set it out in this report?             | 2  | experience tells me that we don't buy a program, launch |
| 3   | Correct?  | 3  | a program, and then choose not to use the program       |
| 4   | A. I'm sorry, if I had evidence, I                              | 4  | because we are bored. So my experience draws me to      |
| 5   | would have set it out   | 5  | number 16 based on the evidence I have before me.       |
| 6   | 119 Q. Any evidence that you say you are                        | 6  | 126 Q. Okay. So let me be clear, then.                  |
| 7   | relying on  | 7  | So your evidence and we'll put this before the          |
| 8   | A. Yes.   | 8  | Court your evidence is that, in your experience,        |
| 9 ' | 120 Q that someone used a Secure                                | 9  | when people buy products that have a suite of different |
| 10  | Delete tool to delete data                                      | 10 | software programs, it simply does not happen that one   |
| 11  | A. Yes.   | 11 | might click on the component programs to see what they  |
| 12  | 121 Q I take it is set out in this                              | 12 | are without then running them. Is that your evidence?   |
| 13  | report?   | 13 | A. My evidence is that the Secure                       |
| 14  | A. Yes.   | 14 | Delete program within the ASO suite is not easy to      |
| 15  | 122 Q. Okay. And, in particular, at                             | 15 | find. It's not on the first page. You have to go        |
| 16  | paragraphs 12 and 13, because that's where we are               | 16 | through a few series of options to get there. And one,  |
| 17  | talking about the use of the Secure Delete program,             | 17 | in my opinion, would intend to launch the program for a |
| 18  | correct?  | 18 | purpose. That would be my evidence.                     |
| 19  | A. Yes. Now, for the record, I do not                           | 19 | 127 Q. Okay.  |
| 20  | have nor have I had access to the image. I'm just               | 20 | A. I don't initiate the program Word                    |
| 21  | saying, for the record. So you are asking me to form            | 21 | if I don't intend to type a document.                   |
| 22  | my opinion based on what I know.                                | 22 | 128 Q. Okay. And if somebody opens or                   |
| 23  | 123 Q. Right. But stick with me here.                           | 23 | purchases Microsoft Office for the first time, it's     |
| 24  | Any evidence that you had                                       | 24 | beyond the bounds of possibility that somebody might,   |
| 25  | A. Yes.   | 25 | for example, click on Excel to see what an Excel        |
|     |   |    |   |

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Page 36
                                                       Page 34
     spreadsheet looks like and then not use it? That
                                                                    trying to hide evidence and cover his tracks.
                                                               2
 2
     doesn't happen?
                                                                                       Sure.
                                                                                   Α.
 3
                         I'm not suggesting that that
                                                               3
                                                                    137
                                                                                       Is that a fair thing? Okay.
 4
     doesn't happen.
                                                                4
                                                               5
                                                                    138
 5
                         Okay. Let me suggest to you -- and
                                                                                   Q.
                                                                                       And I'm saying the fact that he
                    Q.
     you can agree or disagree -- other facts that might be
                                                                6
                                                                    made apparently no effort to remove the software from
 6
     relevant to the question of whether Mr. Moyse was
 7
                                                                    his computer, the ASO/Secure Delete software from his
     attempting to hide evidence, okay?
                                                                8
                                                                    computer, prior to handing it over, do you view that as
 8
 9
                         Uhm-hmm.
                                                                    a relevant fact as to --
                    Α.
                                                               10
                         The fact that the ASO software
                                                                                       It's a fact to be considered, sure.
      130
                                                                                   Α.
10
     remained on Mr. Moyse's computer when he turned it over
                                                               11
                                                                                       Okay. And which way would it cut?
11
12
     for forensic inspection, I would suggest that that
                                                                                       Well, we can explore many options.
13
     could lead one to infer that he was not attempting to
                                                                    Am I allowed to explore many options with you?
     hide or cover his tracks. Do you agree or disagree?
                                                               14
                                                                                   MR. WINTON: Well, I don't think that's
14
                         I'm not sure that I can agree or
                                                               15
                                                                    helpful.
15
                    Α.
                                                               16
                                                                                   MR. BORG-OLIVIER: I can ask as
16
     disagree with that statement.
17
                         Okay. Well, now, to be clear,
                                                               17
                                                                    open-ended a question as -- what's wrong with that?
                                                               18
                                                                                   MR. WINTON: No, you can't. I think
     because you've referred to your experience and -- as
18
                                                                    your question was which way would it cut.
19
     you are very well entitled to do. That's I think part
20
     of your role in all this. I'm just -- I'm asking you
                                                               20
                                                                                   MR. BORG-OLIVIER: Yes.
21
                                                               21
                                                                                   MR. WINTON: And if he is going to
     to give me your view on it.
22
                    In your view, it's neither -- it's not
                                                                    speculate -- are you inviting him to speculate as to
                                                               23
                                                                    which way it cuts or are you asking him his opinion as
23
     relevant one way or the other that Mr. Moyse took no
24
     steps to delete the software from his computer prior to
                                                                    to which way --
                                                                                   MR. BORG-OLIVIER: I'm inviting him to
                                                               25
25
     handing it over?
                                                                                                                      Page 37
                         I'm saying that that question in
                                                                    speculate as to which way it cuts. I'm not sure I draw
 1
     isolation doesn't answer the broader question: Why did
                                                                    a distinction between speculation and his opinion. My
 2
                                                                    point is much of the opinion evidence that he is giving
 3
     he buy the software; why did he buy the reg cleaning
                                                                    seems to be based on bringing his experience to bear to
     program, that registry cleaner program, separate from
                                                                    facts like this, and I'm providing other facts from the
 5
     the ASO program; why did he launch it; what was in his
                                                                    record that haven't made their way into his affidavit
     intention when he launched it? I mean, clearly,
     Mr. Moyse is the one that should really speak to those
                                                                    and asking for his view on whether they affect his
 7
     issues, but from my investigative perspective, it seems
                                                                    analysis or not, and, if not, why not.
 8
     highly unusual that one would purchase, install, and
                                                                                   MR. WINTON: Okay. Well, that's the
 9
     run a Secure Delete program, if I understand the facts
                                                               10
                                                                    question, then, that he should answer.
10
                                                               11
                                                                                   BY MR. BORG-OLIVIER:
11
     correctly, just prior to turning it over to an ISS.
                         Okay. That's fine. That's all
                                                               12
12
                    Q.
                                                                     140
                                                                                   Q.
                                                                                        Okay.
13
     evidence that's in your affidavit.
                                                               13
                                                                                        Sorry, you've both been talking
                                                               14
                                                                    so -- if you could ask the question --
14
                         I understand that.
                    Α.
15
      133
                         Okay. That's not what I'm asking
                                                               15
                                                                     141
                                                                                   Q.
                                                                                        -- I would be --
                                                               16
16
     you now.
                                                               17
                                                                                        So the fact that the ASO software
17
                         Okay. Sorry.
                                                                     142
                    Α.
                         What I'm asking you is take your
                                                               18
                                                                    was apparently not deleted from Mr. Moyse's computer
18
      134
                    Q.
                                                                    prior to him turning it over for forensic analysis,
                                                               19
19
     experience --
                                                                    does that bear on your analysis of whether Mr. Moyse
20
                                                               20
                    Α.
                         Yes.
                                                                    was likely seeking to hide evidence or cover his
                         -- and your investigative
                                                               21
21
                    Q.
22
                                                               22
                                                                    tracks?
     analytical ability --
                                                               23
                                                                                        It bears on my opinion. There are
23
                    Α.
                         Sure.
                                                                    a number of factors to consider. Again, I haven't seen
24
                    Q.
                         -- and consider the fact that you
                                                               24
                                                                    the image, but according to the ISS report, there was
     concluded or given the opinion that Mr. Moyse was
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Page 40
    an e-mail indicating the purchase of the software.
                                                                    147
                                                                                       Let's talk about the e-mail.
1
                                                               2
2
                        We will get to that one.
                                                                                       Okay.
      143
                                                                                  Α.
                   0.
                                                                                       So the ISS reports on e-mails, I
3
                        Okay. So ...
                                                                    148
                                                                                  Q.
                                                                   think it was. I think it was two e-mails confirming
4
      144
                        Let me --
                                                               4
5
                                                                   the purchase of the software that we can --
                        Sorry.
                    Α.
                                                                                      One for ASO and one for a registry
6
     145
                    Q.
                        Why don't I just phrase it this
7
    way. Isn't it fair to say that somebody who is trying
                                                                   cleaner.
                                                                    149
    to cover his tracks would, at a minimum, in a situation
                                                                                  Q. Correct. And is it not fair to
    like this, have sought to delete the software from his
                                                                   conclude, Mr. Musters, that somebody looking to cover
9
                                                                   his tracks and hide evidence would, at a minimum, have
10
    computer? Isn't that a fair statement?
                                                              11
                                                                   deleted those e-mails out of his inbox? Would you not
11
                   A.
                       In light of some other facts, I'm
12
    not sure that that's a fair statement, although I am
                                                              12
                                                                   expect that?
    not arguing with you that he would have been better off
                                                              13
                                                                                  A. I would like to say that in every
13
                                                                   investigation -- and I'm drawing upon my experience
14
     to delete it. I agree with that statement.
                                                                   more so from a criminal perspective; I do a lot of
                    Q. What other facts are you referring
15
16
    to when you say "in light of some other facts"?
                                                                   criminal work, both for the Crown and the defence -- is
17
                    A. Well, when I read Mr. Lo's
                                                              17
                                                                   that somewhere, somehow, someone makes a mistake. So
                                                                   that is ultimately how -- if we were all perfect, we
    affidavit describing the registry keys inside the
18
                                                                   would all commit the perfect crime, and we wouldn't be
19
    registry, I can tell you that those registry keys are
     only created on the initiation of the program, same as
                                                              20
20
                                                                   caught.
21
     a Secure Delete folder gets created on the initiation
                                                              21
                                                                                  Now, again, I'm being theoretical, but
                                                                   I'm just saying whether Mr. Moyse -- should he have
22
    of the program.
                                                                   deleted his e-mail if he was trying to cover his
23
                    In a theoretical sense -- and I'm being
24
     theoretical \operatorname{\text{--}} had someone launched the program like I
                                                                   tracks? Yes. Was he thinking that way? I have no
                                                              25
    did in my affidavit, I would then see that I ran the
                                                                   idea.
25
                                                      Page 39
                                                                                       Okay. But so I hear you conceding
    program and I would then see that I deleted, in my
                                                               1
                                                                    150
 1
                                                                   the point I think that somebody looking to cover his
    affidavit, four files and -- on this date and so
 3
    many -- so many bytes of data were deleted.
                                                                   tracks would not have wanted, for example, to have
                                                                   those two e-mails remain in his inbox?
                    If I -- again, hypothetically, because I
    don't know the exact facts of what happened on that
                                                                                  A.
                                                                                       Or should have.
 5
                                                                                       Right.
     evening. If I were to see that, I would go, oh, darn,
                                                               6
                                                                    151
                                                                                  Q.
 6
                                                               7
                                                                                       Sure.
     I need to make that go away, and I do know that there
                                                                                  Α.
 7
                                                                    152
                                                                                  0.
                                                                                       And would not have wanted the
     is an article on the Internet that shows you how to
     make that go away. So did or did not Mr. Moyse go to
                                                               9
                                                                   software to remain in his computer?
 9
                                                                                  A. Again, we are being speculative,
     the Internet and search that article so that he could
                                                              10
10
                                                                   but assuming that he had intentions to delete things,
     then, as I described in my affidavit, make those
                                                              11
11
     registry keys go away? We can speculate about that or
                                                                   he -- I'm going by recollection -- he said -- Mr. Moyse
12
                                                              12
13
     not. I'm just saying Mr. Moyse may or may not have
                                                                   said in one of his affidavits that he wanted to delete
                                                                   his Internet history, which he felt wasn't relevant,
     felt comfortable that he had done all he needed to do
14
                                                                   because there may be some things that he thought were
     to make the history go away, on the assumption that he
15
                                                                   not relevant -- these are his words and I'm
16
     ran it.
                                                              16
                    So there's a number of different factors
                                                              17
                                                                   paraphrasing.
17
                                                              18
                                                                    153
                                                                                  Q. Yes, I understand.
18
     to consider, not only the e-mail that was in his inbox,
                                                              19
                                                                                       That he wanted to make go away. So
     not only the fact that he purchased and installed the
19
                                                                   again, we're speculating in terms of what his
20
     software, not only that he ran the software, that he
                                                                    intentions were. He said he wanted to clean his web
    may or may not have used it to delete files and
21
                                                                   history. I addressed that in one of my affidavits as
22
     folders, and that he may or may not have then tried to
                                                              22
                                                              23
                                                                   well, and we can talk about that.
23
    make that history log go away. So you can ask me my
                                                              24
                                                                                   So should he have? If he is trying to
24
     opinion in terms of what I believe, but at the end of
                                                                   hide things, sure, absolutely, I can see that.
     the day, we're not going to know.
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|  | STERS, MARTIN on May 19, 2015   |  | Pages 42–43  |
|--|---|--|--|
| 1  | Page 42  MR. BORG-OLIVIER: Okay.  | 1  | Page 44<br>you did?  |
| 2  | RECESS AT 2:52  | 2  | A. Yes.  |
| 3  | RESUMING AT 3:00  | 3  | 164 Q. Okay. Can you tell me what search   |
| 4  | BY MR, BORG-OLIVIER:  | 4  | terms you used?  |
| 5  | Q. Mr. Musters, I'm going to ask you  | 5  | A. I don't recall specifically at this   |
| 6  | to turn up tab 2 of Catalyst's supplementary motion   | 6  | moment. I can guess, but that's not a definitive   |
| 7  | record dated May 1, 2015, and that tab is your  | 7  | answer.  |
| 8  | supplementary affidavit sworn April 30, 2015.   | 8  | 165 Q. Don't guess. And you haven't  |
| 9  | A. Yup.   | 9  | provided here the website address, either, of the  |
| 10   | 155 Q. At paragraph 2 of this affidavit,  | 10   | publicly available information that you referred to. I   |
| 11   | you note that you reviewed the affidavits of Mr. Moyse  | 11   | take it when you refer to publicly available   |
| 12   | and Mr. Lo?   | 12   | information, you are suggesting that your simple   |
| 13   | A. Yes.   | 13   | Internet search turned up a website?   |
| 14   | 156 Q. And you note that this affidavit is  | 14   | A. It did.   |
| 15   | sworn in reply to those affidavits?   | 15   | 166 Q. Okay. And you haven't provided us   |
| 16   | A. Yes.   | 16   | with a copy of what the information says?  |
| 17   | 157 Q. Were you given any particular  | 17   | A. Okay.   |
| 18   | instructions in preparation of this affidavit or was it   | 18   | 167 Q. Correct?  |
| 19   | simply a matter of give us your reply evidence in   | 19   | A. I do recall I do recall   |
| 20   | regards to the affidavits of Lo and Moyse?  | 20   | recording that.  |
| 21   | A. If you give me a moment.   | 21   | 168 Q. Can I ask why you didn't include  |
| 22   | I was asked if I had any comments more  | 22   | that with your affidavit?  |
| 23   | specifically with respect to Mr. Lo's affidavit.  | 23   | A. Oversight on my part.   |
| 24   | 158 Q. Yes.   | 24   | BY MR. BORG-OLIVIER:   |
| 25   | A. And if I had any explanation as to   | 25   | 169 Q. Can I get an undertaking, Counsel,  |
|  | Page 43   |  | Page 45  |
| 1  | how a file may have been deleted yet not show as being  | 1  | to get the search terms that were used or search term  |
| 2  | deleted. So, in order words, to address the issue of  | 2  | that was used as well as the results of that search and  |
| 3  | the in Mr. Lo's words, the logs in the registry.  | 3  | a copy of the publicly available information referred  |
| 4  | 159 Q. And the conclusion that you draw or  | 4  | to by Mr. Musters at paragraph 8?  |
| 5  | the opinion that you provide is I think headlined on  | 5  | U/A MR. WINTON: I will take that under   |
| 6  | page 2 of your affidavit, which is that the Secure  | 6  | advisement.  |
| 7  | Delete history is stored in the registry and can be   | 7  | BY MR. BORG-OLIVIER:   |
| 8  | deleted?  | 8  | 170 Q. And I take it, Mr. Musters, that  |
| 9  | A. It can be deleted, yes.  | 9  | the publicly available information that you are  |
|  |   | 1  |  |
| 10   | 160 Q. Okay. And  | 10   | referring to provided advice on removal of the entire  |
| 10<br>11   | Q. Okay. And A. I was going to use the words can be   | 10   | referring to provided advice on removal of the entire program of ASO and not simply of the remnant files?  |
| i  |   | i  |  |
| 11   | A. I was going to use the words can be  | 11   | program of ASO and not simply of the remnant files?  |
| 11<br>12   | $\hbox{A.}  \hbox{I was going to use the words can be} \\ \hbox{manipulated to show that nothing had been run, but,} \\$  | 11<br>12   | program of ASO and not simply of the remnant files?  A. That's not correct. It provided  |
| 11<br>12<br>13   | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  | 11<br>12<br>13   | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the  |
| 11<br>12<br>13<br>14   | A. I was going to use the words can be manipulated to show that nothing had been rum, but, sure.  161 Q. Fair enough. But the conclusion,   | 11<br>12<br>13<br>14   | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to   |
| 11<br>12<br>13<br>14<br>15   | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log  | 11<br>12<br>13<br>14<br>15   | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence   |
| 11<br>12<br>13<br>14<br>15<br>16                                     | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because   | 11<br>12<br>13<br>14<br>15<br>16                                     | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17                               | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?   | 11<br>12<br>13<br>14<br>15<br>16<br>17                               | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                         | A. I was going to use the words can be manipulated to show that nothing had been rum, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?  A. Yes. That's a good word. Thank  | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                         | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree with me that the prudent thing to do would be to remove not just evidence of wiping but evidence of the program   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19                   | A. I was going to use the words can be manipulated to show that nothing had been rum, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?  A. Yes. That's a good word. Thank you.   | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree with me that the prudent thing to do would be to remove not just evidence of wiping but evidence of the program ever having been on the computer?   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20             | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?  A. Yes. That's a good word. Thank you.  162 Q. It's your word from paragraph 8.  | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20             | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree with me that the prudent thing to do would be to remove not just evidence of wiping but evidence of the program ever having been on the computer?   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?  A. Yes. That's a good word. Thank you.  162 Q. It's your word from paragraph 8.  Can I take you to paragraph 8.          | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree with me that the prudent thing to do would be to remove not just evidence of wiping but evidence of the program ever having been on the computer?   |
| 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | A. I was going to use the words can be manipulated to show that nothing had been run, but, sure.  161 Q. Fair enough. But the conclusion, anyway, is that you say the fact of there being no log showing wiping activity is not dispositive because Secure Delete can be reset?  A. Yes. That's a good word. Thank you.  162 Q. It's your word from paragraph 8.  Can I take you to paragraph 8.  A. Yes. | 11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | program of ASO and not simply of the remnant files?  A. That's not correct. It provided step-by-step instructions on how to we'll use the word "reset"; it's a good word to reset the Secure Delete logs.  171 Q. Okay. And if someone wanted to completely cover their tracks and remove any evidence of having attempted to delete anything, you'd agree with me that the prudent thing to do would be to remove not just evidence of wiping but evidence of the program ever having been on the computer?  A. I'm not sure I agree with that, and |

|  | 1   | Page 46 Secure Delete, and on the assumption that someone then   | 1  | Page 48 why.   |
|--|---|--|--|--|
|  | 2   | looked at the log and it showed that certain things had  | 2  | Uninstalling a program doesn't always  |
| ł  | 3   | been deleted, again, I can't speak to the mind of  | 3  | remove all of the registry entries, and it doesn't   |
| l  | 4   | Mr. Moyse, but I would think it might be good enough to  | 4  | always remove things that are forensically recoverable,  |
|  | 5   | show the system summary and I'm looking at the   | 5  | i.e., deleting a program or file still keeps the master  |
|  | 6   | system summary on page 3 to show no wiping has been  | 6  | file table entry and it shows it as a deleted entry.   |
|  | 7   | performed and then go I'm good.  | 7  | So showing the program installed and not being run may   |
|  |   | 173 Q. The ISS obviously thought the   | 8  | be better than trying to uninstall it and hiding it  |
|  | 8   | presence of the Secure Delete folder was a relevant and  | 9  | forensically. So I'm just saying both of them have   |
|  | 9   | •  | 10   | merit; I'm not saying one has more merit than the  |
|  | 10  | important fact?  | 11   | other. That's what I'm trying to say.  |
|  | 11  | R/F MR. WINTON: He's not going to give   | 12   | MR. BORG-OLIVIER: Mr. Winton, I would  |
| - 1  | 12  | evidence about what the ISS thought.   | 13   | ask, if at all possible, that we get your position on  |
| - 1  | 13  | BY MR. BORG-OLIVIER:   | 14   | the questions that you have taken under advisement, and  |
| - 1  | 14  | 174 Q. Okay. The ISS included in its   |  |  |
|  | 15  | report the fact that the Secure Delete folder was found  | 15   | if you agree to answer them, that we get the information in time to allow further cross-examination  |
| - 1  | 16  | on Mr. Moyse's computer?   | 16   |  |
| - 1  | 17  | A. That's correct.   | 17   | before the 22nd, which is the last day on which examinations will take place, because I expect I   |
| - 1  | 18  | 175 Q. And Catalyst brought a motion for   | 18<br>19   | think this is important information.   |
| - 1  | 19  | contempt based on the presence of the Secure Delete  | 20   | I think that the reference to the search   |
|  | 20<br>21  | folder?  A. I you're I don't know.   | 21   | and publicly available information, without including  |
| - 1  | 22  | 176 Q. Okay. But your evidence is that   | 22   | that in the affidavit I hear Mr. Musters that was an   |
| - 1  | 23  | somebody trying to cover their tracks would not  | 23   | oversight I think that's information on which I'm  |
| - 1  | 24  | necessarily look to delete the entire software program;  | 24   | more than entitled to question, and if you will be   |
| - 1  | 25  | they would simply try to reset the registry? That's  | 25   | undertaking to provide that to us, then I would like it  |
|  |   | cucl worker graphy eri to record and reduced   |  |  |
|  |   |  |  | Dags 40  |
|  | 1   | Page 47  | 1  | Page 49 in a timely fashion so that we can schedule a follow-up  |
|  | 1 2   | your view on this?   | 1 2  | in a timely fashion so that we can schedule a follow-up  |
|  | 2   | your view on this?  A. Well, if I saw this summary and   | ١.   | 9 1  |
|  | 2<br>3 <sub>.</sub>   | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but   | 2  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think   |
|  | 2<br>3<br>4   | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of  | 2 3  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on   |
|  | 2<br>3 <sub>.</sub>   | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but   | 2<br>3<br>4  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.   |
|  | 2<br>3<br>4<br>5  | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of MR. WINTON: It's on page 289 of our  | 2<br>3<br>4<br>5   | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not   |
|  | 2<br>3<br>4<br>5<br>6   | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of  MR. WINTON: It's on page 289 of our  THE WITNESS: Page 289.   | 2<br>3<br>4<br>5<br>6  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not disagreeing with you.   |
|  | 2<br>3<br>4<br>5<br>6<br>7  | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of MR. WINTON: It's on page 289 of our THE WITNESS: Page 289.  MR. WINTON: responding record.  THE WITNESS: And if I saw last wiped,  | 2<br>3<br>4<br>5<br>6<br>7   | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not disagreeing with you.  BY MR. BORG-OLIVIER:   |
| And the second s | 2<br>3<br>4<br>5<br>6<br>7<br>8   | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of MR. WINTON: It's on page 289 of our THE WITNESS: Page 289.  MR. WINTON: responding record.   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not disagreeing with you.  BY MR. BORG-OLIVIER:  179 Q. Okay. Can we go to paragraph 20,  |
|  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9  | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of  MR. WINTON: It's on page 289 of our  THE WITNESS: Page 289.  MR. WINTON: responding record.  THE WITNESS: And if I saw last wiped, items wiped, space recovered, items wiped, nothing   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not disagreeing with you.  BY MR. BORG-OLIVIER:  179 Q. Okay. Can we go to paragraph 20, please.  |
|  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9  | your view on this?  A. Well, if I saw this summary and I know that the reporter here can't see that, but there's a picture towards the bottom or as part of  MR. WINTON: It's on page 289 of our  THE WITNESS: Page 289.  MR. WINTON: responding record.  THE WITNESS: And if I saw last wiped, items wiped, space recovered, items wiped, nothing done, I may feel confidence that I have dodged the  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | in a timely fashion so that we can schedule a follow-up cross-examination on those points, because I I think there are questions that I would want to ask based on that.  MR. WINTON: I hear you. I am not disagreeing with you.  BY MR. BORG-OLIVIER:  179 Q. Okay. Can we go to paragraph 20, please.  A. Uhm-hmm.  180 Q. And at paragraph 20, here, you reach a conclusion or you say:   |
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| 1 2  | ·   |  |   |  |
|--|---|--|---|--|
| 2  | Page 50 A. Uhm-hmm.   | 1  | Page 52<br>A. Yes.  |  |
| 1  | 183 Q. So, here, you refer to Moyse's   | 2  | 188 Q. Because I think we are going a bit   |  |
| 3  | admitted conduct of investigating how to clean his  | 3  | far afield. What we are talking about here is what you  |  |
| 4  | registry, and you say:  | 4  | have referred to in your affidavit as his admitted  |  |
| 5  | "That displays a level of IT  | 5  | conduct of investigating how to clean his registry.   |  |
| 6  | sophistication that exceeds that of the   | 6  | That was the reference there. There's nothing about   |  |
| 7  | ordinary user."   | 7  | wiping a BlackBerry, there's nothing about files  |  |
| 8  | And can I ask you to expand on that and   | 8  | remaining on his computer. And to be fair to you,   |  |
| 9  | explain to me what it is you say about his conduct that   | 9  | paragraph 43 refers to him purchasing registry-cleaning   |  |
| 10   | displays a level of IT sophistication exceeding that of   | 10   | products, so I don't want you to miss that paragraph.   |  |
| 11   | the ordinary user, because that is not clear to me as I   | 11   | A. So, I mean, it was more of a   |  |
| 12   | read that.  | 12   | generic statement that I made, but, yes, 43   |  |
| 13   | A. Okay. My first response to that  | 13   | specifically talks about the ASO software.  |  |
| 14   | would be if I were to ask a hundred people to define in   | 14   | 189 Q. Okay. So let's now break down  |  |
| 15   | computer terms what a registry is, I'm not sure that  | 15   | paragraph 42. Let's start there.  |  |
| 16   | many people would be able to answer that question. So   | 16   | A. Okay.  |  |
| 17   | the fact that he is looking at registry cleaners, has   | 17   | 190 Q. So you'll agree with me that   |  |
| 18   | purchased a registry cleaner, shows that he understands   | 18   | Mr. Moyse's evidence is that, as you have pointed out,  |  |
| 19   | something about registries and what is contained in   | 19   | he was doing Internet searches on how to ensure a   |  |
| 20   | them and what he doesn't want, theoretically, someone   | 20   | complete deletion of his Internet browsing history?   |  |
| 21   | to see.   | 21   | A. Correct.   |  |
| 22   | 184 Q. Okay. Anything else?   | 22   | 191 Q. And he notes that many websites  |  |
| 23   | A. I'm not saying that I'm saying   | 23   | said that cleaning the registry following the deletion  |  |
| 24   | that the average user doesn't know what's in the  | 24   | of the Internet history would accomplish this, correct?   |  |
| 25   | registry and what the registry is and what it contains.   | 25   | A. He notes that, yes.  |  |
| 23   |   |  |   |  |
| ١,   | Page 51   | 1  | Page 53<br>192 Q. He notes that. He notes that the  |  |
| 1  | 185 Q. Okay. Can we turn up Mr. Moyse's   | 2  | websites he is reporting on what the websites say?  |  |
| 2  | affidavit, which is at tab 1 of the responding motion   | 3  | A. Correct.   |  |
| 3  | record of Moyse dated April 6.  | 4  | 193 Q. Okay. So there's no  |  |
| 4  | A. Sure.  | 5  | MR. WINTON: I just want to make it  |  |
| 5  | 186 Q. And can you point me to where you  | 1  | clear. Mr. Musters' agreeing with what the affidavit  |  |
| 6  | say Mr. Moyse is engaging in this admitted conduct that   | 6  | says does not necessarily mean Mr. Musters is affirming   |  |
| 7  | you refer to here. And I think it's around  | 7  | •   |  |
| 8  | paragraph 42, if I'm reading the correct part of it,  | 8  | Mr. Moyse's evidence.  MR. BORG-OLIVIER: Completely. I  |  |
|  | but I want to make sure that I want to be fair to   | 9  |   |  |
| 9  |   |  |   |  |
| 10   | you and give you the opportunity to point me to what it   | 1  | understand that.  |  |
| 10<br>11   | is you are relying on for this particular statement.  | 11,  | MR. WINTON: Good.   |  |
| 10<br>11<br>12   | is you are relying on for this particular statement.  A. In paragraph 41, just prior, he  | 11 .<br>12   | MR. WINTON: Good.<br>THE WITNESS: Okay.   |  |
| 10<br>11<br>12<br>13   | is you are relying on for this particular statement.  A. In paragraph 41, just prior, he talks about deleting his browsing history from his   | 11<br>12<br>13   | MR. WINTON: Good.<br>THE WITNESS: Okay.<br>BY MR. BORG-OLIVIER:   |  |
| 10<br>11<br>12<br>13<br>14   | is you are relying on for this particular statement.  A. In paragraph 41, just prior, he talks about deleting his browsing history from his computer; he talks about searching the Internet for the   | 11<br>12<br>13<br>14   | MR. WINTON: Good.  THE WITNESS: Okay.  BY MR. BORG-OLIVIER:  194 Q. There's no suggestion here, I put   |  |
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| 10<br>11<br>12<br>13<br>14<br>15<br>16   | is you are relying on for this particular statement.  A. In paragraph 41, just prior, he talks about deleting his browsing history from his computer; he talks about searching the Internet for the recently deleted material, which is in 42, which you know; he in paragraph 59, he talks about wiping his  | 11 .<br>12 .<br>13 .<br>14 .<br>15 .<br>16                     | MR. WINTON: Good.  THE WITNESS: Okay.  BY MR. BORG-OLIVIER:  194 Q. There's no suggestion here, I put it to you, Mr. Musters, that Mr. Moyse even knew what a registry was before doing these Internet searches,  |  |
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Page 54
                                                                                                                     Page 56
                         One second. I then did some
                                                                    that, you suggested that if you ask a hundred people to
 1
 2
     further -- I'm reading paragraph 43:
                                                                   define what the registry is, most couldn't answer. Do
                      "I then did some further online
                                                                3
                                                                   you see any evidence in here that suggests that, before
 3
                    research for registry cleaning
                                                                   doing that Internet research, Mr. Moyse knew what the
 4
 5
                    products."
                                                                   registry was?
 6
                    So he would -- Mr. Moyse would infer,
                                                                                  MR. WINTON: I'm just ...
                                                                                  MR. BORG-OLIVIER: Counsel, he is
 7
    based on his affidavit, that he is getting up to speed
                                                               8
                                                                   drawing a conclusion --
     on what a registry is through these searches, based
 8
 9
     on --
                                                                9
                                                                                  MR. WINTON: No, I think you have asked
                         That's how I read it as well.
                                                               10
                                                                    that question, just in a different way, so I feel it's
10
      196
                         Sure.
                                                                    the same question being asked twice. That's why I'm
11
                    Α.
                         And the conclusion that he drew or
12
                    Q.
                                                               12
                                                                   hesitating to let the witness answer.
     the steps that he took with respect to deleting his
                                                               13
                                                                                   MR. BORG-OLIVIER: Is that a refusal?
13
     Internet browsing history through cleaning the
                                                               14
                                                                    R/F
                                                                                   MR. WINTON: Yes.
14
                                                               15
                                                                                   BY MR. BORG-OLIVIER:
15
     registry, you have said in your affidavit of
                                                               16
     April 30th, at paragraph 4, that it makes no sense,
                                                                     203
                                                                                       It is. Okay.
16
                                                               17
                                                                                   Let's go to paragraph C, which is
17
     because a computer's registry does not store
                                                                    another of the facts that you say leads you to the
     information concerning a user's web browsing history,
18
19
                                                               19
                                                                    conclusion --
     right?
                                                               20
20
                         That is correct.
                                                                                        Sorry.
                    Α.
                                                               21
                                                                                   MR. WINTON: I'm just pointing him in
21
      198
                    Q.
                         That's your evidence?
                                                               22
22
                         Yes.
                                                                    the right spot.
                    Α.
                                                               23
23
      199
                    Q.
                         So quite contrary to the position
                                                                                   BY MR. BORG-OLIVIER:
                                                                                       Yes. So paragraph (c) is another
     that Mr. Moyse was more sophisticated than the average
                                                               24
24
                                                                     204
                                                                                   0.
                                                                    of the facts, as you describe them, that leads you to
25
     user, in fact, it seems that he is utterly
 1
     unsophisticated, is he not, in terms of doing some
                                                                    the conclusion with respect to Mr. Moyse's conduct.
     basic Internet research; gleaning information that
                                                                2
                                                                                   Α.
                                                                                        Yes.
 2
                                                                3
     turns out to be completely incorrect? Isn't that the
                                                                     205
                                                                                        Do you see that?
 3
                                                                                   Q.
                                                                4
                                                                                        Yes, I do.
     mark of someone unsophisticated?
 4
                                                                                   A.
                                                                                        Okay. And this is with respect to
                                                                5
 5
                    A.
                        I would certainly say that it -- I
                                                                                   0.
 6
     know he's a smart guy based on his -- based on his
                                                                    Mr. Moyse wiping his BlackBerry smart phone?
                                                                7
                                                                                        Uhm-hmm.
 7
     education and where he went to school and so on and so
     forth, so I think we can all agree -- I have never met
                                                                8
                                                                     207
                                                                                        And you say that he thereby
 8
                                                                9
                                                                    permanently destroyed evidence of his phone and data
 9
     Mr. Moyse, just for the record. So I think we can
10
     agree he's a smart guy and he's doing some research to
                                                               10
                                                                    usage. Do you see that?
     try and figure things out in his mind. So we can
                                                               11
                                                                                        Yes.
11
                                                                                   A.
                                                                                       And I take it phone and data usage
     certainly agree on that. Did he get the registry wrong
                                                               12
                                                                                   Q.
12
                                                                    does not include e-mail, correct?
     or did he believe information incorrectly on the
13
                                                                                        By wiping his BlackBerry, his --
14
     Internet? Sure. Not everything on the Internet is
                                                               14
                                                                                   Α.
                                                               15
                                                                    let me -- okay, let me -- no, not incorrect, not
15
     correct.
                                                               16
                                                                    correct. Let me explain.
      200
                         Right.
16
                    Q.
                                                                                   Had he had his work e-mail synced to his
                                                               17
17
                    Α.
                         But I believe he shows a level of
     sophistication on one hand, and on the other hand, I'll
                                                                    BlackBerry, simply wiping his BlackBerry would not
18
                                                                    affect any data as it related to the Cat Capital --
                                                               19
     also agree with you that he shows a level of lack of
                                                               20
20
                                                                     209
                                                                                        Catalyst.
     knowledge in certain areas as well.
                                                                                   Q.
                                                               21
                                                                                        Sorry, Cat Catalyst (sic) e-mail.
21
                    Q.
                        Okay. But you didn't make mention
                                                                                   Α.
                                                               22
                                                                                        Right.
22
     of that in your affidavit?
                                                                     210
                                                                                   Q.
                                                               23
                                                                                        Had he had a personal e-mail
23
                                                                                   Α.
                    Α.
                         That is correct.
                                                               24
                                                                    account on there, he would have no data from his
24
                        Okay. And going back to what the
      202
                    Q.
                                                                    personal e-mail; it would have been wiped off. Any SMS
25
     sophistication is, when I asked you what you meant by
```

```
Page 60
     message, call histories. There's other applications
                                                                                      I'm just going to -- in terms of --
 2
     more prevalent on an iPhone than on a BlackBerry, but
                                                                   data is e-mail, but if I understand your question
 3
     there's various chat programs available.
                                                                   correctly to be is wiping the BlackBerry going to
 4
                    Q.
                         Okay.
                                                                   prevent -- I'm going to use "Cat" so I don't get it
 5
                         And so on.
                                                               5
                                                                   wrong -- prevent Cat from accessing any e-mail, the
                    Α.
 6
      212
                    0.
                         Again, we're going a bit far
                                                                   answer is no.
 7
     afield.
                                                                    215
                                                                                       Okay.
 8
                                                               8
                    Α.
                         Sorry.
                                                                                  Α.
                                                                                       If that's the question.
                        I'm simply trying to be clear that
                                                               9
                                                                                       That's not precisely my question.
 9
      213
                    Q.
     what I asked you was that the e-mail is not -- and,
                                                                   You have made allegations here about facts that you say
                                                              10
10
     again, I'm not trying to be tricky. At page 71 of your
11
                                                              11
                                                                   support the conclusion that you have reached.
12
     earlier transcript from last year, you were asked about
     Mr. Moyse's e-mail, and I think, quite fairly, you
                                                              13
13
                                                                    217
                                                                                       I'm entitled to test you on those
14
     acknowledged that Catalyst would likely still have
                                                              14
                                                                    facts.
                                                              15
15
     access to Brandon's work e-mails. And the point I was
                                                                                       Sure, sure.
     trying to make is this appears to carefully exclude
16
                                                              16
                                                                    218
                                                                                  Q.
                                                                                       And I just want to make sure that
     e-mail from what you say was permanently destroyed, and
                                                              17
                                                                   I'm understanding clearly what it is that you have said
17
                                                              18
     I want to make sure I'm reading that correctly.
                                                                   here.
18
                                                              19
19
                    Your counsel may have a point to make
                                                                                       There are other --
20
                                                              20
                                                                    219
                                                                                       That's the reason I'm asking this
     here.
21
                                                              21
                    MR. WINTON: No, that's fine. I just
                                                                   question.
                                                              22
                                                                                       There are other points of data --
22
     wasn't sure where you were going with that.
                                                                                  A.
                    MR. BORG-OLIVIER: I'm trying to be very
23
                                                                    let's call them SMS messages, BBM messages, other chat
24
     fair in noting that e-mails -- there doesn't seem to be
                                                                   programs that may or may not have been installed on the
     an allegation here that the wiping of the BlackBerry
                                                                   BlackBerry -- there are other pieces of information on
25
                                                                                                                     Page 61
     destroyed evidence of e-mail usage, because I thought
                                                                    the BlackBerry besides e-mail that I would refer to as
 1
                                                                   data that were erased as a result of wiping the
 2
     that point was covered last year.
 3
                    MR. WINTON: That's right.
                                                                    BlackBerry.
 4
                    MR. BORG-OLIVIER: But if I'm
                                                                    220
                                                                                   Q.
                                                                                       I understand all that.
 5
     misreading -- I don't know exactly what the term "data"
                                                               5
                                                                                       Okay.
                                                                                   Α.
                                                                                       Thank you. With respect to the
 6
                                                                    221
     means.
 7
                    MR. WINTON: Okay. And I think he has
                                                               7
                                                                   phone usage, who was the phone provider on that
     answered that question now, has he not? He
                                                                   BlackBerry?
 8
                                                                                   A. I don't know, I don't know who
 9
     acknowledged the same thing about the e-mails.
                    MR. BORG-OLIVIER: Okay.
                                                              10
                                                                   the -- I don't recall.
10
                    MR. WINTON: And then he explained what
                                                              11
                                                                                   MR. WINTON: Go off the record for one
11
12
     "data" could refer to, but it was a host of things, and
                                                              12
                                                                    second.
     then you cut him off by saying we are going far afield.
                                                              13
                                                                                   MR. BORG-OLIVIER: Sure.
13
                    MR. BORG-OLIVIER: Because my question
                                                              14
                                                                                      -- OFF THE RECORD --
14
                                                              15
                                                                                   BY MR. BORG-OLIVIER:
15
     was about e-mail.
16
                    MR. WINTON: Okay. But now you are
                                                              16
                                                                                       So, Mr. Musters, your counsel was
                                                              17
                                                                    kind enough to show me some information from the report
17
     saying you want to know what "data" means.
                    MR. BORG-OLIVIER: I wanted to know if
                                                                    that you had prepared for Mr. Riley that seems to
18
                                                                    indicate that the BlackBerry was on the Rogers network,
19
                                                              19
     "data" means e-mail.
                                                                    and I take it you have no reason to dispute that if you
20
                    MR. WINTON: Okay. Why don't we ask
                                                              20
                                                                    don't specifically remember it?
21
     that.
                                                              22
                                                                                   A. I have no reason to dispute it. I
22
                    BY MR. BORG-OLIVIER:
                                                              23
                                                                    don't specifically recall that at this moment.
23
                    Q. Okay. "Data", I take it, does not
24
     mean e-mail usage? That's a different category of
                                                                                   Q. Okay. Do you know whether Catalyst
                                                                    paid the bills in connection with that BlackBerry?
     things?
```

```
Page 64
                                                                   You said phone and data usage. I'm focussing on the
1
                    Α.
                         I do not know.
                                                               1
                                                               2
                                                                   phone.
2
      224
                    Q.
                         Okay.
3
                         I can only assume yes, but I do not
                                                               3
                                                                                  A. Well, okay. Phone usage. If
                    A.
                                                                   you're referring -- I mean, we can define the term any
 4
     know.
                         Okay. Do you know whether Catalyst
                                                                   way you like. If you are referring to phone usage as
     225
 5
                    Q.
 6
     received copies of the bills?
                                                                   simply calls in and out.
 7
                         I do not know.
                                                               7
                                                                                      It's your terminology. I'm trying
                                                                                  Q.
                                                                   to understand, you're referring -- you've said here --
                         Do you know whether the bills that
8
     226
     were prepared monthly included records of phone calls
                                                               9
                                                                                       Well --
9
                                                                                  Α.
                                                              10
10
     made and received?
                                                                    237
                                                                                  Ο.
                                                                                       Let me put the question to you.
                        And, again, I don't know.
                                                              11
11
                    Α.
                                                                                       You have said here that, by wiping
                                                              12
                                                                    238
                         Did you make any inquiries with
                                                                                  Q.
12
      227
                    Q.
                                                                   the BlackBerry smart phone, Mr. Moyse had thereby
     Catalyst or otherwise about those questions?
                                                              13
13
                                                                   permanently destroyed evidence of his phone usage, and
                                                              14
14
                    Α.
                         Okay. Your conclusion here, as I
      228
                                                              15
                                                                   I'm trying to explore what you mean by "evidence of his
15
                                                                   phone usage", and I've suggested to you that might mean
     read it, is quite unequivocal, right? You note that
                                                              16
16
                                                                   whom he called, who called him, and duration of calls,
     Mr. Moyse, by wiping the BlackBerry, permanently
                                                              17
17
     destroyed evidence of his phone usage?
                                                                   and I'm asking if there is anything else that would
                                                              18
18
                                                                   fall under that category of evidence of phone usage.
19
                         Evidence of his phone and data
                                                              19
                                                              20
                                                                                   A. All right. May I be permitted to
20
     usage, yes.
                                                                   answer the question what did you mean, Marty, by phone
                         Okay. I take it to the extent that
21
                    Q.
22
     the monthly bills included those sorts of records, in
                                                              22
                                                                   and data usage?
                                                              23
                                                                    239
                                                                                   O. I'm not interested in data usage at
     fact, that evidence wouldn't be destroyed?
23
                                                                    the moment, I'm interested in phone usage. That's the
24
                    A. The monthly bills -- I'm sure that
                                                                    question I'm asking about.
     you can get a record from Rogers with respect to the
25
                                                                                                                     Page 65
     fact that I called you or you called me, that there was
                                                                                       Yes, I understand, and, believe me,
                                                               1
 1
                                                                    I'm simply trying to -- I'm not being argumentative in
 2
     a call. I'm sure you can get that information, yes.
                                                                    any way, shape, or form; I'm simply trying to
 3
                    Q. Okay. And when you say in
     subparagraph (c) "evidence of his phone usage", I take
                                                                    understand.
                                                                                   I used the term "phone and data" in one
     it what you are referring to is, for example, whom he
 5
                                                                   piece. I didn't separate it out in my mind when I
 6
     called?
                                                                    wrote those three words. And the reason that I don't
 7
                         Well, the Rogers bills would have
                                                                    is because you can take -- what's a good one?
 8
     phone numbers.
                                                               9
                                                                                   There are chat programs on an iPhone,
      231
                         Right.
 9
                    Q.
                                                                    predominantly, that either go through Wi-Fi or they go
                         Those phone numbers may not be
                                                              10
10
                    A.
     readily translatable to a person, in other words,
                                                                    through cellular data. So when I say "phone and data",
11
                                                                    I'm referring to the collective use of the phone. I,
     905-123-4567, Cat may not know who that is, they may be
12
                                                                    in my mind, when I wrote those words, did not break it
     able to do a reverse phone look-up, they may or may not
13
                                                                    out in terms of phone is calls and data is SMS. So if
     know who that is registered to, and so on.
14
                                                                    you are asking what I meant, I meant the collective use
15
                    Q.
                         Okay. It may be evidence, you are
                                                               16
                                                                    of the phone.
     referring to, of who called Mr. Moyse?
16
                                                                                   Q. Okay. We have talked about this.
17
                         It may be.
                    Α.
                                                                    You understand that the Court will be looking at this
18
      233
                    0.
                         Evidence of the duration of calls?
                                                                    and will rely on what's in your affidavit?
                                                               19
19
                         Correct.
                    Α.
                         Anything else that I'm missing in
20
      234
                                                               20
                                                                                   A. Absolutely.
                    Q.
                                                              21
                                                                                       Okay. And you understand -- and
     terms of what you refer to as evidence of his phone
21
                                                               22
                                                                    the reason I'm asking these questions is because
22
     usage?
                                                                    somebody might look at that and think that "phone
                         Well, when I referred to phone
                                                               23
23
                    Α.
     usage, I was also referring to SMS and BBMs and --
                                                                    usage" refers to usage of the telephone. You
                                                               24
24
                         Okay. Well, that's data usage.
                                                                    understand that?
25
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| MU:  | STERS, MARTIN on May 19, 2015                           |       | Pages 66–69  |
|------|---|-------|--|
|      | Page 66   |       | Page 68  |
| 1    | A. I I do now. I  | 1     | link files. Is that a term you are familiar with?  |
| 2    | Q. Okay. So let's clear this up.                        | 2     | A. I'm familiar with the term "link  |
| 3    | A. Sure.  | 3     | files".  |
| 4    | Q. When you say that by wiping the                      | 4     | 249 Q. And what Mr. Lo stated was that   |
| 5    | smart phone Mr. Moyse permanently destroyed evidence of | 5     | he in reviewing the link files on Mr. Moyse's  |
| 6    | his phone and data usage, I take it, then, if I'm       | 6     | computer, he saw evidence of use of programs dating  |
| 7    | hearing you correctly, that you are not suggesting that | 7     | back to 2012 but no evidence of registry editor having   |
| 8    | evidence of Mr. Moyse's use of the telephone has been   | 8     | been run at any time.  |
| 9    | permanently destroyed. Because those records likely     | 9     | A. Okay.   |
| 10   | exist through, for example, the monthly bills.          | 10    | 250 Q. And I'm opening the floor to you to   |
| 11   | A. Correct, yes. I fully acknowledge                    | 11    | respond or react, if you would like to, to that  |
| 12   | that those records exist through the monthly bill.      | 12    | evidence from Mr. Lo.  |
| 13   | What I was saying was that there is data as a           | 13    | A. Yes, I would like to.   |
| 14   | forensic investigator, there is a ton of data on the    | 14    | I can emphatically state that running  |
| 15   | phone, the collective smart phone, which are now like   | 15    | reg edit, running the reg edit program, creates on a   |
| 16   | computers, that can be valuable to any investigation.   | 16    | Windows 7 computer which is what we are talking  |
| 17   | 244 Q. Last week, as you probably know,                 | 17    | about leaves no evidence that it was run. And what   |
| 18   | Kevin Lo was cross-examined.                            | 18    | I mean by that or let me sorry, not what I mean  |
| 19   | A. I'm aware.   | 19    | by that, but let me clarify. I submitted an affidavit  |
| 20   | 245 Q. Okay. And Mr. Lo raised something                | 20    | on April the 30th?   |
| 21   | for the first time on re-examination, which I assured   | 21    | 251 O. Yes.  |
| 22   | your counsel I would give you the opportunity to        | 22    | A. Yes. And during the course of that  |
| 23   | respond to.   | 23    | affidavit on April the 30th, I ran the registry edit   |
| . 24 | A. Okay.  | 24    | program on April 29th, as you will see. And I took a   |
| 25   | 246 Q. Because it was not something that                | 25    | forensic image of my forensics computer and found no   |
| 23   |   |       |  |
|      | Page 67   | ١,    | Page 69 evidence that regedit.exe had been initiated or run  |
|      | had shown up. Because of the pace at which the          | 1     | even though I had made changes to the registry itself.   |
| 2    | duelling affidavits came in on the eve of Mr. Lo's      | 2     | So the registry edit program changes files, but we are   |
| 3    | cross-examination, I think that's the way things ended  | 3     | talking about the program itself. So the last accessed   |
| 4    | up shaking out.   | 4     | date on regedit.exe was still its original date. There   |
| 5    | The evidence as, I understood it and                    | 5     | ·  |
| 6    | if I'm not capturing this correctly, I will ask         | 6     | were no link files for reg edit, so there was no   |
| 7    | Mr. Winton to jump in or Mr. Milne-Smith. I understood  | 7 8   | visible evidence that reg edit was run, even though I can assure everyone here that I ran it on the 29th, as |
| 8    | Mr. Lo to say the following, and I apologize if it      | 9     | evidenced by my affidavit.   |
| 9    | sounds like I'm testifying on the record. I'm just      | 10    |  |
| 10   | trying to capture what it was that he said.             |       |  |
| 11   | As you know, there was this question                    | 11 12 |  |
| 12   | raised on his affidavit and yours about the use of the  | i     | -  |
| 13   | registry editor?  | 13    | A. So for Mr. Lo to say I saw no   |
| 14   | A. Uhm-hmm,   | 14    | evidence that it was run, although correct, is   |
| 15   | Q. You know that. And Mr. Lo, upon                      | 15    | meaningless, because there would be no evidence that it  |
| 16   | seeing your reply affidavit, conceded that he had been  | 16    | was run, had it been run.  |
| 17   | incorrect about the last time accessed information in   | 17    | 254 Q. And did you actually go and search  |
| 18   | the sense that the fact that the computer reflected     | 18    | the link files on your computer?   |
| 19   | that registry editor had been last accessed in 2009 did | 19    | A. Yes.  |
| 20   | not necessarily mean that, in fact, it had been last    | 20    | 255 Q. Okay. And when did you do that?   |
| 21   | accessed in 2009. Do you recall that issue?             | 21    | A. I did that after I saw Mr. Lo's   |
| 22   | A. Yes.   | 22    | affidavit with respect to that. So I had taken a   |
| 23   | Q. Okay, And I understand from                          | 23    | forensic image on April the 30th of my forensics   |
| 24   | Mr. Lo's evidence that, after reviewing your reply      | 24    | computer.  |
| 25   | affidavit, he then looked into something called the     | 25    | 256 Q. Can you tell me precisely when it   |

| 1   | STERS, MARTIN on May 19, 2015   |  |  |
|---|---|--|--|
| 1   | Page 70   | ,  | Page 72  |
| 1 0   | was that you searched for the link files on your  | 1  | A. Yes.  |
| 2   | computer?   | 2  | Q. Okay. So I take it we would be in   |
| 3   | A. Can you tell me the date of  | 3  | agreement that one reason why a person might use a   |
| 4   | Mr. Lo's affidavit? When the date that he was   | 4  | service of that nature is to sync or transfer documents  |
| 5   | cross-examined?   | 5  | between a home and an office computer?   |
| 6   | MR. WINTON: That's what I think. I was  | 6  | A. That's one usage, certainly.  |
| 7   | just going to say I think he means cross-examination,   | 7  | Q. And another possible usage is for   |
| 8   | not affidavit.  | 8  | more than one person to share access to a document?  |
| 9   | THE WITNESS: The cross sorry, sorry.  | 9  | A. Correct.  |
| 10  | The date he was cross-examined on this.   | 10   | 261 Q. And you have no way of knowing why  |
| 11  | MR. BORG-OLIVIER: Mr. Lo was  | 11   | Mr. Moyse was using Dropbox at Catalyst?   |
| 12  | cross-examined  | 12   | You seem to be   |
| 13  | MR. WINTON: Thursday.   | 13   | A. I'm I'm always trying to be   |
| 14  | MR. BORG-OLIVIER: Last Thursday, the  | 14   | reflective of the answer so that I can give you the  |
| 15  | 14th.   | 15   | best thoughtful response.  |
| 16  | MR. WINTON: 14th.   | 16   | I am not I'm just going to repeat  |
| 17  | THE WITNESS: It would have been the   | 17   | your question to make sure I still have it accurately  |
| 18  | evening of the 14th.  | 18   | in my head. Your question was did I know for what  |
| 19  | MR. WINTON: Counsel, just to make sure  | 19   | purpose Mr. Moyse was using Dropbox? Is that or  |
| 20  | there is no misunderstanding, as I understand what  | 20   | please clarify if I didn't get it right.   |
| 21  | Mr. Musters was saying, the search on the link files  | 21   | Q. Essentially, yes. Maybe I can help  |
| 22  | was run on an image of his computer that was made on  | 22   | you if I can put it another way. Would you agree with  |
| 23  | the 30th, which will record the April 29th activity.  | 23   | me it's entirely possible that Mr. Moyse was using   |
| 24  | MR. BORG-OLIVIER: I understand.   | 24   | Dropbox to, for example, share information with  |
| 25  | MR. WINTON: If there was anything to  | 25   | individuals at a Catalyst portfolio company?   |
|   | Page 71   |  | Page 73  |
| 1   | record.   | 1  | A. It's possible, yes.   |
| 2   | MR. BORG-OLIVIER: Yes.  | 2  | 263 Q. Mr. Musters, in your June 24, 2014,   |
| 3   | MR. WINTON: Okay.   | 3  | affidavit, you described a pattern of access to certain  |
| 4   | MR. BORG-OLIVIER: Can we go off. I may  | 4  | files that you consider to be consistent with copying  |
| 5   | just have one or two more questions, but I'm just about   | 1 5  |  |
|   |   |  | data to cloud services?  |
| 6   | done. I just want to speak to Mr. Milne-Smith for a   | 6  | A. Correct.  |
| 7   | second.   | 6 7  | A. Correct.  264 Q. And you drew that conclusion, as I   |
| 7 8   | second RECESS AT 3:38   | 6<br>7<br>8  | A. Correct.  264 Q. And you drew that conclusion, as I understood it, based on, at least in part, on metadata  |
| 7<br>8<br>9   | second RECESS AT 3:38 RESUMING AT 3:42  | 6<br>7<br>8<br>9   | A. Correct.  264 Q. And you drew that conclusion, as I understood it, based on, at least in part, on metadata time stamps for access?  |
| 7<br>8<br>9<br>10   | second RECESS AT 3:38 RESUMING AT 3:42 MR. BORG-OLIVIER: So subject to  | 6<br>7<br>8<br>9<br>10   | A. Correct.  264 Q. And you drew that conclusion, as I understood it, based on, at least in part, on metadata time stamps for access?  A. Correct.   |
| 7<br>8<br>9<br>10<br>11   | second.  RECESS AT 3:38  RESUMING AT 3:42  MR. BORG-OLIVIER: So subject to  whatever answers come back on what I think was only one   | 6<br>7<br>8<br>9<br>10   | A. Correct.  264 Q. And you drew that conclusion, as I understood it, based on, at least in part, on metadata time stamps for access?  A. Correct.  265 Q. And you'll recall that you admitted   |
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| 7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | second.  RECESS AT 3:38 RESUMING AT 3:42 MR. BORG-OLIVIER: So subject to whatever answers come back on what I think was only one under advisement.  MR. WINTON: Technically two. You asked for the search terms and then you asked for the results.  MR. BORG-OLIVIER: Correct. Those are my questions. Thank you, Mr. Musters.  CROSS-EXAMINATION BY MR. MILNE-SMITH: 257 Q. Mr. Musters, I just have questions in two areas.  With respect to cloud storage services, you are familiar with what I am speaking about there?               | 6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | A. Correct.  264 Q. And you drew that conclusion, as I understood it, based on, at least in part, on metadata time stamps for access?  A. Correct.  265 Q. And you'll recall that you admitted in cross-examination that you didn't, in fact, know whether that metadata time stamp was generated by the opening or the closing of the file?  A. Yes.  266 Q. Okay. And so if the metadata time stamp was based on opening a file, it tells you nothing about how long the file was open, correct?  A. That's a correct statement, but to clarify, my recollection is that there were numerous documents see, I'm referring to the link files, and there was a pattern of access I'm gathering the   |

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Page 74
                                                                                                                    Page 76
                                                                   opening. As in you can't open three files and close
     function or something like that, if I recall.
                                                                   three files in the same second.
2
                   Q. Why don't we look at -- I think
                                                               3
3
     this is Exhibit F to your affidavit.
                                                                                  Q. But, Mr. Musters, this is the point
                   MR. WINTON: I will have to pull that
                                                               4
                                                                   we just established. It doesn't -- it wouldn't say
4
                                                                   anything about closing it, would it? So I don't know
     out of the archives.
                                                                   why you are talking about opening and closing, because
                   MR. BORG-OLIVIER: This is from the
6
                                                                   the closing wouldn't show up. Correct?
7
     original motion record.
8
                                                               8
                                                                                  A. The closing wouldn't show up, I
                   MR. WINTON: Yes.
9
                       -- OFF THE RECORD --
                                                                   agree with you, but I'm also not agreeing with the
                                                                   first premise: That the file was opened.
10
                    BY MR. MILNE-SMITH:
                                                              10
                                                              11
                                                                                  Q. Let's put this a different way.
11
                   0.
                       So just for the record, I
12
     apologize, I believe I mistakenly referred to June 24.
                                                              12
                                                                   These records are equally consistent with copying the
                                                                   files or just opening them. In other words, you can't
13
     It's June 26, 2014, affidavit, tab F.
                                                                   tell which it is just from these files.
14
                        Okay.
                   Α.
                                                                                     If I go to -- it says record
15
     269
                        So, Mr. Musters, I've actually done
16
     my homework, and we'll see if you agree with me. My
                                                                   number 285, on the left. It's, I don't know, eight
     understanding -- tell me if you disagree or if you just
                                                                   down or something. I haven't counted.
17
     have no knowledge -- is that these metadata time stamps
                                                              18
                                                                                  Q.
                                                                                      Yes.
18
                                                                                      And I look at 84343, and I look at
     are created in a Windows 7 environment by the accessing
                                                                                  Α.
19
                                                                   the next entry, 84343, and I count one, two, three,
20
     of a file and would not reflect when the file was
                                                              21
                                                                   four, five, six.
21
     closed. Do you agree?
                                                              22
                                                                    275
22
                        You're making the assumption that
                    Α.
                                                                                      My experience tells me that someone
23
     the file was open, so I'm disagreeing with your first
                                                              23
                                                              24
                                                                   didn't open six files at the same time and leave them
24
     premise.
                                                                   open and close them at some time in the future. That,
                         Wouldn't agree that, if a file was
25
      270
                                                                                                                    Page 77
                                                      Page 75
                                                                   to me, screams I copied them.
     opened, it would not show in the metadata when it was
 2
     closed?
                                                                                  Q. You are not aware that someone
                                                               3
                                                                   could highlight six files at the same time and open
 3
                    A. In that very narrow view, yes, but
     we need to talk about Windows 7 and last access dates
                                                                   them all at once?
                                                                                       That is more likely to happen on a
     in a slightly different way. We have seen or previous
                                                                                  Α.
     evidence has shown us that if you launch the reg edit
                                                                   MacIntosh computer.
 6
     program, and clearly that program was opened and
                                                                                  Q.
                                                                                     Okay. But it's possible on a
                                                                   Windows computer? You just said it's more likely on a
     closed, it didn't update the last access date in time.
 8
                                                                   Windows, so by implication, you are saying it's
9
                    So this last -- so the last visited date
     and time is coming from a link file that is associated
                                                              10
                                                                   possible on a Windows computer.
10
                                                                                  MR. WINTON: Just to get it straight, he
11
     with these records. So having said -- so because the
12
     link file is created, it creates a record in the master
                                                              12
                                                                   said it's more --
     file table, and it creates a creation date, last access
                                                                                  MR. MILNE-SMITH: More likely.
13
                                                              14
     date, last modified date of that link file, so these
                                                                                  MR. WINTON: On a Mac.
14
                                                              15
                                                                                  MR. MILNE-SMITH: Yes.
     files were last visited or accessed, may have been
15
                                                                                  MR. WINTON: Mac. You said Windows.
16
     opened, may not have been opened, may have been copied,
                                                              16
                                                              17
                                                                                  BY MR. MILNE-SMITH:
     may not have been copied, but when I see three files
                                                                                  Q. So that means it's possible on a
                                                              18
                                                                    278
     with the exact same 83909 -- I'm looking at the first
18
                                                              19
                                                                   Windows.
19
     three entries -- that, to me, doesn't say I opened it
                                                                                  A. I'm -- I'm actually trying to think
                                                              20
     and I closed it all within the same millisecond,
                                                                   of how I would do it in a Windows operating system.
21
     83909 -- all within the same second, I'm sorry -- that
                                                              21
                                                                                  All right. Let me correct the record.
22
     tells me that some other function was performed on
                                                                   I'm not aware of how to open six Word documents in a
23
     that -- on those three files, a copy, as an example.
                                                                   Windows operating system at the same time.
24
      271
                    Q.
                         Or an opening?
                                                                                       Okay. Mr. Musters, you'd agree
                                                              25
25
                    A. I can't -- I -- no. Not an
                                                                    279
```

| N   | иUS                              | TERS, MARTIN on May 19, 2015  |  | Pages 78–81  |
|-----|----------------------------------|---|--|--|
| Γ   |                                  | Page 78   |  | Page 80  |
| -   | 1                                | with me that, in your previous cross-examination, you   | 1                                      | understand it is sensitive.  |
| 1   | 2                                | relied on the fact that it was improbable for someone   | 2                                      | But Mr. Moyse's affidavit sworn  |
| l   | 3                                | to open and close make a decision and close it  | 3                                      | July 7th, 2014, at paragraph 55, I think provides the  |
| l   | 4                                | within seconds?   | 4                                      | context of what Mr. Musters is being asked to respond  |
| ١   | 5                                | A. I agree with that statement.   | 5                                      | to at his cross-examination. I think it's only fair to   |
|     | 6                                | 280 . Q. Okay. But you'd agree with me now  | 6                                      | put that paragraph to him as well. I'm happy for you   |
|     | 7                                | that you were mistaken when you relied on any evidence  | 7                                      | to look at it if you agree or disagree before it is  |
|     | 8                                | of closing a file within seconds, because you simply  | 8                                      | shown to him, but I just want to put in the record I   |
|     | 9                                | don't have any evidence of that, correct?   | 9                                      | think there was a certain situation that was being put   |
|     | 10                               | A. Your entire  | 10                                     | to him that might explain it, and I don't think you  |
|     | 11                               | MR. WINTON: I just don't think it's   | 11                                     | have captured it exactly as it was put to him there or   |
|     | 12                               | fair to call him mistaken. We don't know the question   | 12                                     | that doesn't have the right context without having   |
| 1   | 13                               | that was asked of him.  | 13                                     | reference to Mr. Moyse's affidavit.  |
|     | 14                               | MR. MILNE-SMITH: Okay. Let's read it.   | 14                                     | MR. MILNE-SMITH: Okay. Well, I have  |
|     | 15                               | Could you go to do you have your copy of the  | 15                                     | gone through the transcript. I don't see any reference   |
|     | 16                               | transcript?   | 16                                     | to this passage in the lead-up to these answers, but   |
|     | 17                               | MR. WINTON: I don't think we do.  | 17                                     | I'm happy to read this into the record.  |
|     | 18                               | MR. MILNE-SMITH: Okay. I'm just going   | 18                                     | Paragraph 55 of Mr. Moyse's affidavit  |
| 1   | 19 .                             | to read it into the record, then.   | 19                                     | dated July 7, 2014, reads as follows. And he is  |
| ١   | 20                               | So I'm at page 52, question 161. I'm  | 20                                     | speaking specifically in reference to the so-called  |
| - 1 | 21                               | afraid it's going to go on for a while, because we've   | 21                                     | telecom files, so this isn't with respect to all four  |
| 1   | 22                               | got some back-and-forth between counsel, but I don't  | 22                                     | categories of documents; this is with respect  |
| ı   | 23                               | see any other way to do this.   | 23                                     | specifically to the telecom files.   |
| - 1 | 24                               | MR. BORG-OLIVIER: If it helps to  | 24                                     | MR. WINTON: Which are the files that   |
|     | 25                               | follow. What's the last page from which you're going  | 25                                     | are attached at tab F of Mr. Musters' affidavit.   |
| 1   | -                                | Page 79   |  | Page 81  |
| 1   | 1                                | to be reading?  | 1                                      | MR. MILNE-SMITH: Right.  |
|     | 2                                | MR. MILNE-SMITH: Question 161, I'm  | 2                                      | MR. WINTON: Which is why it refers only  |
|     | 3                                | going to start, and it's going to go through to   | -3                                     | to that section.   |
|     | 4                                | question 162. So it's page 52 to 54.  | 4                                      | BY MR. MILNE-SMITH:  |
|     | 5                                | MR. WINTON: Mr. Borg-Olivier has been   | 5                                      | 283 Q. It says:  |
| 1   | 6                                | so kind as to share his copy with us. Perhaps he can  | 6                                      | "I admit that I accessed the files in  |
|     | 7                                | read it and then you can ask your question without  | 7                                      | question. Contrary to Mr. Riley's bald   |
| ļ   | 8                                | having to read it all into the record.  | 8                                      | assertion that I did so for a nefarious  |
|     | 9                                | BY MR. MILNE-SMITH:   | 9                                      | purpose, I accessed the files as part of   |
| l   | 10                               | Q. All right. So please read  | 10                                     | my duties at Catalyst. In fact, I was  |
| -   | 11                               | questions 161 through 162.  | 11                                     | specifically assigned to work on Wind  |
|     | 12                               | A. Okay.  | 12                                     | Mobile by Mr. Dialba. I accessed the   |
|     | 13                               | Q. So, Mr. Musters, you'd agree with  | 13                                     | files in question because I was working  |
| -   | 14                               | me that   | 14                                     | on a chart to include in an investment   |
|     | 15                               | MR. WINTON: Sorry.  | 15                                     | memo. As there are hundreds of files   |
|     | 16                               | MR. MILNE-SMITH: Sorry. Mr. Winton?   | 16                                     | related to Wind Mobile in Catalyst's   |
| - 1 |                                  |   | 17                                     | system, I had to open a number of files  |
|     | 17                               | MR. WINTON: Yes. This is also in  | 1 1                                    | <del>-</del>   |
|     | 17<br>18                         | MR. WINTON: Yes. This is also in reference to some evidence that was given in   | 18                                     | and quickly scan them to determine if  |
|     |                                  |   | l .                                    | they contained the information I was   |
|     | 18                               | reference to some evidence that was given in  | 18                                     |  |
|     | 18<br>19                         | reference to some evidence that was given in Mr. Moyse's affidavit, as I recall. I'm just before  | 18<br>19<br>20<br>21                   | they contained the information I was   |
|     | 18<br>19<br>20                   | reference to some evidence that was given in Mr. Moyse's affidavit, as I recall. I'm just before he answers any questions, I want to review Mr. Moyse's   | 18<br>19<br>20                         | they contained the information I was looking for. I did not have to read the entirety of all the documents I accessed. While I accessed the files  |
|     | 18<br>19<br>20<br>21             | reference to some evidence that was given in Mr. Moyse's affidavit, as I recall. I'm just before he answers any questions, I want to review Mr. Moyse's affidavit and see if I am going to insist that that be  | 18<br>19<br>20<br>21                   | they contained the information I was looking for. I did not have to read the entirety of all the documents I accessed. While I accessed the files between 8:39 p.m. and 9:03 p.m., e-mail  |
|     | 18<br>19<br>20<br>21<br>22       | reference to some evidence that was given in Mr. Moyse's affidavit, as I recall. I'm just before he answers any questions, I want to review Mr. Moyse's affidavit and see if I am going to insist that that be put to the witness at the same time.  MR. MILNE-SMITH: Go ahead.  MR. WINTON: Yes. This copy is marked | 18<br>19<br>20<br>21<br>22<br>23<br>24 | they contained the information I was looking for. I did not have to read the entirety of all the documents I accessed. While I accessed the files between 8:39 p.m. and 9:03 p.m., e-mail records show that I was still at work. |
|     | 18<br>19<br>20<br>21<br>22<br>23 | reference to some evidence that was given in Mr. Moyse's affidavit, as I recall. I'm just before he answers any questions, I want to review Mr. Moyse's affidavit and see if I am going to insist that that be put to the witness at the same time.  MR. MILNE-SMITH: Go ahead.                                       | 18<br>19<br>20<br>21<br>22<br>23       | they contained the information I was looking for. I did not have to read the entirety of all the documents I accessed. While I accessed the files between 8:39 p.m. and 9:03 p.m., e-mail  |

|   | STERS, MARTIN on May 19, 2015  |  | Pages 62-65  |
|---|--|--|--|
|   | Page 82  |  | Page 84  |
| 1   | exchange between myself and my   | 1  | copying a file or set of files in groups. That's what  |
| 2   | girlfriend dated May 13, 2014, in which  | 2  | I see.   |
| 3   | I tell her that I will not be home until   | 3  | Q. But, sir, you have no basis to  |
| 4   | 10:15. I was also working amongst other  | 4  | conclude that they closed the file, right? You have no   |
| 5   | employees and not trying to  | 5  | evidence?  |
| 6   | surreptitiously read or transfer files.  | 6  | A. I'm also not suggesting they have   |
| 7   | One of those employees still in the  | 7  | opened the file I'm not saying that they did or they   |
| 8   | office was Lorne Creighton (who was also   | 8  | didn't open the file. It looks consistent with   |
| 9   | working on Wind Mobile). I did not   | 9  | copying, not opening.  |
| 10  | transfer any of the files to my Box,   | 10   | 288 Q. It's just as consistent with  |
| 11  | Dropbox, or any other personal account,  | 11   | opening or copying?  |
| 12  | nor have I provided any of the   | 12   | A. I disagree.   |
| 13  | information to West Face."   | 13   | 289 Q. Okay. Would you agree with me that  |
| 14  | So having done that, my question to you,   | 14   | your testimony depended on or assumed that, if   |
| 15  | sir, going back to questions 161 and 162 of your   | 15   | Mr. Moyse had opened the file, he also had to close it,  |
| 16  | August 1, 2014, transcript, which you have had an  | 16   | based on the evidence you had?   |
| 17  | opportunity to review, isn't it true that, in your   | 17   | A. If he opened it, I'm I fully  |
| 18  | response to question 161, you've relied specifically on  | 18   | agree that he would have closed it, yes.   |
| 19  | the improbability of opening, looking at, making some  | 19   | 290 Q. No, but within the five-second  |
| 20  | sort of decision, and closing a file, and opening the  | 20   | window you referred to. You thought the evidence   |
| 21  | next one within a matter of five seconds? You  | 21   | supported that?  |
| 22  | specifically refer to that, correct?   | 22   | A. If I recall, I was asked a  |
| 23  | A. You are talking about 161 and 162?  | 23   | hypothetical question,   |
| 24  | Q. 161. Look at the bottom of page 53  | 24   | 291 Q. Yes.  |
| 25  | and the top of page 54.  | 25   | A. I don't believe he opened any of  |
| 1   |  | 1  | •  |
|   | D 00   |  | Page 85  |
| 1   | Page 83  So I'm reading from this transcript   | 1  | Page 85<br>these files. If you are asking me to look at this   |
| 1   | A. So I'm reading from this transcript   | 1 2  | these files. If you are asking me to look at this  |
| 1 2   | A. So I'm reading from this transcript out of 161:   | 2  | these files. If you are asking me to look at this piece of paper and make a determination, my experience   |
| 1<br>2<br>3   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for  | 2 3  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not   |
| 1<br>2<br>3<br>4  | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I   | 2<br>3<br>4  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes.   |
| 1<br>2<br>3<br>4<br>5   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me   | 2<br>3<br>4<br>5   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.   |
| 1<br>2<br>3<br>4<br>5<br>6  | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart,  | 2<br>3<br>4<br>5<br>6  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you.   | 2<br>3<br>4<br>5<br>6  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph — to question 162, you didn't understand at  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8  | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first  | 2 3 4 5 6 7 8 9  | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're talking correct, to your question. At the time,   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're talking correct, to your question. At the time, yes.  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and have the next one open in five seconds  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're talking correct, to your question. At the time, yes.  293 Q. Okay. But you'd agree with me now  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and have the next one open in five seconds later."  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're talking correct, to your question. At the time, yes.  293 Q. Okay. But you'd agree with me now that it only updates it when the file is opened or   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and have the next one open in five seconds later."  So I stand by that statement.   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph — to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This — so specifically, we're talking — correct, to your question. At the time, yes.  293 Q. Okay. But you'd agree with me now that it only updates it when the file is opened or copied, not when it's closed?   |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16   | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and have the next one open in five seconds later." So I stand by that statement.  Q. But isn't it true, sir, that you   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16   | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph — to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This — so specifically, we're talking — correct, to your question. At the time, yes.  293 Q. Okay. But you'd agree with me now that it only updates it when the file is opened or copied, not when it's closed?  A. We have to be — we have to be very  |
| 1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                                     | A. So I'm reading from this transcript out of 161:  "So if you asked me logically for something that's five minutes apart, I totally agree with you. If you ask me for something that is six seconds apart, five seconds apart, I disagree with you. So I can't see how someone I'm looking at for the very first entry someone can open up an Excel spreadsheet, open it, look at it, make some sort of decision, close it, and have the next one open in five seconds later." So I stand by that statement.  285 Q. But isn't it true, sir, that you have no way of knowing when they closed it?   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                                     | these files. If you are asking me to look at this piece of paper and make a determination, my experience tells me this is a pattern consistent with copying, not opening. Now, is it possible he opened the file? Yes. Is it logical or makes sense? No.  292 Q. And, sir, when you go to paragraph to question 162, you didn't understand at the time that you gave that answer when Microsoft updates the access time?  A. This so specifically, we're talking correct, to your question. At the time, yes.  293 Q. Okay. But you'd agree with me now that it only updates it when the file is opened or copied, not when it's closed?  A. We have to be we have to be very careful when we talk Windows 7, when we talk about   |
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| ## Chilbit F.  ## Chi | ı  | · · · · · · · · · · · · · · · · · · ·   | }  | _ "   |
| yether helast access time, it doesn't, by default, in a Windows 7 operating system.  So here, we are talking about link files. These are the link files was created as a result of documents, and the link files was created as a result of sinteresting word — and because there was an entry created in the master file table, it created all of the link information as it related to that link file. And, beener, this was used a link file is created, then the last access date.  I will go back to my — so I agree with you that, if a document is general and a link file is created, then the last access date would get updated on the link file, not the document.  Twill go back to my — so I agree with you that, if a document is general and a link file is created, then the last access date would get updated on the link file, not the document.  Twill go back to my — so I agree with you that, if a document is general and a link file is created, then the last access date would get updated on the link file, not the document.  Twill go back to my — so I agree with you then the last access date would get updated on the link file, not the document.  Two you that, if a document is general and a link file is created, all of the link file, not the document.  Two you that, if a document is general and a link file is created, then the last access date would get updated on the link file, not the document.  Two you that, if a document is general and a link file is created, then the last access date would get updated on the link file, and the link file?  Two the link file, not the file?  A. And that's what we are talking about here, we will all the link file and the file?  A. If we are talking about here, you opened it?  A. If we have a created all of the link file as a file which is about, the link file?  Two the link file.  A. Minch is what is in Exhibit F.  Okay.  A. Minch is what is in Exhibit F.  Okay.  A. Minch is what is in Exhibit F.  Okay.  A. Minch is what is in Exhibit F.  Okay.  A. Minch is what is in Exhibit F.  Okay.  A. Minch is  | i  | - · · · · · · · · · · · · · · · · · · ·   | 1  | -   |
| 9 update the last access time, it doesn't, by default, in 10 a Windows 7 operating system. So here, we are talking about link 11 So here, we are talking about link 12 files. These are the link files that reference these 13 documents, and the link file was created as a result of 14 accessing these documents - and "access" is an 15 interesting word - and because there was an entry 15 created in the master file table, it created all of the 17 information as it related to that link file. And, 18 hence, that's why we get the last access date. 19 wou that, if a document is opened and a link file is 20 created, then the last access date would get updated on 20 the link file, not the document. 22 are 24 O. Right. And that's what we're 25 A. And that's what we are talking about here, the link files? A. If we are talking about a link 6 file. 29 C. So when you open a file, the link files. 10 A. If we are talking about a link 6 file. 29 C. Yes. Which is what is in Exhibit F. 29 C. Nay. A manufacture of the comments, and the comments, and the comments of the comments, and the comment of the comment of the comment of the times, which are, in some 22 cases, three documents, same second; five documents, 25 same second; eight documents, same second; five documents, 26 same second is eight documents, same second. That's what 1'm basing it on. MR. MILNE-MITH: Okay. Thank you. MR. MI | 1  |   | l  | ·   |
| than open these 25 files on the time and date stamps  So here, we are talking about link  files. These are the link files was created as a result of  accessing these documents and "access" is an  interesting word and because there was an entry  created in the master file table, it created all of the  information as it related to that link file. And,  hence, that's why we get the last access date.  Twill go back to my so I agree with  created, then the last access date would get updated on  the link file, not the document.  Pege 87  about, the link files.  A. And that's what we are talking  A. And that's what we are talking  talking about here, the link files?  A. And that's what we are talking  A. If we are talking about a link  file:  295 Q. So when you open a file, the link  file:  295 Q. So when you open a file, the link  file:  296 Q. Yes. Which is what is in  Exhibit F, correct?  A. Hidwe are talking about a link  file:  297 Q. Okay.  A. However, this what I'm looking  at at Exhibit F is consistent with the copying of  documents, not the opening of documents. Is it  theoreticall proposed these could reflect that moment that  file and then subsequently closed them, you would have this exact can ereurly  a highly unlikely. Tituation based on what I'm looking  at at Exhibit F is consistent with the copying of  documents, not the opening of documents.  A. If we are talking about a link  file and then subsequently close them, you would have this exact as same record  A. I'm running through a socanatio  my head, so give me one second to just I'm not  my head, so give me one second to just I'm running through a socanatio  my head, so give me one second to just I'm running through a socanatio  my head, so give me one second to just I'm running through a socanatio  my head, so give me one second to just I'm running through a socanatio  my head, so give me one second to just I'm running through a socanatio  my head, so give me one second to just I'm running through a socanatio   | 1  | <del>-</del> -  |  |   |
| 11 So here, we are talking about link 12 files. These are the link files that reference these 3 documents, and the link file was created as a result of 4 accessing these documents — and "access" is an 15 interesting word — and because there was an entry 16 created in the master file table, it created all of the 17 information as it related to that link file. And, 18 hence, that's why we get the last access date. 19   | i .  |   |  | _   |
| files. These are the link files that reference these documents, and the link file was created as a result of accessing these documents - and 'access' is an interesting word and because there was an entry created in the master file table, it created all of the information as it related to that link file. And, hence, that's why we get the last access date. If will go back to my so I agree with you that, if a document is opened and a link file is created, then the last access date would get updated on the link file, or Right. And that's what we're talking about here, the link files?  A. And that's what we are talking bout, the link files  2 295 Q. So when you open a file, the link file's last access date would reflect that moment that you opened it?  A. If we are talking about a link file's  2 296 Q. Yes. Which is what is in Exhibit F, correct? A. Which is what is in Exhibit F. 2 297 Q. Okay. A. However, this what I'm looking at at Exhibit F is consistent with the copying of comments, not the opening of documents. Is it theoretical name, the answer, th          | 1  |   |  | -   |
| and coessing these documents - and "access" is an accessing these documents - and "access is an interesting word - and because theze was an entry information as it related to that link file. And, information as it related to that link file. And, information as it related to that link file. And, information as it related to that link file. And, information as it related to that link file. And, information as it related to that link file. And, information as it related to that link file is information as it related to that link file is information as it related to that link file is information as and profiling of people in a season of the motivations and profiling of people in a season of the motivations and profiling of people who engage in corporate malfeasance?  20 Q. Okay. And that's what we're income that is what we are talking about here, the link files?  21 294 Q. Right. And that's what we're in a about, the link files.  22 295 Q. So when you open a file, the link file's last access date would reflect that moment that you opened it?  23 296 Q. Yes. Which is what is in Exhibit F.  24 296 Q. Yes. Which is what is in Exhibit F.  25 A. If we are talking about a link file is in Exhibit F, correct?  26 Q. Okay.  27 A. Whoch is what is in Exhibit F.  28 A. Which is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  29 A. Whoch is what is in Exhibit F.  20 A. If we are talking about a link file with the copying of documents, not the opening of documents. Is it theoretically possible be opened these documents? Yes, but highly unlikely. That's my evidence.  29 A. I'm seasond; eight documents, same second; file thought on the research, the microwall of the whoch what I'm looking at a corporate malfeasance?  20 A. I'm satingly and corporate malfeasance?  21 The basing it corporate mal | 1  | •   | l .  | · · · · · · · · · · · · · · · ·   |
| 14 decreasing these documents and "access" is an 15 interesting word and because there was an entry 2 interesting word and because there was an entry 3 in the answer file table, it created all of the 17 information as it related to that link file. And, 18 hence, that's why we get the last access date. 19 T will go back to my so I agree with 20 you that, if a document is opened and a link file is 21 created, then the last access date would get updated on 2 the link file, not the document. 22 the link file, not the document. 23 294 Q. Right. And that's what we're 24 talking about here, the link files? 25 A. And that's what we are talking 25 A. And that's what we are talking 26 Men. 27 Men. 27 Men. 28 Men. 29 Men. 2             | l .  |   | l  | •   |
| interesting word — and because there was an entry created in the master file table, it created all of the information as it related to that link file. And, hence, that's why we get the last access date. I will go back to my — so I agree with created, then the last access date would get updated on the link file, not the document.  2 the link file, not the document. 2 the link file, not the document. 2 the link files. 2 294 Q. Right. And that's what we're talking about here, the link files? A. And that's what we are talking  Page 87  about, the link files. 2 295 Q. So when you open a file, the link file:  A. If we are talking about a link file.  A. If we are talking about a link file.  A. Mich is what is in Exhibit F. 296 Q. Yes. Which is what is in Exhibit F, correct?  A. Rowever, this — what I'm looking ta assessment of the motivations and profiling of people who engage in corporate malfeasance? A. I'm basing it on.  Page 87  looking at in terms of the times, which are, in some cases, three documents, same second. That's what I'm basing it on.  Page 89  A. Mich sites.  A. Inthe simple based on what I'm looking at in terms of the times, which are, in some cases, three documents, same second. That's what I'm basing it on.  Page 89  A. Mich sites.  A. I'm basing it on.  Page 89  A. I'm basing it on.  Page 89  A. Mich sites.  A. I'm basing it on.  Page 89  A. Mich sites.  A. I'm basing it on.  Page 89  A. Mich sites.  A. I'm basing it on.  Page 89  A. Mich sites.  A. I'm basing it on.  A. Firm ba | 13   | documents, and the link file was created as a result of   | !  | <u>-</u>  |
| 16 created in the master file table, it created all of the 17 information as it related to that link file. And, 18 hence, that's why we get the last access date. 19   | 14   | accessing these documents and "access" is an  |  | theoretical answer, the answer is yes; however, that is   |
| information as it related to that link file. And, 18 hence, that's why we get the last access date.   19   | 15   | interesting word and because there was an entry   | 15   | a highly unlikely situation based on what I'm looking   |
| 18 hence, that's why we get the last access date. 19   | 16   | created in the master file table, it created all of the   | 16   | at.   |
| you that, if a document is opened and a link file is 2 created, then the last access date would get updated on 2 the link file, not the document. 22 the link file, not the document. 23 294 Q. Right. And that's what we're 24 talking about here, the link files? 25 A. And that's what we are talking 25 A. And that's what we are talking 26 A. And that's what we are talking 27 about, the link files. 295 Q. So when you open a file, the link 4 you opened it? 3 A. If we are talking about a link 5 file's last access date would reflect that moment that 4 you opened it? 3 A. If we are talking about a link 6 file. 3 A. Which is what is in Exhibit F. 6 Exhibit F, correct? 4 B. Which is what is in Exhibit F. 10 297 Q. Okay. 10 A. However, this — what I'm looking at at Exhibit F is consistent with the copying of documents, not the opening of documents. Is it 14 theoretically possible he opened these documents? Yes, 5 but highly unlikely. That's my evidence. 16 298 Q. If Mr. Moyse had gone through and opened these call them 25 documents at the times 17 theory of 29 Q. Mr. Musters, you understand you are 29 Q. Mr. Musters, you understand you are 29 questions. 20 Q. Mr. Musters, probable he opened these documents? Yes, 5 but highly unlikely. That's my evidence. 21 the two, but I can define a link file as a file which is a link to another document, and there are rules 20 are transferring data from one type of file type to 20 another. A simple example is burning files to a CD or 23 299 Q. Mr. Musters, you understand you are 24 here to give objective evidence to help the Court? 24 denote that activity. Running a program does not   | 17   | •   | 17   | 302 Q. Okay. And that's based on your   |
| you that, if a document is opened and a link file is created, then the last access date would get updated on 2 the link file, not the document.  22  | 18   | hence, that's why we get the last access date.  | 18   | assessment of the motivations and profiling of people   |
| created, then the last access date would get updated on the link file, not the document.  2  | 19   | I will go back to my so I agree with  | 19   | who engage in corporate malfeasance?  |
| 22 the link file, not the document. 23 294 Q. Right. And that's what we're 24 talking about here, the link files? 25 A. And that's what we are talking 26 A. And that's what we are talking 27 about, the link files. 28 295 Q. So when you open a file, the link 295 A. If we are talking about a link 39 file's last access date would reflect that moment that 40 you opened it? 5 A. If we are talking about a link 60 file. 70 296 Q. Yes. Which is what is in 80 Exhibit F, correct? 81 A. Which is what is in Exhibit F. 81 297 Q. Okay. 81 A. However, this what I'm looking 81 at at Exhibit F is consistent with the copying of documents, not the opening of documents. Is it 81 theoretically possible he opened these documents? Yes, but highly unlikely. That's my evidence. 82 Q. G. If Mr. Moyse had gone through and oppened these call them 25 documents at the times indicated and then done nothing else other than close them, you would have this exact same record? 81 A. I'm running through a scenario in my head, so give me one second to just I'm not sure that's true. 82 Cases, three documents, same second, That's what to I'm basing it on. 82 MR. MINENE-SMITH: Okay. Thank you.  Page 89  Page 89  Those are my questions.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief quest        | 20   | you that, if a document is opened and a link file is  | 20   | A. It's simply based on what I'm  |
| 23 294 Q. Right. And that's what we're talking about here, the link files?  A. And that's what we are talking  Page 87  about, the link files.  295 Q. So when you open a file, the link file's last access date would reflect that moment that you opened it?  A. If we are talking about a link file.  296 Q. Yes. Which is what is in Exhibit F.  297 Q. Okay.  A. Which is what is in Exhibit F.  297 Q. Okay.  A. However, this — what I'm looking at at Exhibit F is consistent with the copying of documents, not the opening of documents. Is it theoretically possible he opened these documents? Yes, but highly unlikely. That's my evidence.  298 Q. If Mr. Moyse had gone through and oppend these call them 25 documents at the times indicated and then done nothing else other than close them, you would have this exact same record?  A. I'm running through a scenario in my head, so give me one second to just I'm not sure that's true.  298 Q. Mr. Musters, you understand you are here to give objective evidence to help the Court?  208 Q. Mr. Musters, you understand you are here to give objective evidence to help the Court?  209 Q. Mr. Musters, you understand you are here to give objective evidence to help the Court?  201 A. B. And that's what we are talking  Page 87  Those are my questions.  MR. MINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief question in re-exam.  MR. WINTON: I just have one brief questions.  20   | 21   | created, then the last access date would get updated on   | 21   | looking at in terms of the times, which are, in some  |
| 24 talking about here, the link files?  25 A. And that's what we are talking  Page 87  1 about, the link files.  2 295 Q. So when you open a file, the link 3 file's last access date would reflect that moment that 4 you opened it?  A. If we are talking about a link 6 file. 7 296 Q. Yes. Which is what is in 8 Exhibit F, correct? 9 A. Which is what is in Exhibit F. 10 297 Q. Okay. 11 A. However, this what I'm looking at at Exhibit F is consistent with the copying of downents, not the opening of documents. Is it 13 documents, not the opening of documents. Is it 14 theoretically possible he opened these documents? Yes, but highly unlikely. That's my evidence. 16 298 Q. If Mr. Moyse had gone through and opened these call them 25 documents at the times indicated and then done nothing else other than close them, you would have this exact same record? 20 A. I'm passing it on. 21 Those are my questions. 22 MR. WINTON: I just have one brief question in re-exam. 33 Question in re-exam. 4 Wh. EE-EXAMINATION BY MR. WINTON: 5 303 Q. Mr. Musters, you recall that the file. 7 your evidence regarding Mr. Lo's suggestion that the absence of link files was somehow relevant to whether or not Mr. Moyse had run the reg edit application? 4 I recall that, yes. 4 A. Link files — there's link files and shortcuts, and oftentimes, terminology, we cross the two, but I can define a link file as a file which is a link to another document, and there are rules around when link files get created: Predominantly when we're briedging — bridging is the wrong word — when we are transferring data from one type of file type to another. A simple example is burning files to a CD or a USB drive. We're going to create link files as a result of that activity. Running a program does not   | 22   | the link file, not the document.  | 22   | cases, three documents, same second; five documents,  |
| 25 A. And that's what we are talking  Page 87  about, the link files.  Page 87  about, the link files.  Page 87  ite's last access date would reflect that moment that you opened it?  A. If we are talking about a link file.  Page 89  A. If we are talking about a link file.  Page 89  A. If we are talking about a link file.  Page 89  A. Which is what is in Exhibit F, correct?  A. Which is what is in Exhibit F.  Page 89  A. Which is what is in Exhibit F.  Page 89  A. Which is what is in Exhibit F, correct?  A. However, this what I'm looking at at Exhibit F is consistent with the copying of documents, not the opening of documents. Is it theoretically possible he opened these documents? Yes, but highly unlikely. That's my evidence.  Page 89  A. Which is what is in Exhibit F.  Page 89  A. If we are talking about a link A. If we are talking about a link A. I'm rouning through and opened these documents at the times indicated and then done nothing else other than close them, you would have this exact same record?  A. I'm running through a scenario in my head, so give me one second to just I'm not sure that's true.  Page 89  A. MR. WINTON: I just have one brief Question in re-exam.  A. Wintonis in what is in Exhibit F.  On MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. MR. WINTON: I just have one brief Question in re-exam.  A. Mr. Boverellint hat the because of in K        | 23   | 294 Q. Right. And that's what we're   | 23   | same second; eight documents, same second. That's what  |
| about, the link files.  2 295 Q. So when you open a file, the link 3 file's last access date would reflect that moment that 4 you opened it? 5 A. If we are talking about a link 6 file. 7 296 Q. Yes. Which is what is in 8 Exhibit F, correct? 9 A. Which is what is in Exhibit F. 10 297 Q. Okay. 11 A. However, this what I'm looking 12 at at Exhibit F is consistent with the copying of 13 documents, not the opening of documents. Is it 14 theoretically possible he opened these documents? Yes, 15 but highly unlikely. That's my evidence. 16 298 Q. If Mr. Moyse had gone through and 17 opened these call them 25 documents at the times 18 indicated and then done nothing else other than close 19 them, you would have this exact same record? 20 A. I'm running through a scenario in 21 my head, so give me one second to just I'm not 22 sure that's true. 23 299 Q. Mr. Musters, you understand you are 24 here to give objective evidence to help the Court?  29 P. Q. Mr. Musters, you understand you are 20 A. I'm running through a scenario in 21 about, the link files are my questions. 22 MR. WINTON: I just have one brief question in re-exam. 24 MR. WINTON: 25 MR. WINTON: 26 NF. Musters, you recall that 27 Mr. Borg-Olivier gave you an opportunity to provide 28 your evidence regarding Mr. Lo's suggestion that the absence of link files was somehow relevant to whether 29 or not Mr. Moyse had run the reg edit application? 29 A. I recall that, yes. 20 A. I recall that, yes. 21 304 Q. In your experience as a forensic 22 examiner, investigator, how widely known is it 23 and shortcuts, and oftentimes, terminology, we cross 24 the two, but I can define a link file as a file which 25 is a link to another document, and there are rules 26 around when link files get created: Predominantly when 27 we're bridging bridging is the wrong word when we 28 retransferring data from one type of file type to 29 Q. Mr. Musters, you understand you are 20 another. A simple example is burning files to a CD or 29 Q. Mr. Musters, you understand you are                | 24   | talking about here, the link files?   | 24   | I'm basing it on.   |
| about, the link files.  2 925 Q. So when you open a file, the link 3 file's last access date would reflect that moment that 4 you opened it? 5 A. If we are talking about a link 6 file. 7 296 Q. Yes. Which is what is in 8 Exhibit F, correct? 9 A. Which is what is in Exhibit F. 10 297 Q. Okay. 11 A. However, this what I'm looking 12 at at Exhibit F is consistent with the copying of 13 documents, not the opening of documents. Is it 14 theoretically possible he opened these documents? Yes, 15 but highly unlikely. That's my evidence. 16 298 Q. If Mr. Moyse had gone through and 17 opened these call them 25 documents at the times 18 indicated and then done nothing else other than close 19 them, you would have this exact same record? 20 A. I'm running through a scenario in 21 my head, so give me one second to just I'm not 22 299 Q. Mr. Musters, you understand you are 24 here to give objective evidence to help the Court?  29 Q. Mr. Musters, you understand you are 20 An I my understand you are 21 are transferring data from one type of file type to 22 another. A simple example is burning files to a CD or 23 299 Q. Mr. Musters, you understand you are 24 here to give objective evidence to help the Court?   | 25   | A. And that's what we are talking   | 25   | MR. MILNE-SMITH: Okay. Thank you.   |
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| MOC      | TERS, MARTIN ON May 19, 2015                            | Pages 90–91 |
|----------|---|-------------|
| 1        | Page 90<br>Now, I wasn't here when Mr. Lo gave his      |             |
| 2        | testimony. If he meant creating a shortcut in the       |             |
| 3        | list, the Windows 7 list, commonly referred to as the   |             |
| 4        | most recently used activity list, that would,           |             |
| 5        | terminology, be a shortcut: Potentially a link file     |             |
| 6        | created to show that it had been run. Mr. Lo should     |             |
| 7        | have known that running the reg edit program does not   |             |
| 8        | create a link or a shortcut or any reference to the     |             |
| 9        | most recently used list on a Windows 7 operating        |             |
| 10       | system.   |             |
| 11       | How common is that? I would assume that                 |             |
| 12       | any forensic investigator would know that.              |             |
| 13       | MR. WINTON: I have no further                           |             |
| 14       | questions.  |             |
| 15       | Whereupon the cross-examination concluded at            |             |
| 16       | 4:12 p.m.   |             |
| 17       | r.m.  |             |
| 18       |   |             |
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| 25       |   |             |
| <u> </u> | Page 91   |             |
| 1.       | REPORTER'S CERTIFICATE                                  |             |
| 2        | I, TERRY WOOD, RPR, CSR, Certified                      |             |
| 3        | Shorthand Reporter, certify;                            |             |
| 4        | That the foregoing proceedings were                     |             |
| 5        | taken before me at the time and place therein set       |             |
| 6        | forth, at which time the witness was put under oath by  |             |
| 7        | me;   |             |
| 8        | That the testimony of the witness and                   | ·           |
| . 9      | all objections made at the time of the examination were |             |
| 10       | recorded stenographically by me and were thereafter     |             |
| 11       | transcribed;  |             |
| 12       | That the foregoing is a true and correct                |             |
| 1.3      | transcript of my shorthand notes so taken.              |             |
| 14       |   |             |
| 1.5      | Dated this 25th day of May, 2015.                       |             |
| 16       | Terry Wood  |             |
| 1.7      |   | ,           |
| 18       | NEESONS   |             |
| 1.9      | PER: TERRY WOOD, RPR, CSR                               |             |
| 20       | CERTIFIED COURT REPORTER                                |             |
| 21       |   |             |
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# **TAB 2**

**ANDREW WINTON** 

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#### Via Email

May 21, 2015

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Dear Counsel:

Re: The Catalyst Capital Group Inc. v. Brandon Moyse et al. Court File No. CV-14-507120

One question (#161) was taken under advisement at Mr. Musters' cross-examination. In response to that question:

- Mr. Musters cannot recall or re-create the search terms used which led to the publicly available information referred to in paragraph 8 of his April 30, 2015 affidavit; and
- Enclosed please find the publicly available information to which Mr. Musters was referring.

In addition to these documents, Mr. Musters also notes that the publicly available information is available on YouTube at https://www.youtube.com/watch?v=PyjjADzw6z0 and https://www.youtube.com/watch?v=lpmdMdu4L7M.

Mr. Musters wishes to correct an error in his testimony. At question 162, Mr. Musters stated that it was incorrect the information he was referring to provided advice as on the removal of the entire ASO program and not simply removal of the remnant files. Upon reviewing the publicly available information, Mr. Musters notes that the information includes advice on the removal of the entire ASO program and his answer to question 162 was incorrect.

Mr. Musters will not re-attend for further cross-examination. None of the other witnesses are reattending following answers to undertakings or under advisements and we see no reason to proceed any differently with Mr. Musters.

Yours truly,

Andrew Winton

c. Rocco DiPucchio

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How to add, modify, or delete registry subkeys and values by using a .reg file



#### Support for Windows XP has ended

Microsoft ended support for Windows XP on April 8, 2014. This change has affected your software updates and security options. Learn what this means for you and how to stay protected.



#### Support for Windows Server 2003 will end on July 14, 2015

Microsoft will end support for Windows Server 2003 on July 14, 2015. This change will affect your software updates and security options.

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Article ID: 310516 - View products that this article applies to.

This article was previously published under Q310516

Summary

Important This section, method, or task contains steps that tell you how to modify the registry. However, serious problems might occur if you modify the registry incorrectly. Therefore, make sure that you follow these steps carefully. For added protection, back up the registry before you modify it. Then, you can restore the registry if a problem occurs. For more information about how to back up and restore the registry, click the following article number to view the article in the Microsoft Knowledge

322756 (https://support.microsoft.com/kb/322756/ ) How to back up and restore the registry in Windows

This step-by-step article describes how to add, modify, or delete registry subkeys and values by using a Registration Entries (.reg) file. Regedit.exe uses .reg files to import and export registry subkeys and values. You can use these .reg files to remotely distribute registry changes to several Windows-based computers. When you run a .reg file, the file contents merge into the local registry. Therefore, you must distribute .reg files with caution.

#### Syntax of .Reg Files

A .reg file has the following syntax:

RegistryEditorVersion Blank line [RegistryPath1] "DataItemName1"="DataType1:DataValue1" DataItemName2"="DataType2:DataValue2" Blank line [RegistryPath2] "DataItemName3"="DataType3:DataValue3"

#### where:

RegistryEditorVersion is either "Windows Registry Editor Version 5.00" for Windows 2000, Windows XP, and Windows Server 2003, or "REGEDIT4" for Windows 98 and Windows NT 4.0. The "REGEDIT4" header also works on Windows 2000-based, Windows XP-based, and Windows Server 2003-based computers.

Blank line is a blank line. This identifies the start of a new registry path. Each key or subkey is a new registry path. If you have several keys in your .reg file, blank lines can help you to examine and to troubleshoot the contents.

RegistryPathx is the path of the subkey that holds the first value you are importing. Enclose the path in square brackets, and separate each level of the hierarchy by a backslash. For example:

HKEY\_LOCAL\_ MACHINE\SOFTWARE\Policies\Microsoft\Windows\System

A .reg file can contain several registry paths. If the bottom of the hierarchy in the path statement does not exist in the registry, a new subkey is created. The contents of the registry files are sent to the registry in the order you enter them. Therefore, if you want to create a new subkey with another subkey below it, you must enter the lines in the correct order.

DataItemNamex is the name of the data item that you want to import. If a data item in your file does not exist in the registry, the .reg file adds it (with the value of the data item). If a data item does exist, the value in your .reg file overwrites the existing value. Quotation marks enclose the name of the data item. An equal sign (=) immediately follows the name of the data item.

DataTypex is the data type for the registry value and immediately follows the equal sign. For all the data types other than REG\_SZ (a string value), a colon immediately

follows the data type. If the data type is REG\_SZ, do not include the data type value or colon. In this case, Regedit.exe assumes REG\_SZ for the data type. The following table lists the typical registry data types:

| Data Type     | DataType in .reg |
|---------------|------------------|
| REG_BINARY    | hexadecimal      |
| REG_DWORD     | dword            |
| REG_EXPAND_SZ | hexadecimal(2)   |
| REG_MULTI_SZ  | hexadecimal(7)   |

For more information about registry data types, click the following article number to view the article in the Microsoft Knowledge Base:

256986 (https://support.microsoft.com/kb/256986/ ) Description of the Microsoft Windows registry

DataValuex immediately follows the colon (or the equal sign with REG\_SZ) and must be in the appropriate format (for example, string or hexadecimal). Use hexadecimal format for binary data items.

Note You can enter several data item lines for the same registry path.

Note the registry file should contain a blank line at the bottom of the file.

#### Adding Registry Subkeys or Adding and Changing Registry Values

To add a registry subkey or add or change a registry value, make the appropriate changes in the registry, and then export the appropriate subkey or subkeys. Exported registry subkeys are automatically saved as .reg files. To make changes to the registry and export your changes to a .reg file, follow these steps:

- 1. Click Start, click Run, type regedit in the Open box, and then click OK.
- 2. Locate and then click the subkey that holds the registry item or items that you want to change.
- 3. Click File, and then click Export.

This step backs up the subkey before you make any changes. You can import this file back into the registry later if your changes cause a problem.

4. In the File name box, type a file name to use to save the .reg file with the original registry items, and then click Save.

Note Use a file name that reminds you of the contents, such as a reference to the name of the subkey.

- 5. In the right pane, add or modify the registry items you want.
- 6. Repeat steps 3 and 4 to export the subkey again, but use a different file name for the .reg file. You can use this .reg file to make your registry changes on another computer.
- 7. Test your changes on the local computer. If they cause a problem, double-click the file that holds the backup of the original registry data to return the registry to its original state. If the changes work as expected, you can distribute the .reg you created in step 6 to other computers by using the methods in the "Distributing Registry Changes" section of this article.

#### Deleting Registry Keys and Values

To delete a registry key with a .reg file, put a hyphen (-) in front of the RegistryPath in the .reg file. For example, to delete the Test subkey from the following registry key: HKEY LOCAL\_MACHINE\Software

put a hyphen in front of the following registry key in the .reg file: HKEY\_LOCAL\_MACHINE\Software\Test

The following example has a .reg file that can perform this task.

```
I -HKEY_LOCAL_MACHINE\Software\Test
```

To delete a registry value with a .reg file, put a hyphen (-) after the equals sign following the DataItemName in the .reg file. For example, to delete the TestValue registry value from the following registry key:

HKEY\_LOCAL\_MACHINE\Software\Test

put a hyphen after the "TestValue"= in the .reg file. The following example has a .reg file that can perform this task. HKEY\_LOCAL\_MACHINE\Software\Test

"TestValue"=-

To create the .reg file, use Regedit.exe to export the registry key that you want to delete, and then use Notepad to edit the .reg file and insert the hyphen.

#### Renaming Registry Keys and Values

To rename a key or value, delete the key or value, and then create a new key or value with the new name.

#### Distributing Registry Changes

You can send a .reg file to users in an e-mail message, put a .reg file on a network share and direct users to the network share to run it, or you can add a command to the users' logon scripts to automatically import the .reg file when they log on. When users run the .reg file, they receive the following messages:

Registry Editor

Are you sure you want to add the information in path of .reg file to the registry?

If the user clicks Yes, the user receives the following message:

Registry Editor

Information in path of .reg file has been successfully entered into the registry.

Regedit.exe supports a /s command-line switch to not display these messages. For example, to silently run the .reg file (with the /s switch) from a login script batch file, use the following syntax:

regedit.exe /s path of .reg file

You can also use Group Policy or System Policy to distribute registry changes across your network. For additional information, visit the following Microsoft Web site: http://msdn2.microsoft.com/en-us/library/ms954395.aspx (http://msdn2.microsoft.com/en-us/library/ms954395.aspx)

Note If the changes work, you can send the registration file to the appropriate users on the network.

#### Properties

Article ID: 310516 - Last Review: September 30, 2013 - Revision: 11.0 Applies to

- Windows 7 Enterprise
- Windows 7 Professional
- Windows 7 Home Basic
- Windows 7 Home Premium
- Windows 7 Starter
- Windows 7 Ultimate
- Windows Server 2008 R2 Enterprise
- Windows Server 2008 R2 Datacenter
- Windows Server 2008 R2 for Itanium-Based Systems
- Windows Server 2008 R2 Foundation
- Windows Server 2008 R2 Standard
- Microsoft Windows Server 2003, Enterprise x64 Edition
- Microsoft Windows Server 2003, Datacenter Edition (32-bit x86)
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Keywords: kbenv kbhowtomaster KB310516

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#### How To Delete Registry Keys in Windows 7



By Tim Fisher PC Support Expert

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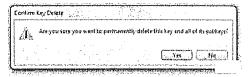
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Confirm Key Delete Message in Windows 7.

Sometimes, as part of a troubleshooting step, or a "registry hack" of some kind, you may need to delete a registry key from the Windows Registry.

Assuming you know the location of the registry key in the Windows 7 Registry, removing it is very easy.

However, considering how important the registry is to Windows 7, be sure to follow these instructions exactly!

Follow these easy steps to delete a registry key in the Windows 7 Registry.



Note: Obviously the steps below require working with the Windows Registry. Making changes other than the ones described below could cause serious problems.

Difficulty: Easy

Time Required: Deleting Windows Registry keys in Windows 7 usually takes less than 10 minutes

Here's How:

- 1. Click on the Start button.
- 2. In the search box, type regedit and then press Enter. The Registry Editor program will
- 3. Using the > icon, navigate through the registry key branches until you reach the subkey (the folder on the left) that you want to delete, or the subkey that contains the value (on the right) you want to delete.
- 4. Backup the registry key you're about to delete.

As sure as you probably are that removing this particular key or value will get you the results you're looking for, it's a good idea to create a backup just in case you're wrong and need to restore the information back to the Windows Registry later.

5. If you're deleting the registry subkey, make sure it's selected on the left. If you're deleting a specific registry value, make sure it's selected on the right.

Ads

Free Driver Updates www.reviversoft.com For Windows 8, 7, XP and Vista, Free 6. With the subkey or value selected, choose Edit and then Delete from the Registry Editor menu.

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permanently delete this value?

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7. If you're deleting an entire subkey on the left, you'll be prompted with this Confirm Key Delete message:

Are you sure you want to permanently delete this key and all of its subkeys?

If you're deleting one or more individual values on the right, you'll be prompted with this Confirm Value Delete message:

Deleting certain registry values could cause system instability. Are you sure you want to

8. No matter the confirmation message, click on the Yes button to remove the key or value.

Note: Changes in the Windows 7 Registry are made immediately. There are no Save or Undo options like in many other programs.

- 9. Close Registry Editor.
- 10. Restart your computer. Depending on the keys or values you removed, you may need to restart to see the changes take effect in Windows 7 or in another program.
- 11. If deleting the registry key or value didn't do what you expected it to do, you can always restore the registry key using the backup you created in Step 4.

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My browser was taking 10 to 15 seconds to load up instead of being instant. Three of the top anti spyware programs insisted all was well. However a few simple instructions from your team and the problem was magically solved.

Nelson S.

## **Secure Browsing**

#### How to Remove Secure Browsing from Your Computer

To completely purge Secure Browsing from your computer, you need to delete the Windows registry keys and registry values associated with Secure Browsing. These registry keys and values are respectively listed in the <u>Registry Keys</u> and <u>Registry Values</u> sections on this page.

For instructions on deleting the Secure Browsing registry keys and registry values, see the following section <u>How to Remove Secure Browsing from the Windows Registry</u>.

How to Remove Secure Browsing from the Windows Registry^

The Windows registry stores important system information such as system preferences, user settings and installed programs details as well as the information about the applications that are automatically run at start-up. Because of this, spyware, malware and adware often store references to their own files in your Windows registry so that they can automatically launch every time you start up your computer.

To effectively remove Secure Browsing from your Windows registry, you must delete all the registry keys and values associated with Secure Browsing, which are listed in the <u>Registry Keys</u> and <u>Registry Values</u> sections on this page.

**IMPORTANT:** Because the registry is a core component of your Windows system, it is strongly recommended that you back up the registry before you begin deleting keys and values. For information about backing up the Windows registry, refer to the Registry Editor online help.

To remove the Secure Browsing registry keys and values:

- 1. On the Windows Start menu, click Run.
- 2. In the **Open** box, type *regedit* and click **OK**.

  The **Registry Editor** window opens. This window consists of two panes. The left pane displays folders that represent the registry keys arranged in hierarchical order. The right one lists the registry values of the currently selected registry key.
- 3. To delete each registry key listed in the Registry Keys section, do the following:
  - Locate the key in the left pane of the Registry Editor window by sequentially expanding the
    folders according to the path indicated in the Registry Keys section. For example, if the
    path of a registry key is
    HKEY LOCAL MACHINE\software\FolderA\FolderB\KeyName1
    - sequentially expand the HKEY\_LOCAL\_MACHINE, software, FolderA and FolderB folders.
  - Select the key name indicated at the end of the path (KeyName1 in the example above).
  - Right-click the key name and select Delete on the menu.
  - Click Yes in the Confirm Key Delete dialog box.
- 4. To delete each registry value listed in the Registry Values section, do the following:
  - o Display the value in the right pane of the **Registry Editor** window by sequentially expanding the folders in the left pane according to the path indicated in the **Registry Values** section and selecting the specified key name. For example, if the path of a registry value is HKEY\_LOCAL\_MACHINE\software\FolderA\FolderB\KeyName2,valueC= sequentially expand the HKEY\_LOCAL\_MACHINE, software, FolderA and FolderB folders and select the **KeyName2** key to display the valueC value in the right pane.
  - In the right pane, select the value name indicated after a comma at the end of the path (valueC in the example above).
  - Right-click the value name and select Delete on the menu.
  - Click Yes in the Confirm Value Delete dialog box.

Registry Keys

HKEY\_LOCAL\_MACHINE\SOFTWARE\Microsoft\Windows\CurrentVersion\Uninstall\Secure Browsing

HKEY\_LOCAL\_MACHINE\SOFTWARE\Microsoft\Windows\CurrentVersion\Uninstall\Secure Browsing

Scan your Windows Registry for Secure Browsing

#### Secure Browsing Categorized as: ^

#### **Trojan**

A trojan is a program that is disguised as legitimate software but is designed to carry out some harmful actions on the infected computer.

Unlike viruses and worms, trojans don't replicate but they can be just as destructive.

These days trojans are very common. Trojans are divided into a number different categories based on their function or type of damage.

Be Aware of the Following Trojan Threats:

Cussifide, Evolution, Startpage.BW!downloader, Lme, Nookl.

#### Downloader

A type of trojan. The primary purpose of downloaders is to install malicious code on a user's computer. However, they can enable other malicious uses. For example, they can be used to continually download new versions of malicious code, adware, or "pornware." They are also used frequently used to exploit the vulnerabilities of Internet Explorer.

Downloaders are typically written in script languages such as VBS or JavaScript.

Be Aware of the Following Downloader Threats:

SillyDl.AHL, Small.dge, GenDropper.Sample, Wintrim, Qoologic.at.

#### How Did My PC Get Infected with Secure Browsing?^

The following are the most likely reasons why your computer got infected with Secure Browsing:

- Your operating system and Web browser's security settings are too lax.
- You are not following safe Internet surfing and PC practices.

#### Downloading and Installing Freeware or Shareware

Small-charge or free software applications may come bundled with spyware, adware, or programs like Secure Browsing. Sometimes adware is attached to free software to enable the developers to cover the overhead involved in created the software. Spyware frequently piggybacks on free software into your computer to damage it and steal valuable private information.

#### **Using Peer-to-Peer Software**

The use of peer-to-peer (P2P) programs or other applications using a shared network exposes your system to the risk of unwittingly downloading infected files, including malicious programs like Secure Browsing.

#### Visiting Questionable Web Sites

When you visit sites with dubious or objectionable content, trojans-including Secure Browsing, spyware and adware, may well be automatically downloaded and installed onto your computer.

#### **Detecting Secure Browsing^**

The following symptoms signal that your computer is very likely to be infected with Secure Browsing:

#### PC is working very slowly

Secure Browsing can seriously slow down your computer. If your PC takes a lot longer than normal to restart or your Internet connection is extremely slow, your computer may well be infected with Secure Browsing.

#### New desktop shortcuts have appeared or the home page has changed

Secure Browsing can tamper with your Internet settings or redirect your default home page to unwanted web sites. Secure Browsing may even add new shortcuts to your PC desktop.

#### Annoying popups keep appearing on your PC

Secure Browsing may swamp your computer with pestering popup ads, even when you're not connected to the Internet, while secretly tracking your browsing habits and gathering your personal information.

#### E-mails that you didn't write are being sent from your mailbox

Secure Browsing may gain complete control of your mailbox to generate and send e-mail with virus attachments, e-mail hoaxes, spam and other types of unsolicited e-mail to other people.

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- 1. SearchPage
- 2. MyWebSearch
- 3. BaiduSearchBar
- 4. SearchProtect
- 5. SweetIM
- 6. StartMenuInternet
- 7. TidyNetwork
- 8. Baidu (BDSearch)
- 9. bProtector
- 10. SmartBar

#### LATEST 10 Files Latest Files

- 1. Win.exe
- 2. textlinks@lplay.com
- 3. aabar.dll

- 4. Incredibar.com
- 5. ftdownloader2@ftdownloader.com.xpi
- 6. chrome-extension ielefkgbofdpglioecfjcbikholflklb 0.localstorage
- 7. MSupdate.exe
- 8. CatWSPrx.dll
- 9. http\_www.istartsurf.com\_0.localstorage-journal
- 10. http www.istartsurf.com 0.localstorage

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# Remove & Uninstall Advanced System Optimizer 3.1.648.8773 Completely from Windows

Do you have trouble in completely uninstalling Advanced System Optimizer 3.1.648.8773 from your system? Are you searching for an effective solution to thoroughly get rid of it off your PC? Don't worry! You have come to the right place and you will be able to uninstall Advanced System Optimizer 3.1.648.8773 without any difficulty.

# Problems You may Encounter when Uninstalling Advanced System Optimizer 3.1.648.8773

- \* Advanced System Optimizer 3.1.648.8773 does not work as good as you thought.
- \* You can not uninstall Advanced System Optimizer 3.1.648.8773 with Add or Remove Programs in Control Panel.
- \* You keep receiving error messages when you are uninstalling Advanced System Optimizer 3.1.648.8773.
- \* Advanced System Optimizer 3.1.648.8773 is still running in the background even after you uninstalled it.
- \* You can still find the folders and files of Advanced System Optimizer 3.1.648.8773 after the uninstallation.

There may be many other problems computer users run into when uninstalling Advanced System Optimizer 3.1.648.8773. As a matter of fact, those issues are caused by improper uninstallation of the program. Also, if the program is corrupted or damaged, users may not be able to uninstall it. Here, you will learn how to correctly and completely remove Advanced System Optimizer 3.1.648.8773.

#### Recommended Solution:

### Download Automatic Advanced System Optimizer 3.1.648.8773 Uninstall Tool

(100% Tested Virus \$ Spyware Free)

## Manually Uninstall Advanced System Optimizer 3.1.648.8773 via Add or Remove Programs

As it's known to most of computer users, the most common way to uninstall a program is via Add or Remove Programs.

1.Exit Advanced System Optimizer 3.1.648.8773 and end all of its processes before uninstalling it.

Tips: if you can not exit the program, you can run your PC in Safe Mode. Restart your PC and keep pressing F8 key before your Windows loads. Select Safe Mode with Networking and hit Enter key.



#### Testimonials

You guys are life saver! I searched for a long time and tried many methods to uninstall my software that stuck in my computer. And then I came to your site and found your uninstall steps could really uninstall my software completely!! Thank you a lot!

----Amelia W, US

I can't uninstall my program in Add/ Remove Program. Without your detailed uninstall tutorial, I can't remove my program so easily. Thank you!

----Eddie L, CA

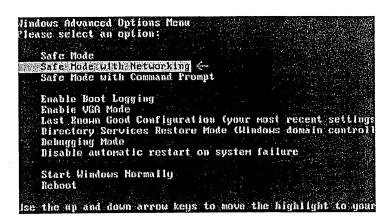
Thank you so much for your guide about uninstalling Norton. Otherwise, I can't install other antivirus. It's very easy for me to understand your uninstall steps. Once again, thank you so much!

----Karl B, UK

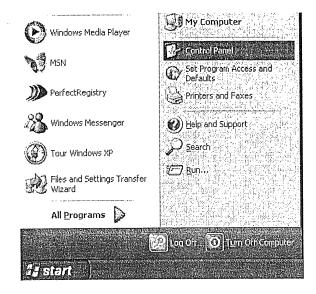
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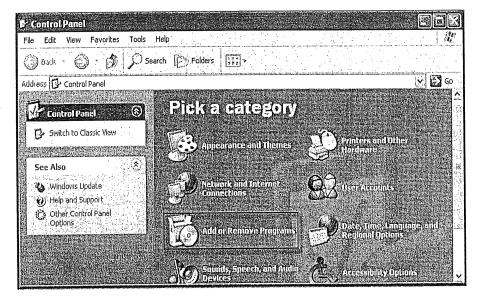




2.Click Start menu and then select Control Panel.



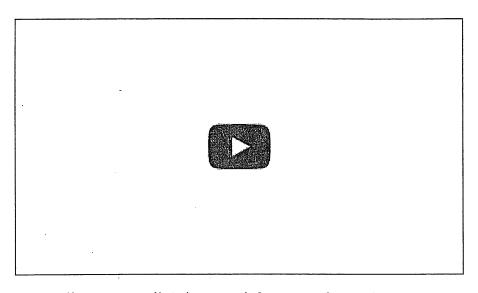
3.Find and click Add/ Remove Programs.



4.Find Advanced System Optimizer 3.1.648.8773 in the list and click Remove button to initiate the uninstallation.

Video of How to Uninstall Advanced System Optimizer 3.1.648.8773 via Add or Remove Programs:

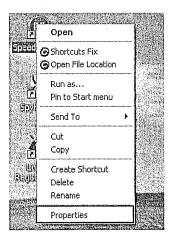




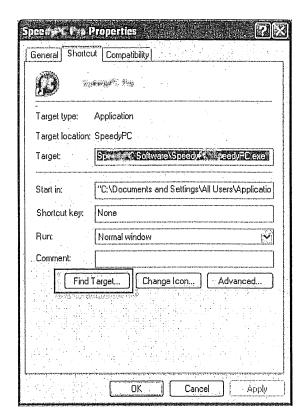
# Manually Uninstall Advanced System Optimizer 3.1.648.8773 with Its Own Uninstaller

If you do not want to use Control Panel to uninstall Advanced System Optimizer 3.1.648.8773, you can also uninstall it with its own uninstaller.

- 1.Go to the desktop and find the icon of Advanced System Optimizer 3.1.648.8773.
- 2.Right click its icon and click Properties.



3.Click Find Target option.



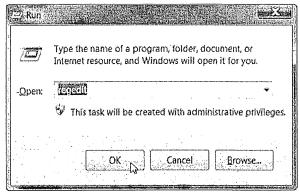
- 4.Find and run unins000.exe or uninstall.exe in its installation folder.
- 5. Follow its uninstall dialog and click "Yes" to uninstall it.
- 6.Reboot your machine after the uninstallation.

Both of the above uninstallation methods are the most common methods for people to uninstall Advanced System Optimizer 3.1.648.8773. Yet, they only allow you to uninstall small programs with few files and are not able to completely remove stubborn software like Advanced System Optimizer 3.1.648.8773. So, the possibility is that many invalid registry files and program files are left in your system and hard disk. If you leave them in your system, your system registry will be stuffed with useless entries and system becomes unstable and slow. In such situation, you need to manually delete those entries and files left in the registry and the system.

# Manually Delete the Remanent Files of Advanced System Optimizer 3.1.648.8773

No matter you use Add or Remove Programs or its uninstaller to uninstall the software, it's necessary for you to get rid of the hidden files and components to ensure a 100% complete uninstallation.

- 1. Delete invalid registry entries
  - \* Click Start and Run
  - \* Type in regedit in the dialog and click OK

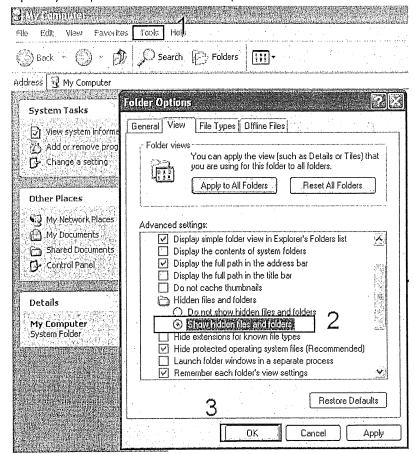


\* Find and delete registry entries of the program, such as in HKEY\_CURRENT\_USER\Software\Advanced System Optimizer 3.1.648.8773 and HKEY\_LOCAL\_MACHINE\SOFTWARE\Advanced System Optimizer 3.1.648.8773

#### 2. Delete associated files and folders

First you need to show all hidden files in your computer.

\* Open My Computer and select Folder Options.



\* Find and delete files of the program, such as in C:\Program Files\Advanced System Optimizer 3.1.648.8773, C:\Documents and Settings\user name\Application Data\Advanced System Optimizer 3.1.648.8773 and C:\Document and Settings\All Users\Application Data\Advanced System Optimizer 3.1.648.8773

registry could be very time-consuming and risky. Please know that Windows registry is the most important central base of your computer. So, you should be extremely careful when deleting entries there. Otherwise, your system will be crashed.

# A Better Way to Automatically Uninstall Advanced System Optimizer 3.1.648.8773

Since most of computer users are not comfortable in manually removing Advanced System Optimizer 3.1.648.8773, it's really advisable for them to resort to the automatic method that is a powerful third-party uninstaller. A powerful third-party uninstaller can

- \* Uninstall all kinds of software safer and faster.
- \* Uninstall half-installed or uninstalled software.
- \* Handle those stubborn software that Add/ Remove Programs cannot.
- \* Detect and remove all associated files and components of the software.
- \* Tidy the registry and improve system performance.
- \* Save your hassle to uninstall the software.

**Step 1: Click and Download** Automatic Advanced System Optimizer 3.1.648.8773 Uninstaller

Step 2: Install and launch the Uninstaller on the PC

Step 3: Select Advanced System Optimizer 3.1.648.8773 and click Uninstall button to uninstall.

Download Automatic Advanced System Optimizer 3.1.648.8773 Uninstaller Now!

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