

In the Matter Of:

The Catalyst Capital Group Inc. v. Brandon Moyse et al

MARTIN MUSTERS

August 01, 2014



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Court File No. CV-14-507120

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is the Cross-Examination of MARTIN MUSTERS on his affidavit sworn June 26, 2014, taken at the offices of Neeson & Associates Court Reporting and Captioning Inc., Suite 1108, 141 Adelaide Street West, Toronto, Ontario, on August 1, 2014.

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

Andrew Winton

& Rocco Di Pucchio, for the Plaintiff

Justin Tetreault, for Brandon Moyse

Andy Pushalik, for West Face Capital Inc.

REPORTED BY: Cindy Littlemore, CSR

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I N D E X

WITNESS: MARTIN MUSTERS, SWORN

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

INDEX OF UNDERTAKINGS

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INDEX OF ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages: 15

INDEX OF REFUSALS

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INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE/LINE NO.

No Exhibits Marked

1 --- Upon commencing at 1:53 p.m.

2 MARTIN MUSTERS, SWORN:

3 CROSS-EXAMINATION BY MR. TETREAULT:

4 1 Q. Can you, please, state your name
5 for the record?

6 A. Martin Hubert Musters.

7 2 Q. And this is a cross-examination
8 for your affidavit sworn on June 26, 2014; correct?

9 A. Yes.

10 3 Q. And the matter is The Catalyst
11 Capital Group Inc. and Brandon Moyses and West Face
12 Capital Inc.

13 MR. WINTON: Yes.

14 THE DEPONENT: Yes.

15 BY MR. TETREAULT:

16 4 Q. When was -- your firm is called
17 Computer Forensics Inc.?

18 A. Correct.

19 5 Q. And when was Computer Forensics
20 Inc. first contacted about this matter?

21 A. Can I refer to my affidavit?

22 6 Q. Yeah, of course.

23 A. June 20th, 2014.

24 7 Q. Okay, and who contacted CFI?

25 A. Mr. Winton.

1 8 Q. Were any other employees of CFI
2 involved in this matter besides yourself?

3 A. I was accompanied by one of my
4 associates, Aniko Kiss, for the collection of the
5 evidence on June 21st although she was there to
6 observe, and I performed the acquisition, the
7 forensic image and the analysis.

8 9 Q. Okay. Specifically, what
9 instructions or directions were you given to
10 perform -- you know, what was the scope of your
11 retainer?

12 A. Are we referring initially or
13 during the course of or --

14 10 Q. Let's start initially.

15 A. I was informed that an
16 employee -- a former employee, Brandon Moyse, had
17 left Catalyst Capital, and I was asked to look for
18 any evidence that files may have been transferred
19 from the Catalyst Capital environment to any other
20 device.

21 11 Q. And who were you speaking with?

22 A. Mr. Winton.

23 12 Q. Was there anybody else?

24 A. Mr. Riley was in attendance on
25 June 21st, but I did not receive any instruction

1 from Mr. Riley.

2 13 Q. Did you receive any instructions
3 or directions in writing?

4 A. If you're referring to e-mail?

5 14 Q. Yes.

6 MR. WINTON: There were -- I'm just
7 here to assist. So there were e-mails relating to
8 the location of the attendance and the type of
9 computer. I think there was some questions
10 Mr. Musters had about --

11 THE DEPONENT: Whether it was
12 encrypted.

13 MR. WINTON: -- the computer system and
14 whether it was encrypted, but other than that, the
15 instructions regarding the taking of the forensic
16 image were not in writing. It was an oral
17 conversation he and I had.

18 BY MR. TETREAULT:

19 15 Q. Can I have an undertaking to
20 produce all e-mail communications between
21 Mr. Musters or CFI and either Catalyst or your
22 firm?

23 R/F MR. WINTON: No.

24 BY MR. TETREAULT:

25 16 Q. Where did you conduct the forensic

1 image of Brandon's workplace computer?

2 A. At our offices.

3 17 Q. And what steps are involved
4 in -- what steps did you undertake to conduct the
5 forensic examination?

6 A. If you will permit, I would like
7 to start at the beginning. Is that all right?

8 18 Q. Yeah.

9 A. Okay. When I attended on June
10 21st, I placed the -- I was given a desktop that I
11 was told belonged to Brandon Moyse. I removed the
12 cover of the desktop. I connected -- there was no
13 power to this device. I removed the cover. I
14 placed the hard drive behind a Tableau TK35 write
15 blocker, and I created a forensic image of the
16 drive using a program called FTK Imager. I used my
17 laptop, my forensic laptop, to perform that. So at
18 no time did the hard drive -- at no time was the
19 hard drive altered in any way, shape or form.

20 From there, I brought the image back to
21 our office, and I ran it through two programs. One
22 is called FTK Forensic Toolkit, and the other one
23 is called Internet Evidence Finder. I ran -- I
24 forgot one step. I always create a second copy of
25 the image in the event that something happens to

1 the original copy.

2 So once those two programs were run,
3 FTK and Internet Evidence Finder -- I also on
4 occasion use Encase, more so for browsing file
5 structures. So those are the three programs in my
6 toolkit, and once those -- once the image is
7 processed, then I begin the analysis work.

8 19 Q. Okay. So once the image was
9 created, what were the next steps in terms of
10 analyzing the image?

11 A. Two aspects. One, I use FTK to
12 look at what are called LNK files. LNK files come
13 in two versions, one you could refer to as a
14 shortcut and one you could refer to as a file
15 that's created so that it's copied to an external
16 device.

17 If we go back a little bit in terms of
18 technology, if you were to burn a CD, every file
19 that you burnt on the CD would have created an
20 associated LNK file. So, first, it creates all the
21 files, puts it altogether and then burns it to the
22 CD, and then in that process, you have a set of LNK
23 files. That's also true when you copy something to
24 a USB or external device.

25 So the first thing that I would do is

1 look for LNK files. If I recall, I found none that
2 were out of the ordinary, and then I went to
3 Internet Evidence Finder, and I looked for -- it
4 has a category within Internet Evidence Finder
5 called the Cloud-based URLs, so I picked up the
6 Cloud-based URLs, and I found that Dropbox and
7 another Cloud-based service called Box were used,
8 so they're of interest to me.

9 20 Q. Okay.

10 A. I also -- it has a category
11 for -- I can't remember what the exact name is, but
12 it identifies web-based e-mail, so whether it be
13 Hotmail, Gmail, Yahoo mail, whatever.

14 So I noted that there were two personal
15 accounts that appeared to be belonging to Brandon
16 or certainly two accounts that were available on
17 the desktop, and I also within Internet Evidence
18 Finder searched for file accesses. The specific --
19 the specific command is file -- I search your file
20 accesses.

21 I don't know, I can keep going, but
22 have I answered your question, or are you looking
23 for more detail?

24 21 Q. So I guess what I'm getting at, so
25 the end product of this, I guess, is a list of

1 files that he accessed?

2 A. If -- no. If I go back to the
3 initial question, which was is there evidence of
4 files being transferred to another device, if I can
5 use that term, then the references to Box and the
6 references to Dropbox were certainly of -- fall
7 within the scope of that question.

8 22 Q. Okay.

9 A. And if I then look for all files
10 that have been accessed with -- and they're
11 presented within Internet Explorer, but it doesn't
12 mean that they came from Internet Explorer, then
13 those files are also of interest, and that's where
14 I found a number of references to files within
15 Dropbox as an example.

16 23 Q. Right. So did you use search
17 terms to find specific -- or specific files, or did
18 you have a complete list of everything you
19 accessed?

20 A. Sorry, please repeat the first
21 part of that question.

22 24 Q. So were you given any search terms
23 to look for specific files, or did you have a
24 complete list of files that he accessed which you
25 then reviewed with somebody?

1 A. No, to the second part of your
2 question. The first part of your question
3 is -- forgive me, I'm not understanding exactly
4 from a technical perspective what you're asking me
5 on the first part.

6 25 Q. So if we go through the various
7 exhibits in your affidavit.

8 A. Yes.

9 26 Q. For instance, at tab F is a list
10 of files that Brandon appears to have accessed
11 relating to WIND Mobile.

12 A. Okay.

13 27 Q. So what I'm asking, you searched
14 the time period May -- or sorry, March 27th to May
15 26th; correct?

16 A. Yes.

17 28 Q. So this is only a subset of the
18 files he accessed on a specific date?

19 A. Correct.

20 29 Q. So would you have an entire list
21 of files similar to this that he accessed during
22 the entire period that you examined?

23 A. If you're asking me if a list of
24 files was provided to me that I searched for, the
25 answer is no.

1 30 Q. No, but I'm asking if -- I mean,
2 I'm assuming that you created this chart at Exhibit
3 E; right?

4 A. Correct.

5 31 Q. So is there -- so where did this
6 come from?

7 A. In -- I provided -- sorry, let's
8 talk about -- within Internet Evidence Finder, I
9 can search for all files that were accessed that
10 become of interest.

11 32 Q. But how would they become of
12 interest to you? You would have no independent
13 knowledge of what would be of interest or not;
14 correct?

15 A. Then let me explain before
16 you -- within Internet Evidence Finder, I search
17 for a list of all files within Internet Evidence
18 Finder. More specifically, I search for file
19 colon colon slash slash slash; okay?

20 33 Q. Right.

21 A. And that gives me a file list and
22 that file list I provided to Mr. Winton because I
23 have no way of knowing what is truly of interest or
24 not. That's not my role here.

25 34 Q. Okay. So can I just stop you

1 there?

2 A. Sure.

3 35 Q. Do you know how many files were on
4 that list?

5 A. I do not recall at this time how
6 many files were on that list.

7 36 Q. More than a hundred?

8 A. I do not recall how many files
9 were on that list.

10 37 Q. Well, how many pages was the list?

11 A. It was in an Excel spreadsheet.

12 38 Q. Okay. Do you have an estimate of
13 how many, how many files were on the list?

14 A. I'm truly not comfort -- I'm truly
15 not comfortable answering how many files. I don't
16 know.

17 39 Q. Can I have an undertaking to
18 answer the question of how many files were on the
19 list produced to your firm?

20 U/T MR. WINTON: Yes, we'll give you that
21 undertaking. We will inform you as to how many
22 files -- I'm not sure if we could use the term
23 "files", but how many entries, let's say, were on
24 the list on the spreadsheet provided to us by
25 Mr. Musters.

1 BY MR. TETREULT:

2 40 Q. And can you, please, produce the
3 lists?

4 MR. WINTON: Well, I'll take that under
5 advisement, because as you can appreciate, there's
6 a lot of confidential information on that through
7 file names that we do not want West Face accessing.
8 So unless you can explain to me what the basis is
9 for asking for the actual list, --

10 MR. TETREULT: Sure.

11 MR. WINTON: -- I'm not sure that
12 you're entitled to it, that it's relevant to
13 anything that's in dispute here.

14 MR. TETREULT: So the position of
15 Catalyst and Mr. Musters, if I understand
16 correctly, is that the pattern of the way he
17 accessed files makes it suspicious, I'll say, or
18 leads to the inference that he was transferring
19 files into a Cloud account.

20 So having access to the full list would
21 enable us to determine whether -- there's no
22 context behind the way that he accessed these
23 files, so seeing a full list would -- it would
24 allow us to determine, you know, is this a normal
25 pattern for him, did he normally open a number of

1 files in a short period of time and things of that
2 nature that would be able to put his actions which
3 you say are suspicious into context.

4 MR. WINTON: Well, if I may, I don't
5 think the word "suspicious" is anywhere in
6 Mr. Musters' affidavit.

7 MR. TETREAULT: Okay.

8 U/A MR. WINTON: So there's that, and
9 secondly, I don't think you've established that if
10 he -- if it's a pattern of conduct that, I guess,
11 happens on other dates other than the dates
12 identified in the affidavit, I don't think you've
13 established that it somehow undermines Mr. Musters'
14 conclusion.

15 So we have no evidence that that would
16 actually prove what you say it proves, and so given
17 the sensitivities of producing that document, I'm
18 taking it under advisement, and what I suggest is
19 if maybe offline we can negotiate some way of
20 protecting confidentiality, we may be able to
21 produce it to you, but I'm not going to give you an
22 undertaking on this cross-examination.

23 BY MR. TETREAULT:

24 41 Q. Okay. So you said that the -- you
25 provided a list to Mr. Winton. So what was -- what

1 happened next?

2 A. I can't speak for -- well, I can't
3 speak for what Mr. Winton did with the list.
4 Subsequently to that, I was asked to narrow in on
5 certain phrases and certain dates.

6 42 Q. Can you be specific about who you
7 were speaking with and what specifically they asked
8 you to do?

9 A. Always speaking with Mr. Winton,
10 so...

11 43 Q. So when did you speak to
12 Mr. Winton?

13 A. I don't have that information with
14 me.

15 44 Q. And so he asked you to focus on
16 specific files?

17 A. Specific dates and -- for example,
18 I recall -- give me one moment.

19 --- Mr. Di Pucchio joins examination
20 at 2:19 p.m.

21 THE DEPONENT: I recall a request for
22 Stelco. I recall a request for WIND Mobile. I
23 also know that I looked at any -- looked for any
24 e-mails with respect to his personal accounts, one
25 Hotmail, one Gmail. So my affidavit -- one second.

1 The appendices and the spreadsheet provided are the
2 results of those inquiries.

3 BY MR. TETREAULT:

4 45 Q. Did you produce a report?

5 A. Outside of this affidavit, no.

6 46 Q. If I can take you to Mr. Riley's
7 affidavit.

8 MR. WINTON: Sure. Just one second. I
9 do want to clarify there was a report produced with
10 respect to the BlackBerry.

11 MR. TETREAULT: Right.

12 MR. WINTON: Just, I think, if you're
13 asking about the subject matter of his affidavit,
14 that's what his answer, I believe, was pertaining
15 to.

16 THE DEPONENT: Yes.

17 MR. WINTON: I just want to make sure
18 there's no error on the record.

19 BY MR. TETREAULT:

20 47 Q. Yeah, and you produced the
21 BlackBerry report, and we'll get to that later.

22 A. So I did not mean to suggest that
23 I didn't produce the BlackBerry report.

24 MR. WINTON: So we're at Mr. Riley's
25 affidavit.

1 BY MR. TETREAULT:

2 48 Q. Paragraph 50, and you can just
3 read it to yourself and let me know when you're
4 ready.

5 A. "I understand from Musters'
6 report --"

7 49 Q. You don't have to read it out
8 loud.

9 A. Oh, sorry. I thought you asked me
10 to read it out loud.

11 50 Q. No. So Mr. Riley says that he
12 understands from your report. So your evidence is
13 that there was no report; correct?

14 A. I'm trying to recall. I did not
15 produce a report outside of my affidavit and the
16 BlackBerry report.

17 51 Q. Okay, and then at paragraph 49, it
18 says:

19 "The information set out below
20 is derived from the report and
21 affidavit of Musters which I have
22 reviewed prior to swearing this
23 affidavit."

24 So again, your evidence is that you
25 didn't produce a report to Mr. Riley or at all?

1 MR. WINTON: He's answered the
2 question.

3 BY MR. TETREault:

4 52 Q. Okay. No, I've got my answer. If
5 you do happen to come across a report, can I get
6 your undertaking to produce it?

7 MR. WINTON: I can explain this -- what
8 you're getting at if you allow me to.

9 MR. TETREault: No, I have his answer.

10 MR. WINTON: Okay. There is no report,
11 and so there's nothing to produce.

12 BY MR. TETREault:

13 53 Q. Okay. Who chose the time period
14 of March 27th to May 26?

15 A. Mr. Winton.

16 54 Q. Did you review any other time
17 periods?

18 A. Can I have a moment to review my
19 affidavit to answer that question?

20 55 Q. Sure. Did you review your
21 affidavit prior to this cross-examination?

22 A. Yes.

23 56 Q. Okay.

24 A. Yes. I need to understand
25 your -- I don't -- your question is too broad for

1 me to answer. When I looked at Hotmail and Gmail
2 activity, I reviewed the entire computer. When I
3 looked at Internet Evidence Finder, I looked at the
4 entire computer. So you need to narrow your
5 question for me. Was I asked -- you need to narrow
6 your question for me.

7 57 Q. Well, what time periods did you
8 examine?

9 A. For what?

10 58 Q. For anything.

11 A. I reviewed the entire computer.

12 59 Q. Okay. Well, you haven't produced
13 any information in terms of files that he accessed
14 prior to March 27th; correct?

15 MR. WINTON: He hasn't produced any
16 information?

17 MR. TETREAULT: So these exhibits to
18 his affidavit, they're only -- I think the earliest
19 of the file -- it shows the date that he accessed
20 the file -- the files. The earliest is, I
21 think -- I believe March 28th.

22 MR. WINTON: They say what they say.

23 BY MR. TETREAULT:

24 60 Q. So why did you choose to produce
25 only a portion of Mr. Moyle's activity?

1 MR. WINTON: Can you -- what's the
2 basis for that question? What are you trying to
3 ask him?

4 MR. TETREAULT: I'm trying to get
5 context around the files that were produced and why
6 certain files were produced and certain files
7 weren't.

8 MR. WINTON: Okay. I don't think any
9 files were produced.

10 MR. TETREAULT: Or file names.

11 MR. WINTON: He didn't prepare any
12 reports on file activity. I think that may be the
13 problem with your question. So he didn't prepare
14 any or produce any documents.

15 BY MR. TETREAULT:

16 61 Q. Well, he produced -- all of his
17 affidavits are his file activity; correct? So why
18 only a portion of all the files he accessed -- you
19 talk about this spreadsheet with his entire file
20 history. Why did you select -- or why did you
21 choose to produce only a select portion over all
22 the files that you uncovered?

23 MR. WINTON: Just to -- Mr. Musters
24 reported to us. He did not produce anything. So
25 if you want to ask him what he reported on, that

1 may be what -- I'm just trying to assist him --

2 MR. TETREAULT: I'm just going to move
3 on.

4 MR. WINTON: -- in terms of what you're
5 trying to ask.

6 BY MR. TETREAULT:

7 62 Q. Did you find any evidence of
8 Mr. Moyses copying files onto a USB?

9 A. I just want to be thoughtful about
10 my answer, so give me a minute. No.

11 63 Q. Did you find any evidence of
12 Mr. Moyses transferring files into his Box or
13 Dropbox accounts?

14 A. Yes.

15 64 Q. What evidence is that?

16 A. If I take you to Appendix B of my
17 affidavit, if you look at record No. -- and forgive
18 me, it's a little bit small -- 99, you'll see a
19 reference to a file that ends Abdullah_documents.

20 65 Q. Okay.

21 A. So there's a file that was
22 referenced in his Box account called
23 Abdullah_documents, and there's also, right above
24 that, line 98 -- it says record 98 -- a login.

25 66 Q. So this -- you're stating that

1 this is a record of Mr. Moyses transferring a file
2 to his Box account?

3 A. I'm saying that if you look
4 at -- if you look at the information listed in
5 Appendix B, okay -- sorry, I'm just looking for the
6 one that has the Dropbox stuff in it. Do you know
7 which one I'm referring to, Mr. Winton?

8 MR. WINTON: If I may assist him?
9 You're looking for Dropbox report?

10 BY MR. TETREAULT:

11 67 Q. Yeah, tab E.

12 A. Tab E? Yes, thank you. So if you
13 look at tab B and tab E, and you look at the access
14 times, then I would like to take you to a statement
15 in my affidavit, No. 17, that says:

16 "In my experience, Moyses's
17 conduct of accessing several files
18 from the same directory over brief
19 period of time, as described above,
20 is consistent with transferring
21 files to a Cloud Service."

22 68 Q. Right, but doesn't your affidavit
23 also say that when you transfer files to a Cloud,
24 it doesn't leave a record in the computer?

25 A. It doesn't leave a LNK file.

1 69 Q. So you're stating -- so correct me
2 if I'm wrong, in tab E, all the Dropbox, isn't this
3 just simply a record of him accessing the files in
4 his Dropbox?

5 A. Well, we have to apply some logic
6 to what we're looking at. The Dropbox is a
7 Cloud-based sharing service, and it's intended to
8 easily share files on more than one computer. So
9 we also know that the desktop, which I analyzed --
10 I'm referring to the Catalyst Capital desktop that
11 Mr. Moyses used, and we can see that it's coming out
12 of his account.

13 So Mr. Moyses had credentials on his
14 account, on his computer, to have these files. So
15 if you're asking -- no one sets up Dropbox on one
16 computer. They always set it up on more than one
17 computer for the purpose of sharing files. It
18 could be ten computers, but let's go with two or
19 more -- or two or more devices, let's say, and --
20 so if you're asking me did he put -- I'm just going
21 to pick one at random, Masonite-1.pdf. It's
22 actually record No. 254. It's about, I don't know,
23 15 down.

24 70 Q. Okay.

25 A. So did he access that file on this

1 computer? Yes. If I look at some of these file
2 names, I would -- I would see that these are files
3 that were accessed. If you're asking me were they
4 accessed because they were placed there from
5 somewhere else or were they accessed from -- sorry,
6 were they put there by Cat Capital, the answer is I
7 can't be sure, but I can tell that these files, if
8 they were in one place, they're logically in two
9 places.

10 71 Q. Right.

11 A. Or more, and the same applies to
12 my statements with respect to Box.

13 72 Q. Okay. So let me help you out with
14 Box.

15 A. Okay.

16 73 Q. So it's Mr. Moyses's evidence that
17 his Box account was used for a work purpose, and on
18 his cross-examination, Mr. Riley acknowledged that
19 the Box account was created for work purposes.

20 So given that both Mr. Moyses and
21 Mr. Riley acknowledged that the Box account was a
22 Catalyst account, would that change your belief
23 about Mr. Moyses's conduct and the records showing
24 that he accessed the Box account?

25 MR. WINTON: What belief are you

1 referring to?

2 MR. TETREULT: Well, Mr. Musters
3 pointed to the Box account and said that record 98
4 and 99 were, I believe -- correct me if I'm
5 wrong -- records of Mr. Moyses transferring files to
6 a Box account.

7 MR. WINTON: Which appendix is it
8 again?

9 BY MR. TETREULT:

10 74 Q. Appendix B.

11 A. Appendix B, so one back. So I
12 referred to 98 and 99. So I referred to a login to
13 the Box account, and I referred to Abdullah
14 documents.

15 75 Q. So do you have any evidence to
16 dispute that those -- that Mr. Moyses accessed these
17 files for a work-related purpose?

18 A. I was never asked to make that
19 determination.

20 76 Q. Would you agree that Mr. -- I can
21 take you to Mr. Moyses's -- have you read
22 Mr. Moyses's affidavit?

23 A. I have.

24 77 Q. So would you agree that the
25 records that you have produced are consistent with

1 Brandon's explanation for the records?

2 A. I'm not sure how to answer that
3 and maybe I'll answer it two ways. My task was to
4 point out whether or not data had left the
5 organization through various means, not -- through
6 various means, and there are many ways that people
7 can take information from an organization. We know
8 and Brandon -- or Mr. Moyse's affidavit
9 acknowledged that he was using a Box account.

10 78 Q. For work purposes.

11 A. I just want to be simplistic for a
12 moment and say -- I'm not the lawyer, so we know
13 that Mr. Moyse was using Box account, and we know
14 that Mr. Moyse was using a Dropbox account. So for
15 what purpose is not for me to determine. However,
16 if I were to have the opportunity to review other
17 devices that would have been attached to this Box
18 or Dropbox account, then by producing those
19 results, the lawyers -- I refer to both sides --
20 can then determine whether or not your statement of
21 for business purposes only is valid. I don't know
22 that. I don't -- I haven't been asked to respond
23 to that, and I make no assertion whether or not it
24 was for those purposes or not.

25 79 Q. Can you explain why in every other

1 exhibit through your affidavit the user is listed,
2 but in Exhibit B, it does not list the user?

3 A. That's simply a function of
4 Internet Evidence Finder in that it wasn't able to
5 recover that information. If you're asking me is
6 that information available, the answer is Internet
7 Evidence Finder did not produce that.

8 80 Q. Is it possible that somebody else
9 was accessing these files on Brandon's computer?

10 MR. WINTON: What's the basis for
11 asking that question?

12 MR. TETREAULT: If you look at Dropbox,
13 for instance, on the second page, the date that the
14 files --

15 MR. WINTON: Sorry, which tab are you
16 at?

17 MR. TETREAULT: Exhibit B, page 120.

18 MR. WINTON: Yeah.

19 MR. TETREAULT: The date accessed says
20 6/20/2014, which is June 20th, 2014.

21 MR. WINTON: Oh, the last one at 3:45
22 p.m.

23 THE DEPONENT: Okay.

24 MR. TETREAULT: So it's -- I mean,
25 Brandon didn't have access to his workplace

1 computer after --

2 MR. WINTON: Is there any -- where are
3 we getting this from?

4 MR. TETREAULT: Mr. Riley stated that
5 he had -- I mean, it's not in dispute that
6 Mr. Moyse didn't work at Catalyst after May 26th,
7 that he was asked to leave the workplace. By June
8 20th, that's after...

9 MR. WINTON: I just think -- if you
10 want to ask a question, ask a question, but if
11 you're going to -- because if you're here to give
12 evidence, I'm not going to accept that. So I think
13 you have to ask a question of this witness rather
14 than giving him a whole bunch of evidence and then
15 asking him to comment on it.

16 BY MR. TETREAULT:

17 81 Q. It's not in dispute that Mr. Moyse
18 wasn't in the workplace on June 20th, so why is
19 there a record here from Mr. Moyse's computer on
20 June 20th?

21 A. Do you want me to answer that
22 question?

23 82 Q. Yes.

24 A. To me, it seems simple. If I have
25 a computer here and a computer here, and let's call

1 this computer -- let's call it Computer 1, which is
2 the Catalyst Capital computer, and Computer 2,
3 the -- another computer not at Catalyst Capital,
4 then as long as both computers are connected to the
5 Internet, then if Computer 2, which is not at
6 Catalyst Capital, accesses a file, that file will
7 be synced -- that's the whole purpose of Dropbox --
8 to other computers that Dropbox is linked to.

9 So to see a Dropbox file accessed after
10 Mr. Moyses was no longer in the workplace does not
11 surprise me. What it does is confirms to me that
12 there's another computer that has access to those
13 Dropbox files.

14 83 Q. So what you're stating is that
15 reference to Dropbox is not Mr. Moyses accessing the
16 Dropbox on his workplace computer, the computer
17 which you examined, but it's him examining -- it's
18 him accessing Dropbox on another computer?

19 A. I can give you a theoretical
20 example. If I put a file on Computer 2, which I've
21 described as not being at Catalyst Capital, a brand
22 new file called Marty.doc, then -- and Dropbox --
23 and this computer at Catalyst Capital is on-line,
24 then the brand new file called Marty.doc will end
25 up in the Dropbox of Catalyst Capital's computer.

1 Having said that, it will have a
2 creation date, a last modified date and an access
3 date. So I haven't done a detailed analysis of
4 these files that you're referring to, but I can
5 tell you that there's a logical explanation for it.

6 84 Q. So I'll ask the question that led
7 to this chain again. Given the user is not --
8 there's no record of the user, is it possible that
9 there was another user who accessed these files on
10 Brandon's computer?

11 A. If someone -- well, let's walk
12 through that.

13 85 Q. I mean, it's a yes-or-no question.

14 A. No, it's not.

15 86 Q. So if somebody else logged into
16 their own -- to their own login on Brandon's
17 computer, there would be no record of that?

18 A. I never said that.

19 87 Q. So why isn't it possible?

20 A. All right. Let me walk you
21 through that. If Marty Musters signed on to
22 Brandon's computer, then Marty Musters would not
23 have access to Dropbox because that was tied
24 Mr. Moyses's account.

25 88 Q. But all this says is -- oh, it

1 doesn't matter. Okay. Let's go to Exhibit C of
2 your affidavit.

3 A. I haven't finished answering the
4 question, but do you want me to --

5 MR. WINTON: Apparently it doesn't
6 matter, so don't worry about it.

7 THE DEPONENT: Okay.

8 BY MR. TETREAULT:

9 89 Q. So it appears that some of the
10 file names in this list are duplicates. Why would
11 that be?

12 A. Well, Internet Evidence Finder
13 produced these, extracted these. I will agree with
14 you that they appear to be duplicates because they
15 have the exact visit date and time and the same
16 file name. So yes, some of them appear to be
17 duplicates although I can't dismiss the fact that
18 they're duplicates. I will agree with you that
19 they appear to be duplicates unless I did more
20 research into whether they were in two different
21 locations, if I try to drill down in terms of
22 getting some additional information about them, but
23 on the surface, they appear to be duplicates, and
24 I'll agree with that.

25 90 Q. Okay. So can you help me

1 understand what the last date visited means?

2 A. The last -- it's referred to as
3 the last access date and time. It is dependent on
4 how the operating system treats those dates and
5 times. For example, the Apple operating system
6 versus Windows 7 versus Windows XP all treat the
7 same date differently.

8 91 Q. So --

9 A. So having said that, Brandon's
10 computer was a Windows 7-based machine. So if I
11 restrict my answer to Windows 7, which would make
12 the most sense, then it either means that the file
13 was manipulated as in it was accessed, it was
14 copied. The -- moved. There would be a number of
15 reasons why an access date in Windows 7 might get
16 updated.

17 92 Q. Okay. So even though this group
18 of files was accessed over an 11-minute period,
19 they could have been open for much longer; correct?

20 A. If you're asking me did I -- did
21 the user open document 1, and then while document 1
22 was open, open document 2 and then open document 3
23 and so on, it's possible.

24 93 Q. What evidence do you rely upon for
25 your belief it was very likely that he transferred

1 these files to his Cloud accounts?

2 A. Because when I look at the times,
3 it's 6:28:18, 6:28:27, 6:29:31, 6:30:15. I also
4 see in the front that it references drive N. Drive
5 N is a server drive. It's not a local drive.

6 So now you're asking me -- now I need
7 to take a number of factors into consideration.
8 How fast is the network speed? Is it running at 10
9 megabits per second, a hundred megabits per second?
10 I have not done an analysis of the network speed,
11 but I also can tell you that based on my
12 experience, people don't look at a document for 15
13 seconds, 11 seconds, 9 seconds and so on.

14 94 Q. But didn't you just state it was
15 possible that these were open longer than the 11
16 minutes?

17 A. Okay. Let me add to my answer.
18 Is it possible? Sure. Is it likely? No.

19 95 Q. What makes you think that it's
20 unlikely?

21 A. If I wanted to look at 20
22 documents, I wouldn't open up 20 documents all at
23 the same time and then go back to the first one and
24 look at it and then go back to the second one and
25 look at it. I would open and close the document,

1 and I would open and close the next document, and I
2 would open and close the third document and so on,
3 or I would copy them or I would move them or I
4 would do something with them, but my experience
5 tells me that these files were likely copied.

6 96 Q. Is it fair to say that your belief
7 is speculation?

8 A. No.

9 97 Q. Well, what evidence do you have to
10 prove that he copied these to a Dropbox or a Cloud
11 account?

12 MR. WINTON: He already answered that
13 question.

14 BY MR. TETREAULT:

15 98 Q. So you're stating -- can we go to
16 paragraphs 43 to 46 of Brandon's affidavit? Have
17 you reviewed Brandon's explanation?

18 MR. WINTON: This one is marked up. We
19 may want to show him a clean one.

20 MR. TETREAULT: Sure.

21 MR. WINTON: There's a little bit of
22 underlining.

23 BY MR. TETREAULT:

24 99 Q. Have you reviewed Brandon's
25 explanation for accessing the investment letters?

1 A. I have.

2 100 Q. So you state that Brandon's
3 activity is consistent with transferring the files
4 to Dropbox?

5 MR. WINTON: I don't think that's --

6 THE DEPONENT: That's not what I said.

7 BY MR. TETREAULT:

8 101 Q. But that's at paragraph 17 of your
9 affidavit.

10 MR. WINTON: I don't think that's an
11 exact wording of what his evidence is. I think the
12 exact wording is important, counsel. He said it is
13 his opinion, based on the pattern of conduct
14 described above, that Mr. Moyses was very likely
15 transferring the documents he reviewed from
16 Catalyst's computers to his Dropbox or Box
17 accounts, although he cannot say so definitively at
18 this time. That was his evidence.

19 BY MR. TETREAULT:

20 102 Q. Would you agree that Brandon's
21 activity is also consistent with his own
22 explanation that he skimmed the files looking for
23 specific information and then closed them?

24 A. Do you mind if I just reread No.
25 43?

1 103 Q. Yeah, go ahead.

2 A. I will -- in my experience, I will
3 say to paragraphs 43 and 45 that it's an unlikely
4 explanation.

5 104 Q. Is it possible?

6 A. Anything is possible.

7 105 Q. How would the activity look
8 different if he was simply reading the files?

9 A. The time --

10 MR. WINTON: I just want to point out,
11 at paragraph 46, Mr. Moyses admits that he only --
12 46, it's right after the paragraph you pointed him
13 to, so you have the benefit of it.

14 MR. TETREAULT: Right.

15 MR. WINTON: The reason it only took
16 him approximately 11 minutes. So I don't think
17 it's fair to suggest to this witness that, in fact,
18 he was looking for longer than the time period that
19 he admits in his own affidavit he was spending. So
20 why don't we work within the evidence that we have
21 on the record, --

22 MR. TETREAULT: Okay.

23 MR. WINTON: -- which is that he looked
24 at it for 11 minutes, and let's ask our questions
25 based on evidence that's in the record and not on

1 some other speculating question that apparently
2 isn't the evidence.

3 BY MR. TETREAULT:

4 106 Q. Okay. So based on Mr. Moyses's
5 evidence or affidavit, which you've read, how would
6 his file activity look different if that was true?

7 A. Sorry?

8 R/F MR. WINTON: Don't answer that
9 question.

10 BY MR. TETREAULT:

11 107 Q. You say that the pattern of
12 conduct -- based on the pattern of conduct
13 described above, Mr. Moyses was very likely
14 transferring the documents he reviewed.

15 So how would the pattern of conduct
16 look different if he was simply reading the files
17 and closing them?

18 R/F MR. WINTON: Don't answer that
19 question.

20 BY MR. TETREAULT:

21 108 Q. Would it look any different?

22 R/F MR. WINTON: Don't answer. All of this
23 is completely improper questioning for him; okay?
24 So we're not answering any of this.

25 BY MR. TETREAULT:

1 109 Q. Having read Brandon's explanation,
2 has your belief changed that it's very likely that
3 he was transferring files?

4 MR. WINTON: He already answered that.

5 BY MR. TETREAULT:

6 110 Q. So why hasn't your -- before you
7 signed -- swore your affidavit, you weren't aware
8 of Brandon's explanation; correct?

9 A. Absolutely correct.

10 111 Q. So why hasn't your explanation
11 changed after hearing Brandon's explanation?

12 MR. WINTON: I think he answered that
13 as well. You asked him whether it changed. He
14 said it's unlikely and then he explained why.

15 THE DEPONENT: I don't believe my
16 answer has changed from paragraph 17 and 18 in my
17 affidavit.

18 BY MR. TETREAULT:

19 112 Q. Have you reviewed the investment
20 letters that Brandon accessed?

21 A. In terms of its content?

22 113 Q. Yes.

23 A. No.

24 114 Q. So you have no knowledge of
25 whether they contained confidential information?

1 A. A, I have no knowledge, and B, I'm
2 not in a position to determine it even if I read
3 it.

4 115 Q. The files that Brandon accessed
5 were available for him; correct? He didn't bypass
6 any security measures?

7 A. I have -- I'm not in a position to
8 answer that. I don't know the answer to that.

9 116 Q. Okay. Can we go to Exhibit D?
10 MR. WINTON: Exhibit D of Mr. Musters'
11 affidavit.

12 BY MR. TETREAULT:

13 117 Q. So what evidence do you rely upon
14 for the belief that it's very likely that he
15 transferred these accounts to his Cloud account?

16 A. I've already answered that.

17 MR. WINTON: No, not for Stelco. It's
18 a different --

19 THE DEPONENT: Sorry, forgive me.
20 Sorry, I'm just...

21 MR. WINTON: Just while he's reviewing,
22 can you repeat the question?

23 BY MR. TETREAULT:

24 118 Q. What evidence do you rely upon for
25 your belief that it was very likely that he

1 transferred these files to his Cloud accounts?

2 A. When I see a pattern of activity
3 where the times are close together, I've already
4 stated in this session that I saw no evidence that
5 they were copied to a USB drive, so the activity
6 here is consistent with -- the conduct of accessing
7 several files from the same directory over a brief
8 period of time is consistent with transferring
9 files to a Cloud Service.

10 119 Q. But you'll agree with me that
11 Exhibit E only shows that Brandon accessed the
12 files; correct?

13 A. Well, access means a number of
14 things. Copying is a form of accessing.

15 120 Q. Okay. So are you stating that
16 this exhibit shows that he copied the files?

17 A. I'm not stating that, but I'm
18 stating that -- I'm stating that in computer
19 language, accessing means a number of things or can
20 mean a number of things. It can mean opening up
21 the file and closing it. It can mean copying it.
22 It can mean moving it. It can mean importing 28
23 pictures into Photoshop and doing something with
24 those 28 pictures to create a collage. There's a
25 number of different explanations for the word

1 "accessing" and -- in a computer sense.

2 So I still go back to my statement in
3 paragraph 17 that if we eliminate thumb drives or
4 external USB storage devices, and we know he has a
5 Dropbox account, and we know he has a Box account,
6 and the file access times are very close together,
7 then my experience tells me that this is consistent
8 with my statement in paragraph 17. That's my what
9 my experience tells me.

10 121 Q. So you're relying upon simply that
11 there's a pattern of him accessing the files, not
12 any specific -- you know, you can't point to
13 anything specific to say this shows that -- this
14 specific entry shows that he transferred the file
15 from, you know, here to here? It's just based on
16 the pattern of accessing the files?

17 A. The pattern of accessing the files
18 and my experience in the analysis of this case
19 draws me to the two conclusions in my affidavit --
20 not two conclusions, the two paragraphs in 17 and
21 18.

22 122 Q. Have you read Brandon's
23 explanation for reviewing these files?

24 A. I have.

25 MR. WINTON: Again, it's --

1 MR. TETREAULT: Paragraph 47 and 48.

2 MR. WINTON: It's highlighted. There's
3 no comments on it if that's okay.

4 BY MR. TETREAULT:

5 123 Q. Okay.

6 A. Okay.

7 124 Q. So having reviewed his comment,
8 has your belief changed that it is very likely that
9 he was transferring the files?

10 A. Well, I read his own words where
11 he says I do admit transferring one Stelco doc --
12 Stelco file to Dropbox to read at home.

13 So we know, based on this statement,
14 that one or more files was transferred to Dropbox.
15 Based on my statements in terms of -- with no
16 knowledge of Mr. Moyses's statement, my statement
17 was that it's likely that it was copied -- sorry,
18 based on the pattern of conduct, very likely the
19 transferring documents to Dropbox. So I'm not sure
20 the question -- I'm almost hearing you affirm my
21 comments based on his subsequent affidavit.

22 125 Q. And again, like the investor
23 files, even though the list shows the files were
24 accessed over a 70-minute period, they could have
25 been open for longer?

1 A. Anything is possible, but that's
2 highly unlikely that you would -- I've never done
3 that. If I have 70 files to review, I don't open
4 up 70 files and then start looking at them. So, I
5 mean, is it possible? Sure. Is it likely? No.

6 126 Q. Did you review any of these files?

7 A. In terms of its content?

8 127 Q. Yes.

9 A. No.

10 128 Q. So you have no knowledge of
11 whether or not they're confidential?

12 A. Even if I did, I would have no
13 basis to state whether or not they were
14 confidential. So the answer is no.

15 129 Q. Okay. Can we turn to your Exhibit
16 E? So I note that -- starting with record 255. Do
17 you see it? It's the files in the Z drive.

18 A. Mm-hmm.

19 130 Q. Why does this list contain files
20 with DGI?

21 A. Well, to me, that tells me that Z
22 is a network drive on the Cat Capital system. So
23 on the drive Z, whatever server that is, there's a
24 folder called Docs. There's a -- within that Docs
25 folder, there's a folder called Credits, and within

1 that Credits folder, there's a folder called DGI
2 and then the file name.

3 131 Q. It's my information that DGI
4 refers to Data Group Limited.

5 A. Okay.

6 MR. WINTON: Where is that information
7 from?

8 BY MR. TETREAULT:

9 132 Q. It's in one of the documents that
10 we produced, but anyways, so do you have any
11 evidence that --

12 MR. WINTON: Which document? I'm
13 sorry, I didn't -- I haven't seen it, and I just
14 want to make sure that it's in the evidence from --
15 the document is actually in the record or else you
16 can introduce it as an exhibit, but I don't --

17 BY MR. TETREAULT:

18 133 Q. It's in the Affidavit of
19 Documents, but I'll move on. So do you have any
20 evidence that DGI refers to Masonite?

21 A. I have no -- no.

22 134 Q. So other than the files that are
23 from the Z drive, the rest of the files are
24 different from the rest of the -- the other files
25 in your affidavit, because it shows that they're

1 from Mr. Moyses's Dropbox, not from Catalyst's
2 system; correct?

3 A. Sorry, you have to start over
4 again with that question.

5 135 Q. So in all the other exhibits to
6 your affidavit, --

7 A. Yes.

8 136 Q. -- it shows, you know, the Z drive
9 or the N drive --

10 A. Yes.

11 137 Q. -- showing that they were accessed
12 in Catalyst's system.

13 A. Yes.

14 138 Q. But these files from Dropbox are
15 not files that were contained in Catalyst's system;
16 correct?

17 MR. WINTON: Other than these Z drive
18 ones.

19 THE DEPONENT: Sorry, I just need to
20 understand your question better, because we were
21 talking about record No. 255.

22 MR. WINTON: Yeah, we're not talking
23 about that.

24 BY MR. TETREAULT:

25 139 Q. We're not talking about those now.

1 A. Sorry, then -- that's why I was
2 focused on that. So forgive me for -- so these
3 other -- well, there were some files at the top.

4 140 Q. Right.

5 A. Starting at 16 that reference
6 Dropbox, and there were other files that don't
7 reference Dropbox. So again, forgive me, I was
8 focused in on something else, so I'm unsure of your
9 question.

10 MR. WINTON: I think you may have
11 answered it. You acknowledge that there's some
12 that refer to Dropbox.

13 THE DEPONENT: Yes, and there's some
14 that aren't.

15 BY MR. TETREAULT:

16 141 Q. So do you have any evidence that
17 Brandon accessed files related to Masonite on
18 Catalyst's system?

19 A. Well, if I take -- I'm just
20 picking one at random, 8853.

21 142 Q. 8853. Okay.

22 A. I did not review the content of
23 it, but based on the fact that it says
24 Masonite.pdf, we'll assume that it's related to
25 Masonite.

1 143 Q. But the path mean says Dropbox?

2 A. Correct.

3 144 Q. And it's from a C drive, so --

4 A. Correct.

5 145 Q. -- that would be -- wouldn't that
6 file be in Mr. Moyses's Dropbox rather than in
7 Catalyst's system?

8 A. Correct.

9 146 Q. So my question was, do you have
10 evidence that Brandon accessed the files related to
11 Masonite from Catalyst's system?

12 A. Oh, I'm sorry, I'm sorry. Okay,
13 now I have it. If you're asking -- so let me tell
14 you what I know, and let me tell you what I don't
15 know.

16 147 Q. Okay.

17 A. What I know is that there's a file
18 called Masonite.pdf in Brandon's Dropbox. If
19 you're asking me do I know the origin of that file
20 and where it came from and whether that file
21 Masonite.pdf exists on the Catalyst Capital's
22 servers, the answer is I don't know. The reason I
23 don't know is because I did not try to -- first of
24 all, it was never part of my scope to review all of
25 the documents on Catalyst Capital's servers and try

1 to match them to the documents here.

2 148 Q. And if Brandon had accessed
3 Masonite files existing in Catalyst's Z drive or N
4 drive, it would have been captured in your image;
5 correct?

6 A. No, not necessarily correct, and
7 I'm glad you brought that up. A lot of these
8 records are recovered from what's called
9 unallocated space. So the files that we have are a
10 subset of the files that were accessed.

11 If you're asking me is this list 100
12 percent accurate, absolutely not, because the
13 nature of a computer is such that it rewrites or
14 overwrites on allocated space. So having said
15 that, we're able to recover -- myself, any other
16 forensics expert, is able to recover a subset of
17 those files. So if you're asking me if this list
18 is complete, no. Is it a subset? Absolutely.

19 149 Q. So just -- if we go back to record
20 255.

21 A. Yes.

22 150 Q. That's Brandon accessing -- going
23 into the Z drive, going into that specific folder.
24 So you are saying that -- do you have any evidence
25 that Brandon went into a Masonite folder in

1 Catalyst's drive? I think your answer is no.

2 MR. WINTON: I think he answered that
3 question.

4 MR. TETREAULT: Okay.

5 MR. WINTON: I agree he answered that
6 question with a no.

7 BY MR. TETREAULT:

8 151 Q. What evidence do you rely upon for
9 your belief that -- sorry, you have no evidence
10 that any of those files originated from Catalyst;
11 correct?

12 MR. WINTON: He's answered that, too.

13 BY MR. TETREAULT:

14 152 Q. So what evidence do you rely upon
15 for your belief that it is very likely that he
16 transferred those files to his Cloud account?

17 A. Well, my evidence is that there's
18 a file called Masonite.pdf-1 -- Masonite-1.pdf for
19 205, sorry, in his Dropbox account.

20 153 Q. Right.

21 A. So we know that file exists or has
22 existed at sometime in his Dropbox account.

23 154 Q. But is it fair to say you have no
24 evidence that he transferred that file from
25 Catalyst's system?

1 A. Correct.

2 155 Q. Okay. Can we turn to tab F?
3 These files relate to WIND Mobile; correct?

4 MR. WINTON: They've been redacted for
5 a reason. I don't think Mr. Musters knows what
6 file they -- looking at them now, but we agree they
7 relate to WIND Mobile but had been deliberately
8 redacted from the record.

9 BY MR. TETREAULT:

10 156 Q. Okay. So what evidence do you
11 rely upon for your belief that it was very likely
12 that he transferred these files to his Cloud
13 accounts?

14 A. Again, based on the access times
15 being close together, in the absence of him copying
16 them to a USB drive, it is likely -- forgive me for
17 being redundant, but my experience tells me that
18 this pattern of contact is consistent with the
19 transferring of documents to somewhere, some other
20 device, and I refer to another device as a Cloud
21 account or some other area, and it's very likely
22 that they were copied to a Box or Dropbox account.

23 157 Q. Is part of the reason for your
24 belief that Mr. Moyses did not have a work-related
25 purpose for accessing those files?

1 A. I would not know that.

2 158 Q. At the time you swore your
3 affidavit, were you aware that Mr. Moyses was
4 working on the WIND Mobile file for Catalyst?

5 A. I was not -- I want to answer that
6 specifically. No, I don't have -- it was never my
7 determination to determine whether or not a
8 document, a project, or whatever was confidential
9 or not or that Mr. Moyses should or shouldn't have
10 access to something.

11 My task was to provide information,
12 which I did in this affidavit. I made no statement
13 in my affidavit saying, Oh, look, he accessed
14 something that he shouldn't have accessed. That
15 was beyond the scope of what I was asked to do.

16 159 Q. Have you reviewed Mr. Moyses's
17 explanation for accessing these files?

18 A. I did today.

19 160 Q. I want to take you to -- I want to
20 show you evidence from Mr. Riley's
21 cross-examination. Specifically you can read from
22 question 422 to 427, but question 427 is actually
23 the important one.

24 A. Okay.

25 161 Q. Okay? So having read Mr. Riley's

1 testimony in this cross-examination, does that
2 change your belief that it was very likely that he
3 transferred the files to his Cloud account?

4 A. Appendix E is the one for the
5 WIND; is that correct?

6 MR. WINTON: Yes, that's right. No, F
7 maybe.

8 THE DEPONENT: F?

9 MR. WINTON: Yes, that's it.

10 THE DEPONENT: If I look specifically
11 at the documents in Appendix F of my affidavit, I
12 note times of 8:39:09, 8:39:14, which is six
13 seconds apart, 8:39:46, which is 32 seconds apart,
14 8:43, which is roughly four minutes apart, 8:48
15 which is roughly five minutes apart, 8:55, which is
16 roughly seven minutes apart, 9:02, which is roughly
17 seven minutes apart, and 9:03, which is roughly one
18 minute apart.

19 So if you ask me logically for
20 something that's five minutes apart, I totally
21 agree with you. If you ask me for something that
22 is six seconds apart, five seconds apart, I
23 disagree with you. So I can't see how someone --
24 I'm looking at the very first entry, someone can
25 open up an Excel spreadsheet, literally open it up,

1 look at it, make some sort of decision, close it
2 and have the next one open five seconds later.

3 BY MR. TETREAULT:

4 162 Q. Correct me if I'm wrong, but this
5 list doesn't say when the document was closed.
6 It's only when it was accessed; correct?

7 A. You raise an interesting point,
8 and the question is was it accessed -- when does
9 Microsoft update the access time, when it closes it
10 or when it opens it, and that's a good question.
11 I'm not sure that I know the answer to that off the
12 top of my head.

13 163 Q. So I'm going to read question 427
14 again.

15 A. Sure.

16 164 Q. So:

17 "Q. So I put it to you that
18 Brandon's explanation seems
19 reasonable, does it not, that he
20 would have had to open a number
21 files and quickly review them to
22 determine if they contained the
23 information that he was looking for
24 if, as you say, there were many WIND
25 Mobile documents?

1 A. Yes, I think that's a fair
2 comment."

3 So despite the fact that Mr. Riley
4 seems to acknowledge that Brandon -- it's
5 reasonable, that Brandon's explanation is
6 reasonable, you still believe that it's very likely
7 that he transferred these files to his Cloud
8 account?

9 A. I'm answering that question and
10 saying it's likely in some cases, and it's not
11 likely in some of the other cases that I'm looking
12 at.

13 165 Q. Well, I'm speaking specifically
14 about this case.

15 A. Yes. No, no, no.

16 MR. WINTON: He was referring to the
17 fact -- just --

18 THE DEPONENT: Sorry.

19 MR. WINTON: I'm just going to try and
20 help him. I think he was referring to the fact
21 that the longer time periods, it could be an
22 acceptable explanation, but if I understood
23 Mr. Moyses's (sic) earlier answer, for the documents
24 where there were shorter intervals, he didn't
25 accept that. Okay?

1 THE DEPONENT: That's exactly what I'm
2 saying.

3 BY MR. TETREAULT:

4 166 Q. Did you review the Excel files at
5 the top the list?

6 A. When?

7 167 Q. When you were accessing -- or when
8 you were analyzing Mr. Moyses's computer.

9 A. Oh, if you asked me did I look at
10 the content of these files, --

11 168 Q. Right.

12 A. -- the answer is no.

13 169 Q. Did you analyze the files to find
14 the metadata behind them?

15 A. We could spend an hour on that.

16 170 Q. Specifically, the metadata behind
17 this file would show if Mr. Moyses edited that file;
18 correct?

19 A. There are -- it's not a simple
20 answer, but I'm happy to launch into it if you
21 wish.

22 171 Q. Well, I mean, did you do an
23 examination to see if Mr. Moyses edited any of these
24 files?

25 A. There are -- I'm going to

1 use -- there are three areas that you can find data
2 as it relates to a file. There's -- every computer
3 has something called a master file table, and think
4 of it as an index, and the index contains the file
5 name, the last access date, the last modified date,
6 the creation date. It also contains the date at
7 which the file access -- sorry, the master file
8 table entry was updated. It also contains the
9 physical location on the drive and so on. That's
10 one aspect of data.

11 There's the actual data, itself. It's
12 just where the file is written on the drive.
13 Certain types of files also have additional data
14 stored inside of the file. More commonly pictures
15 as an example, the camera, the geolocation and so
16 on and so forth but where documents and Excel
17 documents also have some data inside of those files
18 as well.

19 So when you refer to metadata, it's a
20 commonly misnomered term in that are we referring
21 to the metadata on the master file table or the
22 metadata inside of the Excel spreadsheet? I'm
23 going to -- so can you be specific in terms of what
24 metadata that you're talking about?

25 172 Q. Did you examine the file to

1 determine if Mr. -- I mean, Mr. Moyse's position is
2 that he was editing the -- editing the files. He
3 was creating a chart for -- "I was working on a
4 chart to include in an investment memo."

5 A. Okay.

6 173 Q. So did you examine the files to
7 see if he actually edited the Excel files, because
8 presumably if he edited the Excel files, it would
9 support his position that he was creating a chart.

10 MR. WINTON: Are you my witness? Why
11 don't you just ask him the question?

12 BY MR. TETREAULT:

13 174 Q. So did you examine the Excel files
14 to see if Mr. Moyse edited them on May 13th?

15 A. No.

16 175 Q. Why not?

17 A. Well, first of all, when I wrote
18 my affidavit, I did not have the benefit of
19 Mr. Moyse's explanation, nor did I have the benefit
20 of Mr. Riley's affidavit, and I wasn't asked to,
21 nor was -- there are literally a million files on a
22 computer. So to ask me if I've done an analysis on
23 the specific file without being asked seems
24 unreasonable, so the answer is no.

25 176 Q. Okay. Exhibit G and also

1 paragraph 17 of your affidavit.

2 A. Yes. I know it well.

3 177 Q. So in your affidavit, you state:

4 "In my opinion that, based on
5 the pattern of conduct described
6 above, Moyse was very likely
7 transferring the documents he
8 reviewed on March 28, April 25 and
9 May 13 from Catalyst's computers to
10 his Dropbox or Box accounts,
11 although I cannot say so
12 definitively at this time."

13 So judging by this record, Mr. Moyse
14 accessed the file on May 26th, which you did not
15 include in paragraph 17. So I'm just asking -- or
16 I'm just wondering why May 26th is left out of your
17 explanation. Is it that you don't believe it was
18 very likely that he transferred that document?

19 A. Because there's only two, there's
20 not enough to establish a pattern. So I'm
21 suggest -- if you're asking me two files, which one
22 appears to be a duplicate of the other in terms of
23 file name, if I've got that right -- so there's not
24 enough -- oh, access account 3. Interesting.

25 There's not enough information to use

1 the words "based on the pattern of conduct." So I
2 believe -- I'm going by memory, I believe that's
3 why I left it out.

4 178 Q. So is it your belief that
5 Mr. Moyses transferred this file to his Box or
6 Dropbox account?

7 A. See, here's the problem. We know
8 that files were transferred to his Box and Dropbox
9 account. What we don't know is the extent to which
10 those files are, the nature of the confidentiality
11 of those files.

12 So having said that, it would seem
13 reasonable to me to -- based on what we know, it
14 would seem reasonable to me to examine those other
15 devices where these things might be so that we can
16 have an answer.

17 179 Q. But that's not my question. So my
18 question is specifically --

19 A. I don't have enough information to
20 say yes or no on those two specific records. I
21 can't say is it likely that he did, I can't say is
22 it likely that he didn't. My answer was more
23 specific to -- the pattern of activity on the
24 computer would suggest that he has copied things to
25 Box and Dropbox. So to point out one file and say

1 did that one file go is not a reasonable question
2 for me to answer, to give an opinion on. I don't
3 know. It could have, and it could not have. I
4 don't know.

5 180 Q. Okay. So based on the information
6 at the beginning of your affidavit with your
7 background, it seems that you have a lot of
8 experience as a forensic examiner, and I'm just
9 wondering if you can expand on that a bit.

10 A. Can you be more specific?

11 181 Q. Yeah, so how many cases would you
12 say you've been involved in where you've been asked
13 to determine if a person has taken information?

14 A. I've been involved in probably
15 twelve or thirteen hundred forensic cases whose
16 nature spans from criminal investigations to civil
17 litigation, such as this.

18 In terms of -- I haven't done a
19 breakdown, so I can simply say, from a civil
20 perspective, probably half of those cases would
21 generally fall into this type of litigation.

22 182 Q. All right, and in your experience,
23 have you noticed any patterns in how employees or
24 employees have take information?

25 A. Very much so. I actually have

1 written a few articles on what I call profiling,
2 which seems to -- which talks to understanding the
3 behaviour of the user on the computer to determine
4 their pattern of use.

5 So I can't remember whether it was one
6 or two articles, but I've certainly written an
7 article on that very subject.

8 183 Q. So can you explain the types of
9 usual patterns where an employee or a person
10 is -- has been taking confidential information?

11 A. Well, it's a broad question, and
12 I'm happy to go into the various scenarios.
13 Depending on the level of sophistication of the
14 user, one type of user will just e-mail themselves
15 everything to their personal account.

16 Another type of user will use an
17 external storage device. Some users will literally
18 open up a document and print it and then take those
19 printed documents with them because it's harder to
20 detect, and some clients use Dropbox and other
21 Cloud-based services, and the most sophisticated
22 ones will use some form of encryption.

23 184 Q. So the files that -- or the paths
24 that you point to in your affidavit, those files
25 were accessed on March 28th, April 25th, May 13th

1 and May 26th; correct?

2 A. I'll take your word for it.

3 MR. WINTON: Isn't that what it states
4 in his affidavit?

5 BY MR. TETREAULT:

6 185 Q. Yeah.

7 A. Yes.

8 186 Q. Mr. Moyle denies improperly
9 transferring of the files, but assuming for a
10 moment that the chain of events in your affidavit
11 is true, he would have -- Mr. Moyle began speaking
12 to West Face on March 26th, that's not in dispute.

13 So two days after Brandon began
14 speaking to West Face, he accessed three- to
15 six-year-old newsletters and transferred them but
16 nothing else to his Cloud account. Then a month
17 later, he looked at Stelco files, which were then
18 six years old, transferred them to his Cloud
19 account and nothing else. Then he waited another
20 three weeks and looked at files related to WIND and
21 transferred those but nothing else, and then on his
22 last day of work, he accessed some meeting notes.

23 Doesn't that seem like an unusual
24 pattern for someone who is taking confidential
25 information?

1 R/F MR. WINTON: I object to the question.
2 I think you haven't established that's the only --
3 those are the only documents that are -- that were
4 possibly transferred. These are specific instances
5 that have been recorded upon but in no way are they
6 represented by Catalyst as the only instances.

7 MR. TETREAULT: Well, what other
8 documents are you relying upon?

9 MR. WINTON: We're not relying upon
10 any. That's why we're seeking to look at his
11 devices.

12 BY MR. TETREAULT:

13 187 Q. Okay. So you have no evidence --
14 if he has no evidence that he took any other -- I
15 mean, in your experience, is that unusual -- is
16 that an unusual pattern for someone who is taking
17 confidential information?

18 R/F MR. WINTON: I don't think you should
19 answer that question. First of all, it's built on
20 a faulty premise, and it's not one that we accept.
21 So I'm going to instruct the witness not to answer.

22 BY MR. TETREAULT:

23 188 Q. In your experience, if a person is
24 taking confidential information, would they
25 normally transfer a large amount over a short

1 period of time?

2 A. Do you want me to answer?

3 MR. WINTON: Yeah. No, I haven't
4 objecting to it. Yes. I don't want -- it's not
5 what I want or don't want. I haven't objected to
6 it, so you should answer.

7 THE DEPONENT: All right. Thank you.
8 Different people fit different profiles. There's
9 not one shoe fits all, and when I analyzed
10 Mr. Moyse's computer -- and I think ultimately, if
11 I can draw any statement to present to this forum,
12 it would be that in the exact profiling that you
13 talked about, does this profile fit for someone who
14 is taking information from the company, and based
15 on what I saw, the answer is yes, and that's
16 exactly why I said what I said in 17, but let me
17 even go further and say -- this is No. 18. I'm
18 just reading.

19 "I cannot conclusively
20 determine whether Catalyst's files
21 were transferred by Moyse to the
22 Cloud Services and then from the
23 Cloud Services onto any other
24 computer or electronic device, such
25 as an iPad, without access to those

1 those computers and/or devices."

2 Does Mr. Moyses fit the pattern of
3 taking information, and I asked myself that
4 question during this -- when I was doing this
5 analysis, and the answer is yes, he very much fits
6 that profile, and that's why I made those two
7 statements in 17 and 18.

8 So does he do it a little bit here and
9 a little bit there or a lot here and a lot there,
10 he fits the pattern. He jumped at me and fit the
11 pattern. That's ultimately what I wanted to say.

12 189 Q. Can I turn you to Exhibit A of
13 Mr. Riley's supplementary affidavit?

14 MR. WINTON: This is the affidavit
15 dated July 14th, sworn July 14th?

16 MR. TETREAULT: Yes.

17 MR. WINTON: Yes. Exhibit A.
18 Mr. Musters's report?

19 MR. TETREAULT: Yes.

20 MR. WINTON: Okay.

21 BY MR. TETREAULT:

22 190 Q. Did you create the report?

23 A. I did.

24 191 Q. And what information, direction or
25 instructions were you given?

1 A. Can I do an analysis of this
2 BlackBerry and extract all information from it.

3 192 Q. And who gave you those
4 instructions?

5 A. Mr. Winton.

6 193 Q. Was there anything in writing?

7 A. No, it was verbal in a conference
8 room.

9 194 Q. Why did you forensically examine
10 his work computer on June 21st but the phone on
11 July 2nd?

12 A. I was back in the office on July
13 2nd. Do you mind if I pull out -- well, actually,
14 does anyone have a calendar?

15 MR. WINTON: July 2nd was a Wednesday,
16 I can tell you that.

17 THE DEPONENT: Okay. I recall being
18 back in the office on July 2nd and being presented
19 with a BlackBerry and asked to analyze it.

20 BY MR. TETREAULT:

21 195 Q. Was it a separate retainer from
22 examining the work computer?

23 A. I didn't look at it as a separate
24 retainer. I looked at it as part of the same
25 engagement.

1 196 Q. I guess my point is were you
2 originally asked to only examine the work computer
3 and then at a later date asked if you could also
4 examine the phone?

5 A. Yes, because when I recall -- I
6 recall showing up on Saturday to meet with
7 Mr. Winton at the Cat Capital offices, and there
8 was no BlackBerry present, so obviously a few days
9 later I remember being in the boardroom and being
10 presented with a BlackBerry and asked if I could
11 extract all of the information from the BlackBerry.

12 197 Q. Okay.

13 MR. WINTON: He's referring to a
14 boardroom at our office.

15 THE DEPONENT: Yes.

16 BY MR. TETREault:

17 198 Q. So while Brandon had work e-mails
18 connecting to his BlackBerry, those e-mails would
19 ultimately be stored on Catalyst's server; correct?

20 A. If you're talking about his work
21 e-mail account, --

22 199 Q. Right.

23 A. -- then -- they don't necessarily
24 have to be, but logically, the answer would be yes.

25 200 Q. And I guess -- I mean, it's

1 Mr. Moyses's evidence in his responding affidavit
2 that he didn't have personal e-mail attached to the
3 BlackBerry, but I guess you would not have any --

4 A. I have no evidence to suggest --
5 or I have no evidence or information to say yea or
6 nay to that.

7 201 Q. But the answer would be the same,
8 I suppose, that while an e-mail account may have
9 been connected to the BlackBerry, ultimately those
10 e-mails exist on another server somewhere, whether
11 it's Hotmail server or Gmail server?

12 A. Okay. No, and I'm happy to
13 explain. If you're talking about his Catalyst
14 Capital account, then I will -- I would be shocked
15 if all of the e-mails did not traverse through both
16 the Catalyst Capital server and the BlackBerry, if
17 you're talking about his Catalyst Capital.

18 If you're talking about other e-mail
19 accounts, those other e-mail accounts would likely
20 have been local to his BlackBerry and Catalyst
21 would have no knowledge of them. That also applies
22 to SMS text messaging, MMS multimedia text
23 messaging and BBMs as in BlackBerry messaging.
24 None of that information would be -- and contacts
25 may or may not be synchronized to the exchange

1 server. I could set up a contact on my
2 BlackBerry --

3 202 Q. Right.

4 A. -- that is not tied to the
5 exchange server.

6 203 Q. I'm speaking specifically about
7 e-mails.

8 A. Well, and I just want to narrow
9 you to the Catalyst Capital e-mail?

10 204 Q. Right.

11 A. Yes, we both agree.

12 205 Q. But if he had his Gmail connected
13 to the BlackBerry, --

14 A. Yes.

15 206 Q. -- when he wiped his BlackBerry,
16 it wouldn't delete his Gmail account, his e-mails
17 contained in his Gmail account?

18 A. More than likely not. It depends
19 on whether or not you set it up as what's called
20 POP or IMAP, and IMAP actually synchronizes to the
21 original host. I have no idea how he set up his
22 e-mail.

23 207 Q. So he -- sorry.

24 A. Well, I would think he would be a
25 fool to wipe his personal Gmail account by wiping

1 his BlackBerry.

2 208 Q. So it's fair to say that even
3 though Mr. Moyle reset his BlackBerry, Catalyst
4 would still have access to Brandon's Catalyst
5 e-mails; correct?

6 A. That would be a fair statement.

7 209 Q. And, in fact, you've included a
8 screen shot of one of Brandon's Catalyst e-mails in
9 your report?

10 A. Yes.

11 210 Q. Can I turn you to Exhibit B of
12 Mr. Riley's supplementary affidavit?

13 A. Oh, Mr. Riley's supplement --

14 211 Q. No, that's it. That's what I
15 want.

16 A. Oh, sorry.

17 212 Q. Did you have any involvement in
18 retrieving those e-mails?

19 A. These e-mails?

20 213 Q. Yes.

21 A. Yeah, a hundred percent.

22 214 Q. So those e-mails include e-mails
23 in -- as far back -- well, including 2013; correct?
24 So how far back did you look?

25 A. The -- on the local machine, the

1 desktop computer of Mr. Moyse, is a PST file, and
2 the program FTK processes that PST file and parses
3 out all available e-mail, including any available
4 deleted e-mail.

5 Now some e-mail that's been deleted may
6 have been overwritten, so the deleted e-mail we
7 have or I was able to recover is a subset thereof.
8 Was I able to recover some deleted e-mail? Yes.
9 So anything that -- anything that was on -- inside
10 that PST file on his desktop, I certainly had
11 available to me.

12 215 Q. Sorry, when you say deleted
13 e-mail, deleted from where?

14 A. If you -- if you have Outlook, and
15 you delete an e-mail, it goes into your deleted
16 folder, and then if you delete it from there, it
17 goes into basically the unallocated space inside
18 this PST file, and depending on how active your PST
19 file is, FTK is able to recover some of that
20 deleted e-mail.

21 216 Q. Did you analyze Mr. Moyse's e-mail
22 activity on Catalyst's sever?

23 A. On the server, itself?

24 217 Q. Right.

25 A. I was not provided the e-mail on

1 the server because theoretically I would have more
2 e-mail on the PST file than would be available in
3 the exchange PST file.

4 218 Q. So how many e-mails did you find
5 of Brandon sending an e-mail to his personal
6 account? Are those the only ones?

7 A. There are more than these. I do
8 not recall an exact number. I provided -- I do not
9 recall an exact number.

10 219 Q. And it's Brandon's evidence that
11 he would forward information to his personal
12 accounts in order to work from home. Do you have
13 any evidence to dispute that?

14 A. I wasn't asked to analyze that.
15 So you're asking me to analyze the content of any
16 e-mail and make a determination. I wasn't asked to
17 do that.

18 220 Q. Okay, subject to any answers
19 arising from undertakings and the refusals, those
20 are my questions.

21 MR. WINTON: Thank you.

22
23 ---Whereupon, the cross-examination concluded
24 at 3:31 p.m.

25

1 REPORTER'S CERTIFICATE

2
3
4 I, CINDY LITTLEMORE, CSR, Certified
5 Shorthand Reporter, certify;

6 That the foregoing proceedings were
7 taken before me at the time and place therein set
8 forth, at which time the witness was put under oath
9 by me;

10 That the testimony of the witness
11 and all objections made at the time of the
12 examination were recorded stenographically by me
13 and were thereafter transcribed;

14 That the foregoing is a true and
15 correct transcript of my shorthand notes so taken.
16
17
18

19 Dated this 2nd day of August, 2014.
20

21 *Cindy Littlemore*
22

23 NEESON & ASSOCIATES

24 COURT REPORTING AND CAPTIONING INC.

25 PER: CINDY LITTLEMORE, CSR

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