

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

THOMAS DEA
July 31, 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 THOMAS DEA on
his affidavit sworn July 7, 2014, taken at the
offices of Neeson & Associates Court Reporting and
Captioning Inc., 141 Adelaide Street West, Suite
1108, Toronto, Ontario, on the 31st day of July,
2014.

CONFIDENTIAL TRANSCRIPT

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

Rocco DiPucchio, Esq.) For the Plaintiff
Andrew Winton, Esq.)
Jeff C. Hopkins, Esq.) For the Defendant,
) Brandon Moyse
Jeff Mitchell, Esq.,) For the Defendant,
 West Face Capital Inc.

REPORTED BY: Connie A. Holton, C.S.R.

I N D E X

WITNESS: THOMAS DEA

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1 **The following list of undertakings, advisements
2 and refusals is meant as a guide only for the
3 assistance of counsel and no other purpose**
4
5

6 INDEX OF UNDERTAKINGS

7 The questions/requests undertaken are noted by U/T
8 and appear on the following page numbers: 30, 41,
9 98 and 112.
10
11

12 INDEX OF ADVISEMENTS

13 The questions/requests taken under advisement are
14 noted by U/A and appear on the following page
15 number: (None noted).
16
17

18 INDEX OF REFUSALS

19 The questions/requests refused are noted by R/F and
20 appear on the following page numbers: 20, 99, 100,
21 101, 110, 111 and 113.
22
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INDEX OF EXHIBITS	
NUMBER/DESCRIPTION	PAGE NO.
1: Email chain May 22, 2014 at 3:16 p.m. from Mr. Dea to Mr. Moyse	33

1 --- Upon commencing at 2:43 p.m.

2 THOMAS DEA, Sworn

3 CROSS-EXAMINATION BY MR. WINTON:

4 1 Q. Good afternoon, Mr. Dea.

5 A. Hi.

6 2 Q. You're being cross-examined on an
7 affidavit you swore July 7, 2014, you understand
8 that?

9 A. Yes.

10 3 Q. And you recall swearing that
11 affidavit on that day?

12 A. Yes, I do.

13 4 Q. And you understood at the time you
14 were swearing the affidavit that the contents of
15 the affidavit is important they be true and
16 accurate?

17 A. I did.

18 5 Q. And you reviewed it before you
19 swore it to ensure that they were?

20 A. Yes, I did.

21 6 Q. Now, we're also going to be
22 referring to, just to make sure you have copies
23 available, Mr. Moyse's record. There's a document
24 brief we received earlier this week from West Face.
25 And, counsel, I think rather than making the whole

1 brief an exhibit we may stamp individual emails and
2 that way we may not include the attachments to
3 those emails as long as we say into the record what
4 is attached?

5 MR. MITCHELL: That makes sense.

6 MR. WINTON: Thank you.

7 BY MR. WINTON:

8 7 Q. Now, counsel, prior to today's
9 examination we sent over a notice of examination
10 for Mr. Dea where we set out certain documents that
11 we had asked be produced or brought with Mr. Dea to
12 this examination?

13 MR. MITCHELL: Yes.

14 MR. WINTON: And I'm referring -- I
15 have copies of the amended notice of examination.

16 MR. MITCHELL: Yes.

17 MR. WINTON: Which sets out today's
18 date. And I just want to go through this with you
19 because I understand that the document brief is
20 responsive to some but not all of the documents
21 that are listed in this amended notice of
22 examination.

23 MR. MITCHELL: That's correct.

24 MR. WINTON: Okay. And so starting
25 with No. 2, copies of all correspondence between

1 West Face and Mr. Moyse between September 25, 2012
2 and June 22, 2014.

3 Was that correspondence produced?

4 MR. MITCHELL: The majority of them
5 were. There were I believe two or three, and I
6 can't confirm the exact number, between Mr. Moyse
7 and West Face that were omitted. I am in the midst
8 of collecting those. I had -- and will provide
9 them.

10 The emails pertain to the exchange of
11 the employment agreement.

12 MR. WINTON: Okay. So we'll get to
13 that. I think that's around the May 22nd time
14 period.

15 MR. MITCHELL: I believe so.

16 MR. WINTON: And then after you
17 produced those, will we have the full set of all
18 correspondence between West Face and Mr. Moyse for
19 that time period, that is in West Face's possession
20 power and control?

21 MR. MITCHELL: Everything that is
22 relevant, yes.

23 MR. WINTON: Is there something that
24 you'll say is irrelevant to any matter at issue
25 here?

1 MR. MITCHELL: Well, as I've indicated
2 I'm in the process of getting the few that are
3 left. So unless I find one that is not relevant
4 then everything will be produced. It may be that I
5 get one that is not relevant, and if so I will mark
6 it -- I will identify it for you.

7 MR. WINTON: Thank you.

8 BY MR. WINTON:

9 8 Q. Now, turning over to item No. 3,
10 copies of all correspondence exchanged by the
11 employees or partners of West Face relating to the
12 employment or possible employment of Mr. Moyse by
13 West Face, I believe we have some correspondence
14 exchanged within West Face but not all of it; is
15 that correct?

16 MR. MITCHELL: That is correct.

17 MR. WINTON: And on what basis was some
18 of the correspondence not produced?

19 MR. MITCHELL: I identified in my
20 letter back to you that there are some
21 solicitor-client privileged correspondence in
22 relation to Mr. Moyse's employment that has not
23 been produced.

24 MR. WINTON: And that is correspondence
25 involving Mr. Singh?

1 MR. MITCHELL: Both involving Mr. Singh
2 and involving external counsel.

3 MR. WINTON: Okay. And then moving on
4 to paragraph 4(a). So a subset of three was
5 correspondence relating to the conclusion by West
6 Face that the non-competition and non-solicitation
7 covenants in Mr. Moyse's employment agreement were
8 unenforceable. And I believe none of that has been
9 produced?

10 MR. MITCHELL: That's correct. The
11 only correspondence consists of emails between Mr.
12 Singh and/or external counsel that are privileged.

13 MR. WINTON: And as for 4(b), any
14 correspondence relating to the establishment of the
15 confidentiality wall, do we have that?

16 MR. MITCHELL: I believe that has been
17 produced, yes.

18 MR. WINTON: And that's the full set of
19 all the correspondence within West Face?

20 MR. MITCHELL: As far as I am aware,
21 yes.

22 MR. WINTON: And I think you've already
23 responded to the item in number 5 about
24 correspondence with internal or external counsel.

25 MR. MITCHELL: Yes, that's right.

1 MR. WINTON: Okay. Thank you.

2 BY MR. WINTON:

3 9 Q. To prepare for today's
4 cross-examination, Mr. Dea, you reviewed your
5 affidavit?

6 A. Mm-hmm.

7 MR. MITCHELL: You have to answer yes
8 or no.

9 THE DEPONENT: Yes.

10 BY MR. WINTON:

11 10 Q. Did you also review any of the
12 other materials in this, that's been produced in
13 this motion?

14 A. Yes.

15 11 Q. You examined Mr. Singh's
16 affidavit?

17 A. Mm-hmm. Yes.

18 12 Q. And Mr. Moyse's affidavit?

19 A. Yes.

20 MR. MITCHELL: Just to be clear, there
21 are two affidavits of Mr. Moyse.

22 BY MR. WINTON:

23 13 Q. Well, the long one that was sworn
24 July 7th?

25 A. Yes.

1 14 Q. Did you also look at his shorter
2 one from July 16th? Are you familiar with that
3 one?

4 MR. MITCHELL: Take a minute to look at
5 it if you need to.

6 (Witness reads document)

7 BY MR. WINTON:

8 15 Q. I just want to know if that looks
9 familiar at all to you?

10 A. I'm reading this for the first
11 time.

12 16 Q. That's all I need to know. You
13 don't need to read any further. I don't think I
14 have any questions about that for you.

15 And as far as this big document brief
16 that was given to us this week, have you reviewed
17 any of the emails contained in there?

18 A. Yes.

19 17 Q. In order to prepare for today's
20 examination did you meet with anyone other than
21 your external counsel? So did you meet with Mr.
22 Moyse?

23 A. What do you mean by prepare?

24 18 Q. So in anticipation of today's
25 cross-examination did you meet with or have a

1 telephone call, any communications with Brandon
2 Moyse?

3 A. Specifically about today?

4 19 Q. Yes.

5 A. Other than -- so the question is
6 what?

7 20 Q. The question is whether in
8 anticipation or in preparation for today's
9 cross-examination you had any communications with
10 Mr. Moyse?

11 A. With Mr. Moyse, no.

12 21 Q. Have you spoken with him since
13 July 16th?

14 A. July 16th, no.

15 22 Q. What about Mr. Boland?

16 A. Mr. Boland?

17 23 Q. In preparation for today's
18 cross-examination did you meet with or speak to,
19 communicate with Mr. Boland?

20 A. At what time? Like, starting from
21 what time?

22 MR. MITCHELL: In preparation for this
23 event?

24 THE DEPONENT: This specific event?

25 BY MR. WINTON:

1 24 Q. For this specific event.
2 A. No.
3 25 Q. Mr. Singh?
4 A. No.
5 26 Q. You're a partner at West Face?
6 A. Yes.
7 27 Q. Is that a title, or legally
8 speaking are you a partner of some entity that's
9 other than the West Face Capital Inc.?
10 A. It is primarily a title.
11 28 Q. Okay. You're an employee of the
12 corporation?
13 A. I have to go back and look at our
14 legal structure.
15 29 Q. Also part owner?
16 MR. MITCHELL: Do you hold any shares?
17 THE DEPONENT: I'd like to talk --
18 MR. MITCHELL: Generally. I mean,
19 we're not going to get into -- I assume you're not
20 getting into specifics?
21 MR. WINTON: I don't want to know about
22 the dollar value.
23 THE DEPONENT: It's a complicated
24 structure.
25 BY MR. WINTON:

1 30 Q. Okay. Indirectly perhaps you are
2 a part owner of the corporation?

3 A. Which corporation?

4 31 Q. West Face Capital Inc., the
5 defendant?

6 A. No.

7 32 Q. Okay. Senior employee?

8 A. I am not an employee of West Face
9 Capital Inc.

10 33 Q. Okay.

11 A. That I'm aware of.

12 34 Q. Just turn to your affidavit.
13 Paragraph 1, you state you are a partner of the
14 defendant, West Face Capital Inc., what did you
15 mean by that?

16 A. Can I talk to you for a second?

17 MR. MITCHELL: No. You have to do the
18 best you can to answer the questions.

19 THE DEPONENT: I'm a partner of a
20 subsidiary of West Face Capital Inc. And meaning I
21 have an ownership position in a subsidiary of West
22 Face Capital Inc.

23 MR. MITCHELL: I think, if I can, and
24 tell me if this is incorrect, Mr. Dea is certainly
25 a senior representative of West Face. Is that

1 accurate?

2 THE DEPONENT: Mm-hmm.

3 MR. MITCHELL: I'm just trying to move
4 things along a little bit.

5 MR. WINTON: Okay.

6 BY MR. WINTON:

7 35 Q. When you were swearing this
8 affidavit you were doing so on behalf of West Face
9 in response to the motion brought by Catalyst,
10 correct?

11 A. Correct.

12 36 Q. So your evidence binds West Face?

13 A. Yes.

14 37 Q. And your evidence today binds West
15 Face?

16 A. Yes.

17 38 Q. Paragraph 3 of your affidavit on
18 page 2. You state that West Face employees
19 approximately 43 staff in Toronto. And that seems
20 to be in total, correct? General office, your
21 admin, your back office type staff, right?

22 A. Correct.

23 39 Q. As far as the portfolio management
24 team goes, how many employees do you have on that
25 part of the business?

1 A. I don't know precisely. I think
2 it's about 13.

3 40 Q. So that's a fairly small group,
4 correct?

5 A. I don't know. That requires some
6 judgment or some relative assessment.

7 41 Q. In your judgment?

8 A. Compared to what?

9 42 Q. Compared to other investment
10 firms?

11 A. I couldn't comment on that.

12 43 Q. How many associates are in the
13 portfolio management team?

14 A. We have four partners. And then
15 we have -- the balance would be what's generally
16 referred to as analysts. Some have different
17 titles. They're generally analysts that support
18 the partners. I know some have a title of
19 vice-president.

20 44 Q. Right. So you have your four
21 partners, I guess you have nine analysts among your
22 13; is that right?

23 A. It would be about that.

24 45 Q. Okay. And analyst is for you a
25 description of a job function rather than a job

1 title, correct?

2 A. Yes.

3 46 Q. So analyst could include people
4 with the title vice-president?

5 A. You'd have to be more specific
6 about what you mean by that.

7 47 Q. Well, you told me some people
8 have -- you told me you have analysts and some
9 people have the title of vice-president. So I'm
10 just trying to understand your evidence.

11 A. So what's the question?

12 48 Q. You have four partners. You have
13 nine others. How many vice-presidents do you have?

14 A. I'm not sure. I think it's at
15 least two.

16 49 Q. How many associates?

17 A. I think the balance are associates
18 is their title. We don't really use titles for any
19 purpose.

20 50 Q. And I understand that of these
21 people who perform this analyst job function none
22 of them have the job title of analyst; is that
23 correct?

24 A. There isn't a singular job
25 function. There are some people, some non-partners

1 who have been with the firm for a long time, have
2 considerable experience, and some who are
3 absolutely fresh to the company and have virtually
4 no experience like Brandon.

5 51 Q. Prior to when you hired Mr. Moyse
6 in May of this year, when was the most recent
7 analyst or associate hired by West Face?

8 A. I think it was -- in the 2012
9 timeframe we had a fairly broad search for some
10 analysts at that time, and I think that was --
11 could be mistaken, but I think that was the last
12 time prior to hiring Brandon we hired any
13 associates or analysts.

14 52 Q. West Face is registered with the
15 Ontario Securities Commission?

16 A. Which West Face?

17 53 Q. West Face Capital Inc.?

18 A. Inc.? I'm not sure. I don't know
19 which entity is registered. I know we're
20 registered. I know some entities are registered, I
21 don't know which ones specifically.

22 54 Q. With the Ontario Securities
23 Commission?

24 A. I believe so.

25 55 Q. The funds are registered?

1 A. I believe so.

2 56 Q. Are you aware of any other
3 regulatory bodies in Ontario that might have
4 oversight of the funds?

5 MR. MITCHELL: What's the relevance of
6 this line of questioning?

7 MR. WINTON: Well, we're going to be
8 getting into some matters dealing with treatment of
9 confidential information, I think it might matter
10 whether they are registered and who has oversight
11 of them.

12 MR. MITCHELL: Because there's nothing
13 in any pleadings at all around regulatory matters,
14 nor does it appear in any affidavits. I'm just
15 wondering how it's going to relate to any of this?

16 MR. WINTON: He can answer the question
17 or not.

18 MR. MITCHELL: Okay.

19 THE DEPONENT: I'm aware of us being
20 registered with whatever regulatory bodies we're
21 supposed to be registered with.

22 BY MR. WINTON:

23 57 Q. But you're not actually in a
24 position to name them today?

25 A. Not exhaustively.

1 58 Q. Why don't you tell me the ones you
2 know?

3 R/F MR. MITCHELL: I've going to cut it off
4 there.

5 MR. WINTON: Okay.

6 BY MR. WINTON:

7 59 Q. Turn to paragraph 5 of your
8 affidavit.

9 A. Page 2?

10 60 Q. Page 2, paragraph 5. West Face
11 focuses on event-driven investment strategies,
12 that's your evidence, correct?

13 A. Correct.

14 61 Q. And events include proxy battles?
15 Is that one --

16 A. I don't see that referenced here.

17 62 Q. I'm not asking if it's in your
18 affidavit. I'm asking you, events can include
19 proxy battles?

20 A. Event in the investing world has a
21 very, very, very, very broad meaning. It could
22 mean all sorts of things. It could mean -- it
23 could mean an M&A event, mergers and acquisition
24 event. It could mean a favourable ending of a
25 price war. It could mean a resolution of

1 litigation. It's very broad.

2 63 Q. It can include proxy battles?

3 A. I guess it could include proxy
4 battles.

5 64 Q. Events can include takeover
6 attempts?

7 A. Do you mean as a principle?

8 65 Q. Just a company is in play,
9 someone's trying to take it over, that's an event,
10 correct?

11 A. It is. What I was getting at was
12 were you making a distinction between acting as a
13 principal in a proxy event, or participating in a
14 company, a public issuer that is the object of a
15 proxy contest?

16 66 Q. I'm talking about an attempt to
17 take over a company being an event that falls
18 within the description in your affidavit of
19 event-driven investment strategy.

20 A. Specifically seeking to take over
21 a company would be a very rare thing for us to do.

22 67 Q. That's not what my question was
23 though. A takeover attempt doesn't have to be by
24 West Face. It would be an event.

25 A. That would be an event, yes.

1 68 Q. Changes at the board level of a
2 company would be an event?

3 A. As you've asked that question
4 that's very broad. There are changes at a board
5 level all the time.

6 69 Q. So a board replaced, one slate
7 replaced with another, would that be considered an
8 event when your whole sale changes at the board
9 level?

10 A. Having an investing party seek to
11 replace directors would be an event.

12 70 Q. And in the companies you study at
13 West Face, among other things you're looking for
14 situations where a company may be reorganizing its
15 capital structure?

16 A. We would be looking for a very,
17 very wide range of companies and situations. They
18 could be -- we could be looking at the common
19 equities of a company that's doing just fine.
20 There might be some event on the horizon. We could
21 be looking at the bonds of a company. We could be
22 looking at private securities. We could be looking
23 at public securities, private. We could be looking
24 at issuing new securities on a primary basis,
25 purchasing securities on a secondary basis.

1 There's quite a large and broad range of the things
2 that we would do.

3 71 Q. Mr. Dea, we're going to get
4 through here a lot faster if you listen to my
5 question and focus on answering my question, okay?
6 Among the situations you look for is one where a
7 company's reorganizing its capital structure, yes
8 or no?

9 A. Among the situations we look at,
10 yes.

11 72 Q. You will look for companies that
12 may have too much debt? Over indebtedness?

13 A. We don't per se go look for
14 companies that have too much debt. Companies that
15 have too much debt would be among the things we
16 look at.

17 73 Q. You look at whether a company
18 might be suffering from liquidity problems?

19 A. Again, we look at such a broad
20 range of things that among the events we look at
21 companies with liquidity issues would fall within
22 that range.

23 74 Q. Right. And if you turn to
24 paragraph 10 of your affidavit, a company that may
25 be poorly capitalized or undervalued that would be

1 a company that would be considered a distressed
2 investment opportunity?

3 A. A company facing a liquidity
4 event, or with too much debt, yes, that would
5 typically be a distressed situation.

6 75 Q. Right. So distressed investing
7 falls within the mandate of what West Face looks
8 at?

9 A. If you drew a ven diagram of all
10 the things we look at you would have a little
11 circle in there for distressed investing. At the
12 moment there is very little distressed investing
13 going on. The high yield market is at all time low
14 yields. The default rate is below two percent.
15 There's very few distressed opportunities generally
16 speaking in North America which is our primary area
17 of looking for opportunities.

18 76 Q. It's within the mandate though?

19 A. Yes. As I said, we have a very,
20 very broad mandate.

21 77 Q. And includes special situations?

22 A. Special situations again is a very
23 broad term that has almost no meaning because it's
24 so broad. Special situations -- lenders for
25 example refer to special situations that offer a

1 little bit higher return. There are research
2 analysts who cover special situations that are just
3 normal public companies that are a little smaller
4 and therefore they're special situations. So the
5 word special situations in itself is actually
6 fairly meaningless.

7 78 Q. Does distressed investing have
8 meaning?

9 A. Yes, it does.

10 79 Q. So that falls within your mandate?

11 A. Yes.

12 80 Q. We've established that.

13 A. Mm-hmm.

14 81 Q. And distressed investing for
15 control falls within your mandate.

16 A. It would.

17 82 Q. Yes. Distressed investing for
18 influence falls within your mandate.

19 A. It would.

20 83 Q. Do your associates or any members
21 of your investment team do they work for any one
22 particular fund?

23 A. It's a unified team that looks at
24 all investments.

25 84 Q. So the same analysts could be

1 working for both your alternative credit fund as
2 well as your long-term opportunities fund?

3 A. Although we are -- we're very
4 careful about if there are any circumstances that
5 give rise to conflicts. We're very careful to
6 create appropriate walls.

7 85 Q. I don't think that was my question
8 though. Analysts could work for or do work for
9 both funds?

10 A. With the exception that I just
11 gave, it's possible.

12 86 Q. So an analyst may be walled off
13 from the entire fund?

14 A. No. I was referring to specific
15 investments.

16 87 Q. I'm referring to the funds though.

17 A. Okay.

18 88 Q. So with respect to the funds,
19 analysts work for both funds?

20 A. Correct.

21 89 Q. In terms of special situations --
22 sorry, distressed investing that West Face is
23 currently considering, I think it's no secret now
24 that Wind is one of them? It's on your radar?

25 A. I don't know that there's been any

1 public disclosure that I'm aware of that we're
2 looking at that.

3 90 Q. Right. Within this room then I
4 think it's acknowledged that you walled, you say,
5 Mr. Moyse off from Wind, correct?

6 A. Yes, we have.

7 91 Q. And that implies that in fact
8 there must be some sort of Wind team at West Face?

9 A. Yes.

10 92 Q. There's a Mobilicity team?

11 A. There is not. Well, no.

12 93 Q. You're not involved at all in
13 Mobilicity or studying it at all?

14 A. Mobilicity is in the same industry
15 as Wind, any time one is looking at an investment
16 at a company it's very normal that it would be
17 looking at -- it would be aware of and looking at
18 other companies operating within the industry.

19 94 Q. Okay. So Mobilicity is also on
20 the radar then?

21 A. What do you mean by that?

22 95 Q. You're studying it?

23 A. For what purpose?

24 96 Q. Any purpose. You're studying
25 Mobilicity?

1 A. For any purpose? Yes.

2 97 Q. Turning to paragraph 25 of your
3 affidavit, page 8. Mr. Moyse is the most junior
4 member of your investment team; is that right?

5 A. Yes.

6 98 Q. Okay. And you say here, I believe
7 the fourth line, end of the fourth line, you
8 estimate there are hundreds of positions like his
9 at banks and other institutions in Toronto; is that
10 correct?

11 A. The analyst position is fairly
12 common among investment funds, investment banks,
13 securities dealers, banks. So, yes, there are many
14 positions at that level. That level inherently is
15 occupied by people without a lot of experience and
16 the skills that they use are fairly
17 interchangeable. So, yes, there would be a lot of
18 positions at that level in the financial services
19 industry broadly speaking.

20 99 Q. By interchangeable you mean that
21 working in, for instance a securities dealer,
22 someone working there could fairly easily move over
23 to working for an investment fund or vice versa?

24 A. If you think of what the analyst
25 is doing in an investment bank, they're doing

1 financial modelling. They're doing research based
2 on publicly available records. Those skills are
3 readily exchangeable with investment funds and
4 other types of financial market participants.

5 100 Q. Right. So all the types of
6 participants you just listed a couple of minutes
7 ago are all the types who would employ the same
8 type of person performing the same or similar type
9 of job function, correct?

10 A. They would.

11 101 Q. Now, if we turn to Exhibit B of
12 your affidavit. That's at tab B of your brief
13 there. Starting at page 20 of your record is a
14 copy of West Face's employment agreement with Mr.
15 Moyse, correct?

16 A. Mm-hmm. Yes.

17 102 Q. Were you involved in the drafting
18 of this agreement?

19 A. Not in the drafting of it.

20 103 Q. Mr. Singh was?

21 A. I mean I was -- yeah, Mr. Singh
22 was. I reviewed it.

23 104 Q. You reviewed it?

24 A. Mm-hmm.

25 105 Q. Did you review the draft that went

1 out to Mr. Moyse before he accepted or signed the
2 contract?

3 A. I believe I looked at it, yeah.

4 106 Q. Okay. I guess we have an
5 undertaking or we understand if you can find it
6 we'll get the email from May 22nd --

7 MR. MITCHELL: Yes.

8 MR. WINTON: -- where Mr. Singh
9 actually sends a draft to Mr. Moyse, correct?

10 U/T MR. MITCHELL: Yes.

11 BY MR. WINTON:

12 107 Q. Turning to section 1.01 on the
13 first page. The start date is slotted in here as
14 June 23, 2014. Do you recall any discussion with
15 Mr. Moyse about his start date?

16 A. I do.

17 108 Q. And prior to sending him the draft
18 you'd established that was the date he was able to
19 start?

20 A. I specifically asked him when he
21 could start.

22 109 Q. And he told you June 23rd?

23 A. Mm-hmm.

24 110 Q. Yes?

25 A. Yes.

1 111 Q. At the time that he told you he
2 could start on June 23rd did he mention to you that
3 he also had a potential six-month non-competition
4 covenant he had to be concerned with?

5 A. He mentioned -- what I recall is
6 he had a 30-day notification period.

7 112 Q. Yes.

8 A. I don't recall at the time if he
9 mentioned the non-compete or not. But in any event
10 I referred him to our general counsel because I --
11 you know, better use of my time to have our general
12 counsel deal with these matters.

13 113 Q. Right. But my question was, do
14 you recall if he mentioned anything about his
15 non-compete when he told you his start date?

16 A. I don't recall.

17 114 Q. Did Mr. Moyse call you to talk
18 about some business questions after he saw his
19 draft? Do you remember anything about that?

20 A. Could you be more specific?

21 115 Q. Sure. Let me see if I've got...
22 I've got an email here, which I'm going
23 to show you. There's a copy for you. And this is
24 an email. The top email is from you to Mr. Moyse
25 May 22nd, in fact all the emails on this page are

1 dated May 22nd, and it's exchanges involving
2 yourself, Mr. Moyse and Mr. Singh at the bottom.
3 But as you can see, on May 22nd at 3:10 p.m. Mr.
4 Moyse wrote to you and asked if he could speak to
5 you because he had a couple of business questions
6 he wanted you to help him understand. See that
7 now?

8 A. I do see that.

9 116 Q. And does that refresh your memory
10 or trigger any memories of a conversation with Mr.
11 Moyse?

12 A. I recall reading this email.

13 117 Q. Yes. You wrote back and you
14 invited him to call you in the afternoon? Right?

15 A. Yes, that's what it says here.

16 118 Q. Do you recall the conversation you
17 had with him, or even if you had a conversation
18 with him?

19 A. I seem to recall having a
20 conversation with him about this, yes.

21 119 Q. And in the course of that
22 conversation did he speak to you at all or mention
23 his non-compete clause from his Catalyst contract?

24 A. I don't recall that question. I
25 think it had more to do with, you know, the usual

1 things that people care most about it, like money
2 and so forth.

3 120 Q. Okay. Back to the contract,
4 section 1.02.

5 MR. MITCHELL: Do you want to mark this
6 as an exhibit?

7 MR. WINTON: Sure. I thought it might
8 have been an exhibit already to the other, but in
9 case it isn't.

10 MR. MITCHELL: I just didn't see the
11 other ones.

12 MR. WINTON: No. I understand.
13 Thanks. Let's do that. So this is Exhibit 1, an
14 email from Mr. Dea to Mr. Moyse of May 22, 2014 at
15 3:16 p.m., and all the emails preceding that one.

16 EXHIBIT NO. 1: Email chain May 22,
17 2014 at 3:16 p.m. from Mr. Dea to Mr.
18 Moyse

19 BY MR. WINTON:

20 121 Q. Down to 1.02 of this contract,
21 still on page 1. Mr. Moyse reports to Greg Boland?
22 That's what it says here, right?

23 A. Correct.

24 122 Q. Is that how it works for everyone
25 on the investment team, they all report under the

1 contract to Mr. Boland?

2 A. Yes, that I'm aware of.

3 123 Q. Is that a standard term in West
4 Face's employment contracts?

5 A. Is it standard? I'm pretty sure
6 for all of the analysts, analysts, vice-presidents
7 and so forth. This would be an official reporting
8 line. In practice, you know, he might be
9 reporting -- might be reporting to other parties
10 depending on what file he happens to be working on.

11 124 Q. Turning over the page, 21 of the
12 record. In the first paragraph lettered (a), Mr.
13 Moyse is a fiduciary of West Face. Do you see
14 that?

15 A. Sorry. Where is that?

16 125 Q. You appear to be missing a page
17 for some reason. Either that or -- that's odd.

18 MR. MITCHELL: What article number are
19 you looking at?

20 MR. WINTON: I'm looking at 1.03(a).

21 MR. MITCHELL: It's missing in my copy
22 as well.

23 MR. WINTON: There you go.

24 MR. MITCHELL: You know what it may
25 be --

1 THE DEPONENT: Yeah, the employee shall
2 act as a fiduciary of the corporation.

3 MR. MITCHELL: It's just out of order.

4 BY MR. WINTON:

5 126 Q. So you see now, right, the
6 employee shall act as a fiduciary of the
7 corporation. Is that a standard term in West
8 Face's employment contracts with investment team
9 members, do you know?

10 A. I think so.

11 127 Q. Does that apply to every employee
12 of the corporation or just the investment team?

13 MR. MITCHELL: Do you know?

14 THE DEPONENT: I don't know.

15 BY MR. WINTON:

16 128 Q. Okay. You understand that the
17 term "fiduciary" has a legal meaning, legal
18 obligations?

19 A. Yes.

20 129 Q. And they're pretty serious
21 obligations a fiduciary has to the person to whom
22 those duties are owed?

23 A. Yes.

24 130 Q. So the understanding is that
25 members of your investment team are expected to act

1 in the best interest of West Face while they're
2 employed by West Face, correct?

3 A. Yes.

4 131 Q. And also you understand that means
5 they're not to engage in any conduct that might put
6 them at a conflict of interest with West Face,
7 correct?

8 A. Correct.

9 132 Q. That's your expectation for
10 members of your investment team, correct?

11 A. Yes.

12 133 Q. Then it seems to be repeated at
13 section 1.06 further down the page, that you
14 specifically require the employee not to engage in
15 activities that will create a conflict with the
16 corporation?

17 MR. MITCHELL: I'm sorry. How is that
18 a repetition?

19 MR. WINTON: Of the fiduciary
20 obligation?

21 MR. MITCHELL: Well, okay. But you
22 said it repeats itself. Up here it says fiduciary.
23 Down here it says conflict --

24 BY MR. WINTON:

25 134 Q. Okay. Functionally is it the same

1 concept that in both cases, one, he's a fiduciary,
2 two, he's not to engage in any activities that
3 create a conflict with the organization? It's just
4 repeating or perhaps expanding on the obligation of
5 what you expect from your employee?

6 A. So what specifically is the
7 question?

8 135 Q. This term adds let's say an
9 additional obligation on employees not to compete
10 with the corporation.

11 MR. MITCHELL: Conflict with. It
12 doesn't say compete with.

13 MR. WINTON: Sorry. Conflict with.

14 BY MR. WINTON:

15 136 Q. Okay. Let's look at the second,
16 not to provide any service to any person in the
17 sole opinion of the corporation if it would create
18 a conflict of interest. I'm going to suggest to
19 you that incorporates or encapsulates the concept
20 of competing with, right?

21 A. I'm not sure what your question
22 is.

23 137 Q. All right. 1.06 restricts
24 Brandon's ability, or whatever conduct he can
25 engage in while he's employed by the corporation,

1 do you agree with that?

2 A. Yes. This says he will not engage
3 in activities that create a conflict in the
4 interests of the corporation. That's what it says.

5 138 Q. If in the sole opinion of the
6 corporation. So up to West Face to decide if that
7 service would create an actual or potential
8 conflict, correct?

9 A. Correct.

10 139 Q. Turning to article 3, which I
11 think in your case may be actually the page prior
12 because they're out of order. 3.01 compensation?

13 MR. MITCHELL: No. It's the next page.
14 It fixes itself.

15 MR. WINTON: Are you at 3.01?

16 MR. MITCHELL: Page 23 of the motion
17 record.

18 BY MR. WINTON:

19 140 Q. Starting salary is \$110,000. Is
20 that blacked out of that copy? It appears like
21 yours has it redacted.

22 A. What is the question?

23 141 Q. Starting salary was \$110,000?

24 A. Do you have a question?

25 142 Q. That's the first question.

1 A. Does this say \$110,000? Yes,
2 that's what it says.

3 143 Q. And you set that salary? You
4 determined what his salary would be?

5 A. We did.

6 144 Q. By you I mean you specifically?
7 Or was it a decision --

8 A. It was a decision, joint decision.

9 145 Q. Do you recall asking Brandon what
10 his compensation was?

11 A. Yes.

12 146 Q. And did you talk to him about his
13 compensation when you first met him at Aroma back
14 in March?

15 MR. MITCHELL: Are you talking about
16 his compensation with Catalyst?

17 MR. WINTON: Yes.

18 THE DEPONENT: What's the question? Do
19 I recall talking to him about compensation?

20 BY MR. WINTON:

21 147 Q. You met with him at Aroma in March
22 of 2014, right?

23 A. Yes.

24 148 Q. You talked about his compensation?
25 Yes?

1 A. Mm-hmm. Yes.

2 149 Q. Did he tell you his compensation
3 then?

4 A. I don't recall.

5 150 Q. Okay. Let's turn to article 7,
6 section 7.01. Confidential information continues
7 on to the next page. The definition of
8 confidential information if you look starts in sort
9 of the bottom third of that paragraph on that
10 second page there, and includes, but is not limited
11 to, it's about seven lines up from the bottom. I
12 just want to make sure we understand. It's the
13 name of any information on present and prospective
14 clients of West Face, correct?

15 A. Yep.

16 151 Q. And the funds it advises. What's
17 that a reference to?

18 A. West Face has funds that it
19 advises.

20 152 Q. Okay. They're not named here?

21 A. They don't appear to be.

22 153 Q. They're not defined anywhere as to
23 what's meant by the funds it advises?

24 A. It refers to, you know, we have a
25 Canadian fund, we have an offshore fund, a U.S.

1 fund. That's what it's referring to.

2 154 Q. How many funds in total does West
3 Face have?

4 A. Off the top of my head I don't
5 know.

6 155 Q. Estimate?

7 A. Don't know.

8 156 Q. Can you let me know?

9 U/T MR. MITCHELL: Yes. We will undertake
10 to let you know how many funds West Face has.

11 BY MR. WINTON:

12 157 Q. The investment thesis surrounding
13 and contacts linked to any investments made or
14 proposed by the corporation? See that?

15 A. I see that.

16 158 Q. Right. And that refers to the
17 analysis that might be conducted by an analyst to
18 justify, or explain, or ground the decision to
19 invest in a particular opportunity?

20 A. It would -- whether it was
21 generated by the analyst or not, it would refer to
22 the investment thesis, yeah, sure.

23 159 Q. But by investment thesis we mean
24 sort of the idea or the theory behind why something
25 might make a good investment?

1 A. What's the question?

2 160 Q. The word investment thesis --

3 A. Yes.

4 161 Q. -- refers to the theory, the idea
5 why a particular opportunity may be a good
6 investment?

7 A. Well, the investment thesis
8 generally refers to how one expects to make money
9 from the investment.

10 162 Q. So the strategy?

11 A. No. Just as I said.

12 163 Q. How you expect to make money?

13 A. How one expects to make money from
14 the investment.

15 164 Q. Okay. Moving down. So the
16 company's models and concepts. That's the models
17 it employs to analyze opportunities?

18 A. Those would be referring to
19 financial models.

20 165 Q. Right. They're usually in the
21 form of spreadsheets, correct?

22 A. Correct.

23 166 Q. And you use certain ratios,
24 formula of your own that try to help you understand
25 whether something fits within your mandate?

1 A. Financial models are fairly
2 generic. There's financial modelling, what you're
3 really doing is taking information often from
4 public issuers and putting it into a spreadsheet.
5 It can be a fairly kind of mundane task.

6 167 Q. If it's that generic why is it
7 considered confidential?

8 A. It may contain confidential
9 information.

10 168 Q. Okay. So the model itself may not
11 be confidential, or the equation isn't
12 confidential, but the numbers you plug in and the
13 results of that model would be considered
14 confidential, correct?

15 MR. MITCHELL: In fairness, he said
16 they may be.

17 BY MR. WINTON:

18 169 Q. Right. May be confidential?

19 A. They may be relying upon
20 confidential information.

21 170 Q. I see. And if they don't rely on
22 confidential information then the model is not
23 confidential?

24 A. Well, if I did a financial model
25 of a public issuer based on public information that

1 only contain the publicly listed -- the information
2 provided in the public domain, it's really just
3 taking notes.

4 171 Q. Okay. And after you build that
5 model, you then analyze it, correct?

6 A. Correct.

7 172 Q. And that analysis would be unique
8 to the person or the organization conducting the
9 analysis, correct?

10 A. The analysis unique. I'm not sure
11 what you mean by unique. Different firms could
12 form the same views given the same set of
13 information.

14 173 Q. But the particular analysis or
15 conclusion would be something that a company would
16 consider to be proprietary to that company,
17 correct? You don't share your analyses with third
18 parties?

19 A. I can't say -- we do share our
20 analyses with third parties in some circumstances.

21 174 Q. You publish your analyst's memos,
22 share them with the general public?

23 A. We do not share our analysis with
24 the public. Sometimes we might share information
25 with the public.

1 175 Q. But not your analysts -- not the
2 analyses that are conducted of research
3 opportunities?

4 A. Well, sometimes we might want to
5 make a case in public about a certain investment.

6 176 Q. You choose to do that? You make a
7 deliberate decision to do that?

8 A. Correct.

9 177 Q. And absent making that deliberate
10 choice you keep that information confidential to
11 West Face, correct?

12 A. Correct.

13 178 Q. And you consider that to be West
14 Face's confidential information?

15 A. Yes.

16 179 Q. And it's not up to the analysts
17 who create -- who conduct the analysis or write a
18 memo to decide whether or not that information is
19 confidential or not, correct?

20 A. Correct.

21 180 Q. It would be up to a partner or
22 senior level employee, correct?

23 A. Sorry. Ask the question again.

24 181 Q. It would be up to the partner, or
25 some senior level employee?

1 A. To?

2 182 Q. To make the determination whether
3 an otherwise confidential memo should be shared
4 with the public?

5 A. Are you asking who makes a
6 determination to disclose to the public a memo?

7 183 Q. Correct.

8 A. Yeah, it would be up to the
9 partners.

10 184 Q. And then, again, the research, the
11 investment models, formulas, analysis for
12 prospective investments, that all falls within the
13 scope of what we were just discussing for these
14 memos, correct?

15 A. Yes.

16 185 Q. And the same discussion about
17 confidentiality and the idea that it belongs to the
18 company, considered confidential, that applies to
19 those documents, or that content as well, correct?

20 A. It does.

21 186 Q. Just looking down to 7.03.
22 Article 7 survives termination of the agreement.
23 In other words, you understand that the
24 confidential information an analyst or an employee
25 may have, that obligation to keep that information

1 confidential is meant to survive even after they
2 leave the organization, correct?

3 A. Yes.

4 187 Q. So if they decide to resign and go
5 work for a competitor you expect them to keep that
6 information confidential?

7 A. Yes.

8 188 Q. And to honour that obligation even
9 if they're no longer an employee of West Face?

10 A. Yes.

11 189 Q. And you expect them to return any
12 confidential information to you before they go, if
13 they had any in their personal possession?

14 A. By return what do you mean?

15 190 Q. If they had a USB key that had
16 West Face's --

17 A. What?

18 191 Q. A USB key. A thumb drive? I'll
19 show you one. A USB disk. Are you familiar with
20 these?

21 A. Yes.

22 192 Q. So if they had information on a
23 personal disk of their own that was West Face's
24 confidential analyses, or memos, you would expect
25 them to return that before they leave, correct?

1 A. Not necessarily.

2 193 Q. No? You'd be okay if they took
3 that with them?

4 A. We would take it very seriously
5 that they honour the confidentiality requirements
6 that they have agreed to. But in a world where
7 there's so many ways to disseminate and retain
8 information it might be impractical to ensure that
9 all of it were returned.

10 You didn't ask me if we would require
11 them to delete things. We might require employees
12 to delete all information and to give us notice
13 that they have done so. I would have to go and
14 check other agreements and so forth. In any event,
15 we would make it very clear that they are to uphold
16 the levels of confidentiality. That would be an
17 expectation that we would have.

18 194 Q. And you take this obligation very
19 seriously, correct?

20 A. Yes.

21 195 Q. And you would treat any breach of
22 that obligation -- you would consider that to be a
23 serious event, correct?

24 A. I would.

25 196 Q. If an employee disclosed your

1 confidential information that would be a matter of
2 concern to you?

3 A. It would.

4 197 Q. Turning to article 11. 11.01.
5 This is a breach of the confidentiality what is
6 referred to in article 7 you see that, is one that
7 you require employees to acknowledge can't be
8 compensated for damages, correct?

9 A. This is a clause in the contract,
10 yes.

11 198 Q. Right. And you understand that
12 because it's difficult or may be impossible to put
13 a dollar value on the damage that might be caused
14 by a breach of confidence?

15 A. I couldn't tell you all the
16 reasons why we have this in there, but this is in
17 there.

18 199 Q. Do you have an understanding as to
19 why it's in there?

20 A. I do.

21 200 Q. So what's your understanding?

22 Isn't it to ensure that if there's a
23 breach of the confidentiality that you can go to
24 court quickly and get everything returned to you
25 and make sure that that employee stops that breach?

1 A. That is what this says.

2 201 Q. Right. And you understand the
3 harm that could happen, that could occur if
4 confidentiality is breached at a firm such as
5 yours, right? Very serious harms?

6 MR. MITCHELL: I think you need more
7 context around that question. I mean, there's a
8 huge degree of variation in terms of the breach of
9 confidentiality. So I don't think it's fair to
10 just put that as a general proposition to the
11 witness.

12 BY MR. WINTON:

13 202 Q. I'll try and be more specific
14 then. So if an employee discloses upcoming
15 potential deals your firm is working on, that could
16 be very harmful to the corporation, correct?

17 A. Disclosing confidential
18 information could be anywhere from benign to very
19 serious. In concept disclosing confidential
20 information is serious and we all take it very
21 seriously. In terms of what damages arise, I
22 imagine that it would be very case specific.

23 203 Q. Right. Because in some cases it
24 could be letting out the secret of an investment
25 you may be making in the near future? That could

1 be very serious, correct?

2 A. Correct.

3 204 Q. Because someone who gets that
4 information can profit from it, correct?

5 A. Yeah. There are many reasons why
6 one would seek to retain that confidential.

7 205 Q. Right. But looking from the other
8 side, if once that confidentiality is breached the
9 harm is very serious, correct?

10 A. Again, the concept of breaching
11 the confidentiality is very serious. In terms of
12 the impact of a particular breach it really is case
13 specific. In some cases it would be very harmful,
14 in some cases rather benign.

15 206 Q. Right. The harmful cases are the
16 kind of harm where, say, it's impossible to
17 unscramble the omelette type of example, correct?
18 You let the information out, it's out there and now
19 you've lost an opportunity.

20 A. If I were working for an
21 investment bank and I disclosed confidentiality
22 information about an upcoming takeover would be
23 criminal and with far-reaching implications, so.

24 207 Q. Right. If you weren't talking
25 let's say about publicly traded securities, but

1 let's just talk about a private opportunity, it
2 would still be very harmful to West Face if an
3 investment you were planning to make --

4 A. Well, again, I just answered. The
5 concept of breaching confidentiality is very
6 serious. The impact of that breach is very case
7 specific. Could be benign. Could be very harmful.

8 208 Q. Right.

9 A. Depending on the case.

10 209 Q. And it has the potential --

11 A. Which doesn't diminish the fact
12 that in concept breaching confidentiality is a
13 serious matter.

14 210 Q. Right. So you created this
15 spectrum of benign and potentially very harmful.

16 A. Yes.

17 211 Q. And so I want to talk about that
18 potentially very harmful side of the spectrum. And
19 the harms we're talking about are the potential
20 that an investment opportunity you've been studying
21 and working on, let's say, disappears because of
22 the breach of confidence. That's a possibility,
23 correct?

24 A. That an opportunity disappears?

25 212 Q. Right. That you lose out on it.

1 Once the secret that you were planning something is
2 out, you know, out of the bag, the cost of making
3 the investment may rise, correct?

4 A. If I were working, for example, on
5 a public company, yes. And there was information
6 that were to lead to say a takeover, and it became
7 known to the public, and the stock price moved up
8 and the opportunity went away that would be
9 harmful.

10 213 Q. Right. Someone disclosed to a
11 competitor of yours that you were planning on
12 making a certain deal, they might be able to get in
13 on it before you finished your analysis, ready to
14 make your move; is that possible?

15 A. Is it possible that if -- yes,
16 that would be possible, yes.

17 214 Q. So then you would lose out on that
18 opportunity you've been studying? In this
19 scenario?

20 A. What's the question?

21 215 Q. I'm creating a scenario here.
22 You've lost out on an opportunity because someone
23 else moved faster having learned of your
24 confidential information. Are you with me there?

25 A. So you're asking me to envision a

1 scenario where we have lost an opportunity because
2 someone has divulged confidential information?

3 216 Q. Right.

4 A. Okay, I'm with you so far.

5 217 Q. Right. How would you value that
6 loss?

7 A. How would I value that?

8 218 Q. Yes.

9 A. It's very difficult to continue
10 this line without knowing the case specifics.

11 219 Q. Okay. But would you agree with me
12 that given the many potential ways an investment
13 can unfold, or potential for profit, it's actually
14 very difficult to envision what the damages would
15 be?

16 MR. MITCHELL: I think you've got his
17 answer that he can't do that in a hypothetical.

18 BY MR. WINTON:

19 220 Q. Okay. So do you agree with me
20 that there are some cases where, with confidence
21 having been breached, you can't even determine what
22 the harm that was caused with any precision? You
23 can't determine how it's harmed you?

24 A. So we're talking about a
25 hypothetical situation again?

1 221 Q. Yes.

2 A. Are we talking about that
3 hypothetical situation where someone has breached
4 our confidentiality and we lost that opportunity?

5 222 Q. Yes.

6 A. So what is the question?

7 223 Q. That it is difficult to determine
8 with any precision what the harm was.

9 A. Difficult for who?

10 224 Q. For you as West Face, the party
11 that suffered the loss.

12 A. Well, with any investment an
13 investment can have a whole range of outcomes from
14 a capital loss to making money. So, again, we're
15 kind of talking about a hypothetical world. It's
16 very difficult to answer your question.

17 225 Q. But it's difficult to know what
18 the harm would be at the outset of learning that
19 your confidence has been breached?

20 MR. MITCHELL: He's already answered
21 this. He's answered this.

22 BY MR. WINTON:

23 226 Q. Okay. Just following up on our
24 discussion about the return of confidentiality
25 information, if you turn to section 12.05. On

1 termination employee surrenders the property
2 belonging to the corporation. Does that include
3 the confidential information that belongs to the
4 corporation?

5 A. Property of a corporation would
6 include the confidential information.

7 227 Q. Turning back to article 9. The
8 non-competition, non-solicitation clause in 9.01.
9 Are you aware of whether this is the standard
10 clause for all members of the investment team?

11 A. Are you referring to 9.01(a) or
12 (b)? Or what are you referring to?

13 228 Q. Well, the introduction before the
14 (a) and the (b), really the whole thing. Before
15 the (a) and (b) and (c).

16 A. Would you like me to reread it?

17 229 Q. If you need to, please do.

18 (Witness reads document)

19 A. Okay. Yes.

20 230 Q. So my question to you, is that
21 standard form clause for members of the investment
22 team?

23 A. Well, again, I don't know that --
24 I'd have to review all our outstanding employment
25 contracts.

1 MR. MITCHELL: If it's of assistance,
2 Mr. Singh was primarily responsible for drafting
3 this and he's going to be giving evidence. I just
4 don't think Mr. Dea is in a position really to
5 respond.

6 MR. WINTON: That's fine. Why don't I
7 reserve my questions for Mr. Singh?

8 MR. MITCHELL: That's fine. And we can
9 talk about an undertaking if Mr. Singh doesn't know
10 at that time.

11 MR. WINTON: Thank you, counsel.

12 BY MR. WINTON:

13 231 Q. Turn to tab C of your affidavit.
14 Exhibit C is a redacted copy of Catalyst's
15 employment agreement with Mr. Moyse. Do you see
16 that?

17 A. I do.

18 232 Q. And did Mr. Moyse give this to you
19 or did he give this to Mr. Singh, do you know?

20 A. Well, I know he gave it to Mr.
21 Singh. Whether it came indirectly through me I
22 just don't recall.

23 233 Q. Did you review this?

24 A. No.

25 234 Q. Let's just turn then to page 5 of

1 this contract, section 10.

2 A. Page 5.

3 235 Q. We have different page numbering.
4 That's interesting. So the section entitled
5 Confidential Information. Are you with me?

6 A. Yes.

7 236 Q. All right. And looking here at
8 Catalyst's definition of confidential information
9 it starts on the third line of this section, and it
10 includes, without limitation, the identity of
11 existing or prospective investors in the fund or
12 any such future partnership or fund.

13 Stopping there. That's similar to
14 information that West Face considers confidential.
15 Do you agree?

16 A. Are you asking my judgment if that
17 is similar to our definition of confidential?

18 237 Q. Yes.

19 A. I would have to closely review
20 both definitions, but...

21 238 Q. Do you know what information West
22 Face considers confidential?

23 A. Seems to.

24 239 Q. So that seems to encapsulate the
25 same type of information that West Face considers

1 to be confidential?

2 A. I would have to review both
3 closely.

4 240 Q. What we'll do is hold your hand
5 there, go back to tab B, and let's do this
6 exercise. So, going to section 7.01.

7 A. Mm-hmm.

8 241 Q. Turn over to the second page of
9 that section. Turn over to the second page of
10 section 7.01. There you go. Now, starting from
11 about seven or eight lines up you see confidential
12 information includes, but not limited to. And the
13 first item listed is the names of and any
14 information on present and prospective clients of
15 the corporation and the funds it advises.

16 A. Mm-hmm.

17 242 Q. You agree that's similar to item
18 (i) the identity of existing or prospective
19 investors in the fund?

20 A. Well, one refers to clients and
21 one refers to investors.

22 243 Q. Is there a difference between West
23 Face's clients? Are West Face's clients the people
24 who invest in your funds?

25 A. Yes.

1 244 Q. Okay. 2 structure of same.

2 A. What would you like me to look at
3 in ours?

4 245 Q. All financial information
5 concerning the combined business.

6 A. What line is that?

7 246 Q. That's four lines from the bottom
8 of your section. The financial information
9 concerning the combined business, and it appears to
10 be a defined term, including West Face and all its
11 subsidiaries. Would that be similar to the
12 structure of your funds? Structure of the funds?

13 A. Well, structure to funds to me
14 might mean how the funds are structured, what the
15 ownership position is. Where's the GP? Where are
16 the LPs? Where are they domicile? Is it Caymen
17 and so forth.

18 247 Q. So going to item 3 of Catalyst's,
19 the marketing strategies for securities or
20 investments? And that incorporation includes its
21 strategies, policies, models and concepts? Would
22 that include marketing strategies?

23 A. I see in the Catalyst 10(iii),
24 marketing strategies for securities and investments
25 in the capital. So what is the question?

1 248 Q. So going back now to West Face's.
2 There's a reference to the corporation's policies,
3 strategies, models and concepts. You see that four
4 lines from the bottom?

5 A. I think these are different.

6 249 Q. You think -- so strategies and
7 marketing strategies are different?

8 A. Well, marketing strategies might
9 refer to the marketing of the Catalyst funds.

10 250 Q. Yes.

11 A. This might be referring to...

12 251 Q. Investment strategies?

13 A. No. That could be -- policies
14 could be our confidentiality policies. They could
15 be our compliance policies.

16 252 Q. The next word though is
17 "strategies." So what strategies would be
18 considered confidential to West Face?

19 A. It's not particularly -- the
20 strategies are well-known, what strategies we
21 pursue. And when we regularly talk to investors
22 and prospective investors we can talk fairly
23 generically about what our strategies are.

24 253 Q. So your strategies, you include
25 them in here but they're not actually confidential?

1 Is that what you're suggesting to me?

2 A. The particular strategies related
3 to investments would be confidential.

4 254 Q. So investment strategies with
5 respect to a particular investment would be
6 considered confidential?

7 A. In some circumstances the
8 investment thesis, just the name of the company
9 alone may be enough.

10 255 Q. To be confidential?

11 A. Mm-hmm.

12 256 Q. Yes? Sorry. You just said
13 "mm-hmm" I just want to make sure it's a "yes" for
14 the record.

15 A. Well, the... so what is the
16 question I'm answering again?

17 257 Q. You told me that just the name of
18 the company alone, I understood you to say --

19 A. Yes. For example, if you're
20 working on a takeover bid of a public issuer, if
21 that information became known prior to being
22 publicly announced the shares could go up in value.

23 258 Q. Right. But even short of that, or
24 even more than that, an investment strategy for a
25 particular opportunity, the strategy that West Face

1 decides to employ for a particular opportunity you
2 would consider that to be confidential, correct?

3 A. In some circumstances it would be
4 confidential.

5 259 Q. Yes. So you have an interest, a
6 proprietary interest. You have an interest in
7 protecting that, correct?

8 A. We do. We would.

9 260 Q. So continuing with Catalyst.
10 Let's just go through the Catalyst. So item 4 was
11 investment strategies. I think we've discussed
12 that one. Five is value realization strategies.
13 Do you agree that could be information that West
14 Face would consider confidential?

15 A. Yes.

16 261 Q. Negotiating positions? Continuing
17 on. Would that be information that West Face
18 considers confidential?

19 A. Sorry. You're asking me whether
20 we consider it confidential, or whether it's in
21 this contract?

22 262 Q. Why don't we leave the contract
23 aside for a minute? Let's just find out if you
24 consider that to be confidential, because I think
25 that --

1 A. Do I consider negotiating
2 positions regarding a prospective investment to be
3 confidential?

4 263 Q. Yes.

5 A. Is that your question?

6 264 Q. Yes.

7 A. Yes.

8 265 Q. Okay. Do you consider the
9 portfolio of investments that a fund's invested in
10 to be considered confidential?

11 A. Are you asking us in respect to
12 West Face?

13 266 Q. Yes.

14 A. Yes.

15 267 Q. Any prospective acquisitions to a
16 portfolio, would that be considered confidential?

17 A. Yes.

18 268 Q. Any prospective dispositions from
19 a portfolio, that would be considered confidential?

20 A. Yes.

21 269 Q. Personal information about
22 Catalyst or its employees, would you consider that
23 to be confidential to -- sorry. Personal
24 information about West Face, or West Face
25 employees, would you consider that to be

1 confidential?

2 A. You'd have to be more specific.

3 270 Q. Okay. Compensation structure at
4 West Face, would you consider that to be
5 confidential?

6 A. The structure, or the
7 particularities of compensation?

8 271 Q. Both. Let's start with the
9 structure.

10 A. Would I consider the structure --
11 West Face's compensation structure to be --

12 272 Q. Confidential.

13 A. -- confidential? Yep.

14 273 Q. And the particulars of the
15 compensation I assume you're going to tell me are
16 confidential?

17 A. Yes.

18 274 Q. Okay. Turning to Exhibit L of
19 your affidavit. There's an email. The first few
20 pages consist of an email exchange over a long
21 period of time between you and Mr. Moyse.

22 A. Mm-hmm.

23 275 Q. And it seems that -- if you go to
24 the second page of this email. I think we've
25 established you recall meeting Mr. Moyse at Aroma

1 in March 2014? Correct?

2 A. Correct.

3 276 Q. From the email chain here it seems
4 it was on March 26th, right?

5 A. Yes.

6 277 Q. Now, after the meeting, the top
7 email on page 2 there is an email from you to Mr.
8 Moyse sent at what appears to be 9:31 p.m.

9 A. Mm-hmm.

10 278 Q. You wrote:

11 "Hey, Brandon, thanks. What is
12 the name of the Cerberus entity that
13 Callidus is modelled after?" (as
14 read)

15 Was that something you discussed with
16 Mr. Moyse during your discussion with him at Aroma?

17 A. Was what?

18 279 Q. Callidus?

19 A. Did I discuss Callidus?

20 280 Q. Yes.

21 A. Any discussion that I had with
22 Brandon was about Brandon and what he was doing.
23 So to get an idea of what kind of a candidate he
24 would be. So I would have asked him questions
25 about what Callidus is doing as a business line,

1 and if he was doing any of that sort of thing.

2 281 Q. Do you recall his responses to
3 those questions?

4 A. As I recall he didn't have a whole
5 lot to do with Callidus, if anything. I don't
6 think he had anything to do with Callidus.

7 282 Q. Okay. So why then after the
8 meeting are you asking him more information about
9 the Cerberus entity that Callidus is modelled
10 after?

11 A. Oh. One of the co-founders of
12 Cerberus is a personal friend of mine from college,
13 and I was visiting him either just before or just
14 after, and we were just talking about lots of
15 different things, and I couldn't remember what the
16 name of that entity was. They're a large
17 organization and I couldn't remember what one
18 particular entity was.

19 283 Q. Did you talk to Mr. Moyse about
20 the deals he was working on at Catalyst?

21 A. The deals that he was working on?

22 284 Q. Investment opportunities.

23 A. No.

24 285 Q. So just a general discussion of
25 work?

1 A. Do you mean prospectively?

2 286 Q. Yes.

3 A. No.

4 287 Q. Did you talk about past deals he
5 worked on?

6 A. I was interested, and it's very
7 typical in these situations when you're trying to
8 get a handle of particularly a young candidate to
9 just get a handle of what the breadth of their
10 experience is. So I would have asked him questions
11 about his academic record, what he did at RBC, what
12 he did at Credit Suisse, the kinds of things he was
13 working on. Without mentioning names, what sorts
14 of things he was working on and so forth. The
15 kinds of -- actually I would have been asking him
16 the kinds of or opportunities he's worked on in the
17 past, and if he could generically describe his
18 contribution.

19 288 Q. Did he use any names to describe
20 the opportunities he had worked on?

21 A. I don't recall what the answers
22 were.

23 289 Q. Now, turning over his email to
24 you. On the first page now. March 27 at 1:47
25 a.m., the first line is:

1 "As discussed, please see
2 attached my CV and deal sheet and a
3 few investment write ups I've done
4 at Catalyst." (as read)

5 Now, was that information you asked him
6 to send you? You asked him to send you his CV?

7 A. I asked him to send me his CV and
8 a deal sheet. A deal sheet is fairly common in the
9 industry to provide a little bit more detail in
10 generic terms of things that you had worked on that
11 is put together in such a way that it can be shared
12 outside of the organization. So I would have asked
13 for that. And I think I asked for some -- I think
14 I asked for some writing samples. I said, you
15 know, if you need to redact, or take names, or put
16 things into generic form and so forth, you know,
17 anything that would be helpful to us reviewing your
18 background.

19 290 Q. So you asked him for the writing
20 samples, but you also invited him to redact or
21 otherwise alter the work to, I'm going to suggest,
22 protect Catalyst's confidential information,
23 correct?

24 A. Yeah, I don't remember precisely
25 what I asked, but that would have been normal to

1 ask that. And also I would have been assuming
2 that, like anyone in the industry would comply with
3 any confidential undertakings that he had made in
4 asking questions.

5 291 Q. So you asked him for a writing
6 sample, right? Yes?

7 A. Yes, I did.

8 292 Q. Did you say to him don't send me
9 anything confidential?

10 A. I said if you need to redact, or
11 all I'm looking for is, you know, just some sample
12 of how you, you know, how you write, put something
13 together.

14 293 Q. Is that a typical request you'd
15 make of a prospective employee, a writing sample?

16 A. In a more typical circumstance --
17 yeah, it could be. I mean, you could ask that, or
18 you could ask to do a -- prepare an analysis. I
19 could give him a name and provide -- ask him to do
20 some analysis.

21 294 Q. And that's an alternative to
22 providing what I'd call a live sample of his work,
23 is to prepare an almost artificial analysis based
24 on a name you give him, right?

25 A. Sorry. You said a live example?

1 295 Q. Well, here you asked him for
2 samples of his writing --

3 A. Right.

4 296 Q. -- from his work? Yes?

5 A. Yes, I did.

6 297 Q. And an alternative to that is for
7 you to give him the name of a company and ask him
8 to go out and do up a research report on them?

9 A. It would be. Well, not a research
10 report, yeah, it would be.

11 298 Q. Right. And that would give you an
12 example, sample of his writing --

13 A. Mm-hmm.

14 299 Q. -- without having to actually take
15 the risk that you're getting something from his
16 current employer, correct?

17 A. Mm-hmm.

18 300 Q. Yes?

19 A. Yes. It could be additive. I'm
20 not sure that it's entirely the same, but yeah.

21 301 Q. It would certainly be more
22 protective of the current employer's confidential
23 information, correct?

24 A. Well, it depends. It's over to
25 him how he manages it. You could send me something

1 back and say, you know, this -- this is a company
2 XYZ in the cosmetics industry and, you know, you
3 can describe the opportunity and so forth. So it
4 really depends.

5 302 Q. Right.

6 A. It's over to him, in other words,
7 to abide by all of his confidentiality
8 requirements.

9 303 Q. That was your expectation, that he
10 would abide by --

11 A. That would have been my
12 expectation for sure.

13 304 Q. Your expectation was he wouldn't
14 send you confidential information?

15 A. Absolutely.

16 305 Q. So when you received the documents
17 that he attached to his email, and you saw they
18 were marked confidential, for internal discussion
19 purposes only, you understood that Brandon may not
20 have understood what you were asking for, correct?

21 A. I didn't read his attachments
22 right away.

23 306 Q. You read them eventually?

24 A. Eventually I did, yeah.

25 307 Q. And you saw those markings on

1 them, correct? That they were confidential and for
2 internal purposes only?

3 A. I did.

4 308 Q. Did you send them back to him?

5 A. Did I send them back?

6 309 Q. Like return them back? Did you
7 destroy them?

8 A. I did not destroy them.

9 310 Q. No. You did not tell Catalyst
10 that he'd sent them?

11 A. I did not.

12 311 Q. When you reviewed them you saw
13 that he hadn't redacted any information?

14 A. I don't remember exactly when I
15 reviewed them, but when I reviewed them, as I
16 recall, there were four examples. I was really
17 just looking for, you know, how was the wording put
18 together. You know, was it logical. They all were
19 fairly rather pedestrian analyses. It seemed to be
20 just a collection of, you know, gathering of public
21 information.

22 312 Q. Is it just a gathering of public
23 information, or does it also include some analysis
24 by the author of the memos?

25 A. Our conclusion was that the

1 analysis was very pedestrian. That it was really
2 primarily just, you know, recitation of public
3 information. In one of the circumstances, one of
4 the examples, I believe it was -- I don't remember
5 exactly, but I think it was something that was --
6 that he had not done himself, he said he
7 contributed to, that was -- that he said was
8 circulated -- that was used to circulate to their
9 limited partners. So I actually didn't read it too
10 intently. I didn't really spend much time on the
11 information.

12 313 Q. You took these documents. You
13 circulated them within the firm, correct?

14 A. I circulated a very, very narrow
15 set within the firm. So I only circulated them to
16 the other three partners. There are four partners.
17 So three of the other partners, and one of our
18 senior level analysts. I think he's a
19 vice-president. Anyone who would have been
20 involved in interviewing. So it was the -- so it
21 was merely just forwarding as a conduit information
22 containing the CV. I believe there was a deal
23 sheet, I don't recall exactly, and then the writing
24 samples. With the understanding that they would,
25 of course, abide by all confidential undertakings

1 as well.

2 314 Q. Who is they?

3 A. The people that I forwarded to.

4 315 Q. So just to put some names to these
5 people. There's Peter Fraser?

6 A. Correct.

7 316 Q. There's Tony Griffin?

8 A. Right.

9 317 Q. The third partner, is that a
10 reference to Mr. Boland?

11 A. Correct.

12 318 Q. And the vice-president is Yu-Jia
13 Zhu?

14 A. Correct.

15 319 Q. I'll spell that for the record.
16 It's Y-U, hyphen, J-A-I. Z-H-U is the last name.
17 And that's the vice-president at West
18 Face? Who you were referring to when you said a
19 senior vice-president also received --

20 A. No, a senior analyst I said. I
21 think his title is vice-president.

22 320 Q. Is that Mr. Zhu? Is that a man?

23 A. It's a man.

24 321 Q. So he's a senior vice-president?

25 A. No.

1 322 Q. Senior analyst?

2 A. I think his title is
3 vice-president, as I said.

4 323 Q. That's the senior-most title for
5 someone who does the analyst type of role at West
6 Face?

7 A. I believe so.

8 324 Q. And Mr. Zhu is one of the
9 employees of West Face who interviewed Mr. Moyse,
10 correct?

11 A. He is.

12 325 Q. So you said you -- that they -- I
13 just want to make sure I have your evidence right.
14 That your expectation was they would comply with
15 confidentiality undertakings was I believe the
16 phrase you used. What undertakings are you talking
17 about?

18 A. I assume that if they noticed that
19 this was confidential information that they would
20 keep it confidential.

21 326 Q. But it's not West Face's
22 confidential information, correct?

23 A. Correct.

24 327 Q. It's Catalyst's confidential
25 information you're referring to?

1 A. Right.

2 328 Q. So what obligation does West Face
3 have to keep any information it receives
4 confidential?

5 A. What I mean by that is that I
6 felt -- although I recognized that this was
7 information that was -- that was confidential to
8 Catalyst, I felt that I could show it to my
9 partners. Only as a writing sample. Because it
10 concluded that it was very benign, you know,
11 analyses.

12 329 Q. That was your conclusion?

13 A. Mm-hmm.

14 330 Q. Yes?

15 A. Yes.

16 331 Q. Upon reviewing the documents you
17 concluded that it was benign analysis?

18 A. Mm-hmm.

19 332 Q. Yes?

20 A. I did.

21 333 Q. So you understood you had
22 confidential information, but it seemed safe for
23 you to share it within your company?

24 A. For the purpose of evaluating
25 Brandon, yes.

1 334 Q. Rather than returning it to
2 Catalyst and let them know that their employee
3 disclosed confidential information; that's not what
4 you did, right?

5 A. That's not what I did.

6 335 Q. Did any of the partners, or did
7 Mr. Zhu express any concern about the fact that Mr.
8 Moyse had sent West Face Catalyst's confidential
9 information?

10 A. Yes. Prior to us extending the
11 offer I discussed with one of the partners, with
12 Tony, we were generally favourably disposed to his
13 capabilities, but one concern we had was that he
14 had conveyed confidential information to us, and I
15 agreed with that, and so I asked our general
16 counsel to have a discussion with him specifically
17 about that, to convey to him the seriousness with
18 which we view the protection of confidential
19 information, to make sure that -- and to explain
20 that we'd have the highest expectation that he
21 would uphold that if he were to come and work for
22 us.

23 336 Q. That's going forward you had this
24 expectation, but whatever he did in the past that's
25 in the past; is that your attitude?

1 A. Well, our view was that he -- it
2 was -- there was nothing in there that we viewed
3 particularly damaging. There was nothing that we
4 were looking at and, you know, we viewed it sort of
5 as a rookie error. And so we felt compelled to
6 convey to him that you don't do this kind of thing.
7 You should stop doing this. Don't do this again.
8 And by the way, if you come and work here the
9 expectation is that you will take this seriously
10 and protect our confidential information.

11 337 Q. You protect our confidential
12 information? You're referring to West Face's
13 information, correct?

14 A. Correct.

15 338 Q. So, in other words, what he did
16 here you wouldn't want him to do with your
17 information?

18 A. Correct.

19 339 Q. If he was looking for prospective
20 employment somewhere else your expectation is he
21 wouldn't take your memos and send them to that
22 employer, correct?

23 A. Yeah, that's right.

24 340 Q. Turning to Exhibit D to your
25 affidavit. It's tab D of the brief. There's a

1 letter from our office to Mr. Boland, among others,
2 and Mr. Hopkins, which is Mr. Moyse's lawyer. And
3 you can see on page 3, the very last line, Mr.
4 DiPucchio writes:

5 "Moreover, our client is
6 concerned, reasonably in our view,
7 that Mr. Moyse has imparted or will
8 be imparting confidential
9 information to West Face that he
10 acquired in the course of his
11 employment with Catalyst." (as read)
12 Stopping there. You agree with me he
13 had already done that at this point, hadn't he? He
14 had already imparted confidential information that
15 belonged to Catalyst to West Face, correct?

16 A. Yeah, that's right. But getting
17 back to a comment made earlier, there's breaching
18 confidentiality which is a very serious matter, but
19 then there's a spectrum of whether that is benign
20 or very serious.

21 341 Q. So in your judgment this was
22 benign?

23 A. From our perspective we viewed it
24 as a kid trying to get a job and just show his
25 ability to put together a sentence, a paragraph and

1 so forth.

2 342 Q. Now, turning to tab E...

3 You formed your perspective on I guess
4 the seriousness of Mr. Moyse's conduct in sending
5 you that information, right?

6 A. Mm-hmm.

7 343 Q. Yes?

8 A. I did.

9 344 Q. And you understand, you agree that
10 Catalyst may have a different perspective on that?

11 A. They may.

12 345 Q. You didn't ask them how they felt
13 about this?

14 A. Since we were not involved in any
15 of the things that were mentioned we didn't think
16 it was necessary.

17 346 Q. You think that by receiving the
18 information you're not involved in his imparting
19 confidential information to you?

20 MR. MITCHELL: Sorry. I don't think
21 that was his evidence. His evidence was, I think,
22 that he was not involved in the transactions that
23 were the subject of.

24 THE DEPONENT: Correct.

25 BY MR. WINTON:

1 347 Q. So because you weren't involved
2 you didn't have to say anything to Catalyst or
3 alert them to the fact that their employee had done
4 this?

5 A. What is the question?

6 348 Q. I was asking you about Catalyst's
7 perspective, and you didn't see fit to notify them
8 that he had done this.

9 A. Right.

10 349 Q. And because you weren't involved
11 in I guess, I understand your evidence, because you
12 aren't involved in the transactions that are the
13 subject of the memos, that's why?

14 A. He sent me the information. We
15 viewed it was rather benign. The content of it was
16 rather benign. So we didn't think it gave rise to
17 that.

18 350 Q. That's your view, correct?

19 A. That is my view.

20 351 Q. Now, at Exhibit E to your
21 affidavit is a letter from your counsel, Dentons,
22 correct? Dated June 3, 2014. Tab E, correct?

23 A. Mm-hmm.

24 352 Q. Yes?

25 A. Oh, yeah. This is from Dentons

1 to...

2 353 Q. Mr. DiPucchio?

3 A. Yes.

4 354 Q. On June 3, 2014, correct?

5 A. Right.

6 355 Q. Now, at this stage were you
7 involved at all in having reviewed Mr. DiPucchio's
8 letter and correspondence? And I don't want to
9 know about details, but just to know whether or not
10 you had any involvement in the correspondence at
11 any level.

12 A. Are you asking if I reviewed --
13 who?

14 356 Q. Mr. DiPucchio.

15 A. Letter. Is that your question?

16 357 Q. Yes.

17 A. I think at some point I saw it. I
18 think I read it pretty quickly.

19 358 Q. You reviewed it before Dentons
20 responded back to Mr. DiPucchio?

21 A. I don't know actually the timeline
22 of it.

23 359 Q. Was Mr. Singh involved, do you
24 know?

25 A. Yes.

1 360 Q. Okay. Why don't I reserve my
2 question for him then?

3 At this stage Mr. Singh was aware of
4 the fact that Mr. Moyse had sent you the memos that
5 had been attached to his email on March 27th,
6 correct?

7 A. At what time?

8 361 Q. At this time in early June, before
9 June 3rd, was Mr. Singh aware of the fact that Mr.
10 Moyse had sent you those memos marked confidential?

11 A. Honestly I can't remember the
12 timeline.

13 362 Q. As I recall your evidence, you
14 told me you had Mr. Singh communicate to Mr. Moyse
15 the importance of --

16 A. Prior to his being hired, that's
17 correct, yeah.

18 363 Q. And what led you to generate or to
19 have that -- to ask Mr. Singh to have that
20 discussion was the fact that he had sent these
21 memos to you? That was your evidence?

22 A. That was what I was basing that
23 request on, yeah.

24 364 Q. Did you tell Mr. Singh that that's
25 what had happened?

1 A. I don't recall exactly how the
2 conversation went. I can't remember if I told him
3 or not. I think I did.

4 365 Q. Were you involved with the
5 establishment of a confidentiality --

6 A. In other words, I may have said he
7 sent us some information, confidential information,
8 and left it at that. I don't think I went into
9 detail what the contents of the files were.

10 366 Q. But you may have told him that he
11 had sent you Catalyst's confidential information?

12 A. Right. Yes.

13 367 Q. Were you involved at all in the
14 establishment of the confidentiality wall that was
15 created to --

16 A. Mm-hmm.

17 368 Q. -- as we understand it, wall Mr.
18 Moyse off from the Wind opportunity?

19 A. Mm-hmm.

20 369 Q. Yes?

21 A. Yes.

22 370 Q. Was it at your request?

23 A. I think it was in consultation
24 with Alex our general counsel.

25 371 Q. What was that consultation? What

1 was that discussion that you had?

2 MR. MITCHELL: I'm prepared to allow
3 the question, but I do want to be clear that we're
4 starting to get into solicitor-client information
5 and I may cut it off.

6 MR. WINTON: We'll take it on a
7 question-by-question basis, but if you're putting
8 evidence in your affidavits about the establishment
9 of a wall I think we'll have to look into that.

10 THE DEPONENT: I recall standing up in
11 front of our -- on our trading floor and saying,
12 henceforth, any discussion regarding Wind, that
13 Brandon is to be excluded from any such discussion,
14 any such discussion involving that opportunity need
15 to be conducted elsewhere. He's not to have access
16 to any information. He's not to be aware of and so
17 forth, and that we are putting in place a wall
18 effective immediately, and that was it.

19 BY MR. WINTON:

20 372 Q. So this is an oral announcement
21 you made to the firm?

22 A. Yes.

23 373 Q. To your trading floor?

24 A. Well, by trading floor I mean all
25 of the investment professionals.

1 374 Q. Right. And so I just want to
2 understand the physical setup here. So your
3 investment professionals are all in sort of one
4 large room?

5 A. Correct.

6 375 Q. Open space?

7 A. Correct.

8 376 Q. And they're all on the same floor?

9 A. They're on the same floor.

10 377 Q. And their desks are more or less
11 side by side, or near each other?

12 A. They are near each other.

13 378 Q. In this open air environment,
14 correct?

15 A. Yes. There is an open air
16 environment, and there are smaller meeting rooms
17 and there are offices.

18 379 Q. Who has an office?

19 A. A number of the partners have
20 offices.

21 380 Q. But the analysts, the other
22 members of the team, they're all out on the floor,
23 correct?

24 A. They are.

25 381 Q. And employees can hear each

1 other's conversations on the floor?

2 A. In some cases.

3 382 Q. Because the trading is conducted
4 on the floor, correct?

5 A. By trading?

6 383 Q. Well, whatever strategies you're
7 making, whatever decisions you're making --

8 A. The floor is actually very quiet.

9 384 Q. Okay. So your announcement was,
10 as I understand it, henceforth, any discussions
11 about Wind have to be conducted outside of earshot
12 of Mr. Moyse, correct?

13 A. Correct.

14 385 Q. How did you know to wall Mr. Moyse
15 off of Wind?

16 A. How did I know?

17 386 Q. Yeah.

18 A. Because we were aware that
19 Catalyst was involved in the industry more broadly
20 and didn't think it was appropriate.

21 387 Q. What industry are you talking
22 about?

23 A. The telecom, wireless industry.

24 388 Q. So how did you choose Wind as the
25 company you were going to wall him off from?

1 A. As I said, it was in the wireless
2 telecom industry.

3 389 Q. What about Mobilicity, you didn't
4 wall him off of that, did you?

5 A. He's walled off -- well, we
6 weren't -- did you ask me if we were working on
7 Mobilicity?

8 390 Q. We had a discussion about that,
9 but I'm asking you, he wasn't walled off of
10 Mobilicity, was he?

11 A. We weren't -- we were not looking
12 at -- I mean, I haven't answered a question whether
13 or not we are even looking at Mobilicity.

14 391 Q. Actually I think you did.

15 MR. MITCHELL: In fairness, I think he
16 did. He said there was no deal team for Mobilicity
17 at the time. That was his evidence.

18 BY MR. WINTON:

19 392 Q. Is there a deal team for
20 Mobilicity now?

21 A. No.

22 393 Q. But we may have to go back through
23 the record.

24 A. What do you mean by that? I'm a
25 little confused.

1 394 Q. Would it be appropriate for anyone
2 on the investment team at West Face to discuss
3 Mobilicity with Mr. Moyse?

4 A. No.

5 395 Q. And how do you enforce that?

6 A. As I said, we have a wall.
7 There's to be no discussion about anything to do
8 with Wind with Brandon Moyse. And Mobilicity is in
9 the same industry.

10 396 Q. Well, turn to tab I of your
11 affidavit. Exhibit I is the memo you say that
12 established the confidentiality wall, correct?

13 A. Mm-hmm.

14 397 Q. Yes? You have to say yes for the
15 record, that's why I keep asking.

16 A. Yes.

17 398 Q. And nowhere does this memo refer
18 to Mobilicity or any other telecommunication
19 company, agreed?

20 A. Let me just read it here.

21 399 Q. Sure.

22 (Witness reads document)

23 A. So I've read it now.

24 400 Q. Yes. Doesn't mention Mobilicity,
25 does it?

1 A. Well, it does by inference.

2 401 Q. Where is the inference?

3 A. With respect to Wind.

4 402 Q. Those are two separate companies,
5 correct?

6 A. Yes. But they're in the same
7 industry.

8 403 Q. Well, lots of companies are in the
9 same industry, but the wall is only established
10 with respect to Wind, correct?

11 A. Yes. But Wind would include
12 Mobilicity.

13 404 Q. And that's what people are meant
14 to understand from when you say Wind that you also
15 mean other companies?

16 A. That's what they would have
17 understood for sure.

18 405 Q. Because it doesn't say the telecom
19 industry.

20 A. No, but it's understood.

21 406 Q. And it's understood by all the
22 analysts and members of the investment team?

23 A. Yes.

24 407 Q. I'm going to suggest to you the
25 wall was set up after West Face learned that

1 Catalyst was about to begin legal proceedings with
2 relation to Mr. Moyse's employment? Do you agree
3 with that?

4 A. Is that a question?

5 408 Q. Yes.

6 A. The question is?

7 409 Q. Do you agree with that statement?

8 A. I do not.

9 410 Q. So this was something you were
10 planning on setting up anyway?

11 A. I think we set it up before. I
12 mean, we -- as I said, I stood up on the floor and
13 said Brandon is to have nothing to do with this
14 file and so forth. We also took matters of
15 confidentiality extremely seriously. As I said, as
16 soon as we had -- prior to extending employment, I
17 contacted our GC to communicate to him the
18 seriousness with which we take these issues.

19 It was generally known in the public
20 that Catalyst was involved with Mobilicity. I
21 specifically asked Brandon at some point whether he
22 had worked on Mobilicity, and he said no. And --
23 but given the fact that Catalyst was involved in
24 the industry I felt that it was important for us to
25 make that distinction.

1 411 Q. Just so I understand, Mr. Moyse
2 told you that he hadn't worked on Mobilicity?

3 A. He did.

4 412 Q. And the process at West Face for
5 creating a confidentiality wall is to make an oral
6 announcement?

7 A. In that case it was.

8 413 Q. Right. So when did you make the
9 announcement? Do you remember what day?

10 A. I don't recall.

11 414 Q. So how can you say definitively
12 that it was not as a response to Catalyst
13 indicating it was going to commence legal
14 proceedings?

15 A. I don't think that -- because I
16 don't recall that that was the motivation for me
17 saying it.

18 415 Q. I'm not talking about what you
19 recall as your motivation. I'm talking about a
20 matter of timing.

21 MR. MITCHELL: Well, no, you did ask
22 him about his motivation. Was it set up because of
23 the legal proceedings. That's a motivation
24 question. That's exactly what you asked him.

25 BY MR. WINTON:

1 416 Q. So the timing of it though, you
2 can't recall if it was before or after you found
3 out that --

4 A. I don't recall the exact dates,
5 no, I don't.

6 417 Q. Now it's all fine to make an
7 announcement, but you understand that part of
8 setting up a confidentiality wall also involves
9 locking down the IT files relating to an
10 opportunity, correct?

11 A. Correct.

12 418 Q. And as far as the timing of that,
13 are you aware of the timing of when that happened?

14 A. No, because I would have deferred
15 to general counsel and the IT department to handle
16 it. But it was very clearly understood by all the
17 investment professionals.

18 419 Q. But I'm talking about whatever
19 access Mr. Moyse could have to the files. That's a
20 second part of the confidentiality wall.

21 A. I didn't independently go and
22 verify whether Brandon had access to the files and
23 at what point.

24 420 Q. You relied on others to do that?

25 A. Relied on general counsel and IT.

1 MR. MITCHELL: Counsel, if it assists,
2 in our motion record at tab I is the memo that you
3 referred to which refers to the network restriction
4 access.

5 The second last sentence:

6 "The IT group at West Face has
7 taken steps to restrict access to
8 the network for files regarding
9 Wind." (as read)

10 BY MR. WINTON:

11 421 Q. And would you agree with me then
12 that until that access is restricted the wall
13 hasn't actually been fully set up?

14 A. No. I would not agree with that.

15 422 Q. It's fully set up whether or not
16 you restrict access?

17 A. No. If I stand up and say we
18 expect you to comply with the wall, you're not to
19 look at this and you're not to be involved with
20 this, and you guys are not to have any discussions
21 in any proximity, you're supposed to go off the
22 floor and have a meeting in a room over here where
23 you can't be heard, the expectation is that
24 everyone will comply with that.

25 423 Q. And that's how you ensure that

1 they comply?

2 A. And then you follow up with -- one
3 follows up with actually restricting it with IT. I
4 can't press a button and make it happen
5 immediately.

6 424 Q. You've got to get IT to do that.
7 At that point the wall is established, or the wall
8 is established whether or not you do that?

9 A. No. I would say the wall's
10 established immediately.

11 425 Q. So even if you don't restrict the
12 IT the wall's established?

13 A. Well, are you asking me to
14 speculate on a hypothetical situation?

15 426 Q. I'm asking you about when you
16 consider the wall to be --

17 A. I consider the wall to be
18 established when one says it's established.

19 MR. MITCHELL: Well, I'm reluctant to
20 get into testimony, but the memo at tab I is dated
21 June 19th. Mr. Moyse didn't start until June 23rd.

22 So, I mean, if you want to look at the
23 timing of this. June 19 says that the steps have
24 been taken to restrict access to the network, and
25 Mr. Moyse didn't start until after that date.

1 BY MR. WINTON:

2 427 Q. Can you turn to tab 24 of the
3 document brief?

4 Now, at tab 24 there's email exchange
5 between -- to be fair to you, not that you're
6 involved with, but there's a Supria Kapoor who
7 appears to be the chief compliance officer at West
8 Face, correct?

9 A. Mm-hmm.

10 428 Q. Yes?

11 A. She is.

12 429 Q. And Chap Chow is someone who works
13 in the IT department at West Face, correct?

14 A. Yes.

15 430 Q. And these emails are exchanged
16 between the two of them regarding the establishment
17 of the IT portion of the confidentiality wall,
18 correct?

19 A. I haven't read this before, but...

20 431 Q. It's not that long. Why don't you
21 take a minute and read it?

22 (Witness reads document)

23 A. Yes.

24 432 Q. So looking at the top email sent
25 at 5:47 p.m., do you agree with me based on the

1 exchange between Supria Kapoor and Chap Chow that
2 as of that period on June 19th as of 5:47 p.m. the
3 IT wall had not yet --

4 MR. MITCHELL: Don't answer that. She
5 is seeking to ensure the restrictions are set up.
6 That doesn't suggest that they're not. She's
7 seeking confirmation. That's the content of her
8 email.

9 BY MR. WINTON:

10 433 Q. So is it West Face's position then
11 that as of 5:47 p.m. it was set up?

12 MR. MITCHELL: If you want an
13 undertaking for us to advise as to the specific
14 time that the IT wall was set up I will it to you.

15 U/T MR. WINTON: Yes.

16 BY MR. WINTON:

17 434 Q. And going back to your affidavit
18 and tab I, which is the memo. This is the memo
19 that I guess sets out in writing the establishment
20 of the wall that you orally announced on the
21 trading floor, correct?

22 A. Yes.

23 435 Q. So this is the record of the wall
24 having been established, do you agree with that?

25 Yes?

1 A. Yes.

2 436 Q. And tell me what are the
3 consequences at West Face if someone were to not
4 comply and were to not comply with the order that
5 the wall be established?

6 R/F MR. MITCHELL: Don't answer that.

7 MR. WINTON: Why not?

8 MR. MITCHELL: It's a hypothetical
9 question, and there's no evidence that he's
10 violated this wall. So I don't understand the
11 relevance of the question.

12 MR. WINTON: Well, if there are no
13 consequences then it's not really much of a wall,
14 is it? So what are the consequences?

15 MR. MITCHELL: Like anything, the
16 consequences are going to vary depending on what
17 the circumstances are. There's never one
18 consequence to anything.

19 MR. WINTON: So there may be no
20 consequences.

21 MR. MITCHELL: That's not what I said.
22 I said there are a range of consequences depending
23 on the nature of any breach. It's not a fair
24 question.

25 BY MR. WINTON:

1 437 Q. So we don't know what the
2 consequences are for employees who don't comply
3 with your direction that the confidentiality wall
4 be maintained?

5 R/F MR. MITCHELL: I'm going to object to
6 the question.

7 BY MR. WINTON:

8 438 Q. So what is the remedy for Catalyst
9 if this confidentiality wall is breached?

10 MR. MITCHELL: We'll we're in
11 litigation, and litigation has its consequences.
12 He's not a lawyer. He's not in a position to
13 answer what a court may do if there's a breach of
14 confidentiality.

15 MR. WINTON: Isn't there really no
16 answer to that because there's nothing Catalyst can
17 do outside of this litigation if there's a breach
18 of the confidentiality wall?

19 MR. MITCHELL: This litigation is
20 exactly what Catalyst can do.

21 BY MR. WINTON:

22 439 Q. When Mr. Moyse talked to you about
23 his employment at West Face did he express any
24 concern about resigning from Catalyst and not
25 honouring his non-compete agreement?

1 A. No.

2 440 Q. He didn't have any discussion with
3 you about that?

4 A. No.

5 441 Q. Did he express any concern that
6 Catalyst might sue him or start legal proceedings
7 against him?

8 A. I recall him being concerned that,
9 you know, Catalyst has a reputation of being
10 extremely litigious and being unfair and so forth,
11 and treating former employees very poorly, and he
12 was very concerned about how he was going to be
13 treated. That's what I recall him being concerned
14 about.

15 442 Q. Did he ask West Face to indemnify
16 him for legal fees?

17 R/F MR. MITCHELL: Don't answer that
18 question?

19 BY MR. WINTON:

20 443 Q. Is there an indemnity agreement --
21 MR. MITCHELL: Don't answer that
22 question.

23 MR. WINTON: -- between West Face and
24 Mr. Moyse?

25 R/F MR. MITCHELL: Don't answer that

1 question. That's a refusal.

2 MR. WINTON: And the basis of that
3 refusal?

4 MR. MITCHELL: It's irrelevant.

5 MR. WINTON: Okay.

6 BY MR. WINTON:

7 444 Q. Now, when the litigation started
8 you were aware of the fact that Catalyst had gone
9 ahead and sued West Face and Mr. Moyse, correct?

10 A. Sorry. Say again.

11 445 Q. Litigation started and you're
12 aware of the fact that Catalyst sued West Face and
13 Mr. Moyse?

14 A. Yes.

15 446 Q. And you're aware that one of the
16 things that Catalyst was seeking in this lawsuit
17 was return of confidential information?

18 A. I kind of deferred the matter to
19 our general counsel. I was focussing on our
20 investments and so on.

21 447 Q. Okay. If you just turn to
22 Catalyst's motion record. Counsel will give you a
23 copy. And at tab 1, page 3 of the -- at tab 1 page
24 3 of Catalyst's record. It's the notice of motion.
25 And at page 3 of the record itself, paragraph (c)

1 you see that one of the things Catalyst is seeking
2 is an order requiring the defendants to return to
3 Catalyst all confidential information in their
4 possession or control. Do you see that, Mr. Dea?

5 A. Yes, I do.

6 448 Q. Now, in response to this motion
7 West Face in your affidavit attached the email from
8 Mr. Moyse that included the memos he'd sent you,
9 correct?

10 A. The question is what?

11 449 Q. Your affidavit tab K -- actually
12 tab L. This attached all the memos that Mr. Moyse
13 had sent you as part of his writing samples,
14 correct?

15 A. Correct.

16 450 Q. And these are the memos that were
17 marked confidential, for internal purposes only?

18 A. When you open them up you can see
19 that.

20 451 Q. Yes.

21 A. You can't see that from the
22 outside of the email by the way.

23 452 Q. But you can definitely see that in
24 the motion record, correct? You can see that when
25 you look at --

1 A. No, no. I'm referring to the
2 email itself. If you just look at the email it
3 doesn't say that.

4 453 Q. Correct. By I'm referring to the
5 fact that if you turn to page 70 of the record. We
6 seem to have different -- turn over to the first
7 exhibit there. This is the Homburg Invest Inc.
8 memo. And you see that's stamped confidential, for
9 internal discussion purposes only, correct?

10 A. Right.

11 454 Q. And if you keep turning to -- I
12 think there's blue slip sheets. So if we turn to
13 the next blue slip sheet you see another memo again
14 marked confidential, initial review. Similarly all
15 these documents, the four documents that Mr. Moyse
16 sent you were marked confidential, correct?

17 A. Correct.

18 455 Q. You gave no thought to whether or
19 not you should warn Catalyst that you were going to
20 be attaching these to your affidavit?

21 A. Well, the content of these is very
22 pedestrian content. It's like this is just for
23 example Rona. Rona basically, you know, showing
24 publicly available information. We didn't really
25 care. We don't have anything to do with that

1 particular file. And it's -- as I said before,
2 it's rather benign the content.

3 456 Q. That was your estimate. So based
4 on that your judgment that this is benign you saw
5 no --

6 A. Well, all --

7 457 Q. Let me finish the question. Based
8 on your judgment that this is benign you didn't
9 give a second thought to whether or not you should
10 be attaching these to your affidavit, correct?

11 A. Sorry. Whether or not I should be
12 attaching them to my affidavit?

13 458 Q. Correct.

14 A. I don't understand the question.

15 459 Q. Well, these are exhibits to your
16 affidavit, correct?

17 A. Right.

18 460 Q. They're part of West Face's
19 responding motion record in a motion brought by
20 Catalyst, correct?

21 A. Right.

22 461 Q. The motion is for the return of
23 confidential information, you understood that?

24 A. Mm-hmm.

25 462 Q. Yes?

1 A. Mm-hmm.

2 463 Q. You have to say yes.

3 A. Yes, I did.

4 464 Q. And so in a motion for the return
5 of confidential information, you don't return it to
6 Catalyst you put it into your affidavit, correct?

7 A. Yes.

8 465 Q. And now it's filed in court. You
9 understood that? That this is now filed with the
10 court?

11 A. Yes.

12 466 Q. And when it's filed with the court
13 anyone could go to the court and request a copy,
14 did you know that?

15 A. Now that you're pointing it out,
16 yes.

17 467 Q. Yes. So in response to a motion
18 seeking return of confidential information you take
19 that information and put it in the open court file,
20 correct? That's what you did?

21 A. We did.

22 468 Q. Right. Based on your judgment
23 that it was benign information, correct?

24 A. Yes.

25 MR. MITCHELL: West Face also agreed to

1 a sealing order at the hearing of the interim
2 motion on the matter on July 16th.

3 MR. WINTON: On July 16th, right. And
4 that's after the material had been filed in court,
5 correct?

6 MR. MITCHELL: Yes.

7 BY MR. WINTON:

8 469 Q. If you can turn to your affidavit.
9 Tab 1 of your brief. Paragraph 28. 27, actually,
10 on page 8 of your affidavit.

11 Paragraph 27 which is page 8 of your
12 affidavit, just getting back to a sequence of
13 events. After -- so paragraph 27 you state in the
14 last sentence that on May 28, 2014 Brandon provided
15 us with a redacted copy of his employment contract
16 with Catalyst. And you recall we reviewed the
17 employment contract to some extent earlier,
18 correct?

19 A. Yes.

20 470 Q. So that's two days after Mr. Moyse
21 had already accepted the employment at Catalyst
22 (sic), agreed?

23 A. I'll have to go back and check the
24 dates, but that sounds right.

25 471 Q. Sorry. Accepted employment at

1 West Face is what I meant to say. But you
2 understood what I meant, right?

3 A. I'd have to go back and check that
4 date.

5 472 Q. If you go to tab B of your
6 affidavit. Just look on the first page of the
7 employment agreement we saw that it's dated May
8 26th, correct?

9 A. The employment agreement is dated
10 May 26th.

11 473 Q. So go to the last page of tab B,
12 sir. The last page of that exhibit.

13 A. Mm-hmm.

14 474 Q. You see it's indicated that Mr.
15 Moyse signed it on May 26, correct?

16 A. Yes.

17 475 Q. Now if you go back to your
18 affidavit we've established that -- page 8 of the
19 record, tab 1. Looking at those bottom three
20 lines, two days after he accepts employment at West
21 Face Mr. Moyse sends you a copy of his contract
22 with Catalyst, correct?

23 A. Mm-hmm.

24 476 Q. Yes?

25 A. Yes.

1 477 Q. Now, the next page paragraph 28
2 states upon reviewing the Catalyst employment
3 contract West Face concluded the non-competition
4 covenant was unenforceable. Who reviewed the
5 Catalyst employment contract?

6 A. Our general counsel, and I believe
7 he accessed outside counsel as well.

8 478 Q. And your affidavit refers to West
9 Face. Upon reviewing it West Face concludes. So
10 you agree that implies that it was West Face that
11 had conducted the review, correct?

12 A. Yes.

13 479 Q. You didn't conduct that review?

14 A. I did not, no.

15 480 Q. You didn't form the conclusion
16 that it was unenforceable?

17 A. Well, I think as a group we
18 concluded.

19 481 Q. Yes. And as a group were you
20 emailing each other about this?

21 A. I don't recall any emails on this
22 topic.

23 482 Q. You're engaged in discussions
24 about it?

25 A. Again, I was primarily deferring

1 to our general counsel to review it.

2 483 Q. Did he prepare a memo --

3 A. You got to put this into context.
4 We're talking about, you know, paperwork, hiring a
5 really junior employee, everyone's busy, and so
6 handed it to our general counsel to review it.
7 Handle the matter.

8 484 Q. Your affidavit goes on to give
9 some examples about why it is -- it says I will
10 give just two examples here, and there's examples
11 about why it is West Face says the non-competition
12 covenant is unenforceable. That's not your
13 analysis that's reproduced here, is it?

14 A. It is the -- it says West Face
15 concluded. It says I will give two examples. Two
16 examples from that conclusion.

17 485 Q. Right. So was there an email or
18 any kind of memo discussion regarding that
19 conclusion?

20 R/F MR. MITCHELL: I'm going to tell the
21 witness not to answer. Mr. Singh is internal legal
22 counsel, and in addition to -- frankly I don't see
23 the relevance of internal discussions. It's for a
24 court to decide whether it's enforceable or not,
25 but in any event it's solicitor-client privileged.

1 MR. WINTON: Well, it's in his
2 affidavit. So it must have seemed important.

3 MR. MITCHELL: The conclusion is in his
4 affidavit, but there's no pleading about legal
5 advice, nor is there any reliance on legal advice.
6 It's the conclusion. It was the conclusion of West
7 Face that the non-competition covenant was
8 unenforceable.

9 MR. WINTON: Well, our position is that
10 having given examples that appear to be intended to
11 justify that conclusion that solicitor-client
12 privilege of any type has been waived and that
13 those communications should be produced.

14 MR. MITCHELL: That may be your
15 position. I disagree with that position.

16 MR. WINTON: Just for the record, we
17 asked for production of any written correspondence
18 where West Face forms any kind of conclusion that
19 the non-competition covenant is unenforceable.

20 R/F MR. MITCHELL: That's refused.

21 BY MR. WINTON:

22 486 Q. Just back to paragraph 27 for a
23 minute. Your evidence is that on May 28th Mr.
24 Moyse provided West Face with a redacted copy of
25 his employment contract. Do you know if that was

1 by email, or was that just a hard copy he handed
2 someone at West Face?

3 A. No, I don't know.

4 Could I be excused?

5 MR. WINTON: We don't have much longer.

6 BY MR. WINTON:

7 487 Q. You don't know if that was by
8 email or not?

9 A. Sorry.

10 488 Q. So May 28th Mr. Moyse sends or
11 provides you is the language with a redacted copy
12 of his employment contract.

13 A. Mm-hmm.

14 489 Q. Was that by email?

15 A. I don't know.

16 490 Q. Counsel, can you please check, and
17 if it was we'd ask that that email be produced.

18 U/T MR. MITCHELL: Yes. I'll provide that
19 undertaking.

20 MR. WINTON: Thank you.

21 BY MR. WINTON:

22 491 Q. Paragraph 29 of the affidavit West
23 Face also reviewed the non-solicitation clause and
24 made a conclusion it was similarly unenforceable.
25 Let's just cut to the chase here, counsel, and our

1 position is similarly that there's been a waiver of
2 solicitor-client privilege. We're going to ask for
3 any communications related to the review and/or
4 conclusion conducted related to the
5 non-solicitation clause.

6 R/F MR. MITCHELL: That's refused.

7 MR. WINTON: Let's take a five-minute
8 break.

9 --- Recess at 4:52 p.m.

10 --- On resuming at 5:01 p.m.

11 MR. WINTON: Mr. Dea, this concludes
12 your cross-examination. Thank you very much for
13 your time.

14 ---Whereupon the proceedings adjourned at 5:02 p.m.
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REPORTER'S CERTIFICATE

I, CONNIE A. HOLTON, CSR, Certified
Shorthand Reporter, certify;

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

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

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 1st day of August, 2014.

Connie Holton

Per: Connie A. Holton, CSR

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