

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

ANTHONY GRIFFIN
May 08, 2015

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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 ANTHONY
GRIFFIN, on his affidavits sworn March 7 and May 6,
2015, respectively, taken at the offices of Davies
Ward Phillips & Vineberg LLP, 40th Floor, 155
Wellington St. West, Toronto, Ontario, on the 8th
day of May, 2015.

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

2 Rocco DiPucchio, Esq., for the Plaintiff

3 & Andrew Winton, Esq.,

4

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

6 Brandon Moyse

7

8 Matthew Milne-Smith, Esq., for the Defendant,

9 & Andrew Carlson, Esq., West Face Capital Inc.

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11

12 ALSO PRESENT: Philip Panet, In-House Counsel, West

13 Face Capital

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

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I N D E X

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

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1 -- Upon commencing at 10:04 a.m.

2

3 ANTHONY GRIFFIN: SWORN.

4 CROSS-EXAMINATION BY MR. DiPUCCHIO:

5 1 Q. Good morning, Mr. Griffin.

6 A. Good morning.

7 2 Q. I understand, sir, that you are a
8 partner at West Face Capital?

9 A. Yes.

10 3 Q. And you have been a partner there
11 since what time?

12 A. 2006.

13 4 Q. You have sworn two affidavits in
14 this matter?

15 A. Yes.

16 5 Q. The first affidavit was sworn on
17 March 7th, 2015; is that right?

18 A. That's correct.

19 6 Q. And then you have sworn a second
20 affidavit a few days ago, May 6th, 2015; is that
21 correct?

22 MR. MILNE-SMITH: That is the date.

23 THE DEPONENT: That is the date, yes.

24 BY MR. DiPUCCHIO:

25 7 Q. You have had an opportunity to

1 review those affidavits, I take it, before you
2 swore them?

3 A. Yes.

4 8 Q. And prior to getting started
5 today, can you confirm for me that you are not
6 making any changes or additions or deletions to the
7 affidavits?

8 A. That's correct.

9 9 Q. When you swore your affidavit on
10 March 7th, 2015, had you had an opportunity to read
11 the affidavits that had been filed in this
12 proceeding prior to that time?

13 A. I'm trying to recollect which ones
14 were available. I think up until that point I
15 guess the original Moyse affidavit.

16 10 Q. Yes?

17 A. And then whatever Mr. Riley had
18 filed in response.

19 11 Q. Did you have an opportunity to
20 review your partner Mr. Dea's affidavit?

21 A. No, I don't believe I did,
22 actually.

23 12 Q. Did you speak to Mr. Dea at all
24 prior to swearing your affidavit?

25 A. On what matters?

1 13 Q. Generally in respect of the
2 evidence you gave in your affidavit.

3 A. Only insofar as ensuring the
4 account I provided in the affidavit was accurate
5 insofar as it referenced Mr. Dea in any capacity.

6 14 Q. And you didn't discuss with him
7 the evidence he had already given in the matter?

8 A. No, no.

9 15 Q. All right. Did you have an
10 opportunity to review any of the cross-examination
11 transcripts?

12 A. No, I did not look at those.

13 16 Q. Now, I understand that before you
14 joined West Face, you were a Managing Director of
15 Amaranth Advisors?

16 A. Yes.

17 17 Q. And for how long were you at
18 Amaranth?

19 A. Roughly, it was a period of 2003
20 to 2006.

21 18 Q. And before that?

22 A. Before that, I was at CIBC Capital
23 Partners.

24 19 Q. And how long were you at CIBC
25 Capital?

1 A. I believe it was a period of
2 roughly two and a half years.

3 20 Q. And I understand you have a
4 Bachelor of Commerce from UBC?

5 A. That's correct.

6 21 Q. When did you obtain your Bachelor
7 of Commerce?

8 A. 1997.

9 22 Q. Your affidavit indicates that you
10 are on the Board of Directors of Mandalay
11 Resources; is that correct?

12 A. That's correct.

13 23 Q. How long have you been on the
14 Board of Mandalay?

15 A. I would say it is a period of in
16 excess of four years now, since we originally made
17 our investment.

18 24 Q. And I take it one of the West Face
19 funds has an investment in Mandalay?

20 A. That is correct. Yes, that is
21 publicly disclosed we are a shareholder.

22 25 Q. Is it fair to say that West Face
23 invests on behalf of the funds that it manages in
24 different types of investment opportunities?

25 A. Yes.

1 26 Q. And does that include distressed
2 investing?

3 A. Episodically, yes.

4 27 Q. And what we are talking about when
5 we refer to "distressed investing" is investing in
6 companies that are in some kind of financial
7 difficulty?

8 A. We look at it in a few different
9 capacities. In certain circumstances we would go
10 broader than just that and include common equity
11 that is trading at distressed valuations for
12 reasons that may be different than financial,
13 conventional financial distress.

14 28 Q. All right, but does it include
15 investments in companies that on some occasions are
16 experiencing financial difficulty?

17 A. Yes.

18 29 Q. Would Mobilicity be an example of
19 that?

20 A. Yes, historically.

21 30 Q. And certainly, sir, given your
22 background, you understand the difference between
23 secured and unsecured debt?

24 A. Yes.

25 31 Q. And West Face itself trades in

1 debt all the time, right, debt instruments?

2 A. In the secondary market or
3 primary?

4 32 Q. Well, you tell me.

5 A. Well, the trading activity would
6 only be relegated to existing secondary market
7 securities that are either traded on an exchange or
8 over the counter.

9 33 Q. Okay.

10 A. But we also do primary debt
11 origination, which is not really a trading
12 activity. It is really an origination activity.

13 34 Q. Okay, you buy secured,
14 subordinated, unsecured debt?

15 A. All forms.

16 35 Q. And as I understand it from the
17 last go-around, West Face fairly recently started
18 up a special situations fund; is that fair?

19 A. What we called it is an
20 alternative credit fund.

21 36 Q. And that was 2014?

22 A. I would say we are about a year
23 and a quarter in basically.

24 37 Q. And Mr. Dea is running that fund?

25 A. Mr. Dea and I jointly look after

1 it. The Investment Committee is the same for both.

2 38 Q. And I take it also, given your
3 extensive background, that you understand the
4 concept of short-selling a stock?

5 A. Yes.

6 39 Q. And you understand the risks
7 associated with short-selling a stock?

8 A. Yes.

9 40 Q. And the unlimited liability that
10 comes with short-selling stocks, right?

11 A. Sorry, in what capacity?

12 41 Q. Well, in the sense that there is
13 no -- sorry, it is different than, for example,
14 taking a long position in a stock where you can
15 actually cap your risk. There is really unlimited
16 downside to short-selling a stock, right?

17 A. I'm not sure I would agree with
18 that. If what you are suggesting is that a stock
19 can go up infinitely but can only go to zero --

20 42 Q. Yes, right.

21 A. -- I would agree with you, yes.

22 43 Q. That is essentially what I am
23 saying.

24 A. Yes.

25 44 Q. Now, I understand from your

1 affidavit that West Face manages approximately 2.2
2 billion dollars in assets; is that fair?

3 A. Yes.

4 45 Q. And that is on behalf of third
5 parties, I gather, that have invested in West Face
6 funds?

7 A. Yes.

8 46 Q. So in other words, the 2.2 million
9 dollars --

10 MR. MILNE-SMITH: Billion.

11 BY MR. DiPUCCHIO:

12 47 Q. Billions, sorry, in assets -- I'm
13 not used to dealing in billions, as you might
14 imagine, for myself. The 2.2 billion dollars that
15 you are investing are not your own funds,
16 obviously?

17 A. The partners have an investment in
18 each of the fund vehicles that we manage.

19 48 Q. Okay, fair enough. You have a
20 piece --

21 A. Yes.

22 49 Q. -- which is an individual
23 investment, but the vast majority of the funds --

24 A. The majority of the capital is
25 third party capital.

1 50 Q. -- would be third party capital.
2 And so the way it works is the
3 investors would invest in your fund, and then West
4 Face would be managing the fund on behalf of those
5 investors?

6 A. Yes.

7 51 Q. Is that generally structured as an
8 LP?

9 A. Yes.

10 52 Q. And West Face would be the general
11 partner; is that how it works?

12 A. That's correct.

13 53 Q. And investors are LPs?

14 A. Yes.

15 54 Q. I want to talk to you a little bit
16 about the Arcan matter that is referred to in your
17 affidavit.

18 A. Uhm-hmm.

19 55 Q. I think the discussion of Arcan
20 starts at page 19 -- actually, it is not.

21 Sorry, it might be page 20, actually.
22 It is page 20. My apologies.

23 So first of all, before I get into
24 asking you some questions specifically in regards
25 to Arcan, I assume we are in agreement that the

1 March 27th, 2014 email that was sent by Mr. Moyse
2 to Mr. Dea was subsequently flipped to you, amongst
3 others at West Face, right?

4 A. Yes.

5 56 Q. And you have admitted in your
6 affidavit that you received a copy of that email
7 and that you actually opened up one or more of the
8 attachments?

9 A. I opened one of the attachments,
10 yes.

11 57 Q. To your memory, it was one?

12 A. Yes.

13 58 Q. And you do not have a memory of
14 opening any of the others, right?

15 A. No.

16 59 Q. And when you opened up that
17 attachment, you saw that it was stamped
18 "confidential" obviously, right?

19 A. I believe on the header of the one
20 I opened or at the bottom header or footer there
21 was some "confidentiality" mark on it.

22 60 Q. And you noticed that?

23 A. Yes.

24 61 Q. And you noticed, I take it, upon
25 opening up that attachment that that was a piece of

1 research that Mr. Moyse had done on behalf of
2 Catalyst? I assume that came as no surprise to
3 you?

4 A. I can't actually remember who the
5 author of it was. Presumably it was his, given
6 that he had forwarded it.

7 62 Q. Well, it was being forwarded by
8 him as an example of some of his writing or work,
9 right?

10 A. Yeah. I mean, often investment
11 memos can be a composite of work committee
12 individuals at a firm, so I can't recall if his
13 name was on the header.

14 63 Q. Okay, fair enough, but you
15 certainly must have assumed that this was a piece
16 of writing that had been done by Mr. Moyse in part?

17 A. I think, yes, that he had
18 contributed to it.

19 64 Q. And did you understand as well
20 that it was a piece of writing that he had done
21 while he was employed at Catalyst?

22 A. Yes.

23 65 Q. And you also acknowledge having
24 read to some extent the attachment that you opened,
25 right?

1 A. Yes.

2 66 Q. And you had no difficulty reading
3 it?

4 A. No.

5 67 Q. Did you ever consider not reading
6 it once you noticed that it was stamped
7 "confidential"?

8 A. Yes, I brought the matter up with
9 Tom Dea and indicated that, you know, we -- that
10 Brandon probably shouldn't have forwarded this to
11 the firm.

12 68 Q. Was that prior to reading the memo
13 that you talked to Mr. Dea, or did you read the
14 memo first and then talk to Mr. Dea?

15 A. No, I only got about a page in and
16 then brought it to his attention.

17 69 Q. So what did you do? You got about
18 a page into the memo and then picked up the phone
19 and called Mr. Dea --

20 A. No, I walked down.

21 70 Q. -- or did you walk into his
22 office?

23 A. I walked to him.

24 71 Q. All right, and tell me about that
25 conversation?

1 A. I don't recollect the specifics of
2 it other than to say that he should examine the
3 contents of what was in that email before
4 distributing it, and that was about the extent of
5 it.

6 72 Q. Were you concerned about the fact
7 that he had sent you a memo that was marked
8 "confidential"? Is that why you were speaking to
9 Mr. Dea?

10 A. I wanted to flag it for him
11 because he was dealing with the hiring decision of
12 Brandon and liaising with him, and I wasn't
13 involved in that.

14 73 Q. And is the reason you were
15 flagging it is because you thought there was
16 something improper about it?

17 A. I didn't know, but I didn't want
18 to take a chance that there might be.

19 74 Q. All right. And what did Mr. Dea
20 say in response to you when you alerted him to
21 this?

22 A. He said understood, I'll look into
23 it.

24 75 Q. Do you know what he did subsequent
25 to that?

1 A. I don't.

2 76 Q. You never followed up?

3 A. No, I think he -- my understanding
4 was he talked to our general counsel about the
5 matter, and I know the next time I heard about it
6 was through our general counsel.

7 77 Q. Did you think about destroying or
8 returning the copy of the document that had been
9 sent to you?

10 A. I didn't give it any particular
11 thought other than, you know, not to go back and
12 open the contents. I think we were all awaiting
13 instructions from our general counsel as to what
14 the appropriate course of action was with it.

15 78 Q. And were you involved in the
16 actual interview process for Mr. Moyse?

17 A. I met him on one occasion.

18 79 Q. Do you recall when that was?

19 A. I don't. I could look it up.

20 80 Q. Was it in or around April of 2014?

21 A. I don't recall. I would have to
22 look for the date.

23 81 Q. And were you reading or reviewing
24 the email and attachment to that email for the
25 purposes of preparing for the interview of

1 Mr. Moyse?

2 A. No, my understanding -- my
3 recollection is that came later.

4 82 Q. So you would have interviewed him
5 prior to receiving this email?

6 A. Yes.

7 83 Q. So it would have been sometime
8 prior to March 27th, 2014, that the interview would
9 have occurred?

10 A. Again, I would have to go back and
11 check the date. I don't recollect.

12 84 Q. All right, could you do that? Is
13 there a way for you to do that?

14 U/T MR. MILNE-SMITH: We'll make best
15 efforts to find out when the interview took place.

16 BY MR. DiPUCCHIO:

17 85 Q. Do you remember who was there
18 interviewing Mr. Moyse?

19 A. I think at the time it was just
20 set up as an opportunity for me to meet with him,
21 and Tom had set up the meeting.

22 86 Q. So I think you have just testified
23 a moment ago that following your discussion with
24 Mr. Dea in which you alerted him to this issue,
25 that your general counsel at the time took on the

1 matter and had a discussion with Mr. Moyse; is that
2 fair?

3 A. I don't know if he spoke to
4 Mr. Moyse actually.

5 87 Q. All right. And your general
6 counsel at that time was a gentleman by the name of
7 Alex Singh?

8 A. Yes.

9 88 Q. Who is no longer with the company?

10 A. That's right.

11 89 Q. When did Mr. Singh leave the
12 company?

13 A. I don't recall his exact departure
14 date. I would have to look into that.

15 90 Q. All right, could you let me know
16 when Mr. Singh left the company?

17 MR. MILNE-SMITH: Give me one second.

18 MR. DiPUCCHIO: Sure.

19 MR. MILNE-SMITH: I'm informed it was
20 around July of 2014.

21 BY MR. DiPUCCHIO:

22 91 Q. All right. And did Mr. Singh's
23 departure from the company have anything to do with
24 this action?

25 U/A MR. MILNE-SMITH: We are going to take

1 that under advisement.

2 BY MR. DiPUCCHIO:

3 92 Q. All right. Now, I take it, Mr.
4 Griffin, you were aware that at some point in or
5 around June of 2015 my office on behalf of Catalyst
6 was writing to West Face in relation to Mr. Moyse's
7 hiring?

8 MR. MILNE-SMITH: Sorry, June of 2014
9 you mean?

10 MR. DiPUCCHIO: Yes, that is what I
11 said. Did I say something --

12 MR. MILNE-SMITH: The transcript says
13 2015 but --

14 MR. DiPUCCHIO: Okay, I thought I said
15 2014, but the transcript is probably correct. My
16 apologies.

17 MR. MILNE-SMITH: That is what I heard.

18 BY MR. DiPUCCHIO:

19 93 Q. Okay, fine. Were you aware that
20 in June of 2014 that my office was communicating
21 with West Face in respect of Mr. Moyse's hiring?

22 A. At some point I became aware of
23 the communication, but I don't recall if it was
24 June or later.

25 94 Q. How did you become aware of the

1 communication?

2 A. I think our general counsel had
3 made us aware of it.

4 95 Q. All right. And you understood I
5 take it from whatever conversation you may have had
6 with your general counsel that there was a concern
7 that Mr. Moyse was in possession of some
8 confidential information and that confidential
9 information might be shared with people at West
10 Face?

11 A. We did not get into that
12 discussion. I wasn't really involved in that
13 dialogue.

14 96 Q. All right. Who was?

15 A. I believe our general counsel
16 spoke to Greg Boland and Tom Dea.

17 97 Q. All right, so you were not in that
18 loop?

19 A. No.

20 98 Q. And were you aware that in
21 response to the initial letter that went out in
22 June of 2014 that your counsel at the time,
23 Dentons, wrote a letter in essence saying that
24 Mr. Moyse had been made aware of his obligations
25 around confidentiality and that there was no cause

1 for concern?

2 A. At the -- I am aware of it now.
3 At the time I wasn't at all involved in the
4 dialogue or the discussions with outside counsel on
5 the matter in any capacity.

6 99 Q. Okay. And I take it that whatever
7 letter was written by Dentons in June of 2014 would
8 have followed any discussion between the general
9 counsel and Mr. Moyse?

10 MR. MILNE-SMITH: We are not going to
11 get into discussions, privileged discussions,
12 Counsel.

13 MR. DiPUCCHIO: So you are asserting
14 privilege over the discussions between Mr. Singh
15 and Mr. Moyse?

16 MR. MILNE-SMITH: No, I thought you
17 were talking about discussions between Dentons and
18 Mr. Singh.

19 MR. DiPUCCHIO: No.

20 MR. MILNE-SMITH: I'm sorry, let me --

21 BY MR. DiPUCCHIO:

22 100 Q. Maybe my question was worded
23 awkwardly. I apologize, Counsel.

24 What I am asking is, is it fair to say
25 that the letter from Dentons followed whatever

1 discussion may have occurred between Mr. Moyse and
2 Mr. Singh?

3 A. I honestly don't know what
4 discussions transpired between the two. As I said,
5 I wasn't involved in the matter in any capacity.

6 101 Q. Okay. And Mr. Moyse, I take it,
7 commences work at West Face on June 23, 2014,
8 right?

9 A. Yes.

10 102 Q. And you say that on June 23, 2014,
11 there was a strategic transaction announced by
12 Arcan, right?

13 A. Yes.

14 103 Q. And at the time, I take it, your
15 evidence is that you either didn't recall or never
16 noticed that Mr. Moyse had forwarded a memo of
17 certain research he had done on behalf of Catalyst
18 in regards to Arcan; is that fair?

19 A. That is fair.

20 104 Q. And is that because you say you
21 never read that memo or you just simply have no
22 memory of every having read it?

23 A. No, I never opened any of the
24 attachments other than one I referenced, which was
25 Homburg.

1 105 Q. Do you know whether anybody else
2 had opened the attachment as it related to Arcan?

3 A. Not to my knowledge.

4 106 Q. Have you asked people at West
5 Face?

6 A. No.

7 107 Q. And you then, as I understand it,
8 forward an email to Mr. Moyse in respect of this
9 Arcan opportunity, right?

10 A. Uhm-hmm.

11 108 Q. You have to say "yes" or "no" for
12 the transcript.

13 A. Oh, sorry, yes.

14 109 Q. Now, does Mr. Moyse at any
15 point -- I take it the answer is no, but did
16 Mr. Moyse at any point alert you to the fact that
17 he had worked on Arcan for Catalyst?

18 A. No.

19 110 Q. And what were you asking Mr. Moyse
20 to do?

21 A. I wasn't asking him to do anything
22 at that point. I had prepared an analysis on the
23 deal and had followed the company for a number of
24 years, and I had sent an email around the firm
25 which did not include him, including our investment

1 committee on that analysis, and subsequently added
2 him to the distribution.

3 111 Q. Okay, so the email you are -- the
4 email we are talking about to Mr. Moyse is what is
5 attached as Exhibit 15 to your affidavit; is that
6 right?

7 A. Yes.

8 112 Q. And you say this is essentially a
9 copy of an email that you had earlier circulated to
10 others at West Face?

11 A. Yes.

12 113 Q. And do you have a copy of that
13 email?

14 MR. MILNE-SMITH: We don't have it. I
15 take it your next question is to produce it?

16 MR. DiPUCCHIO: Yes.

17 U/A MR. MILNE-SMITH: I'll take it under
18 advisement.

19 BY MR. DiPUCCHIO:

20 114 Q. So you then send what in essence
21 is a copy of your analysis of the deal to Mr. Moyse
22 and a Pat McGuire?

23 A. Yes.

24 115 Q. And who is Mr. or Ms. McGuire, I
25 don't know?

1 A. Patrick is our trader at West
2 Face.

3 116 Q. All right. And so tell me what
4 was the reason for forwarding this to Mr. Moyse and
5 to Mr. McGuire?

6 A. Mr. McGuire and I had followed the
7 situation for a number of years, and if we were
8 going to execute a trade in the securities, I was
9 going to notify him of the background to the
10 transaction.

11 117 Q. Okay.

12 A. Brandon, given his start time, had
13 not been included in some of the original email
14 chains that I had sent more broadly, and I was
15 aware of the fact that he did not have anything
16 currently of any consequence in terms of work flow
17 and I thought it might be an opportunity to get him
18 involved in a file.

19 118 Q. All right, and Mr. Moyse I take it
20 never responded to your email?

21 A. I don't recollect a response.
22 There could have been a short one, a thank you or I
23 will look at this.

24 119 Q. And one of the things you
25 acknowledge in your affidavit is that in fact West

1 Face had previously been interested in Arcan?

2 A. That is correct.

3 120 Q. And in fact, they had previously
4 taken positions in Arcan, right?

5 A. That is right.

6 121 Q. So you say in your affidavit that
7 you were already familiar with that business?

8 A. Very familiar.

9 122 Q. And I take it there is no dispute
10 that notwithstanding that you say you never asked
11 Mr. Moyse to do anything in relation to this
12 transaction, he did subsequently do work on behalf
13 of West Face in relation to Arcan, right?

14 A. There was some work product that
15 he apparently took upon himself to prepare, which I
16 didn't actually ever see and I think was only
17 discovered by a later date. But I did not ask him
18 to produce anything. I had done the analysis and
19 was sharing that with him.

20 123 Q. And do you have any idea
21 whatsoever why Mr. Moyse would be preparing an
22 analysis if you hadn't instructed him to do it?

23 A. I think he had a self-interest in
24 showing motivation to get involved in a file as an
25 employee.

1 124 Q. All right. And have you asked
2 whether anybody else at West Face instructed
3 Mr. Moyse to do this?

4 A. I have not, but to my knowledge,
5 no one did.

6 125 Q. And did you ever subsequently
7 speak to Mr. Moyse about any work he may have done?

8 A. No.

9 MR. MILNE-SMITH: About Arcan?

10 BY MR. DiPUCCHIO:

11 126 Q. About Arcan, yes.

12 A. About Arcan, no.

13 127 Q. The very next day you say on your
14 recommendation an investment was made in Arcan?

15 A. That is correct.

16 128 Q. And --

17 A. It commenced.

18 129 Q. It commenced?

19 A. We had not completed it.

20 130 Q. Okay, and how many -- did this
21 proceed in tranches; is that the way it worked?

22 A. Yeah, the unsecured debentures
23 that the company had issued, there were two series.
24 Both of them were exchange-traded and it took a
25 period of time to accumulate a position.

1 131 Q. And do you know what period of
2 time that was?

3 A. I don't recollect exactly. I
4 would have to look at our trading records.

5 132 Q. Could you take a look at your
6 trading records and let me know over what period of
7 time West Face transacted its investment in Arcan's
8 unsecured debentures?

9 U/T MR. MILNE-SMITH: Yes, we'll do that.

10 BY MR. DiPUCCHIO:

11 133 Q. Now, you have indicated in your
12 affidavit that you now understand that at some time
13 between June 24th and 26th Mr. Moyse performed a
14 financial analysis of Arcan's proposed deal with
15 Aspenleaf, right?

16 A. I actually don't know what work he
17 prepared in that capacity. It is something to do
18 with Arcan, a spreadsheet, but I don't recollect
19 ever seeing it.

20 134 Q. Okay, well, paragraph 55 of your
21 affidavit says as follows, Mr. Griffin:

22 "I now understand that at some
23 time between June 24 and 26, 2014,
24 Mr. Moyse performed a financial
25 analysis of Arcan's proposed deal

1 with Aspenleaf and summarized
2 Arcan's financials."

3 A. Yes.

4 135 Q. Is that what he did?

5 A. Well, I didn't -- I was informed
6 by our counsel that some work product was prepared,
7 and that is what I am referring to.

8 136 Q. And you have never seen that work
9 product?

10 A. No.

11 137 Q. And it has never been produced in
12 this litigation?

13 A. I don't know the answer to that.

14 138 Q. Okay, I haven't seen it in
15 anything that we have been provided, so I'm going
16 to ask you to produce Mr. Moyse's work product
17 between June 24th and June 26th as it relates to
18 Arcan?

19 U/A MR. MILNE-SMITH: We'll take it under
20 advisement, Counsel.

21 As you know, in Mr. Griffin's affidavit
22 and I think in the covering letter that I sent
23 accompanying it we offered to produce via the ISS
24 any document that Brandon had created while he was
25 at West Face. The only concern we have is

1 regarding confidentiality, but assuming that can be
2 worked out --

3 MR. DiPUCCHIO: You let me know whether
4 you have any issue with respect to confidentiality,
5 and I'm sure we'll be able to work out something
6 that will address those concerns.

7 MR. MILNE-SMITH: I share your
8 confidence.

9 MR. DiPUCCHIO: All right, are you
10 taking that under advisement then?

11 MR. MILNE-SMITH: Yes.

12 BY MR. DiPUCCHIO:

13 139 Q. You then go on to say, Mr.
14 Griffin, that you have been:

15 "[...] informed by Mr. Singh
16 and believe that in or around that
17 time, Mr. Singh asked Mr. Moyse what
18 he was working on, and when
19 Mr. Moyse advised that he was
20 performing a financial analysis of
21 Arcan's proposed deal, Mr. Singh
22 determined that Mr. Moyse's work was
23 on a company that he had analyzed
24 while at Catalyst, and told him to
25 stop all work on the project, which

1 he did."

2 Now, first of all, I take it this is
3 some sort of discussion you have had with Mr. Singh
4 recently?

5 A. No.

6 140 Q. Okay, so when did Mr. Singh inform
7 you of these facts?

8 A. I would have to go back and look
9 at the exact date, but it was shortly after we
10 began accumulating a position in the company.

11 141 Q. Sorry, so let me understand that.
12 So shortly after you began to accumulate a position
13 in Arcan, Mr. Singh alerted you to the fact that
14 there had been an issue with respect to Brandon
15 doing some work on Arcan?

16 A. I was told by Mr. Singh that if
17 Brandon was doing any work on Arcan, I could not
18 assign anything more to him or get him involved in
19 the file.

20 142 Q. Well, what were Mr. Singh's exact
21 words to you, to the best of your recollection?

22 A. I have given you my recollection
23 of it.

24 143 Q. That if he was performing any work
25 in relation to Arcan?

1 A. Yes.

2 144 Q. Well, did Mr. Singh know, to your
3 knowledge, whether he had already performed work in
4 relation to Arcan?

5 A. I think the implication is that he
6 had a discussion with Mr. Moyse and between the two
7 of them they established he had done some amount of
8 work or was doing inquiries into the transaction
9 that was announced.

10 145 Q. All right. And so to the best of
11 your recollection this discussion with Mr. Singh
12 would have occurred sometime between I gather June
13 24th and whenever your investment concluded in
14 Arcan?

15 A. Yes.

16 146 Q. Can you go back and make whatever
17 inquiries you would need to make and try to isolate
18 for me the date that you say this conversation with
19 Mr. Singh occurred?

20 MR. MILNE-SMITH: Would you have any
21 means to do so?

22 THE DEPONENT: I don't have -- it was a
23 verbal conversation, and I don't have an electronic
24 record of that conversation.

25 MR. DiPUCCHIO: Okay, and --

1 MR. MILNE-SMITH: I don't think we can
2 do any better than that then, Counsel.

3 By MR. DiPUCCHIO:

4 147 Q. All right, well, can you ask
5 Mr. Singh whether he has a recollection as to when
6 this conversation would have occurred?

7 U/A MR. MILNE-SMITH: I'll take it under
8 advisement. I'm not sure, though, why it matters.

9 BY MR. DiPUCCHIO:

10 148 Q. All right, well, it matters to me.
11 And was there anything else said about
12 this work that Mr. Moyse had done on behalf of --

13 A. Not to my recollection.

14 149 Q. -- West Face? Okay.

15 Now, Mr. Singh's evidence in this
16 proceeding has been, and I can take you to it if
17 you want, but his evidence has been that he hadn't
18 seen a copy of the investment memos, the writing
19 samples, that Mr. Moyse sent to Mr. Dea on March
20 27th until after this litigation began. Are you
21 aware of that?

22 A. I'm not aware of the timeline.

23 150 Q. Okay. Just can we go off the
24 record just for one second.

25 (DISCUSSION OFF THE RECORD.)

1 BY MR. DiPUCCHIO:

2 151 Q. So what I am referring to, Mr.
3 Griffin, is a transcript of a cross-examination
4 that was done in relation to Mr. Singh on July
5 31st, 2014, and at page 13 of that transcript
6 Mr. Singh is giving evidence in relation to the
7 conversation that he had with Mr. Moyse to
8 reinforce the importance of confidentiality, and
9 then he is asked at question 42:

10 "Question: At the time, had
11 you seen the email in question?

12 Answer: No.

13 Question: You eventually saw the
14 email in question after you had that
15 conversation with Mr. Moyse?

16 Answer: I eventually saw it, but
17 only in the course of -- of this
18 matter.

19 Question: So only after
20 litigation commenced?

21 Answer: Exactly."

22 Were you aware of that evidence from
23 Mr. Singh?

24 A. No, I hadn't read the transcript.

25 152 Q. And are we agreed that the claim

1 was issued in this matter on June 25th?

2 MR. MILNE-SMITH: Yes.

3 BY MR. DiPUCCHIO:

4 153 Q. And there was a motion record that
5 was dated June 26th?

6 MR. MILNE-SMITH: Yes.

7 BY MR. DiPUCCHIO:

8 154 Q. Okay. So can we agree that
9 Mr. Singh would not have seen the email prior to
10 June 26th?

11 MR. MILNE-SMITH: We can agree that
12 that's what Mr. Singh's evidence was.

13 BY MR. DiPUCCHIO:

14 155 Q. Okay, fine. And so I guess my
15 question to you, Mr. Griffin, is can you explain
16 how Mr. Singh would have known that Moyse had done
17 work in relation to Arcan if he hadn't yet seen the
18 email?

19 MR. MILNE-SMITH: Sorry, at what point
20 in time?

21 MR. DiPUCCHIO: When he had this
22 conversation with Mr. Moyse telling him to stop
23 working.

24 MR. MILNE-SMITH: You are implying that
25 that conversation took place before the 26th, but

1 the affidavit says that Mr. Moyse's work was
2 performed sometime between the 24th and the 26th,
3 which implies that Mr. Singh's conversation with
4 him happened after the 26th, so everything is
5 consistent.

6 BY MR. DiPUCCHIO:

7 156 Q. Okay, so I'm asking you -- I guess
8 we don't know when that conversation occurred
9 between Mr. Singh and Mr. Moyse. I have asked you
10 for some information in relation to that.

11 But is the suggestion that that
12 conversation occurred only after Mr. Singh saw the
13 email?

14 MR. MILNE-SMITH: Sorry, I'm lost,
15 Counsel, and I don't know if the witness is.

16 Could you remind me which specific
17 conversation you are talking about now?

18 MR. DiPUCCHIO: I'm talking about the
19 conversation that occurred between Mr. Moyse and
20 Mr. Singh.

21 MR. MILNE-SMITH: That is referred to
22 in paragraph 55?

23 MR. DiPUCCHIO: That is referred to in
24 paragraph 55, yes.

25 MR. MILNE-SMITH: Okay.

1 MR. DiPUCCHIO: I'm trying to isolate
2 when this conversation would have occurred.

3 MR. MILNE-SMITH: Okay. Do you know?

4 THE DEPONENT: I don't recollect when
5 they had that conversation.

6 BY MR. DiPUCCHIO:

7 157 Q. And would you agree with me that
8 it would have had to have been sometime after
9 Mr. Singh saw this email?

10 MR. MILNE-SMITH: Which email?

11 BY MR. DiPUCCHIO:

12 158 Q. The email of March 27th.

13 A. I can only affirm what he has
14 sworn to in his testimony. I haven't read the
15 transcript.

16 159 Q. Well, if Mr. Singh hadn't seen the
17 email of March 27th, then he wouldn't know that
18 Arcan was one of the companies that Mr. Moyse had
19 done --

20 R/F MR. MILNE-SMITH: Well, I'm sorry, I'm
21 going to object to that question because I don't
22 think the factual premise is correct. Someone
23 could have told him about it without him seeing it.

24 BY MR. DiPUCCHIO:

25 160 Q. Okay, did someone tell him about

1 it?

2 A. I don't know.

3 161 Q. And did Mr. Singh tell you, Mr.
4 Griffin, how he came to learn that Mr. Moyse had
5 done work in relation to Arcan on behalf of
6 Catalyst?

7 A. No.

8 162 Q. Has there been any search done of
9 any emails Mr. Singh may have sent to anybody at
10 West Face in relation to this matter, this
11 particular issue, Counsel?

12 MR. MILNE-SMITH: Not to my knowledge.

13 BY MR. DiPUCCHIO:

14 163 Q. Okay, if there is any email
15 traffic in relation to this particular issue, could
16 you produce it to me?

17 U/A MR. MILNE-SMITH: I'll take it under
18 advisement for obvious privilege reasons.

19 BY MR. DiPUCCHIO:

20 164 Q. So at the time that West Face was
21 preparing its motion materials in response to the
22 original injunction motion, I take it then that
23 both you and Mr. Singh, at least the two of you
24 were aware that Mr. Moyse had done work on behalf
25 of West Face in relation to Arcan?

1 A. When were the motion materials
2 prepared?

3 165 Q. Well, the responding motion
4 materials would have been prepared well after June
5 26th, 2014.

6 A. Would I be -- what I was informed
7 of from our counsel, Alex Singh, was that -- and
8 again, I don't recollect the time frame -- Brandon
9 could not be doing any more work on Arcan if I had
10 decided to assign it to him, and that was the
11 extent of the conversation.

12 166 Q. Okay. So when you say "any more
13 work", it suggests to me that there had been some
14 work done, right?

15 A. No, I think what I said was any
16 work of any kind associated with that file he could
17 not be involved.

18 167 Q. And did you say to Mr. Singh at
19 that time, what are you talking about, I didn't
20 tell him to perform any work?

21 A. Well, I don't actually recollect.
22 I took the instruction and drove on.

23 168 Q. So Mr. Singh would have had this
24 conversation with you about Arcan and you wouldn't
25 have bothered to mention to Mr. Singh that you only

1 sent him a for-information-only email and didn't
2 ask him to perform any work?

3 A. He may have asked me if I have
4 sent Brandon anything and he may have asked me to
5 produce the email that I sent, which was my work
6 product, and --

7 169 Q. And did you do that?

8 A. I'm sure if he asked me for it, I
9 did.

10 170 Q. Okay, so there would be some email
11 traffic around this?

12 A. I imagine that there could be.

13 171 Q. Okay, so again, Counsel, this is
14 what is underlying my request.

15 MR. MILNE-SMITH: I think it falls
16 within the same advisement.

17 BY MR. DiPUCCHIO:

18 172 Q. And my original question, which I
19 can't remember now whether we got an answer to, was
20 can we agree that at the time that West Face was
21 producing its responding materials in relation to
22 the injunction motion, that at least you and
23 Mr. Singh were aware that Mr. Moyse had prepared
24 something in relation to Arcan on behalf of West
25 Face?

1 A. I don't think I became aware of
2 the file itself or whatever he had produced until a
3 later date.

4 173 Q. All right, so are you -- and I
5 understand what your evidence is in relation to the
6 fact that you say you have never seen what
7 Mr. Moyse prepared, but do you not agree with me
8 that you would have known from your conversation
9 with Mr. Singh that Mr. Moyse had done something?

10 A. No, the implication of Alex's
11 conversation with me was that regardless of, you
12 know, anything he may or may have not done, I could
13 not assign any work associated with Arcan in any
14 capacity to Brandon.

15 174 Q. Okay.

16 A. And I -- we didn't get into a
17 conversation of, as I recollect it, of whether I
18 had given him anything to do or whether he had done
19 anything of his own choosing on the file.

20 175 Q. Okay, and you don't recall
21 anything more in terms of the specific discussion
22 you would have had with Mr. Singh at that time?

23 A. I don't.

24 176 Q. And were you involved at all in
25 the preparation of the responding motion materials

1 in this matter?

2 A. No, I don't recall being involved
3 at all.

4 177 Q. Did you ever see the position that
5 West Face took in respect of that motion insofar as
6 it related to whether Mr. Moyse had done any work
7 in relation to anything that he had worked for
8 Catalyst on?

9 A. No, not at the time.

10 178 Q. Okay. Well, let me show you a
11 couple of things that were said by West Face, and I
12 just want to ask you to agree or disagree with it.

13 But let me take you, first of all, to
14 the factum that was filed by West Face.

15 MR. MILNE-SMITH: I think you'll have
16 to share that.

17 BY MR. DiPUCCHIO:

18 179 Q. Okay, yes.

19 First of all, I take it we can agree
20 that at no point in the previous proceeding
21 relating to the injunction did West Face disclose
22 to the Court that Mr. Moyse had done any work in
23 relation to Arcan on behalf of West Face?

24 A. I don't know. I wasn't involved
25 in the process at all.

1 180 Q. All right, Counsel, do you have
2 any different view on that?

3 U/T MR. MILNE-SMITH: I'll have to consult
4 with counsel who were on the file at the time.

5 BY MR. DiPUCCHIO:

6 181 Q. All right, and why did you
7 disclose it now in your affidavit?

8 A. I'm sorry, what?

9 182 Q. Why did you bother to put this
10 whole piece in about Arcan now?

11 A. Can you put the context -- I mean,
12 what is the specific question?

13 183 Q. Well, I take it -- let's take it
14 as a given that you hadn't disclosed it, that West
15 Face hadn't disclosed it in the prior proceeding
16 involving the injunction.

17 A. Uhm-hmm.

18 184 Q. And my question to you is why have
19 you put it in the affidavit now, in your affidavit
20 now?

21 A. At a much later date in the
22 process of preparing the affidavit there had been I
23 guess a discussion with counsel as to the contents
24 of that original email and what files were attached
25 to it, and I think we --

1 185 Q. I don't want to hear about the
2 discussions with counsel.

3 MR. MILNE-SMITH: Yeah, I mean,
4 Counsel, as you know, preparation of an affidavit
5 and content is a matter of strategic choice, and I
6 think all you can take from it is that West Face
7 determined the contents of the affidavit based on
8 the motion that had been brought.

9 MR. DiPUCCHIO: Okay, but I'm asking
10 why it was important for you to mention this piece
11 on Arcan now when it hadn't been mentioned to the
12 Court in the previous materials that were filed?

13 MR. MILNE-SMITH: Because it was
14 relevant to the allegations made by Catalyst in its
15 motion.

16 MR. DiPUCCHIO: And was there some
17 relevance to this motion that didn't exist in the
18 previous motion?

19 MR. MILNE-SMITH: I can't speak to what
20 was in the minds of the general counsel and
21 external counsel who were acting for West Face at
22 the time, and quite frankly, I wouldn't go into it
23 if I could.

24 BY MR. DiPUCCHIO:

25 186 Q. All right. And in the factum at

1 paragraph 39 there is an underlined portion, and it
2 is my underlining.

3 MR. MILNE-SMITH: Okay.

4 BY MR. DiPUCCHIO:

5 187 Q. Do you see there was a statement
6 made in the factum that was submitted to the Court
7 on the last go-around that:

8 "West Face was not involved in
9 any of the transactions that were
10 the subject of the documents
11 attached to the email and, as such,
12 had no use for the information
13 contained therein."

14 Do you see that, Mr. Griffin?

15 A. Yes.

16 188 Q. Now, I take it from your evidence
17 today that is not accurate?

18 MR. MILNE-SMITH: Well, hang on a
19 second. The tenses are actually important here.
20 "West Face was not involved". At the time the
21 email was received, West Face was not involved in
22 any of those transactions.

23 BY MR. DiPUCCHIO:

24 189 Q. All right, so is it your position
25 that that's an accurate and fulsome statement to

1 the Court?

2 A. Yes.

3 190 Q. And it is your position or your
4 evidence, I take it, that this wasn't misleading in
5 any way?

6 A. Well, it is not my statement, but
7 I will say that clearly the email that Brandon sent
8 with the materials that are referenced pre-dated an
9 announcement of a third party transaction that was
10 the subject of our investment.

11 191 Q. And as a matter of fact,
12 historically, as you have testified now, West Face
13 was involved in Arcan?

14 A. 2012, 2013.

15 192 Q. Right, so when we read into your
16 factum that "West Face was not involved in any of
17 the transactions that were the subject of the
18 documents", I take it what you are telling me is
19 what you really were saying to the Court was West
20 Face was not involved at the time the email was
21 sent in any of the transactions?

22 A. Well, I think what is being
23 referred to here, there actually were no prior
24 transactions to be involved in. This was a passive
25 investment position for the firm. The only

1 transaction that transpired was the announcement by
2 Aspenleaf that they had entered into an agreement
3 to acquire Arcan on the date that you previously
4 referenced.

5 193 Q. Okay, so prior to your disclosure
6 in this affidavit today -- sorry, prior to the
7 disclosure in the affidavit that was sworn in
8 March, there had been no disclosure of this Arcan
9 work that was performed by Mr. Moyse on behalf of
10 West Face?

11 A. I'm sorry, I don't understand the
12 question.

13 194 Q. Prior to your disclosure in your
14 affidavit sworn in March, there had been no
15 disclosure by West Face or Mr. Moyse for that
16 matter of work that had been done relating to Arcan
17 on behalf of West Face?

18 A. Which work product are you
19 referring to? That was attached to his email --

20 195 Q. Well, whatever work product we
21 have asked for. No, the work product done on
22 behalf of West Face.

23 A. The only work product I was aware
24 done on behalf of West Face was that which I
25 produced for the firm, for Arcan.

1 196 Q. All right, well, we have been
2 through this on the cross-examination so I don't
3 want to go over it again, but you and Mr. Singh had
4 had that conversation, right, back in June?

5 A. Back about?

6 197 Q. In June, about the fact that you
7 were not to give Mr. Moyse any work in relation to
8 Arcan?

9 A. Yes.

10 198 Q. All right. But prior to you
11 swearing your affidavit in March of this year --

12 A. Yes.

13 199 Q. -- there had been no disclosure to
14 the Court or to Catalyst of any work done by
15 Mr. Moyse on Arcan for West Face?

16 A. I'm not aware of what was
17 produced.

18 200 Q. I take it that you agree that
19 confidentiality is important, right?

20 A. Yes.

21 201 Q. And certainly I think you have
22 said in your affidavit that West Face certainly
23 takes matters of confidentiality seriously?

24 A. We do.

25 202 Q. And you expected Brandon, I take

1 it, to live up to whatever confidentiality
2 obligations West Face had set out for him in his
3 employment contract, right?

4 A. Similar to all employees we hire.

5 203 Q. Would that include, for example,
6 if you were asking Mr. Moyse to research a
7 potential opportunity, investment opportunity on
8 behalf of West Face, would that include not
9 disclosing that to anybody?

10 A. Outside of our advisors and any
11 third parties that we are involved with, yes.

12 204 Q. So you wouldn't want Mr. Moyse,
13 for example, as part of his confidentiality
14 obligations to be telling unrelated third parties
15 about potential investment opportunities that he
16 was being asked to look into?

17 A. No.

18 205 Q. So would you consider that to be a
19 breach of his confidentiality obligations to West
20 Face?

21 A. Yes.

22 206 Q. Could I show you one email. I
23 think you mentioned actually in your affidavit that
24 one of the assignments that Mr. Moyse had been
25 tasked to work on during the time period that he

1 was at West Face -- and I am just going to find it
2 for you. This is page 58 of the record, your
3 record, paragraph 10, was an opportunity in
4 relation to TransOcean, right?

5 A. Yes.

6 207 Q. And Mr. Moyse was asked to look at
7 a short position with respect to a company called
8 TransOcean?

9 A. Yes.

10 208 Q. And that would be something that
11 obviously you would want him to maintain
12 confidential, right?

13 A. You know, I think any of the
14 discussions that we have internally regarding
15 potential investment opportunities are things that
16 we would like to keep within the firm.

17 209 Q. Right. Would it be troublesome to
18 you if Mr. Moyse had turned around and, for
19 example, once you gave him that work to do, turned
20 around and told somebody on the street that you are
21 looking at TransOcean?

22 A. It depended on -- it would really
23 depend on the specific counterparty to that. If it
24 was an investment analyst who covers it, no. I
25 mean, we frequently make inquiries of investment

1 analysts.

2 If it is other shareholders who are
3 involved in the situation that we might want to
4 speak to to gain insight, no.

5 If it is parties that we think can
6 assist us in our due diligence process that may
7 have knowledge of the company or the case, no.

8 If it is, you know, other investors or
9 our limited partners, before we have properly
10 disseminated any notice of our involvement in the
11 situation, that would be more of an issue.

12 210 Q. Okay, and typically if he is going
13 to disclose things to third parties, the kinds of
14 third parties that you have described, would you
15 expect him to speak to you about that first or --

16 A. No, I mean, we take it that people
17 understand what is generally appropriate and not
18 appropriate. We can't police everything.

19 211 Q. And in this particular case
20 relating to TransOcean where you were looking at
21 taking a short position, you say that Mr. Dea asked
22 Mr. Moyse to review quarterly reports,
23 presentations and conference calls of major oil
24 companies for certain indications of risk in the
25 industry as well as certain information on

1 TransOcean itself, and I take it that was all
2 research that you were asking Mr. Moyse -- or
3 Mr. Dea was asking Mr. Moyse to do in advance of
4 making a decision on whether to take a short
5 position?

6 A. That would seem to be the
7 implication, yes.

8 212 Q. Is that fairly common; in other
9 words, to ask one of your analysts to do that kind
10 of research prior to making a decision whether to
11 take a short position?

12 A. It really depends on the case.

13 213 Q. Okay, how does it -- can you give
14 me some situations where that wouldn't apply, for
15 example?

16 A. Well, if it is an event-oriented
17 situation where we are trying to capture a
18 particular pricing environment for a security, high
19 or low -- in the case obviously of a short, high;
20 in the case of a long position, low -- one of the
21 facets of the fund we manage in terms of our
22 strategy is that we are an event-oriented fund, and
23 so we often have to quickly respond to pricing
24 discrepancies in the market that are created on
25 either side.

1 And before we get too far advanced in
2 diligencing the company itself, I mean, we have a
3 general industry knowledge that allows us to apply
4 our sales to investment decisions. You are dealing
5 typically with finite and imperfect information at
6 all times.

7 And depending on the size of the
8 position we initiate, the research that is put into
9 it at various stages in time will, you know, be
10 somewhat amorphous. There is never a set process
11 that we follow in every situation. Some cases are
12 very time-sensitive and they require decisions to
13 be made with less than perfect information.

14 214 Q. Do you have any investment
15 policies as they relate to taking short positions?

16 A. Only insofar as we are permitted
17 to.

18 215 Q. Okay, then you wouldn't specify,
19 for example, what had to be done prior to taking a
20 short position?

21 A. No, there is no hard and fast
22 rules. I mean, look, we -- again, the level of
23 research done on any particular situation, the
24 amount of time that is available to do research on
25 a particular situation is often beyond our control,

1 dealing in public securities.

2 216 Q. So in this particular case, he was
3 asked to do a bunch of research as it related to
4 this potential opportunity?

5 A. Yes.

6 217 Q. Do I take it from that that there
7 wasn't some kind of event-oriented rationale?

8 A. I don't know what the context was
9 of Mr. Dea. You know, I'm vaguely familiar with
10 TransOcean's business. I don't know what the
11 context was other than what he references here
12 saying it was a potential short position, what the
13 nature of the request was that was made.

14 218 Q. And this is I guess a more general
15 question as it relates to your affidavit, but
16 certainly you have, for example, in this case
17 indicated what Mr. Dea was asking Mr. Moyse to do.
18 I take it you haven't actually had a discussion
19 with Mr. Dea; you are reconstructing this from some
20 documents that you have seen?

21 A. When we -- I can't recall exactly
22 how this got pieced together. At one point I would
23 have affirmed with Mr. Dea what is in here.

24 219 Q. Okay. And I mean, generally
25 speaking, in regards to the portions of your

1 affidavit as they relate to the Wind negotiations,
2 one of the things you have said in your affidavit
3 is that you were initially responsible for the Wind
4 opportunity?

5 A. Yes.

6 220 Q. What time period were you
7 responsible for the opportunity?

8 A. I was involved from start to
9 finish of the file, but the team on the file grew
10 over time as we got further into it.

11 221 Q. So at some point did you have
12 primary responsibility and then you didn't have
13 primary responsibility?

14 A. We typically work in a
15 collaborative fashion at the partner level, so if a
16 transaction demands it, we put resources on it as
17 required.

18 So starting in November of -- let me
19 just get that --

20 MR. MILNE-SMITH: November 2013.

21 THE DEPONENT: November 2013, I had the
22 original contact that I reference, and I was, you
23 know, primarily responsible for understanding the
24 nature of the opportunity and dialoguing with some
25 of the individuals that had been in touch with us,

1 advisors and Mr. Lacavera, and you know, we decided
2 over time how that opportunity needed to be
3 staffed, you know, whether it is analysts or
4 partners.

5 BY MR. DiPUCCHIO:

6 222 Q. And what about as things
7 progressed through the August/September 2014 time
8 frame, would you have considered yourself to have
9 been one of the primary people responsible for the
10 Wind transaction?

11 A. Yes.

12 223 Q. Who else?

13 A. Okay, Peter Fraser, my partner,
14 and Greg Boland and Yu-jia Zhu, our analyst.

15 224 Q. I understand from your
16 affidavit, and I think I'm understanding this
17 correctly, that Mr. Moyse is still on a leave?

18 A. I don't actually know. Is he --
19 he hasn't been in the employ of the firm, but I
20 would say --

21 MR. MILNE-SMITH: He is on leave, yes.

22 BY MR. DiPUCCHIO:

23 225 Q. All right, and do you know why he
24 hasn't been working at West Face since the
25 injunction expired?

1 A. I don't. I haven't been involved
2 in the discussions or management of that.

3 226 Q. Okay. And has there been any
4 agreement in respect of that or have you spoken to
5 your partners at all in respect of that?

6 A. I haven't.

7 227 Q. Are there emails that exist that
8 would explain why Mr. Moyse is not working there
9 now?

10 A. I have no knowledge of email
11 traffic. I don't know.

12 228 Q. Counsel, if there is any
13 information as to why Mr. Moyse is on a leave of
14 absence that exists in emails between people at
15 West Face, other than obviously their counsel, I
16 suppose, would you produce those for me?

17 MR. MILNE-SMITH: There are none,
18 Counsel, because I can tell you it has been driven
19 entirely by the lawyers.

20 BY MR. DiPUCCHIO:

21 229 Q. Okay. Let's talk about Callidus.
22 Now, first of all, Mr. Griffin, if you
23 turn to the March 27th, 2014 email from Mr. Moyse
24 to Mr. Dea which is at tab 13, obviously we have
25 all seen this before. This is the email chain

1 where the investment memos are forwarded. Do you
2 see in the middle of page 177 of the record there
3 is an email from Mr. Dea to Mr. Moyse on March
4 26th, 2014, where Mr. Dea writes:

5 "Hey Brandon.

6 Thanks. What is the name of the
7 Cerberus entity that Callidus is
8 modeled after?"

9 A. Yes.

10 230 Q. Do you have any understanding as
11 to why Mr. Dea was asking Mr. Moyse on March 26th
12 about Callidus?

13 A. I don't.

14 231 Q. And have you ever spoken to
15 Mr. Dea about that?

16 A. No.

17 232 Q. Now, you have set out in your
18 affidavit beginning at page 38 your evidence in
19 regards to Callidus, and just before we start
20 talking about some specifics, at paragraph 103 you
21 have said:

22 "Historically based on my
23 experience [...]"

24 And I just wanted to ask you following
25 from that statement what experience do you have in

1 asset-based lending?

2 A. I have experience in lending
3 generally, both to distressed and performing
4 companies, both public and private.

5 You could consider asset-based loans to
6 encompass a broad category. I mean, at its heart
7 every loan is, you know, on a secured basis is
8 covering assets of some form.

9 If you want to go to a strict
10 definition of ABL lending against very liquid
11 receivables, working capital, what someone like a
12 Wells Fargo might do or one of the Canadian banks,
13 I have had experience procuring facilities on
14 behalf of issuers that we were involved in where we
15 were junior in setting the terms with the company
16 in connection with those ABLs.

17 233 Q. Okay, and is that the experience
18 you are referring to here?

19 A. In part. You know, obviously I
20 have cumulative experience as an investor since
21 1997.

22 234 Q. And so would you agree with the
23 statement that it is typical of an asset-based
24 borrower to have unpredictable cash flows, losses,
25 high leverage?

1 A. It depends what investment
2 universe you are targeting. I would certainly say
3 if you look at the ABL books of the Canadian banks,
4 they are typically lending to investment grade or
5 rated issuers which, you know, don't necessarily
6 have that volatility in their business.

7 235 Q. Okay, have you had any experience
8 in asset-based lending other than in that
9 particular environment?

10 A. Yes.

11 236 Q. In other words, to distressed
12 companies?

13 A. To distressed, yes.

14 237 Q. Okay, and what is your experience
15 in relation to that?

16 A. Going back to a date I would have
17 to recollect, but we were involved in the
18 restructuring of the Saskatchewan Wheat Pool when I
19 was at one of my prior firms, and we negotiated an
20 asset-based lending working capital facility with
21 GE Finance that we sat junior to and we put up a --
22 this was not at West Face but in a prior
23 capacity -- we put up a junior credit facility
24 concurrent with that. I was involved in the
25 negotiation of the terms with the company, and that

1 was a restructuring transaction for the balance
2 sheet.

3 238 Q. And was that entity in a
4 restructuring, a formal restructuring process?

5 A. Not a formal process.

6 239 Q. And what kind of security was
7 involved for the loan in that case?

8 A. Well, in the case of that company,
9 most of their security -- so for the ABL component
10 of the deal, it would be receivables, receivables
11 from customers, from the Canadian Wheat Board.
12 They would have inventories, obviously, of grain
13 that they would hold on behalf of their customers
14 that they purchased either in trust or on their own
15 account. Those would be the primary working
16 capital assets of the company.

17 The fixed assets of the company would
18 include predominantly grain elevators and other
19 processing equipment and processing facilities
20 themselves throughout --

21 240 Q. And was the security for the loan
22 that you were involved in in that situation secured
23 by all of those assets that you have described?

24 A. The security for the GE facility
25 looked to the working capital of the company or the

1 liquid assets. Our loan looked to the plant,
2 property and equipment first, and then we had a
3 second lien on the working capital and GE had a
4 reciprocal second lien on the fixed plant or
5 equipment.

6 241 Q. And how did you value the security
7 that was being provided to you?

8 A. We did an independent financial
9 analysis. There were appraisal values associated
10 with the assets. They had actually gone through a
11 very recent significant capital expenditure program
12 to construct modern elevators in the Prairies where
13 these grain collection points were, so we had very
14 recent information on the replacement cost of those
15 assets. We had the financial statements for the
16 working capital associated with the appraisal work
17 that GE had done.

18 242 Q. And the appraisals were done by
19 third party appraisal companies?

20 A. I think GE had an in-house
21 appraisal group, if I recollect. They had the
22 field examiners and auditors and their own team. I
23 don't think they outsourced it.

24 243 Q. Do you remember on what basis
25 those appraisals were done?

1 A. I think they probably -- not
2 specifically. I could guess if you would like me
3 to.

4 244 Q. Go ahead.

5 A. I mean, typically the convention
6 in the industry would be you are looking at orderly
7 liquidation value of the inventory or market value
8 or cost.

9 245 Q. Okay.

10 A. And typically I would say that
11 most of these lenders would cap their exposure to
12 the lesser of one of those numbers.

13 246 Q. And that would typically be
14 orderly liquidation value, do you know?

15 A. It would be the lesser of the two.
16 I mean, you know, in a declining grain price
17 environment, it is entirely possible that the
18 market value on the day in question would be less
19 than that original cost, so typically they would
20 cap it at the lesser of the two.

21 They also have provisions which limit
22 the extension of credit to each of the
23 subcategories of liquid working capital. So for
24 example, accounts receivable, there would be some
25 measurement of how many days in arrears those

1 accounts receivable would be. They would bucket
2 them into performing and non-performing. They
3 would then margin those receivables at a specified
4 rate.

5 With respect to inventories, they go
6 through a similar aging process, but then they
7 would also typically impose a sub cap on inventory
8 financing advances as part of the overall facility
9 and both percentage terms. So typically, the
10 inventory would be the more constraining of the
11 two.

12 247 Q. And that would be in order to
13 protect --

14 A. Protect their principal at risk.

15 248 Q. -- their principal which was at
16 risk, right?

17 A. Correct.

18 249 Q. And would you agree with me that
19 those appraisals would be key to the financing
20 transaction?

21 A. Yes.

22 250 Q. So in the case of Saskatchewan
23 Wheat Pool that you were involved in, was that a
24 case of a distressed company?

25 A. It had balance sheet stress. It

1 was not formally distressed. It had not filed for
2 any formal proceedings.

3 251 Q. Did it have any cash flow issues
4 or was it experiencing losses or anything like
5 that?

6 A. At the time, the company had gone
7 through a major capital expenditure program and
8 there were two successive years of industry what
9 they considered drought conditions in western
10 Canada, and as a consequence of that, there was
11 some volatility in the pre-tax income of the
12 company.

13 252 Q. Would you agree with me generally
14 that asset-based lenders are lending on the basis
15 of the security that they have and not on the cash
16 flow of the company?

17 A. It depends on the nature. If it
18 is a strict working capital loan as defined where
19 the borrowing -- so for example, a reserve-based
20 lending facility in an oil and gas company,
21 typically that is going to be indexed to the
22 independently appraised engineering value of the
23 reserves.

24 If it is like some of the other
25 situations we have been involved in, the

1 measurement of what credit is available is
2 constrained solely to margin rates on accounts
3 receivable and inventory, full stop.

4 253 Q. Okay. And do you agree with me
5 that when you are engaged in asset-based lending,
6 that if the lender defaults, your protection is to
7 realize on the security?

8 A. It could be. It really depends
9 on, you know, the perspective of the lender as to
10 whether there should be an immediate realization,
11 or if the industry conditions are poor, it may be
12 incumbent upon them to go through a more protracted
13 process to realize.

14 254 Q. Okay. And if there is remaining
15 value in the collateral that would exceed the value
16 of the loan outstanding, then would you agree with
17 me that there is no need to take a provision for a
18 loss in that case?

19 A. On what, though? How would the
20 value of the assets be measured, at cost or at
21 market or --

22 255 Q. Well, presumably there is some
23 kind of appraisal that has been done, right?

24 A. Yeah, each of them would go
25 through their independent processes in terms of how

1 they determine, you know, what the coverage is.

2 256 Q. Right, and do you agree with me
3 that if based on the appraisal, and let's say it is
4 liquidation value, orderly liquidation value, that
5 if there is remaining value in that collateral,
6 that there would be no need to take provision for a
7 loss?

8 A. You know, sometimes -- yes, in
9 general terms.

10 257 Q. Okay. And do you agree with me
11 that for an asset-based lender an insolvency event
12 is not necessarily a negative event?

13 A. It depends again on the nature of,
14 you know, what you are calling asset-based lending.
15 So if you are lending against anything other than
16 the working capital of the company where servicing
17 of the obligations is dependent on cash flows,
18 where you are relying on something other than an
19 orderly liquidation of very liquid assets, I would
20 disagree.

21 258 Q. Okay, so I suppose you are telling
22 me it would depend on the nature of the loan
23 itself?

24 A. Yes.

25 259 Q. But in some cases, depending on

1 the nature of the loan, an insolvency event can be
2 a neutral event; is that fair?

3 A. I'm sure in certain circumstances
4 that could be the case.

5 260 Q. So let's talk a little bit about
6 your evidence in relation to when West Face started
7 to accumulate a short position in Callidus, and I
8 understand from your evidence that that occurred,
9 if you look at paragraph 118, at some point in
10 October of 2014; is that fair?

11 A. That's correct.

12 261 Q. And you say in paragraph 118 that
13 there was some kind of decision that was made by
14 Mr. Fraser, Mr. Boland and yourself prior to
15 actually executing on that strategy, right?

16 A. It was actually Mr. Fraser in
17 discussion with Mr. Boland who decided that.

18 262 Q. Okay, so you weren't making the
19 decision?

20 A. No, not at that time.

21 263 Q. But you say in your affidavit that
22 you had primary responsibility, so in what respect
23 did you have primary responsibility?

24 A. Well, I think what I am referring
25 to is when we -- both Peter and I were following

1 the situation since the IPO in April. We were both
2 generally aware of the activities of the company.
3 When we started to conduct -- I think what I say
4 here in paragraph 118 -- sorry, it is not 118.

5 MR. MILNE-SMITH: Actually, just to
6 make sure the evidence is quoted properly, at
7 paragraph 1 Mr. Griffin says that he was the
8 primary responsibility for West Face's research
9 regarding Callidus Capital Corporation.

10 THE DEPONENT: Yes.

11 BY MR. DiPUCCHIO:

12 264 Q. Okay, so --

13 A. So my point was, you know, Peter
14 and I had both been following it. When it came
15 time to do some significant research on it, I took
16 primary responsibility.

17 265 Q. All right, well, let's break that
18 down a little bit. First of all, what is the
19 process for getting approval to take a position
20 like this within West Face? What is the process?

21 A. Well, Greg and Peter are co-Chief
22 Investment Officers and they have ultimate
23 authority to determine, you know, what goes in the
24 book or what doesn't, and so as between them, they
25 can decide, you know, what we take action on.

1 266 Q. Does that have to follow some kind
2 of formal process, or can they just decide one day
3 to take a position?

4 A. It really depends on the size of
5 the transaction. You know, I guess strictly
6 speaking it is only their approval that is
7 required. You know, we have an Investment
8 Committee that the four of us sit on, but it really
9 goes to the nature of the type of position we are
10 taking, the size of the position and if it is
11 something that is time-sensitive. You know, we
12 have a flexible investment mandate. We don't
13 always follow a linear process when we get involved
14 in an investment.

15 267 Q. So in this case, was this decision
16 made at the Investment Committee level?

17 A. No, I think I had indicated we
18 didn't have a formal Investment Committee meeting.
19 It was Peter and Greg that decided to initiate the
20 position.

21 268 Q. And you say that you and
22 Mr. Fraser had been following Callidus for some
23 period of time before this?

24 A. Uhm-hmm, yes.

25 269 Q. And would that have been after the

1 IPO?

2 A. Yes.

3 270 Q. And was it immediately after the
4 IPO that you became interested in Callidus?

5 A. I looked at the original
6 preliminary prospectus for the company, I looked at
7 the final prospectus, and I looked at the
8 presentation materials that they had publicly
9 filed, the research reports that had come out
10 subsequent to the IPO, and then any other quarterly
11 financial or annual financial statements that they
12 had published.

13 271 Q. Okay, what I am trying to
14 understand is was there interest triggered at the
15 moment of the IPO or was it triggered at some point
16 after?

17 A. We started following it at the
18 time of the IPO, so I would say from a time
19 investment standpoint, we had started tracking the
20 situation.

21 272 Q. And that would have been then in
22 April of 2014 or thereabouts?

23 A. Yes, whenever the preliminary was
24 filed and that would have been the first time.

25 273 Q. And what would have been involved

1 or what was involved in following it for that
2 period of time?

3 A. Well, it is, you know, I would say
4 typical of other situations we are involved in, you
5 are keeping apprised of and you are reading the
6 public disclosure on the company, any material
7 contracts they had published to SEDAR; you are
8 following the financial reporting; you are
9 following analysts' commentary or reports on the
10 company; you are following, you know, the
11 conference call transcripts, conference calls they
12 may hold, earnings releases, material
13 announcements, you know, really just what is on the
14 public record.

15 274 Q. And was there internal
16 communications between you and Mr. Fraser or
17 anybody else at West Face in regards to these
18 matters following --

19 A. Informally, we talked about it
20 periodically.

21 275 Q. So would there be some record at
22 West Face as to when you first took an interest in
23 Callidus?

24 A. I honestly don't know. There
25 could be. I think most of the conversations were

1 probably verbal. I mean, you know, I have
2 indicated to you that I started following it
3 personally when the preliminary prospectus was
4 published, so I don't recollect what the email
5 traffic was on it, if any.

6 276 Q. And why did you become aware of
7 Callidus? What made you aware of Callidus in April
8 of 2014?

9 A. Well, the company had conducted a
10 broad marketing process, and you know, we had
11 seen -- you know, we had been sent by investment
12 dealers involved in the IPO process the prospectus,
13 the marketing materials. We generally follow, you
14 know, new issues, secondary, primary, you know, any
15 other -- I mean, for this company or any other.

16 277 Q. Counsel, I guess if there is any
17 internal emails involving any of the West Face
18 personnel in respect of Callidus between April of
19 2014 and the time that it took its short position
20 in October of 2014, I would ask for production of
21 those emails?

22 U/A MR. MILNE-SMITH: Well, I'll take it
23 under advisement just because of proportionality,
24 but I will consider it.

25 MR. DiPUCCHIO: Well, there may not be

1 a huge universe of them from what we have just
2 heard, so --

3 MR. MILNE-SMITH: Who knows.

4 BY MR. DiPUCCHIO:

5 278 Q. Who knows.

6 So do I understand -- well, let me
7 refine that request a little bit then, I guess.

8 I would also ask for whatever emails
9 would evidence this decision to make the investment
10 in October of 2014? So if there are emails, for
11 example, between Mr. Boland and others who were on
12 the Investment Committee or some such thing, I
13 would want to have production of those emails?

14 U/A MR. MILNE-SMITH: I'll take that under
15 advisement as well.

16 BY MR. DiPUCCHIO:

17 279 Q. Do I understand correctly from
18 your affidavit, Mr. Griffin, that there really
19 hadn't been any detailed research done by West Face
20 prior to taking a short position in Callidus?

21 A. Well, I would say we had done a
22 diligent review of the public record materials that
23 were available at the time. As I said, you know,
24 with a lot of these processes, these are things we
25 leg into over time, particularly in illiquid

1 securities. We are responding to events and
2 pricing in the market.

3 Depending on the size of the position,
4 we have, you know, long-term investment positions
5 that are significant quantum in our book; we have
6 trading positions which are numerous; we have
7 differing levels of research.

8 You know, using Arcan as an example,
9 there we have got a cumulative knowledge of the
10 company. A transaction is announced which creates
11 an event, and you are forced in a limited window to
12 respond to it.

13 280 Q. Right, and you forwarded an
14 analysis that you had done, and that date we saw,
15 right?

16 A. Uhm-hmm.

17 MR. MILNE-SMITH: You have to say
18 "yes".

19 THE DEPONENT: Yes.

20 BY MR. DiPUCCHIO:

21 281 Q. Sorry, you have to say "yes".

22 A. Yes.

23 282 Q. So in relation to Callidus, was
24 there any research done?

25 A. Yes.

1 283 Q. And is there a record of that
2 research?

3 A. I'm sure there would have been a
4 drive that we created to house or add to the
5 repository for the public information that we had
6 pulled down on the company. That is typically our
7 practice, so you know, the prospectus filing, any
8 presentations they had made publicly that were
9 circulated. There could be some notes, you know,
10 that we had prepared, I'm sure.

11 284 Q. Okay, and would that drive contain
12 any kind of financial analysis that would have been
13 performed by you or anyone else who was looking at
14 this opportunity prior to October?

15 A. I would have to go back and look,
16 but yes, assuredly there would be forms of
17 financial analysis. I mean, whether it was a
18 comprehensive financial model or notes or -- I
19 mean, you know, the analysis itself could take many
20 parts; there is both quantitative and qualitative.

21 285 Q. Well, I'm going to ask for
22 production of this drive or whatever exists on this
23 drive as it relates to the research that was done
24 prior to October of 2014?

25 U/A MR. MILNE-SMITH: I'll take it under

1 advisement.

2 BY MR. DiPUCCHIO:

3 286 Q. Am I right from your answers that
4 the short position wasn't accumulated all at once,
5 right?

6 A. It was done over time.

7 287 Q. And do you recall what time frame?

8 A. I think it began in October and --
9 I'm trying to remember. I believe we were complete
10 or, you know, we topped out in terms of our
11 position sometime in December, if I recollect.

12 288 Q. Would there be trading records at
13 West Face that would give us some insight into the
14 time period over which you accumulated the short
15 position in Callidus?

16 A. Yes.

17 289 Q. Could you produce for me the
18 trading records that would illustrate that?

19 U/A MR. MILNE-SMITH: I'll take it under
20 advisement.

21 BY MR. DiPUCCHIO:

22 290 Q. And what was your total
23 investment?

24 A. Rough numbers, I think at one
25 point we were short in excess of a million shares.

1 291 Q. And I take it this was a slightly
2 different case than we saw with respect to the
3 example for TransOcean in that you didn't ask any
4 analyst to do research prior to taking a short
5 position?

6 A. We had another associate in the
7 firm who was also following it at the time, and we
8 eventually did get him formally involved.

9 292 Q. Who was that?

10 A. His name was Aland Wang.

11 293 Q. And Mr. Wang was an associate that
12 was working on the Callidus opportunity prior to
13 October 2014?

14 A. I think -- I don't recall exactly
15 the date when we got him formally involved. I
16 would have to go back and look. But at some point
17 he became involved in following it.

18 294 Q. Would you let me know, to the
19 extent it wouldn't be revealed in some of the other
20 answers, would you let me know when Mr. Wang first
21 became involved?

22 U/T MR. MILNE-SMITH: Well, we'll make best
23 efforts to find when he first became involved.

24 BY MR. DiPUCCHIO:

25 295 Q. And other than Mr. Wang, were

1 there any other investment associates who were
2 assisting in this opportunity?

3 A. No.

4 296 Q. Now, you have disclosed to us a
5 report, a research report that is dated March 2015,
6 and as I understood your previous responses, that
7 was the report that you assumed primary
8 responsibility for?

9 A. Yes.

10 297 Q. And prior to that March 2015
11 report, had there been any other reports prepared?

12 A. We had consistently updated our
13 work on the company.

14 298 Q. So are there other reports that
15 would pre-date March 2015?

16 A. Yes, and notes as well.

17 299 Q. Could you produce those for me,
18 please?

19 U/A MR. MILNE-SMITH: I'll take it under
20 advisement.

21 BY MR. DiPUCCHIO:

22 300 Q. And I take it that you are not
23 suggesting that the March 2015 report is certainly
24 the first report that you prepared in relation to
25 Callidus, right?

1 A. No.

2 301 Q. And did you share any of the
3 reports that were prepared in relation to Callidus
4 with third parties?

5 A. No, I didn't.

6 302 Q. Well, I know you didn't, but did
7 West Face?

8 A. Not to my knowledge.

9 303 Q. So none of the reports that were
10 prepared, whether the March 2015 report or any of
11 the prior reports, were shared with any third
12 parties?

13 A. Not to my knowledge.

14 304 Q. All right. Could that have
15 occurred without your knowledge?

16 A. I suppose it could have.

17 305 Q. Have you asked anybody internally
18 at West Face whether they shared the report with
19 third parties?

20 A. No.

21 306 Q. Could you make inquiries and let
22 me know whether the reports, either the March 2015
23 report or any of the other reports were shared with
24 third parties?

25 MR. MILNE-SMITH: Just while I'll take

1 that under advisement, but to assist me in my
2 deliberations, Counsel, can you advise me of the
3 relevance of that in the context of a motion where
4 the allegation is that Brandon Moyse disclosed
5 confidential information about Callidus?

6 MR. DiPUCCHIO: Well, because I think
7 that that would be extremely relevant to know if
8 that confidential information ultimately made its
9 way to third parties.

10 U/A MR. MILNE-SMITH: I'll take that under
11 advisement.

12 MR. DiPUCCHIO: Okay.

13 MR. MILNE-SMITH: But we have yet to
14 learn what exactly the confidential information is
15 that Brandon is to have disclosed.

16 MR. DiPUCCHIO: Well, that is the
17 purpose of this proceeding, isn't it. That is the
18 purpose for the ISS request, Counsel.

19 MR. MILNE-SMITH: Sorry, let's go off
20 the record.

21 (DISCUSSION OFF THE RECORD.)

22 -- RECESSED AT 11:27 A.M.

23 -- RESUMED AT 11:44 A.M.

24 BY MR. DiPUCCHIO:

25 307 Q. All right, Mr. Griffin, at

1 paragraph 119 of your affidavit you have said that
2 the first step in your research was to try to
3 understand as much as possible the specific
4 composition of Callidus' loan book through public
5 sources of information, right?

6 A. Yes.

7 308 Q. So do I take it that prior to
8 engaging in your research, which occurred after you
9 began taking a short position, you didn't have any
10 knowledge of the specific composition of Callidus's
11 loan book?

12 A. No, that is not correct.

13 309 Q. Okay, tell me what is correct.

14 A. We had gone through the disclosure
15 that we had been provided by the company which
16 listed a series of indicators about the loan book,
17 how many loans were in the book, the size of those
18 commitments, the commitment size, the drawn amount
19 of those commitments --

20 THE COURT REPORTER: Sorry, could you
21 repeat that? Did you say the "drawn amount"?

22 THE DEPONENT: Sorry, let me repeat.
23 I'll slow down.

24 The number of commitments, the size of
25 those commitments, the drawn amount of those

1 commitments, the origination date, and I believe
2 there was general information on the industry in
3 which the issuers -- or sorry, the borrowers
4 operated, provided in the public disclosure.

5 BY MR. DiPUCCHIO:

6 310 Q. And was that simply the IPO that
7 you are referring to right now?

8 A. That was a --

9 311 Q. Being the prospectus on the IPO?

10 A. That was one part of it, yes. And
11 then we had also discovered through some of the
12 ongoing bankruptcy proceedings that were public on
13 the Industry Canada site that there were certain
14 specific loans that were under CCAA restructuring
15 processes that were named by name, amongst others.

16 312 Q. So that would have occurred prior
17 to taking a short position?

18 A. Yes.

19 313 Q. And so when you say the specific
20 composition of Callidus's loan book, what are you
21 referring to in your affidavit?

22 A. Well, what we were referring to as
23 much as possible is to try to understand who the
24 end borrowers are that are borrowing money at 20
25 percent rates of interest.

1 314 Q. So with the exception of the CCAA
2 proceedings that you were aware of --

3 A. Yes.

4 315 Q. -- did you have any other
5 knowledge of the end borrowers?

6 A. As we did our research,
7 cumulatively we developed what we thought was a
8 better understanding of who some of the historical
9 borrowers were that may or may not be part of the
10 book as it stood, plus some of the existing credits
11 that were in the book.

12 316 Q. Okay, sorry, I should have been a
13 little more precise in my question. Prior to you
14 initiating your short position in October of 2014,
15 did you have any specific knowledge of the
16 identities of the borrowers?

17 A. Certain ones.

18 317 Q. Right, and those were the ones
19 that we referred to that were in CCAA proceedings?

20 A. Yes, and I believe a couple of
21 others as well.

22 318 Q. Okay, do you know or can you
23 recall which ones they were?

24 A. I couldn't assign a chronology to
25 how we discovered them, but I could certainly name

1 some of the names that we cumulatively discovered
2 in our research.

3 319 Q. Okay, well, that I know from your
4 report. I was trying to get a sense of prior to
5 October 2014 which ones you would have known about.

6 A. I don't recollect specifically.

7 320 Q. And I suppose the only way we
8 might find that out is through an examination of
9 whatever files might exist prior to that time?

10 A. Well, I think we did fairly
11 exhaustive searches, internet-based searches and
12 using publicly available sources, so you know, that
13 would I suppose provide some trail of how our
14 research was conducted.

15 321 Q. Right, but that would have all or
16 a large part of that would have occurred after
17 October 2014?

18 A. No, it started when we looked at
19 the initial IPO prospectus, we found it peculiar
20 for a public company that we considered comparable
21 to a Business Development Company to have
22 absolutely no disclosure on who the end borrowers
23 were, specifically when you compared a BDC against
24 Callidus and said a BDC provides issuer names,
25 amounts, principal values, you know, whether the

1 loans are in default or performing. We found it
2 difficult to understand why the IPO prospectus did
3 not have more comprehensive disclosure.

4 322 Q. Okay, so you may have found it
5 difficult to understand that based on your
6 comparison to a BDC, but can you assist me at all
7 with when you became aware of the identities of the
8 end borrowers?

9 A. It was a cumulative process which
10 began after the IPO document was filed, because
11 that was the first time that we had any public
12 disclosure of what the loan book looked like at
13 all.

14 323 Q. And you are saying there would
15 have been searches done of publicly available
16 sources prior to initiating your short position?

17 A. Yes.

18 324 Q. And would those have been recorded
19 somewhere?

20 A. There were probably some notes
21 that we have in our files, either written or typed.
22 You know, to the extent there is an internet
23 browsing history, certainly there would be I
24 suppose records maintained of that.

25 325 Q. Okay, so I would consider that to

1 have been subsumed in the previous request that I
2 made, Counsel, and I understand you are taking all
3 that under advisement?

4 U/A MR. MILNE-SMITH: That is fair.

5 BY MR. DiPUCCHIO:

6 326 Q. So when you say in paragraph 19
7 that you were in your first step of your research
8 seeking to determine who the borrowers were, I take
9 it that really means to the extent you didn't
10 already have some information in relation to that?

11 A. We were really starting from the
12 incipient stages and said, okay, to approach this
13 research process, you know, what are the key
14 questions we are trying to answer? You know, that
15 is my approach, anyways.

16 327 Q. All right. And one of the other
17 things you were trying to do through your research,
18 and this is on page 47 of your affidavit, Mr.
19 Griffin, was to obtain details of the collateral
20 that was backing the Callidus loans, right?

21 A. Yes.

22 328 Q. And that obviously would have been
23 important because that would give you some
24 indication of whether there was any misstatement in
25 terms of potential loan losses or whether there was

1 any impairment of the loans, right?

2 A. I think it was important to
3 understand what collateral backs the loans, and I
4 think it was also very important for us to
5 understand whether the collateral backing the loan
6 was conventional, what we considered conventional
7 ABL collateral or unconventional ABL collateral.

8 329 Q. Well, help me out with what you
9 consider to be conventional and unconventional ABL
10 collateral?

11 A. Conventional ABL collateral, much
12 as I explained earlier in some of the examples I
13 provided, would be inventories and accounts
14 receivable.

15 330 Q. You don't include equipment in
16 that?

17 A. Our experience is that most ABL
18 lenders, a true definition of an ABL lender would
19 not look to the property, plant and equipment of a
20 firm as the primary source of collateral.

21 331 Q. And so would you consider
22 equipment to be unconventional collateral?

23 A. For an ABL lender, yes.

24 332 Q. So help me out with what you did
25 in your research to figure out what specific

1 collateral was backing the Callidus loans?

2 A. Well, we -- it was a cumulative
3 process where we tried to understand, starting with
4 the CCAA filings for the companies that we had
5 found, what the composition of the asset base of
6 the company was.

7 And so for example, Arthon Contractors
8 or Industries which we looked into, there was a
9 record in the Monitors' Reports of what the major
10 components of the assets of that company were, what
11 was underpinning the loan, and you know, we went
12 through examinations similar to that.

13 333 Q. Okay, so --

14 A. So as information was available.

15 334 Q. All right, and so that is Arthon
16 where there was a CCAA process in play.

17 A. Yes.

18 335 Q. What about in those situations
19 where there was no CCAA process in play or Court
20 proceeding in play, how were you determining the
21 collateral backing the loans?

22 A. Well, I think we worked with the
23 public record and our understanding of what the
24 disclosure was; to the extent there was no
25 disclosure, we didn't make any judgments as to what

1 the composition of the collateral was.

2 336 Q. Well, help me out with what public
3 record you would be referring to that would assist
4 you in determining the collateral?

5 A. Company websites, for example,
6 describing the nature of the business.

7 337 Q. And so something describing the
8 nature of the business is going to give you a sense
9 of the collateral backing the --

10 A. Yes.

11 338 Q. Okay, how does it do that? Can
12 you give me an example?

13 A. Well, let me give you an example.

14 If you had a gaming company that
15 developed software for a gaming industry, such as
16 Blueberry Technology, one of the chief assets of
17 that company is going to be a non-tangible
18 intellectual property.

19 339 Q. Sure.

20 A. There is an example.

21 340 Q. Okay, and how does that assist you
22 in determining the value of the collateral backing
23 the loans?

24 A. It assists us in determining the
25 nature of the collateral backing the loans and

1 whether that collateral is fungible in our view, in
2 other words, readily -- can be readily turned into
3 cash and is standardized such as an account
4 receivable or a unit of inventory, or whether it
5 has liquidity attributes which are substantively
6 less liquid than those items.

7 341 Q. Well, presumably any business, any
8 conventional business might have inventory and
9 accounts receivable, right? You wouldn't need to
10 do a web search in order to figure out the nature
11 of the business to determine that they might have
12 accounts receivable and inventory?

13 A. Not all companies have inventory.

14 342 Q. Agreed.

15 A. Many companies have accounts --
16 most companies have accounts receivable.

17 343 Q. Right, and so nothing in a web
18 search would assist you in that regard, right?

19 A. In terms of identifying whether a
20 company had accounts receivable?

21 344 Q. Yes.

22 A. If the company is public, it
23 would.

24 345 Q. Okay, and so tell me your process.
25 Tell me what the research was in order to determine

1 the collateral and the values of that collateral.
2 Not hypothetically. Tell me what you did in this
3 case?

4 A. Well, I think that is outlined in
5 the presentation that we put together.

6 346 Q. Okay, so take me to it. We are in
7 March, in the March presentation, as an example,
8 which is at Exhibit 46, and where can I find the
9 analysis, cumulative analysis that was done with
10 respect to the quality of the collateral or the
11 values of the collateral?

12 A. Sure. Well, let me use Arthon as
13 an example.

14 347 Q. Yes.

15 MR. MILNE-SMITH: That is at page 793
16 of the record.

17 BY MR. DiPUCCHIO:

18 348 Q. Right.

19 A. In this case, there was
20 information available on the borrower because it
21 was in a CCAA proceeding.

22 349 Q. Right.

23 A. We examined the Monitors'
24 Reports --

25 350 Q. Right.

1 A. -- which gave a detailed account
2 of the subsidiaries of the company that were
3 subject to the filing and those that were not.

4 351 Q. Right.

5 A. There was a description of the
6 assets that underpinned that company, such as the
7 Coalmont asset which was an inoperative thermal
8 coal mine in BC. It gave a description of an
9 aggregate deposit that was under a development
10 proposal or it was proposed to be developed in
11 Kitimat. It gave a description of equipment that
12 the company owned that had historically been used
13 for civil work, and it gave an accounting of the
14 borrower's efforts to monetize portions of those
15 receivables.

16 352 Q. Right, and that was all --

17 A. Inventories --

18 353 Q. That was all in the various
19 Monitor Reports that you would have reviewed as
20 part of that particular file?

21 A. Correct.

22 354 Q. And so we have talked about
23 Arthon, and we'll come back to Arthon. I don't to
24 touch off on that, but what other ones could you
25 point to?

1 A. Exchange Technology was a similar
2 one.

3 355 Q. And where is that?

4 A. The previous page.

5 MR. MILNE-SMITH: The previous page.

6 BY MR. DiPUCCHIO:

7 356 Q. Tell me about that one.

8 A. That was a situation where the
9 company had gone into a CCAA filing. There was a
10 similar listing of Monitors' Reports available.
11 There was an account in the Monitors' Reports of
12 the company's efforts to conduct a sales process.

13 357 Q. Sorry, so is it your evidence that
14 Exchange went into a CCAA process?

15 A. Well, let me just look here.

16 Sorry, a receivership application was
17 made to the Ontario Superior Court.

18 358 Q. Right.

19 A. They appointed Duff & Phelps as
20 Receiver, and the company hired KPMG to conduct a
21 refinancing solicitation process and also engaged
22 Canaccord Genuity at a later date to conduct a
23 refinancing solicitation process and sales process.
24 There was an accounting of the process that was
25 followed, the expressions of interest that were

1 submitted. There was a discussion around the value
2 of those expressions of interest.

3 359 Q. Okay.

4 A. And there was a discussion around
5 the value of those expressions of interest relative
6 to the outstanding credit that was against the
7 company.

8 360 Q. And what other examples do you
9 have where you were able to determine collateral
10 values?

11 A. Leader Energy Services.

12 MR. MILNE-SMITH: Counsel, I hope you
13 are aware of this, but Appendices B and C give
14 details of where the information was found and what
15 the information was for every single one of these.

16 BY MR. DiPUCCHIO:

17 361 Q. Right, and we'll come to that in a
18 second. I'm talking in reference to the
19 presentation in March. Is there anything about
20 Leader in there?

21 A. We do reference Leader.

22 362 Q. Where is that? I am just trying
23 to --

24 MR. CARLSON: 773 maybe?

25 THE DEPONENT: Yeah, I'm just getting

1 to that.

2 Yes, it is 773.

3 BY MR. DiPUCCHIO:

4 363 Q. Okay, and where do I see your
5 analysis of the collateral in that case?

6 A. A synopsis is provided on the
7 right where it is indicated "Liquidation Analysis".

8 364 Q. Is that your analysis?

9 A. It is analysis that we prepared
10 internally with the assistance of our associate.

11 365 Q. Okay, and this was Mr. --

12 A. Wang.

13 366 Q. -- Wang that you referred to
14 earlier?

15 And what is the analysis? Is the
16 analysis taking the net book value?

17 A. Well, there is a few parts to it.

18 The first part of it was understanding
19 what credit had been extended to Leader and who the
20 other credit counter-parties were to the company.

21 It was understanding what collateral
22 that loan was secured against, what other
23 obligations there were in the company.

24 We did some additional work around the
25 cash flow profile of the business and whether it

1 was, you know, generating or reducing its liquidity
2 over time.

3 And then what we have here is our
4 estimate as to what the orderly liquidation value
5 or market value of the equipment backing the loan
6 could be.

7 367 Q. That is your estimate?

8 A. That is our estimate.

9 368 Q. All right, you weren't able to
10 determine what others' estimates may have been or
11 what other appraisals may have been done or on what
12 basis the loan was advanced --

13 A. None of that was disclosed.

14 369 Q. And is it fair to say that in all
15 of these cases that you have mentioned, at no point
16 were you able to obtain any information with
17 respect to the appraisals that were -- that may
18 have been used to make the financing?

19 A. Unless they were disclosed in one
20 of the Monitors' Reports, as an example, or
21 publicly disclosed by an issuer, we worked with
22 what was publicly available.

23 370 Q. And do you recall any of that
24 information being disclosed in any of the public
25 filings that you looked at?

1 A. Certainly in the Monitors' Reports
2 that we reviewed, there were discussions of
3 analyses that had been prepared. There were
4 discussions around bids that resulted from
5 processes like Exchange.

6 371 Q. And apart from those, were there
7 any examples where you had actual knowledge of the
8 appraisals that had been done?

9 A. You mean the internal appraisals
10 that Callidus had done as lender or --

11 372 Q. Correct.

12 A. Unless they were publicly
13 disclosed, no.

14 373 Q. Now, this report, the March
15 report, Exhibit 46, who prepared it?

16 A. I worked on it, as did our
17 associate Aland Wang.

18 374 Q. Anybody other than the two of you?

19 A. At various points in time there
20 were, you know, versions of this document that we
21 had prepared that were reviewed internally.

22 375 Q. So is this some kind of final
23 version of a document that went through various
24 iterations?

25 A. Yes.

1 376 Q. All right. And when you say it
2 was reviewed internally, what do you mean?
3 Presented internally?

4 A. As our work advanced over time, we
5 presented our findings to our Investment Committee.

6 377 Q. And those would have been actual
7 presentations that were made to the Investment
8 Committee?

9 A. They could have been emails with
10 summarized facts. I don't recall ever making a
11 formal Investment Committee review until a much
12 later date. And you know, as the findings were
13 accumulated and parsed into this report, we did our
14 best to gather together the information that we had
15 found.

16 378 Q. Do you recall how many times
17 information would have been presented to the
18 Investment Committee?

19 A. I don't recall. Numerous times.

20 379 Q. All right. And you mentioned a
21 final, some kind of final presentation. When was
22 that?

23 A. I don't recall. Whenever, you
24 know, we finished a reasonably comprehensive cut of
25 the report that we prepared, one of those versions

1 was presented.

2 380 Q. Would it have been after March
3 2015?

4 A. After March 2015? No.

5 381 Q. Before March 2015?

6 A. Yes.

7 382 Q. Okay, and what was the purpose of
8 that presentation, what you call the final?

9 A. It was to discuss with the
10 Investment Committee the findings of the research
11 that we had compiled.

12 383 Q. For what purpose?

13 A. To further our knowledge and
14 understanding of the issuer.

15 384 Q. All right, and I guess I'm trying
16 to understand by that point in time, you have
17 already accumulated your short position, right?

18 A. All of this was sort of happening
19 in parallel.

20 385 Q. So are you saying to me that there
21 would have been presentations happening at some
22 stage between October and December?

23 A. Various forms of presentations.

24 386 Q. And after you -- and when I say
25 "you", I mean West Face. After West Face finished

1 accumulating its short position, which I think you
2 told me was sometime in December of 2014?

3 A. Yes.

4 387 Q. Were there further presentations?

5 A. We kept updating the presentation
6 materials as newer information became available.

7 388 Q. And what I am asking you is what
8 were the purposes for those presentations?

9 A. More information to become
10 available that was not available in the earlier
11 iterations of the presentation we had done. There
12 had been additional insolvency filings amongst the
13 borrowers in the portfolio.

14 389 Q. And so there would have been
15 information that post-dated the accumulation of the
16 short position?

17 A. Yes.

18 390 Q. And you were presenting that
19 information to people on the Investment Committee?

20 A. Yes.

21 391 Q. And were you looking to get some
22 kind of direction from them?

23 A. No.

24 392 Q. So what was the point of
25 presenting it?

1 A. Any time we have an investment,
2 once the investment is made, there is a cumulative
3 process of monitoring that position. And so the
4 work doesn't stop just because you have executed an
5 investment. You have to track it.

6 393 Q. Okay, so this was just simply
7 tracking the investment that had been made?

8 A. Yes.

9 394 Q. And there were no directions that
10 came out of those meetings?

11 A. No.

12 395 Q. So I'm probably going to be
13 repeating myself, but to the extent there is any
14 record of these presentations, various
15 presentations made to the Investment Committee and
16 any corresponding emails or things of that nature
17 that would have emanated from those, I would like
18 to see them?

19 U/A MR. MILNE-SMITH: I'll take it under
20 advisement.

21 BY MR. DiPUCCHIO:

22 396 Q. Now, at some point was there any
23 direction given by the Investment Committee with
24 respect to this particular short position?

25 A. By "direction", can you be a bit

1 more specific?

2 397 Q. Well, okay, let me be more
3 specific. I take it at some point you exited the
4 short position?

5 A. Yes.

6 398 Q. When did that happen?

7 A. I would have to review our trading
8 records to --

9 399 Q. Okay, could you do that and let me
10 know?

11 U/A MR. MILNE-SMITH: Yeah, I'll take
12 that -- I think we already gave an advisement with
13 respect to the trading records, and so I think the
14 closing out of the position would fall within that.

15 BY MR. DiPUCCHIO:

16 400 Q. Okay, fair enough. Can you give
17 me a ballpark, Mr. Griffin, as to when this would
18 have happened?

19 A. I believe it was after --

20 MR. MILNE-SMITH: Only if you know.

21 BY MR. DiPUCCHIO:

22 401 Q. Yes, a ballpark. I'm not asking
23 you to be precise about it. Was it four months
24 ago, two months ago, a month ago?

25 A. No, it would have been after the

1 company released its last financial results, which
2 would have been the Q4 year-end results.

3 402 Q. So that would have occurred
4 sometime I take it after March 31st?

5 A. It would have been, yes, yeah.

6 403 Q. So likely we are talking April?

7 A. Again, I would have to go back
8 and --

9 404 Q. I mean, given that we are early in
10 May, it wasn't a week ago, right?

11 A. Yeah, again, I would rather answer
12 your question with the benefit of the actual
13 information.

14 405 Q. Would you have been the one giving
15 the direction to your trader?

16 A. No.

17 406 Q. Who would that have been?

18 A. That would have been either Peter
19 Fraser or Greg Boland.

20 407 Q. All right. Did West Face profit
21 from its short position?

22 A. Yes.

23 408 Q. How much did it profit?

24 MR. MILNE-SMITH: What is the relevance
25 of that?

1 MR. DiPUCCHIO: Well, it is ultimately
2 going to be relevant I think to a question of
3 damages, is it not? I mean, there is going to be
4 no surprise here.

5 U/A MR. MILNE-SMITH: I don't see the
6 connection frankly, but I'll take it under
7 advisement.

8 BY MR. DiPUCCHIO:

9 409 Q. Okay. So for example, if I look
10 at --

11 MR. MILNE-SMITH: Sorry, just to be
12 clear, Counsel, let's also remember that this is a
13 cross-examination on an affidavit in the course of
14 a motion seeking injunctive relief. It is not an
15 examination for discovery on an action for damages.

16 MR. DiPUCCHIO: Understood. I think
17 that the benefit that was received by West Face in
18 having used confidential information, which was the
19 allegation --

20 MR. MILNE-SMITH: Which we still
21 haven't seen any of.

22 BY MR. DiPUCCHIO:

23 410 Q. I understand the position you are
24 taking -- is relevant, but we can have that debate
25 at a later date.

1 So for example, I want to take you, Mr.
2 Griffin, to some of the examples in your March
3 presentation that refer to pieces of information
4 that would have post-dated your accumulation of the
5 short position, okay.

6 So for example, let's look at page 745
7 of the record. There is information there that as
8 of February 2015 Callidus has a gross loan book of
9 878 million. Obviously you would not have had that
10 information prior to February, right?

11 A. Correct.

12 411 Q. So for example, at page 747 these
13 charts as well contain information that would not
14 have been available between October and December
15 when you were accumulating the short position,
16 right?

17 A. Well, the chart on the right,
18 which is the gross yield of the portfolio, is
19 marked as of September 2014, so whenever the
20 company published its third quarter financial
21 results, that would have been disclosed.

22 412 Q. Likely it would not have been
23 October, though, right?

24 A. Correct.

25 413 Q. It likely would have been sometime

1 in January of the following year would be my guess?

2 A. There was discussion in the
3 management discussion analysis which gives forward
4 guidance with respect to assumptions and income
5 generation of the portfolio --

6 414 Q. Okay.

7 A. -- which pre-dated that as well.

8 415 Q. All right, and the chart on the
9 left clearly includes information that would have
10 been obtained subsequent to the accumulation of the
11 short position, right?

12 A. Not entirely.

13 416 Q. Well, current to February 2015
14 information?

15 A. So the 2011 gross loans
16 receivable, 2012, '13, the IPO balances, the 2014
17 year-end balance and then the 878 that is
18 referenced for February '15, that would have been
19 disclosed at varying points in time.

20 417 Q. And then, for example, if you look
21 to page 755 of the record, there is reference right
22 at the very bottom of the page to loans to Great
23 Lakes Aviation and Midwest Asphalt that I take it
24 you'll agree with me were originated most likely
25 after you accumulated your short position?

1 A. The origination dates of those
2 loans, if I recall correctly, Great Lakes Aviation
3 I believe is a public company. We would have been
4 relying on their SEC filings for that information.

5 418 Q. Right, but the loan was originated
6 on December 22nd, 2014?

7 A. That is what we have noted here.

8 419 Q. Right, and the loan in respect of
9 Midwest Asphalt was originated January 28th, 2015?

10 A. That is also what we noted.

11 420 Q. Right, so what I am suggesting to
12 you is those two loans were originated after you
13 took your short position?

14 A. Yeah, yes.

15 421 Q. Okay, so we'll just put that aside
16 for the moment.

17 Sorry, I just have a wrong reference in
18 my notes here, so I'm just trying to find what it
19 actually is.

20 Well, anyways, let me just ask you the
21 question. In your affidavit, you make the
22 statement that it appeared to you that Callidus was
23 overvalued?

24 A. Yes.

25 422 Q. Fair enough? When did you come to

1 that conclusion?

2 A. That was a conclusion that we
3 reached over time. We thought at the IPO valuation
4 that the company was coming out at the multiples
5 were favourable/aggressive, and as the stock price
6 increased from the IPO point, it became more
7 glaring.

8 423 Q. Okay, and so are you able to put
9 your finger on when you actually came to the view
10 that the company was overvalued?

11 A. Hard to pinpoint an exact date,
12 but that is the position we developed over a period
13 of time. We didn't buy stock in the initial public
14 offering, so you know, that is one indication of
15 whether we thought the company was over or
16 undervalued.

17 424 Q. Were you actually contemplating
18 buying stock in the IPO?

19 A. We had looked at the prospectus
20 with, you know, no intentions at the time, really
21 just to understand the offering and the business.

22 425 Q. At paragraph 110 of your
23 affidavit, you make the statement that:

24 "[...] Callidus claimed in its
25 IPO prospectus not to have 'realized

1 losses on principal on
2 Callidus-originated loans.'"

3 And then you go on to say in respect of
4 the November 24th press release that there were
5 comments made about there being no loans that are
6 non-performing and no realized loan losses.

7 So I guess I wanted to ask you, are you
8 suggesting, Mr. Griffin, in your affidavit that
9 there has been some sort of material non-disclosure
10 of realized losses?

11 A. No, what we are stating here is a
12 restatement of what the company's disclosure is,
13 which is the paragraph highlighted --

14 426 Q. But I take it you are not --

15 MR. MILNE-SMITH: Just let him finish.

16 BY MR. DiPUCCHIO:

17 427 Q. Yeah, go ahead.

18 A. The investment deck that we
19 prepared obviously makes judgments as to whether we
20 think a loan will be recouped in its entirety or
21 not. That is part of the valuation exercise.

22 428 Q. Yes.

23 A. And we believe there are
24 instances, such as Exchange Technology
25 specifically, where auction processes did not yield

1 an asset value sufficient to recover the principal
2 value on the company's credit which had been
3 extended.

4 429 Q. Okay, well, let's --

5 A. And that was --

6 430 Q. -- talk about Exchange in a
7 second.

8 A. And that was affirmed by
9 independent third parties who conducted the
10 auctions and reported by the Monitor.

11 431 Q. Okay, and we'll talk about that in
12 a --

13 A. And similarly, in the case of
14 Arthon Contractors where the company had run an
15 auction process for the Coalmont mine, it had run a
16 process or considered running a process for
17 Sandhill Materials where they had endeavoured to
18 sell through a broker the equipment that the
19 company owned which was used for civil contracting.
20 There were affirmations from third parties as to
21 what values had been achieved or whether a sales
22 result had been achieved at all, and in the case of
23 Coalmont that was not the case.

24 432 Q. Well, let's talk about those two
25 specific examples.

1 Let's talk about Arthon, first of all.
2 But before I do that, could you just
3 answer my question. Is what you are suggesting in
4 the affidavit that there has been material
5 non-disclosure of realized losses?

6 A. I'm not suggesting that.

7 433 Q. So let's talk about Arthon, and
8 you were aware through your research, I take it,
9 that Arthon was in CCAA when Callidus became
10 involved?

11 A. That was reported. It was either
12 they -- they had an assignment of a loan from HSBC.
13 The exact dates, it was somewhere around December
14 of 2013, if I recall correctly.

15 434 Q. But certainly you understood that
16 the company was in CCAA before Callidus became
17 involved?

18 A. I believe that was the case.

19 435 Q. All right. And as you have just
20 mentioned a second ago, Callidus took over HSBC's
21 position as the senior secured lender in the -- the
22 DIP lender, right?

23 A. Yes.

24 436 Q. And were you aware of whether
25 Callidus in essence controlled the CCAA process

1 through its position as DIP lender?

2 A. I think they had a high degree of
3 influence.

4 437 Q. And I take it from your research
5 you would have been aware that Arthon has four main
6 subsidiaries, right?

7 A. Could you list them?

8 438 Q. Contractors, Equipment, Coalmont
9 and Sandhill?

10 A. That is my recollection.

11 439 Q. And Sandhill is the aggregate
12 deposit?

13 A. That is correct.

14 440 Q. And when you say in paragraph
15 12 -- and I am looking or should be looking at your
16 appendix now.

17 MR. MILNE-SMITH: Appendix C, I
18 believe.

19 BY MR. DiPUCCHIO:

20 441 Q. Yes, that is correct, Counsel.

21 When you say in paragraph 12 of
22 Appendix C that various entities went into CCAA, do
23 you see that?

24 "As a result, various entities
25 within the group, including Arthon

1 Industries, were forced to apply for
2 CCAA protection"?

3 A. Yes.

4 442 Q. Did you understand that to include
5 Sandhill?

6 A. No.

7 443 Q. So Sandhill didn't go into CCAA?

8 A. My understanding was it was not an
9 applicant.

10 444 Q. All right, and then at page 20 of
11 Appendix C, at the last line you say:

12 "By that time [...]" --

13 MR. MILNE-SMITH: Sorry, you mean
14 paragraph now?

15 MR. DiPUCCHIO: Sorry, did I say
16 "page"?

17 MR. MILNE-SMITH: I believe so.

18 BY MR. DiPUCCHIO:

19 445 Q. Okay, I apologize. At paragraph
20 20, in the last sentence you say:

21 "By that time, Callidus had not
22 made any disclosures regarding
23 impairment of the loan."

24 Now, are you saying the loan was
25 impaired?

1 A. No. I'm just saying there had
2 been no disclosure of any impairment or any
3 substantiation of whether it was fully recoverable.

4 446 Q. Why would you say -- why would you
5 make a statement that Callidus hasn't made any
6 disclosure regarding impairment if you can't say
7 whether the loan was impaired or not?

8 A. It was a statement of fact.

9 447 Q. Okay, so it is just a statement of
10 fact?

11 A. Yes.

12 448 Q. And you didn't mean to imply that
13 Callidus should have been making some sort of
14 disclosure about impairment of the loan?

15 A. No, I think what we had discovered
16 in our examination was that the original intention
17 had been to sell the equipment in the company and
18 recoup some of the principal at risk, to sell the
19 Coalmont mine, and that had failed and resulted in
20 HSBC getting drawn on their 10 million dollar
21 subordinated commitment or LC, whatever you want to
22 refer to it as, that over time the company
23 continued to draw monies under the DIP financing in
24 increasing amounts, and even after the 10 million
25 was drawn from HSBC, that the advances kept

1 accumulating to higher levels.

2 And so we are not making a statement as
3 to recoverability or impairment of the loan. We
4 are just stating the facts of what has occurred as
5 reported in the Monitors' Reports.

6 449 Q. And one of those facts which you
7 chose to mention was that Callidus had not made any
8 disclosures regarding the impairment of the loan?

9 MR. MILNE-SMITH: We have covered that,
10 yes, Counsel.

11 BY MR. DiPUCCHIO:

12 450 Q. And you understood that part of
13 the security for the loan was Sandhill?

14 A. Yes.

15 451 Q. The assets of Sandhill?

16 A. Yes.

17 452 Q. And Sandhill wasn't in CCAA,
18 right?

19 A. Correct.

20 453 Q. So you had no insight into the
21 value of that security?

22 A. There was discussion in the
23 Monitors' Reports as to a process that they had
24 embarked upon with the same advisor who had advised
25 them on the Coalmont process where there was

1 financial modelling work that had been done to
2 assess the immediate sale value of Sandhill, and
3 there was a statement in the Monitors' Reports, if
4 I recall correctly, that said that value on an
5 immediate basis would be potentially insufficient
6 to cover the Callidus and HSBC credit facilities.

7 There was an alternative scenario
8 modelled which was a development scenario, and that
9 was perceived to yield better values but it would
10 be contingent on the investment of capital and
11 procurement of capital and that is what we
12 understood to have been examined in the context of
13 Sandhill.

14 454 Q. Okay, so other than what you have
15 just mentioned in terms of the Monitor saying that
16 the Sandhill -- the value of Sandhill was
17 potentially insufficient, was there any work you
18 did independent of that to try to --

19 A. We looked at what publicly
20 available information there was on Sandhill,
21 whether it was operating, whether it was
22 inoperative, did it need capital, was it permitted,
23 what information we could find publicly.

24 455 Q. Okay, and what did you conclude?

25 A. The permitting of the project we

1 weren't able to determine. I think we were able to
2 determine that the project was in need of capital
3 for development. We were able to determine where
4 it was located. There was some discussion in the
5 Monitors' Reports around the plans for Sandhill
6 longer term in terms of its intention to service
7 LNG Development in the immediate area, and that the
8 company if it were to pursue anything other than
9 the immediate liquidation scenario or sales
10 scenario was examining alternative forms of
11 financing to pursue that project.

12 456 Q. All right, but you never did an
13 appraisal yourself of the value of the assets of
14 Sandhill?

15 A. We didn't, no.

16 457 Q. You didn't have any information in
17 order to be able to do that, right?

18 A. We had -- what information we
19 reference is really what the Monitor and their
20 financial advisor, MNP, the financial advisor had
21 prepared, which was an immediate estimation of the
22 sale value of the asset and their commentary, which
23 was enclosed.

24 458 Q. Right, and you certainly didn't
25 have a copy of any appraisal that would have been

1 in the possession of Catalyst, for example -- or
2 Callidus, rather?

3 A. No, we did not.

4 459 Q. And as I understand it, through
5 that CCAA process the parent company in essence
6 sold off the bad asset, right, which was Coalmont?

7 A. No, they ran an unsuccessful
8 process for Coalmont that didn't yield any results.

9 460 Q. Okay. And so what ended up
10 happening with Coalmont?

11 A. I believe they assigned it into
12 bankruptcy and they assumed some of the assets.
13 One of the assets of Coalmont which they said was
14 the most material according to the Monitors'
15 Reports was a coal-washing plant facility, and my
16 understanding was that was assumed by the
17 continuing entities to which Callidus had extended
18 credit.

19 461 Q. And were the unsecured creditors
20 shed through the CCAA process?

21 A. I believe so.

22 462 Q. And the Sandhill asset was
23 essentially retained, right?

24 A. That is correct.

25 463 Q. And so Arthon, the parent company,

1 emerged from the CCAA process ultimately, right?

2 A. That is our understanding.

3 464 Q. And if I suggested to you that
4 Callidus is fully secured on its loan, would you
5 have any information that you could point me to to
6 suggest otherwise?

7 A. Well, other than what I have
8 referenced cumulatively in our discussion here,
9 that was the information that we had access to.

10 465 Q. Okay, and can you point me to any
11 evidence that the loan is non-performing?

12 A. Well, we made an estimation of
13 what we thought the underlying collateral value of
14 the assets were underpinning the loan and whether
15 that value would be recovered immediately or over
16 time, whether it was ascertainable. As to whether
17 it is performing on interest service obligations
18 and current, I presume it is, as it hasn't been
19 discussed in any other context.

20 466 Q. You don't know one way or the
21 other?

22 A. Well, I guess I assume by virtue
23 of the public disclosure of Callidus that it is not
24 non-performing, as they define it.

25 467 Q. And certainly you have no reason

1 to challenge that?

2 A. I'm taking it on faith what the
3 publicly disclosed information includes.

4 468 Q. Okay. And the other one you
5 mentioned just a second ago that we were talking
6 about was -- what was the other example you gave?

7 MR. MILNE-SMITH: It was Exchange, I
8 believe.

9 BY MR. DiPUCCHIO:

10 469 Q. Exchange, I believe, yeah, okay.
11 We'll talk about Exchange in a second.

12 So let's just continue going through
13 some of the analysis you did, because you have
14 included many exhibits that relate to the research
15 that you conducted after you took the short
16 position, right?

17 A. No, these are -- this is research
18 that is really a culmination of everything we had
19 done.

20 470 Q. Okay, let me just -- I want to
21 take you, and it will be very quick, but I just
22 want to do this, so it may help to have all the
23 volumes in front of us.

24 MR. MILNE-SMITH: I have got them.
25 Where would you like to start?

1 MR. DiPUCCHIO: 54.

2 MR. WINTON: Volume 3.

3 BY MR. DiPUCCHIO:

4 471 Q. So this is one of the documents
5 that would have been generated through your
6 research?

7 A. Yes.

8 472 Q. Okay, and that looks to me like it
9 was a document that was accessed or created on
10 January 27th, 2015; is that fair?

11 A. For the purposes of inclusion in
12 my affidavit it was, but it was not originally
13 viewed on that date.

14 473 Q. Okay, so you are suggesting that
15 the -- because we are going to have several
16 examples of this if we go through each and every
17 one, but maybe to short-circuit this, you'll agree
18 with me that many of the exhibits that you have
19 appended to your affidavit would bear a date in
20 January or February of 2015?

21 A. Yes.

22 474 Q. Okay, reflecting the date that
23 they were created?

24 A. No.

25 MR. MILNE-SMITH: No.

1 BY MR. DiPUCCHIO:

2 475 Q. No, I was just -- I hadn't
3 finished my question. Reflecting the date that
4 they were created you say for the purpose of
5 inclusion in your affidavit?

6 A. For purposes of inclusion in the
7 affidavit only, yes.

8 476 Q. And where would I find the
9 original information?

10 A. Well, these are all publicly
11 maintained websites. Anyone can access them.

12 477 Q. So are you suggesting that none of
13 this would have been printed out for the purposes
14 of your research?

15 A. Some of it may have been.

16 478 Q. Okay, and the stuff that was
17 printed out, is there any reason why we don't have
18 the originals and we have some copies that were
19 generated afterwards?

20 A. Only because, you know, the
21 informational content is identical, unless the CIPO
22 has updated their site subsequent to us originally
23 looking at it.

24 479 Q. So what you are saying is that
25 most of what you have reproduced in your affidavit

1 that would have been produced for the purposes of
2 the affidavit would exist in hard copy somewhere?

3 A. No, I'm not suggesting that.

4 480 Q. Okay, so we --

5 A. We didn't print --

6 481 Q. You just would have looked at it
7 on a website?

8 A. Sometimes.

9 482 Q. But some of it may be in hard
10 copy?

11 A. Entirely possible.

12 483 Q. Okay, so I take it that is going
13 to be captured in whatever response you give me in
14 respect of this hard drive that was created for
15 this purpose, right?

16 U/A MR. MILNE-SMITH: Yes, I'll take under
17 advisement anything to do with printouts of
18 publicly available information reviewed in respect
19 of Callidus.

20 MR. DiPUCCHIO: Okay.

21 MR. MILNE-SMITH: I don't think it
22 would be on the drive because the drive is
23 electronic. We are talking about a hard drive.

24 BY MR. DiPUCCHIO:

25 484 Q. Okay, I hadn't understood how

1 exactly this drive was maintained. I thought maybe
2 you would have copies, hard copies of documents
3 that would be scanned in and kept on a hard drive,
4 but maybe I'm wrong.

5 So is there a paper file that would
6 exist in relation to the research that was done in
7 regards to Callidus?

8 A. There will certainly be some paper
9 records. There will be some electronically stored
10 documents, and some of what we have done is, you
11 know, in this case we may have printed some of
12 the -- you know, in this case the CIPO data that we
13 may have printed, Monitors' Reports, and we may
14 have viewed them electronically. There is no, you
15 know, necessary process to outline in terms of what
16 we print or don't print.

17 485 Q. So it is all encompassed in the
18 same request, I take it, right?

19 MR. MILNE-SMITH: Yes.

20 BY MR. DiPUCCHIO:

21 486 Q. And you know, Mr. Griffin, that --
22 so that is short-circuited, that whole line of
23 inquiry, so we don't have to go through, you'll
24 happily note, we don't have to go through all of
25 the various exhibits that were appended.

1 So, Mr. Griffin, you are aware through
2 the prospectus that was filed in the IPO of
3 Callidus that Callidus did have loan loss
4 provisions, right?

5 A. Yes.

6 487 Q. And you understood that those loan
7 loss provisions at the time of the IPO were about 6
8 million dollars?

9 A. I don't recall.

10 488 Q. And if you look at page 612 of
11 your motion record, so that would be probably
12 Volume 2.

13 MR. MILNE-SMITH: So this is tab 33?

14 MR. DiPUCCHIO: Correct, Exhibit 33.

15 MR. MILNE-SMITH: And this is the
16 Callidus Capital Corporation prospectus for the
17 initial public offering dated April 15, 2014.

18 BY MR. DiPUCCHIO:

19 489 Q. Correct, which I think you have
20 mentioned you would have reviewed, right?

21 A. Yes.

22 490 Q. So you would have been aware,
23 looking at Note 6, that the company said that as at
24 December 31, 2013, it had an allowance for loan
25 losses of approximately \$10,176,000 --

1 A. I thought you had earlier asked me
2 about a 6 million dollar loan loss provision.

3 491 Q. Yeah, I thought that that was -- I
4 had a note of a 6 million --

5 A. Which number do you want me to
6 refer to?

7 492 Q. At page 593 -- I have got a record
8 of it, and it is page 593. So it would be the same
9 document.

10 A. You may be confused between a
11 current provision in the quarter and a cumulative
12 provision.

13 493 Q. Yes, right. I think that's the --

14 A. Which one would you like me to
15 address?

16 494 Q. Well, let's look at the one on
17 Note 6. That is a cumulative provision, right?

18 A. That is a cumulative provision.

19 495 Q. So you were aware -- and when I
20 mentioned 6 million, I apologize, that was my
21 mistake in my notes. But you were aware that as of
22 the end of 2013 that Callidus was reporting that it
23 had a cumulative loan loss provision in excess of
24 10 million dollars?

25 A. That is what the financial

1 statements indicate.

2 496 Q. Okay. And you also saw the
3 statement that the loan loss allowances were offset
4 against loan receivables?

5 A. Can you refer me to that, please?

6 497 Q. Yes, in Note 6, loan losses of
7 \$10,176,000 --

8 A. Yes.

9 498 Q. -- which was offset against loans
10 receivable?

11 A. Yes.

12 499 Q. Were you aware of that?

13 A. Yes.

14 500 Q. And there were no direct
15 write-offs for 2013? Did you see that in Note 6?

16 A. Can you refer me to that?

17 501 Q. Right at the bottom.

18 A. Yes.

19 502 Q. And you are not suggesting in any
20 of your evidence that any of this is incorrect?

21 A. I have no knowledge whether it is
22 or not. I'm not making that suggestion.

23 503 Q. All right. Bear with me for a
24 second.

25 A. I would indicate, though, however,

1 that the accounting for provisions subsequently
2 changed in the fourth quarter of 2014.

3 504 Q. Okay.

4 A. And that the company's
5 presentation of those losses changed to include the
6 guarantee that was provided by Catalyst to the
7 Callidus vehicle.

8 505 Q. And you have no reason to question
9 anything the company said in that regard?

10 A. I am just going on the public
11 information that is available.

12 506 Q. All right. One second as I review
13 my notes.

14 Do I take it in your research, because
15 you refer in your affidavit to searches that are
16 done on law firm websites and case dockets of
17 ongoing bankruptcy proceedings and things of that
18 nature, do I take it that in your research we might
19 see evidence of that as well?

20 A. Yes.

21 507 Q. Do you recall specifically where
22 you would have looked to do that research?

23 A. Yes, it was all internet-based
24 research predominantly.

25 508 Q. And do you recall any specifics?

1 A. Yes, we would have done typically
2 Google searches using various search syntaxes,
3 which include different search terms in the
4 strings, too numerous to list.

5 There were indications of, you know,
6 that pop-up on those searches that we would then
7 drill down into; so as an example, if a law firm
8 had worked on a transaction that one of the lawyers
9 had mentioned in their deal history publicly for
10 Callidus, we found evidence of transactions that
11 were not discussed in the public disclosure with
12 Callidus at the IPO point that were available in
13 other capacities.

14 509 Q. And is this all being done via
15 Google searches?

16 A. Yes.

17 510 Q. And you are just typing in search
18 parameters?

19 A. That's correct.

20 511 Q. Search terms, basically?

21 A. Yeah, the other tool we have
22 available to us is Bloomberg.

23 512 Q. Yes.

24 A. And you could perform similar
25 search functions on a Bloomberg terminal, not quite

1 as robust.

2 513 Q. Okay. And you mention in your
3 affidavit, and it is at paragraph 123 if you want
4 to have it in front of you, but you mention that
5 there are other internal methods that you use?

6 A. Sorry, can you refer me to the
7 paragraph?

8 514 Q. 123.

9 MR. MILNE-SMITH: It is page 48 of the
10 record. It's right there.

11 THE DEPONENT: Yes.

12 BY MR. DiPUCCHIO:

13 515 Q. And what would those internal
14 methods be?

15 A. Well, I think it is really largely
16 what we have outlined here, so looking at the
17 Industry Canada website which has a listing of
18 outstanding CCAA applications, looking at the
19 U.S. --

20 516 Q. Are those searchable?

21 A. You have to -- there is a listing
22 and there is usually links to the Monitors'
23 websites.

24 517 Q. Right.

25 A. And then once you are in the

1 Monitors' websites, you can open documents and word
2 search a lot of them, as they are either PDF or --
3 typically PDF documents.

4 518 Q. And that is what you did here?
5 That is what is involved here?

6 A. In part.

7 519 Q. And what other internal methods
8 were you referring to?

9 A. There is the U.S. Pacer System
10 which has Bankruptcy Court docs which is actually a
11 more searchable universe, so you can create news
12 alerts within the Pacer System, from what I
13 understand, and that will prompt you with
14 information on specific cases or topics.

15 We looked through law sites of major --
16 sorry, the websites of major Canadian law firms,
17 you know, Stikeman, Elliott, Davies, Aird & Berlis,
18 BLG, Fasken Martineau, Cassels Brock, any company
19 that, you know, we think could have been an agent
20 or advisor, to see if there was any mention of
21 transactions.

22 We looked at the case dockets of
23 ongoing U.S. bankruptcy proceedings in various
24 jurisdictions, most of which was sourced through
25 Pacer.

1 We looked through the Intellectual
2 Property Office websites in Canada and the U.S., so
3 any time a lien had been created against
4 intellectual property, there was a record of when
5 that lien had been registered and/or discharged and
6 the counter-party to whom it had been registered.

7 520 Q. So those are all the internal
8 methods you are referring to?

9 A. Yeah, we looked at SEC filings.
10 You know, I think in the case of a company like
11 Great Lakes Aviation, which if I recollect properly
12 is public and a reporting issuer in the U.S., we
13 would have looked at their EDGAR filings. If a
14 company was public, like Leader Energy Services or
15 North American Tungston, we would have looked at
16 their public disclosure.

17 521 Q. And this was all you and Mr. Wang
18 who were performing this research?

19 A. Yes.

20 522 Q. Do you have a sense of how many
21 hours you would have spent doing this?

22 A. We don't keep a docket like a
23 lawyer does, but we -- it would have been
24 substantive.

25 523 Q. Weeks of your time?

1 A. Cumulatively, yes.

2 524 Q. And you identify in your affidavit
3 six loans which were of particular interest to you,
4 right, in your research, through your research?

5 A. What page are you on?

6 525 Q. I'm on page 49 of the record, of
7 your affidavit.

8 A. So you are referring to Exchange
9 Technology, Arthon, Leader, North American
10 Tungston, Esco and Deepak?

11 526 Q. Right.

12 A. Yes.

13 527 Q. And those were the ones you say
14 you found information that raised significant
15 concern in your mind about the ability of the
16 borrower to ultimately repay the debt, right?

17 A. It goes beyond that. I think we
18 found in our examination an understanding of
19 collateral that we would be -- that we would
20 consider at West Face to be atypical of asset-based
21 lending collateral as we conventionally would
22 describe it. That is particularly the case in
23 something like North American Tungston and Deepak
24 International which had no operating business.

25 And we also --

1 528 Q. Sorry, sorry, you say it is
2 unconventional why?

3 A. Well, if we go back to what I had
4 originally stated and you had asked me about how
5 I -- or what I believe an ABL loan constitutes in
6 its strictest definition, asset-based lending at
7 its core is basically lending against the most
8 liquid assets of a company. You are not making
9 enterprise loans. You are not making cash flow
10 loans. You are not making loans whose recovery
11 value is contingent on the liquidation of
12 non-fungible, non-liquid property, property which
13 would be classified not as a current asset of a
14 company but rather a long-term asset, so as the
15 case of Coalmont, like a wash plant, that would be
16 booked as property, plant and equipment.

17 You know, in the case of -- you know,
18 so that is what we were trying to ascertain is what
19 is the nature of the collateral backing these
20 loans, who are the borrowers, and not just is there
21 evidence of a current impairment but is there a
22 potential for future difficulties in recovering the
23 principal that has been extended on these loans.

24 529 Q. And that is again going back to
25 our discussion where in your view a conventional

1 asset-based lender is lending as against inventory
2 and receivables?

3 A. Yes, in the strictest definition.

4 530 Q. And when you say the "strictest
5 definition", what are you referring to?

6 A. Well, I would say the vast
7 preponderance of ABL lenders that we have worked
8 with in Canada, Wells Fargo, CIT, CIBC asset-based
9 lending, typically their loans are going to be
10 confined to accounts receivable and inventories and
11 their borrowing bases defined on that.

12 To the extent they take collateral
13 charges over plant, property and equipment, they
14 are usually in a second capacity, not as a primary
15 collateral.

16 531 Q. Right, and did you understand from
17 the prospectus that you read in regards to Callidus
18 that this wasn't a conventional asset-based lender?

19 A. I think there were important
20 differences, in our view.

21 532 Q. Okay, but did you understand that
22 they themselves were not holding themselves out to
23 be a conventional asset-based lender?

24 A. I don't know.

25 533 Q. Did you know on average what kind

1 of interest rates they were charging for their
2 loans?

3 A. Yes.

4 534 Q. And was it quite high?

5 A. It was very high.

6 535 Q. Right, and is that consistent with
7 what you would view to be the business of a
8 conventional asset-based lender?

9 A. No, I think if you asked me my
10 view, I would say that the collateral that they
11 were taking interest in was atypical of what we
12 would call an ABL lender and that the rates of
13 interest being charged were materially higher than
14 other lenders that we have seen in the market, both
15 secured and unsecured of any form.

16 536 Q. Right, so you understood that the
17 interest rates that were being charged were much
18 higher than would otherwise be charged in these
19 traditional situations that you are talking about?

20 A. That certainly seemed to be the
21 case.

22 537 Q. And why did you think that was?

23 A. Well, I think as you move out on
24 the risk spectrum in the investment industry,
25 typically rates of return move higher.

1 538 Q. So let's talk a little bit about
2 the six loans that were of particular interest to
3 you. We have talked about Arthon already, and so
4 we won't repeat what we have said about Arthon.

5 And in regards to Exchange, did you
6 understand through your research that Callidus had
7 actually initiated the receivership proceedings?

8 A. Yes, I think we previously
9 established that.

10 539 Q. Okay, and instead of going through
11 a liquidation, what ultimately happened is that
12 Callidus bought the asset using a credit bid,
13 right?

14 A. That is our understanding.

15 540 Q. And did you understand, Mr.
16 Griffin, that as a result of that transaction in
17 the receivership process that the loan and any
18 associated loan loss provision would have moved off
19 the loan portfolio to a separate entry on the
20 balance sheet?

21 A. Sorry, on the Callidus balance
22 sheet?

23 541 Q. Yes.

24 A. I think at a future date they
25 ended up classifying it as an asset held for

1 sale --

2 542 Q. Right.

3 A. -- at Q4, and the loan balance had
4 an exposure, had increased materially from what the
5 last reported balance was in the Monitors' Report,
6 north of 60 million dollars, if I recall correctly.

7 543 Q. Right, so did you understand then
8 that from a balance sheet perspective that it moved
9 off into a separate area of the balance sheet?

10 A. As they reported it and it
11 appeared in their footnotes.

12 544 Q. And it was at that stage
13 considered to be an asset held for sale, as you
14 have said?

15 A. Yes.

16 545 Q. And if that asset gets sold for
17 more than the value of the loan, then there would
18 be a gain, and if it gets sold for less than the
19 value of the loan, then it would be a loss?

20 A. Correct.

21 546 Q. Is that fair? And do you know
22 whether any of that information is audited?

23 A. That would depend on whether it is
24 in the Q4 financial statements or -- which would be
25 year-end audited results or the quarterlies which

1 would be unaudited.

2 547 Q. Did you have any information one
3 way or the other as to whether that was an audited
4 figure?

5 A. I can't recall where it first
6 appeared as an asset held for sale.

7 548 Q. And certainly you have no insight
8 ultimately as to whether there would be a loss or
9 not on this loan, right?

10 A. Well, I would say that during the
11 pendency of the process, I guess receivership
12 process as we have established, there was a
13 comprehensive auction process run by Canaccord
14 Genuity and KPMG, and the only bid that surfaced
15 for the company was a bid, if I recall correctly,
16 of 17 million dollars which was contingent and did
17 not close.

18 So I guess what I would suggest to you
19 is that in a process where 56 parties were
20 contacted, signed -- and a subset of those signed
21 LOIs and a subset of those went to diligence on the
22 company, you had a fairly transparent and
23 independent process run for the company to
24 ascertain whether its market value was sufficient
25 to cover the loan that they had extended at the

1 time, which was, if I recall, somewhere in the
2 order of 45 million and the Monitor themselves
3 report that the only bids received, which did not
4 go to a binding commitment, were significantly less
5 than that.

6 549 Q. The receiver?

7 A. Yes.

8 550 Q. Yes, and do you have any
9 information beyond that to suggest that the loan is
10 going to be at a loss?

11 A. At this juncture, that is what we
12 have.

13 551 Q. Okay. As I say, we have talked
14 about Arthon. With respect to Leader, am I right
15 that you can't say how the loan is secured with
16 respect to Leader?

17 A. Our understanding is that it is
18 secured against the fleet equipment of the company.

19 552 Q. Right, and you got that
20 understanding from the filings that you reviewed?

21 A. Yes, whatever public filings
22 Leader made available.

23 553 Q. And if it is secured by equipment,
24 then any loss or potential loss would depend on the
25 value of that equipment, right?

1 A. Yes.

2 554 Q. And to state the obvious, if the
3 value of the equipment is higher than the value of
4 the loan, then there isn't going to be a loss?

5 A. Correct.

6 555 Q. And did you take any -- what did
7 you take from the Notice of Intention process in
8 that case?

9 A. I'm sorry, could you --

10 556 Q. Was that some significant event
11 vis-à-vis Callidus?

12 A. I'm not sure what you are
13 referring to. Can you remind me?

14 557 Q. All right, well, you referred to
15 the fact that the company entered into a Notice of
16 Intention, right, process?

17 A. Yeah, yes.

18 558 Q. Okay, and what I am suggesting to
19 you is --

20 A. Yeah, right, to the --

21 559 Q. -- is there any significance in
22 that?

23 A. Well, I guess our inference was
24 going to be that we would have in relatively short
25 order a determination as to whether the realizable

1 value of that equipment was greater or less than
2 the principal value of the loan.

3 560 Q. Okay.

4 A. And one of the outcomes of that
5 process may have been the sale transaction.

6 561 Q. All right, but is it your view
7 that the secured lenders are part of the proposal
8 process?

9 A. They would certainly be a party to
10 it.

11 562 Q. Would it not only affect the
12 unsecureds?

13 A. It would affect all lenders,
14 including the equity holders, public equity
15 holders.

16 563 Q. Okay. And did you have any
17 information available to you as to what the
18 appraisal values were for the equipment that was
19 securing the loan?

20 A. What we have are realtime
21 indications of where companies in that sector that
22 we would consider comparable to Leader trade on a
23 book value basis. We have been through
24 cumulatively in our history a number of
25 restructuring transactions in the services sector,

1 and I think we have a cumulative institutional
2 knowledge in a soft commodity market of where this
3 type of equipment would trade generically speaking
4 in a liquidation in a poor market for energy
5 services.

6 564 Q. And where is your analysis on
7 that? Was that the --

8 A. It was partly referred to in the
9 presentation deck we put together.

10 565 Q. And that is the chart that we
11 looked at? Was that the little chart that we
12 looked at?

13 A. That provides a synopsis.

14 566 Q. That was done in terms of the net
15 book value of the assets?

16 A. It references a margin on the
17 reported accounting value of those assets on a
18 depreciated basis.

19 567 Q. And so if you look at page 1301 of
20 the record, Mr. Griffin, this is what I was
21 referring to when I was asking you questions about
22 whether to your understanding the Notice of
23 Intention --

24 MR. WINTON: It's Exhibit 151.

25 BY MR. DiPUCCHIO:

1 568 Q. -- affected the secured lender.

2 Do you see that it says:

3 "Pursuant to the filing the
4 Company has received temporary
5 protection from its creditors, other
6 than its senior lender, as it
7 attempts to restructure"?

8 A. I think what you asked me is would
9 the senior lender be involved in the process in any
10 capacity, and I had indicated yes, they probably
11 would be involved in the process.

12 569 Q. Okay.

13 A. I wasn't making any comment about
14 whether they were seeking to compromise the
15 liabilities of the senior lender at that juncture.

16 570 Q. All right.

17 A. What I would indicate is that
18 Leader had a cumulative history of operating
19 losses, and it was not clear to us as to how the
20 company was going to raise additional capital to
21 sustain its operations.

22 One of the consequences of that may
23 have been an orderly liquidation of the assets of
24 the company to satisfy all lenders, secured or
25 unsecured, and we await further information.

1 571 Q. So that is not information you
2 had; that was an assumption you were making?

3 A. Yes.

4 572 Q. And North American Tungston, which
5 is the other one you referred to, that has two
6 mines, right, a performing and non-performing?

7 A. Our understanding was there was an
8 operating mine and a non-operating mine, and the
9 security was only granted over one of them, if I
10 recall correctly.

11 573 Q. And that would have been the
12 performing mine?

13 A. There was a mine which was coming
14 to the end of its productive life. Let me just
15 read my --

16 574 Q. Sure.

17 A. (Witness reviews document.)
18 The Cantung mine.

19 575 Q. Okay, and that is the performing
20 mine?

21 A. Yeah, that is the mine that has a
22 mineral reserve life that supports the production
23 life through 2017/18.

24 576 Q. Right, okay. And I think you
25 indicated in your affidavit it has only two years

1 of reserves; is that what you are referring to?

2 A. That is what is the publicly
3 reported financial statements.

4 577 Q. Do you know whether that is
5 consistent with all mines?

6 A. Well, I would say mines can have
7 short reserve lives on a running basis, but you
8 know, there has been an indication that the life of
9 the mine would not run beyond that, as far as I
10 remember in the public disclosure.

11 578 Q. And do you know the value of the
12 loan in that case?

13 A. Off the top -- I mean, we make
14 reference to it somewhere in our presentation deck,
15 I believe. It is publicly reported by North
16 American Tungston.

17 579 Q. And I take it, consistent with
18 what you have told me previously, that you are not
19 aware of the appraised value of the security?

20 A. Well, North American Tungston
21 would report a carrying value on its own balance
22 sheet of what the assets are worth according to the
23 financial statements.

24 580 Q. Right, and I am asking you the
25 appraised value of the security?

1 A. Unless they provided a prior
2 appraisal, I mean, in connection with a resources
3 company, all of them are required to publish
4 NI-51101s with estimates of the present value of
5 the remaining reserves and resources.

6 581 Q. All right.

7 A. So I would say that there is
8 independent audits performed at various discount
9 rates by third parties that would -- or from which
10 you could surmise a value for the asset, obviously
11 dependent on the commodity price assumptions that
12 are embedded whether those are realistic or not.

13 MR. DiPUCCHIO: Okay, give me one
14 second.

15 Do you want to take a break now at this
16 point?

17 MR. MILNE-SMITH: Sure.

18 MR. DiPUCCHIO: It is 1 o'clock, so we
19 might as well take a break.

20 MR. MILNE-SMITH: I assume you are not
21 close enough to being done?

22 MR. DiPUCCHIO: No, I'm not close
23 enough to being done, so we might as well take a
24 lunch, and then I won't be much longer after that,
25 but we might as well take a lunch now.

1 MR. MILNE-SMITH: When do you want to
2 come back?

3 MR. DiPUCCHIO: 2 o'clock is fine.

4 -- RECESSED AT 1:00 P.M.

5 -- RESUMED AT 2:01 P.M.

6 BY MR. DiPUCCHIO:

7 582 Q. Just to circle back, Mr. Griffin,
8 to something that I had asked you previously but I
9 don't think I asked you the follow-up question, you
10 had indicated that you never shared any of the
11 iterations of your research report on Callidus with
12 any third parties, right?

13 A. I didn't send a research report to
14 any third parties.

15 583 Q. And my follow-up question is have
16 you discussed the results of your research on
17 Callidus with any third parties?

18 A. No. I mean, my discussions with
19 third parties on Callidus really was limited to,
20 well, one particular investment analyst who covers
21 the company externally, and it was us asking
22 questions of them around some of the reports that
23 they had put out.

24 584 Q. To try and get some information
25 for the purposes of your research?

1 A. Yeah, and questions on the content
2 of a piece of research that they had written.

3 585 Q. Okay, and other than that one --
4 and who was that one analyst?

5 A. It was an analyst at TD Securities
6 who covers the company. I just can't remember his
7 name.

8 586 Q. All right, fine. And other than
9 that one analyst, you don't recall having any
10 discussions with any third parties?

11 A. We had -- let's see. So at one
12 point we had a meeting with Veritas Investment
13 Research to discuss a number of opportunities that
14 they were following. We talked about Bombardier,
15 Loblaws, AutoCanada, and they had apparently --
16 well, I don't know where it started but either
17 mentioned or asked us what we were working on and
18 the subject of Callidus came up.

19 587 Q. When was this meeting with
20 Veritas?

21 A. I would have to go back and look.

22 588 Q. Okay, could you go back and check
23 your calendar and give me a date for the meeting
24 with Veritas?

25 U/T MR. MILNE-SMITH: Yeah, that is fine,

1 we'll do that.

2 BY MR. DiPUCCHIO:

3 589 Q. And who did you meet with at
4 Veritas?

5 A. I don't recall the names. I would
6 have to go back and look. I didn't -- I don't
7 remember these individuals. I think I have only --
8 the only occasion I had met with them was quite a
9 few years prior, so --

10 590 Q. Can you go back and do the best
11 you can and try to get the names of the people
12 that -- would it have been one person or more than
13 one person?

14 A. No, it was more than one person.

15 591 Q. Okay, can you get me the names of
16 the people that you would have met with at Veritas?

17 U/A MR. MILNE-SMITH: I'll take the names
18 under advisement.

19 BY MR. DiPUCCHIO:

20 592 Q. And was it only you?

21 A. No.

22 593 Q. Who else at West Face would have
23 been --

24 A. I believe Greg Boland, myself, and
25 I believe I think Peter Fraser may have been there

1 as well, but I would have to confirm that.

2 594 Q. And insofar as Callidus was
3 concerned, what was your discussion -- tell me
4 about your discussion with the people at Veritas
5 about Callidus?

6 A. Well, they asked us if we had
7 looked at the situation, had we conducted any -- if
8 we owned it or were aware of it and have looked at
9 it in the IPO documentation.

10 595 Q. And what was your response to
11 them?

12 A. We said we had done some work on
13 it.

14 596 Q. And did you speak to them about
15 the work that you had done?

16 A. We talked about like process, you
17 know, what we were doing in terms of, you know,
18 what I had explained to you earlier in terms of the
19 work flow that we had done.

20 597 Q. And did you discuss any of your
21 conclusions as a result of your research with them?

22 A. Well, what we had shared with them
23 was some of the borrowers that we had identified.

24 598 Q. Had you actually transmitted
25 anything to them in writing before or after the

1 meeting?

2 A. I think Greg asked Allen, the
3 analyst I had previously referred to, to send them
4 some names of borrowers that we had identified.

5 599 Q. And did you do that?

6 A. I did not do it, but he did.

7 600 Q. Could you produce for me whatever
8 correspondence would have flowed between West Face
9 and Veritas as a result of these meetings or
10 discussions?

11 U/T MR. MILNE-SMITH: Well, I can't do that
12 because, as Mr. Griffin indicated, there were a
13 number of other subjects that were discussed but I
14 can, I believe -- well, I will make best efforts to
15 produce to you the document or documents that Mr.
16 Griffin referred to in terms of identifying the
17 borrowers that was sent by Mr. Wang to Veritas.

18 BY MR. DiPUCCHIO:

19 601 Q. Okay, well, I would certainly to
20 the extent there is other correspondence that may
21 also touch upon other matters, I am happy to hear
22 your suggestion about how we can redact the
23 correspondence if you think there is other matters
24 that would not in any way, shape or form be
25 relevant to this matter, but if there is other

1 correspondence that relates specifically to
2 Callidus, then I would like to see that?

3 U/A MR. MILNE-SMITH: Yeah, I don't know
4 what that context would be, so I'll take it under
5 advisement.

6 BY MR. DiPUCCHIO:

7 602 Q. And what was the purpose of having
8 this discussion with Veritas?

9 A. Well, the meeting was set up to
10 discuss their investment research product, and you
11 know, they are basically a boutique non-affiliated
12 investment research house, and you know, they talk
13 about the scope of their service offering and the
14 research products and the names they follow.

15 603 Q. And was it your intention to have
16 them publish as an independent research house a
17 report that would ultimately benefit your short
18 position?

19 A. No, we did not.

20 604 Q. So then why would you care about
21 what they had to say about Callidus?

22 A. No, the inquiry had been made of
23 us as to whether we looked at it.

24 605 Q. Okay, and why would you bother to
25 share the results of your research with them?

1 A. Greg was asked a question and he
2 answered it.

3 606 Q. All right, well, he went beyond
4 answering a question, though. You actually sent
5 them the names, some of the names of the borrowers,
6 right?

7 A. Yes.

8 607 Q. And was there some benefit that
9 you perceived in doing that?

10 A. I didn't have the dialogue with
11 them about that. But no, it was --

12 608 Q. Purely altruistic?

13 A. No, I think Greg was -- you know,
14 it was Greg's decision as to whether he sent it
15 over or not.

16 609 Q. And did you have a discussion with
17 Greg before he decided to do that?

18 A. I did not, no.

19 610 Q. Can you ask Greg what his
20 rationale was for sending that over to Veritas?

21 U/T MR. MILNE-SMITH: Yes, we'll do that.

22 BY MR. DiPUCCHIO:

23 611 Q. And you are aware subsequently
24 that Veritas published a report on Callidus, right?

25 A. Yes.

1 612 Q. And were you involved, other than
2 sending -- was West Face involved, not you
3 personally, was West Face involved other than in
4 sending the names of these borrowers in the
5 preparation of that research report?

6 A. We were not.

7 613 Q. Can I ask you to turn up, and this
8 is going to be in our motion record, tab FF. And
9 so there is reference here at the top part of the
10 page --

11 MR. MILNE-SMITH: Sorry, which page are
12 you looking at?

13 BY MR. DiPUCCHIO:

14 614 Q. 321, sorry, to a comment that was
15 posted on December 30th, 2014, by a Jerome Hass.
16 Do you know that individual?

17 A. I do not know that individual.

18 615 Q. And do you see in the comment or
19 in the opinion that has been posted the sentence:

20 "A firm presented a very
21 formidable short case recently which
22 is probably part of the reason for
23 the selloff."

24 Do you see that comment?

25 A. Yes.

1 616 Q. Were you the firm that presented
2 the short case?

3 A. No.

4 617 Q. You weren't presenting any short
5 case in December of 2014?

6 A. Not to my knowledge.

7 618 Q. Can you make inquiries with your
8 other partners and find out whether they were
9 involved in presenting a short case?

10 U/A MR. MILNE-SMITH: We'll take it under
11 advisement.

12 BY MR. DiPUCCHIO:

13 619 Q. All right. We were just talking
14 before the break about North American Tungston, Mr.
15 Griffin, and you remember you were talking about
16 the life of the mine; do you remember that?

17 A. Yes.

18 620 Q. And when you were preparing your
19 research -- I mean, you didn't mean to suggest in
20 any way that this mine was going to be shut down in
21 2018, did you?

22 A. We were simply paraphrasing what
23 the public disclosure was from the company itself
24 that referenced in their MD&A what the remaining
25 reserve life of the asset was, and then also, you

1 know, there was references to the security that was
2 afforded to the loan and also references to the
3 status of the Mactung property which, if I recall
4 correctly, was not developed at that juncture.

5 621 Q. All right, but you have -- and I
6 think I read this into your affidavit, that you
7 have a pretty good background in mining, right?

8 A. I sit on the board of a mining
9 company.

10 622 Q. Right, so you wouldn't have read
11 into any of the public filings that you reviewed
12 that somehow this mine was going to be shut down in
13 2018?

14 A. I don't recall specifically. I
15 would have to go back and look at the disclosure
16 that we looked at.

17 623 Q. Well, if you look at Exhibit 153
18 of your affidavit, page 1306, this is the technical
19 report of September 19th, 2014?

20 A. Uhm-hmm.

21 624 Q. Do you see the sentence right
22 before the table:

23 "It is anticipated that during
24 the 2017 and 2018 fiscal years the
25 development would decrease unless a

1 new ore body is explored and the
2 life of mine is extended"?

3 Right?

4 A. Yes.

5 625 Q. And that is pretty common in your
6 experience, isn't it?

7 A. That mines have a finite life?

8 626 Q. Yeah, or that they have certain
9 reserves that --

10 A. Yes.

11 627 Q. -- will span out for two or three
12 years, and then you either have to explore new ore
13 bodies or go in a different direction, right? I
14 mean, it is pretty common. I mean, you are not
15 reading into that that the mine is going to be shut
16 down in 2018, are you?

17 A. No, I think it is indeterminate at
18 this juncture.

19 628 Q. Right, and so my point is that
20 this statement would suggest that there are options
21 that can be explored beyond 2018 with respect to
22 the mine, right?

23 A. I think what it indicates is that
24 management is basically stating and the independent
25 party that has prepared this report is that without

1 the discovery of a new ore body, the known
2 resources and reserves in the mine would be fully
3 depleted by 2017 or '18.

4 629 Q. Right.

5 A. So without the application of new
6 capital or the discovery of a new ore body, there
7 would be a finite life which would not run beyond
8 the --

9 630 Q. And that is a pretty common
10 statement; you have seen those kinds of statements
11 before, right?

12 A. Yes.

13 631 Q. Let's just briefly talk about the
14 remaining -- well, with respect to Deepak, which
15 you have identified as another one of your areas of
16 concern, is it fair to say that you couldn't locate
17 any information with respect to the collateral for
18 that loan?

19 A. It was pretty limited. I mean,
20 there were a few press reports that were available
21 on the business itself. It seemed that it had
22 dissolved into litigation. If I recall correctly,
23 there was some allegations of either
24 misrepresentation or fraud on the part of the
25 borrower at a very early stage, and you know, that

1 is about the extent of what I remember about it.

2 In fact, I think the capital that was
3 being raised was actually not to secure existing
4 assets so much as to capitalize a new business
5 venture which was I think a diamond polishing
6 operation or something to that effect in the
7 Northwest Territories.

8 632 Q. Right, but you couldn't find any
9 information as to what assets were securing that
10 loan?

11 A. It appeared that given the state
12 of the company, there were not any substantive
13 assets at that juncture without the application of
14 capital.

15 633 Q. Well, did you know there was a
16 building?

17 A. That was mentioned in the press
18 release -- or sorry, in a press report.

19 634 Q. Right, so there was at least a
20 building?

21 A. Yes.

22 635 Q. Okay, so when you say there were
23 no assets, you are not including the building?

24 A. Well, I guess there were no
25 substantive operating assets; as we could see, the

1 business appeared to be dormant.

2 636 Q. Did you have any sense of what the
3 value of the building was?

4 A. I don't think we made any
5 inquiries.

6 637 Q. Did you even inquire as to what
7 kind of loan had been made?

8 A. Well, we presumed it was something
9 similar to what Callidus has done historically, a
10 first lien loan, and the issue on that was less
11 about the potential for credit losses so much as,
12 you know, the fact that, like CarCap many years ago
13 and as Esco Marine has recently alleged, there
14 seemed to be potentially some holes in the
15 diligence process that they were conducting that
16 would allow borrowers such as this to get qualified
17 to receive advances.

18 And it wasn't so much about
19 establishing the value of the collateral so much as
20 the fact that, you know, this was seen to be a bit
21 of a recurring pattern in this borrower universe
22 where, look, of course there could be borrower
23 fraud, there could be misrepresentations that, you
24 know, parties can make. This seemed to be an
25 instance like Esco and like CarCap where, you know,

1 a problem emerged that truncated the relationship.

2 638 Q. So this is more a comment on the
3 fact that the borrower is sort of a distressed
4 borrower?

5 A. Well, if I remember the press
6 reports, I think that it went beyond that. I think
7 that --

8 639 Q. Because you are talking about some
9 litigation that was filed against the borrower by
10 his financial advisor?

11 A. By the principals --

12 640 Q. Right, but --

13 A. Or sorry, against the principals.

14 641 Q. So my question basically is did
15 you have any knowledge of how much money had
16 actually been loaned?

17 A. I can't recall offhand. Do we
18 reference it? Less than a million dollars? A term
19 sheet had been signed for 20.5 million. I can't
20 recall whether that --

21 642 Q. For a loan -- do you have any
22 information as to what the actual draw was on the
23 loan?

24 A. I would have go back and look at
25 our materials to see if we did.

1 643 Q. Okay, can you let me know whether
2 there was any information in that regard?

3 A. Yes.

4 MR. MILNE-SMITH: Yes, we can.

5 BY MR. DiPUCCHIO:

6 644 Q. Now, you state in your --

7 MR. MILNE-SMITH: Counsel, just to
8 answer that, at page 93 of the record, Callidus,
9 and this is at paragraph 45, Callidus has disclosed
10 it was owed 2.6 million by Deepak and that no cash
11 flow is expected until construction of the facility
12 is completed.

13 BY MR. DiPUCCHIO:

14 645 Q. Yes, okay, so on February 17th
15 Callidus disclosed that it was owed 2.6 million by
16 Deepak, right, okay. And that is the information
17 you had?

18 A. Yes, whatever we referenced there.

19 MR. MILNE-SMITH: And that is reflected
20 in the slide deck at 755, and that is tab 46 of
21 Volume 2.

22 BY MR. DiPUCCHIO:

23 646 Q. All right. In your affidavit you
24 draw a comparison between the business of Callidus
25 and the business of certain BDCs, right?

1 A. Correct.

2 647 Q. And have you reviewed Mr. Riley's
3 supplementary affidavit?

4 A. Yes.

5 648 Q. And he has indicated that there
6 are a number of areas of difference between BDC and
7 the business that Callidus is engaged in. I just
8 wanted to cover those with you, just to see whether
9 you agree or disagree.

10 If you look at --

11 MR. MILNE-SMITH: And that is starting
12 at paragraph 25 of the reply affidavit.

13 BY MR. DiPUCCHIO:

14 649 Q. Right, paragraph 25 and moving to
15 page 8, would you agree with Mr. Riley --

16 MR. MILNE-SMITH: Hang on a second. We
17 are just getting the right one.

18 MR. DiPUCCHIO: Okay, I apologize.

19 MR. MILNE-SMITH: Do you have the reply
20 affidavit there?

21 This is it.

22 THE DEPONENT: All right. Okay, yes.

23 BY MR. DiPUCCHIO:

24 650 Q. Do you agree with Mr. Riley that
25 BDCs tend to have external management?

1 A. Well, actually, Callidus similarly
2 has an external management agreement.

3 651 Q. Okay, but do you agree with
4 Mr. Riley that BDCs tend to have external
5 management?

6 A. Yes.

7 652 Q. And do you agree with Mr. Riley
8 that BDCs are closed-ended funds and are required
9 to return cash to investors?

10 A. We think that is an important
11 distinction in that it ensures that the companies
12 are making performing loans to companies with, you
13 know, cash income that is distributed to investors,
14 and so yes, we acknowledge the difference and I
15 also think it is an important one.

16 653 Q. So that is a difference and it is
17 an important difference?

18 A. Yes, in favour of the BDCs in
19 terms of the attributes they provide to an end
20 investor.

21 654 Q. And do you agree with Mr. Riley
22 that BDCs tend to finance subordinate debt and
23 unsecured positions, including equity?

24 A. Actually, I don't agree with that
25 because it is actually a misstatement. If you look

1 at the U.S. BDC universe, 75 percent of, you know,
2 for instance, the Raymond James coverage universe
3 is comprised of secured indebtedness issued by BDCs
4 in terms of their asset composition.

5 If you were to look at the Goldman
6 Sachs BDC, by example, 95 percent of its
7 outstanding assets are in the form of secured
8 indebtedness to issuers.

9 So no, I don't agree. Yes, they do it
10 as part of their business, but the vast majority of
11 the lending that BDCs do is to small and
12 medium-sized enterprises on a secured basis.

13 655 Q. Is it senior secured debt?

14 A. Yes.

15 656 Q. And do you agree with Mr. Riley
16 that BDCs are not taxable at the corporate level;
17 they are taxed at a personal level?

18 A. That is correct.

19 657 Q. And is that a distinction?

20 A. Yes.

21 658 Q. And when you said that Callidus is
22 managed externally, are you referring to Mr. Reese?

23 A. No, I'm referring to the
24 management services agreement that exists with
25 respect to Newton Glassman and Jim Riley.

1 659 Q. Okay, so you are referring to that
2 as external management?

3 A. In part.

4 660 Q. Okay.

5 A. There is a management services
6 agreement which exists which outlines their duties
7 and their time commitment to the fund, and whether,
8 you know, a manager is compensated internally or
9 externally at the end of the day, the compensation
10 that flows to them is in all cases performance
11 based and a combination of cash incentive and, you
12 know, share purchases or performance rewards. And
13 in each case, these companies typically will
14 extend -- well, I guess by inference there is a
15 benefit to the affiliation with the parent company
16 or the parent shareholder in terms of deal
17 origination.

18 661 Q. Now, I just want to skip around a
19 little bit just to ask you some questions with
20 respect to specific things that you have said in
21 your affidavit, so bear with me.

22 You refer in your affidavit to a USB
23 drive that was provided to our firm which contains
24 all non-privileged emails found on West Face's
25 email server that were sent to or from Mr. Moyse's

1 West Face email address. Do you see that at
2 paragraph 62?

3 A. Yes.

4 662 Q. And first of all, let's just ask a
5 question to establish some background. In the time
6 that Mr. Moyse was employed by West Face and
7 actually showed up at work, so I guess it would
8 have been the three-and-a-half-week period in June
9 and July, is it fair to say that he received
10 thousands of emails or a thousand emails during
11 that time frame?

12 A. I don't know.

13 663 Q. And this USB drive that was
14 created, do you know when it was created?

15 A. I don't. I wasn't involved in
16 that process directly.

17 MR. DiPUCCHIO: Counsel, do you know?

18 MR. MILNE-SMITH: It was created in the
19 weeks leading up to finalization of the affidavit.
20 It was done concurrently with preparing the
21 affidavit.

22 MR. DiPUCCHIO: All right, so the USB
23 drive would have been created I take it after --
24 sometime after our motion materials were delivered
25 in this matter?

1 MR. MILNE-SMITH: The USB. What is on
2 the USB, what it was taken from was materials that
3 were preserved much earlier.

4 MR. DiPUCCHIO: Yeah, no, I'll get to
5 questions on that. I'm just trying to understand
6 when the USB drive was created for the moment.

7 So the USB drive itself that we
8 received was created at some point after the motion
9 materials were sent out?

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

11 MR. DiPUCCHIO: Okay, and would it be
12 possible to get me a date, do you know?

13 MR. MILNE-SMITH: I mean, I think it
14 was finally burned the day before we served.

15 MR. DiPUCCHIO: Okay, which would have
16 been in or around March -- or sorry, not March --
17 or maybe it was, yeah, early March 2015?

18 MR. MILNE-SMITH: It would have been
19 early March, yes.

20 BY MR. DiPUCCHIO:

21 664 Q. Okay. And as your counsel has
22 just mentioned, back in the summer of 2014 West
23 Face had taken steps to preserve whatever existed
24 on the West Face servers in relation to Mr. Moyse's
25 work during the period of time that he was with

1 you, right?

2 A. That is what I understand to be
3 the case.

4 665 Q. All right. And were there active
5 steps that were taken to preserve?

6 A. Well, my understanding is our
7 general counsel and our I/T department did take
8 active steps to do that. As to the specifics, only
9 they would know beyond what I have sworn to.

10 666 Q. And we have seen an affidavit that
11 is included as part of your motion record from
12 Mr. Burt-Gerrans, an expert that you retained.
13 Have you seen that affidavit?

14 A. I didn't personally retain him,
15 but I'm generally familiar with him.

16 667 Q. Yes, I know that, but are you
17 familiar with the affidavit?

18 A. Generally, yes.

19 668 Q. And just for the record, I guess
20 it is at tab C of your motion record.

21 MR. MILNE-SMITH: Yes, we have it here.

22 BY MR. DiPUCCHIO:

23 669 Q. And Mr. Burt-Gerrans recites in
24 his affidavit what he did, but I am just interested
25 in canvassing with you a comment that he made at

1 paragraph 16. So do you see he recounts in that
2 paragraph what his first step was in analyzing the
3 forensic image of Mr. Moyse's computer hard drive,
4 and he says:

5 "The first step was to
6 determine who had logged into his
7 computer from June 23, 2014, to July
8 16, 2014."

9 Do you see that?

10 A. Yes.

11 670 Q. And then he says he extracted this
12 log-in data from the records and:

13 "According to the log-in data,
14 the only users who had logged on to
15 Mr. Moyse's computer were the user
16 ID issued to Mr. Moyse and the user
17 ID issued to Danny Yu, who I have
18 been advised by Mr. Chau is a West
19 Face IT analyst."

20 Do you see that?

21 A. Yes.

22 671 Q. And then he goes on to say at
23 paragraph 17:

24 "After July 16, 2014, no user
25 logged into Mr. Moyse's computer

1 until December 15, 2014, when the
2 user ID issued to Mr. Chau was used
3 to log in."

4 Do you see that?

5 A. Yes.

6 672 Q. And then after that,
7 Mr. Burt-Gerrans says that he was advised that
8 Mr. Chau logged on to Mr. Moyse's computer again on
9 January 14 and 26; do you see that?

10 A. Yes.

11 673 Q. And those dates, January 14th and
12 26th, were after the motion materials were
13 delivered in this matter, right?

14 A. I am not familiar with the dates
15 exactly.

16 674 Q. Or was it the 19th?

17 MR. MILNE-SMITH: The original Notice
18 of Motion was dated January 13 and then it was
19 amended on February 6.

20 BY MR. DiPUCCHIO:

21 675 Q. Okay, so I guess my question
22 stands. The dates that Mr. Chau allegedly logged
23 into Mr. Moyse's computer were after the Notice of
24 Motion was delivered in this matter; is that
25 correct?

1 A. That is what it sounds like.

2 676 Q. And do you have any information as
3 to, other than what is reported here by
4 Mr. Burt-Gerrans, do you have any information as to
5 who directed Mr. Chau to log into the computer at
6 that time?

7 A. No.

8 677 Q. So it wasn't you, obviously?

9 A. No.

10 678 Q. And was it any of the partners?

11 A. I don't know who it was.

12 679 Q. And Mr. Chau hasn't sworn an
13 affidavit in these proceedings, right?

14 A. I don't believe so.

15 MR. MILNE-SMITH: He has not.

16 Counsel, is there a spoliation
17 allegation?

18 MR. DiPUCCHIO: No, not a spoliation --
19 well, I don't know what the allegation is going to
20 be. There is going to be an allegation that
21 someone logged on to a computer after the date of
22 this Notice of Motion.

23 MR. MILNE-SMITH: It is not an
24 allegation. It is stated explicitly. You don't
25 have to allege it. We admit it.

1 MR. DiPUCCHIO: Right, and we are going
2 to ask the Court to draw certain inferences from
3 that.

4 MR. MILNE-SMITH: Okay, and what
5 inference is going to be drawn?

6 MR. DiPUCCHIO: It is an inference that
7 even your own expert suggests, which is that
8 someone who has IT experience might well have run
9 scrubbing software or would know how to run
10 scrubbing software.

11 MR. MILNE-SMITH: Well, that is not
12 what it says. And that is a spoliation allegation.
13 If you are going to make a spoliation allegation, I
14 think you should plead it.

15 MR. DiPUCCHIO: Well, how can I plead
16 something? You have just delivered an affidavit to
17 me. So I'm going to ask the Court to draw
18 inferences, and part of the reason why we are
19 requesting an ISS is to get to the bottom of
20 whether there was anything like that that happened,
21 as we did in the case of Mr. Moyse.

22 So once I have the information that
23 allows me to plead intelligently, I'll do that.

24 MR. MILNE-SMITH: Okay. Now that I
25 know you are alleging it, that is good to know.

1 BY MR. DiPUCCHIO:

2 680 Q. Yes, I'm not alleging anything.
3 I'm asking questions based on the information you
4 have given me.

5 So you can't tell me why that expert
6 would have accessed or why your IT person would
7 have accessed the computer at that time?

8 A. I have no idea.

9 681 Q. With respect to the Wind matters
10 in your affidavit, I just want to ask you a few
11 questions.

12 Is it fair to say that you only became
13 aware of the fact that Catalyst was the party that
14 had exclusivity with Wind during that period of
15 time in August through the course of these
16 proceedings?

17 A. Yes.

18 682 Q. But you were aware that a party
19 had an exclusive negotiating period with Wind at
20 some point in time?

21 A. Certainly.

22 683 Q. And you also acknowledge in your
23 affidavit that even though you knew that there was
24 a party that had an exclusive negotiation period
25 with Wind, that you elected, West Face elected to

1 submit offers to Wind during that period of time?

2 A. The syndicate elected to
3 collectively.

4 684 Q. Right, which included West Face?

5 A. Yes.

6 685 Q. And in those offers -- was it one
7 offer or more than one offer that were
8 communicated?

9 A. No, I believe it was only the
10 single offer.

11 686 Q. And did that single offer that was
12 communicated at that time, did that deal with the
13 regulatory concerns that you have identified?

14 A. Well, what it did was in our view
15 provided a transaction structure with a high degree
16 of certainty and expediency to the vendor, and what
17 changed from some of the prior proposals we had
18 made in our prior history with them was that we did
19 not require Industry Canada approval before closing
20 the transaction. We were effectively stepping into
21 the shoes of VimpelCom as minority voting
22 shareholder in Wind.

23 687 Q. Right, so in part, it dealt with
24 the regulatory concerns that you have identified in
25 your affidavit?

1 A. Well, I think what it dealt with
2 was a specific condition around closing that was
3 important, you know, we felt important to the
4 vendor in terms of delivering certainty of outcome,
5 expediency of capital and certainty of execution.

6 688 Q. And that offer as it related to
7 the regulatory concerns was something that had not
8 been part of any of your previous dealings with
9 Wind up to that point in time?

10 A. Yes, up until August, that was
11 when the idea first came up.

12 689 Q. Right. Bear with me for one
13 second.

14 And you have said in your affidavit
15 that no one at West Face had any communication with
16 Mr. Moyse -- I think you say a couple of things,
17 but let me clarify.

18 Are you saying that nobody from West
19 Face has had any communication with Mr. Moyse since
20 he was effectively -- well, since he stopped
21 working, effectively, at West Face after July of
22 2014?

23 MR. MILNE-SMITH: Sorry, what paragraph
24 are you referring to?

25 BY MR. DiPUCCHIO:

1 690 Q. Well, I'm reading into something,
2 and that is why I'm asking him to clarify what
3 exactly he is saying, because he has said some
4 things in relation to whether people had contact
5 with him or not and I am just trying to figure out,
6 are you saying that nobody has had contact with
7 him?

8 MR. MILNE-SMITH: Sorry, what paragraph
9 are we at? I don't want to give him a memory test
10 for it.

11 MR. DiPUCCHIO: All right, well,
12 paragraph 13 as an example.

13 MR. MILNE-SMITH: It is a long
14 affidavit. I can't expect him to remember
15 everything.

16 BY MR. DiPUCCHIO:

17 691 Q. No, I know. So you make a
18 specific allegation here. You say:

19 "No members of West Face's Wind
20 deal team communicated at all with
21 him about Wind during this period",
22 okay.

23 A. Correct.

24 692 Q. So what I am trying to establish
25 is are you saying they communicated with him but

1 just not about Wind, or are you saying there were
2 no communications? I can read that one of two
3 ways.

4 A. Well, to my knowledge, I don't
5 know what communications there were with Brandon on
6 general subject matters. What I am attesting to
7 here specifically is that there was no
8 communication from me or any of the members of the
9 Wind deal team insofar as it contained -- or it
10 pertained to our process on Wind.

11 693 Q. Okay.

12 A. And to my knowledge, no one inside
13 the firm discussed any matters with respect to any
14 pending, current or proposed investment situations
15 that the firm was engaged in in any capacity.

16 694 Q. All right, and I understood that
17 from what you were giving evidence about, but what
18 I want to ask you is were there actual
19 conversations with Mr. Moyse during this period of
20 time about anything?

21 A. I don't know.

22 695 Q. Okay. Do you recall having any?

23 A. I absolutely recall having none.

24 696 Q. Okay, so you have a positive
25 recollection that you had no conversations with

1 Mr. Moyse after he left West Face up until present?

2 A. That is correct.

3 697 Q. Okay. And you haven't had that
4 discussion with everybody else at West Face in
5 order to determine whether they have had any
6 discussions with Mr. Moyse?

7 A. Only insofar as it pertains to the
8 Wind transaction, which is again what I am
9 referring to here, I know that to be the case.

10 MR. MILNE-SMITH: Counsel, I could help
11 you on this.

12 I think the emails you have that we
13 have disclosed to you demonstrate this, but to the
14 best of our knowledge and as a result of the
15 various inquiries we have made, the only
16 communications with Mr. Moyse following his
17 departure on July 16 concern human resources
18 matters, legal-related matters, which probably went
19 through counsel rather than directly between any
20 sort of lay staff.

21 I believe one time he asked a fellow
22 junior member of the firm to meet him for lunch on
23 a social basis, and I believe he tried to, when he
24 wanted to trade on his personal account, he had to
25 clear it through sort of whoever the appropriate

1 control person at West Face was.

2 And to the best of our knowledge, based
3 on reviewing computer records and speaking to the
4 people, those are the only communications with
5 Mr. Moyse.

6 MR. DiPUCCHIO: So what you are telling
7 us -- and that is helpful, Counsel.

8 What you are telling me, is that based
9 on the review of the email traffic or are you also
10 saying to me that that is the extent of the
11 communications that may have occurred even by phone
12 or what have you?

13 MR. MILNE-SMITH: That is based on
14 email traffic and phone. It is based on we have
15 looked at the email traffic and we have spoken to
16 people.

17 BY MR. DiPUCCHIO:

18 698 Q. All right, so that is helpful. If
19 you could confirm for me that that's the case, that
20 if you can make inquiries of -- and I'm not asking
21 you to inquire about everybody I guess at West
22 Face, but --

23 MR. MILNE-SMITH: If we come up with --

24 MR. DiPUCCHIO: -- starting with the
25 partners.

1 U/T MR. MILNE-SMITH: If we come up with
2 anything further, I'll let you know.

3 BY MR. DiPUCCHIO:

4 699 Q. Okay. And I am going to ask a
5 question to you, and I presume you are going to
6 jump in here, Counsel.

7 But what I would like to do, and it is
8 based on what I plan to ask Mr. Moyse later on in
9 this piece for, I would like to get from you the
10 phone numbers of the partners at West Face,
11 business and cell. And you know, you can give
12 those to me in whatever form you want. You don't
13 have to put it in a public record or anything like
14 that, obviously, but I am going to be making some
15 requests of Mr. Moyse to produce some documentation
16 which will only be useful to me if I have the phone
17 numbers ultimately of the partners at West Face.

18 U/A MR. MILNE-SMITH: I am sure it will be
19 no surprise to you I'll take that under advisement.

20 MR. DiPUCCHIO: I know, I expected as
21 much, but maybe you would have given me one, I
22 don't know.

23 MR. CARLSON: Not when you lead into it
24 like that.

25 BY MR. DiPUCCHIO:

1 700 Q. Yes, exactly. Well, just being up
2 front.

3 Okay, bear with me, okay, because I'm
4 getting to some odds and sods here, so I'm just
5 flipping through. We are almost done.

6 In paragraph 43, and I just had one
7 question at paragraph 43 of your affidavit. This
8 is where you referred to the fact that there was
9 certain correspondence very early on in this piece
10 about concern about a telecom deal, and you then
11 point out that West Face implemented a
12 confidentiality wall on June 19, 2014, relating to
13 Wind, right; do you see that?

14 A. Yes.

15 701 Q. Okay, and my question is simply
16 this. Can you tell me how West Face knew that the
17 concern around the telecom deal was a concern that
18 related to Wind?

19 A. I can't. I didn't deal with it
20 directly. From recollection, it would have been
21 probably Greg, our general counsel at the time, and
22 our compliance officer.

23 702 Q. All right, so you can't say
24 whether that knowledge came from any discussion
25 that would have been had with Mr. Moyse?

1 A. I wasn't party to that discussion.
2 The only thing I recall from that, once the memo
3 had gone around regarding the confidentiality wall
4 being established for Wind, there was a discussion
5 that I believe is referenced in here with Tom Dea
6 where Tom Dea informed everyone in the office of
7 what had been established.

8 703 Q. Okay, so was it primarily
9 Mr. Boland and your in-house counsel that would
10 have been dealing with the confidentiality wall?

11 A. Yes.

12 704 Q. And I know your in-house counsel
13 is not here any longer, but could you ask
14 Mr. Boland how he came to know that the concern
15 around the telecom deal related to Wind?

16 U/T MR. MILNE-SMITH: I will make
17 inquiries, yes.

18 BY MR. DiPUCCHIO:

19 705 Q. And specifically whether that
20 would have come from Mr. Moyse.

21 And you have referred in your affidavit
22 at paragraph 61 and you have appended as an exhibit
23 a notebook that was kept by Mr. Moyse during the
24 period of time that he was employed by West Face in
25 June and July of 2014.

1 Counsel, this is probably more a
2 question for you than it is for your client
3 representative, but there is a number of
4 redactions. What is being redacted there?

5 MR. MILNE-SMITH: That is referred to
6 in footnote 16 which indicates that West Face
7 confidential information in the notebook has been
8 redacted, none of which relates to Wind, the AWS-3
9 auction or Callidus.

10 MR. DiPUCCHIO: Okay.

11 MR. MILNE-SMITH: So it is basically
12 West Face confidential information about ongoing
13 activities which is confidential to the market
14 which has nothing to do with this case.

15 MR. DiPUCCHIO: With those three
16 things?

17 MR. MILNE-SMITH: Well, those were the
18 scope of the allegations, so that is all we
19 referred to because that is all we understood the
20 allegations to relate to.

21 BY MR. DiPUCCHIO:

22 706 Q. Well, did any of them refer to
23 Arcan, do you know?

24 A. I would have to look at it again.
25 I don't recall.

1 U/A MR. MILNE-SMITH: We'll have to look at
2 it. I'll take it under advisement to --

3 BY MR. DiPUCCHIO:

4 707 Q. All right.

5 A. Some of the notes in that book
6 were, you know, summaries of internal meetings we
7 would have had, morning meetings with the analysts,
8 so I would have to go back and look.

9 708 Q. And that is material that you
10 would consider to be confidential?

11 A. I would insofar as, you know,
12 there is ongoing discussion of positions that are
13 open in the book, and you know, some of these are
14 companies that we are public on, but the mere
15 existence of the position is one aspect. The other
16 aspect is obviously, you know, what are the
17 specific thoughts or parameters that we have around
18 it.

19 709 Q. Okay. And so sometimes, insofar
20 as you are concerned, the mere disclosure of the
21 existence of a position might be information that
22 you would want to retain confidential?

23 A. You know, if there is something
24 like a proxy action where we are accumulating a
25 position in a security, then I mean, look, at the

1 end of the day, we comply with our filing
2 obligations to the letter and don't go any further.

3 MR. DiPUCCHIO: All right, give me one,
4 if we can go off the record, and we may be done,
5 okay.

6 (DISCUSSION OFF THE RECORD.)

7 BY MR. DiPUCCHIO:

8 710 Q. Just a couple of cleanup things.
9 Number one, we should probably mark
10 that page of the factum as an exhibit, since we
11 have referred to it, Counsel. Are you okay with
12 that?

13 MR. MILNE-SMITH: Sure. Here is a
14 clean copy.

15 MR. DiPUCCHIO: So it would be page 12
16 of the factum filed by West Face on the injunction
17 motion, just the page.

18 MR. MILNE-SMITH: Well, why don't we --
19 I think it is better to just do the whole thing.

20 MR. DiPUCCHIO: You want to mark the
21 whole thing?

22 MR. MILNE-SMITH: Yeah.

23 MR. DiPUCCHIO: Okay, that's fine by
24 me.

25 EXHIBIT NO. 1: Factum filed by West

1 Face on the injunction motion.

2 MR. DiPUCCHIO: It just makes the
3 materials that much thicker.

4 MR. CENTA: That ship has sailed.

5 MR. DiPUCCHIO: Yes, that ship sailed
6 awhile ago, you are right.

7 MR. MILNE-SMITH: Look around you.

8 BY MR. DiPUCCHIO:

9 711 Q. And, Mr. Griffin, do you recall we
10 were discussing Mr. Dea's request in mid-July for
11 Mr. Moyse to do some work in relation to
12 TransOcean?

13 A. Yes.

14 712 Q. Do you remember that? That is
15 referred to in your affidavit, and I am going to
16 show you an email that was sent by Mr. Dea to
17 Mr. Moyse on July 14th, 2014, and I take it this is
18 the email that was sent by Mr. Dea indicating to
19 Mr. Moyse the work that he wanted him to do?

20 A. Okay.

21 713 Q. Is that fair?

22 A. It appears to be the case.

23 MR. DiPUCCHIO: All right, can we mark
24 that as an exhibit as well, Counsel?

25 MR. MILNE-SMITH: Yes.

1 EXHIBIT NO. 2: Email sent by Mr. Dea
2 to Mr. Moyse on July 14th, 2014.

3 BY MR. DiPUCCHIO:

4 714 Q. And, Mr. Griffin, you have
5 mentioned in your affidavit, you were talking about
6 the harm to West Face in the relief being sought
7 with respect to Wind?

8 A. Yes.

9 715 Q. And you mentioned that West Face
10 has two out of the ten seats on the Board of
11 Directors, right?

12 A. Yes.

13 716 Q. And am I right that Wind has its
14 own management team?

15 A. It does.

16 717 Q. And it doesn't have people from
17 West Face on the management team?

18 A. It has people that the board,
19 including West Face, have assisted in procuring.

20 718 Q. Right, fair enough. I didn't ask
21 you who procured them. The management team doesn't
22 include anybody from West Face?

23 A. That is correct.

24 719 Q. And you are not suggesting that if
25 the relief is granted, that somehow Wind can't

1 operate?

2 A. I think what we are suggesting --
3 well, look, the practical reality is the company
4 relies on the sponsorship of its financial sponsors
5 of which we are one of the largest.

6 720 Q. Right.

7 A. That is what we are suggesting.

8 721 Q. Okay, but you are not going to
9 pull your financial sponsorship of the company if
10 the relief is granted?

11 A. We are not pulling our financial
12 sponsorship of the company.

13 722 Q. So are you suggesting in any way
14 that Wind cannot operate if the relief is granted,
15 that management of Wind wouldn't be able to operate
16 the company?

17 A. No, I'm not suggesting that. What
18 I am suggesting is that it is a company that relies
19 on the direction and input of a series of advisors,
20 including financial investors and advisors of which
21 we are one and the most important and a functioning
22 board of which we have two seats, and our influence
23 is instrumental in terms of, you know, the
24 conception of the transaction and the consummation
25 of the transaction and the go-forward success of

1 the company.

2 And on behalf of our LPs, we have a
3 duty obviously to manage that investment on their
4 behalf.

5 And, yes, I believe that without our
6 input and involvement, we wouldn't be where we are
7 today and we certainly wouldn't have the same
8 chance of success with the business that we do.

9 723 Q. So are you suggesting that without
10 your management and/or strategic direction that
11 Wind could not operate?

12 MR. MILNE-SMITH: He has answered the
13 question, Counsel.

14 BY MR. DiPUCCHIO:

15 724 Q. Okay, those are my questions.
16 Thank you.

17 Sorry, Counsel, I just wanted to
18 clarify, because Mr. Winton is concerned. I
19 believe I did ask for an undertaking that the work
20 product be produced in regards to Arcan. I thought
21 I remembered asking that and you took it under
22 advisement, I believe?

23 MR. MILNE-SMITH: Mr. Moyse's work
24 product.

25 MR. DiPUCCHIO: Mr. Moyse's work

1 product in relation to Arcan. Mr. Winton doesn't
2 recall me making that request.

3 U/A MR. MILNE-SMITH: I'll take it under
4 advisement.

5 MR. DiPUCCHIO: Okay, thank you.

6 MR. MILNE-SMITH: I just want to take
7 one or two minutes to talk about re-examination
8 with my friends. It will be very, very short, if
9 any.

10 MR. DiPUCCHIO: Okay.

11 -- RECESSED AT 2:53 P.M.

12 -- RESUMED AT 2:57 P.M.

13 RE-EXAMINATION BY MR. MILNE-SMITH:

14 725 Q. Mr. Griffin, I just want to
15 address four issues that were raised during the
16 course of your cross-examination.

17 The first, while you were discussing
18 the issue of the short position that West Face took
19 with respect to Callidus with Mr. DiPucchio, you
20 used the phrase that it was a position that West
21 Face, quote, "legged into" over time. Could you
22 just explain what that mean in layperson's terms?

23 A. Sure. Often times wherein you are
24 confronted with a security where the liquidity is
25 somewhat limited in that the daily trading volume

1 is, you know, constrained or low, it will take time
2 to deploy either a long or a short position of any
3 consequence in a company. So it is hard to predict
4 when volume will improve or get worse, but you
5 know, you are in there basically on a daily or a
6 weekly basis trying to execute a program to get to
7 a certain end point.

8 And so you know, we'll set some
9 parameters. Sometimes constraints are imposed upon
10 us, if we could only borrow -- you know, in a short
11 position, you can only borrow a certain amount of
12 stock, you know the end point you are getting to.
13 If it is a long position, you may have a position
14 objective you want to get to. We are beholden to
15 the liquidity that is available on a given day, and
16 you are never going to be a hundred percent of the
17 volume.

18 726 Q. Okay. The second point, you were
19 asked a series of questions about ongoing research
20 by West Face after it had accumulated its short
21 position in Callidus. Do you recall that series of
22 questions?

23 A. Yes.

24 727 Q. So it may be clear to everybody
25 around the table, but I'm not sure it will be

1 necessarily to everyone reading the transcript.
2 Could you just explain to me how a short sale works
3 and how a company like West Face tries to make a
4 profit off of it?

5 A. Well, what we try to do is, first,
6 identify whether we think there is an aberration or
7 anomaly in the value of the company relative to
8 typically a comparable set, a discounted cash flow
9 analysis, our own internal financial models, and
10 those would be some of the ways we could judge
11 valuation, and any other research we had done
12 qualitatively or quantitatively.

13 And then we are trying to basically
14 time our entry point. Unlike a purchase where you
15 are trying to purchase low and then sell high, on a
16 short position it is the reverse, you are trying to
17 sell high, as high as possible, and cover as low as
18 possible.

19 So to a large degree the timing of our
20 involvement in a situation is influenced by how the
21 stock trades in the market, and you know, we are
22 looking for entry points where the valuations are
23 at extremes, in a purchase either extremely low, in
24 a short sale extremely high.

25 728 Q. So you mentioned two parts of it

1 there. You said you have to sell as high as
2 possible and cover as low as possible. So when you
3 were talking to Mr. DiPucchio about accumulating
4 your short position, which part was that, the
5 selling or the covering?

6 A. That is the selling.

7 729 Q. And how do you sell shares that
8 you don't have?

9 A. We have to borrow those shares and
10 provide evidence, though, that we have a borrow
11 before we execute a trade. Those trades are
12 typically routed to an institutional trading desk
13 who does the execution as agent on our behalf and
14 then charges our firm a commission for transacting
15 in the underlying security.

16 730 Q. Okay. Now, you spoke to Mr.
17 DiPucchio about how by December you had accumulated
18 your short position. At that point had you done
19 anything with respect to the second part of the
20 transaction, covering as low as possible?

21 A. No, my recollection is there was
22 some distance between those events.

23 731 Q. So how do you ultimately decide on
24 when to cover the position, as you described it?

25 A. It is driven really by -- well,

1 part of the job that we do is we continually
2 monitor the position, whether it is a long or a
3 short, you know, both as you are going into it and
4 once you have it on and once you are closing it
5 out. And what you are looking for is are there any
6 positive or negative changes in circumstances that
7 influence your thesis on it, rightly or wrongly,
8 the value positively or negatively, and you are
9 also looking for changes obviously in the
10 underlying price of the security.

11 So you know, when we are coming out of
12 the short position, we are looking for
13 opportunities to opportunistically purchase when
14 liquidities are available and prices are low.

15 732 Q. And did such a situation arise in
16 the past few months?

17 A. Yeah, after the earnings for the
18 fourth quarter were presented to the market, there
19 was a series of analyst downgrades which occurred,
20 and the share price declined reasonably
21 significantly once those financial results had been
22 published.

23 733 Q. The third point, during the
24 discussion about Wind, you told Mr. DiPucchio that
25 the August 7 offer made by the new syndicate,

1 including West Face, dealt with a regulatory
2 condition that was important to the vendor. Why
3 did you think it was important to the vendor?

4 A. Well, I guess from the outset of
5 the process, you know, we originally got involved
6 in Wind on the basis that we were going to provide
7 a loan proposal to the company. That went all the
8 way back to I believe '09 and then was reinitiated
9 on our first contact in November of 2013.

10 The objective of that was basically
11 they had an immediate fire they needed to put out,
12 which was maturing vendor obligations, their first
13 lien debt owed to Huawei, Alcatel, and other
14 lenders. And that was the first proposal we put
15 in.

16 It then became very clear that the
17 federal government as a result of their
18 relationship with the Russian government, whether
19 security concerns, economic sanctions, political
20 sanctions, they, as the press reported, made it
21 clear that VimpelCom was never going to be in a
22 position to exercise both voting and economic
23 control over this company.

24 That turned them into not only a party
25 that wanted to refinance the debt, but also a

1 company that wanted just to get out of the country
2 and out of the business as expediently as possible.

3 And from the outset, it had been
4 explained to us from the advisor UBS that you are
5 basically buying the business at a very discounted
6 valuation on an as-is/where-is basis with limited
7 reps and warranties, where certainty of closing and
8 timeline of closing are two of the most important
9 things for our client, and that will remain the
10 message throughout. And unlike many processes we
11 have been involved in, it actually went so far as
12 to actually, rather than asking us for a price,
13 indicate a rough enterprise value range that was
14 acceptable ballpark.

15 734 Q. I can't remember if it is in the
16 record already, so just we are clear, what is the
17 connection between Russia and VimpelCom?

18 A. Well, the ultimate mind and
19 management -- so going way back, Wind was
20 originally owned by Orascom or one of its
21 affiliates. VimpelCom purchased I believe it was
22 Orascom's parent company, and Wind came under the
23 umbrella of VimpelCom which basically had, you
24 know, mind and management that was unpalatable to
25 the Canadian government, as far as it has been

1 explained to us.

2 735 Q. And where were they located?

3 A. In Russia.

4 736 Q. And the last point, in the
5 discussion on BDCs you discussed one point of
6 distinction between Callidus and BDCs is that BDCs
7 were taxed at the personal level, whereas Callidus
8 was taxed at the corporate level or at the entity
9 level?

10 A. Yes.

11 737 Q. Which do you perceive from an
12 investment perspective to be more favourable?

13 A. Well, I think most of these credit
14 vehicles, and the income trusts were a historical
15 artifact of this, were set up to generate recurring
16 distributable income to investors. And you know,
17 it is our perception or our judgment that most
18 investors, institutional or retail, own income
19 products for the recurring distribution of income
20 and that funding of growth can be accommodated
21 through, you know, additional leverage applied on a
22 consistent basis to extension of gross assets.

23 So I would contend that in a business
24 that is set up to basically make performing loans
25 to companies that are solvent where recovery of

1 principal is highly certain and where consistency
2 of income generation and distributions is paramount
3 and you are beholden to a distribution policy, you
4 know, investors generally favour a flow-through of
5 that income.

6 And that is certainly, you know, the
7 perspective of sophisticated institutional
8 investors that back our credit fund vehicle, is it
9 is an income product where return of principal,
10 volatility is presumed to be low, certainty of
11 collection is high, and predictability of income is
12 also high.

13 738 Q. And I think you may have been sort
14 of assuming the answer to the question I was
15 asking, but what is the distinction between when
16 you are taxed at the personal level versus being
17 taxed at the corporate level?

18 A. Well, it affects your after-tax
19 cash flows, and obviously, you know, individuals
20 may have differing tax situations that may be
21 better or worse than what the corporation would
22 experience themselves. They may hold these in
23 tax-advantaged accounts which shelter the income
24 and really make the issue go away in their
25 entirety.

1 I think the important point is that,
2 you know, investors value the distribution of the
3 income out of the vehicles and a flow-through of
4 that income to them on a predictable basis.

5 MR. MILNE-SMITH: Okay, thank you.
6 Those are my questions.

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9 -- Adjourned at 3:08 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
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 8th day of May, 2015.

Deana Santedicola

NEESONS

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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