In the Matter Of:

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

MARTIN MUSTERS

August 01, 2014

1   Court File No. CV-14-507120

2

3   ONTARIO

4   SUPERIOR COURT OF JUSTICE

5

6   B E T W E E N:

7   THE CATALYST CAPITAL GROUP INC.

8   Plaintiff

9   - and -

10   BRANDON MOYSE and WEST FACE CAPITAL INC.

11   Defendants

12   --------

13   --- This is the Cross-Examination of MARTIN MUSTERS

14   on his affidavit sworn June 26, 2014, taken at the

15   offices of Neeson & Associates Court Reporting and

16   Captioning Inc., Suite 1108, 141 Adelaide Street

17   West, Toronto, Ontario, on August 1, 2014.

18   --------

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

20   Andrew Winton

21   & Rocco Di Pucchio,   for the Plaintiff

22   Justin Tetreault,   for Brandon Moyse

23   Andy Pushalik,   for West Face Capital Inc.

24

25   REPORTED BY: Cindy Littlemore, CSR

1   I N D E X

2

3   WITNESS: MARTIN MUSTERS, SWORN

4   PAGE

5   CROSS-EXAMINATION BY MR. TETREAULT.............   4

6

7

8   **The following list of undertakings, advisements and

9   refusals is meant as a guide only for the assistance of

10   counsel and no other purpose**

11

12

13   INDEX OF UNDERTAKINGS

14   The questions/requests undertaken are noted by U/T and

15   appear on the following pages: 13

16

17

18   INDEX OF ADVISEMENTS

19   The questions/requests taken under advisement are noted

20   by U/A and appear on the following pages: 15

21

22

23   INDEX OF REFUSALS

24   The questions/requests refused are noted by R/F and

25   appear on the following pages: 6, 38, 64

1   INDEX OF EXHIBITS

2

3   NUMBER/DESCRIPTION   PAGE/LINE NO.

4

5   No Exhibits Marked

6

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

 2                     MARTIN MUSTERS, SWORN:

 3                     CROSS-EXAMINATION BY MR. TETREAULT:

 4    1                Q.   Can you, please, state your name

 5         for the record?

 6                     A.   Martin Hubert Musters.

 7    2                Q.   And this is a cross-examination

 8         for your affidavit sworn on June 26, 2014; correct?

 9                     A.   Yes.

10    3                Q.   And the matter is The Catalyst

11         Capital Group Inc. and Brandon Moyse and West Face

12         Capital Inc.

13                     MR. WINTON:  Yes.

14                     THE DEPONENT:  Yes.

15                     BY MR. TETREAULT:

16    4                Q.   When was -- your firm is called

17         Computer Forensics Inc.?

18                     A.   Correct.

19    5                Q.   And when was Computer Forensics

20         Inc. first contacted about this matter?

21                     A.   Can I refer to my affidavit?

22    6                Q.   Yeah, of course.

23                     A.   June 20th, 2014.

24    7                Q.   Okay, and who contacted CFI?

25                     A.   Mr. Winton.
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1	8	Q. Were any other employees of CFI
2		involved in this matter besides yourself?
3		A. I was accompanied by one of my
4		associates, Aniko Kiss, for the collection of the
5		evidence on June 21st although she was there to
6		observe, and I performed the acquisition, the
7		forensic image and the analysis.
8	9	Q. Okay. Specifically, what
9		instructions or directions were you given to
10		perform -- you know, what was the scope of your
11		retainer?
12		A. Are we referring initially or
13		during the course of or --
14	10	Q. Let's start initially.
15		A. I was informed that an
16		employee -- a former employee, Brandon Moyse, had
17		left Catalyst Capital, and I was asked to look for
18		any evidence that files may have been transferred
19		from the Catalyst Capital environment to any other
20		device.
21	11	Q. And who were you speaking with?
22		A. Mr. Winton.
23	12	Q. Was there anybody else?
24		A. Mr. Riley was in attendance on
25		June 21st, but I did not receive any instruction

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 1        from Mr. Riley.

 2   13                  Q.   Did you receive any instructions

 3        or directions in writing?

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

 5   14                  Q.   Yes.

 6                       MR. WINTON:  There were -- I'm just

 7        here to assist.  So there were e-mails relating to

 8        the location of the attendance and the type of

 9        computer.  I think there was some questions

10        Mr. Musters had about --

11                       THE DEPONENT:  Whether it was

12        encrypted.

13                       MR. WINTON:  -- the computer system and

14        whether it was encrypted, but other than that, the

15        instructions regarding the taking of the forensic

16        image were not in writing.  It was an oral

17        conversation he and I had.

18                       BY MR. TETREAULT:

19   15                  Q.   Can I have an undertaking to

20        produce all e-mail communications between

21        Mr. Musters or CFI and either Catalyst or your

22        firm?

23   R/F            MR. WINTON:  No.

24                       BY MR. TETREAULT:

25   16                  Q.   Where did you conduct the forensic
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1   image of Brandon's workplace computer?

2   A.   At our offices.

3   17   Q.   And what steps are involved

4   in -- what steps did you undertake to conduct the

5   forensic examination?

6   A.   If you will permit, I would like

7   to start at the beginning. Is that all right?

8   18   Q.   Yeah.

9   A.   Okay. When I attended on June

10   21st, I placed the -- I was given a desktop that I

11   was told belonged to Brandon Moyse. I removed the

12   cover of the desktop. I connected -- there was no

13   power to this device. I removed the cover. I

14   placed the hard drive behind a Tableau TK35 write

15   blocker, and I created a forensic image of the

16   drive using a program called FTK Imager. I used my

17   laptop, my forensic laptop, to perform that. So at

18   no time did the hard drive -- at no time was the

19   hard drive altered in any way, shape or form.

20   From there, I brought the image back to

21   our office, and I ran it through two programs. One

22   is called FTK Forensic Toolkit, and the other one

23   is called Internet Evidence Finder. I ran -- I

24   forgot one step. I always create a second copy of

25   the image in the event that something happens to

1   the original copy.

2   So once those two programs were run,

3   FTK and Internet Evidence Finder -- I also on

4   occasion use Encase, more so for browsing file

5   structures. So those are the three programs in my

6   toolkit, and once those -- once the image is

7   processed, then I begin the analysis work.

8   19   Q.   Okay. So once the image was

9   created, what were the next steps in terms of

10   analyzing the image?

11   A.   Two aspects. One, I use FTK to

12   look at what are called LNK files. LNK files come

13   in two versions, one you could refer to as a

14   shortcut and one you could refer to as a file

15   that's created so that it's copied to an external

16   device.

17   If we go back a little bit in terms of

18   technology, if you were to burn a CD, every file

19   that you burnt on the CD would have created an

20   associated LNK file. So, first, it creates all the

21   files, puts it altogether and then burns it to the

22   CD, and then in that process, you have a set of LNK

23   files. That's also true when you copy something to

24   a USB or external device.

25   So the first thing that I would do is

1   look for LNK files. If I recall, I found none that

2   were out of the ordinary, and then I went to

3   Internet Evidence Finder, and I looked for -- it

4   has a category within Internet Evidence Finder

5   called the Cloud-based URLS, so I picked up the

6   Cloud-based URLs, and I found that Dropbox and

7   another Cloud-based service called Box were used,

8   so they're of interest to me.

9   20   Q.   Okay.

10   A.   I also -- it has a category

11   for -- I can't remember what the exact name is, but

12   it identifies web-based e-mail, so whether it be

13   Hotmail, Gmail, Yahoo mail, whatever.

14   So I noted that there were two personal

15   accounts that appeared to be belonging to Brandon

16   or certainly two accounts that were available on

17   the desktop, and I also within Internet Evidence

18   Finder searched for file accesses. The specific --

19   the specific command is file -- I search your file

20   accesses.

21   I don't know, I can keep going, but

22   have I answered your question, or are you looking

23   for more detail?

24   21   Q.   So I guess what I'm getting at, so

25   the end product of this, I guess, is a list of

1   files that he accessed?

2   A.   If -- no. If I go back to the

3   initial question, which was is there evidence of

4   files being transferred to another device, if I can

5   use that term, then the references to Box and the

6   references to Dropbox were certainly of -- fall

7   within the scope of that question.

8   22   Q.   Okay.

9   A.   And if I then look for all files

10   that have been accessed with -- and they're

11   presented within Internet Explorer, but it doesn't

12   mean that they came from Internet Explorer, then

13   those files are also of interest, and that's where

14   I found a number of references to files within

15   Dropbox as an example.

16   23   Q.   Right. So did you use search

17   terms to find specific -- or specific files, or did

18   you have a complete list of everything you

19   accessed?

20   A.   Sorry, please repeat the first

21   part of that question.

22   24   Q.   So were you given any search terms

23   to look for specific files, or did you have a

24   complete list of files that he accessed which you

25   then reviewed with somebody?

1   A.   No, to the second part of your

2   question. The first part of your question

3   is -- forgive me, I'm not understanding exactly

4   from a technical perspective what you're asking me

5   on the first part.

6   25   Q.   So if we go through the various

7   exhibits in your affidavit.

8   A.   Yes.

9   26   Q.   For instance, at tab F is a list

10   of files that Brandon appears to have accessed

11   relating to WIND Mobile.

12   A.   Okay.

13 27   Q.   So what I'm asking, you searched

14   the time period May -- or sorry, March 27th to May

15   26th; correct?

16   A.   Yes.

17 28   Q.   So this is only a subset of the

18   files he accessed on a specific date?

19   A.   Correct.

20 29   Q.   So would you have an entire list

21   of files similar to this that he accessed during

22   the entire period that you examined?

23   A.   If you're asking me if a list of

24   files was provided to me that I searched for, the

25   answer is no.

1	30	Q. No, but I'm asking if -- I mean,
2		I'm assuming that you created this chart at Exhibit
3		E; right?
4		A. Correct.
5	31	Q. So is there -- so where did this
6		come from?
7		A. In -- I provided -- sorry, let's
8		talk about -- within Internet Evidence Finder, I
9		can search for all files that were accessed that
10		become of interest.
11	32	Q. But how would they become of
12		interest to you? You would have no independent
13		knowledge of what would be of interest or not;
14		correct?
15		A. Then let me explain before
16		you -- within Internet Evidence Finder, I search
17		for a list of all files within Internet Evidence
18		Finder. More specifically, I search for file
19		colon colon slash slash slash; okay?
20	33	Q. Right.
21		A. And that gives me a file list and
22		that file list I provided to Mr. Winton because I
23		have no way of knowing what is truly of interest or
24		not. That's not my role here.
25	34	Q. Okay. So can I just stop you

1   there?

2   A.   Sure.

3   35   Q.   Do you know how many files were on

4   that list?

5   A.   I do not recall at this time how

6   many files were on that list.

7   36   Q.   More than a hundred?

8   A.   I do not recall how many files

9   were on that list.

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

11   A.   It was in an Excel spreadsheet.

12   38   Q.   Okay. Do you have an estimate of

13   how many, how many files were on the list?

14   A.   I'm truly not comfort -- I'm truly

15   not comfortable answering how many files. I don't

16   know.

17   39   Q.   Can I have an undertaking to

18   answer the question of how many files were on the

19   list produced to your firm?

20   U/T   MR. WINTON: Yes, we'll give you that

21   undertaking. We will inform you as to how many

22   files -- I'm not sure if we could use the term

23   "files", but how many entries, let's say, were on

24   the list on the spreadsheet provided to us by

25   Mr. Musters.

1   BY MR. TETREAULT:

2   40   Q.   And can you, please, produce the

3   lists?

4   MR. WINTON: Well, I'll take that under

5   advisement, because as you can appreciate, there's

6   a lot of confidential information on that through

7   file names that we do not want West Face accessing.

8   So unless you can explain to me what the basis is

9   for asking for the actual list, --

10   MR. TETREAULT: Sure.

11   MR. WINTON: -- I'm not sure that

12   you're entitled to it, that it's relevant to

13   anything that's in dispute here.

14   MR. TETREAULT: So the position of

15   Catalyst and Mr. Musters, if I understand

16   correctly, is that the pattern of the way he

17   accessed files makes it suspicious, I'll say, or

18   leads to the inference that he was transferring

19   files into a Cloud account.

20   So having access to the full list would

21   enable us to determine whether -- there's no

22   context behind the way that he accessed these

23   files, so seeing a full list would -- it would

24   allow us to determine, you know, is this a normal

25   pattern for him, did he normally open a number of

1   files in a short period of time and things of that

2   nature that would be able to put his actions which

3   you say are suspicious into context.

4   MR. WINTON: Well, if I may, I don't

5   think the word "suspicious" is anywhere in

6   Mr. Musters' affidavit.

7   MR. TETREAULT: Okay.

8   U/A   MR. WINTON: So there's that, and

9   secondly, I don't think you've established that if

10   he -- if it's a pattern of conduct that, I guess,

11   happens on other dates other than the dates

12   identified in the affidavit, I don't think you've

13   established that it somehow undermines Mr. Musters'

14   conclusion.

15   So we have no evidence that that would

16   actually prove what you say it proves, and so given

17   the sensitivities of producing that document, I'm

18   taking it under advisement, and what I suggest is

19   if maybe offline we can negotiate some way of

20   protecting confidentiality, we may be able to

21   produce it to you, but I'm not going to give you an

22   undertaking on this cross-examination.

23   BY MR. TETREAULT:

24 41   Q.   Okay. So you said that the -- you

25   provided a list to Mr. Winton. So what was -- what

1   happened next?

2   A.   I can't speak for -- well, I can't

3   speak for what Mr. Winton did with the list.

4   Subsequently to that, I was asked to narrow in on

5   certain phrases and certain dates.

6   42   Q.   Can you be specific about who you

7   were speaking with and what specifically they asked

8   you to do?

9   A.   Always speaking with Mr. Winton,

10   so...

11 43   Q.   So when did you speak to

12   Mr. Winton?

13   A.   I don't have that information with

14   me.

15 44   Q.   And so he asked you to focus on

16   specific files?

17   A.   Specific dates and -- for example,

18   I recall -- give me one moment.

19   --- Mr. Di Pucchio joins examination

20   at 2:19 p.m.

21   THE DEPONENT: I recall a request for

22   Stelco. I recall a request for WIND Mobile. I

23   also know that I looked at any -- looked for any

24   e-mails with respect to his personal accounts, one

25   Hotmail, one Gmail. So my affidavit -- one second.

1   The appendices and the spreadsheet provided are the

2   results of those inquiries.

3   BY MR. TETREAULT:

4   45   Q.   Did you produce a report?

5   A.   Outside of this affidavit, no.

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

7   affidavit.

8   MR. WINTON: Sure. Just one second. I

9   do want to clarify there was a report produced with

10   respect to the BlackBerry.

11   MR. TETREAULT: Right.

12   MR. WINTON: Just, I think, if you're

13   asking about the subject matter of his affidavit,

14   that's what his answer, I believe, was pertaining

15   to.

16   THE DEPONENT: Yes.

17   MR. WINTON: I just want to make sure

18   there's no error on the record.

19   BY MR. TETREAULT:

20   47   Q.   Yeah, and you produced the

21   BlackBerry report, and we'll get to that later.

22   A.   So I did not mean to suggest that

23   I didn't produce the BlackBerry report.

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

25   affidavit.

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 1                      BY MR. TETREAULT:

 2   48                 Q.   Paragraph 50, and you can just

 3        read it to yourself and let me know when you're

 4        ready.

 5                      A.   "I understand from Musters'

 6        report --"

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

 8        loud.

 9                      A.   Oh, sorry.  I thought you asked me

10        to read it out loud.

11   50                 Q.   No.  So Mr. Riley says that he

12        understands from your report.  So your evidence is

13        that there was no report; correct?

14                      A.   I'm trying to recall.  I did not

15        produce a report outside of my affidavit and the

16        BlackBerry report.

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

18        says:

19                           "The information set out below

20                           is derived from the report and

21                           affidavit of Musters which I have

22                           reviewed prior to swearing this

23                           affidavit."

24                      So again, your evidence is that you

25        didn't produce a report to Mr. Riley or at all?
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 1                            MR. WINTON:  He's answered the

 2        question.

 3                            BY MR. TETREAULT:

 4   52                       Q.   Okay.  No, I've got my answer.  If

 5        you do happen to come across a report, can I get

 6        your undertaking to produce it?

 7                            MR. WINTON:  I can explain this -- what

 8        you're getting at if you allow me to.

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

10                            MR. WINTON:  Okay.  There is no report,

11        and so there's nothing to produce.

12                            BY MR. TETREAULT:

13   53                       Q.   Okay.  Who chose the time period

14        of March 27th to May 26?

15                            A.   Mr. Winton.

16   54                       Q.   Did you review any other time

17        periods?

18                            A.   Can I have a moment to review my

19        affidavit to answer that question?

20   55                       Q.   Sure.  Did you review your

21        affidavit prior to this cross-examination?

22                            A.   Yes.

23   56                       Q.   Okay.

24                            A.   Yes.  I need to understand

25        your -- I don't -- your question is too broad for
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1   me to answer. When I looked at Hotmail and Gmail

2   activity, I reviewed the entire computer. When I

3   looked at Internet Evidence Finder, I looked at the

4   entire computer. So you need to narrow your

5   question for me. Was I asked -- you need to narrow

6   your question for me.

7   57   Q.   Well, what time periods did you

8   examine?

9   A.   For what?

10 58   Q.   For anything.

11   A.   I reviewed the entire computer.

12 59   Q.   Okay. Well, you haven't produced

13   any information in terms of files that he accessed

14   prior to March 27th; correct?

15   MR. WINTON: He hasn't produced any

16   information?

17   MR. TETREAULT: So these exhibits to

18   his affidavit, they're only -- I think the earliest

19   of the file -- it shows the date that he accessed

20   the file -- the files. The earliest is, I

21   think -- I believe March 28th.

22   MR. WINTON: They say what they say.

23   BY MR. TETREAULT:

24 60   Q.   So why did you choose to produce

25   only a portion of Mr. Moyse's activity?

1   MR. WINTON: Can you -- what's the

2   basis for that question? What are you trying to

3   ask him?

4   MR. TETREAULT: I'm trying to get

5   context around the files that were produced and why

6   certain files were produced and certain files

7   weren't.

8   MR. WINTON: Okay. I don't think any

9   files were produced.

10   MR. TETREAULT: Or file names.

11   MR. WINTON: He didn't prepare any

12   reports on file activity. I think that may be the

13   problem with your question. So he didn't prepare

14   any or produce any documents.

15   BY MR. TETREAULT:

16   61   Q.   Well, he produced -- all of his

17   affidavits are his file activity; correct? So why

18   only a portion of all the files he accessed -- you

19   talk about this spreadsheet with his entire file

20   history. Why did you select -- or why did you

21   choose to produce only a select portion over all

22   the files that you uncovered?

23   MR. WINTON: Just to -- Mr. Musters

24   reported to us. He did not produce anything. So

25   if you want to ask him what he reported on, that

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

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

3   on.

4   MR. WINTON: -- in terms of what you're

5   trying to ask.

6   BY MR. TETREAULT:

7   62   Q.   Did you find any evidence of

8   Mr. Moyse copying files onto a USB?

9   A.   I just want to be thoughtful about

10   my answer, so give me a minute. No.

11   63   Q.   Did you find any evidence of

12   Mr. Moyse transferring files into his Box or

13   Dropbox accounts?

14   A.   Yes.

15   64   Q.   What evidence is that?

16   A.   If I take you to Appendix B of my

17   affidavit, if you look at record No. -- and forgive

18   me, it's a little bit small -- 99, you'll see a

19   reference to a file that ends Abdullah_documents.

20   65   Q.   Okay.

21   A.   So there's a file that was

22   referenced in his Box account called

23   Abdullah.documents, and there's also, right above

24   that, line 98 -- it says record 98 -- a login.

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

1   this is a record of Mr. Moyse transferring a file

2   to his Box account?

3   A.   I'm saying that if you look

4   at -- if you look at the information listed in

5   Appendix B, okay -- sorry, I'm just looking for the

6   one that has the Dropbox stuff in it. Do you know

7   which one I'm referring to, Mr. Winton?

8   MR. WINTON: If I may assist him?

9   You're looking for Dropbox report?

10   BY MR. TETREAULT:

11   67   Q.   Yeah, tab E.

12   A.   Tab E? Yes, thank you. So if you

13   look at tab B and tab E, and you look at the access

14   times, then I would like to take you to a statement

15   in my affidavit, No. 17, that says:

16   "In my experience, Moyse's

17   conduct of accessing several files

18   from the same directory over brief

19   period of time, as described above,

20   is consistent with transferring

21   files to a Cloud Service."

22   68   Q.   Right, but doesn't your affidavit

23   also say that when you transfer files to a Cloud,

24   it doesn't leave a record in the computer?

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

1   69   Q.   So you're stating -- so correct me

2   if I'm wrong, in tab E, all the Dropbox, isn't this

3   just simply a record of him accessing the files in

4   his Dropbox?

5   A.   Well, we have to apply some logic

6   to what we're looking at. The Dropbox is a

7   Cloud-based sharing service, and it's intended to

8   easily share files on more than one computer. So

9   we also know that the desktop, which I analyzed --

10   I'm referring to the Catalyst Capital desktop that

11   Mr. Moyse used, and we can see that it's coming out

12   of his account.

13   So Mr. Moyse had credentials on his

14   account, on his computer, to have these files. So

15   if you're asking -- no one sets up Dropbox on one

16   computer. They always set it up on more than one

17   computer for the purpose of sharing files. It

18   could be ten computers, but let's go with two or

19   more -- or two or more devices, let's say, and --

20   so if you're asking me did he put -- I'm just going

21   to pick one at random, Masonite-1.pdf. It's

22   actually record No. 254. It's about, I don't know,

23   15 down.

24   70   Q.   Okay.

25   A.   So did he access that file on this

1   computer? Yes. If I look at some of these file

2   names, I would -- I would see that these are files

3   that were accessed. If you're asking me were they

4   accessed because they were placed there from

5   somewhere else or were they accessed from -- sorry,

6   were they put there by Cat Capital, the answer is I

7   can't be sure, but I can tell that these files, if

8   they were in one place, they're logically in two

9   places.

10   71   Q.   Right.

11   A.   Or more, and the same applies to

12   my statements with respect to Box.

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

14   Box.

15   A.   Okay.

16   73   Q.   So it's Mr. Moyse's evidence that

17   his Box account was used for a work purpose, and on

18   his cross-examination, Mr. Riley acknowledged that

19   the Box account was created for work purposes.

20   So given that both Mr. Moyse and

21   Mr. Riley acknowledged that the Box account was a

22   Catalyst account, would that change your belief

23   about Mr. Moyse's conduct and the records showing

24   that he accessed the Box account?

25   MR. WINTON: What belief are you

1   referring to?

2   MR. TETREAULT: Well, Mr. Musters

3   pointed to the Box account and said that record 98

4   and 99 were, I believe -- correct me if I'm

5   wrong -- records of Mr. Moyse transferring files to

6   a Box account.

7   MR. WINTON: Which appendix is it

8   again?

9   BY MR. TETREAULT:

10 74   Q.   Appendix B.

11   A.   Appendix B, so one back. So I

12   referred to 98 and 99. So I referred to a login to

13   the Box account, and I referred to Abdullah

14   documents.

15 75   Q.   So do you have any evidence to

16   dispute that those -- that Mr. Moyse accessed these

17   files for a work-related purpose?

18   A.   I was never asked to make that

19   determination.

20 76   Q.   Would you agree that Mr. -- I can

21   take you to Mr. Moyse's -- have you read

22   Mr. Moyse's affidavit?

23   A.   I have.

24 77   Q.   So would you agree that the

25   records that you have produced are consistent with

1   Brandon's explanation for the records?

2   A.   I'm not sure how to answer that

3   and maybe I'll answer it two ways. My task was to

4   point out whether or not data had left the

5   organization through various means, not -- through

6   various means, and there are many ways that people

7   can take information from an organization. We know

8   and Brandon -- or Mr. Moyse's affidavit

9   acknowledged that he was using a Box account.

10 78   Q.   For work purposes.

11   A.   I just want to be simplistic for a

12   moment and say -- I'm not the lawyer, so we know

13   that Mr. Moyse was using Box account, and we know

14   that Mr. Moyse was using a Dropbox account. So for

15   what purpose is not for me to determine. However,

16   if I were to have the opportunity to review other

17   devices that would have been attached to this Box

18   or Dropbox account, then by producing those

19   results, the lawyers -- I refer to both sides --

20   can then determine whether or not your statement of

21   for business purposes only is valid. I don't know

22   that. I don't -- I haven't been asked to respond

23   to that, and I make no assertion whether or not it

24   was for those purposes or not.

25 79   Q.   Can you explain why in every other

1   exhibit through your affidavit the user is listed,

2   but in Exhibit B, it does not list the user?

3   A.   That's simply a function of

4   Internet Evidence Finder in that it wasn't able to

5   recover that information. If you're asking me is

6   that information available, the answer is Internet

7   Evidence Finder did not produce that.

8   80   Q.   Is it possible that somebody else

9   was accessing these files on Brandon's computer?

10   MR. WINTON: What's the basis for

11   asking that question?

12   MR. TETREAULT: If you look at Dropbox,

13   for instance, on the second page, the date that the

14   files --

15   MR. WINTON: Sorry, which tab are you

16   at?

17   MR. TETREAULT: Exhibit B, page 120.

18   MR. WINTON: Yeah.

19   MR. TETREAULT: The date accessed says

20   6/20/2014, which is June 20th, 2014.

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

22   p.m.

23   THE DEPONENT: Okay.

24   MR. TETREAULT: So it's -- I mean,

25   Brandon didn't have access to his workplace

1   computer after --

2   MR. WINTON: Is there any -- where are

3   we getting this from?

4   MR. TETREAULT: Mr. Riley stated that

5   he had -- I mean, it's not in dispute that

6   Mr. Moyse didn't work at Catalyst after May 26th,

7   that he was asked to leave the workplace. By June

8   20th, that's after...

9   MR. WINTON: I just think -- if you

10   want to ask a question, ask a question, but if

11   you're going to -- because if you're here to give

12   evidence, I'm not going to accept that. So I think

13   you have to ask a question of this witness rather

14   than giving him a whole bunch of evidence and then

15   asking him to comment on it.

16   BY MR. TETREAULT:

17 81   Q.   It's not in dispute that Mr. Moyse

18   wasn't in the workplace on June 20th, so why is

19   there a record here from Mr. Moyse's computer on

20   June 20th?

21   A.   Do you want me to answer that

22   question?

23 82   Q.   Yes.

24   A.   To me, it seems simple. If I have

25   a computer here and a computer here, and let's call

1   this computer -- let's call it Computer 1, which is

2   the Catalyst Capital computer, and Computer 2,

3   the -- another computer not at Catalyst Capital,

4   then as long as both computers are connected to the

5   Internet, then if Computer 2, which is not at

6   Catalyst Capital, accesses a file, that file will

7   be synced -- that's the whole purpose of Dropbox --

8   to other computers that Dropbox is linked to.

9   So to see a Dropbox file accessed after

10   Mr. Moyse was no longer in the workplace does not

11   surprise me. What it does is confirms to me that

12   there's another computer that has access to those

13   Dropbox files.

14 83   Q.   So what you're stating is that

15   reference to Dropbox is not Mr. Moyse accessing the

16   Dropbox on his workplace computer, the computer

17   which you examined, but it's him examining -- it's

18   him accessing Dropbox on another computer?

19   A.   I can give you a theoretical

20   example. If I put a file on Computer 2, which I've

21   described as not being at Catalyst Capital, a brand

22   new file called Marty.doc, then -- and Dropbox --

23   and this computer at Catalyst Capital is on-line,

24   then the brand new file called Marty.doc will end

25   up in the Dropbox of Catalyst Capital's computer.

1   Having said that, it will have a

2   creation date, a last modified date and an access

3   date. So I haven't done a detailed analysis of

4   these files that you're referring to, but I can

5   tell you that there's a logical explanation for it.

6   84   Q.   So I'll ask the question that led

7   to this chain again. Given the user is not --

8   there's no record of the user, is it possible that

9   there was another user who accessed these files on

10   Brandon's computer?

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

12   through that.

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

14   A.   No, it's not.

15   86   Q.   So if somebody else logged into

16   their own -- to their own login on Brandon's

17   computer, there would be no record of that?

18   A.   I never said that.

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

20   A.   All right. Let me walk you

21   through that. If Marty Musters signed on to

22   Brandon's computer, then Marty Musters would not

23   have access to Dropbox because that was tied

24   Mr. Moyse's account.

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

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

2   your affidavit.

3   A.   I haven't finished answering the

4   question, but do you want me to --

5   MR. WINTON: Apparently it doesn't

6   matter, so don't worry about it.

7   THE DEPONENT: Okay.

8   BY MR. TETREAULT:

9   89   Q.   So it appears that some of the

10   file names in this list are duplicates. Why would

11   that be?

12   A.   Well, Internet Evidence Finder

13   produced these, extracted these. I will agree with

14   you that they appear to be duplicates because they

15   have the exact visit date and time and the same

16   file name. So yes, some of them appear to be

17   duplicates although I can't dismiss the fact that

18   they're duplicates. I will agree with you that

19   they appear to be duplicates unless I did more

20   research into whether they were in two different

21   locations, if I try to drill down in terms of

22   getting some additional information about them, but

23   on the surface, they appear to be duplicates, and

24   I'll agree with that.

25   90   Q.   Okay. So can you help me

1   understand what the last date visited means?

2   A.   The last -- it's referred to as

3   the last access date and time. It is dependent on

4   how the operating system treats those dates and

5   times. For example, the Apple operating system

6   versus Windows 7 versus Windows XP all treat the

7   same date differently.

8   91   Q.   So --

9   A.   So having said that, Brandon's

10   computer was a Windows 7-based machine. So if I

11   restrict my answer to Windows 7, which would make

12   the most sense, then it either means that the file

13   was manipulated as in it was accessed, it was

14   copied. The -- moved. There would be a number of

15   reasons why an access date in Windows 7 might get

16   updated.

17   92   Q.   Okay. So even though this group

18   of files was accessed over an 11-minute period,

19   they could have been open for much longer; correct?

20   A.   If you're asking me did I -- did

21   the user open document 1, and then while document 1

22   was open, open document 2 and then open document 3

23   and so on, it's possible.

24   93   Q.   What evidence do you rely upon for

25   your belief it was very likely that he transferred

1   these files to his Cloud accounts?

2   A.   Because when I look at the times,

3   it's 6:28:18, 6:28:27, 6:29:31, 6:30:15. I also

4   see in the front that it references drive N. Drive

5   N is a server drive. It's not a local drive.

6   So now you're asking me -- now I need

7   to take a number of factors into consideration.

8   How fast is the network speed? Is it running at 10

9   megabits per second, a hundred megabits per second?

10   I have not done an analysis of the network speed,

11   but I also can tell you that based on my

12   experience, people don't look at a document for 15

13   seconds, 11 seconds, 9 seconds and so on.

14 94   Q.   But didn't you just state it was

15   possible that these were open longer than the 11

16   minutes?

17   A.   Okay. Let me add to my answer.

18   Is it possible? Sure. Is it likely? No.

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

20   unlikely?

21   A.   If I wanted to look at 20

22   documents, I wouldn't open up 20 documents all at

23   the same time and then go back to the first one and

24   look at it and then go back to the second one and

25   look at it. I would open and close the document,

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 1        and I would open and close the next document, and I

 2        would open and close the third document and so on,

 3        or I would copy them or I would move them or I

 4        would do something with them, but my experience

 5        tells me that these files were likely copied.

 6   96             Q.   Is it fair to say that your belief

 7        is speculation?

 8                    A.   No.

 9   97             Q.   Well, what evidence do you have to

10        prove that he copied these to a Dropbox or a Cloud

11        account?

12                    MR. WINTON:   He already answered that

13        question.

14                    BY MR. TETREAULT:

15   98             Q.   So you're stating -- can we go to

16        paragraphs 43 to 46 of Brandon's affidavit?   Have

17        you reviewed Brandon's explanation?

18                    MR. WINTON:   This one is marked up.   We

19        may want to show him a clean one.

20                    MR. TETREAULT:   Sure.

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

22        underlining.

23                    BY MR. TETREAULT:

24   99             Q.   Have you reviewed Brandon's

25        explanation for accessing the investment letters?
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1   A.   I have.

2   100   Q.   So you state that Brandon's

3   activity is consistent with transferring the files

4   to Dropbox?

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

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

7   BY MR. TETREAULT:

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

9   affidavit.

10   MR. WINTON: I don't think that's an

11   exact wording of what his evidence is. I think the

12   exact wording is important, counsel. He said it is

13   his opinion, based on the pattern of conduct

14   described above, that Mr. Moyse was very likely

15   transferring the documents he reviewed from

16   Catalyst's computers to his Dropbox or Box

17   accounts, although he cannot say so definitively at

18   this time. That was his evidence.

19   BY MR. TETREAULT:

20   102   Q.   Would you agree that Brandon's

21   activity is also consistent with his own

22   explanation that he skimmed the files looking for

23   specific information and then closed them?

24   A.   Do you mind if I just reread No.

25   43?

1   103   Q.   Yeah, go ahead.

2   A.   I will -- in my experience, I will

3   say to paragraphs 43 and 45 that it's an unlikely

4   explanation.

5   104   Q.   Is it possible?

6   A.   Anything is possible.

7   105   Q.   How would the activity look

8   different if he was simply reading the files?

9   A.   The time --

10   MR. WINTON: I just want to point out,

11   at paragraph 46, Mr. Moyse admits that he only --

12   46, it's right after the paragraph you pointed him

13   to, so you have the benefit of it.

14   MR. TETREAULT: Right.

15   MR. WINTON: The reason it only took

16   him approximately 11 minutes. So I don't think

17   it's fair to suggest to this witness that, in fact,

18   he was looking for longer than the time period that

19   he admits in his own affidavit he was spending. So

20   why don't we work within the evidence that we have

21   on the record, --

22   MR. TETREAULT: Okay.

23   MR. WINTON: -- which is that he looked

24   at it for 11 minutes, and let's ask our questions

25   based on evidence that's in the record and not on

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 1        some other speculating question that apparently

 2        isn't the evidence.

 3                      BY MR. TETREAULT:

 4   106                Q.   Okay.  So based on Mr. Moyse's

 5        evidence or affidavit, which you've read, how would

 6        his file activity look different if that was true?

 7                      A.   Sorry?

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

 9        question.

10                      BY MR. TETREAULT:

11   107                Q.   You say that the pattern of

12        conduct -- based on the pattern of conduct

13        described above, Mr. Moyse was very likely

14        transferring the documents he reviewed.

15                      So how would the pattern of conduct

16        look different if he was simply reading the files

17        and closing them?

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

19        question.

20                      BY MR. TETREAULT:

21   108                Q.   Would it look any different?

22        R/F           MR. WINTON:  Don't answer.  All of this

23        is completely improper questioning for him; okay?

24        So we're not answering any of this.

25                      BY MR. TETREAULT:
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1 109   Q.   Having read Brandon's explanation,

2   has your belief changed that it's very likely that

3   he was transferring files?

4   MR. WINTON: He already answered that.

5   BY MR. TETREAULT:

6 110   Q.   So why hasn't your -- before you

7   signed -- swore your affidavit, you weren't aware

8   of Brandon's explanation; correct?

9   A.   Absolutely correct.

10 111   Q.   So why hasn't your explanation

11   changed after hearing Brandon's explanation?

12   MR. WINTON: I think he answered that

13   as well. You asked him whether it changed. He

14   said it's unlikely and then he explained why.

15   THE DEPONENT: I don't believe my

16   answer has changed from paragraph 17 and 18 in my

17   affidavit.

18   BY MR. TETREAULT:

19 112   Q.   Have you reviewed the investment

20   letters that Brandon accessed?

21   A.   In terms of its content?

22 113   Q.   Yes.

23   A.   No.

24 114   Q.   So you have no knowledge of

25   whether they contained confidential information?

1   A.   A, I have no knowledge, and B, I'm

2   not in a position to determine it even if I read

3   it.

4   115   Q.   The files that Brandon accessed

5   were available for him; correct? He didn't bypass

6   any security measures?

7   A.   I have -- I'm not in a position to

8   answer that. I don't know the answer to that.

9   116   Q.   Okay. Can we go to Exhibit D?

10   MR. WINTON: Exhibit D of Mr. Musters'

11   affidavit.

12   BY MR. TETREAULT:

13 117   Q.   So what evidence do you rely upon

14   for the belief that it's very likely that he

15   transferred these accounts to his Cloud account?

16   A.   I've already answered that.

17   MR. WINTON: No, not for Stelco. It's

18   a different --

19   THE DEPONENT: Sorry, forgive me.

20   Sorry, I'm just...

21   MR. WINTON: Just while he's reviewing,

22   can you repeat the question?

23   BY MR. TETREAULT:

24 118   Q.   What evidence do you rely upon for

25   your belief that it was very likely that he

1   transferred these files to his Cloud accounts?

2   A.   When I see a pattern of activity

3   where the times are close together, I've already

4   stated in this session that I saw no evidence that

5   they were copied to a USB drive, so the activity

6   here is consistent with -- the conduct of accessing

7   several files from the same directory over a brief

8   period of time is consistent with transferring

9   files to a Cloud Service.

10 119   Q.   But you'll agree with me that

11   Exhibit E only shows that Brandon accessed the

12   files; correct?

13   A.   Well, access means a number of

14   things. Copying is a form of accessing.

15 120   Q.   Okay. So are you stating that

16   this exhibit shows that he copied the files?

17   A.   I'm not stating that, but I'm

18   stating that -- I'm stating that in computer

19   language, accessing means a number of things or can

20   mean a number of things. It can mean opening up

21   the file and closing it. It can mean copying it.

22   It can mean moving it. It can mean importing 28

23   pictures into Photoshop and doing something with

24   those 28 pictures to create a collage. There's a

25   number of different explanations for the word

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

 2   So I still go back to my statement in

 3   paragraph 17 that if we eliminate thumb drives or

 4   external USB storage devices, and we know he has a

 5   Dropbox account, and we know he has a Box account,

 6   and the file access times are very close together,

 7   then my experience tells me that this is consistent

 8   with my statement in paragraph 17. That's my what

 9   my experience tells me.

10 121   Q.   So you're relying upon simply that

11   there's a pattern of him accessing the files, not

12   any specific -- you know, you can't point to

13   anything specific to say this shows that -- this

14   specific entry shows that he transferred the file

15   from, you know, here to here? It's just based on

16   the pattern of accessing the files?

17   A.   The pattern of accessing the files

18   and my experience in the analysis of this case

19   draws me to the two conclusions in my affidavit --

20   not two conclusions, the two paragraphs in 17 and

21   18.

22 122   Q.   Have you read Brandon's

23   explanation for reviewing these files?

24   A.   I have.

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

1   MR. TETREAULT: Paragraph 47 and 48.

2   MR. WINTON: It's highlighted. There's

3   no comments on it if that's okay.

4   BY MR. TETREAULT:

5   123   Q.   Okay.

6   A.   Okay.

7   124   Q.   So having reviewed his comment,

8   has your belief changed that it is very likely that

9   he was transferring the files?

10   A.   Well, I read his own words where

11   he says I do admit transferring one Stelco doc --

12   Stelco file to Dropbox to read at home.

13   So we know, based on this statement,

14   that one or more files was transferred to Dropbox.

15   Based on my statements in terms of -- with no

16   knowledge of Mr. Moyse's statement, my statement

17   was that it's likely that it was copied -- sorry,

18   based on the pattern of conduct, very likely the

19   transferring documents to Dropbox. So I'm not sure

20   the question -- I'm almost hearing you affirm my

21   comments based on his subsequent affidavit.

22   125   Q.   And again, like the investor

23   files, even though the list shows the files were

24   accessed over a 70-minute period, they could have

25   been open for longer?

1   A.   Anything is possible, but that's

2   highly unlikely that you would -- I've never done

3   that. If I have 70 files to review, I don't open

4   up 70 files and then start looking at them. So, I

5   mean, is it possible? Sure. Is it likely? No.

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

7   A.   In terms of its content?

8   127   Q.   Yes.

9   A.   No.

10   128   Q.   So you have no knowledge of

11   whether or not they're confidential?

12   A.   Even if I did, I would have no

13   basis to state whether or not they were

14   confidential. So the answer is no.

15   129   Q.   Okay. Can we turn to your Exhibit

16   E? So I note that -- starting with record 255. Do

17   you see it? It's the files in the Z drive.

18   A.   Mm-hmm.

19   130   Q.   Why does this list contain files

20   with DGI?

21   A.   Well, to me, that tells me that Z

22   is a network drive on the Cat Capital system. So

23   on the drive Z, whatever server that is, there's a

24   folder called Docs. There's a -- within that Docs

25   folder, there's a folder called Credits, and within

1   that Credits folder, there's a folder called DGI

2   and then the file name.

3 131   Q.   It's my information that DGI

4   refers to Data Group Limited.

5   A.   Okay.

6   MR. WINTON: Where is that information

7   from?

8   BY MR. TETREAULT:

9 132   Q.   It's in one of the documents that

10   we produced, but anyways, so do you have any

11   evidence that --

12   MR. WINTON: Which document? I'm

13   sorry, I didn't -- I haven't seen it, and I just

14   want to make sure that it's in the evidence from --

15   the document is actually in the record or else you

16   can introduce it as an exhibit, but I don't --

17   BY MR. TETREAULT:

18 133   Q.   It's in the Affidavit of

19   Documents, but I'll move on. So do you have any

20   evidence that DGI refers to Masonite?

21   A.   I have no -- no.

22 134   Q.   So other than the files that are

23   from the Z drive, the rest of the files are

24   different from the rest of the -- the other files

25   in your affidavit, because it shows that they're

1   from Mr. Moyse's Dropbox, not from Catalyst's

2   system; correct?

3   A.   Sorry, you have to start over

4   again with that question.

5   135   Q.   So in all the other exhibits to

6   your affidavit, --

7   A.   Yes.

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

9   or the N drive --

10   A.   Yes.

11   137   Q.   -- showing that they were accessed

12   in Catalyst's system.

13   A.   Yes.

14   138   Q.   But these files from Dropbox are

15   not files that were contained in Catalyst's system;

16   correct?

17   MR. WINTON: Other than these Z drive

18   ones.

19   THE DEPONENT: Sorry, I just need to

20   understand your question better, because we were

21   talking about record No. 255.

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

23   about that.

24   BY MR. TETREAULT:

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

1   A.   Sorry, then -- that's why I was

2   focused on that. So forgive me for -- so these

3   other -- well, there were some files at the top.

4   140   Q.   Right.

5   A.   Starting at 16 that reference

6   Dropbox, and there were other files that don't

7   reference Dropbox. So again, forgive me, I was

8   focused in on something else, so I'm unsure of your

9   question.

10   MR. WINTON: I think you may have

11   answered it. You acknowledge that there's some

12   that refer to Dropbox.

13   THE DEPONENT: Yes, and there's some

14   that aren't.

15   BY MR. TETREAULT:

16   141   Q.   So do you have any evidence that

17   Brandon accessed files related to Masonite on

18   Catalyst's system?

19   A.   Well, if I take -- I'm just

20   picking one at random, 8853.

21   142   Q.   8853. Okay.

22   A.   I did not review the content of

23   it, but based on the fact that it says

24   Masonite.pdf, we'll assume that it's related to

25   Masonite.

1	143	Q.	But the path mean says Dropbox?
2		A.	Correct.
3	144	Q.	And it's from a C drive, so --
4		A.	Correct.

5   145   Q.   -- that would be -- wouldn't that

6   file be in Mr. Moyse's Dropbox rather than in

7   Catalyst's system?

8   A.   Correct.

9   146   Q.   So my question was, do you have

10   evidence that Brandon accessed the files related to

11   Masonite from Catalyst's system?

12   A.   Oh, I'm sorry, I'm sorry. Okay,

13   now I have it. If you're asking -- so let me tell

14   you what I know, and let me tell you what I don't

15   know.

16 147   Q.   Okay.

17   A.   What I know is that there's a file

18   called Masonite.pdf in Brandon's Dropbox. If

19   you're asking me do I know the origin of that file

20   and where it came from and whether that file

21   Masonite.pdf exists on the Catalyst Capital's

22   servers, the answer is I don't know. The reason I

23   don't know is because I did not try to -- first of

24   all, it was never part of my scope to review all of

25   the documents on Catalyst Capital's servers and try

1   to match them to the documents here.

2   148   Q.   And if Brandon had accessed

3   Masonite files existing in Catalyst's Z drive or N

4   drive, it would have been captured in your image;

5   correct?

6   A.   No, not necessarily correct, and

7   I'm glad you brought that up. A lot of these

8   records are recovered from what's called

9   unallocated space. So the files that we have are a

10   subset of the files that were accessed.

11   If you're asking me is this list 100

12   percent accurate, absolutely not, because the

13   nature of a computer is such that it rewrites or

14   overwrites on allocated space. So having said

15   that, we're able to recover -- myself, any other

16   forensics expert, is able to recover a subset of

17   those files. So if you're asking me if this list

18   is complete, no. Is it a subset? Absolutely.

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

20   255.

21   A.   Yes.

22 150   Q.   That's Brandon accessing -- going

23   into the Z drive, going into that specific folder.

24   So you are saying that -- do you have any evidence

25   that Brandon went into a Masonite folder in

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

2   MR. WINTON: I think he answered that

3   question.

4   MR. TETREAULT: Okay.

5   MR. WINTON: I agree he answered that

6   question with a no.

7   BY MR. TETREAULT:

8   151   Q.   What evidence do you rely upon for

9   your belief that -- sorry, you have no evidence

10   that any of those files originated from Catalyst;

11   correct?

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

13   BY MR. TETREAULT:

14   152   Q.   So what evidence do you rely upon

15   for your belief that it is very likely that he

16   transferred those files to his Cloud account?

17   A.   Well, my evidence is that there's

18   a filed called Masonite.pdf-1 -- Masonite-1.pdf for

19   205, sorry, in his Dropbox account.

20   153   Q.   Right.

21   A.   So we know that file exists or has

22   existed at sometime in his Dropbox account.

23   154   Q.   But is it fair to say you have no

24   evidence that he transferred that file from

25   Catalyst's system?

1   A.   Correct.

2   155   Q.   Okay. Can we turn to tab F?

3   These files relate to WIND Mobile; correct?

4   MR. WINTON: They've been redacted for

5   a reason. I don't think Mr. Musters knows what

6   file they -- looking at them now, but we agree they

7   relate to WIND Mobile but had been deliberately

8   redacted from the record.

9   BY MR. TETREAULT:

10   156   Q.   Okay. So what evidence do you

11   rely upon for your belief that it was very likely

12   that he transferred these files to his Cloud

13   accounts?

14   A.   Again, based on the access times

15   being close together, in the absence of him copying

16   them to a USB drive, it is likely -- forgive me for

17   being redundant, but my experience tells me that

18   this pattern of contact is consistent with the

19   transferring of documents to somewhere, some other

20   device, and I refer to another device as a Cloud

21   account or some other area, and it's very likely

22   that they were copied to a Box or Dropbox account.

23   157   Q.   Is part of the reason for your

24   belief that Mr. Moyse did not have a work-related

25   purpose for accessing those files?

1   A.   I would not know that.

2   158   Q.   At the time you swore your

3   affidavit, were you aware that Mr. Moyse was

4   working on the WIND Mobile file for Catalyst?

5   A.   I was not -- I want to answer that

6   specifically. No, I don't have -- it was never my

7   determination to determine whether or not a

8   document, a project, or whatever was confidential

9   or not or that Mr. Moyse should or shouldn't have

10   access to something.

11   My task was to provide information,

12   which I did in this affidavit. I made no statement

13   in my affidavit saying, Oh, look, he accessed

14   something that he shouldn't have accessed. That

15   was beyond the scope of what I was asked to do.

16   159   Q.   Have you reviewed Mr. Moyse's

17   explanation for accessing these files?

18   A.   I did today.

19   160   Q.   I want to take you to -- I want to

20   show you evidence from Mr. Riley's

21   cross-examination. Specifically you can read from

22   question 422 to 427, but question 427 is actually

23   the important one.

24   A.   Okay.

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

1   testimony in this cross-examination, does that

2   change your belief that it was very likely that he

3   transferred the files to his Cloud account?

4   A.   Appendix E is the one for the

5   WIND; is that correct?

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

7   maybe.

8   THE DEPONENT: F?

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

10   THE DEPONENT: If I look specifically

11   at the documents in Appendix F of my affidavit, I

12   note times of 8:39:09, 8:39:14, which is six

13   seconds apart, 8:39:46, which is 32 seconds apart,

14   8:43, which is roughly four minutes apart, 8:48

15   which is roughly five minutes apart, 8:55, which is

16   roughly seven minutes apart, 9:02, which is roughly

17   seven minutes apart, and 9:03, which is roughly one

18   minute apart.

19   So if you ask me logically for

20   something that's five minutes apart, I totally

21   agree with you. If you ask me for something that

22   is six seconds apart, five seconds apart, I

23   disagree with you. So I can't see how someone --

24   I'm looking at the very first entry, someone can

25   open up an Excel spreadsheet, literally open it up,

 1   look at it, make some sort of decision, close it

 2   and have the next one open five seconds later.

 3   BY MR. TETREAULT:

 4   162   Q.   Correct me if I'm wrong, but this

 5   list doesn't say when the document was closed.

 6   It's only when it was accessed; correct?

 7   A.   You raise an interesting point,

 8   and the question is was it accessed -- when does

 9   Microsoft update the access time, when it closes it

10   or when it opens it, and that's a good question.

11   I'm not sure that I know the answer to that off the

12   top of my head.

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

14   again.

15   A.   Sure.

16   164   Q.   So:

17   "Q. So I put it to you that

18   Brandon's explanation seems

19   reasonable, does it not, that he

20   would have had to open a number

21   files and quickly review them to

22   determine if they contained the

23   information that he was looking for

24   if, as you say, there were many WIND

25   Mobile documents?

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

2   comment."

3   So despite the fact that Mr. Riley

4   seems to acknowledge that Brandon -- it's

5   reasonable, that Brandon's explanation is

6   reasonable, you still believe that it's very likely

7   that he transferred these files to his Cloud

8   account?

9   A.   I'm answering that question and

10   saying it's likely in some cases, and it's not

11   likely in some of the other cases that I'm looking

12   at.

13 165   Q.   Well, I'm speaking specifically

14   about this case.

15   A.   Yes. No, no, no.

16   MR. WINTON: He was referring to the

17   fact -- just --

18   THE DEPONENT: Sorry.

19   MR. WINTON: I'm just going to try and

20   help him. I think he was referring to the fact

21   that the longer time periods, it could be an

22   acceptable explanation, but if I understood

23   Mr. Moyse's (sic) earlier answer, for the documents

24   where there were shorter intervals, he didn't

25   accept that. Okay?

1   THE DEPONENT: That's exactly what I'm

2   saying.

3   BY MR. TETREAULT:

4   166   Q.   Did you review the Excel files at

5   the top the list?

6   A.   When?

7   167   Q.   When you were accessing -- or when

8   you were analyzing Mr. Moyse's computer.

9   A.   Oh, if you asked me did I look at

10   the content of these files, --

11   168   Q.   Right.

12   A.   -- the answer is no.

13   169   Q.   Did you analyze the files to find

14   the metadata behind them?

15   A.   We could spend an hour on that.

16   170   Q.   Specifically, the metadata behind

17   this file would show if Mr. Moyse edited that file;

18   correct?

19   A.   There are -- it's not a simple

20   answer, but I'm happy to launch into it if you

21   wish.

22   171   Q.   Well, I mean, did you do an

23   examination to see if Mr. Moyse edited any of these

24   files?

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

1   use -- there are three areas that you can find data

2   as it relates to a file. There's -- every computer

3   has something called a master file table, and think

4   of it as an index, and the index contains the file

5   name, the last access date, the last modified date,

6   the creation date. It also contains the date at

7   which the file access -- sorry, the master file

8   table entry was updated. It also contains the

9   physical location on the drive and so on. That's

10   one aspect of data.

11   There's the actual data, itself. It's

12   just where the file is written on the drive.

13   Certain types of files also have additional data

14   stored inside of the file. More commonly pictures

15   as an example, the camera, the geolocation and so

16   on and so forth but where documents and Excel

17   documents also have some data inside of those files

18   as well.

19   So when you refer to metadata, it's a

20   commonly misnomered term in that are we referring

21   to the metadata on the master file table or the

22   metadata inside of the Excel spreadsheet? I'm

23   going to -- so can you be specific in terms of what

24   metadata that you're talking about?

25 172   Q.   Did you examine the file to

1   determine if Mr. -- I mean, Mr. Moyse's position is

2   that he was editing the -- editing the files. He

3   was creating a chart for -- "I was working on a

4   chart to include in an investment memo."

5   A.   Okay.

6   173   Q.   So did you examine the files to

7   see if he actually edited the Excel files, because

8   presumably if he edited the Excel files, it would

9   support his position that he was creating a chart.

10   MR. WINTON: Are you my witness? Why

11   don't you just ask him the question?

12   BY MR. TETREAULT:

13   174   Q.   So did you examine the Excel files

14   to see if Mr. Moyse edited them on May 13th?

15   A.   No.

16   175   Q.   Why not?

17   A.   Well, first of all, when I wrote

18   my affidavit, I did not have the benefit of

19   Mr. Moyse's explanation, nor did I have the benefit

20   of Mr. Riley's affidavit, and I wasn't asked to,

21   nor was -- there are literally a million files on a

22   computer. So to ask me if I've done an analysis on

23   the specific file without being asked seems

24   unreasonable, so the answer is no.

25   176   Q.   Okay. Exhibit G and also

1   paragraph 17 of your affidavit.

2   A.   Yes. I know it well.

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

4   "In my opinion that, based on

5   the pattern of conduct described

6   above, Moyse was very likely

7   transferring the documents he

8   reviewed on March 28, April 25 and

9   May 13 from Catalyst's computers to

10   his Dropbox or Box accounts,

11   although I cannot say so

12   definitively at this time."

13   So judging by this record, Mr. Moyse

14   accessed the file on May 26th, which you did not

15   include in paragraph 17. So I'm just asking -- or

16   I'm just wondering why May 26th is left out of your

17   explanation. Is it that you don't believe it was

18   very likely that he transferred that document?

19   A.   Because there's only two, there's

20   not enough to establish a pattern. So I'm

21   suggest -- if you're asking me two files, which one

22   appears to be a duplicate of the other in terms of

23   file name, if I've got that right -- so there's not

24   enough -- oh, access account 3. Interesting.

25   There's not enough information to use

1   the words "based on the pattern of conduct." So I

2   believe -- I'm going by memory, I believe that's

3   why I left it out.

4   178   Q.   So is it your belief that

5   Mr. Moyse transferred this file to his Box or

6   Dropbox account?

7   A.   See, here's the problem. We know

8   that files were transferred to his Box and Dropbox

9   account. What we don't know is the extent to which

10   those files are, the nature of the confidentiality

11   of those files.

12   So having said that, it would seem

13   reasonable to me to -- based on what we know, it

14   would seem reasonable to me to examine those other

15   devices where these things might be so that we can

16   have an answer.

17   179   Q.   But that's not my question. So my

18   question is specifically --

19   A.   I don't have enough information to

20   say yes or no on those two specific records. I

21   can't say is it likely that he did, I can't say is

22   it likely that he didn't. My answer was more

23   specific to -- the pattern of activity on the

24   computer would suggest that he has copied things to

25   Box and Dropbox. So to point out one file and say

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1        did that one file go is not a reasonable question

2        for me to answer, to give an opinion on.  I don't

3        know.  It could have, and it could not have.  I

4        don't know.

5   180              Q.   Okay.  So based on the information

6        at the beginning of your affidavit with your

7        background, it seems that you have a lot of

8        experience as a forensic examiner, and I'm just

9        wondering if you can expand on that a bit.

10                   A.   Can you be more specific?

11  181              Q.   Yeah, so how many cases would you

12       say you've been involved in where you've been asked

13       to determine if a person has taken information?

14                   A.   I've been involved in probably

15       twelve or thirteen hundred forensic cases whose

16       nature spans from criminal investigations to civil

17       litigation, such as this.

18                   In terms of -- I haven't done a

19       breakdown, so I can simply say, from a civil

20       perspective, probably half of those cases would

21       generally fall into this type of litigation.

22  182              Q.   All right, and in your experience,

23       have you noticed any patterns in how employees or

24       employees have take information?

25                   A.   Very much so.  I actually have
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1   written a few articles on what I call profiling,

2   which seems to -- which talks to understanding the

3   behaviour of the user on the computer to determine

4   their pattern of use.

5   So I can't remember whether it was one

6   or two articles, but I've certainly written an

7   article on that very subject.

8   183   Q.   So can you explain the types of

9   usual patterns where an employee or a person

10   is -- has been taking confidential information?

11   A.   Well, it's a broad question, and

12   I'm happy to go into the various scenarios.

13   Depending on the level of sophistication of the

14   user, one type of user will just e-mail themselves

15   everything to their personal account.

16   Another type of user will use an

17   external storage device. Some users will literally

18   open up a document and print it and then take those

19   printed documents with them because it's harder to

20   detect, and some clients use Dropbox and other

21   Cloud-based services, and the most sophisticated

22   ones will use some form of encryption.

23 184   Q.   So the files that -- or the paths

24   that you point to in your affidavit, those files

25   were accessed on March 28th, April 25th, May 13th

 1   and May 26th; correct?

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

 3   MR. WINTON: Isn't that what it states

 4   in his affidavit?

 5   BY MR. TETREAULT:

 6   185   Q.   Yeah.

 7   A.   Yes.

 8   186   Q.   Mr. Moyse denies improperly

 9   transferring of the files, but assuming for a

10   moment that the chain of events in your affidavit

11   is true, he would have -- Mr. Moyse began speaking

12   to West Face on March 26th, that's not in dispute.

13   So two days after Brandon began

14   speaking to West Face, he accessed three- to

15   six-year-old newsletters and transferred them but

16   nothing else to his Cloud account. Then a month

17   later, he looked at Stelco files, which were then

18   six years old, transferred them to his Cloud

19   account and nothing else. Then he waited another

20   three weeks and looked at files related to WIND and

21   transferred those but nothing else, and then on his

22   last day of work, he accessed some meeting notes.

23   Doesn't that seem like an unusual

24   pattern for someone who is taking confidential

25   information?

1   R/F   MR. WINTON: I object to the question.

2   I think you haven't established that's the only --

3   those are the only documents that are -- that were

4   possibly transferred. These are specific instances

5   that have been recorded upon but in no way are they

6   represented by Catalyst as the only instances.

7   MR. TETREAULT: Well, what other

8   documents are you relying upon?

9   MR. WINTON: We're not relying upon

10   any. That's why we're seeking to look at his

11   devices.

12   BY MR. TETREAULT:

13 187   Q.   Okay. So you have no evidence --

14   if he has no evidence that he took any other -- I

15   mean, in your experience, is that unusual -- is

16   that an unusual pattern for someone who is taking

17   confidential information?

18   R/F   MR. WINTON: I don't think you should

19   answer that question. First of all, it's built on

20   a faulty premise, and it's not one that we accept.

21   So I'm going to instruct the witness not to answer.

22   BY MR. TETREAULT:

23 188   Q.   In your experience, if a person is

24   taking confidential information, would they

25   normally transfer a large amount over a short

1 period of time?

2   A.   Do you want me to answer?

3   MR. WINTON: Yeah.   No, I haven't

4 objecting to it.   Yes.   I don't want -- it's not

5 what I want or don't want.   I haven't objected to

6 it, so you should answer.

7   THE DEPONENT: All right.   Thank you.

8 Different people fit different profiles.   There's

9 not one shoe fits all, and when I analyzed

10 Mr. Moyse's computer -- and I think ultimately, if

11 I can draw any statement to present to this forum,

12 it would be that in the exact profiling that you

13 talked about, does this profile fit for someone who

14 is taking information from the company, and based

15 on what I saw, the answer is yes, and that's

16 exactly why I said what I said in 17, but let me

17 even go further and say -- this is No. 18.   I'm

18 just reading.

19   "I cannot conclusively

20   determine whether Catalyst's files

21   were transferred by Moyse to the

22   Cloud Services and then from the

23   Cloud Services onto any other

24   computer or electronic device, such

25   as an iPad, without access to those

1   those computers and/or devices."

2   Does Mr. Moyse fit the pattern of

3   taking information, and I asked myself that

4   question during this -- when I was doing this

5   analysis, and the answer is yes, he very much fits

6   that profile, and that's why I made those two

7   statements in 17 and 18.

8   So does he do it a little bit here and

9   a little bit there or a lot here and a lot there,

10   he fits the pattern. He jumped at me and fit the

11   pattern. That's ultimately what I wanted to say.

12   189   Q.   Can I turn you to Exhibit A of

13   Mr. Riley's supplementary affidavit?

14   MR. WINTON: This is the affidavit

15   dated July 14th, sworn July 14th?

16   MR. TETREAULT: Yes.

17   MR. WINTON: Yes. Exhibit A.

18   Mr. Musters's report?

19   MR. TETREAULT: Yes.

20   MR. WINTON: Okay.

21   BY MR. TETREAULT:

22   190   Q.   Did you create the report?

23   A.   I did.

24   191   Q.   And what information, direction or

25   instructions were you given?

1   A.   Can I do an analysis of this

2   BlackBerry and extract all information from it.

3   192   Q.   And who gave you those

4   instructions?

5   A.   Mr. Winton.

6   193   Q.   Was there anything in writing?

7   A.   No, it was verbal in a conference

8   room.

9   194   Q.   Why did you forensically examine

10   his work computer on June 21st but the phone on

11   July 2nd?

12   A.   I was back in the office on July

13   2nd. Do you mind if I pull out -- well, actually,

14   does anyone have a calendar?

15   MR. WINTON: July 2nd was a Wednesday,

16   I can tell you that.

17   THE DEPONENT: Okay. I recall being

18   back in the office on July 2nd and being presented

19   with a BlackBerry and asked to analyze it.

20   BY MR. TETREAULT:

21   195   Q.   Was it a separate retainer from

22   examining the work computer?

23   A.   I didn't look at it as a separate

24   retainer. I looked at it as part of the same

25   engagement.

1   196   Q.   I guess my point is were you

2   originally asked to only examine the work computer

3   and then at a later date asked if you could also

4   examine the phone?

5   A.   Yes, because when I recall -- I

6   recall showing up on Saturday to meet with

7   Mr. Winton at the Cat Capital offices, and there

8   was no BlackBerry present, so obviously a few days

9   later I remember being in the boardroom and being

10   presented with a BlackBerry and asked if I could

11   extract all of the information from the BlackBerry.

12   197   Q.   Okay.

13   MR. WINTON: He's referring to a

14   boardroom at our office.

15   THE DEPONENT: Yes.

16   BY MR. TETREAULT:

17   198   Q.   So while Brandon had work e-mails

18   connecting to his BlackBerry, those e-mails would

19   ultimately be stored on Catalyst's server; correct?

20   A.   If you're talking about his work

21   e-mail account, --

22   199   Q.   Right.

23   A.   -- then -- they don't necessarily

24   have to be, but logically, the answer would be yes.

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

1   Mr. Moyse's evidence in his responding affidavit

2   that he didn't have personal e-mail attached to the

3   BlackBerry, but I guess you would not have any --

4   A.   I have no evidence to suggest --

5   or I have no evidence or information to say yea or

6   nay to that.

7   201   Q.   But the answer would be the same,

8   I suppose, that while an e-mail account may have

9   been connected to the BlackBerry, ultimately those

10   e-mails exist on another server somewhere, whether

11   it's Hotmail server or Gmail server?

12   A.   Okay. No, and I'm happy to

13   explain. If you're talking about his Catalyst

14   Capital account, then I will -- I would be shocked

15   if all of the e-mails did not traverse through both

16   the Catalyst Capital server and the BlackBerry, if

17   you're talking about his Catalyst Capital.

18   If you're talking about other e-mail

19   accounts, those other e-mail accounts would likely

20   have been local to his BlackBerry and Catalyst

21   would have no knowledge of them. That also applies

22   to SMS text messaging, MMS multimedia text

23   messaging and BBMs as in BlackBerry messaging.

24   None of that information would be -- and contacts

25   may or may not be synchronized to the exchange

1   server. I could set up a contact on my

2   BlackBerry --

3   202   Q.   Right.

4   A.   -- that is not tied to the

5   exchange server.

6   203   Q.   I'm speaking specifically about

7   e-mails.

8   A.   Well, and I just want to narrow

9   you to the Catalyst Capital e-mail?

10 204   Q.   Right.

11   A.   Yes, we both agree.

12 205   Q.   But if he had his Gmail connected

13   to the BlackBerry, --

14   A.   Yes.

15 206   Q.   -- when he wiped his BlackBerry,

16   it wouldn't delete his Gmail account, his e-mails

17   contained in his Gmail account?

18   A.   More than likely not. It depends

19   on whether or not you set it up as what's called

20   POP or IMAP, and IMAP actually synchronizes to the

21   original host. I have no idea how he set up his

22   e-mail.

23 207   Q.   So he -- sorry.

24   A.   Well, I would think he would be a

25   fool to wipe his personal Gmail account by wiping

1   his BlackBerry.

2   208   Q.   So it's fair to say that even

3   though Mr. Moyse reset his BlackBerry, Catalyst

4   would still have access to Brandon's Catalyst

5   e-mails; correct?

6   A.   That would be a fair statement.

7   209   Q.   And, in fact, you've included a

8   screen shot of one of Brandon's Catalyst e-mails in

9   your report?

10   A.   Yes.

11 210   Q.   Can I turn you to Exhibit B of

12   Mr. Riley's supplementary affidavit?

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

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

15   want.

16   A.   Oh, sorry.

17 212   Q.   Did you have any involvement in

18   retrieving those e-mails?

19   A.   These e-mails?

20 213   Q.   Yes.

21   A.   Yeah, a hundred percent.

22 214   Q.   So those e-mails include e-mails

23   in -- as far back -- well, including 2013; correct?

24   So how far back did you look?

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

1   desktop computer of Mr. Moyse, is a PST file, and

2   the program FTK processes that PST file and parses

3   out all available e-mail, including any available

4   deleted e-mail.

5   Now some e-mail that's been deleted may

6   have been overwritten, so the deleted e-mail we

7   have or I was able to recover is a subset thereof.

8   Was I able to recover some deleted e-mail? Yes.

9   So anything that -- anything that was on -- inside

10   that PST file on his desktop, I certainly had

11   available to me.

12   215   Q.   Sorry, when you say deleted

13   e-mail, deleted from where?

14   A.   If you -- if you have Outlook, and

15   you delete an e-mail, it goes into your deleted

16   folder, and then if you delete it from there, it

17   goes into basically the unallocated space inside

18   this PST file, and depending on how active your PST

19   file is, FTK is able to recover some of that

20   deleted e-mail.

21   216   Q.   Did you analyze Mr. Moyse's e-mail

22   activity on Catalyst's sever?

23   A.   On the server, itself?

24   217   Q.   Right.

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

1   the server because theoretically I would have more

2   e-mail on the PST file than would be available in

3   the exchange PST file.

4   218   Q.   So how many e-mails did you find

5   of Brandon sending an e-mail to his personal

6   account? Are those the only ones?

7   A.   There are more than these. I do

8   not recall an exact number. I provided -- I do not

9   recall an exact number.

10   219   Q.   And it's Brandon's evidence that

11   he would forward information to his personal

12   accounts in order to work from home. Do you have

13   any evidence to dispute that?

14   A.   I wasn't asked to analyze that.

15   So you're asking me to analyze the content of any

16   e-mail and make a determination. I wasn't asked to

17   do that.

18   220   Q.   Okay, subject to any answers

19   arising from undertakings and the refusals, those

20   are my questions.

21   MR. WINTON: Thank you.

22

23   ---Whereupon, the cross-examination concluded

24   at 3:31 p.m.

25

1   REPORTER'S CERTIFICATE

2

3

4   I, CINDY LITTLEMORE, CSR, Certified

5   Shorthand Reporter, certify;

6   That the foregoing proceedings were

7   taken before me at the time and place therein set

8   forth, at which time the witness was put under oath

9   by me;

10   That the testimony of the witness

11   and all objections made at the time of the

12   examination were recorded stenographically by me

13   and were thereafter transcribed;

14   That the foregoing is a true and

15   correct transcript of my shorthand notes so taken.

16

17

18

19   Dated this 2nd day of August, 2014.

20

21   *Cindy Littlemore*

22   _____

23   NEESON & ASSOCIATES

24   COURT REPORTING AND CAPTIONING INC.

25   PER: CINDY LITTLEMORE, CSR

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