

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

---

JAMES RILEY  
May 13, 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.

Defendant

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--- This is the Cross-Examination of JAMES RILEY, on  
his affidavit, taken at the offices of Davies Ward  
Phillips & Vineberg LLP, 40th Floor, 155 Wellington  
Street West, Toronto, Ontario, on the 13th day of May,  
2015.

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1     A P P E A R A N C E S:

2

3     Andrew Winton, Esq.                             for the Plaintiff.

4

5     Kristian Borg-Olivier, Esq.                   for the Defendant  
6   Brandon Moyse

7

8     Matthew Milne-Smith, Esq.                   for the Defendant  
9         & Andrew Carlson, Esq.                 West Face Capital  
10   Inc.

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12                             REPORTED BY:   Terry Wood, RPR, CSR

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I N D E X

WITNESS: JAMES RILEY

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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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The questions/requests refused are noted by R/F and appear on the following pages/lines: 173/19, 176/18, 176/25, 177/7, 177/12, 178/1, 179/2, 179/15, 210/22, 211/6, 245/25, 248/20,

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: 42/23, 44/9, 46/14, 108/19, 126/9, 127/22, 128/3, 131/13.

INDEX OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted  
by U/A and appear on the following pages/lines: 42/23,  
64/5, 65/1, 65/11, 72/8, 77/21, 101/6, 123/11, 124/15,  
125/4, 164/8, 214/10, 255/16, 264/24.

1	LIST OF EXHIBITS	
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3	1 Letter from Mr. Milne-Smith to	95
4	Mr. DiPucchio dated March 13, 2015	
5	2 Request for production of documentation	96
6	relating to letter from Mr. Mitchell to	
7	Mr. DiPucchio dated February 20, 2015	
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1 --- Upon commencing at 10:05 a.m.

2 CROSS-EXAMINATION BY MR. BORG-OLIVIER:

3 1 Q. Good morning, Mr. Riley.

4 A. Good morning.

5 2 Q. You're here today, Mr. Riley, in  
6 connection with the action Catalyst versus Brandon  
7 Moyse and West Face Capital. Do you understand that?

8 A. Yes.

9 3 Q. And you have sworn, if I have  
10 counted correctly -- sworn or affirmed -- five  
11 affidavits in this proceeding? I can walk you through  
12 the dates, if you would like.

13 A. Could you -- if you could, could  
14 just show me the first page?

15 4 Q. Absolutely.

16 A. Please.

17 5 Q. And maybe for the record, I will  
18 point out that, in the motion record dated February 18,  
19 2015, there's an affidavit of yours sworn February 18,  
20 2015, which is at tab 3. And your counsel will take  
21 you to the first page.

22 A. Thank you.

23 Yes.

24 6 Q. Then attached to that affidavit is  
25 exhibits you have at tab A, an affidavit that you swore

1 in this proceeding dated June 26, 2014, and if I have  
2 it correct, that was the first affidavit that you  
3 swore?

4 A. Yes. I don't know if it's the  
5 first, but I do recognize the affidavit.

6 7 Q. Behind tab B, there's what's called  
7 a reply affidavit of yours sworn July 14, 2014?

8 A. Yes.

9 8 Q. This one was -- if you look at  
10 paragraph 2 there, this one was sworn primarily in  
11 response to affidavits that were put in by our client  
12 Mr. Moyse and by West Face?

13 A. Yes.

14 9 Q. And behind tab C, there's a further  
15 reply affidavit sworn July 28, 2014.

16 A. Yes.

17 10 Q. And, finally, if you pull up the  
18 supplementary motion record dated May 1st, 2015,  
19 there's an affidavit of yours, supplementary affidavit,  
20 sworn May 1st, 2015?

21 A. Yes.

22 11 Q. Okay. And have you had a chance  
23 before appearing here today to review the affidavits  
24 that you swore in this proceeding?

25 A. I have reviewed them.



1           12           Q.    And is there anything in those  
2   affidavits that you would like to take the opportunity  
3   to correct?

4                   A.    Not at this time, no.

5           13           Q.    Okay.  For your purposes and your  
6   counsel's purposes, I will let you know that my  
7   examination will be quite brief, and then I will be  
8   turning it over to Mr. Milne-Smith, and I expect most  
9   of my questions will pertain to the affidavit of  
10  February 18, 2015.

11                   A.    May I do one thing before we start?

12                   MR. BORG-OLIVIER:  Yes.

13                   -- OFF THE RECORD --

14                   BY MR. BORG-OLIVIER:

15           14           Q.    So if I could have you turn,  
16  please, Mr. Riley, to the affidavit of February 18,  
17  2015, which is at tab 3 of the motion record.  And I  
18  would ask you to pull up paragraph 31, please.

19                   A.    Can I read it for one moment?

20           15           Q.    Please do.

21                   A.    Yes, I have read it.

22           16           Q.    And in this paragraph, you are  
23  describing the parties' appearance before Justice Himel  
24  on June 30th to schedule Catalyst's motion for urgent  
25  interim relief.  Do you see that?

1 A. Yes, I do.

2 17 Q. And Catalyst, I believe, was  
3 represented by Mr. Winton on that appearance; is that  
4 right?

5 A. I don't know. I don't remember  
6 whether it was Mr. DiPucchio or Mr. Winton, but if you  
7 tell me it's Mr. Winton, I will take that as given.

8 18 Q. Were you in court that day?

9 A. No.

10 19 Q. And what your counsel, whether it  
11 be Mr. Winton or Mr. DiPucchio, was seeking that day,  
12 as you know, was an urgent motion for an interim  
13 injunction, correct?

14 A. Correct.

15 20 Q. And if you turn up Exhibit F to  
16 this affidavit. We'll all struggle with this a little  
17 bit.

18 A. Is there a typed version of this  
19 endorsement?

20 21 Q. There isn't, but I don't think  
21 there is going to be anything controversial about it.

22 So what this is, I will tell you,  
23 Mr. Riley, is Justice Himel's endorsement, and one  
24 thing that you can see there, at the top, is that the  
25 approved date for the hearing of the motion was

1 July 16, 2014. Do you see that?

2 A. Yes, I see that.

3 22 Q. Okay. And the endorsement reads --  
4 about three lines down, you will see it says:

5 "Counsel seeks urgent motion interim  
6 injunction."

7 Do you see that?

8 A. Yes.

9 Q. "Moving party to serve and file  
10 materials by July 2, 2014, and  
11 responding party by July 7, 2014."

12 Do you see that?

13 A. Yes, I see it.

14 23 Q. And, finally, it says:

15 "On consent, counsel agree to preserve  
16 status quo re documents."

17 Et cetera. Do you see all that?

18 A. Yes, I do.

19 24 Q. Okay. And if you turn two pages  
20 beyond that to page --

21 A. Sorry, there is a -- there's a --  
22 there's a little bit of writing to the right.

23 25 Q. There is. Yes. I think that's  
24 Justice Himel's description of the type of case it is,  
25 so it says "Employment departure employee case

1 non-compete clause".

2 A. Okay. Thank you.

3 26 Q. I think it's typical in those cases  
4 so that the next judge would understand basically what  
5 kind of case they are dealing with.

6 A. Okay.

7 27 Q. So if you turn two pages beyond  
8 that to 129 in the motion record, what you see there is  
9 the consent that was entered into between the parties.  
10 Do you see that?

11 A. Yes.

12 28 Q. And it's signed by Mr. Pushalik for  
13 the defendants and by Mr. Winton for the plaintiffs.  
14 Do you see that?

15 A. Yes.

16 29 Q. And that reads:

17 "Defendants' counsel agree to preserve  
18 the status quo with respect to relevant  
19 documents in the defendants' power,  
20 possession, or control."

21 Do you see that?

22 A. Yes, I see that.

23 30 Q. And I take it that that was the  
24 only undertaking that the -- that Catalyst obtained at  
25 the time?

1                   A.    As far as I know, yes, as far as I  
2    know.

3       31           Q.    And Catalyst accepted and  
4    understood that those terms would stay in place from  
5    that date, June 30th, until the July 16th hearing?

6                   A.    And I'm not quibbling in any way.  
7    Just having reread the endorsement and looking at the  
8    undertaking, it's a little broader than the judge's  
9    order. I'm just -- just looking at the language.

10      32           Q.    Yes. So we are focussing right now  
11    on the undertaking that was provided by -- on consent.

12                   A.    Yes.

13      33           Q.    So Catalyst understood and accepted  
14    that those terms would stay in place from June 30th to  
15    July 16th, to the date of the hearing?

16                   A.    Yes.

17      34           Q.    And, of course, it was open to  
18    Catalyst, as it was to any of the other parties, to  
19    seek that different terms be included in that  
20    undertaking?

21                   A.    Yes.

22      35           Q.    And the undertaking didn't say, for  
23    example, that counsel would agree to preserve the  
24    status quo with respect to irrelevant documents?

25                   A.    No.

1           36                   Q.     That wasn't a concern for Catalyst?  
2     The focus was on relevant documents?

3                           A.     Yes.

4           37                   Q.     Yes.   And nor did it require, for  
5     example, that Mr. Moyse hand over his computer  
6     immediately on that date?

7                           A.     I don't recall why there was a  
8     hiatus between the date of the order and the date of  
9     the turnover.

10          38                   Q.     Okay.   But that wasn't something  
11     that Catalyst sought or obtained on that date?

12                          A.     No.   Never turned our minds to it,  
13     as far as I recall.

14          39                   Q.     Okay.   Then if we can go to  
15     paragraph 32 of your affidavit, please.

16                          A.     Sorry.   I will leave him to find  
17     it, because otherwise I will --

18                          MR. BORG-OLIVIER:   It's page 65 of the  
19     record, if that helps.

20                               -- OFF THE RECORD --

21                          BY MR. BORG-OLIVIER:

22          40                   Q.     So, Mr. Riley, in paragraph 32, you  
23     describe the motion for interim relief which took place  
24     on July 16, 2014?

25                          A.     Yes.

1           41                   Q.     Were you in court that day?

2                           A.     As far as I recall, no.

3           42                   Q.     You understand, I take it, that the  
4 parties appeared before Justice Firestone?

5                           A.     Yes.

6           43                   Q.     And you understand, in fact, you  
7 have stated here, that the parties consented to interim  
8 terms which were incorporated into an order of Justice  
9 Firestone?

10                          A.     Yes.

11          44                   Q.     All the parties consented to the  
12 interim terms that day, I understand?

13                          A.     Yes.

14          45                   Q.     And those terms were acceptable to  
15 Catalyst?

16                          A.     They were, although, to my best  
17 recollection, they were read to me over the telephone.  
18 I was not given a hard copy.

19          46                   Q.     Understood. Was it you who was  
20 providing instruction to counsel that day?

21                          A.     I was, and as I recall, we were  
22 under a lot of time pressure.

23          47                   Q.     No doubt. And you were providing  
24 instructions on behalf of Catalyst?

25                          A.     I was.

1       48                   Q.     And, ultimately, the instructions  
2       that you provided were that the terms of what became  
3       the order of Justice Firestone were acceptable to you  
4       and to Catalyst?

5                        A.     That is correct.

6       49                   Q.     And if we go to Exhibit G, this,  
7       Mr. Riley, is the interim relief order signed that day  
8       by Justice Firestone?

9                        MR. WINTON: I don't want to interfere  
10       unduly, Counsel, but it wasn't signed that day by  
11       Justice Firestone.

12                       MR. BORG-OLIVIER: Okay.

13                       MR. WINTON: But it is the interim  
14       order.

15                       MR. BORG-OLIVIER: Okay. Fair enough.

16                       BY MR. BORG-OLIVIER:

17       50                   Q.     And I take it, Mr. Riley, that this  
18       order appropriately captured what you understood to be  
19       the terms that Catalyst had consented to at that time?

20                       A.     May I just read it?

21       51                   Q.     Please do.

22                       A.     I think that's correct, but I just  
23       want to read it. May I take a moment?

24                       I've read it.

25       52                   Q.     Okay. And I will repeat my



1 question. I take it that this order appropriately  
2 captured the relief that Catalyst sought and obtained  
3 on that date?

4 A. Yes.

5 53 Q. Okay.

6 A. Yes, it does.

7 54 Q. And Catalyst did not seek or obtain  
8 any broader relief than that captured within this  
9 order, I take it?

10 MR. WINTON: Can you just clarify when  
11 you say -- what do you mean by "sought" or "seek"?

12 BY MR. BORG-OLIVIER:

13 55 Q. Well, fair point. Maybe the point  
14 that should be made in the question is, ultimately,  
15 Catalyst didn't obtain any further relief beyond this?  
16 Beyond what was in this order at that time?

17 A. To the best of my knowledge, no.

18 56 Q. Okay. Nor did it seek to by  
19 bringing a motion for further relief at that time?

20 A. No.

21 57 Q. Okay. If we can go to  
22 paragraph 36, please, of your affidavit, and this is at  
23 page 68 of the record.

24 So, Mr. Riley, subsequent to the interim  
25 relief order being signed on July 16 or soon

1       thereafter, I take it counsel were in regular  
2       communication regarding the process that would lead to  
3       the creation of the images of Mr. Moyse's computer  
4       devices? Do you recall that?

5                   A.     I don't recall. That would have  
6       been communication between counsel, which I would only  
7       be on the periphery of.

8       58               Q.     Okay. But I take it you were  
9       generally kept informed of the fact that the parties  
10      were working together in furtherance of the order?

11                   A.     I have no recollection either way.  
12      I mean, I assume -- when I say -- "assume" is always a  
13      bad word. I would take it that they were working  
14      towards fulfilling the order of Justice Firestone.

15      59               Q.     Okay. So in these paragraphs where  
16      you are describing the process by which the image was  
17      ultimately created on July 21, 2014, I take it this is  
18      information that you received from counsel or  
19      otherwise?

20                   So if I start you at paragraph 33, for  
21      example. And maybe it makes sense, Mr. Riley, that you  
22      take a moment to read through these paragraphs, but  
23      what you are describing here is the process leading up  
24      to Mr. Moyse turning over his computer and the image  
25      being created. So why don't you have a look at that.

1 A. Do I need to look at the exhibits?

2 60 Q. If you'd like. I'm going to take  
3 you to Exhibit K, but you are welcome to look at any  
4 exhibits you need.

5 A. Okay. I think.

6 61 Q. So you've told us in paragraph 1 of  
7 the affidavit -- and I acknowledge this is standard  
8 language in these affidavits -- that you have knowledge  
9 of the matters set out in the affidavit and that, where  
10 it's based on information and belief, you identify the  
11 source of the information and belief to be true?

12 A. Yes.

13 62 Q. So I don't see any language  
14 suggesting that this is on information and belief, so  
15 is it a fair conclusion to draw that this is  
16 information that you are now aware of or were aware of  
17 at the time?

18 A. Yes.

19 63 Q. Okay. So I'll ask again. This is  
20 a description, then, of the process by which  
21 Mr. Moyse's computer came to be turned over for  
22 forensic imaging on July 21st?

23 A. Yes.

24 64 Q. And as described in those  
25 paragraphs, counsel were in regular communication

1 regarding that process?

2 A. Yes.

3 65 Q. Okay. And as you note in  
4 paragraph 33, it was agreed that -- Harold  
5 Burt-Gerrans?

6 A. I don't know how to pronounce that.

7 MR. WINTON: We have been using the hard  
8 G internally, but I don't think --

9 BY MR. BORG-OLIVIER:

10 66 Q. Harold Burt-Gerrans of --

11 A. Why don't you call him "H&A"?

12 67 Q. Yes. H&A eDiscovery was retained  
13 to create the images. Do you see that?

14 A. Yes.

15 68 Q. Okay. And in paragraph 36, you  
16 refer to an e-mail which is reproduced in full at  
17 tab K.

18 A. Yes.

19 69 Q. From Mr. Hopkins, who is then  
20 Mr. Moyse's counsel to Mr. Burt-Gerrans?

21 A. Yes, I see it.

22 70 Q. Okay. And that e-mail was copied  
23 to your counsel, Mr. Winton and Mr. DiPucchio, and to  
24 West Face's counsel, Mr. Pushalik. Do you see that?

25 A. I do.

1           71                   Q.    Okay.  And this e-mail is dated  
2   July 18 at 8:54.  Do you see that?

3                           A.    Yes.

4           72                   Q.    Okay.  And it sets out some  
5   proposed changes to the engagement letter.  Do you see  
6   that?

7                           A.    Yes.

8           73                   Q.    And it requests consultation with  
9   Mr. Musters regarding how to image Mr. Moyse's iPad, in  
10  the paragraph beneath the numbered paragraphs?

11                          A.    I see that.

12          74                   Q.    Okay.  And, finally, it advises in  
13  the last standalone paragraph that Mr. Moyse has  
14  confirmed he will be at the Grossman offices by 10 a.m.  
15  on Monday with his three computer devices.  Do you see  
16  that?

17                          A.    Yes.

18          75                   Q.    And I can tell you, Mr. Riley --  
19  you won't necessarily know this by looking at it --  
20  that the Monday he's referring to, the following  
21  Monday, is July 21, 2014.

22                          A.    I will take that as given.

23          76                   Q.    Yes.  So there was, you'll agree  
24  with me, no attempt on behalf of Mr. Moyse's counsel to  
25  hide the fact that he would only be producing the

1 computer for forensic imaging some days later?

2 A. No.

3 77 Q. And I haven't seen any evidence  
4 that your counsel or anybody else objected in any way  
5 to that plan?

6 A. Not to my knowledge.

7 BY MR. BORG-OLIVIER:

8 78 Q. Okay. And I can ask this to you or  
9 to Mr. Winton, but if there are any communications from  
10 you, Mr. Winton, or Mr. DiPucchio, or anyone else to  
11 Mr. Moyse's former counsel objecting to the plan or  
12 suggesting that the computer, in fact, had to be turned  
13 over immediately, I take it you will provide them to  
14 me? We haven't seen anything like that?

15 MR. WINTON: In response to this e-mail,  
16 no.

17 MR. BORG-OLIVIER: Okay. And you can  
18 certainly do it by way of undertaking, if that's  
19 easier.

20 MR. WINTON: What I am just reviewing  
21 right now is the correspondence, because there was one  
22 fact I wanted to check, but -- in response to that  
23 question.

24 MR. BORG-OLIVIER: Should we go off for  
25 a second?

1 MR. WINTON: If we can. That would be  
2 great. Thanks.

3 MR. BORG-OLIVIER: Sure.

4 -- OFF THE RECORD --

5 MR. WINTON: That's fine.

6 BY MR. BORG-OLIVIER:

7 79 Q. Okay. Can we go, Mr. Riley, to  
8 paragraph 61, please, of your affidavit, which is at  
9 page 74 of the record.

10 Just so I'm clear on the record,  
11 Mr. Winton, when you said "That's fine", that means you  
12 gave the undertaking asked before we went off the  
13 record?

14 MR. WINTON: No, it means there is no  
15 such correspondence. There's nothing to undertake to  
16 produce.

17 MR. BORG-OLIVIER: Okay. So you have  
18 provided the answer?

19 MR. WINTON: Correct.

20 MR. BORG-OLIVIER: Okay.

21 THE WITNESS: I'm on paragraph 61.

22 BY MR. BORG-OLIVIER:

23 80 Q. Sorry, actually, go to  
24 paragraph 60, if you wouldn't mind, and I would ask if  
25 you would just read from paragraph 60 to paragraph 63.

1 A. Just to 63?

2 81 Q. Yes. Please. So you are  
3 describing here, Mr. Riley, your reaction or views to  
4 the draft report from the ISS that was circulated?

5 A. Yes.

6 82 Q. And one of the concerns that you  
7 have that you express in paragraph 63 is that you or  
8 Catalyst were concerned that Catalyst's confidential  
9 information was potentially mistakenly omitted from the  
10 draft report?

11 A. Yes.

12 83 Q. And at paragraph 62, you suggest  
13 that the ISS might have misunderstood the relationship  
14 between Catalyst and Callidus and that may have been a  
15 reason why certain confidential information was  
16 mistakenly omitted from the draft report?

17 A. Yes.

18 84 Q. And you'll recall that there was a  
19 series of what you describe as additional search terms  
20 that had been provided to the ISS that you make  
21 reference to at paragraph 62?

22 A. Yes, I recall that.

23 85 Q. Yes. And you take the position at  
24 the end of paragraph 62 that any document in  
25 Mr. Moyse's possession or potentially any document in



1 Moyse's possession that was responsive to the  
2 additional search terms, by its nature, very likely  
3 contained Catalyst's confidential information?

4 A. Yes. That was my belief at the  
5 time.

6 86 Q. Okay. And I take it that you had  
7 reviewed the additional search terms before swearing  
8 this affidavit?

9 A. Yes. Is it attached here? I can't  
10 remember. Did we redact this?

11 87 Q. They are not.

12 A. Sorry. I apologize. I think we  
13 redacted them.

14 88 Q. Yes.

15 A. Yes. Okay. And I do recall the  
16 search -- I don't recall each one of them, but I do  
17 recall the additional search terms.

18 89 Q. Okay. And I take it that you at  
19 least turned your mind to what those search terms were  
20 when providing the evidence that --

21 A. Yes.

22 90 Q. -- any document containing those  
23 search terms, by their nature, very likely contained  
24 Catalyst's confidential information?

25 A. Yes.

1       91               Q.    Okay.  And in making that  
2       statement, did you consider whether it might be  
3       possible that some of the terms would show up on  
4       Mr. Moyse's computer for benign reasons, that is, in  
5       contexts unrelated to Catalyst's confidential  
6       information?

7                       A.    I did not, but I'm not a  
8       computer -- a computer -- I'm relying on others for  
9       that expertise.

10      92               Q.    Okay.  You understood this much,  
11      surely, that, to the extent a document on Mr. Moyse's  
12      computer contained one of those search terms, it would  
13      register as a hit?

14                      A.    Yes, I do understand that.

15      93               Q.    Okay.  And you expressed the view  
16      that, when there would be such a hit, it very likely  
17      was a document containing Catalyst's confidential  
18      information?  That's what you have said here, isn't it?

19                      A.    Yes.

20      94               Q.    Okay.  And the conclusion that you  
21      reached, I take it, is that it was very unlikely that  
22      there would be documents on there that would register  
23      hits but not contain Catalyst's confidential  
24      information?

25                      A.    I'm not sure -- could you repeat

1 the question.

2 95 Q. Sure. I'm just really stating the  
3 converse of what you have stated here. I think you are  
4 saying that if a document contains one of those search  
5 terms, by its nature, that very likely contained  
6 Catalyst's confidential information?

7 A. Yes.

8 96 Q. You have said that?

9 A. Yes.

10 97 Q. So I'm suggesting that the  
11 necessary converse of that is that it's very unlikely  
12 that documents containing those search terms would be  
13 benign: Not containing Catalyst's confidential  
14 information?

15 A. I think that's correct. I have  
16 trouble with --

17 98 Q. I think I'm stating that fairly.

18 A. And I'm not quibbling. I'm just  
19 saying I think that is correct, but I'm not sure I --  
20 I'm not sure I understand the construct.

21 99 Q. Fair enough. I will move forward  
22 on that basis.

23 A. Okay.

24 100 Q. As you mentioned, the search terms  
25 have been redacted on the record and, in fact, we

1 included the supplementary ISS report in Mr. Moyse's  
2 motion record, but we redacted those terms, and I have  
3 a copy of the unredacted one for these purposes. I  
4 don't propose to enter it as an exhibit, nor do I  
5 propose to share it with West Face's counsel, but I do  
6 want to have a list of the search terms available to  
7 us, and I won't read any of them into the record, but  
8 the purpose of the questions, I need to have reference  
9 to those search terms. So they start at paragraph 3.

10 MR. WINTON: Can we go off the record?

11 -- OFF THE RECORD --

12 THE WITNESS: May I look at this for a  
13 moment?

14 BY MR. BORG-OLIVIER:

15 101 Q. For sure, absolutely.

16 A. Yes.

17 102 Q. So am I right, Mr. Riley, that the  
18 additional search terms to which you make reference at  
19 paragraph 62 of your affidavit are those listed here at  
20 paragraph 8 of the unredacted supplementary ISS report?

21 A. I'm sorry, I don't see the  
22 reference to it in here. What paragraph, 62?

23 103 Q. Paragraph 62.

24 A. Yes.

25 104 Q. In the last line.

1 A. Oh, I apologize. I see it now.

2 105 Q. That's okay. So there's a  
3 reference at paragraph 62 to additional search terms?

4 A. Yes.

5 106 Q. And I'm just seeking your  
6 confirmation that the terms listed here at paragraph 8  
7 of the supplementary ISS report are those additional  
8 search terms to which you've referred.

9 A. What date is this document?

10 107 Q. This document is dated --

11 A. March, okay.

12 108 Q. -- March 30, 2015.

13 A. Yes, these are -- to the best of my  
14 recollection, these are the additional search terms.

15 109 Q. Okay. And if you turn to page 4  
16 and look at the third term down on that list, it's one  
17 that registered 541 hits. Do you see that?

18 A. Yes, I see it.

19 110 Q. Okay. You'll agree with me, I take  
20 it, that that's a common man's name?

21 A. I would actually disagree with  
22 that.

23 111 Q. Okay.

24 A. I don't know any [redacted]. I'm  
25 not an expert on names.

1 MR. WINTON: Let's go off the record for  
2 a second.

3 -- OFF THE RECORD --

4 BY MR. BORG-OLIVIER:

5 112 Q. So we are back on. So without  
6 saying the name in question, and perhaps without  
7 getting into too much of an argument about how common  
8 that name is, would you at least go this far with me,  
9 Mr. Riley: That's a recognized man's name?

10 A. Yes.

11 113 Q. In other words, you look at that  
12 and you would acknowledge that certainly it's a word  
13 and a name that might appear in contexts other than in  
14 respect of Catalyst confidential information?

15 A. Yes.

16 114 Q. And did you consider at the time  
17 you swore the affidavit that that term might show up on  
18 Mr. Moyse's computer because he might have had  
19 reference to or discussions with a person with that  
20 name in an unrelated context to Catalyst?

21 A. We did, but we looked at the  
22 totality of all of the hits and found it -- in context,  
23 that it seemed unusual to us.

24 115 Q. What do you mean by that?

25 A. That it was not something I would

1 have expected to come up as frequently as that, and  
2 when I tied it in with the other -- the other hits, it  
3 seemed unusual to me.

4 116 Q. Okay. And the second term that I  
5 want to take you to, which I think we have agreement  
6 from you and your counsel that we can read into the  
7 record, notwithstanding that it was previously  
8 redacted, is the term "leader". Do you see that?

9 A. Yes.

10 117 Q. L-E-A-D-E-R.

11 A. I do.

12 118 Q. Okay. Can you agree with me that  
13 that is a common word?

14 A. Yes.

15 119 Q. Used in normal conversation outside  
16 of Catalyst context?

17 A. Yes.

18 120 Q. And, in fact, in numerous contexts  
19 that would have nothing to do with finance?

20 A. Yes.

21 121 Q. Sports, politics, others?

22 A. Yes.

23 122 Q. Okay. And you didn't disclose to  
24 the Court, I take it, that this was a common term that  
25 was among the redacted search terms?

1                   A.     Not to my knowledge, but I wasn't  
2     present in any of those hearings, I don't think.

3     123            Q.     Okay.   In your affidavit?

4                   A.     Yeah.   Not in my affidavit, no.

5     124            Q.     Okay.   And I take it, again, did  
6     you give any consideration to the fact that that term  
7     could show up in benign contexts on Mr. Moyse's  
8     computer?

9                   A.     I'm prepared to answer that  
10    question, but I think when I looked at these search  
11    terms, I looked at them in the context of the  
12    likelihood of the number of times that all of them  
13    would show up.   In other words, I -- from my view, I  
14    didn't isolate one term and say, wow, that showed up a  
15    lot; I looked at it in the context of why would these  
16    names have shown up and what was the likelihood of all  
17    of them showing up in any significant way.

18    125            Q.     Okay.   I see.   As I look at the hit  
19    counts, it looks to me like there's a pretty broad  
20    range, from zero all the way up to 15,000, on the  
21    different hits, right?

22                  A.     Yes.

23    126            Q.     Okay.

24                  A.     What I'm saying and what I'm trying  
25    to say is I don't think you can isolate just one set of



1 hit counts and dismiss them because of the likelihood  
2 that they could be a common term. I'm expressing this  
3 in my own way. You have to look at all of the ones  
4 that show up. What is the likelihood with those search  
5 terms of all of them showing up in any significant way?  
6 Sorry, a number of them showing up in any significant  
7 way? So without going through the names again --

8 127 Q. Right.

9 A. -- I was surprised to see these  
10 names showing up in any way. I would have expected  
11 zeros or low numbers.

12 128 Q. Okay. I think I understand the  
13 point. But I take it, Mr. Riley, you are not  
14 quarreling with the idea that the word "leader", for  
15 example, could quite easily show up in contexts  
16 unrelated to Catalyst?

17 A. I'm not quarreling with that. I  
18 didn't think I was quarreling with anything you were  
19 saying.

20 129 Q. No, no. I think it was going  
21 swimmingly.

22 In paragraph 65, if I can take you  
23 there.

24 A. May I look at 64?

25 130 Q. Of course.

1 A. Okay.

2 131 Q. So at paragraph 64 of your  
3 affidavit, Mr. Riley, you set out there four questions  
4 that your counsel, Mr. Winton, on behalf of Catalyst,  
5 asked the ISS arising out of their draft report. Do  
6 you see that?

7 A. Yes.

8 132 Q. And those were questions intended  
9 to address the concerns that you have set out in the  
10 preceding paragraphs about potentially the ISS  
11 misinterpreting the relationship between Catalyst and  
12 Callidus, among other issues?

13 A. Yes.

14 133 Q. And at paragraph 65, you note that  
15 Mr. Moyse's counsel objected to letting the ISS answer  
16 the questions?

17 A. Yes.

18 134 Q. You are aware, I take it,  
19 Mr. Riley, that Mr. Moyse's new counsel subsequently  
20 agreed to have the ISS answer those questions?

21 A. Can I just -- I never know the rule  
22 on this. Can I confirm? I do not recall -- I do  
23 believe that that is correct, but I can't recall  
24 precisely when I saw it or when I was informed of it.

25 135 Q. That's perfectly fair. You

1 understand, I take it, that the ISS subsequently  
2 delivered a supplementary report?

3 A. Yes.

4 136 Q. Which is the document that I have  
5 handed to you --

6 A. Yes.

7 137 Q. -- that maybe you can have  
8 reference to if your counsel has it handy.

9 A. Yes.

10 138 Q. And you understood then or, at a  
11 minimum, I take it you understand now that the purpose  
12 of that ISS supplementary report was, in fact, to  
13 specifically answer the four questions that you have  
14 set out there at paragraph 64?

15 MR. WINTON: Just -- I note that I think  
16 paragraph 3 of the supplementary report, which is not  
17 redacted from the record, may help address this  
18 question.

19 MR. BORG-OLIVIER: Perfect.

20 MR. WINTON: And maybe if I pull out a  
21 copy of the appendix C, which might be in -- is the  
22 appendix to that report in the record somewhere,  
23 because that might also help.

24 MR. BORG-OLIVIER: It is. Do you have  
25 our responding motion record?

1 MR. WINTON: I will.

2 MR. BORG-OLIVIER: Let's go off for a  
3 second.

4 -- OFF THE RECORD --

5 BY MR. BORG-OLIVIER:

6 139 Q. So, Mr. Riley, your counsel is  
7 showing you the complete supplementary ISS report,  
8 including its appendices, which is at tab K of  
9 Mr. Moyse's affidavit in our responding motion record.  
10 And if you go to tab C of the complete supplementary  
11 ISS report at page 129 of the responding motion record  
12 of Moyse, you will see there an e-mail from Mr. Winton  
13 to the ISS, and others. Can you have a look at that  
14 e-mail.

15 A. Yes, I've looked at it.

16 140 Q. And you see there confirmation  
17 that, in fact, Mr. Moyse's new counsel agreed that the  
18 issues of concern that had been raised previously  
19 could, in fact, be responded to and addressed by the  
20 ISS?

21 A. Yes.

22 141 Q. And that subsequently led to the  
23 creation of the supplementary report that we have been  
24 looking at?

25 A. Yes. Thank you.

1       142               Q.     So I take it that the concerns,  
2     then, that you had raised in those preceding paragraphs  
3     have now been addressed by virtue of the ISS preparing  
4     its supplementary report?

5                    A.     I still have some residual concern.

6       143               Q.     Okay. But I take it the concern  
7     that the issues had not been addressed by the ISS  
8     certainly have been dealt with?

9                    A.     I'm not trying to be argumentative.  
10    I still have residual concerns.

11       144               Q.     I understand that. You may  
12    disagree with the conclusions of the ISS, but -- let me  
13    ask the question -- but you no longer have the concern  
14    that you have expressed in here that Catalyst had  
15    raised certain concerns which the ISS was precluded  
16    from dealing with?

17                   A.     Again, I'm not trying to be  
18    argumentative. I think this was part of the response,  
19    but I do believe I've still got residual concerns, so I  
20    want that expressed that way.

21       145               Q.     Okay. And neither you nor your  
22    counsel, I take it, asked any further questions of the  
23    ISS coming out of this supplementary report?

24                    A.     We did resolve that we would have  
25    to probe deeper into the ISS and we might need a

1 broader process.

2 146 Q. I take it neither you nor your  
3 counsel asked any further questions of the ISS in the  
4 aftermath of this report?

5 A. I only asked questions of my  
6 counsel. Whether they pursued them at that time, I  
7 don't know or I don't recall.

8 147 Q. Okay. Maybe we can get that answer  
9 from your counsel or by way of undertaking, but I  
10 certainly haven't seen any further issues or questions  
11 raised with the ISS in the aftermath of the  
12 supplementary report, and I'd appreciate getting that  
13 confirmation.

14 MR. WINTON: That's correct, we did not  
15 pursue this further with the ISS in relation to  
16 Mr. Moyse's -- the images in Mr. Moyse's devices.

17 BY MR. BORG-OLIVIER:

18 148 Q. Thank you. And, finally, I'm going  
19 to ask you to turn up your July 14th affidavit, which  
20 is at tab B of your motion record at page 109.

21 MR. WINTON: Tab 3B.

22 MR. BORG-OLIVIER: Sorry, tab 3B. There  
23 are several B's.

24 THE WITNESS: May I look at this for a  
25 moment just to put it in context?

1 BY MR. BORG-OLIVIER:

2 149 Q. Yes. You can look at it to place  
3 yourself at the right moment in time, and I will let  
4 you know that the only questions I'm going to be asking  
5 pertain to paragraph 14.

6 A. Yes.

7 150 Q. Okay. So at this paragraph 14,  
8 Mr. Riley, you're discussing the fact that Mr. Moyse  
9 wiped his company-issued BlackBerry before returning it  
10 to Catalyst?

11 A. Yes.

12 151 Q. And in the last line of that  
13 paragraph, you raise concern that, by doing so,  
14 Mr. Moyse may have destroyed evidence of, among other  
15 things, Moyse's communications with West Face?

16 A. Yes.

17 152 Q. And I take it, Mr. Riley, that it's  
18 speculation on your part that Mr. Moyse had any  
19 communications with West Face from his work-issued  
20 BlackBerry?

21 A. I can't tell one way or the other,  
22 because it's wiped.

23 153 Q. Therefore, it's speculation,  
24 correct? You don't know that Mr. Moyse had any  
25 communications with West Face -- let me ask the

1 question.

2 A. I don't know that, because his  
3 BlackBerry was wiped.

4 154 Q. Yes.

5 A. If I was able to look at his  
6 BlackBerry, unwiped or unaltered, I would be able to  
7 answer that question.

8 155 Q. Well, you are still able to answer  
9 that question. The question is it's speculation on  
10 your part that Mr. Moyse had any communications with  
11 West Face from his work-issued BlackBerry?

12 A. Yes, that is correct.

13 156 Q. Okay. And I take it that e-mails  
14 sent to or from a Catalyst work e-mail address are  
15 maintained on a server at Catalyst; is that correct?

16 A. Yes.

17 157 Q. And my understanding -- and you can  
18 correct me if I'm wrong -- would be that wiping a  
19 BlackBerry would not remove e-mails on that BlackBerry  
20 from the Catalyst server; is that correct?

21 A. That is correct.

22 158 Q. Okay. So e-mails that Mr. Moyse  
23 may have sent or received on that BlackBerry wouldn't  
24 have been destroyed by virtue of the wiping of the  
25 BlackBerry?



1                   A.     I'm not -- again, I'm not a  
2     technical expert, but I think what I'm about to say is  
3     correct. If you deleted the e-mail on our -- in our  
4     system, double delete, it's most likely it would have  
5     been taken out of -- our server would be removed, but  
6     it would still be retained on his BlackBerry.

7     159           Q.     Okay.

8                   A.     If I delete -- let me say it  
9     simply. If I delete an e-mail from my -- if I double  
10    delete an e-mail --

11    160           Q.     What do you mean by "double  
12    delete"?

13                  A.     You delete it once and then you go  
14    and you delete it --

15    161           Q.     You empty the deleted folder.

16                  A.     -- you empty the deleted bucket, it  
17    will still be on my BlackBerry, because I don't sync  
18    the two from the deletion point of view. Similarly, if  
19    I delete a message on my BlackBerry, it is not deleted  
20    from my computer.

21    162           Q.     Okay. Does --

22                  A.     The other thing I will say is that  
23    I believe in the BlackBerry system that if you use  
24    BlackBerry Messenger or text messages, those are not --  
25    those are not touched.

1       163               Q.     Understood. I imagine Catalyst has  
2     some sort of e-mail backing-up system?

3                    A.     I would have to -- I would have to  
4     confirm that with our tech people, how it's backed up.  
5     Again, there is a backup system.

6       164               Q.     Yes.

7                    A.     But I believe that when you delete  
8     it, it's deleted from the system.

9       165               Q.     Okay. You have access to your IT  
10    people, right?

11                   A.     Yes.

12    166               Q.     I mean, you have made reference in  
13    one of your affidavits to the fact that you spoke to  
14    one of your internal IT people?

15                   A.     Yes.

16    167               Q.     But I take it you didn't raise this  
17    issue with them before swearing the affidavit?

18                   A.     I do not recall.

19    168               Q.     Okay. So when you provided this  
20    evidence that, by virtue of the BlackBerry being wiped  
21    Mr. Moyse's communications would be destroyed, I take  
22    it you didn't confirm that fact with anybody in the IT  
23    department as to whether, in fact, e-mails might be  
24    preserved?

25                   A.     We discussed at the time how we

1     could access different messages; in particular, what  
2     was on his BlackBerry, and it was confirmed to me we  
3     could not trace what was on his BlackBerry through any  
4     system we had.

5     169                   Q.     By whom?

6                           A.     What date was that? It was -- I  
7     can't remember the name of the -- I can undertake to  
8     give you the name.

9                           MR. WINTON: I will do undertakings.

10                          THE WITNESS: Yes. I just can't recall  
11     the name, because we have switched providers.

12                          BY MR. BORG-OLIVIER:

13     170                   Q.     Okay. Well, what I would like to  
14     know is what Catalyst's backup data retention policies  
15     are, and if the evidence is that e-mails wiped from a  
16     BlackBerry would not be maintained, I'd like to  
17     understand why that is with respect to its data  
18     retention policies.

19                          MR. WINTON: First of all, I'm going to  
20     restrict any response to whatever policies may have  
21     existed in July, 2000 -- or June-July, 2014.

22                          MR. BORG-OLIVIER: Yes.

23     U/A, U/T            MR. WINTON: I'm going to take it under  
24     advisement in any event as far as production of a data  
25     retention policy.

1                   As for the second, I will confirm  
2                   whether or not on a factual basis it's Catalyst's  
3                   position that e-mails wiped from a BlackBerry would not  
4                   otherwise be maintained on Catalyst's servers, but I  
5                   just want to make it clear we are referring to e-mails  
6                   sent or received from a Catalyst e-mail address --

7                   MR. BORG-OLIVIER: Absolutely.

8                   MR. WINTON: -- and account, not  
9                   referring to Mr. Moyse's personal e-mails.

10                  MR. BORG-OLIVIER: No, my only interest,  
11                  in fact, is on the work-issued BlackBerry account.

12                  THE WITNESS: The other thing, I don't  
13                  know how he set up his BlackBerry, but you can set it  
14                  up as a feature that if you delete it on your  
15                  BlackBerry, it's deleted on the system. That's a  
16                  feature that BlackBerry has. I don't do it that way  
17                  for a particular reason, which is I like to -- I like  
18                  to keep the two systems somewhat separate.

19                  BY MR. BORG-OLIVIER:

20                  171               Q.     Okay. And do you have any  
21                  information as to how Mr. Moyse would have set up his  
22                  BlackBerry at the time?

23                  A.     No. As I said, I don't know.

24                  BY MR. BORG-OLIVIER:

25                  172               Q.     And perhaps that's something that

1 could be determined by your IT folks, in which case I'd  
2 ask that we get that information by way of undertaking.

3 MR. WINTON: I don't agree with the  
4 suggestion that that can be determined, so we will make  
5 inquiries as to whether it can be determined, and if it  
6 can be determined, we will make inquiries as to  
7 whether -- to what evidence they have on that point.

8 MR. BORG-OLIVIER: Yes. That's fair.

9 U/T MR. WINTON: Okay. And just to be  
10 clear, the determination is whether it is possible now  
11 to determine whether Mr. Moyse's BlackBerry was  
12 synchronized with his -- the Catalyst server such that  
13 e-mails that were deleted from one would be deleted  
14 from the other.

15 MR. BORG-OLIVIER: I think that's what I  
16 understand Mr. Riley's evidence to suggest, so that's  
17 the information --

18 MR. WINTON: That may be a setting  
19 that's turned on or off, and we will see if we can  
20 determine what the setting was on Mr. Moyse's  
21 BlackBerry and, if we can make that determination, we  
22 will share that information with you.

23 BY MR. BORG-OLIVIER:

24 173 Q. Thank you. And I take it the  
25 BlackBerry that would have been work-issued would have

1 included a phone component?

2 A. Yes.

3 174 Q. It would have been usable as a  
4 phone?

5 A. Yes.

6 175 Q. When you refer to Mr. Moyse's  
7 hypothetical communications with West Face in this  
8 paragraph 14, I take it you are not suggesting that  
9 records of any phone calls Mr. Moyse might have made to  
10 or from West Face would also be destroyed by virtue of  
11 the BlackBerry being wiped?

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

14 176 Q. I take it that Catalyst receives --

15 A. Actually, I apologize -- I  
16 apologize. It would wipe it from his phone, because  
17 there is a phone record, but as to -- as to -- I have  
18 not examined our phone records.

19 177 Q. Okay. Do you see the bills that  
20 Catalyst receives in respect to, for example, your  
21 BlackBerry?

22 A. I don't, personally. They go  
23 directly -- no, they go directly to our accounting  
24 group.

25

1 BY MR. BORG-OLIVIER:

2 178 Q. Okay. Then I would ask for an  
3 undertaking seeking confirmation that, in fact,  
4 Catalyst would receive bills in respect of work-issued  
5 BlackBerrys that would, around this time, have included  
6 records of phone calls made and received from that  
7 work-issued BlackBerry.

8 MR. WINTON: Well, I think I just want  
9 to get clarification, Counsel, as to what you mean by  
10 "records of phone calls". What data points you say  
11 would be recorded in the invoices.

12 MR. BORG-OLIVIER: The numbers of the  
13 calls of the sender or recipient of the phone calls.

14 U/T MR. WINTON: Okay. Yes, we will give  
15 you that undertaking.

16 MR. BORG-OLIVIER: Okay. And subject to  
17 the answers to the undertakings that come back, those  
18 are the questions that I have for you, Mr. Riley.  
19 Thank you for your time.

20 THE WITNESS: Thank you.

21 MR. BORG-OLIVIER: I'll turn you over to  
22 Mr. Milne-Smith.

23 -- RECESS AT 10:58 --

24 CROSS-EXAMINATION BY MR. MILNE-SMITH:

25 179 Q. Good morning, Mr. Riley. I'm going

1 to skip over the preliminaries that Mr. Borg-Olivier  
2 covered.

3 I take it you assume or that you will  
4 understand that you are still under oath and the same  
5 ground rules that Mr. Borg-Olivier set up this morning  
6 still apply.

7 A. Good morning, and I do.

8 180 Q. Okay. Good. Now, Catalyst alleges  
9 in this motion and in this action that Mr. Moyse has  
10 misappropriated and given to West Face confidential  
11 information belonging to Catalyst; is that right?

12 A. Yes.

13 181 Q. And you have put in your  
14 affidavits -- and Mr. Borg-Olivier went through the  
15 five of them -- all relevant information of which you  
16 are aware in support of that allegation, correct?

17 A. Yes.

18 182 Q. And Catalyst has also filed two  
19 affidavits of Mark Musters; is that right?

20 MR. WINTON: Martin Musters.

21 BY MR. MILNE-SMITH:

22 183 Q. Sorry, Martin Musters.

23 A. Yes. Is it two?

24 MR. WINTON: It's two, yes.

25 THE WITNESS: Yes.



1 BY MR. MILNE-SMITH:

2 184 Q. Okay. And, Mr. Riley, you are the  
3 Chief Operating Officer of Catalyst?

4 A. I am.

5 185 Q. And that makes you one of the most  
6 senior executives at the firm?

7 A. Yes.

8 186 Q. One of three, correct?

9 A. One of three. I think that's a  
10 better way to express it.

11 187 Q. Okay. I take it there's no formal  
12 general counsel role at Catalyst?

13 A. No.

14 188 Q. But you are the closest thing to an  
15 in-house counsel?

16 A. I am.

17 189 Q. You were a banking lawyer for  
18 several decades before joining Catalyst?

19 A. I also did insolvency work, but I  
20 was a banking and insolvency lawyer for --

21 190 Q. Okay. So you certainly --

22 A. For some years.

23 191 Q. Okay. So you certainly have an  
24 extensive legal background?

25 A. I do.

1           192           Q.    And do I also understand it -- or,  
2           sorry, just to finish off that point. Is it fair to  
3           say you are the closest thing to an in-house counsel  
4           that Catalyst would have?

5                    A.    Yes. I'm the only lawyer.

6           193           Q.    Okay. And you've taken an active  
7           role in managing this litigation?

8                    A.    Yes, I have.

9           194           Q.    You're the company's principal,  
10          indeed, only affiant from the company itself?

11                   A.    Yes.

12          195           Q.    And without disclosing the content  
13          of any communications, is it fair to say that you are  
14          the principal person at Catalyst involved in  
15          instructing counsel?

16                   A.    Yes. I should step back from that.  
17          I think instruction was also provided by Newton  
18          Glassman from time to time. Newton Glassman,  
19          G-L-A-S-S-M-A-N.

20          196           Q.    And I take it you would be aware of  
21          any material instructions that Mr. Glassman gave, you  
22          would become aware of any --

23                   A.    Yes, I would be aware of any.

24          197           Q.    Okay. That Mr. Glassman gave to  
25          your counsel?

1 A. Yes.

2 198 Q. Okay. And to the best of your  
3 knowledge, Catalyst's various affidavits have put  
4 before the Court all evidence of which it is aware  
5 supporting the allegation that Mr. Moyse disclosed  
6 confidential Catalyst information to West Face?

7 A. Sorry, ask the question again,  
8 please.

9 199 Q. Sure. To the best of your  
10 knowledge, Catalyst's various affidavits have put  
11 before the Court all evidence of which Catalyst is  
12 aware that support the allegation that Mr. Moyse  
13 disclosed confidential Catalyst information to West  
14 Face?

15 A. Yes.

16 200 Q. Okay. So we briefly touched on --  
17 I just want to make sure the Court has a little bit of  
18 information on your background and qualifications. So  
19 your background is as a banking and insolvency lawyer?

20 A. Yes.

21 201 Q. You practiced at Stikemans, Ogilvy  
22 Renault, and Goodmans?

23 A. Yes.

24 202 Q. You left the private practice of  
25 law in 2011 to join Catalyst; is that correct?

1 A. Yes.

2 203 Q. You obviously have a law degree.  
3 Do you have any other degrees or professional  
4 qualifications beyond undergraduate?

5 A. I have a Masters of Law from  
6 Harvard.

7 204 Q. Could you briefly describe for me  
8 your responsibilities as COO of Catalyst.

9 A. They are fairly broad. I do the  
10 day-to-day operations, including management of the  
11 office. I interface with the finance group. When  
12 we're fundraising, I handle the mechanics of  
13 fundraising as well as participate in those fundraising  
14 meetings. I do the -- our financial banking  
15 arrangements. I interface with, in particular -- some  
16 of the portfolio companies and, in particular, Callidus  
17 on a daily basis. And anything that falls between the  
18 cracks usually falls into my remit.

19 205 Q. Okay.

20 A. Including paying attention to  
21 things like Nortel. That's why I was asking the  
22 questions.

23 206 Q. Okay. I take it, as COO, you do  
24 not make any final investment decisions at Catalyst?

25 A. No. Let me qualify that.

1 Investment decisions are made by all three partners,  
2 but ultimately, the final say would be Newton  
3 Glassman's as the chief investment officer.

4 207 Q. That's correct. So I think you  
5 have anticipated where I --

6 A. Sure, and I wasn't trying to  
7 anticipate. I was just -- you asked me the question  
8 and I wanted to be able to say.

9 208 Q. No, that's fine. So you referred  
10 to Mr. Glassman as the chief investment officer,  
11 correct?

12 A. Yes. I'm not sure he has that  
13 official title, but that's certainly functionally.

14 209 Q. Okay. That's fine. And you would  
15 be aware that Mr. Glassman is the only person at  
16 Catalyst registered with the Canadian Securities  
17 Administrators as a dealing representative?

18 A. That is correct.

19 210 Q. Under national instrument 31-103?

20 A. I'm not sure what the instrument  
21 number is, but I will take it. If that's the right  
22 instrument, I will accept that.

23 211 Q. Okay. And just for the sake of the  
24 record, you are aware that the Canadian Securities  
25 Administrators have a national instrument that deals

1 with the qualifications for people entitled to make  
2 various levels of investment decisions?

3 A. Yes.

4 212 Q. And Mr. Glassman is the only person  
5 at Catalyst with such a designation?

6 A. That is correct.

7 213 Q. Okay. Because your background is  
8 in law, not in investment, correct?

9 A. That is correct.

10 214 Q. Okay. And I take it you would  
11 agree with me that analyzing investments is an inexact  
12 science if it's a science at all?

13 A. I'm not -- I am not sure I can  
14 agree with that. I think there are nuances.

15 215 Q. Okay. So let's put it another way.  
16 You would agree with me that two  
17 analysts could look at the same facts and draw  
18 different conclusions about a company's prospects?

19 A. Yes.

20 216 Q. And sometimes analysts agree and  
21 sometimes they do not?

22 A. Again, I mean, I understand where  
23 you -- I understand what you are asking for in the  
24 question. The only things in the back of my mind is  
25 that, to the extent that they're applying the same

1 principles to the same set of facts --

2 217 Q. Yes.

3 A. -- I would expect them to come  
4 close to the same answer.

5 218 Q. Okay.

6 A. I think it's -- that's why --  
7 again, I'm not trying to be argumentative. I think  
8 it's a nuanced question, and I do think that a certain  
9 set of facts run through the same model or the same  
10 analysis -- I don't mean model in the technical  
11 sense -- should result, more or less, in the same  
12 answer.

13 219 Q. But the fact of the matter is that  
14 people do, in fact, reach different conclusions on the  
15 prospects of a company or an investment all the time?

16 A. Yes.

17 220 Q. Okay. And when they do not agree  
18 like that, it's not necessarily a matter of bad faith;  
19 it could just be a matter of a difference of opinion or  
20 a difference of approach?

21 A. Maybe. I don't --

22 221 Q. It depends on the facts?

23 A. You're asking a question that has a  
24 lot of nuances. That's what I'm -- that's why I'm  
25 hesitating.

1       222               Q.     That's fine. Mr. Moyse gave notice  
2     of his intention to resign from Catalyst on May 24,  
3     2014, correct?

4                       A.     Is that a Sunday?

5       223               Q.     I can check for you.

6                       A.     Could you check for me? I think if  
7     the 24th is a Sunday, I believe he gave it on Sunday.  
8     Around that date.

9       224               Q.     I will confirm for you.

10                      A.     Do we have that e-mail?

11       225               Q.     May 24 was a Saturday.

12                      A.     Saturday. Then it was on that  
13     weekend.

14       226               Q.     Okay. That, obviously, was almost  
15     a year ago?

16                      A.     Yes.

17       227               Q.     And you would agree with me that  
18     after six months Mr. Moyse's knowledge of Catalyst's  
19     plans would be stale and of little use to West Face?

20                      A.     Depends on what the facts were. I  
21     think some things might be stale, not all things.

22       228               Q.     Okay. Well, let me take you to --

23                      A.     In other words, what I'm saying is  
24     I think it's still subject to the confidentiality wrap  
25     that's in his employment agreement.



1           229                   Q.     Let me take you -- well, the  
2     confidentiality wrap was a six-month ...

3                           A.     No, I think confidential is  
4     forever.

5           230                   Q.     Okay.

6                           A.     That's why I say there are two  
7     provisions in the employment agreement, and maybe we  
8     should go to that. One is the non-compete and the  
9     other is confidentiality.

10          231                   Q.     Let me take you to paragraph 33 of  
11     your June 26, 2014, affidavit.

12                          A.     Yes. Is that a clean copy?

13                          MR. WINTON: Yes. Paragraph 33?

14                          BY MR. MILNE-SMITH:

15          232                   Q.     Paragraph 33, correct.

16                          A.     What page was that?

17          233                   Q.     That's on page 19 of the record,  
18     page -- I'm going to flip you over to the  
19     subparagraphs (a), (b), and (c), but feel free to read  
20     the entire paragraph.

21                          MR. WINTON: We are actually at page 94  
22     of our most recent motion record, which attached the  
23     affidavit.

24                          MR. MILNE-SMITH: Oh, that's fine.

25                          MR. WINTON: It's the same text.

1 THE WITNESS: Here?

2 MR. WINTON: Yes.

3 THE WITNESS: May I look at his  
4 employment agreement first for a moment before I answer  
5 this question?

6 BY MR. MILNE-SMITH:

7 234 Q. By all means.

8 A. Okay.

9 235 Q. That was at tab A, tab 2A, of your  
10 original motion record from last summer.

11 MR. WINTON: At hand, I have tab 1E of  
12 Mr. Moyse's responding record.

13 MR. MILNE-SMITH: If it's there too,  
14 that's fine.

15 MR. WINTON: It's at page 92 of  
16 Mr. Moyse's responding record.

17 MR. MILNE-SMITH: Okay.

18 THE WITNESS: I still agree with  
19 generally what I said there. I think the nuance that  
20 is missing in there is that I don't read the  
21 confidentiality agreement as being limited as to time.  
22 I.e., if the information is confidential or if there is  
23 a limitation of one year for any opportunities  
24 belonging to the fund.

25

1 BY MR. MILNE-SMITH:

2 236 Q. I don't want to debate nor I think  
3 is the role for either of us to debate the meaning and  
4 impact of the confidentiality provision in the  
5 employment agreement.

6 A. Okay.

7 237 Q. The only thing I want to confirm is  
8 a factual point, which is, at paragraph 33 of your  
9 June 26, 2014, affidavit, you are discussing the  
10 non-compete clause, correct?

11 A. Correct.

12 238 Q. And in that context, you say, at  
13 paragraph 33(b):

14 "After six months, the analyst's  
15 knowledge of Catalyst's plans would be  
16 'stale' and of little use to a  
17 competitor."

18 You stand by those words?

19 A. I do, but if I were rewriting this,  
20 given the question you are asking, I would say "should  
21 be stale".

22 239 Q. Okay. But you said "would be  
23 stale"?

24 A. I did.

25 240 Q. Okay. And the analyst here would

1 be Mr. Moyse?

2 A. Yes.

3 241 Q. And the reference to a competitor,  
4 that's what you are alleging in this case that West  
5 Face is?

6 A. Yes.

7 242 Q. So we established earlier that  
8 May 24 was when Mr. Moyse gave notice that he was  
9 leaving. I take it you would also agree with me that  
10 two days later, on May 26, was when he told Catalyst  
11 that he was going to West Face?

12 A. Yes.

13 243 Q. Okay. So it's safe to say that,  
14 from that day forward, you knew he was planning to work  
15 for someone that Catalyst, at least, considered to be a  
16 competitor?

17 A. Yes.

18 244 Q. And he was on vacation at the time?

19 A. No, the 26th ...

20 245 Q. Sorry, the 26th was when he  
21 returned?

22 A. He returned to the office, yes.

23 246 Q. Right. And he was sent home at  
24 that time?

25 A. I asked him to go home, yes.

1       247                   Q.    Okay.  And he stayed home for the  
2       reminder of his notice period?

3                           A.    Yes.

4       248                   Q.    And he wasn't given any additional  
5       assignments?

6                           A.    I don't know that for sure, but I  
7       think we were reluctant to engage him in anything that  
8       was active.

9       249                   Q.    You certainly don't recall --

10                          A.    No, no.

11       250                   Q.    Let me just make sure it's clear  
12       for the record.  You didn't recall giving him or anyone  
13       else at Catalyst giving him any additional assignments?

14                          A.    That is correct.

15       251                   Q.    And you kept him away from any  
16       further discussions regarding investment opportunities  
17       at Catalyst?

18                          A.    Yes.

19       252                   Q.    So six months from late May would  
20       have been late November, 2014, correct?

21                          A.    It depends -- his notice period was  
22       30 days, so I think he would count the non-compete  
23       six-month period starting after 30 days.

24       253                   Q.    So either late November or late  
25       December?

1 A. Yes.

2 254 Q. In your February 18, 2015,  
3 affidavit, paragraph 8, you refer to the danger of a  
4 competitor scooping an opportunity that Catalyst was  
5 considering?

6 A. Yes.

7 255 Q. I take it you'd agree with me,  
8 because I think you gave this evidence in your last  
9 cross-examination, that, in the last six months of  
10 Mr. Moyse's employment, his work was focussed almost  
11 entirely on performing operating reviews of  
12 Catalyst-owned companies?

13 A. He was also involved in the -- in  
14 the telecom files.

15 256 Q. I understand that, but his work was  
16 focussed -- outside of the telecom opportunity, his  
17 work was focussed almost entirely on performing  
18 operating reviews of Catalyst-owned companies?

19 A. Yes, yes.

20 257 Q. And so if they were Catalyst-owned  
21 companies, they were no longer an opportunity someone  
22 else could scoop; that was something that Catalyst  
23 already owned?

24 A. But there might be bolt-on  
25 acquisitions that would be new opportunities.

1           258           Q.    Okay.  The only opportunity that,  
2   in your affidavits, you say West Face has scooped  
3   relates to Wind Mobile, correct?

4                   A.    That is correct.  Excuse me.  That  
5   is what I said in my affidavits at the time.  I think  
6   there's some issue around Arcan, which was part of the  
7   information that was conveyed by Moyse to West Face.

8           259           Q.    Okay.  Catalyst alleges that  
9   Mr. Moyse disclosed confidential information to West  
10  Face in the March 27, 2014, e-mail which attached the  
11  writing samples?

12                  A.    Yes.

13           260           Q.    And Catalyst has, in fact,  
14  consented to unsealing the court record that contained  
15  those documents, correct?

16                  A.    Yes.

17           261           Q.    So it no longer treats that  
18  information as confidential?

19                  A.    Yes.

20           262           Q.    Meaning I was correct?  I'm correct  
21  that Catalyst no longer treats them as confidential?

22                  A.    That is correct.

23           263           Q.    Okay.  Good.  Sometimes a "yes" can  
24  mean --

25                  A.    No, no, sorry, I wasn't trying

1 to -- I was trying to agree with you.

2 264 Q. I understand.

3 A. Ask simpler questions.

4 265 Q. Yes. Did anyone at Catalyst advise  
5 any members of the media that the court file was  
6 unsealed and they could find materials there?

7 A. Not to my knowledge.

8 266 Q. Did anyone at Catalyst speak to  
9 Theresa Tedesco of the National Post?

10 A. We would have spoken to Theresa  
11 from time to time.

12 267 Q. Do you know if anyone spoke to  
13 Ms. Tedesco about these proceedings?

14 A. I don't know if it's possible that  
15 Newton would have spoken to her or one of our -- I  
16 think -- I can't remember when -- when we hired --  
17 we've hired a new communications officer, Shawn Lepin.

18 BY MR. MILNE-SMITH:

19 268 Q. I would like to know if your  
20 communication officer or Mr. Glassman spoke to  
21 Ms. Tedesco at any time after the unsealing of the  
22 court record about this case.

23 MR. WINTON: Perhaps you can explain how  
24 it's relevant before we respond to that.

25 MR. MILNE-SMITH: Catalyst has made



1     allegations about West Face making -- entering evidence  
2     about Callidus in an effort to publicize its position,  
3     effectively. So I would like to test whether Catalyst  
4     has, in fact, been doing exactly the same thing.

5     U/A                 MR. WINTON: Okay. Well, I will take  
6     that under advisement.

7                         MR. MILNE-SMITH: I would ask the same  
8     questions for Tim Kiladze at the Globe and Mail.

9                         MR. WINTON: Kiladze.

10                        MR. MILNE-SMITH: And just for your  
11     reference, those are the authors of two articles about  
12     the case that we have included at Volume 2, tab 50 of  
13     the responding motion record.

14                        THE WITNESS: Sorry, tab 2?

15                        BY MR. MILNE-SMITH:

16     269                Q.     Sorry, Volume 2, tab 50.

17                        A.     Do I have that? May I see that for  
18     a minute?

19                        MR. WINTON: I'm just getting down the  
20     question that was asked so I make sure I have it. I  
21     just want to make sure I have this right. You want to  
22     know if Mr. Lepin or Mr. Glassman spoke at any time  
23     after the unsealing of the court order with Ms. Tedesco  
24     or Mr. Kiladze about this case?

25                        MR. MILNE-SMITH: Yes.

1 U/A MR. WINTON: And I will take that under  
2 advisement.

3 MR. MILNE-SMITH: Okay. And just to be  
4 clear, I would like to know if anyone at Catalyst spoke  
5 to anyone at the Globe and Mail or National Post, but I  
6 have named those four individuals as the most likely  
7 participants in such communication.

8 MR. WINTON: So the question is actually  
9 broader than the names you gave?

10 MR. MILNE-SMITH: Yes.

11 U/A MR. WINTON: Still under advisement.

12 THE WITNESS: Was this an online piece  
13 or was it also in FP?

14 BY MR. MILNE-SMITH:

15 270 Q. I don't know.

16 A. Okay.

17 MR. WINTON: So that's the -- Mr. Riley  
18 is looking at the --

19 THE WITNESS: That's Tedesco.

20 MR. WINTON: -- Financial Post article,  
21 and slip-sheeted behind that is a Globe and Mail  
22 article.

23 MR. MILNE-SMITH: That's correct.

24 BY MR. MILNE-SMITH:

25 271 Q. I'm ready to move on from that

1 whenever you are, Mr. Riley.

2 A. Okay.

3 272 Q. So going back to the four writing  
4 samples, I take it there's no dispute here that West  
5 Face has not made an investment into Homburg?

6 A. Not to my knowledge.

7 273 Q. Homburg was one of the four writing  
8 samples?

9 A. Yes.

10 274 Q. And another one of the writing  
11 samples was a company called NSINV?

12 A. Yes.

13 275 Q. And West Face hasn't made any  
14 investment in that company?

15 A. I don't know if West Face has made  
16 an investment or not.

17 276 Q. Not to your knowledge?

18 A. You have asked me that question. I  
19 don't know.

20 277 Q. You have no information that West  
21 Face has made an investment in that company?

22 A. No, no.

23 278 Q. And another one of the companies --  
24 another one of the companies addressed by a writing  
25 sample was Rona?

1 A. Yes.

2 279 Q. And you are not aware of West Face  
3 making any investment in that company?

4 A. No.

5 280 Q. Okay. And the fourth one, the last  
6 one, is Arcan Resources, correct?

7 A. Yes.

8 281 Q. And that's the one that you  
9 mentioned earlier?

10 A. Yes.

11 282 Q. So you are aware, of course -- I  
12 take it that you have reviewed Mr. Griffin's affidavit?

13 A. I have.

14 283 Q. So you are aware that Mr. Griffin  
15 addressed that investment in his affidavit?

16 A. Yes.

17 284 Q. And his evidence was that the  
18 investment arose out of a plan of arrangement with a  
19 company called Aspen Leaf. Do you recall that?

20 A. I'd have to go back to his  
21 testimony, but I believe that's correct.

22 285 Q. Okay.

23 A. I will take it -- if you say it's  
24 correct, I will take it as -- I will concur.

25 286 Q. Thank you.

1 MR. WINTON: Don't get into that habit.

2 THE WITNESS: Sorry, no, no. You know  
3 what I mean. Without having to go back to the  
4 document.

5 BY MR. MILNE-SMITH:

6 287 Q. So Mr. Griffin explained in his  
7 affidavit that he concluded that debentures were being  
8 treated unfairly by the Aspen Leaf plan of arrangement  
9 compared to the shareholders. Do you recall that?

10 A. Yes.

11 288 Q. And you'd agree with me, of course,  
12 that the Aspen Leaf transaction hadn't even happened  
13 when Mr. Moyse wrote his memo for Catalyst, correct?

14 A. I would have to go back and -- I  
15 would have to go back and look at the time sequence.

16 289 Q. Okay. Do you have any familiarity  
17 with the Aspen Leaf plan of arrangement yourself?

18 A. I do not.

19 290 Q. And I take it, then, you are not  
20 aware of Catalyst taking any position with respect to  
21 that transaction?

22 A. It's the best of my recollection we  
23 did not.

24 291 Q. Okay. You weren't aware of  
25 Catalyst considering any investment?

1 A. We were considering it.

2 292 Q. Okay. In the Aspen Leaf  
3 transaction?

4 A. I would have to go back and, again,  
5 double-check, but I believe we were looking at -- we  
6 continued to monitor Arcan.

7 293 Q. Okay. But decided not to pursue  
8 it?

9 A. Yes.

10 294 Q. Okay. And I take it you can't  
11 point to anything in Mr. Moyse's memo for Catalyst  
12 about Arcan that would have been relevant to  
13 Mr. Griffin's investment hypothesis as explained in his  
14 affidavit?

15 A. I would have to review. I would  
16 have to review both the analysis he did for West  
17 Face --

18 295 Q. Right.

19 A. -- and the analysis he did -- and  
20 the information he had from -- from Catalyst. I have  
21 not done that review.

22 296 Q. Okay. And you are not aware of  
23 anyone else telling you there was anything relevant  
24 between the two?

25 A. I -- no.

1       297               Q.     You are not aware of any overlap  
2     from any source between the two?

3                   A.     No, but, again, I have not done the  
4     review to compare what he did and what we did.

5                   MR. MILNE-SMITH:   I understand.   Why  
6     don't we -- I'm moving on to a new subject, so why  
7     don't we take the morning break now.

8                   -- RECESS AT 11:30 --

9                   -- RESUMING AT 11:41 --

10                  BY MR. MILNE-SMITH:

11       298               Q.     So, Mr. Riley, just a few follow-up  
12     points or clarification points from this morning before  
13     I move on to our next subject.

14                   In respect of the examination conducted  
15     by Mr. Borg-Olivier, I take it that Catalyst, as a  
16     factual matter, has not conducted or instructed to be  
17     conducted any search of Mr. Moyse's text message or  
18     e-mail or phone history in respect of his company  
19     BlackBerry, correct?

20                   A.     That is correct as to phone, but we  
21     would not be able to trace BlackBerry text.

22       299               Q.     Okay.   Well, I think there may be a  
23     technical dispute about that down the road, but I just  
24     want to make sure, as a factual matter, whether it's  
25     because they couldn't or, for whatever reason, they did

1 not instruct such a search be taken.

2 A. At the time, I believe I talked to  
3 Jonathan -- and I can't remember Jonathan's last  
4 name -- as to whether we would be able to retrieve text  
5 or BBM messages.

6 300 Q. Okay. Again, I'm not looking for  
7 the why at this point. I think that has to be left to  
8 the technical experts. I just want to figure out the  
9 what. So, as a matter of fact, no search has been  
10 directed or conducted of SMS, meaning text messages?

11 A. Yes.

12 301 Q. Or e-mail or phone records,  
13 correct?

14 A. There's been no search of phone  
15 records, and I don't believe -- sorry, and I'm not  
16 trying to quibble or quarrel, but I don't believe --  
17 based on my understanding is, we would not be able to  
18 trace BBM or SMS messages.

19 302 Q. And so you didn't try to?

20 A. No, didn't try to do the  
21 impossible.

22 BY MR. MILNE-SMITH:

23 303 Q. Okay. I'm going to have to  
24 apologize to Mr. Winton here, because I have already  
25 expanded the scope of his advisement once. I'm going



1 to ask to do it once more.

2 When I was asking this morning about  
3 communications with the Globe and Mail or National  
4 Post, I would also like that to encompass any indirect  
5 communications. So if Catalyst advised an external  
6 press agent or anyone else on its behalf to communicate  
7 with the press, I would also like to know about that.

8 U/A MR. WINTON: Okay. Well, still, I'll  
9 take it under advisement.

10 MR. MILNE-SMITH: Of course.

11 MR. WINTON: I understand.

12 BY MR. MILNE-SMITH:

13 304 Q. Okay. But it's unclear on the  
14 record here whether I got my answer about e-mail  
15 records. You said there was no search of phone  
16 records, and you weren't trying to quibble or quarrel.  
17 Based on your understanding, you would not be able to  
18 trace BBM.

19 A. Or text, SMS.

20 305 Q. But how about e-mail? Was a search  
21 done of Brandon's e-mails?

22 A. Not from his BlackBerry device.

23 306 Q. From his Catalyst -- from  
24 Catalyst's records, did you search?

25 A. Yeah, we did -- we did do some

1 searches.

2 307 Q. Okay. And I assume anything  
3 relevant would have been produced?

4 A. Yes.

5 308 Q. I take it you'd agree with me that,  
6 to the best of your knowledge, the position that West  
7 Face took in Arcan was a passive one?

8 A. I don't know.

9 309 Q. You are not aware of West Face  
10 taking any control position in Arcan?

11 A. No, I am not.

12 310 Q. Mr. Griffin's evidence was that  
13 they bought some debentures, correct?

14 A. Yes. I mean, I would have to go  
15 back and look, but I believe that is correct.

16 311 Q. And you are not aware of anything  
17 further?

18 A. No.

19 312 Q. So I take it you would agree with  
20 me that West Face buying some debentures would not  
21 interfere with Catalyst's ability to make a similar or  
22 an opposing investment in Arcan?

23 A. It could.

24 313 Q. Are you saying that West Face's  
25 purchase of debentures interfered with the market price

1 of those debentures?

2 A. No. It could, in certain  
3 circumstances, represent a blocking position, i.e., it  
4 might be a critical piece of the control piece.

5 314 Q. But you are not aware of West Face  
6 acquiring a position large enough to constitute a  
7 blocking position?

8 A. I don't know. I don't know what  
9 they acquired.

10 315 Q. Okay. And if Catalyst had wanted  
11 to make an investment in Arcan, presumably, you would  
12 have done the deal just to find out whether or not West  
13 Face had a blocking position?

14 A. We would continue diligence before  
15 investing.

16 316 Q. Okay. But you haven't --

17 A. But we would not know -- the fact  
18 you just presented to me, we would not necessarily  
19 know.

20 317 Q. Okay. You haven't made that  
21 effort?

22 A. No.

23 318 Q. In other words, to find out that  
24 West Face had a blocking position, you would have to  
25 try to invest?

1 A. Correct.

2 319 Q. And because West -- because you  
3 don't know or are aware of West Face having a blocking  
4 position, you haven't made the effort to invest?

5 A. I think that is correct, but I  
6 would have to go -- I would have to go back and  
7 double-check some of these things.

8 320 Q. Well, if you have any information  
9 to the contrary, you will let me know?

10 A. Yes.

11 321 Q. Okay.

12 MR. WINTON: And just to be clear, let's  
13 not treat that as an undertaking. If there is a need  
14 to correct --

15 MR. MILNE-SMITH: Absolutely.

16 MR. WINTON: -- what was said, it will  
17 be corrected, but, otherwise, if you don't hear from  
18 us, it's going to just stand as is.

19 MR. MILNE-SMITH: I agree.

20 MR. WINTON: Thanks.

21 BY MR. MILNE-SMITH:

22 322 Q. Mr. Moyse was only assigned to work  
23 on Wind roughly two weeks before he submitted his  
24 resignation; is that correct?

25 A. I believe he may have been working

1 on it earlier than that.

2 323 Q. Mr. Riley, you were cross-examined  
3 on your first three affidavits on July 29, 2014?

4 A. Yes.

5 324 Q. Do you recall that?

6 A. I do.

7 325 Q. Okay. And you were asked the  
8 question -- now, Brandon's evidence at paragraph 11 of  
9 his affidavit is that he was only assigned to work on  
10 Wind Mobile two weeks before he left on vacation.

11 A. Yes.

12 326 Q. That's at paragraph 11, halfway  
13 down the paragraph, and now, in quotes, from  
14 Mr. Moyse's affidavit:

15 "I was only assigned to work on Wind  
16 Mobile the week before I left on  
17 vacation two weeks before my resignation  
18 and, as such, did not have extensive  
19 knowledge of the transaction.'

20 "Would you agree with that statement?

21 "Answer: I would have to double-check  
22 the timing, but I'm willing to accept it  
23 for now."

24 And then you move on to a different  
25 point.

1 I take it you stand by that evidence?

2 A. I would like to go back and, again,  
3 double-check, because I don't -- my recollection is  
4 that there may be some documents from earlier time --  
5 like, a March date where his name appeared. So I  
6 would -- I would, once again, like to go back and  
7 affirm my recollection.

8 327 Q. Okay. So is that --

9 A. That is --

10 328 Q. -- an undertaking to advise of any  
11 documents showing Brandon on -- involved in Wind before  
12 April -- before May of 2014?

13 MR. WINTON: Here's what I will suggest.  
14 We will undertake to inform you whether the evidence  
15 given at Mr. Riley's July 29th cross-examination is  
16 correct.

17 MR. MILNE-SMITH: Yes.

18 MR. WINTON: Because he referred to a  
19 need to double-check.

20 MR. MILNE-SMITH: Yes.

21 U/A MR. WINTON: And if there is any  
22 document that supports his suggestion that his  
23 involvement predates the two-week period referred to in  
24 the question, we'll -- I'll take under advisement  
25 whether we will produce it, but we will definitely

1 discuss it with you and come up with a solution with  
2 regards to that document.

3 MR. MILNE-SMITH: Okay. And I take it  
4 before this matter was argued to Mr. Justice Lederer  
5 last year, no update to that evidence was given?

6 MR. WINTON: That's correct.

7 BY MR. MILNE-SMITH:

8 329 Q. Okay. And we're going to come this  
9 later, but I think it might be relevant now. I  
10 understand there has been some reference to a  
11 PowerPoint presentation to Industry Canada on which  
12 Mr. Moyse worked?

13 A. Yes.

14 330 Q. Might that have been what you were  
15 thinking of, of something that took place earlier in  
16 the year on which Mr. Moyse worked?

17 A. I would have to check my dates. If  
18 you are asking me the question right now, I do not  
19 recall the actual date when that was presented.

20 331 Q. Okay.

21 A. Or prepared -- excuse me.

22 332 Q. I will just wait to see the answers  
23 that come on the previous question, then.

24 Am I correct in understanding that this  
25 PowerPoint presentation was not specifically in respect

1 of Wind but was with respect to the telecom industry  
2 more broadly?

3 A. At that -- at this time or at that  
4 time? You cannot talk about the telecom industry  
5 without talking about at least Mobilicity and Wind.

6 333 Q. Okay. But, again, so the  
7 presentation would have applied to Wind but wasn't  
8 solely in respect of Wind?

9 A. That is correct.

10 334 Q. Okay. And I understand from e-mail  
11 received from your counsel last night that the  
12 PowerPoint presentation in question has been -- was  
13 destroyed shortly after it was given?

14 A. Yes.

15 335 Q. And no records of it have been  
16 maintained?

17 A. That is correct.

18 336 Q. Mr. Riley, I take it you would  
19 agree with me that the fact that VimpelCom was  
20 considering selling its investment in Wind in early  
21 2014 was not a piece of information that was  
22 confidential to Catalyst?

23 A. That is correct.

24 337 Q. There's no dispute that the price  
25 demanded by VimpelCom was well known to all potential



1 bidders?

2 A. I don't know that.

3 338 Q. If you want to look at  
4 Mr. Griffin's affidavit, Exhibit 5. So that's in  
5 Volume 1, tab 5.

6 MR. WINTON: It's clean.

7 BY MR. MILNE-SMITH:

8 339 Q. So this is an article in the Globe  
9 and Mail --

10 A. Sorry.

11 340 Q. This is an article in the Globe and  
12 Mail dated July 31, 2014?

13 A. Yes.

14 341 Q. And you will see the first line of  
15 the article states "Wind Mobile's foreign owner ..."

16 Let me just pause there. I take it we  
17 agree that's reference to VimpelCom?

18 A. Yes.

19 Q. "... has put a \$300 million price  
20 tag on the start-up wireless  
21 carrier."

22 Do you see that?

23 A. Yes, I see that, yeah.

24 342 Q. So based on that, you would agree  
25 with me, then, that the \$300 million price tag set by

1 VimpelCom was known to the market at least as of July,  
2 2014?

3 A. Again, I'm not quibbling, but  
4 certainly Christine Dobby believed it. I don't know  
5 whether -- I don't know what her source was for that.

6 343 Q. Okay.

7 A. And I don't -- she is -- I have  
8 only met her once.

9 344 Q. And I take it there's no dispute  
10 also that by May, 2014, VimpelCom had expressed any  
11 interest in bidders that it was interested in a  
12 complete sale of its interest? In other words, it  
13 wasn't trying to refinance, it was trying to get out?

14 A. Yes, I believe that is correct.

15 345 Q. Okay. And, finally, it was also  
16 well known to all interested parties that regulatory  
17 risk was a significant issue from the perspective of  
18 VimpelCom, correct?

19 A. I'm not sure I can -- I'm not sure  
20 I can say that -- what you are asking me, I'm not sure  
21 I can affirm yes or no.

22 346 Q. Okay. So let's talk a little bit  
23 more about what regulatory risk means and maybe we can  
24 come back to that.

25 Is it fair to say that Wind Mobile was

1 considered a strategic asset by Industry Canada?

2 A. Yes.

3 347 Q. And a company called AAL controlled  
4 by Anthony Lacavera and others held two-thirds of the  
5 voting shares in Wind Mobile?

6 A. That sounds correct.

7 348 Q. And VimpelCom held debt non-voting  
8 equity and some of the remaining voting shares,  
9 correct?

10 A. Yes.

11 349 Q. Industry Canada, by virtue of Wind  
12 Mobile being a strategic asset, held the right to  
13 approve any transfer of voting shares?

14 A. Yes.

15 350 Q. And this was well known to anybody  
16 in the marketplace?

17 A. Yes.

18 351 Q. So if VimpelCom wanted to get paid  
19 for its share --

20 A. Can I go back for a second?

21 352 Q. Please.

22 A. What I would understand from the  
23 questions you are asking is if you wanted to have a  
24 controlling interest, a share ownership controlling  
25 interest, and you were -- you would need Industry

1 Canada approval. That's what I would understand from  
2 that question. If you want control of VimpelCom, you  
3 needed IC approval.

4 353 Q. And control --

5 A. Or, sorry, excuse me, of Wind.

6 354 Q. Right. And "control" means voting  
7 shares?

8 A. Yes.

9 355 Q. So if you wanted to get the voting  
10 shares, you had to get Industry Canada approval?

11 A. Yes.

12 356 Q. And so if a party wanted to acquire  
13 all of the equity in Wind -- meaning both the voting  
14 shares held by AAL and the other shares held by  
15 VimpelCom -- in one transaction, Industry Canada had  
16 the right to approve that or not?

17 A. That is correct.

18 357 Q. So there was a risk to VimpelCom or  
19 any potential purchaser that industry Canada could deny  
20 such approval?

21 A. Say that -- sorry, ask -- sorry,  
22 I'm not -- again, I'm not trying to quibble. I just  
23 want to make sure I understand the question.

24 358 Q. There was a risk to VimpelCom that  
25 Industry Canada could deny approval of a transaction

1       that included a transfer of the voting shares?

2                   A.     I'm going to say maybe, because I  
3       think you can pre-socialize with Industry Canada where  
4       they are going to come out on that decision, because I  
5       think that Industry Canada -- this is -- I don't want  
6       to over-answer, but I think you have to put it in the  
7       context of what is it that the Government of Canada  
8       wanted to see, which is the development of a fourth  
9       carrier and, to a certain extent, the reduction of  
10      foreign ownership in the space at that time.

11      359           Q.     And the socialization of Industry  
12      Canada, until you had done that, you wouldn't know what  
13      their reaction was going to be?

14                  A.     Yes.

15      360           Q.     And that was a risk that any  
16      potential bidder faced until they had undergone that  
17      socialization?

18                  A.     We had spent a fair amount of time  
19      in discussions with Industry Canada and with other  
20      members -- other aspects of the government, so we had a  
21      sense of what they would be willing to agree to in  
22      terms of approvals.

23      361           Q.     Is it your position that Catalyst  
24      had Industry Canada's pre-approval for the acquisition  
25      of the voting shares in Wind?

1                   A.     You never have pre-approval from  
2     the government, in my experience.

3     362           Q.     So there was a risk there?

4                   A.     Yes.

5     363           Q.     And that risk was equally borne by  
6     VimpelCom in that it could see a transaction into which  
7     it wanted to participate be blocked?

8                   A.     Yes.

9     364           Q.     So that's the regulatory risk I was  
10    talking about for VimpelCom.

11                  A.     Yes.

12    365           Q.     So you would agree that it was well  
13    known that regulatory risk was an issue for VimpelCom?

14                  A.     Yes.

15    366           Q.     Okay. So let's see if we can agree  
16    on one more thing. If VimpelCom wanted to get out, to  
17    sell its entire interest in Wind as part of a  
18    transaction in which the acquiring party or parties  
19    would also be acquiring the voting shares, all right?  
20    So are we clear on the hypothetical? It's a  
21    transaction where VimpelCom is selling everything and  
22    the purchaser is acquiring the voting shares. Right?

23                  A.     And everything else.

24    367           Q.     Yes.

25                  A.     Okay. Yes.

1           368           Q.    So if VimpelCom wanted to do that  
2    without getting Industry Canada approval, one way they  
3    could do that is if the owner of the voting shares was  
4    one of the purchasers, because then there would be no  
5    transfer of the voting shares, right?

6                    A.    I'm sorry, I just -- again, could  
7    you please repeat the question.

8           369           Q.    Yes.   So VimpelCom wants to get  
9    paid for transfer of their interest, correct?

10                   A.    Yes, yes.

11           370           Q.    And they want to do it without  
12    incurring the risk of Industry Canada saying no?

13                   A.    Yes.

14           371           Q.    One way they could do that is if no  
15    transfer of the voting shares was required, correct?

16                   A.    Yes.

17           372           Q.    And they could do that, for  
18    example, if the purchaser already holds the voting  
19    shares, because then there is no transfer of voting  
20    shares.

21                   A.    Keep going, because I'm not sure --  
22    I can't -- are you saying if Mr. X owns two-thirds --

23           373           Q.    Mr. Lacavera.

24                   A.    -- and Mr. Lacavera acquires the  
25    third, would that require approval? I don't know the

1 answer to that question. I think the answer is  
2 probably not, but I don't know the answer. I'm not --  
3 I am not a regulatory -- I am not a regulatory guru in  
4 that space.

5 374 Q. Fair enough. Another way you could  
6 do it without Industry Canada approval is if the voting  
7 shares are being transferred, if they just stayed --

8 A. Yes.

9 375 Q. Okay. And that was never something  
10 that Catalyst was considering, correct?

11 A. To the best of my knowledge, no.  
12 Although we may have considered many hypotheticals at  
13 that time.

14 376 Q. Okay. But never something that was  
15 seriously pursued?

16 A. To the best of my knowledge, no.

17 377 Q. Okay. If I have read your  
18 affidavit correctly, your position is that the  
19 information that Mr. Moyse disclosed to West Face  
20 thereby blocking Catalyst's efforts to acquire Wind  
21 related to Catalyst's confidential regulatory concerns;  
22 is that right?

23 A. Yes.

24 378 Q. So how Catalyst planned to deal  
25 with the regulatory risk was the confidential



1 information?

2 A. Yes. Attitude. I will call it  
3 attitude towards the government and risk.

4 379 Q. What was Catalyst's attitude  
5 towards the government?

6 A. We believed that you needed --  
7 you -- it would be a smarter approach to get approval  
8 from the government for any transaction you did. A  
9 broader concern -- broader expression than you have.  
10 You wanted the government to be on side.

11 380 Q. So your position is that it's --  
12 the confidential information is that it would be better  
13 to have the government on side?

14 A. Yes.

15 381 Q. Okay. And I take it you are not  
16 aware of any efforts by West Face to get the government  
17 on side in advance?

18 A. Don't know.

19 382 Q. I want to come back to that  
20 PowerPoint presentation we have spoken about earlier.  
21 What was in the presentation?

22 A. It was -- can we go off the record  
23 for a moment?

24 MR. MILNE-SMITH: Yes.

25 -- OFF THE RECORD --

1 THE WITNESS: Yes. I have read  
2 paragraph 36.

3 BY MR. MILNE-SMITH:

4 383 Q. Okay. Before we get to that, I  
5 just want to go back and make sure I have covered off  
6 one point completely.

7 You told me earlier that the  
8 confidential information you are concerned Mr. Moyse  
9 conveyed to West Face related to the need or the desire  
10 to have government on side before entering into a  
11 transaction, correct?

12 A. Correct.

13 384 Q. Was there anything else? Is there  
14 anything else? Any other confidential information that  
15 you say Mr. Moyse passed to West Face? Relating to  
16 Wind?

17 A. There would also be in that context  
18 the ability to transfer Spectrum. Which is an ongoing  
19 issue in the telecom space.

20 385 Q. So Industry Canada's approval for  
21 whether or not you can transfer Spectrum?

22 A. It would be their consideration of  
23 future transfers of Spectrum.

24 386 Q. Industry Canada's consideration?

25 A. Yes, and the government indirectly.

1       387               Q.     And, again, are you aware of any  
2     efforts by West Face to determine the government's  
3     willingness to transfer Spectrum in the future?

4                       A.     I do not know that.

5       388               Q.     Have we, then, now completely  
6     covered the landscape of what confidential information  
7     you are concerned about passing from Mr. Moyse to West  
8     Face? Relating to Wind?

9                       A.     Yes.

10      389               Q.     Okay. So back to paragraph 36 of  
11     your reply affidavit.

12                       A.     This one?

13                       MR. WINTON: Yes.

14                       THE WITNESS: Yes.

15                       BY MR. MILNE-SMITH:

16      390               Q.     And that's May 1, 2015. You state  
17     that:

18                       "The PowerPoint presentation primarily  
19     concerned Catalyst's plans for Wind and  
20     outlined regulatory concessions Catalyst  
21     needed in order to carry out a Wind  
22     transaction."

23                       A.     Correct.

24      391               Q.     So the regulatory concessions that  
25     you are talking about there, are we talking about, for

1 example, wholesale roaming rates?

2 A. Yes. Oh, no, excuse me. No, that  
3 was not -- to the best of my recollection, that was not  
4 a consideration.

5 392 Q. Okay. Tower sharing or tower  
6 leases?

7 A. It may have been in there, because  
8 that was an ongoing issue at the time.

9 393 Q. Okay. Spectrum transfer?

10 A. Spectrum transfer, for sure, and  
11 use of Spectrum, alternative uses of Spectrum.  
12 Wholesale versus retail.

13 394 Q. Any other regulatory concessions  
14 that you can recall being a part of that presentation?

15 A. Considerations of consolidation in  
16 the industry.

17 395 Q. Okay. And you are not aware of  
18 West Face raising any of those concerns with Industry  
19 Canada?

20 A. You are asking me -- you are asking  
21 me questions that I have no basis to answer one way or  
22 the other.

23 396 Q. Okay. So you have -- you have no  
24 basis to conclude that West Face implemented any of  
25 Catalyst's strategy with respect to these regulatory

1 issues?

2 A. I have a concern that West Face  
3 took a position, knowing what our regulatory attitude  
4 was, that was more aggressive than they might otherwise  
5 have taken.

6 397 Q. Okay. So the concern is not that  
7 West Face copied Catalyst; it's that West Face took a  
8 different approach?

9 A. That knowing our strategy, they  
10 were willing to be more aggressive, but they only were  
11 willing to be more aggressive if they knew what our  
12 strategy was.

13 398 Q. Okay. Mr. Griffin has sworn in his  
14 affidavit that West Face first explored investment in  
15 Wind in 2009. Do you recall that?

16 A. If you -- if you can tell me that  
17 that's what it says, I will agree with you --

18 399 Q. Okay. You have no reason --

19 A. -- without having to go back to  
20 that.

21 400 Q. You have no reason to dispute that?

22 A. I have no reason to dispute that.  
23 Sorry, what was the date, in 2009?

24 401 Q. I don't recall precisely when  
25 in 2009.

1                   A.     It doesn't matter the month. Just  
2 the year was 2009?

3     402           Q.     The year was 2009.

4                   A.     Thank you.

5     403           Q.     So I take it there is no issue here  
6 that West Face was aware of and, indeed, was pursuing  
7 in late 2013 and early 2014 the Wind opportunity before  
8 Moyse ever appeared on the landscape of West Face?

9                   A.     Is that what -- is that what  
10 Mr. Griffin's affidavit --

11     404           Q.     Yes.

12                   A.     I have no reason to disagree with  
13 that.

14     405           Q.     Okay. So Mr. Griffin, in his  
15 affidavit, states that West Face entered into a  
16 confidentiality agreement on December 7, 2013, with  
17 VimpelCom. I take it you have no reason to dispute  
18 that?

19                   A.     No reason to dispute that.

20     406           Q.     Okay. And are you aware that West  
21 Face told your counsel at the time they delivered  
22 Mr. Griffin's affidavit that West Face could not  
23 produce the confidentiality agreement and other  
24 negotiating documents with VimpelCom because of the  
25 obligations in the CA but invited Catalyst to seek an

1 exception and said that West Face wouldn't oppose it?  
2 Were you aware of that?

3 A. I'm not recalling that.

4 407 Q. Okay.

5 A. Is there something you can point me  
6 to?

7 408 Q. Sure. So I'm handing you a copy of  
8 a March 13, 2015, letter from me to Mr. DiPucchio.

9 And you'll see in the first paragraph  
10 this refers to serving the responding motion record of  
11 West Face?

12 A. I do.

13 409 Q. And you will see in the second  
14 paragraph it refers to the nondisclosure agreement with  
15 VimpelCom?

16 A. I do.

17 410 Q. And you'll see the last sentence,  
18 it says:

19 "West Face undertakes not to oppose a  
20 motion to relieve it of its  
21 nondisclosure obligations to VimpelCom  
22 under the 2013 NDA."

23 A. I'm sorry, where is that, please?

24 411 Q. The last sentence of paragraph 2 of  
25 the letter.

1 A. Got it.

2 412 Q. Reads:

3 "West Face undertakes not to oppose a  
4 motion to relieve it of its  
5 nondisclosure obligations to VimpelCom  
6 under the 2013 NDA."

7 A. I do see that.

8 413 Q. And I take it we are agreed that  
9 Catalyst took no steps in that regard?

10 A. Do you have any response from Rocco  
11 on this one?

12 414 Q. No. But you are not aware of  
13 anything?

14 A. No, but I would want to confer -- I  
15 would want to confer with Rocco.

16 MR. MILNE-SMITH: Okay. I would like to  
17 mark that as the first exhibit on this examination.

18 MR. WINTON: Okay.

19 EXHIBIT NO. 1: Letter from  
20 Mr. Milne-Smith to Mr. DiPucchio dated  
21 March 13, 2015

22 BY MR. MILNE-SMITH:

23 415 Q. Now, Mr. Riley, as the instructing  
24 principal at Catalyst, I take it you are also aware or  
25 you'd also agree that, after delivery of your affidavit



1 on this motion on February 18, 2015, West Face's  
2 counsel asked Catalyst to produce copies of any  
3 documentation relating to your allegation that Catalyst  
4 and VimpelCom had negotiated everything but a term  
5 relating to regulatory approval? Do you recall that?

6 A. Yes.

7 416 Q. So I'm handing you a copy of a  
8 letter dated February 20, 2015. This one was from Jeff  
9 Mitchell at Denton's sent, again, to Mr. DiPucchio?

10 A. Uhm-hmm.

11 417 Q. And you'll see the third paragraph.

12 A. Yes.

13 418 Q. Makes the request for production of  
14 documentation relating to that assertion in your  
15 affidavit?

16 A. Yes.

17 MR. MILNE-SMITH: So let's mark that as  
18 Exhibit 2.

19 EXHIBIT NO. 2: Request for production  
20 of documentation relating to letter from  
21 Mr. Mitchell to Mr. DiPucchio dated  
22 February 20, 2015

23 THE WITNESS: Yes.

24 BY MR. MILNE-SMITH:

25 419 Q. And then the response comes from

1 Mr. Winton on February 26 to Mr. Mitchell. I'm handing  
2 you a copy of that.

3 A. Thank you.

4 420 Q. You are aware of that  
5 communication?

6 A. Yes.

7 MR. MILNE-SMITH: So we will mark that  
8 as Exhibit 3.

9 EXHIBIT NO. 3: Letter dated February 26  
10 to Mr. Mitchell

11 BY MR. MILNE-SMITH:

12 421 Q. I take it you'd agree with me --  
13 feel free to review the letter, but I take it you would  
14 agree with me that Mr. Winton, on behalf of Catalyst,  
15 refused to produce the requested communications?

16 A. Yes.

17 422 Q. And counsel advised last night that  
18 this refusal was based on an agreement from last July  
19 between counsel to Mr. Moyse and counsel to Catalyst  
20 that Catalyst didn't have to produce e-mails on which  
21 Mr. Moyse was copied concerning negotiations with  
22 VimpelCom; is that correct?

23 A. Sorry, where is that referenced in  
24 the letter?

25 423 Q. No, I'm moving on to a

1 communication I had last night. Perhaps you should let  
2 Mr. Winton answer this.

3 Counsel, you'd agree with me, of course,  
4 that last night you advised that the refusal to produce  
5 the communications with VimpelCom -- and that refusal  
6 is set out in Exhibit 3 -- was based on an agreement  
7 from last July between counsel to Mr. Moyse and counsel  
8 to Catalyst that you didn't have to produce e-mails  
9 Mr. Moyse was copied on?

10 MR. WINTON: Well, the e-mail  
11 correspondence last night was not in reference to  
12 communications with VimpelCom; it was, as I understood  
13 it, a request for copies of the e-mails referenced in  
14 affidavits that said Mr. Moyse had been copied on  
15 e-mails at Catalyst relating to Wind.

16 MR. MILNE-SMITH: Okay.

17 MR. WINTON: There's an allegation or  
18 it's -- in Mr. Riley's affidavit, there's a statement  
19 that Mr. Moyse was copied on numerous e-mails, dozens  
20 of e-mails. You may not use the term "dozens", but  
21 several e-mails, let's say, relating to Wind. Those  
22 e-mails were present at Mr. Moyse's cross-examination  
23 on July 31st, 2014, and at the time, rather than  
24 introduce them into the record under some form of seal  
25 or confidentiality undertaking between the parties, it

1 was agreed that Mr. Moyse would admit to having  
2 received the e-mails and, on that basis, there was no  
3 need to introduce them into the record.

4 BY MR. MILNE-SMITH:

5 424 Q. And at the time of that agreement,  
6 Wind was still in play, correct? So this is in July of  
7 2014, Mr. Riley, Wind was still in play?

8 A. I believe that that's correct. I  
9 can't remember what the date of the West Face  
10 transaction was.

11 425 Q. That was in September 16, I  
12 believe.

13 A. Thank you.

14 426 Q. And, in fact, Catalyst had  
15 exclusivity from I believe July 23rd until August 18?  
16 Does that sound correct?

17 A. That sounds correct.

18 427 Q. Okay. So at the time of this  
19 agreement, the negotiations between Catalyst and  
20 VimpelCom were very much confidential?

21 A. Yes.

22 428 Q. Those negotiations are no longer  
23 confidential, would you agree?

24 A. There may still be some vestige of  
25 confidentiality vis-a-vis us and VimpelCom. I would

1 have to look at that arrangement.

2 429 Q. Certainly concerns about  
3 confidentiality are greatly attenuated? Greatly  
4 reduced?

5 A. I think that's correct, although  
6 there may be still some sensitive information in there.

7 430 Q. Okay. But you haven't checked to  
8 see if there is anything still, have you?

9 A. I have not, I have not.

10 431 Q. So the reason, then, that documents  
11 relating to Catalyst's negotiation with VimpelCom have  
12 not been produced is because of what is set out in  
13 paragraph 3 of Exhibit 3, which is that they simply  
14 aren't relevant? On the first page, paragraph 3.

15 MR. WINTON: Well, to be fair, I think  
16 the letter says "are relevant and/or should be  
17 produced". So I think there's suggestion there that  
18 it's not just about concerns about relevancy or about  
19 whether it's proper to produce them to West Face in the  
20 context of what is complained of.

21 MR. MILNE-SMITH: So is it relevance and  
22 confidentiality?

23 MR. WINTON: Correct.

24 BY MR. MILNE-SMITH:

25 432 Q. Okay. I will repeat for the record

1 my request that Catalyst produce any evidence  
2 concerning its negotiations with VimpelCom that support  
3 Mr. Riley's assertion in his February 18 affidavit that  
4 Catalyst and VimpelCom had negotiated everything except  
5 for a term relating to regulatory approval.

6 U/A MR. WINTON: I will take that under  
7 advisement.

8 BY MR. MILNE-SMITH:

9 433 Q. And, Mr. Riley, you are aware, I  
10 take it, that West Face has produced to your counsel  
11 all e-mails it was able to retrieve from the West Face  
12 computer servers either from, to, or about Mr. Moyse?

13 A. To the best of my knowledge, yes.

14 434 Q. Okay. And you are also aware that  
15 West Face made an offer to let the independent  
16 supervising solicitor review any documents that were  
17 able to be retrieved from the West Face computer system  
18 that were created, edited, or accessed by Mr. Moyse?  
19 Were you aware of that?

20 A. I -- I think your question is more  
21 precise than I can answer. I think it's more -- I turn  
22 to Andrew and ask him to answer that.

23 435 Q. That's fine.

24 MR. WINTON: I believe it's in Exhibit 1  
25 the offer is made.

1                   Counsel, I think we need to distinguish  
2     between what West Face -- or what you and West Face say  
3     has been done versus whether or not it has actually  
4     been done. And so in saying you provided a USB drive  
5     that contains all the e-mails relating -- to/from  
6     relating to Mr. Moyse versus whether in fact that's the  
7     case, that's, of course, a matter that is at issue in  
8     this motion.

9                   MR. MILNE-SMITH: I understand.

10                  MR. WINTON: Okay.

11                  MR. MILNE-SMITH: The fact I'm trying to  
12     establish is if the offer has been made. I'm asking  
13     specifically about the ISS proposal now.

14                  MR. WINTON: Right. But I'm going back  
15     to two questions ago where you asked Mr. Riley that ...

16                  MR. MILNE-SMITH: All e-mails were  
17     produced.

18                  MR. WINTON: All e-mails were produced,  
19     and that's the position you are taking.

20                  MR. MILNE-SMITH: Right.

21                  MR. WINTON: But whether or not that is,  
22     in fact, the case is what is really at the heart of  
23     this motion.

24                  MR. MILNE-SMITH: I understand.

25                  MR. WINTON: Okay.

1 MR. MILNE-SMITH: At least one of the  
2 issues that your client has raised.

3 BY MR. MILNE-SMITH:

4 436 Q. But going back to my -- my question  
5 now is just a predicate to what is going to be the real  
6 question.

7 So the predicate is an offer was made to  
8 let the ISS review and then produce to Catalyst, under  
9 appropriate confidentiality terms, any document  
10 created, edited, or accessed by Mr. Moyse. That offer  
11 was made, correct?

12 A. In this letter? Is that in this  
13 letter?

14 437 Q. In this letter and, in fact, also  
15 in Mr. Griffin's affidavit.

16 A. Yes.

17 438 Q. And there was no response to that  
18 offer, correct? That's the real question.

19 A. To the best of my knowledge, no.

20 439 Q. Mr. Riley, were you aware that  
21 VimpelCom, during the course of its negotiations with  
22 Catalyst, sent a draft share purchase agreement to  
23 Catalyst?

24 A. Yes.

25 440 Q. And we're going to have to do a



1 little bit of compare and contrast here, so bear with  
2 me. I'd like you to have your reply affidavit,  
3 specifically Exhibit E, and Mr. Griffin's supplementary  
4 motion record.

5 A. Okay.

6 441 Q. Tab 1A.

7 A. So what is this? What is this one?

8 MR. WINTON: This one is Mr. Griffin's.

9 BY MR. MILNE-SMITH:

10 442 Q. Right. So just to give you the  
11 context, sir, and be fair to you. Tab 1A of  
12 Mr. Griffin's affidavit.

13 A. This one? This one?

14 443 Q. Yes, correct. Is what he describes  
15 as a May 9, 2014, draft share purchase agreement sent  
16 by VimpelCom to West Face.

17 A. Okay.

18 444 Q. Okay. Now, the proposition I'm  
19 going to put to you, sir, is that -- sorry, let me get  
20 the other side of the equation clear on the record as  
21 well.

22 So Exhibit E to your reply affidavit is  
23 a clean and a blackline copy of a share purchase  
24 agreement sent by Catalyst to VimpelCom, correct?

25 A. Yes, it is. That's this one,

1 right? This one?

2 445 Q. Correct. You are at page -- Bates  
3 stamp page 51.

4 A. 51, yes. Yes.

5 446 Q. So the simple proposition I want to  
6 put to you is that -- sorry, if you want to go to  
7 page 165 of the record. So what you are looking at now  
8 is the clean copy; page 165 is the blackline.

9 A. Okay.

10 447 Q. So the simple proposition I would  
11 put to you, sir, is that the blackline here that we are  
12 looking at on page 165 is a blackline against the very  
13 same VimpelCom draft that's at tab 1A of Mr. Griffin's  
14 supplementary affidavit.

15 A. I can't answer that. I mean,  
16 that's -- I can't -- the reason I can't answer that  
17 question is that when you have documents that are  
18 some -- have, whatever, ten -- ten articles.

19 448 Q. Okay.

20 A. In other words --

21 449 Q. I understand.

22 A. -- you would have to do a fairly  
23 thorough cross-reference between the documents.

24 450 Q. I understand. So we have done  
25 that.

1                   A.     Okay.   Can I rely on your  
2 diligence?

3     451           Q.     Well, Mr. Griffin says, at  
4 paragraph 4 of his supplementary affidavit, that:

5                   "Exhibit E includes clean and  
6 blackline copies of what appear to be a  
7 Catalyst markup of a draft share  
8 purchase agreement provided by  
9 VimpelCom."

10                  A.     So can I -- sorry.

11     452           Q.     So what I would ask is for --

12                  A.     Hang on.   Sorry, now I'm confused,  
13 and you have got to help me.

14     453           Q.     Yes.

15                  A.     This is a draft of May 9th.

16     454           Q.     Yes.

17                  A.     The blackline, which is Faskens'  
18 comments, is marked May 23rd.

19     455           Q.     Correct.

20                  A.     Okay.   So, I'm sorry, can you ask  
21 the question again, because I may be misunderstanding  
22 your question.

23     456           Q.     Okay.   So let me restate it so it's  
24 hopefully clear on the record.

25                   I'm going to put a proposition to you.

1 What I'm going to ask for at the end is if you have any  
2 information or evidence to the contrary.

3 So the proposition is this. What's at  
4 tab 1A of Mr. Griffin's supplementary affidavit is a  
5 draft share purchase agreement sent by VimpelCom to  
6 West Face. My first proposition to you is that that  
7 very same draft was sent by VimpelCom to Catalyst.

8 A. I don't know. I can't -- I mean, I  
9 can't answer that question, because you are asking --  
10 you are asking me to confirm things that I may not be  
11 able to prove.

12 457 Q. I understand.

13 A. Or establish, say.

14 458 Q. The basis on which I assert that is  
15 that Exhibit E to your reply affidavit --

16 A. Yes.

17 459 Q. -- is a blackline against the very  
18 same document that is at tab 1A of Mr. Griffin's  
19 affidavit. In other words, if you take out all the  
20 changes shown in the blackline, what you're left with  
21 is Exhibit 1A of Mr. Griffin's affidavit.

22 A. And, again, I'm not trying to  
23 argue. You would have to do a line-by-line comparison.

24 MR. MILNE-SMITH: So if you are going to  
25 take a contrary position at the return of the motion, I

1 would like to know on what basis.

2 MR. WINTON: Well, without getting into  
3 the nuts and bolts, I just notice right away that on  
4 page 165 of the Catalyst supplementary record.

5 MR. MILNE-SMITH: Yes.

6 MR. WINTON: The red struck-out text  
7 suggests this was a draft dated May 16th.

8 MR. MILNE-SMITH: As opposed to May 9.

9 MR. WINTON: As opposed to May 9.

10 MR. MILNE-SMITH: So there's one  
11 difference. If you have any others, please let me  
12 know.

13 THE WITNESS: The others -- that was  
14 provided during the confidentiality period, the  
15 exclusive negotiation period, I believe.

16 BY MR. MILNE-SMITH:

17 460 Q. No. That came later.

18 A. No. Oh, sorry, later. Okay.

19 U/T MR. WINTON: I just was bringing that to  
20 the attention. We do not -- if we intend to take that  
21 position, we will let you know.

22 THE WITNESS: And I'm not trying to be  
23 difficult, I'm just saying you are asking a person  
24 who -- this is what I do for a living.

25

1 BY MR. MILNE-SMITH:

2 461 Q. Yes.

3 A. Or used to do for a living for many  
4 decades, so I have learned my lesson.

5 462 Q. Mr. Riley, I'm not faulting you for  
6 not being able to answer this question on the spot, and  
7 I didn't mean to imply that you should. All I want to  
8 know is whether a contrary position to the proposition  
9 I have stated is going to be taken at the return of the  
10 motion, and, if so, on what basis.

11 A. May I ask a question?

12 463 Q. Yes.

13 A. Just for my own edification. The  
14 only thing that I'm confused by -- it's a different  
15 issue than Andrew raised. In what I appended, a party  
16 to the agreement is VimpelCom.

17 464 Q. Yes.

18 A. In this draft of May 9th, which  
19 precedes this draft, I think, if I'm correct.

20 465 Q. Yes.

21 A. In other words, I'm looking at the  
22 ribbon at the top of the Faskens document.

23 466 Q. Yes.

24 A. VimpelCom is not a party to this  
25 agreement.

1       467                   Q.     Yes.   That's one of the changes  
2     that you made.   If you go to the blackline at page 165,  
3     you will see --

4                        A.     Okay.   So that was an add by us.

5       468                   Q.     Right.   You'll see that "and  
6     VimpelCom" has been added by Catalyst.

7                        A.     Okay.   Sorry, and that's why I say  
8     I don't want to -- I don't want to -- without --  
9     without going through them and also asking some  
10    questions, I can't answer your question.

11       469                   Q.     Okay.

12                        A.     In the way you want it answered.

13       470                   Q.     That's fine.   I think I've got the  
14    commitment clear on the record that if you are going to  
15    take a contrary position to the proposition I've put,  
16    you're going to let me know ahead of time and on what  
17    basis, correct?

18                        MR. WINTON:   Yes.   Just to be clear, the  
19    proposition that is at tab 1A of Mr. Griffin's  
20    affidavit is the same draft that was marked up in the  
21    blackline attached to tab 1E of Mr. Riley's  
22    supplementary affidavit.

23                        MR. MILNE-SMITH:   Right.   With the only  
24    apparent difference being the date.

25                        MR. WINTON:   Right.

1 BY MR. MILNE-SMITH:

2 471 Q. Right. So let's look at the  
3 VimpelCom form at tab 1A of Mr. Riley's -- of  
4 Mr. Griffin's supplementary affidavit, and I want to  
5 take you to section 7.3B, as in Bravo.

6 Let's go off the record.

7 -- OFF THE RECORD --

8 BY MR. MILNE-SMITH:

9 472 Q. Just one thing I wanted to make  
10 clear, and I don't think I did before. We were looking  
11 at Exhibit E to your affidavit, and that includes a  
12 covering e-mail dated May 24, which is copied to a  
13 number of people including Mr. Moyse?

14 MR. WINTON: Yes.

15 BY MR. MILNE-SMITH:

16 473 Q. So I take it we are in agreement  
17 that --

18 MR. WINTON: Tab E is May 23.

19 MR. MILNE-SMITH: No, no. Sorry,  
20 Mr. Riley's reply affidavit, not Mr. Griffin.

21 MR. WINTON: Yes. Let's go to it.

22 MR. MILNE-SMITH: Okay.

23 MR. WINTON: Are you referring to an  
24 e-mail from Mr. Batista?

25 MR. MILNE-SMITH: I am referring to --



1 oh, yes, May 23, not 24. I apologize.

2 MR. WINTON: Right.

3 MR. MILNE-SMITH: Yes.

4 BY MR. MILNE-SMITH:

5 474 Q. So I take it that was the latest  
6 draft that Mr. Moyse would have seen? That's why you  
7 included it, right?

8 A. I think that's correct.

9 475 Q. The day before he gave notice?

10 A. Yes. That's a -- I want to keep, I  
11 just want to remember, that would be a Friday, correct?

12 476 Q. Correct.

13 A. Okay. Thank you.

14 477 Q. That's correct. So if we go to tab  
15 1A of Mr. Griffin's supplementary affidavit, page 36 of  
16 the record.

17 A. So let me just understand. This  
18 is -- you're asking me to look at an agreement dated  
19 May 9th that was presented to West Face or it was a  
20 document that we were not in the circle on?

21 478 Q. Correct.

22 A. Okay.

23 479 Q. All we are doing is looking,  
24 compare and contrast here to make sure I'm not missing  
25 anything.

1 A. I'm more worried about me missing  
2 something.

3 480 Q. So you will see section 7.3 (b)  
4 there is a clause referring to Industry Canada  
5 approval?

6 A. Yes.

7 481 Q. So without limiting the purchaser's  
8 obligations herein, including in section 6.5 -- sorry,  
9 I'm going to read the preamble so it makes sense. It  
10 says:

11 "The obligation of the parties to  
12 complete the transaction is subject to  
13 the following conditions which are the  
14 benefit of all of the parties."

15 And then A deals with Competition Act  
16 approval and B deals with Industry Canada approval.

17 A. Yes.

18 482 Q. So what this is saying is that the  
19 transaction doesn't go ahead unless Industry Canada  
20 approves?

21 A. Yes. Do you mind if I look at the  
22 definition?

23 483 Q. Sure. You are looking at the  
24 definition of Industry Canada approval?

25 A. Yes, because it was a defined term.

1           484                   Q.     For the record that's on page 12.

2                               A.     Okay.   Thank you.

3           485                   Q.     Maybe you can leave that in front  
4 of you.   And then if you want to pull up Exhibit E to  
5 your affidavit, it's at page 209 of the Bates stamp.

6                               A.     So this is -- this -- can I refer  
7 to this as the West Face document?

8           486                   Q.     Sure.   So the West Face document  
9 means tab 1A of Mr. Griffin's supplementary affidavit.

10                              A.     Thank you.

11          487                   Q.     So you will see Catalyst has made a  
12 few changes to the preamble of clause 7.3 substituting  
13 purchaser and the seller for parties?

14                              A.     Can I just, again, can I look at  
15 this?

16          488                   Q.     Sure.

17                              A.     So the only parties to this  
18 agreement -- just -- were the purchasers, so whoever  
19 the purchasers, and Globalive.

20          489                   Q.     Yes.

21                              A.     So here who was defined as the  
22 seller?   We're presumably the purchaser.

23          490                   Q.     The seller is Globalive.   VimpelCom  
24 is a separate defined term.

25                              A.     Okay.   So this was --

1 MR. WINTON: Page 177 of the Catalyst  
2 supplementary record, the defined term "seller" is the  
3 meaning specified in the recitals to this agreement,  
4 and if we -- recitals are where? Are on page --

5 THE WITNESS: Sorry.

6 MR. WINTON: -- 169 --

7 MR. MILNE-SMITH: Correct.

8 MR. WINTON: -- of the agreement. And  
9 the seller is defined as Globalive Investment Holdings  
10 Corp.

11 BY MR. MILNE-SMITH:

12 491 Q. Correct. Sir, my simple question  
13 is the Industry Canada approval clause doesn't change,  
14 correct?

15 A. I'd have to go back and understand  
16 why VimpelCom was not involved in that ability to waive  
17 the condition. I just -- just don't know.

18 492 Q. VimpelCom is not included, not  
19 included on either -- in either of the drafts. Because  
20 it's not a party to the West Face document and it's not  
21 a purchaser or seller in the Catalyst draft.

22 A. I agree with -- I just can't --  
23 mine is an intellectual point, not anything more than I  
24 can't understand why VimpelCom wouldn't have been in  
25 that circle. That's -- it's a question.

1       493               Q.    My simple point is that there's no  
2       change made to the Industry Canada approval clause?

3                       A.    Correct.

4                       Although you are asking -- and I only  
5       say this, you are asking me a question about a document  
6       that if I ever read it, I haven't looked at it in a  
7       long time.

8       494               Q.    Okay. That's fine.

9                       A.    So there may be a nuance in there.

10      495               Q.    Here's my simple point, and I'm  
11     happy to take this by way of undertaking. On my review  
12     of Exhibit E, I don't see Catalyst adding anything  
13     novel about Industry Canada approval or regulatory risk  
14     to the draft agreement that it sends back to VimpelCom.  
15     And if I'm wrong, I would like you to tell me where it  
16     is.

17                       A.    No. On the wording of this  
18     agreement I don't see that.

19      496               Q.    Okay. So just to take stock then,  
20     as of May 24 when Mr. Moyse announces his departure,  
21     VimpelCom had proposed a regulatory approval condition?

22                       A.    Hmm-hmm.

23      497               Q.    You have to say yes. Okay?

24                       A.    Sorry, yes.

25      498               Q.    And Catalyst have not demanded any

1 additional regulatory conditions in its black line it  
2 sent back on May 23?

3 A. Not in the blackline draft.

4 499 Q. And you are not aware of it sending  
5 such a condition anywhere else?

6 A. There were conversations at the  
7 time which I was not a party to, but I know it was a  
8 subject of discussion internally as to whether we had  
9 to expand what -- what the aspects of that consent,  
10 that consent should be.

11 500 Q. Okay.

12 A. Which would not be unusual, when  
13 you are at that early stage, to see where you end up in  
14 the negotiations.

15 501 Q. But certainly nothing had been  
16 communicated to VimpelCom?

17 A. Not to my knowledge.

18 502 Q. And you're not aware of Mr. Moyse  
19 being involved in high-level discussions like that?

20 A. Oh, that -- he would be involved  
21 in -- he would be aware of our concern about, as I say,  
22 going back to the presentation that he was a party to.

23 503 Q. Right.

24 A. That would be part of that whole  
25 text.

1       504                   Q.    Okay.  But nothing communicated to  
2   VimpelCom on that front?

3                           A.    To my knowledge, no.

4       505                   Q.    Okay.  Mr. Moyse stopped working at  
5   West Face on July 16, 2014, as part of a consent order.  
6   You saw that in the discussions with Mr. Borg-Olivier  
7   this morning?

8                           A.    Yes.

9       506                   Q.    And as of that date, I take it you  
10   have and Catalyst has no evidence that West Face was  
11   willing to drop a condition of regulatory approval?

12                          A.    Not to my knowledge.

13       507                   Q.    Okay.  And on July 23rd catalyst  
14   earned the exclusive right to negotiate with VimpelCom  
15   for the sale of its interest in Wind; is that right?

16                          A.    I --

17       508                   Q.    You will take my word for it?

18                          A.    I will take your word for it.

19       509                   Q.    Okay.

20                          A.    Because otherwise I have to go back  
21   and double-check the date.

22       510                   Q.    That's fine.  I take it I'm right  
23   that Catalyst has not commenced proceedings against  
24   VimpelCom for breach of that exclusivity obligation?

25                          A.    No, we have not.

1           511           Q.    There is no suggestion here that  
2   VimpelCom breached exclusivity?

3                   A.    I wouldn't say that.

4           512           Q.    You haven't sent a demand letter to  
5   VimpelCom?

6                   A.    We have not at this time.

7           513           Q.    You haven't made any allegation to  
8   VimpelCom in that regard?

9                   A.    Not to my knowledge.

10                   However, when a contract is breached, as  
11   I recall, there's two -- you can -- under the theory of  
12   Lumly and Guy, and I'm not trying to play lawyer, you  
13   can go after one of two parties, the party breaching or  
14   the party inducing a breach.

15           514           Q.    There's been no pleading of  
16   inducing breach of contract?

17                   A.    There's been no pleading.

18           515           Q.    If we go back to your original -- I  
19   shouldn't say original, because that's 2014. We go to  
20   your February 8, 2015, affidavit.

21                   A.    Sorry, 2015? You said 2008 and I  
22   was nervous.

23           516           Q.    Sorry, 2015. I apologize.

24                   A.    That's okay.

25           517           Q.    February 8, 2015.



1 MR. WINTON: Can I put the others away?

2 MR. MILNE-SMITH: For now, yes.

3 THE WITNESS: There are a lot of dates  
4 that float around.

5 BY MR. MILNE-SMITH:

6 518 Q. Yes, it's good to be clear.

7 So if you go to your affidavit at tab 3,  
8 paragraph 45, and we've touched on this before but I  
9 want to make sure I have covered it off.

10 A. Sorry, this is my affidavit,  
11 correct?

12 519 Q. Your affidavit, correct,  
13 February 18, 2015.

14 A. Yes.

15 520 Q. You say:

16 "During the exclusivity period,  
17 Catalyst and VimpelCom were able to  
18 negotiate almost all of the terms of the  
19 potential sale of Wind Mobile to  
20 Catalyst. The only point over which the  
21 parties could not agree was regulatory  
22 approval risk. Catalyst wanted to  
23 ensure that its purchase was conditional  
24 on receiving certain regulatory  
25 concessions from Industry Canada, but

1 VimpelCom would not agree to the  
2 conditions Catalyst sought."

3 So I take it we are talking here about  
4 regulatory concessions that were not in the draft on  
5 which Mr. Moyse was copied on May 23rd appearing at  
6 Exhibit E to your reply affidavit?

7 A. It's not in that agreement, no. We  
8 have touched on that before.

9 521 Q. Okay. What were the conditions  
10 that Catalyst demanded?

11 A. We have touched on them before and  
12 I don't want to be and I'm not trying to be a  
13 hundred percent these are the only ones, but it had to  
14 do with transferability of Spectrum --

15 522 Q. Okay.

16 A. -- in certain events. It also had  
17 to do with the ability to create a wholesale as opposed  
18 to a retail --

19 523 Q. Okay.

20 A. -- network.

21 524 Q. So I take it between May 23rd,  
22 2014, and call it August 18 when exclusivity ended in  
23 2014, nobody at Catalyst communicated with Mr. Moyse  
24 and told him that Catalyst was demanding those  
25 conditions?

1 A. That is correct.

2 525 Q. In your reply affidavit at  
3 paragraph 41.

4 A. Is that the same affidavit I'm  
5 looking at here?

6 526 Q. No. That's the May 1 affidavit.  
7 They have the same subject covered in two affidavits so  
8 we have to flip back and forth.

9 A. Okay. That's fine.

10 MR. WINTON: Which paragraph?

11 BY MR. MILNE-SMITH:

12 527 Q. Paragraph 41.

13 A. This is the reply affidavit to  
14 Moyse? Or what is the affidavit I'm applying to?

15 528 Q. You are replying to Moyse and  
16 Griffin.

17 A. Okay. Thank you.

18 MR. WINTON: I just want to show you  
19 those pages.

20 MR. MILNE-SMITH: That's fine.

21 529 Q. So you see paragraph 41 you are  
22 referring to information and belief --

23 A. Yes.

24 530 Q. -- you obtained from Mr. DeAlba?

25 A. Yes.

1       531               Q.    I take it this is something you  
2       were not aware of at the time you swore your  
3       February 18 affidavit?  It's not referred to.

4                       A.    No.  I mean, I can't recall why it  
5       would have been omitted from there.  I ...

6       532               Q.    Okay.  So this refers to final but  
7       unsigned paper work for a transaction to acquire Wind.

8                       A.    Yes.

9       533               Q.    I'd like production of that final  
10      but unsigned paper work?

11     U/A               MR. WINTON:  Take that under advisement.

12                       BY MR. MILNE-SMITH:

13      534               Q.    And would that final but unsigned  
14      paper work have included the regulatory conditions that  
15      we've been referring to?

16                       A.    I would have to say, subject to  
17      seeing it, yes.

18      535               Q.    Okay.  And paragraph 41 also refers  
19      to a conference calls with representatives of Industry  
20      Canada?

21                       A.    We is this now?

22      536               Q.    Paragraph 41.

23                       A.    Paragraph 41, yes.

24      537               Q.    So this is in August of 2014, a  
25      conference call with representatives of Industry

1 Canada?

2 A. Yes.

3 538 Q. And obviously Mr. Moyse would have  
4 no way of knowing the contents of that conversation?

5 A. He would not.

6 Unless he bugged --sorry, strike that.

7 I don't want to --

8 539 Q. That's fine. I understand what was  
9 said in jest and you are not making an allegation.

10 A. Exactly.

11 540 Q. I would like any -- in addition to  
12 the final but unsigned paper work referred to, I'd like  
13 any documentary evidence demonstrating that VimpelCom  
14 was prepared to accept those terms.

15 U/A MR. WINTON: Take that under advisement.

16 BY MR. MILNE-SMITH:

17 541 Q. Okay. When did this call with --  
18 are there any records that reflect when exactly the  
19 call with Industry Canada took place?

20 A. Not, not -- I would have to -- I  
21 would have to confirm with Mr. DeAlba to figure out the  
22 date.

23 542 Q. If you could consult either diaries  
24 or maybe long-distance phone records --

25 A. Yes.

1       543               Q.     -- of Catalyst and advise when that  
2     call took place?

3                       A.     Yes.

4     U/A               MR. WINTON:  we will take that under  
5     advisement.

6                       MR. MILNE-SMITH:  Okay.

7                       THE WITNESS:  I apologize.  I have my  
8     counsel.

9                       BY MR. MILNE-SMITH:

10    544               Q.     Now, I take it you would accept  
11    that at this stage in the transaction you are  
12    identifying when you are having a call with Industry  
13    Canada and there was final but unsigned paper work, but  
14    the matter was still subject of VimpelCom board  
15    approval, correct?

16                       A.     I don't know.

17    545               Q.     If you could advise -- make an  
18    inquiry of the appropriate people and advise?

19                       MR. WINTON:  Whether -- I'm sure I'm  
20    understanding.

21                       BY MR. MILNE-SMITH:

22    546               Q.     At the point in the transaction --

23                       A.     Was it conditional upon board  
24    approval?

25    547               Q.     Right, VimpelCom's board still had

1 not given approval?

2 MR. WINTON: You are asking for  
3 Catalyst's understanding?

4 BY MR. MILNE-SMITH:

5 548 Q. Correct. And if any VimpelCom  
6 approval had been communicated, I'd like to see  
7 evidence of it.

8 So take that under advisement?

9 U/T MR. WINTON: No. I will give you that  
10 undertaking.

11 BY MR. MILNE-SMITH:

12 549 Q. Wonderful. Paragraph 42 you go on  
13 to say that the anticipated deal with VimpelCom was  
14 conditional on Industry Canada approval and the  
15 granting of certain regulatory concessions to a  
16 Catalyst-owned Wind, and in Catalyst's mind would make  
17 it easier for a fourth national carrier to succeed. I  
18 take it those are the same regulatory concessions we've  
19 been discussing?

20 A. Yes.

21 550 Q. And those weren't in the May 23  
22 draft that Mr. Moyse saw?

23 A. No, but, again, it would have  
24 been -- I think it was in the context of the PowerPoint  
25 that I have raised it.

1       551                   Q.     I understand.   And to your  
2     knowledge, West Face has never asked -- never asked for  
3     any such concessions?

4                        A.     I don't know what concessions they  
5     asked for.

6       552                   Q.     You're not aware of them ever  
7     asking for those kinds of concession?

8                        A.     No.   But just to be clear, I have  
9     no way of knowing that.   Industry Canada would never  
10    share that under kind of information.   Counsel would  
11    never share that kind of information and West Face  
12    would not share that information to my knowledge.

13    553                   Q.     I understand.

14                        A.     So there is no source for that.

15    554                   Q.     Did VimpelCom ever ask for a break  
16    fee?

17                        A.     I don't know.

18    555                   Q.     Could you --

19                        A.     Is it in the draft?

20    556                   Q.     Could you please make inquiries and  
21    advise?

22    U/T                   MR. WINTON:   Yes.

23                        BY MR. MILNE-SMITH:

24    557                   Q.     I would also like to know that if  
25    VimpelCom did ask for a break fee, I'd like to know



1 obviously its precise terms and whether Catalyst agreed  
2 to it?

3 U/T MR. WINTON: That I will take under  
4 advisements.

5 BY MR. MILNE-SMITH:

6 558 Q. Mr. Riley, do you know if Catalyst  
7 ever had committed financing for its proposed  
8 transaction to acquire VimpelCom's interest in Wind?

9 A. Can I defer for a minute just to  
10 explain the fund structure? We would call for capital.

11 559 Q. Yes.

12 A. And we do have a line of credit  
13 that we could use in the interim. So our access,  
14 our -- our ability to access funds is under our limited  
15 partnership agreements.

16 560 Q. Did your line of credit -- was the  
17 available balance --

18 A. I don't know.

19 561 Q. You don't know whether it would  
20 have covered --

21 A. I -- you know, I don't know.

22 562 Q. Okay. So it would have then been  
23 subject to a capital call that would have to be  
24 approved by the various investors in Catalyst?

25 A. No, there's no approval rights. If

1 we call Capital, they are required under the LPA to  
2 provide that capital.

3 563 Q. The limited partners?

4 A. Correct.

5 564 Q. You'd never made that call though,  
6 call for capital?

7 A. To my knowledge, no. I mean, I  
8 would have to look back at the calls at that period.

9 565 Q. Right.

10 A. In other words, I don't know  
11 because we call capital on a fairly frequent basis.

12 566 Q. Okay.

13 A. And what we were calling capital  
14 for at that time, we may or may not have made any  
15 capital calls at that time. I just -- I can't answer  
16 that question.

17 567 Q. And you hadn't gotten far enough  
18 along in that transaction to actually make that capital  
19 call with respect to Wind?

20 A. No. We would make that capital  
21 call when we were ready to close. And I suspect, given  
22 the availability -- if we had our capital call  
23 facility, which is a line of credit, available we would  
24 use that first, just to manage cash flows.

25 568 Q. Okay. West Face ultimately made an

1 offer to close without any condition related to  
2 transfer of ownership of voting shares held by AAL.  
3 Are you aware of that?

4 A. Yes.

5 569 Q. And that offer went in on  
6 August 7th, 2014, according to Mr. Griffin?

7 A. Yes. Well, I'm going based on what  
8 he said in his affidavit.

9 570 Q. Correct. And you're not aware of  
10 any evidence to the contrary?

11 A. No.

12 571 Q. And I take it we are agreed that  
13 Mr. Moyse obviously had been gone from West Face for  
14 three weeks by then?

15 A. He left on July 16th.

16 572 Q. Yes.

17 A. And it sounds like three weeks to  
18 me.

19 573 Q. July 16 to August 7 is roughly  
20 three weeks, right?

21 A. Yes. I had to do the math.

22 574 Q. And Catalyst never agreed to drop  
23 all regulatory conditions, correct?

24 A. Not that I can recall.

25 575 Q. And it was never part of Catalyst's

1 strategy to engage in a two-part structure to the  
2 transaction whereby VimpelCom only transferred  
3 nonvoting shares at the first stage of the transaction?  
4 That was never contemplated by --

5 A. I was not -- that's a very  
6 technical point in a deal, so I can't answer that  
7 question.

8 576 Q. Okay. If you can advise by way of  
9 undertaking whether Catalyst ever engaged or considered  
10 that structure and, if so, produce evidence of having  
11 done so?

12 A. Yes.

13 U/T MR. WINTON: Yes.

14 BY MR. MILNE-SMITH:

15 577 Q. I also take it it was never part of  
16 Catalyst's strategy to waive any and all conditions for  
17 regulatory approval or regulatory concessions?

18 A. Not to my knowledge.

19 578 Q. Okay. And it was also never part  
20 of Catalyst's strategy to give VimpelCom a  
21 representation backed by an indemnity that no  
22 regulatory approval was required for the transfer of  
23 its shares?

24 A. Sorry, I would -- not to my  
25 knowledge.

1       579                   Q.     Why don't we take a break for lunch  
2       there.

3                           -- LUNCHEON RECESS AT 12:54 --

4                           -- RESUMING AT 2:03 --

5                           BY MR. MILNE-SMITH:

6       580                   Q.     Mr. Riley, just a few points to  
7       close off from this morning. We talked about your role  
8       at Catalyst. I just want to understand the scope of  
9       Catalyst.

10                         I believe in a previous  
11       cross-examination -- sorry, take a step back. So we  
12       know there are three partners?

13                         A.     Correct.

14       581                   Q.     We have heard of that already. I  
15       believe in a previous cross-examination, you refer to  
16       there being one or two vice-presidents?

17                         A.     There are currently three  
18       vice-presidents.

19       582                   Q.     Three vice-presidents. And how  
20       many analysts or associates?

21                         A.     There are two right now, and I  
22       can't remember whether they're associates. There are  
23       at least one analyst, one associate. I think one is an  
24       associate, one is an analyst.

25       583                   Q.     Okay. And I read an article that

1 appeared shortly after you started Catalyst in 2011,  
2 and it said that, at the time, there were over 25  
3 professionals. What do you recall as being the -- sort  
4 of the comparable head count at the time in 2011?

5 A. Three.

6 584 Q. Okay.

7 A. I don't know where that number -- I  
8 would have to see the article. I don't know where that  
9 number came from.

10 585 Q. That's fine.

11 A. That might include -- I'd have to  
12 go back.

13 586 Q. That might include support staff?

14 A. Yeah.

15 587 Q. Right. What are the current assets  
16 under management for Catalyst?

17 A. It would be in the order of  
18 4 billion, 4.5.

19 588 Q. And how is that comprised? I know  
20 there are sort of the five funds and they're in various  
21 stages. How is that number calculated?

22 A. By assets under administration.  
23 I'm sorry, I don't know what -- what are trying to get  
24 to, maybe?

25 589 Q. So which of the five funds would be

1       comprised in that?

2                               A.     In that number?

3       590                   Q.     Yes.

4                               A.     Fund 2, fund 3, fund 4 -- oh, I'm  
5       sorry, there's a parallel fund to fund 2, and then  
6       fund 3, and then fund 4, and fund 4 parallel.

7       591                   Q.     Okay. But not fund 5?

8                               A.     No. Fund 5 is in just the course  
9       of raising funds.

10      592                   Q.     Okay. Thank you.

11                             You talked this morning about a capital  
12      call. What is the notice period for a capital call?

13                             A.     Ten days.

14      593                   Q.     Ten days. And you never sought  
15      outside financing?

16                             A.     Separate, no.

17      594                   Q.     Okay. Just the line of credit  
18      availability that you referred to, which was never  
19      drawn on?

20                             A.     Correct.

21      595                   Q.     Now, at the time that negotiations  
22      broke down or at least that exclusivity expired with  
23      VimpelCom.

24                             A.     Yes.

25      596                   Q.     I take it that you didn't

1 disclose -- Catalyst didn't disclose to anybody outside  
2 Catalyst why those negotiations had broken down?

3 A. Not to my knowledge.

4 597 Q. And you are not aware of VimpelCom  
5 disclosing or anybody on behalf of VimpelCom  
6 disclosing?

7 A. No, not to my knowledge.

8 598 Q. Okay. And so at that time --

9 A. Sorry, and, again, when you say  
10 "outside", do you mean outside of professionals that  
11 might have been involved in the matter?

12 599 Q. That's what I meant, yes, and thank  
13 you for clarifying. So obviously, for example,  
14 VimpelCom had UBS working for them?

15 A. Correct.

16 600 Q. And they had lawyers working for  
17 them?

18 A. Yes.

19 601 Q. So outside of VimpelCom, nobody at  
20 VimpelCom or their professional advisors, to your  
21 knowledge, disclosed to any third party?

22 A. To my knowledge.

23 602 Q. Okay. And so when exclusivity  
24 expired, all of a sudden, anybody could bid for Wind,  
25 correct?



1 A. Yes.

2 603 Q. And I think we discussed this  
3 before. It had been known throughout 2014 that getting  
4 to the finish line, as it were, was an important thing  
5 for VimpelCom?

6 A. Yes.

7 604 Q. And so it would have been a  
8 sensible thing for any interested bidder to drop as  
9 many conditions as possible to get to that finish line,  
10 correct?

11 A. I disagree with that. I think you  
12 have to always look at what conditions make sense in  
13 the context of what you are prepared to do.

14 605 Q. That's a fair point. So you don't  
15 want to drop so many conditions that it's no longer a  
16 good deal for you?

17 A. Correct.

18 606 Q. Because Catalyst determined that  
19 dropping conditions wasn't a good deal?

20 A. I think it was our conditions were  
21 important to us. Whether we would have dropped them in  
22 certain circumstances, I can't -- it's a hypothetical.

23 607 Q. Okay. But you certainly weren't  
24 willing to drop them at the time?

25 A. Yes.

1           608                   Q.     And presumably, if presented with  
2     the same choice today, you wouldn't drop them again?

3                           A.     Don't know that.

4           609                   Q.     All other things being equal, you  
5     are not aware of anything that would have changed?

6                           A.     Well, actually, there's a lot of  
7     things have changed in telecom, so I can't answer.

8           610                   Q.     In telecom. I see.

9                           A.     I'm not trying to be argumentative  
10    as much as I'm saying your question asks too much.

11          611                   Q.     The landscape just changed?

12                          A.     The landscape has changed  
13    dramatically.

14          612                   Q.     Did you know back in August, on  
15    August 18, when exclusivity expired, did you know that  
16    West Face was interested in Wind?

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

18          613                   Q.     Okay. Let's talk about Callidus.  
19    You note in your reply affidavit -- so this is the  
20    May 1, 2015, affidavit. At paragraph 7.

21                          MR. WINTON: Counsel, that's fine.

22                          MR. MILNE-SMITH: That's fine.

23                          THE WITNESS: Sorry, where am I, please?

24                          BY MR. MILNE-SMITH:

25          614                   Q.     Paragraph 7.

1 A. Okay.

2 615 Q. So just take a look at that  
3 paragraph.

4 A. May I just read it?

5 616 Q. Absolutely.

6 A. Yes.

7 617 Q. So you note that the short position  
8 against Catalyst started to be reduced --

9 A. Against Callidus.

10 618 Q. Against Callidus. I'm sorry.

11 A. By the way, at this point, I would  
12 rather prefer "Callidus" and "the funds", because  
13 otherwise, by the time we are through, it will be  
14 interspersed, trust me.

15 619 Q. Okay. I will try to remember that.  
16 It's a good way to keep it straight.

17 So the short position against Callidus  
18 started to be reduced on March 30th?

19 A. Yes. Based on the reports that we  
20 can get.

21 620 Q. Okay. And you note that that took  
22 place after a BNN article, Business News Network  
23 article, was published on March 30, 2015?

24 A. Correct.

25 621 Q. Now, it's also true, you'd agree,

1     that Callidus released its 2014 year-end financials on  
2     March 31st, correct?

3                     A.     Correct.

4     622             Q.     So reducing the short position also  
5     occurred after Callidus' -- release of Callidus'  
6     financials?

7                     A.     Correct.

8     623             Q.     And I think it's fair to say that  
9     Callidus did not meet analysts' predicted earnings?

10                    A.     I can't remember. I just -- I  
11     don't recall.

12     624             Q.     You'd agree that --

13                    A.     I just -- I can't recall whether we  
14     had met their expectations or not.

15     625             Q.     Okay. You'd agree that the  
16     coverage of Callidus that is referred to in paragraph 7  
17     only came after West Face filed materials at court  
18     relating to Callidus, correct?

19                    A.     What was the date of that? Was it  
20     March 15th? The date of the affidavit?

21     626             Q.     Mr. Griffin's affidavit was sworn  
22     March 7, 2015?

23                    A.     Okay.

24                    MR. WINTON: But I seem to recall,  
25     counsel, there was a bit of a brief lull before --

1 between the time he was sworn and a copy of the  
2 affidavit sent to us and the date that you actually  
3 filed it. If you recall, there was some e-mails that  
4 may even be in the record or we discussed some e-mails  
5 relate -- there was some e-mail traffic between us  
6 about the filing of the record.

7 MR. MILNE-SMITH: Yes, but the BNN  
8 article comes out on March 30th.

9 MR. WINTON: Correct. And I believe  
10 that the date is March 13th, roughly, is when the  
11 record was filed, just to make sure we are accurate in  
12 the record.

13 BY MR. MILNE-SMITH:

14 627 Q. So either way, the coverage only  
15 comes out after the West Face materials are filed with  
16 the court?

17 A. Yes, yup, yes.

18 628 Q. And it's true, isn't it, that the  
19 first time the word "Callidus" appeared in this  
20 litigation was when the funds filed their amended  
21 notice of motion on February 6th, 2015, correct?

22 A. Hmm, I have no --

23 MR. WINTON: Why don't I show the  
24 amended notice of motion to --

25 THE WITNESS: Okay.

1 MR. MILNE-SMITH: Okay.

2 THE WITNESS: This is February?

3 BY MR. MILNE-SMITH:

4 629 Q. This is February?

5 MR. WINTON: I mean, if we're going to  
6 be -- I don't want the witness to be put to a memory  
7 test if I can --

8 MR. MILNE-SMITH: No, I'm happy for you  
9 to answer.

10 MR. WINTON: Fine. Then the issue -- or  
11 at least the mention of Callidus did come up in the  
12 record with respect to -- during the cross-examination  
13 of Mr. Dea and Mr. Moyse back in July in -- based on  
14 the March 27th e-mail or March 26-27th e-mail  
15 exchange between Mr. Dea and Mr. Moyse. There was a  
16 question from Mr. Dea about Callidus that was the  
17 subject of some discussion.

18 BY MR. MILNE-SMITH:

19 630 Q. Right. There was a -- there was a  
20 question -- I think Mr. Dea asked Mr. Moyse what was  
21 the name of that entity that had been modelled after a  
22 Cerberus entity or something like that, right?

23 A. I think it would be Callidus  
24 modelled after -- sorry, what would be the Cerberus  
25 entity that Catalyst was modelled after.

1           631                   Q.     Okay.

2                           A.     I suspect is the question.

3                           MR. WINTON:   Right.   And just because  
4   your question asked the first time the word "Callidus"  
5   appeared in this litigation, ellipses.

6                           I'm trying to make sure -- just to  
7   respond accurately that, if he agrees with that, that's  
8   not technically what --

9                           MR. MILNE-SMITH:   Okay.   No, that's very  
10   fair.   So to the best of both of our recollections as  
11   of right now, the only time "Callidus" appeared was in  
12   the context of that e-mail where they were asking about  
13   the Cerberus connection?

14                          MR. WINTON:   And questions in the  
15   transcripts relating to that e-mail.

16                          MR. MILNE-SMITH:   Right.   That's  
17   correct.

18                          MR. WINTON:   Okay.

19                          BY MR. MILNE-SMITH:

20           632                   Q.     So I take it it's fair to say that  
21   there was no allegation made by West Face in respect of  
22   Callidus before February 6th?   It's not something that  
23   West Face was raising?

24                          A.     Callidus?

25           633                   Q.     Yes.

1 A. Not to my knowledge.

2 634 Q. Okay. Now, your affidavit dated  
3 February 18 elaborated on the Callidus accusation made  
4 in the notice of motion dated February 6th, correct?

5 MR. WINTON: Can you take him to where  
6 in the affidavit you are referring to.

7 BY MR. MILNE-SMITH:

8 635 Q. Sure. So that's in tab 3 of the  
9 motion record.

10 MR. WINTON: Yes.

11 BY MR. MILNE-SMITH:

12 636 Q. And starting at paragraph 70. So  
13 feel free to review it, but you can review it with this  
14 context. My question is that the basic accusation here  
15 is that Mr. Moyse took confidential information about  
16 Callidus and gave it to West Face, correct?

17 A. Yes.

18 637 Q. And West Face hadn't made any  
19 effort to introduce evidence in this proceeding about  
20 Callidus, its strengths or weaknesses, until after you  
21 had filed your affidavit on February 18, 2015, correct?

22 A. I'm not sure I'm following you,  
23 Counsel. I just -- if you could walk me through it a  
24 little bit.

25 638 Q. Sure. So the February 18 affidavit



1     that you filed said that Callidus confidential  
2     information was given by Mr. Moyse to West Face,  
3     correct?

4                     A.     Yes.

5     639             Q.     And West Face, in its responding  
6     materials, included evidence about what information it  
7     had about Callidus and where it came from, correct?

8                     A.     That is correct.

9     640             Q.     And West Face had never tried to  
10    lead evidence like that before your February 18  
11    affidavit, correct?

12                    A.     No, but we had -- I think it was --  
13    we had requested of West Face several times to provide  
14    the information we refer to as the November, 2014,  
15    whisper campaign.

16    641             Q.     But that was entirely outside the  
17    context of the litigation, correct?

18                    A.     Of this litigation?

19    642             Q.     Yes.

20                    A.     Yes, because at that time, we  
21    hadn't seen anything that would suggest where you could  
22    imply the source of that information was.

23    643             Q.     Right. So we now know that  
24    starting in -- we know this based on Mr. Griffin's  
25    testimony, that starting in mid-October, West Face

1 was -- started to accumulate a short position on  
2 Callidus, correct?

3 A. Yes, without having undertaken  
4 research at that time.

5 644 Q. Well, we have a disagreement about  
6 that, but it will be for a judge to interpret  
7 Mr. Griffin's evidence.

8 A. Yes.

9 645 Q. The original injunction motion, I  
10 believe, the -- not the interim but the interlocutory,  
11 was argued on October 27, 2014, before Justice Lederer?

12 A. Yes, that's -- yes.

13 646 Q. And there was no effort made at  
14 that time by West Face to introduce any information  
15 about Callidus or the strengths of Callidus' financial  
16 condition?

17 A. In that motion?

18 647 Q. Correct.

19 A. No.

20 648 Q. And there was no effort thereafter  
21 to introduce information about Callidus until after you  
22 swore your February 18 affidavit, correct?

23 MR. WINTON: I think he already answered  
24 that.

25 THE WITNESS: I think I have answered

1 that, haven't I?

2 BY MR. MILNE-SMITH:

3 649 Q. And the answer is "yes", correct?

4 A. Yes.

5 650 Q. Okay. And I take it Callidus  
6 wasn't raising money in the public markets at any time  
7 since October, 2014, was it?

8 A. No.

9 651 Q. I believe we are agreed, but let me  
10 be sure. Mr. Moyse never worked for Callidus?

11 A. No, but at the time he was -- at  
12 the time he was with Catalyst, Callidus and the funds  
13 occupied the same space, and there was no partition.

14 652 Q. I understand. They had different  
15 computer systems?

16 A. Yes, they had different computer  
17 systems.

18 653 Q. And you conducted your -- people on  
19 behalf of Catalyst, the funds, conducted forensic  
20 reviews of his computer both at Catalyst and his home  
21 computer?

22 A. We didn't conduct a forensic on his  
23 home computer. That was through the ISS.

24 654 Q. Through the ISS.

25 A. We did review his computer, and

1       that's when we started our action.

2       655               Q.     Okay. And in your reply affidavit,  
3       that's the May 1 affidavit, you point to various pieces  
4       of information that you say West Face got wrong about  
5       Callidus.

6                       A.     Yes.

7       656               Q.     You say it's inaccurate?

8                       A.     Yes. Could I look at the -- sorry,  
9       can you flip to the page, just if we could, please.

10      657               Q.     Sure. I'm not talking about  
11      anything in particular right now --

12                      A.     Okay.

13      658               Q.     -- but I'm just summarizing  
14      generally.

15                      A.     I think I set out three possible  
16      examples.

17      659               Q.     Correct. But the allegation you  
18      made is one of inaccuracy, correct?

19                      A.     Yes. Can I just see what I --

20      660               Q.     Sure.

21                      A.     May I just take a moment to read  
22      these paragraphs?

23      661               Q.     By all means.

24                      A.     Thank you.

25                      Yes.

1           662           Q.     So in your reply affidavit, you  
2     don't point to anything about Callidus that you say was  
3     based on confidential information, correct?

4           A.     My concern is that, in order to  
5     conduct the type of research that West Face purported  
6     to undertake, he would be guided by confidential  
7     information. That's my -- that's my allegation, I  
8     guess.

9           663           Q.     Okay. But you haven't, in your  
10    affidavit, pointed to one fact that West Face has put  
11    forward that you say was based on confidential  
12    information?

13          A.     Well, I do, because I say that the  
14    names of the companies involved would be I think based  
15    on confidential information.

16          664           Q.     Well, West Face has put in an  
17    affidavit of Mr. Griffin that specifies for every  
18    single borrower, it has identified from Callidus the  
19    source of that information. You are aware of that from  
20    Mr. Griffin's affidavit?

21          A.     Yes.

22          665           Q.     And I take it you are not able to  
23    point to one fact in Mr. Griffin's affidavit with  
24    respect to Callidus that came from a nonpublic source?

25          A.     I would have to look back through

1 his affidavit. I have not looked at the report on that  
2 basis.

3 666 Q. Okay. Well, you understood that  
4 the issue in this proceeding --

5 A. Yes, correct.

6 667 Q. -- was whether or not West Face had  
7 confidential information about Callidus?

8 A. Yes, and I'm starting with the  
9 names.

10 668 Q. Okay. And you read Mr. Griffin's  
11 affidavit with that purpose in mind?

12 A. Yes.

13 669 Q. And in reading that affidavit, you  
14 don't recall coming across a single piece of  
15 information that could be traced to a nonpublic source?

16 A. I would have to go back and look at  
17 his whole affidavit again, because there were extensive  
18 materials.

19 670 Q. But in reading it for that purpose  
20 and in that context, you don't recall coming across  
21 anything?

22 A. I tried to replicate his searches,  
23 and I wasn't able to replicate them to the degree of  
24 specificity that he was able to do so.

25 671 Q. But you saw that he produced

1 exhibits documenting every single fact, correct?

2 A. After the fact.

3 672 Q. Okay. And all of the exhibits that  
4 are in Mr. Griffin's affidavit are from public sources,  
5 correct? We are agreed on that much?

6 A. I think that's probably correct.

7 673 Q. Okay. And if someone were to have  
8 confidential information from Catalyst, then --

9 A. From Catalyst or Callidus? Sorry,  
10 that's why I just --

11 674 Q. Sorry, no, you are right.

12 A. Sorry, I want to -- I will keep  
13 doing that, because you are better off using "the  
14 funds" or "Callidus".

15 675 Q. Let's say Callidus.

16 A. Yes.

17 676 Q. So if someone had confidential  
18 information from Callidus --

19 A. Or about Callidus.

20 677 Q. -- or about Callidus, then it would  
21 be correct, right? You don't maintain inaccurate  
22 information about Callidus?

23 A. No. No, we do not.

24 678 Q. Right. Okay. So to the extent,  
25 then, that you are pointing to inaccuracies in

1 Mr. Griffin's information, that can't have come from a  
2 confidential source?

3 A. I think that's correct.

4 679 Q. Okay. I'd like to look at  
5 Exhibit A to your May 1 reply affidavit.

6 MR. WINTON: It's the short chart?

7 MR. MILNE-SMITH: Yes.

8 BY MR. MILNE-SMITH:

9 680 Q. So this shows that in October and  
10 November of 2014 the share price was above \$20?

11 A. Yes. Let me just check the bar  
12 graph. Yes, yeah, okay, thank you, yup.

13 681 Q. And I think it's fair to say that  
14 the vast majority of the short interest came during  
15 this period when the share price was above \$20?

16 A. Yes.

17 682 Q. And once the share price came down  
18 in the \$16 range in early December, the short interest,  
19 it's fair to say, petered out? At least the short  
20 interest you were able to track?

21 A. This is taken off a Bloomberg  
22 screen. This is not -- it's nothing --

23 683 Q. I understand.

24 A. No rocket science involved.

25 MR. WINTON: What do you mean by



1 "petered out"?

2 BY MR. MILNE-SMITH:

3 684 Q. It means it --

4 A. And nobody increased their short  
5 position.

6 685 Q. Correct.

7 A. There's little blips in March.

8 686 Q. Right. But between early December  
9 and March, the short interest stays not completely but  
10 relatively flat?

11 MR. WINTON: I'm just pointing out the  
12 dots on the chart to assist Mr. Riley.

13 BY MR. MILNE-SMITH:

14 687 Q. Correct.

15 A. Sorry, and I'm just trying to pick  
16 the dates off the bottom. There's too much information  
17 on this chart.

18 Yes, I agree with that statement.

19 688 Q. Okay. And then in -- I think you  
20 said in April, between March 30 and April 14, you see  
21 some reducing of the short position?

22 A. Yes.

23 689 Q. Some reduction in the short  
24 position?

25 A. Yes. No, you can see -- you can

1 see it over on the right-hand side of that chart.

2 690 Q. Right. And this stock price chart  
3 starts in October, because that's when the short  
4 interest began?

5 A. Correct.

6 691 Q. So if you go, then, to Exhibit B.

7 A. Okay.

8 692 Q. This includes a very small stock  
9 chart, but is it fair to say this would appear to be  
10 from the IPO up through the date of the article, which  
11 is March 30?

12 A. I apologize, I can't see -- there  
13 are dates at the bottom that I can't make out.

14 693 Q. Yes. The first line is --

15 A. Yes, this would run through July  
16 to -- I actually can't read the dates.

17 694 Q. Right. The point is it starts  
18 below -- it starts before July, 2014?

19 A. Yes.

20 695 Q. So that would be going back to the  
21 April, 2014, IPO?

22 A. Yes.

23 696 Q. Okay.

24 A. Sorry, what date did you say?  
25 April, 2014.

1       697                   Q.     April, 2014, yes. I'm sorry if I  
2       misspoke.

3                           A.     Yes, yes. That's okay.

4       698                   Q.     The IPO price was \$14, correct?

5                           A.     Yes.

6       699                   Q.     And the shorting occurred, we can  
7       see, when the Callidus stock was at its peak, around  
8       October of 2014?

9                           A.     No, the peak I think was in August.  
10      I think.

11      700                   Q.     Okay. I don't want to quibble  
12      about the exact --

13                           A.     Yeah. I think it was in August.  
14      The peak was in August.

15      701                   Q.     But you'd agree that in October the  
16      price was still -- sorry, no, that can't be right. If  
17      you look in August on this share price chart, it's  
18      barely above 20, and then as you get into  
19      September/October, it's well above 23.

20                           A.     Sorry, which chart are you looking  
21      at?

22      702                   Q.     I'm on Exhibit B still.

23                           MR. WINTON: Page 16. Right?

24                           MR. MILNE-SMITH: Yes.

25                           THE WITNESS: Sorry, can we look back at

1 this?

2 MR. WINTON: This only starts October 1.

3 THE WITNESS: Oh, okay. Got you.

4 BY MR. MILNE-SMITH:

5 703 Q. Right. So I'm going before  
6 Exhibit A.

7 MR. WINTON: This is the October line.

8 THE WITNESS: Yes. So October would  
9 appear to be somewhere between 20 and 25.

10 BY MR. MILNE-SMITH:

11 704 Q. Right.

12 A. Is that what you said -- the point  
13 you are trying to make? Assuming this is correct. I  
14 mean, it's a --

15 705 Q. Assuming this is correct, then  
16 October 14 -- October, 2014, the stock price is at or  
17 near its peak?

18 A. Yes.

19 706 Q. Okay.

20 MR. WINTON: I think what Mr. Riley is  
21 referring to is, just prior to October, there seems to  
22 be a slightly higher peak.

23 THE WITNESS: And that's why I think  
24 that occurred in August. It's hard to extrapolate what  
25 the dates are from this chart.

1 MR. WINTON: Late August or early  
2 September.

3 BY MR. MILNE-SMITH:

4 707 Q. It's at or near the peak?

5 A. Yes. Somewhere between July and  
6 October, it was near the peak.

7 708 Q. Right. So the short interest only  
8 began when the price was roughly 50 percent higher than  
9 the IPO price?

10 A. Yes. No -- yes. Sorry.

11 709 Q. Yes. 14 up above 20?

12 A. I had to do the math.

13 710 Q. So you say that West Face's short  
14 selling was based on nonpublic confidential information  
15 about Callidus disclosed to it by Moyse?

16 A. Well, no, I think -- I think that's  
17 not what I'm saying, precisely. I think what I'm  
18 saying is they discovered names, purported to do  
19 research on those names, and yet didn't -- weren't as  
20 fulsome in their research as they could have been. So  
21 I think there's two aspects to it: How did they find  
22 out the names, because we are very careful about that,  
23 and what did they say about those names. There's two  
24 issues in there.

25

1 BY MR. MILNE-SMITH:

2 711 Q. Okay. Given what you have said  
3 about the names, our position is that every single one  
4 of the names that West Face was able to identify has  
5 been traced to a public source which is attached to an  
6 exhibit to Mr. Griffin's affidavit. If you have any  
7 evidence to the contrary, if you have any evidence that  
8 one of the documents that attached is nonpublic or you  
9 can show me an identified borrower that cannot be  
10 traced to a public document, I would like to know about  
11 it before the motion.

12 MR. WINTON: I think the issue here,  
13 Counsel, is there is a difference between identifying a  
14 document that is, at least in theory, public and how  
15 that document was found or how one knew to look for  
16 that document. And so it's not evidence you'll be  
17 hearing, but I will just be fair and to make sure there  
18 is no surprise. Given the question you've asked, there  
19 will be argument as to whether or not it's reasonable  
20 to suggest that the evidence in Mr. Griffin's affidavit  
21 is, in fact, the basis upon which West Face discovered  
22 of the names was Callidus borrowers.

23 BY MR. MILNE-SMITH:

24 712 Q. Okay. I appreciate you clarifying  
25 what you will be relying on at the motion.

1 -- RECESS AT 2:29 --

2 -- RESUMING AT 2:32 --

3 BY MR. MILNE-SMITH:

4 713 Q. So the only nonpublic -- the only  
5 confidential information you say was taken by Moyse and  
6 given to West Face relates to the identity of  
7 borrowers?

8 A. Yes.

9 714 Q. Relating to Callidus?

10 A. At least that's from what I can  
11 tell. There may be others -- there may -- there may be  
12 other information, but that's ...

13 715 Q. Would it have been the practice of  
14 Callidus to carry out intellectual property  
15 registration at the time that its loans were initiated?

16 A. Depends on what the collateral was.

17 716 Q. To the extent the collateral  
18 included IP?

19 A. Uhm-hmm.

20 717 Q. You have to say "yes".

21 A. Yes. Sorry.

22 718 Q. So to the extent that an IP  
23 registration was done at all, it would have been done  
24 at the initiation of a loan?

25 A. Yes.

1           719                   Q.     And that --

2                               A.     Or contemporaneous with the loan.

3           720                   Q.     Contemporaneous.   And that would be  
4     in the public domain?

5                               A.     Yes.

6           721                   Q.     Okay.

7                               A.     However -- may I go -- when I tried  
8     to do those searches, I couldn't find it using the  
9     lender's name; I could only find it using the  
10    borrower's name.

11          722                   Q.     But you understand that the  
12    intellectual property registrations are public  
13    information?

14                               A.     Absolutely.

15          723                   Q.     And some people may be better at  
16    searching than you?

17                               A.     That could be.

18          724                   Q.     Okay.   Are you familiar with a  
19    company called Veritas?

20                               A.     Yes, I am.

21          725                   Q.     You are aware that they are an  
22    independent market research company?

23                               A.     They purport to be an independent  
24    research company.

25          726                   Q.     They aren't taking the position --



1       they aren't making investments on stocks?

2                   A.     I don't know. I don't know how  
3       they make -- I don't know how their model works,  
4       whether they are paid to produce their research and how  
5       they are paid for producing their research.

6       727           Q.     Okay. The position they have  
7       taken, publicly, at least, is that they do not make  
8       investments; they conduct research, correct?

9                   A.     Okay.

10       728          Q.     You agree with that?

11                  A.     I will take -- if that's what you  
12       are saying that's publicly said.

13       729          Q.     Well, I'd also like to know what --  
14       your knowledge of them about how they have been  
15       marketed to the public. Do you have any awareness?

16                  A.     No.

17       730          Q.     Okay. I take it they would have no  
18       access to Callidus confidential information?

19                  A.     They shouldn't.

20       731          Q.     Okay. And you are aware, of  
21       course, that they published a report on Callidus dated  
22       April 16, 2015?

23                  A.     If you could show me the report  
24       again, but I think I am aware of the report.

25       732          Q.     Sure. So let's mark this as the

1 next -- well, sorry, let me ask you. Have you seen  
2 this report before?

3 A. Yes, I have.

4 733 Q. So this is --

5 MR. WINTON: This one is highlighted.  
6 Do you want to hand that back.

7 BY MR. MILNE-SMITH:

8 734 Q. Can I trade?

9 A. Can I look at this?

10 735 Q. Well, we're going to be going to  
11 the passages.

12 A. This is the exhibit.

13 736 Q. We are going to go to the same  
14 passages, so this will help me get there quicker.

15 A. Okay.

16 MR. MILNE-SMITH: So this is a document  
17 entitled "Accounting Alerts! Callidus Capital  
18 Corporation" dated April 16, 2015.

19 THE WITNESS: Yes.

20 EXHIBIT NO. 4: Document entitled  
21 "Accounting Alerts! Callidus Capital  
22 Corporation" dated April 16, 2015

23 THE WITNESS: Can you tell me what date  
24 April 16 was?

25

1 BY MR. MILNE-SMITH:

2 737 Q. What day of the week?

3 A. What day of the week. Was it a  
4 Thursday?

5 738 Q. Just a second. April 16, 2015, was  
6 a Thursday, yes.

7 A. Thank you.

8 MR. WINTON: This is Exhibit 4, I  
9 believe?

10 MR. MILNE-SMITH: I think that's right.

11 BY MR. MILNE-SMITH:

12 739 Q. Flip over to the second page of the  
13 exhibit but it's marked page 1 at the top.

14 A. Okay. Sorry. Yes. I'm there.

15 740 Q. So you'll see, at the bottom  
16 paragraph, it states that:

17 "The analysis and estimates included  
18 herein are based on our interpretation  
19 of publicly available information and  
20 applicable accounting standards."

21 A. Uhm-hmm, yes.

22 741 Q. And you have no evidence on which  
23 to dispute that statement?

24 A. Not currently.

25 742 Q. And it says:

1 "Management has yet to provide  
2 responses to our questions."

3 Were you aware that Veritas had made  
4 inquiries of Callidus?

5 A. The only inquiry that I was aware  
6 of was on March 31, when we were releasing our annual  
7 statements, that they had launched a call in to our  
8 communications officer.

9 743 Q. And no response was provided?

10 A. No. To my knowledge, no.

11 744 Q. And if you go up to the third  
12 paragraph on page 1.

13 A. Sorry, can I -- it's not -- can we  
14 go off the record for a second?

15 MR. MILNE-SMITH: Sure.

16 -- OFF THE RECORD --

17 BY MR. MILNE-SMITH:

18 745 Q. So the date of this report is  
19 obviously April 16 and, therefore, when Veritas said  
20 that there had not been a response to their questions,  
21 that was as of April 16, 2015, correct?

22 A. That is correct.

23 746 Q. Okay. And has there subsequently  
24 been any communications with Veritas?

25 A. There have been communications to

1 say that there are a number of misstatements in their  
2 report and that they should be aware that we consider  
3 that to be defamatory.

4 BY MR. MILNE-SMITH:

5 747 Q. Okay. And will you produce any  
6 correspondence between Veritas and Catalyst or anybody  
7 on behalf of Catalyst?

8 U/A MR. WINTON: I will take that under  
9 advisement.

10 BY MR. MILNE-SMITH:

11 748 Q. Okay. If you go up to the third  
12 paragraph on this same page 1.

13 A. Sorry.

14 749 Q. You see it says:

15 "Our analysis indicates that investor  
16 concerns are well-founded."

17 A. I'm sorry, where is that?

18 750 Q. Third paragraph.

19 A. Oh, got it.

20 Yes.

21 751 Q. And you'd agree that, as of the  
22 date of this report, April 16, 2015, West Face was the  
23 only other investor on the public record as having a  
24 concern about Callidus at the time?

25 A. Were they on the public record at

1       that time? Had that material been filed?

2       752                   Q.     It had been filed in the court.

3                           A.     Yes, then I'm aware of that.

4       753                   Q.     Okay. You are also aware, I take  
5       it, of an article published in the Wall Street Journal  
6       yesterday about Callidus?

7                           A.     Yes.

8       754                   Q.     So this is a May 12, 2015, article  
9       in the Wall Street with the heading "Manager Feels Heat  
10      on IPO". You are familiar with this article?

11                          A.     Yes, I am.

12      755                   Q.     I'd like to mark that --

13                          A.     Sorry, is this the one from the  
14      Journal itself or is this the one online?

15      756                   Q.     This is the one online.

16                          A.     There was also one -- I have not  
17      tried to compare the two, but there's one in the  
18      Journal yesterday.

19      757                   Q.     Right.

20                          A.     Which I have not read.

21                          MR. MILNE-SMITH: So I would like to  
22      mark this as Exhibit 5.

23                          EXHIBIT NO. 5: Wall Street Journal  
24      article dated May 12, 2015

25

1 BY MR. MILNE-SMITH:

2 758 Q. So if you look at the fourth  
3 paragraph of this article.

4 A. Starting "Some Callidus"?

5 759 Q. Yes. It says:

6 "Some Callidus investors say they are  
7 worried about potential conflicts  
8 created by the company's shared  
9 management team."

10 A. Yes.

11 760 Q. And down at the bottom of the page,  
12 it quotes someone by the name Salman Malik, portfolio  
13 manager at Toronto-based Barometer Capital Management,  
14 expressing concerns about potential conflicts of  
15 interest.

16 A. Yes, I see -- I read -- I see the  
17 paragraph.

18 761 Q. Yes. And I take it Mr. Malik, to  
19 your knowledge, has no access to Callidus confidential  
20 information?

21 A. To my knowledge, no.

22 762 Q. Okay. And over on the second page,  
23 in the second-last paragraph, it quotes an Andrew Pink,  
24 a fund manager at LDIC Inc.?

25 A. Sorry, where is that paragraph?

1       763                   Q.     Second-to-last paragraph.  
2                           A.     Yes.  
3       764                   Q.     And Mr. Pink expresses -- he says:  
4                            "It would be worthwhile if the company  
5                           was a lot more explicit about the  
6                           business, the loan guarantees, and the  
7                           business in general, because they have  
8                           to answer to public shareholders, but  
9                           management is still pretty  
10                          tight-lipped."  
11                          Do you see that?  
12                          A.     Yes, I do.  
13       765                   Q.     And I take it Mr. Pink has no  
14       access to Callidus --  
15                          A.     To my knowledge, no.  
16       766                   Q.     -- confidential information?  
17                          A.     No.  
18       767                   Q.     Your affidavit states that  
19       Mr. Griffin's affidavit was "replete" with  
20       misrepresentations or inaccuracies about Callidus?  
21                          A.     Yes.  
22       768                   Q.     And you say that you have singled  
23       out three categories of what you've called the most  
24       egregious misrepresentations?  
25                          A.     Yes.



1       769                   Q.     And that concerns an excerpt from a  
2     Callidus conference call, the Arthon Resources --

3                           A.     Yes.

4       770                   Q.     -- A-R-T-H-O-N -- the Arthon  
5     Resources Company and comparisons to BDCs?

6                           A.     Correct.

7       771                   Q.     So let's start with the Callidus  
8     conference call.

9                           A.     Okay.   What -- can we -- there it  
10    is.   Okay.

11                          MR. WINTON:   I brought the witness to  
12    page 4 of his supplementary affidavit, paragraphs 14  
13    and 15.

14                          BY MR. MILNE-SMITH:

15       772                   Q.     And you should also have, in  
16    fairness to you, I think, Mr. Griffin's affidavit, his  
17    March 7 affidavit, which the relevant passage is at  
18    paragraph 110 on page 43 of the record.

19                          MR. WINTON:   You may want to give me  
20    your copy, please.   I'll share with the witness.   Thank  
21    you.

22                          MR. CARLSON:   Do you want to just flip  
23    the page and see if there is anything on the next page.

24                          MR. MILNE-SMITH:   It's fine.

25                          THE WITNESS:   Where am I looking now?

1 BY MR. MILNE-SMITH:

2 773 Q. Paragraph 110 quotes from a  
3 conference call with investors held by Callidus on  
4 November 7, 2014, correct?

5 A. That is correct, yes.

6 774 Q. And that paragraph says -- it's  
7 quoting Mr. Glassman saying that:

8 "Callidus does not have a single loan  
9 that is nonperforming."

10 Correct?

11 A. That is correct.

12 775 Q. And you'll see that there's a  
13 footnote at the end of that excerpt, footnote 47?

14 A. Yes.

15 776 Q. And that attaches a copy of the  
16 entire transcript as Exhibit 42 to the affidavit,  
17 correct?

18 A. Yes.

19 777 Q. So anybody who wanted to see the  
20 context for that statement could look it up at  
21 Exhibit 42, correct?

22 A. That is correct, but I feel it's  
23 buried in the affidavit.

24 778 Q. Okay. But the fact remains it was  
25 available for anyone who wanted to look at it?

1                   A.    Yes, although with a little bit of  
2 obfuscation in the way it was displayed.

3       779           Q.    The paragraph that Mr. Griffin  
4 quotes in his affidavit gives an extremely positive  
5 portrayal of Callidus, correct?

6                   A.    No, but it goes on -- I think it --  
7 you have to look at that in the context. So I'm not  
8 sure it's glowing. We have to look at what we were --  
9 what Mr. Glassman, in a Q&A period after the  
10 announcement of our earnings, was trying to convey in  
11 terms of --

12       780           Q.    Okay. We'll get to that. I just  
13 want to understand, this paragraph alone, I mean, I  
14 struggle to see anything negative about Callidus in  
15 this paragraph.

16                   A.    That's not what I'm saying. I  
17 think you have to look at the whole thing to portray --  
18 what I think the context is trying to portray is that  
19 there was something misleading about this statement.  
20 That's what I think this is -- that Mr. Griffin was  
21 trying to say.

22       781           Q.    Okay. So you are saying that this  
23 paragraph was -- looked at alone, was -- painted an  
24 excessively optimistic view of Callidus?

25                   A.    I think it wasn't -- I think it

1 wasn't balanced in terms of what -- what -- and let me  
2 go on to say that we have not experienced any -- what's  
3 the phrase he used? No, it's not -- it's -- we have  
4 not had any actual loan loss in the portfolio, the  
5 current Callidus portfolio.

6 782 Q. Okay.

7 A. Recognized loss, if you know what I  
8 mean. That's apart from reserves.

9 783 Q. Okay. We'll get to that.

10 A. Okay.

11 784 Q. If a company cannot pay principal  
12 and cannot meet interest payments, is that considered  
13 to be a performing loan?

14 A. It's not the way IFRS works,  
15 unfortunately. Do we want to refer to it as "IFRS"?

16 785 Q. That's fine. Okay.

17 A. IFRS, if you have a contractually  
18 committed cash flow, you keep bringing in income, and  
19 then you now analyze whether it is actually going to be  
20 realized or not. I.e., for example, if you think  
21 through a realization process, you will be able to  
22 recognize that amount; you don't have to back it out of  
23 IFRS. It's different than the old way non-performing  
24 loans worked.

25 786 Q. Or, for example, you say that you

1 are going to get paid through a guarantee?

2 A. No, the way we set it up on our  
3 books is that we recognize a loan loss provision and we  
4 look at what the guarantee covers. So if you've got  
5 \$10 of loan losses, then you have \$10 -- you may  
6 have \$10 of claim over against the funds.

7 787 Q. But I want to understand what you  
8 say is a performing loan. To be a performing loan,  
9 does the borrower have to be able to pay interest and  
10 principal as they come due?

11 A. They don't have to be paying it  
12 currently, as I'm talking -- we are talking about an  
13 accounting concept.

14 788 Q. I understand.

15 A. That I think as long as you are  
16 satisfied that you will be able -- that there are  
17 amounts available to pay those claims, you can still  
18 recognize them.

19 789 Q. Amounts available at some point in  
20 the future?

21 A. Yes.

22 790 Q. Okay. So even if they can't --

23 A. But determined at the time you are  
24 making the calculation. I believe that is the correct  
25 analysis.

1       791                   Q.     So if you can't pay it now, but you  
2     are confident based on the facts as they exist now that  
3     they will be able to pay it in the future, then it's  
4     performing?

5                        A.     I believe that still counts as  
6     performing, but in the loans that he was referring to,  
7     we were still receiving interest payments as they fell  
8     due.

9       792                   Q.     So the remaining three paragraphs,  
10    which you've quoted at paragraph 14 of your affidavit,  
11    provide further support for the statement in the first  
12    paragraph, correct?

13                      A.     Yes. We didn't see -- we didn't  
14    see value at risk other than in two loans.

15    793                   Q.     So it refers to a watch list?

16                      A.     Yes.

17    794                   Q.     Which loans are currently on the  
18    watch list?

19    R/F                   MR. WINTON: Not going to -- we're not  
20    answering that.

21                      THE WITNESS: That's MNPI. Material  
22    nonpublic information.

23                      BY MR. MILNE-SMITH:

24    795                   Q.     Okay. Just so it's clear on the  
25    record, the reason why I'm asking this is because I've

1     been told by the witness that these three paragraphs  
2     are necessary to provide the proper context and  
3     understand why the first paragraph isn't a fair  
4     presentation by Mr. Griffin, and what these paragraphs  
5     talk about is watch lists and value at risk and  
6     guarantees.

7                             A.     Yes.

8     796                    Q.     And so that's what I want to  
9     understand.

10                   MR. WINTON: Well, I think, first off, I  
11     don't think that's quite an accurate summary of the  
12     witness's evidence, because I think what the witness is  
13     saying, both in his affidavit and today, is that  
14     Mr. Griffin's selective quotation from the transcript  
15     and then suggesting that that is somehow an inaccurate  
16     statement about the state of affairs of Callidus, which  
17     is what happens in -- what we say happens in his  
18     affidavit, was misleading because he ignored the  
19     context provided by the remaining paragraphs.

20                   MR. MILNE-SMITH: I want to understand  
21     the remaining paragraphs.

22                   MR. WINTON: Right. You don't need to  
23     know which loans are on the watch list to understand  
24     the remaining paragraphs, and that is material  
25     nonpublic information. It won't be disclosed in the

1 course of this litigation.

2 THE WITNESS: What may help you is the  
3 watch list consists of loans where we have a heightened  
4 concern and whether we should be taking further action,  
5 not necessarily in an insolvency or realization sense  
6 but in an increased vigilance over that particular  
7 borrowing relationship.

8 BY MR. MILNE-SMITH:

9 797 Q. And how do you determine -- what  
10 threshold do you use for putting something on the watch  
11 list?

12 A. It's not a dollar amount. It's  
13 just in conversations between the Credit Committee and  
14 our underwriters whether there should be enhanced  
15 supervision or whether a loan should come off. It's a  
16 two-way conversation.

17 798 Q. And who are your underwriters?

18 A. Craig Boyer, Jim Hall, and Kurt --  
19 Bert Crossin.

20 799 Q. Can you say --

21 MR. WINTON: These are employees of  
22 Callidus.

23 THE WITNESS: Yes.

24 BY MR. MILNE-SMITH:

25 800 Q. Okay. And can you say which two



1 loans have negative value at risk?

2 A. I can't remember from that time.

3 This is March 31? I can't remember which two those --

4 MR. WINTON: And I'm not even sure, even  
5 if he could remember, we would answer that question.

6 THE WITNESS: I wouldn't be able to give  
7 you the names.

8 BY MR. MILNE-SMITH:

9 801 Q. It would be November, 2014. That's  
10 when the conference call took place.

11 A. Okay. I -- I cannot recall.

12 802 Q. Okay. I will ask for --

13 A. And if I recalled, I wouldn't be  
14 able to give them to you. I'll adopt my counsel's  
15 answer.

16 MR. MILNE-SMITH: I will take that as  
17 refusal, then?

18 R/F MR. WINTON: Yes.

19 BY MR. MILNE-SMITH:

20 803 Q. Putting aside the identities, how  
21 much money was owed by borrowers on the watch list?

22 MR. WINTON: I'm just going to ask. Is  
23 that public information?

24 THE WITNESS: No.

25 R/F MR. WINTON: You can't answer that.

1 BY MR. MILNE-SMITH:

2 804 Q. Okay. What is the amount of  
3 negative VAR?

4 MR. WINTON: I'm going to assume we  
5 can't answer that?

6 THE WITNESS: No.

7 R/F MR. WINTON: We can't answer that.

8 BY MR. MILNE-SMITH:

9 805 Q. Have there been any additional  
10 loans placed on the watch list since this conference  
11 call?

12 R/F MR. WINTON: We are not going to answer  
13 that as well.

14 BY MR. MILNE-SMITH:

15 806 Q. Do you have third-party valuations  
16 for loans that are on the watch list?

17 A. We have third-party valuations for  
18 all of the equipment-type collateral or land collateral  
19 that forms part of our collateral package. We rely on  
20 management information systems subject to our --  
21 subject to field examiners for counts, and inventory,  
22 we have may have third-party valuations.

23 BY MR. MILNE-SMITH:

24 807 Q. Okay. Can you produce any  
25 valuations for loans that West Face has identified?

1 R/F MR. WINTON: No.

2 BY MR. MILNE-SMITH:

3 808 Q. Okay. So I take it that you would  
4 have -- the valuations would -- that you have described  
5 would apply to anything that is put up as collateral?

6 A. Yes.

7 809 Q. You are not interested in  
8 valuations of assets that you don't have security over?

9 A. Well, no. In asset-based lending,  
10 you have assets on which you are lending money and then  
11 you take what is known as boot collateral. Boot  
12 collateral is something you are not lending on but you  
13 take as something to boot with the original collateral.

14 810 Q. So that's additional collateral?

15 A. Correct. Whatever word you want to  
16 use.

17 811 Q. Okay. So you would have valuations  
18 for -- would you have valuations for both classes of  
19 collateral?

20 A. Sometimes, we would, sometimes, we  
21 would not. Sometimes, we would take it just because it  
22 was there to take.

23 MR. MILNE-SMITH: Okay. So I would ask  
24 that my previous request for an undertaking, which you  
25 have refused, I would include both aspects of that

1 collateral to the extent valuations exist.

2 R/F MR. WINTON: Doesn't change our answer.

3 BY MR. MILNE-SMITH:

4 812 Q. Okay. And do you conduct any  
5 internal valuations for assets held by borrowers?

6 A. No. Although we -- the field  
7 examiners may do some assessments relating to value as  
8 to whether they are overvalued. We have our own  
9 internal field examiners, but the answer is, no, we  
10 don't -- we don't -- we -- any valuations we rely upon  
11 like that, we have third-party confirmations.

12 BY MR. MILNE-SMITH:

13 813 Q. Okay. And I'd like financial  
14 statements for any borrowers on the watch list.

15 R/F MR. WINTON: No.

16 BY MR. MILNE-SMITH:

17 814 Q. Okay. The last paragraph refers to  
18 a guarantee. I'd like to understand the nature of this  
19 guarantee.

20 A. I'm sorry, where are we now?

21 MR. WINTON: You're referring to the  
22 last paragraph in the full quotation in Mr. Riley's  
23 affidavit.

24 BY MR. MILNE-SMITH:

25 815 Q. The last paragraph of

1 Mr. Glassman's quotation on page 5.

2 A. Page 5 of mine. Thank you.

3 816 Q. Of your reply affidavit.

4 So I understand that public --  
5 Catalyst -- the funds -- have publicly disclosed a  
6 debenture repayment agreement?

7 A. Yes.

8 817 Q. And a participation agreement?

9 A. Yes.

10 818 Q. Are there any other contracts that  
11 relate to or underlie the guarantee?

12 A. No.

13 819 Q. I understand Mr. Glassman has made  
14 public statements that newly originated loans after the  
15 IPO in April, 2014, that subsequently go on the watch  
16 list are thereafter guaranteed by the funds?

17 A. Sorry, let me -- could you read  
18 that more slowly, because there are two different types  
19 of guarantees, so I want to make sure I'm answering the  
20 right question.

21 820 Q. Well, why don't you describe to me  
22 the two guarantees.

23 A. Well, let me describe how the  
24 original guarantee works.

25 821 Q. Yes.

1                   A.     To the extent that they were loans  
2     on the watch list at the time of the IPO, we agreed  
3     they would be covered in perpetuity by the guarantee.  
4     So let's assume that there was a loan on the watch  
5     list, it was in insolvency proceedings or it was of  
6     concern -- of heightened concern, as I said before;  
7     then we agreed that would be covered by 100 percent  
8     guarantee in perpetuity until the loan was repaid or  
9     realized upon.

10     822           Q.     Okay.

11                   A.     So just to stick with that simple  
12     example for a moment. Let's assume it was a \$10  
13     loan -- and I will give you rationale for it. I would  
14     like to also give the rationale, because it makes more  
15     sense, I think. To me, it makes more sense. It may  
16     not to you.

17                   You have a \$10 loan. It's on the watch  
18     list at the time. We agreed 100 percent coverage of  
19     the principal amount in perpetuity until it was  
20     realized. If it was realized and got \$11, then there  
21     was no impairment of the loan and we didn't have to pay  
22     under the guarantee. If there was \$9 realized, then we  
23     had to pay \$1.

24     823           Q.     Right.

25                   A.     The rationale for that was we

1     wanted to sell the whole -- the whole of the loan  
2     portfolio, because keeping loans back would have meant  
3     we had to manage them; it would be difficult to manage.  
4     The underwriter is quite right. He said we don't want  
5     to be stuck in a situation where we are accused of  
6     taking a bad loan, and we said we won't do that; we  
7     will guarantee it.

8                     That guarantee -- so let's assume it's  
9     not on the watch list and it goes -- it goes to, in  
10    effect, its new credit renewal period, so we're  
11    essentially one year down the road and the credit is  
12    renewed. On the same underwriting principles that we  
13    would on any new loan, then the guarantee ceases to  
14    apply. So the third case is if a loan is in between,  
15    so it's not on the watch list at IPO time, it never  
16    gets to a renewal on the credit cycle, and some credit  
17    event occurs, then that is covered by the guarantee of  
18    100 percent in perpetuity.

19     824             Q.    So if anything ever goes on the  
20    watch list, it becomes guaranteed in perpetuity?

21                     A.    On the original portfolio.

22     825             Q.    From the original portfolio.

23                     A.    Yes.

24     826             Q.    Whether it was --

25                     MR. WINTON: Let me just stop you --

1 BY MR. MILNE-SMITH:

2 827 Q. -- on the watch list at the time of  
3 the IPO or not?

4 A. Correct.

5 MR. WINTON: Just to clarify, though,  
6 only if it goes on the watch list before the first  
7 renewal.

8 THE WITNESS: Yes, before credit  
9 renewal.

10 BY MR. MILNE-SMITH:

11 828 Q. Before credit renewal.

12 A. So let's step back for a second.  
13 The same \$10 loan. Not on the watch list at the time  
14 of the IPO. So let's say it was -- originally, it was  
15 part of the IPO loan pool. You get six months out, and  
16 it goes into insolvency. We push it into insolvency or  
17 they take themselves into bankruptcy, whatever -- that  
18 will then have the benefit of the same guarantee as if  
19 it was on the watch list at IPO.

20 829 Q. Okay. So anything originated after  
21 the IPO is not going to be covered by the guarantee?

22 A. No. There's -- there's an  
23 exception -- sorry, there is another guarantee, a  
24 second guarantee.

25 830 Q. Okay. What is the second



1 guarantee?

2 A. That was all the first guarantee.

3 831 Q. Okay.

4 A. That's the first. So that's why --  
5 okay. So that's -- that's the -- think of --

6 832 Q. Sorry, before we move on to the  
7 second guarantee, I take it the guarantee you've just  
8 been describing only covers principal, not interest?

9 A. That's correct.

10 833 Q. Okay. Sorry I interrupted you.

11 A. That's okay. But the interest is,  
12 in effect, a first claim on the cash flow.

13 834 Q. I understand. You were then going  
14 to talk about the second guarantee.

15 A. Second guarantee, the funds have  
16 participation rights in -- had in the existing loan  
17 portfolio, so there's a little bit of overlap here that  
18 just -- let's assume away for the sake of the  
19 discussion the overlap, because, for the most part,  
20 that first guarantee is going to cover the loan pool.

21 If there is a participation by a loan --  
22 by a Catalyst fund in a pool of loans going forward --  
23 and that will happen in two occasions. It happened in  
24 the initial IPO because there was participation given  
25 to one of the funds as consideration for, in effect,

1 repayment of the amounts that was it was owing.

2 835 Q. Right.

3 A. Then a subsequent fund well also  
4 have similar rights. So fund 5, for example, will have  
5 a right to participate in new loans originated while  
6 fund 5 is in existence.

7 836 Q. Yes.

8 A. Until that loan participation is  
9 cancelled. If it has, let's say, a 50 -- let's assume  
10 there is \$100 of loan and Callidus puts up \$50 -- bear  
11 with me; you know what I mean by that -- and the funds  
12 put up \$50, when that loan is -- when the participation  
13 is cancelled, i.e., gets back whatever amount it put in  
14 for its participation, then it will -- it will agree on  
15 the same basis as the original guarantee -- the same  
16 principles of the original guarantee -- to cover its  
17 interest in the loan.

18 837 Q. So that guarantee, then, is  
19 contingent on the funds selling back their  
20 participation to Callidus?

21 A. Correct.

22 838 Q. And has that actually happened?

23 A. Fund 4's participation has been  
24 purchased back. Fund 5 hasn't started. It's just  
25 starting its participation interest, so it has not been

1 paid back.

2 839 Q. Why would fund 4 sell back its  
3 participation?

4 A. Because at some point the return on  
5 the participation, the -- whatever the -- it's  
6 essentially the same as the ROE because it's like an  
7 equity piece. When its return on that piece is less  
8 than it can get investing in other assets.  
9 Essentially, that's when the determination would be  
10 made.

11 840 Q. And all of this that you have  
12 described is set out in the debenture repayment  
13 agreement and the participation agreement?

14 A. Correct. Plus there have been --  
15 there's an ongoing -- in effect, Callidus and Catalyst  
16 will periodically make sure that we are agreeing on how  
17 it applies to particular loans, so that's an ongoing  
18 discussion from time to time.

19 841 Q. Sorry, are you saying that there's  
20 something that wouldn't be in the participation  
21 agreement?

22 A. No. You will actually see that  
23 there is a provision in there for arbitration, but  
24 rather than going to arbitration, there is a discussion  
25 between the independent directors and Callidus --

1 Catalyst funds. Just to make sure we're -- make sure  
2 we're agreeing on how the participation -- how the  
3 guarantee works.

4 842 Q. Okay. Is there any outside  
5 advisory board that reviews transactions between  
6 Catalyst funds and Callidus?

7 A. Yes, the independent directors.

8 843 Q. Of Callidus?

9 A. Yes. Those are related part --  
10 those would be related-party transactions.

11 844 Q. And do principals of Catalyst funds  
12 like yourself, Mr. Dialba, and Mr. Glassman have  
13 economic incentives in the Callidus share price?

14 A. We -- we have -- our interests are  
15 the same as they would be for the fund itself. We have  
16 a portion of our -- let me step back. And you tell me  
17 if I'm telling you too much.

18 We have what's called a European  
19 carrier.

20 MR. WINTON: I doubt he will do that.

21 THE WITNESS: We have what is called a  
22 European carrier.

23 BY MR. MILNE-SMITH:

24 845 Q. Yes, I read about that in the  
25 affidavit.

1                   A.     Okay, okay.   So the European  
2     carrier says at the end of -- once the -- once the LP's  
3     have gotten back their principal plus an 8 percent  
4     preferred return, we then -- there's a trueing up  
5     provision, but then we share 80/20 in any amounts that  
6     are realized subsequent to that -- that date of  
7     8 percent return.

8     846               Q.     Right.

9                   A.     So we will have an entitlement to  
10    have some of the shares or an economic amount equal to  
11    the shares in each of the funds to the extent that  
12    there is -- we earn our carry.

13    847               Q.     I guess what --

14                   A.     That's why I'm not sure what your  
15    question is, but that's --

16    848               Q.     Okay.   Just to simplify, do the  
17    funds hold any -- the funds continue to hold shares of  
18    Catalyst -- of Callidus, correct?

19                   A.     Yes, fund 3 and fund 4.

20    849               Q.     Right.   Okay.   So let's talk --

21                   A.     And, sorry, fund 2 also has some.

22    850               Q.     Okay.   So let's talk, then, about  
23    Arthon.

24                   A.     Yes.

25    851               Q.     That's the second misrepresentation

1     you've alleged?

2                     A.     Yes.

3     852             Q.     So at paragraph 17 in your  
4     affidavit, in your personal affidavit.

5                     A.     Yes. Sorry, for my benefit, could  
6     I also have Mr. Griffin's affidavit?

7     853             Q.     I was going to ask you to do that,  
8     yes. So what you are going to want to be looking at --

9                     A.     Could you turn to -- there's an  
10    appendix, I believe, that contains the Arthon  
11    information.

12    854             Q.     Yes. It's appendix C, which starts  
13    at -- the Arthon information starts at page 80 of the  
14    record.

15                     A.     May I turn to appendix B? Sorry,  
16    where is appendix B?

17    855             Q.     You're in it.

18                     MR. WINTON: This is it.

19                     THE WITNESS: This is appendix B? Okay.  
20    Thank you.

21                     MR. WINTON: This is the beginning of C.  
22    Appendix C.

23                     BY MR. MILNE-SMITH:

24    856             Q.     This is the one that contains  
25    detailed information about certain loans that West Face

1 found to be of concern?

2 A. Excuse me, can I go to the report  
3 that -- the ...

4 MR. WINTON: Monitor's reports?

5 THE WITNESS: No, no.

6 BY MR. MILNE-SMITH:

7 857 Q. Oh, you mean this report? Tab 46  
8 of Mr. Griffin?

9 A. Tab 46, as it's known on the  
10 street. Can I look at that for a second, please?

11 858 Q. Yes. I think the analysis of  
12 Arthon is near the back of it.

13 -- OFF THE RECORD --

14 MR. WINTON: It's page 769 of the  
15 record, I believe.

16 BY MR. MILNE-SMITH:

17 859 Q. Okay.

18 A. And this I think was purporting to  
19 be done on the basis of publicly available information?

20 860 Q. That's correct.

21 A. Okay.

22 861 Q. Do you see any nonpublic  
23 information in that report?

24 A. Well, no. What I do see -- may I?

25 862 Q. Yes.

1                   A.     Do you want to ask your questions  
2     or do you want me to put something on the record now?

3     863            Q.     No, I want to ask you a question.  
4                    You have looked at that -- what page is  
5     that, Counsel?

6                   MR. WINTON:   769.

7                   BY MR. MILNE-SMITH:

8     864            Q.     769.   Do you see any nonpublic  
9     information on that page?

10                  A.     No, but I see a failure to have a  
11     complete disclosure of what was on the public record at  
12     the time.

13     865            Q.     Okay.   Well, that's a separate  
14     question.   We're going to go through that now.

15                  A.     Okay.

16     866            Q.     Can I have that back?

17                  A.     Yes.   I don't know what I'm looking  
18     at.

19     867            Q.     There are two things you should  
20     have in front of you.

21                  A.     Okay.

22     868            Q.     Two things you should have in front  
23     of you are your reply affidavit.

24                  A.     Yes.

25     869            Q.     Dated May 1, 2015, at page 6,



1 starting paragraph 16.

2 A. Okay.

3 870 Q. And Mr. Griffin's exhibit  
4 appendix C to his March 7 affidavit, which the  
5 information on Arthon starts at page 80 of the record.

6 A. I'm in the right spot? Thank you.

7 871 Q. All right. So let's start with  
8 paragraph 17 of your reply affidavit.

9 A. What page is it?

10 872 Q. Paragraph 17.

11 A. Thank you.

12 873 Q. So in that paragraph, is that fair  
13 to say you state that Arthon is a construction holding  
14 company that owned mining equipment, a coal mine, an  
15 aggregate deposit through four subsidiaries?

16 A. That is correct.

17 874 Q. Okay. If you then look at  
18 paragraph 10 of appendix C to Mr. Griffin's affidavit,  
19 on page 81, you will see that paragraph contains those  
20 same facts, correct?

21 A. Yes, correct.

22 875 Q. Okay. So so far, so good. No  
23 inaccuracy so far with Mr. Griffin, correct?

24 A. Yes. And I believe this was taken  
25 from the same source.

1       876                   Q.    Yes.    So paragraph 18 of your reply  
2       affidavit, then, says that Arthon equipment and  
3       Coalmont filed for CCAA protection in order to  
4       restructure the HSBC debt.

5                           A.    Yes.

6       877                   Q.    And it states that Sandhill, the  
7       related company, was liable for the debts to HSBC,  
8       correct?

9                           A.    Yes.

10      878                   Q.    If you then go to Mr. Griffin's  
11      paragraph 12, you'll see that the same information is  
12      there with the exception of the fact that Sandhill did  
13      not file for CCAA?

14                          A.    Yes.

15      879                   Q.    And, in fact, if you look then at  
16      Exhibit 138, which is what is cited to in that  
17      paragraph. So Exhibit 138 is in Volume 4. It's the  
18      second report of the monitor.

19                          A.    I'm sorry, where is 138?

20                          MR. WINTON: There's a reference.

21                          BY MR. MILNE-SMITH:

22      880                   Q.    It's Exhibit 138 is what is cited  
23      at --

24                          A.    Oh, sorry, got it, got it. Okay.  
25      It's a footnote.

1           881                   Q.     It's footnote 170.

2                           MR. WINTON:   Yes.   Second report of the  
3   monitor dated -- it doesn't actually say Exhibit 138,  
4   but we agree that that's -- okay -- the information.

5                           BY MR. MILNE-SMITH:

6           882                   Q.     Correct.   Exhibit 138 is referred  
7   to back on an earlier page.

8                           A.     Okay.   Got it.

9           883                   Q.     And you will see, of course, that  
10   on this Exhibit 138, it refers to a  
11   plaintiff-compromising arrangement of Arthon  
12   Industries, Arthon Contractors, Arthon Equipment,  
13   Coalmont, and two other companies, so Sandhill is not  
14   an applicant, correct?

15                          A.     That is correct.

16           884                   Q.     That means Sandhill did not file  
17   for CCAA?

18                          A.     And Sandhill was the aggregates.  
19   It was aggregates.

20           885                   Q.     Correct.   And so that was apparent  
21   from the information relied upon by Mr. Griffin?

22                          A.     Uhm-hmm.

23           886                   Q.     Right.   So Mr. Griffin was not  
24   purporting to say that Sandhill filed?   He never said  
25   Sandhill filed for CCAA?

1                   A.    Let me just -- can I look back at,  
2   again, the 46 report?

3       887           Q.    Yes.

4                   A.    I just want to make sure this is  
5   consistent.

6                   Yes.  Here, it's -- if you go down to  
7   the April, 2014.

8       888           Q.    Yes?

9                   A.    It says "The restructuring  
10   focus" -- sorry, it's page 783.

11       889           Q.    793.

12                   A.    Sorry, 793.

13                   There's nothing in here that  
14   separates -- that same distinction that Sandhill was  
15   not part of the CCAA, which part of that would be that  
16   it was not insolvent.

17       890           Q.    Okay.

18                   A.    Okay?

19       891           Q.    So it doesn't --

20                   A.    It become important later when we  
21   get into --

22       892           Q.    It doesn't explicitly say in the  
23   report that Sandhill was not insolvent?

24                   A.    Well, it also doesn't say in that  
25   report -- and this is important, and I'm not trying to

1     jump ahead -- that there was a successful restructuring  
2     of the CCAA in I believe late December or early  
3     January.

4     893                   Q.     We're going to come to that.

5                           A.     Okay.   Good.

6     894                   Q.     Paragraph 19 of your reply  
7     affidavit says that Callidus assumed the position of  
8     HSBC ultimately at a substantial discount to the book  
9     value of the secured debt.

10                          A.     Yes, yes.

11     895                   Q.     Mr. Griffin's paragraph 13 in  
12     appendix C at page 82 refers to an assignment to the  
13     HSBC loan?

14                          A.     Yes.

15     896                   Q.     Now, Mr. Griffin does not refer to  
16     that assignment taking place at a discount.   Did the  
17     discount occur at assignment?

18                          A.     I think ultimately there was a  
19     discount.   It wasn't at the initial assignment date.  
20     It was -- it was through the whole process -- the whole  
21     agreement with HSBC.

22     897                   Q.     Right.   So if you look at the  
23     second report of the monitor at tab 138, which is what  
24     Mr. Griffin was relying on, if you go to paragraph 7.4  
25     at page 1131.

1 A. Uhm-hmm.

2 898 Q. It says:

3 "Callidus will take an assignment of  
4 HSBC security for the total amount  
5 outstanding."

6 Which is approximately 47 million. So  
7 no reference to a discount there?

8 A. Yes. Except there's the 10 million  
9 that's provided in the next period.

10 899 Q. Yes. So:

11 "HSBC has to provide a \$10 million  
12 line of credit in favour of Callidus  
13 which will be drawn upon if the Coalmont  
14 Mine and related assets owned by  
15 Coalmont are sold for anything less than  
16 net less proceeds of 10 million."

17 Is that the discount you are referring  
18 to?

19 A. Yes, yeah. So, in effect, it was a  
20 sure \$10 million.

21 900 Q. Well, HSBC is providing a line of  
22 credit, not a gift, correct?

23 A. Well, it's a letter of credit in  
24 our favour.

25 901 Q. Right. But you have to pay it back

1 if you draw on it?

2 A. No. It's a -- we are the  
3 beneficiary of the letter of credit.

4 902 Q. Okay. So that's what you interpret  
5 this as?

6 A. Yes. Sorry, I'm not -- letters of  
7 credit are funny.

8 903 Q. So that's what you interpret as the  
9 discount?

10 A. Yes, yeah. We are beneficiary of  
11 the letter of credit.

12 904 Q. Okay. And this information was  
13 available in the exhibit to Mr. Griffin's report if  
14 anybody wanted to look at it?

15 A. Well, I think he tries to paint it  
16 in a different way than what I just said. In other  
17 words, you'd have to go in and look at that  
18 information, because he didn't synthesize it.

19 905 Q. He just says in paragraph 13 that  
20 the loan was assigned to Callidus?

21 A. Yes. And he also doesn't --  
22 there's also -- and it's a nuance, but this is a dip  
23 financing, which is generally considered to be one of  
24 the safer ways to provide -- to provide loans.

25 906 Q. Well, now that I know that you say

1 the discount is the 10 million, you will look four  
2 lines down, it says:

3 "HSBC agreed" --

4 A. Sorry, four lines down in what,  
5 please?

6 907 Q. In paragraph 13 of appendix C.

7 A. Yup.

8 908 Q. Mr. Griffin says:

9 "HSBC agreed to provide a \$10 million  
10 line of credit in favour of Callidus" --

11 A. Yes.

12 Q. -- "to be drawn upon."

13 A. Yes.

14 909 Q. So he did synthesize that  
15 information?

16 A. Okay. I apologize, then.

17 910 Q. So, again, so far, everything we  
18 have seen in your paragraphs 17, 18, and 19 has all  
19 been faithfully reproduced in one manner or another in  
20 Mr. Griffin's affidavit?

21 MR. WINTON: Save for the exclusion of  
22 Sandhill. That was not faithfully represented in  
23 Mr. Griffin's affidavit.

24 MR. MILNE-SMITH: Okay. We have gone  
25 over that, so no need to go over it again.



1 MR. WINTON: Right. I just want to make  
2 sure that your summary isn't taken to include that.

3 BY MR. MILNE-SMITH:

4 911 Q. So then in paragraph 20, you say --  
5 you describe restructuring activities, and you say that  
6 Arthon Equipment sold assets to Arthon Industries.

7 A. Yes.

8 912 Q. Arthon Industries and Sandhill  
9 assumed joint responsibility for the debt?

10 A. Uhm-hmm.

11 913 Q. That's correct?

12 A. Yes.

13 914 Q. And Mr. Griffin, at paragraph 12 of  
14 appendix C, says that various HSBC facilities were  
15 secured and cross-collateralized within the Arthon  
16 Group?

17 A. Uhm-hmm.

18 915 Q. Yes?

19 A. Yes, I see it.

20 916 Q. And "secured and  
21 cross-collateralized" means multiple entities had joint  
22 responsibility for the debt?

23 A. Yes, I would -- I would say that,  
24 yes.

25 917 Q. And then if one wanted to find out

1 the detail behind that, you see there is a footnote 169  
2 that refers to the affidavit of Keri Ming Leong?

3 A. Yes. That was the original  
4 affidavit sworn in connection with the CCAA.

5 918 Q. Right. And that, I can tell you,  
6 is at footnote -- at tab 137 in Volume 4. So you  
7 recognize that affidavit --

8 A. Yes.

9 919 Q. -- as the original application in  
10 the CCAA process?

11 A. Yes. And what paragraph do you  
12 want me to look at?

13 920 Q. Paragraph 25. So you will see, at  
14 paragraph 25, Mr. Leong says that:

15 "The various HSBC facilities were  
16 secured and, in many respects,  
17 cross-collateralized within the Arthon  
18 Group, Sandhill, and other entities."

19 A. Yeah. I don't know why he said  
20 "many respects". So it's less -- it's not equivocal.  
21 Or not unequivocal.

22 921 Q. Okay. But you can't blame  
23 Mr. Griffin for not picking that up?

24 A. Okay. Well, I could, but let's  
25 keep going. You cannot tell me I cannot blame someone.

1 I think I'm still free to blame people.

2 922 Q. Okay. Well, let's put it another  
3 way. To the extent that Mr. Griffin is relying on the  
4 Leong affidavit, he can't be expected to know that  
5 Mr. Leong was not entirely correct in that?

6 A. In other words, he didn't  
7 independently verify anything. He relied on the  
8 reports.

9 923 Q. He relied on the public reports,  
10 correct.

11 A. Okay, yup.

12 924 Q. So we were talking about  
13 paragraph 20 of your affidavit, which talks about an  
14 asset sale of equipment to Arthon?

15 A. Yes.

16 925 Q. So then if you go to paragraph 19  
17 of Mr. Griffin's affidavit. You'll see there he refers  
18 to the --

19 A. Sorry, what is -- is this --

20 926 Q. This is appendix C --

21 A. This is an appendix to an  
22 affidavit, right?

23 927 Q. Appendix C to Mr. Griffin's  
24 affidavit.

25 A. So -- but I'm just trying to --

1     okay.

2     928                   Q.     This is on paragraph 19 of page 85.

3                           A.     Yup, yup.

4     929                   Q.     So you will see there Mr. Griffin  
5     refers to the sale of equipment. That's what you were  
6     referring to in your paragraph 20, correct?

7                           A.     Yes.

8     930                   Q.     Okay.

9                           A.     No, this is separate. This is a  
10    sale outside. Those weren't -- I don't think those  
11    were the ones that were ultimately transferred to  
12    Sandhill. These were third-party sales. If you see,  
13    there was a realization of \$6 million of total net  
14    proceeds on a sale of 28 pieces of equipment. The  
15    company advised it would no longer focus on the  
16    equipment sales.

17                         MR. WINTON: I think it's a reference to  
18    a different --

19                         THE WITNESS: These sound to me like  
20    third-party equipment sales that he's referring to.  
21    The ones that are referred to in here were ultimately  
22    Coalmont properties, Coalmont equipment, that was sold  
23    to whatever the name of the entity is -- Equipment. I  
24    think -- and I'm going by memory, but I think there was  
25    a coal wash facility that was transferred up to --

1     what's the name of the subsidiary, Equipment? I think  
2     Equipment.

3                     BY MR. MILNE-SMITH:

4     931             Q.     And that's what we -- that's what  
5     you talked before about the ultimate outcome of the  
6     restructuring, correct?

7                     A.     Yes.

8     932             Q.     So this is what's being described  
9     here as the net result of the CCAA process?

10                    A.     Yes. Which I describe, I think, in  
11     paragraphs 21, 22, 23, and 24.

12     933             Q.     Yes, you describe it in 20 and then  
13     you characterize it in the remaining paragraphs.

14                    A.     Okay. Yeah.

15     934             Q.     So Mr. Griffin's affidavit was  
16     sworn on March 7th, 2015, correct?

17                    A.     Sorry. Again.

18     935             Q.     Mr. Griffin's affidavit was sworn  
19     on March 7, 2015?

20                    A.     Yes.

21     936             Q.     Okay. The last monitor's report  
22     for Arthon before March 7, 2015, was January 27, 2015,  
23     which is tab 146, correct?

24                    A.     Yes.

25     937             Q.     And as of that date, the CCAA

1 process had not yet wrapped up, right?

2 A. I think it did. I think it was  
3 wrapped up at that point.

4 938 Q. Okay. Well, if you want to look at  
5 page 1290 of the record, you'll see that it seeks an  
6 extension of the stay period, which was set to expire  
7 on January 30th.

8 A. Yeah. That's to Equipment and  
9 Coalmont.

10 939 Q. Right. So to seek an extension of  
11 the stay period to the earlier of February 18, 2015, or  
12 the date on which the respective --

13 A. It's been assigned into bankruptcy.

14 940 Q. Right. So that hadn't yet  
15 occurred?

16 A. I don't have that information, but  
17 what that represents is the end of the stay period,  
18 okay? It relates only to Equipment and Coalmont.

19 MR. WINTON: But also --

20 THE WITNESS: So this is the -- so the  
21 other parts of the restructuring have been completed at  
22 that time.

23 MR. WINTON: And just to be clear,  
24 Counsel, February -- the earlier of February 18th or  
25 the assignment of bankruptcy had occurred by the time

1 Mr. Griffin swore his affidavit, right?

2 THE WITNESS: And you'll see --

3 BY MR. MILNE-SMITH:

4 941 Q. Well, the question is whether it  
5 was in the public record or not.

6 A. I think it would have been filed at  
7 that time.

8 BY MR. MILNE-SMITH:

9 942 Q. Okay. Can you produce it?

10 THE WITNESS: This document?

11 MR. WINTON: It's not --

12 THE WITNESS: This is dated  
13 January 27th, 2015.

14 BY MR. MILNE-SMITH:

15 943 Q. Right.

16 A. So it's got to be in the public  
17 record, because it was before the Supreme Court.

18 944 Q. Look, this -- I mean, Mr. Griffin  
19 referred to it, so obviously he had it.

20 A. Exactly, but, you see:

21 "Based on the foregoing, the monitor  
22 respectfully recommends that this  
23 Honourable Court grant the petitioner's  
24 request for the following orders: An  
25 order approving the sale of the Coalmont

1 assets to Sandhill; investing the  
2 Coalmont assets in Sandhill and 102; an  
3 order approving the sale of the  
4 Equipment assets to Industries and  
5 vesting the Equipment assets in  
6 Industries; the bankruptcy orders; and  
7 the extension order."

8 So then let me just -- to me, having  
9 done insolvency work, the only reason you kept the stay  
10 in place was to give you time to file the bankruptcy  
11 orders and have them become effective. And that's why  
12 the first part of 8.1 has two dates.

13 945 Q. So I'm giving you the twelfth  
14 report of the monitor. We were just looking at the  
15 eleventh. This is the twelfth report of the monitor  
16 dated March 17, 2015.

17 A. Sorry, what's the date, March 17?  
18 MR. MILNE-SMITH: Yes. Mark that as  
19 Exhibit 6.

20 EXHIBIT NO. 6: Monitor's report dated  
21 March 17, 2015

22 BY MR. MILNE-SMITH:

23 946 Q. So that obviously is after  
24 Mr. Griffin's affidavit?

25 A. Yes.



1       947               Q.     And I hope this is -- can be taken  
2     for granted, but let me make sure. We were looking at  
3     the eleventh from January 27th. This is the twelfth.  
4     There would have been nothing in between, correct? You  
5     can't have a monitor's report between the eleventh and  
6     the twelfth?

7                       A.     Sorry, what's the --

8                       MR. WINTON: As far as monitor's reports  
9     go, yes, we will agree to that.

10                      MR. MILNE-SMITH: Yes.

11                      THE WITNESS: Sorry, what's the date?

12                      MR. WINTON: This is March 17.

13                      THE WITNESS: And this is the eleventh  
14     and the twelfth -- or the twelfth and thirteenth.

15                      MR. WINTON: No.

16                      THE WITNESS: Sorry, eleventh and  
17     twelfth.

18                      MR. WINTON: Yes.

19                      THE WITNESS: Okay. Got it.

20                      MR. WINTON: The eleventh is in January,  
21     the twelfth is in March.

22                      MR. MILNE-SMITH: Exhibit 6 is the  
23     twelfth.

24                      MR. WINTON: Correct.  
25

1 BY MR. MILNE-SMITH:

2 948 Q. There's no report 11.5?

3 A. Not to my knowledge, no. Smarty  
4 pants.

5 949 Q. So if we look at, for example, on  
6 paragraph 4.3 on page 5 --

7 A. Yes.

8 950 Q. -- it says that:

9 "Sandhill entered into an asset  
10 purchase agreement with Coalmont which  
11 was approved by this Honourable Court on  
12 January 29, 2015."

13 So that approval happened after the  
14 eleventh report?

15 A. Yes.

16 951 Q. And the transaction was closed on  
17 February 12th, also after the eleventh report.

18 A. Okay.

19 952 Q. So if one were just looking at the  
20 reports of the monitor, there would be nothing in  
21 between the eleventh report and the twelfth report?

22 A. Uhm-hmm.

23 953 Q. Yes?

24 A. But they're -- hold on.

25 954 Q. If you are looking just at the

1 monitor's reports.

2 A. Okay.

3 955 Q. There's nothing between January 27  
4 and March 17, correct?

5 A. Uhm-hmm.

6 956 Q. You have to say "yes".

7 A. Yes. I'm sorry.

8 957 Q. Okay. And in terms of the ultimate  
9 outcome of this investment --

10 A. Yes.

11 958 Q. -- what's the interest rate that  
12 Callidus is enjoying on the loan?

13 A. I don't know that. I would have to  
14 go back and look. I can't remember what rate it's at  
15 right now.

16 BY MR. MILNE-SMITH:

17 959 Q. Okay. Could you make an  
18 undertaking to advise, please.

19 MR. WINTON: Stop.

20 THE WITNESS: This is -- again, it's not  
21 public information. So -- as far as I know.

22 R/F MR. WINTON: We are not going to answer  
23 that.

24 THE WITNESS: Okay.

25

1 BY MR. MILNE-SMITH:

2 960 Q. How much principal or interest has  
3 been repaid to Callidus out of cash generated by  
4 Arthon, in other words, not funded by further advances  
5 by Callidus?

6 R/F MR. WINTON: We're not answering that.

7 BY MR. MILNE-SMITH:

8 961 Q. Okay. So Mr. Riley has taken the  
9 position that this was a "very successful workout" in  
10 paragraph 22.

11 A. Yes.

12 962 Q. But you are not willing to tell me  
13 how much principal or interest has actually been paid?

14 A. I can say that there have been  
15 paydowns on the loan subsequent to the insolvency  
16 proceedings.

17 963 Q. You but you can't tell me how much?

18 A. Significant.

19 MR. MILNE-SMITH: I'd like to know how  
20 much principal or interest has been repaid by Arthon  
21 out of funds that were not funded by Callidus.

22 MR. WINTON: I understand the question.  
23 It's refused.

24 BY MR. MILNE-SMITH:

25 964 Q. Okay. And what are the assets

1       securing the loan at present?

2                       A.     It is the aggregate.

3       965               Q.     Okay.

4                       A.     And others.   Equipment and some  
5       other assets.

6       966               Q.     Okay.   Well, all equipment was put  
7       up for sale, and what could be sold was sold, correct,  
8       at the time?

9                       A.     Well, there is equipment that's  
10      needed to -- there's equipment, as I recall, came from  
11      Coalmont.

12      967               Q.     Yes.

13                      A.     Excess -- it was just equipment  
14      that came from Coalmont, given that they were going to  
15      put it into bankruptcy, and then there was equipment  
16      used for -- in the operation of the aggregate mine.

17      968               Q.     Okay.   So you kept the  
18      information -- you kept the equipment necessary for the  
19      aggregate mine?

20                      A.     Yeah, exactly.

21      969               Q.     But the aggregate mine is not an  
22      operating facility, correct?

23                      A.     I believe it is, currently, right  
24      now.   It is either -- it is -- there are contracts  
25      relating to that operation.   Whether they are actually

1 conveying the aggregate at this time. But there are  
2 contracts in place.

3 970 Q. If you look at tab 145.

4 A. Yup.

5 971 Q. This is a document from June, 2012.  
6 You'll see, at the top, it says "Brief on Projects  
7 Proposed for Kitimat, June, 2012"?

8 A. Yes.

9 972 Q. And number 5 is Sandhill materials?

10 A. Yes.

11 973 Q. And it says -- this is the Sandhill  
12 project that Callidus has loaned to, correct?

13 A. Yes, uhm-hmm.

14 974 Q. It says:

15 "Marine terminal and aggregate expert  
16 operation construction start date is  
17 contingent on finalizing  
18 pre-construction and sales agreements."

19 A. Yes.

20 975 Q. And it says 25 to \$30 million of  
21 investment is required?

22 A. Yes.

23 976 Q. So you are telling me that that 25  
24 to \$30 million investment was made and then, in fact,  
25 the construction was not just started but was

1 completed?

2 A. I actually don't know. I mean, I  
3 don't know. I think the main use of the aggregate will  
4 be for -- in connection with LNG facilities that are  
5 being built.

6 BY MR. MILNE-SMITH:

7 977 Q. Okay. Well, if there's any  
8 documentary evidence that the Sandhill facility is up,  
9 running, and generating income, I'd like to see it.

10 U/A MR. WINTON: I will take that under  
11 advisement.

12 BY MR. MILNE-SMITH:

13 978 Q. Okay. And let's just make sure  
14 we've got a few other things here on the record, and  
15 I'm happy to take you to the monitor's reports if you  
16 want to, if you are not familiar with it personally.

17 You're aware that the monitor ran a  
18 sales process for Coalmont?

19 A. Yes.

20 979 Q. And no one submitted an offer?

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

22 980 Q. And the assets were transferred to  
23 Sandhill, a related company?

24 A. I -- well, I think they were put  
25 into a company -- sorry, when you say -- sorry, which

1 assets? The mine itself --

2 981 Q. The assets. Coal.

3 A. -- the mine or the assets?

4 982 Q. Yes.

5 A. Sorry, the mine itself? The coal  
6 property?

7 983 Q. Correct.

8 A. The coal property, I think it was  
9 taken through bankruptcy. It was put into bankruptcy.

10 984 Q. Right. And any remaining assets  
11 were transferred to Sandhill?

12 A. I think that is correct. I think  
13 that's what the monitor's reports says, and I don't  
14 think -- I don't know anything inconsistent with that.

15 985 Q. And there was also a sales process  
16 with respect to the company known as Arthon Equipment?

17 A. Can you lead it to me in the  
18 monitor --

19 986 Q. Okay. So let's --

20 A. I'm not -- I get very confused when  
21 there are multiple subsidiaries with similar names.

22 987 Q. I know. It is confusing. So let's  
23 go to tab 146, the eleventh report, at paragraph 4.14.

24 A. Yes.

25 988 Q. So it says:



1                   "On April 15, 2014, this Honourable  
2                   Court granted an order authorizing the  
3                   company to undertake a process to market  
4                   and sell its machinery and equipment."  
5                   And it says, in the next paragraph:

6                   "The proceeds realized from the  
7                   equipment sales process total  
8                   approximately \$769,000."

9                   A.     Yes.

10                  Q.    "The majority of the machinery  
11                  and equipment assets remain unsold."

12                  A.     Yes.

13                  989           Q.    And those assets were transferred  
14                  to Arthon Industries?

15                  A.     Yes.   Hmm, can I just -- can we  
16                  read the rest of that sentence?   Could you read the  
17                  rest of the sentence for me.

18                  990           Q.    Sure.

19                  "In October, 2014, the company  
20                  determined that it may require the  
21                  machinery and equipment owned by  
22                  Equipment for use by Sandhill to fulfill  
23                  large extraction agreements that it was  
24                  planning to enter into and, accordingly,  
25                  it re-focussed its efforts on other

1 restructuring matters."

2 A. And I would -- I would -- I'm not  
3 going to submit, but I would say that's consistent with  
4 how the restructure evolved: That that equipment was  
5 transferred and that the aggregate -- the aggregate --  
6 the aggregate mine is now in or will begin operation.

7 991 Q. So the assets --

8 A. I.e., the aggregate is valuable.

9 992 Q. So to sum up, the assets of both  
10 Coalmont and Equipment were put up for sale and  
11 garnered net cash proceeds of 769,000?

12 A. Yeah. I'd have -- that's what it  
13 says in the monitor's report.

14 993 Q. Okay.

15 A. So that was the equipment that was  
16 sold.

17 994 Q. Okay.

18 A. I thought there were some other  
19 numbers in there.

20 MR. WINTON: And, Counsel, I just want  
21 to make sure it's clear. The reference to the  
22 capital C "Company" in paragraph 4.1.4 and elsewhere in  
23 this monitor's report, that's a defined term that  
24 refers collectively to all of the CCAA entities, as I  
25 understand from the preamble of the report.

1 MR. MILNE-SMITH: That's correct.

2 MR. WINTON: And so the sale of  
3 machinery and equipment, that's not limited to the  
4 capital E Equipment as in the subsidiary known as "the  
5 Equipment company"; it's referring to all the machinery  
6 and equipment collectively owned -- as I read it,  
7 collectively owned by all of the applicant companies.

8 MR. MILNE-SMITH: Well, I don't think we  
9 need to debate it on the record.

10 MR. WINTON: Okay.

11 MR. MILNE-SMITH: But, I mean, it says  
12 the capital C "Company" determined it may require  
13 machinery and small E "equipment" owed by big E  
14 "Equipment".

15 MR. WINTON: Yes, correct.

16 MR. MILNE-SMITH: Okay. So it says what  
17 it says.

18 MR. WINTON: It does. Because of the  
19 defined term, I want to make sure there is no confusion  
20 as to what we are talking about. Any more than  
21 already.

22 THE WITNESS: You guys think that  
23 commercial lawyers are way smarter than they are.

24 MR. WINTON: No, we don't.

25

1 BY MR. MILNE-SMITH:

2 995 Q. And paragraph 4.11, at the top of  
3 that page.

4 A. Yes.

5 996 Q. Summarizes that there -- as of the  
6 date of this report on January 27, 2015, there was  
7 \$53.8 million owing by Arthon to Callidus?

8 A. So this is January, 2015, and it's  
9 the eleventh report?

10 997 Q. Correct.

11 A. Thank you.

12 998 Q. So that was, to the best of your  
13 knowledge, accurate, the 53.8 million?

14 A. I'm sorry, you are -- 53.8 --

15 999 Q. You will see in 4.11C.

16 A. Yes, got it, got it.

17 1000 Q. And so that 53.8 million, that's,  
18 in fact, more than the 47 million plus 5 million dip  
19 loan. So the balance has gone up from 47 million  
20 assigned from HSBC plus the five million dip loan,  
21 correct?

22 A. I can't do my math quickly enough.  
23 I just --

24 1001 Q. Sorry. 47 plus 5 is 52.

25 A. Can I have a pen just for a second?

1       1002                   Q.     Sure.

2                           A.     Because I want to make sure we're  
3     taking the same note. And you deducted the 10 out of  
4     there? The 10 from the letter of credit?

5       1003                   Q.     No. I'm just going directly on  
6     what the monitor said.

7                           A.     Okay. So you are adding the -- the  
8     18.9, the 34.9. Is that what you are adding?

9       1004                   Q.     That's what the monitor appears to  
10    have added, yes.

11                          A.     Sorry, I want to make sure that I  
12    am working this. Okay. So that comes to 53.8.

13       1005                   Q.     Yes.

14                          A.     Okay. Thank you.

15       1006                   Q.     And so that is more than the  
16    47 million plus 5 million that was --

17                          A.     Yes.

18       1007                   Q.     -- initially loaned?

19                          A.     Yes.

20       1008                   Q.     Okay.

21                          A.     Although pretty close.

22       1009                   Q.     And so there was no further public  
23    information about the amounts of the debt owing by  
24    Arthon to Callidus?

25                          A.     The other thing, he doesn't break

1     it -- I assume this is -- I assume he is talking about  
2     principal. He doesn't make it clear.

3         1010             Q.     I'm not asking about principal or  
4     interest. I'm just saying that, at the time that  
5     Mr. Griffin swore his affidavit on March 7th, the most  
6     recent public information about the amount of the debt  
7     owing was 53.8 million.

8                     A.     I think that's fair.

9         1011             Q.     Okay. And that brings us to the  
10    BDC comparison. Now, you'd agree with me that  
11    Mr. Griffin did not purport to say that Callidus was  
12    the same as a BDC, correct?

13                    A.     Can you -- well, are we looking at  
14    his affidavit or are we looking at the -- the tab 46  
15    report?

16         1012             Q.     No, we are looking at his  
17    affidavit. So if you want to look at --

18                    A.     I think we need perhaps to look at  
19    both.

20         1013             Q.     Sure.

21                    MR. WINTON: And I believe this is in  
22    the body of the affidavit, not in one of the  
23    appendices.

24                    BY MR. MILNE-SMITH:

25         1014             Q.     That's correct. If you look at

1 paragraph 113. That's on page 44 of the record. And  
2 specifically, it's footnote 50. He says:

3 "In West Face's view, the most closely  
4 comparable companies to Callidus are US  
5 business development companies."

6 Which we referred to as BDCs?

7 A. Yes.

8 1015 Q. So he doesn't say they are the  
9 same; he says they are the closest comparable, right?

10 A. I think that's a nuance.

11 1016 Q. And he also acknowledges in that  
12 same footnote that Callidus may also be compared to  
13 specialty finance companies?

14 A. Accord and Chesswood? Yes.

15 1017 Q. And in paragraph 116, he says, in  
16 the middle of the paragraph:

17 "To put Callidus' lack of disclosure  
18 in perspective, U.S. business  
19 development companies, BDCs (arguably  
20 Callidus' closest comparables)."

21 A. Yes.

22 1018 Q. So he is calling them, again, not  
23 the same thing but arguably the closest comparables,  
24 fair?

25 A. Those are his words.

1       1019               Q.    Okay.  So are you aware that the  
2       Veritas report we looked at, which I believe was  
3       Exhibit 4 --

4                       A.    Yes.

5       1020               Q.    -- had also indicated that BDCs  
6       might be a good comparable to Callidus?

7                       A.    I think that, to a certain extent,  
8       I find that the Veritas report bears a startling  
9       resemblance to what West Face had produced.

10      1021               Q.    In other words, they agreed with  
11      West Face?

12                      A.    No, I think they were informed by  
13      West Face.  I don't know whether they agreed.

14      1022               Q.    Okay.  Well, they published it,  
15      right?

16                      A.    Yes, but they don't reference it.

17      1023               Q.    Are you saying they published  
18      something that they didn't believe?

19                      A.    I think there is that possibility.  
20      Possibility.

21      1024               Q.    Veritas' business depends on their  
22      reputation for producing accurate research, correct?

23                      A.    It would be a factor.

24      1025               Q.    Okay.  So it would certainly be  
25      against their interest to publish information they



1 believed to be incorrect?

2 A. Say that again. Sorry.

3 1026 Q. It would be against their interest  
4 to publish something that they didn't believe to be  
5 correct?

6 A. Had they done enough verification  
7 to determine whether it was correct.

8 1027 Q. That's not my question. The  
9 question isn't whether or not they are right, the  
10 question is whether or not they believed in it. You  
11 have no reason to believe that they didn't believe in  
12 what they published?

13 A. Correct.

14 1028 Q. Okay. So let's then turn to the  
15 differences that you point out in your reply affidavit  
16 of paragraph 26.

17 A. Okay. So can I put this to one  
18 side now --

19 1029 Q. Yes.

20 A. -- or are you going back to it?

21 1030 Q. You can. Thank you.

22 A. Okay. Paragraph ...

23 1031 Q. Paragraph 26, and, actually, the  
24 four enumerated points you make are on page 8.

25 A. Can I just read it again?

1       1032               Q.     Yes.

2                       A.     This is underlined, by the way.

3       1033               Q.     That's fine. The whole thing is  
4 underlined. No point of emphasis.

5                       A.     Yes.

6       1034               Q.     So point number 1 is that BDCs tend  
7 to have external management whereas Callidus is managed  
8 internally?

9                       A.     Correct.

10      1035               Q.     And, in your view, management  
11 provided by executives of Catalyst funds through a  
12 management services agreement constitutes internal  
13 management for Callidus?

14                       A.     Let me step back for a second.  
15 You're misconstruing what Callidus -- how Callidus is  
16 managed. It has its own president and chief operating  
17 officer.

18      1036               Q.     Yes.

19                       A.     It also has, I think, 28 or 29  
20 other people who fulfill various functions. Chief  
21 financial officer, it has its own underwriters, it has  
22 its own originators, it has its own collateral  
23 management people, and it has field examiners.

24                       The roles that I play and Newton play  
25 are -- are an adjunct to that. We're on portfolio --

1 not me, but others are on portfolio companies. So the  
2 reason we have a management services agreement was  
3 because that's what the underwriters wanted, to make  
4 sure that we were available to Callidus.

5 1037 Q. Right.

6 A. If we did not have that management  
7 services agreement, this would be the same issue.  
8 Newton is active as CEO, he's active as a chair of the  
9 investment committee, he is on the board. What we  
10 don't get is any compensation for it, whereas BDCs are  
11 externally managed for a fee. They have no -- they  
12 have no actual management people at all, no employees.

13 1038 Q. And the value of management depends  
14 on how good they are?

15 A. I agree.

16 1039 Q. And so the reason why Mr. Glassman  
17 provides value is because you say he is good at what he  
18 does?

19 A. Yes.

20 1040 Q. And so that's really the most  
21 important thing in terms of management is whether it is  
22 good or bad?

23 A. Yes.

24 1041 Q. Okay. The second point is you say  
25 Callidus does not pay dividends, it reinvests its

1 income for future growth?

2 A. Correct. It's a growth company.

3 1042 Q. Right. And you would agree that  
4 Mr. Griffin recognized that distinction in his  
5 affidavit at paragraph 113?

6 A. Sorry, I don't have any -- sorry, I  
7 have no idea which affidavit I'm looking at anymore.

8 1043 Q. We are looking at Mr. Griffin's  
9 affidavit.

10 A. I've got it.

11 1044 Q. At paragraph 113, the last sentence  
12 says that:

13 "These comparable businesses" --

14 A. Uhm-hmm.

15 1045 Q. Referring to BDCs:

16 -- "generally provide investors with  
17 attractive dividend yields, whereas  
18 Callidus had publicly disclosed its  
19 intention to not declare or pay  
20 dividends in the foreseeable future."

21 A. What he doesn't go on to say is  
22 that we are considered by the market to be a growth  
23 story. I.e., you are investing in us for future  
24 growth. Whereas BDCs are, in effect, more like a bond.  
25 You are getting back your principal/interest over time.

1 There's no new assets acquired.

2 1046 Q. Okay. Different investors will be  
3 attracted to different kinds of companies?

4 A. Fair.

5 1047 Q. Right?

6 A. But someone who is attracted to a  
7 BDC will not be attracted to a Callidus.

8 1048 Q. Right. Someone who's attracted to  
9 a BDC may not be attracted to Callidus and vice versa?

10 A. So to compare the two and say they  
11 are comparable is very difficult.

12 1049 Q. Okay. But, again, Mr. Griffin  
13 explicitly states that distinction?

14 A. No, he doesn't.

15 1050 Q. Between paying dividends or not?

16 A. No, but he doesn't make the  
17 distinction I just made. He's saying they're  
18 comparable.

19 1051 Q. That's not what I am asking,  
20 though.

21 A. No, but I am saying.

22 1052 Q. Yes.

23 A. I'm saying he has said they're  
24 comparable, and you have emphasized that several times.  
25 I'm saying they're not comparable because of one is a

1 growth story and one is more like a bond. A BDC is  
2 like a bond.

3 1053 Q. But I'm saying the difference that  
4 you point out, Mr. Griffin has acknowledged?

5 MR. WINTON: No.

6 BY MR. MILNE-SMITH:

7 1054 Q. Not the way you put it, but he's  
8 acknowledged the different --

9 A. No, no, I don't think he's  
10 acknowledged it in a way that is accurate, that's what  
11 I'm saying.

12 1055 Q. Okay. So he has acknowledged that  
13 they -- that Callidus does not pay dividends --

14 A. Yes.

15 1056 Q. -- he just hasn't characterized it  
16 the way you would like him to?

17 A. I don't think I would -- I don't  
18 agree with what you've just said.

19 1057 Q. Okay. Mr. Griffin has acknowledged  
20 that Callidus doesn't pay dividends?

21 A. That is correct.

22 1058 Q. And that's what you say in your  
23 paragraph 26B, that Callidus does not pay dividends?

24 A. No, but I also say the closed-end  
25 funds are required to return cash to investors, so they

1 are like a bond. There's a payout ratio of 90 percent,  
2 so over time, you're going to get back your cash or  
3 whatever -- subject to whatever losses there are.

4 1059 Q. Okay. And if you're not  
5 distributing your dividends, the only other alternative  
6 is you're reinvesting it for future growth?

7 A. Yes.

8 1060 Q. Okay. So that's implicit in what  
9 Mr. Griffin says? If you are not paying dividends, you  
10 are re-investing for future growth?

11 A. Okay.

12 1061 Q. Fair?

13 A. Yes.

14 1062 Q. Okay. Third point, you say that:  
15 "BDCs tend to finance subordinate debt  
16 in unsecured positions, including  
17 equity, whereas Callidus focusses almost  
18 exclusively on senior secured debt."

19 A. Correct.

20 1063 Q. Now, you'd agree with me that, in  
21 some cases, Callidus has taken equity?

22 A. Only as a result of lending. In  
23 other words, we might end up taking equity in a  
24 realization situation.

25 1064 Q. Right. But not --

1                   A.     We don't invest in it, we receive  
2     it as a result, whereas BDCs do invest in that.

3     1065           Q.     So Callidus winds up holding equity  
4     in some circumstances?

5                   A.     Purely limited, but, yes.

6     1066           Q.     Okay. And your statement that  
7     Callidus focusses almost exclusivity on senior secured  
8     debt, the only way to verify that would be to see the  
9     loan book?

10                  A.     No. I think we've made public  
11     statements in our -- in our IPO and in subsequent  
12     documents that that -- we focus on senior secured debt,  
13     top of the balance sheet.

14     1067           Q.     You have made the statement and  
15     you've also made the statement here, but that's not my  
16     question. My question is the only way to verify the  
17     accuracy of that statement would be to see your loan  
18     book?

19                  A.     And I think that's what  
20     underwriters do as part of the underwriting process.

21     1068           Q.     Okay. But the public can't do  
22     that?

23                  A.     No.

24     1069           Q.     And the fourth point is you  
25     mentioned that BDCs are not taxable --



1                   A.     Although that's not true. They can  
2 do the search that was done by West Face and find that.

3     1070           Q.     That's certainly what we say  
4 happened.

5                   The fourth point is you say BDCs are not  
6 taxable at the corporate level --

7                   A.     Yes.

8     1071           Q.     -- they are taxed at the personal  
9 level. Being taxed at the personal level means you're  
10 avoiding double taxation, correct?

11                  A.     No. What I mean by that is if you  
12 look at the return in Callidus.

13     1072           Q.     Yes.

14                  A.     And let's say it's 20 percent, for  
15 argument's sake, that's post-tax. The BDC references  
16 that I think Mr. Griffin is referring to are before  
17 personal tax so that you have to take out some taxation  
18 to -- say I get 7 percent net of tax, and in Callidus,  
19 I'm getting a 20 percent return net of tax, because we  
20 pay no dividends, as he has pointed out. So I'm just  
21 trying to get to a comparable return.

22     1073           Q.     Okay. You'd agree that --

23                  A.     Both net of tax. That's what I'm  
24 trying to say.

25     1074           Q.     You'd agree that both the BDCs and

1 Callidus provide customized financing solutions to  
2 corporations?

3 A. I have not seen that for a -- have  
4 you got an example of a BDC saying that?

5 1075 Q. I'm just wondering if you are aware  
6 of that from your experience in the market.

7 A. For us, we would say we do  
8 bespoke-type financing. I don't know about BDCs.

9 1076 Q. Okay. You can't say if they do  
10 that or not?

11 A. Don't know.

12 1077 Q. Would you agree that both BDCs and  
13 Callidus lend to a variety of industries?

14 A. Yes.

15 1078 Q. You are not industry-specific?

16 A. We can being agnostic. We do not  
17 lend to E&P -- resource -- resource development or  
18 exploration other than to the extent you want to say  
19 that an aggregate pit is a mine, which I don't think it  
20 is. It's gravel.

21 1079 Q. Okay. And both BDCs and Callidus  
22 rely on income generated from a loan portfolio?

23 A. Yes.

24 1080 Q. And both have portfolio monitoring  
25 policies and procedures in place?

1                   A.     We certainly do. I can't vouch for  
2     BDCs.

3     1081           Q.     Okay. You just don't know one way  
4     or another for BDCs?

5                   A.     Yes. But I don't think -- is that  
6     in an affidavit somewhere?

7     1082           Q.     No, these are propositions I'm  
8     putting to you.

9                   A.     Okay. Thank you.

10    1083           Q.     You say that in your reply  
11    affidavit you addressed some of the more "egregious"  
12    errors about Callidus. Let's look at a couple of  
13    other -- you know what, before we do that, let's take a  
14    break now.

15                           -- RECESS AT 3:46 --

16                           --- RESUMING AT 4:00 ---

17                   BY MR. MILNE-SMITH:

18    1084           Q.     So Mr. Riley, we have been talking  
19    about some of the alleged errors you've pointed out in  
20    your reply affidavit. I want to look at few other  
21    examples of the research that is in Mr. Griffin's  
22    affidavit. Let's start with Exchange Technology Group.  
23    Are you familiar with that company?

24                   A.     Yes.

25    1085           Q.     So Callidus has made a loan to this

1 company?

2 A. Yes.

3 1086 Q. So if you go to volume 4, tab  
4 132 -- so tab 132, and if you go in to page 1064 of the  
5 record, do you see Callidus is the applicant?

6 A. Yes.

7 1087 Q. And this is a report of Duff &  
8 Phelps Canada --

9 A. Yes.

10 1088 Q. -- as proposed receiver?

11 A. Yes.

12 1089 Q. So Duff & Phelps are the party that  
13 Callidus put up to be the receiver, correct?

14 A. Yes.

15 1090 Q. So I can take it what's in here  
16 would be accurate from Callidus' perspective?

17 A. Yes. Although they are a  
18 court-appointed receiver, so there is some degree of  
19 independence. We might put them up, but they are still  
20 a court officer.

21 1091 Q. Right, but that's not going to  
22 detract from the accuracy of it?

23 A. Shouldn't.

24 1092 Q. And this is dated October 25, 2013,  
25 just so you have that.

1 A. Yes.

2 1093 Q. So if you go to page 1073.

3 A. Just before we get there, can I  
4 just look at something for a second?

5 1094 Q. Sure. --

6 A. Okay.

7 1095 Q. So if you go to page 1073, at the  
8 very top of that page there's a numbered point 2 which  
9 says that:

10 "As at October 24, 2013, the XTG Group  
11 was indebted to Callidus in the amount  
12 of 36.97 million including an over  
13 advance for approximately 4.5 million on  
14 the revolving line of credit facility."

15 A. Yes.

16 1096 Q. An over advance, can you explain  
17 what that means?

18 A. An over advance is where you are  
19 lending against -- the easiest way to think of it,  
20 let's assume you have an asset on which you are  
21 prepared to make an original loan of 50 cents on the  
22 dollar, so it's a one dollar asset and you'll advance a  
23 loan of 50.

24 1097 Q. Yes.

25 A. An over advance is where you are

1 prepared to advance on the value in excess of the 50  
2 cents.

3 1098 Q. Right.

4 A. So you may still have collateral  
5 value, but you're over advanced over what you are  
6 anticipating.

7 1099 Q. And if you go to page 1072, just  
8 back one page, you'll see the numbered paragraph 3  
9 says --

10 MR. WINTON: Sorry?

11 THE WITNESS: Got it.

12 BY MR. MILNE-SMITH:

13 1100 Q. It says:

14 "XTG Group is presently not generating  
15 sufficient cash flow to service its  
16 obligations to Callidus --"

17 A. Yes.

18 Q. "-- nor does it have sufficient  
19 funding to continue to operate in the  
20 normal course."

21 A. Yes.

22 1101 Q. So that was correct at that time?

23 A. It would, I can't -- I can't  
24 disagree with it, because it's a statement that is  
25 there. I don't have any information in my mind that's

1       contrary to that.

2       1102               Q.     Okay.   That's all I can ask for.

3                        A.     Yes.

4       1103               Q.     Then if you flip forward to page  
5       1078.

6                        A.     1078, thank you.

7       1104               Q.     Yes, you will there's a heading "CG  
8       Processing Results."

9                        A.     Yes.

10      1105               Q.     I will let you know that earlier in  
11      the report CG is defined as Canaccord Genuity.

12                        A.     Genuity, yes.

13      1106               Q.     So it says the 23 parties executed  
14      the CA confidentiality agreement?

15                        A.     Uhm-hmm, yes.

16      1107               Q.     And it says in the next paragraph  
17      that Canaccord Genuity received five verbal expressions  
18      of interest, three terms sheets, only one of these  
19      threats parties performed due diligence, and that party  
20      passed on the opportunity shortly after it commenced  
21      due diligence.   So the upshot of that is no one was  
22      willing to make an offer, correct?

23                        A.     Yes.

24      1108               Q.     And down at paragraph 5 it's  
25      explaining the only sort of fruit that emerged from the

1 CG process was a private equity firm that made an offer  
2 to purchase the Callidus debt for 17 million?

3 A. Correct.

4 1109 Q. But that was -- less than half of  
5 the value that's been described earlier?

6 A. Yes.

7 1110 Q. That refers to a KPMG process, and  
8 over next page, KPMG process results. Do you see that?

9 A. Yes, but I'm trying to remember  
10 what KPMG was doing.

11 Sorry, it was part of XTG's attempts,  
12 right?

13 1111 Q. That's correct.

14 A. Both 4.1 and 4.2 were -- the events  
15 described there were attempts by exchange.

16 1112 Q. Yes.

17 A. Okay. I just want to make sure  
18 we --

19 1113 Q. They are trying to find an external  
20 party to pay something.

21 A. Yes, exactly, but it's under their  
22 watch.

23 1114 Q. Right.

24 A. Yup.

25 1115 Q. And KPMG turned up only one term



1 sheet which passed on the opportunity after performing  
2 diligence?

3 A. Yes.

4 1116 Q. Then if you go to the next tab,  
5 that's tab 133, we have excerpts from an affidavit of  
6 Craig Boyer?

7 A. I'm sorry, where are we? Thank  
8 you, yes.

9 1117 Q. I think you referred to Mr. Boyer  
10 before. He is a Callidus employee?

11 A. Yes, he is.

12 1118 Q. Vice-president of Callidus?

13 A. Yes, he is, and he is one of our  
14 underwriters, one of the peoples experienced in  
15 insolvency matters.

16 1119 Q. Right. So if you just flip over  
17 the slip sheet to paragraph 56, it says that Duff &  
18 Phelps has prepared a liquidation analysis, the  
19 liquidation analysis illustrates that Callidus will  
20 incur a substantial shortfall on its advances to the  
21 XTG debtors should the XTG debtors business and assets  
22 be liquidated?

23 A. Uhm-hmm.

24 1120 Q. And then over the next page to  
25 paragraph 58.

1 A. Yes.

2 1121 Q. And paragraph 58, it's fair to say,  
3 says that XTG is currently lending -- sorry, Callidus  
4 is lending to XTG in excess of the limits under the  
5 loan agreement?

6 A. Yes.

7 1122 Q. And am I correct that Callidus  
8 ultimately made a stocking horse credit bid for the  
9 assets of XTG Group?

10 A. Correct. If I could just draw your  
11 attention, just as part of my premise in thinking what  
12 you asking me is paragraph 60.

13 1123 Q. Yes.

14 A. "-- where Callidus is prepared to  
15 continue its support of the XTG  
16 debtors for a limited period in order  
17 to fund the implementation of a  
18 restructuring to be carried out  
19 through receivership and stocking  
20 horse sales process --  
21 --- Reporter clarification.

22 1124 Q. Let's just make sure that what I  
23 think is clear to all of us in the room is also clear  
24 to whoever is reading this transcript.

25 A credit bid means that you exchange

1 your debt for equity in the company?

2 A. Well, it -- what you do is you say  
3 I -- I will bid my paper, let's say it's \$20.

4 1125 Q. Right.

5 A. For all of the assets of the  
6 company.

7 1126 Q. Right.

8 A. Every aspect of the company.

9 1127 Q. Right.

10 A. You can think of -- it also  
11 actually I think in this case probably consider also  
12 the stocking horse bid. If someone wants to come along  
13 and bid \$21, we are gone.

14 1128 Q. Right. So Callidus said we will  
15 give up our -- the indebtedness that the company owes  
16 us, and we get everything in the company?

17 A. Correct.

18 1129 Q. And if anybody wants to pay more,  
19 be our guest?

20 A. Yes.

21 1130 Q. And --

22 A. But in the context of believing  
23 that a restructuring would increase value returns to  
24 us.

25 1131 Q. Well, at this point you didn't

1 really have any alternative, correct?

2 A. No. We could have, we could have  
3 let it go into bankruptcy.

4 1132 Q. Right. And then you would have  
5 lost a lot of money?

6 A. Probably.

7 1133 Q. Okay. So then if you go to the  
8 next tab, paragraph 134, this is the first report of  
9 Duff & Phelps on November 19, 2013, after they have  
10 been appointed as receiver.

11 A. Yes.

12 1134 Q. Can you flip to page 1096 of the  
13 record.

14 A. Yes.

15 1135 Q. Sorry, just to be fair in 1095,  
16 just to situate you, this is describing the sale  
17 process.

18 A. Uhm-hmm.

19 1136 Q. So this is the sale. We talked  
20 earlier about the sale process run by XTG. This is now  
21 the sale process being run by Duff and Phelps.

22 A. Yup.

23 1137 Q. So at the top of the page 1096?

24 A. Sorry, I meant yes.

25 1138 Q. Top of 1096 they refer to 88

1 perspective purchasers?

2 A. This was the teaser, right?

3 1139 Q. Yes.

4 A. Yes, yes.

5 1140 Q. And then when you go down to look  
6 at the results, it says that three parties executed a  
7 confidentiality agreement?

8 A. Uhm-hmm.

9 1141 Q. And no offers were submitted?

10 A. Uhm-hmm.

11 1142 Q. Yes?

12 A. Yes.

13 1143 Q. And so the stocking horse bid was  
14 final, that went through?

15 A. Yes, but can I -- can I spend a  
16 moment on this?

17 1144 Q. Sure.

18 A. Typically when you go into a  
19 court-appointed receiver, you have to demonstrate to  
20 the Court that you have tried to market the company.

21 1145 Q. Yes.

22 A. When I say company, it can be  
23 shares or assets, market the company to the universe of  
24 people.

25 1146 Q. Right.

1                   A.     And you have -- that takes an  
2     extended period of time, and there has to be a  
3     confidential information memorandum and all of those  
4     things that go towards a sale process that would  
5     normally be required by the court. In certain  
6     circumstances where there has been efforts by the  
7     debtor company to market itself, they will allow for a  
8     truncated sale process. In this case Mr. Justice  
9     Morawetz was satisfied that there had been enough  
10    efforts that we would not be able to get more than our  
11    credit, more than we were owed on our credit. So  
12    that's -- you have to keep it in the context of, we  
13    were trying to get an expedited court-appointed  
14    receiver.

15       1147           Q.     Right. And how much money did  
16    Callidus ultimately advance to XTG?

17                   A.     I --

18                   MR. WINTON: If it's not already in the  
19    public record, we are not saying it here.

20                   BY MR. MILNE-SMITH:

21       1148           Q.     All I know is 36.97 million which  
22    is --

23                   A.     That was in these materials?

24       1149           Q.     Yes.

25    R/F             MR. WINTON: Then we can't answer that

1 question, other than to say if it's in the public  
2 materials, it is in the public materials and we can't  
3 say anything else.

4 BY MR. MILNE-SMITH:

5 1150 Q. Okay. And we then go to tab 136.

6 A. Uhm-hmm.

7 1151 Q. This is a receiver's certificate.

8 A. Yes.

9 1152 Q. And this is essentially approving  
10 the transaction that was described in the previous  
11 receiver's report we just looked at, correct?

12 A. Correct, yes.

13 1153 Q. So this is over a year later?

14 A. Yeah. It would be -- I can't  
15 remember when the order was made, but this is  
16 January 2nd, 2015.

17 1154 Q. Right. So it says that the -- if  
18 you look at paragraph B of the certificate on page 1104  
19 of the record, it says there was an order of the court  
20 dated November 22nd --

21 A. Yes.

22 1155 Q. -- 2013?

23 A. Uhm-hmm.

24 1156 Q. Approving the asset purchase  
25 agreement?

1 A. Uhm-hmm.

2 1157 Q. And so the closing -- the receiver  
3 doesn't certify the closing of the transaction until  
4 January 2, 2015?

5 A. Yes.

6 1158 Q. Does Callidus continue to hold the  
7 equity of XTG Group?

8 A. Today?

9 1159 Q. Yes.

10 A. Yes, we do.

11 1160 Q. So you haven't realized anything on  
12 that investment to date?

13 A. No, we have not. And I think it  
14 will be -- it's classified as an asset held for sale on  
15 our books.

16 1161 Q. Can you produce financial  
17 statements or anything else that might indicate that  
18 the asset will return anything of value?

19 A. Not publicly available.

20 MR. WINTON: I think there are already  
21 published financial statements that refer to subsequent  
22 events, because this is a subsequent event --

23 THE WITNESS: Those are our financial  
24 statements.

25 MR. WINTON: Right. You're asking for



1 financial statements of?

2 BY MR. MILNE-SMITH:

3 1162 Q. XTG.

4 MR. WINTON: No.

5 THE WITNESS: No.

6 BY MR. MILNE-SMITH:

7 1163 Q. Okay. If you go back to tab 132,  
8 this was the original report of the proposed receiver  
9 on October 25th, 2013. If you go to page 1080, at the  
10 bottom, at the very bottom of page 1080 it says that  
11 Callidus would provide "new or amended credit  
12 facilities to the purchaser to facilitate its  
13 restructuring and future growth." Do you see that?

14 A. Yes, I do see that.

15 1164 Q. So has Callidus, in fact, advanced  
16 additional funds to XTG to facilitate its restructuring  
17 and future growth?

18 MR. WINTON: Is that public information?

19 THE WITNESS: No.

20 R/F MR. WINTON: We can't answer that.

21 BY MR. MILNE-SMITH:

22 1165 Q. Okay.

23 A. What I can say is that we have  
24 restructured exchange, as is evidenced by the  
25 receiver's certificate.

1       1166               Q.     Okay. And how did Callidus value  
2     XTG's loan in its financial statements at the time of  
3     the IPO?

4                       A.     I don't -- I don't know how it was  
5     valued.

6       1167               Q.     Do you know how it's currently  
7     valued?

8                       A.     Well, an asset held for sale is  
9     based on enterprise value.

10      1168               Q.     And how do you determine the  
11     enterprise value?

12                      A.     Enterprise value is a function of  
13     the EBITDA of the enterprise and the appropriate  
14     multiplier.

15      1169               Q.     What multiplier do you apply?

16                      A.     I think that's not in the public  
17     domain, but the valuation is reviewed, in our case, by  
18     PWC and KPMG. When we have -- in Catalyst, I suppose  
19     we've now taking the practice to Callidus. When we  
20     value assets for our purposes for public reporting or  
21     even reporting to LPs, we have two people evaluate it:  
22     PWC who is external and provides third-party  
23     verification and then it's reviewed as KPMG as part of  
24     their audit process.

25      1170               Q.     Do you know if XTG, the XTG asset

1 is held at a premium to its book value?

2 MR. WINTON: I don't think we can answer  
3 that specifically, but I think -- I don't think that's  
4 possible, is it?

5 THE WITNESS: Sure. You can -- in fact,  
6 it's common. Most companies, the value of the company  
7 is in excess of the book value of its assets. Can I  
8 ask you why you are asking that question? I'm not  
9 sure -- I don't want to say something that's wrong  
10 because I don't understand your question.

11 BY MR. MILNE-SMITH:

12 1171 Q. I'm just interested in testing the  
13 assertion that Mr. Griffin's research with respect to  
14 XTG was inaccurate.

15 A. He had no basis to establish a  
16 value one way or another for XTG.

17 1172 Q. Okay.

18 A. And didn't provide any that I  
19 recall in his report. Indeed if you're asking that  
20 question, if I can make the observation that the  
21 attempt to value was not based -- or the attempt -- the  
22 observation on the loan is not based on any valuations  
23 that I can see. So, in other words, there were  
24 observations about credits without any -- without  
25 appointing any values. Just an observation.

1       1173               Q.     Because Mr. Griffin didn't have  
2     access to the nonpublic information he needed to do  
3     that.

4                       A.     Yup, so I guess you would say --  
5     you would agree with me that he didn't have a basis for  
6     established values. He could ask questions, but not  
7     establish values.

8       1174               Q.     I don't know where Mr. Griffin  
9     purported to do that.

10                      A.     Okay.

11       1175               Q.     But we can each interpret it our  
12     way own way.

13                      A.     Okay.

14       1176               Q.     Another loan that West Face  
15     identified was Sherwood Hockey. Is that a loan by  
16     Callidus?

17                      A.     Sherwood was an asset acquired as  
18     part of an original purchase of distressed assets from  
19     one of the Canadian charter banks. They had financed a  
20     particular entity that was, in turn, lending to  
21     companies one of which was Sherwood Hockey.

22       1177               Q.     Right. If we look at the Callidus  
23     IPO -- sorry, the Callidus prospectus, this is tab 33  
24     in Volume 2 of Mr. Griffin's materials.

25                      A.     Yes.

1 MR. WINTON: There's some flagging and  
2 highlighting, but no comments.

3 MR. MILNE-SMITH: That's fine.

4 MR. WINTON: Okay. Which page?

5 BY MR. MILNE-SMITH:

6 1178 Q. Page 623.

7 A. And where are we?

8 1179 Q. Page 623 under, "Assets held for  
9 sale."

10 A. Yes.

11 1180 Q. So this says during 2011 the  
12 company received 100 percent of the common shares of a  
13 borrower in exchange for a loan valued at 12.6 million.  
14 "The asset held for sale is a corporation which  
15 distributes athletic equipment." That's Sherwood?

16 A. Yes.

17 1181 Q. Okay. So this is another case  
18 where you held equity?

19 A. Yes, but -- but be careful though.  
20 We didn't pay anything for that equity. When we  
21 acquired the assets from the Canadian chartered bank,  
22 we were handed, in effect, a loan plus the shares of  
23 that company.

24 1182 Q. Right.

25 A. That's -- so we didn't -- we

1 didn't -- we were -- it was part of our overall  
2 acquisition of a portfolio in various states.

3 1183 Q. Okay. You paid money to acquire  
4 that portfolio?

5 A. We -- we --

6 1184 Q. Paid valuable assets?

7 A. Yeah, we paid value to the bank in  
8 question.

9 1185 Q. Right.

10 A. At -- I think we acquired  
11 everything at a discount, an overall discount.

12 1186 Q. I think you said earlier that XTG  
13 was held on the books as assets for sale?

14 A. Asset held for sale.

15 1187 Q. Asset held for sale. Why wouldn't  
16 it show up in this note on page 623?

17 A. What date was that?

18 1188 Q. December 31, 2013.

19 A. Because it's -- these, this is year  
20 ended 2013?

21 1189 Q. Yes.

22 A. So the date on which the  
23 receivership was completed was, I believe, 2015.

24 1190 Q. Okay. So it's not as of the date  
25 of the approval. It has to be when it closes.

1                   A.     Well, yes. Well, XTG at that time  
2     was a functioning loan, right. In 2013? End of --  
3     during this period for the period 21 -- 2012, 2013.

4     1191           Q.     So you will recall, though, when we  
5     look at XTG at the end of 2013, the sale processes  
6     had -- run by the company had failed --

7                   A.     Yes.

8     1192           Q.     -- with respect to CG and KPMG?

9                   A.     Yes.

10    1193           Q.     And no buyer had been produced by  
11    stocking horse bid process run by Duff and Phelps,  
12    correct?

13                  A.     Uhm-hmm.

14    1194           Q.     And the only person willing to pay  
15    anything was paying 17 million, which was less than  
16    half the value of the loan?

17                  A.     Yes.

18    1195           Q.     But on your books that was still a  
19    performing loan?

20                  A.     I -- there might be loan lost  
21    provisions in here, but I can't -- I don't recall  
22    whether there were any attributions of loan lost  
23    provisions against that particular loan at that time.

24    1196           Q.     Okay.

25                  A.     The other is that these statements

1 are -- these in the context of restating the  
2 financials. In, during the period -- until the IPO --

3 1197 Q. Yes.

4 A. -- exchange was a loan held  
5 directly -- in effect, directly by the funds.

6 1198 Q. Okay.

7 A. So these were restatements of the  
8 financial statements which KPMG was satisfied as to how  
9 we characterized the assets.

10 1199 Q. And Sherwood Hockey was ultimately  
11 sold to a company called Gracious Living?

12 A. Yes.

13 1200 Q. For how much?

14 A. I don't recall.

15 1201 Q. Would you undertake to advise?

16 U/A MR. WINTON: I'll take that under  
17 advisement.

18 BY MR. MILNE-SMITH:

19 1202 Q. The principals of that company were  
20 Enzo Macri and Vito Galloro?

21 A. Yes.

22 1203 Q. Did you have any prior relationship  
23 with those individuals?

24 A. I did. I had acted as their  
25 counsel. They were part of Royal Group Technologies



1 and I had acted for Royal Group Technologies and  
2 subsequent to its evolution into Georgia Pacific. I  
3 did some work for Gracious Living, but not much.

4 1204 Q. Okay. At Exhibit D to your reply  
5 affidavit -- that's the May 1 affidavit -- you have  
6 included correspondence between -- I believe it's  
7 between myself and Mr. Winton actually.

8 MR. WINTON: This is the May affidavit?

9 MR. MILNE-SMITH: No. This is the  
10 May 1, the reply.

11 MR. WINTON: The reply affidavit.

12 MR. MILNE-SMITH: D as in Donald.

13 MR. WINTON: D. Okay.

14 THE WITNESS: Can I look at this?

15 BY MR. MILNE-SMITH:

16 1205 Q. Yes. And it's between myself and  
17 Mr. Winton or Mr. DiPucchio.

18 A. Okay.

19 1206 Q. Just to situate you, there's an  
20 e-mail chain here.

21 This is correspondence surrounding the  
22 filing of Mr. Griffin's affidavit, and it was sent  
23 electronically to your counsel before it was filed.

24 A. Okay.

25 1207 Q. And your counsel took objection to

1 the contents. And you'll see --

2 A. Yes. This is over tab 46?

3 1208 Q. Page 46.

4 A. Okay.

5 1209 Q. Sorry -- well, it's not just about  
6 tab 46. It's about the entire record.

7 A. Okay.

8 1210 Q. So we're at page 45 of your record.

9 A. Yes.

10 1211 Q. I guess you can go over to 44 and  
11 see the date. It's a March 9 e-mail from me. You will  
12 see the last paragraph of --

13 A. Sorry, I'm having trouble getting  
14 this in focus. So this is March 9? You to --

15 1212 Q. Yes.

16 A. Okay.

17 MR. WINTON: Over here, it's the chain  
18 so it's reading backwards.

19 BY MR. MILNE-SMITH:

20 1213 Q. Right. So it's March 9 from me to  
21 Rocco, and then you have to go back to page 45 to see  
22 the content. And the last paragraph says:

23 "While we see no merit to your  
24 client's attempt to control the court  
25 record, we will defer filing West Face's

1                   responding motion record until Wednesday  
2                   at 10 a.m. so that you may obtain  
3                   instructions in respect of the  
4                   foregoing."

5                   A.     Sorry, so I'm having -- what date  
6     would Wednesday be?

7     1214           Q.     I will tell you.

8                   A.     Sorry, I just ...

9     1215           Q.     I will tell you. It was March 9th,  
10    that was the Monday. So offering to defer for two  
11    days. I'm just giving you all the context here before  
12    I asked the ultimate question, okay.

13                  A.     Is it okay to look through all the  
14    e-mails?

15    1216           Q.     Sure. I'm going to walk you  
16    through it.

17                  A.     Why don't you do that. I won't  
18    take the time.

19    1217           Q.     So then Mr. Winton's reply comes on  
20    March the 12th, so that's on page 44 now.

21                  A.     That's -- how many days later?

22    1218           Q.     Three days later.

23                  A.     Oh, there -- sorry, okay. Yes.

24    1219           Q.     So you'll see Mr. Winton does not  
25    accept the -- Catalyst does not accept the offer that I

1 had set out. It says that:

2 "Catalyst's position is that the  
3 Griffin affidavit contains material  
4 misstatements of fact about Callidus.  
5 If West Face proceeds to file the  
6 Griffin affidavit in the public record,  
7 Catalyst will be sending a copy of the  
8 affidavit to the OSC to deal with that  
9 matter."

10 A. Hmm.

11 1220 Q. Did Catalyst, in fact, do that?

12 A. We had discussions with the OSC,  
13 but the ultimate result, as you know, in enforcement  
14 they don't tell you what's happening.

15 1221 Q. Okay. So you are not aware of them  
16 doing anything in response?

17 A. No.

18 1222 Q. And the next paragraph:

19 "Catalyst was not willing to advise  
20 West Face of what the alleged  
21 misstatements were."

22 A. Yes.

23 1223 Q. And then the last paragraph says  
24 that if West Face agreed to keep the Griffin affidavit  
25 out of the public record by agreeing to a sealing

1 order, Catalyst will agree to seal its reply to that  
2 affidavit.

3 A. Correct.

4 1224 Q. And then if you go to the next  
5 e-mail in the chain on paragraph 43 --

6 A. Okay.

7 1225 Q. -- Mr. Winton -- on page 43, sorry,  
8 Mr. Winton clarifies:

9 "The suggestion that West Face can  
10 file the Griffin affidavit under seal  
11 and Catalyst will file its reply under  
12 seal is a suggestion, not a firm offer.  
13 To the extent the e-mail below suggests  
14 otherwise, I misstated Catalyst's  
15 position."

16 A. Okay.

17 1226 Q. So is it fair to say that  
18 Catalyst's position was that West Face should file  
19 under seal but Catalyst would not undertake to do the  
20 same?

21 A. I think -- well, you tell me. I  
22 don't remember the context of this.

23 MR. WINTON: That's not what is being  
24 suggested here. It's being suggesting if the parties  
25 can agree the parties can agree, but Catalyst wasn't

1 willing to bind itself yet until it understood what  
2 West Face, if West Face was interested in that  
3 suggestion. At that point we would seek instructions.

4 BY MR. MILNE-SMITH:

5 1227 Q. Right. Is it fair to say Catalyst  
6 took no steps so seal the record?

7 MR. WINTON: Yes.

8 BY MR. MILNE-SMITH:

9 1228 Q. If we go to paragraph 12 of the  
10 reply affidavit.

11 A. I think it's fair to say from my  
12 point of view the cat was out of the bag.

13 MR. WINTON: Paragraph 12?

14 MR. MILNE-SMITH: Paragraph 12.

15 MR. WINTON: Of the affidavit?

16 MR. MILNE-SMITH: Of the affidavit.

17 That's on page 4.

18 MR. WINTON: Yes.

19 BY MR. MILNE-SMITH:

20 1229 Q. The last sentence there says:

21 "Griffin also implicitly admits  
22 without giving details that West Face  
23 circulated to third parties its research  
24 with respect to Catalyst."

25 Where do you say Mr. Griffin made that

1 admission?

2 A. May I go back? Can I also see  
3 his -- his testimony? If you can give me his  
4 testimony.

5 1230 Q. Just to clear, Mr. Riley, you said  
6 this before you had his testimony, so you couldn't --

7 A. I agree with that.

8 1231 Q. Okay. So you are not referring to  
9 anything in his testimony when you swore your reply  
10 affidavit?

11 A. I agree with that.

12 MR. WINTON: If I may?

13 MR. MILNE-SMITH: Yes.

14 MR. WINTON: I think it's implicit in  
15 paragraph 120 that the preparation of the PowerPoint  
16 document which is the Callidus' analysis --

17 MR. MILNE-SMITH: Yes.

18 MR. WINTON: -- is the report that has  
19 the appearance and trappings of being presented for  
20 public consumption and not for internal use.

21 THE WITNESS: That was, I think, my --  
22 one doesn't prepare a deck of that number of pages for  
23 an internal review and also, in effect, making a case  
24 for the public as opposed to case for internal position  
25 given that they had already put on their short -- I

1 don't know -- I don't know when they started -- I don't  
2 know they completed their research, but they certainly  
3 said they put their short on before they did the  
4 research.

5 BY MR. MILNE-SMITH:

6 1232 Q. They don't say that, sir, but we  
7 will leave that for the judge to determine.

8 A. Okay.

9 1233 Q. I take it, sir, you'd agree with me  
10 that once you have opened a short position you need to  
11 continue tracking the stock so you can decide when to  
12 consolidate it?

13 A. I agree.

14 1234 Q. So it would certainly make sense  
15 for West Face, after it had opened its short position,  
16 to continue following and updating its research on  
17 Callidus?

18 A. I agree with that.

19 1235 Q. You never worked at West Face  
20 obviously?

21 A. No.

22 1236 Q. You have no idea how they present  
23 things externally?

24 A. Sorry, sorry. No, I have not.

25 It's only -- sorry, it's only I understand why you are



1 asking the question.

2 1237 Q. So you have no idea how they might  
3 present things internally?

4 A. No, I do not.

5 1238 Q. And you aren't able to point to  
6 anyone they disclose some version of that report to  
7 outside of West Face?

8 A. I would like confirmation that they  
9 did not share it, share the substance and issues of it  
10 with Veritas.

11 1239 Q. That's been the subject of  
12 examination of Mr. Griffin. But I'm asking about what  
13 you are aware. So you are not aware of them giving it  
14 to anybody?

15 A. No. Well I am aware of several  
16 people who were -- referenced that they were, that  
17 there was discussions with West Face as to certain  
18 aspects of the report. Whether the report was finished  
19 or not, I don't know.

20 1240 Q. Who was that?

21 A. Certain of our investors.

22 1241 Q. Who?

23 A. Do I have to --

24 U/A MR. WINTON: We can -- we will take it  
25 under advisement. Probably refuse it, but ...

1 BY MR. MILNE-SMITH:

2 1242 Q. Okay. Just to be clear, the  
3 paragraph that you say is where he implicitly admits to  
4 circulating it to third parties is paragraph 120?

5 A. I believe that is correct. Can I  
6 go back and refresh?

7 1243 Q. Yes.

8 Mr. Riley, Catalyst has taken the  
9 position in this litigation that West Face --

10 A. Sorry, can I go back to it again  
11 for a second?

12 1244 Q. Sure.

13 A. Okay. Thank you.

14 1245 Q. So Catalyst has taken the position  
15 in this litigation that West Face is a competitor of  
16 Catalyst, right?

17 A. Yes.

18 1246 Q. So they -- one of the things they  
19 compete for is investments?

20 A. Yes.

21 1247 Q. And is it also fair to say that  
22 your position is they compete for investors, people who  
23 are willing to give you money?

24 A. I don't know who their investors  
25 are. I know who our investors are, but I can't -- I

1 can't say. Because we have a certain type of  
2 investors; they may have different type.

3 1248 Q. Okay. You can't say one way or  
4 another?

5 A. No.

6 1249 Q. To the extent that West Face's  
7 investment in Wind were to be impeded or harmed, that  
8 would lower West Face's value and perception in the  
9 market, fair to say?

10 A. I'm sorry. What do you mean by  
11 impeded or harmed?

12 1250 Q. The value of it were diminished.

13 A. In what way?

14 1251 Q. Well, for example, by --

15 A. Of Wind?

16 1252 Q. For example, by the relief sought  
17 in this motion being granted?

18 A. It depends whether or not the  
19 relief is -- if the relief is granted --

20 1253 Q. Yes?

21 A. -- then it's not their value.

22 Right? In other words, if we are successful in getting  
23 result in trust, it's not diminished. It's not their  
24 investment.

25 1254 Q. Let's distinguish between the

1 motion and the action. So in the action you are  
2 seeking constructive trust.

3 A. Got you.

4 1255 Q. In the motion you are seeking  
5 injunctive relief to prevent them from exercising any  
6 control over the asset?

7 A. Yes.

8 1256 Q. Or any influence over the asset?

9 A. Yes.

10 1257 Q. So that would --

11 A. Yes.

12 1258 Q. -- harm West Face if that were to  
13 happen?

14 A. I don't know if that's true.

15 1259 Q. Okay. Fair to say that if an order  
16 was made enjoining West Face from playing any role in  
17 Wind, that would have a negative impact on West Face's  
18 standing in the market?

19 A. It may. I don't know how I can  
20 assess that because it depends ultimately on the  
21 outcome of the action.

22 1260 Q. And to the extent that West Face,  
23 an alleged competitive of Catalyst, were to be harmed,  
24 that would also help Catalyst, correct?

25 A. Again, I can't say.

1       1261               Q.    As an investment manager, Catalyst  
2       has an incentive to maximize returns on investments in  
3       its funds, obviously?

4                       A.    Yes, that's fair enough.

5       1262               Q.    And you have no reason to dispute  
6       that West Face would have the same incentives?

7                       A.    Yes.

8       1263               Q.    So West Face would obviously have  
9       an incentive ot maximize the value of its investment in  
10      Wind?

11                      A.    Yes.

12      1264               Q.    Let's take a break there. I want  
13      to check a couple of things and then we will close up.

14                               -- RECESS AT 4:35 --

15                               -- RESUME AT 4:39 --

16                               BY MR. MILNE-SMITH:

17      1265               Q.    Mr. Riley, I thank you for your  
18      patience. Just one last point. Earlier in your  
19      cross-examination I referred to earnings not meeting  
20      expectations from the May 31st?

21                      A.    Yes.

22      1266               Q.    And I just wanted to give you an  
23      example of that.

24                      A.    March 31, sorry.

25      1267               Q.    March 31, yes, I'm sorry.

1 A. That's okay.

2 1268 Q. That is an analyst report from M.  
3 Partners. You recognize them as one of the companies  
4 that -- one of the analysts that follows Callidus?

5 A. Uhm-hmm.

6 1269 Q. So this is dated April 2, 2015. Do  
7 you follow analyst reports for Callidus?

8 A. I look at them. I don't follow  
9 them religiously. I kind of look at them from time to  
10 time.

11 1270 Q. Okay, but you presumably --

12 A. We do. Catalyst, or Callidus and  
13 Catalyst are well aware of the analyst reports.

14 1271 Q. So you can recognize this as one of  
15 the reports following the release of the Q4?

16 A. Yes, I'm trying to remember. M  
17 Partners chose to follow us. I don't think we had  
18 any -- they were not part of the original underwriting  
19 group.

20 1272 Q. Right. So you will see that it  
21 says, just at the very top of the text, it says:

22 "As a result of reduced gross yield  
23 expectations higher provisions to  
24 reflect risk in the book and a lower  
25 target multiple, our target price moves

1 to \$24 from \$34."

2 A. Yes.

3 1273 Q. So what that means to a layperson  
4 is that their projection for the future share price of  
5 Callidus dropped from 34 to 22?

6 A. On their methodology, and I'm not  
7 here to debate. Every -- I think the other analysts  
8 are looking -- I think the consensus is 25. Did you  
9 look at that? Are you looking at just -- this is an  
10 isolated report.

11 1274 Q. There are many different numbers  
12 and I think that goes to the point we discussed earlier  
13 about how analysts can look at the same facts and come  
14 to different projection.

15 A. Although again, I don't recall. I  
16 know -- I don't recall the details of this report. Can  
17 I look at it for a second to try to help you with the  
18 question you are asking me?

19 1275 Q. Sure. In the interim I will mark  
20 this as Exhibit 7, the morning note from M Partners  
21 dated April 2, 2015.

22 EXHIBIT NO. 7: Morning note from M  
23 Partners dated April 2, 2015

24 THE WITNESS: Yes, without going through  
25 this in detail right now, if you go through it --

1     there's some, if you look at the estimates that they  
2     had for net income and our actual --

3                     BY MR. MILNE-SMITH:

4     1276             Q.     Where are you looking?

5                     A.     Just looking in the table, the Q4,  
6     14 results.

7     1277             Q.     Yes.

8                     A.     Trying to remember whether they  
9     were looking at Q14 [sic] or full year.

10    1278             Q.     Looks like Q4.

11                     A.     It's Q4? I'm not sure. Oh, there  
12    we are. Review, okay. This is Q4. If you look at  
13    their estimate for total revenue and actual --

14    1279             Q.     Yes.

15                     A.     -- net income, ours was actually  
16    higher, earnings per share was higher, gross loans  
17    receivable was -- give a push, right. Average  
18    outstandings we were higher than they were.

19    1280             Q.     Sorry, total revenue was lower.  
20    Actual is 33.5, consensus was 34.39.

21                     A.     Yes, and you'll see that -- sorry,  
22    you're quite right. You will see there's a slight  
23    compression of gross yield as they go on to talk about.

24    1281             Q.     Yes.

25                     A.     What people are starting to talk



1 about is we have a mixture of Callidus light and  
2 Callidus. We have two types, two general products.  
3 And in that particular quarter there was more Callidus  
4 light. And as we pointed out to the market, that  
5 number will go up and down, the gross yield, because it  
6 depends on what -- how much of the light product  
7 compared to the regular product.

8 So that's what I think, that's what --  
9 they are saying that will perpetuate forever. We don't  
10 believe in that. They are saying until we see -- I  
11 think what they are saying is until we see proof over  
12 time, they are just saying what's your return, not any  
13 other issue than that. So I can't remember why we  
14 started this analysis.

15 1282 Q. And to be fair, the gross yield  
16 compression is something that Mr. Griffin had -- or  
17 that West Face had predicted in the, what you call the  
18 exhibit 46 report.

19 A. But that wasn't -- he did no  
20 analysis as to how much was Callidus light and how much  
21 regular Callidus.

22 1283 Q. Yes, but just to get the basic  
23 facts on the record, West Face had predicted that  
24 Callidus light loans would take up, in the future, a  
25 bigger proportion and that Callidus loans would take up

1 a smaller portion resulting in overall reduction of  
2 gross yields?

3 A. He had no basis to make that  
4 conclusion. That just happens to be in this quarter we  
5 did more Callidus light.

6 1284 Q. Again, that's not my question.  
7 It's not whether he had a basis to say it. It's that  
8 that's what he predicted.

9 A. Can you show me his prediction?  
10 That doesn't necessarily reduce our  
11 returns, because with Callidus light you can use more  
12 leverage in the book.

13 1285 Q. Again, not my question.

14 A. I'm just -- you started down this  
15 line of questioning, so I just want to make sure we  
16 have facts on the record.

17 1286 Q. Look at page 784 of the record. So  
18 it says:

19 "Analysts currently expect Callidus  
20 will have a gross yield of approximately  
21 19.4 percent in 2016."

22 It says:

23 "Analysts underestimate the diluted  
24 impact that competition in Callidus  
25 light will have on gross yields."

1                               So whether, whether you think he was  
2       justified in doing so or not, he was predicting that  
3       gross yields would come down?

4                               A.     Could you please read the next  
5       point?

6                               Q.    "For reasons already elucidated,  
7       the traditional Callidus loan book is  
8       very difficult to monitor and scale.  
9       Therefore, Callidus light will likely  
10      outpace growth in the traditional  
11      Callidus loan book and become a  
12      larger portion of the loan book."

13                              A.    And could you tell me how he gets  
14      to those elucidations?

15       1287                Q.    That's not the purpose of this  
16      cross-examination, sir. I'm just trying to make a  
17      simple factual point. Let's just be clear on this.  
18      The Court isn't being asked to determine whether West  
19      Face was correct or not in its analysis of Callidus.  
20      All the Court is being -- all we're looking at here is  
21      a simple question of whether or not the gross yield  
22      compression referred to in Exhibit 7 is the same  
23      phenomenon that's being referred to in page 784,  
24      regardless of whether you think it's hogwash or not.

25                              A.    I don't think it is. I think that

1 he is saying that over time it will be for sure that it  
2 is going to compress. This is taking a one quarter  
3 compression and implying that, he has implied that that  
4 kind of compression will last forever. This is just  
5 one notation of a compression.

6 1288 Q. Well, the M Partner says "gross  
7 yield as a result of Callidus light will -- well in  
8 excess of expectations and we expect it to continue."

9 A. To be compressed?

10 1289 Q. Yes. That's what it says.

11 A. Okay. But this is the only report  
12 you are going to put in?

13 1290 Q. Yes.

14 A. Okay.

15 1291 Q. And this report agrees with the  
16 predictions made by West Face on gross yield  
17 compressions.

18 A. Dated April 2.

19 1292 Q. Yes. At least one analyst agreed,  
20 right?

21 A. Subsequent to, not before.

22 1293 Q. After seeing the results.

23 A. In that one quarter.

24 1294 Q. Yes.

25 A. Okay.

1           1295           Q.     Subject to the undertakings and  
2           questions taken under advisement, those are my  
3           questions.   Thank you.

4                       MR. WINTON:   I do have a brief re-exam.

5                       RE-EXAMINATION BY MR. WINTON:

6           1296           Q.     Mr. Riley, you recall that earlier  
7           today Mr. Milne-Smith asked you some questions  
8           regarding Catalyst's communication with Industry  
9           Canada?

10                      A.     Yes.

11           1297           Q.     And one of those questions  
12           concerned the discussions regarding concessions that  
13           Catalyst would be seeking from Industry Canada?

14                      A.     Yes.

15           1298           Q.     You recall that in particular he  
16           posited to you that any discussions with Industry  
17           Canada that took place on May 24th or thereafter would  
18           not be within the knowledge of Mr. Moyse.

19                      A.     That's correct.

20           1299           Q.     You agreed with that?

21                      A.     I did.

22           1300           Q.     My question for you is, when did  
23           the discussions with Industry Canada regarding  
24           concessions Catalyst may be seeking first take place?

25                      A.     Prior to that date.   On several

1 occasions prior to that date.

2 1301 Q. You recall that this afternoon  
3 Mr. Milne-Smith asked you questions regarding Arthon?

4 A. Yes.

5 1302 Q. In particular he brought you to at  
6 least one, I think two, maybe three of the monitor's  
7 report that were filed in that proceeding?

8 A. Yes, he did.

9 1303 Q. And you recall that he brought you  
10 to the monitor's report that was filed in late January  
11 of 2015?

12 A. Sorry what was the date again?

13 1304 Q. Late January 2015.

14 A. Yes, I recall that one.

15 1305 Q. The 11 --

16 MR. MILNE-SMITH: The 11th report.

17 BY MR. WINTON:

18 1306 Q. And the 12th report which is an  
19 exhibit to this examination --

20 A. Yes, yes.

21 1307 Q. -- which is Exhibit 6 is dated  
22 March 17th, 2015?

23 A. Correct.

24 1308 Q. This is just to situate where we  
25 are going here. To your knowledge what other documents

1 are publicly posted on a monitor's website in relation  
2 to a CCAA proceeding?

3 A. I believe the bankruptcy filings  
4 would have been posted as part of the court record. In  
5 fact, and I can't speak for Alvarez' filing, but you  
6 have all of the pleadings made, you have the reports,  
7 and you have any of the orders made that relate to it,  
8 so one of those would be the bankruptcy order for  
9 Coalmont.

10 1309 Q. Now you recall in relation to the  
11 discussions concerning BDCs, Mr. Milne-Smith asked you  
12 certain questions about Catalyst's loan behaviour and  
13 I'm going to review them it summary for you. One, he  
14 made mention of the fact that Catalyst loans to a  
15 variety of industries, and you agreed with that  
16 statement?

17 A. Yes.

18 1310 Q. Two, he suggested that Callidus  
19 relies on the income from its loan portfolio?

20 A. Yes.

21 1311 Q. Third was that Callidus has  
22 portfolio monitoring policies and procedures in place?

23 A. Yes.

24 1312 Q. Aside from BDCs, are you aware of  
25 any other lending institutions that would share those

1 characteristics?

2 A. Banks.

3 MR. WINTON: No further questions.

4 MR. MILNE-SMITH: Okay.

5 -- Whereupon the cross-examination concluded at  
6 4:52 p.m.

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REPORTER'S CERTIFICATE

I, TERRY WOOD, RPR, 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 19th day of May, 2015.

*Terry Wood*

NEESONS

PER: TERRY WOOD, RPR, CSR

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