

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

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JAMES A. RILEY

July 29, 2014

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1 Court File No. CV-14-507120

2  
3 ONTARIO

4 SUPERIOR COURT OF JUSTICE

5 B E T W E E N:

6  
7 THE CATALYST CAPITAL GROUP INC.

8 Plaintiff

9 - and -

10  
11 BRANDON MOYSE and WEST FACE CAPITAL INC.

12 Defendants

13  
14 -----  
15 --- This is the Cross-Examination of JAMES A. RILEY  
16 on his affidavits sworn June 26, 2014, July 14,  
17 2014 and July 28, 2014, taken at the offices of  
18 Neeson & Associates Court Reporting and Captioning  
19 Inc., 141 Adelaide Street West, Suite 1108,  
20 Toronto, Ontario, on the 29th day of July, 2014.

21 -----  
22  
23 CONFIDENTIAL TRANSCRIPT

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

2 Rocco DiPucchio, Esq. ) For the Plaintiff

3 Jeff C. Hopkins, Esq. ) For the Defendant,

4 Justin Tetreault, Esq. ) Brandon Moyse

5 Jeff Mitchell, Esq., ) For the Defendant,

6 West Face Capital Inc.

7

8 ALSO PRESENT: Brandon Moyse

9

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

11 -----

12

13

14 I N D E X

15 WITNESS: JAMES A. RILEY

16 PAGE

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18 CROSS-EXAMINATION BY MR. MITCHELL..... 173

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

5  
6                               INDEX OF UNDERTAKINGS

7       The questions/requests undertaken are noted by U/T  
8       and appear on the following page numbers: 20, 52,  
9       70, 81, 106, 113, 114, 131, 134, 137 and 207.  
10

11  
12                               INDEX OF ADVISEMENTS

13       The questions/requests taken under advisement are  
14       noted by U/A and appear on the following page  
15       number: 64.  
16

17  
18                               INDEX OF REFUSALS

19       The questions/requests refused are noted by R/F and  
20       appear on the following page numbers: (None noted).  
21  
22  
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## INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE NO.

(None marked)

1 --- Upon commencing at 9:59 a.m.

2 JAMES A. RILEY, Sworn

3 MR. HOPKINS: Before we get started,  
4 counsel have discussed and I think agreed that  
5 subject to what comes out of Mr. Riley's  
6 cross-examination that the parties shall have equal  
7 access to the transcripts in terms of Mr. Mitchell  
8 won't be required to repeat the questions and  
9 obtain the same responses that I obtain out of my  
10 cross-examination, and that the transcripts have  
11 been marked as confidential.

12 MR. DIPUCCHIO: Yes, that's agreeable,  
13 with the proviso that depending on what comes out  
14 of the examination today we may need to discuss  
15 part of the transcript being marked "counsel's eyes  
16 only" depending on the access we might want to have  
17 Mr. Mitchell's client have to that part of the  
18 transcript.

19 MR. MITCHELL: Yes, and I've agreed  
20 we'll deal with that on a case-by-case basis as we  
21 proceed.

22 CROSS-EXAMINATION BY MR. HOPKINS:

23 1 Q. How are you this morning, Mr.  
24 Riley?

25 A. I'm fine, except it was warm.

1           2                   Q.    Good.  This is the  
2                               cross-examination of James Riley on his affidavits  
3                               sworn June 26, July 14, and July 28th in the matter  
4                               of The Catalyst Capital Group Inc. and Brandon  
5                               Moyse and West Face Capital Inc.

6                               I would like to start out, Mr. Riley,  
7                               talking about Brandon's former role with Catalyst.  
8                               And to start I would like to take you to his job  
9                               description at tab B of his motion record.

10                              A.    I have it.

11           3                   Q.    Tab B, page 27.  You've got it  
12                               right there in front of you.

13                              A.    I do.

14           4                   Q.    Do you recognize this document?

15                              A.    As being attached to his  
16                               affidavit.  I don't recall seeing it before.

17           5                   Q.    Okay.  I would like you just to  
18                               review the Overview of Position section near the  
19                               bottom, and the Key Responsibilities section at the  
20                               bottom of page 1, spilling on to page 2.  And just  
21                               let me know when you've had a chance to review  
22                               that.

23                                       (Witness reads document)

24                              A.    I'm now at key success measures.  
25                               Do you want me to keep reading?

1       6                   Q.    No, that's fine.  You can stop  
2                   there.  Given what you've just read, Mr. Riley, are  
3                   Brandon's former duties and responsibilities  
4                   accurately described in the document?

5                   A.    I think part of them are.  I think  
6                   he moved beyond that and had a higher profile of  
7                   responsibility.

8       7                   Q.    And can you be more specific?

9                   A.    Well, in the case of at least  
10                  Advantage he had day-to-day operating  
11                  responsibilities for Advantage which was a new  
12                  investment.  And I think it's fair to say that his  
13                  responsibilities there were somewhere between an  
14                  associate and a vice-president.  That would be my  
15                  view, and after discussing with my colleagues I  
16                  think they would share that view.

17      8                   Q.    Now, my understanding is that with  
18                  regard to Advantage he was actually -- that was  
19                  only on an interim basis; is that not true?

20                  A.    Well, it was in anticipation that  
21                  we would hire additional people, correct.

22      9                   Q.    Other than that one example, are  
23                  the duties as outlined accurately described?

24                  A.    I think Natural Markets I think he  
25                  had a slightly higher profile too, working very



1           closely with...

2       10                   Q.     But Mr. Moyse was never actually  
3       promoted in anticipation of --

4                   A.     He was going to be promoted to  
5       associate.

6       11                   Q.     Okay.

7                   A.     I'm sorry. I didn't really finish  
8       your question because you were interrupted with the  
9       note. So could I just finish?

10      12                   Q.     Go ahead.

11                   A.     In Natural Markets I think he also  
12      had what I would call a higher profile.

13      13                   Q.     Sorry. In which?

14                   A.     Natural Markets which is our food  
15      retailing operation.

16      14                   Q.     And can you be more specific in  
17      term of his elevated role?

18                   A.     Interfacing with day-to-day  
19      operations, the planning of future expansion.

20      15                   Q.     And how long was he in that role?

21                   A.     Oh. Six months I think. He might  
22      have a better view, but I think six months.

23      16                   Q.     Any other examples?

24                   A.     He had just started on Therapure,  
25      but I think other than that those were his two

1 responsibilities in our group of operating  
2 companies.

3 17 Q. Brandon had no supervisory or  
4 managerial type responsibilities, did he?

5 A. I'm not sure what that would mean  
6 in the context of our companies.

7 18 Q. Well, nobody reported to him,  
8 correct?

9 A. Well, I think -- I'm wondering if  
10 in the case of Advantage the other analyst reported  
11 to him in the sense that I think he was working in  
12 anticipation of becoming an associate I think the  
13 other analyst was almost report something.

14 19 Q. Well, almost. Was he or wasn't  
15 he?

16 A. We don't have that formal kind of  
17 hierarchy. We're a pretty flat operation. I think  
18 at the time Brandon was one of two analysts and  
19 then there was one or two vice-presidents. Like  
20 one of the vice-presidents left partway through.

21 20 Q. Was there any -- were there any  
22 employees for lack of a better phrase beneath  
23 Brandon as an associate?

24 A. No. As an associate or as an  
25 analyst?

1 21 Q. Sorry. As an analyst.

2 A. As an analyst, no. That's the  
3 starting position.

4 22 Q. Brandon didn't have any signing  
5 authority, did he?

6 A. No.

7 23 Q. He didn't have any -- did he have  
8 any delegation authority?

9 A. I don't know. I mean, in terms of  
10 an official delegation?

11 24 Q. Correct.

12 A. Not that I'm aware of.

13 25 Q. Because my understanding is in  
14 Brandon's one and a half years with Catalyst  
15 typically he was assigned by a superior --

16 A. Correct.

17 26 Q. -- to work on -- let me finish the  
18 question, Mr. Riley. He was always assigned by a  
19 superior whether it be a vice-president or usually  
20 a partner to research a specific either a new  
21 opportunity or a currently owned Catalyst company,  
22 create a research memo, and that was by and large  
23 what he did in the one and a half years he was  
24 there; is that correct?

25 A. I don't think that's correct.

1 27 Q. Why?

2 A. What is partly correct, or what is  
3 the correct part of that statement is it would have  
4 been assigned directly or indirectly by a partner.  
5 That's true of all of our files.

6 28 Q. Okay.

7 A. What I think is a bit of an  
8 understatement is that he would have also attended  
9 due diligence meetings. He would have had  
10 participation in strategic sessions, both with  
11 management and with external advisors.

12 29 Q. But that's not my question though.  
13 My question is, Brandon didn't have the autonomy to  
14 decide what he would or would not work on?

15 A. That's fair.

16 30 Q. And that goes for Catalyst  
17 companies that were Catalyst-owned companies and  
18 potential new investment opportunities; that goes  
19 for both, correct?

20 A. That statement is correct for  
21 both.

22 31 Q. All right. I would like to take  
23 you to the first two bullets under Key  
24 Responsibilities in the job description. And this  
25 would pertain to potentially new investment

1 opportunities for Catalyst?

2 A. Yes.

3 32 Q. And you'd agree with me that the  
4 new investment opportunities were companies Brandon  
5 would be analyzing in furtherance of the first two  
6 bullets, it would be -- it was often public  
7 knowledge that Catalyst was interested in those  
8 companies, correct?

9 A. No.

10 33 Q. But it --

11 A. Sorry. It might at some point  
12 become known. For example, in the case of a CCAA  
13 filing we might be involved at that point. But I  
14 would say at some point we become known because of  
15 the position we hold in that company, but not  
16 initially. Because some of our investments don't  
17 -- we will be researching them for two to three  
18 years before we do anything, or even longer.

19 34 Q. But at some point it's fair to say  
20 that Catalyst's interest would or could become  
21 public knowledge?

22 A. Correct.

23 35 Q. And I think that's reflected --  
24 and I don't think we have to turn to them unless  
25 you would like to. That's reflected in the

1 newspaper articles that Brandon attached as  
2 exhibits to his affidavit?

3 A. I think that may be true of  
4 Mobilicity, but not the other investment.

5 This is confident. So the other  
6 investment being Wind, or the other potential  
7 investment being Wind.

8 36 Q. Although I mean Wind is  
9 specifically referenced in the newspaper articles.

10 A. Maybe we should turn to that.

11 37 Q. We should probably turn to the  
12 articles. It's Exhibit C of Brandon's affidavit.  
13 So just the following tab. And if you look at the  
14 first article entitled Bid Deadline for Canada's  
15 Mobilicity Delayed By a Week. The sixth paragraph  
16 down:

17 The largest of Mobilicity's creditors,  
18 private equity firm Catalyst -- and I'm  
19 paraphrasing -- wants the startup to merge with  
20 Wind Mobile, the biggest of the new players in the  
21 Canadian mobile market.

22 A. That's -- would consider. Would  
23 consider, okay? Would consider. Not that we were  
24 promoting that, but would consider.

25 38 Q. Right. But there's some -- you'd

1 agree with me that that suggests some interest?

2 Some level of interest?

3 A. Some level, yes.

4 39 Q. With respect to Wind Mobile?

5 A. Yes.

6 40 Q. Let's look at the third bullet,  
7 and we're going to talk about the valuation  
8 methodologies for --

9 A. Sorry. What tab was that again,  
10 please?

11 41 Q. Sorry. Back to the Key  
12 Responsibilities, the third tab on page 1. Page 27  
13 of the motion record.

14 A. Thank you.

15 42 Q. The third bullet reads:

16 "Performing valuations of  
17 companies using both traditional and  
18 proprietary valuation  
19 methodologies." (as read)

20 Traditional. And I want to focus on  
21 the word "traditional", Mr. Riley. Would you agree  
22 with me that an example of that would be  
23 methodologies that are commonly used in the  
24 industry?

25 A. Yes.

1       43                   Q.     So they wouldn't be particularly  
2                   unique to any one firm?

3                   A.     That's fair. But the second bit  
4                   you have to focus in on too, proprietary, which is  
5                   another aspect.

6       44                   Q.     I understand your case, Mr. Riley.

7                   A.     Thank you.

8       45                   Q.     Another example would be --

9                   A.     Sorry. I wasn't trying to...

10      46                   Q.     Another example would be, as  
11                   Brandon states in his affidavit, methodologies that  
12                   he might have learned while in the course of his  
13                   schooling?

14                   A.     Yes.

15      47                   Q.     You'd agree that he would have  
16                   learned traditional valuation methodologies?

17                   A.     Yes.

18      48                   Q.     Another example would be  
19                   methodologies that he may have learned in the  
20                   course of his previous employment with Credit  
21                   Suisse and RBC Capital Markets?

22                   A.     I can't comment on that. I don't  
23                   know what he learned at those places.

24      49                   Q.     You have no evidence to dispute  
25                   his assertion that he would have learned those



1 methodologies? The traditional methodologies?

2 A. The traditional, yep.

3 50 Q. And you'd agree with me that in  
4 the course of his employment with Catalyst he would  
5 have used those same traditional valuation  
6 methodologies when researching a certain company  
7 and drafting a memo for management?

8 Again, I'm more focusing on the  
9 traditional valuation methodology. You would agree  
10 with me that he would have used those traditional  
11 valuation methodologies in the course of his  
12 employment with Catalyst?

13 A. Yes.

14 51 Q. All right. So help me understand  
15 what Catalyst means when it refers to proprietary  
16 valuation methodologies.

17 A. I can give you two examples. One  
18 would be how you value a particular piece of debt  
19 given the fundamental underlying rights that it  
20 might have with an overlay of how that might play  
21 out in the courts.

22 So, for example, how the events of the  
23 default structure work, how you can argue what the  
24 value of that piece of paper is based on a  
25 make-whole premium. Those kinds of things which

1 are very based on our knowledge set and approach  
2 and skill set.

3 Another example, would be how you can  
4 value a company that is going to go through  
5 insolvency proceedings in terms of what its  
6 waterfall and capital structure might look like.  
7 And I think that's -- I don't think that's a skill  
8 set you can learn in school. It's a skill set you  
9 learn over time based on experience.

10 52 Q. But correct me if I'm wrong,  
11 wouldn't you -- wouldn't an individual in the  
12 industry learn that -- that sounds like a very  
13 generic example. Would an employee not learn that  
14 regardless of what equity -- what firm he was  
15 employed at?

16 A. No. No. I think there's a  
17 special added level of knowledge that comes from  
18 working in a shop like ours, because of the skill  
19 set we have generally.

20 53 Q. If I can turn you to the next  
21 page, page 28, specifically under the title Profile  
22 of the Ideal Candidate. Second paragraph, the last  
23 five words, "often times working long hours." You  
24 see that there? Those words, "often times working  
25 long hours"? Sorry. The end of the second

1 paragraph under Profile of the Ideal Candidate?

2 A. Yes, got it.

3 54 Q. For ease of reference I'll just  
4 read the sentence:

5 "The individual demonstrates  
6 great creativity, sound judgment,  
7 exceptional sensitivity to detail  
8 and is able to handle a large case  
9 load, oftentimes working long  
10 hours." (as read)

11 It's true that analysts at Catalyst,  
12 including Brandon, would often work long hours?

13 A. Yes.

14 55 Q. And that would mean past 6 o'clock  
15 at night?

16 A. Yes.

17 56 Q. In fact, it would not be unusual  
18 for analysts and other employees, including  
19 Brandon, given if they're in the office past 6  
20 o'clock they would be accessing Catalyst files  
21 during that time period?

22 A. Yes.

23 57 Q. Fair to say between the hours of 6  
24 o'clock and midnight?

25 A. That, I don't know. I mean, I

1 don't know for sure that I can say that between six  
2 and midnight they'd be accessing.

3 58 Q. Well, that's certainly Brandon's  
4 evidence. You have no evidence to dispute that?

5 A. No.

6 59 Q. All right. Let's turn to your  
7 affidavit, paragraph 15.

8 MR. DIPUCCHIO: The initial affidavit?

9 MR. HOPKINS: The initial affidavit,  
10 yes.

11 THE DEPONENT: Paragraph 15?

12 MR. HOPKINS: Yes.

13 BY MR. HOPKINS:

14 60 Q. You say that Brandon had  
15 substantial autonomy and responsibility. What  
16 exactly do you mean by the word "autonomy"?

17 A. Well, for example, in his  
18 day-to-day activities in Advantage I think he was  
19 doing a lot of initiative work on his own in terms  
20 of handling that file. But he would report up.

21 61 Q. Who would he report to?

22 A. Mark Horrox I believe. And then  
23 when Mark left he would have been reporting to  
24 Gabriel De Alba.

25 62 Q. And Mark Horrox, he wasn't a

1 partner, he was a vice-president, correct?

2 A. He's a vice-president, yep.

3 63 Q. But in terms of his handling  
4 the -- correct me if I'm wrong in terms of the  
5 phraseology, the handling the day-to-day workload  
6 of Advantage, he wouldn't have the authority to  
7 make unilateral decisions. He would have to  
8 obtain, whether it's Mr. Horrox or Mr. De Alba,  
9 approval before he made any decisions, correct?

10 A. I would have to go back and double  
11 check that before I answer one way or the other.

12 64 Q. All right. Counsel, could I get  
13 an undertaking as to whether -- I don't know if you  
14 need to inquire -- I think Mr. Horrox is no longer  
15 with the company, but inquire of Mr. De Alba as to  
16 whether Brandon had the authority, the autonomy to  
17 make unilateral decisions without the approval of  
18 Mr. De Alba?

19 MR. DIPUCCHIO: In respect of anything?

20 MR. HOPKINS: In respect to his working  
21 with Advantage Rent A Car.

22 U/T MR. DIPUCCHIO: We'll ask Mr. De Alba  
23 that question.

24 BY MR. HOPKINS:

25 65 Q. And what exactly do you mean by

1 the words "substantial responsibility"? Can you  
2 give me some detail in that regard?

3 A. I think working with management on  
4 a day-to-day basis on one of our significant new  
5 investments.

6 66 Q. And that would be researching?

7 A. No. He was onsite and evaluating  
8 the performance of that operation and I think was  
9 involved in decisions that went to increasing the  
10 value.

11 67 Q. What type of decisions were those?

12 A. What type of operations to  
13 eliminate and what type of operations to expand,  
14 what locations could be terminated.

15 68 Q. Although you would agree with me  
16 that Brandon had no decision-making power on  
17 whether Catalyst would actually move forward on a  
18 potential new investment?

19 A. I think he would have input, but  
20 the ultimate decision on that is made by the chief  
21 investment officer Newton Glassman, in conjunction  
22 with the input from top to bottom.

23 69 Q. Fair to describe that level of  
24 input as being low level?

25 A. I wouldn't describe it that way,

1 because in the context of preparing investment  
2 memos and the back and forth, he would have a good  
3 view on what investments we were going to make and  
4 how we were looking at them.

5 70 Q. The decision to move forward on a  
6 new investment opportunity though would be made at  
7 the partner level, correct?

8 A. Yeah, chief investment officer.

9 71 Q. And there was no investment type  
10 committees where analysts like Brandon would be  
11 given a forum to argue for or against moving  
12 forward with an opportunity?

13 A. Sorry. I'm smiling only because  
14 when you've got about five people working on  
15 virtually everything in an environment that is  
16 probably not bigger than this room, I don't think  
17 we would have an investment committee. We're not  
18 that large a shop.

19 72 Q. Well, even generally, even  
20 generally speaking. I mean Brandon wouldn't be --  
21 there would not be an opportunity for Brandon to  
22 argue for or against whether Catalyst moves forward  
23 with a particular opportunity.

24 A. I think he would express views.  
25 Whether or not -- how those would factor into the

1 ultimate decision, I don't know.

2 73 Q. Is it not true that the decision  
3 to move forward with an investment would often  
4 already have been made by the time Brandon is  
5 assigned a particular task?

6 A. No. The decision would not be  
7 made in advance, because we would look at  
8 investments for a long period of time. Long period  
9 of time meaning years as opposed to weeks or  
10 months. Sometimes we made them more quickly.  
11 Advantage would be one example. But that process  
12 of evaluation starts with the analyst and it may or  
13 may not go forward based on what the environment  
14 is. For example, I can think of investments that  
15 we looked at but didn't make because they didn't  
16 appeal to us ultimately.

17 74 Q. Brandon would never be present at  
18 any partner level meetings or discussions in which  
19 it would be discussed whether to move forward with  
20 a particular investment or not?

21 A. I just -- you know, in other words  
22 as a general practice I wouldn't say that we did  
23 that. But I also would say that he would have been  
24 part of the process that brought forward the  
25 recommendation to consider the investment.



1       75                   Q.     But in terms of the actual  
2       discussion and decision-making process as to  
3       whether to move forward with an investment or not,  
4       Brandon would not be part of that discussion,  
5       correct?

6                   A.     In some cases I think he would be.  
7       For example, I suspect in Homburg he had some  
8       input. He had I believe at least one occasion went  
9       to Europe alone on Homburg, and Homburg is a  
10      complex file. Very complex. Very hard to play  
11      through.

12     76                   Q.     Now, it's my understanding that  
13      Brandon would typically use public information as  
14      part of his research and analysis on new investment  
15      opportunities; is that fair?

16                   A.     There might be some public, but  
17      there would be over time a lot of non-public  
18      information. Some. It depends on the situation.  
19      If you've got a private company there's no public  
20      information.

21     77                   Q.     Right. But even if it's a public  
22      or -- sorry. Even if it's a private company one of  
23      the resources Brandon would use would be research  
24      firms, correct?

25                   A.     There might be some public

1 sources, but they would be based on who knows what  
2 information.

3 78 Q. Right. But would it also be fair  
4 to say that other similar private equity firms  
5 would also have access to that same information  
6 from CIBC, for example?

7 A. Yeah. Or Bloomberg as an  
8 information source, yes.

9 79 Q. Now, it's Brandon's evidence --  
10 and it's in paragraph 7 of his affidavit. We can  
11 turn to it if you -- why don't we turn to it?

12 Paragraph 7. So Brandon's evidence is  
13 in the last six months of his employment his work  
14 was focused almost entirely on performing operating  
15 reviews of Catalyst-owned companies. It's a fair  
16 statement, isn't it?

17 A. Yes. I think I've said that  
18 already.

19 80 Q. So it would be fair to say then as  
20 a result, Mr. Riley, that at the time Brandon  
21 resigned from Catalyst he actually had very little  
22 knowledge of Catalyst's current prospective  
23 investments?

24 A. I think he had knowledge on at  
25 least two investments that were current. In terms

1 of further investments, he would know better than I  
2 do.

3 81 Q. So your evidence is that, to your  
4 knowledge, he was aware of two?

5 A. Well, he actually mentions three I  
6 think in correspondence, or in his affidavit.

7 82 Q. Fair enough.

8 All right. I want to talk a little bit  
9 about the 60/40 scheme.

10 A. Sure.

11 83 Q. Paragraph 16 of your affidavit.  
12 You state that Brandon's equity compensation, his  
13 options and participation in the 60/40 scheme  
14 exceeded his base salary and annual bonus.

15 A. Yes.

16 84 Q. But that's not actually true, is  
17 it?

18 A. I'm not sure what you mean.

19 85 Q. Brandon's evidence is that in 2013  
20 his base salary and bonus was 162,000.

21 A. Mm-hmm.

22 86 Q. And his overall compensation was  
23 165,000. The 162 being his bonus or his base  
24 salary and his bonus. Just for ease of reference,  
25 if I could take you to paragraph 17 of his

1 affidavit. Paragraph 17.

2 Where Brandon states: I earned a base  
3 salary of 90 and had the opportunity to earn a  
4 bonus of 80?

5 A. Yes.

6 87 Q. Contrary to the statement at  
7 paragraph 16 of Mr. Riley's affidavit, my equity  
8 compensation did not exceed my base salary and  
9 bonus. In fact, the equity comp I received was  
10 negligible. In 2013 I earned \$165,127 of which  
11 90,000 was my salary and 72,000 was my annual  
12 bonus.

13 A. Yes.

14 88 Q. So would you agree with me that  
15 your statement is not factually accurate?

16 A. I disagree with that.

17 89 Q. On what basis?

18 A. On the basis that his -- the way  
19 the 60/40 scheme works -- it's a longer  
20 explanation. We are what's called a European carry  
21 firm. So we don't earn our share of carry on a  
22 deal-by-deal basis. We only earn it, i.e. receive  
23 it, once the investors have received back their  
24 capital plus an eight percent preferred return.  
25 And there's a true up so we get our eight percent

1 on our capital, and then there is a sharing of the  
2 earned -- the appreciated value that's split 60/40.  
3 So when I say the value of that -- his value  
4 exceeded his comp, although it wasn't paid to him  
5 and wouldn't be paid to him until we had hit the  
6 threshold for earning that.

7 90 Q. So you made that statement in the  
8 context of some future payment?

9 A. Yeah, deferred. The easiest way  
10 to think of it is a deferred bonus that is not  
11 payable until a later date.

12 91 Q. And was there any indication made  
13 to Brandon as to when that payment would be made?  
14 What date that payment would be made?

15 A. It's right in his employment  
16 contract as to when that's payable.

17 92 Q. Well, the 60/40 plan -- let me  
18 back up. Mr. Moyse was never provided with a copy  
19 of any --

20 A. I was surprised by that comment.  
21 I'm surprised in the following way: If I was told  
22 that my compensation included something like that I  
23 would want to understand it. So I would think it  
24 was explained to him at some point.

25 93 Q. Well, his evidence is that it

1           wasn't, in fact that he specifically asked for a  
2           copy of the plan or details of the plan and they  
3           were never provided. Do you have any evidence to  
4           dispute that?

5                   A. I have no idea. Because the  
6           practice of most employees is to ask periodically  
7           the CFO what accrued value they have in their 60/40  
8           plan.

9           94                   Q. You go on to say that the 60/40  
10          scheme provided Catalyst professional employees  
11          with a partner-like interest, yet they would never  
12          be invited to partner meetings, correct?

13                   A. We have partner meetings on  
14          Mondays, most Mondays during the regular year, not  
15          during the summer. And in those partner meetings  
16          we usually don't talk about anything other than  
17          where we're headed, fundraising and who we're going  
18          to employ, those kinds of issues. In other words,  
19          he would be welcome to come but they would be very  
20          boring I think to him.

21          95                   Q. He was never invited, was he?

22                   A. No. He wouldn't, because we then  
23          would go from those partner meetings directly into  
24          what we call the Monday morning meetings with  
25          everybody where we'd have lunch, discuss issues,

1 bring people up-to-date as to where we are, discuss  
2 the economy, those kinds of things.

3 96 Q. Now, despite participation in the  
4 60/40 scheme Brandon never obtained any actual  
5 ownership rights or interest in Catalyst, correct?

6 A. He had options to acquire shares.

7 97 Q. Right. But he had no ownership  
8 right. He had no partnership. I don't know -- I  
9 don't think we need to get into details how your  
10 partnership works, but he had no partnership units  
11 in Catalyst, correct?

12 A. Even a partner -- let me give you  
13 my example. I have, like Brandon, I have options  
14 to acquire shares up to a certain percentage like  
15 he does. I have a share in the 60/40 like he does,  
16 or did have. Let me speak in the past tense. And  
17 that's my comp. Plus I get salary and a bonus. So  
18 to describe me as a partner, I don't have  
19 partnership units. Nobody has partnership units.  
20 There's ownership of shares.

21 98 Q. And that's it?

22 A. Well, actually we also have  
23 through Catalyst each one of us participates in the  
24 funds, the operating funds. He was offered I think  
25 -- he for sure was in fund 4 and I think he was

1           offered participation in fund 3. So I participate  
2           in fund 2, fund 3 and fund 4.

3           99           Q.    So in order to have a partnership  
4           interest in Catalyst there's no requirement that  
5           you put up any equity, above and beyond the options  
6           that we've discussed?

7                    A.    I have not acquired shares in  
8           Catalyst at this time. I have options to acquire.  
9           And I have a participation in the 60/40 plan. And  
10          I participate in the funds themselves. Which  
11          aligns everybody's interest.

12          100          Q.    But despite Brandon's  
13          participation in the 60/40 scheme he would have no  
14          voting rights, correct?

15                   A.    No. I have no voting rights.

16          101          Q.    Who has voting rights?

17                   A.    Newton Glassman.

18          102          Q.    Anyone else?

19                   A.    Nope. Actually, Gabriel may have  
20          a few, but he doesn't have -- Newton Glassman has  
21          more.

22          103          Q.    Okay. To your knowledge, would  
23          either of those individuals have put up equity in  
24          the firm above and beyond the options or the 60/40  
25          scheme participation?



1 A. Newton for sure, and I think  
2 Gabriel has some.

3 104 Q. Can I take you to paragraph 24 of  
4 Brandon's affidavit? It's on page 6.

5 MR. DIPUCCHIO: Is he being  
6 cross-examined on Brandon's affidavit?

7 THE DEPONENT: No, no. I apologize.  
8 What page number?

9 MR. HOPKINS: Page 6. Paragraph 24.  
10 Read it to yourself. Let me know when  
11 you're done.

12 THE DEPONENT: May I look at the  
13 exhibit for a second?

14 MR. HOPKINS: Yes. It's on page 45 of  
15 the motion record. Exhibit F.

16 THE DEPONENT: And can you direct me --

17 MR. HOPKINS: Yeah. I'm going to take  
18 you to --

19 THE DEPONENT: This is Kotterman's  
20 (ph.) article? Theresa Tedesco, I apologize.

21 BY MR. HOPKINS:

22 105 Q. Page 45. And I'm going to take  
23 you --

24 A. Can I get my glasses?

25 106 Q. Sure.

1                   Specifically I want to take your  
2                   attention to the 4th -- sorry. The 3rd and 4th  
3                   from the bottom?

4                   A.     Mm-hmm.

5     107           Q.     Where it states: Glassman  
6                   concedes his firm. Do you see that there? Fourth  
7                   from the bottom? Glassman concedes his firm?

8                   A.     Got it. Got it. Yes.

9     108           Q.     So I'm just going to read this  
10                  just for ease of reference:

11                         "Glassman concedes his firm has  
12                         acquired a not-so-flattering  
13                         reputation for being obstreperous,  
14                         particularly during its formative  
15                         years. But he offers no apology.  
16                         'We work for our investors, not to  
17                         make friends across the table,' he  
18                         says. It's about enforcing  
19                         contractual obligations. Distress  
20                         by nature is confrontational and  
21                         we've never really been apologetic  
22                         for being tough.' However, Glassman  
23                         admits his firm's notoriety in  
24                         Canada's clubby business community  
25                         has at times worked against it. 'I

1 think that has hurt our deal flow in  
2 the past and I think we've made a  
3 significant error in failing to  
4 educate the market of our  
5 contributions and how distress helps  
6 capital markets generally,' he  
7 says."

8 Have you seen this article before, Mr.  
9 Mr. Riley?

10 A. Yes. Yeah. I think I'm quoted in  
11 here somewhere I think. Yes, I've seen it.

12 109 Q. You've seen it before this  
13 litigation?

14 A. Yep.

15 110 Q. In fact, is this article on  
16 Catalyst's website?

17 A. I don't know. I mean I should  
18 know, but I don't know.

19 111 Q. I believe it is, but --

20 A. Could be.

21 112 Q. -- in any event. In terms of what  
22 I just read, Mr. Riley, you'd agree with me that  
23 Mr. Glassman he wasn't misquoted, was he?

24 A. There's two things I notice in  
25 this, because I haven't read it for awhile, it

1 talks about the past tense. So I think that having  
2 worked with Newton, both as a lawyer and his  
3 partner, I think that Catalyst has come a long way  
4 in terms of its profile.

5 113 Q. Since this article?

6 A. No. Just generally from its  
7 inception in 2002. And I think it also is fair  
8 that the nature of distress is that it's hard to be  
9 liked in the distress business. Someone is not  
10 going to like you.

11 114 Q. Can you point to any examples, or  
12 help me understand how that reputation has  
13 improved?

14 MR. DIPUCCHIO: Counsel, why is that  
15 relevant to the issues in this motion?

16 MR. HOPKINS: Well, it's relevant to  
17 Mr. Moyse's evidence that the deal flow had  
18 continued to be slow and as a result a lot of his  
19 work was on Catalyst-owned companies as opposed to  
20 new investments.

21 THE DEPONENT: Can I answer that  
22 question?

23 MR. HOPKINS: Sure.

24 THE DEPONENT: First of all, I think  
25 that generally in the insolvency business right now

1 in Canada it is slow for everybody. I think if you  
2 talk to participants in the community although  
3 there's potential for insolvency, for example some  
4 people are looking at the steel industry, if you  
5 read the newspaper, that the major insolvency case  
6 right now is trying to figure out how to divvy up  
7 the Nortel proceeds. We anticipate it's going to  
8 increase, but I've seen times when it's been slow  
9 in the past. I don't think that that's unusual  
10 from time to time for it to be slower and other  
11 times to be more robust.

12 But, for example, Advantage which is a  
13 significant file has come up in the last six months  
14 if I've got my timing right. So I think that deal  
15 flow generally is slow, but I don't think it's  
16 impacted our deal flow anymore than it does anybody  
17 else's. I think there's also, as you know, there  
18 are two situations right now that both we and West  
19 Face are involved in.

20 BY MR. HOPKINS:

21 115 Q. Well, it is Brandon's evidence  
22 that Catalyst reputation is still having a negative  
23 impact on its deal flow. I've heard what you said  
24 about the conditions of the market generally right  
25 now, but is there any evidence that you can point

1 to to dispute what Mr. Moyse's evidence is in terms  
2 of its continued reputation?

3 A. Advantage. Advantage was brought  
4 to us by the law firm involved, Oslers.

5 116 Q. Any other examples? It's a  
6 question, Mr. Riley. Just doing my job.

7 A. No, no, I understand. Let me  
8 think about it for a second.

9 I think our involvement in the Wind  
10 file was brought to us by third parties. So two of  
11 our active files.

12 117 Q. Well, Advantage isn't --

13 A. But Advantage is --

14 118 Q. It's not really active in terms  
15 of -- I mean it's active in terms of your -- I mean  
16 the opportunity has come to fruition.

17 A. Yes. We did the stalking horse  
18 bid and we were successful. I also would have to  
19 check as to how we got involved in Homburg. I  
20 can't recall -- Homburg we'd been following for a  
21 long time, but how we originally got into it I  
22 don't know.

23 119 Q. Is it not true that Wind wouldn't  
24 have actually been shopped by any third party due  
25 to its size?

1 A. I don't understand the question.

2 120 Q. I would like to take you to  
3 exhibit H of your affidavit. Page 62.

4 A. Thank you.

5 121 Q. I don't think there's any dispute  
6 here, Mr. Riley, I just want to get it on the  
7 record. So Brandon resigned by email dated May  
8 24th. You've seen this email before?

9 A. Yes, I have.

10 122 Q. He resigned, gave notice on May  
11 24th effective 30 days later, or June 22, 2014?

12 A. Yes.

13 123 Q. And there's no dispute that he  
14 adhered to his contractual notice of resignation  
15 obligation?

16 A. Yup.

17 124 Q. And you'd also agree with me --

18 A. I should say "yes" not "yup."

19 125 Q. You would also agree with me that  
20 he offered to work to transition his duties during  
21 that 30-day notice period? I think that's  
22 reflected in his email.

23 A. I think he offered to do that. I  
24 asked him to not continue in the office, to work  
25 from his home. During that time period I think

1           there was transition to the extent that he needed.

2       126                   Q.    Can I take you to paragraph 30 of  
3           your affidavit?  This is the telecommunications  
4           opportunity that we've been discussing.

5                   A.    Do you want me to read it first?

6       127                   Q.    If you need to.  My question is  
7           fairly general.  I'll ask the question and you can  
8           take your time to answer.  What time frame are you  
9           referring to when you say that Brandon was working  
10          on the telecommunications opportunity?

11                   A.    I'm sorry?

12       128                   Q.    What timeframe?  What time period  
13          do you say that Brandon was working extensively on  
14          the --

15                   A.    I think it would be one to two  
16          months.

17       129                   Q.    Prior to his resignation?

18                   A.    Yes.

19       130                   Q.    In fact, Brandon only became  
20          involved in the telecommunications opportunity in  
21          late March 2014 because another associate, or an  
22          associate Andrew Yeh, Y-E-H --

23                   A.    Yes.

24       131                   Q.    -- departed the firm?

25                   A.    Yes.



1       132                   Q.    And Brandon had no involvement  
2                   whatsoever prior to late March 2014?

3                   A.    Not to my knowledge.

4       133                   Q.    Now, we've already looked at one  
5                   of the newspaper articles, Mr. Riley. I can take  
6                   you to a couple of the other ones just in terms of  
7                   it specifically referencing capital. Sorry.  
8                   Capitalist Capital, and it's --

9                   A.    Catalyst Capital.

10                   MR. DIPUCCHIO: Not capitalists.

11                   BY MR. HOPKINS:

12       134                   Q.    And its interest in --

13                   A.    Do you mind if I look at it?

14       135                   Q.    No, not at all.

15                   A.    Because these articles sometimes I  
16                   remember.

17       136                   Q.    Fair enough. It's at Exhibit C of  
18                   Brandon's affidavit.

19                   A.    Thank you.

20       137                   Q.    Sure. So we looked at --

21                   A.    This is a little better print, but  
22                   I still need these.

23       138                   Q.    We looked at the article at page  
24                   31, and you pointed out the specific wording that  
25                   Catalyst would consider putting resources behind

1           such a move?

2                           A.     Yes.

3   139                   Q.     If I get you to turn the page to  
4           the next article?

5                           A.     Yes.   Sorry.   You mean page 31 or  
6           32?

7   140                   Q.     32.   Page 32.   This is more  
8           specific.   And I'm referring to the title about  
9           halfway down the page.   Catalyst Capital Group Eyes  
10          Rumoured Verizon-Wind Mobile Deal?

11                       A.     Mm-hmm.

12   141                   Q.     And the date of this article is  
13          June 27, 2013.

14                       A.     Yes.

15   142                   Q.     So would you agree with me by late  
16          June 2013 it was public knowledge that Catalyst had  
17          an interest in merging Mobilicity and Wind Mobile?

18                       A.     You'll notice down at the bottom,  
19          "Newton Glassman would not comment on the nature of  
20          the firm's involvement with Verizon or Wind."   So I  
21          think that the tone of this article would be that  
22          we weren't interested at that stage.

23   143                   Q.     He's not denying -- you'd agree  
24          with me that he's not denying that Catalyst had an  
25          interest in Wind Mobile?

1                   A.     Well, I think this article is more  
2                   about a Verizon deal. And what I would take that  
3                   to mean is that we were looking at what we could do  
4                   with our debt interest in Mobilicity vis-à-vis that  
5                   kind of deal. But that would be a Verizon-Wind  
6                   deal, not us.

7     144               Q.     It's true with respect to Wind  
8                   Mobile and it potentially being available for  
9                   sale -- I mean that knowledge certainly wasn't  
10                  unique to Catalyst; that would be known broadly  
11                  within the industry?

12                 A.     Yes.

13     145               Q.     So is it Catalyst's position  
14                  then -- and I believe this is from your affidavit.  
15                  Is it Catalyst's position that the unique plans  
16                  Catalyst is considering to execute, those unique  
17                  plans, is that confident -- does that constitute  
18                  confidential information --

19                 A.     Yes.

20     146               Q.     -- for the purposes of this  
21                  proceeding?

22                 A.     Yes, it does.

23     147               Q.     And you have no evidence  
24                  whatsoever that Brandon has disclosed any of those  
25                  unique plans to -- whether it's West Face or any

1 other third party? Other than -- actually, no.  
2 Sorry. You have no evidence that he's disclosed  
3 any of those unique plans?

4 A. No.

5 148 Q. And you have no evidence that  
6 Brandon has made any disclosure whatsoever to West  
7 Face with respect to Wind Mobile, correct?

8 A. I think that's the same question,  
9 isn't it? Sorry. I'm not being --

10 149 Q. It's broader in fairness. It's a  
11 broader question. My earlier question was in  
12 reference to the unique plans that you reference in  
13 your affidavit. My second question was just -- was  
14 more broad. Simply you have no evidence that  
15 Brandon has disclosed -- made any disclosure  
16 whatsoever to West Face with respect to Wind  
17 Mobile? Whether it's --

18 A. No. No, I do not have that  
19 evidence at this time.

20 150 Q. And you have no evidence that West  
21 Face has made or will make any attempt to interfere  
22 with Catalyst's plans either by creating a blocking  
23 position, or scooping the opportunity using any  
24 knowledge that Brandon might have with respect to  
25 Wind Mobile? You have no evidence in that regard

1           either, do you?

2                       MR. DIPUCCHIO: That they've done that?  
3           Or plan to do that?

4                       BY MR. HOPKINS:

5   151               Q. That West Face has made or will  
6           make a blocking position based on information that  
7           Brandon might have with respect to Wind Mobile?

8                       A. I don't have that information, but  
9           I do believe that West Face has looked at taking a  
10          position in Wind.

11   152             Q. So as of today, Mr. Riley, with  
12          respect to Wind Mobile you can't point to any  
13          specific harm or loss suffered by Catalyst with  
14          respect to Wind Mobile?

15                     A. No.

16   153             Q. You can't point to any damage, any  
17          measurable damage to Catalyst's goodwill with  
18          respect to Wind Mobile?

19                     I'm reading from paragraph 30 of your  
20          affidavit.

21                     A. I think if, if West Face is able  
22          to obtain a blocking position that will have  
23          irreparable harm.

24   154             Q. But as of today there's been no  
25          damage in that regard?

1 A. Don't know. Don't know the facts.

2 155 Q. Do you have any evidence of any  
3 damage as of today?

4 A. No. No.

5 156 Q. If I told you that West Face was  
6 working on Wind Mobile prior to Brandon commencing  
7 employment there you have no evidence to dispute  
8 that?

9 A. Well, I would be concerned as to  
10 why they hired him if they were working on it and  
11 knew we were working on it. That would be my  
12 concern.

13 157 Q. But you have no evidence that --  
14 if I told you that West Face was already working on  
15 Wind Mobile prior to Brandon's employment you would  
16 have no evidence to dispute that?

17 MR. DIPUCCHIO: On what basis are you  
18 saying that?

19 BY MR. HOPKINS:

20 158 Q. I'll move on. And you have no  
21 evidence that West Face hired Brandon based on  
22 information that he may have with respect to Wind  
23 Mobile?

24 A. I don't know what discussions took  
25 place between him and West Face.

1       159                   Q.     But you have no evidence that any  
2                   knowledge he might have on Wind Mobile was a reason  
3                   that he was hired by West Face? You have no  
4                   evidence to suggest that was the case.

5                   A.     Circumstantial evidence, but no  
6                   hard evidence. I think that would be in West  
7                   Face's -- that would be evidence that would come  
8                   from West Face.

9       160                   Q.     What circumstantial evidence are  
10                   you referring to?

11                   A.     The fact that he was looking at  
12                   sensitive information in connection with Wind  
13                   Mobile. That he understood our strategy vis-à-vis  
14                   the government, because he worked on the decks that  
15                   we were providing to the government at that time as  
16                   to how we saw the situation evolve. He attended  
17                   due diligence sessions. So he had a significant  
18                   amount of information relating to Wind.

19       161                   Q.     Fair to say that West Face could  
20                   execute its plans, or plans generally for Wind  
21                   Mobile without any involvement from Brandon?

22                   A.     I don't know that.

23       162                   Q.     Now, Brandon's evidence at  
24                   paragraph 11 of his affidavit is that he was only  
25                   assigned to work on Wind Mobile two weeks before he

1 left on vacation. That's at paragraph 11.

2 Halfway down the paragraph:

3 "I was only assigned to work on  
4 Wind Mobile the week before I left  
5 on vacation, two weeks before my  
6 resignation, and as such did not  
7 have extensive knowledge of the  
8 transaction." (as read)

9 Would you agree with that statement?

10 A. I would have to double check the  
11 timing, but I'm willing to accept it for now. But  
12 where I do think I have a problem with is he talks  
13 about this in the next paragraph, "I fulfilled a  
14 purely clerical or administrative role typing."  
15 Those were the notes that we submitted to the  
16 government as slides. Very sensitive information.  
17 So I don't think he -- I think it's fair to say he  
18 had more input than just transcribing handwritten  
19 notes.

20 163 Q. Did he have any other involvement  
21 beyond transcribing handwritten notes?

22 A. That's why I say I think he  
23 probably had more input than that.

24 164 Q. Can you expand upon that at all?

25 A. There were let's say eight pages



1 of notes that he would have read and would have  
2 helped assemble and would have done probably some  
3 initial drafting on that was subsequently turned by  
4 two others, Zack and Gabriel. And I think I also  
5 had some comments as well. This is very -- of all  
6 the information that's probably the most sensitive.

7 165 Q. Brandon further states that the  
8 analysis that he did do he used documents provided  
9 by Wind Mobile which Wind Mobile -- this is  
10 paragraph 11 -- which Wind Mobile likely would have  
11 provided to any potential purchaser. Is that a  
12 fair statement?

13 A. I don't know. I would have to --  
14 that's his statement, not mine. I would have to  
15 look at the information and find out its source.

16 166 Q. Is it not -- I mean, you must have  
17 knowledge of the -- you know, similar situations.  
18 Is it not fair to say that --

19 A. Generally as you proceed towards  
20 more serious talks you're getting information  
21 that's beyond what the data room has, because  
22 you're attending due diligence sessions.

23 167 Q. But you have no evidence to  
24 dispute Brandon's statement that that's what he  
25 used to create his analysis were documentation

1 provided by Wind Mobile?

2 MR. DIPUCCHIO: He said likely. He  
3 actually isn't as definitive as you're saying he  
4 is.

5 BY MR. HOPKINS:

6 168 Q. Fair enough. You have no evidence  
7 to dispute that, do you?

8 A. Well, he was in due diligence  
9 sessions where he would have learned additional  
10 information.

11 169 Q. Such as?

12 A. He would know better than I  
13 because I wasn't in the due diligence sessions.  
14 But he would have -- as a matter of practice, once  
15 you move into due diligence, once you move beyond  
16 the data room data you're getting additional  
17 information that not necessarily other purchasers  
18 have at that time. It's a more intimate  
19 relationship. It shapes your understanding.

20 170 Q. Paragraph 11 Brandon goes on to  
21 say: As a low-level employee --

22 A. Sorry. Back to page 3? Sorry.  
23 I've got the wrong -- I'm in his affidavit,  
24 correct?

25 171 Q. His affidavit.

1 A. Page 3?

2 172 Q. Yes.

3 "As a low-level employee I was  
4 not privy to any internal  
5 discussions about the strategy  
6 behind Catalyst's potential  
7 acquisition or how Catalyst planned  
8 to structure a potential deal." (as  
9 read)

10 So in terms of that what I'll call  
11 higher level involvement, you would agree that  
12 that's a fair statement?

13 A. I apologize. I can't see the one  
14 you're reading. What paragraph?

15 173 Q. Paragraph 11. The last sentence.

16 A. Thank you.

17 (Witness reads document)

18 174 Q. Is that not true?

19 MR. DIPUCCHIO: This is in relation to  
20 Wind.

21 MR. HOPKINS: Correct, yes.

22 THE DEPONENT: I think he would have  
23 had an understanding of how we were going to  
24 approach Wind in a possible combination with  
25 Mobilicity. So I think he had an understanding of

1           that. And I think that in terms of how we would  
2           approach Wind there would be a discussion. It  
3           would be a share purchase. We had to resolve the  
4           lack of air interest. So I think his understanding  
5           would be pretty good at that point.

6                       BY MR. HOPKINS:

7   175               Q.   Is it not true that his  
8           involvement in late March to late May would have  
9           been too early in on the deal to really understand  
10          that level of detail?

11                    A.   I think he would have a working  
12          knowledge of what we would be doing. So I disagree  
13          with that statement.

14   176               Q.   But Catalyst was still conducting  
15          basic business due diligence at the time that  
16          Brandon resigned, correct?

17                    A.   Yes.

18   177               Q.   So there was no real discussion,  
19          no in-depth discussion on how a deal would be  
20          structured; is that fair?

21                    A.   I would have to check the dates,  
22          but I think at that point we may have received a  
23          share purchase agreement or provided a share  
24          purchase agreement.

25   178               Q.   Was Brandon provided with a copy

1 of the share purchase agreement?

2 A. I think -- I would have to look at  
3 his files as to whether he accessed that. I don't  
4 know.

5 179 Q. Well, if I told you that he didn't  
6 get a copy of the share purchase agreement you'd  
7 have no evidence to dispute that?

8 A. No. I'd have to check on that.

9 180 Q. I'm happy to deal with it by way  
10 of an undertaking. Can I get an undertaking as to  
11 whether Brandon received a copy of the share  
12 purchase agreement?

13 U/T MR. DIPUCCHIO: We'll get you whatever  
14 evidence we can on that.

15 MR. HOPKINS: Thank you.

16 BY MR. HOPKINS:

17 181 Q. Or if he did get a copy of it  
18 whether Catalyst is able to determine whether he  
19 opened the email. Or opened it.

20 U/T MR. DIPUCCHIO: We'll see what we have  
21 first of all.

22 BY MR. HOPKINS:

23 182 Q. All right. Let's talk about --

24 A. Can I just ask one thing?

25 183 Q. Sure.

1 A. Who is this transcript shared  
2 with? Just counsel?

3 MR. DIPUCCHIO: What parts of it are  
4 you concerned about?

5 THE DEPONENT: Well, we're getting into  
6 in-depth discussions about --

7 MR. HOPKINS: I'm moving on if that  
8 helps you.

9 BY MR. HOPKINS:

10 184 Q. I want to talk next, Mr. Riley,  
11 about the two other potential deals that you say  
12 Brandon had knowledge of before he left Catalyst.

13 You've got Brandon's affidavit there in  
14 front of you? Just the next paragraph, paragraph  
15 12. If you can just read paragraph 12 to yourself  
16 and let me know when you're done.

17 A. Paragraph 12?

18 185 Q. Paragraph 12.

19 A. Yes, I've read it.

20 186 Q. Would you agree with me that  
21 that's accurate what Brandon has sworn to in  
22 paragraph 12?

23 A. No. I think that those are the  
24 notes I was referring to before where he would have  
25 reviewed them, was part of the assembly of those

1 notes which was part of our potential strategy for  
2 dealing with Wind/Mobilicity.

3 187 Q. Did he have any other involvement  
4 in the Mobilicity file that you would say it was of  
5 a high --

6 A. I believe he may have done some  
7 valuation exercises.

8 188 Q. But you don't know?

9 A. I don't know for sure. Mobilicity  
10 was relatively quiet at that time.

11 189 Q. Okay. Paragraph 13. Same thing,  
12 if you could just read paragraph 13 and let me know  
13 when you're done.

14 (Witness reads document)

15 A. Yes.

16 190 Q. Is that accurate, what Brandon has  
17 sworn to in paragraph 13, to your knowledge?

18 A. To my knowledge.

19 191 Q. I want to talk about the Monday  
20 meetings next. And if I can take you to paragraph  
21 64 of your affidavit.

22 A. Yes.

23 192 Q. Now, it's Brandon's evidence in --

24 A. Where's his -- what --

25 193 Q. If we want to cross-reference, he

1 deals with the Monday meetings at paragraph 59.

2 So with respect to the Monday meeting  
3 on May 26th which you address in paragraph 64 of  
4 your affidavit it's Brandon's evidence in paragraph  
5 59 that he didn't actually attend that Monday  
6 meeting because he was told he was not invited  
7 ostensibly because he had resigned. Is that true?

8 A. Yes. Well, I don't know the 26th  
9 for sure, but I did talk to him as soon as he was  
10 back in the office and said that I thought it was  
11 better if he worked from home. So that would be  
12 23rd, 24th I think. Sorry. When was he back in  
13 the office? That's a Monday.

14 194 Q. He was back on the 26th.

15 A. So he was on the 26th. Thank you.

16 195 Q. He was on the 26 because I believe  
17 -- yes, he was back on the 26th. And his evidence  
18 is that he was not invited to the Monday meeting  
19 that day. Is that true?

20 A. I don't recall whether he was. I  
21 had started to discuss with him the staying at  
22 home, because I was concerned about when he was  
23 going to West Face that I didn't want to have him  
24 privy to information.

25 196 Q. Did you know he was going to West



1 Face on May 26th?

2 A. Yes.

3 197 Q. Did you ask him?

4 A. Yes.

5 198 Q. And subsequent to May 26th  
6 obviously he didn't attend any further Monday  
7 meetings?

8 A. That is correct.

9 199 Q. Now, in his affidavit, I believe  
10 it's in paragraph 60, Brandon --

11 A. Sorry. His affidavit?

12 200 Q. His affidavit, correct. He states  
13 that the Monday meeting notes that you've  
14 referenced in your affidavit were not actually --  
15 were not created after the meeting, but they were  
16 actually created in advance of the meeting, and  
17 they consisted simply of, you know, world news,  
18 economic events which may be discussed during the  
19 meeting, and that was his normal practice to create  
20 notes before the meeting, not create a record of  
21 what was discussed at the meeting.

22 A. Well, without looking at those  
23 notes, what they comprised, that also would have  
24 included our potential deal list. I believe.

25 201 Q. How does it work? Does that get

1           circulated before the meeting?

2                   A.    Yes.   Yes.

3                   The usual package is economic news,  
4           plus the deal package, because it's reviewed.  
5           Immediately after the Monday meeting it's reviewed  
6           with the deal teams.

7   202                   Q.   Well, my understanding is that's  
8           not true, that Brandon's notes would not have had  
9           that attached to it; does that change your answer  
10          at all?

11                   A.    I'm just going by the practice  
12          that those would have been circulated prior to the  
13          meeting.

14   203                   Q.   So you don't have specific  
15          knowledge of these meeting notes containing --

16                   A.    Not these particular. I'm talking  
17          about our general practice and what he would have  
18          had access to at various times while he was an  
19          employee. So he would know our deal list.  
20          Potential deal list.

21   204                   Q.   That makes sense.

22                   A.    Yeah. Exactly.

23   205                   Q.   So you have no evidence though to  
24          dispute Brandon's statement that the notes that  
25          you're referencing were not created after the

1 meeting. They were his standard practice of  
2 creating notes prior to the meeting.

3 A. I don't know what his standard  
4 practice was.

5 206 Q. Okay. And Catalyst hasn't  
6 produced any of Brandon's Monday meeting notes,  
7 either these May 26th notes or any prior Monday  
8 meeting notes?

9 A. No, we have not.

10 207 Q. So there's no evidence on the  
11 record other than the statements in your affidavit  
12 that Brandon's Monday meeting notes contained  
13 confidential information?

14 A. No.

15 208 Q. And Catalyst has no evidence that  
16 Brandon transferred, whether it's these Monday, May  
17 26th meeting notes or any previous Monday meeting  
18 notes to any third party including West Face?

19 A. I think on our forensic audit  
20 there's a possibility they were.

21 209 Q. What do you mean by that exactly?

22 A. Well, use of gmail account.

23 210 Q. Right, but there's no evidence  
24 that they were transferred to a third party. He  
25 may have --

1 A. As I say, I can't tell.

2 211 Q. Well, there's no evidence that --

3 A. That is correct.

4 212 Q. -- that he did?

5 A. That is correct.

6 213 Q. Before bringing this motion did  
7 Catalyst ever specifically inquire with Brandon as  
8 to whether he transferred any of his Monday meeting  
9 notes to any third party?

10 A. No.

11 214 Q. I'd like to -- are you okay to  
12 keep going?

13 A. I wouldn't mind taking a break.

14 MR. HOPKINS: All right. Why don't we  
15 take a break?

16 --- Recess at 11:06 a.m.

17 --- On resuming at 11:17 a.m.

18 BY MR. HOPKINS:

19 215 Q. Okay, Mr. Riley, I would like to  
20 switch gears a little bit and talk about the four  
21 specific examples of files that Brandon accessed  
22 between March 27 and May 26, 2014.

23 A. Mm-hmm. Yes.

24 216 Q. And these are the files that are  
25 outlined in your affidavit, and they're the files

1           that it appears came out of Mr. Musters' computer  
2           analysis and report to Catalyst?

3                           A.    Yes.

4   217                   Q.    Can I take you to paragraph 54 of  
5           your affidavit?  You see it there?

6                           A.    Yes.

7   218                   Q.    So you say in paragraph 54:

8                               "The following are some  
9                           examples of Confidential Information  
10                          that Moyse reviewed after he met  
11                          with Dea on March 27, 2014."  
12                          You say some examples.

13                          A.    Yes.

14   219                   Q.    Is Catalyst relying on any other  
15           examples other than the four that are listed after  
16           paragraph 54?

17                          A.    May I confirm?

18                          MR. DIPUCCHIO:  Which paragraph are you  
19           looking at specifically, counsel?

20                          MR. HOPKINS:  Well, paragraph 54 simply  
21           says, "The following are some examples of the  
22           Confidential Information," and we've got the  
23           headings Investment Letters, Stelco Files, Masonite  
24           Files and Telecom Files.  And my question is, are  
25           there any other examples that Catalyst is relying

1 on as examples that Brandon accessed or reviewed  
2 after he met with Dea on March 27th?

3 MR. DIPUCCHIO: Well, those are the  
4 ones we're aware of together with the information  
5 that's now been produced by Mr. Moyse in terms of  
6 what was retained locally on his computer system.

7 THE DEPONENT: Plus the information  
8 from the Dea affidavit.

9 MR. DIPUCCHIO: Right.

10 MR. HOPKINS: The March 27th email --

11 THE DEPONENT: Yes.

12 MR. HOPKINS: -- you're referring to.

13 THE DEPONENT: Yes. If that's the  
14 date. The one in which he --

15 MR. HOPKINS: It is.

16 THE DEPONENT: But there may be others.

17 MR. DIPUCCHIO: Apart from that, that's  
18 all I can think of at this time.

19 BY MR. HOPKINS:

20 220 Q. And just so we're clear, Catalyst  
21 is only asserting that Brandon accessed them or  
22 reviewed them, correct? You're not asserting that  
23 he disclosed them to West Face or any other third  
24 party? And, again, I'm just talking about the four  
25 in your affidavit, the letters, Stelco, Masonite

1 and Telecom Files. Your position is simply that  
2 Brandon accessed them and ostensibly reviewed them?

3 MR. DIPUCCHIO: That's all we can  
4 determine at present which is why some of the  
5 relief requested in the motion has been requested.

6 BY MR. HOPKINS:

7 221 Q. And Mr. Musters only reviewed the  
8 period March 27th to May 26th, correct?

9 MR. DIPUCCHIO: I think that's --

10 THE DEPONENT: I think that's correct,  
11 but I think it's in his affidavit.

12 BY MR. HOPKINS:

13 222 Q. So he would have no knowledge then  
14 of the types of files that Brandon accessed before  
15 March 27th, correct?

16 MR. DIPUCCHIO: We'll have to ask him,  
17 counsel.

18 THE DEPONENT: I think you have to ask  
19 him, because I had very limited interaction with  
20 him.

21 BY MR. HOPKINS:

22 223 Q. Now, it's our position that  
23 Catalyst has not provided any context or certainly  
24 the proper context for these four files. And what  
25 I mean by that is Catalyst has not provided the

1 list, the full list of files that Brandon accessed  
2 between March 27th and May 26th, 2014. Would it be  
3 fair to say, Mr. Riley, that Brandon from March 27  
4 to May 26 that he would have accessed many other  
5 Catalyst files during that period?

6 MR. DIPUCCHIO: We'll have to ask Mr.  
7 Musters.

8 THE DEPONENT: I mean, I'm not a  
9 computer expert. So I can't really answer that  
10 question properly, I don't think.

11 BY MR. HOPKINS:

12 224 Q. So --

13 A. He would have accessed files  
14 relating to what he was working on at the time.  
15 So, he would have accessed, I assume, but I can't  
16 tell, things relating to Advantage, Natural  
17 Markets, and Therapure I think.

18 225 Q. So you yourself haven't seen a  
19 list of files that Brandon accessed during that  
20 time?

21 A. I don't think so. I don't think  
22 so, no. That's why we retained Mr. Musters.

23 226 Q. Now, based on your own affidavit I  
24 understand that Mr. Musters provided Catalyst with  
25 some form of report or summary of his work?



1 A. Yes.

2 227 Q. Did you review that report?

3 A. I think it was reviewed by Lax,  
4 O'Sullivan on my behalf.

5 228 Q. So you didn't review it yourself?

6 A. I have seen it, but I didn't  
7 review it in depth.

8 229 Q. Did anyone else at Catalyst review  
9 the report to your knowledge?

10 A. No.

11 230 Q. To the extent that you saw it, you  
12 say, do you know if that report contained the list  
13 of files that Brandon accessed during that time,  
14 the full list of files?

15 A. I don't recall.

16 231 Q. Counsel, can I get an undertaking  
17 to produce a copy of Mr. Musters' report that he  
18 provided to yourself?

19 MR. DIPUCCHIO: I don't think it's  
20 anything different than what we've given to you.  
21 But I'll go back and check to see what has been  
22 provided by Mr. Musters.

23 MR. HOPKINS: I would like an  
24 undertaking to have the report produced.

25 U/A MR. DIPUCCHIO: I'm going to take that

1 under advisement.

2 BY MR. HOPKINS:

3 232 Q. Would you not agree with me, Mr.  
4 Riley, that it would be relevant to know all the  
5 files that Brandon accessed from March 27 to May 26  
6 in order to place those four in the proper context?

7 A. No. I don't agree with that.

8 233 Q. Why?

9 A. Because I think these are -- in  
10 the preliminary review these were the ones that are  
11 sensitive. These are very sensitive. And it turns  
12 out later he actually had in his possession even  
13 more sensitive information, and had conveyed some  
14 very sensitive information.

15 234 Q. Sensitive according to who? Mr.  
16 Musters?

17 A. No. Sensitive according -- once  
18 you've seen the document then you can determine its  
19 sensitivity from our perspective. He's not capable  
20 of I think determining sensitivity per se.

21 235 Q. So how did he pick out -- who  
22 picked out these four?

23 A. As I recall it was Lax O'Sullivan  
24 in conjunction with reviewing it with Mr. Musters.

25 236 Q. Okay. So no one at Catalyst? I

1 find that bizarre.

2 A. Why?

3 237 Q. Well, how would your legal counsel  
4 know which files are sensitive?

5 A. Because we discussed -- they came  
6 up with some examples of, Would this be sensitive?  
7 Would this be sensitive? And the answer was yes.  
8 To these particular as examples.

9 238 Q. And who was the one that affirmed,  
10 that said yes, that those are -- those documents  
11 are sensitive or --

12 A. It was me.

13 239 Q. Yourself?

14 A. Yes.

15 240 Q. Anyone else?

16 A. I reviewed it with Mr. De Alba,  
17 some of them. Because some of them I knew without  
18 even questioning that they were sensitive, for  
19 example -- if I can go to an example.

20 241 Q. Sure.

21 A. Stelco, even though it was a past  
22 transaction, that was one where West Face was  
23 involved, and we would in those kinds of documents  
24 discuss strategy, as we did in other files like the  
25 Homburg memo that went to Mr. Dea. So there would

1 be discussion of strategy, and steel's possibly  
2 back on the table. So there's no reason for him to  
3 have looked at that.

4 242 Q. Do you recall how many -- I think  
5 your evidence was that your legal counsel, and in  
6 conjunction with Mr. Musters brought certain files  
7 to your attention, can you give me some examples of  
8 the other files that did not cause you concern?

9 A. No.

10 243 Q. Can't recall?

11 A. No.

12 244 Q. Any?

13 A. Well, I would come at it this way,  
14 I would start with the assumption that everything  
15 in our data system was sensitive, but some is even  
16 more sensitive than others. Investment memos. For  
17 example, the investment letters, those are our  
18 reports to our investors which give a view on  
19 particular investments, outlook on assets.

20 245 Q. Now, it's my understanding that it  
21 was not unusual for Catalyst's analysts and  
22 associates to forward or download work from their  
23 Catalyst computer to a personal computer device  
24 either by Cloud account or by email so they could  
25 work from home. Would you agree with that?

1                   A.    No.  I reviewed that practice with  
2                   both Gabriel De Alba and with Zach Michaud and they  
3                   were surprised by that statement, i.e. they thought  
4                   that most people used remote access and only used  
5                   alternatives on particular occasions.  And in the  
6                   case of Zach, Zach uses a work computer.  Gabriel I  
7                   think uses both a work computer and his own private  
8                   computer from time to time I suspect.  I have not  
9                   quizzed him on what computers because he's my  
10                  partner and I trust him.  I was surprised that what  
11                  Brandon says is a widespread practice.

12   246               Q.   You said most do not.

13                   A.   Occasionally.  Zach would say  
14                   occasionally.

15   247               Q.   He would transfer work  
16                   documents --

17                   A.   Yes.

18   248               Q.   -- from his work computer to a  
19                   personal computer?

20                   A.   No.  To a work computer directly.  
21                   Not through remote access, but by email into his  
22                   own account.

23   249               Q.   Anyone else that you know of?

24                   A.   No.

25   250               Q.   Well, my information is that

1 Andrew Yu or Yeh --

2 A. Yes.

3 251 Q. -- who we've referenced earlier,  
4 he's a former associate at Catalyst, correct?

5 A. Yes, he is.

6 252 Q. My information is that he would on  
7 several occasions frequently use Dropbox to  
8 transfer Catalyst documents from a Catalyst  
9 computer to that remote Cloud.

10 A. I don't know. I haven't imaged  
11 his computer so I don't have that knowledge.

12 253 Q. It's also my understanding that  
13 Mark Horrox used his personal gmail on several  
14 occasions.

15 A. We have not imaged his computer  
16 because we had no reason to.

17 254 Q. It's also my understanding that  
18 Gabriel De Alba himself would use his personal  
19 America Online account to transfer Catalyst  
20 documents.

21 A. I'm not aware of that practice  
22 except to say that he, like Zach, probably does it  
23 occasionally. I asked him that directly. I can't  
24 ask Andrew and I can't ask Mark, but they also --  
25 they left on good terms.

1 255 Q. Counsel, could I get an  
2 undertaking to inquire with Mr. De Alba as to the  
3 frequency of him using his America Online account  
4 to access or transfer Catalyst documents?

5 U/T MR. DIPUCCHIO: Yes.

6 BY MR. HOPKINS:

7 256 Q. Sorry. And just to add on to  
8 that, or any other personal email account, whether  
9 it be a gmail, hot mail, Rogers?

10 U/T MR. DIPUCCHIO: Yes.

11 BY MR. HOPKINS:

12 257 Q. Now, I'm sure you've seen  
13 Brandon's evidence that Catalyst's remote access  
14 system is slow. Is that not true, Mr. Riley?

15 A. I asked our IT source, no reason  
16 to believe that it's not usable in the sense of  
17 it's accessible to everyone. He was surprised that  
18 people are using their accounts. When I talked to  
19 Zach he says he usually accesses it through -- he  
20 customarily accesses it through remote access,  
21 occasionally there would be difficulties.

22 258 Q. Sorry?

23 A. Occasionally there would be  
24 difficulties.

25 259 Q. Occasionally it would be

1           difficult?

2                           A.    Mm-hmm.   Yes.

3       260                   Q.    And I think you said that your IT  
4           person says that it's useable.

5                           A.    Yes.

6       261                   Q.    Well, that's certainly not my  
7           question. My question is I put it to you that  
8           Catalyst's remote access system is slow; is that  
9           true?

10                          A.    Talking to -- I think I put a  
11           statement in my affidavit if I can go to it after  
12           my discussion with the fellow who is our IT  
13           contact. Can you help me find it in here?

14                          I know there's a statement in here  
15           because I did talk to him. I can't remember which  
16           one. It's probably in the reply affidavit.

17                          There it is.

18                          Can I just take a moment to find it?

19                          MR. HOPKINS: Go off the record.

20                          --- Off-the-record discussion

21                          BY MR. HOPKINS:

22       262                   Q.    So you've pointed me, Mr. Riley,  
23           to paragraph 51 where you say:

24                                "I am informed by Jonathan

25                                Moore, the team lead at Catalyst's



1 external IT services supplier, that  
2 Mr. Moyse had no reason to use  
3 Dropbox or Box for work purposes.  
4 Catalyst has remote access to its  
5 files and Moyse knew how to use  
6 these remote access services."  
7 So I appreciate what you say Mr. Moore  
8 says.

9 A. Yes.

10 263 Q. But my question is the same, is it  
11 true that Catalyst remote access system is slow?

12 A. It can be slow. Talking to Zach,  
13 and he's one of the people that use it, he believes  
14 generally -- when I say "generally" what I mean is  
15 of course computer systems from time to time can be  
16 slow.

17 264 Q. But Catalyst is slower than usual?

18 A. No, not to my knowledge.

19 265 Q. Brandon further states that  
20 partners would at times ask associates and analysts  
21 to forward work to their personal email addresses  
22 when those partners would have trouble accessing  
23 Catalyst network. Do you have any reason to  
24 dispute that statement?

25 A. I think that's part of the

1           undertaking we're taking under advisement. Is that  
2           correct? Sorry. I'm not trying to speak for my  
3           counsel.

4       266                   Q.    Have you yourself ever used  
5           Catalyst remote access system?

6                           A.    No.

7       267                   Q.    Any particular reason why?

8                           A.    If I need documents I go into the  
9           office. I like hard copy, or I take them home as  
10          hard copy. I also can access my desk top from my  
11          iPad. Company issued iPad.

12       268                   Q.    Company iPad?

13                           A.    Yep.

14       269                   Q.    And iPads, company iPads weren't  
15          made available to analysts, correct?

16                           A.    I think -- laptops were made  
17          available.

18       270                   Q.    But not iPads?

19                           A.    I think that's correct.

20       271                   Q.    Now, I'm going to switch gears a  
21          little bit again and talk about Brandon's Cloud  
22          accounts. Now, Brandon's evidence is that he has  
23          or has access to two Cloud accounts, one is the one  
24          that's referred to or has been referred to as a  
25          Dropbox.

1 A. In my affidavit?

2 272 Q. In both actually. I think it's  
3 been referred to as the same. It's Dropbox and --  
4 and Brandon's evidence is, just so you're clear on  
5 his position, the Dropbox is a storage space that  
6 he created as a personal storage space. That's the  
7 Dropbox. The Box space, and again this is  
8 Brandon's position, the Box space is actually a  
9 Catalyst created space which certain Catalyst  
10 partners and associated companies had access to.  
11 So I guess a fair way to describe it would be a  
12 shared Catalyst storage space. That's Brandon's --

13 A. Can you tell me what that storage  
14 space relates to? That sounds very generic. The  
15 Box. And also I'm not a technical guy.

16 273 Q. And neither am I.

17 A. And so if we can both dumb it  
18 down. The only Box account that I could find when  
19 I did an investigation, subsequent to swearing this  
20 affidavit, not at the time, because at the time  
21 what we were concerned about was trying to evaluate  
22 as best we could what information Brandon might  
23 have accessed and how he might have accessed it.  
24 That was the primary focus at the time of swearing  
25 this affidavit in support of the application.

1                   If that Box relates to Natural Markets  
2                   I would understand that, that I didn't have that  
3                   knowledge at the time. And I think to a certain  
4                   extent this information is kind of outdated based  
5                   on the fact that we now have had revealed to us a  
6                   number of documents both by West Face and by  
7                   Brandon. This was a concern as to what he was --  
8                   how he was accessing and where he was storing it.

9       274                   Q.    Right. Well, if I can -- maybe I  
10                   can help.

11                   A.    I'm just saying at that time I  
12                   didn't have full information. For example, I  
13                   understand there's a Box account for Natural  
14                   Markets, which I talked with Zach about yesterday.  
15                   And it was a Box account created by Natural  
16                   Markets.

17       275                   Q.    Okay. Well, my understanding is  
18                   that the Box account was established under  
19                   Brandon's Catalyst email address. Maybe if I could  
20                   take you to paragraph 38 of his affidavit.

21                   Paragraph 38, the last sentence. Where  
22                   Brandon states:

23                                "My Box account was established  
24                                under my Catalyst email address with  
25                                Catalyst's knowledge to host or have

1 access to information hosted by  
2 Catalyst portfolio companies or  
3 advisors." (as read)

4 And just following along at paragraph  
5 39, Brandon goes on to explain the Catalyst Capital  
6 folder in his Box account and the process under  
7 which it was created. I was going to take you  
8 through this later but I can do it now. Is what  
9 Brandon has outlined there, is that accurate?

10 And, again, we're focusing on the Box  
11 account, not the Dropbox. The Dropbox is the  
12 personal account. The Box account is the Catalyst  
13 account with a Catalyst folder in which Brandon  
14 would have transferred the documents. Sorry,  
15 accessed the documents, because it's a shared  
16 space.

17 So, for example, other Catalyst  
18 companies could transfer the file into that  
19 Catalyst folder in the box and Brandon could then  
20 access it, access those documents. Like a remote  
21 hard drive. If that helps.

22 MR. DIPUCCHIO: In other words, as I  
23 understand it, to cut through this, the Box account  
24 is populated by documents that are not -- that are  
25 supplied by either Catalyst or other companies.

1 MR. HOPKINS: Exactly. Exactly.

2 MR. DIPUCCHIO: And they're not put  
3 into the box by Brandon.

4 MR. HOPKINS: Correct.

5 MR. DIPUCCHIO: Is what we're trying to  
6 say.

7 MR. HOPKINS: Correct.

8 THE DEPONENT: I don't know. I mean  
9 I'd have to go back and ask the question of people  
10 using the box as to what the source -- the box.

11 BY MR. HOPKINS:

12 276 Q. It's a fairly important point.  
13 Who at Catalyst would be able to confirm or respond  
14 to what Brandon has stated in paragraphs 38 and 39?

15 A. I would have to review it with our  
16 IT people. We outsource our IT. With our IT  
17 people and also the people working on those files.  
18 Because some of these, for example, these files are  
19 part of what Brandon disclosed to us in his -- the  
20 request for what documents do you have in your  
21 possession at this time. I think. These are  
22 Natural Market food group's files.

23 So even though I can -- I will go back  
24 and ascertain the accuracy of this. I think to a  
25 certain extent this to me is superceded by the fact

1           that he had documents in his possession subsequent  
2           to leaving. Those are the ones that he disclosed.

3       277                   Q.   Fair enough. And we can deal with  
4           that. But just by the very notion that, or by the  
5           fact that there were the Natural Market Food Group  
6           documents in the Capitalist --

7                           A.   Catalyst.

8       278                   Q.   -- Capital -- sorry. Catalyst.  
9           The Catalyst folder, I think his explanation --

10                   MR. DIPUCCHIO: I think part of the  
11           problem here, counsel, is first of all this  
12           affidavit was obviously sworn before we had  
13           disclosure of a bunch of information that now bears  
14           on this. But we don't know, because we've imaged  
15           Mr. Moyse's computer but we obviously haven't  
16           analyzed it yet. We don't know how documents made  
17           their way onto his computer as disclosed in  
18           Schedule A, only he can really answer that  
19           question.

20                           We understand that the suggestion may  
21           be that some of those came through email, but we  
22           don't know whether there were some that were  
23           accessed through Dropbox, and we frankly don't know  
24           what he can access via this box. So, it's  
25           difficult for us to tell you with precision how

1 documents would have been transferred. We only  
2 know that obviously documents are residing on his  
3 personal computer.

4 BY MR. HOPKINS:

5 279 Q. But just on that last statement  
6 though, counsel, various I understand Catalyst  
7 partners and associated companies, portfolio  
8 companies or advisors they would have access to  
9 that box.

10 MR. DIPUCCHIO: That's true. That may  
11 or may not be true, and I'm happy to go back and  
12 try to confirm that for you. But what I'm  
13 suggesting is we don't know how documents got from  
14 the box, as an example, or from the Catalyst  
15 computer system, internal servers, to Brandon's  
16 personal computer or computing devices. That, we  
17 don't know yet.

18 BY MR. HOPKINS:

19 280 Q. But you say in your affidavit, Mr.  
20 Riley, that there was no reason for Mr. Moyse to  
21 have a Box account. So I think we've established  
22 that that's a false statement, correct?

23 A. Based on the subsequent  
24 investigations I have to concur with that. Further  
25 information would make that statement untrue at



1           this time. Not false, untrue at this time. In  
2           other words, I believed at the time that there was  
3           no reason for those Box accounts to be there.

4       281           Q.    Again, just so we're clear,  
5           counsel, you're giving an undertaking to inquire  
6           whether paragraphs 38, 39 and 40 are accurate?

7           A.    Sorry. These are -- in which  
8           affidavit?

9       282           Q.    Mr. Moyse. Brandon's affidavit.  
10           MR. DIPUCCHIO: Let me just quickly  
11           read them just to see what is involved.

12           MR. HOPKINS: Sure.

13           (Counsel reads document)

14           MR. DIPUCCHIO: Some of these  
15           paragraphs obviously we can't confirm or deny them  
16           at the moment.

17           BY MR. HOPKINS:

18       283           Q.    If I can point to the more  
19           operative sections or portions. It would be the  
20           last sentence in paragraph 38.

21           MR. DIPUCCHIO: Right.

22           And paragraph 39 with respect to the  
23           particular folder in the Box account.

24           MR. HOPKINS: Correct.

25           MR. DIPUCCHIO: And --

1 MR. HOPKINS: And that he did not have  
2 control over this folder.

3 MR. DIPUCCHIO: Right.

4 MR. HOPKINS: And with respect to  
5 paragraph 40. I think the first sentence is  
6 important.

7 MR. DIPUCCHIO: Right.

8 MR. HOPKINS: And the last sentence.  
9 These folders were in some instances created by me,  
10 in other instances created by others, ostensibly  
11 Catalyst individuals, but at all times created with  
12 the full knowledge of Catalyst.

13 U/T MR. DIPUCCHIO: We'll go back and make  
14 some inquiries and do our best in terms of getting  
15 you our response to these paragraphs and their  
16 accuracy.

17 BY MR. HOPKINS:

18 284 Q. And if it may assist, Mr. Riley,  
19 it's my understanding that in terms of Catalyst  
20 partners that did have access to the box, the  
21 Capitalist -- the Catalyst Capital folder --

22 A. At some point I will object.

23 285 Q. Mr. De Alba was the partner that  
24 had access to that folder?

25 A. Yes.

1           286                   Q.    That box and that folder?

2                           A.    Yes.

3           287                   Q.    Would you agree with that?

4                           A.    I believe that would be correct.

5                   We will take it back to make sure that's accurate,  
6                   but I believe that's accurate.

7           288                   Q.    Okay.  Can I turn your attention  
8                   to paragraph 41 of Brandon's affidavit?  Paragraph  
9                   41 where Brandon states:

10                               "Since my resignation from  
11                               Catalyst I have not accessed or  
12                               attempted to access the information  
13                               located in this Box account and I  
14                               have not disclosed such information  
15                               to West Face or any other parties."  
16                               (as read)

17                               Do you have any evidence to dispute  
18                   that statement, Mr. Riley?

19                           A.    No, we do not.  But we have also  
20                   not had access to anything to suggest where these  
21                   documents went, the documents he had in his  
22                   possession, the 812 that he disclosed the other  
23                   day.

24                           MR. DIPUCCHIO:  There's 800 and some  
25                   odd.

1 THE DEPONENT: Some odd, yeah. I think  
2 that was the number.

3 BY MR. HOPKINS:

4 289 Q. Can I take you to paragraph 50?  
5 We're going to move on to the investment letters  
6 file. Paragraph 57 of your affidavit.

7 A. Page 25?

8 290 Q. Correct.

9 A. Yes.

10 291 Q. Now, you say that Brandon accessed  
11 these files between 6:28 and 6:39 p.m. outside of  
12 regular office hours at Catalyst, but I think you  
13 acknowledged earlier that it would not be unusual  
14 for Brandon to be in the office at those two time  
15 periods?

16 A. Yes. But there would be fewer  
17 people around.

18 292 Q. But wouldn't other analysts and  
19 associates also be around at that time? Who else  
20 wouldn't be around if it's common for analysts and  
21 associates to be working well past or past 6 p.m.?

22 A. The VPs might be there. The  
23 partners may or may not be there.

24 293 Q. You would be there though?

25 A. I usually go home somewhere

1           between 6:30 and 8 o'clock, depending on what's  
2           going on. I used to say good night to Brandon.

3       294           Q. In terms of the investment  
4           letters, how many investment letters would go out  
5           every quarter? Can you give me a rough number in  
6           terms of --

7           A. We try to have four per year, but  
8           when you go back there would be maybe fewer in the  
9           early years.

10      295          Q. No, I'm talking about in terms of  
11          the number of investors. How many actual letters  
12          are being disseminated?

13          A. I think we probably have on  
14          average 60 limited partners per fund. I can give  
15          you the exact number, but I don't know it off the  
16          top. These are institutional investors.

17      296          Q. Sixty per fund so there would be  
18          240?

19          A. No. There would be some overlap.  
20          Some people invest in fund 2 and then invest in  
21          fund 3. Some invest across all of our funds.

22      297          Q. And these letters would give  
23          investors updates on potential new investments,  
24          updates on current investments, that type of thing?

25          A. Yes. Not so much prospective

1 investments. We might say that we're looking at  
2 something related to the area, but not very often  
3 would they be directional as to the investments.

4 298 Q. But they could?

5 A. Could.

6 299 Q. And Catalyst didn't produce any  
7 investment letters even in a redacted form so that  
8 we could look at what, you know, a typical  
9 investment letter might say, correct?

10 A. No, we did not.

11 300 Q. So is it fair to say then that if  
12 certain investment letters went out to 60 investors  
13 per fund that those investment letters that outline  
14 potential opportunities they would contain  
15 confidential information, correct?

16 A. Well, not -- well, confidential  
17 information, but providing it to your investors is  
18 being shared within the relationship you've  
19 created.

20 301 Q. But the investment letters, some  
21 investment letters would contain -- fair to say  
22 they would contain confidential information?

23 A. Yes. Sorry. Let me clarify what  
24 I mean by my "yes." If we looked at further  
25 investments you were going to make in a portfolio

1           company in the next 24 months, that's giving them  
2           guidance as to what they can expect in capital  
3           calls. So that's confidential outside of the  
4           world, to the outside world, but as between us and  
5           the limited partners that's information we share  
6           because they have to know that we're going to have  
7           a capital call so they can plan their life. And  
8           what it's going to be used for.

9       302                   Q. But would the investment letters  
10           not talk about potential acquisitions in a more --

11                   A. No.

12       303                   Q. -- general form?

13                   A. No.

14       304                   Q. Not at all?

15                   A. No. Well, I'd have to go back and  
16           look at each one again.

17       305                   Q. I find that hard to believe.

18                   A. Generally speaking that's very  
19           sensitive information. So we would not want to  
20           signal it because of a need to ensure that we  
21           didn't have information out there that could be  
22           used against us. We don't think the limited  
23           partners would ever use it improperly, and they're  
24           always cautioned to use the information we give  
25           the. But we try to be very, very careful with our

1 use of information.

2 306 Q. Do you require that they sign a  
3 non-disclosure agreement?

4 A. No.

5 307 Q. No?

6 A. No. In some cases we do get  
7 non-disclosure agreements if they want to do  
8 further due diligence. There's at least three  
9 instances I can think of.

10 308 Q. Now, the investment letters that  
11 Brandon did review were from the period June 2008  
12 to April 2011, correct?

13 A. Yes.

14 309 Q. So would it be fair to say that  
15 those letters would not have contained any current  
16 investment information? And we're talking about  
17 letters that are three years old at least, if not  
18 up to six years old.

19 A. Some of them would have investment  
20 thesis as to particular investments we had, and I  
21 think those investments are probably still held as  
22 portfolio companies. That would be the period I  
23 think when Therapure, Gateway, some of the other  
24 current investments were acquired or expanded.

25 310 Q. But for the most part you'd agree



1 with me that the information contained in those  
2 letters would be fairly stale?

3 A. Some of it might be.

4 311 Q. Now, is it not true that the  
5 investment letters in the past contain personnel  
6 updates with regard to certain Catalyst employees  
7 perhaps who has joined, who has departed?

8 A. Without looking at the particular  
9 letters, I think that would be accurate to say we  
10 do update from time to time where we've hired and  
11 where people have departed.

12 312 Q. And you've reviewed Brandon's  
13 explanation for why he reviewed the investment  
14 letters?

15 A. I found that unusual.

16 313 Q. Brandon references a March -- in  
17 paragraph 45 of his affidavit, he references a  
18 March 2014 --

19 A. Sorry.

20 314 Q. No, no, go ahead.  
21 References a March 2014 investors  
22 meeting. I understand that you were also at that  
23 meeting?

24 A. Yep.

25 315 Q. And Brandon was at that meeting?

1 In fact, I think the two of you spoke.

2 A. We spoke at that meeting?

3 316 Q. I believe so. Or can you confirm  
4 that Brandon was also at that meeting, to the best  
5 of your recollection?

6 A. I think that was our investors  
7 meeting, yes.

8 317 Q. And did you hear Mr. Glassman make  
9 negative comments about a former employee at that  
10 meeting?

11 A. As I recall, he discussed with the  
12 investors the performance of Mark Horrox.

13 318 Q. And do you recall specifically  
14 what he said?

15 A. No. But I don't recall it being  
16 -- I recall it being factual.

17 319 Q. Do you recall him stating that  
18 Mark's performance was weak and that setbacks  
19 experienced with some portfolio companies were due  
20 to his performance? Do you recall him making that  
21 statement?

22 A. Not word for word, but I think  
23 that was the general substance of the conclusion  
24 around Mark. Investors care about our employees  
25 and what they do and how they perform.

1       320                   Q.    Mr. Glassman didn't provide any  
2                   further detail with respect to Mr. Horrox other  
3                   than what I've just said?

4                   A.    I believe that to be correct, but  
5                   I don't remember word for word.  We don't keep  
6                   minutes of the meetings.

7       321                   Q.    And Mr. Glassman made the comments  
8                   in front of the entire room of investors, correct?

9                   A.    Yes.

10      322                  Q.    Given Mr. Glassman's comments  
11                   about a former employee as recent as March 2014, a  
12                   couple months ago, is Brandon's explanation -- is  
13                   it not reasonable, in terms of why he was reviewing  
14                   the investment letters?

15                  A.    No, not in my view.

16      323                  Q.    Not in your view?

17                  Now, in any event, Catalyst has no  
18                   evidence that Brandon disclosed the contents of any  
19                   investment letter, whether the ones that he  
20                   reviewed on March 28th or any other to West Face?

21                  A.    No.

22      324                  Q.    You have no -- Catalyst has no  
23                   evidence that he transferred any of the investment  
24                   letters to his personal Dropbox account or a  
25                   personal email account?

1 MR. DIPUCCHIO: We can't have that  
2 until we do a review of the forensic image that's  
3 been taken.

4 BY MR. HOPKINS:

5 325 Q. As of today you have no evidence  
6 that that occurred?

7 MR. DIPUCCHIO: Correct.

8 THE DEPONENT: No.

9 BY MR. HOPKINS:

10 326 Q. And prior to bringing this motion  
11 Catalyst never sought any explanation from Brandon  
12 with respect to why he reviewed the investment  
13 letters?

14 A. I'm sorry. Repeat that again.

15 327 Q. Prior to bringing this motion  
16 Catalyst never sought an explanation from Brandon  
17 as to why he reviewed those letters?

18 A. No. Our concern was that he had  
19 dealt with -- that he had in his possession  
20 confidential information. That was our concern.  
21 That's why we imaged his work computer. That's why  
22 we retained Mr. Musters.

23 328 Q. Right, but before bringing this  
24 motion Catalyst could have reached out to Brandon  
25 through legal counsel to seek an explanation as to

1           why he accessed the letters.

2                   A.    As I recall, we tried to reach out  
3           generally so that we could --

4    329           Q.    Generally?

5                   A.    So that we could avoid bringing  
6           this motion. We tried to reach some sort of  
7           understanding that would have resulted in us not  
8           having to bring this motion.

9    330           Q.    My point is Catalyst's concern  
10           with respect to these investment letters, reviewing  
11           it in your affidavit is the first instance that  
12           Brandon was made aware that there was a concern?

13                  A.    That is correct.

14    331           Q.    All right. Let's move on to  
15           Stelco.

16                  A.    Which affidavit?

17    332           Q.    Your affidavit, Mr. Riley.

18                  A.    Page?

19    333           Q.    Paragraphs 58 and 59. Page 25.  
20                        Now, Catalyst hasn't produced any of  
21           the documents that Brandon accessed, correct?

22                  A.    That is correct.

23    334           Q.    Any particular reason why?

24                        MR. DIPUCCHIO: Because they're  
25           confidential.

1 THE DEPONENT: We're trying to keep all  
2 of these documents confidential.

3 BY MR. HOPKINS:

4 335 Q. Even in redacted form?

5 A. Yes. I think because in redacted  
6 form -- in my experience with redacted documents  
7 you still can deduce a lot, and it's time consuming  
8 to redact.

9 336 Q. But in fairness, Mr. Riley,  
10 there's no way that I or a court can decipher  
11 whether those documents actually contain  
12 confidential information without having some form  
13 of document; is that not fair?

14 A. I think documents in our  
15 possession are by very nature confidential unless  
16 they're public access.

17 337 Q. Say that again?

18 A. Unless, for example, financial  
19 statements of a company that are available because  
20 they're a public company, that's public  
21 information. Otherwise something like Stelco is  
22 proprietary to us.

23 338 Q. Regardless of where you obtained  
24 it?

25 A. Some portions may be public, but

1 other portions, including our analysis, would not  
2 be public.

3 339 Q. So the analysis portion of the  
4 document would be proprietary?

5 A. Yes. Well, everything in that  
6 document that cannot be attributed to a public  
7 source is ours.

8 340 Q. I assume you've reviewed the  
9 Stelco documents that you say Brandon accessed?

10 A. No. I know generally what they  
11 would contain though. They're historical. But  
12 there was no reason for him to access them.

13 341 Q. Apart from his explanation.

14 Who reviewed the Stelco documents in  
15 order to put your affidavit together?

16 A. I said earlier I hadn't reviewed  
17 the list. I want to go back, if I could, I don't  
18 know what the rules are, but I want to confer with  
19 Andrew, because Andrew and I spent some time, and I  
20 realize --

21 342 Q. Andrew Winton?

22 A. Andrew Winton, in preparing this  
23 that I may have looked at more than I thought, more  
24 than I'm remembering looking at. So I don't know  
25 within the rules what I'm allowed to do.

1       343                   Q.    You can certainly correct your  
2                   answer if your answer was not entirely factual.

3                   A.    But to do that I have to talk to  
4                   Andrew.  That's what --

5                   MR. DIPUCCHIO:  That's not going to  
6                   happen now.

7                   MR. HOPKINS:  That can't happen.

8                   THE DEPONENT:  Okay.  That's...

9                   BY MR. HOPKINS:

10       344                  Q.    So your answer as stated --

11                  A.    To the best of my memory at this  
12                  time.  Although I'm start -- okay.

13                  Could I ask --

14       345                  Q.    No, you can't consult with your  
15                  counsel.  The question is how many files did you  
16                  review that Brandon accessed between March 27th and  
17                  May 26th?  I believe your answer was that your  
18                  legal counsel raised certain files with you.

19                  A.    Yes.

20       346                  Q.    And you upon hearing the file name  
21                  determined whether there was a concern with respect  
22                  to that document or not.  And by the sounds of it  
23                  with respect to Stelco you didn't even review the  
24                  document.

25                  MR. DIPUCCHIO:  That's not what he just



1           said.

2                       THE DEPONENT: Stelco would have been  
3           in our proprietary form. There is no need for me  
4           to go back and look at it because there was no  
5           reason for him to be looking at it. It's  
6           confidential to us.

7                       And let me give you a more specific  
8           example. The Homburg memo which he sent to West  
9           Face marked confidential is sensitive information.

10                      BY MR. HOPKINS:

11   347               Q. So forgive me, Mr. Riley. Would  
12           there not have been more than four files in a span  
13           of two months that would have raised -- that would  
14           have contained confidential information?

15                      A. Yes. But do you want us to give a  
16           complete listing of those files?

17   348               Q. Yes.

18                      MR. DIPUCCHIO: I think there's a  
19           misunderstanding. What the affidavit says is these  
20           are documents that he had no business accessing and  
21           therefore raise a concern, because he's accessing  
22           large amounts of information that he has no  
23           legitimate business reason to access within a very  
24           short period of time, and that's all the affidavits  
25           say.

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

3 --- Off-the-record discussion

4 THE DEPONENT: If you look at -- this  
5 is my affidavit, correct?

6 MR. DIPUCCHIO: This is Mr. Musters'  
7 affidavit. Exhibit D.

8 THE DEPONENT: Okay.

9 Some of the -- you can see this is all  
10 Stelco material. So, for example, there's an  
11 affidavit of Greg Boland which would be on the  
12 public record.

13 BY MR. HOPKINS:

14 349 Q. Sorry. Hold on. Where are we?  
15 What page?

16 A. I'm sorry. It's Mr. Musters.

17 350 Q. The motion record page is the  
18 best.

19 A. 126, sorry. So some of these  
20 would have been -- like the affidavits I assume  
21 would be on the court record. But if you go  
22 through all the analysis this would be sensitive  
23 information. Valuation.

24 351 Q. But the court documents wouldn't  
25 be?

1 A. Yeah, I agree. Mr. Boland's  
2 affidavit would be in the public record.

3 352 Q. So not all of the documents  
4 contained confidential information obviously.

5 A. I agree with that.

6 353 Q. But it's true, Mr. Riley, that the  
7 Stelco transaction was obviously no longer active  
8 when Brandon accessed -- reviewed the documents a  
9 couple months ago?

10 A. That one may come back on the  
11 agenda though. If you read the newspaper steel is  
12 back on the agenda, both Stelco and Algoma.

13 354 Q. In what way?

14 A. In the case of Algoma I believe  
15 there's an existing default under their I think  
16 public bonds. And then in the case of Stelco the  
17 parent, whatever, U.S. Steel has said that they're  
18 making sure there will be no cross default to their  
19 debt in the case of a default at Stelco. So on a  
20 preliminary basis I would say that both of the  
21 steel companies may be back in play.

22 355 Q. And obviously Algoma is an  
23 entirely separate company from Stelco. I mean of  
24 what use would a six-year-old file be --

25 A. It might be relevant to Stelco.

1       356                   Q.     How could it be relevant to  
2                   Stelco?

3                   A.     Because it would give you a  
4                   preliminary analysis as to how you would approach  
5                   Stelco.  It's of some relevance.

6                   MR. DIPUCCHIO:  Presumably if it wasn't  
7                   of relevance Mr. Moyse wouldn't have any reason to  
8                   access it.

9                   MR. HOPKINS:  He's provided his  
10                  explanation as to why he --

11                  MR. DIPUCCHIO:  Right.  Well, even he  
12                  says he did it out of personal curiosity.

13                  MR. HOPKINS:  Correct.

14                  MR. DIPUCCHIO:  Personal curiosity  
15                  about what?  Presumably you're trying to learn  
16                  something.  But in any event.

17                  BY MR. HOPKINS:

18       357                   Q.     Now, Catalyst has no evidence that  
19                   Brandon disclosed the contents of the Stelco files  
20                   to West Face?

21                  A.     That is correct.

22       358                   Q.     And apart from the one Stelco file  
23                   that Brandon states that he did transfer to his  
24                   personal Dropbox to read at home, which his  
25                   affidavit states that he deleted, Catalyst has no

1 evidence that he transferred any of the Stelco  
2 files from the Catalyst system to his personal  
3 Dropbox Cloud account, or a personal account,  
4 personal email account?

5 A. I'm sorry?

6 359 Q. Brandon has acknowledged  
7 transferring one Stelco file to his Dropbox to read  
8 at home. Other than that one file Catalyst has no  
9 evidence of him transferring any other Stelco files  
10 to his personal Cloud account or any other personal  
11 email?

12 MR. DIPUCCHIO: Not at this time.  
13 That's why the motion is being brought.

14 THE DEPONENT: Yes. I also think we'd  
15 have to review that with Mr. Musters, right?

16 BY MR. HOPKINS:

17 360 Q. Let's move on to the Masonite  
18 files. This can be found at paragraph 60 of your  
19 affidavit.

20 A. Yes.

21 361 Q. So based on your affidavit  
22 Catalyst is or it had been studying a Masonite  
23 international opportunity?

24 A. Yes.

25 362 Q. Brandon's evidence is he had no

1 knowledge of that. Is that true? Brandon wasn't  
2 aware of that opportunity? Do you know one way or  
3 the other?

4 A. I don't know one way or the other.  
5 But there is an investment analysis on Masonite.  
6 It's a little bit dated, 2008. But Masonite is one  
7 of those companies that can come back on the agenda  
8 because it's very sensitive. It's like a Stelco  
9 file, it's very sensitive to what the economy is  
10 doing.

11 363 Q. Is it back in play right now?

12 A. We are looking at it, but not --  
13 no, it has not suffered any downturn at this time.  
14 There's no catalytic event.

15 But it's back because housing is still  
16 soft in the U.S., and the U.S. market is very  
17 important to it.

18 364 Q. When you say that it's back, it's  
19 not -- I mean there's no -- like you said there's  
20 no... what term did you use? No catalytic event?

21 A. Which means that there's no event  
22 has occurred. It's not to the level of say a  
23 Stelco or an Algoma where there is some default.

24 365 Q. Reason for it to be brought to the  
25 forefront?

1 A. Yeah. In order to get into a  
2 restructuring you need to know that there's going  
3 to be an event that you can restructure around.

4 366 Q. And there's been no such event  
5 since 2008?

6 A. No.

7 367 Q. You would agree though that  
8 Brandon wasn't working on the apparent Masonite --  
9 well, he wasn't working on Masonite at the time he  
10 resigned?

11 A. No.

12 368 Q. Now, you've seen Brandon's  
13 explanation as to why he had Masonite files in his  
14 Dropbox.

15 A. May I have a look at that again?

16 369 Q. It's at paragraph 50. And 51. So  
17 if I can just paraphrase for you, Brandon's  
18 explanation is that when he was in the process of  
19 interviewing with Mackenzie Investments they asked  
20 him to draft a two to four-page model of Masonite.  
21 And Mackenzie Investments is the source of those  
22 Masonite documents that Brandon had in his personal  
23 Dropbox.

24 A. Mm-hmm.

25 370 Q. You don't have any evidence to --

1 A. No.

2 371 Q. -- dispute Brandon's explanation?

3 A. No.

4 372 Q. And, in fact, Brandon's  
5 explanation makes sense given the apparent state of  
6 Masonite at the time Brandon resigned?

7 A. The fact that something is rated  
8 investment grade is not decisive. Because what is  
9 investment grade today isn't necessarily investment  
10 grade tomorrow.

11 373 Q. So you'll certainly agree with me  
12 that the documents that Brandon had in his Dropbox,  
13 the Masonite files that he had in his Dropbox,  
14 those weren't Catalyst documents?

15 A. I would have to go back. I think  
16 some of them may be public information, and some of  
17 them we may have got from Mackenzie. I don't know.

18 374 Q. Counsel, could I get an  
19 undertaking as to -- inquiries to be made and  
20 confirmation that the Masonite files that were in  
21 Brandon's personal Dropbox, none of which were  
22 Catalyst documents.

23 MR. DIPUCCHIO: I'm just trying to  
24 piece this together myself. The only document that  
25 Brandon has included in his affidavit, if I'm not



1 mistaken, is the actual investor presentation  
2 document that was attached to the email dated --

3 MR. HOPKINS: That's true. That's  
4 true.

5 MR. MITCHELL: Just to be totally  
6 clear, there was also an annual report.

7 MR. DIPUCCHIO: Is that attached there?  
8 Was there a slipped page? Forgive me.

9 So I don't know whether there's any  
10 evidence quite frankly where the other Masonite  
11 documents may or may not have come from. So I  
12 don't know.

13 BY MR. HOPKINS:

14 375 Q. And Catalyst has no evidence that  
15 Brandon accessed any Masonite files on Catalyst's  
16 system? I have to believe given --

17 MR. DIPUCCHIO: From the Catalyst  
18 system up mean?

19 MR. HOPKINS: Correct.

20 MR. DIPUCCHIO: The only evidence we  
21 have is what has been produced to you.

22 BY MR. HOPKINS:

23 376 Q. Which is just his Dropbox.

24 A. Can I just look at it for a  
25 second?

1 377 Q. Yes. Sure.

2 MR. DIPUCCHIO: We're just bringing it  
3 up.

4 I'm not sure whether that's true  
5 because he does access an initial memo, but I don't  
6 know what that is. We would have to go back and  
7 look at what that initial memo is.

8 THE DEPONENT: Initial memo is the  
9 language we use to describe investment memorandum.  
10 The initial is the first. So that raises a  
11 question in my mind.

12 MR. DIPUCCHIO: So, in fact, he may  
13 well have accessed Catalyst information.

14 MR. HOPKINS: My information is that is  
15 not a Masonite file.

16 MR. DIPUCCHIO: Well, I don't know  
17 where your information is coming from. There is no  
18 evidence to that effect.

19 BY MR. HOPKINS:

20 378 Q. So I just want to repeat the  
21 question so we're clear. So you'll agree with me,  
22 Mr. Riley, that Catalyst hasn't provided any  
23 evidence that Brandon accessed any Masonite  
24 documents in Catalyst's system. All we've got  
25 before us are the documents that Brandon -- the

1           Masonite documents that Brandon produced as part of  
2           his interview process with Mackenzie.

3                   MR. DIPUCCHIO: No. What we've just  
4           said to you is there appears to be in the listing  
5           of documents in Mr. Musters' affidavit a reference  
6           to an initial memo which is a Catalyst document.

7                   BY MR. HOPKINS:

8   379           Q. Well, could I get an undertaking  
9           to advise whether that -- whether Catalyst takes  
10          the position that Brandon was or had accessed  
11          Masonite files prior to his resignation?

12          U/T           MR. DIPUCCHIO: We'll check that.

13                  BY MR. HOPKINS:

14   380           Q. Sorry. You'll give that  
15          undertaking, counsel?

16                  MR. DIPUCCHIO: Yes. We'll go back and  
17          check to the extent we can.

18                  BY MR. HOPKINS:

19   381           Q. Now, in terms of the Masonite  
20          files that you reference in your affidavit at  
21          paragraph 60, did you review those documents?

22                  A. I reviewed that summary.

23   382           Q. So in the course of making your  
24          affidavit you didn't review the documents?

25                  A. No. I just took the summary.

1 MR. DIPUCCHIO: In fairness, there's no  
2 way to review the documents.

3 THE DEPONENT: It just tells you what  
4 he accessed.

5 MR. DIPUCCHIO: It just tells you what  
6 he accessed.

7 BY MR. HOPKINS:

8 383 Q. But the documents on Catalyst's  
9 system you could have?

10 MR. DIPUCCHIO: Right. But he would  
11 have to cross-reference whether there were titles,  
12 document titles the same. You can't just link on  
13 this file.

14 THE DEPONENT: It's not the most --  
15 it's a system -- it's directory as to what you  
16 should look for.

17 BY MR. HOPKINS:

18 384 Q. Now, you would agree with me that  
19 the document at Exhibit I of Brandon's affidavit --  
20 I don't know, that might be the one you've got open  
21 in front of you.

22 THE DEPONENT: No.

23 MR. DIPUCCHIO: Exhibit I in Brandon's  
24 affidavit?

25 MR. HOPKINS: Yes.

1 BY MR. HOPKINS:

2 385 Q. This is his email. Sorry. This  
3 is the email from Mackenzie Investments to Brandon  
4 on May 13, 2014 containing --

5 A. May I read it again?

6 386 Q. Sure.

7 A. And also I find emails confusing.

8 (Witness reads document)

9 Okay, I've looked at that.

10 387 Q. I don't think you need to look at  
11 the attachment. I guess my concern is that you've  
12 raised Masonite as a concern and as a basis for  
13 bringing this motion, yet you didn't review the  
14 Masonite documents. So you wouldn't even -- and if  
15 you can, great, but you wouldn't be able to answer  
16 whether the Masonite documents that Brandon  
17 accessed are in fact these documents that he's  
18 produced as Exhibit I.

19 MR. DIPUCCHIO: There's no way for us  
20 to do that from this.

21 THE DEPONENT: That's right. That is  
22 correct.

23 MR. DIPUCCHIO: The only way we could  
24 do that, counsel, is by having access to his  
25 Dropbox which is why we've commenced the motion.

1 BY MR. HOPKINS:

2 388 Q. You would agree with me, though,  
3 that the documents attached to Ms. Beer's email at  
4 Exhibit I these documents aren't Catalyst property?

5 A. Can I look at them again?

6 389 Q. Certainly.

7 A. This is a Merrill Lynch document.  
8 Without going through it, it looks to  
9 me like these were prepared for presentation  
10 purposes not by us.

11 390 Q. So those documents wouldn't belong  
12 to Catalyst?

13 A. No. But I also don't know,  
14 looking at this, where these documents show up in  
15 this Dropbox list. Can't tell.

16 In other words, these are two  
17 documents. I think there's just two in here.  
18 There's a debt presentation and then the annual  
19 report. There's more documents listed in here.

20 So the annual report is referenced,  
21 2013. And it looks like the documents that are  
22 here based on having seen these they're referred to  
23 in -- do you have my affidavit?

24 391 Q. No, I don't. What tab are you at  
25 again?

1 A. Tab E.

2 MR. DIPUCCHIO: Page 129.

3 THE DEPONENT: Shows you what I don't  
4 do for a living.

5 So can I answer the question?

6 MR. HOPKINS: Absolutely.

7 THE DEPONENT: These two documents, the  
8 first one, the investor presentation?

9 BY MR. HOPKINS:

10 392 Q. Sorry. Where are you exactly?

11 A. I'm looking at page 129.

12 393 Q. Right.

13 A. And if you go down 1, 2, 3, 4 and  
14 5, those would appear to be this document. Why  
15 it's two documents I don't know. Why it's to  
16 Dropbox 2 I don't know. Then if you go down --  
17 this is going to be a little harder.

18 Do you see -- it's easier to do it this  
19 way. You see the second longest lines in Mr.  
20 Musters' report or the information derived from his  
21 report? Those would be the annual report that's in  
22 this affidavit.

23 394 Q. Okay.

24 A. The rest of them -- as you know,  
25 we don't know what document -- you can look at that

1 and have some sense of what the document is.  
2 That's why I think we focused on the initial memo.  
3 I would like to go back and correct  
4 something. I did review these, all the pages that  
5 Mr. Musters produced. What I wasn't remembering  
6 was the fact that you couldn't get to the document  
7 itself, but that's how we identified the items we  
8 thought were sensitive. So I have to correct my  
9 prior statement that I did review this.

10 395 Q. The file names?

11 A. Yes. Of the various files to help  
12 formulate the affidavit material. I remembered it  
13 now that I look at them again.

14 396 Q. But correct me if I'm wrong then,  
15 how would that work? Would you be forwarded all of  
16 the file names for X number, and then you would  
17 determine which one --

18 A. No. I reviewed them with Andrew.  
19 At your office. I apologize. It was only when I  
20 looked at it again that I realized what I had  
21 looked or hadn't looked at.

22 397 Q. Let's go off the record.

23 --- Off-the-record discussion

24 BY MR. HOPKINS:

25 398 Q. Now, if the list of files we



1           looked at, Mr. Riley, can help you, I don't think  
2           that it does, but if it does -- I mean Brandon's  
3           explanation --

4                       A.    What affidavit?  What page?

5   399                Q.    It's your motion record, Mr.  
6           Musters.  Page 129, Exhibit E.  Page 129.

7                       Now, Brandon's evidence remains the  
8           same, and that is despite that list that Catalyst  
9           has not produced any evidence that Brandon accessed  
10          any Masonite documents on Catalyst's system.  His  
11          explanation is that the documents were provided to  
12          him by Mackenzie Investments and he obtained other  
13          research through Masonite's website, and that's  
14          what's reflected in the document.

15                      So, at the end of the day, that's fine  
16          that you have a list of file names, but our point  
17          is none of those were accessed on Catalyst's  
18          system.  Do you have any evidence to dispute that?  
19          Those are file names taken from his personal  
20          Dropbox.  It doesn't say where they came from.

21                      MR. DIPUCCHIO:  No.  Well, with the  
22          exception of the initial memo.

23                      THE DEPONENT:  I think the concern is  
24          the documents referred to as initial memo in -- I  
25          don't know how to describe it.

1 BY MR. HOPKINS:

2 400 Q. Go ahead.

3 A. It's these ones that raise  
4 concern. Generally that he would at the same time  
5 be passing into his Dropbox the ones that are  
6 initial memo, and there's five references.

7 401 Q. Are those the file names marked Z?

8 A. Yes.

9 402 Q. But those aren't -- but those  
10 aren't Masonite documents is what I'm telling you.

11 MR. DIPUCCHIO: There's no evidence of  
12 that.

13 THE DEPONENT: There's no evidence of  
14 that.

15 BY MR. HOPKINS:

16 403 Q. Well, they're on Catalyst's  
17 system --

18 A. Z drive.

19 404 Q. So we would like an undertaking to  
20 find from, I think it's 255... but the document's  
21 from 255 to 9380. 255190547, 3458 and finally  
22 9380.

23 U/T MR. DIPUCCHIO: We'll do our best.

24 BY MR. HOPKINS:

25 405 Q. And my understanding is we

1 actually produced those documents as part of  
2 Brandon's production.

3 MR. DIPUCCHIO: Okay.

4 MR. HOPKINS: It was at the 819, No.  
5 440. So if we could get an undertaking to confirm  
6 that those are actually Catalyst documents not  
7 Masonite documents.

8 THE DEPONENT: Not related to Masonite.

9 MR. HOPKINS: Correct.

10 U/T MR. DIPUCCHIO: We'll take a look.  
11 But I think in response to your free question,  
12 counsel, which was we don't have any evidence that  
13 these documents were taken from Catalyst's system.  
14 We can't do that unless we have access to his  
15 Dropbox in order to determine where the documents  
16 in his Dropbox originated from. That's the  
17 problem.

18 BY MR. HOPKINS:

19 406 Q. Well, you'll agree with me, Mr.  
20 Riley, that Catalyst doesn't have any evidence or  
21 basis to dispute Brandon's explanation as outlined  
22 in his affidavit as to why he had the Masonite  
23 international files in his Dropbox?

24 MR. DIPUCCHIO: What we have is what's  
25 been presented here.

1 THE DEPONENT: That's the evidence we  
2 have.

3 BY MR. HOPKINS:

4 407 Q. That's your evidence.

5 A. Yes.

6 408 Q. And you'll agree with me that  
7 Catalyst has no evidence that Brandon disclosed any  
8 Masonite International documents, or confidential  
9 information to West Face or any other third party?

10 A. No.

11 MR. DIPUCCHIO: We don't have anything  
12 right now.

13 THE DEPONENT: Right now.

14 MR. HOPKINS: All right. Go off the  
15 record for a second.

16 --- Off-the-record discussion

17 --- Recess at 12:36 p.m.

18 --- On resuming at 1:16 p.m.

19 BY MR. HOPKINS:

20 409 Q. Just before we get started,  
21 counsel, if it may assist in answering the last  
22 undertaking, we quickly checked the documents that  
23 we produced as part of Brandon's affidavit of  
24 documents, and those documents that we've asked  
25 Catalyst to, you know, confirm. It appears there

1           it's a Catalyst template memo that's blank,  
2           insinuation being Brandon accessed it to use to  
3           create the memo for Mackenzie Investments just to  
4           assist.

5                       MR. DIPUCCHIO: We'll see.

6                       BY MR. HOPKINS:

7       410               Q.    Mr. Riley, I'm going to turn to  
8           paragraph 61, 62 and 63 of your affidavit. And  
9           this is the section where you deal with the telecom  
10          files?

11                      A.    Yes.

12       411               Q.    Now, again, I apologize for making  
13           you cross-reference, but it's important. I would  
14           like to take you to -- this is with respect to, you  
15           know, whether it would be fair to consider the Wind  
16           deal public knowledge or not in terms of Catalyst's  
17           involvement.

18                      And if I could take you to page 37 of  
19           our motion record. That's tab D. It's one of the  
20           newspaper articles. And specifically it's  
21           paragraph 2. Newton Glassman? Where it reads:

22                               "Newton Glassman who manages  
23                               private equity funds that are the  
24                               top performers in Canada is one of  
25                               the bidders for Wind Mobile which

1 has been put up for sale by its  
2 Russian and Dutch owners said two  
3 people familiar with the sale." (as  
4 read)

5 Now, would you not agree with me, Mr.  
6 Riley, that just on a plain reading of that  
7 paragraph that it would be fair to characterize  
8 Catalyst's involvement in Wind as being public  
9 knowledge?

10 A. When I read these -- when it said  
11 "two people familiar with the sale" means they are  
12 not directly connected with it. So they are people  
13 passing on information. They may or may not be  
14 doing it for various reasons.

15 412 Q. But in fairness that's your  
16 interpretation of that?

17 A. I don't know why they would have  
18 said that, and I'm not sure that in April...

19 413 Q. This is April 2013.

20 A. Yes. I'm not sure that we -- I'm  
21 not sure it would have been true that we were in  
22 discussions was Wind at the time. So, you know,  
23 it's over a year old, but I don't think we were  
24 involved with Wind at that time.

25 414 Q. Now, paragraph 52 of your

1 affidavit you question why Brandon would be  
2 accessing --

3 A. I'm sorry. Where am I now?  
4 Sorry. I wanted to see if there was anything else  
5 in that article. I think if I could just for a  
6 moment. Glassman declined to comment. So I think  
7 there was speculation in April 213.

8 Sorry. Now where am I again?

9 415 Q. Paragraph 52 of your affidavit.

10 A. 52. Yes.

11 416 Q. You say that upon review of  
12 Brandon's file access after March 27th:

13 "I believe that shortly after  
14 Moyse met with Dea, he began to  
15 review Catalyst materials that had  
16 nothing to do with his immediate  
17 assignments, for the purpose of  
18 gaining as much knowledge of  
19 Catalyst's methods as he could."

20 But isn't it true, Mr. Riley, that  
21 Brandon was actually working on Wind Mobile at that  
22 time, and he would have had reason to access those  
23 documents?

24 A. And I think there are other files  
25 that he was looking at at that time that he didn't

1           have reason to look at.

2       417                   Q.    Well, I'm focusing on Wind Mobile  
3           for now.

4                   A.    Okay.  Should I go back --

5       418                   Q.    I think I've got the answer.

6                   A.    Okay.

7       419                   Q.    And, again, just to start to close  
8           the loop on Wind Mobile, I understand that again it  
9           was Mr. De Alba that instructed Brandon to start  
10          working on Wind Mobile roughly two weeks before he  
11          resigned because Raymond Yeh had departed?

12                   A.    Andrew Yeh.

13       420                   Q.    Sorry.  Andrew Yeh?

14                   A.    I just want to go back and look at  
15          something if I could just for a moment.

16                   May I ask you just clarify the  
17          question?  Because my paragraph 52 we questioned  
18          sort of what the activity was in March 27.  You've  
19          referred several times to Brandon getting involved  
20          two weeks before he went on vacation.  So are you  
21          saying that he was looking at those files  
22          contemporaneously or before?  What is your  
23          statement as to when he was looking at the file?  
24          That's what I'm confused about.

25       421                   Q.    It would have been in the two-week



1 period prior to his resignation.

2 A. Okay. So could you ask the  
3 question again? I just want to make sure I  
4 understand.

5 422 Q. Sure. The question is, as part of  
6 Brandon working on Wind Mobile in the two weeks  
7 prior to his resignation on May 26th --

8 A. Yes.

9 423 Q. -- he would have had legitimate  
10 reasons for accessing documents on Catalyst's  
11 system?

12 A. Yes. I assume so. It was an  
13 assigned task. But precisely why he was looking at  
14 them on May 13th, I don't know. What day was May  
15 13th? Does anybody know?

16 MR. MOYSE: Wednesday. Tuesday or  
17 Wednesday.

18 THE DEPONENT: Thank you.

19 BY MR. HOPKINS:

20 424 Q. Now, in terms of Brandon's  
21 explanation for why he was accessing the Wind  
22 Mobile materials on Catalyst's system, in paragraph  
23 55 he --

24 A. Can I -- may I flip to it?

25 425 Q. Sure. Paragraph 55, page 12.

1 Specifically the third sentence Brandon  
2 states:

3 "I accessed the files in  
4 question because I was working on a  
5 chart to include in an investment  
6 memo." (as read)

7 Do you have any reason to dispute that  
8 statement?

9 A. No.

10 426 Q. Are there in fact hundreds of  
11 files related to Wind Mobile on Catalyst's system?  
12 Do you know if that's true?

13 A. I don't know. There would be a  
14 substantial number, but I don't know whether it's  
15 hundreds.

16 427 Q. So I put it to you that Brandon's  
17 explanation then seems reasonable, does it not,  
18 that he would have had to open a number of files  
19 and quickly review them to determine if they  
20 contained the information that he was looking for  
21 if, as you say, there were many Wind Mobile  
22 documents?

23 A. Yes. I think that's a fair  
24 comment.

25 428 Q. And Catalyst has no evidence that

1           Brandon disclosed any Wind Mobile documents or  
2           confidential information to West Face or any other  
3           third party at this time?

4                   A.    At this time we do not.

5   429           Q.    It goes without saying, counsel,  
6           if your client obtains any such --

7                   MR. DIPUCCHIO:   Of course.

8                   MR. HOPKINS:   -- evidence it will be  
9           disclosed?

10                  MR. DIPUCCHIO:   You can imagine it will  
11           be.

12                  BY MR. HOPKINS:

13   430           Q.    If I could take you to paragraph  
14           66 of your affidavit, motion record page 27.

15                  A.    Yes.

16   431           Q.    Now, you start the paragraph by  
17           stating, "In light of, among other things," and  
18           then you go on to list (a) through (e) I believe in  
19           terms of reasons why Catalyst is extremely  
20           vulnerable to unfair competition by Brandon and  
21           West Face. Can you tell me what you are, if  
22           anything, referring to when you say, "among other  
23           things"?

24                  A.    You mean --

25   432           Q.    What is that a reference to?

1 A. The "among other things"?

2 433 Q. Yes.

3 A. I think it's fair to say that that  
4 was a placeholder that as we went through --  
5 remember, at this time when I'm swearing this  
6 affidavit we don't have full facts. So in my view  
7 it was a drafting placeholder that as we discovered  
8 the evidence that we would be able to assert other  
9 facts, or other conclusions.

10 434 Q. All right. Are there any further  
11 facts or evidence that have come to light since you  
12 swore this affidavit that Catalyst is relying on?

13 A. Yes.

14 435 Q. And what are those?

15 A. The March 26th email.

16 436 Q. March 27th?

17 A. 27th, thank you.

18 437 Q. Anything else?

19 A. I think that's it.

20 438 Q. Okay. Paragraph 24 of your  
21 affidavit. You've got it there at the bottom of  
22 the page, page 16.

23 A. May I read it?

24 439 Q. Yes, go ahead.

25 (Witness reads document)

1 A. Yes, I've read it.

2 440 Q. What "multiple internal  
3 discussions" are you referring to in the second  
4 line?

5 A. I think we regularly talked about  
6 West Face as a competitor, among others. In the  
7 distress space you're conscious of who you might be  
8 facing.

9 441 Q. So I mean can you help me out in  
10 terms of specifics? I mean Brandon was only there  
11 for a year and a half.

12 A. Where we dealt with West Face  
13 before?

14 442 Q. No. Just in terms of multiple  
15 internal discussions with respect to West Face  
16 competing directly with Catalyst?

17 A. Mobilicity was one of the files.  
18 Stelco was another file.

19 443 Q. And when did those conversations  
20 take place, do you remember?

21 A. They tended to be casual ones  
22 either at the luncheon or just around the work  
23 space. West Face I believe has a Mobilicity  
24 exposure, but up to them to confirm that.

25 444 Q. I mean, I find it surprising that

1           you would discuss a six-year-old file, Stelco, and  
2           how West Face and Catalyst competed on that file.  
3           Are you sure that there were discussions with  
4           Brandon present that West Face competed with  
5           Catalyst with respect to Stelco? Are you sure?

6                   A. I believe there may have been.

7           445           Q. You don't know?

8                   A. A high degree of certainty? No, I  
9           believe it likely was. Because that was kind of  
10          West Face's inaugural entry into the distress  
11          space. So it would come up in the context of how  
12          they behaved on that file in the context of what we  
13          believed they were doing on Mobilicity and Wind.

14          446           Q. Any other examples other than  
15          Mobilicity, in the context of Mobilicity and  
16          Stelco?

17                   A. I can't be for certain, but we did  
18          discuss it in the context of Wind. But I'm not  
19          sure he was around at that time. I can't remember.

20          447           Q. All right. Let's look at the  
21          March 27 email.

22                   A. Sure.

23          448           Q. Which is in West Face's materials,  
24          tab L. Page 65 of the motion record. And I'm just  
25          right now looking at the email from Brandon to Tom

1 Dea dated March 27, 2014?

2 A. Got it.

3 449 Q. Okay. You've obviously had a  
4 chance to look at this document a number of times I  
5 assume?

6 A. Yes.

7 450 Q. Now, you'll see at the end of  
8 numbers 2, 3 and 4 in the enumerated list under the  
9 first paragraph?

10 A. Mm-hmm.

11 451 Q. Again, focusing on the last  
12 sentence or part sentence where under No. 2 Brandon  
13 states to Mr. Dea, "only public info was used for  
14 the write up." With respect to No. 3 he states,  
15 "the memo was done over the course of a couple  
16 weeks and with only public info." And then with  
17 respect to No. 4, "the memo represents a couple  
18 weeks work off completely public information."

19 Do you have any evidence to dispute  
20 Brandon's statement to Mr. Dea that he only used  
21 publicly available information to create these  
22 three research memos?

23 A. I'll just go back and look at them  
24 again. When I look at them... Homburg is such a  
25 lengthy piece.

1 452 Q. No, we're not talking about  
2 Homburg.

3 A. No, no. Sorry. I wasn't saying  
4 Homburg. I was getting to this.

5 The 19 and 20, as I recall -- may I  
6 just refresh my memory?

7 Seven and eight.

8 453 Q. Sorry. What page of the motion  
9 record are you on?

10 A. Sorry. Page 176 and 177. This  
11 would be our assessment of what the likely outcome  
12 would be both on a liquidation analysis and a  
13 waterfall analysis which would be based on analysis  
14 that we did. So this would be our speculation on  
15 what would happen in Rona. And although  
16 information may come -- Rona's a public company.  
17 That information is public, no question, but the 7  
18 and 8 are not on the public record.

19 454 Q. But they were created using  
20 publicly available information?

21 A. No. Some of that would be our own  
22 analysis.

23 455 Q. Sorry. What specifically?

24 A. What the values of the assets  
25 would be and what the relative hierarchy of the



1 outstanding capital instruments would be. Who  
2 would get what.

3 456 Q. And just point me to where -- I  
4 see total assets on the document, but I need your  
5 help in understanding what exactly you're referring  
6 to.

7 A. Let me keep going through it.  
8 If you look at the waterfall analysis.  
9 This is looking at --

10 457 Q. Sorry. Waterfall?

11 A. Sorry. Let me go back to the  
12 liquidation analysis. This is our assessment of  
13 what the likely asset -- in a liquidation what the  
14 values of the assets would be worth.

15 458 Q. Are you referring to the far three  
16 right columns?

17 A. The whole of 7. No. If you look  
18 at the -- if you look here, we've got the worse  
19 case, mid case, best case. So that's our  
20 assessment of what is likely to happen if you  
21 liquidate the assets.

22 459 Q. So where if I -- where would  
23 Brandon have obtained these numbers? If you're  
24 saying these come from Catalyst, where would he --

25 A. They would be work product that

1           was produced by him or maybe had input from others  
2           that looked at Rona. So it would be a collective  
3           analysis.

4                       So, for example, he might have done the  
5           initial cut, but someone would have looked at it  
6           and said, no, I don't agree with that number, or I  
7           think this number is too low, it's too high, or  
8           change this number, or this asset is worthless. So  
9           it would be a collective assessment.

10   460               Q. So, again, just so we're clear,  
11           your evidence is that this, that these percentages,  
12           worst, mid, best would have been Catalyst  
13           calculations analysis?

14                     A. Yes.

15   461               Q. Based on publicly available  
16           information?

17                     A. No. No. No. Sorry. You're  
18           going too fast. You can get the value of it. You  
19           can get the book value. You see where it says NBV,  
20           net book value?

21   462               Q. Yes.

22                     A. Those are public numbers. I  
23           believe. I would have to go back through each one  
24           of them and see where they came from. But I think  
25           these would be public numbers off of Rona's balance

1 sheet. These are balance sheet numbers. Then the  
2 worst case, mid case and best case would be the  
3 assessment of Catalyst as to what those values are  
4 likely to be. So, for example, and I'm having  
5 trouble reading this. If you look at trade and  
6 other receivables of 428,761?

7 463 Q. Sorry. I apologize.

8 A. That's okay. You see the 428,761?  
9 If you go through the different assessments by  
10 percentage you see the numbers translate across  
11 there.

12 464 Q. I do.

13 A. So what you're doing is trying to  
14 asses what you think -- what the bust-up value of  
15 Rona would be.

16 Then you go to page 177, item 8, and  
17 that's our analysis of where the assets would go,  
18 i.e. the waterfall. Who gets the first monies, who  
19 gets the second, who gets the third. Which is  
20 quite -- that can be a painful analysis.

21 And then if you go to 10 on page 180.

22 465 Q. Yes?

23 A. These represent our assessment of  
24 the issues that would be relevant in a Rona  
25 transaction, liquidation transaction.

1       466                   Q.    But you don't know whether Brandon  
2                   created these assessments himself, do you?

3                   A.    Typically on these memos there  
4                   would be input from people critiquing them. I  
5                   don't think he ever would have done this totally on  
6                   his own.

7       467                   Q.    But you don't know one way or the  
8                   other for sure? I have to ask you, you don't  
9                   know --

10                  A.    Absolutely. I can go back and  
11                  check for you.

12       468                   Q.    Okay. Could you?

13                  MR. DIPUCCHIO: What do you want to  
14                  know? Other people who contributed to the  
15                  analysis?

16                  BY MR. HOPKINS:

17       469                   Q.    Exactly. Whether other Catalyst  
18                   individuals had input into creating, let's call  
19                   them the findings contained on page 180?

20       U/T           A.    Sure. And we'll do the same thing  
21                   with the other three. All four of them to  
22                   determine what input people had.

23       470                   Q.    Yeah, absolutely.

24                   A.    I think we should do all four of  
25                   them.

1 471 Q. That's fine.

2 So other than pages -- well, the pages  
3 we just looked at, 176, 177 and 180, at least with  
4 respect to that particular memo, is there anything  
5 else which was not -- well, it's going to be  
6 captured in the undertaking. That will get  
7 captured in the undertaking?

8 A. I think it's better to address it  
9 that way.

10 472 Q. And I hope you can do this fairly  
11 quickly.

12 A. Yes. Yes.

13 473 Q. Now, with respect to Homburg,  
14 you'll agree with me that this was a deal that had  
15 been successfully completed by Catalyst? It was no  
16 longer an active opportunities, if you will?

17 A. I think at this stage in May of  
18 2013 some of the information would still be  
19 relevant because that's still a situation that's  
20 reaching towards the end, but not completed.

21 474 Q. But he sent the email in March  
22 2014.

23 A. But, again, if you go into it it  
24 details a lot of -- first of all, there's several  
25 bits in here that I think are relevant.

1 475 Q. As of March 2014?

2 A. Yes.

3 476 Q. Like what?

4 A. The underlying values and property  
5 level debt. Our approach to the file, which is  
6 detailed in --

7 477 Q. Where is that?

8 A. It's all through the memo. So,  
9 for example, 125 has spinout of Belgium properties,  
10 spinout of Dutch properties.

11 Sorry. I've got the wrong --

12 478 Q. That's fine. I've got --

13 A. Sprinkled throughout here there  
14 are items that are not in the public domain,  
15 including for example our strategy on Homburg.

16 479 Q. Right. I appreciate that, Mr.  
17 Riley, but my question was more in the context of  
18 -- I appreciate that may be the nature of some of  
19 the information, but the point is more it's a done  
20 deal.

21 A. It's not --

22 480 Q. It's ex post facto, right?

23 A. It's not 100 percent complete. In  
24 fact, I think technically I'm not sure if it's out  
25 of insolvency proceedings. I would have to check,

1 but I think it may be by now. But I think it's  
2 still relevant as to how we approach the asset and  
3 the added values that we see in there. I don't  
4 think this memo will become unconfidential any time  
5 soon in terms of every bit of information that's on  
6 there being in the public record.

7 481 Q. Now, with respect -- and this may  
8 get caught in the undertaking you just gave, Mr.  
9 Riley, and that's fine, but it's important that I  
10 ask, in terms of numbers 2, 3 and 4 I would like  
11 you to point to what information Catalyst considers  
12 to be confidential and proprietary. I appreciate  
13 No. 1, Homburg. I'm talking about 2, 3 and 4.

14 A. Sure.

15 482 Q. I think that gets captured in the  
16 undertaking, but I would like that information.

17 U/T A. Yes. Absolutely.

18 483 Q. Okay. Let's turn to the  
19 non-compete clause. It's page 14, paragraph 17 of  
20 your affidavit.

21 A. Mm-hmm.

22 484 Q. Got it there?

23 A. Yes, I do.

24 485 Q. Now, I want to turn your attention  
25 to the first paragraph, and I'm just paraphrasing,

1           you agree that for a period of six months  
2           thereafter, i.e. your employment, if you leave of  
3           your own volition you shall not directly or  
4           indirectly within Ontario, and then I just want to  
5           focus on Roman numeral 1 for now, the first  
6           subparagraph.

7                           A.    Yes.

8   486                   Q.    Let me know when you've had a  
9           chance to review it again.

10                       A.    Okay.

11   487                   Q.    All right. I just want to focus  
12           on the term or word "fund" for now. The term  
13           "fund" is capitalized, correct?

14                       A.    Yes.

15   488                   Q.    And you'd agree with me, Mr.  
16           Riley, that that term "fund" is a very important  
17           term in this clause?

18                       A.    Mm-hmm.

19   489                   Q.    In fact, I put it to you that it's  
20           actually a critical term because it relates  
21           specifically to the business activities that  
22           Brandon would be prohibited from engaging in,  
23           correct?

24                       A.    Yes.

25   490                   Q.    Yet despite "fund" being



1 capitalized it's not defined anywhere in the  
2 employment agreement, is it?

3 A. May I look at the employment  
4 agreement?

5 491 Q. Absolutely. Take your time.

6 A. It's not defined, but I think you  
7 have to read it in the context of fund 4.

8 492 Q. And where do you see that?

9 A. Well, if you look at the economic  
10 interest that Brandon has they relate to Fund IV.  
11 So I think what's missing in there is not that it's  
12 not defined but the reference to Fund IV.

13 493 Q. First I need to know where exactly  
14 you're looking.

15 A. I'm sorry. I'm doing to you what  
16 you do to me sometimes.

17 494 Q. All right.

18 A. If you go to page -- let's go  
19 back. If you go to page 34 of his contract.

20 495 Q. Sorry.

21 A. Page 34. And I'll take you down  
22 to "As further compensation" etcetera, etcetera?  
23 The first full paragraph after Roman 4.

24 496 Q. Mm-hmm.

25 A. His starting equity is tied to

1 Fund IV. You'll see it about five lines up.

2 497 Q. Pursuant to that paragraph?

3 A. Correct. And then you got the  
4 reference again in Fund IV at the bottom. And then  
5 as a potential -- sorry. On page 35, first full  
6 paragraph on 35 reference to Fund IV. He never  
7 invested in Fund III. I don't think. I don't  
8 think you had an investment in Fund III?

9 498 Q. My understanding is that he did.  
10 Can we get an undertaking to determine whether he  
11 invested in Fund III?

12 A. Yes.

13 499 Q. It's important because Fund III is  
14 also referenced on page 35.

15 U/T MR. DIPUCCHIO: Yes.

16 THE DEPONENT: So I think you have to  
17 read -- it would be better if it had Fund IV and  
18 Fund III specified in there, but I read that as  
19 being the fund in which he has an economic  
20 interest.

21 BY MR. HOPKINS:

22 500 Q. Simply based on the fact that it's  
23 referenced in two other paragraphs in his  
24 employment agreement?

25 A. It's referenced several places.

1 And in the places where it's referenced it's used  
2 in the colloquial expression. In other words, I  
3 don't think it sets out the full fund name. It  
4 doesn't refer to it by its full proper name.

5 501 Q. Do you know whether when Brandon  
6 was given a copy of this employment agreement to  
7 review did anybody explain to him that the  
8 non-compete is only applicable to Fund III and Fund  
9 IV potentially? Do you know if anybody explained  
10 that to him?

11 A. I know that he confirms that he  
12 read and understood it.

13 502 Q. I appreciate that, Mr. Riley.

14 A. So I have no reason to quibble  
15 with that statement. And he certainly knew what  
16 funds were active at the time. Fund II -- let me  
17 just go back. And he would know that the only  
18 active funds that we had, active in the sense of  
19 new investments, are Fund III and Fund IV.

20 503 Q. Before he started working there?  
21 I wouldn't think he would know before he started  
22 working there.

23 MR. DIPUCCHIO: Of course he would.  
24 His whole compensation is tied to it.

25 THE DEPONENT: You're sort of taking me

1           aback, because he would have looked at this and if  
2           he had a question I would expect him to ask it.  
3           Like what is Fund III and what is Fund IV. I don't  
4           find that people just sign this kind of an  
5           agreement lightly, in my experience.

6                       What paragraph are we back at? 17?

7                       MR. HOPKINS: Yes.

8                       BY MR. HOPKINS:

9       504               Q. So I think I have the answer, but  
10           it was never verbally explained to him before he  
11           signed the contract specifically what "fund" meant  
12           as it's stated in the non-compete?

13                      MR. DIPUCCHIO: Do you even know?

14                      BY MR. HOPKINS:

15       505               Q. Do you know?

16                      A. I don't know. Because I mean -- I  
17           wasn't party to what he was -- in the sense of I  
18           wasn't there when he was signing it.

19       506               Q. Fair enough. It's Brandon's  
20           position that it was never explained to him. The  
21           word "fund" was never explained to him.

22                      MR. DIPUCCHIO: Where is that in the  
23           evidence?

24                      BY MR. HOPKINS:

25       507               Q. Well, I'm putting it to the

1 witness. I can put a question to the witness.

2 MR. DIPUCCHIO: Okay. But don't state  
3 it as a fact, because it's certainly not in the  
4 evidence.

5 BY MR. HOPKINS:

6 508 Q. Do you have any reason to dispute  
7 that it was never explained to Brandon what the  
8 word "fund" means as it appears in the non-compete?

9 A. I'm not trying to be  
10 argumentative. As you know I haven't argued with  
11 any of your questions. I honest to God don't  
12 understand your question. Because I would have  
13 said that someone who was coming to work with  
14 Catalyst which has four -- Fund I, which is in the  
15 course of being wound up; Fund II, which is in its  
16 harvest period; Fund III, which is active and Fund  
17 IV which is active. And you're being asked to  
18 invest in Fund III and Fund IV. You're being  
19 offered the opportunity to invest in Fund III and  
20 Fund IV. And I understand he did -- I apologize.  
21 I thought he had only invested in Fund IV. He's  
22 invested in Fund III and Fund IV and he doesn't  
23 know what the term "fund" means? I find that  
24 astonishing.

25 509 Q. So why is it not "funds" plural as

1           opposed to "fund"?

2                   A.     Someone made a mistake.

3     510           Q.     I would think so. I think someone  
4           made a big mistake, quick frankly.

5                   MR. DIPUCCHIO: No, I don't agree.

6                   BY MR. HOPKINS:

7     511           Q.     Would you agree with me at least  
8           that it would have been a good idea for someone to  
9           explain what "fund" meant before he signed it?

10                  A.     Sir, you're working this to death.  
11           I understood that he invested in Fund III and Fund  
12           IV. Is that correct? Do I understand that to be  
13           correct? I think he knows what "fund" meant in the  
14           context of his employment contract.

15     512           Q.     What's contained in each fund?

16                  A.     The actual investments?

17     513           Q.     Well, I don't need -- I don't want  
18           the details obviously, but I'm just trying to get a  
19           better understanding of what these funds are.

20                  A.     We invest in a security in a  
21           distress company as a general proposition. We then  
22           try and get control of that asset and rehabilitate  
23           it into a productive asset, and along the way we  
24           may add additional entities to it. For example,  
25           Natural Markets started as Richtree which is the

1 original Movenpick. It was a very small investment  
2 but now substantial value.

3 So in the funds, Fund III and Fund IV  
4 have two overlapping, four overlapping assets, or  
5 portfolio interests. Fund II and Fund III also  
6 have overlapping assets, with the exception -- Fund  
7 II has one extra asset. But other than that Fund  
8 III and Fund IV and Fund II have very similar  
9 assets.

10 514 Q. And just so I'm clear, these  
11 distress companies would be in addition to the  
12 seven associates that you've outlined in your reply  
13 affidavit?

14 A. Can I look at that just for a  
15 second?

16 515 Q. Sure.

17 A. Can you ask me the question again?

18 516 Q. Absolutely. My question is simply  
19 are there other distress companies that are I guess  
20 controlled by or a part of these funds that are in  
21 addition to the seven associates that you've listed  
22 in paragraph 14?

23 A. We have some other investments  
24 that are in the course of being wound up. For  
25 example, we have an investment in a company called

1 YRC, but that's just operating debt.

2 517 Q. Any others?

3 A. We have -- I don't believe -- we  
4 have an interest in a company called Great  
5 Canadian.

6 518 Q. Is it a going concern?

7 A. Yes. It's a public company. It's  
8 not in distress, but it relates to our Gateway  
9 investment.

10 519 Q. So it's a --

11 A. It's in the same line of business.

12 520 Q. Okay. So is it captured within  
13 (g)?

14 A. My view is, yeah, it does nothing  
15 more. It's a gambling company.

16 521 Q. And, sorry, you said YRC. Is that  
17 captured within any of these?

18 A. No. Because YRC is just debt.  
19 It's not an associated company.

20 522 Q. Any other companies, distress  
21 companies that would be part of a fund that are not  
22 part of paragraph 14?

23 A. No. No.

24 523 Q. At one point though, correct me if  
25 I'm wrong, at one point Catalyst would have had



1 equity in YRC, and it would have been operating as  
2 a going concern; isn't that true? It would have  
3 been an operating company.

4 A. I can't remember the exact number,  
5 but we had a significant economic interest from our  
6 point of view. But YRC is the largest, less than  
7 full truck load shipper in the world. It's a very  
8 big company. So I'm not sure what question you're  
9 asking me.

10 524 Q. Well, my question is would it  
11 become relevant to the non-compete?

12 A. Not in my view.

13 MR. DIPUCCHIO: If it's not defined as  
14 an associate.

15 THE DEPONENT: I don't think it reaches  
16 the associate level at this time. I'm not even  
17 sure if it ever was an associate.

18 BY MR. HOPKINS:

19 525 Q. So when Brandon was provided with  
20 and signed the employment agreement he wouldn't  
21 have known, because it's not stated in the  
22 agreement anywhere, he wouldn't have known what  
23 corporate entities were controlled by the various  
24 funds, or Funds III and IV?

25 A. I think these companies are listed

1 on our website. Not Geneva. Sonar is, Natural  
2 Markets is, Callidus is, Therapure is.

3 526 Q. But they're not in the employment  
4 agreement?

5 A. Oh, no. No.

6 527 Q. You'd agree with that?

7 A. Well, you wouldn't put them in the  
8 agreement, because if this agreement lasts for  
9 five, 10 years the mix will change.

10 528 Q. Right. Exactly.

11 A. Sorry. Maybe I'm not  
12 understanding your drafting point. But this has  
13 some dynamism to it, which is if he was there for  
14 10 years and left the mix of companies would  
15 change, but we still would be concerned about the  
16 same thing, namely, information that could be used  
17 adversely to the interests of those people.

18 529 Q. Fair enough. That's part of our  
19 argument as well, is that it's fluid. It's always  
20 changing. So there's no certainty to this clause  
21 whatsoever.

22 MR. DIPUCCHIO: Of course there's  
23 certainty. At any given point in time there's  
24 certainty.

25 BY MR. HOPKINS:

1       530                   Q.    Well, you'd agree with me that the  
2                   companies under the control of the funds could be  
3                   different from the time that he signed the  
4                   employment agreement to the date that he left,  
5                   correct?

6                   A.    Yes.  But, again, I apologize.  I  
7                   don't understand your question.

8       531                   Q.    I'm just asking.  It's a simple  
9                   question.  You'd agree with me that the companies  
10                  under the control of the funds could change from  
11                  the time that he signed the employment agreement to  
12                  some future date that he resigned?

13                  A.    Yes.  But I think for -- let me  
14                  just use an example.  Let's assume -- this is an  
15                  assumption or hypothetical.  When he signed  
16                  Therapure wasn't in the mix, okay?  We acquire  
17                  Therapure five years -- I'm assuming a long  
18                  timeframe just for the sake of the argument.  We  
19                  acquire Therapure.  That becomes an associate.  We  
20                  would not want him -- and he was working on  
21                  Therapure when he left -- to use information  
22                  relating to Therapure for the benefit of someone  
23                  else.

24       532                   Q.    I understand your argument, Mr.  
25                   Riley.

1 A. I'm just saying that's the way I  
2 view it.

3 533 Q. Fair enough. Now, let's look at  
4 direct associate. We've defined the definition of  
5 associate under the OBCA in Brandon's affidavit, I  
6 don't know if you want to refer to it. I want to  
7 ensure that you don't take issue with the  
8 definition.

9 A. I haven't looked at the -- is it  
10 here? No, this is West Face?

11 534 Q. This one here.

12 A. What paragraph are you referring  
13 to?

14 535 Q. Paragraph 34. The question is  
15 simply whether you agree with the definition of  
16 associate as outlined in paragraph 34. And it  
17 specifically --

18 MR. DIPUCCHIO: That comes right from  
19 the OBCA.

20 MR. HOPKINS: It does.

21 THE DEPONENT: Then I have no  
22 disagreement.

23 MR. DIPUCCHIO: It's actually what the  
24 non-competition provision says.

25 THE DEPONENT: And actually, looking at

1           this again, I apologize, Great Canadian would not  
2           be an associate. We don't own more than 10  
3           percent.

4                           BY MR. HOPKINS:

5   536                   Q.    Sorry. You don't own more than 10  
6           percent?

7                           A.    No.

8   537                   Q.    So based on that definition, and I  
9           know your reply affidavit sworn and served  
10          yesterday elaborated on this point, but based on  
11          that definition Catalyst obviously has a number of  
12          associates which would be applicable to the  
13          non-compete clause, correct?

14                          A.    Yes.

15   538                   Q.    That are not specifically named in  
16          the non-compete clause?

17                          A.    Correct.

18   539                   Q.    And it's possible that these --  
19          just while we've got the evidence now, the seven  
20          associate companies that you've named, it's  
21          possible that Brandon would not have had any  
22          involvement with those companies and yet he would  
23          still be precluded from working with them? That's  
24          correct? Based on the non-compete?

25                          Even if he had no involvement with

1 Callidus in the course of his employment, Callidus  
2 would still be --

3 A. Yes.

4 540 Q. -- a restricted company vis-a-vis  
5 the non-compete?

6 A. Yes. I think that's correct.

7 541 Q. That's correct?

8 A. Yes.

9 542 Q. And I think it goes without saying  
10 that these associates operate in completely  
11 different areas of business than Catalyst?

12 A. Did you say Catalyst or Callidus?  
13 Sorry.

14 543 Q. Catalyst.

15 A. Catalyst. Catalyst is in a  
16 related business. Asset-backed lending is  
17 relatively closely related to what we do in  
18 Catalyst. The others are just true portfolio  
19 investments. An aspect of the distress model is  
20 that you have an asset-based lender. That was  
21 originally the Cerberus model.

22 544 Q. At the time Brandon signed the  
23 employment agreement on October 3rd, 2012, I know  
24 you've given us the list as of today, do you know  
25 how many associates and who they were at the time

1 Brandon signed the agreement?

2 A. I think the two that wouldn't have  
3 been on that list at that time I believe would be  
4 Geneba and Advantage.

5 545 Q. The first two, A and B?

6 A. Yep. Sonar would have been there  
7 I believe. Natural Markets would have been there.

8 546 Q. What about Callidus?

9 A. Callidus, yes.

10 547 Q. And Therapure?

11 A. Yes.

12 548 Q. And Gateway?

13 A. Yes.

14 549 Q. So since Brandon signed the  
15 employment agreement there have been -- is it just  
16 two additions? Have there been any subtractions?  
17 Any companies that are no longer associates that  
18 were back in October 2012?

19 A. To the best of my recollection,  
20 no. No change.

21 550 Q. So we only have two additional  
22 companies that Brandon is restricted from  
23 working --

24 A. Well, actually he's not restricted  
25 because they don't operate in Canada. Geneba and

1 Advantage.

2 551 Q. They don't operate in Canada.

3 MR. DIPUCCHIO: And it's only within  
4 Ontario.

5 THE DEPONENT: Sorry, Ontario. I  
6 apologize.

7 BY MR. HOPKINS:

8 552 Q. When Brandon was provided with a  
9 copy of the employment agreement do you know if  
10 anyone told him who the associate companies were?

11 A. I wouldn't know.

12 553 Q. You don't know?

13 Fair to say that when Brandon signed  
14 the employment agreement back in October 2012 that  
15 he wouldn't have known companies (c) through (g) as  
16 being associates of Catalyst?

17 A. Based on my experience with  
18 Brandon he would have looked at the website. He  
19 would have known what companies were in the fold.  
20 He's a smart guy.

21 554 Q. Focusing on the employment  
22 agreement, because that's what's in issue in this  
23 proceeding, based on the employment agreement is it  
24 fair to say that when Brandon was provided with a  
25 copy of that employment agreement he would not have



1 known that companies (c) through (g) were  
2 associates of Catalyst?

3 MR. DIPUCCHIO: That's not a fair  
4 question to put, counsel. How does he know what  
5 Brandon knew or didn't know?

6 BY MR. HOPKINS:

7 555 Q. You just mentioned a moment ago,  
8 Mr. Riley, that Brandon if he would have looked on  
9 the website he would have known who the associates  
10 of Catalyst are for the purposes of the  
11 non-compete, but my understanding is that on your  
12 website the associates aren't specifically listed.  
13 There may be references to certain companies that  
14 Catalyst has an economic interest in or business  
15 interest in.

16 A. Yes.

17 556 Q. But the associates aren't --  
18 there's no laundry list.

19 A. We don't label them this is an  
20 associate, this is not. He would know that we  
21 considered them to be portfolio investments.

22 557 Q. Right. But he wouldn't know that  
23 they're an associate as an associate is relevant to  
24 the non-compete?

25 A. I don't know what -- you're asking

1 me --

2 558 Q. You must know what's on your  
3 website. I mean if they're not specifically listed  
4 as associates --

5 A. I don't know what he knew at the  
6 time. I'm just saying there was information out  
7 there that he could have -- would, I would think  
8 would animate his discussion if he wanted to know  
9 what the associates were.

10 559 Q. Well, let me ask this again, just  
11 so we're clear. The associates of Catalyst are not  
12 specifically listed on the Catalyst website as  
13 associates, correct?

14 A. That is correct.

15 560 Q. All right.

16 So based on the clause, the wording of  
17 the clause, you'd agree with me that it would  
18 prevent Brandon from working at companies that  
19 while they may conduct some private equity  
20 business, or they may conduct some business that is  
21 similar or the same as Catalyst, it would also  
22 prevent him from working at companies that had  
23 other lines of business, correct? It would prevent  
24 him from working in companies in other lines of  
25 business within that company that happened to have

1 a private equity line of business?

2 A. I'm sorry.

3 MR. DIPUCCHIO: The reason I'm not  
4 following you is because these are all companies  
5 that Catalyst had a controlling interest in. So,  
6 therefore -- I mean you're defining Catalyst as  
7 being a particular type of business. These are  
8 companies that Catalyst has a controlling interest  
9 in.

10 MR. HOPKINS: I'm not talking about the  
11 associates right now. I'm just talking about the  
12 clause, the clause generally.

13 MR. DIPUCCHIO: I thought you just said  
14 it would prevent Brandon from working in companies  
15 that are unrelated to Catalyst business. And I'm  
16 telling you these are companies that Catalyst has a  
17 controlling interest in.

18 BY MR. HOPKINS:

19 561 Q. But I'm not talking about the  
20 associates. For example, would this clause not  
21 prevent Brandon from working at any of the five  
22 major banks in any role?

23 MR. DIPUCCHIO: Would it prevent?

24 BY MR. HOPKINS:

25 562 Q. It would prevent him, would it

1 not?

2 A. No. I disagree with that.

3 563 Q. And why do you disagree with that?

4 A. Because I don't think they are --  
5 they're not competitive to us. We are not  
6 competitive to them is probably a better way of  
7 saying it.

8 And so maybe you can give me the  
9 example that you're thinking of.

10 Like, if Brandon wanted to go to RBC he  
11 could go to RBC.

12 564 Q. Let me take you back to the  
13 clause, Roman numeral 1, where it reads:

14 You agree that for a period of six  
15 months thereafter, your employment, if you leave of  
16 your own volition you shall not directly or  
17 indirectly within Ontario engage in or become a  
18 party with an economic interest in any business or  
19 undertaking of the type conducted by CCGI, by  
20 Catalyst.

21 A. Yes.

22 565 Q. So I read that, Mr. Riley, to say  
23 that he cannot become employed in any company in  
24 any capacity as long as that business in whole or  
25 in part engages in the business or undertaking of

1 the type conducted by Catalyst.

2 A. And we do distressed investing and  
3 investing for control.

4 566 Q. And RBC doesn't operate -- conduct  
5 that business in any way?

6 A. Nope. If they do you can let me  
7 know.

8 567 Q. Do banks not operate proprietary  
9 investment groups?

10 A. I don't think their prop books  
11 invest in distressed assets. Prop books are  
12 investing in publicly traded equities for the most  
13 part.

14 Do you want to take a moment so he can  
15 write the question?

16 And a more particular way to answer,  
17 several of our employees have gone to work for CPP  
18 IP.

19 568 Q. What's that?

20 A. The pension fund. Canada Pension  
21 Fund.

22 569 Q. CPP?

23 A. Which is an investing arm. They  
24 do direct investing.

25 570 Q. Would this clause not prevent

1 Brandon from working at, for example a mutual fund?

2 A. I don't think so. Mutual funds by  
3 and large don't invest in distressed assets. They  
4 do --

5 571 Q. They could. They could.

6 A. Some of their assets become  
7 distressed.

8 In fact, I think mutual funds are  
9 probably limited to the extent that they can invest  
10 in a distressed asset, other than the one that's  
11 become distressed.

12 572 Q. What about a private equity fund?  
13 He would be prevented from working at a private  
14 equity fund.

15 A. You'd have to tell me what that  
16 private equity fund does.

17 573 Q. Well, if that private equity fund  
18 in any way dealt with distressed investments --

19 A. Yes. Agree with that. Totally.

20 MR. DIPUCCHIO: It wouldn't be much of  
21 a non-compete if it didn't prevent him from  
22 competing in something.

23 THE DEPONENT: For a period of time, by  
24 the way. Six months.

25 MR. HOPKINS: Let's go off the record

1 for a minute.

2 --- Off-the-record discussion

3 BY MR. HOPKINS:

4 574 Q. Okay, Mr. Riley, I'm going to give  
5 you some examples of different scenarios that by  
6 our interpretation of the non-compete Brandon would  
7 be precluded from working at these companies.

8 A. Can I ask one --

9 575 Q. Sure.

10 A. If I'm allowed to ask this  
11 question, if I'm not I'll withdraw it. This is a  
12 mixed question of fact and law. Now although I'm a  
13 lawyer I'm not sure I should be giving legal  
14 testimony in the case. That's my concern. So is  
15 it okay to go ahead?

16 MR. DIPUCCHIO: Well, he wants to know  
17 our position and he has various hypotheticals I  
18 suppose. Let's just wait to hear.

19 BY MR. HOPKINS:

20 576 Q. So one example is if Brandon were  
21 to be working at an investment bank advising a  
22 competitor to either Catalyst or a Catalyst-owned  
23 portfolio company.

24 A. Sorry. Investment bank?

25 577 Q. If Brandon were working at an

1 investment bank advising a competitor to either  
2 Catalyst or a Catalyst-owned portfolio company  
3 would that not violate the non-compete?

4 A. No. I think as long as he wasn't  
5 using confidential information. So, for example,  
6 the competitor to Natural Markets would be Whole  
7 Foods. So if he's at an investment bank advising  
8 Whole Foods he would have to not use any  
9 confidential information directly or indirectly.

10 So if I were in his shoes and that was  
11 my non-compete, because I've got the same  
12 non-compete, I wouldn't advise. I would decline to  
13 advise in that situation just because I'd be afraid  
14 of a possibility someone could say I was using  
15 confidential information.

16 MR. DIPUCCHIO: But to answer the  
17 question, counsel, the investment bank itself is  
18 not a competitor --

19 THE DEPONENT: No. The investment bank  
20 itself is not a competitor.

21 MR. DIPUCCHIO: It's not a competitor  
22 of Catalyst for the fund.

23 MR. HOPKINS: Let's go off the record.

24 --- Off-the-record discussion

25 --- Recess at 2:14 p.m.



1 --- On resuming at 2:19 p.m.

2 BY MR. HOPKINS:

3 578 Q. So, Mr. Riley, just so I  
4 understand the plaintiff's position and  
5 interpretation on the non-compete. Is it your  
6 evidence that the non-compete would not prevent  
7 Brandon from working at other organizations that  
8 may do special situations investments, but would  
9 also do other lines of business provided he's  
10 working in those other lines of business?

11 MR. DIPUCCHIO: No.

12 THE DEPONENT: No.

13 BY MR. HOPKINS:

14 579 Q. He can't work at that organization  
15 whatsoever?

16 A. Yes.

17 580 Q. All right. Thank you. So by that  
18 interpretation then, for example, he wouldn't be  
19 able to work at Brookfield because Brookfield has a  
20 special situations arm notwithstanding the fact  
21 that it's a -- my understanding is a very small  
22 component of its overall operations. I mean,  
23 Brookfield is obviously a massive real estate  
24 holdings company. So Mr. Moyse wouldn't be  
25 permitted to work at Brookfield?

1 MR. DIPUCCHIO: It depends whether the  
2 distressed investment arm of Brookfield is a  
3 separate company and is run separately and all the  
4 rest. If it is, then presumably if he's working  
5 for Brookfield the non-distress company then  
6 perhaps that would be permissible. You'd have to  
7 look at each individual situation.

8 BY MR. HOPKINS:

9 581 Q. And under that example then it  
10 would have to be a separate company, a sub or an  
11 affiliate?

12 A. I think it would depend on the  
13 structure. For example, the reason I mentioned CPP  
14 IP is they may have some distressed investments,  
15 but we've had several people go to CPP -- let me  
16 apologize. At least one that I know of in my  
17 career at Catalyst. I believe there's one or two  
18 others.

19 Similarly I think if someone wanted to  
20 go to Teachers I would have to look at Teachers  
21 carefully, but I suspect we would not be averse to  
22 that.

23 582 Q. So it's also true just by the  
24 nature of Catalyst business that the subject matter  
25 of this non-compete in terms of the number of

1 associates and who those associates are, that would  
2 change over time from the date Brandon signed the  
3 agreement to the date that -- some future date that  
4 he might leave?

5 A. Yes.

6 583 Q. So by extension then Brandon is  
7 essentially agreeing not to work for a company when  
8 he signs the agreement, he's agreeing, potentially  
9 agreeing not to work for a company which at the  
10 time Catalyst had absolutely no business  
11 relationship whatsoever?

12 A. Yes.

13 584 Q. Do you not agree with me that  
14 that's rather --

15 MR. DIPUCCHIO: For a period of time by  
16 the way. You keep saying agreed not to work,  
17 right? It's for a limited period of time.

18 BY MR. HOPKINS:

19 585 Q. Fair enough. But you'd agree with  
20 me though that that's rather ambiguous, is it not?

21 A. I know you have been trying to get  
22 to ambiguity, and I thank you for using the word, I  
23 don't think it is. I think that it ties back -- I  
24 believe, okay, that you have to look at the  
25 non-compete, the non-solicitation, and the

1 confidential information as a basket, okay? And  
2 the reason you have to look at that is the reason  
3 that you have the associates, which, as you say,  
4 the pool can change, is because it relates back to  
5 the fact there's going to be confidential  
6 information that relate to those entities that in  
7 order to -- the best protection against misuse of  
8 confidential information is if you're in an  
9 environment where it has no value, if you  
10 understand what I'm saying.

11 586 Q. I think I do.

12 A. So I think that if you have  
13 confidential information, say, relating to NMRC and  
14 you go to work for Whole Foods that raises  
15 questions, and you're trying to protect NMRC from a  
16 competitor like Whole Foods.

17 MR. DIPUCCHIO: But I think if you want  
18 our position, so that you have our position on your  
19 ambiguity point, in our view ambiguity doesn't mean  
20 that the provision can't be fluid in the sense that  
21 there can never be changing circumstances that are  
22 caught by the provision. Ambiguity is defined as  
23 or is dictated as to whether you can define  
24 something the minute you read that provision. And  
25 reading that provision today you have every ability

1 to know exactly what it means. That doesn't mean  
2 that it has to remain static. No non-compete does  
3 because the nature of a business can change.  
4 Itself.

5 BY MR. HOPKINS:

6 587 Q. Has the nature of Catalyst's  
7 business changed over time? I think it was  
8 established in 2002. Has it changed in the last 12  
9 years at all?

10 A. Excluding the associates that are  
11 in the pool?

12 588 Q. Mm-hmm.

13 A. I think we have flirted and I  
14 would say done some activist investing. For  
15 example, Hollinger would have been an activist  
16 investment. I think there's others where you could  
17 say we were an activist investor.

18 589 Q. But by and large the nature of the  
19 business --

20 A. We like to invest in distressed  
21 assets, but I think in that continuum activist  
22 investing is also something that we have considered  
23 from time to time in the right circumstance.

24 590 Q. That you flirted with?

25 A. We did it on Hollinger.

1       591                   Q.    Now, turning back to the seven  
2                   associates that you've listed in paragraph 14 of  
3                   your reply affidavit. You'd agree with me that  
4                   based on this list Brandon would be prohibited from  
5                   working at any company that works, for example in  
6                   the food retail or restaurant industry?

7                   A.    Mm-hmm.

8       592                   Q.    The biologics industry?

9                   A.    Yes.

10      593                  Q.    Asset, I think you called it back  
11                   back lending?

12                  A.    Asset-based.

13      594                  Q.    Asset-based lending.

14                  A.    Callidus does a very special --  
15                   it's a specialty asset-based lender. We lend as a  
16                   lender of last resort. I think if Brandon were  
17                   doing general credit work in a bank that isn't what  
18                   Catalyst does. We lend in very, very precarious --  
19                   sorry. We believe it's not risky, the average  
20                   person would look at it as high risk.

21      595                  Q.    He would be prohibited from  
22                   working in the gaming industry?

23                  A.    There's two gaming companies in  
24                   Canada.

25      596                  Q.    So yes?

1 A. Yes. Actually, well, no. You  
2 know what, it's interesting. Gateway currently  
3 doesn't have any operations in Ontario.

4 597 Q. As of when?

5 A. As of we don't have licences in  
6 Ontario. Gambling is regulated in Canada by  
7 province. We're in B.C. and Alberta in Gateway.  
8 So actually that's one more I would have to add to  
9 the list of companies that are not.

10 598 Q. Are you attempting to? Is there  
11 any move to obtain a licence in Ontario?

12 A. Yes.

13 599 Q. Any idea as to when that might  
14 happen?

15 A. Not any time soon. As you know,  
16 the gambling authority in Ontario is going under a  
17 little bit of stress itself. OLG is going through  
18 a rough formation.

19 600 Q. There's no overlap between  
20 Catalyst's business and the business of its  
21 associates, is there?

22 A. No.

23 So, I apologize. Gateway actually  
24 doesn't fit within the non-compete because it has  
25 to be in Ontario. He could go work for --

1 MR. DIPUCCHIO: But there could be  
2 another gaming company in Ontario.

3 THE DEPONENT: Oh, yeah. Yeah.

4 BY MR. HOPKINS:

5 601 Q. That he would be prohibited from  
6 working for?

7 A. Yes. Yes. So I'm correct.

8 602 Q. All right. Let's look at the  
9 confidentiality provision on page 15 of your  
10 affidavit.

11 A. Mm-hmm.

12 603 Q. Now, it's our position that this  
13 confidentiality is actually quite specific in terms  
14 of what information Catalyst considers to be  
15 confidential and should not be disclosed to any  
16 third party. In fact, Catalyst goes on to list the  
17 specific types of information that it wishes to  
18 protect in Roman numerals 1 through 10.

19 You would agree with me, Mr. Riley,  
20 that this clause is actually extremely specific  
21 with respect to defining confidential information?

22 MR. DIPUCCHIO: Extremely specific?

23 BY MR. HOPKINS:

24 604 Q. Well, it's very specific.

25 A. I think you have to look at two



1 things in reading this. Yes, I agree with you 1 to  
2 10 -- Roman 1 to 10 are pretty extensive, but it  
3 also starts with "including, without limitation"  
4 and ends with, "and the like (collectively  
5 'Confidential Information')." I think this is a  
6 fairly -- I think it's broad relating to  
7 information which is our information.

8 605 Q. Well, it has the standard, broad  
9 boiler plate language which all clauses do, but I'm  
10 actually giving Catalyst some credit here. I'm  
11 saying that this is actually a very good  
12 confidentiality clause because it goes so far as to  
13 be directly applicable to the types of information  
14 that would be unique to Catalyst in terms of what  
15 it would want to protect.

16 A. Yes.

17 Sorry. I wasn't trying -- I think this  
18 was meant to give specific examples of what we  
19 believe is confidential but not be definitive.

20 MR. DIPUCCHIO: Exhaustive.

21 THE DEPONENT: Thank you. Exhaustive.

22 BY MR. HOPKINS:

23 606 Q. Now, does Catalyst take the  
24 position that Brandon has breached this clause?

25 MR. DIPUCCHIO: Yes.

1 THE DEPONENT: Yes, we do.

2 BY MR. HOPKINS:

3 607 Q. And in what way? Other than the  
4 March 27th email, are there any other examples?

5 A. There are none that we know of at  
6 this time, but the March 27th would be --

7 608 Q. One example?

8 A. -- the example right now.

9 609 Q. The example.

10 A. Yes. The example right now.

11 Actually there is one other example now  
12 that I look at this again. He would have mentioned  
13 Mobilicity, but I think it may be -- that may have  
14 been during a time period when we were on the  
15 record in Mobilicity. So it's not...

16 610 Q. Not an example?

17 A. No.

18 611 Q. Now, with respect to the affidavit  
19 that you served, your July 28th sworn affidavit.

20 A. That's yesterday's?

21 612 Q. Yes. If I can take you to that.

22 A. What page, please?

23 613 Q. Paragraph 6.

24 A. Yes.

25 614 Q. Now, correct me if I'm wrong, but

1 I read this to mean that neither yourself nor Mr.  
2 Michaud have actually opened and reviewed any of  
3 the documents. This affidavit, specifically  
4 paragraphs 6 through 12, is simply based on you  
5 having reviewed the file names.

6 A. Correct.

7 615 Q. And Catalyst has no evidence that  
8 Brandon has used any of these documents since he  
9 submitted his resignation?

10 MR. DIPUCCHIO: Used in what sense?

11 MR. HOPKINS: Used in any sense.

12 MR. DIPUCCHIO: We don't know.

13 I don't know whether some of the  
14 documents that he forwarded off in the March 27th  
15 email were part of this disclosure. I haven't done  
16 that cross-referencing.

17 MR. TETREAULT: That was prior to his  
18 resignation.

19 MR. DIPUCCHIO: Yes. Are you saying  
20 after his resignation?

21 MR. HOPKINS: Both before and after.

22 MR. DIPUCCHIO: Well, before --

23 MR. HOPKINS: Sorry. Since his  
24 resignation.

25 MR. DIPUCCHIO: Right. Since his

1 resignation we don't know.

2 BY MR. HOPKINS:

3 616 Q. Catalyst has no evidence that  
4 Brandon disclosed any of these documents to West  
5 Face?

6 MR. DIPUCCHIO: Not right now, no.

7 THE DEPONENT: You have to go through  
8 them more slowly.

9 MR. DIPUCCHIO: But the answer is no,  
10 we don't know what has been disclosed to West Face.

11 BY MR. HOPKINS:

12 617 Q. And Catalyst, at least as of  
13 today, and I appreciate your evidence from earlier,  
14 but as of today Catalyst has no evidence whatsoever  
15 of having suffered any harm or loss resulting -- as  
16 a result of anything Brandon has done before or  
17 after his resignation from Catalyst?

18 A. I think that's why we're seeking  
19 injunctive relief. Isn't that the answer? That's  
20 why the remedy -- no, but that's why the remedy  
21 we're considering is injunctive relief. And I  
22 think in his employment agreement, if I could just  
23 turn to that for a second.

24 Damages won't be an appropriate remedy.  
25 Injunctive relief.

1       618                   Q.    I appreciate what the boiler plate  
2                   paragraph says.  So if I understand you correctly  
3                   then you're bringing this motion seeking injunctive  
4                   relief based on zero evidence that Brandon has  
5                   disclosed any confidential information to West Face  
6                   apart from the March 27th email that Brandon  
7                   disclosed?

8                   MR. DIPUCCHIO:  Well, we don't call  
9                   that zero evidence.  The disclosure of that  
10                  information is extremely serious.

11                  THE DEPONENT:  West Face disclosed  
12                  that.

13                  BY MR. HOPKINS:

14       619                   Q.    That disclosure occurred after the  
15                   injunction was brought.  So other than that March  
16                   27th email, does Catalyst have evidence of any  
17                   disclosure whatsoever, other than that March 27th  
18                   email, in support of its motion for injunctive  
19                   relief?

20                  MR. DIPUCCHIO:  Any disclosure to West  
21                  Face?

22                  MR. HOPKINS:  Yes.

23                  MR. DIPUCCHIO:  No.  That's why part of  
24                  the remedy being sought is access to his computers.  
25                  But what we do know now is that he has 800 some odd

1 documents belonging to Catalyst on his computer  
2 system.

3 MR. HOPKINS: Off the record for a  
4 second.

5 --- Off-the-record discussion

6 MR. HOPKINS: Subject to any further  
7 questions that may arise out of answers to  
8 undertakings, those are my questions.

9 MR. DIPUCCHIO: Okay.

10 THE DEPONENT: Thank you.

11 MR. MITCHELL: Off the record.

12 --- Off-the-record discussion

13 --- Recess at 2:36 p.m.

14 --- On resuming at 2:40 p.m.

15 CROSS-EXAMINATION BY MR. MITCHELL:

16 620 Q. Thank you, Mr. Riley. Just to  
17 confirm our agreement this morning, I may be  
18 seeking clarification on certain of your answers  
19 but I'm not going to ask you to repeat the answers  
20 you've already given because we've agreed that the  
21 transcript is going to be relied on by everybody.

22 A. Thank you.

23 621 Q. So I will try and keep it sort of  
24 narrowly focussed. You were sworn this morning,  
25 and I just wanted to remind you that still applies

1 to your evidence this afternoon.

2 You actually have to say yes on the  
3 record.

4 A. Sorry. Yes.

5 622 Q. So I wanted to start just for a  
6 couple minutes on Catalyst and West Face in terms  
7 of their business segments. And from what I  
8 understood you to say this morning is that  
9 Catalyst's business model generally speaking, and  
10 there are exceptions, but generally speaking is to  
11 gain control or influence on distressed  
12 investments?

13 A. Yes.

14 623 Q. And typically when you take a  
15 controlling interest or a position of influence --  
16 sorry? Did you want to correct me?

17 A. Influence is something less than  
18 control.

19 624 Q. Okay. So maybe you can describe  
20 for us the control versus the influence?

21 A. Control is when you have -- the  
22 easiest example is when you have 50 percent plus  
23 one of the equity of a company, or you have debt  
24 entitlements that can get you that 50 percent plus  
25 one. If you have less than -- the smaller your

1 interest gets the more you're trying to influence  
2 an outcome. So we have had situations where we've  
3 had nowhere close to controlling interest but we've  
4 had influence.

5 625 Q. And when you mean influence do you  
6 mean influence on the board of directors?

7 A. Influence the outcome. Or  
8 influence the result we want which can include,  
9 among other things, being on the board of  
10 directors.

11 626 Q. And that can be distinguished  
12 between a passive investment where you put your  
13 money in and other people control the organization?

14 A. Yes.

15 627 Q. Okay. And generally speaking, I  
16 take it from what you've said, Catalyst does not  
17 seek to be a passive investor in most cases?

18 A. In most cases, yes.

19 628 Q. And I accept that there are  
20 exceptions to this. So I'm just talking about  
21 general business philosophies.

22 A. We like to be in a situation where  
23 we can make money is the easiest way to think of  
24 it.

25 629 Q. Makes sense.



1                   A.    I think that's why he kept  
2                   referring to us as Capitalist Capital.

3   630               Q.   Now, you also said that there  
4                   are -- in your affidavit and I can take you to  
5                   it -- that there are a relatively small number of  
6                   investment opportunities in Canada relating to  
7                   distressed investments.

8                   A.    Yes.

9   631               Q.   Generally speaking, how does  
10                  Catalyst find out about the distressed investments  
11                  that come up?

12                  A.    There are many different ways.  
13                  People in the community that bring forward the  
14                  possible investment. For example, I think that was  
15                  the origin of Advantage, where we were invited to  
16                  become the financier and then do the stocking horse  
17                  bid that resulted in us being successful.

18                  In the case of -- and I'm trying to  
19                  think of the current investments, easier to do. In  
20                  the case of Homburg we looked at it for a number of  
21                  years. We were looking at it for as long as I was  
22                  -- during the time when I joined. So that's almost  
23                  three and a half years, and I believe it preceded  
24                  that. And that was -- actually we were  
25                  antagonistic to the monitor in that case, and then

1 eventually became their best friend, or what would  
2 pass as their best friend.

3 So they come from a variety of sources.  
4 And some we just do totally on our own. For  
5 example, Mobilicity. We bought debt insurance  
6 totally on our own. I don't think there was any  
7 direct sourcing from anybody other than the market.

8 632 Q. Okay. And I want to take you to  
9 West Face's motion materials, and in particular  
10 paragraph 12 of Mr. Dea's affidavit, which is on  
11 page 4. Maybe just take a minute to read paragraph  
12 12.

13 (Witness reads document)

14 The last sentence of Mr. Dea's  
15 affidavit refers to the fact that there are a small  
16 number of investment opportunities; you agreed with  
17 that. And he then goes on to say:

18 "As a result the investment  
19 opportunities that are available are  
20 widely known in the industry." (as  
21 read)

22 Would you agree with that?

23 A. I think that's an overstatement.  
24 I mean, I know what he's trying to say, that once  
25 an investment opportunity comes up. But these

1 are -- it depends on the ripeness of the investment  
2 opportunity. Let me take for example Homburg. I'm  
3 not sure that Homburg became that well-known until  
4 it went into insolvency proceedings.

5 633 Q. But at a certain point it will  
6 become publicly known and widely known.

7 A. Yes. Only because you -- sorry.  
8 I'm not trying to be argumentative.

9 634 Q. No, no. I want to hear what you  
10 have to say.

11 A. Eventually you go into some sort  
12 of -- you either do a CBCA reorganization, or you  
13 do a CCAA reorganization. At some point you're  
14 into a public forum that is controlled by the  
15 courts is ultimately where you end up, either  
16 because the company chooses to go there or because  
17 you try to force it in, or because there are  
18 multiple -- you have to start managing the multiple  
19 stakeholders.

20 Now, in some other cases we have not  
21 had to do that. We have gone through a  
22 court-appointed receiver, but those are usually  
23 smaller cases.

24 635 Q. Now, the Wind I'll call it the  
25 transaction, or opportunity is probably a better

1 term.

2 A. My understanding is that there's  
3 an exposure in Mobilicity as well. West Face has  
4 an exposure there.

5 636 Q. Okay. So if we look at Wind, at  
6 what point in time did it start to become publicly  
7 known that it was a distressed investment?

8 A. I don't have a precise date.

9 637 Q. Okay. Would it be a year ago?  
10 You were referred to the April 2013...

11 A. Whether it was there before -- I  
12 don't have a precise date. It's been known that --  
13 two things have been known, Wind is struggling.  
14 All of the incumbents -- sorry. All of the  
15 non-incumbents were struggling at some point to try  
16 and create a -- become a fourth carrier.

17 638 Q. Is it fair to say Wind has been  
18 publicly known for just over a year at least?

19 A. At least a year.

20 639 Q. Thank you. Now, if we go back to  
21 Mr. Dea's affidavit. He talks about two funds in  
22 his affidavit. He talks about the long-term  
23 opportunities fund and the alternative credit fund.  
24 And I'll take you to paragraph 7 through 9 of his  
25 affidavit.

1 A. May I read those for a moment?

2 640 Q. Sure. Absolutely.

3 (Witness reads document)

4 A. You said 7 and 8. Do I have to  
5 read 9 as well?

6 641 Q. Actually 9 would be helpful, yes,  
7 please.

8 A. Okay.

9 642 Q. So there are the two funds  
10 referenced there, and I want to speak first about  
11 the long-term opportunities fund. Mr. Dea talks  
12 about the long-term opportunities fund as a fund  
13 where West Face makes minority investments in  
14 public equity strategies, and in paragraph 9 in  
15 particular refers to it as a strategy whereby the  
16 assets can be liquidated fairly quickly.

17 Would you agree with me that based on  
18 Mr. Dea's description the long-term opportunities  
19 fund really wouldn't be directly competitive with  
20 what Catalyst is seeking to accomplish?

21 A. I would have to know what its  
22 investment record was. I would have to see what  
23 they invested in. For example, was that the  
24 fund -- I don't know when LTOF was founded. Was  
25 that the fund that invested in Stelco?

1       643                   Q.    I'm not asking about any  
2                   particular transaction. We'll get to particular  
3                   transactions.

4                   A.    The only reason I'm asking is  
5                   because I don't know which funds invested in which,  
6                   but I would say that that wasn't an LTOF type  
7                   transaction, but I don't think the ACF fund is a  
8                   recent fund, so.

9       644                   Q.    Right. And it goes back to what  
10                   we said earlier which is there are exceptions and  
11                   there are differences. I'm talking as a general  
12                   proposition based on the description that's in  
13                   paragraphs 7 through 9. The long-term  
14                   opportunities fund I'd suggest to you would not be  
15                   directly competitive based only on this  
16                   description. I'm not asking for anything other  
17                   than that. You would agree with that?

18                   A.    I think so, yes.

19       645                   Q.    Okay. And so where we go with the  
20                   ACF, the alternative credit fund, is I take it  
21                   based on your affidavit in addition, where West  
22                   Face may come into certain competitive aspects with  
23                   Catalyst?

24                   A.    Can I go back? And, again, I  
25                   don't know enough about the LTOF to make this

1 statement, but I would ask whether -- in a number  
2 of these distress situations there is an active  
3 two-way market in the debt, notwithstanding it's a  
4 distressed company. And there's a very active  
5 market particularly in the U.S. for -- could be  
6 Canadian assets, because a lot of Canadian debt is  
7 issued -- even though it's private debt it's issued  
8 in the U.S.

9 So in most cases if it's the right type  
10 of debt there is a very active two-way market that  
11 you can liquidate at any time. So I don't -- I  
12 hear what you're saying, but I think when you're  
13 talking about publicly traded debt opportunities  
14 those can be distressed and still have an active  
15 two-way market that fulfills the requirement.

16 646 Q. But the two other aspects of it as  
17 reflected in Mr. Dea's affidavit is that they can  
18 be liquidated fairly quickly and that they are not  
19 seeking a controlling interest or a position of  
20 influence. That's reflected in paragraph 9.

21 A. Sorry. In paragraph 9 it doesn't  
22 say that the LTOF is not going for influence.

23 647 Q. Oh, I'm sorry. That's the ACF.

24 A. Sorry. I'm just saying.

25 648 Q. But, again, if we go back to the

1 LTOF, and I appreciate there have been transactions  
2 where they have been competitive, and you've given  
3 that evidence. So I don't want to --

4 A. Can I phrase it a slightly  
5 different way? And, again, I'm not trying to be  
6 argumentative, but we have two competitive  
7 situations today.

8 649 Q. Yes.

9 A. And we have a relatively small  
10 number of investments. So significant.

11 650 Q. So the two today are the telecom  
12 transaction. Everybody said it Wind?

13 A. Yes.

14 651 Q. And then the other one is?

15 A. Mobilicity.

16 652 Q. And then there's a past one,  
17 Stelco?

18 A. Yes.

19 653 Q. Can you think of any other past  
20 ones?

21 A. Not off the top, no.

22 654 Q. So those are the three, the two  
23 active ones and the Stelco from the historical.

24 Now, when --

25 A. Sorry. I'm not going to say what



1 I was going to say. I withdraw my...

2 655 Q. I take you to your motion record  
3 tab O. This is tab O to your affidavit, page 83 of  
4 the motion record. This is a letter written before  
5 the commencement of legal proceedings.

6 And if I take you to paragraph 3 of  
7 that letter from Mr. Miedema. Mr. Miedema writes,  
8 "you", meaning Mr. DiPucchio.

9 "You mentioned yesterday that  
10 Catalyst is particularly concerned  
11 about Mr. Moyse's involvement in a  
12 'telecom deal'."

13 I take it that's the West Face -- or  
14 that's the Wind?

15 A. It was both.

16 MR. DIPUCCHIO: It was actually both.  
17 We had talked about multiple telecom deals.

18 BY MR. HOPKINS:

19 656 Q. So there were two telecom deals,  
20 Mobilicity and Wind that were discussed on that  
21 call. How did, or did you know, or was it just a  
22 guess that West Face was involved in those at this  
23 point in time?

24 A. In those two?

25 657 Q. Yes.

1                   A.     Based on market. Market intel. I  
2                   mean unless someone -- to use the term we use,  
3                   unless someone surfaces you don't know 100 percent  
4                   for sure, but you can tell from market intel that  
5                   there's a high likelihood.

6     658            Q.     So it was generally known in the  
7                   marketplace that there was a high likelihood?

8                   A.     I don't know what our source was.  
9                   I don't know our particular source for that,  
10                  whether it was sort of well-known in the  
11                  marketplace or whether there was some well-placed  
12                  sources that informed us. It could be one of the  
13                  two.

14     659           Q.     Similar to the news article you  
15                  were referred to about the sources?

16                  A.     The sources.

17     660           Q.     Okay. Now, I would you like to  
18                  take you to, and maybe I'll use your motion record.  
19                  Tab A is the employment agreement, and I know  
20                  you've already given evidence on that. This is the  
21                  employment agreement of Mr. Moyse with Catalyst.

22                  A.     Yes.

23     661           Q.     If I take you directly to section  
24                  8 which is on page 37. That's the non-competition  
25                  clause. I think you mentioned it already. I take

1           it this clause is part of your standard form  
2           employment agreement. It's not prepared  
3           specifically for Mr. Moyse?

4                           A.     No.

5   662                   Q.     Okay. Now, you talked with Mr.  
6           Hopkins about the fund, and I wanted to revisit it  
7           with you because I obviously heard what you said  
8           but I was a little bit confused. You referred back  
9           to page 34 -- or, sorry, 35 rather of the motion  
10          record where you say there's a reference there to  
11          Fund IV and Fund III.

12                       A.     Mm-hmm.

13   663                   Q.     And I note at the end of that  
14          paragraph there's also a reference to "these  
15          Funds." Can you just give me --

16                       A.     I'm sorry. Where? Yes, in these  
17          Funds.

18   664                   Q.     Right at the end. The last two  
19          words. Before we get into it, can you just give me  
20          an explanation of how the funds work? Because what  
21          I understand, and you're the expert on it as  
22          opposed to me, but what I understand is that each  
23          fund will have I think of it as an investment  
24          horizon over several years.

25                       A.     Correct.

1       665                   Q.     And so a fund will start on day 1  
2                   and it will mature and mature and mature and at  
3                   some point, maybe six years, seven years, eight  
4                   year, maybe more, maybe less, at some point the  
5                   fund will complete its objectives and essentially  
6                   be wound up; is that right?

7                   A.     You've got the right idea, but let  
8                   me tell you generally -- first of all, let me talk  
9                   about our current funds because they have almost  
10                  the same investment horizon. There is a five-year  
11                  period for investing and a five-year period for  
12                  harvesting those investments subject to the ability  
13                  to lengthen those periods by two one-year periods  
14                  or with consent.

15                  During the investment period you  
16                  invest, and you invest in two ways. You buy a  
17                  company and you fix it up, or you buy a company and  
18                  add onto it like we call bolt on acquisitions.  
19                  Then in the next five years you may still do some  
20                  of that. You may still try and improve the asset,  
21                  but your intent is to try and realize on it within  
22                  that five-year period.

23                  You're doing that because that's the  
24                  expectation of the investors and it's also in our  
25                  enlightened self-interest because that's when we

1 get our carry. And that's the way our funds work.

2 Now, the earlier -- I think Fund I was  
3 probably a three-year fund, relatively short  
4 horizon. And then the Fund II was probably seven  
5 years, five plus two, but it's been extended twice.

6 666 Q. So Fund I is now -- is that  
7 completely done?

8 A. It's done. Well, there's a  
9 wind-up, and we have one lawsuit left. But there's  
10 no assets being managed.

11 667 Q. And Fund II I think you said is  
12 nearing the end of its horizon?

13 A. It's actually past its investment  
14 period and is starting to be harvested, harvesting  
15 those investments.

16 668 Q. And what's the status of Funds III  
17 and IV?

18 A. Fund III will be finishing its  
19 investment period on December 31 of this year,  
20 2014, and Fund V is probably in its second year.

21 669 Q. Fund IV?

22 A. Sorry, Fund IV. Sorry.

23 670 Q. And has there been a Fund V yet at  
24 this point?

25 A. No. But we are starting to

1 prepare for that.

2 671 Q. Okay. So when I go back into the  
3 non-complete where it says "the Fund", as of the  
4 date -- and this was a little bit of my confusion,  
5 I apologize, you had mentioned at one point you  
6 weren't sure whether Mr. Moyse had invested in Fund  
7 III or not. Is your view that whether the  
8 non-compete covers the fund, is it west -- sorry,  
9 Catalyst's position that the non-compete only  
10 applies to a fund if the individual invests in it?

11 A. No. Those are the funds which you  
12 have the opportunity to invest in, because those  
13 funds, those funds will have crossover assets. So  
14 it's meant to talk about the business carried on by  
15 those funds which are the current funds. Those  
16 funds are mentioned because they're the current  
17 funds, Funds III and IV, and then the associates  
18 are the current associates, but subject to their  
19 ability to change over. Because if we sell off an  
20 asset that's no longer an associate of ours.

21 672 Q. Right. And so your position is  
22 that it is the reference to "the Fund" in section 8  
23 is actually not necessarily Fund III, not  
24 necessarily Fund IV, but whatever funds are active  
25 at the time the clause becomes operative?

1 A. Actually, I think it's Funds III  
2 and IV in the context of how this is drafted.

3 673 Q. Okay. So if Mr. Moyse had been  
4 with you for 25 years and then left, your position  
5 is Fund III and Fund IV which would have been  
6 wrapped up --

7 A. I think we would have had an  
8 argument at that time. That's what I think.

9 MR. DIPUCCHIO: There may well have  
10 been another employment agreement by that time.

11 THE DEPONENT: In other words, by  
12 that -- I mean, you raise a point that I would have  
13 to spend more time thinking about, the reasonable  
14 construct of that when you had multiple funds.

15 BY MR. HOPKINS:

16 674 Q. Well, you had -- but you had  
17 multiple funds in this.

18 A. III and IV. These are two active  
19 funds.

20 675 Q. And you had Fund I which had been  
21 wrapped up and Fund II which was in the process of  
22 being wrapped up.

23 A. Yes. But remember that Fund II --  
24 the business of Fund III and Fund IV -- you're  
25 measuring the business by reference to funds that

1           are active at this time. So Fund IV is the  
2           business -- is business. Fund I, I have to say --  
3           I'd have to go back and think. I have never  
4           thought of this. So it's first impression. So I  
5           should maybe not speak until I've thought about it.

6       676                   Q. I'm just trying to understand how  
7           the fund is described.

8                   A. I think the interpretation of it  
9           in this agreement is the two active funds, Fund III  
10          and Fund IV. But Catalyst itself and the  
11          business -- in other words, the business of those  
12          funds would still be dealing with distressed  
13          assets, just at various stages of their  
14          development.

15       677                   Q. But you'll agree with me that  
16          nowhere in the agreement does the fund anywhere  
17          suggest that it's Fund III and Fund IV? It's just  
18          referred to as "the Fund."

19                   A. Actually it -- sorry. Let's go --

20                   MR. DIPUCCHIO: Fund III and IV are  
21          referred to.

22                   THE DEPONENT: But there's also --  
23          sorry. As we were going through this I just wanted  
24          to draw your attention to something.

25                   MR. MITCHELL: Sure.



1 THE DEPONENT: If you go to page 3 of  
2 -- page 35 in the transcript.

3 BY MR. MITCHELL:

4 678 Q. Page 35 in the motion record, yes.

5 A. And you look at the first full  
6 paragraph, the one starting, "as a potential equity  
7 holder"?

8 679 Q. Yes.

9 A. It goes, should you leave the firm  
10 for any reason, your money will come back to you,  
11 upon you signing a release of all claims  
12 relating --

13 THE REPORTER: Sorry. Sorry.

14 THE DEPONENT: I'm sorry. Let me slow  
15 down.

16 Reading from the agreement.

17 MR. MITCHELL: And that's the last  
18 sentence.

19 THE DEPONENT: Last sentence:

20 "Should you leave the Firm for  
21 any reason whatsoever, your capital,  
22 and/or any portion thereof  
23 remaining, will be returned to you  
24 at original cost (and you will lose  
25 the right to any gains thereof) upon

1                   you signing a release of all claims  
2                   relating to your participation in or  
3                   investment in these Funds."

4                   So there, again, it's a capitalized  
5                   term that captures III and IV.

6                   BY MR. MITCHELL:

7       680           Q.    Right. But that says "these  
8                   Funds" and then when you flip over to section 8 it  
9                   says "the Fund."

10                  A.    Yeah.

11       681           Q.    And when you refer to Fund IV it's  
12                   in the singular. When you refer to Fund III it's  
13                   in the singular. And then when you want to refer  
14                   to both of them you say "these Funds" and then  
15                   section 8 it says "the Fund."

16                  MR. DIPUCCHIO: Or the fund.

17                  MR. MITCHELL: The fund though.  
18                  There's no plural there.

19                  MR. DIPUCCHIO: But it could be any one  
20                   of the funds. I mean that's our position.

21                  MR. MITCHELL: Okay. Sure.

22                  BY MR. MITCHELL:

23       682           Q.    Now, I want to move on to the  
24                   associates definition, and this was dealt with in  
25                   paragraph 14 of your affidavit.

1 A. Of this one, right?

2 683 Q. Your July 28th affidavit.

3 You gave evidence that during his  
4 employment Mr. Moyse was quite heavily involved in  
5 Advantage, which is sub (b) of paragraph 14.

6 A. Yep.

7 684 Q. And that he was involved in sub  
8 (d) Natural Markets Restaurant Corporation?

9 A. Yes.

10 685 Q. And that he was involved in (f)  
11 which is Therapure?

12 A. Yes. Just starting to get  
13 involved in Therapure.

14 686 Q. Was Mr. Moyse involved in the  
15 other four, being Geneba, Sonar, Callidus or  
16 Gateway?

17 A. He was involved in Geneba. He was  
18 not involved in Callidus. I don't believe he was  
19 involved in Gateway, and I don't think Sonar.

20 687 Q. But in terms of the section 8  
21 restriction -- I think you already gave this  
22 evidence. But in terms of the section 8  
23 restriction any of these companies that were doing  
24 business within the restricted territory he would  
25 be subject to section 8 regardless of whether he

1 was working on them?

2 A. Yes.

3 688 Q. Now, if you we look at Natural  
4 Markets Restaurant Corporation. I think you gave  
5 evidence already that it's involved in a variety of  
6 restaurants, one of which I think you mentioned  
7 being Richtree?

8 A. Let me give you the -- do we have  
9 time? I don't want to bore you to death.

10 689 Q. I don't think we need the whole  
11 history. I think right now it's Richtree; is that  
12 right?

13 A. No. Richtree is one of the parts  
14 of it, but it's a conglomeration of four different  
15 brands.

16 690 Q. Okay. And are they all operative  
17 in Ontario?

18 A. I believe so.

19 691 Q. Okay. So given section 8 of his  
20 employment agreement, for six months after the end  
21 of his employment if in Ontario Mr. Moyse is  
22 prohibited from working in any restaurant in the  
23 same line of business as Natural Markets  
24 Restaurant?

25 A. Yes.

1       692                   Q.    I also want to look at Gateway  
2                   Casinos.  You gave evidence already that it  
3                   operates a gambling company out West.  I think you  
4                   said they're in B.C. and Alberta; is that correct?

5                   A.    Correct.

6       693                   Q.    Now, you said in your evidence  
7                   earlier today that Gateway would not be on the  
8                   restricted list because they're not in Ontario; is  
9                   that correct?

10                  A.    I think I corrected myself,  
11                  because I was thinking about the fact that it's not  
12                  in Ontario, but you could be in Ontario in a  
13                  gambling operation competitive.  Perhaps.

14       694                   Q.    I want to take you to the clause,  
15                   and it's 8(i).  And, again, just so I understand  
16                   it, your evidence has been that he could actually  
17                   work in a gambling casino in Ontario?

18                  A.    I think I corrected that.  Maybe  
19                  we want to go back and read on the transcript.

20       695                   Q.    Sorry.  What was your correction?

21                  A.    Well, I initially thought that you  
22                  could slide -- because Gateway only has operations,  
23                  currently only has operations in Alberta and B.C.  
24                  that you could read it is engage in a gambling  
25                  operation within Ontario.  So I think the way -- I

1           corrected myself because if you key it back to  
2           Ontario, the fact that Gateway is not here doesn't  
3           mean they wouldn't be in competition with that  
4           company, if you say with a gambling operation in  
5           Ontario.

6       696                   Q.    So is it your position that he  
7           cannot work for a gambling operation in Ontario?

8                   A.    Yes, it is.

9       697                   Q.    Okay. You go on in your affidavit  
10          in paragraph 17 to say that:

11                           "Catalyst has a legitimate  
12                           interest to prevent a Catalyst  
13                           employee from resigning and  
14                           immediately beginning to work for a  
15                           competitor to a company that  
16                           Catalyst is so heavily invested in."  
17                           (as read)

18                           What is the interest in prohibiting Mr.  
19           Moyse from potentially working for a gambling  
20           operation in Ontario when the entity you're  
21           invested in is not located in Ontario?

22                   A.    Because you're looking to --

23                           MR. DIPUCCHIO: Hold on a second.

24                           Let's correct ourselves. The company may be based  
25           in Ontario, but they may have gambling operations

1 located in wherever Gateway operates its business.

2 BY MR. MITCHELL:

3 698 Q. But Mr. Moyse is restricted from  
4 working within Ontario. So you've already given  
5 evidence that the Ontario market is heavily  
6 regulated.

7 A. All of them are regulated in  
8 Canada.

9 699 Q. If Mr. Moyse works for a gambling  
10 operation that is solely based in Ontario, does  
11 this clause prohibit him from engaging in that?

12 MR. DIPUCCHIO: Yes.

13 BY MR. MITCHELL:

14 700 Q. So what is the business interest  
15 in restricting Mr. Moyse from working in Ontario  
16 for a business solely located in Ontario when the  
17 business that Catalyst has invested in is not  
18 located in Ontario? What's the business interest?

19 MR. DIPUCCHIO: Are you talking about a  
20 hypothetical case?

21 MR. MITCHELL: He's told me that this  
22 clause restricts Mr. Moyse from working in Ontario  
23 for a business solely based in Ontario where  
24 Gateway --

25 MR. DIPUCCHIO: So what if there's a

1 business with a head office in Toronto that runs a  
2 casino in Alberta?

3 MR. MITCHELL: That's not my question.  
4 His evidence is that even if the business is based  
5 solely in Ontario he can't do it because Gateway is  
6 located out West. And I want to know based on his  
7 affidavit what is the legitimate interest in  
8 preventing that?

9 MR. DIPUCCHIO: But we don't have a  
10 fact scenario in front of us.

11 MR. MITCHELL: I just gave him the fact  
12 scenario.

13 MR. DIPUCCHIO: Which is what?

14 MR. MITCHELL: Which is you have a  
15 business that is based solely in Ontario that is  
16 not based in B.C., has no operations in B.C. or  
17 Alberta.

18 MR. DIPUCCHIO: But you've heard that  
19 Gateway has visions of coming to Ontario.

20 THE DEPONENT: We are currently trying  
21 to get a licence.

22 BY MR. MITCHELL:

23 701 Q. His evidence earlier today was  
24 they're trying to get a licence. The nature of the  
25 business in Ontario right now is such that there is



1 no time horizon at all.

2 MR. DIPUCCHIO: But that doesn't mean  
3 they're not trying.

4 THE DEPONENT: It doesn't mean we're  
5 not trying. It doesn't mean that we won't get one.

6 BY MR. MITCHELL:

7 702 Q. So you think you'll get one within  
8 the next six months?

9 MR. DIPUCCHIO: That's not the point.

10 MR. MITCHELL: Well, he's only  
11 restricted for six months.

12 THE DEPONENT: Let me tell you where we  
13 are factually and then you can tell me what the  
14 answer is. Because gambling is highly regulated in  
15 Canada you have to go through very, very thorough  
16 checks as to your background, where your money  
17 comes from as it were, what your background is,  
18 your connections. You have to go through  
19 effectively a full police check. We've gone  
20 through all that.

21 So we're at the stage where we can be  
22 actively considered for a gaming licence in  
23 Ontario. How fast the Ontario regulator will move  
24 we don't know because they have -- you know, the  
25 OLG has gone through some degree of turmoil. They

1           now have -- I think their new head is the fellow  
2           who used to run the LCBO. So they've made a big  
3           commitment to fixing it. But in terms of actually  
4           when we'll get it, don't know. But are we actively  
5           trying to get it? Absolutely.

6                           BY MR. MITCHELL:

7       703                   Q.    But as of now you have no --

8                           A.    No.

9       704                   Q.    -- clear picture of when you will  
10           get it?

11                          A.    No.

12       705                   Q.    Okay. I would like to turn to Mr.  
13           Moyse's responsibility for Advantage. I think in  
14           your evidence earlier today you said that he had  
15           day-to-day responsibility for Advantage?

16                          A.    Yes.

17       706                   Q.    And I think you said -- and  
18           correct me if I'm wrong because I'm paraphrasing.  
19           You said that his level of responsibility on  
20           Advantage in the short term was more like a  
21           vice-president level because he had significant  
22           day-to-day interaction; is that right?

23                          A.    Yes.

24       707                   Q.    Can you give us any indication of  
25           approximately how much of his average work would be

1           spent on Advantage? More than 50 percent? Less  
2           than 50 percent?

3                   A. I would say in the last -- in the  
4           period between sort of January to April I would say  
5           about 50 percent of his time. I mean, I'm doing  
6           that just based on impression, but I would have to  
7           review his, you know --

8   708           Q. It's just rough, I appreciate  
9           that. And I think you also said that because  
10          Advantage has no operations in Canada he would not  
11          be subject to section 8 in respect of Advantage at  
12          all?

13                  A. That would be my view.

14   709           Q. Thank you. Let's go back to your  
15          affidavit of June 26 which was in your initial  
16          motion record.

17                  A. Sorry. What page am I on?

18   710           Q. Page 19.

19                  A. Yes.

20   711           Q. So this is paragraph 33. And  
21          actually paragraph 33 starts on page 18 and then it  
22          goes over on 19. I'm wondering if you can just  
23          read that paragraph.

24                  A. The non-compete is a crucial --

25   712           Q. Don't read it out loud. We don't

1           need it all on the record. Just to yourself. It's  
2           getting late in the day, I appreciate that.

3                       A. Yes. I've read it.

4       713           Q. Okay. So this is where you're  
5           talking about the non-compete being a component of  
6           the employment agreement. And in (b), if I take  
7           you just to sub (b) you say:

8                       "After six months, the  
9                       analyst's knowledge of Catalyst's  
10                      plans would be 'stale' and of little  
11                      use to a competitor."

12                     Can you just elaborate a little bit on  
13           what you mean by that?

14                     A. That a large part of the  
15           information that you have at any given time is  
16           looking into the future or is current. So either  
17           current you've executed on, or it's looking into  
18           the future. When you look at forward-looking  
19           information it tends to not be accurate the  
20           longer -- your estimate of where you'll be in six  
21           months is not as accurate as it is when you get to  
22           six months. That's all I mean by that. So stale  
23           in the sense that it's no longer particularly  
24           useful information.

25       714           Q. Okay. I would like to take you

1 back to West Face's motion record, tab L.

2 A. And what page, please?

3 715 Q. Tab L. Page 65.

4 A. Yes.

5 716 Q. This is the March 27th email that  
6 Mr. Hopkins referred you to earlier.

7 A. Yes.

8 717 Q. There were five attachments to  
9 that, one is Mr. Moyse's resume, and I'm not going  
10 to take you to that. The other four are documents  
11 that he forwarded that you've given some evidence  
12 on already. The first one, the Homburg  
13 transaction, this document it shows that it was  
14 prepared in May of 2013?

15 A. Correct.

16 718 Q. Do you have any reason to believe  
17 that's not the case when it was prepared or  
18 finalized?

19 A. I'll go on that basis.

20 719 Q. From what I understand Homburg was  
21 something that as of March of 2014 Catalyst was  
22 already quite heavily invested in?

23 A. Yes.

24 720 Q. On Homburg did you have -- at that  
25 time, and I'm going to speak specifically as of the

1 date of the March 27th email. So all of my  
2 questions are going to be related back to that  
3 date.

4 A. Yes.

5 721 Q. As of that date did Catalyst have  
6 a position of influence or a position of control?

7 A. Control I think at that point.  
8 Sorry. In March?

9 722 Q. In March of 2014.

10 A. I think control at that point.

11 723 Q. So at that point Catalyst  
12 essentially could control Homburg, not completely,  
13 because you can't completely ignore --

14 A. At that point it's Geneba and  
15 Geneba is a public company at that point.  
16 Homburg -- it gets very confusing. Because Homburg  
17 was public in Canada, went through insolvency  
18 proceedings in Canada, but its continuing  
19 operations are in Europe.

20 724 Q. So when you say you had a position  
21 of control as of March of 2014 were you talking  
22 about the Canadian operation or the European?

23 A. No, European.

24 725 Q. Okay. And was the Canadian  
25 operation wholly owned by the European one?

1                   A.    It was in insolvency proceedings.  
2                   So ownership was not relevant to Homburg, i.e.  
3                   there was nobody owned it. The debt owned it I  
4                   suppose.

5       726               Q.    So as of March of 2014 when the  
6                   email was sent, I'd suggest to you that you had  
7                   your controlling interest so West Face at that  
8                   point couldn't really take a blocking position in  
9                   terms of what you were trying to accomplish?

10                  A.    Well, first of all, they might  
11                  have some guidance as to where we were looking for  
12                  other investments in Europe. So they could have --  
13                  because I think the other memo is -- is it MBI? I  
14                  can't remember the name of it.

15       727               Q.    We'll look at them individually,  
16                  but I'm talking about Homburg.

17                  A.    But can I look at one thing? His  
18                  employment agreement. Because I think it might  
19                  become relevant.

20                  Okay.

21       728               Q.    So my question was, given that you  
22                  already had the controlling interest in Homburg at  
23                  the time on March 2014, and appreciating your  
24                  position that there's confidential information  
25                  here, I don't want to discard that, this was not, I

1 would suggest to you, an active opportunity at that  
2 time in March 2014.

3 A. In terms of someone coming along  
4 and buying Homburg instead of us, or buying  
5 interest in Homburg?

6 729 Q. Well, you weren't actively  
7 pursuing it because you already had it. You  
8 already had your controlling interest.

9 A. Yeah, but I think there was still  
10 opportunities to acquire more securities in  
11 Homburg.

12 730 Q. And as of March 2014 were you  
13 actively pursuing those?

14 A. I'd have to double check, but I  
15 think we still were trying to acquire additional  
16 interests in the publicly traded --

17 731 Q. Can I get an undertaking that  
18 you'll --

19 A. I mean, some of these -- I  
20 apologize for not sort of knowing exactly.

21 732 Q. You can't anticipate everything, I  
22 appreciate that. So that's an undertaking to  
23 advise whether in March of 2014 Catalyst was  
24 actively pursuing further investment in Homburg.

25 U/T A. Mm-hmm. Or in related investments



1           that were mentioned I think in the memo. It's a  
2           long memo.

3       733                   Q.   Fair enough. Now then if we look  
4           at --

5                   A.   And I'd like to make sure that we  
6           keep in mind that our position, among other things,  
7           is not only quite apart from what could be made use  
8           of, that that in and of itself is confidential  
9           information and must remain confidential.

10      734                  Q.   I appreciate your position.

11                  A.   I just want to make sure that we  
12           don't get confused.

13      735                  Q.   Now, if we go back. I'm going to  
14           turn to NSI now, which is the second document. In  
15           Mr. Moyse's covering email where he sends this...  
16           where he refers to NSI in his covering email?

17                  A.   Let me make sure.

18                  Yeah, got it.

19      736                  Q.   So the date on that document is  
20           July of 2013. Do you have any reason to believe it  
21           wasn't finalized on that date?

22                  A.   No.

23      737                  Q.   If we go back to Mr. Moyse's  
24           covering email of March 27 where he refers to NSI.

25                  A.   Sorry. You want to go back to

1           that now?

2                               Yes.

3       738                   Q.    He indicates this was another  
4           distressed European real estate company which we  
5           ultimately did not proceed with for fund level  
6           issues. Does Catalyst take the position that it  
7           did proceed with it, or are you agreed that  
8           Catalyst ultimately did not proceed with this  
9           investment?

10                           A.    That is correct.

11       739                   Q.    It did not proceed with it?

12                           A.    That is correct.

13       740                   Q.    And Mr. Moyse goes on to say that  
14           the opportunity is now gone as the company did an  
15           equity raise. Is that statement accurate?

16                           A.    I would have to go back and check  
17           to make sure that was the solution to that one. I  
18           know that they did find an alternative to our  
19           investing.

20       741                   Q.    So I'm not sure I care what the  
21           solution was, but was Mr. Moyse's comment on March  
22           27th that the opportunity was now gone, was that an  
23           accurate comment?

24                           A.    Yes. This one's off the table.

25       742                   Q.    So as of March 27 I take it that

1 Catalyst was not pursuing the NSI opportunity?

2 A. Yes.

3 743 Q. Thank you. I would like to turn  
4 now to the third document, the Rona Inc. document.  
5 It indicates that -- the document cover  
6 indicates --

7 A. Do you have the page?

8 744 Q. Oh, I'm sorry. It's page 159.  
9 The covering -- the first page of that  
10 document indicates it was prepared and finalized as  
11 of November 2012. Any reason to believe that's not  
12 when it was prepared?

13 A. No.

14 745 Q. And if we go back to Mr. Moyse's  
15 covering email.

16 A. Yes.

17 746 Q. Sorry. A lot of flipping back and  
18 forth.

19 A. That's okay. Now I know what  
20 you're doing.

21 747 Q. Mr. Moyse in his covering email on  
22 March 27th says:

23 "We spent a couple of weeks  
24 looking at it. The memo was done  
25 over the course of a couple of weeks

1 and with only public information."

2 (as read)

3 Mr. Moyse's comment there I want to  
4 focus in on is, "we spent a couple of weeks looking  
5 at it." Given that it was prepared in November  
6 2012 was this Rona prospect active in March of  
7 2014?

8 A. It may have -- it's a potential.  
9 It's a potential. Rona is still on the screen.

10 748 Q. So can I get an undertaking that  
11 you'll advise as of March 2014 whether it was  
12 active?

13 A. Yes.

14 MR. DIPUCCHIO: I think you just got  
15 that evidence.

16 THE DEPONENT: I think I've just given  
17 you that. In other words, I think Rona still has  
18 potential. It doesn't mean we'll do it, but it  
19 does mean it's a potential that we've looked at and  
20 may come back on our screen.

21 Let me explain why. The housing  
22 industry is cyclical, and so something like Rona is  
23 very vulnerable to economic downturns related to  
24 falling off houses.

25 BY MR. MITCHELL:

1       749                   Q.    Makes sense. Do you know whether  
2                   in March 2014 Mr. Moyse was actively working on it  
3                   for Catalyst?

4                   A.    I don't know.

5       750                   Q.    And then the last one is Arcan  
6                   Resources.

7                   A.    Mm-hmm.

8       751                   Q.    If we go to Mr. Moyse's covering  
9                   email of March 27th he says:

10                           "Junior E&P company which was  
11                           interesting but we couldn't get  
12                           comfortable with how to enter the  
13                           capital structure. We also needed  
14                           to engage industry consultants to  
15                           better understand the asset. The  
16                           memo represents a couple of weeks  
17                           work. Completely public  
18                           information." (as read)

19                           In terms of Arcan was that one active  
20                           or still in Catalyst's sights as of March 2014?

21                   A.    It's one of those ones -- if you  
22                   look at what he was saying, Arcan is one of those  
23                   that could come back on the screen.

24       752                   Q.    Did you have any involvement in  
25                   assessing the Arcan proposal?

1 A. No.

2 753 Q. So I take it you don't know what  
3 Mr. Moyse would mean by, "we couldn't get  
4 comfortable with it"?

5 A. Couldn't get comfortable with -- I  
6 think he says --

7 754 Q. With how to enter --

8 A. Capital structure. Which means  
9 that people weren't certain what the so-called  
10 Fulcrum security was. Is what I would take. I  
11 don't know for sure, but that's what I would  
12 interpret it as being.

13 755 Q. Fair enough. I mean it's Mr.  
14 Moyse's language, it's not yours.

15 The implication from reading this is  
16 that Catalyst was not enthralled with this  
17 opportunity. Do you know whether that's accurate  
18 or not?

19 A. Don't know.

20 MR. MITCHELL: If we could go off the  
21 record for a moment.

22 --- Off-the-record discussion

23 BY MR. MITCHELL:

24 756 Q. I wanted to refer you back, and I  
25 referred you to this letter already, tab O of your

1 motion record. This was the letter from Mr.  
2 Miedema that I already referred you to. In this  
3 letter Mr. Miedema makes reference to the fact that  
4 there was a contractual obligation on Mr. Moyse  
5 with West Face to maintain confidentiality over all  
6 confidential information, and that West Face had  
7 implemented a confidentiality wall. And you can  
8 take a minute to read it because I'm obviously  
9 paraphrasing.

10 A. That's the West Face wall?

11 757 Q. Yes.

12 A. Sorry. The West Face wall  
13 relating to Wind?

14 758 Q. The telecom, yes.

15 A. But just Wind, not Mobilicity.

16 759 Q. I believe so.

17 A. Yes.

18 760 Q. After receiving this did Catalyst  
19 make any inquiries in term of the details of the  
20 confidentiality wall, or request West Face to  
21 modify the confidentiality wall at all?

22 MR. DIPUCCHIO: No.

23 THE DEPONENT: No.

24 BY MR. MITCHELL:

25 761 Q. And I take it that Catalyst has no

1 evidence that Mr. Moyse or West Face have not  
2 complied fully with the implementation of the  
3 confidentiality wall?

4 A. No.

5 MR. MITCHELL: Thank you. Subject to  
6 any questions arising from any undertakings, that's  
7 everything.

8 MR. DIPUCCHIO: Thank you.

9 No re-examination.

10 ---Whereupon the proceedings adjourned at 3:25 p.m.

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## REPORTER'S CERTIFICATE

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

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

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

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

Dated this 30th day of July, 2014.

Connie Holton

Per: Connie A. Holton, CSR

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