

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

BRANDON MOYSE
July 31, 2014

neelsons

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Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

--- This is the Cross-Examination of BRANDON MOYSE
on his affidavits sworn July 7, 2014 and July 16,
2014, taken at the offices of Neeson & Associates
Court Reporting and Captioning Inc., 141 Adelaide
Street West, Suite 1108, Toronto, Ontario, on the
31st day of July, 2014.

CONFIDENTIAL TRANSCRIPT

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

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

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

I N D E X

WITNESS: BRANDON MOYSE

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

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following page numbers: 112, 163
and 172.

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INDEX OF ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following page number: 26 and 173.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following page numbers: 36, 115, 116 and 153.

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NUMBER/DESCRIPTION	PAGE NO.
1: Email chain starting April 24, 2014	164
2: Email chain January 29, 2014 at 1:21 p.m. from Mr. Moyse to Debra Witkin.	165
3: Email chain February 12, 2014, 2:48 p.m., from Ms. Witkin to Mr. Moyse.	166
4: Email chain March 18, 2014, 7:14 p.m. from Marlyz Swaye at Mackenzie Investments to Mr. Moyse.	167

1 5: Email chain April 22, 2014 at 167
2 11:54 a.m. from Stephanie Tse at
3 Mackenzie to Mr. Moyse.
4 6: Email chain dated April 28, 2014 168
5 at 11:39 a.m. from Mr. Moyse to Ling
6 Chen.
7 7: Email chain March 31, 2014 at 3:19 168
8 p.m. from Ms. Chen to Mr. Moyse.
9 8: Email chain dated May 17, 2014 at 168
10 10:24 p.m. from Ms. Chen to Mr. Moyse.
11 9: Email chain May 20, 2014 at 9:01 170
12 p.m. from David Colla to Mr. Moyse.
13 10: Email chain May 20, 2014 at 5:13 170
14 p.m. from Sharon Beers to Mr. Moyse.
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1 --- Upon commencing at 10:01 a.m.

2 BRANDON MOYSE, Affirmed

3 CROSS-EXAMINATION BY MR. DIPUCCHIO:

4 1 Q. Good morning, Mr. Moyle. You
5 swore two affidavits in this matter, I'm going to
6 call them the substantive affidavits, dated July
7 7th and July 16th, 2014; is that correct?

8 A. Yes.

9 2 Q. And before you swore those
10 affidavits you had an opportunity to review the
11 contents of them and satisfy yourself that you were
12 being totally honest and truthful in your evidence?

13 A. Yes.

14 3 Q. And in addition to those two
15 affidavits that I call the substantive affidavits
16 you've also sworn two other affidavits which
17 contain a listing of relevant documents in your
18 possession, power or control; is that right?

19 A. I swear to?

20 4 Q. Yes. An original affidavit of
21 documents and then a supplementary affidavit of
22 documents.

23 A. Yes.

24 5 Q. The original affidavit of
25 documents that you swore was dated, or sworn,

1 rather, on July 22, 2014?

2 A. Yes. Yes.

3 6 Q. And then you swore a supplementary
4 affidavit of documents just before Mr. Riley's
5 examination on July 29, 2014?

6 A. Yes.

7 7 Q. Is that correct?

8 A. Yes.

9 8 Q. And you understood that you were
10 swearing all of these affidavits, but in particular
11 the affidavits of July 7th and 16th, the
12 substantive affidavits, for the purposes of a court
13 proceeding and that they would be read and
14 considered by the judge that was presiding over
15 that proceeding, right?

16 A. Yes.

17 9 Q. And you understood that you were
18 swearing to the truth of what was set out in those
19 affidavits?

20 A. Mm-hmm. Yes.

21 10 Q. And you took your oath seriously
22 when you swore those affidavits, correct?

23 A. Yes.

24 11 Q. And your obligation to tell the
25 truth seriously?

1 A. Yes.

2 12 Q. And you take your oath seriously
3 that you've sworn today?

4 A. Yes.

5 13 Q. And apart from being completely
6 truthful in the evidence that you gave in your
7 affidavits to the court, you also understood that
8 it would not have been appropriate and certainly
9 wasn't your intention to mislead the court in any
10 way?

11 A. Of course not.

12 14 Q. And as an adjunct to that, you
13 would want to be totally transparent and
14 forthcoming with the court when you swore those
15 affidavits?

16 A. Yes.

17 15 Q. And did you consider yourself to
18 be completely transparent and forthcoming in those
19 affidavits with the benefit of hindsight now?

20 A. Yes.

21 16 Q. Is there anything, before we
22 launch into this cross-examination, that you would
23 want to amplify, or correct, or change in those
24 affidavits?

25 A. No.

1 17 Q. Apart from the affidavits you also
2 understood that you wouldn't have wanted your
3 counsel to say anything that was inaccurate or
4 misleading in any way in letters that were written
5 prior to the court proceedings being taken?

6 A. I agree, but I didn't necessarily
7 review every letter before it was sent.

8 18 Q. But you certainly would not have
9 wanted your --

10 A. Correct.

11 19 Q. -- counsel to be misleading?

12 A. Yes.

13 20 Q. So let's look at your July 16th
14 affidavit, if we can. Sorry. I think I may have
15 meant the July 7th affidavit, not the July 16th.

16 Presumably you've had an opportunity to
17 review that before testifying here today?

18 A. Yes.

19 21 Q. So starting at paragraph 3 of that
20 affidavit, Mr. Moyse, you've sworn that you
21 obtained a Bachelor of Arts in mathematics from the
22 University of Pennsylvania, is that the only degree
23 that you obtained from U-Penn?

24 A. Yes.

25 22 Q. And was that at the -- was that in

1 some school of business?

2 A. No. The Wharton school is the
3 business school. I studied in the College of Arts
4 and Sciences. However, as a college student at
5 Penn I was able to take courses at the Wharton
6 school.

7 23 Q. But you've never obtained a degree
8 from Wharton?

9 A. No.

10 24 Q. And you testify as well that you,
11 prior to working for Catalyst, were employed at
12 Credit Suisse in New York and RBC Capital Markets
13 in Toronto as a junior banker on their respective
14 debt capital market desks, right?

15 A. Yes.

16 25 Q. And neither of those positions I
17 take it were in the area of what we've now called
18 special situations; is that fair?

19 A. We would have worked on certain
20 special situations.

21 26 Q. Like what?

22 A. Mergers, acquisitions,
23 divestitures, and related debt funding for those
24 situations.

25 27 Q. Was either Credit Suisse or RBC

1 Capital Markets actually looking to acquire
2 controlling interests in distressed companies?

3 A. No, but we advised those who were.

4 28 Q. But you weren't looking to
5 acquire --

6 A. No.

7 29 Q. -- positions in those companies?

8 A. No.

9 30 Q. And so I take it just looking at
10 what your employment history has been over the last
11 several years that you've had, with the position
12 you now have at West Face, you've had four
13 positions in the last four years, right?

14 A. That's correct.

15 31 Q. So you would agree with me that
16 there's been some considerable degree of mobility
17 in terms of your career?

18 A. Yeah, I agree.

19 32 Q. In other words, you've been able
20 to find positions quite easily over the last four
21 years?

22 A. Yes.

23 33 Q. And some of those positions such
24 as the one at Credit Suisse aren't even based in
25 Canada. You've had positions in the U.S.?

1 A. Sorry. Can I correct my earlier
2 answer?

3 34 Q. Yes.

4 A. I wouldn't necessarily say it was
5 that easy. I was looking for a job in Toronto
6 while I was at Credit Suisse for over a year.

7 35 Q. Okay. And since that time you
8 found three jobs in Toronto?

9 A. Two jobs.

10 36 Q. Well, you found a job at RBC. You
11 found --

12 A. That was prior to Credit Suisse.

13 37 Q. Sorry. Your job at RBC preceded
14 the job at Credit Suisse?

15 A. Correct.

16 38 Q. So since that time you found two
17 jobs in Toronto?

18 A. Yes.

19 39 Q. And the job at Credit Suisse was
20 based in New York?

21 A. That's correct.

22 40 Q. So you worked for a period of time
23 outside of Ontario as well?

24 A. Yes.

25 41 Q. And if I could ask you to turn up

1 page 203 of the West Face motion record. Because I
2 think this is the only place we can actually find a
3 copy of your CV.

4 MR. HOPKINS: Sorry. 203?

5 MR. DIPUCCHIO: Yes.

6 BY MR. DIPUCCHIO:

7 42 Q. This is a copy of a CV, as I
8 understand it, that you forwarded to West Face when
9 you were applying for the job there, correct?

10 A. That's correct.

11 43 Q. And is it also your practice to be
12 honest and forthcoming in what you've included in
13 your CV?

14 A. I embellish a bit, but I think
15 everybody does.

16 44 Q. Okay. When you say "embellish"
17 does that mean you lie in your CV?

18 A. No.

19 45 Q. What does embellish mean?

20 A. It means obviously I'm going to
21 make my accomplishments sound possibly better than
22 they are.

23 46 Q. In other words, possibly better
24 than in reality they are?

25 A. No. Possibly better than some

1 people might view them.

2 47 Q. Okay. So let's work through it --

3 A. Sure.

4 48 Q. -- and you can tell me where
5 you've embellished. So let's look at, first of
6 all, your experience. So as you've correctly
7 pointed out you were at RBC Capital Markets from
8 July 2010 to February 2011 for slightly less than a
9 year, correct?

10 A. Yes.

11 49 Q. And that was a position based in
12 Toronto, correct?

13 A. Yes.

14 50 Q. And you haven't included any
15 description of your duties as an analyst in the
16 debt capital markets department at RBC. What were
17 your duties there?

18 A. They would be substantially
19 similar to the ones at Credit Suisse I did to save
20 space.

21 51 Q. Okay. So when we look at your
22 description for Credit Suisse we can pretty much
23 port that over to RBC as well?

24 A. I think so.

25 52 Q. So then you left Credit Suisse and

1 immediately started working -- sorry. You left RBC
2 Capital Markets rather and you immediately started
3 working at Credit Suisse in New York, correct?

4 A. Yes.

5 53 Q. So there was no interim period
6 there?

7 A. Just a couple of weeks.

8 54 Q. All right. And, again, there you
9 were an analyst in the debt capital markets
10 division. And is it true that you originated,
11 structured and executed debt capital transactions
12 for investment grade and high yield clients?

13 A. It's true I participated on a team
14 that did that. I did not do it individually, but I
15 don't think anybody would have thought I did.

16 55 Q. Okay. And similarly you performed
17 credit analyses, as you've said in your CV, by
18 analyzing metrics, comparing qualitative
19 fundamental factors and regressing historical
20 relationships to assess relative value?

21 A. Yes.

22 56 Q. And you also prepared daily and
23 weekly market update materials to summarize key
24 events and market tone?

25 A. Yes. And I add that all these

1 were at the direction of senior coverage officers.

2 57 Q. And then, again, you make a jump
3 from that position directly into another position
4 at Catalyst Capital, right?

5 A. Mm-hmm. Yes.

6 58 Q. And this time you describe
7 yourself as a distress debt associate and distress
8 debt analyst, right?

9 A. That is correct.

10 59 Q. Okay. And did you in fact hold
11 two positions at Catalyst Capital?

12 A. At the time I wrote this CV I
13 believed I was in imminent, or would imminently
14 become an associate. That promotion was in fact,
15 or later it became apparent that was just a carrot
16 that was dangled out for about four months.

17 60 Q. So at the time you wrote this CV,
18 which was when?

19 A. I don't know the exact date, but
20 February probably of 2014.

21 61 Q. And so --

22 A. Yeah, February 2014.

23 62 Q. So was this one of the
24 embellishments?

25 A. Yes.

1 63 Q. So in fact you never actually
2 became a distress debt associate?

3 A. I began to be introduced as such
4 to people and was told that I would be discussing
5 my promotion with Mr. De Alba the next week and it
6 never happened.

7 64 Q. And is the description of your
8 duties as it's set out in your CV accurate?

9 A. I would say it's accurate with the
10 exception of one or two analysts associates, that
11 was true at the time I wrote it, but not at all
12 material times, and most times I was one of three
13 analysts or associates.

14 65 Q. But at the time you wrote the CV
15 in February you were one of two analysts
16 associates?

17 A. Yes.

18 66 Q. And did that change at some point
19 in the future? In other words, at some point after
20 February of 2014 did that change?

21 A. No.

22 67 Q. Okay. So at the time that you
23 accepted the position with West Face you were one
24 of two analysts associates at Catalyst?

25 A. That's correct.

1 68 Q. And apart from that then I take it
2 the rest of your description of your duties at
3 Catalyst and your accomplishments at Catalyst are
4 accurate?

5 A. I think so, yes.

6 69 Q. Now, if you flip the page you've
7 also included what I think has been referred to as
8 a deal sheet which lists two completed
9 transactions, one of which is Homburg Invest Inc.
10 and the other is Advantage Rent-a-car. And are you
11 able to say whether your description of your
12 experience in relation to those two transactions is
13 accurate, or has that been embellished as well by
14 you?

15 A. It has been embellished.

16 70 Q. Tell me how it's been embellished.

17 A. For Homburg I did not build the
18 waterfall model initially, I expanded greatly upon
19 it, but I was not the initial person to create it.

20 71 Q. And we'll come to that in a
21 second. So what you're telling me is that the memo
22 that we've seen in the course of these proceedings
23 in relation to Homburg wasn't exclusively your
24 work?

25 A. No, not exclusively.

1 72 Q. So that memo was contributed to by
2 other people at Catalyst?

3 A. Yes.

4 73 Q. Who were those people?

5 A. I believe Zach Michaud.

6 74 Q. And who's he?

7 A. He's a vice-president.

8 75 Q. So the waterfall model that you've
9 described in this particular document was initially
10 built by Mr. Michaud and then you expanded upon it
11 and contributed to it as well?

12 A. I believe the waterfall model was
13 initially built from what I've heard by Mr.
14 Michaud, Mr. Horrox and a former associate named
15 Phil Bacal.

16 76 Q. And these were all people who were
17 at Catalyst at the time?

18 A. Not at the time I did this.

19 77 Q. No, no, but at the time the
20 waterfall analysis was being prepared?

21 A. Yes.

22 78 Q. And then you subsequently added on
23 to that waterfall analysis and contributed your
24 experience and expertise to it?

25 A. Under Zach Michaud's direction,

1 yes.

2 79 Q. And anything else that you
3 embellished?

4 A. I didn't necessarily lead the due
5 diligence process.

6 80 Q. Well, what word would you choose
7 other than led?

8 A. I think participated would be a
9 fair description.

10 81 Q. And who did you participate in it
11 with?

12 A. Mr. Michaud, Mr. De Alba, and a
13 third party advisor named Marvin Budding.

14 82 Q. Why in your CV did you indicate to
15 your prospective employers that you led the due
16 diligence process?

17 A. I certainly led certain parts of
18 it, but I didn't direct the due diligence process.

19 83 Q. I don't think it says you directed
20 it, does it?

21 A. No.

22 84 Q. So is the fact that you led the
23 due diligence process an accurate comment?

24 A. No.

25 85 Q. So tell me what is the accurate

1 description?

2 A. I participated in it.

3 86 Q. Okay. And so I go back to my
4 question, why did you tell your prospective
5 employers that you led the due diligence process?

6 A. I was embellishing.

7 87 Q. For what purpose?

8 A. I wanted a job.

9 88 Q. So were you intending to mislead
10 them in that respect?

11 A. I don't think it was misleading,
12 and they could have asked me about this if they
13 wanted to.

14 89 Q. And so they would have to ask you
15 in order to get the truth out of you?

16 A. I think they would know that
17 anybody with only three years of experience was not
18 leading anything.

19 90 Q. Why, if you told them that? Are
20 we to not believe what you tell us?

21 A. Sorry. I don't understand what
22 you're asking me.

23 91 Q. Are we not to believe what you
24 tell us?

25 A. It wasn't a sworn document.

1 92 Q. Does that make a difference to
2 you?

3 A. It wasn't --

4 MR. HOPKINS: I think he's given his
5 answer, counsel.

6 MR. DIPUCCHIO: Don't interrupt,
7 counsel. It's a cross-examination. This is not a
8 discovery. It is a cross-examination, and I would
9 prefer if you didn't interrupt when there's a valid
10 question being asked.

11 THE DEPONENT: It's a resume. I
12 suppose it is misleading if you're a naive reader.

13 BY MR. DIPUCCHIO:

14 93 Q. And how about drafting press
15 releases and investor presentations, media scripts,
16 are those all things you did?

17 A. Yes. I was a good writer.

18 94 Q. Did you provide ongoing support
19 through negotiation stages?

20 A. Yes.

21 95 Q. And you did that by modelling
22 Catalyst's and other stakeholders' returns under
23 different scenarios and deal structures?

24 A. Correct.

25 96 Q. And those scenarios and deal

1 structures, do I take your evidence to be that you
2 weren't necessarily involved in developing the
3 scenarios and deal structures?

4 A. I was involved in modelling their
5 outcome, but I didn't come up with the ideas.

6 97 Q. So the ideas for the deal
7 structures were being developed by other people
8 within Catalyst?

9 A. Correct. Mr. De Alba in
10 particular.

11 98 Q. And you were the beneficiary of
12 having received those ideas, right?

13 A. Some of them, yes.

14 99 Q. Okay. And then your job was to
15 model returns bearing in mind those deal
16 structures?

17 A. Yes.

18 100 Q. And was one of the things you were
19 learning at Catalyst in fairness how to structure
20 deals in these particular scenarios?

21 A. I wasn't given any insight, I
22 suppose by osmosis at best.

23 101 Q. As you were receiving information
24 about how deals were being structured, that's one
25 of the things you would be learning, right?

1 A. I didn't understand the why.

2 102 Q. I understand that, but in terms of
3 just structuring the deal, that's one of the things
4 you would be learning as part of your job?

5 A. Sure. I would learn the
6 mechanics.

7 103 Q. Of structuring a deal?

8 A. Yes.

9 104 Q. In those particular distress
10 scenarios?

11 A. In this particular distress
12 scenario.

13 105 Q. And others that you were working
14 on, in fairness.

15 A. I don't think we structured many
16 deals while I was there.

17 106 Q. How many deals did you structure?
18 Were structured while you were there?

19 A. Two. These two.

20 107 Q. Now, in Advantage, when we turn to
21 Advantage Rent-a-car, is there any embellishment in
22 that part of your CV?

23 A. Yes.

24 108 Q. Where is the embellishment there?

25 A. I would say day-to-day deal team

1 leader was probably true, and supported by one
2 analyst was probably true for a month or two at the
3 time I wrote this but not generally throughout the
4 transaction.

5 109 Q. But at the time you wrote this
6 that's at least an accurate statement?

7 A. Yes, but it wasn't true in
8 November or December of 2013 either. So it was
9 true for January and February.

10 110 Q. So at the time you wrote this it
11 was accurate?

12 A. I suppose at that moment.

13 111 Q. Did it remain accurate?

14 A. No.

15 112 Q. When did that change?

16 A. Some time I would say in late
17 February or March 2014. The initial deal team
18 leader would have been Mark Horrox, a
19 vice-president. Mark left in early January of
20 2014. It appeared that for a small period of time
21 between then and late February Mr. De Alba was
22 willing to give myself and the other analyst a bit
23 more leeway. He slowly, I would say, consolidated
24 his control over the transaction.

25 113 Q. And do you know when that

1 occurred?

2 A. Like I said, it was gradual, but
3 probably beginning in late February.

4 114 Q. Okay. And did you conduct the
5 initial analysis of the investment opportunity in
6 this case?

7 A. Along with Mr. Horrox and Mr.
8 Creighton, an analyst.

9 115 Q. So, again, that would not have
10 been exclusively your work?

11 A. No, but I did -- I think that's a
12 factual statement what I have here.

13 116 Q. No, no, I understand. I'm just
14 saying as you mentioned in the case of Homburg that
15 initial analysis wouldn't necessarily be
16 exclusively your work?

17 A. Correct.

18 117 Q. And how about the other
19 descriptions under the other bullet points, are
20 those all fair and accurate?

21 A. I would say maybe bullet 3, sub
22 bullet 2 I thought would be accurate. That
23 arrangement was changed. So that didn't end up
24 happening.

25 118 Q. But certainly at the time you

1 wrote this you thought that that was accurate?

2 A. Yes.

3 119 Q. Okay. Bullet point 4, was that an
4 accurate description?

5 A. I didn't create it solely, but I
6 worked extensively on it.

7 120 Q. Okay. And how about in the last
8 bullet point?

9 A. I think those are all true as my
10 part of being a team.

11 121 Q. Okay. Now, in respect of your
12 jobs at RBC Capital Markets and Credit Suisse did
13 you have employment agreements with those two
14 companies?

15 A. Yes.

16 122 Q. And do you recall whether those
17 employment agreements had any restrictive covenants
18 or confidentiality provisions in them?

19 A. I don't remember in particular.

20 123 Q. Okay. Could you produce for me a
21 copy of those employment agreements, please?

22 U/A MR. HOPKINS: We'll take that under
23 advisement.

24 BY MR. DIPUCCHIO:

25 124 Q. Let's go back to your July 7th

1 affidavit. So in paragraph 4 of that affidavit you
2 have given evidence that you commenced employment
3 at Catalyst as an analyst on or around November
4 1st, 2012. And you've indicated that you did so
5 pursuant to an employment agreement dated October
6 1st, 2012 which you've appended as Exhibit A.

7 So if we could just go to -- I think
8 the better one to go to is actually the one that is
9 included in the Catalyst motion record, I
10 apologize, because I think that one is signed. And
11 it's similarly Exhibit A to Mr. Riley's affidavit
12 in the Catalyst record.

13 And if you flip through it very
14 quickly, I gather there's no issue that this is the
15 employment agreement that you're referring to?

16 A. Looks like it.

17 125 Q. And that is in fact your signature
18 that appears at page 41 of the record?

19 A. It is.

20 126 Q. And you signed that agreement on
21 October 3, 2012, sir?

22 A. Yes.

23 127 Q. And in signing that agreement you
24 indicated that you had reviewed, understood and
25 accepted the terms of the offer, right?

1 A. Yes.

2 128 Q. And were those all true
3 statements?

4 A. Yes.

5 129 Q. And you also acknowledge that you
6 had had an opportunity to seek and receive --

7 A. Sorry. I correct my earlier
8 statement. I didn't necessarily understand that's
9 what I said I did.

10 130 Q. Okay. So is this another occasion
11 when you signed something or said something that
12 wasn't necessarily true?

13 A. Sure.

14 131 Q. So you didn't understand the
15 employment agreement is what your evidence is now?

16 A. I understood most of it.

17 132 Q. Okay. But parts of it you didn't
18 understand?

19 A. Certain specifics, no.

20 133 Q. And did you ask any questions in
21 relation to those parts?

22 A. Yes.

23 134 Q. In terms of what?

24 A. In particular I asked about the
25 60/40 plan.

1 135 Q. Yes?

2 A. I emailed Mr. De Alba some time
3 between October 1st and October 3rd asking, you
4 know, if we could speak about the employment
5 agreement. In particular, I wanted to know about
6 the 60/40 scheme.

7 136 Q. Okay.

8 A. I said, you know, it seemed to be
9 a capitalized term, but there were no real details
10 on it. I was curious if he can provide me with
11 more insight into the mechanics of the plan.

12 137 Q. Okay.

13 A. Mr. De Alba did not do so. He
14 simply told me it was a carry scheme which I
15 understood. I had a few others questions as well
16 relating to my compensation for example.

17 138 Q. And did you ask any further
18 questions in relation to the 60/40 scheme after he
19 said to you it was a carry scheme and that you
20 would understand?

21 A. I did ask how it worked and what
22 the 60/40 meant, and he said sixty points to the
23 deal team, forty points to the firm I believe. I
24 don't remember what other questions I asked, but I
25 wasn't necessarily satisfied with my understanding.

1 139 Q. And did you follow-up in any way?

2 A. No, I didn't. He was pretty
3 discouraging about it.

4 140 Q. And in spite of that you elected
5 to sign the agreement?

6 A. I wanted a job.

7 141 Q. All right. Why did you want a
8 job?

9 A. I wanted to move back to Toronto
10 because my girlfriend didn't want to move to New
11 York. She's from Toronto.

12 142 Q. All right. And after you joined
13 at Catalyst did you ask anybody about the 60/40
14 scheme?

15 A. I had informal discussions with
16 Mr. Michaud, and I also asked Chester Dawes, our
17 CFO, once probably in March 2014.

18 143 Q. And what do you mean by an
19 informal discussion?

20 A. We talked about the mechanics
21 generally. Like, if anybody has received money
22 from it, how it works, how the points get
23 allocated.

24 144 Q. And did you gain any better
25 understanding from Mr. Michaud?

1 A. Not particularly.

2 145 Q. What was it that was confusing to
3 you?

4 A. I didn't understand how the points
5 were allocated. I didn't understand the payment in
6 waterfall that would ultimately result in how many
7 dollars came to me and understand when these
8 dollars would be paid.

9 146 Q. And were any of those questions
10 answered?

11 A. No.

12 147 Q. Okay. Did you set any of this out
13 in the writing to anybody?

14 A. No.

15 148 Q. So all of this is oral
16 conversations that you've had with people?

17 A. Yes.

18 149 Q. All right. And what about this
19 other conversation you say you had with the CFO?

20 A. I asked -- following a meeting, a
21 Monday meeting, Mr. Glassman talked about the 60/40
22 scheme. He advised us that -- or he seemed to be
23 under the impression that we were all receiving
24 regular updates on our accruals in the 60/40
25 scheme. I didn't speak up at the meeting and say

1 no, but I know that nobody was receiving these
2 updates. So after the meeting I asked Chester
3 Dawes about my entitlement in the 60/40 scheme.

4 150 Q. How did you know that nobody was
5 receiving updates?

6 A. I asked.

7 151 Q. Did you speak to every single
8 person at Catalyst?

9 A. I asked the analysts, associates
10 and vice-president. I didn't ask the partners, but
11 I assume they would know their entitlements.

12 152 Q. So when you say "everybody" you're
13 not actually meaning everybody?

14 A. No. I suppose that's an
15 embellishment.

16 153 Q. So who did you speak to?

17 A. I spoke to Mr. Michaud and Mr.
18 Creighton.

19 154 Q. All right. And what did they say?

20 A. They said they didn't have it, and
21 Zach advised I should go talk to Chester.

22 155 Q. Why would Zach not have gone
23 himself?

24 A. On my behalf?

25 156 Q. No. Why did he need you to go --

1 A. No, no. Just for myself. He
2 didn't -- I assume maybe he had asked Chester
3 himself at some point.

4 157 Q. And are you able to say whether
5 Zach ever received anything?

6 A. I don't know, but he said he never
7 had anything on paper.

8 158 Q. But do you know whether he did or
9 didn't receive anything?

10 A. No, I don't. I don't.

11 159 Q. And did you in fact follow-up with
12 Chester?

13 A. I did.

14 160 Q. And what happened then?

15 A. Chester opened a spreadsheet on
16 his computer. I did not view the spreadsheet
17 myself. It was not printed for me. I wasn't given
18 the opportunity to look at it. And he advised me
19 my entitlement was \$500,000.

20 161 Q. So you were advised by the CFO
21 that your entitlement was \$500,000?

22 A. He told me a number, yes.

23 162 Q. Did you set that out in your
24 affidavit anywhere?

25 A. No.

1 163 Q. Any particular reason why you
2 didn't?

3 A. I don't think it increased my
4 understanding of the 60/40 plan. I wasn't provided
5 with, again, any details on mechanics. Chester
6 didn't know how the points were allocated. I
7 wasn't paid any amounts under the plan. I didn't
8 know when I would be paid any amounts under the
9 plan. Simply being told a number doesn't increase
10 my understanding.

11 164 Q. Was there some reason that you
12 didn't accept what Chester was saying to you? That
13 your entitlement had accrued to \$500,000 by that
14 time?

15 A. I asked him how it was calculated,
16 he didn't know. I mean he knew the math, but he
17 didn't understand how I got those points. And he
18 wouldn't know when they would be paid.

19 165 Q. So the CFO of the company said to
20 you, it's your evidence, that he didn't know,
21 despite looking at this spreadsheet, how your
22 points were calculated or how any of this
23 calculation worked?

24 A. He understood the math. He didn't
25 understand how I received the points, how my

1 entitlement was determined.

2 166 Q. Okay. And before I move on from
3 that. So where in your affidavit at paragraph 18
4 you talk about the 60/40 scheme, you say in
5 response to what Mr. Riley had testified in regards
6 to the amount that had been accrued to you -- and
7 by the way, Mr. Riley's evidence with respect to
8 what had accrued to you is consistent with what you
9 were told by the CFO, right?

10 A. Yes.

11 167 Q. So Mr. Riley hasn't embellished
12 anything in his affidavit?

13 A. No.

14 168 Q. And when you responded to that and
15 said, during my employment at Catalyst I was never
16 provided with a copy of the plan nor any statements
17 indicating the points I had allegedly accrued, why
18 didn't you say I was told that I had accrued
19 \$500,000?

20 A. I wasn't provided with a
21 statement.

22 169 Q. But why didn't you go on to
23 actually say what you were provided with?

24 MR. HOPKINS: Counsel, I don't see why
25 -- the affidavit states what it states.

1 BY MR. DIPUCCHIO:

2 170 Q. Right. So I'm asking in the
3 interest of fairness and transparency why didn't
4 you say in your affidavit I was told that I was
5 entitled to \$500,000?

6 R/F MR. HOPKINS: Don't answer that. The
7 affidavit states what it states.

8 MR. DIPUCCHIO: And I can't know why he
9 wouldn't have testified to a piece of evidence that
10 he's now testifying to?

11 MR. HOPKINS: I don't think it's a
12 proper question.

13 MR. DIPUCCHIO: Why?

14 MR. HOPKINS: It's simply not a proper
15 question.

16 BY MR. DIPUCCHIO:

17 171 Q. And this information that you set
18 out at paragraph 19, how did you come to know that?
19 Was that through your various discussions that
20 you've just told me about?

21 A. Yeah. I'd say these are high
22 level details.

23 172 Q. And those all came from the
24 discussions that you say that you had with these
25 various people within Catalyst?

1 A. Mostly from Mr. Michaud, if not
2 all.

3 173 Q. All right.

4 Now, when you signed your employment
5 agreement I take it you would have read it
6 carefully, No. 1?

7 A. Mm-hmm. Yes.

8 174 Q. And did you take the obligations
9 in your employment agreement seriously?

10 A. I did.

11 175 Q. And obviously you would have read
12 as you've just described for us very carefully the
13 section in relation to your compensation, right?

14 A. Yes.

15 176 Q. And you had various questions in
16 relation to your compensation?

17 A. Yes.

18 177 Q. And which you discussed with Mr. I
19 believe you said De Alba?

20 A. It wasn't a deep discussion.

21 178 Q. Right. But you at least raised
22 them and tried to get some answers for yourself?

23 A. Yes.

24 179 Q. And were those the only questions
25 you asked in advance to signing the employment

1 agreement?

2 A. Yes. I didn't want to burden him
3 with questions as a junior employee.

4 180 Q. And you would have read at the
5 time you signed your employment agreement paragraph
6 8, which is the non-competition provision?

7 A. Yes.

8 181 Q. And paragraph 9, which is the
9 non-solicitation provision?

10 A. Yes.

11 182 Q. And paragraph 10, which talks
12 about confidential information and your obligations
13 in relation to that?

14 A. Yes.

15 183 Q. So you would have understood that
16 in your employment agreement you were agreeing that
17 those things listed in paragraph 10 as being
18 confidential you had an obligation to treat as
19 confidential and keep confidential?

20 A. Yes.

21 184 Q. Did you also read the section of
22 the agreement entitled Remedies at paragraph 11
23 before you signed the agreement?

24 A. I did.

25 185 Q. So let's turn back to paragraph 5

1 of your affidavit of July 7th where you describe
2 your role as an analyst at Catalyst. And one of
3 the things you say in that paragraph, Mr. Moyse, is
4 that you would be researching potential investment
5 opportunities which we've discussed somewhat. And
6 then you say:

7 "I would normally review
8 publicly available information such
9 as financial statements and provide
10 analysis regarding the company's
11 potential value to Catalyst." (as
12 read)

13 So, first of all, when you say you
14 would normally review publicly available
15 information, I take it that's an acknowledgment
16 that in some cases you were reviewing information
17 that was not publicly available?

18 A. I can think of three or four
19 cases.

20 186 Q. Okay. But there are examples of
21 information that you were reviewing that was not
22 publicly available?

23 A. Yes.

24 187 Q. Okay. And in certain situations
25 would that be information that was coming from

1 private companies?

2 A. In one or two cases, yes.

3 188 Q. And I take it you're not -- you're
4 not denying, are you, that in the course of your
5 duties you were also reviewing information that
6 would be considered confidential?

7 A. No, I don't disagree.

8 189 Q. So apart from viewing publicly
9 available information in certain cases you were
10 also in receipt of and reviewing confidential
11 information?

12 A. Yes.

13 190 Q. And do you accept that your
14 analysis of a company's potential value to
15 Catalyst, a company's potential value to Catalyst
16 is work product that you were producing on behalf
17 of Catalyst?

18 A. Yes.

19 191 Q. And that work product belonged to
20 Catalyst?

21 A. Yes.

22 192 Q. All right. So at least in
23 relation to the analyses that you were preparing
24 while you were employed by Catalyst you accept that
25 Catalyst has a proprietary interest in that

1 analysis?

2 A. Yes.

3 193 Q. At paragraph 7 of your affidavit
4 you talk a little bit about how your duties morphed
5 a bit over the last six months of your employment.
6 You say that in the beginning you were more
7 involved with researching potential investment
8 opportunities, and then during the last six months
9 you focused almost entirely on performing operating
10 reviews, right?

11 A. Yes.

12 194 Q. Again, I take it when you say that
13 you were almost entirely focused on performing
14 operating reviews, some of what you were doing in
15 that six months would have involved still analyzing
16 and researching potential investment opportunities?

17 A. Yes.

18 195 Q. We know for example that there was
19 one opportunity that you were researching and you
20 prepared a memo in respect of in January of 2014 as
21 an example?

22 A. That example was self-directed.

23 196 Q. What do you mean by self-directed?

24 A. I did that because I wanted to.

25 It was never reviewed by a partner.

1 197 Q. Fair enough. But that was in part
2 what you were doing as part of your duties, right?

3 A. I guess, yeah.

4 198 Q. So you go on to testify that as a
5 result of that you had very little knowledge of
6 Catalyst's prospective investments, right?

7 A. Yes.

8 199 Q. When you talk about prospective
9 investments I'm just interested in the use of your
10 words. What do you mean by prospective
11 investments? Do you mean investments that they may
12 be making in the future?

13 A. I think it's a spectrum.

14 200 Q. Can you describe that a little bit
15 for me?

16 A. Prospective investment could be
17 anything covered by something I looked at for five
18 minutes under Catalyst's definition, or something I
19 was deeply involved in with private information for
20 several months.

21 201 Q. Okay. But when you say you have
22 very little knowledge of Catalyst's current
23 prospective investments, are you saying that you
24 weren't even aware of what those current
25 prospective investments might be?

1 A. I had very little -- I think I was
2 aware of what the prospective investments might be
3 as far as the three I lay out in my affidavit. As
4 far as knowledge of Catalyst plans, structuring,
5 even financial information, no, I don't think I had
6 very much knowledge.

7 202 Q. So what you're talking about in
8 this sentence is something a little more than just
9 simply not having knowledge of any of the potential
10 prospective investments, right? Because you
11 certainly were aware of the fact that Catalyst was
12 potentially pursuing various opportunities?

13 A. The three in my affidavit.

14 203 Q. Okay. And you certainly were
15 aware of others that you had looked at that may or
16 may not be on the radar screen depending upon
17 whatever direction was being given at the top?

18 A. I didn't consider those
19 prospective. If I was asked to do work on
20 something and was not followed up on for six months
21 I wouldn't say Catalyst exhibited very much
22 interest if at all in that investment.

23 204 Q. But in fairness, you're also
24 saying that you were not involved in and didn't
25 have insight into what was happening at the more

1 senior levels where those decisions were being
2 made, right?

3 A. Yes.

4 205 Q. So, in fairness, you couldn't say
5 with any degree of certainty whether or not those
6 things that you had researched were or weren't
7 potential investment opportunities?

8 A. I find it strange they would
9 consider those potential opportunities and not want
10 more work done on them.

11 206 Q. You might find it strange, but you
12 wouldn't know that as a fact, right?

13 A. I wouldn't.

14 207 Q. And were any of these
15 opportunities discussed in some of these group
16 meetings that you had? I think we've referred to
17 them as Monday morning meetings from time to time.

18 A. Mobilicity.

19 208 Q. I'm not asking you to name
20 specific ones. I'm saying to you were any
21 opportunities discussed in those meetings?

22 A. Yes.

23 209 Q. So those meetings weren't simply a
24 review of economic conditions generally or things
25 of that nature. There was also some discussion of

1 potential investment opportunities?

2 A. In the latter half or third of the
3 meeting, yes.

4 210 Q. Okay. So in paragraph 9 of your
5 affidavit you then talk about a comment that was
6 made by Mr. Riley at paragraphs 39 and 40 of his
7 affidavit. And you know that those comments were
8 in relation to a letter that was written by your
9 counsel at the time, Mr. Hopkins, right?

10 A. Yes.

11 211 Q. And you might want to just quickly
12 turn up that letter. That's at tab K of Mr.
13 Riley's affidavit in the Catalyst motion record. I
14 may have the wrong... I apologize. It's not tab K.

15 Maybe it is. I'm looking at the wrong
16 record. Sorry.

17 MR. HOPKINS: June 5th letter?

18 MR. DIPUCCHIO: There it is. Sorry.

19 BY MR. DIPUCCHIO:

20 212 Q. Yes. Tab K. So page 72 of the
21 Catalyst record. And this was the letter that was
22 written by Mr. Hopkins on your behalf on June 5,
23 2014, right?

24 A. Yes.

25 213 Q. And in that letter Mr. Hopkins

1 says in response to a letter that had been written
2 by me that with regards to your knowledge of
3 prospective acquisitions you are only aware of
4 three to five such prospects at least two of which
5 are well-known publicly, right?

6 A. Yes.

7 214 Q. And where did Mr. Hopkins get the
8 information in relation to the three to five
9 prospects?

10 A. The ballpark estimate I gave him
11 in an informal sit down.

12 215 Q. And how were you ball parking this
13 estimate? Can you take me through how you were
14 calculating the five prospects?

15 A. I knew of the three, and I was
16 just providing a cushion if I was wrong.

17 216 Q. So you knew of the three, and then
18 you provided a cushion of two?

19 A. To him, yes.

20 217 Q. And when you saw this letter did
21 you say that that's wrong?

22 A. I didn't see it before it went
23 out. I don't think I did.

24 218 Q. Okay. And when you were saying
25 there was a cushion did you have two other in mind?

1 A. No.

2 219 Q. Just a cushion you chose?

3 A. Yes. If I had them in mind I
4 would have been more specific than three to five.

5 220 Q. Well, three to five those are
6 pretty specific numbers. You're not saying a
7 number. You're not saying certain. You're saying
8 three to five. So those are two very specific
9 numbers.

10 A. A range with a 40 percent
11 variance.

12 221 Q. So did you actually outline for
13 Mr. Hopkins what those five would have been?

14 A. No.

15 222 Q. Now, at paragraph 10 of your
16 affidavit you actually go ahead and in the face of
17 Mr. Riley talking about an opportunity in the
18 telecommunications industry you actually identify
19 that opportunity in your affidavit, right?

20 A. I did.

21 223 Q. Okay. And was there some
22 particular reason why you felt it necessary to
23 identify that opportunity after Mr. Riley had
24 stated it in generic terms?

25 A. I didn't think it was secret.

1 There were several newspaper articles detailing
2 Catalyst's interest.

3 224 Q. Is it only relevant to you what
4 you think as opposed to what someone at Catalyst
5 may think?

6 A. This is my affidavit.

7 225 Q. So notwithstanding that Mr. Riley
8 had taken pains not to describe that opportunity in
9 his affidavit you decided in your wisdom that you
10 should just come out and say what that opportunity
11 was?

12 A. Yes.

13 226 Q. And did you make any attempts to
14 figure out whether that would be in any way
15 offensive or damaging to Catalyst prior to doing
16 it?

17 A. Again, I think it was common
18 knowledge in the industry.

19 227 Q. We'll talk about common knowledge
20 in a second. But did you make any efforts to reach
21 out and ask whether it would be offensive or
22 damaging to Catalyst's interest before you made
23 this disclosure in your affidavit?

24 A. No.

25 228 Q. You do go on to say that it is

1 widely known in the industry that Catalyst is
2 interested in purchasing Wind Mobile, and you
3 attach two newspaper articles at Exhibit C to your
4 affidavit.

5 And would you agree with me, Mr. Moyses,
6 that regardless of what may or may not be said in
7 those articles, and we can all read them, that
8 Catalyst had never publicly acknowledged an
9 interest in Wind?

10 A. Not necessarily.

11 229 Q. Not necessarily what?

12 A. Mr. Glassman says on page 32 of my
13 motion record.

14 230 Q. Yes?

15 A. Sorry. On page 33. 32 going on
16 to 33.

17 231 Q. Yes?

18 A. Newton Glassman, co-founder and
19 managing partner of Catalyst, would not comment on
20 the nature of his firm's involvement with Verizon
21 and Wind. However, he told the Financial Post
22 that -- he would not comment on the nature of.
23 However, he told the Financial Post that Catalyst
24 is not interested in Mobilicity on a standalone
25 basis, never were, never will be. It continues:

1 "Mobilicity on its own is a
2 flea on an elephant's butt of
3 wireless telecom in Canada. The
4 only way to build a fourth wireless
5 provider in Canada is through Wind."
6 (as read)

7 232 Q. But he goes to pains in that
8 article not to comment on the nature of the
9 involvement with Wind, right?

10 A. I would say --

11 233 Q. Or Verizon for that matter.

12 A. Sure. I agree he does not comment
13 on the nature of his involvement.

14 234 Q. Okay. And yet apart from what Mr.
15 Glassman says in this article, and the fact that so
16 far as I can see nobody has ever confirmed to
17 anyone publicly that Catalyst is actually
18 interested in Wind, you went ahead and in your
19 affidavit disclosed that that was the potential
20 opportunity that was being investigated?

21 MR. HOPKINS: I don't think that's
22 fair, counsel. I think based on what -- Mr. Moyle
23 has provided his interpretation of the statement
24 from the article that he just read. And I think
25 his focus was on the word "the nature of" not

1 whether there is an interest or not. It's the
2 nature of the interest. You've got his
3 interpretation of the article.

4 BY MR. DIPUCCHIO:

5 235 Q. I understand. So what you were
6 doing was interpreting that article and yet in
7 spite of the fact that Mr. Riley in his affidavit
8 doesn't mention the opportunity, you went ahead and
9 in your wisdom decided that you should just name it
10 as the opportunity?

11 A. Mr. Glassman has made public
12 statements saying he's committed to building a
13 fourth wireless carrier in Canada. That, together
14 with him saying the only way to do that during Wind
15 is tacit -- I guess a tacit admital of Catalyst's
16 interest in Wind.

17 236 Q. That was your interpretation?

18 A. Putting two and two together.

19 237 Q. And do you have any knowledge why
20 Mr. Glassman wouldn't comment on the nature of the
21 involvement with Verizon or Wind to the reporter?

22 A. No, I don't.

23 238 Q. Okay. So you just took that into
24 your own hands and decided to disclose it publicly
25 in an affidavit?

1 A. Yeah. I read two publicly
2 available articles.

3 239 Q. And at paragraph 11 of your
4 affidavit -- sorry. In the other article can you
5 tell me where you say that anything that Catalyst
6 has said would have influenced what you said in
7 your affidavit?

8 A. You'll have to give me a minute.
9 No, not in these articles specifically.

10 240 Q. Okay. So at paragraph 11 of your
11 affidavit you acknowledge that you were working on
12 the Wind Mobile file prior to giving your notice of
13 resignation, correct?

14 A. Correct.

15 241 Q. And you say you were privy to very
16 little if any confidential information about the
17 transaction. So I'm curious, Mr. Moyse, which one
18 is it? Were you privy to confidential information
19 or were you not privy to confidential information?

20 A. I was privy to confidential
21 information, yeah, I was.

22 242 Q. So the words "if any" are
23 superfluous?

24 A. Sure. If you want to edit them
25 out.

1 243 Q. They should be edited out?

2 A. Okay.

3 244 Q. Is that fair?

4 A. Yes.

5 245 Q. And you say that your contribution
6 was limited to contributing a memo. What kind of
7 memo did you contribute? Just generally.

8 A. Contributed to a memo. I didn't
9 actually contribute the memo. The memo was not
10 complete when I went on vacation.

11 246 Q. I apologize. That was my
12 misreading it. So when you say you contributed to
13 a memo, what kind of memo were you contributing to?

14 A. It would have been an investment
15 memo outlining Wind Mobile from a qualitative and
16 financial perspective. I contributed some charts.
17 I took the information Wind provided in the data
18 room and I essentially transposed those financials
19 into chart form.

20 247 Q. And in the course of doing that
21 obviously you would have reviewed the other parts
22 of the memo that may have been contributed by
23 others within Catalyst?

24 A. I don't think so. I don't know.
25 I wasn't involved for very long on the memo.

1 248 Q. So you never read the memo?

2 A. No.

3 249 Q. You just transposed charts into a

4 memo?

5 A. It was two days before my vacation

6 and I was getting ready to leave.

7 250 Q. You can't read a memo in two days?

8 A. I didn't want to. I didn't need

9 to.

10 251 Q. That's not what I'm asking you.

11 A. I didn't read it.

12 252 Q. So all you did was you transposed

13 a chart into a memo?

14 A. A few charts, yes. I gave them to

15 Loren Creighton to put into the memo.

16 253 Q. So what's your analysis? When you

17 say you performed an analysis?

18 A. I guess it wasn't much of an

19 analysis.

20 254 Q. So this is something else that's

21 not true in your affidavit?

22 A. I guess when you think of it that

23 way, no, it's not an analysis.

24 255 Q. What am I thinking of? Is it or

25 isn't it true that performed an analysis?

1 A. Some people might consider that to
2 be analysis.

3 256 Q. What is it that you would consider
4 to be an analysis then?

5 A. Something with original thought.

6 257 Q. Did you contribute something with
7 original thought?

8 A. I don't think so.

9 258 Q. So your use of the word "analysis"
10 there is the wrong word again?

11 A. I suppose it's the wrong word.
12 Are you my editor?

13 259 Q. I'm not your editor. I'm trying
14 to figure out what's your truth because it seems to
15 shift. So you didn't perform any analysis in
16 relation to Wind?

17 A. No.

18 260 Q. You just transposed a chart?

19 A. To my memory, yes.

20 261 Q. Okay. What chart was that?

21 A. Wind provided their financials,
22 their historical and future financials. So I put
23 that into chart form. So if you had to read a
24 table with their revenue I put that into a bar
25 chart so you can see the visual build of the

1 revenue.

2 262 Q. Is that public information? Or
3 private information?

4 A. It would be private, but provided
5 to most or if not all potential purchasers.

6 263 Q. But certainly not publicly
7 available?

8 A. No.

9 264 Q. So that's part of the confidential
10 information that you're talking about?

11 A. Yes.

12 265 Q. Would you have any dispute with
13 the fact that the memo itself was confidential?

14 A. No.

15 266 Q. So, in other words, the analysis
16 that was performed by the team at Catalyst, to
17 which you contributed this chart, this bar graph,
18 is confidential?

19 A. Yes.

20 267 Q. Now, looking at paragraph 13 of
21 your affidavit. Here you talk about a nutrition
22 company that you say is not public knowledge. And
23 in that case you also drafted an investment memo in
24 December of 2012, right?

25 A. Correct.

1 268 Q. And that again would have
2 represented your, in part, possibly with others,
3 your analysis of the investment thesis? Your
4 analysis and investment thesis?

5 A. There wasn't really an investment
6 thesis. In fact, I believe the memo said we would
7 need substantial information on the company to even
8 have a thesis because the company was private and I
9 did this with only public information, i.e. de
10 minimis information.

11 269 Q. So you weren't able to form a
12 view, in other words?

13 A. Exactly.

14 270 Q. And then you say you had no other
15 involvement on that file until on or about May 14,
16 2014 when you were provided with a teaser deck from
17 that company's financial advisor. And is this now
18 your receipt of confidential information from that
19 entity?

20 A. I believe so.

21 271 Q. Okay. So in December 2012 you
22 prepare an initial memo using publicly available
23 information, and then at some point, a year and a
24 half later, this deal is still -- this potential
25 transaction is still on the table and you're

1 receiving confidential information about that
2 company? Is that a fair summary?

3 A. Yes, but nothing happened between
4 2012 and 2014.

5 272 Q. It may or may not have, but the
6 fact of the matter is this same opportunity that
7 you were initially investigating in December 2012
8 is still on the table in some way, shape or form by
9 May 14, 2014?

10 A. Yes.

11 273 Q. So just to finish that off, here
12 again was your only role creating a bar chart that
13 you transposed from that financial information?

14 A. Yeah. It was the day before my
15 vacation. I didn't have much time.

16 274 Q. So in this one you say I did not
17 perform any analysis, right?

18 A. Yes.

19 275 Q. And then in paragraph 15 of your
20 affidavit you talk about valuation methods. And in
21 paragraph 16 you say:

22 "I learned how to analyze
23 companies as part of my education at
24 the University of Pennsylvania and
25 my previous employment at Credit

1 Suisse and RBC Capital Markets." (as
2 read)

3 And I take it, in fairness, you don't
4 mean to suggest that you learned nothing about
5 investing in distressed companies while you were
6 working at Catalyst?

7 A. I didn't learn any methodology.

8 276 Q. What did you learn?

9 A. Just generally gained experience
10 just from repetition.

11 277 Q. Well, what were you repeating?

12 A. Reading credit indentures, writing
13 memos, running models. But there was no
14 methodology at Catalyst. There was no system for
15 me to learn.

16 278 Q. Are you denying that you learned
17 about the process of investing in distressed
18 companies while you were at Catalyst?

19 A. Of course I did.

20 279 Q. All right. And I take it that's
21 valuable knowledge that you want to take with you
22 to future opportunities in your career?

23 A. It was good experience. It
24 doesn't necessarily mean I'll ever use it again.

25 280 Q. Well, depending on what position.

1 But you may or may not. It's part of your skill
2 set or tool set that you now have in terms of the
3 development of your future career.

4 A. Certainly.

5 281 Q. And, in fact, in fairness to you,
6 when you were -- when you resigned from Catalyst
7 and when you were making applications to
8 prospective employers in the 2014 timeframe, you
9 did indicate to both Mr. De Alba and to your
10 prospective employers that you had learned a lot at
11 Catalyst?

12 A. Of course I'm going to say I
13 learned a lot. I'm applying for a job.

14 MR. HOPKINS: Sorry. You mean to Mr.
15 Dea?

16 MR. DIPUCCHIO: Both to Mr. De Alba and
17 to his prospective employers, that you had had a
18 good learning opportunity at Catalyst.

19 THE DEPONENT: Are you referring to my
20 notice to Mr. De Alba?

21 BY MR. DIPUCCHIO:

22 282 Q. Both to your notice to Mr. De
23 Alba, yes, and in terms of cover letters and such
24 that you wrote to prospective employers.

25 A. Yeah, I was being respectful in my

1 notice and wanting a job in my letters to
2 prospective employers.

3 283 Q. But you wouldn't have to say that
4 you learned something at Catalyst to your
5 prospective employers if that wasn't true.

6 A. I guess not.

7 284 Q. And in fairness that's true?

8 A. Yeah, I learned something.

9 285 Q. Right. At paragraph 28, if we
10 flip forward to paragraph 28. You say on May 19th
11 -- I apologize.

12 A. Apology accepted.

13 286 Q. Let me just turn off that phone so
14 we don't have that again.

15 So you say in paragraph 28 of your
16 affidavit that on May 19th you were offered a
17 position with West Face Capital Inc., and that in
18 fact is accurate. You were offered that position
19 on May 19th, right?

20 A. Verbally, yes.

21 287 Q. And who offered it to you
22 verbally?

23 A. Mr. Dea.

24 288 Q. And then you submitted your
25 resignation on May 24, 2014 which I believe was a

1 weekend, right?

2 A. I think it was midnight on
3 Saturday. I was in Hong Kong at the time. So it
4 was daytime there.

5 289 Q. Okay. And on May 26th when you
6 returned to the office from your vacation in Hong
7 Kong you were instructed by Mr. Riley to remain at
8 home for the balance of your notice period, right?

9 A. That is correct.

10 290 Q. And did Mr. Riley explain to you
11 why you were being asked to stay at home during the
12 notice period?

13 A. I don't remember the specifics. I
14 think he said maybe to, you know, avoid having me
15 exposed to more confidential information during my
16 notice period.

17 291 Q. So one of the things Mr. Riley
18 specifically talked to you about when he asked you
19 to stay at home for the balance of the notice
20 period was the concern around confidential
21 information?

22 A. Yes.

23 292 Q. Moving on to paragraph 30 of your
24 affidavit. And really I look at paragraphs 30 to
25 35 as being sort of one particular section in your

1 affidavit in which you express some views in
2 relation to the non-competition covenant.

3 Now, obviously it goes without saying,
4 Mr. Moyse, apart from your obviously considerable
5 education in the business world you have not been
6 educated as a lawyer?

7 A. No. I'm learning a lot now
8 though.

9 293 Q. I imagine you are. And certainly
10 you wouldn't say that you have any expertise to
11 comment upon legal issues?

12 A. No. I take advice from my
13 counsel.

14 294 Q. All right. And when you in your
15 affidavit set out these issues that presumably have
16 come from somebody else in respect of the
17 restrictive covenant, did you discuss any of these
18 particular issues with anyone at Catalyst either
19 before or after you took on employment there?

20 A. No.

21 295 Q. And I wonder, given your
22 conclusion that certain provisions of the
23 employment agreement that you did sign with
24 Catalyst are unreasonable, I wonder whether you
25 make it a habit of signing contracts that in your

1 view are unreasonable or unenforceable?

2 A. It's probably the only one.

3 296 Q. You have never done that before?

4 A. I think my phone bills are
5 unreasonable but I got to sign those.

6 297 Q. And do you think that they're
7 unenforceable? In other words, do you think the
8 phone company doesn't have the right?

9 A. I've been advised by counsel that
10 this is unenforceable.

11 298 Q. And that's where all this is
12 coming from? I don't want to get into your legal
13 advice. I don't think we're actually treading on
14 anything that's particularly privileged.

15 MR. HOPKINS: No, it's fine with
16 counsel so far.

17 BY MR. DIPUCCHIO:

18 299 Q. But that's where all of this is
19 coming from?

20 A. This is a legal argument. I'm not
21 a lawyer.

22 300 Q. I understand that. My only point
23 being this wasn't a view that you had formed at
24 some point before you accepted employment with
25 Catalyst?

1 A. Yes. I was advised prior to
2 accepting employment at Catalyst that this was
3 unenforceable.

4 301 Q. So I don't want to get into that
5 information because that's privileged information.
6 Are you saying that you got legal advice prior to
7 signing your employment agreement at Catalyst?

8 A. Yes.

9 302 Q. And in spite of the legal advice
10 you received you went on and signed the employment
11 agreement?

12 A. I was told it was unenforceable.

13 303 Q. But I don't want to know what you
14 were told because otherwise you're going to be
15 opening yourself up to a bunch of questions in
16 relation to that and I don't want to go there.
17 What I want to know is, did you get legal advice?

18 A. Yes.

19 304 Q. And you went ahead and signed the
20 employment agreement in light of that legal advice?

21 A. Yes.

22 305 Q. And you didn't ask after receiving
23 legal advice for any changes to be made to your
24 employment agreement?

25 A. I had already asked Mr. De Alba

1 several questions. As I said, I didn't want to be
2 a burden.

3 306 Q. Answer my question --

4 A. No.

5 307 Q. -- after you received the legal
6 advice did you ask for any changes to be made to
7 your employment agreement?

8 A. No. I think that would be unusual
9 for a junior employee to do.

10 308 Q. You sought legal advice, right?

11 A. Yes.

12 309 Q. And did you ask for any changes to
13 be made?

14 A. No.

15 310 Q. At paragraph 34 and 35 one of the
16 things you do say is, in reference to the
17 definition of the word "associate" as used in the
18 restrictive covenant in your employment agreement,
19 you are able to make the statement that (a) the
20 definition of "associate" is set out in the Ontario
21 Business Corporations Act, and you've set that out
22 in your affidavit, right?

23 A. Mm-hmm. Yes.

24 311 Q. And then looking at that
25 definition you're able to determine with some

1 degree of precision what industries that would
2 prevent you from working in, right?

3 A. I don't think I could have
4 determined that.

5 312 Q. What do you mean you don't think
6 you could determine that? It's in your affidavit.
7 At paragraph 35.

8 A. Are you talking after I left or
9 prior to signing the contract?

10 313 Q. At this point that you signed your
11 affidavit.

12 A. Now I believe I can.

13 314 Q. And you did, in fact, in paragraph
14 35, right?

15 A. Yes.

16 315 Q. At paragraph 36 of your affidavit
17 -- so, first of all, let's look for a moment at the
18 Catalyst motion record, and the notice of motion
19 that was filed in this proceeding.

20 So notice of motion is at tab 1. So
21 you understood as of the date of this notice of
22 motion, which is June 26th, you understood that one
23 of the things that Catalyst was seeking in this
24 motion -- I'm looking now at page 3 of the record
25 specifically -- was an order that required the

1 defendants to immediately return to Catalyst or its
2 counsel all confidential information in their
3 possession or control, right?

4 A. Yes.

5 316 Q. And confidential information was
6 defined in the motion record as it had been defined
7 in the employment agreement, right?

8 A. Yes.

9 317 Q. And so when you swore your
10 affidavit on July 7th what you say on page 8 at
11 paragraph 36 is that:

12 "It is noteworthy that neither
13 Mr. Riley nor Mr. Musters provide
14 any actual evidence that I
15 transferred any information,
16 confidential or otherwise, from
17 Catalyst servers to my Dropbox or
18 Box accounts or other personal
19 devices." (as read)

20 Right?

21 A. Yes.

22 318 Q. So stop right there for a second.
23 So why did you think it was noteworthy
24 that neither Mr. Riley nor Mr. Musters provided any
25 actual evidence that you transferred information,

1 confidential or otherwise, to your Dropbox or
2 personal devices? Why did you emphasize that that
3 was noteworthy?

4 A. Well, it seemed to me that the
5 reason -- that you were using these examples as a
6 basis to seek relief against me. To me these
7 examples were purely speculative.

8 319 Q. And that was the point you made to
9 the court, that in other words that the examples
10 that were being used in order to obtain the relief
11 that was being sought in the notice of motion which
12 included relief that you return all confidential
13 information, right?

14 A. Mm-hmm.

15 320 Q. That those examples, in your view,
16 were unsupported speculation and innuendo, right?

17 A. Yes.

18 321 Q. And that's what you swore on July
19 7th?

20 A. Yes.

21 322 Q. And I take it the reason you did
22 that, and the reason you indicated to the court
23 that that was noteworthy in particular was because
24 you're trying to convince the court through your
25 affidavit that Mr. Musters and Mr. Riley's concerns

1 were totally unfounded?

2 Are you having some difficulty with
3 that question?

4 A. No. What concerns in particular?
5 That I --

6 323 Q. Concerns that you had confidential
7 information on your personal devices.

8 A. At the time I swore this I didn't
9 -- I was not aware I had confidential information
10 on my devices. So I did believe their concerns
11 were unfounded, and I still believe their concerns
12 are unfounded.

13 324 Q. So you're testifying now that at
14 the time you swore an affidavit in response to a
15 motion which specifically requested an order that
16 you return confidential information that you
17 weren't aware that you had information on your
18 personal devices?

19 A. I was not.

20 325 Q. And, therefore, you were saying it
21 was noteworthy that the concerns that were being
22 expressed by Mr. Riley and Mr. Musters were
23 unsupported speculation and innuendo?

24 A. Yes. That's what I said.

25 326 Q. Did it ever occur to you to

1 actually go check your personal devices before you
2 swore something to the court?

3 A. I did actually, and I didn't -- I
4 mean, I didn't look in the right folders,
5 apparently.

6 327 Q. So there were folders that you
7 didn't look at?

8 A. You know, there's a lot of
9 folders. I looked where -- I didn't find them.

10 328 Q. Tell me what folders you looked
11 at.

12 A. I looked on my desk top. I had a
13 Dropbox folder that I thought maybe I would have
14 all my information in. I didn't have anything
15 there.

16 329 Q. And what folder did you ultimately
17 have to look at to find all the information that
18 subsequently makes its way into your affidavit of
19 documents?

20 A. Almost all the confidential
21 information was in my downloads folder. The reason
22 it was in my downloads folder was because, as I
23 said, the Catalyst remote access was slow and
24 unreliable and I would frequently email myself
25 files to work on locally at home, and then I would

1 download them. The copies were retained in the
2 downloads folder. I didn't know that.

3 330 Q. But you were doing it so
4 frequently, according to you, Mr. Moyses, that how
5 could you not have known that that information was
6 on your personal device?

7 A. I didn't know. And, I mean, had I
8 known I wouldn't have it anymore.

9 331 Q. So you didn't make that exhaustive
10 search at the time that you swore your affidavit of
11 July 7th in which you essentially criticize Mr.
12 Riley and Mr. Musters for giving the court
13 unsupported speculation and innuendo?

14 A. I suppose it wasn't exhaustive
15 enough.

16 332 Q. And is it possible that your
17 search even today hasn't been exhaustive enough?

18 A. It's been exhaustive. I believe
19 I've captured all the documents.

20 333 Q. Can you say that with absolute
21 certainty?

22 A. I can't say anything with absolute
23 certainty.

24 334 Q. You go so far as to call Mr.
25 Riley's allegations -- and I take you to paragraph

1 61 of your affidavit on this point. You say:

2 "As explained above, Catalyst's
3 allegations of my removal and misuse
4 of confidential information are
5 baseless." (as read)

6 You go so far as to call Mr. Riley's
7 allegations baseless, right?

8 A. Yes.

9 335 Q. And then in paragraph 71 in
10 response to the order that was being requested --
11 because you understood that one of the orders that
12 was being requested was for a forensic image to be
13 taken of your personal devices, and for that image
14 to be reviewed by an independent solicitor, right?

15 A. Yes.

16 336 Q. And in response to that you go so
17 far in paragraph 71 as to say that the court has no
18 basis to order a forensic review, because what was
19 being requested was a fishing expedition only,
20 right?

21 A. Yes.

22 337 Q. And the reason you say that, and
23 what you try to tell the court in order to support
24 your position is that Catalyst was unable to
25 provide any actual evidence that you transferred

1 any confidential information to my personal
2 equipment or accounts, right?

3 A. That's correct.

4 338 Q. And that is a false statement,
5 right?

6 A. No. That's a true statement.
7 Catalyst was unable to provide any actual evidence.

8 339 Q. So what you're telling the court
9 is they're not able to provide any actual evidence,
10 therefore, I shouldn't have to submit to a forensic
11 analysis of my computer, right? Is that what
12 you're saying?

13 A. I've been forthcoming with all the
14 documents I have.

15 340 Q. You were, after we got a court
16 order requiring you to do so. What I'm going to
17 ask you, Mr. Moyle, is why didn't you tell the
18 court that you had those documents in this
19 affidavit?

20 A. I wasn't aware at the time.

21 MR. HOPKINS: I think he answered the
22 question, counsel.

23 BY MR. DIPUCCHIO:

24 341 Q. So it's just because you weren't
25 aware at the time not having done an exhaustive

1 search of your computer?

2 A. Yes.

3 342 Q. Do you admit now that the concerns
4 that were expressed by Mr. Riley and Mr. Musters
5 that you might have confidential information on
6 your personal computing devices was justified?

7 A. Not based on the evidence, and
8 they have all the confidential information I had
9 now.

10 343 Q. I understand that, but do you
11 understand and acknowledge that their concerns as
12 expressed in the original affidavits that you might
13 have transferred confidential information to your
14 personal computing devices was in fact a justified
15 concern?

16 MR. HOPKINS: Mr. Moyle acknowledges in
17 his affidavit that he did that on a regular basis,
18 the transferring of the files to his personal
19 computer devices due to the system being slow and
20 unreliable. I'm not sure that particular
21 allegation is in dispute.

22 MR. DIPUCCHIO: No. It is in dispute,
23 because one of the things he said is that they
24 didn't provide any evidence that he had actually
25 transferred any confidential information to his

1 personal computing devices.

2 BY MR. DIPUCCHIO:

3 344 Q. Is it fair to say now that those
4 concerns were justified? In other words, you did
5 have confidential information on your personal
6 computing devices?

7 A. I did have confidential
8 information on my personal computer devices.

9 345 Q. But you haven't yet erased those,
10 have you?

11 A. You've asked me to retain them. I
12 would gladly erase them if I can.

13 346 Q. But that's what I'm saying. Prior
14 to the motion being brought, and prior to the order
15 being made, there was no attempt by you to erase or
16 dispose of the confidential information that you
17 had retained?

18 A. Not this confidential information.
19 There was some that I knew I had that I made
20 efforts to delete. I wasn't aware I had these.

21 347 Q. And when did you make those
22 efforts?

23 A. Some time between -- I want to say
24 -- I don't know exactly, but prior --

25 348 Q. Give me a timeframe.

1 A. March. April.

2 349 Q. And why were you deleting things
3 in March and April?

4 A. I didn't think I wanted to stay at
5 Catalyst for much longer and I didn't want to
6 retain any information.

7 350 Q. So there was information that
8 exist or existed on your computer system that you
9 deleted in March, April, possibly May as well?

10 A. Possibly. I don't remember
11 exactly.

12 351 Q. How about June?

13 A. No.

14 352 Q. So up until the end of May there's
15 information that you had on your computer system
16 that has possibly been deleted by you?

17 A. Yes.

18 353 Q. And do you agree with me that the
19 only way we know, we can know what that information
20 was is by examining your computer system and trying
21 to piece that together now that you've deleted it?

22 A. I don't see what use that does.

23 354 Q. I don't care whether you think
24 it's useful. Do you agree with me that that's the
25 only way we can find out what you've deleted?

1 A. Yeah.

2 355 Q. Because in your affidavit of
3 documents you haven't been able to provide us with
4 a listing of what you deleted, right?

5 A. I don't know what I deleted.

6 356 Q. Other than the May 27th email
7 which you know you deleted.

8 A. Yes.

9 357 Q. Sorry. March 27th.

10 A. I knew what you were saying.

11 358 Q. March 27th.

12 When you met with Mr. Riley on May 26th
13 and he indicated to you that they had a concern
14 that you should possibly work at home in order to
15 restrict the amount of confidential information you
16 were obtaining, did you offer to Mr. Riley to
17 return confidential information that you did have?

18 A. I did not.

19 359 Q. You didn't even tell him that you
20 had that information, right?

21 A. I didn't know I had it.

22 360 Q. You didn't even know it at that
23 time?

24 A. This information. Yes, I had -- I
25 had other confidential information I suppose.

1 361 Q. Okay. And did you tell him that
2 you had that information?

3 A. No. But he -- I mean, they sent
4 me home with my BlackBerry. So they allowed me to
5 continue to receive confidential information.

6 362 Q. We'll talk about your BlackBerry
7 in a second.

8 A. Sure.

9 363 Q. But you didn't tell him that you
10 had that information, nor did you offer to return
11 it to Catalyst?

12 A. No.

13 364 Q. And when you said in paragraph 38
14 that Mr. Riley has provided no evidence that I have
15 used my personal Dropbox account to store Catalyst
16 files, is that again just a statement you made to
17 point out to the court that Catalyst didn't have
18 the evidence to present to the court as opposed to
19 the fact that that was not an accurate statement?

20 A. It was an accurate statement in
21 that he did not provide any evidence.

22 365 Q. But it's actually an accurate
23 statement that you did use your personal Dropbox to
24 transfer files?

25 A. I did.

1 366 Q. Okay. And, in fact, you admit
2 later on in your affidavit, at least in relation to
3 the Stelco file, that you did use Dropbox to
4 transfer some Stelco documents?

5 A. Yes.

6 367 Q. Which you then say you deleted,
7 right?

8 A. Yes.

9 368 Q. So Stelco documents would have
10 been some of the documents you say you deleted?

11 A. Correct.

12 369 Q. And do you know which documents
13 those were?

14 A. No, I don't.

15 370 Q. With respect to those Stelco
16 documents that you say you reviewed, and the
17 investment letters for that matter, after March of
18 2014 you acknowledge both in relation to the
19 investment letters and in relation to the Stelco
20 documents that you had no need to review either of
21 those categories of documents for any work or
22 duties that you were performing on behalf of
23 Catalyst?

24 A. I agree with that.

25 371 Q. And is that true of other

1 potential mandates as well? In other words, is it
2 possible that during the course of your employment
3 at Catalyst you would have been looking at some
4 other transactions that you weren't technically
5 involved in?

6 A. I would look at old completed
7 transactions, yes.

8 372 Q. So it's not necessarily the case
9 that you were only reviewing information on matters
10 that you were actively working on?

11 A. No, that's not the case.

12 373 Q. And the Stelco case in particular
13 you say in your affidavit you were reviewing out of
14 curiosity to learn more about the transaction. And
15 that's at a time I take it that you knew you were
16 going to be leaving Catalyst, right?

17 A. I wanted to leave. I didn't know
18 to where.

19 374 Q. But you certainly had made your
20 mind up in terms of the fact you were going to be
21 seeking alternative employment?

22 A. Yes.

23 375 Q. And why did you have any curiosity
24 about reviewing the Stelco transaction and learning
25 about that transaction?

1 A. As I said, I routinely reviewed
2 old transactions, Stelco was just one of them.

3 376 Q. And why at that particular point
4 in time did you find it necessary to review a
5 transaction that we know was many years old?

6 A. I don't know.

7 377 Q. You don't have any recollection as
8 to why you had a personal curiosity at that time?

9 A. I don't know why I would have
10 review Pope and Talbot or Calpine around that time.

11 378 Q. Did you review those as well?

12 A. At some point, yes.

13 379 Q. Did you transfer any documents in
14 relation to those as well?

15 A. No.

16 380 Q. Only Stelco?

17 A. Only Stelco.

18 381 Q. Did you know at the time that West
19 Face was involved in Stelco?

20 A. Yes.

21 382 Q. Would that have been what peaked
22 your curiosity perhaps?

23 A. It's coincidental.

24 383 Q. So it didn't?

25 A. No.

1 384 Q. That's purely coincidental? Fair?

2 A. Yes.

3 385 Q. And one of the things we know you
4 reviewed or at least looked at was an affidavit
5 that was sworn by the principal of West Face in
6 that proceeding, right?

7 A. I also looked at an affidavit
8 sworn by the principal of Davidson Kempner.

9 386 Q. Yes. But one of the things you
10 reviewed --

11 A. Yes.

12 387 Q. -- was an affidavit that had been
13 sworn by the principal of West Face?

14 A. Sure.

15 I also looked at an affidavit sworn by
16 Mr. De Alba.

17 388 Q. I know.

18 At paragraph 54 of your affidavit you
19 say that -- let's take a look, first of all, at the
20 email that's being referenced in that paragraph
21 which I believe is at tab D of the Catalyst motion
22 record. So this is page 48 of the record.

23 And this is an email chain between you
24 and a gentleman by the name of Evan Dryer at Credit
25 Suisse. I take it this is an old business

1 colleague from Credit Suisse?

2 A. Yes.

3 389 Q. And Mr. Dryer forwards to you an
4 article -- I apologize. I guess you had forwarded
5 to him an article in the Globe and Mail about West
6 Face Capital on February 7, 2013. And do you
7 recall why you were doing that?

8 A. He worked for a special situations
9 group at Credit Suisse, I thought he might find it
10 of interest.

11 390 Q. Why? Why would he find that of
12 interest?

13 A. He's mentioned West Face before.
14 He knows I'm from Canada. It's come up in
15 conversation. So I thought he might find this
16 interesting.

17 391 Q. And he then responds to you and
18 talks about I guess some West Face activity in
19 relation to this SNC-Lavalin situation.

20 And then you say in your response to
21 him at 12:01 a.m., you say:

22 "Oh, for sure. Will be
23 interesting to see what will happen.
24 They're very Ackman-like in their
25 high profile hits and misses.

1 They've been hammered on one
2 activist play we're looking at
3 (though we don't like). Never good
4 when we're looking at something you
5 bought. And we're fighting with
6 them on a different distress name
7 right now." (as read)

8 Right?

9 A. Yes.

10 392 Q. And what is the one activist play
11 that West Face -- that you were aware that West
12 Face was looking at -- sorry. That you were aware
13 that West Face was involved in that Catalyst was
14 looking at?

15 A. I believe I was referring to
16 Connacher, but we just looked at it and put
17 together an initial memo.

18 393 Q. All right. And, in fact, West
19 Face was actively involved in that matter?

20 A. West Face was already in that.

21 394 Q. Okay. And you say that we're
22 fighting with them on a different distress name
23 right now, but you say that that's not -- in your
24 affidavit you say that that wasn't a reference to
25 Wind?

1 A. Correct.

2 395 Q. What was that a reference to?

3 A. I had no basis to make that
4 statement at the time in the email given I was
5 referring to Mobilicity and I had no involvement or
6 knowledge of Mobilicity at the time. I was just
7 blustering to a friend who might think it was
8 impressive that we were involved in the same deal
9 as West Face.

10 396 Q. Okay. So you're not -- so was
11 this an untruthful statement?

12 A. Yes. To my knowledge.

13 397 Q. All right. But what you were
14 referring to, at least in your mind, was
15 Mobilicity?

16 A. Yeah. Sure.

17 398 Q. But you're not denying that West
18 Face and Catalyst were actively looking at similar
19 opportunities in various spaces?

20 A. Sorry. In this email?

21 399 Q. No, generally. You're not denying
22 that --

23 A. They've looked at similar
24 opportunities, yes.

25 400 Q. Across various industries?

1 A. I can think of, yeah, two
2 industries.

3 401 Q. And you were aware of that?

4 A. I'm aware of that. I was aware
5 they were involved in Stelco at this time, and now
6 I'm aware they're involved in Wind.

7 402 Q. Okay. And then there's the
8 Connacher thing that you were talking about as
9 well?

10 A. Well, they were involved in that,
11 yes.

12 403 Q. And you were looking at it? And
13 Catalyst was looking at it?

14 A. I wouldn't consider it -- it would
15 be on the call it the low interest side of that
16 spectrum I referenced earlier.

17 404 Q. Nonetheless Catalyst was looking
18 at it?

19 A. Sure.

20 405 Q. And West Face is also involved in
21 Mobilicity, right?

22 A. I actually don't know.

23 406 Q. Is that possible?

24 A. I suppose it's possible.

25 407 Q. At paragraph 56 you say that you

1 are not privy to any internal discussions about the
2 strategy behind Catalyst's potential acquisition of
3 Wind. And then you say: Nevertheless, West Face
4 took specific efforts to erect a confidentiality
5 wall. And we'll come back to that.

6 Can you tell me, Mr. Moyle -- can you
7 help me out with this? How did West Face know to
8 erect a confidentiality wall in respect of Wind?

9 A. I don't know.

10 408 Q. Did you tell them that?

11 A. No.

12 409 Q. Now, let's turn to the March 27th
13 email that is referenced in your affidavit at
14 paragraph 62. And before I ask you any questions
15 in relation to that particular email, do you
16 acknowledge, Mr. Moyle, that prior to swearing this
17 affidavit you had had discussions with West Face,
18 or at least had become aware of discussions with
19 West Face where they acknowledged having a copy of
20 the March 27th email?

21 A. I don't remember if they said they
22 had a copy. We did discuss my sending the March
23 27th email.

24 410 Q. But had they -- did they
25 acknowledge to you -- prior to your swearing your

1 affidavit what I want to know is were you aware
2 that West Face had this March 27th email?

3 A. I wasn't aware they retained it.

4 411 Q. Okay. And did you have any
5 discussions with anybody at West Face about the
6 fact that they were going to disclose that email in
7 their motion materials? Or that they might be
8 required to disclose that email in their motion
9 materials?

10 A. No.

11 412 Q. Now, you yourself had actually
12 deleted a copy of that March 27th email from your
13 computer system, right?

14 A. Yes.

15 413 Q. And the reason you chose to delete
16 that particular email, I take it, as opposed to
17 other emails which you didn't delete, was because
18 you thought that there was something perhaps
19 improper about you having sent that email?

20 A. Upon further reflexion after
21 sending it, yes.

22 414 Q. And what is it that you thought
23 was wrong about that? That you had disclosed
24 confidential information to West Face?

25 A. That I had disclosed information

1 to West Face.

2 415 Q. And you're not denying that your
3 analysis and the analysis of other people at
4 Catalyst in those memos that you did send to West
5 Face was proprietary information that belonged to
6 Catalyst?

7 A. I agree it's proprietary.

8 416 Q. And you're not denying I take it
9 that the analysis that was performed, in
10 particular -- and we'll look in some detail at
11 these presentations or memos. But some of the
12 analysis that was performed was certainly
13 confidential?

14 A. Yes.

15 417 Q. In other words, it wouldn't be
16 known by third parties?

17 A. Yes.

18 418 Q. Now, how long did it take you to
19 come to that realization?

20 A. That I shouldn't have sent it?

21 419 Q. Yes.

22 A. I don't remember exactly.

23 420 Q. And was it around the time that
24 you came to that realization that you thought you
25 might cover your tracks by deleting it?

1 A. No. I deleted it within a week of
2 sending it probably. I just don't remember exactly
3 the date.

4 421 Q. But what I'm trying to get at, was
5 it prior to your deleting that email that you came
6 to the realization that maybe you shouldn't have
7 sent it?

8 A. Yes.

9 422 Q. So some time within a week after
10 you sent that email you came to the realization
11 that you ought not to have sent it, and then you
12 made the decision to delete that email?

13 A. Correct.

14 423 Q. What you didn't do obviously is
15 you didn't go to Catalyst at the time you came to
16 that realization and tell them that you had made
17 the mistake of sending confidential and proprietary
18 information to one of their competitors?

19 A. I doubt they would have been very
20 forgiving.

21 424 Q. They may not have been forgiving,
22 but since you made the mistake --

23 A. No, I did not.

24 425 Q. You chose not to try to correct
25 that by going to Catalyst and being up front with

1 your employer?

2 A. No.

3 426 Q. So at paragraph 64 -- I take it we
4 can also agree with each other on this point, that
5 in paragraph 64 where you say that three of the
6 research pieces did not contain any confidential
7 information or information proprietary to Catalyst,
8 that's wrong?

9 A. I don't agree.

10 427 Q. So you're saying that those
11 analyses that were performed, those research pieces
12 that were performed were not proprietary to
13 Catalyst?

14 A. The pieces themselves were. They
15 didn't contain any confidential information.

16 428 Q. I don't understand the
17 distinction.

18 A. I mean there's -- in logic a set
19 doesn't contain itself. So the memo can be
20 confidential and not contain any confidential
21 information.

22 429 Q. So what makes the memo
23 confidential?

24 A. I'm not really sure actually.

25 430 Q. Well, maybe I can help you out.

1 Is it the fact that the work product that you're
2 performing on behalf of your employer shouldn't be
3 shared with a competitor?

4 A. I agree with that.

5 431 Q. Okay. And in terms of the actual
6 confidential information, you say it didn't include
7 any confidential information, you don't mean to
8 suggest again that the analysis that you're
9 performing is not confidential?

10 A. I don't believe it is. It was
11 based on publicly available information.

12 432 Q. Right. But lots of things are
13 based on publicly available information, but the
14 fact that you're performing an analysis that may
15 not be readily available to the public is what
16 makes it confidential. That's your work product is
17 analyzing.

18 A. I agree it's a work product and
19 proprietary.

20 433 Q. And that's what makes it
21 confidential. That's what you're being paid for,
22 to perform this analysis that's not publicly
23 available.

24 A. I multiply publicly available
25 numbers by publicly available numbers. Like-minded

1 people would have done the same thing.

2 434 Q. You do far more than multiply, Mr.
3 Moyle. Let's be fair. Anybody can take a
4 calculator. You're not hired to be a calculator.
5 You're hired to bring your experience and expertise
6 in performing an analysis, right? That's why
7 you're being paid \$200,000 a year.

8 A. One sixty-two.

9 435 Q. Right.

10 Right? It's that level of analysis,
11 that's the work product that's being performed for
12 your employer; you surely understand that.

13 A. Yes.

14 436 Q. And that's what makes it
15 confidential.

16 A. I don't know.

17 437 Q. Do you disagree with that?

18 A. I don't know what makes it
19 confidential.

20 438 Q. Okay. Why do you put
21 "confidential" on the documents? When you're
22 authoring the documents why do you label them
23 confidential?

24 A. That's part of the template. I've
25 never given it a second thought.

1 439 Q. Did you tell anybody or ask
2 anybody, Why do we label these things confidential?
3 Or did you have an understanding of what made them
4 confidential?

5 A. Seemed boiler plate.

6 440 Q. Would you take any analysis that
7 you're performing or have performed for West Face
8 and disclose it to third parties?

9 A. No. And I agree that the
10 disclosure of information was wrong regardless of
11 whether I thought it was confidential.

12 441 Q. So why are you telling the court
13 that the research pieces didn't contain any
14 confidential information or information proprietary
15 to Catalyst if you're now disagreeing that that's
16 the case?

17 A. The entire piece is proprietary.
18 They don't -- I don't know what makes it
19 confidential. I don't agree that any of the
20 information in it was proprietary.

21 442 Q. Other than your analysis.

22 A. The whole of the product, yes.

23 443 Q. Including your analysis. Right?
24 Which is contained within those pieces.

25 MR. HOPKINS: I think you have his

1 answer. His answer was he doesn't know.

2 BY MR. DIPUCCHIO:

3 444 Q. And what about the structure or
4 strategy behind a particular deal? Would you
5 consider that to be sensitive or confidential
6 information that belongs to Catalyst?

7 A. Could be, yes.

8 445 Q. So in these memos where we see for
9 example, and I'll take you to specific parts of
10 them if you want me to, but where we see for
11 example a recitation of the structure of a deal, or
12 the strategy that was being employed by Catalyst in
13 certain situations, would you agree that those
14 things are confidential information that Catalyst
15 would not want to be widely shared?

16 A. Yes.

17 446 Q. And whatever you do say in your
18 affidavit you do draw a distinction, it seems to me
19 at least, between three of the research pieces and
20 then the fourth one, right?

21 A. Yes.

22 447 Q. So at least in the case of the
23 fourth one you agree that did contain, even by your
24 definition, confidential and proprietary
25 information in it?

1 A. Yes.

2 448 Q. And why? What was the distinction
3 there?

4 A. The information in it was based on
5 information provided by the company under a
6 non-disclosure agreement that would not have been
7 available to the public.

8 449 Q. So in that particular case -- let
9 me just understand and break that down. In that
10 particular case you were aware that Catalyst had
11 signed a non-disclosure agreement in order to
12 obtain the information that found its way into that
13 memo?

14 A. Yes.

15 450 Q. And in spite of that you actually
16 disclosed that memo to a third party thereby, in
17 effect, causing Catalyst to breach its
18 non-disclosure agreement?

19 A. Yes.

20 Just to clarify, I'm not aware what the
21 non-disclosure says, but...

22 451 Q. You certainly understand at least
23 at minimum that the non-disclosure agreement would
24 not allow that information that was received by
25 Catalyst in confidence to be disclosed to a third

1 party?

2 A. It should, yes.

3 452 Q. And that was -- the fourth case
4 that you're referring to at paragraph 65 is which
5 one?

6 A. That would be Homburg.

7 453 Q. Homburg, okay.

8 Shall we take a break there?

9 MR. HOPKINS: Sure.

10 THE DEPONENT: I'm fine.

11 MR. DIPUCCHIO: I know, but the
12 reporter -- we have to be considerate of the
13 reporter. This is much more difficult for her than
14 it is probably for you as well.

15 --- Recess at 11:37 a.m.

16 --- On resuming at 11:53 a.m.

17 BY MR. DIPUCCHIO:

18 454 Q. Can we turn up tab I of the
19 Catalyst motion record? This is tab I to the
20 affidavit of Mr. Riley. Page 64 of the record is a
21 letter --

22 MR. HOPKINS: Sorry. "I" or page 59?

23 MR. DIPUCCHIO: 64 of the record.

24 MR. HOPKINS: So tab K.

25 MR. DIPUCCHIO: I think you have the

1 wrong record. You're looking at Dentons record.

2 MR. HOPKINS: Sorry. My apologies.

3 Yes.

4 BY MR. DIPUCCHIO:

5 455 Q. So after you announced to Catalyst
6 that you were going to be resigning your position,
7 approximately a week after that a letter was sent
8 to your counsel and to Mr. Boland at West Face.
9 And do you recall receiving that letter, Mr. Moyle?

10 A. Through my counsel, yes.

11 456 Q. And you understood in that letter
12 that, in essence, Catalyst was concerned about two
13 things. Firstly, they were concerned about the
14 fact that you had breached the restrictive covenant
15 in your employment contract, right?

16 A. That was their position, yes.

17 457 Q. Their concern?

18 A. Yes.

19 458 Q. And secondly they were concerned
20 about the fact that you might have confidential
21 information in your possession, right?

22 A. Yes.

23 459 Q. And then presumably your lawyer on
24 your behalf responded to this letter on June 5th.
25 And that's at page 72 of the record. And we've

1 looked at this letter briefly already. But what he
2 says in regards to confidentiality is at the bottom
3 of the first page of the letter:

4 "In response to your client's
5 invitation that Mr. Moyle propose
6 terms on which the current situation
7 may be remedied, Mr. Moyle is
8 willing to confirm in writing that
9 he understands and will abide by the
10 confidentiality provision contained
11 in the employment agreement, a
12 proposal which we feel is reasonable
13 in the circumstances." (as read)

14 So through your counsel you indicated
15 that you were prepared to indicate in writing that
16 you understood and would abide by the
17 confidentiality provision in the agreement, right?

18 A. Yes.

19 460 Q. And at this time, June 5th, 2014,
20 when your counsel is writing this letter to my
21 firm, you're still employed by Catalyst. You're
22 still being paid by Catalyst, right?

23 A. Yes.

24 461 Q. And in the face of the letter that
25 was sent to your counsel on May 30th, and the

1 response that was delivered by your counsel on June
2 5th to that letter, you still made the decision at
3 that time not to disclose to Catalyst that you had
4 sent an email to West Face that contained
5 proprietary and confidential information in it?

6 A. I did not, that's right.

7 462 Q. And was there any particular
8 reason why you didn't willingly disclose that at
9 this time?

10 A. I don't know.

11 463 Q. You don't know whether there was a
12 reason?

13 A. I don't have a reason.

14 464 Q. And, in fact, you believed at this
15 time, when your counsel wrote the response to the
16 letter, you believed at this time that there was no
17 evidence of your having sent that email to West
18 Face because you had deleted it, right?

19 A. I don't know whether or not
20 Catalyst could have found it.

21 465 Q. But you yourself thought that you
22 had deleted it.

23 A. Yes.

24 466 Q. Well, you knew you had deleted it.

25 A. Yes.

1 467 Q. And nor at that time, after May
2 30th and before your counsel responded on June 5th,
3 nor at that time did you either tell your counsel,
4 or tell anybody at Catalyst that you may have had
5 information on your personal computing devices?

6 A. I don't remember.

7 468 Q. You don't remember whether you did
8 or didn't tell anybody at Catalyst?

9 A. I definitely didn't tell anybody
10 at Catalyst. I don't remember whether or not I
11 told my counsel.

12 469 Q. Let's not get into that. In any
13 event, that wasn't disclosed in your counsel's
14 letter of June 5th.

15 A. Correct.

16 470 Q. Now, you've looked at, I take it,
17 the supplementary affidavits that were filed in
18 this matter by Mr. Riley and Mr. Musters?

19 A. I have.

20 471 Q. Let's turn up the affidavit that
21 was sworn by Mr. Musters, the supplementary one.
22 So that's in the supplementary motion record. At
23 tab...

24 MR. HOPKINS: Tab A?

25 MR. DIPUCCHIO: Yes. Exactly.

1 I guess it's attached. I apologize.
2 There isn't a supplementary affidavit of Mr.
3 Musters. It's my mistake. There's a supplementary
4 affidavit of Mr. Riley which attaches a report by
5 Mr. Musters, right? At tab A.

6 BY MR. DIPUCCHIO:

7 472 Q. And you reviewed that report?

8 I'm not suggesting you reviewed it in
9 any degree of detail, but you were aware of that
10 report being filed?

11 A. I was aware of the report. I
12 don't believe I reviewed it.

13 473 Q. And in your affidavit, I believe
14 it's your reply affidavit, you acknowledge that you
15 wiped your BlackBerry, right?

16 A. Yep.

17 474 Q. And do you have any specific
18 recollection of the date upon which you did that?

19 A. I believe it would have -- so I
20 probably would have been I want to say between June
21 18 and June 20th.

22 475 Q. There's no question, is there, Mr.
23 Moyle, that you chose to wipe your BlackBerry after
24 it became clear through my correspondence with your
25 counsel that there were going to be court

1 proceedings brought in relation to this matter?

2 MR. HOPKINS: Well, in terms of court
3 proceeding --

4 THE DEPONENT: I agree with the
5 timeline. I don't agree there's a logical
6 connection.

7 BY MR. DIPUCCHIO:

8 476 Q. Let's forget about logical
9 connections. We'll leave that to somebody else to
10 draw. You acknowledge that you wiped your
11 BlackBerry after you were made aware through my
12 correspondence to your counsel that there were
13 going to be court proceedings initiated?

14 A. I don't remember exactly, because
15 I don't remember the date of the letter that you
16 sent that indicated there would be court
17 proceedings.

18 477 Q. Let's look at that. I believe it
19 was --

20 A. We should get the timing right.

21 478 Q. Okay. Let's get the timing right.
22 Fair enough. I believe it was June 18th, but let
23 me confirm.

24 I apologize. It's June 19th. So it's
25 Exhibit N to Mr. Riley's affidavit, page 79. And

1 you had seen this email when it came through?

2 A. Yes. It was forwarded to me some
3 time after.

4 479 Q. Okay. And do you know whether you
5 wiped your BlackBerry after that email?

6 A. I don't remember.

7 480 Q. Is it possible you did?

8 A. I would say it's equally possible
9 I didn't.

10 481 Q. And if you wiped it prior to that
11 it wouldn't have been much prior to that, right?

12 A. I agree with that.

13 482 Q. So it was some time we know from
14 Mr. Musters report after June 17th, right?

15 A. Yes. I just know it was some time
16 between Wednesday and Friday.

17 483 Q. And prior to wiping your
18 BlackBerry, I take it you and I can agree that you
19 didn't ask anyone at Catalyst whether you should be
20 wiping your BlackBerry?

21 A. I didn't think I had to.

22 484 Q. Well --

23 A. I did not.

24 485 Q. Let's just answer the questions.

25 A. I didn't.

1 486 Q. And you didn't give it to your
2 counsel as an example, in order to preserve it?

3 A. No. I didn't think of that.

4 487 Q. Let's go back to your affidavit of
5 July 7th. We were talking before the break about,
6 in part about this view that you had about the
7 non-competition covenant. I take it that in the
8 course of applying for the job at West Face you had
9 discussions with West Face specifically about your
10 employment contract with Catalyst and in particular
11 the restrictive covenants?

12 A. Can I answer that?

13 MR. HOPKINS: I think so.

14 THE DEPONENT: Yes.

15 BY MR. DIPUCCHIO:

16 488 Q. And can you tell me, please, who
17 you spoke to at West Face in regards to that
18 particular issue?

19 A. I would have advised Mr. Dea, and
20 --

21 489 Q. Okay. Just to be precise, let's
22 not sue works like, "I would have advised." Tell
23 me who you did advise.

24 A. I believe Mr. Dea, and definitely
25 Mr. Singh.

1 490 Q. Do you recall the context within
2 which you had that discussion with Mr. Dea?

3 A. I don't remember the exact
4 context. I think I would have just advised him
5 kind of as a heads-up in case they need to know.

6 491 Q. Were the two of you in the same
7 room? Was it on the phone? Do you remember that
8 at least?

9 A. That, I don't remember.

10 492 Q. And do you recall anything of this
11 discussion other than the fact that you may have
12 alerted Mr. Dea to the fact that you had a
13 restrictive covenant in your employment agreement?

14 A. No. And I don't know if that was
15 the only thing we discussed or if we discussed
16 other issues.

17 493 Q. Do you have a sense of the timing
18 of that discussion? When it occurred?

19 A. Some time before May 24th when I
20 signed the agreement, but I don't remember the
21 dates.

22 494 Q. Do you recall that discussion --
23 to help you in maybe placing it, do you recall that
24 discussion happening after you received the draft
25 employment contract from West Face?

1 A. I don't remember.

2 495 Q. Do you recall giving Mr. Dea a
3 copy of your employment agreement at Catalyst?

4 A. I did not give him a copy.

5 496 Q. Now, let's look at your
6 discussions with Mr. Singh. What do you recall of
7 those discussions?

8 A. I spoke to Mr. Singh I believe
9 after receiving the employment agreement. I was --
10 there was one clause in the agreement that I had to
11 represent I wasn't violating any non-competition
12 clauses I believe. I advised Mr. Singh that I
13 would need to get counsel's opinion on that. Some
14 time after I provided Mr. Singh with a copy of my
15 employment agreement.

16 497 Q. So there was a provision in your
17 draft employment agreement I guess, maybe in your
18 final employment agreement with West Face that
19 required you to, in essence, confirm that you, by
20 accepting your employment with West Face, were not
21 violating any kind of non-compete covenants that
22 you had with your existing employer?

23 A. That's correct.

24 498 Q. And that raised some sort of
25 concern in your mind?

1 A. I just didn't want to make
2 representations as to legal matters. Like I said
3 before, I'm not a lawyer. I would need a lawyer to
4 evaluate that.

5 499 Q. And so this raised some issue in
6 your mind in any way that you chose to address
7 directly with Mr. Singh?

8 A. Sure. Yeah.

9 500 Q. And what did you do? Did you pick
10 up the phone and call Mr. Singh?

11 A. I actually believe we arranged a
12 time to speak, yes. Just about -- I think he sent
13 me the agreement and said give me a call when you
14 have a chance, and I raised that issue in our phone
15 call.

16 501 Q. Okay. And were there any other
17 issues you raised with him?

18 A. I don't think so.

19 502 Q. And then what came of that
20 discussion?

21 A. I mean, I -- he advised me, and I
22 told him I was already going to seek counsel's
23 opinion, he advised me to do so, and also -- I
24 don't remember if he asked for my employment
25 agreement at that time, but I did seek out counsel

1 after that.

2 503 Q. Okay. We're not going to tread in
3 those waters.

4 A. Sure.

5 504 Q. And how did you provide that
6 employment agreement to Mr. Singh, do you recall?

7 A. I emailed it to him.

8 505 Q. And you redacted it before you
9 emailed it to him?

10 A. I redacted the 60/40 scheme.

11 506 Q. Well, actually I don't think you
12 redacted the 60/40 scheme. You redacted something
13 else.

14 A. Maybe 60/40. I think it's an
15 exhibit.

16 507 Q. Yes, it is.

17 A. Why don't we just refer to it?

18 508 Q. I think it's in the motion record
19 of -- I don't know which one.

20 MR. MITCHELL: If it assists, I think
21 it's in our motion record, tab C.

22 Tab C, page 34 of our motion record.

23 THE DEPONENT: I believe I redacted the
24 portion then relating to the equity compensation.

25 BY MR. DIPUCCHIO:

1 509 Q. And you didn't redact the portion
2 relating to the 60/40 scheme, right?

3 A. So, sorry. I misremembered.

4 510 Q. And how did you do this redaction?

5 A. I have Adobe Acrobat.

6 511 Q. So using Adobe Acrobat you blocked
7 out --

8 A. You just do a black square over
9 it.

10 512 Q. And you say that this would have
11 been transmitted with an email?

12 A. Yes.

13 513 Q. So you just didn't carry it over
14 to Mr. Singh and present it to him?

15 A. No.

16 514 Q. And do you know what became of
17 that email?

18 A. I don't.

19 515 Q. It doesn't appear to be one of the
20 documents that you've disclosed to us in your
21 affidavits. Did you delete that?

22 A. I don't know.

23 516 Q. Did you receive a response from
24 Mr. Singh by email?

25 A. I don't remember.

1 517 Q. Is it possible that you would have
2 received a response by Mr. Singh by email?

3 A. He replied with an acknowledgment,
4 but he wouldn't have given anything much more than
5 that I don't think.

6 518 Q. And that too I haven't seen in
7 your disclosure. Is that something you would have
8 deleted as well potentially?

9 A. I don't know.

10 519 Q. Can you go back and just confirm
11 that those emails actually don't exist on your
12 computer system?

13 U/T MR. HOPKINS: We will.

14 BY MR. DIPUCCHIO:

15 520 Q. Did Mr. Singh express any view to
16 you about the covenant in the employment agreement?

17 A. I don't remember. I told him --
18 well, I don't know if we can talk about it.

19 521 Q. I don't want to get into that.
20 Well, I mean, if you told him about legal advice
21 you received I guess in my view it's no longer
22 privileged in any event.

23 MR. HOPKINS: I think we've already
24 covered the overall --

25 BY MR. DIPUCCHIO:

1 522 Q. But you don't recall what he said
2 to you?

3 A. No.

4 523 Q. And did you have -- how did that
5 all end up? What was sort of the upshot of all of
6 this?

7 A. I was advised by counsel.

8 524 Q. Okay. I'm not interested in what
9 you did as a result.

10 A. I signed the agreement believing
11 my representations were correct.

12 525 Q. So you just chose to sign the
13 agreement?

14 A. After receiving advice.

15 526 Q. In other words, there were no
16 further discussions with West Face about it?

17 A. Correct, not to my memory.

18 527 Q. And did you express any concern to
19 West Face about the fact that there could be
20 proceedings initiated by Catalyst?

21 A. I believe I had advised them that
22 in the past Catalyst had attempted to initiate
23 proceedings.

24 528 Q. In respect of employees that may
25 have left?

1 A. Correct.

2 529 Q. And which employees were you
3 referring to specifically?

4 A. Phil Bacal.

5 530 Q. And do you know what happened in
6 that case?

7 A. Phil Bacal was a former associate
8 at Catalyst. He joined a firm called Search Light
9 Capital. Search Light has offices in Toronto, New
10 York and London. Catalyst threatened to initiate
11 proceedings. To my knowledge there were some
12 lawyers letters back and forth, and Phil Bacal
13 ultimately moved to the New York office for six
14 months to wait out the non-compete.

15 531 Q. So he complied with his
16 non-compete? To your knowledge?

17 A. He went to New York for six
18 months.

19 532 Q. Right. And worked in New York,
20 right?

21 A. Yes.

22 533 Q. And did you in the course of
23 having discussions with West Face about what had
24 happened in a previous employment situation --
25 which, by the way, I gather you found out about as

1 a result of your employment at Catalyst at the
2 time?

3 A. I actually didn't find out through
4 Catalyst. It's moderately well-known.

5 534 Q. Where did you find out?

6 A. Several people.

7 535 Q. Who?

8 A. Mr. Bacal had hinted at it. I
9 heard from Mark Horrox. Those are two off the top
10 of my head, but it's well-known.

11 536 Q. And did you discuss with West Face
12 what would happen in the event that legal
13 proceedings were commenced?

14 A. No.

15 537 Q. Did West Face offer to indemnify
16 you in respect of any legal fees --

17 MR. HOPKINS: Don't answer. Sorry.
18 Finish the question.

19 MR. DIPUCCHIO: Let me finish the
20 question. You're jumping all over that one.

21 BY MR. DIPUCCHIO:

22 538 Q. Did West Face offer to indemnify
23 you in respect of your legal fees or any damages
24 that might be awarded against you?

25 R/F MR. HOPKINS: It's refused.

1 MR. DIPUCCHIO: On what basis, counsel?

2 MR. HOPKINS: It's irrelevant.

3 MR. DIPUCCHIO: It's irrelevant to a
4 case for inducement?

5 R/F MR. HOPKINS: It's refused.

6 BY MR. DIPUCCHIO:

7 539 Q. So just for the record -- and I
8 understand you're refusing it, but for the record
9 in the event there is an indemnification agreement
10 I'm requesting production of it, okay?

11 MR. HOPKINS: Okay.

12 MR. DIPUCCHIO: And I understand you're
13 refusing it.

14 BY MR. DIPUCCHIO:

15 540 Q. Now, in paragraph 70 of your
16 original affidavit you say that an interlocutory
17 injunction would be devastating to your career and
18 livelihood as it would prevent you from holding
19 gainful employment and would deprive you of the
20 experience you're developing in your still young
21 career.

22 You're not suggesting that complying
23 with your obligations under the restrictive
24 covenant in your employment agreement would
25 preclude you from any type of employment

1 opportunity?

2 A. No, not any type. I suppose I
3 could work somewhere.

4 541 Q. Because the statement you've made
5 here is quite definitive, in other words, complying
6 with it would prevent you from holding gainful
7 employment. That's clearly not the case, right?

8 A. Yes.

9 MR. HOPKINS: In the context of his
10 career, in fairness.

11 MR. DIPUCCHIO: No, I understand.

12 BY MR. DIPUCCHIO:

13 542 Q. But there are opportunities
14 available to you, you and I can agree, right?

15 A. Yeah. Yeah. I can drive a cab.

16 543 Q. Well, let's go a little bit
17 further than driving a cab. I don't think
18 anybody's asking you to drive a cab.

19 A. I don't think we could go much
20 further.

21 544 Q. Well, let's look at some of the
22 other opportunities you were looking at, okay?

23 A. Sure.

24 545 Q. So your opportunity with Mackenzie
25 Financial --

1 A. Mm-hmm.

2 546 Q. -- you had gone to a series of
3 interviews with Mackenzie Financial, right?

4 A. That's correct.

5 547 Q. And you withdraw from that
6 process, right?

7 A. Yes.

8 548 Q. And that's a job you could have
9 had potentially, right?

10 A. If I had made it through the
11 interview process, correct. I don't know what the
12 impact on -- what the non-compete would bear on it.

13 549 Q. Did you ever consider that?

14 A. Yeah. I considered it in all
15 cases.

16 550 Q. So did you form a view as to
17 whether the non-compete would apply in that
18 situation or not?

19 A. I didn't get a legal opinion
20 there.

21 551 Q. But in any event you withdrew from
22 that process, right, in order to accept your
23 position at West Face?

24 A. Correct.

25 552 Q. And you did that voluntarily?

1 A. Yes.

2 553 Q. Now, in Mr. Dea's affidavit at
3 paragraph 25. This is at page 8 of the West Face
4 motion record. He says the following in the middle
5 of that paragraph, after describing your
6 involvement and duties at West Face, he says:

7 "I estimate that there are
8 hundreds of positions like Brandon's
9 at banks and other financial
10 institutions in Toronto." (as read)
11 Is that something you would accept, Mr.
12 Moyle?

13 A. Yes.

14 554 Q. And when you had made the decision
15 or determination to leave Catalyst one of the
16 things you did was you engaged certain recruitment
17 firms or headhunting firms, right?

18 A. Mm-hmm.

19 555 Q. Was there one or more than one?

20 A. It would have been Robin Judson.
21 I think I reached out to Vlaad and Co here. I
22 reached out to Thorek Scott, never got a response.
23 That's what I can remember. I don't know if there
24 were others.

25 556 Q. So two of them were in active

1 contact with you throughout this period?

2 A. Yes.

3 557 Q. And is one based in the U.S. and
4 the other in Ontario?

5 A. Yes. Robin Judson is based in the
6 U.S.

7 558 Q. In fact, through those headhunting
8 firms you were introduced to a number of potential
9 prospects, right?

10 A. That's right.

11 559 Q. For example, you interviewed at a
12 firm by the name of Mid Ocean in New York City,
13 right?

14 A. Yep.

15 560 Q. And you understood at the time
16 that if you had accepted a position with Mid Ocean
17 in New York City your restrictive covenant wouldn't
18 impact on that, right?

19 A. I had no intention of doing so,
20 but yes.

21 561 Q. But you interviewed with them?

22 A. Yes.

23 562 Q. And that was a potential
24 opportunity for you?

25 A. It would be on the low end of the

1 spectrum.

2 563 Q. But a potential opportunity?

3 A. I didn't want to take it. I
4 wouldn't call it an opportunity. It was practice.

5 564 Q. But maybe in comparison to driving
6 a cab you would have taken that opportunity?

7 A. I don't know.

8 565 Q. But that, you knew, would not have
9 offended your restrictive covenant?

10 MR. HOPKINS: Did you know? I don't
11 know.

12 THE DEPONENT: I don't know, because
13 I'm not a lawyer. I didn't get an opinion on that.

14 BY MR. DIPUCCHIO:

15 566 Q. So you didn't know at all, one way
16 or the other?

17 A. It didn't seem like it would, but
18 I don't know.

19 567 Q. And on what basis didn't it seem
20 like it would?

21 A. Their office is in New York.

22 568 Q. And, in fact, you knew in the
23 Bacal case -- you just said, you knew from the
24 Bacal case that having worked in New York meant
25 that Catalyst wasn't going to take any action

1 against him, right?

2 A. I don't know the specifics and I
3 don't know if that was the only reason.

4 569 Q. But you knew that that was one of
5 the reasons that was being given to you.

6 A. One of, yes, sure.

7 570 Q. Okay. And were you also looking
8 at several firms that were not involved in the
9 special situations field?

10 A. Such as?

11 571 Q. Well, Anson?

12 A. I completely disagree with that.

13 572 Q. Tell me about Anson?

14 A. Anson is an event-driven special
15 situations fund.

16 573 Q. Where is that based?

17 A. In Toronto.

18 574 Q. So you were looking at another
19 special situations --

20 A. They invest in mergers,
21 acquisitions, risk arbitrage, yes, that would all
22 be classified as special situations.

23 575 Q. And you had no difficulty
24 classifying them as somebody who did special
25 situations investing?

1 A. I don't think so. That's a really
2 broad term. It's an umbrella term for a variety of
3 strategies.

4 576 Q. But Anson was definitely a firm
5 you would identify in that field?

6 A. Yes.

7 577 Q. And how about CPPIB?

8 A. I would identify them as
9 participating in certain aspects of special
10 situations investing, yes.

11 578 Q. How about in star AGF?

12 A. I don't think they would be a
13 special situations firm.

14 579 Q. And Mackenzie, would you call them
15 a special situations firm?

16 A. They're involved in certain
17 distressed investments.

18 580 Q. Would you call them a special
19 situations firm?

20 A. Not generally.

21 581 Q. How many firms do you say operate
22 in the special -- almost exclusively in the special
23 situations field?

24 A. Special situations is a very broad
25 term.

1 582 Q. And how many firms would you say
2 participate primarily in that field?

3 A. I can't estimate.

4 583 Q. Do you have any ballpark?

5 A. It's got to be hundreds.

6 584 Q. Hundreds? In Toronto?

7 A. Not in Toronto.

8 585 Q. In Toronto I'm talking about, or
9 Ontario.

10 A. I don't know, at least six or
11 seven.

12 586 Q. So a handful?

13 A. Yeah.

14 587 Q. If I could ask you --

15 A. Sorry. By operate in, do you mean
16 as their primary line of business?

17 588 Q. Yes.

18 A. Yeah. Okay. Six or seven.

19 589 Q. If I could ask you to turn up the
20 brief that has been provided by West Face.

21 MR. MITCHELL: Could we go off the
22 record for a minute?

23 MR. DIPUCCHIO: Absolutely.

24 --- Off-the-record discussion

25 BY MR. DIPUCCHIO:

1 590 Q. So let me ask you to turn to... I
2 apologize, I don't have it clearly noted in my
3 notes.

4 Okay, yes. So tab 2 of that brief.

5 A. Mm-hmm.

6 591 Q. And before I ask you about this
7 particular email that's at the bottom of that first
8 page, you knew Mr. Dea from before you started
9 working at Catalyst, right?

10 A. Right.

11 592 Q. How did you know him?

12 A. I had interviewed with West Face
13 while I was at Credit Suisse looking for employment
14 in Toronto.

15 593 Q. So prior to joining Catalyst you
16 had interviewed at West Face?

17 A. Yes.

18 594 Q. Did they offer you a job at that
19 time?

20 A. No.

21 595 Q. And so you had some idea through
22 that application process I gather of what West Face
23 did and the types of transactions it would work on?

24 A. I didn't actually get a whole lot
25 of insight during that part of the process. I was

1 actually interviewing with them more as a favour
2 because Tom's friend was my boss at Credit Suisse.
3 But I wasn't given much regard there.

4 596 Q. So on December 11, 2013 you reach
5 out again to Mr. Dea. And I take it this is just a
6 point of contact you're making at this time?

7 A. Yep.

8 597 Q. All right. And you reach out to
9 him and say:

10 "Hope all is well. It's been a
11 very long while and I meant to reach
12 out much earlier. It is indeed a
13 small space up here, much smaller
14 than I had realized." (as read)
15 So just stopping there. What were you
16 referring to?

17 A. Just how everyone in the space is
18 very familiar with each other.

19 598 Q. When you talk about the space, are
20 you talking about the special situations field?

21 A. No. I was probably talking about
22 the broader hedge fund industry in Canada.

23 599 Q. And you say, "I did want to keep
24 in touch" --

25 A. "Up here" I meant Canada

1 generally.

2 600 Q. Okay. You say:

3 "I did want to keep in touch
4 especially now that I have some more
5 experience and insight." (as read)

6 So you had I take it gained more
7 experience and insight?

8 A. Some, yes.

9 601 Q. Then you say:

10 "Things are great at Catalyst,
11 but we don't share enough
12 perspective with others which is
13 somewhat unfortunate." (as read)

14 So, first of all, were things going
15 well for you at Catalyst?

16 A. No, but I'm not going to say
17 they're terrible and I want to get out. I was
18 planting a seed here to follow up on.

19 602 Q. So you weren't exactly being
20 upfront with Mr. Dea in terms of what your
21 experience had been at Catalyst?

22 A. No.

23 603 Q. And then you say, "We don't share
24 enough perspective with others." Are you saying
25 that the firms don't really talk to each other

1 much?

2 A. I'm saying Catalyst in particular
3 is very insular.

4 604 Q. And you knew that?

5 A. I found that out.

6 605 Q. Well, you knew that through the
7 course of your employment?

8 A. Yes, through the course of my
9 employment. I didn't know that beforehand.

10 606 Q. Okay. And then you talk about a
11 deal that you had just -- Catalyst had just won.

12 A. Mm-hmm.

13 607 Q. And the rest of it is sort of
14 chitchat about that deal.

15 And then did you get a response from
16 Mr. Dea to that email?

17 A. The December email?

18 608 Q. Yes.

19 A. No.

20 609 Q. And then you follow-up again with
21 him on March 14, 2014 it appears. And all these
22 emails are being sent through a hotmail account,
23 right?

24 A. I wasn't going to send them
25 through my work account, but yes.

1 610 Q. I understand that. But all of
2 these emails were being sent through a hotmail
3 account?

4 A. Yes.

5 611 Q. And do you have a hotmail account
6 in addition to a gmail account?

7 A. Yes, but I almost exclusively use
8 the hotmail.

9 612 Q. Rather than the gmail?

10 A. Yeah.

11 613 Q. And have you searched both of
12 those email accounts?

13 A. I have.

14 614 Q. And in your March 14th email you
15 say to Mr. Dea:

16 "I saw you launched an
17 alternative/illiquid credit fund a
18 couple of months ago." (as read)
19 And by that are you referring to
20 their -- what they call, or what Mr. Dea calls in
21 his affidavit I believe the alternative credit
22 fund?

23 A. Yes, I was.

24 615 Q. And where did you hear about that?
25 Was there some sort of news release?

1 A. There was a news article in
2 January I believe.

3 616 Q. Okay. You go on to say:
4 "Not sure what your needs are,
5 but I wanted to let you know that
6 I'm starting to look at exploring
7 other opportunities and this is
8 something that would definitely be
9 of interest." (as read)

10 So were you telling Mr. Dea that you
11 were particularly interested in the alternative
12 credit fund that had been launched?

13 A. I thought it would be a good
14 opening to a position at West Face, in what regard
15 I didn't know.

16 617 Q. And is the reason you specifically
17 mention the alternative credit fund because it
18 dovetailed quite nicely into what you were doing at
19 Catalyst?

20 A. No. I mentioned it because it was
21 newsworthy and I thought they might need people to
22 staff the new fund.

23 618 Q. And then you say:
24 "I'd like to move somewhere
25 where I can focus more heavily on

1 the investment process/analysis and
2 deal structuring as opposed to the
3 heavy day-to-day operational
4 involvement in pure private equity,
5 and this would be by far the most
6 interesting opportunity in Toronto."

7 (as read)

8 Now, what were you referring to when
9 you said, "this would be by far the most
10 interesting opportunity in Toronto"?

11 A. My understanding was that West
12 Face has one and probably the broadest investment
13 mandate of any hedge fund manager in Canada and I
14 want exposure to all types of deals, including
15 public equity and lending.

16 619 Q. Okay. And then Mr. Dea responds
17 to you that same day just telling you that he's
18 away that week and next, and that he would chat
19 when he was back.

20 A. Mm-hmm.

21 620 Q. And then in fact you did go on to
22 meet with Mr. Dea at Aroma in the food court on
23 March 26th, right?

24 A. Yes.

25 621 Q. Tell me about that meeting with

1 Mr. Dea.

2 A. We had coffee. He ordered soup.
3 We discussed generally my duties at Catalyst and
4 the type of work I did. He talked about the type
5 of work that West Face does and what their
6 potential needs might be, although he wasn't sure
7 at the time if they would need somebody. And that
8 was the extent of our conversation. It lasted
9 probably a half hour, 45 minutes.

10 622 Q. Did you mention any specific
11 transactions to Mr. Dea?

12 A. No.

13 623 Q. None at all?

14 A. None that I remember.

15 624 Q. Did Mr. Dea ask you to provide
16 anything to him as a result of that meeting?

17 A. He asked if I could provide
18 research and writing samples to gauge my writing
19 and research ability. He specifically asked that I
20 do not provide confidential information.

21 625 Q. Okay. So Mr. Dea made the request
22 to you?

23 A. Yes.

24 626 Q. And it was in response to that
25 request that you then sent him the email of March

1 27th?

2 A. Correct.

3 627 Q. And what didn't you understand
4 about Mr. Dea's caution that you say he gave you on
5 March 26th about not sending confidential
6 information?

7 A. It was clear.

8 628 Q. And did you take that to heart?
9 Or did you just ignore what Mr. Dea said to you?

10 A. I took it to heart.

11 629 Q. And, in fact, when you got back to
12 the office and sent him what you sent him you sent
13 him information that you now acknowledge was
14 confidential?

15 A. The Homburg information I do
16 acknowledge was confidential, yes.

17 630 Q. And then if I can ask you to turn
18 up tab 10 of that same brief. And this is a copy
19 of an email, I don't know whether you've seen it or
20 not, that Mr. Dea sent to Mr. Boland, Mr. Griffin
21 and Mr. Fraser at some time after your meeting with
22 him at Aroma. And you'll see a reference to you
23 near the bottom of the page. And it says in
24 reference to you:

25 "Working at Catalyst currently.

1 Just promoted to associate. Been
2 there 1.5 years." (as read)
3 Now, first of all, did you tell Mr. Dea
4 that you had been promoted to associate?

5 A. I had been continued to be led to
6 believe I was an associate and would be formalized,
7 but, yes, that is what I would have told him.

8 631 Q. So you told him that?

9 A. Yes. Or he may have gotten it
10 from my resume, I'm not sure. Oh, no. This was
11 before. Okay. So I told him that.

12 632 Q. And then you also told him that
13 you were looking around because focus was shifting
14 from new business to current ops. Deal pipeline
15 not great.

16 A. That's what I told him.

17 633 Q. So you told Mr. Dea something
18 about the deal pipeline at Catalyst?

19 A. Generally, yes. No specifics.

20 634 Q. And you told him that it was not
21 great?

22 A. Yes.

23 635 Q. Did you have any concern about
24 telling Mr. Dea at West Face about Catalyst's deal
25 pipeline?

1 A. It was the equivalent of saying
2 business is slow. I think a lot of people would
3 say that at a lot of firms.

4 636 Q. And you had no concern about
5 revealing that information about Catalyst to West
6 Face?

7 A. No. In fact, I believe it's
8 acknowledged by all the parties that business in
9 the distress space is very slow right now.

10 637 Q. And then you went on to say that
11 your base at Catalyst was 110,000, all in was
12 190,000. Was that an embellishment on your part in
13 respect to the base?

14 A. No. He's not correct. I even
15 sent him, I believe, my compensation at some point,
16 and he must have heard it wrong.

17 638 Q. So you did not tell him that your
18 compensation was 110,000?

19 A. No, I did not.

20 639 Q. Then this final bullet point is:

21 "Will send updated CV, deal
22 sheet, sample internal output." (as
23 read)

24 Right?

25 A. Mm-hmm.

1 640 Q. So did you tell Mr. Dea that you
2 were going to be sending him internal output?

3 A. I don't know what he meant by
4 that.

5 641 Q. Now, tab 11 of that same brief.
6 Following your meeting with Mr. Dea, Mr. Dea writes
7 to you at 5:32 p.m. and says:

8 "Hey, Brandon, thanks. What is
9 the name of the Cerberus entity that
10 Callidus is modelled after?" (as
11 read)

12 And why was Mr. Dea asking you that
13 question?

14 A. I think... I'm trying to remember
15 the context. I think I mentioned that Callidus is
16 similar to a company called Ableco at Cerberus
17 which is -- I mean, they engage in the same lines
18 of business. They're both publicly known entities.
19 Newton spent time at Cerberus.

20 642 Q. And did you -- in the course of
21 your discussion with Mr. Dea on March 26th, were
22 you actually talking to him about Callidus?

23 A. I don't know anything about
24 Callidus. I never worked on it. So even if I
25 mentioned the name that would have been it.

1 643 Q. Well, do you agree with me that
2 given the nature of the question that was being put
3 to you that you must have had a discussion with Mr.
4 Dea about Callidus and what it was modelled after?

5 A. I don't call it discussion. Maybe
6 five seconds of conversation, sure.

7 644 Q. And do you know why that was
8 particularly interesting to Mr. Dea?

9 A. I don't.

10 645 Q. And did you have any concern at
11 all talking to Mr. Dea about an operating company
12 that belonged to Catalyst?

13 A. No. It's well-know what Catalyst
14 does and it's well-know what Ableco at Cerberus
15 did.

16 646 Q. And you were making the
17 determination of what might be well-known and what
18 might be of interest to West Face?

19 A. I suppose I was making the
20 determination that, you know, public information is
21 well-known, yes.

22 647 Q. Because certainly you didn't go
23 back to Catalyst and say, Would it be okay if I
24 mention this to West Face?

25 A. No.

1 648 Q. And then, as we know, on March
2 27th you send an email to Mr. Dea. That's at tab
3 12 of this brief, just to make it easy for us to
4 follow along.

5 And you send that to Mr. Dea at it
6 looks like 1:46 in the morning; is that right?

7 A. Yes.

8 649 Q. Do you remember why you were up at
9 1:46 in the morning sending this to Mr. Dea?

10 A. I don't. I work late. I've
11 worked until midnight, one, two, three in the
12 morning before. Maybe I sent it after work. I
13 don't remember.

14 650 Q. Do you know whether you were at
15 the office when you sent this or whether you were
16 at home?

17 A. Don't remember.

18 651 Q. And what you attach are, as we
19 know, the analyses in relation to Homburg, NSI,
20 Rona and Arcan Resources, right?

21 A. Mm-hmm.

22 652 Q. You have to say yes or no.

23 A. I'm sorry. Yes.

24 653 Q. Did it ever occur to you prior to
25 sending off these memos, investment analysis memos

1 to try to redact them?

2 A. It would have been, as Mr. Riley
3 has said, a very extensive undertaking to redact
4 them.

5 654 Q. Is that because what you would
6 have considered worthy of redaction would have been
7 a substantial part of those memos?

8 A. I'm not sure. If I want to
9 completely redact them so people can guess anything
10 what they were about, yes.

11 655 Q. Okay. And what about just
12 redacting your analysis? Your work product?

13 A. I wasn't sure what was considered
14 analysis and what wasn't.

15 656 Q. You're not sure what your own work
16 product was?

17 A. In some cases, yes, I probably
18 would have been able to ascertain.

19 657 Q. Let's look at the Homburg one,
20 since that happens to be the first one that's
21 attached.

22 A. Okay.

23 658 Q. First of all --

24 MR. MITCHELL: Just for the record,
25 that's over at tab 13 now, right?

1 MR. DIPUCCHIO: Yes, we were on tab 13.

2 Were we not? I apologize. Yes, that's at tab 13.

3 BY MR. DIPUCCHIO:

4 659 Q. Now, first of all, these memos all
5 have on the header that they're for internal
6 discussion purposes only, right?

7 A. That's on all of our memos whether
8 or not that's true.

9 660 Q. You mean you put those on memos
10 that are meant to be distributed to third parties
11 as well?

12 A. Yes. Actually, this Homburg memo
13 was distributed to third parties.

14 661 Q. Who was it distributed to?

15 A. It was distributed to certain
16 prospective investors in the fund.

17 662 Q. Was that after the -- when did
18 that occur?

19 A. Some time between -- actually it
20 would have occurred May 2013 because we wrote the
21 memo for that purpose.

22 663 Q. Okay. So that's the purpose for
23 which the memo was being written?

24 A. It was written to be distributed
25 to prospective investors.

1 664 Q. And it's also marked
2 "confidential", right?

3 A. Yeah. Part of the template. But
4 yes, that's what it says.

5 665 Q. So that's only a template so far
6 as you're concerned. It means nothing.

7 A. I never gave it any thought.

8 666 Q. Okay. Well, when someone marks
9 something "confidential" is that important to you,
10 or not?

11 A. Generally, yes.

12 667 Q. And just looking at page 2 of that
13 memo in particular, would you agree with me that --
14 for example, in the bullet point in the executive
15 summary that talks about Catalyst buy-out values.

16 A. Mm-hmm.

17 668 Q. That that is information that is
18 generated for Catalyst's eyes?

19 A. That was actually public
20 information. That was information made available
21 to the bond holders as well as the monitor's
22 estimates of value.

23 669 Q. And how about the bullet point
24 that says, "Catalyst believes newco is undervalued"
25 and what follows?

1 A. I suppose that would be Catalyst's
2 opinion of the situation.

3 670 Q. Its own internal opinion, right?

4 A. Yes.

5 They wouldn't be buying it if they
6 didn't think it was undervalued though.

7 671 Q. Right. But the actual basis for
8 that conclusion is set out in that paragraph,
9 right?

10 A. Yes. And I believe it's also set
11 out in the investor letters which are distributed
12 to investors.

13 672 Q. I understand. But Catalyst
14 decided who to distribute it to, right? Not you.

15 A. Yes. Yes.

16 673 Q. And let's just flip forward. I
17 don't want to review this whole thing, but let's
18 flip forward to...

19 A. It's a gripping read.

20 674 Q. It is. Page 17.

21 This whole series of bullet points that
22 talks about the initial Catalyst offer and certain
23 strategy that related to the offer, would you agree
24 with me that that's Catalyst information?

25 A. Can I just have a second to read

1 it?

2 675 Q. Sure.

3 (Witness reads document)

4 A. I suppose -- no. I mean, much of
5 this is factual and would have been known by the
6 bond holders to whom the offer was presented. I
7 mean, I don't see anything --

8 676 Q. So you think this is information
9 that would have been known to third parties --

10 A. That the monitor released a key
11 report? Yes.

12 677 Q. -- at the time that this memo was
13 being written?

14 A. I don't think there's any secret
15 Catalyst was the first fund. I don't think there's
16 any secret that the monitor released a key report.
17 There's no secret that -- you know, obviously
18 Catalyst wanted to establish the position if they
19 made an offer.

20 I don't think there's any secret as of
21 May 2013 that the initial offer served to continue
22 and open up discussions between Catalyst, because
23 Catalyst ended up being the prospective purchaser.
24 So, no, I don't think any of that information is
25 confidential.

1 678 Q. But do you understand that this is
2 describing a process to achieve an end result?

3 A. It's generic.

4 679 Q. This is generic?

5 A. Yes. It's a generic process.

6 680 Q. Okay. So your understanding is
7 that this isn't confidential to anybody. So, in
8 other words, at West Face you're able to produce
9 this information to us as well.

10 A. Sorry. What do you mean?

11 681 Q. When you're doing this type of
12 analysis for West Face you would feel free to
13 disclose that information as well?

14 A. No. I don't agree I would
15 disclose that, but I don't think there's anything
16 confidential or harmful about it.

17 682 Q. When you say that you would agree
18 that you shouldn't disclose it, isn't that the same
19 thing as saying that therefore I have to maintain
20 confidence in respect to that information? Are we
21 having a war of semantics here?

22 A. No.

23 683 Q. So would you agree with me that
24 when you say, I have an obligation not to disclose
25 it, in essence what you're saying is I have an

1 obligation to keep it confidential?

2 A. I don't think any of this
3 information is confidential. I don't think any of
4 this information is confidential.

5 684 Q. So my initial question to you was,
6 so you feel comfortable disclosing this information
7 to third parties?

8 A. This information, yes. It's
9 outlining facts that are well-known.

10 685 Q. Now what about under the heading
11 on page 18, Trustee Conflict? Is that all
12 information that you would feel comfortable sharing
13 with a third party?

14 A. Probably not. It's not very
15 consequential, but no.

16 686 Q. Forget about whether it's
17 consequential in your mind. That's not for you to
18 decide. Do you agree with me that that's not
19 information that Catalyst would want disclosed to a
20 third party?

21 A. Some of it probably not.

22 687 Q. What about at page 21? Do you
23 agree with me that under the heading submission of
24 superior offer and superior offer forces short
25 auction process that there are a number of bullet

1 points that speak to the strategy that was being
2 employed by Catalyst?

3 A. Yes.

4 688 Q. And do you agree with me that
5 disclosure of that strategy would be of concern to
6 Catalyst?

7 A. Not as of March 2014.

8 689 Q. But generally speaking.

9 A. Yes.

10 690 Q. It would be of concern to
11 Catalyst.

12 A. If it were to interrupt.

13 691 Q. It's not only -- Mr. Moyses, surely
14 you understand, it's not only in respect of its
15 ability to interrupt this particular transaction,
16 it's in respect of revealing to a potential
17 competitor what kind of strategy may or may not
18 employ in any given situation.

19 A. Sure.

20 692 Q. Do you agree with that?

21 A. Yes.

22 693 Q. Similarly on page 22 under the
23 heading Catalyst wins short auction process with
24 multiple creative structuring options, again there,
25 do you agree with me that that's strategic

1 information that's being provided in this memo?

2 A. No. This is essentially an
3 advertisement to investors just saying that
4 Catalyst is really creative.

5 694 Q. So you call that an advertisement?

6 A. Yes. Remember the purpose of this
7 memo.

8 695 Q. All right.

9 A. Also Catalyst was really smart and
10 really creative.

11 696 Q. And is that something you disagree
12 with?

13 A. I think they're smart.

14 697 Q. You don't think they're creative?

15 A. Not particularly.

16 698 Q. You seem to have a pretty dim view
17 of Catalyst; is that fair?

18 A. I mean, I left because I had a dim
19 view of the learning opportunities available to me
20 there.

21 699 Q. Okay. But you also seem to have a
22 dim view of the firm generally.

23 A. I think they have a very good
24 track record.

25 700 Q. Did you have some animus towards

1 Catalyst before you left?

2 A. I didn't want to work there
3 anymore, but I think that's clear.

4 701 Q. But apart from that, did you have
5 any animus? Did you have an intention to harm them
6 on the way out?

7 A. No. In fact, I was ready to quit
8 even if I didn't have anything.

9 702 Q. What about the analysis at page
10 29? The waterfall analysis.

11 A. Yes.

12 703 Q. Would you agree with me that this
13 is confidential information?

14 A. Yes.

15 704 Q. And then just skipping forward to
16 46. Would you agree with me that the bullet points
17 under the heading Summary would contain information
18 that would be sensitive and that Catalyst would not
19 want to have shared with third parties?

20 A. Potentially the last bullet. I
21 think the first three are publicly known or --
22 yeah, potentially the fourth.

23 705 Q. Okay. Now, I don't propose to go
24 through each of these memos that were shared with
25 West Face, but would you agree with me that most if

1 not all of those memos contain some of the same
2 type of information we've just reviewed in the
3 Homburg memo?

4 A. Some of the memos may contain some
5 of that information.

6 706 Q. Okay.

7 A. For example, Arcan Resources has
8 no summary analysis recommendation section.
9 Moreover, Arcan's littered with reference to
10 Catalyst needing more information to develop even a
11 thesis.

12 707 Q. I'm just trying to come to Arcan
13 with you here.

14 I'm having trouble finding it.

15 A. Unfortunately I guess these
16 weren't numbered, right? It's going to be the last
17 one, I think, or second --

18 MR. MITCHELL: It's the last
19 opportunity.

20 MR. DIPUCCHIO: I'm just trying to get
21 there.

22 THE DEPONENT: It's the second one.
23 It's right after Homburg.

24 BY MR. DIPUCCHIO:

25 708 Q. I think the easiest way to find it

1 is page 182 of Dentons record.

2 And that was the summary that in part
3 you prepared in January of 2014?

4 A. Yep.

5 709 Q. And one of the things that's set
6 out in that particular memo on page 1 is an actual
7 investment thesis, right?

8 A. Not really.

9 710 Q. Well --

10 A. It says investment thesis. It
11 then states some publicly available information,
12 and says as the next step Catalyst should engage
13 industry consultants. So it's acknowledging
14 Catalyst doesn't know anything. It doesn't know
15 enough to, you know, have a view yet.

16 711 Q. But it's performing whatever
17 thesis you're able to perform with the information
18 that you have at that time, right?

19 A. Right, which is not really a
20 thesis.

21 712 Q. But there is some information
22 contained there that is a thesis. It may not be a
23 thesis based on all available information but it is
24 a thesis?

25 A. The thesis is we need more

1 information.

2 713 Q. And would you agree with me that
3 whatever is there would be confidential?

4 A. I don't think any of this is.

5 714 Q. You don't think any of that
6 information is confidential?

7 A. All of this is publicly available;
8 the reserves, where the trading comps are, where
9 the debt is trading, where the comps are trading,
10 the cash flow generated. This is all available
11 from the public financials.

12 715 Q. And what's the blow-down model?

13 A. It's a model I developed using
14 public financials.

15 716 Q. Is your conclusion in relation to
16 the blow-down model on Arcan publicly available
17 information? Can I search somewhere and find your
18 conclusion in relation to Arcan?

19 A. I suppose not.

20 717 Q. No, not that you suppose not.
21 It's not available, right?

22 A. No.

23 718 Q. So that conclusion is the product
24 of your work in relation to this analysis?

25 A. Yes.

1 719 Q. And those types of analysis -- we
2 can sit here for days if you want and go through
3 all the memos, but that type of analysis is
4 contained in every single one of the memos you sent
5 over.

6 A. It's all based on publicly
7 available information.

8 720 Q. It may or may not, but we know in
9 one case it wasn't. But I don't care what it was
10 based on. Your analysis itself is contained in all
11 of those memos.

12 A. I don't think my analysis is
13 unique to Catalyst.

14 721 Q. Is it publicly available?

15 A. No.

16 722 Q. And therefore do you accept that
17 it's confidential?

18 A. I don't know.

19 723 Q. Do you have some problem defining
20 what's confidential?

21 A. I don't think I need to define it
22 right now.

23 724 Q. But do you have some difficulty
24 defining for yourself what is confidential?

25 A. I know it when I see it.

1 725 Q. I see. And would you consider
2 these to be confidential?

3 MR. HOPKINS: I think he's answered the
4 question, counsel.

5 BY MR. DIPUCCHIO:

6 726 Q. Should the court rely upon you to
7 determine what's confidential then?

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

9 BY MR. DIPUCCHIO:

10 727 Q. Now, if we go back to the brief of
11 documents from West Face for a moment. At tab 16.
12 There is an email from you to Tony Griffin on April
13 16, 2014. Who is Tony Griffin?

14 A. He's a partner at West Face.

15 728 Q. And it indicates in your email to
16 him that you had met with him I guess on April
17 15th; is that right?

18 A. I guess, yes.

19 729 Q. And then you say in your email to
20 him:

21 "As discussed, I believe I
22 built a very strong skill set at
23 Catalyst and have had an overall
24 positive experience there." (as
25 read)

1 Is that again -- do you accept any of
2 that?

3 A. Again, I'm trying to get a job,
4 I'm going to make myself sound as good as possible.

5 730 Q. I understand that, but there's no
6 need for you --

7 A. I disagree with the overall
8 positive experience.

9 731 Q. Okay. Do you agree that you built
10 a strong skill set at Catalyst?

11 A. I wouldn't say very strong. I
12 built a skill set.

13 732 Q. So it wasn't very strong?

14 A. It needed more development.

15 733 Q. And then you say:

16 "However, West Face aligns much
17 better with my interests and longer
18 term goals." (as read)

19 And then you say meeting everyone
20 yesterday only further solidified that belief. So
21 who did you meet with on April 15th.

22 A. I believe I met with Tony Griffin,
23 Peter Fraser, Tom Dea, those are all partners, and
24 /AOU yeah /STKPWAOU /(who is a vice-president
25 there.

1 734 Q. And tell me about your discussion
2 with those folks?

3 A. They were very similar to the
4 first discussion I had with Mr. Dea. We discussed
5 generally the type of work I did at Catalyst, what
6 West Face does and why I would want to go to West
7 Face.

8 735 Q. Do you recall mentioning at any
9 point during that discussion or the one with Mr.
10 Dea your involvement in Wind?

11 A. I wasn't even involved in Wind at
12 that time.

13 736 Q. So you had -- you're going back to
14 your evidence that you had very limited to no
15 involvement in Wind?

16 A. My evidence is that I was only
17 involved in Wind beginning in early May.

18 737 Q. And your involvement was -- Im
19 just trying to remember. Your involvement was
20 restricted to transposing some sort of bar graph
21 into a presentation?

22 A. Yeah. Mm-hmm.

23 738 Q. I'll come back to that in a
24 second. So how long was this meeting? Do you have
25 a sense of how long the meeting was with the people

1 at West Face?

2 A. Less than two hours.

3 739 Q. So in a two-hour conversation you
4 just had a general discussion?

5 A. Well, it was four separate
6 conversations, probably a half hour each.

7 740 Q. So you met with those individuals
8 separately?

9 A. Successively, correct.

10 741 Q. And any discussions at all about
11 an issue with respect to moving to West Face, or
12 anything of that of nature?

13 A. What do you mean by issue?

14 742 Q. In terms of you may have had an
15 issue with your restrictive covenant or anything
16 like that. You weren't having those kinds of
17 discussions at that time I take it?

18 A. No.

19 743 Q. Those discussions only happened
20 after they actually offered you a position?

21 A. Correct.

22 744 Q. And then I take it after that
23 discussion with the four individuals that you
24 mention there was a further meeting with Mr. Boland
25 himself?

1 A. Correct.

2 745 Q. And that occurred April 24th or
3 thereabouts?

4 A. I don't remember the day.

5 746 Q. If you look at tab 20 that may
6 help.

7 A. Sure. Yeah, okay.

8 747 Q. On April 28th you send an email to
9 Mr. Boland saying, Thanks again for taking the time
10 to meet today, right?

11 A. So it was April 28th.

12 748 Q. And do you recall anything of your
13 meeting with Mr. Boland?

14 A. Lasted probably five minutes.

15 749 Q. And what do you recall of it?

16 A. He wanted to know why I was
17 interested in moving to West Face. He just said he
18 needed to meet me.

19 750 Q. And what did you tell Mr. Boland
20 in that regard?

21 A. I told him I was interested in
22 focusing on investment analysis and structuring,
23 working on a wide variety, broad variety of deals,
24 and that was the extent of it.

25 751 Q. Okay. Now, let me just take you

1 to an email chain where there's a discussion about
2 the contract, or the agreement, employment
3 agreement with West Face. We may have already
4 covered this off, but I just want to --

5 A. Sure.

6 MR. HOPKINS: Sorry. Is this in the --

7 MR. DIPUCCHIO: This would be in the
8 documents that you produced.

9 MR. HOPKINS: Do you mind sharing the
10 documents?

11 MR. DIPUCCHIO: I'm going to share it
12 with you as soon as I make sure I have the right
13 one.

14 BY MR. DIPUCCHIO:

15 752 Q. Okay. So, what I'm showing is a
16 fairly lengthy email chain that goes back to May
17 2nd. Actually it goes back to April 24th and the
18 meeting that we just talked about, scheduling the
19 meeting with Mr. Boland. But there's a series of
20 emails that are sent.

21 And then just to follow-up on an answer
22 that you gave previously where you said that Mr.
23 Dea's information was mistaken in respect of your
24 compensation.

25 A. Mm-hmm.

1 753 Q. Do you see that Mr. Dea in the
2 email of May 5th asks you to send your compensation
3 information to him?

4 A. I do.

5 754 Q. And do you acknowledge that what
6 you sent to him was not correct in respect of your
7 current base?

8 A. No, I don't. My current base at
9 the time was 100.

10 755 Q. So it had come up from what it was
11 in your employment agreement?

12 A. Yes. It had been increased 14
13 months after I commenced work.

14 756 Q. Okay. Because I don't recall that
15 actually being said by you in your affidavit. As a
16 matter of fact, I think in your affidavit you said
17 at paragraph 17, "At Catalyst I earned a base
18 salary of 90,000."

19 A. No, that's not correct.

20 757 Q. So that actually should be
21 100,000?

22 A. Correct.

23 758 Q. And there was some sort of salary
24 increase given to you?

25 A. After 14 months, yes.

1 MR. MITCHELL: Could we go off the
2 record for just a moment?

3 MR. DIPUCCHIO: Sure.

4 --- Off-the-record discussion

5 BY MR. DIPUCCHIO:

6 759 Q. And then you have a further
7 discussion with Mr. Dea about references and you
8 send him a bunch of references.

9 And then on May 22nd -- well, first of
10 all, Mr. Dea emails you on May 16th and says,
11 "Please call when you get a minute."

12 A. Mm-hmm.

13 760 Q. Do you remember speaking to Mr.
14 Dea on May 16th?

15 A. I do remember. I was getting off
16 a 14-hour flight. So I spoke to him after that
17 flight. He sent that. It might have been May 17th
18 where I was.

19 761 Q. Do you recall, was that the
20 conversation in which he indicated to you that they
21 were going to offer you a position?

22 A. Yes.

23 762 Q. Was it a lengthy conversation, or
24 just a short conversation where he confirmed that
25 to you?

1 A. Just a few minutes, and -- yeah,
2 just a few minutes.

3 763 Q. And then on May 22nd you write to
4 Mr. Dea and say:

5 "Hey, Tom, I wanted to check in
6 on the written offer. I'm very
7 excited about the opportunity and
8 want to start as soon as possible."

9 (as read)

10 So I take it by this point in time
11 you've received a written offer?

12 A. No. I was checking in because I
13 hadn't.

14 764 Q. I'm sorry. Yes. I'm misreading
15 that. So you're asking him where is the written
16 offer?

17 A. Yes.

18 765 Q. And then on May 22nd, that same
19 day, they do send you a copy of the written offer?

20 A. I don't remember the exact day,
21 but if that's what the email says then yes, I
22 agree.

23 766 Q. And Mr. Dea says to you:

24 "I'd like to discuss this with
25 you today and am available between 2

1 and 4." (as read)

2 To which you reply: "Are you free to
3 discuss tomorrow?" Because you're travelling
4 presumably. And you say:

5 "I just had a couple of
6 business questions I was hoping you
7 could help me understand." (as read)

8 So by this point in time I take it
9 you've at least had a chance to initially review
10 the employment agreement?

11 A. Yes.

12 767 Q. And what were the business
13 questions you were hoping to clarify with him?

14 A. It was my title and my
15 compensation.

16 768 Q. Okay. And what were the issues
17 around those?

18 A. The original contract said I was
19 being offered the position of analyst. However, it
20 was my understanding that the most junior person
21 there right now was associate. So I just asked for
22 associate because I didn't want to be even more
23 junior than somebody with the same three to four
24 years of experience as I have. And then the
25 compensation I just wanted to see if I could get a

1 bit more.

2 769 Q. Did that work or not?

3 A. It didn't.

4 770 Q. You had no shyness about asking
5 those questions to him though?

6 A. I think in this business you're
7 expected to.

8 771 Q. Give me one second.

9 I don't believe we actually have the
10 attachments to the emails. So we don't have, for
11 example the copy of the offer itself.

12 MR. HOPKINS: Okay.

13 MR. DIPUCCHIO: Counsel, could you go
14 back and see if the attachments do exist?

15 U/T MR. HOPKINS: We can do that.

16 MR. DIPUCCHIO: And produce those if
17 you can find them?

18 U/T MR. HOPKINS: Subject to my review of
19 those, that should be fine.

20 BY MR. DIPUCCHIO:

21 772 Q. And following that discussion with
22 Mr. Dea about business questions, I take it there
23 must have been at some point some further
24 discussion in regards to your ability to covenant
25 to West Face that you were not breaching any

1 covenants?

2 A. I think that was a subsequent
3 discussion I had with Mr. Singh.

4 MR. HOPKINS: Sorry. Counsel, what was
5 the date of that email?

6 MR. DIPUCCHIO: May 22, 2014.

7 And I apologize, I think I may have
8 said that the offer was being sent by Mr. Dea. It
9 wasn't Mr. Dea. It was sent actually by Mr. Singh.

10 So can we mark this as an exhibit to
11 this examination?

12 MR. HOPKINS: Sure.

13 MR. DIPUCCHIO: Make that Exhibit 1.

14 EXHIBIT NO. 1: Email chain starting
15 April 24, 2014

16 BY MR. DIPUCCHIO:

17 773 Q. Now, counsel, I don't propose to
18 really spend a lot of time taking Mr. Moyle through
19 the various emails that have been produced by you
20 in respect of his job search. Can we agree that
21 these will be marked exhibits to this examination
22 and be introduced in the record in that way?

23 MR. HOPKINS: I think that's fine.

24 MR. DIPUCCHIO: So I think there are
25 nine of them. And I'm not sure whether these are

1 all of the emails. They're not. So why don't I
2 read out which emails I'm proposing to mark, okay?

3 MR. MITCHELL: As we're going through
4 them, are those solely Mr. Moyle's job search?

5 MR. DIPUCCHIO: Yes.

6 MR. MITCHELL: Again, because I haven't
7 seen them, I don't know what they are.

8 MR. DIPUCCHIO: These are. These have
9 no relevance to West Face.

10 MR. MITCHELL: Thank you.

11 BY MR. DIPUCCHIO:

12 774 Q. So the first one is an email chain
13 that begins on January 29, 2014 at 1:21 p.m. from
14 Mr. Moyle to a Debra Witkin, W-I-T-K-I-N, subject
15 re follow-up. Who was Ms. Witkin?

16 A. She was a recruiter at Robin
17 Judson.

18 775 Q. That was the recruitment firm
19 based in the U.S.?

20 A. Yes.

21 776 Q. So we'll make that email chain
22 Exhibit 2.

23 EXHIBIT NO. 2: Email chain January 29,
24 2014 at 1:21 p.m. from Mr. Moyle to
25 Debra Witkin.

1 MR. DIPUCCHIO: The next one is an
2 email chain that is dated February 12, 2014, 2:48
3 p.m. from Ms. Witkin to Mr. Moyle. I'll make that
4 Exhibit 3.

5 EXHIBIT NO. 3: Email chain February
6 12, 2014, 2:48 p.m., from Ms. Witkin to
7 Mr. Moyle.

8 MR. HOPKINS: Can I see those emails,
9 counsel?

10 MR. DIPUCCHIO: Yes. Absolutely.
11 The next one is an email chain dated
12 March 18, 2014, 7:14 p.m.

13 MR. HOPKINS: Sorry. What was the
14 date?

15 MR. DIPUCCHIO: March 18th.

16 BY MR. DIPUCCHIO:

17 777 Q. This is an email from Marlyz Swaye
18 at Mackenzie Investments to Mr. Moyle. And was Ms.
19 Swaye the woman at Mackenzie that you were dealing
20 with in respect of your application there?

21 A. No. She was a contact I used.
22 She's my girlfriend's cousin.

23 778 Q. And she was working at Mackenzie?

24 A. I just thanked her and asked her
25 to follow-up on my application for me.

1 779 Q. Okay. That will be Exhibit 4.
2 EXHIBIT NO. 4: Email chain March 18,
3 2014, 7:14 p.m. from Marlyz Swaye at
4 Mackenzie Investments to Mr. Moyle.

5 BY MR. DIPUCCHIO:

6 780 Q. The next document is an email
7 chain that begins with an email dated April 22,
8 2014 at 11:54 a.m. from a Stephanie Tse at
9 Mackenzie to Mr. Moyle. And that I take it, Mr.
10 Moyle, was the person that you were in contact
11 with?

12 A. I think she was just an
13 administrative assistant. She arranged the
14 meetings. The person I was in contact with was
15 Sharon Beers. You have those.

16 781 Q. We'll come to those I think in a
17 second.

18 That will be Exhibit 5.

19 EXHIBIT NO. 5: Email chain April 22,
20 2014 at 11:54 a.m. from Stephanie Tse
21 at Mackenzie to Mr. Moyle.

22 BY MR. DIPUCCHIO:

23 782 Q. The next document is an email
24 chain dated April 28, 2014 at 11:39 a.m. from Mr.
25 Moyle to a Ling Chen. Who is Mr. or Ms. Chen?

1 A. Ms. Chen. She was a recruiter at
2 Vlaad and Co which is a Toronto-based recruitment
3 firm.

4 783 Q. And Vlaad for the record is
5 V-L-A-A-D. And Vlaad and Co you were working with
6 in order to try and line up interviews?

7 A. Correct.

8 784 Q. We'll mark that Exhibit 6.
9 EXHIBIT NO. 6: Email chain dated April
10 28, 2014 at 11:39 a.m. from Mr. Moyle
11 to Ling Chen.

12 MR. DIPUCCHIO: Jumping back in time a
13 little bit. The next document is an email chain
14 that begins with an email March 31, 2014 at 3:19
15 p.m. from Ms. Chen to Mr. Moyle. We'll make that
16 exhibit 7.

17 EXHIBIT NO. 7: Email chain March 31,
18 2014 at 3:19 p.m. from Ms. Chen to Mr.
19 Moyle.

20 MR. DIPUCCHIO: And the next document
21 is an email chain beginning with an email dated May
22 17, 2014 at 10:24 p.m. from Ms. Chen to Mr. Moyle.
23 We'll make that Exhibit 8.

24 EXHIBIT NO. 8: Email chain dated May
25 17, 2014 at 10:24 p.m. from Ms. Chen to

1 Mr. Moyse.

2 BY MR. DIPUCCHIO:

3 785 Q. And in relation to that specific
4 email chain, Mr. Moyse, you'll see that on the
5 email sort of at the top half of the page you
6 advise Ms. Chen that you've received a verbal offer
7 from West Face on May 17th at 8:09 p.m., right? So
8 that assists us in placing the exact timing for --

9 A. I think that's right, yeah. Yeah,
10 that's right.

11 786 Q. And, in fact, you tell Ms. Ling at
12 that point that you're going to be accepting that
13 offer?

14 A. Yes.

15 787 Q. And then the next document is an
16 email chain beginning with an email dated May 20,
17 2014 at 9:01 p.m. from a Mr. David Colla to you,
18 Mr. Moyse. Who was Mr. Colla?

19 A. He's a senior principal in CPPIB's
20 private debt group.

21 788 Q. And you were in contact with him
22 during this period of time with respect to a
23 potential position?

24 A. Yes.

25 789 Q. We'll make that Exhibit No. 9.

1 EXHIBIT NO. 9: Email chain May 20,
2 2014 at 9:01 p.m. from David Colla to
3 Mr. Moyse.

4 BY MR. DIPUCCHIO:

5 790 Q. And finally the last one is an
6 email chain beginning with an email dated May 20,
7 2014 at 5:13 p.m. from Ms. Sharon Beers at
8 Mackenzie to you, Mr. Moyse. And that's just you
9 telling her essentially that you've been offered
10 another position and were withdrawing from your
11 candidacy at Mackenzie?

12 A. Yeah, I think so.

13 791 Q. I'll let you see it in a second.
14 We'll mark that as Exhibit 10. And just confirm
15 for me that that's what that is?

16 A. Yes. Confirmed.

17 EXHIBIT NO. 10: Email chain May 20,
18 2014 at 5:13 p.m. from Sharon Beers to
19 Mr. Moyse.

20 BY MR. DIPUCCHIO:

21 792 Q. And just so we have it for the
22 record, I know we've seen it in some correspondence
23 between counsel, but your first official day at
24 West Face was June 23rd, 2014?

25 A. Yes.

1 793 Q. And, in fact, you worked at West
2 Face until the interim injunction order was made in
3 this case on July 16, 2014; is that correct?

4 A. That's correct.

5 794 Q. And what exactly did you work on
6 while you were at West Face?

7 A. Not much. For the first -- I want
8 to say for the first two weeks I didn't have
9 anything to work on.

10 795 Q. Nothing at all?

11 A. I did a lot of research on my own,
12 and just read some news, but I wasn't assigned
13 anything. And then in my third week I was assigned
14 to look -- and I don't know if I should name the
15 names.

16 796 Q. You tell me.

17 MR. MITCHELL: We're getting into
18 territory -- maybe it would be preferable if you
19 could identify or ask Mr. Moyle whether he worked
20 on any specific engagements of concern.

21 MR. DIPUCCHIO: I was actually asking
22 him to give me generally what he was working on.

23 MR. MITCHELL: Okay.

24 THE DEPONENT: I was looking at one
25 potential public equity investment, a short

1 investment. And I was looking at two potential
2 pre-IPO investments in private companies, but in a
3 minority, non-influence stake.

4 BY MR. DIPUCCHIO:

5 797 Q. Okay. And I don't want you to
6 answer this without giving Mr. Mitchell an
7 opportunity to jump in here, but are you prepared
8 to tell me what those opportunities are?

9 A. I don't think I should.

10 MR. MITCHELL: Perhaps what we can do
11 is go off the record. I can confer with my client
12 about whether there's any sensitivity around it.
13 There may not be if they're relatively publicly
14 knows. Is that fair?

15 MR. DIPUCCHIO: That's fair. And would
16 you let me know whether in your view you consider
17 those to be sensitive? Or your client.

18 U/T MR. MITCHELL: Yes.

19 BY MR. DIPUCCHIO:

20 798 Q. Did you produce any analyses in
21 relation to those potential transactions?

22 A. I produced some email thoughts on
23 whether we should continue to do more work.

24 799 Q. Okay. So what I'm going to ask
25 you to produce for me, and I'll tell you why, is

1 I'm going to ask you to produce all of the work
2 product that you did perform for West Face in the
3 three-week period that you were there.

4 A. Okay.

5 MR. MITCHELL: No. Hold on.

6 MR. DIPUCCHIO: Don't worry. I don't
7 accept that as an undertaking, okay? I won't bind
8 you to that answer, counsel.

9 THE DEPONENT: I was simply saying
10 "okay" as I'm listening.

11 BY MR. DIPUCCHIO:

12 800 Q. So I'm going to ask you to produce
13 that to me. And the reason frankly that I would
14 want it is because I need to test what it is he
15 says he did versus obviously what we're concerned
16 about in terms of the allegations that have been
17 made in this claim. So would you give me -- I
18 don't expect you to answer that question now.

19 U/A MR. HOPKINS: We'll take it under
20 advisement.

21 MR. DIPUCCHIO: You folks will give me
22 your position on it?

23 MR. HOPKINS: We will. We will.

24 BY MR. DIPUCCHIO:

25 801 Q. Now, sort of the on-the-fly kind

1 of experience that we have in these
2 cross-examinations, I wanted to come back to some
3 answers that you gave in regards to Wind Mobile
4 specifically and your involvement in Wind.

5 A. Sure.

6 802 Q. And we might want to go off the
7 record here for a second before I do this.

8 --- Off-the-record discussion

9 --- Recess at 1:16 p.m.

10 --- On resuming at 1:54 p.m.

11 BY MR. DIPUCCHIO:

12 803 Q. What we've agreed is rather than
13 introducing into the record a fairly large stack of
14 emails with attachments in relation to the Wind
15 matter, Mr. Moyle, we've agreed that I'll ask you
16 some questions and you'll answer those questions
17 instead.

18 So, first of all, do you acknowledge
19 that when you were with Catalyst you were part of
20 what's known as the deal team for Wind?

21 A. Yes.

22 804 Q. And so as part of the deal team on
23 the Wind matter, Mr. Moyle, you would acknowledge
24 having received literally hundreds of emails in
25 relation to that particular transaction?

1 A. I don't remember the number, but
2 that sounds reasonable.

3 805 Q. You were copied on these emails?

4 A. Sure.

5 806 Q. And those emails would have
6 included for example due diligence agendas?

7 A. Yes, I believe so.

8 807 Q. And reports of due diligence?

9 A. I believe so.

10 808 Q. And as well draft share purchase
11 agreements?

12 A. That one I would have to see. I
13 don't remember that one.

14 809 Q. But it's possible you would have
15 received a draft of the share purchase agreement as
16 well?

17 A. Yes.

18 810 Q. Now, as a final matter, and then
19 we can wrap up for today, can you just turn up your
20 second affidavit, the affidavit of July 16th?

21 We've talked about your BlackBerry
22 device. And what I'm interested in is in
23 paragraphs 6 and 7 you talk again about emails that
24 Mr. Riley had attached as part of his second
25 affidavit. And what you say is that all of the

1 emails that Mr. Riley had attached to his affidavit
2 were sent for work-related purposes, and that it's
3 unsurprising that Catalyst found evidence that I
4 forwarded documents that I was working on to my
5 personal email account as I am sure they would find
6 similar evidence from many other Catalyst
7 employees.

8 Now, at the time that you swore this
9 affidavit, July 16, 2014, were you aware at this
10 time that you had 800-some-odd Catalyst documents
11 on your personal computer?

12 A. I wasn't.

13 811 Q. So when you swore this affidavit
14 you didn't include any of that information in this
15 affidavit because you say you weren't aware of the
16 fact that you had those documents?

17 A. I wasn't aware, no.

18 MR. DIPUCCHIO: Okay. Subject to any
19 questions that may arise out of the answers to
20 undertakings and under advisements, those are my
21 questions for you today, Mr. Moyse. Thank you.

22 THE DEPONENT: Thanks.

23 ---Whereupon the proceedings adjourned at 2:08 p.m.
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REPORTER'S CERTIFICATE

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

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

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

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

Dated this 1st day of August, 2014.

Connie Holton

Per: Connie A. Holton, CSR

Neeson & Associates

Court Reporting and Captioning Inc.

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Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: August-01-14 1:16 PM
To: Rocco DiPucchio; Andrew Winton
Cc: Justin Tetreault; Mitchell, Jeff (jeff.mitchell@dentons.com); Pushalik, Andy (andy.pushalik@dentons.com); Theresa (Terry) Vandervoort
Subject: Moyse Undertakings / Under Advisements
Attachments: WFC- Long Form PermEmploymentContract -- Moyse v01.pdf

In response to what I believe to be Mr. Moyse's one undertaking, below is Mr. Singh's May 22, 2014 email to Mr. Moyse with a copy of the attached employment offer.

Mr. Moyse is not prepared to produce copies of his written employment agreements with RBC Capital Markets or Credit Suisse, on the basis they are irrelevant.

We are still in consultation with West Face regarding the request for production of all Mr. Moyse's work product from West Face.

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: brandonmoyse@hotmail.com
To: tom.dea@westfacecapital.com
Subject: FW: follow-up
Date: Thu, 22 May 2014 15:10:04 -0400

Hi Tom,

Are you free to discuss tomorrow? (Still travelling and it's 2am here.) I just had a couple business questions I was hoping you could help me understand.

Thanks,
Brandon

From: alex.singh@westfacecapital.com
To: brandonmoyse@hotmail.com
CC: tom.dea@westfacecapital.com

Subject: RE: follow-up

Date: Thu, 22 May 2014 14:36:46 +0000

Brandon,

Attached is our written offer for your review. I would like to discuss this with you today and am available between 2 and 4 pm for a brief call. Let me know when works for you.

Alex



Alexander Singh | General Counsel & Secretary, West Face Capital Inc.
2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8917 | Fax: 647-724-8910
Email: alex.singh@westfacecapital.com

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From: Brandon Moyse [<mailto:brandonmoyse@hotmail.com>]

Sent: May-22-14 7:29 AM

To: Tom Dea

Subject: RE: follow-up

Hey Tom - I wanted to check in on the written offer. I'm very excited about the opportunity and want to start as soon as possible, but as discussed I'm subject to a 30-day notice period. I haven't provided that notice to Catalyst yet and currently would feel most comfortable doing so only after reviewing the employment agreement, which is why I've held off. Let me know if you have a sense of timing or any thoughts on this. Thanks!

From: tom.dea@westfacecapital.com

To: brandonmoyse@hotmail.com

Subject: Re: follow-up

Date: Fri, 16 May 2014 14:54:42 +0000

Pls call when you get a min.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Brandon Moyse

Sent: Friday, May 9, 2014 2:21 PM

To: Tom Dea

Subject: RE: follow-up

Sure. See below. You know Tommy Mercein as well and he is happy to act as a reference.

Rich Myers - Director, Debt Capital Markets, Credit Suisse - (212) 325-0924 - rich.myers@credit-suisse.com

Dave DiNanno - Managing Director and Head of US FIG Syndicate, Credit Suisse - (212) 325-3325 - david.dinanno@credit-suisse.com

Conor Stransky - Vice President, Liability Management, Credit Suisse - (212) 325-2476 - conor.stransky@credit-suisse.com

Tom Ritchie (trying to confirm - believe he is travelling) - Managing Director & Head, US FIG Debt Capital Markets, Credit Suisse - (212) 538-4497 - thomas.ritchie@credit-suisse.com

Andrew Yeh - Former Associate, Catalyst Capital - (425) 736-5807 - yeh.andrew@gmail.com

From: tom.dea@westfacecapital.com

To: brandonmoyse@hotmail.com

Subject: RE: follow-up

Date: Fri, 9 May 2014 17:35:37 +0000

Hey thanks

Some additional references would be good.

Thanks

Thomas P. Dea

(o) 647-724-8902

(m) 416-704-1273

tom.dea@westfacecapital.com

From: Brandon Moyse [<mailto:brandonmoyse@hotmail.com>]

Sent: May-09-14 1:35 PM

To: Tom Dea

Subject: RE: follow-up

Let me know if you need anything else or would like to discuss - happy to help or provide additional references.

From: brandonmoyse@hotmail.com

To: tom.dea@westfacecapital.com

Subject: RE: follow-up

Date: Mon, 5 May 2014 10:44:59 -0400

Cash comp -

Current base: \$100K

Min. Contractual Bonus: \$80K

Dividends and Distributions: ~\$5K

From: tom.dea@westfacecapital.com

To: brandonmoyse@hotmail.com

Subject: RE: follow-up

Date: Mon, 5 May 2014 14:40:22 +0000

Please send me your comp info again. Thanks

From: Brandon Moyse [<mailto:brandonmoyse@hotmail.com>]

Sent: Monday, May 05, 2014 9:41 AM

To: Tom Dea
Subject: RE: follow-up

Today still work? When is convenient?

From: tom.dea@westfacecapital.com
To: brandonmoyse@hotmail.com
Subject: Re: follow-up
Date: Fri, 2 May 2014 15:12:48 +0000
Things look good we re just all busy. Lets talk Monday

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Brandon Moyse
Sent: Friday, May 2, 2014 10:46 AM
To: Tom Dea
Subject: RE: follow-up

Hey Tom - just wanted to follow-up on my meeting with Greg on Monday. Not sure what you are considering for next steps but in terms of timing on my end, I have a final round interview at another firm on Monday - I'd expect to hear back sometime later next week or the week after. So no decisions to make yet but wanted to give you a timely heads up.

Best regards,
Brandon

From: tom.dea@westfacecapital.com
To: brandonmoyse@hotmail.com
CC: nikol.markovic@westfacecapital.com
Subject: follow-up
Date: Thu, 24 Apr 2014 13:22:57 +0000
Brandon,

Could you arrange a time with Nikol to come in and have a brief chat with Greg -- don't need more than 15 min with Greg, but maybe budget 30 min of your time.

Thanks



Thomas P. Dea - Partner | West Face Capital Inc.
2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8902 | Mobile: 416-704-1273
Email: tom.dea@westfacecapital.com

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THIS EMPLOYMENT AGREEMENT dated as of [May *], 2014.

BETWEEN:

West Face Capital Inc., a corporation incorporated under the laws of Canada (hereinafter called the "**Corporation**")

-and-

Brandon Moyse, residing in Toronto, in the Province of Ontario (hereinafter called the "**EMPLOYEE**");

- A. **WHEREAS**, the Corporation is principally engaged in the business of providing financial services;
- B. **AND WHEREAS**, the Corporation and the EMPLOYEE are desirous of entering into this Agreement on the terms, conditions and for the considerations as set out below.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, the mutual covenants and agreements contained in the Agreement below and other good and valuable consideration, the parties hereto mutually covenant and agree as follows:

ARTICLE 1.
EMPLOYMENT

- 1.01 The Corporation hereby agrees to employ the EMPLOYEE effective [June 23, 2014], or such other date as determined by the Corporation in consultation with the Employee (the "Start Date"), under the title of Analyst and the EMPLOYEE agrees to be employed by the Corporation in accordance with the terms and provisions hereof.
- 1.02 The EMPLOYEE shall initially report to Gregory A. Boland ("**Supervisor**"). The reporting line and direct supervisor of the EMPLOYEE may be changed at the discretion of the Supervisor.
- 1.03 The EMPLOYEE's duties as Analyst will include:
- Fundamental research and due diligence of investment opportunities, including equities and credits;
 - Financial modeling;
 - Deal structuring;
 - General support of the Corporation's Portfolio Managers;
 - and such other duties assigned by the Corporation.

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The EMPLOYEE will carry out the EMPLOYEE's duties on the basis of the following terms and conditions:

- (a) the EMPLOYEE shall act as a fiduciary of the Corporation and shall faithfully, honestly and diligently serve the Corporation and cooperate with the Corporation and utilize the EMPLOYEE's professional skill and care to ensure that all services rendered under this Agreement are to the satisfaction of the Corporation, acting reasonably, and in the best interests of the Corporation.
- (b) the EMPLOYEE shall assume, implement and execute such duties, directions, responsibilities, procedures, policies and lawful orders as may be reasonably determined or given by the Supervisor from time to time and report results of same as may from time to time be determined by the Supervisor.

1.04 The EMPLOYEE'S employment and the Corporation's agreement to employ the EMPLOYEE is conditional upon completion of a background check on the EMPLOYEE satisfactory to the Corporation.

1.05 As a material inducement to the Corporation to employ the EMPLOYEE, the EMPLOYEE represents and warrants to the Corporation that:

- (a) He has all, or will undertake as soon as possible to obtain all appropriate qualifications, designations and licensing required by governmental and regulatory bodies to carry out his duties including, without limitation, those required by the Ontario Securities Commission;
- (b) He is not currently suspended, disbarred, under investigation or otherwise not in good standing with any regulatory body;
- (c) The acceptance of the Corporation's retention by the EMPLOYEE would not result in any breach of any agreements, whether written or oral, that the EMPLOYEE is a party to including, without limitation, non-competition and non-solicitation agreements; and
- (d) The EMPLOYEE will not use any property in the course of the EMPLOYEE's employment which is confidential or proprietary information of any other person, company, group or organization.

1.06 The EMPLOYEE agrees that he will not engage in any activities (either during or outside of working hours) that create a conflict with the interests of the Corporation, nor shall he provide any service to any person, company, group or organization if, in the sole opinion of the Corporation, the provision of such service would actually or potentially create a conflict of interests.

1.07 It is acknowledged and agreed between the parties to this Agreement that the services to be provided by the EMPLOYEE hereunder are of such a nature that hours of work will vary from day to day and week to week. The Corporation may change the EMPLOYEE's hours of work and work schedule from time to time due to organizational demands. The EMPLOYEE understands that the EMPLOYEE's salary is compensation for all hours of work, subject to the requirements of the Ontario *Employment Standards Act, 2000*, or any successor or amended legislation (the "*Employment Standards Act*").

ARTICLE 2.
TERM OF CONTRACT

- 2.01 The term of this Agreement shall commence as and from the Start Date and shall be for an indefinite term subject to termination in accordance with this Agreement.

ARTICLE 3.
COMPENSATION

- 3.01 In consideration of the services to be provided by the EMPLOYEE to the Corporation pursuant to ARTICLE 1 hereof, the Corporation shall pay to the EMPLOYEE a minimum annual salary (the "Salary") at the annual rate of \$110,000.00 or such other amount from time to time as set by the Corporation. Remuneration shall be paid in twice monthly installments through direct deposit to the EMPLOYEE's bank account, subject to all required tax withholdings and statutory and other deductions. An increase in the EMPLOYEE's Salary shall be at the sole discretion of the Chief Executive Officer.
- 3.02 The EMPLOYEE shall be eligible for an annual discretionary bonus, which shall reflect the EMPLOYEE's performance based on assessments by the Corporation's Portfolio Managers and in accordance with the bonus policy or program established by the Corporation (as may be amended by the Corporation from time to time). The amount of the annual bonus will have a target range of 50% to 100% of EMPLOYEE's Salary (prorated for less than a full year's employment) but will be determined by the Corporation in its sole discretion. In order to be eligible for a bonus, the EMPLOYEE must be "Actively Employed" and in compliance with the Corporation's policies and directives concerning the EMPLOYEE's job performance and conduct on the bonus pay out date. For the purposes of this Agreement, "Actively Employed" means that the EMPLOYEE must be employed by the Corporation and must not have resigned or given notice of intent to resign, and, in the event that the EMPLOYEE's employment is terminated for any reason, "Actively Employed" shall include only the period of statutory notice (if any) required by the *Employment Standards Act*. Bonuses are subject to required deductions and withholdings. A bonus is not considered vested or earned until it is paid.
- 3.03 The EMPLOYEE shall be eligible to participate in all benefit plans ("**Benefits**"), including health and dental plans, generally available to employees of the Corporation, subject to plan terms (including eligibility criteria) as of the Start Date; except that the EMPLOYEE shall not be eligible for the extended health care plan until the end of his probationary period. Premiums for the employee-paid long-term disability insurance plan will be deducted from the EMPLOYEE's net salary. The EMPLOYEE acknowledges that the Corporation retains the right to change or terminate any benefit plans.
- 3.04 The EMPLOYEE shall be promptly reimbursed for all reasonable expenses incurred by the EMPLOYEE in or about the execution of the EMPLOYEE's services under this Agreement. All such expenses shall be verified by statements, receipts or other reasonable evidence satisfactory to the Corporation.
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- 4.01 During the term of this agreement, the EMPLOYEE shall be entitled to earn a minimum of two (2) weeks of vacation in each calendar year pro-rated for partial years of employment. Vacation shall be taken by the EMPLOYEE at such time as may be acceptable to the Supervisor having regard to the Corporation's operations. The EMPLOYEE agrees that he will not take vacation during his probationary period.
- 4.02 In the event the EMPLOYEE fails to utilize any such vacation time during a calendar year, such vacation time may not be carried over and such time will be forfeited subject to the *Employment Standards Act*.

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- Police/criminal record check;
 - Proof that you are legally permitted to work in Canada; and
 - Employment background check.

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- 6.01 In the event the EMPLOYEE is insured either personally or through the Corporation or through a group plan provided by the Corporation for loss of income as a result of disability and the EMPLOYEE receives compensation or disability income pursuant thereto, then the amount of remuneration (if any) which the EMPLOYEE is otherwise entitled to receive hereunder during the period of illness or incapacity shall be reduced by the amount of compensation or disability income paid by such insurer to the EMPLOYEE and the EMPLOYEE covenants and agrees that the EMPLOYEE shall immediately advise the Corporation from time to time of the receipt of any such disability income paid by such insurer to the EMPLOYEE, provided however that this clause shall only be applicable if premiums for the said insurance are paid or funded by the Corporation.

ARTICLE 7.
CONFIDENTIAL INFORMATION

- 7.01 The EMPLOYEE covenants and agrees that he will keep in strict confidence (as if it were his own confidential information) and shall not use, directly or indirectly, for any other

purpose other than for the purpose of the EMPLOYEE's employment hereunder, all oral or written confidential knowledge, materials, business data or other information (the "Confidential Information"), obtained or acquired during the course of the EMPLOYEE's employment hereunder relating to the Corporation or any subsidiary, affiliate or any legal entity controlled by the same persons (as the term is defined by the *Business Corporations Act* (Ontario), either directly or indirectly, and their respective business and affairs (collectively, the "Combined Business") as the Corporation. The EMPLOYEE will not disclose, divulge, publish or transfer, or authorize or permit anyone else to disclose, divulge, publish or transfer or use to the EMPLOYEE's own advantage any Confidential Information obtained pursuant to this Agreement or which relate in any manner to the business and affairs of the Combined Business, without the prior written consent of the Corporation, which consent may be arbitrarily or unreasonably withheld. "Confidential Information" includes, but is not limited to: the names of and any information on present and prospective clients of the Corporation and the funds it advises; the names, investment thesis surrounding and contacts linked to any investments made or proposed to be made by the Corporation or the funds it advises; the Corporation's policies, strategies, models and concepts; all financial information concerning the Combined Business, and; research, investment models, formulas, technology and analyses for prospective and executed investments, including any developed by the EMPLOYEE.

- 7.02 The obligation of the EMPLOYEE as identified in Clause 7.01 hereof shall not apply to such knowledge, information, material or business data obtained pursuant to this Agreement or relating in any manner to the business affairs of the Corporation which:
- a) was demonstrably known to the EMPLOYEE prior to receipt thereof pursuant to this Agreement;
 - b) is generally known or available to the public;
 - c) shall have become available to the EMPLOYEE in good faith from a third party who has a bona fide right to disclose same; and
 - d) is required to be disclosed to any federal, provincial, state or local government or governmental branch, board, agency or instrumentality necessary to comply with relevant timely disclosure laws or regulatory authorities, including stock exchanges having jurisdiction in respect of securities of the Corporation.

7.03 This ARTICLE 7 shall survive the termination of this Agreement.

ARTICLE 8.

INTELLECTUAL PROPERTY

- 8.01 EMPLOYEE acknowledges and agrees that the copyright and all other intellectual property rights in and to any designs, discoveries, ideas and suggestions, improvements, inventions or any other form of intellectual property of any character pertaining to the Corporation's industry or coming within the scope of the business of the Corporation, made and/or developed by the EMPLOYEE during the course of fulfilling his obligations as an employee of the Corporation, whether or not the EMPLOYEE is specifically instructed to make or develop same, or whether made and/or developed by the EMPLOYEE prior to the date hereof (collectively, the "Work Product") belong to the

Corporation. For greater certainty, the Work Product shall be considered to have been made for the benefit of the Corporation under and by virtue of this Agreement, and shall immediately become the property of the Corporation.

- 8.02 EMPLOYEE will immediately notify the Corporation of the creation of any Work Product, and assign, set over, transfer and waive to the Corporation his entire right, title and interest in and to any and all Work Product which he may create solely, jointly or in common with others during the term of his employment. EMPLOYEE agrees to execute and deliver to the Corporation any and all instruments and papers necessary or desirable to accomplish such assignment and transfer and to perfect the title, and all instruments or papers which may be necessary or desirable to obtain and promote the right to the exclusive enjoyment of the Work Product by the Corporation, and the EMPLOYEE will, when requested by the Corporation, aid the Corporation, at the Corporation's sole cost and expense, to obtain and enforce protection of such Work Product in any and all countries.
- 8.03 The EMPLOYEE hereby waives any and all moral rights respecting any work that constitutes the Work Product
- 8.04 The EMPLOYEE acknowledges and agrees that any persons or legal entities that become clients of the Corporation due to the efforts of the EMPLOYEE, either directly or indirectly, shall be clients of the Corporation and shall not be personal to the EMPLOYEE.
- 8.05 This ARTICLE 8 shall survive the termination of this Agreement.

ARTICLE 9.
NON-COMPETITION AND NON-SOLICITATION

- 9.01 The EMPLOYEE shall not during his employment (with regards to (a), (b) and (c) below) and for a period of one (1) year from the termination of his employment, however caused whether by the EMPLOYEE or the Corporation with or without cause (only with regard to (b) and (c) below), without the prior written consent of the Corporation, individually or in partnership or jointly or in conjunction with any other person (except the Corporation or any of its affiliate and subsidiaries) whether as an employee, principal, agent, shareholder or in any other capacity whatsoever:
- a) carry on or be engaged in, be concerned with, be interested in, advise, lend money to, guarantee the debts or obligations of, or permit his or its name or any part thereof to be used or employed by any person engaged in or concerned with or interested in a business which competes with the Corporation;
 - b) solicit business from the Contacts known to the EMPLOYEE at the time of the termination of this Agreement and with whom or which the EMPLOYEE had material contact in the twelve (12) months preceding the termination of the EMPLOYEE's employment for a purpose competitive with the Corporation's business. "Contacts" means clients or prospective clients of the Corporation or the funds it advises or contacts linked to any investments made or proposed to be made by the Corporation or the funds it advises; or

- c) solicit or attempt to solicit any employee or consultant engaged by the Corporation or entice any such person to leave his/her employment or engagement with the Corporation.

For these purposes, ownership of securities of a company whose securities are publicly traded under a recognized securities regime not in excess of 5% of any class of such securities shall not be considered to be competition with the Corporation.

- 9.02 This ARTICLE 9 shall survive the termination of this Agreement.

ARTICLE 10.
SEVERABILITY

- 10.01 Each provision of this Agreement is declared to constitute a separate and distinct covenant and to be severable from all other such separate and distinct covenants. Without limiting the foregoing, each provision contained in ARTICLE 7, ARTICLE 8 and ARTICLE 9 hereof is declared to constitute a separate and distinct covenant in respect of each capacity and each activity specified in ARTICLE 7, ARTICLE 8 and ARTICLE 9 and to be severable from all other such separate and distinct covenants. If a court of competent jurisdiction declares any provision or portion of this Agreement to be void or unenforceable, such provision or portion shall be deemed severed from this Agreement to the minimum extent possible, and the remainder of this Agreement shall remain in full force and effect.

- 10.02 If any covenant or provision herein is determined to be void or unenforceable in whole or in part, it will not be deemed to affect or impair the enforceability or validity of any other covenant or provision of this Agreement or any part thereof.

ARTICLE 11.
RELIEF

- 11.01 The parties to this Agreement recognize that a breach by the EMPLOYEE of any of the covenants referred to in ARTICLE 7, ARTICLE 8 and ARTICLE 9 would result in damages to the Corporation and that the Corporation could not adequately be compensated for such damages by monetary award. Accordingly, the EMPLOYEE agrees that in the event of such breach (or a reasonable apprehension of a breach), in addition to all other remedies available to the Corporation at law or in equity, the Corporation will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by way of restraining order, injunction, decree or otherwise, as may be appropriate to ensure compliance with the provisions of this Agreement.

- 11.02 This ARTICLE 11 shall survive the termination of this Agreement.

ARTICLE 12.
TERM AND TERMINATION OF AGREEMENT

- 12.01 This Agreement shall continue and remain in full force until terminated by either the Corporation or the EMPLOYEE in accordance with the provisions outlined below.
- 12.02 The EMPLOYEE shall have the right to terminate this Agreement and the EMPLOYEE's employment hereunder by providing the Corporation with written notice to that effect which notice shall provide for a termination date which is effective a minimum of two (2) weeks and a maximum of one (1) month after the giving of the notice, unless otherwise agreed to by the Corporation. The EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.03 The Corporation shall have the right to terminate this Agreement and the EMPLOYEE's employment without cause at any time. There will be a three-month probationary period starting [June 23, 2014] and ending [September 22, 2014]. During this period either the Corporation or the EMPLOYEE may terminate this Agreement without any advance notice. In such event, the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.01 In the event the Corporation terminates this Agreement and the EMPLOYEE's employment without cause after the probationary period, it will provide the EMPLOYEE with only the notice (or pay in lieu of notice) and severance (if any) required by the *Employment Standards Act*. The Corporation guarantees that the EMPLOYEE shall receive the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses. The EMPLOYEE's Benefits will be continued only for the period and to the extent required by the *Employment Standards Act*. The EMPLOYEE acknowledges and agrees that upon receipt of the notice and/or entitlements set out in this Section the Corporation shall not have any further or other liability to the EMPLOYEE whatsoever, and the EMPLOYEE hereby waives any right that he has, or may have, to receive reasonable notice at common law. Notwithstanding anything in this Agreement, the EMPLOYEE will receive no less than the EMPLOYEE's minimum entitlements under the *Employment Standards Act*.
- 12.02 The Corporation shall have the right to terminate this Agreement and the EMPLOYEE's employment without notice or payment in lieu thereof, for just cause at law. In such event, the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.03 This Agreement and/or the EMPLOYEE's employment may be terminated at any time upon the mutual agreement of the Corporation and the Employee.
- 12.04 Notwithstanding the other provisions of this Agreement, the EMPLOYEE's employment hereunder shall terminate without notice or payment in lieu of notice as follows:

- (a) automatically upon the death of the EMPLOYEE in which event the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's Benefits to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses; or
- (b) at the Corporation's discretion, upon the incapacity due to illness or injury to the EMPLOYEE, such that in the opinion of an independent medical expert acceptable to the EMPLOYEE (or his legal personal representative) and the Corporation, will keep the EMPLOYEE from his duties for a period longer than three (3) consecutive months or ninety (90) days in any one hundred and twenty day (120) period, subject to the Ontario *Human Rights Code*, in which event the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's Benefits to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.

12.05 Upon termination, the EMPLOYEE shall surrender to the Corporation all property belonging to the Corporation.

ARTICLE 13.
NOTICES

13.01 All notices required or allowed to be given under this Agreement shall be made either personally, by mailing same by prepaid registered post, or by facsimile or electronic correspondence addressed as hereinafter set forth or to such other addresses as may be designated from time to time by such party in writing, and any notice mailed as aforesaid shall be deemed to have been received by the addresses thereof on the third (3rd) business day following the day of mailing, on the day of delivery if delivered personally, or on the next business day following facsimile or electronic correspondence.

EMPLOYEE:

Brandon Moyse
23 Brant St., Apt. 509
Toronto, Ontario M5V 2L5
(416) 918-9798
brandonmoyse@hotmail.com

Corporation:

West Face Capital Inc.
2 Bloor Street East, Suite 3000
Toronto, Ontario M4W 1A8
alex.singh@westfacecapital.com
Attention: Alexander A. Singh

Any party may from time to time change its address for service hereunder on written notice to the other parties. Any notice may be served in the manner set out above in this Clause 13.01.

ARTICLE 14.
NON-ASSIGNABILITY

- 14.01 This Agreement and all other rights, benefits, and privileges herein conferred are personal to the EMPLOYEE and accordingly may not be assigned by the EMPLOYEE. The Corporation may in its sole discretion assign this Agreement to an entity related to the Corporation or to a successor in the business of the Corporation.

ARTICLE 15.
WAIVER

- 15.01 The parties agree that all restrictions in this Agreement are necessary and fundamental to the protection of the Corporation and are reasonable and valid.

ARTICLE 16.
ORGANIZATIONAL RULES

- 16.01 The EMPLOYEE agrees to follow all organizational rules set down by the Corporation from time to time, including without restriction, the rules in the West Face Capital Inc. Policy and Procedures Manual as it may be amended by the Corporation in its sole discretion.

ARTICLE 17.
GENERAL

- 17.01 The parties hereto agree that they have expressed herein their entire understanding and agreement concerning the subject matter of this Agreement and it is expressly agreed that no implied covenant, condition, term or reservation or prior representation or warranty shall be read into this Agreement relating to or concerning the subject matter hereof.
- 17.02 All previous agreements, written or oral, express or implied between the parties relating to the subject matter of this Agreement are terminated and cancelled without any liability or cost to the Corporation and each of the parties releases and forever discharges the other from all manner of action, claim or demand whatsoever under or in respect of any such previous agreement.
- 17.03 The parties agree that this Agreement may not be amended except in writing.
- 17.04 All references to currency or dollars amounts in the Agreement are to the lawful currency of Canada.
- 17.05 The provisions of this Agreement will enure to the benefit of and be binding upon the heirs, executors, administrators and legal personal representatives of the EMPLOYEE and the successors and assigns of the Corporation respectively.
- 17.06 Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or a body politic or corporate and vice versa where the context of the parties hereto so require.
- 17.07 Time is of the essence hereof.

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17.08 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the applicable laws of Canada in force in Ontario and each of the parties hereto hereby irrevocably attorns to the jurisdiction of the Courts of such province.

17.09 The EMPLOYEE has been advised to obtain independent legal advice as to the meaning and effect of this Agreement and, to the extent he deems necessary, such advice has been obtained.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

WEST FACE CAPITAL INC.

Name:

Title:

Agreed and accepted this ____ day of _____, _____

Brandon Moyse

Witness Name:

THIS EMPLOYMENT AGREEMENT dated as of [May •], 2014.

BETWEEN:

West Face Capital Inc., a corporation incorporated under the laws of Canada (hereinafter called the "Corporation")

-and-

Brandon Moyse, residing in Toronto, in the Province of Ontario (hereinafter called the "EMPLOYEE");

- A. **WHEREAS**, the Corporation is principally engaged in the business of providing financial services;
- B. **AND WHEREAS**, the Corporation and the EMPLOYEE are desirous of entering into this Agreement on the terms, conditions and for the considerations as set out below.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, the mutual covenants and agreements contained in the Agreement below and other good and valuable consideration, the parties hereto mutually covenant and agree as follows:

ARTICLE 1.
EMPLOYMENT

- 1.01 The Corporation hereby agrees to employ the EMPLOYEE effective [June 23, 2014], or such other date as determined by the Corporation in consultation with the Employee (the "Start Date"), under the title of Analyst and the EMPLOYEE agrees to be employed by the Corporation in accordance with the terms and provisions hereof.
- 1.02 The EMPLOYEE shall initially report to Gregory A. Boland ("Supervisor"). The reporting line and direct supervisor of the EMPLOYEE may be changed at the discretion of the Supervisor.
- 1.03 The EMPLOYEE's duties as Analyst will include:
- Fundamental research and due diligence of investment opportunities, including equities and credits;
 - Financial modeling;
 - Deal structuring;
 - General support of the Corporation's Portfolio Managers;
 - and such other duties assigned by the Corporation.

The EMPLOYEE will carry out the EMPLOYEE's duties on the basis of the following terms and conditions:

- (a) the EMPLOYEE shall act as a fiduciary of the Corporation and shall faithfully, honestly and diligently serve the Corporation and cooperate with the Corporation and utilize the EMPLOYEE's professional skill and care to ensure that all services rendered under this Agreement are to the satisfaction of the Corporation, acting reasonably, and in the best interests of the Corporation.
- (b) the EMPLOYEE shall assume, implement and execute such duties, directions, responsibilities, procedures, policies and lawful orders as may be reasonably determined or given by the Supervisor from time to time and report results of same as may from time to time be determined by the Supervisor.

1.04 The EMPLOYEE'S employment and the Corporation's agreement to employ the EMPLOYEE is conditional upon completion of a background check on the EMPLOYEE satisfactory to the Corporation.

1.05 As a material inducement to the Corporation to employ the EMPLOYEE, the EMPLOYEE represents and warrants to the Corporation that:

- (a) He has all, or will undertake as soon as possible to obtain all appropriate qualifications, designations and licensing required by governmental and regulatory bodies to carry out his duties including, without limitation, those required by the Ontario Securities Commission;
- (b) He is not currently suspended, disbarred, under investigation or otherwise not in good standing with any regulatory body;
- (c) The acceptance of the Corporation's retention by the EMPLOYEE would not result in any breach of any agreements, whether written or oral, that the EMPLOYEE is a party to including, without limitation, non-competition and non-solicitation agreements; and
- (d) The EMPLOYEE will not use any property in the course of the EMPLOYEE's employment which is confidential or proprietary information of any other person, company, group or organization.

1.06 The EMPLOYEE agrees that he will not engage in any activities (either during or outside of working hours) that create a conflict with the interests of the Corporation, nor shall he provide any service to any person, company, group or organization if, in the sole opinion of the Corporation, the provision of such service would actually or potentially create a conflict of interests.

1.07 It is acknowledged and agreed between the parties to this Agreement that the services to be provided by the EMPLOYEE hereunder are of such a nature that hours of work will vary from day to day and week to week. The Corporation may change the EMPLOYEE's hours of work and work schedule from time to time due to organizational demands. The EMPLOYEE understands that the EMPLOYEE's salary is compensation for all hours of work, subject to the requirements of the Ontario *Employment Standards Act, 2000*, or any successor or amended legislation (the "*Employment Standards Act*").

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- 5.01 The Corporation conducts background checks on all new employees to ensure that such employees meet the Corporation's high standards and fit well within the team. The EMPLOYEE consents to the Corporation obtaining the following background information, and acknowledges that the employment is conditional on such information being acceptable to the Corporation in its discretion:
- Police/criminal record check;
 - Proof that you are legally permitted to work in Canada; and
 - Employment background check.

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- 6.01 In the event the EMPLOYEE is insured either personally or through the Corporation or through a group plan provided by the Corporation for loss of income as a result of disability and the EMPLOYEE receives compensation or disability income pursuant thereto, then the amount of remuneration (if any) which the EMPLOYEE is otherwise entitled to receive hereunder during the period of illness or incapacity shall be reduced by the amount of compensation or disability income paid by such insurer to the EMPLOYEE and the EMPLOYEE covenants and agrees that the EMPLOYEE shall immediately advise the Corporation from time to time of the receipt of any such disability income paid by such insurer to the EMPLOYEE, provided however that this clause shall only be applicable if premiums for the said insurance are paid or funded by the Corporation.

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purpose other than for the purpose of the EMPLOYEE's employment hereunder, all oral or written confidential knowledge, materials, business data or other information (the "**Confidential Information**"), obtained or acquired during the course of the EMPLOYEE's employment hereunder relating to the Corporation or any subsidiary, affiliate or any legal entity controlled by the same persons (as the term is defined by the *Business Corporations Act* (Ontario), either directly or indirectly, and their respective business and affairs (collectively, the "**Combined Business**") as the Corporation. The EMPLOYEE will not disclose, divulge, publish or transfer, or authorize or permit anyone else to disclose, divulge, publish or transfer or use to the EMPLOYEE's own advantage any Confidential Information obtained pursuant to this Agreement or which relate in any manner to the business and affairs of the Combined Business, without the prior written consent of the Corporation, which consent may be arbitrarily or unreasonably withheld. "Confidential Information" includes, but is not limited to: the names of and any information on present and prospective clients of the Corporation and the funds it advises; the names, investment thesis surrounding and contacts linked to any investments made or proposed to be made by the Corporation or the funds it advises; the Corporation's policies, strategies, models and concepts; all financial information concerning the Combined Business, and; research, investment models, formulas, technology and analyses for prospective and executed investments, including any developed by the EMPLOYEE.

7.02 The obligation of the EMPLOYEE as identified in Clause 7.01 hereof shall not apply to such knowledge, information, material or business data obtained pursuant to this Agreement or relating in any manner to the business affairs of the Corporation which:

- a) was demonstrably known to the EMPLOYEE prior to receipt thereof pursuant to this Agreement;
- b) is generally known or available to the public;
- c) shall have become available to the EMPLOYEE in good faith from a third party who has a bona fide right to disclose same; and
- d) is required to be disclosed to any federal, provincial, state or local government or governmental branch, board, agency or instrumentality necessary to comply with relevant timely disclosure laws or regulatory authorities, including stock exchanges having jurisdiction in respect of securities of the Corporation.

7.03 This ARTICLE 7 shall survive the termination of this Agreement.

ARTICLE 8. **INTELLECTUAL PROPERTY**

8.01 EMPLOYEE acknowledges and agrees that the copyright and all other intellectual property rights in and to any designs, discoveries, ideas and suggestions, improvements, inventions or any other form of intellectual property of any character pertaining to the Corporation's industry or coming within the scope of the business of the Corporation, made and/or developed by the EMPLOYEE during the course of fulfilling his obligations as an employee of the Corporation, whether or not the EMPLOYEE is specifically instructed to make or develop same, or whether made and/or developed by the EMPLOYEE prior to the date hereof (collectively, the "**Work Product**") belong to the

Corporation. For greater certainty, the Work Product shall be considered to have been made for the benefit of the Corporation under and by virtue of this Agreement, and shall immediately become the property of the Corporation.

- 8.02 EMPLOYEE will immediately notify the Corporation of the creation of any Work Product, and assign, set over, transfer and waive to the Corporation his entire right, title and interest in and to any and all Work Product which he may create solely, jointly or in common with others during the term of his employment. EMPLOYEE agrees to execute and deliver to the Corporation any and all instruments and papers necessary or desirable to accomplish such assignment and transfer and to perfect the title, and all instruments or papers which may be necessary or desirable to obtain and promote the right to the exclusive enjoyment of the Work Product by the Corporation, and the EMPLOYEE will, when requested by the Corporation, aid the Corporation, at the Corporation's sole cost and expense, to obtain and enforce protection of such Work Product in any and all countries.
- 8.03 The EMPLOYEE hereby waives any and all moral rights respecting any work that constitutes the Work Product
- 8.04 The EMPLOYEE acknowledges and agrees that any persons or legal entities that become clients of the Corporation due to the efforts of the EMPLOYEE, either directly or indirectly, shall be clients of the Corporation and shall not be personal to the EMPLOYEE.
- 8.05 This ARTICLE 8 shall survive the termination of this Agreement.

ARTICLE 9.

NON-COMPETITION AND NON-SOLICITATION

- 9.01 The EMPLOYEE shall not during his employment (with regards to (a), (b) and (c) below) and for a period of one (1) year from the termination of his employment, however caused whether by the EMPLOYEE or the Corporation with or without cause (only with regard to (b) and (c) below), without the prior written consent of the Corporation, individually or in partnership or jointly or in conjunction with any other person (except the Corporation or any of its affiliate and subsidiaries) whether as an employee, principal, agent, shareholder or in any other capacity whatsoever:
- a) carry on or be engaged in, be concerned with, be interested in, advise, lend money to, guarantee the debts or obligations of, or permit his or its name or any part thereof to be used or employed by any person engaged in or concerned with or interested in a business which competes with the Corporation;
 - b) solicit business from the Contacts known to the EMPLOYEE at the time of the termination of this Agreement and with whom or which the EMPLOYEE had material contact in the twelve (12) months preceding the termination of the EMPLOYEE's employment for a purpose competitive with the Corporation's business. "Contacts" means clients or prospective clients of the Corporation or the funds it advises or contacts linked to any investments made or proposed to be made by the Corporation or the funds it advises; or

- c) solicit or attempt to solicit any employee or consultant engaged by the Corporation or entice any such person to leave his/her employment or engagement with the Corporation.

For these purposes, ownership of securities of a company whose securities are publicly traded under a recognized securities regime not in excess of 5% of any class of such securities shall not be considered to be competition with the Corporation.

- 9.02 This ARTICLE 9 shall survive the termination of this Agreement.

ARTICLE 10.
SEVERABILITY

- 10.01 Each provision of this Agreement is declared to constitute a separate and distinct covenant and to be severable from all other such separate and distinct covenants. Without limiting the foregoing, each provision contained in ARTICLE 7, ARTICLE 8 and ARTICLE 9 hereof is declared to constitute a separate and distinct covenant in respect of each capacity and each activity specified in ARTICLE 7, ARTICLE 8 and ARTICLE 9 and to be severable from all other such separate and distinct covenants. If a court of competent jurisdiction declares any provision or portion of this Agreement to be void or unenforceable, such provision or portion shall be deemed severed from this Agreement to the minimum extent possible, and the remainder of this Agreement shall remain in full force and effect.

- 10.02 If any covenant or provision herein is determined to be void or unenforceable in whole or in part, it will not be deemed to affect or impair the enforceability or validity of any other covenant or provision of this Agreement or any part thereof.

ARTICLE 11.
RELIEF

- 11.01 The parties to this Agreement recognize that a breach by the EMPLOYEE of any of the covenants referred to in ARTICLE 7, ARTICLE 8 and ARTICLE 9 would result in damages to the Corporation and that the Corporation could not adequately be compensated for such damages by monetary award. Accordingly, the EMPLOYEE agrees that in the event of such breach (or a reasonable apprehension of a breach), in addition to all other remedies available to the Corporation at law or in equity, the Corporation will be entitled as a matter of right to apply to a court of competent jurisdiction for such relief by way of restraining order, injunction, decree or otherwise, as may be appropriate to ensure compliance with the provisions of this Agreement.

- 11.02 This ARTICLE 11 shall survive the termination of this Agreement.

ARTICLE 12.
TERM AND TERMINATION OF AGREEMENT

- 12.01 This Agreement shall continue and remain in full force until terminated by either the Corporation or the EMPLOYEE in accordance with the provisions outlined below.
- 12.02 The EMPLOYEE shall have the right to terminate this Agreement and the EMPLOYEE's employment hereunder by providing the Corporation with written notice to that effect which notice shall provide for a termination date which is effective a minimum of two (2) weeks and a maximum of one (1) month after the giving of the notice, unless otherwise agreed to by the Corporation. The EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.03 The Corporation shall have the right to terminate this Agreement and the EMPLOYEE's employment without cause at any time. There will be a three-month probationary period starting [June 23, 2014] and ending [September 22, 2014]. During this period either the Corporation or the EMPLOYEE may terminate this Agreement without any advance notice. In such event, the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.01 In the event the Corporation terminates this Agreement and the EMPLOYEE's employment without cause after the probationary period, it will provide the EMPLOYEE with only the notice (or pay in lieu of notice) and severance (if any) required by the *Employment Standards Act*. The Corporation guarantees that the EMPLOYEE shall receive the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses. The EMPLOYEE's Benefits will be continued only for the period and to the extent required by the *Employment Standards Act*. The EMPLOYEE acknowledges and agrees that upon receipt of the notice and/or entitlements set out in this Section the Corporation shall not have any further or other liability to the EMPLOYEE whatsoever, and the EMPLOYEE hereby waives any right that he has, or may have, to receive reasonable notice at common law. Notwithstanding anything in this Agreement, the EMPLOYEE will receive no less than the EMPLOYEE's minimum entitlements under the *Employment Standards Act*.
- 12.02 The Corporation shall have the right to terminate this Agreement and the EMPLOYEE's employment without notice or payment in lieu thereof, for just cause at law. In such event, the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination plus Benefits to the date of termination plus accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.03 This Agreement and/or the EMPLOYEE's employment may be terminated at any time upon the mutual agreement of the Corporation and the Employee.
- 12.04 Notwithstanding the other provisions of this Agreement, the EMPLOYEE's employment hereunder shall terminate without notice or payment in lieu of notice as follows:

- (a) automatically upon the death of the EMPLOYEE in which event the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's Benefits to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses; or
- (b) at the Corporation's discretion, upon the incapacity due to illness or injury to the EMPLOYEE, such that in the opinion of an independent medical expert acceptable to the EMPLOYEE (or his legal personal representative) and the Corporation, will keep the EMPLOYEE from his duties for a period longer than three (3) consecutive months or ninety (90) days in any one hundred and twenty day (120) period, subject to the Ontario *Human Rights Code*, in which event the EMPLOYEE shall receive only the EMPLOYEE's Salary earned to the date of termination, the EMPLOYEE's Benefits to the date of termination, the EMPLOYEE's accrued and unpaid vacation pay (if any) and reimbursement of reasonable business expenses.
- 12.05 Upon termination, the EMPLOYEE shall surrender to the Corporation all property belonging to the Corporation.

ARTICLE 13.
NOTICES

- 13.01 All notices required or allowed to be given under this Agreement shall be made either personally, by mailing same by prepaid registered post, or by facsimile or electronic correspondence addressed as hereinafter set forth or to such other addresses as may be designated from time to time by such party in writing, and any notice mailed as aforesaid shall be deemed to have been received by the addresses thereof on the third (3rd) business day following the day of mailing, on the day of delivery if delivered personally, or on the next business day following facsimile or electronic correspondence.

EMPLOYEE:

Brandon Moyse
23 Brant St., Apt. 509
Toronto, Ontario M5V 2L5
(416) 918-9798
brandonmoyse@hotmail.com

Corporation:

West Face Capital Inc.
2 Bloor Street East, Suite 3000
Toronto, Ontario M4W 1A8
alex.singh@westfacecapital.com
Attention: Alexander A. Singh

Any party may from time to time change its address for service hereunder on written notice to the other parties. Any notice may be served in the manner set out above in this Clause 13.01.

ARTICLE 14.
NON-ASSIGNABILITY

- 14.01 This Agreement and all other rights, benefits, and privileges herein conferred are personal to the EMPLOYEE and accordingly may not be assigned by the EMPLOYEE. The Corporation may in its sole discretion assign this Agreement to an entity related to the Corporation or to a successor in the business of the Corporation.

ARTICLE 15.
WAIVER

- 15.01 The parties agree that all restrictions in this Agreement are necessary and fundamental to the protection of the Corporation and are reasonable and valid.

ARTICLE 16.
ORGANIZATIONAL RULES

- 16.01 The EMPLOYEE agrees to follow all organizational rules set down by the Corporation from time to time, including without restriction, the rules in the West Face Capital Inc. Policy and Procedures Manual as it may be amended by the Corporation in its sole discretion.

ARTICLE 17.
GENERAL

- 17.01 The parties hereto agree that they have expressed herein their entire understanding and agreement concerning the subject matter of this Agreement and it is expressly agreed that no implied covenant, condition, term or reservation or prior representation or warranty shall be read into this Agreement relating to or concerning the subject matter hereof.
- 17.02 All previous agreements, written or oral, express or implied between the parties relating to the subject matter of this Agreement are terminated and cancelled without any liability or cost to the Corporation and each of the parties releases and forever discharges the other from all manner of action, claim or demand whatsoever under or in respect of any such previous agreement.
- 17.03 The parties agree that this Agreement may not be amended except in writing.
- 17.04 All references to currency or dollars amounts in the Agreement are to the lawful currency of Canada.
- 17.05 The provisions of this Agreement will enure to the benefit of and be binding upon the heirs, executors, administrators and legal personal representatives of the EMPLOYEE and the successors and assigns of the Corporation respectively.
- 17.06 Wherever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or a body politic or corporate and vice versa where the context of the parties hereto so require.
- 17.07 Time is of the essence hereof.

17.08 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the applicable laws of Canada in force in Ontario and each of the parties hereto hereby irrevocably attorns to the jurisdiction of the Courts of such province.

17.09 The EMPLOYEE has been advised to obtain independent legal advice as to the meaning and effect of this Agreement and, to the extent he deems necessary, such advice has been obtained.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first above written.

WEST FACE CAPITAL INC.

Name:

Title:

Agreed and accepted this ____ day of _____, _____

Brandon Moyse

Witness Name: