

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

BRANDON MOYSE
May 11, 2015

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.

Defendant

--- This is the Cross-Examination of BRANDON MOYSE, on
his affidavit sworn April 2, 2015, taken at the offices
of Neesons, 141 Adelaide St. W., Suite 1108, Toronto,
Ontario, on the 11th day of May, 2015.

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

2

3 Rocco DiPucchio, Esq. for the Plaintiff.

4 & Andrew Winton, Esq.

5

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

7 & Kristian Borg-Olivier, Esq. Brandon Moyses.

8 & Denise Cooney, Esq.

9

10 Matthew Milne-Smith, Esq. for the Defenant

11 West Face Capital Inc.

12

13 Also present: Jim Riley

14

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16 REPORTED BY: Terry Wood, RPR, CSR

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I N D E X

WITNESS: BRANDON MOYSE

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BRANDON MOYSE

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Re-Examination by Mr. Centa 122

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 REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages/lines: 95/16, 105/24.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: 37/1, 107/20.

INDEX OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages/lines: 71/14, 78/13, 100/17, 105/2, 106/8, 106/15, 107/14, 119/14.

	LIST OF EXHIBITS	
	EXHIBIT NO./DESCRIPTION	Page
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2		
3	1 E-mail chain dated May 6th, 2014, and	24
4	ending May 7th, 2014	
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1 --- Upon commencing at 9:59 a.m.

2 BRANDON MOYSE, AFFIRMED.

3 CROSS-EXAMINATION BY MR. DIPUCCHIO:

4 1 Q. Mr. Moyse, you have sworn three
5 substantive affidavits in this proceeding; is that
6 correct?

7 A. Have sworn -- yes. I have sworn
8 four, I think.

9 2 Q. All right. Let's review them. The
10 dates of them, in any event. You have sworn an
11 affidavit on July 4th, 2014?

12 A. Correct.

13 3 Q. And another one on July 16th, 2014?

14 A. Correct.

15 4 Q. And then there is a third that's
16 appended to your materials which appears to be sworn
17 October 10th, 2014. Is that fair?

18 A. That's correct.

19 5 Q. Is that affidavit identical to the
20 one you swore on July 16th, 2014?

21 A. It appears identical.

22 6 Q. Do you have an explanation as to
23 why it was sworn on October 10th, 2014?

24 A. I can't remember.

25 7 Q. And in addition to those three, you

1 have sworn an affidavit on April 2nd, 2015?

2 A. Correct.

3 8 Q. And it's in relation to that
4 affidavit that you are here today. You understand
5 that?

6 A. Yes.

7 9 Q. You were also cross-examined, you
8 might recall, on July 31st, 2014?

9 A. I do.

10 10 Q. And in your affidavits -- both in
11 your sworn testimony and your affidavits and when you
12 were cross-examined, you understood your obligation to
13 tell the truth?

14 A. I did.

15 11 Q. And you understood that the
16 evidence you were giving, both in relation to your
17 affidavits and in relation to your cross-examination on
18 those affidavits, was going to be used for the purposes
19 of a court proceeding?

20 A. I did.

21 12 Q. You understood, I take it, that in
22 relation to the affidavits that you swore in 2014 and
23 the cross-examination that occurred in the summer of
24 2014, that one of the issues that was in dispute was
25 whether you had communicated confidential information

1 belonging to Catalyst to your new employer, West Face?

2 A. Yes.

3 13 Q. And you certainly understood that
4 it was important, both in your affidavits and in your
5 cross-examination, to be honest and forthcoming in
6 relation to the evidence you were giving under oath?

7 A. Yes.

8 14 Q. Now, as I understand it, in your
9 affidavit sworn in April of this year, you have
10 incorporated all of the evidence from your previous
11 affidavits with one exception into your current
12 affidavit. I will call it your current affidavit. Is
13 that fair? If you look at paragraph 5?

14 A. Yes, that's fair.

15 15 Q. So as I understand it, with the
16 exception of the one correction that you make to your
17 affidavit sworn July 4th, 2014, which we'll review in a
18 minute, you stand by everything else that you have said
19 in your affidavits previously sworn?

20 A. I do.

21 16 Q. Do I take it from that that you
22 also don't have any corrections to your evidence as it
23 relates to the cross-examination on July 31st, 2014?

24 A. I do not.

25 17 Q. And it's fair to say that, had you

1 had any corrections to make to your evidence given on
2 July 31st, 2014, you would have done so in this
3 affidavit?

4 A. Yes, but I don't know, because I
5 don't have any.

6 18 Q. All right. And the correction you
7 have made, Mr. Moyses, to your affidavit of July 4th,
8 2014, is that you acknowledge that, when you stated in
9 paragraph 71 of your affidavit of July 4th -- and
10 that's Exhibit A. Do you see that?

11 A. Yes.

12 19 Q. You acknowledge now that the
13 statement you made in paragraph 71 of your affidavit
14 was not correct?

15 A. I believed at the time it was
16 correct; now it is not.

17 20 Q. You acknowledge now that that was
18 not correct?

19 A. Yes, yes.

20 21 Q. You acknowledge now that what you
21 characterized as a fishing expedition in paragraph 71
22 of your affidavit was far from a fishing expedition,
23 right?

24 A. I don't know.

25 22 Q. Well, you don't know that?

1 A. I believed it was a fishing
2 expedition.

3 23 Q. Yes. And you acknowledge now that
4 it was anything but a fishing expedition?

5 A. I don't agree.

6 24 Q. You don't agree that there were
7 hundreds of documents that existed on your computer
8 that were generated from your work at Catalyst?

9 A. I do agree that.

10 25 Q. Okay. And do you not agree that
11 you were telling the Court in paragraph 71 that there
12 were no grounds upon which the Court should order a
13 forensic review of your personal devices because
14 Catalyst was unable to provide any actual evidence that
15 you transferred confidential information to your
16 personal equipment?

17 A. Based on the evidence at the time,
18 no.

19 26 Q. Right. And do you acknowledge
20 now -- not at the time. Do you acknowledge now that
21 you had no basis upon which to make that statement? It
22 was incorrect?

23 A. It was incorrect.

24 27 Q. Right. So what you characterized
25 as a fishing expedition that Catalyst was on at the

1 time was anything but a fishing expedition?

2 A. I still believe it was a fishing
3 expedition.

4 28 Q. So had Catalyst not obtained an
5 affidavit of documents from you, they would not have
6 known that those documents existed on your hard drive.
7 Would you acknowledge that?

8 A. Yes.

9 29 Q. Okay. So, therefore, having
10 brought the motion in the first place was not a fishing
11 expedition: It generated fish. Correct?

12 A. Generated, yes, documents.

13 30 Q. Right. Documents that they would
14 not have otherwise known about, according to your
15 evidence?

16 A. Yes.

17 31 Q. Now, while you were at Catalyst,
18 you acknowledged that there were eight people working
19 on the team at Catalyst as it related to potential and
20 actual investments?

21 A. Yes. At many times or most times.

22 32 Q. And that consisted -- that team
23 consisted of three partners, right?

24 A. Yes.

25 33 Q. And then there were two

1 vice-presidents?

2 A. Correct.

3 34 Q. And three what we will call
4 associates or analysts?

5 A. Yes.

6 35 Q. And that's a smaller group than
7 exists at West Face?

8 A. It is smaller in terms of head
9 count.

10 36 Q. Okay. And in your affidavit, many
11 times, you have described yourself as an analyst or a
12 junior employee, but we both, I take it, agree that --
13 can agree that, in early 2014, you were told by people
14 at Catalyst that you were going to be promoted to the
15 position of associate, right?

16 A. Yes.

17 37 Q. And as we covered in the last
18 cross-examination, you actually were describing
19 yourself as an associate to recruiters, for example, in
20 New York that you were corresponding with in the 2014
21 time frame?

22 A. Yes.

23 38 Q. In fact, you told Mr. Dea, as I
24 recall, that you had just been promoted to the position
25 of associate when you were interviewing with Mr. Dea,

1 right?

2 A. Yes. Based on everything at
3 Catalyst, I believed that was the case.

4 39 Q. Right. And can I ask you to just
5 bring up paragraph 14 of your affidavit in April of
6 this year.

7 A. Yes.

8 40 Q. This is your evidence as it relates
9 to the work you were doing on the Wind file. And if I
10 can ask you to just keep your hand there so we have it.
11 Can I also ask you to turn up your July 14th affidavit,
12 which is Exhibit A.

13 A. July 4th.

14 41 Q. Sorry, July 4th, I apologize.
15 Exhibit A. Turn up paragraph 11 of that affidavit.
16 And this is the first affidavit you swore in relation
17 to this proceeding, right, the one on July 4th?

18 A. Yes.

19 42 Q. And so what you were telling the
20 Court in paragraph 11 on July 4th was that you were
21 privy to very little, if any, confidential information
22 about the transaction, and you played a minor role,
23 essentially limited to contributing a memo, right?

24 A. Yes.

25 43 Q. And that's all you told the Court

1 at that time?

2 A. Yes.

3 44 Q. All right. So now let's turn back
4 to paragraph 14 of your affidavit in April. And I take
5 it you and I agree, Mr. Moyses, that you were on the
6 Wind team, right, what was characterized as the Wind
7 team at Catalyst?

8 A. Yes.

9 45 Q. All right. Now, in paragraph 14,
10 you do a little more than simply state that you
11 contributed a memo, right? You certainly say that you
12 helped work on the initial draft of an investment
13 memorandum, right?

14 A. Yes.

15 46 Q. But there is also other things that
16 you acknowledge doing, right?

17 A. I acknowledge attending a meeting.

18 47 Q. Okay. And in addition to attending
19 a meeting, you also acknowledge that you were copied on
20 e-mails, right?

21 A. Yes.

22 48 Q. And you also acknowledge now that
23 you also looked at a preliminary model?

24 A. Yes.

25 49 Q. Right? And you indicate in that

1 preliminary -- that in looking at that preliminary
2 model, it wasn't complete?

3 A. Yes.

4 50 Q. There is no question there was a
5 preliminary model that you looked at, right?

6 A. Yes.

7 51 Q. And that model included scenario
8 analysis and business drivers?

9 A. I don't remember exactly what it
10 included. I remember it was not complete.

11 52 Q. Well, don't you say it in your
12 affidavit?

13 A. I said it was not complete in terms
14 of scenario analysis and business drivers, so I'm
15 not --

16 53 Q. Well, was it -- did it include --

17 A. That's what it should have
18 included.

19 54 Q. Did it include any scenario
20 analysis and business drivers?

21 A. I don't remember exactly.

22 55 Q. It's possible it did?

23 A. It's possible.

24 56 Q. Okay. And you also indicate that
25 you had some discussions in relation to that

1 preliminary model with Zach Michaud?

2 A. I wouldn't characterize it as a
3 discussion.

4 57 Q. Well, you gave cursory comments to
5 him?

6 A. That's correct.

7 58 Q. All right. And was that in an
8 e-mail?

9 A. Yes.

10 59 Q. All right. So whereas in July of
11 2014 you indicated that your involvement in Wind was
12 essentially limited to contributing a memo, that wasn't
13 entirely the case, was it? You have just described a
14 number of other things you were doing.

15 A. This model would have been part of
16 a contribution to a memo.

17 60 Q. Okay. Listen to my question.
18 Whereas on July 4th you indicated to the Court that
19 your involvement in Wind was essentially limited to
20 contributing a memo, your paragraph 14 indicates that
21 you had more involvement than just that.

22 A. I believe all that involvement was
23 related to the memo.

24 61 Q. Including all of the hundreds of
25 e-mails that we presented to you at the last

1 examination?

2 A. I don't think it's fair to
3 characterize me being copied on e-mails as involvement.
4 I don't recall reading those memos.

5 62 Q. Well, how do you characterize being
6 copied on e-mails? As part of the Wind team?

7 A. I was part of the Wind team.

8 63 Q. And you don't characterize that as
9 involvement?

10 A. I did not do anything with those
11 e-mails.

12 64 Q. Did you read them?

13 A. Most of them, no.

14 65 Q. You just didn't do anything with
15 them?

16 A. No. I was on vacation for most of
17 that time.

18 66 Q. And you don't read e-mails while on
19 vacation?

20 A. Not in this case.

21 67 Q. Do you read any other e-mails on
22 vacation?

23 A. I don't remember on this vacation.
24 Personal e-mails, certainly.

25 68 Q. But the Wind e-mails, you didn't

1 read?

2 A. No.

3 69 Q. You never read them?

4 A. I don't remember reading any of
5 them, so I don't think I did.

6 70 Q. Okay. And did you read e-mails in
7 regards to West Face while you were on vacation?

8 A. Yes. I don't think I had many
9 e-mails in regard to West Face.

10 71 Q. Those ones, you read?

11 A. Yes.

12 72 Q. In paragraph 16, you say your work
13 on the Wind file consisted largely of due diligence.
14 Do you see that?

15 A. Yes.

16 73 Q. And you say your work did not
17 involve any deal-structuring analysis, scenario
18 analysis, or late-stage negotiations?

19 A. Correct.

20 74 Q. And do I take it from that that
21 your work did involve some early stage negotiations?

22 A. I was not privy to any
23 negotiations.

24 75 Q. And why do you use the word
25 "late-stage negotiations", then, in your affidavit?

1 A. I was responding to Riley's
2 allegations about why Catalyst failed to win the deal,
3 so that would have been late stage, but I was not privy
4 to any negotiations.

5 76 Q. Okay. So really what you are
6 saying in paragraph 16 is you were not privy to any
7 negotiations whatsoever?

8 A. Correct.

9 77 Q. All right. And you also go on to
10 say in paragraph 16 that Catalyst had not decided on
11 regulatory risk mitigation. Do you see that?

12 A. Yes.

13 78 Q. And then you go on in paragraph 17
14 to say that you don't recall analyzing regulatory risk
15 during your brief period of time working on the Wind
16 file.

17 A. Yes.

18 79 Q. And what do you mean by "analyzing
19 regulatory risk"?

20 A. Understanding -- well, first, I
21 can't say because I didn't do it, but it would have
22 involved understanding what the regulatory risks are
23 and how or if you can work around it.

24 80 Q. Did you have any communication with
25 anybody at Catalyst with respect to regulatory risk?

1 A. Just the general regulatory risk
2 about -- that was well-publicized about whether or not
3 a new Spectrum entrant or new telecom entrant could
4 sell their Spectrum to an incumbent.

5 81 Q. So you did have some discussions as
6 it related to regulatory risk or communications?

7 A. There were discussions about it. I
8 did not really discuss it with anybody.

9 82 Q. Okay. But you became aware of
10 those discussions how?

11 A. Through the news and also --
12 through the news initially, and then that was repeated
13 at Catalyst.

14 83 Q. How so?

15 A. I don't remember the exact
16 instances.

17 84 Q. E-mail?

18 A. I don't remember.

19 85 Q. Okay. Can I show you an e-mail?

20 A. Sure.

21 86 Q. So this is an e-mail chain which
22 starts -- I guess I don't see the date on it. The
23 initial e-mail. But there's an e-mail from Gabriel
24 DeAlba dated May 6th, 2014, at 3:25 p.m. Do you see
25 that?

1 A. Yes.

2 87 Q. Which forwards a message that he
3 received from Mr. Turgeon, who was at UBS?

4 A. Yes.

5 88 Q. And UBS was the advisor to Wind?

6 A. I believe so, yeah.

7 89 Q. And looking at the e-mail from
8 Mr. Glassman on May 6th, 2014, that appears just above
9 that. Do you see that?

10 A. Yes.

11 90 Q. And Mr. Glassman says, right at the
12 end of his e-mail:

13 "Need a condition of governmental
14 approval."

15 Do you see that?

16 A. I do.

17 91 Q. And then Mr. DeAlba writes back --
18 and you're copied on this e-mail, right?

19 A. Yes.

20 92 Q. And you're copied on the original
21 e-mail from Mr. DeAlba?

22 A. I am.

23 93 Q. Is that one of the e-mails that you
24 would have read or you didn't read this e-mail?

25 A. I don't remember.

1 94 Q. Okay. And then Mr. DeAlba says, in
2 the second paragraph of his e-mail with respect to
3 governmental approval:

4 "This can be positioned to our
5 advantage with the government to get the
6 required clarity on the ability to sell
7 Spectrum and/or monetize the investment.
8 The following type of argument can be
9 presented to the government: 'We are
10 the Canadian solution. We will focus in
11 building the standalone fourth player,
12 but even from a debt financing/capital
13 market's perspective, no lender will
14 provide funding unless there is clarity
15 on how the collateral and ultimately the
16 business can be sold and when. At the
17 minimum, it adds to the pile'" -- I
18 think that should say "of" -- "'reasons
19 why the government needs to give us
20 clarity.'" Do you see that?

21 A. I do.

22 95 Q. And this was an e-mail that was
23 sent prior to your going on vacation; is that correct?

24 A. It was.

25 96 Q. So is it likely you would have read

1 it?

2 A. Likely, yes.

3 97 Q. All right. So you would have been
4 aware that there were some discussions ongoing here
5 with respect to how to position the matter with the
6 federal government in order to obtain the federal
7 government's approval in relation to any transaction
8 that might be done, right?

9 A. I think this is a very generic
10 statement that echoes the general regulatory risk that
11 was publicized in the news.

12 98 Q. I don't care whether it was general
13 or specific. The fact of the matter is the e-mail
14 refers to what the strategy was going to be to seek
15 governmental approval, right?

16 A. Very high level. There's ...

17 99 Q. I didn't want your characterization
18 of it.

19 A. Yes.

20 100 Q. Does it reveal the strategy?

21 A. If you want to call this a
22 strategy.

23 101 Q. Okay. And then you get a further
24 e-mail from Mr. Glassman that you were copied on,
25 right?

1 A. Yes.

2 102 Q. And Mr. Glassman says in that
3 e-mail, essentially, that the government had advised
4 Catalyst on that day that they would not give us in
5 writing the right to sell Spectrum in five years,
6 right?

7 A. That's what it says.

8 103 Q. So you knew that at that time?

9 A. At the time.

10 104 Q. And you knew as well that
11 Mr. Glassman's response to the government was that that
12 would, therefore, take, quote/unquote, option one off
13 the table, right?

14 A. I'm not sure what "option one"
15 refers to.

16 105 Q. All right. Well, does he then go
17 on to say that we would only be willing to build a
18 wholesale leasing business?

19 A. He does say that.

20 106 Q. So what's option one, would that be
21 a retail business?

22 A. I don't remember.

23 107 Q. You can't read into that as part of
24 the Wind team what that meant?

25 A. I -- no, I can't.

1 108 Q. You don't know?

2 A. I don't know.

3 109 Q. Okay. And you certainly understood
4 that what Mr. Glassman was saying here was that, if the
5 government didn't give Catalyst the right to sell
6 Spectrum within a period of time, that the only thing
7 that they would be willing to do with any Wind
8 acquisition was build a wholesale leasing business,
9 right?

10 A. That's what it says. I don't
11 really know what that means.

12 110 Q. Well, that's what it says, and
13 that's what you understood at the time, surely?

14 A. I understood the words; I don't
15 understand what that means.

16 111 Q. You had no understanding as part of
17 the Wind team as to what that meant?

18 A. No.

19 112 Q. As someone doing due diligence on
20 this transaction on behalf of Catalyst, you had no idea
21 what that meant?

22 A. No.

23 MR. DiPUCCHIO: And can we mark this as
24 an exhibit.

25 EXHIBIT NO. 1: E-mail chain dated

1 May 6th, 2014, and ending May 7th, 2014

2 BY MR. DiPUCCHIO:

3 113 Q. So in paragraph 18 of your
4 affidavit, where you say:

5 "The only regulatory risk related to
6 Wind of which I was aware was whether or
7 not the federal government would allow a
8 new wireless entrant to sell its
9 Spectrum and/or be purchased by an
10 incumbent, I learned about this
11 regulatory issue through the extensive
12 media coverage it received in both the
13 general and business news."

14 That's not true, is it?

15 A. I don't agree.

16 114 Q. Okay. Well, did you not learn
17 about that issue through internal discussions at
18 Catalyst that you were copied on, as we have just seen?

19 A. No.

20 115 Q. Okay. So you learned about that
21 issue through the news, and then it was the subject of
22 some discussion within Catalyst? Is that fair?

23 A. I think I learned about it through
24 the news in relation to a -- it was not related to
25 Wind.

1 116 Q. It was related to another carrier?

2 A. Yes.

3 117 Q. Okay. But in relation to Wind, is
4 it not fair to say, looking at the e-mail we just
5 looked at, that there were internal discussions at
6 Catalyst that you were copied on that would have made
7 you aware of this issue?

8 A. I was already aware of the issue.

9 118 Q. Okay. When you tell the Court in
10 paragraph 18 that you learned about the regulatory
11 issue through the extensive media coverage, are you not
12 conveying the impression to the Court that that wasn't
13 the subject of any internal discussions that you were
14 involved with?

15 A. It was, but I didn't learn about it
16 in those discussions.

17 119 Q. Okay. But you don't tell the Court
18 that it was the subject of internal discussions that
19 you were a party to?

20 A. Doesn't say that in the affidavit.

21 120 Q. Right. You don't say that, right?

22 A. I do not.

23 121 Q. When you talk in paragraph 19 of
24 this project that you worked on, insofar as it related
25 to meetings with Industry Canada, first of all, you

1 were at those meetings with Industry Canada, right?

2 A. No, I was not.

3 122 Q. Okay. So can you just tell me
4 what -- what your work involved?

5 A. I do not remember clearly --

6 123 Q. All right.

7 A. -- or specifically what it
8 involved, because I was asked to destroy copies of the
9 presentation as soon as I had printed them.

10 124 Q. Okay. And what you say, though, is
11 that it touched on the Canadian telecom landscape,
12 right?

13 A. Yes, I remember that.

14 125 Q. And you have reviewed Mr. Riley's
15 affidavits?

16 A. I have.

17 126 Q. And you know Mr. Riley has sworn in
18 his affidavit that these notes related to Wind?

19 A. My memory, my recollection of that,
20 is different.

21 127 Q. All right. So you do have a
22 recollection?

23 A. I remember it touched on a separate
24 project in the Canadian telecom landscape.

25 128 Q. So we are to take your

1 recollection, not Mr. Riley's, in this regard?

2 A. I'm confident of what I remember.

3 129 Q. So you are confident Mr. Riley is
4 wrong?

5 MR. CENTA: Objection. Don't ask him to
6 comment on the veracity of another witness' evidence.
7 You can ask him what he knows and what he believes.

8 BY MR. DiPUCCHIO:

9 130 Q. Okay. But you disagree with
10 Mr. Riley in this particular instance?

11 A. I do disagree.

12 131 Q. All right. And you can't assist us
13 with what that PowerPoint presentation related to?
14 Specifically?

15 A. I remember it related to
16 Mobilicity. I do not remember the specifics of what
17 was in it.

18 132 Q. Did it relate to regulatory
19 matters?

20 A. I don't remember.

21 133 Q. Could it have related to regulatory
22 matters?

23 A. Probably, if it was to Industry
24 Canada.

25 134 Q. Did it relate to regulatory

1 concessions? Do you have any recollection of that?

2 A. Not at all.

3 135 Q. Not at all, it didn't?

4 A. No, sorry, not at all, I do not
5 recall.

6 136 Q. Recall.

7 A. Yes.

8 137 Q. When you say in paragraph 20 of
9 your affidavit -- I'm just curious about the last
10 sentence -- paragraph 20, where you talk about a
11 conversation that you had with Mr. DeAlba, and you say
12 that it's as a result of that conversation with
13 Mr. DeAlba just before you left Catalyst that you
14 became aware that West Face might be involved in the
15 Wind transaction or in a Wind transaction?

16 A. Based on his statements, yes.

17 138 Q. And you weren't aware of that
18 before that?

19 A. I was not.

20 139 Q. Okay. And then you state:

21 "I have no way of verifying the
22 accuracy of Mr. DeAlba's statement."

23 What do you mean by that?

24 A. I meant that, at the time, I didn't
25 have any way of knowing whether or not that was true.

1 140 Q. Okay. So your affidavit says "I
2 have no way of verifying". Should I read that to be I
3 had no way of verifying?

4 A. I don't know if he knew West Face
5 was involved in Wind at the time. I don't know what he
6 knew.

7 141 Q. That's not what you say. You say:
8 "I have no way of verifying the
9 accuracy of Mr. DeAlba's statements."
10 So what are you saying? Are you
11 intending to say that you have no way of verifying
12 whether West Face was involved in a Wind transaction?

13 A. I am aware now that West Face was
14 involved in them -- is -- or was involved in a Wind
15 transaction.

16 142 Q. When did you become aware of that?

17 A. I became aware with retrospect when
18 Mr. DeAlba told me. The first time I actually became
19 aware was when I received the memo from Supriya Kapoor
20 detailing that a wall had been set up.

21 143 Q. Okay. So prior to -- so I get your
22 evidence on this -- prior to being presented with a
23 memo that indicated that a wall was being set up in
24 relation to Wind over at West Face, you had no
25 knowledge that West Face was potentially involved in a

1 Wind transaction?

2 A. That's correct.

3 144 Q. But I take it, obviously, after you
4 received that memo which set up a confidentiality wall,
5 you must have known that they were involved in some
6 discussions as they related to Wind?

7 A. Yeah, in some way, but I couldn't
8 have known detail.

9 145 Q. All right. Now, you acknowledge,
10 obviously -- and you already have acknowledged in your
11 previous evidence -- that you sent to Mr. Dea four
12 investment memos that you had authored while at
13 Catalyst to West Face?

14 A. Yes.

15 146 Q. And I think there's no dispute even
16 in your evidence this time around that those memos were
17 marked confidential, right?

18 A. Correct.

19 147 Q. And I take it that you've reviewed
20 in preparation for your evidence today Mr. Griffin's
21 testimony?

22 A. I have.

23 148 Q. And you've seen --

24 MR. CENTA: Sorry, Mr. Griffin's
25 affidavit.

1 MR. DiPUCCHIO: Affidavit, yes.

2 THE WITNESS: Sorry, I have not reviewed
3 his testimony.

4 BY MR. DiPUCCHIO:

5 149 Q. Fair enough. I meant his
6 affidavit.

7 And you will have seen in his affidavit
8 the discussion about work you did while at West Face in
9 relation to Arcan?

10 A. Yes, I did see that.

11 150 Q. All right. And I'm not going to
12 take you to Mr. Griffin's affidavit. Let's see if we
13 can agree.

14 You agree that, while you were working
15 for West Face, in the first few days that you started
16 there, that you were sent an analysis of Arcan by
17 Mr. Griffin?

18 A. Yes.

19 151 Q. And sometime subsequent to that,
20 you performed a financial analysis of Arcan?

21 A. I don't remember.

22 152 Q. You have no recollection of that?

23 A. I don't remember if it was
24 subsequent to that or before that.

25 153 Q. Well, my understanding was -- and

1 perhaps I'm wrong -- that Mr. Griffin sent you that
2 memo the very first day you started at West Face.

3 A. At night, at 10:40 at night.

4 154 Q. So the very first thing you may
5 have done while you sat down at your desk at West Face
6 was pump out a financial analysis of Arcan?

7 A. No. I think you need some context
8 here. Arcan announced the transaction in the evening
9 after market close.

10 155 Q. Correct.

11 A. So that was not the first thing I
12 did there.

13 156 Q. I don't -- I'm not understanding.
14 I think we are talking at cross-purposes. You
15 indicated to me you can't be sure when you did your
16 financial analysis of Arcan.

17 A. I am sure it was not before Arcan
18 announced the transaction that the -- to which the
19 analysis relates.

20 157 Q. Okay. So could it have been
21 coincidental with Mr. Griffin sending you his analysis?

22 A. No.

23 158 Q. So was it subsequent to Mr. Griffin
24 sending you an analysis?

25 A. No. Mr. Griffin was leaving that

1 day in the evening. Arcan had announced a transaction.
2 He mentioned generally that Arcan had announced a
3 transaction.

4 159 Q. Yes.

5 A. I started to read up on it.

6 160 Q. Yes.

7 A. And started to do some initial work
8 in case I was asked to do any work on it.

9 161 Q. Okay. And when did you prepare
10 your financial analysis?

11 A. I don't remember exactly, but
12 sometime after the transaction was announced, which was
13 in the evening of that Monday.

14 162 Q. But did you only become aware of
15 the Arcan transaction through Mr. Griffin's e-mail?

16 A. No, I became aware before that when
17 Arcan announced the transaction.

18 163 Q. Okay. So can you assist me with
19 whether your financial analysis was done before or
20 after Mr. Griffin sent his e-mail to you?

21 A. I recall at least starting it
22 before. That's my --

23 164 Q. Before Mr. Griffin?

24 A. Yes.

25 165 Q. And then Mr. Griffin sends you an

1 e-mail. Correct?

2 A. Yes.

3 166 Q. And then you complete your
4 financial analysis?

5 A. I wouldn't call it complete.

6 167 Q. Well, what would you call it?

7 A. I continued to work on it before
8 and after he sent the e-mail.

9 168 Q. Where is it?

10 A. I don't know.

11 169 Q. Have you ever disclosed it?

12 A. I don't have it -- I don't have
13 access to the work I performed at West Face. I do not
14 possess that analysis.

15 170 Q. Okay. In fact, when I asked you to
16 produce copies of the work you had done at West Face,
17 you refused to do that. Do you recall that?

18 A. I don't remember if I refused or if
19 West Face's counsel refused.

20 171 Q. Well, do you remember if your
21 counsel refused?

22 A. I don't.

23 172 Q. And there is no question that -- I
24 assume we don't disagree -- that one of the memos that
25 you sent to Mr. Dea on March 27th related to Arcan?

1 A. Yes.

2 MR. CENTA: Can we go off the record for
3 just a second.

4 MR. DiPUCCHIO: Yes.

5 -- OFF THE RECORD --

6 MR. MILNE-SMITH: Counsel, two points.
7 First is that, of course, we offered to produce through
8 the ISS everything that Brandon produced at West Face,
9 and we have never been -- no one followed up on that
10 request from us. The second point is that I brought
11 with me there the Arcan -- the two documents that
12 Mr. Moyses created in relation to Arcan, and I'm happy
13 to give you a copy.

14 MR. DiPUCCHIO: Well, those are
15 documents I asked for through your witness, right?

16 MR. MILNE-SMITH: Yes. It was a part of
17 our answer to undertaking.

18 MR. DiPUCCHIO: Right. So that's part
19 of your answer to undertaking. Okay. Fine. I will
20 look at those later. Thank you very much, Counsel.

21 But my question related to the position
22 he took in relation to the last motion, and the
23 position he took through his counsel, as I understood
24 it -- you can clarify -- was that you refused to
25 provide copies of the work done.

1 U/T MR. CENTA: We will clarify that and get
2 back to you.

3 MR. DiPUCCHIO: Okay.

4 BY MR. DiPUCCHIO:

5 173 Q. And, Mr. Moyses, you acknowledge in
6 your affidavit sworn in April at paragraph 26 -- if you
7 want to have it in front of you -- that Mr. Singh, who
8 was West Face's general counsel at the time, advised
9 you that West Face was concerned about the Catalyst
10 memos that you had shared with Mr. Dea, right?

11 A. Yes.

12 174 Q. And do you remember when that
13 occurred?

14 A. I don't remember exactly.

15 175 Q. Okay. Was that before you started?

16 A. Yes.

17 176 Q. All right. So before you started
18 at West Face on June 23rd I believe it was, correct?

19 A. Correct.

20 177 Q. Before you started work at West
21 Face on June 23rd, you had a specific discussion with
22 Mr. Singh in which he advised you that West Face was
23 concerned that you had shared the Catalyst memos with
24 Mr. Dea, right?

25 A. Correct.

1 178 Q. And then sometime immediately after
2 you begin working at West Face, you start to do an
3 analysis in relation to one of the very companies that
4 you had done an analysis for while at Catalyst? Fair?

5 A. It involved the same company, yeah.
6 The context was completely different.

7 179 Q. Right. I'm talking about the fact
8 that it involved the same company, right?

9 A. Yes.

10 180 Q. Okay. And what did you do with
11 this analysis?

12 A. Which analysis?

13 181 Q. The Arcan analysis that you
14 performed while at West Face?

15 A. I don't recall doing anything with
16 it.

17 182 Q. Okay. And did anybody see it?

18 A. I don't know.

19 183 Q. All right. Is it possible somebody
20 at West Face saw it?

21 A. I don't know.

22 184 Q. So you see from Mr. Griffin's
23 affidavit that he relates that Mr. Singh subsequently
24 had another conversation with you specifically in
25 relation to the Arcan memo, right?

1 A. Yes.

2 185 Q. When did that conversation occur?

3 A. From my memory, the next day.

4 186 Q. So that would have been on --

5 A. June 24.

6 187 Q. -- June 24th?

7 A. From memory.

8 188 Q. All right. And do you have any
9 understanding as to how Mr. Singh would have known that
10 you had previously done work for Catalyst in relation
11 to Arcan at that time?

12 A. I -- I don't know how he would have
13 known that. He may have seen the memo, but I don't
14 know what he knew.

15 189 Q. Which memo do you think he saw?

16 A. The Catalyst memos I provided to
17 Mr. Dea.

18 190 Q. All right. So did he specifically
19 mention that you had done work for Catalyst in relation
20 to Arcan in this conversation that you had with him on
21 the 24th?

22 A. He asked me if Arcan -- he asked me
23 what I was working on. I had mentioned Arcan. He
24 asked me if that was one of the companies from the
25 Catalyst memos. I said yes.

1 191 Q. And what did Mr. Singh say to you
2 after you told him that that was one of the companies
3 that you had done work for while at Catalyst?

4 A. He told me to stop working on it.

5 192 Q. So Mr. Singh was concerned enough
6 that he immediately told you to stop work on that?

7 A. He told me to stop work on it.

8 193 Q. Was he concerned?

9 A. I don't know what his mental state
10 was.

11 194 Q. Did he say anything beyond stop
12 working on that?

13 A. No.

14 195 Q. So how long was this discussion
15 with Mr. Singh?

16 A. Not more than a few minutes.

17 196 Q. Was it in the hallway?

18 A. It was in an office. I don't know
19 whose, but it was off to the side.

20 197 Q. All right. And do you know what
21 else Mr. Singh may have done after speaking with you?

22 A. He may have gone to Tony Griffin
23 and told him that I can't work on it.

24 198 Q. How did you became aware of that?

25 A. I was never asked to do any more

1 work on it by Tony, so I don't know for sure.

2 199 Q. So you are just assuming that he
3 may have gone to Mr. Griffin?

4 A. I'm assuming that because
5 Mr. Griffin never asked me anything about Arcan after
6 that day.

7 200 Q. Mr. Griffin never had any other
8 conversation with you?

9 A. He did not.

10 201 Q. Okay. So you are not -- you were
11 not told by Mr. Singh that he had spoken to
12 Mr. Griffin?

13 A. No.

14 202 Q. So there was nothing further you
15 heard in relation to this matter after Mr. Singh told
16 you to stop working on any -- any memo that you were
17 preparing in relation to Arcan?

18 A. Not at all.

19 203 Q. And that -- I take it, given that
20 that occurred not 24 hours after you started to work at
21 West Face, that that would have been something that you
22 took note of at the time?

23 A. Yes.

24 204 Q. Right. General counsel, after
25 having sat you down before you started working at West

1 Face, now sits you down again and says don't do work on
2 this specific matter, right?

3 A. Yes.

4 205 Q. Must have been significant, in your
5 mind?

6 A. I remember the meeting, yes.

7 206 Q. Well, if you remember the meeting,
8 why didn't you say anything about it in your previous
9 affidavits?

10 MR. CENTA: Objection. The affidavit is
11 prepared in response to the matters that were put in
12 issue on the prior motion.

13 MR. DiPUCCHIO: Okay.

14 MR. CENTA: And they have been responded
15 to on your cross-examination here arising from
16 Mr. Griffin's affidavit that he filed in response to
17 this motion.

18 BY MR. DiPUCCHIO:

19 207 Q. Okay. Would you agree with me,
20 Mr. Moyle, that you have never made mention of the work
21 you did on Arcan on behalf of West Face, ever?

22 A. I was not asked to do this work at
23 West Face, but I have not mentioned it.

24 208 Q. Ever?

25 A. Ever.

1 209 Q. Including in your affidavit in
2 April of this year?

3 A. I did not mention it.

4 210 Q. Right. And the only reason, we now
5 know, that you did work on a company that you had
6 analyzed while at Catalyst is because it was disclosed
7 by Mr. Griffin in his most recent affidavit?

8 MR. CENTA: Objection.

9 MR. DiPUCCHIO: Okay.

10 MR. CENTA: West Face has offered to
11 provide you with full documentary production through
12 the ISS. Through that process, you would have obtained
13 any relevant documents, including all of Mr. Moyses's
14 documents. There was no attempt to hide anything.

15 BY MR. DiPUCCHIO:

16 211 Q. Okay. Well, not sure about that,
17 Counsel, but would you agree with me, Mr. Moyses, that
18 you never made that offer? You never offered to
19 disclose any of this?

20 MR. CENTA: Objection. Those documents
21 are not under his possession and control as an
22 employee, and West Face was dealing with that.

23 BY MR. DiPUCCHIO:

24 212 Q. We are not talking about documents,
25 Counsel. I'm talking about you never disclosed or

1 offered to disclose the fact that you had done work for
2 West Face on Arcan?

3 A. I did not.

4 213 Q. In fact, Mr. Moyle, when I
5 cross-examined you on July 31st of 2014 and I asked
6 you specifically what you worked at while you were at
7 West Face -- this is an exhibit to your affidavit,
8 Exhibit L.

9 A. Yes.

10 214 Q. Do you agree with me -- can we
11 agree on this: That when I cross-examined you, I gave
12 you the opportunity to tell me what you did while at
13 West Face, right?

14 A. I was not working on Arcan for West
15 Face.

16 215 Q. Okay. Just listen to me. When I
17 cross-examined you, I specifically gave you the
18 opportunity to tell me what you worked at while you
19 were at West Face.

20 MR. CENTA: Objection. Counsel, there
21 is an exchange between counsel where it's agreed that
22 the names of the companies are not going to be
23 described. Right? At question 796, as I see
24 Mr. Mitchell says:

25 "We're getting into territory -- maybe

1 it would be preferable if you could
2 identify or ask Mr. Moyse whether he
3 worked on any specific engagements of
4 concern."

5 And the company names are not used
6 throughout the rest of the balance of the questions and
7 answers.

8 MR. DiPUCCHIO: No, I understand, but
9 before that, Counsel. You have indicated what comes
10 at 796.

11 At 794, I asked you specifically what
12 did you work on while were you at West Face, right?

13 A. Yes.

14 216 Q. And your answer to that was "not
15 much", right?

16 A. That's right.

17 217 Q. You didn't tell me about Arcan.

18 A. I was not working on Arcan. I was
19 researching the transaction question in case I was
20 asked to work on it.

21 218 Q. So you don't consider that work?

22 A. I consider that part of the --
23 doing a lot of research on my own.

24 219 Q. And were you paid while you were at
25 West Face?

1 A. Yes.

2 220 Q. All right. But you don't consider
3 that work you did for West Face? Is that the
4 distinction you are drawing?

5 A. I was preparing in case I was asked
6 to work on it.

7 221 Q. Just let me ask it to you again so
8 we have it for the record.

9 Is the distinction you are drawing for
10 the Court that while you were at West Face the work you
11 did on Arcan was not work for West Face? Is that what
12 you are saying?

13 A. I was paid during my time at West
14 Face.

15 222 Q. That's not what I asked you. I
16 said is the distinction you are drawing for the Court
17 now that the work you did on Arcan while you were
18 employed at West Face was not work for West Face? Is
19 that what you want to tell the Court? Yes or no,
20 Mr. Moyse?

21 A. No.

22 223 Q. Okay. So it is work for West Face?

23 A. It was in preparation if I needed
24 to do work for West Face on it.

25 224 Q. Okay. And, notwithstanding that,

1 when I asked you what work you did while you were at
2 West Face, you didn't tell me about Arcan; you said
3 "not much".

4 A. Because it wasn't very much. It
5 was a few hours of time.

6 225 Q. But you didn't tell me about Arcan.
7 The significant issue that had arisen the very first
8 day that you worked at West Face. You didn't tell me
9 about it. Right?

10 A. No.

11 226 Q. Did you become aware that West Face
12 took a position in Arcan?

13 A. I don't remember. I became aware
14 as a result of Mr. Griffin's transaction -- or
15 Mr. Griffin's affidavit.

16 227 Q. That's the first time you became
17 aware that West Face took a position in Arcan?

18 A. I don't remember.

19 228 Q. Mr. Moyse, come on. Are you
20 telling me that you don't know the positions that West
21 Face took while you were employed there?

22 A. No.

23 229 Q. So you were never privy to any kind
24 of disclosure while at West Face as to investments they
25 made while you were employed there?

1 A. No. Some, but not all. I couldn't
2 have known if they had made one.

3 230 Q. Some, but not all?

4 A. Yes.

5 231 Q. Not this one?

6 A. I don't remember.

7 232 Q. We can close up Exhibit L,
8 Mr. Moyse.

9 When I cross-examined you back in July,
10 do you remember acknowledging to me, Mr. Moyse, that
11 you had deleted files from your computer in March,
12 April, and May?

13 A. Yes.

14 233 Q. And do you remember you
15 acknowledged to me in the course of that examination
16 that the only way to determine what you may have
17 deleted was to have someone examine your computer?

18 A. Yes.

19 234 Q. And you knew, I take it, when I was
20 cross-examining you on July 31st, the purpose for
21 which Catalyst was seeking an ISS?

22 A. I thought I had an understanding of
23 it, yeah.

24 235 Q. Right. And when I was
25 cross-examining you, I take it you and I can agree that

1 you didn't tell me that you had deleted certain things
2 from your computer in June?

3 A. I don't know what I deleted in
4 June. Did I delete?

5 236 Q. Well, don't you understand that you
6 have said in your affidavit that you deleted certain
7 things from your computer in June?

8 A. Yes.

9 237 Q. All right. So I take it that we
10 can agree that, while you told me in your
11 cross-examination that you had deleted certain things
12 from your computer in April -- March, April, and May,
13 you never told me that you deleted anything from your
14 computer in June?

15 A. Sorry, where do I say I deleted
16 things in June?

17 238 Q. You don't. You mean in your
18 affidavit now?

19 A. I thought you just told me I said
20 that.

21 239 Q. Well, don't you understand that you
22 have sworn an affidavit that says you deleted your --
23 at minimum, your browsing history?

24 A. Yes, I agree with that, yes, yes.

25 240 Q. Okay. So you deleted certain

1 things from your computer in June?

2 A. Yes.

3 MR. CENTA: Just --

4 MR. DiPUCCHIO: Does it say July? I
5 apologize.

6 MR. CENTA: Yes. I think that may be
7 the confusion.

8 BY MR. DiPUCCHIO:

9 241 Q. Okay. I apologize. That's my
10 mistake. I apologize, Mr. Moyse. In July?

11 A. Yes.

12 242 Q. In mid-July or whenever it was,
13 right?

14 A. Yes.

15 243 Q. Okay. So all my questions still
16 stand. Do you acknowledge that you never told me in
17 the cross-examination that you have deleted things from
18 your computer in July?

19 A. Nothing I deleted from my computer
20 I believe was relevant.

21 244 Q. I understand the argument you are
22 making, but can you and I acknowledge that nothing you
23 told me indicated that you had deleted anything from
24 your computer in July?

25 A. Correct.

1 245 Q. Right? Because the position you
2 were taking back then was, even the things you admitted
3 to me that you deleted in March, April, and May, you
4 were taking the position those weren't relevant either.
5 Do you remember?

6 A. I don't remember if that's the
7 position I took.

8 246 Q. Okay. But you say you didn't tell
9 me anything about what you had deleted in July because
10 your position was it wasn't relevant?

11 A. Correct.

12 247 Q. And you were told that an
13 undertaking had been given on your behalf to preserve
14 relevant documents, right?

15 A. Yes.

16 248 Q. You understood that your counsel
17 had given that undertaking?

18 A. Yes.

19 249 Q. And in your affidavit, you make a
20 big deal about the fact that that related to relevant
21 documents, right?

22 A. Yes.

23 250 Q. And how did you have a concept of
24 what was relevant?

25 A. I read the order closely, and it

1 was very clear to me what would be relevant.

2 251 Q. Okay. How? How did you determine
3 that?

4 A. I know what -- what's personal and
5 what's not.

6 252 Q. All right. So you made a
7 determination legally what was relevant in the
8 proceeding?

9 A. I made a determination because it
10 was very clear to me.

11 253 Q. Okay. But you are not listening to
12 me. You made a determination as to what was legally
13 relevant in this proceeding?

14 A. Yes.

15 254 Q. Okay. Did you understand from the
16 allegations that had been made up to that point in time
17 that your use of Dropbox was something that was
18 relevant?

19 A. Yes.

20 255 Q. All right. And that's, what,
21 something that you do through -- online -- is it online
22 access?

23 A. There's an app. There's an
24 online -- there's a way to access it online. I don't
25 remember how I access my Dropbox.

1 256 Q. Do you go through the Internet?

2 A. Maybe. There's also apps for it.

3 257 Q. Maybe? Have you not used Dropbox
4 for many, many years?

5 A. There's an app, so I don't know if
6 I used the app or if I used the Internet.

7 258 Q. All right. But have you used the
8 Internet to access Dropbox from time to time?

9 A. From time to time.

10 259 Q. Right. Would that appear in your
11 browsing history?

12 A. I don't know.

13 260 Q. Is it possible it would have?

14 A. Possible.

15 261 Q. Right. And when you did your
16 Internet searches that you described in regards to what
17 it would take to delete your browsing history, right?

18 A. Yes.

19 262 Q. Those searches that you performed
20 in order to get that information would have been
21 retained in your browsing history, right?

22 A. I don't know for sure.

23 263 Q. Well, if you Google search
24 something, right? Which is likely what you did,
25 correct?

1 A. It might be, yeah.

2 264 Q. Well, do you remember?

3 A. I don't know.

4 265 Q. All right. You don't know?

5 A. I don't know what searches -- what
6 individual searches would have been retained.

7 266 Q. Well, tell me the searches you did.

8 A. I don't remember the exact
9 searches.

10 267 Q. How did you get this information?

11 A. I started searching on Google for
12 ways to delete your Internet browsing history.

13 268 Q. Oh, so it was Google?

14 A. Yeah, but I don't know if those
15 searches would have been retained. I don't know how
16 the retention works.

17 269 Q. I'm not asking about retention
18 right now; I'm asking you what searches you did. Tell
19 me, what did you type in Google?

20 A. I don't remember exactly. Whatever
21 related to deleting your Internet browser history.

22 270 Q. All right. So one of the searches
23 you would have typed is how to delete your browsing
24 history?

25 A. Correct.

1 271 Q. Right? So if you had typed in "How
2 to delete files", that would have been, presumably, a
3 Google search as well?

4 A. I didn't type that.

5 272 Q. Right. But would that have been a
6 Google search? You would have likely used Google for
7 that?

8 A. If I had searched for that.

9 273 Q. Right. And you say you didn't type
10 that?

11 A. Right.

12 274 Q. But we will never know that,
13 because you deleted your browsing history, right?

14 MR. CENTA: Objection. That contains in
15 it the very thing he wouldn't agree with, because he
16 doesn't know if typing things into Google search engine
17 would have been saved in the browsing history.

18 BY MR. DiPUCCHIO:

19 275 Q. Okay. So what about what would
20 have happened once you type things into Google? So,
21 for example, you type in "How to delete a browsing
22 history", right?

23 A. Yes.

24 276 Q. Does that take you to a website?

25 A. It takes me to a page of hits,

1 search hits.

2 277 Q. And then what do you do with search
3 hits? Does the search hits give you any information?

4 A. Sometimes there's information.

5 278 Q. Right in the search hits?

6 A. Sometimes there's a brief summary,
7 yeah.

8 279 Q. Okay. Did you access websites?

9 A. Probably did, but I do not remember
10 what I accessed.

11 280 Q. Okay. Well, how did you figure out
12 how to do things?

13 A. I search for it and I read -- I
14 would have read what was available to me.

15 281 Q. Likely on websites?

16 A. Likely.

17 282 Q. Okay. And the history of the
18 websites that you visited that day or those days, do
19 you have any understanding of whether those would have
20 been retained through your browsing history?

21 A. They probably would have been.

22 283 Q. Right. And all of those have been
23 deleted by you?

24 A. I don't know.

25 284 Q. You don't know?

1 A. I don't know. I don't know if they
2 have been deleted.

3 285 Q. Do you think they still exist?

4 A. I don't know.

5 286 Q. Did you use software to try to
6 delete them?

7 A. I tried to delete them, yes.

8 287 Q. Okay. So you made an attempt to
9 delete those?

10 A. Yes.

11 288 Q. And if your attempt was successful,
12 as we think it was, we now don't have any history?

13 A. No.

14 289 Q. Right. So what you may have been
15 doing over the course of -- and what was it, one day,
16 multiple days? How many times did you do these
17 searches?

18 A. I don't remember.

19 290 Q. Okay. So whatever you may have
20 been doing over the course of however many days you
21 were doing it now that you can't recall, we will never
22 know. Right?

23 A. I don't know. I don't know if you
24 can find my browser history.

25 291 Q. Okay. But let's assume for the

1 moment that, whatever you did, you were successful at
2 doing.

3 A. Okay.

4 292 Q. All right? Which was your goal,
5 right?

6 A. It was my goal to delete my
7 Internet browsing history.

8 293 Q. Your goal was to be successful in
9 deleting your browsing history, right?

10 A. Yes.

11 294 Q. So you say. So if you were
12 successful, then you will agree with me we have no way
13 now of verifying what it was you were doing over the
14 course of the day or multiple days that you were doing
15 this research, right?

16 A. Right.

17 295 Q. And also, if I'm correct that your
18 Dropbox, your history of accessing Dropbox, was
19 retained in your browsing history, you would also have
20 been successful in deleting that, right?

21 A. I don't know what the browser
22 history shows when you access Dropbox.

23 296 Q. Okay. And we will never know that
24 now, will we?

25 A. I access my Dropbox through a

1 variety of other means.

2 297 Q. Okay. But we will never know that
3 now, will we?

4 A. I thought -- no, we will not know
5 what I accessed through my browser.

6 298 Q. Because what you deleted when you
7 deleted your browsing history wasn't selective, was it?

8 A. No.

9 299 Q. You deleted your entire browsing
10 history. Or you attempted to delete your entire
11 browsing history, right?

12 A. Yes.

13 300 Q. And you made the determination on
14 your own, Mr. Moyse, that your browsing history was
15 irrelevant to this proceeding?

16 A. It was clear to me that my personal
17 Internet browsing history was not relevant.

18 301 Q. Well, it may have been clear to
19 you, but you made that determination yourself, right?

20 A. Yes.

21 302 Q. You certainly didn't tell your
22 counsel you were going to do it?

23 A. I did not.

24 303 Q. Right. And you didn't tell us,
25 that's for sure.

1 A. No.

2 304 Q. Just let me review the events of
3 April -- sorry, July 16th with you, because that was
4 the date upon which the order was made by Justice
5 Firestone, right?

6 A. Right.

7 305 Q. And certainly you recall being
8 there that morning, right, Mr. Moyse?

9 A. I was there.

10 306 Q. Okay. And you were there with your
11 counsel, right?

12 A. Yes.

13 307 Q. And do you remember that court
14 started at 10 a.m. that day?

15 A. Sounds right.

16 308 Q. And there were some submissions
17 initially, and then Justice Firestone took a break to
18 read some materials. Do you remember that?

19 A. I do.

20 309 Q. Okay. And do you remember that,
21 after Mr. Justice Firestone took a break to review some
22 materials, he returned. Do you remember that?

23 A. I do.

24 310 Q. And then there was another break
25 while there were dates being discussed for the

1 interlocutory motion. Do you recall all of that?

2 A. There were a lot of breaks.

3 311 Q. Okay. And around 11:30 or so, do
4 you remember the parties meeting in the hallway to
5 discuss the terms of the interim -- the terms upon
6 which the interim motion could be resolved on consent?
7 Do you remember that?

8 A. I don't remember the time, but --

9 312 Q. You remember discussions in the
10 hallway?

11 A. Yes.

12 313 Q. And all of those discussions
13 ultimately led to the interim order that was made by
14 Justice Firestone, right?

15 A. Yes.

16 314 Q. And that all took place, I take it
17 you will agree with me, between 10 a.m. and 1 p.m. on
18 July 16th?

19 A. Sure.

20 315 Q. And before the motion commenced, or
21 before ten o'clock on July 16th, you knew what the
22 motion was all about, right?

23 A. Yes.

24 316 Q. So you knew that Catalyst was
25 looking to have the Court order that a forensic image

1 be made of your personal devices?

2 A. Yes.

3 317 Q. Including your computer?

4 A. Yes.

5 318 Q. And you knew as a result of that
6 that one of the potential outcomes of the motion would
7 be that a forensic image would be taken of your
8 devices, right?

9 A. Yes.

10 319 Q. And you also knew that the
11 relief -- part of the relief that Catalyst was seeking
12 on its motion was for the appointment of an ISS?

13 A. Yes.

14 320 Q. And what you understood from that,
15 I take it, that -- was that that meant that someone
16 independent could possibly review this forensic image
17 that was being taken from your computer?

18 A. I knew that somebody would review
19 it. I wasn't sure of the process or protocol.

20 321 Q. Okay. You never had any
21 understanding of what an ISS was?

22 A. No.

23 322 Q. That's not something you discussed
24 with your counsel?

25 A. No.

1 323 Q. Okay. And you say in your
2 affidavit in April of this year -- I'll take you to the
3 portion of it -- that you were aware -- this is
4 paragraph 37 -- you were aware for a number of days
5 before the court appearance on July 16th that it was
6 possible that your personal computer would have to be
7 turned over to be reviewed for documents relevant to
8 this matter, right?

9 A. Yes.

10 324 Q. So that was something you knew well
11 before we appeared in court on July 16th, right?

12 A. Yes.

13 325 Q. And I take it the fact that you
14 were aware of this a number of days prior to the Court
15 appearance led to the concern you had which you
16 subsequently describe: That personal information might
17 be captured in this process?

18 A. Yes.

19 326 Q. And, sir, would you agree with me
20 that, notwithstanding this concern that was in the back
21 of your mind for a number of days prior to July 16th
22 leading up to our appearance before Justice Firestone,
23 you never articulated that concern to anybody?

24 A. I did not.

25 327 Q. Nor did you articulate to anybody

1 in the days leading up to July 16th or, indeed, on the
2 morning of July 16th while we were all there in court
3 before Justice Firestone, that you had purchased
4 software two times that would deal with this concern
5 that you allegedly had?

6 A. I did not, because didn't think
7 that my personal Internet browsing history was in any
8 way relevant.

9 328 Q. Okay. But you were concerned about
10 it, right?

11 A. Yes.

12 329 Q. All right. Despite the fact that
13 you say you were concerned about it to the point where
14 you actually purchased two pieces of software to deal
15 with it, you never articulated that concern to anybody?

16 A. I did not.

17 330 Q. You didn't even articulate it to
18 your own counsel, right?

19 A. I did not.

20 331 Q. You didn't articulate it to us
21 while we were having discussions with respect to the
22 order, right?

23 A. I did not.

24 332 Q. And you certainly didn't articulate
25 it to the Court?

1 A. I did not.

2 333 Q. And one of the pieces of software
3 that you purchased, the Advanced System Optimizer, you
4 purchased the very morning that we appeared in court,
5 right?

6 A. Yes.

7 334 Q. And you say that that piece of
8 software you were purchasing because you wanted to
9 improve the performance of your computer?

10 A. Yes.

11 335 Q. And it was entirely coincidental
12 that you purchased that piece of software the very
13 morning we appeared in court where we were discussing a
14 potential order to have your computer forensically
15 imaged. Is that what you're telling the Court?

16 A. I don't know if you want to call it
17 a coincidence.

18 336 Q. What do you mean you don't know
19 whether I want to call it coincidence? Is it a
20 coincidence?

21 A. In the sense that two separate
22 things happened, yes.

23 337 Q. Was it the only reason you
24 purchased that software, to optimize your system?

25 A. Yes.

1 338 Q. And that was just purely
2 coincidental that the day you are appearing in court on
3 this very matter where you were concerned that a
4 forensic image might be taken of your computer that the
5 only thing you were thinking about that morning was
6 that you had to buy software to optimize the
7 performance of your computer?

8 A. I don't know if that's the only
9 thing I was thinking that morning.

10 339 Q. But it was so important to you to
11 optimize the performance of your computer on the
12 morning that you were appearing in court that you had
13 to actually go out and buy software for that purpose?

14 A. It was easy to buy the software.

15 340 Q. Is that -- is that something you do
16 on the morning that you appear in court?

17 A. I don't know. I don't know. I
18 don't regularly appear in court.

19 341 Q. Well, that's my point. I would
20 have taken as a fact that someone who doesn't regularly
21 appear in court would have been more concerned about
22 what was happening in court that day than about
23 purchasing tools to optimize his computer performance.

24 A. I don't know.

25 342 Q. So that's all coincidental is what

1 you are saying to the Court in this?

2 MR. CENTA: Counsel, he has given you
3 his answer on that.

4 BY MR. DiPUCCHIO:

5 343 Q. Okay. What was it that you were
6 concerned about, your computer was running slowly?

7 A. It was.

8 344 Q. All right. Well, what were you
9 concerned about from a performance perspective?

10 A. It was running slowly.

11 345 Q. All right. And that's why you
12 purchased this software?

13 A. Yes.

14 346 Q. Okay. And when it was -- since you
15 were so concerned about the performance of your
16 computer on the morning of July 16th, so concerned that
17 you purchased this software the day you're appearing in
18 court, why didn't you optimize your performance of your
19 system?

20 A. Sorry, I don't know what you mean.

21 347 Q. Why didn't you subsequently
22 optimize the performance of your system on July 16th?

23 A. I bought the program.

24 348 Q. Okay. But it was so important for
25 you to buy this program the very morning you're

1 appearing in court. Why didn't you optimize the
2 performance of your system on July 16th?

3 A. I didn't have time.

4 349 Q. You didn't have time?

5 A. Before I went to court.

6 350 Q. No, but at any point on July 16th?

7 A. I don't know.

8 351 Q. Did you ever optimize your system?

9 A. Yes.

10 352 Q. When?

11 A. I don't remember for sure.

12 353 Q. Well, when? Was it before you
13 turned your computer over to your counsel?

14 A. I don't remember.

15 354 Q. You have no memory of that?

16 A. I know that I used the tool several
17 times, so I can't remember when, specifically.

18 355 Q. You can't assist the Court with
19 whether that happened during that five-day window?

20 A. I don't remember.

21 356 Q. And this order -- well, first of
22 all, at paragraph 40, you say:

23 "I was also concerned that the
24 irrelevant information on the images
25 would somehow become part of the public

1 record through this litigation. At that
2 point, it was not clear to me what would
3 happen to the images."

4 Right?

5 A. Yes.

6 357 Q. Do you see that?

7 A. Yes.

8 358 Q. You're saying that it wasn't clear
9 to you what would happen to the images notwithstanding
10 that you understood that the process that was being
11 proposed was an ISS process?

12 A. I -- sorry, can you repeat the
13 question.

14 359 Q. Yes. You are saying in your
15 affidavit that it was not clear to you what would
16 happen to the images, which would include irrelevant
17 personal information, right?

18 A. Yes.

19 360 Q. Notwithstanding that you knew at
20 the time that what was being proposed was an ISS?

21 A. I knew the word "ISS". I didn't
22 know what any of that would entail.

23 361 Q. And you are saying you never had
24 any conversations with your counsel that would have
25 assisted you in your understanding?

1 A. I tried to, but they didn't --
2 weren't able to provide me with any answers.

3 362 Q. Okay.

4 MR. CENTA: Counsel, please go off the
5 record for a second.

6 MR. DiPUCCHIO: Yes.

7 -- OFF THE RECORD --

8 BY MR. DiPUCCHIO:

9 363 Q. So you understood, Mr. Moyses, I
10 take it, that the simple taking of the forensic image
11 didn't mean that Catalyst had access to the forensic
12 image?

13 A. I wasn't sure how or who would take
14 the image.

15 364 Q. Okay. Well, you read Mr. --

16 A. Sorry.

17 365 Q. Go ahead.

18 A. Somebody had taken the image; I
19 wasn't sure what would happen to it afterwards.

20 366 Q. All right. And I think you just
21 told me that you tried to seek information from your
22 counsel relevant to the question of the ISS, right, or
23 the process that would be followed, if you want to put
24 it more broadly?

25 A. Yes, yes.

1 367 Q. And you didn't get that
2 information?

3 A. They were not sure how the process
4 would unfold.

5 MR. DiPUCCHIO: Okay. So because I
6 think, in fairness, the affidavit has put your client's
7 state of mind in issue, Counsel, during this period of
8 time, I am going to ask for the communications between
9 Mr. Moyses and his counsel -- looking for a time frame
10 that we can limit this to, but certainly before the
11 date that he actually brought his computer in for the
12 purpose of forensic imaging relevant to this question
13 of the relief that was being sought on the motion.

14 U/A MR. CENTA: I don't think my client has
15 put his state of mind in issue in a way that he's
16 relying on the legal advice that he received. We will
17 take it under advisement.

18 MR. DiPUCCHIO: Okay. I will wait for
19 your position on it.

20 MR. CENTA: Yes.

21 MR. DiPUCCHIO: My position on it is
22 that obviously he has said in his affidavit that he was
23 concerned about certain things or wasn't aware of
24 certain things, so to the point -- to the extent he
25 says that in his affidavit, I'm saying he put his state

1 of mind in issue.

2 BY MR. DiPUCCHIO:

3 368 Q. And, Mr. Moyse, you've read, as you
4 say, Mr. Justice Firestone's order very carefully,
5 right?

6 A. I did.

7 369 Q. So you understood that that order
8 required you to turn over your personal devices to your
9 counsel?

10 A. Yes.

11 370 Q. And you understood, I take it, from
12 the very terms of that order that your counsel was to
13 hold the forensic image in trust?

14 A. Yes.

15 371 Q. Sorry, I'm just looking here.

16 A. I don't know if it's in trust.

17 372 Q. Sorry. Just going to look at it
18 here. Yes. Do you see paragraph 7 of the order,
19 page 109 of the record?

20 A. Yes.

21 373 Q. Right?

22 A. I do.

23 374 Q. Okay. So they were to hold that
24 forensic image in trust, right?

25 A. Yes.

1 375 Q. Your own counsel?

2 A. Yes.

3 376 Q. So you understood, I take it, that
4 that forensic image, by the terms of Mr. Justice
5 Firestone's order, was not going to be provided to
6 Catalyst at that time?

7 A. Not at that time.

8 377 Q. Right. It was to be held in trust
9 by your counsel, right?

10 A. Yes.

11 378 Q. And whatever happened to it would
12 be the subject of some future order, potentially,
13 right?

14 A. Yes.

15 379 Q. And whatever concerns you may have
16 had with respect to personal information could have
17 been dealt with in some future order?

18 A. I don't know.

19 380 Q. You don't know that?

20 A. I -- I don't know.

21 381 Q. Okay. And you never bothered to
22 ask your counsel that question?

23 A. I did not.

24 382 Q. And what you did instead,
25 Mr. Moyse, was you made a unilateral decision not to

1 turn over your devices to your counsel?

2 A. I recall turning my devices over to
3 my counsel.

4 383 Q. When did you turn the devices over
5 to your counsel?

6 A. I don't remember the exact date.
7 It was several days later.

8 384 Q. Okay. Did your counsel ever
9 actually have your device in their possession without
10 your being there?

11 A. Yes.

12 385 Q. When did that happen?

13 A. When I turned it over.

14 386 Q. What happened once you turned it
15 over?

16 A. Turned it over, I left it with
17 them.

18 387 Q. Yes.

19 A. I believe they were having an image
20 taken. And then I came back.

21 388 Q. Okay. And was that all the same
22 day?

23 A. I think so.

24 389 Q. So you went to their office. I
25 want to understand how this happened. You went to

1 their office, right?

2 A. Yes.

3 390 Q. And that was five days after the
4 order was made?

5 A. I -- yes, yes.

6 391 Q. Okay. So you waited five days?

7 A. I don't remember the circumstances
8 of the five days.

9 392 Q. But you waited five days?

10 A. They took the image five days
11 later.

12 393 Q. Okay. Did you ever turn the device
13 over to your counsel prior to that visit to your
14 counsel's office?

15 A. I don't remember. I don't think
16 so.

17 394 Q. All right. And when you went to
18 their office, what happened? You visit their office at
19 what time?

20 A. It was in the morning.

21 395 Q. Okay. And there's an expert there?

22 A. Yes.

23 396 Q. Okay. And then you give the device
24 to the expert?

25 A. I just left it there.

1 397 Q. And the expert did whatever the
2 expert was doing with it?

3 A. I don't know what he did, but he
4 did.

5 398 Q. How long did that take?

6 A. Several hours, from what I
7 remember.

8 399 Q. And in the meantime, you did what?

9 A. I don't remember. I wasn't there.

10 400 Q. Okay. Then you come back?

11 A. I came back.

12 401 Q. And took your computer?

13 A. Yes.

14 402 Q. So other than that period of time
15 during which your device was being imaged --

16 A. I'm sorry, when we say "computer",
17 I mean my phone and my iPad.

18 403 Q. Your personal devices?

19 A. Yes.

20 404 Q. So other than that period of time
21 where your devices were being imaged by the expert,
22 right, you never actually turned your device over to
23 your counsel?

24 A. I turned it over that morning.

25 405 Q. Right. Only during the period of

1 time that it was being imaged, right?

2 A. Yes.

3 406 Q. Okay. And prior to having the
4 image taken on the morning of July -- whatever it
5 was -- 21st, I guess, you never told your counsel or
6 the expert who was taking the forensic image of your
7 device that you had altered your personal device? Just
8 answer the question. Did you ever tell your counsel --

9 A. I did not tell them -- I did not
10 tell them that I deleted my personal Internet browsing
11 history.

12 407 Q. And if it was an innocent act,
13 Mr. Moyle, why wouldn't you have told them?

14 A. Because it didn't occur to me
15 that -- I did not believe at all that that was relevant
16 in any way to this litigation.

17 408 Q. Right. So why wouldn't you have
18 had an open discussion with your counsel and the expert
19 to say, just so you know, I've altered this device by
20 taking off materials that weren't relevant, in my
21 opinion?

22 MR. CENTA: Objection. You have asked
23 the question about what he said. I don't think you can
24 ask him why he didn't tell his lawyer something.

25 MR. DiPUCCHIO: I can't ask him why he

1 would have taken a certain action or not taken --

2 MR. CENTA: You are asking for a
3 privileged answer.

4 MR. DiPUCCHIO: Oh, okay, sorry. You
5 are claiming privilege over this part of it?

6 MR. CENTA: Yes.

7 MR. DiPUCCHIO: Okay. Well, again, I'm
8 going to extend my questions to this area, as you
9 know --

10 MR. CENTA: I understand.

11 MR. DiPUCCHIO: -- and I understand you
12 are taking it under advisement.

13 U/A MR. CENTA: Yes.

14 BY MR. DiPUCCHIO:

15 409 Q. And, Mr. Moyse, when you swore an
16 affidavit of documents, do you recall swearing an
17 affidavit of documents that listed out the documents
18 that were on your personal device?

19 A. Yes.

20 410 Q. That affidavit was sworn the day
21 after you took your personal devices to your counsel
22 for the purposes of the taking of the forensic image,
23 right?

24 A. Yes.

25 411 Q. And nobody, I take it, had a list

1 of what existed on your computer prior to July 22nd?

2 A. No.

3 412 Q. Now, you say in your affidavit that
4 what you deleted was your browsing history only, and
5 specifically, you say that the concern at that time was
6 that there was some embarrassing information in that
7 browsing history; is that fair?

8 A. Personally embarrassing, yes.

9 413 Q. And what is the embarrassing
10 information? It wasn't clear to me what it was.

11 A. It would have been certain of the
12 activities I use my browser for, such as adult
13 entertainment websites.

14 414 Q. Is that the embarrassing part of
15 it?

16 A. It's personally embarrassing, yes.

17 415 Q. Is the gambling website the part --
18 embarrassing as well?

19 A. No, not so embarrassing.

20 416 Q. Well, because it was mentioned in
21 your affidavit.

22 A. It was mentioned as one of the
23 uses, but I say that the adult entertainment websites
24 were personally embarrassing.

25 417 Q. Okay. And is that what motivated

1 you to delete your browsing history, the adult
2 entertainment websites?

3 A. Yes.

4 418 Q. Which ones were you visiting?

5 A. I don't know.

6 419 Q. You don't remember?

7 A. Certain websites.

8 420 Q. Which ones?

9 A. Do you want a listing?

10 421 Q. Yes. Give me one, two, three.

11 A. Red Tube.

12 422 Q. Red Tube?

13 A. Sure.

14 423 Q. Anything else? You're thinking
15 long and hard about this.

16 A. Well, it is personally embarrassing
17 still.

18 424 Q. Right. But you can't tell me off
19 the top of your head?

20 A. XTube would be another.

21 425 Q. Okay. Anything else?

22 A. There are several. I can't
23 remember exactly what I visit. There's not a --

24 426 Q. All right.

25 A. -- list.

1 427 Q. And it's this reference to Red Tube
2 and XTube in your browsing history that was so
3 embarrassing to you that you felt you had to delete
4 those prior to giving your device over to your counsel?

5 A. I'm telling you, I can't remember
6 exactly what I visited.

7 428 Q. Okay. Is there anything that was
8 embarrassing?

9 A. No.

10 429 Q. Only your visit to those websites
11 and whatever other websites?

12 A. Yes.

13 430 Q. Was any of it illegal?

14 A. No.

15 431 Q. And you say in your affidavit that,
16 prior to your actually deleting what you say you
17 deleted, you had done some researching. We have
18 discussed some of that, right?

19 A. Yes.

20 432 Q. And do you remember the date on
21 which you actually did the deletions? Was it just
22 before you delivered your computer?

23 A. I don't remember for sure. I'd
24 have to double-check, but I don't remember for sure.

25 433 Q. And the web searches you say you

1 did, you actually -- you must have done some, what,
2 fairly comprehensive research on how to delete your web
3 browsing history?

4 A. I don't remember how comprehensive
5 it was.

6 434 Q. All right. And whatever web
7 research you did pointed you to deleting your registry?

8 A. It pointed me towards using a
9 registry cleaner.

10 435 Q. Okay. So tell me what it is you
11 learned through your research.

12 A. I learned that it was my belief
13 that simply clearing your Internet browsing history
14 through the browsing tool is not sufficient, and one
15 should clear the history and then run a registry
16 cleaner.

17 436 Q. So you could have, I take it, used
18 the tool that was built within your browser to clear
19 your browsing history? That was an option available?

20 A. But I don't know if that was
21 sufficient for permanent deletion.

22 437 Q. No, I'm saying to you you were
23 aware that there was a tool within your browser itself
24 that allowed you to delete browsing history, right?

25 A. Yes.

1 438 Q. Okay. And what you were trying to
2 do was find out whether use of that tool would have
3 been sufficient to hide your browsing history from the
4 expert that was going to be taking the forensic image?

5 A. Correct.

6 439 Q. Okay. So as a result of the
7 concern about whether that could withstand a forensic
8 examination, you then went ahead and did some further
9 Internet research?

10 A. Sorry, whether what could withstand
11 a forensic investigation?

12 440 Q. Simply using the built-in tool?

13 A. I was searching for a way to make
14 sure that my Internet browsing history was deleted.

15 441 Q. Right. And I guess I'm just trying
16 to understand how this all happened.

17 A. Okay.

18 442 Q. You knew at the time that you could
19 delete your browsing history through a built-in tool in
20 your browser?

21 A. Yes.

22 443 Q. But I take it you had a concern at
23 the time that simply using that tool would not have
24 been sufficient to hide that from whomever was taking
25 the forensic image of your drive?

1 A. I was curious whether or not it
2 would be sufficient.

3 444 Q. Okay. So you were curious whether
4 that would be sufficient?

5 A. Yes.

6 445 Q. Did you actually delete your
7 browsing history before you did the research?

8 A. Sorry, what do you mean before I --

9 446 Q. Did you delete your browser history
10 and then determine, well, I wonder if that is going to
11 be enough; I'd better figure that out?

12 A. I didn't determine whether or not
13 it would be enough.

14 447 Q. Okay.

15 A. I don't know how one goes about
16 recovering browser history.

17 448 Q. All right. But bear with me while
18 I try to work through this, okay?

19 A. Okay.

20 449 Q. Did you delete your browser history
21 and then figure out is that enough or did you go ahead
22 and do this research before you took any steps
23 whatsoever?

24 A. No, I did -- I went ahead and did
25 the research.

1 450 Q. Before you took any steps?

2 A. Yes.

3 451 Q. Okay. So before you did the
4 research, your browser history was still there, intact?

5 A. I don't know.

6 452 Q. You didn't delete it? You didn't
7 take any steps to delete it?

8 A. I didn't delete it as a means to
9 testing this, no.

10 453 Q. Okay. So then you do this
11 research. Tell me what you find in the research.

12 A. I can't remember exactly, but
13 whatever it was pointed me in the direction of using
14 the registry cleaner.

15 454 Q. Okay. Then there must have been
16 further research you did with respect to which registry
17 cleaner you should buy.

18 A. Yes.

19 455 Q. All right. And do you remember
20 that at all?

21 A. No.

22 456 Q. Okay. And how did you come to
23 decide on the registry cleaner that you did buy?

24 A. I don't remember.

25 457 Q. Okay. And we know through the

1 report of the ISS that you ultimately purchased a
2 registry cleaner?

3 A. Yes.

4 458 Q. And that happened on July 12th?

5 A. Yes.

6 459 Q. And notwithstanding that you had
7 purchased a registry cleaner on July 12th, you didn't
8 go ahead and use it on July 12th, did you?

9 A. I don't remember. If they are
10 saying I didn't, then I didn't, but I don't remember.

11 460 Q. You don't remember?

12 A. No.

13 461 Q. You don't remember having used the
14 registry cleaner prior to appearing in court on
15 the 16th, do you?

16 A. I don't remember, no.

17 462 Q. And after you bought this registry
18 cleaner -- I think we have already covered this, but
19 you certainly didn't inform anybody that you had bought
20 a registry cleaner?

21 A. No.

22 463 Q. Is it possible that you didn't use
23 the registry cleaner on July 12th because you were
24 awaiting the outcome of the motion on the 16th?

25 A. I don't know.

1 464 Q. And then the morning -- and we have
2 covered this as well. But then on the morning of
3 July 16th, you download Advanced System Optimizer?

4 A. Yes.

5 465 Q. And that's the software that, I
6 take it, you understand includes the secure delete
7 function?

8 A. I understand that now.

9 466 Q. Well, you understood it at some
10 point after you bought the Advanced System Optimizer,
11 right? Not just now, you understood it at some point
12 after you bought the software?

13 A. Yeah, but I don't -- I didn't
14 remember until I was told I had used it -- or clicked
15 on it, rather.

16 467 Q. Right. Because you say in your
17 affidavit that you spent some time reviewing the tools
18 that were available under Advanced System Optimizer,
19 right?

20 A. I don't know how much time. It was
21 probably just clicking on tabs. It was not much time.

22 468 Q. Okay. But do you remember when
23 that happened?

24 A. I don't.

25 469 Q. Do you remember when you would have

1 taken an interest in Advanced System Optimizer? The
2 functionality of it?

3 A. I do not remember, but I am told it
4 is on July 20th is when I opened the program.

5 470 Q. Okay. That, you have been told as
6 a result of the affidavits that have been filed by the
7 experts in this proceeding?

8 A. Yes.

9 471 Q. Okay. But you don't have a
10 recollection of that?

11 A. Not exactly the time or date, but
12 I -- I know I opened it.

13 472 Q. Okay. So was this another
14 coincidence, that you just happened to be noodling
15 around the various functions of Advanced System
16 Optimizer the day before you were scheduled to go to
17 your lawyer's office to turn over your computer?

18 A. I don't know. It's a coincidence.

19 473 Q. It is a coincidence, is what you're
20 saying. It wasn't related at all to the fact that you
21 were visiting your lawyer the next day. That's your
22 evidence?

23 A. No, it was not.

24 474 Q. It was not related?

25 A. No.

1 475 Q. And when you were noodling around
2 the functionality of Advanced System Optimizer, because
3 we know on the morning of July 16th you were concerned
4 enough about the performance of your system that you
5 purchased the software, you say, and when you finally
6 started to noodle around in the program itself to
7 determine its functionality on July 20th, you still
8 didn't optimize your system on July 20th?

9 A. I don't -- I don't remember.

10 476 Q. You don't remember? Whether you
11 optimized your system on July 20?

12 A. Like I said, I used the tool
13 several times. I don't remember the exact times and
14 dates I would have used the tool.

15 477 Q. Okay. You could have used the tool
16 after you got the computer back?

17 A. Yes, and I have.

18 478 Q. And you have?

19 A. Yes.

20 479 Q. But you don't recall whether you
21 optimized your system during the period between
22 July 16th and July 20th?

23 A. I don't recall.

24 480 Q. Okay. And is there some reason why
25 you would be fiddling around to determine the

1 functionality of the program on July 20th and then
2 determine that you are not going to use the program?

3 A. I don't -- I don't know.

4 481 Q. You don't know?

5 A. No.

6 482 Q. And you know now, Mr. Moyse, that
7 there is a secure delete folder that exists on the
8 forensic image that was created of your drive, right?

9 A. Yes.

10 483 Q. And in your affidavit, you state
11 that you have no explanation for why that folder
12 exists, right?

13 A. I do not.

14 MR. CENTA: Counsel, I see it's 11:25.

15 MR. DiPUCCHIO: Do you want to take a
16 break?

17 MR. CENTA: Can you keep an eye out for
18 a good time?

19 MR. DiPUCCHIO: Yes, that's fine.

20 -- RECESS AT 11:25 --

21 -- RESUMING AT 11:38 --

22 BY MR. DiPUCCHIO:

23 484 Q. Mr. Moyse, just a few more
24 questions on this issue of the deletion of what you say
25 was the browsing history on your computer.

1 Do you recall, Mr. Moyses, that prior to
2 this time frame -- we're talking now the July 16th to
3 July 21st time frame -- do you recall there being
4 some concern about the fact that you had wiped your
5 BlackBerry?

6 A. That was a concern Catalyst had
7 raised.

8 485 Q. Right. And that was a concern
9 Catalyst had raised when it became obvious to them that
10 you had deleted your BlackBerry prior to turning it
11 back in to Catalyst, right?

12 A. Yes.

13 486 Q. And that was the subject of
14 evidence both in Mr. Riley's affidavit and in your
15 affidavits prior to July 16th. Do you remember that?

16 A. Yes.

17 487 Q. So you were aware as of July 16th
18 that deleting material from your devices was creating
19 some concern on the part of Catalyst to the point where
20 it had been raised in the motion?

21 A. I thought Catalyst's concern was
22 because it was a Catalyst device.

23 488 Q. Okay. But you were aware that
24 having deleted material from one of your devices had
25 concern in this very proceeding prior to July 16th?

1 A. Yes.

2 489 Q. And let me just recap, if I could,
3 some of the evidence that you have given thus far.

4 So, Mr. Moyse, you acknowledge and have
5 acknowledged I think that sending the March 27th
6 e-mail with the investment memos to Mr. Dea was a
7 mistake on your part?

8 A. I do.

9 490 Q. And you also acknowledge I think in
10 your affidavit of April 15th -- is it April 15th?
11 April 2nd, I apologize -- of this year, that you
12 deleted that e-mail once you sent it. You acknowledged
13 it earlier, but you acknowledge it again in your
14 affidavit in April, right?

15 A. Yes.

16 491 Q. And you acknowledge that your
17 having deleted that e-mail was a mistake? You have
18 some issue with acknowledging it's a mistake or are you
19 just simply trying to confirm that you said that in
20 your affidavit?

21 A. Can you just point me to it?

22 492 Q. Sure. I can point you to it.

23 MR. CENTA: It's the last sentence in
24 paragraph 30, I think, Counsel.

25

1 BY MR. DiPUCCHIO:

2 493 Q. You are probably right. Yes, it
3 is. Page 10.

4 A. Yes.

5 494 Q. Okay. So now having read it, do
6 you acknowledge that it was a mistake?

7 A. Yes.

8 495 Q. Okay. And you and I have also just
9 talked about your having wiped your BlackBerry device,
10 right, that was issued by Catalyst to you?

11 A. Yes.

12 496 Q. Do you acknowledge that that
13 created concerns?

14 A. I do.

15 497 Q. Do you acknowledge that perhaps it
16 would have been wise for you not to have done that?

17 A. I don't know what would have
18 happened.

19 498 Q. Okay. But do you acknowledge that
20 it perhaps would have been wise for you not to have
21 done that?

22 A. There may have been another way to
23 deal with it.

24 499 Q. Okay. A better way than simply
25 wiping the entire thing and then returning it to

1 Catalyst?

2 A. I don't know what would have
3 happened, but there may have been another way.

4 500 Q. All right. And you and I, I think,
5 can agree that you've acknowledged that you made a
6 mistake in paragraph 71 of your original affidavit
7 where you indicated that there was no reason to believe
8 that any confidential information had been transferred
9 from your Catalyst computer to your personal device,
10 right?

11 A. Yes.

12 501 Q. That was a mistake, right?

13 A. I realized later I was mistaken,
14 yes.

15 502 Q. Yes. That was a mistake?

16 A. Yes.

17 503 Q. And would you acknowledge now that
18 it was perhaps a mistake for you not to have mentioned
19 the fact that you had done work for West Face on Arcan?

20 A. I was researching a situation on my
21 own in preparation for if I was asked to do work on it.

22 504 Q. Do you acknowledge, now that I'm
23 giving you the opportunity to acknowledge it, that it
24 was perhaps a mistake for you not to have mentioned
25 that in your affidavit material?

1 A. I could have mentioned it.

2 505 Q. And was it a mistake for you not to
3 have done so?

4 A. I don't know. I could have --
5 there could have been a way to address it.

6 506 Q. Okay. And apart from mentioning it
7 in your affidavit, do you acknowledge, perhaps, that it
8 was a mistake in judgement on your part to have even
9 done anything in relation to Arcan while you were at
10 West Face?

11 A. I don't -- I didn't view the
12 situation in which Arcan was involved to have any
13 bearing on the work I had done at Catalyst.

14 507 Q. And Mr. Singh apparently disagreed
15 with you?

16 R/F MR. CENTA: Objection.

17 BY MR. DiPUCCHIO:

18 508 Q. Well, do you know whether
19 Mr. Singh --

20 MR. CENTA: You're asking for
21 speculation about what was in Mr. Singh's mind as
22 opposed to what Mr. Singh told him on a particular day
23 in the context of the litigation that was unfolding
24 with your client and West Face.

25 MR. DiPUCCHIO: All right. Let me ask

1 it a different way, Counsel.

2 MR. CENTA: Sure.

3 BY MR. DiPUCCHIO:

4 509 Q. Mr. Singh, at the very least, told
5 you to stop working on that?

6 A. He did.

7 510 Q. The very day he found out that you
8 were working on it?

9 A. Yes.

10 511 Q. Do you acknowledge that it -- well,
11 your affidavit, I gather, doesn't acknowledge that you
12 made any mistake whatsoever in having altered the state
13 of your computer prior to turning it over to your
14 counsel?

15 A. It does not say that in the
16 affidavit.

17 512 Q. Right. So you have no remorse in
18 terms of having deleted something from your computer
19 prior to turning it over to your counsel?

20 A. I was very careful with how I
21 maintained my computer following the order.

22 513 Q. Right. So when I --

23 A. And I was confident that what I was
24 deleting was personal history not relevant to the
25 litigation.

1 514 Q. And, therefore, you have absolutely
2 no remorse in terms of having done so?

3 A. It would make this matter less
4 difficult, but I don't believe what I did was wrong.

5 515 Q. Do you acknowledge it was a mistake
6 in judgement?

7 A. It -- I could have addressed it
8 another way.

9 516 Q. By being up front about it?

10 A. Maybe. I don't know.

11 517 Q. And articulating to the Court that
12 you had a legitimate concern in your mind?

13 A. That would be one thing I could
14 have done.

15 518 Q. Right. You could have been up
16 front with the Court, right?

17 A. I don't know if that would have
18 been the first thing I would have done.

19 519 Q. Well, but that's one of the
20 alternatives that was available to you was to have been
21 up front with the Court?

22 A. Yes, I could have done that.

23 520 Q. Right. And do you acknowledge that
24 it was a mistake for you not to have done that?

25 A. I don't believe what I did was

1 wrong in terms of deleting my personal Internet
2 browsing history.

3 521 Q. Okay. So what you are saying --
4 and I just want to have your evidence for this, okay?
5 So what you are saying is, at this point in time, you
6 do not have any remorse for what you did between the
7 period of July 16th and July 21st?

8 A. I'm sorry that I turned a personal
9 issue into a complicated legal one.

10 522 Q. For everybody? Right? Because,
11 had you dealt with it up front, we wouldn't be facing
12 this issue right now?

13 A. I don't know. I don't know what
14 would have happened.

15 523 Q. So what you did was you simply made
16 your own decision to delete something, and you never
17 offered anybody the opportunity to make any submissions
18 to the Court in relation to that, right? You simply
19 took matters into your own hand?

20 A. Yes. I was confident what I was
21 doing was not contrary to the order.

22 524 Q. And did you also unilaterally
23 determine that you could wait five days before turning
24 over your computer?

25 A. I don't remember.

1 525 Q. You don't remember whether that was
2 the subject of any discussion?

3 A. I don't remember. I would not have
4 withheld my computer, but I don't remember the
5 circumstances of it being five days.

6 526 Q. So what you are saying is that if
7 your counsel had said you've got to turn it over as of
8 today, i.e., July 16th, you would have done that?

9 A. Yes.

10 527 Q. Would you have deleted your
11 browsing history before you did it?

12 A. I don't know.

13 528 Q. So was it the fact that there was
14 this period of time in between your turning over your
15 device and the device being forensically imaged that
16 you determined that you should be deleting information
17 on your device? Was it the delay that occasioned that?

18 A. I did it during that delay. I'm
19 not quite sure what you are asking.

20 529 Q. Well, I'm asking you if someone had
21 said to you you've got to give us your device now
22 pursuant to the order, would you have had that
23 opportunity?

24 A. I don't think I would have.

25 530 Q. During the time you were at

1 Catalyst, Mr. Moyses, we know you had a company-issued
2 BlackBerry. We have just talked about it, right?

3 A. Yes.

4 531 Q. Did you also have a personal phone
5 that you used?

6 A. I did.

7 532 Q. What was that, a mobile device or
8 was it a home phone?

9 A. It was a mobile device.

10 533 Q. Did you have a home phone as well
11 or just a mobile device?

12 A. I have a home phone now. I'm not
13 sure when we got it. I can't remember.

14 BY MR. DiPUCCHIO:

15 534 Q. Okay. Would you let me know when
16 you got your home phone?

17 U/A MR. CENTA: We will take that under
18 advisement.

19 BY MR. DiPUCCHIO:

20 535 Q. And when you started work at West
21 Face, did they issue you a company phone as well?

22 A. They did not.

23 536 Q. They did not?

24 A. No.

25 537 Q. So you continued to use your

1 personal phone from the time you left Catalyst to
2 present?

3 A. There's a segregated program on my
4 phone to deal with West Face matters. You can't move
5 it between that program and your personal part of your
6 phone.

7 538 Q. Okay. I'm not speaking right now
8 of the data portion of it.

9 A. Okay.

10 539 Q. I'm speaking specifically of your
11 phone.

12 A. No.

13 540 Q. So you use only your own personal
14 phone now for the purpose of making phone calls?

15 A. Yes.

16 541 Q. So any phone calls you would have
17 made to anybody from June, 2014, onwards would have
18 been made exclusively on your own personal device, or
19 perhaps your home phone, if you had had your home phone
20 by that time? Is that fair?

21 A. Yes.

22 542 Q. And prior to that time, between
23 March and June of 2014, any calls you would have made
24 to anybody might have been made either on your cell
25 phone issued to you by Catalyst or on your personal

1 phone?

2 A. Almost exclusively on the cell
3 phone issued by Catalyst.

4 543 Q. Okay. And you have alleged in this
5 proceeding -- well, let me ask you directly. From the
6 time that the injunction was issued that prohibited you
7 from working at Catalyst, right, have you had any
8 contact at all with anybody at West Face?

9 A. I have.

10 544 Q. What's been the nature of that
11 contact?

12 A. I'm sorry, just give me the time
13 frame again?

14 545 Q. I knew you would ask me that. The
15 injunction was granted -- was it the July 16th order?
16 Okay. From July 16th onwards, you haven't worked
17 physically at West Face, right?

18 A. That's correct.

19 546 Q. Have you worked for them at all?

20 A. No.

21 547 Q. And my question is, from that date
22 onwards, have you had any communications with anybody
23 at West Face?

24 A. Yes.

25 548 Q. What have been the nature of those

1 communications?

2 A. HR administrative matters, like
3 clearing compliance trades.

4 549 Q. And is that the only communication
5 you have had with anybody at West Face?

6 A. And I believe I had lunch with one
7 junior employee there.

8 550 Q. Okay. And when was that?

9 A. I can't remember exactly.

10 551 Q. Okay. Who was it that you had
11 lunch with?

12 A. His name is Peter Brimm, B-R-I-M-M.

13 552 Q. What role does he play at West
14 Face?

15 A. He is no longer there, to my
16 knowledge.

17 553 Q. Did you have lunch with him before
18 or after he left?

19 A. Before.

20 554 Q. Do you know when he left?

21 A. Recently, but I don't know exactly
22 when.

23 555 Q. Other than that lunch you say you
24 had and these contacts intermittently with people in
25 the HR department or the administrative/compliance

1 department, have you had any discussion with anybody
2 else at West Face?

3 A. No.

4 556 Q. And that certainly includes all the
5 partners?

6 A. Certainly. Not all.

7 557 Q. Okay. In other words, you haven't
8 had any --

9 A. No contact at all.

10 558 Q. No contact with any of them.

11 Right.

12 Sorry, my colleague is asking me to ask
13 you was -- what was Brimm's role while he was at West
14 Face?

15 A. He was an analyst, I believe.

16 559 Q. Okay. Was he part of the Wind
17 team?

18 A. No, he was not.

19 BY MR. DiPUCCHIO:

20 560 Q. Now, what I'm going to ask you
21 for -- and I expect your counsel is going to answer
22 this -- is I'm going to ask you for copies of your
23 detailed cell phone billings for the period from
24 June -- well, I guess you've had a personal cell phone
25 throughout, so from the period from March -- let's say

1 March 1st, 2014, to present.

2 U/A MR. CENTA: Take that under advisement.

3 MR. DiPUCCHIO: And you'll take that
4 under advisement, Counsel. And I don't necessarily
5 need disclosure of every call he has made, Counsel. If
6 you are inclined to produce those, you could redact
7 them and include only those phone calls that were made
8 to people at West Face.

9 MR. CENTA: When we formulate our
10 position, perhaps I will give you a call and we'll see
11 if we can resolve it on that basis.

12 MR. DiPUCCHIO: Fair enough.

13 BY MR. DiPUCCHIO:

14 561 Q. And, Mr. Moyse, you have just said
15 to me that you haven't done any work for West Face
16 since July 16th, 2014, right?

17 A. That's correct.

18 562 Q. And that includes not having gone
19 back to work at West Face after the period of the
20 injunction expired?

21 A. That's correct.

22 563 Q. And why is it that you haven't
23 returned to work at West Face after that time?

24 R/F MR. CENTA: That's been subject of the
25 discussions among counsel.

1 MR. DiPUCCHIO: Okay.

2 BY MR. DiPUCCHIO:

3 564 Q. And I'm going to ask a few more
4 questions in relation to that.

5 So is there an agreement that exists
6 between you and West Face right now in relation to your
7 role at West Face?

8 U/A MR. CENTA: We'll take that under
9 advisement.

10 BY MR. DiPUCCHIO:

11 565 Q. I would like production of that
12 agreement in whatever form it exists, Counsel. I
13 understand you're probably going to take that under
14 advisement as well.

15 U/A MR. CENTA: Same response.

16 MR. DiPUCCHIO: Okay. And just for the
17 purposes of putting it on the record, because you may
18 ask me later on why I think that's relevant.

19 MR. CENTA: Sure.

20 MR. DiPUCCHIO: It's because the nature
21 of that agreement may have something to do with whether
22 he has a motivation to tell the truth or give evidence
23 in favour of West Face in this matter, okay?

24 MR. CENTA: I understand your position.

25

1 BY MR. DiPUCCHIO:

2 566 Q. I take it you agree, though, West
3 Face continues to pay you throughout this time frame?

4 A. They do.

5 567 Q. Even though you are not working
6 now?

7 A. Yes.

8 BY MR. DiPUCCHIO:

9 568 Q. This question was asked previously,
10 Counsel, so I will direct it to you this time around.

11 Is there an indemnity agreement that
12 exists between West Face and Mr. Moyses with respect to
13 his legal fees in this matter?

14 U/A MR. CENTA: We will take that question
15 under advisement.

16 BY MR. DiPUCCHIO:

17 569 Q. Okay. And if you answer that
18 question and it turns out there is, I would like to
19 have production of that agreement.

20 U/T MR. CENTA: I understand.

21 BY MR. DiPUCCHIO:

22 570 Q. Mr. Moyses, you were at Catalyst at
23 the time that Catalyst was in the process of taking
24 Callidus public in March or April of 2014, right?

25 A. I was there, yes.

1 571 Q. And is it fair to say that, at the
2 time that you were there, that Catalyst and Callidus
3 shared office space?

4 A. They did.

5 572 Q. And that was on the 43rd floor of
6 the Royal Trust Tower?

7 A. I think it's called the North Tower
8 now.

9 573 Q. Okay. But what we know as the
10 Royal Trust Tower, right?

11 A. Yes. 77 King Street West.

12 574 Q. Okay. And I take you didn't work
13 on the IPO directly?

14 A. I didn't work on it at all.

15 575 Q. Okay. But you certainly were
16 occupying the same office space as people who were
17 working on the IPO, right?

18 A. They were on one side of the
19 office, I was on the other.

20 576 Q. There was no physical separation
21 between them, was there?

22 A. No.

23 577 Q. Okay. And you have given evidence
24 previously that certainly it was not unusual for you to
25 work late in the office?

1 A. Correct.

2 578 Q. Would that include times when you
3 were alone in the office?

4 A. Sometimes.

5 579 Q. And I think you have testified
6 previously that it was not at all unusual for you to
7 actually look at documents relating to transactions for
8 companies that you had no formal role with respect to?

9 A. Documents -- Catalyst documents on
10 Catalyst file systems, yes.

11 580 Q. Yes.

12 A. Yes.

13 581 Q. And you had no absolutely no role
14 with respect to some of the companies or transactions
15 that you were reviewing?

16 A. Yes.

17 582 Q. And you did that, I think you
18 testified previously, simply as a matter of personal
19 curiosity?

20 A. That's right.

21 583 Q. With respect to what Catalyst was
22 doing?

23 A. Had done.

24 584 Q. Had done or was doing, I take it?

25 A. No.

1 585 Q. It was all historical?

2 A. To my knowledge, to my memory.

3 586 Q. Okay. And you have said you had no
4 access at all to any Callidus information.

5 A. Correct.

6 587 Q. But you refer in your affidavit to
7 a certain discussion that occurred with someone at
8 Callidus, right?

9 A. Yes. I -- I had a brief discussion
10 with Lorne Morein.

11 588 Q. Okay. So it must have been --
12 there must have been some access that you had to some
13 information related to Callidus?

14 A. No.

15 589 Q. Okay. So let's go to your
16 affidavit on this, because I actually found it slightly
17 confusing, so perhaps you can clarify for me.

18 A. Sure.

19 590 Q. You say that Mr. Riley is almost
20 entirely correct --

21 MR. MILNE-SMITH: What paragraph,
22 Counsel?

23 MR. DiPUCCHIO: Sorry. Paragraph 52.

24 BY MR. DiPUCCHIO:

25 591 Q. You say Mr. Riley is almost

1 entirely correct in stating that you, quote, had no
2 involvement with the operations of Callidus, right?

3 A. Correct.

4 592 Q. So aren't you saying there that, in
5 fact, you did have some involvement with the operations
6 of Callidus?

7 A. No. I had no involvement with the
8 operations. I was just trying to be complete here by
9 saying I had talked to Lorne Morein on this one
10 occasion.

11 593 Q. Okay. So but you have actually
12 pointed out in your affidavit you disagree with
13 Mr. Riley's statement that you had no involvement with
14 the operations of Callidus.

15 A. I had no involvement with
16 operations at Callidus.

17 594 Q. All right. So when you say
18 Mr. Riley is almost entirely correct in saying that,
19 what you are pointing out is this discussion that you
20 had by e-mail with Mr. Morein?

21 A. That is the sole exception.

22 595 Q. Okay. So what did you know of
23 Mr. Morein?

24 A. He worked at Callidus.

25 596 Q. Okay.

1 A. He was a junior employee there.

2 597 Q. All right. And you were e-mailing
3 him for information on a company called Discovery Air?

4 A. Correct.

5 598 Q. And you say that Discovery Air had
6 received loan funds from Callidus?

7 A. Yes.

8 599 Q. So you knew that much?

9 A. I knew that through public
10 documents filed by Discovery Air.

11 600 Q. Okay. And why were you looking at
12 Discovery Air?

13 A. I was -- I suppose -- it was a
14 personal project based on the fact that Discovery Air's
15 bonds were trading at call them stressed levels.

16 601 Q. What do you mean a personal
17 project?

18 A. Nobody assigned it to me and I
19 never did any work on it, but I was just maybe going to
20 start looking at it myself.

21 602 Q. This is another thing that you were
22 taking initiative on?

23 A. Yes.

24 603 Q. For what reason?

25 A. I was bored with some of the other

1 work I was doing at Catalyst.

2 604 Q. So were you just taking it on
3 personal initiative to look up Discovery Air?

4 A. I had some free time. I thought it
5 might be productive. I didn't have time to go forward
6 with any work on it.

7 605 Q. How did you think it was going to
8 be productive?

9 A. I told you, they had bonds trading
10 at stressed levels.

11 606 Q. So what?

12 A. That might -- could potentially be
13 worthy of an investment.

14 607 Q. On whose part?

15 A. On Catalyst's part.

16 608 Q. But I thought you told me
17 previously that you had no role whatever in presenting
18 opportunities to Catalyst?

19 A. And I never did present any of
20 these personal project opportunities to anybody at
21 Catalyst.

22 609 Q. So this was something you were
23 doing notwithstanding your understanding at the time
24 that you had no role in presenting investment
25 opportunities to Catalyst?

1 A. I enjoy the work, I enjoy looking
2 at new investments whether or not Catalyst will listen
3 to anything I have to say.

4 610 Q. Okay. And one of these
5 investments, potential investments, that you were
6 looking at through your own initiative at this time
7 involved a company that had received loan funds from
8 Callidus?

9 A. Correct.

10 611 Q. And you knew that?

11 A. I knew that through the public
12 disclosures.

13 612 Q. And what were you seeking from
14 Mr. Morein?

15 A. I was -- like I said, I had just
16 started to look at Discovery Air. I was seeking if
17 they had any material that would help me gain some
18 information about the company generally.

19 613 Q. Which company, Discovery Air?

20 A. Discovery Air.

21 614 Q. And you were seeking information
22 from Callidus' files in relation to that?

23 A. I asked him if he -- I asked him
24 about it.

25 615 Q. And he actually sent you something?

1 A. Correct.

2 616 Q. But you don't recall precisely what
3 he sent you?

4 A. I remember it being very brief and
5 unhelpful.

6 617 Q. Okay. And why was it unhelpful?

7 A. Because it didn't have any
8 information that would help somebody learn about the
9 company.

10 618 Q. All right. And so I take it
11 whatever you did with respect to Discovery Air would
12 still exist within Catalyst's file system?

13 A. I don't recall doing anything on
14 Discovery Air. I recall reading materials, but I don't
15 recall commencing any work. If I did, it should be
16 there.

17 619 Q. Okay. Including this e-mail,
18 purportedly, that was sent by Mr. Morein to you?

19 A. It should.

20 620 Q. Would you have deleted that,
21 potentially?

22 A. I don't think so.

23 621 Q. And other than that, you say you
24 didn't know anything about Callidus?

25 A. Correct.

1 622 Q. And we know that you discussed
2 Callidus with Mr. Dea in your initial interview with
3 Mr. Dea, right?

4 A. I think "discussion" is a bit of an
5 overstatement.

6 623 Q. Well, what would you call it?

7 A. It came up briefly in conversation.

8 624 Q. Well, I call that a discussion.

9 A. We didn't discuss it, because I had
10 nothing to add to it.

11 625 Q. What was it that was being
12 discussed?

13 A. At the time, Callidus -- it was
14 well known that Callidus was going public. It was a
15 topic of conversation. It was not surprising that it
16 would be a topic of conversation in the financial
17 world. It was a big story. I had nothing to say about
18 it, because I don't know anything about it.

19 626 Q. What was Mr. Dea asking you?

20 A. I don't remember if he was asking
21 me; it just came up in conversation.

22 627 Q. How did it come up? Tell me.

23 A. It was a big news story. It was
24 not uncommon for people in the financial world in
25 Toronto to be talking about it. I'm not sure how it

1 came up.

2 628 Q. And you are not sure what you told
3 him?

4 A. I didn't tell him anything, because
5 I didn't know anything.

6 629 Q. You sat there silent in the
7 conversation?

8 A. If it came up, I just said --

9 630 Q. Well, not if it came up. We know
10 it came up.

11 A. Well, the only -- the extent of
12 what I could have added to the conversation was I don't
13 know anything about Callidus.

14 631 Q. Did you bring it up or did he bring
15 it up?

16 A. I probably brought it up.

17 632 Q. In what context? Since you weren't
18 doing anything in relation to it.

19 A. Shop talk, people are busy on it.

20 633 Q. And then he followed up, and then
21 from there on, notwithstanding you brought it up, you
22 said I don't know anything it; don't ask me anything
23 further?

24 A. Yeah. I just said people are busy
25 on it; I don't know anything about it.

1 634 Q. Okay. And Mr. Dea followed up with
2 you, right?

3 A. He did.

4 635 Q. It was enough of a conversation
5 that Mr. Dea actually elected to follow up with you in
6 relation to it?

7 A. I'm -- I can't remember it lasting
8 more than 30 seconds of conversation.

9 636 Q. Well, that 30 seconds of
10 conversation was something that Mr. Dea followed up
11 with you on?

12 A. Yes.

13 637 Q. And we have seen that in the e-mail
14 chain that precedes your sending the memos, right?

15 A. Yes.

16 638 Q. And Mr. Dea asks you specifically
17 what was the Cerberus entity that Callidus was modelled
18 after?

19 A. Right.

20 639 Q. Was that part of the discussion?

21 A. I don't remember.

22 640 Q. Well, would Mr. Dea just be saying
23 that randomly?

24 A. I don't remember how it came up.

25 641 Q. Okay. And did you ever respond to

1 Mr. Dea's e-mail?

2 A. I don't remember.

3 642 Q. Do you recall phoning him,
4 e-mailing him?

5 A. I would have e-mailed him, but I
6 don't -- I haven't seen it, so I don't remember. I
7 wouldn't have phoned him.

8 643 Q. Okay. Do you have a copy of that
9 e-mail?

10 A. I don't know.

11 BY MR. DiPUCCHIO:

12 644 Q. All right. Could you look for a
13 copy of the e-mail?

14 U/A MR. CENTA: We will take it under
15 advisement.

16 MR. DiPUCCHIO: Let me know if there is
17 a response.

18 MR. CENTA: Yes.

19 BY MR. DiPUCCHIO:

20 645 Q. Is it likely you would have
21 responded to him, given that you were trying to seek a
22 job from him at that point in time?

23 A. I think I would have.

24 646 Q. Okay. And if that e-mail doesn't
25 exist, is it because you would have deleted it?

1 A. If it doesn't exist, yes, probably
2 because I would have deleted it.

3 647 Q. Do you have a memory of deleting
4 that e-mail?

5 A. No. Not that one specifically.

6 648 Q. All right. Do you recall what the
7 nature of your response was?

8 A. It was a single word.

9 649 Q. What was it?

10 A. "Ableco."

11 650 Q. "Ableco?"

12 A. Yes.

13 651 Q. And that was all that you responded
14 to Mr. Dea?

15 A. Yeah.

16 652 Q. And was there any --

17 A. If -- if I did, yeah.

18 653 Q. Okay. And was there any further
19 discussion with Mr. Dea or anybody at West Face, to
20 your recollection, about Callidus?

21 A. No.

22 654 Q. So that was the last discussion you
23 ever had with anybody at West Face in relation to
24 Callidus?

25 A. That was it.

1 655 Q. And the fact that that discussion
2 occurred in your interview process was, again, just a
3 coincidence?

4 A. I said it was a major news story at
5 the time. Other people in the financial world were
6 talking about it.

7 656 Q. So it just happened to be
8 coincidental?

9 A. It -- in the sense that two
10 separate events happened, yes, but it was not -- it was
11 a common topic of conversation.

12 657 Q. And in the sense that West Face
13 subsequently took a short position in Callidus, that
14 was totally coincidental?

15 A. Yes.

16 MR. DiPUCCHIO: Give me one second.

17 Do you want to give us five minutes?

18 MR. CENTA: Sure.

19 -- RECESS AT 12:08 --

20 -- RESUMING AT 12:15 --

21 MR. DiPUCCHIO: All right. Subject to
22 the questions, Counsel, that have been taken under
23 advisement and any information that might result as it
24 relates to those questions, and subject to marking this
25 an exhibit, those are my questions for today. Thank

1 you, Mr. Moyse.

2 THE WITNESS: Thanks.

3 MR. CENTA: Counsel, I have some brief
4 re-examination.

5 MR. DiPUCCHIO: Okay. No problem.

6 RE-EXAMINATION BY MR. CENTA:

7 658 Q. Mr. Moyse, do you recall that
8 Mr. DiPucchio asked you some questions about the Arcan
9 transaction?

10 A. I do.

11 659 Q. And I'm showing you what has been
12 marked previously as Exhibit 14 to the affidavit of
13 Mr. Griffin, which is found in Volume 1 of 4 of the
14 responding motion record of the defendant West Face
15 Capital Inc.

16 Mr. Moyse, when did you first become
17 aware of the Arcan strategic transaction?

18 A. After it was announced.

19 660 Q. And when was it announced?

20 A. This press release is dated
21 June 23rd, 2014, at 4:22 in the afternoon, so at some
22 point after that, but that day.

23 661 Q. How did you become aware of that
24 transaction?

25 MR. DiPUCCHIO: I think I asked him that

1 question, did I not? I think I asked him that
2 question. I think his answer was he couldn't recall
3 how he had become aware.

4 MR. CENTA: Okay.

5 MR. DiPUCCHIO: But in any event, I'm
6 happy to have him answer it again.

7 THE WITNESS: I don't remember saying
8 that.

9 I don't recall exactly how I first
10 became aware of the transaction. I remember
11 Mr. Griffin at some point speaking out loud saying that
12 Arcan was involved in a transaction.

13 BY MR. CENTA:

14 662 Q. What, if anything, did Mr. Griffin
15 ask you to do?

16 A. Nothing.

17 663 Q. Did anyone at West Face ask you to
18 do anything?

19 A. No. He asked me to read about the
20 transaction, and that was it.

21 664 Q. Why did you do the reading you did?

22 A. He asked me to read about it, and
23 that was learning about the transaction.

24 665 Q. How long did you spend on that
25 task?

1 A. The reading?

2 666 Q. Uhm-hmm.

3 A. Maybe half an hour.

4 667 Q. And today, Mr. Milne-Smith provided
5 to counsel for Catalyst some of the documents that you
6 generated. How long would you have spent doing the
7 reading and generating the documents that have been
8 provided?

9 A. Well, the Excel analysis was
10 limited to mapping out the flow of funds in the
11 transaction and some high-level financial details about
12 Arcan, and I took some notes based on their earnings
13 calls, so maybe four to six hours.

14 668 Q. And Mr. DiPucchio asked you some
15 questions about your conversation with Mr. Singh.
16 What, if any, further work did you do on those
17 documents after your conversation with Mr. Singh?

18 A. Nothing. I remember stopping work.

19 669 Q. Mr. DiPucchio also asked you some
20 questions about the Arcan memo that you generated while
21 you were working at Catalyst and that you then attached
22 to the March 27th e-mail that you have sent as part
23 of the recruitment process to Catalyst. How similar
24 was the strategic transaction to the circumstances you
25 described in the Arcan memo you prepared while at

1 Catalyst?

2 A. The strategic transaction was a
3 standalone transaction. One didn't need to know
4 anything about Arcan to understand the details of the
5 transaction and the fact that it was unfair to
6 bondholders.

7 670 Q. Why would you not need to know
8 anything about the underlying business?

9 A. The details of the transaction were
10 that Aspen Leaf was offering to pay a certain amount of
11 money to buy Arcan, and they were paying bondholders a
12 discount to the par value of their bonds, and they were
13 giving a substantial amount of money to the equity
14 holders. Anybody who knows anything about corporate
15 finance knows that that is not fair to bondholders.
16 Bondholders should be paid in full first.

17 671 Q. After Mr. Singh told you not to
18 work anymore on the Arcan reading you were doing, when,
19 if ever, did anyone at West Face mention Arcan in your
20 presence?

21 A. We had team meetings, like, once a
22 week where people would discuss what they were working
23 on. I recall on at least one occasion Tony Griffin
24 mentioning that he was working on Arcan.

25 MR. CENTA: Those are my questions,

1 Counsel.

2 MR. DiPUCCHIO: Thank you.

3 -- Whereupon the cross-examination concluded at
4 12:21 p.m.

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1 REPORTER'S CERTIFICATE

2 I, TERRY WOOD, RPR, CSR, Certified
3 Shorthand Reporter, certify;

4 That the foregoing proceedings were
5 taken before me at the time and place therein set
6 forth, at which time the witness was put under oath by
7 me;

8 That the testimony of the witness and
9 all objections made at the time of the examination were
10 recorded stenographically by me and were thereafter
11 transcribed;

12 That the foregoing is a true and correct
13 transcript of my shorthand notes so taken.

14
15 Dated this 15th day of May, 2015.

16 *Terry Wood*
17

18 NEESONS

19 PER: TERRY WOOD, RPR, CSR

20 CERTIFIED COURT REPORTER
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**Cross-Examination of Brandon Moyse, May 11, 2015
Undertakings, Under Adviseements and Refusals**

No.	Pg.	Q.	Undertaking / Under Adviseement	Question	Answer
1	35	173	Undertaking	To advise whether Mr. Moyse's counsel refused to produce copies of the work Mr. Moyse had done at West Face.	Mr. Moyse's counsel took this question under adviseement on Mr. Moyse's July 31, 2014 cross-examination. Mr. Moyse's counsel did not subsequently answer this question; however, Catalyst's counsel did not follow up on this request. In any event, West Face offered to produce such documents through the Independent Supervising Solicitor in March, 2015, but Catalyst did not accept this offer.
2	68	368	Under Adviseement	To provide communications between Mr. Moyse and his counsel before the date that he brought his computer into his counsel's office for the purpose of forensic imaging, relevant to this question of the relief that was being sought on the motion.	Refused. These communications are privileged. Mr. Moyse has not put his state of mind during these privileged communications in issue.
3	75	410	Under Adviseement	To advise why Mr. Moyse wouldn't have had an open discussion with his counsel and the forensic expert to alert them that he had altered his computer by taking materials that weren't relevant off of it.	Refused. The scope of Mr. Moyse's discussions with his counsel are privileged.
4	96	535	Under Adviseement	To advise when Mr. Moyse got his home phone.	Mr. Moyse got his home phone line in November, 2013.

No.	Pg.	Q.	Undertaking / Under Advisement	Question	Answer
5	100	561	Under Advisement	To provide detailed copies of Mr. Moyse's cell phone billings from the period of March 1, 2014 to present.	<p>Between March, 2014 and October, 2014, Mr. Moyse's cell phone billings only show the calls he placed and received when he was outside of the Rogers coverage area. None of the calls Mr. Moyse made during this period were made to West Face personnel.</p> <p>Mr. Moyse's detailed cell phone billings from November, 2014-present reflect two calls he made to West Face personnel:</p> <ol style="list-style-type: none"> 1) Feb 10, 2015, 14:41 to 416-479-7330 (business number for Supriya Kapoor, Chief Compliance Officer at West Face), length of call 2 mins: Mr. Moyse's call to Ms. Kapoor was in order to seek clearance on a trade he had placed. 2) April 23, 2015, 17:57 to 416-303-8980, cell number for Peter Brimm (departed employee), length of call 7 mins: Mr. Moyse's call to Mr. Brimm on April 23, 2015, was for personal reasons following Mr. Brimm's departure from West Face. <p>Redacted copies of the bills for February, 2015 and April, 2015 are attached at Tab A.</p> <p>There is no agreement between Mr. Moyse and West Face in relation to Mr. Moyse's role</p>
6	102	565	Under Advisement	To advise whether there is an agreement that exists between Mr.	

No.	Pg.	Q.	Undertaking / Under Advisement	Question	Answer
				Moyses and West Face right now in relation to Mr. Moyses's role at West Face.	at West Face.
7	102	566	Under Advisement	To produce any agreement that exists between Mr. Moyses and West Face right now in relation to Mr. Moyses's role at West Face.	There is no agreement between Mr. Moyses and West Face in relation to Mr. Moyses's role at West Face.
8	103	569	Under Advisement	To advise whether there is an indemnity agreement that exists between West Face and Mr. Moyses with respect to his legal fees in this matter.	West Face has reimbursed Mr. Moyses for his legal fees to date in this matter. However, there is no indemnity agreement.
9	103	570	Under Advisement	To produce any indemnity agreement that exists between West Face and Mr. Moyses with respect to his legal fees in this matter.	There is no indemnity agreement between West Face and Mr. Moyses with respect to his legal fees in this matter.
10	114	643	Under Advisement	To advise whether Mr. Moyses still has a copy of the email from Mr. Moyses responding to Mr. Dea's request for the Cerberus entity that Callidus was modeled after.	Mr. Moyses has reviewed his records and does not have a copy of this email.