Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

RJA/am

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND and CHRYSALIS YOGA INC.

Respondents

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This is the Examination Pursuant to Receivership Order of CRAIG CLYDESDALE, taken at the offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 12th day of March, 2018.

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APPEARANCES:

MIRANDA SPENCE DIANA SATURNO (articling student)	-- for Grant Thornton Limited, in its capacity as Receiver and Manager of Crystal Wealth Management System Limited, Clayton Smith, Crystal Wealth Media Strategy, Crystal Wealth Mortgage Strategy, Crystal Enlightened Resource & Precious Metals Fund, Crystal Wealth Medical Strategy, Crystal Wealth Enlightened Factoring Strategy, ACM Growth Fund, ACM Income Fund, Crystal Wealth High Yield Mortgage Strategy, Crystal Enlightened Bullion Fund, Absolute Sustainable Dividend Fund, Absolute Sustainable Property Fund, Crystal Wealth Enlightened Hedge Fund, Crystal Wealth Infrastructure Strategy, Crystal Wealth Conscious Capital Strategy, Crystal Wealth Retirement One Fund, CLJ Everest Ltd., and 1150752 Ontario Limited
K. WILLIAM McKENZIE	-- for Craig Clydesdale

ALSO PRESENT:

Bruce S. Bando

INDEX OF PROCEEDINGS

--- upon convening at 9:30 a.m.
--- upon commencing at 10:05 a.m.

CRAIG CLYDESDALE, sworn
EXAMINATION BY MS. SPENCE:
1. Q. Good morning, Mr. Clydesdale. So, you have been sworn this morning, correct?
A. Yes.
2. Q. And you are here, pursuant to a Summons to Witness, which I will hand to you, correct? You received that?
MR. McKENZIE: Yes, we got this, Miranda, by e-mail, and I said...I had received it in service for Mr. Clydesdale. I did notice it said "pursuant to an Order of the Honourable Justice Myers issued which is enclosed, but of course it was not enclosed.
3. MS. SPENCE: It was not enclosed, no. I have a copy here. So...and to the extent that you hadn't seen it, I believe you had seen it previously, but there it is.
MR. McKENZIE: So, I presume my...I am saying, so, if you want to...what do you want to do with the summons that you have

identified?

4. MS. SPENCE: I would like to mark it as Exhibit 1.

MR. McKENZIE: Okay. And we will just have...well, I am not going to read the Order right now, but just keep it with me.

5. MS. SPENCE: Okay.

--- EXHIBIT NO. 1: Summons to Witness to Craig Clydesdale, dated February 28, 2018

BY MS. SPENCE:

6. Q. So, in the summons, which I have just marked, you will see that it identifies a request that you bring certain documents with you today. There is a number of items, 1 through 3. Did you bring any of those documents with you today?

MR. McKENZIE: As I stated earlier off the record, everything that the OSC has asked Mr. Clydesdale to provide has been already forwarded in electronic format.

7. MS. SPENCE: Okay.

MR. McKENZIE: So, you have...

8. MS. SPENCE: So, let me just...

MR. McKENZIE: ...all of it already, and

I...I may have some of it, the electronic stuff, but I know the OSC has it all.

9. MS. SPENCE: Okay. Let me just stop you for a second. So, the summons today has been issued to Mr. Clydesdale, and so I am looking for Mr. Clydesdale's evidence today. So, I appreciate that you are trying to be of assistance, but I would like for the answers to be coming from today's deponent, Mr. Clydesdale, okay? Secondly...

MR. McKENZIE: Well, with proper questions, I won't interfere, obviously.

10. MS. SPENCE: Certainly, certainly.

MR. McKENZIE: It is my job to make sure everything goes by the book...

11. MS. SPENCE: Right.

MR. McKENZIE: ...so to speak.

12. MS. SPENCE: I am just saying so because, so far, I haven't heard from Mr. Clydesdale. So, I am just going to clarify that that is the person I am expecting to answer the questions. Okay?

MR. McKENZIE: Thank you.

13. MS. SPENCE: I also want to clarify.

You just said two things that I want to clarify: number one, that requests for documents have been made by the OSC. I am here today on behalf of the Receiver, and any document requests that I am aware of have been made by the Receiver, through counsel. Is that what you were talking about when you said "document requests by the OSC"? Or is there a separate vein of document requests that the OSC has made?

MR. McKENZIE: I am looking at the Order, or the summons, and the applicant is the Ontario Securities Commission, which the law firm of Aird & Berlis and the Receiver have been appointed to do their work for them. And I am saying so from the point of view of this side of the table, according to my views, you are here, you know, as a representative of the OSC. And as I said, everything...we sent a big...

14. MS. SPENCE: Okay, can you stop...

MR. McKENZIE: ...pile of things electronically...just let me finish...

15. MS. SPENCE: That was not my question, though.

MR. McKENZIE: ...electronically to your firm, and other stuff which is pretty well the same stuff, to an office...the Ontario Securities Commission. So, I am saying to us, you are the same people, if you want to understand what I am saying.

16. MS. SPENCE: Okay. So, you are...but you are telling me...because I act for the Receiver. I don't act for the OSC, and so...

MR. McKENZIE: What? Just a second.

17. MS. SPENCE: I am just asking, when you were talking about responding to document requests, were you talking about the requests that came from my office?

MR. McKENZIE: Well, we have answered every document request...

18. MS. SPENCE: Just answer the question yes or no, please.

MR. McKENZIE: Ask me the question again?

19. MS. SPENCE: When you mentioned responding to document requests, were you referring to the document requests that came from my office?

MR. McKENZIE: We have answered every document request from your office, yes.

20. MS. SPENCE: All right. So, let me just turn to the summons again, because...so, for example, number 3 on the list is any and all internal financial statements, including balance sheets, for the company fiscal year ending 2017. To date, the response that you have made to my office has been for financial statements ending in the year 2016. So, this summons was intended to address documents that have not yet been provided by you.

MR. McKENZIE: So you say, and I am saying...you will have to remind me, the financial statements were sent, and some general ledgers, because I think we said some of the financial statements have not been prepared, because the whole thing has gone sideways. In other words, they haven't done the financial statements.

21. MS. SPENCE: Okay. So, the answer is you haven't prepared the financial statements for 2017?

MR. McKENZIE: For the year ending...

okay, I think you are going to have to help me here, but I am saying financial statements, to me, are issued by accountants. Whatever there was, you have got them.

22. MS. SPENCE: Okay. So, let me just have Mr. Clydesdale's answer on that point, that you have produced all existing financial statements for the companies to the Receiver already.

THE DEPONENT: I am not sure.

23. MS. SPENCE: You don't know. Mr. McKenzie?

MR. McKENZIE: My answer stands. I sent you...because I requisitioned them, that there are some financial statements for the year-end...I will have to look it up, but I think it is the year ending 2016. Because they are done six months after. And, so, the year ending in 2017 has happened while... after the Receiver was appointed and everything went to a halt, you know, with all of the four companies we are talking about, just all stopped dead, and saying...

24. MS. SPENCE: Okay.

MR. McKENZIE: ...there is no money or worthwhile like, actually getting an accountant to do this stuff, because it is muddled at the moment. I mean, we are all sharing that problem, by the way, not...you know, I share it with you, and I am saying part of the problem is I have asked you to send me the financial records from Crystal Wealth just to see if we can assimilate and make sure everything matches, and we haven't got those. So, I am just confused by how this process works, where we get nothing and we send you things. So, you have what you have, and unless Mr. Clydesdale tells me that an accountant, a chartered accountant or something has prepared some financial statements since I last got the pile from him...do you want to answer that?

25. MS. SPENCE: Okay. I am going to come back to that.

MR. McKENZIE: Fair enough.

26. MS. SPENCE: All right.

BY MS. SPENCE:

27. Q. So, Mr. Clydesdale, can you please state your full name?

A. Craig Clydesdale.

28. Q. No middle name?

A. Hugh. H-U-G-H.

29. Q. And what is your date of birth?

A. June 30th, 1958.

30. Q. Where do you currently reside?

MR. McKENZIE: Don't answer that. Privacy. /R

31. MS. SPENCE: Privacy?

MR. McKENZIE: If you want to contact Mr. Clydesdale, call me.

BY MS. SPENCE:

32. Q. Do you reside at 1237 Beechgrove Crescent in Oakville?

MR. McKENZIE: Don't answer that, same question. Contact me and I will get you in touch with Mr. Clydesdale. There are security issues and privacy issues. /R

BY MS. SPENCE:

33. Q. Do you or your spouse own any real

estate?

MR. McKENZIE: Don't answer that. It is irrelevant. /R

34. MS. SPENCE: Irrelevant to what?

MR. McKENZIE: You are here to find out what happened to the money, right?

35. MS. SPENCE: And I am here to find out...

MR. McKENZIE: And now you are asking whether he owns real estate.

36. MS. SPENCE: Well, yes. He is a guarantor under the loans.

MR. McKENZIE: We don't agree with that.

37. MS. SPENCE: Okay, so...

MR. McKENZIE: You will have to, you know, update me on that, and show me the documents that you say you rely on, a guarantor. That is not agreed to.

BY MS. SPENCE:

38. Q. So, it is your position that you have no personal liability to Crystal Wealth?

MR. McKENZIE: Well, I just said...

39. MS. SPENCE: Let me have Mr. Clydesdale's evidence, please.

MR. McKENZIE: Mr. Clydesdale...that is a legal question. If you want to put something on the table that says he does...I keep asking for the documents. You are not...

40. MS. SPENCE: All right, we will come back to that.

MR. McKENZIE: No, he is...

41. MS. SPENCE: So, is it...

MR. McKENZIE: We are happy to answer a question. Put something on the table, and we will say yes, no, or legal opinion. But I don't agree with you.

BY MS. SPENCE:

42. Q. What level of education do you have?
A. I went to university.
43. Q. Where did you go to university?
A. York University.
44. Q. Did you take a degree?
A. Yes.
45. Q. What was the degree in?
A. Economics.
46. Q. When did you graduate?
A. I am not sure. Early 1980s.

47. Q. Is that a B.A.?
A. Yes.
48. Q. Do you have any other formal training?
MR. McKENZIE: Sorry, you mean university or schools?
49. MS. SPENCE: Any schools...
MR. McKENZIE: He has got a lot of training in real life...
50. MS. SPENCE: Any formal course that led to a diploma or a degree or anything of that nature.
THE DEPONENT: I am not sure what that means. I have taken lots of courses in my life. I don't have a Master's degree, for example, no.

BY MS. SPENCE:
51. Q. And so, when you say "lots of courses", what area were those courses in?
A. Everything from soccer to greenhouse gas emissions, and all sorts of things like that.
52. Q. Okay, well, I am going to focus on the courses that relate to the business that was carried on by the OOM companies. Do you have any

specific qualifications or diplomas relating to that business?

A. I don't recall all the ones that I have...I don't know for sure.

53. Q. All right. Can you undertake to let us know?

MR. McKENZIE: You want to know whether he has training in cogeneration, toxic substances that go into the air...I am just trying to recall what his business is...and keeping customers happy?

54. MS. SPENCE: Well, I am going to let...

MR. McKENZIE: Okay. If he has a diploma course in any of those topics, I question the relevance but we will get there. I am just saying...so, the undertaking is, we will look for a diploma in any of those topics.

55. MS. SPENCE: Or any certification.

MR. McKENZIE: What is the certification?

56. MS. SPENCE: Well, I don't know. That would be...I would presume that you would be able to tell, based on the course that you took, whether you received a

certification or not.

MR. McKENZIE: All right, whatever...he has a piece of paper that says he has a certification, we will see if we can find it. It is a best efforts case, because...best you can do for the education. U/T

BY MS. SPENCE:

57. Q. Okay. So, we referred to OOM a moment ago. I just want to understand exactly what the OOM group of companies relates to. So, I am going to name a number of companies that I am aware of that operate within the OOM group, and I would like if you could tell me if there are any that I am missing, okay?

MR. McKENZIE: Well, there are four companies, and a peripheral fifth one that are under the umbrella of this receivership. And, so, if you stay there, sure, okay.

58. MS. SPENCE: I don't understand what that objection is, but I am going to go through the names...

MR. McKENZIE: Well, ask your questions,

and then...I am just saying I am just trying to...

59. MS. SPENCE: Okay.

MR. McKENZIE: ...focus us today.

BY MS. SPENCE:

60. Q. So, I have something called MCS Solutions. Is that a corporation or a trade name?

MR. McKENZIE: It is irrelevant. It is not one of the companies that I just mentioned. There are five companies we are talking about, that we have been focusing on. Now you are asking if he runs a dog catcher business? I mean, I am just saying it is not relevant to what... /R

61. MS. SPENCE: Okay.

MR. McKENZIE: ...we are trying to do today. We are trying here to get to the bottom of getting these companies afloat, and getting the money back to the Receiver, to Crystal Wealth. So...I can name the five companies if it will help you.

62. MS. SPENCE: Well...

MR. McKENZIE: I think you know what they are, but I will name them.

63. MS. SPENCE: Sure, let's hear them.

MR. McKENZIE: They are already in correspondence, which you have. As a matter of fact, you asked...when I say "you", OSC collectively have asked for this stuff. So, let me just find...I just want to...just look it up to make sure I get the names correct. One of them is MCSAB10 Inc. One of them is 2441472 Ontario Inc. Another one is MCSnox Recovery Inc. The other one is Magnitude CS Energy Inc. And, as I indicated, a peripheral one is MCS Energy 12, Inc. And I will have to make sure I have the spelling right, but I think that is correct with the comma.

64. MS. SPENCE: Okay. So, those are five companies. And my understanding is the OOM group of companies contains some other companies, as well, and I just want to clarify those.

MR. McKENZIE: Refusal. Not relevant. /R

65. MS. SPENCE: So, the companies...and I have your refusal, but I would like to put my questions on the record. So, the companies that I understand also form part

of the OOM group include 2404873 Ontario Corp, do you agree with that?

THE DEPONENT: I am not sure.

MR. McKENZIE: Don't answer. You are putting them on the record...

66. MS. SPENCE: Yes.

MR. McKENZIE: ...which is your function, if you like to. /R

67. MS. SPENCE: 2363265 Ontario Inc., 2518394 Ontario Inc., Gen Fix Corporation, MCS 7 Energy Inc., and something called MCS Solutions. And, so, I take it that you are refusing to answer whether any of those corporations or entities belong in the OOM group of companies?

MR. McKENZIE: Well, they are not relevant to what we are doing today. So, the answer is, let's not go there, because they are not relevant. So, yes, you are going to get a refusal. And unless you can explain to me that... /R

68. MS. SPENCE: I have your refusal. Thank you.

MR. McKENZIE: ...some of these companies were somehow borrowing money from

Crystal Wealth, which I don't think is the case, I could be wrong...but, you know, ask your questions, and if relevance becomes established, then, of course, my client will answer.

BY MS. SPENCE:

69. Q. Can you describe the structure of the OOM corporate group, how these companies are structured?

MR. McKENZIE: There is no such thing. So...

70. MS. SPENCE: May I have Mr. Clydesdale...

MR. McKENZIE: We are going to stay to the five...I understand, but you keep circling back, trying to ask the same question. So, let me state this again. There are five companies. You may ask questions about what those companies did all day long. That is why we are here. But to ask what other business things Mr. Clydesdale or any of his associated... whatever it does, is not relevant...

71. MS. SPENCE: Well, my...

MR. McKENZIE: ...to what we are doing today. /R

72. MS. SPENCE: My position is that the structure of the group is relevant. And, so, I am asking that question.

MR. McKENZIE: Okay, explain how it is relevant, please, because I don't understand.

73. MS. SPENCE: It is relevant in the sense that I...so, monies flowed to a variety of your companies. They appear to have some sort of collective operating goal. And I am trying to understand how that collective operates so that I can understand how the monies might have flowed in between the companies.

MR. McKENZIE: Well, when you get specific as to questions, we will deal with them one at a time. But that overall statement, it is not...if what you just said is true, and you are fishing to see if there might be something that is not relevant and improper, and therefore I am saying, let's do it the other way. Ask specific questions, rather than say, "Tell me about your whole life and all of your companies". I mean, I am just saying we will be here for a month and get nowhere. If he has a company that has nothing to do with this, are we going to spend all day answering questions about that company? No, we are not, but even if we did, I don't know why it would be profitable.

74. MS. SPENCE: So, you are refusing to answer what the structure of the OOM corporate group is?

MR. McKENZIE: You have my answer. I mean...I am just saying, go ahead.

75. MS. SPENCE: How would you...

MR. McKENZIE: That is a generic question. I didn't say that.

76. MS. SPENCE: You did refuse to answer the question.

MR. McKENZIE: I said, "We will answer questions when they become relevant, instead of saying tell me the story of your corporate structure for the last 25 years", which is what you are doing. And I am saying we are not going to do that.

77. MS. SPENCE: I would like to know the

current structure of the company. So, for example, if you had an org chart, that would be helpful. That would be an answer to my question.

MR. McKENZIE: I will give you an org chart.

78. MS. SPENCE: All right. Thank you.

MR. McKENZIE: It is five corporations that have been involved with Crystal Wealth. That is why we are here, full stop.

79. MS. SPENCE: So, you are refusing to produce an org chart of the OOM companies?

MR. McKENZIE: If one existed. I am saying...

80. MS. SPENCE: Is it a yes or a no, please, so I can have it on the record.

MR. McKENZIE: An org chart for...say it again.

81. MS. SPENCE: The OOM companies.

MR. McKENZIE: Refused. /R

BY MS. SPENCE:

82. Q. How would you describe OOM's business?

MR. McKENZIE: No. You just did it again. Ask him about the specific companies. Any one of the five, or all of the five, we are good. That is a refusal. /R

83. MS. SPENCE: All right.

BY MS. SPENCE:

84. Q. If I focus on the five companies that your counsel is permitting you to answer questions about, what is their business?

MR. McKENZIE: Can we take them one at a time? Because...

85. MS. SPENCE: Sure.

BY MS. SPENCE:

86. Q. So, pick one.

MR. McKENZIE: Why don't we start with...

87. MS. SPENCE: I will have Mr. Clydesdale's evidence, please. Let's pick...

MR. McKENZIE: Why don't we start...

BY MS. SPENCE:

88. Q. ...MCSnoxrecovery Inc.

MR. McKENZIE: No, don't pick...

BY MS. SPENCE:

89. Q. What does that company do?

MR. McKENZIE: ...that one. Start with 244...

90. MS. SPENCE: Excuse me. This is my question.

MR. McKENZIE: Okay, go ahead. Because...you will see.

91. MS. SPENCE: Okay.

MR. McKENZIE: Go ahead. What is the business of MCSnoxrecovery Inc., correct?

92. MS. SPENCE: Correct.

MR. McKENZIE: All right, go ahead.

THE DEPONENT: I am not sure.

BY MS. SPENCE:

93. Q. You don't know what the company does?

A. I am not sure.

94. Q. What about Magnitude CS Energy Inc.? What does that company do?

A. Again, I am not sure.

95. Q. What does MSCAB10 Inc. do?

A. Not sure.

96. Q. What does 244 do?

A. Same thing, not sure.

97. Q. And what does MCS Energy 12, Inc. do?

A. Not sure.

MR. McKENZIE: Can I supply the... because I have information. In other words, the reason he doesn't know is he is the senior, senior, senior guy of these companies and each one of them is engaged in a different kind of business, right?

98. MS. SPENCE: So, that is why my collective question was more appropriate. I would have appreciated an answer to that. If you would like to...

MR. McKENZIE: I am going to give you...

99. MS. SPENCE: ...provide me an answer that somehow explains what these businesses do...

MR. McKENZIE: We can do this two ways: we will give you an undertaking, and we will write one paragraph for each company, or I can help you today as you wish.

BY MS. SPENCE:

100. Q. So, Mr. Clydesdale, you can't explain to me what your companies do?

MR. McKENZIE: Yes, we can, but we have to...

101. MS. SPENCE: Let me have his answer, please.

THE DEPONENT: I am not sure of the question.

BY MS. SPENCE:

102. Q. You don't understand what...

MR. McKENZIE: Okay.

103. MS. SPENCE: ...the companies do?

MR. McKENZIE: Let's try this. What does 244 do with Leaside, which we talked to the Receiver about incessantly? What do they do? I mean, just explain the generic part of it.

THE DEPONENT: Yes, 244 is a company that has a cogeneration machine in it that produces energy for the client.

BY MS. SPENCE:

104. Q. Okay. And of the other four

companies, can you explain what their businesses are?

MR. McKENZIE: Can you do that in a very general way, for each one?

THE DEPONENT: Okay, sorry, can you go down the...

BY MS. SPENCE:

105. Q. So, Magnitude CS Energy Inc.

A. I am not sure on that one. I don't know that one.

106. Q. You don't know that one. Do you know which specific projects that company might be associated with?

A. No, I am not sure.

107. Q. How about MCSAB10 Inc.?

A. I believe that one was designed to do a cogeneration and sell kilowatts to an Alberta company...an Alberta...a company in Alberta.

MR. McKENZIE: We will call that the Imaginea deal, by the way. We call that the Imaginea deal. That is...the Receiver knows all about this, because they are interacting with Colin somebody because Suzanne West died, so a reminder that I think you have a lot of this information.

108. MS. SPENCE: When did Suzanne West die?

MR. McKENZIE: Last week.

THE DEPONENT: Last week.

109. MS. SPENCE: Do you know what day?

MR. McKENZIE: I read it in the paper. I mean, sad, sad, lovely lady, and before her time, but there goes more information. So, I think you are talking, now, to Colin Davies, I think it is, from...I can't remember the name of his company.

110. MS. SPENCE: So, is it your...

MR. McKENZIE: Cor4, or Cor5, Cor-something like that. I don't even know what...I just heard it, so I am...

111. MS. SPENCE: It doesn't matter.

MR. McKENZIE: I just heard it said. I am not sure it is exactly right, but he has sort of taken over.

BY MS. SPENCE:

112. Q. So, would you incorporate a new entity for each project that the OOM companies engaged in?

MR. McKENZIE: That is a legal question.

That...

113. MS. SPENCE: That is not. It is a factual question as to whether a new company was incorporated.

MR. McKENZIE: Okay. For a specific project, such as the Leaside one, which you are familiar with, yes, there was one company...and by the way, Miller Thomson did it I think because they wanted it that way. One company, for one installation and one loan to Crystal Wealth, which we all know was signed and sealed and closed by the lawyers, John Fine (sic), I believe is his name.

BY MS. SPENCE:

114. Q. So, 244 is engaged in that St. Marys Leaside project only, is that the answer?

MR. McKENZIE: Correct.

BY MS. SPENCE:

115. Q. Okay. And MCSAB10 is involved in the Imaginea project in Alberta only?

MR. McKENZIE: Ditto. They were going to install the same kind of gadget. When I say "gadget", it is more complicated than a gadget, obviously, but...

BY MS. SPENCE:

116. Q. How about MCSnoxrecovery Inc.? Was that engaged in a particular project?

A. That one, I am not sure.

MR. McKENZIE: That one is complicated.

BY MS. SPENCE:

117. Q. So, was it engaged in multiple projects?

MR. McKENZIE: No, it is basically a research company, from what I can see. It was involved in removing toxic stuff from...whatever, gas, exhaust, stuff like that. You all know all about this, because it is interacting with Pond, which is another one that you guys...when I say "you guys", I am talking about generically. I just say that so...

118. MS. SPENCE: So...

MR. McKENZIE: You people are already engaged with Pond. You know what they do. It is the same kind of business. They have interacted with each other.

119. MS. SPENCE: Does MCS...

MR. McKENZIE: They have got things going on that you have, I think...

120. MS. SPENCE: This is not helping.

MR. McKENZIE: Well, I understand, but you have to let me finish. So, go ahead. Anyway.

BY MS. SPENCE:

121. Q. So, is MCSnoxrecovery engaged in carrying on any business?

MR. McKENZIE: I just told you.

BY MS. SPENCE:

122. Q. Is it operating a facility?

MR. McKENZIE: It doesn't have a cogen unit installed, because it is not in the cogen business. It is in that other business I have told you about.

123. MS. SPENCE: Right, but you said it was a research company. Is it carrying out research, or is operating a facility?

MR. McKENZIE: That was my word, "research", because apparently, to use all this stuff, algae and the other gadgets, to remove these effluents, the toxic effluents, you need to have gadgets, and you have to have a lot of smart stuff, and I called it research. Maybe other people can...

124. MS. SPENCE: That is all right. It does processing of a kind? Is that...

MR. McKENZIE: You could call it that, yes.

125. MS. SPENCE: Okay.

MR. McKENZIE: How do they remove CO2 from the air? I don't know. And this company was trying to get NOx and SOx...SOx, NOx and CO2 out of the...whatever, pollution of the world or something like that.

BY MS. SPENCE:

126. Q. So, Mr. Clydesdale, are you aware of these operations that MCSnoxrecovery Inc. is carrying on?

A. Not in detail, but what he described is accurate. That is...trying to figure out how to take NOx and SOx out of the air.

127. Q. So, when you say "trying to figure out", is it still in the research and development stage?

A. I am not sure where it is at.

128. Q. And is the intention that it would be associated with various projects? So, for example, Pond works in conjunction with Pond?

MR. McKENZIE: It is a different business.

129. MS. SPENCE: I understand it is a different business...

MR. McKENZIE: But they match.

130. MS. SPENCE: ...but I want to understand what the business is.

MR. McKENZIE: You know, if you are running a gas plant, and somebody comes in to take the bad stuff out of the gas, you can sell that service for the same thing. But as of now, there are no...they didn't get that far because they ran out of money...

131. MS. SPENCE: So...

MR. McKENZIE: ...from what I can see, or maybe they didn't, but we don't know about...

BY MS. SPENCE:

132. Q. So, the business carried on by MCSnoxrecovery Inc. has the potential to operate at multiple sites?

A. That is speculation.

133. Q. Does it have that ability?

MR. McKENZIE: Well, when it gets going.

134. MS. SPENCE: When it gets going.

MR. McKENZIE: I mean, they will save the world if somebody can figure out how to do this.

135. MS. SPENCE: So, that is what I am asking. Is it still in the research phase? It is not currently doing anything?

MR. McKENZIE: It is not actually doing...

136. MS. SPENCE: Okay.

MR. McKENZIE: ...the removal yet. And we have had to go back, because Pond is in sort of a similar business, and you know a lot more about that than I do, because you have been talking to them.

137. MS. SPENCE: And is that research ongoing?

MR. McKENZIE: Well, it ran out of

money.

138. MS. SPENCE: Okay. So, currently MCSnoxrecovery Inc...

MR. McKENZIE: Well...

139. MS. SPENCE: ...is doing nothing?

MR. McKENZIE: I think there are still guys...

THE WITNESS: I am not going to...

BY MS. SPENCE:

140. Q. Does it have any employees?

A. I am not sure.

141. Q. Okay. How about MCS Energy 12, Inc.? Is that associated with a particular project?

MR. McKENZIE: Okay, I will explain that. It is also...

142. MS. SPENCE: Does Mr. Clydesdale know the answer to that question?

MR. McKENZIE: No.

143. MS. SPENCE: Let me have his answer.

THE DEPONENT: I am not sure.

BY MS. SPENCE:

144. Q. You don't know what MCS Energy 12, Inc...

A. I am not sure.

145. Q. ...if they are affiliated with a particular project?

A. Again, I would be guessing, so I am not totally sure.

MR. McKENZIE: Do you want to know?

146. MS. SPENCE: Let's hear it.

MR. McKENZIE: Okay. MCS Energy 12, Inc. is a Michigan corporation. Is it where Detroit is?

THE DEPONENT: Yes.

MR. McKENZIE: It is a Michigan corporation that has signed an ESA with St. Marys, because they have a plant in... somewhere down there in Michigan. And, you know, if the money hadn't been cut off that it was promised, they would probably be operating today. We are in a heck of a mess because of that.

147. MS. SPENCE: So, MCS Energy 12, Inc. is affiliated with a particular cogen site in Detroit; is that the answer?

MR. McKENZIE: It has a contract, called an energy supply agreement, you already know what they are, with this Michigan cement plant down there. And if it had been allowed to run, and gotten the financing it had been promised, it would be operating by now, just like the one at Leaside is running. In other words, it is identical...no, I shouldn't say "identical", but the same business, which is providing energy to the plant in Michigan.

BY MS. SPENCE:

148. Q. So, that particular company is associated with that particular project that Mr. McKenzie just described, is that correct?

MR. McKENZIE: I don't really like the word "associated". It has a contract. That is the legal jargon, isn't it?

149. MS. SPENCE: I was directing my question to Mr. Clydesdale.

MR. McKENZIE: Well, he is not answering the word "associated" unless you define it, because that is a word that can mean so many things, and we need to be very specific.

BY MS. SPENCE:

150. Q. Okay. So, MCS Energy 12, Inc. has a contract for a particular project in Michigan?

A. I believe so, yes.

151. Q. And does it have any other business?

A. I am not sure.

152. Q. And let me go to the last company, Magnitude CS Energy Inc. Is that company associated with a particular project?

A. I am not sure. I don't know.

153. Q. Is there any project for which Magnitude CS Energy Inc. has a contract?

MR. McKENZIE: In other words, an ESA?

154. MS. SPENCE: Any kind of contract that might result in it doing business.

THE DEPONENT: I don't recall.

MR. McKENZIE: Well, I know we are all looking for a value. It is the other way around. Magnitude is moribund because it didn't get the money it was promised. But, no, there are no contracts...

155. MS. SPENCE: So, does...

MR. McKENZIE: ...no ESAs...

156. MS. SPENCE: Does Magnitude...

MR. McKENZIE: ...no customers.

157. MS. SPENCE: Does Magnitude CS Energy Inc. carry on any business?

MR. McKENZIE: Any business?

THE DEPONENT: I am not sure. Sorry, I am not sure.

BY MS. SPENCE:

158. Q. No, or yes?

MR. McKENZIE: He said he is not sure.

THE DEPONENT: I am not sure.

BY MS. SPENCE:

159. Q. So, you don't know if Magnitude CS Energy Inc. is carrying on any business?

MR. McKENZIE: No, he is not sure, he said. They basically shut down when Crystal Wealth stopped sending them money.

BY MS. SPENCE:

160. Q. Would you identify Magnitude CS Energy Inc. as the main operating company within the OOM group?

MR. McKENZIE: Don't answer that. You are now going back to the questions about the OOM group. So, let's do it the other

way around. You asked if Magnitude CS Energy Inc. is, blah, blah, blah, or anything. We have been through all that, and I am saying that is fine. But the other one is trying to run around my objection earlier. We are not talking about things that are not relevant here. So, you can stay with MCS Recovery Inc. which, as I said, is presently, as far as I can see,
moribund. /R

161. MS. SPENCE: So, Magnitude CS Energy Inc. was actually the company I was asking about. And, so, my understanding, based on the answers given today, is that you don't know whether this company is carrying on any business?

MR. McKENZIE: Just a second. Magnitude CS Energy Inc.?

162. MS. SPENCE: Correct.

MR. McKENZIE: At present, it is moribund. So, it has no business to carry on. It is...where is the money? You know, we have been asking this for a year, April, I think.

BY MS. SPENCE:

163. Q. Prior to Crystal Wealth ceasing funding to Magnitude CS Energy Inc., what business did it carry on?

MR. McKENZIE: I think you have that question backwards. Do you mean when Magnitude was seeking funding from...

164. MS. SPENCE: Ceasing funding.

MR. McKENZIE: Ceasing funding?

165. MS. SPENCE: When Crystal Wealth stopped funding Magnitude CS Energy Inc. I am...so, that question is arising out of the answer you just gave, which is that it has no money because Crystal Wealth stopped funding it. So, before Crystal Wealth allegedly stopped funding Magnitude CS Energy Inc., what business did it carry on?

MR. McKENZIE: I understand that question.

THE DEPONENT: I am not sure. I don't recall.

MR. McKENZIE: So, basically, that... what was the date of receivership, April of last year? 2017? But before April 2017, right? Or whatever the date of

receivership was. That was what the
question was, okay.

166. MS. SPENCE: And the answer is, "We
don't know"?

MR. McKENZIE: He said he doesn't
recall.

THE DEPONENT: I don't recall.

BY MS. SPENCE:

167. Q. So, are you...so, of the five
companies that you are willing to answer questions
about, are you the only shareholder?

A. I am not sure.

MR. McKENZIE: There is an e-mail
somewhere to you, Miranda, last summer, on
the same topic.

BY MS. SPENCE:

168. Q. So, many of the companies that you
operate, including the ones we are talking about
today, operate under the trade name OOM Energy,
correct?

MR. McKENZIE: Don't answer that. /R

BY MS. SPENCE:

169. Q. The five companies that you are answering questions about today, they operate under the trade name OOM Energy, correct?
MR. McKENZIE: We have to look that up. U/T

BY MS. SPENCE:
170. Q. You don't know the answer to that?
A. I am not sure.
171. Q. And we know that you used to use a trade name that was MCS Energy, correct?
A. I don't recall.
172. Q. Why did you make that change in branding?
MR. McKENZIE: He didn't say he did. You just...
THE WITNESS: I don't recall.

BY MS. SPENCE:
173. Q. Did you, Mr. Clydesdale, on behalf of your companies, work with Crystal Wealth on branding your companies?
A. I don't understand...
MR. McKENZIE: The five companies? What does "branding" mean?
174. MS. SPENCE: "Branding" means marketing,

coming up with names, determining how you are going to present the companies in the marketplace...

MR. McKENZIE: Sorry...okay. You are saying, did Crystal Wealth provide services to Mr. Clydesdale about branding? Crystal Wealth?

175. MS. SPENCE: I am asking...I didn't say "provide services". I said, did you work with the Crystal Wealth companies on branding?

THE DEPONENT: I don't recall.

176. MS. SPENCE: Okay. So, I have a binder here that contains some documents. I am going to hand it to you. And, so, just for the sake of ease of use on this exam, I would like to mark the binder as Exhibit 2 to the exam.

MR. McKENZIE: No. You handed a loose leaf binder...it is a black loose leaf binder like we used in high school. A three-ring binder with 16 tabs in it and, what, 200 printed pages, that we have never seen before, presumably. And I am saying that you can't do that. I mean, there is law. You can't just throw something at that person...

177. MS. SPENCE: Okay. I am going to mark them for identification, then.

MR. McKENZIE: Okay, we have a deal.

178. MS. SPENCE: Okay?

MR. McKENZIE: And I am going to be able to keep this...

179. MS. SPENCE: Exhibit A for identification.

MR. McKENZIE: ...right? Or go home with a copy of it?

180. MS. SPENCE: Yes.

MR. McKENZIE: Awesome. So, could I have a stamp...well, can I keep this one?

181. MS. SPENCE: Yes.

MR. McKENZIE: Okay. So...no, no, I think the young lady needs a stamp to mark it. And I am going to write on here, this is...what do we call it? Exhibit A?

182. MS. SPENCE: Exhibit A.

--- EXHIBIT A: Black binder entitled "Craig Clydesdale March 12, 2018" containing 16 tabs (for identification)

MR. McKENZIE: Okay, fire away.

183. MS. SPENCE: Thank you.

BY MS. SPENCE:

184. Q. So, can you turn to tab 1, please? You can take a moment to look at the document. I am just going to ask you, initially, if you recognize it.

A. I recognize the general look. I don't recognize this one specifically.

185. Q. Do you know who prepared it?

A. I don't recall.

186. Q. So, I am going to ask you to turn to page 6 of the document. So, this appears to be an overview of...well, let me just describe what I understand the document to be, and you tell me if you agree. It appears to be a document that is marketing materials for OOM. Would that be an accurate reflection of what the document is?

A. I am not sure.

187. Q. So, at page 6, it says, "Overview". And then it says "Who We Are". Do you see that?

A. M'hmm.

188. Q. And based on the nature of the document, I understand that this is referring to OOM. So, who OOM is. Is that correct?

A. Again, I am not sure.

189. Q. Okay. There are a number of different entities listed. And, so, I am going to ask you to tell me how each of those entities is affiliated or engaged with the OOM business. The first is Aon Insurance.

MR. McKENZIE: So, you can ask him that for the five companies we are talking about.

190. MS. SPENCE: Sure.

MR. McKENZIE: And the answer is, that is what it says. Aon is basically...I am going to call it, using my word, the global insurer. And, so, it issues, sort of, the sub-policy for this...Leaside would be insured by Aon.

BY MS. SPENCE:

191. Q. Okay. So, Aon provides insurance to the five companies that we are talking about?

MR. McKENZIE: Well, it would. I mean, the one that is running, yes.

192. MS. SPENCE: You mean 244?

MR. McKENZIE: But it might not have kicked in if the other deal didn't close, right? But I couldn't tell you that.

193. MS. SPENCE: Okay. Could you please produce the insurance policies pursuant to which Aon Insurance provides...

MR. McKENZIE: Yes.

194. MS. SPENCE: ...any coverage?

MR. McKENZIE: We wrestled with this. And don't get me wrong. There are so many confidentiality obligations. I am trying to explain this. It is a global policy. In other words, you know, we are insuring the whole...whatever project you sign up for, we will insure it. And then when we close, we get a specific, "Yes, this project is insured". So, I am saying, I am trying to wrestle with...would you...would it be okay to get a letter from Aon saying, "Yes, here is the coverage you have got for this particular project, say, Leaside", is the one I always go back to, because...otherwise, we are not going to get where we want to go, which is, it is insured.

195. MS. SPENCE: So, my request is for the insurance policy.

MR. McKENZIE: Well, I don't even know if there is one. So, okay, let's be very specific, and I am just going to make an inquiry of Aon, because, you know, insurance companies, it is probably maybe ten yards thick. Specifically, you would like to have...

196. MS. SPENCE: I would like to have...

MR. McKENZIE: ...the policy that is insuring one or more of the five projects?

197. MS. SPENCE: Correct.

MR. McKENZIE: I will ask them for that, and see what we can do. U/T

198. MS. SPENCE: Okay.

MR. McKENZIE: I am saying it is...

199. MS. SPENCE: Thank you for that undertaking.

BY MS. SPENCE:

200. Q. Moving on in this list, The State Group, what does The State Group do for those five companies?

A. I don't recall. They are a construction company, and I don't recall what they did for those companies.

201. Q. Okay. Did they...so, let's say, for example, with respect to 244, the Leaside plant, did they do any work on that project?

A. I don't recall. I don't know. I don't recall.

202. Q. Clayton Industrial?

A. They make steam equipment.

203. Q. Did they make any equipment for, for example, the Leaside project?

A. I don't recall.

204. MS. SPENCE: Can you undertake to review your records and identify whether 244 paid Clayton Industrial to carry on any work for the Leaside project? To my mind, that fits squarely within what you have identified as the purpose of this exam.

MR. McKENZIE: Yes, I am trying to...I am trying to give you one answer that is going to avoid us with 50 questions. I mean, I am just going...okay. So, let me just talk for a minute. When you install something like this, you might hire ten different engineering companies to do ten different things, right? And one of them might be to bring this thing on a truck, and another might be to connect A to B. And there was also some work...anyways, I am saying this is, say, a subcontractor, and I am saying, you want to know if some money was paid to Clayton Industrial as a subcontractor to do something at Leaside, right?

205. MS. SPENCE: Yes.

MR. McKENZIE: Okay. We can make that inquiry, and again...

206. MS. SPENCE: So, again, when you say "make an inquiry", I am expecting that your own records, meaning 244's records, would reflect payments made to Clayton Industrial if Clayton Industrial did work for that company.

MR. McKENZIE: It is not that simple, but we will search.

207. MS. SPENCE: Okay.

MR. McKENZIE: So, the answer is going to be yes or no, they paid Clayton Industrial to do something. That is really what the answer is going to be, right?

208. MS. SPENCE: And, so, my understanding is that based on our discussion so far today, that the four other companies, they haven't done any work, correct? There has been no...

MR. McKENZIE: Clayton, you mean?

209. MS. SPENCE: No, I mean...so, for example, MCSAB10, has it actually built anything?

MR. McKENZIE: Well, as you understand, I am sure, you start with signing the contract, and then there is a whole pile of unique and specific engineering...

210. MS. SPENCE: Right. So, I am...

MR. McKENZIE: Just let me finish, because I want to get to the end of this...work done...and then, you know, down the line a certain way, you might order three bolts from Canadian Tire, because it is for a specific job. And I do know they have to order generators, obviously, because a generator is part of...I think part of the thing. So, I am saying specifically, you are asking whether

Clayton Industrial did any work for any of the other four? Like, we can give you the same undertaking as a yes or no.

211. MS. SPENCE: Yes.

MR. McKENZIE: Okay. That simplifies it for me.

212. MS. SPENCE: Okay, great So, then, you know what? I mean, I think that I would like to have the same undertaking for the other companies listed on this list. So, Cummins Power Generation, Estate Group and ORTECH Environmental. So, the undertaking is to let me know if these companies did any work for the five companies...the five OOM companies that we are talking about.

MR. McKENZIE: Yes. And as I say, I can give you that undertaking, and say yes or no, or, "We can't figure it out". I mean, that is...

213. MS. SPENCE: Okay, and...

MR. McKENZIE: Well, the last one is a bit...we should be able to call them and say, "Did you work on that project?" I mean, they will have records too, so... U/T

214. MS. SPENCE: And, so, if the answer is

yes to any of those questions, then I am including Clayton Industrial in this undertaking. I would also want to know how much was paid to them by the relevant OOM company, and documentation reflecting those amounts to be produced.

MR. McKENZIE: How much...okay, so if the answer is yes...

215. MS. SPENCE: If the answer is yes...

MR. McKENZIE: ...we will tell you how much money was paid to any one of them. Yes. And what was the second part of the question?

216. MS. SPENCE: To produce the documentation reflecting those payments.

MR. McKENZIE: Like a cheque or something?

217. MS. SPENCE: Cheque, yes.

MR. McKENZIE: I will take that under advisement. And I am going...by the way, the only reason I am taking that under advisement is it may be complicated...and I am saying they might say, yes, they have acknowledged we have paid them. I am not recalling any liens or... U/A

218. MS. SPENCE: Right, I am...

MR. McKENZIE: ...non-payment or lawsuits by any of them. But we have to go back...because it is, you know, a messy situation. We have to go back and check our records. I may be wrong. People in this industry put liens on and sue people and that is a record, too. That is why I just want to...

219. MS. SPENCE: So, I...

MR. McKENZIE: ...simplify it, just...

220. MS. SPENCE: I am looking for any records of payment to those companies.

MR. McKENZIE: Yes, no, I hear you. But as I said, I...I think it should be simple, but this has never been a simple file.

BY MS. SPENCE:

221. Q. I am going to ask you to turn to page 2 of this document that we are looking at. So, it doesn't actually have a number on it, but... actually, so the one that I am looking at is...it has a big circle with OOM in the middle of it, and then it says, "Together with Richardson". What is Richardson?

A. I don't recall. I am not sure.

222. Q. So, I mean, when I look at this page, it implies that OOM and Richardson are working together to do whatever work is being promoted in this manual.

MR. McKENZIE: You know, this might have been one of 900 drafts. I mean, I am...we are trying to assist you. This is sort of a...you are using it as an aide memoire. I am saying that nobody even knows that this was foisted on the public. I mean, I am just saying this is a piece of paper. So, I hope it is helping you, but I am going...he says he doesn't remember.

223. MS. SPENCE: Okay.

BY MS. SPENCE:

224. Q. So, you don't have any recollection of doing business with something called Richardson?

MR. McKENZIE: Well, he said he doesn't recall.

BY MS. SPENCE:

225. Q. Is OOM a registered trademark?

MR. McKENZIE: Hold that thought.

Somebody is going to have to search it. In other words...

226. MS. SPENCE: So, you don't know?

MR. McKENZIE: Well, we are not the IP lawyers, but it is out there. Trademarks is a whole, as you know, world of itself. So, it takes them forever to get back to you.

227. MS. SPENCE: Okay, so...

MR. McKENZIE: We would have to search it. So, I will let you search it.

228. MS. SPENCE: Okay, so you don't know, is the answer?

THE DEPONENT: Not sure.

229. MS. SPENCE: I am taking "I am not sure" to be the same as "I don't know", so...

MR. McKENZIE: Well, no...

230. MS. SPENCE: ...that is what I understand.

MR. McKENZIE: ..."I don't know" is not his answer. He is saying, "I don't recall". As I said, this guy is involved in about...a lot of things, and you are asking him stuff that happened one, two, three years ago that has cratered on him, and caused an enormous amount of grief to his business, which we are spending a lot more time trying to solve those things than worrying about...and we are working with you to try to, you know, find the way to get the money back to the investors. So, he doesn't recall. You know, if you convince me that something is relevant, we can go dig it out, if it exists. But...

231. MS. SPENCE: I mean, I would have thought that if you are running multiple companies using the same name, you would know if it is a trademark or not, but...

MR. McKENZIE: Well, no, no...

232. MS. SPENCE: ...I will take your...

MR. McKENZIE: ...it is out there...no, no, don't get me wrong. He is not a legal genius, but I can tell you that it is out there to, you know, being...whatever IP lawyers do with it to make sure other people don't use it. So, why don't you search the trademarks and copyrights, and you will find out if it has happened? Because...

233. MS. SPENCE: So, you are...

MR. McKENZIE: ...that is what I would have to do.

234. MS. SPENCE: So, your answer is that you instructed counsel to register the trademark?

MR. McKENZIE: He didn't say that, either. I mean, you are asking me...

THE DEPONENT: I said I don't recall.

MR. McKENZIE: You know, this is the legal department...I am not the legal department, but I am saying you are asking me whether he has done all the things he is supposed to do on all the regulations in the world? Are you asking...

235. MS. SPENCE: No, that is not what I am asking. I am asking if he has instructed counsel to register the trademark "OOM".

MR. McKENZIE: Well, it stands to reason they are trying to protect it. Absolutely, yes, they are trying to protect it. So...

236. MS. SPENCE: Okay.

MR. McKENZIE: ...we will search it. And be my guest. I would think that you would try to protect it in Europe, South America, the U.S. and Canada, if it were me. So, why don't you search it?

237. MS. SPENCE: Well, it is your client, so I would have expected...

MR. McKENZIE: No, no, these companies don't have a trademark.

238. MS. SPENCE: So...

MR. McKENZIE: These five companies we are talking about don't have a trademark.

239. MS. SPENCE: Okay, thank you.

BY MS. SPENCE:

240. Q. Do you have separately retained IP counsel?

MR. McKENZIE: How is that relevant?

241. MS. SPENCE: You have just described to me that the answer to my question lies with the lawyers who are handling the IP. So, I am asking who those lawyers are.

MR. McKENZIE: No, you search it. We are not going to let you subpoena other people. You have already dragged us down here for, like, five days. And I am saying what are you going to do, subpoena the lawyers now?

242. MS. SPENCE: I...

MR. McKENZIE: No. Just look it up. I am putting my foot down. I am saying...

243. MS. SPENCE: Okay, so...

MR. McKENZIE: ...five days we have been in Toronto answering questions, and this is the first time you have produced documents today, 150 pages that I am supposed to read, what, at the break? So, I am saying the answer is, look it up. I am sure...

244. MS. SPENCE: That is not an answer to my question...

MR. McKENZIE: ...it has been done properly.

245. MS. SPENCE: ...Mr. McKenzie. My question is...

MR. McKENZIE: No.

246. MS. SPENCE: ...have you retained IP counsel?

MR. McKENZIE: Well, I am not sure he would even know, but the point is, look it up.

247. MS. SPENCE: So, the answer is, "Look it up" to my question...

MR. McKENZIE: These five companies...

248. MS. SPENCE: ...have you retained IP

counsel?

MR. McKENZIE: ...have not retained IP counsel. That is why we are here. And you keep going off on...I mean, we have told you already, OOM is not even relevant to this, and you have now spent 20 minutes talking about OOM, and dragging out a document that gosh knows what it is.

249. MS. SPENCE: So, Mr. Clydesdale...

MR. McKENZIE: Can we get to the documents that are the...the loan documents and the money that we are trying to find for you?

250. MS. SPENCE: It is my examination, Mr. McKenzie, thank you.

BY MS. SPENCE:

251. Q. Mr. Clydesdale, are you aware of whether you have retained IP counsel?

MR. McKENZIE: Don't answer that. /R

BY MS. SPENCE:

252. Q. Do you know if any of the five companies that we are talking about today own any patents or trademarks?

MR. McKENZIE: The answer is no.

BY MS. SPENCE:

253. Q. When did you first begin working with Crystal Wealth?

A. I don't remember.

MR. McKENZIE: "Working with", you mean associated with them? Because he doesn't work for them.

BY MS. SPENCE:

254. Q. When did the relationship between your companies and Crystal Wealth begin?

A. Like I said before, I don't recall. It was...

255. Q. Ballpark?

A. ...a few years ago, a couple of years ago. I don't recall.

MR. McKENZIE: Well, the first...my recollection is the first closing was...what was it, 1974 with Miller Thomson? So, it must have been before that, somebody introduced...and there was a company called 2G...

256. MS. SPENCE: Yes.

MR. McKENZIE: ...which...

257. MS. SPENCE: Did you say 1974? Sorry, I...

MR. McKENZIE: Yes, there you go.

258. MS. SPENCE: Right.

MR. McKENZIE: That is what happens when you are old. 2014.

259. MS. SPENCE: 2014.

MR. McKENZIE: And I am saying...I was reading another brief this morning, there is an estate in four countries, and gone back 100 years. So, I am so sorry...

260. MS. SPENCE: Okay.

MR. McKENZIE: Thank you for picking that up, but I am saying...

261. MS. SPENCE: 2014.

MR. McKENZIE: Okay. We know that he met Mr. Smith at Crystal Wealth, and we know that he was introduced. You can correct me if I am wrong, Mr. Clydesdale...

262. MS. SPENCE: I would rather have Mr. Clydesdale tell me.

MR. McKENZIE: No, no, I understand, but I am trying to lead us and remember a lot. 2G, okay...the reason I can tell you is I closed the deal with Jonathan at Miller Thomson.

263. MS. SPENCE: Okay, so...

MR. McKENZIE: So, that is how I knew about 2G.

BY MS. SPENCE:

264. Q. So, who is 2G Capital Solutions?

MR. McKENZIE: They are brokers, I guess.

THE DEPONENT: I don't recall. I think they are brokers.

BY MS. SPENCE:

265. Q. Who was the individual at 2G Capital that you deal with?

A. I don't recall his name.

266. Q. Is that someone you had an ongoing business relationship with?

MR. McKENZIE: Since when? Ongoing business relationship? They are brokers.

THE DEPONENT: I don't recall. They are brokers.

MR. McKENZIE: They find you money.

267. MS. SPENCE: So, that is...

MR. McKENZIE: Do you remember when you met 2G first?
THE DEPONENT: No, I don't remember.

BY MS. SPENCE:
268. Q. Did you do deals with 2G prior to getting introduced to Crystal Wealth?
A. I don't remember.
269. Q. So, you don't know if 2G's introduction to Crystal Wealth on your behalf was the first deal you did with them?
A. I know that the Leaside 244 closed. I know that one happened. The other one...I don't know if there was anything else. I don't recall.
270. Q. Has 2G Capital introduced you to any other lenders, other than Crystal Wealth?
A. Again, I don't recall.
271. Q. Once 2G had conducted that...or completed that introduction, did they stay engaged in your relationship with...
MR. McKENZIE: Define that, please?
272. MS. SPENCE: ...Crystal Wealth? Did they have any role? Did they have any ongoing relationship, any commission arrangement?

MR. McKENZIE: Well, let's do those one at a time. Yes, there was a commission arrangement of some nature.

273. MS. SPENCE: Can you...

MR. McKENZIE: Stay involved in the cogen business, negative.

274. MS. SPENCE: Can you please produce a copy of any commission agreement, or agreement that gave rise to commissions between 2G Capital Solutions Inc. and the OOM companies?

MR. McKENZIE: Off the record for a minute.

--- DISCUSSION OFF THE RECORD

275. MS. SPENCE: So, Mr. McKenzie, you were just responding to my request for an undertaking to produce the commission agreement between 2G Capital and the OOM companies that we are talking about.

MR. McKENZIE: Okay. What we are going to do is look, and see if there is one. But you should have it, because Crystal Wealth would have it. I mean, Crystal

Wealth was the one that paid them.

276. MS. SPENCE: Okay. So, that is helpful. Crystal Wealth was paying...

MR. McKENZIE: So, it could have gone the other way. In other words, the commission could have been payable to Crystal Wealth. I know from memory, there was something right at the end that they were to get paid out of the proceeds or something like that. So, it could have been the other way around.

277. MS. SPENCE: Okay.

MR. McKENZIE: So...and, you know, this mystery. Unless it is in this book, gosh knows if we ever saw it at this side.

278. MS. SPENCE: Okay.

BY MS. SPENCE:

279. Q. So, prior to the introduction to Crystal Wealth by 2G Capital, did you know Clayton Smith?

A. I don't recall. I can't remember.

280. Q. Did you socialize with him?

A. I don't remember.

281. Q. You don't remember?

A. No.

282. Q. Was it a friendly relationship?

A. Again, I don't remember. I don't recall.

283. Q. What did you think about Clayton's business? Did you think he was a good businessman?

MR. McKENZIE: I think a lot of people are questioning that right now. But, anyway, it was a business relationship. A lender, like, from the outside...you know...I mean, Mr. Clydesdale has got a statement he can read you that he wrote to describe his relationship...

284. MS. SPENCE: Okay, yes.

MR. McKENZIE: ...with Mr. Smith, because I am going...it is just two guys. A fund is like a bank to us guys out in the country. If you want to read that to her, that thing you wrote out? No, I am just saying, because...I said, you know...recollections are difficult years later. And I said, you know, spend a couple of days writing out something, and then I read it this morning. This might help you a lot.

THE DEPONENT: Okay. So, I will read this out. If I go too fast...

MR. McKENZIE: Yes, okay. Just read it slowly.

THE DEPONENT: Okay:

"...I met Mr. Smith through 2G. The first transaction was to finance the ESA between 244 and St. Marys, and I went to Crystal Wealth's lawyer's office and signed documents. Then I left it to the lawyers to get the deal closed, and they did. And I understand they did not use all the documents that I had signed, but did some other things. So, I went and signed some more documents. In summary, I am not sure what I signed, and some of the documents that I did sign were never used, and I presume were discarded or destroyed..."

Okay?

"...For the rest of the deals, i.e., MCSAB10 Inc., Magnitude CS Energy Inc., and MCSnoxrecovery Inc., it was the same idea, but mostly I just met directly with Mr. Smith and signed some things, and he was going to take me to his lawyer so they could close those deals.

So, for the monies for the first deal, I can't remember if I got a cheque from the lawyers, but that bogged down because the bank held the cheque for a while before releasing it. So, later, Mr. Smith would do it directly. So the money got deposited to the company bank. Payments were made by the companies, which I presume Crystal Wealth kept track of. So, in summary, all you need to do is go through the Crystal Wealth records and track down all of the transactions where money was paid to any of the four companies, and then deduct when monies were paid as directed by Mr. Smith, and you will find the balance that is owing.

The important question now is, how much can be recovered from the projects that are unfinished, because they were not completely funded? So far, we have managed to work together with the Receiver well, and sort out the Leaside transaction. I continue to be happy to work with you and your ultimate client, the OSC, to resolve these issues for all of the projects and loans. There are some confidentiality issues, so we want to make all communications off the record, or at least until that is sorted out. So, we continue to encourage the Receiver to meet on a without prejudice off the record basis, and iron out any difficulties as best we can, and get on with the business of maximizing the returns for the Crystal Wealth investors..."

BY MS. SPENCE:

285. Q. So, Mr. Clydesdale, when did you prepare that?

A. I printed it yesterday.

286. Q. Okay. Did you prepare it for the purpose of this exam today?

MR. McKENZIE: Yes, I told him to write...I said...you know, his memory, like mine, it is not great. And I just said, "Do your best, because she is going to ask you about Clayton Smith", which you have been doing. I said, "Write down, as best you can remember"...it is not going to get

any better than that. Do you see what I
mean? No matter how many questions you
ask, it was a business relationship with a
lender. A fund that has got the imprimatur
of the OSC all over it.

BY MS. SPENCE:

287. Q. So, when you...I am just going to ask a few questions arising from what you have just read. You mentioned that you met at Crystal Wealth lawyer's office?

A. Yes.

288. Q. Which office was that?

MR. McKENZIE: Miller Thomson. John Fine?

THE DEPONENT: Jonathan Dyck, I think.

MR. McKENZIE: I take that back. It might be Dyck.

289. MS. SPENCE: I believe it is Dyck.

MR. McKENZIE: There you go, you are ahead of me.

290. MS. SPENCE: Okay.

BY MS. SPENCE:

291. Q. So, that is the office you are

talking about?

A. Correct.

292. Q. And when you say you signed documents, did you receive copies of the documents that you signed?

A. I don't recall. I don't know.

293. Q. And when you say the funds were deposited into the company bank, what bank account were you referring to?

A. Again, I am not sure. I don't recall. I would assume it would have...if it was 244, it would have gone into the 244 bank account.

294. Q. Okay.

MR. McKENZIE: Do you have a copy of the cheque...

THE DEPONENT: I don't recall.

MR. McKENZIE: ...Miranda?

295. MS. SPENCE: Do I have a copy of the cheque?

MR. McKENZIE: Yes. Well, it came from Crystal Wealth, or their lawyers.

296. MS. SPENCE: I am asking questions.

MR. McKENZIE: No, that was the question I was asking myself this weekend, if we had a copy of the cheque, because it didn't bounce, but it got held up for ten days or something. And I am saying, I don't know why that happened.

297. MS. SPENCE: Presumably, you would have a record of the funds being deposited into 244's bank account?

THE DEPONENT: That is fair, yes.

298. MS. SPENCE: And can you produce a copy of that record?

MR. McKENZIE: Why don't we just give you...yes. U/T

299. MS. SPENCE: Thank you.

MR. McKENZIE: If it went in. I mean, wherever it went, because I just remember it was a fiasco because the bank held it...I think it was a cheque from Miller Thomson. I said, "How can you hold a cheque from a law firm for ten days?" And I just remember that being another issue.

300. MS. SPENCE: Okay. So, you have just undertaken to produce a copy of the record...the bank record reflecting where the 244 loans advanced by Crystal Wealth went. Can I ask you to also produce bank account records reflecting the disbursement

of those funds in the course of 244's business?

MR. McKENZIE: Yes, I just wrote this down as...produced a bank record reflecting the disbursements of that money.

301. MS. SPENCE: Yes.

MR. McKENZIE: Right.

302. MS. SPENCE: So, that is an undertaking?

MR. McKENZIE: Yes. U/T

BY MS. SPENCE:

303. Q. Are you the sole shareholder of 244?

MR. McKENZIE: Don't answer that. /R

304. MS. SPENCE: And we have already...

MR. McKENZIE: I mean, your problem is...as you know, I have been asking you guys about the shares and where they went, because some of them are pledged...and I am saying we can sort that out, but he doesn't know.

305. MS. SPENCE: And 244 is in the business of operating the cogen facility at the Leaside St. Marys plant?

THE DEPONENT: Correct.

BY MS. SPENCE:

306. Q. All right. So, I am going to ask you to turn to tab 2 of the brief in front of you. So, this is the loan agreement dated November 7th, 2014. Take a minute to take a look at it.

MR. McKENZIE: It looks like it.

307. MS. SPENCE: Okay.

MR. McKENZIE: I mean, if you want me to read it, I will come back tomorrow, because, you know, I wish you had sent these to me ahead of time, as requested many, many times.

308. MS. SPENCE: So, I understand from the statement that you just read that the 244 loan from the Crystal Enhanced Mortgage Fund was the first that your companies did with Crystal Wealth, correct?

MR. McKENZIE: It is the first loan that was negotiated with Crystal Wealth for any of these projects, of those five companies. You are correct. As a matter of fact, I don't think he ever heard of Crystal Wealth earlier...I mean, earlier than that. So, if you are looking for did he do...did he borrow money from Crystal Wealth before,

every question that I have asked says no.
He was introduced by 2G. They were just
looking for a solid fund to lend them
money.

BY MS. SPENCE:

309. Q. And, so, when 2G introduced you to Crystal Wealth, was it expressly for the purpose of financing the St. Marys Leaside project?

A. I don't recall.

MR. McKENZIE: No, it was much bigger than that. He was looking to finance his future business, which...this was the first one. But that was the whole point of this. Crystal Wealth said, "We can finance your projects".

BY MS. SPENCE:

310. Q. And you may have already answered this, but do you recall the name of the individual of 2G Capital?

A. No, I don't remember.

311. Q. Okay. And...

MR. McKENZIE: Clayton will know. I mean, they knew each other.

BY MS. SPENCE:

312. Q. What did you use the money for?

MR. McKENZIE: To install the gadget.

THE DEPONENT: To install the thing that is at Leaside.

BY MS. SPENCE:

313. Q. So, did you use the money to pay people to build the cogen unit, or did you just buy it?

MR. McKENZIE: No, we will just go back to...just...I just wanted to make your life easier. When you start, you need to design it. It is a one-off kind of design, right?

THE DEPONENT: Yes.

MR. McKENZIE: Because everything is different, and Leaside had its own problems. They actually had to help them rebuild their side of the meeting place, if you want to...and then that is all thinking and engineering and stuff like that. And then you create a list of things you have to buy. As I said, three screws and a generator, and you have to hire people, different people to come in and do this stuff, and there are electrical components to it. So, you need those kind of engineers, and there is heat components to it. So, you need guys that understand air conditioning. So, it is complicated that way.

314. MS. SPENCE: So, can you produce that list, that you just referred to?

MR. McKENZIE: Well, you already asked me for the best we could do. I mean, you know, if a guy goes in and tightens a bolt, he might not charge you for that, but...so...I think we already said we would give you the...well, let's make it bigger. We will give you the bank account showing you where the money went. U/T

315. MS. SPENCE: Okay.

MR. McKENZIE: And I think one of the financial statements...you have the 244 year-end that I sent you from...I think it was the 2016. It has got a lot of...you can see the money, like, I paid him, he paid me, all that kind of...I mean, I just looked at them. I am not an accountant, but I am saying...yes, I am...we will have to give you the bank statement, I guess.

316. MS. SPENCE: Okay. And, so...well, my question is, since I am trying to find out what the money was used for, I presume that you will answer questions arising out of my review of those bank statements to understand what those disbursements related to?

MR. McKENZIE: Well, I am trying to not have to come a sixth time. You know...

317. MS. SPENCE: Yes.

MR. McKENZIE: ...I love Toronto, but traffic is miserable here. I get it, but...

318. MS. SPENCE: Okay.

MR. McKENZIE: ...in other words, I am going to try to work with you, but I think if we did this off the record, it would go a lot faster, but the idea is, on the record, okay, if we wrote a cheque to Joe's Fish & Chips, you would have to go and say that was lunch for three guys? I mean, it just gets sometimes silly. Because the big components of this are getting the engineering done. That is throwaway money if you don't finish the project. And then you go and order the gadgets and the units. Some of them are really expensive, and it takes six months to get them.

319. MS. SPENCE: Okay.

MR. McKENZIE: Whatever. So, I am saying that is the big picture that I understand about this business. So, I am trying to help you say yes. We already said we will give you the best we can to say, "Here is where the money went" that the Receiver is looking for. Which is what I am trying to do, so...

320. MS. SPENCE: How did...

MR. McKENZIE: Well, we will be able to work that out, but maybe we could do those questions in writing, rather than...I mean, it is a long drive down here for asking about what his college education is. I mean, you know, nothing against, Miranda, I know you are doing your job, but jeepers creepers.

BY MS. SPENCE:

321. Q. How did 244 get the contract to work

with St. Marys at the Leaside facility?

MR. McKENZIE: Hold it. You are asking now about the Energy Services Agreement with St. Marys?

322. MS. SPENCE: Correct.

MR. McKENZIE: Okay, first of all, we have a confidentiality problem, so we will stop there. But we are saying they signed the contract.

323. MS. SPENCE: They signed the contract, and I am wondering how...

MR. McKENZIE: So, I am saying they have a whole legal department. You know about this because you are talking to them and I am saying I think that agreement has confidentiality clauses in it that I am worried about today. So, I am saying... what are you after? I will try to help you.

324. MS. SPENCE: I am just trying to understand how 244 does it business, what it does with the money it receives, and how it intends to pay the money back.

MR. McKENZIE: Well, yes, me too. I am saying...

325. MS. SPENCE: So, to the extent that 244's ability to get a contract with a company like St. Marys Cement, I am asking the question because I want to know whether that might be relevant to what my ultimate goal is here.

MR. McKENZIE: Okay, well, let's put it this way: 244 had a need to reduce its energy costs, which is kind of prevalent...

326. MS. SPENCE: You mean St. Marys?

MR. McKENZIE: ...Ontario...I put it backwards. 244 goes to St. Marys and says, "We can reduce your energy costs". And energy costs, being a real burden, in the cement industry, they may a deal that came down to that contract, which is the start of the relationship, and then they needed the money. So, the other question that you asked about a sales pitch or something like that?

BY MS. SPENCE:

327. Q. Well, Mr. Clydesdale, do you know somebody at St. Marys Cement?

MR. McKENZIE: Don't answer that. You

are way off-base, Counsel. It is not relevant. So what if he knew them all? I mean, they signed a contract. /R

BY MS. SPENCE:

328. Q. What is the MCS Cogen Mark VI Co-Energy POD?

MR. McKENZIE: Have you got a week? Go ahead.

THE DEPONENT: Simply, I think it just refers to the thing on site that produces the energy.

BY MS. SPENCE:

329. Q. So, if I call it the cogen unit, that is what you are talking about?

A. It is a box of stuff, yes.

330. Q. Okay. Who manufactured that?

A. That is a very complex question. There is a whole bunch of different stuff involved.

331. Q. So, would your company act as a kind of general contractor getting that thing put together...

MR. McKENZIE: 244.

BY MS. SPENCE:

332. Q. ...or does it buy it...244, does it buy it in one piece?

MR. McKENZIE: Let me just...I said it already. It is a complex engineering thing, and then you order parts from different people...

333. MS. SPENCE: Right.

MR. McKENZIE: ...and they all arrive, and somehow you...

334. MS. SPENCE: Well, Mr...

MR. McKENZIE: ...stick them all together.

335. MS. SPENCE: Mr. Clydesdale appeared to know the answer to that, so can you describe it for me?

MR. McKENZIE: Well, your question wasn't clear.

336. MS. SPENCE: Well, I am asking Mr. Clydesdale to answer the question.

MR. McKENZIE: All right.

THE DEPONENT: On that one, I don't recall specifically.

BY MS. SPENCE:

337. Q. You don't recall specifically, but generally, are you involved in pulling these things together, or you buy them fully formed from somewhere?

A. On the 244, I don't recall how much we did, and how we did it.

338. Q. But you would...you commissioned engineers?

A. Again, on that one, I don't recall what we did.

339. Q. Do you...does 244 actually have, for example, a facility where it can build a cogen unit?

MR. McKENZIE: You mean a factory?

340. MS. SPENCE: Yes, like, I am just trying to understand...

MR. McKENZIE: Or a warehouse?

341. MS. SPENCE: ...how it comes to be in possession of a cogen unit. Does it build it itself?

THE DEPONENT: Again, I don't recall specifically for 244, but generally, no.

BY MS. SPENCE:

342. Q. And then once the cogen unit is built, 244 installed it at the St. Marys plant, or

caused it to be installed?

A. Yes, I don't recall, but it got installed, yes.

343. Q. It got installed by workers who were commissioned by 244?

MR. McKENZIE: Generically, yes.

THE DEPONENT: Generically. I don't recall...

MR. McKENZIE: I mean, some of the St. Marys guys might have turned a wrench. I mean, it is a cooperative thing, because you have to connect it to St. Marys who, as I said, are a bit outdated with their own HVAC system and everything. So, you don't want to blow...I will take that back, "blow them up". You don't want to disturb their own systems, which is where the challenge is sometimes.

344. MS. SPENCE: Okay.

BY MS. SPENCE:

345. Q. And, so, who...what company actually owns the cogen unit?

A. 244.

346. Q. 244. And I am assuming that the

cost of the installation would be reflected in those bank statements.

MR. McKENZIE: They do.

BY MS. SPENCE:

347. Q. What...so my understanding is that a cogen unit, like the MCS pod at the St. Marys Leaside facility is controlled by software. Is that accurate?

A. That is a very general question. It is very complex.

348. Q. Right, but it is computerized?

A. Lots of computers.

349. Q. Okay.

A. Lots of stuff.

350. Q. So, lots of computers. Do you have a name for the system, generally, that is used to control that cogen unit?

A. At 244, I don't recall. I don't know.

351. Q. You don't have, like...internally at 244, you don't say, "Let's get that system up and running", and use a particular name?

A. Probably 244. I don't recall.

352. Q. And the software that is used to run

the cogen facility, is that software that OOM...or that 244 owns?

MR. McKENZIE: Just a second. I am trying to listen to your question. I would call it "know-how". I mean, "software", again, it has a connotation that it is a... something you go buy in a store, like on a disc or stuff like that. So, the know-how to install it...

353. MS. SPENCE: And to run it.

MR. McKENZIE: Okay, we are doing it in two pieces. I am saying the know-how to install it is a done deal. I mean, whoever, they just assemble it, all the guys, and put it all together. The know-how to run it, does 244 own it? So, as legal title to it? I would have to give you an undertaking whether that is a specific yes or no.

354. MS. SPENCE: Okay. So, the undertaking...

MR. McKENZIE: It is never that simple. Don't you know there is a thing with Leaside? They are still calling every day to say, "How do we fix the thermostat?" Is that know-how or procedure? That is that whole thing about we are not...my guy is not getting paid, and they are still calling day after day and say, "The HVAC needs to be..." You know? So, it is know-how or advice. Whether it is running...

355. MS. SPENCE: So...

MR. McKENZIE: ...I mean...

356. MS. SPENCE: So, just to be...

MR. McKENZIE: ...as far as expertise to run it...

357. MS. SPENCE: To be clear, the undertaking is you are going to advise me if 244 owns the software that is used to run the cogen plant at the Leaside facility.

MR. McKENZIE: If there is software, as opposed to what I am calling know-how. I mean, between the ears of people, somebody calls up and says, "How do I do this?" And they say, "Well, plug this in and it will work", you know, that is... U/T

BY MS. SPENCE:

358. Q. So, where does the know-how reside? Is it in a manual?

MR. McKENZIE: In people's heads.

THE DEPONENT: No, at 244 there is...

BY MS. SPENCE:

359. Q. There is a manual?

A. Yes, I am sure there is. I don't know specifically.

360. Q. Can you produce...

MR. McKENZIE: Are you sure there is?

THE DEPONENT: No.

361. MS. SPENCE: All right. Can you undertake to look for and produce a copy of any manual maintained at 244...

MR. McKENZIE: Okay, so I am looking for...

362. MS. SPENCE: ...for the Leaside facility?

MR. McKENZIE: ...an operating manual...is there, like...if I open the door to the gadget, would I find a book there that says...

THE DEPONENT: Generically, there is a large number of different things running there. There are all sorts of different pieces of equipment that inter-relate with other pieces of equipment. And they are not necessarily owned...at least, you know, they might be owned by the company that created that particular IO device. So when you ask for a manual, there might be 10,000 manuals.

MR. McKENZIE: Yes.

THE DEPONENT: I mean, they are very complex.

MR. McKENZIE: I mean, if it is a certain kind of generator that was brought from a company, they have a manual how to run the generator, but that is only a piece. You know, that is like saying, "A car has a manual for everything except"...I can't read them half the time, but I am saying if you were assembling the car and said, "Is there a manual for the engine?" "Yes". "Is there a manual for the air conditioner?" "Yes, but they are different". So, how can I help you? Because...

363. MS. SPENCE: Well, what I...

MR. McKENZIE: What are you after? I am not seeing value being added if there is a manual. But if there is a manual, like, one giant manual that is sitting out there at 244, or that St. Marys have, we will ask them. I can't believe there would be, but is that what you are looking for?

364. MS. SPENCE: So, what I am looking for is any document that facilitates the running of the cogen facility by 244.

MR. McKENZIE: That is way too broad.

365. MS. SPENCE: And, so...I would have Mr. Clydesdale's answer, please.

MR. McKENZIE: It is very complex.

366. MS. SPENCE: So, that answer does not help me. What I want to know is, how do we understand that complexity? If there are multiple manuals, then I want the multiple manuals.

MR. McKENZIE: Okay. The answer is no. I am going to give you an analogy. How is this building run?

367. MS. SPENCE: I am not helped by analogies, Mr. McKenzie.

MR. McKENZIE: Yes...

368. MS. SPENCE: I am trying to understand...as you are aware, Crystal Wealth has security over 244, which would include any intellectual property owned by 244. And, so, I need to understand what it is that 244 does, and how it does that. That would include any manuals. That would include your giving me advice as to which individuals have the know-how that you have described to run these facilities. All of that is relevant, and all of that goes to the assets held by 244 over which Crystal Wealth holds security. That is what I am trying to get at.

MR. McKENZIE: Okay. So, let me try to narrow that, because I am saying it is not that simple, and there is no definite, finite answer to your question. If something doesn't run today, say, right, somebody calls and says, "The air conditioning is not working", right, then there is no manual for that. It is just, like, "Well, we have got to think about how we...how that specific installation is because they are all different".

369. MS. SPENCE: Okay.

MR. McKENZIE: There is an expertise or a know-how from experience, and...

BY MS. SPENCE:

370. Q. So, who are the individuals who have that experience? What are their names?

MR. McKENZIE: I don't think that is relevant, because they don't...in other words...

371. MS. SPENCE: It certainly is relveant.

MR. McKENZIE: Okay, we have been through this. They haven't paid for four months, and they want to know who is running the air conditioning? Say, well, I asked the other...I ask you, I say, "Who is going to pay that person's salary?"

372. MS. SPENCE: I find it hard to believe that you have a facility that you are operating, and you don't know how it runs. That is the answer I am getting. You don't know how it runs. It depends exclusively on specialized expertise, but you don't know who has that expertise, and you are not allowed to tell me who might. So, this

doesn't help me.

MR. McKENZIE: I don't agree with what you just said, but I think I have explained it, which is it runs just fine, until there is a problem. What is the problem? We will tell you how we fix it. And for you to say...

373. MS. SPENCE: Who is "we"?

MR. McKENZIE: Well, call 244, or...

374. MS. SPENCE: I have called 244. That is Mr. Clydesdale here.

MR. McKENZIE: No.

375. MS. SPENCE: If there is somebody else, then please tell me who that is.

MR. McKENZIE: Okay. Now I am just saying, send an e-mail with a specific thing to say, "There is water leaking from pipe that is red", and then the answer will be sought from whatever people...and you don't even know who you are going to call yet. If it is the generator, you might have to call the generator company. So I am saying, you know, who is the brains of this operation? Yes, okay, so...

376. MS. SPENCE: Who is the brains of the

operation?

MR. McKENZIE: Multiple, obviously.

377. MS. SPENCE: Who are they? What are their names?

MR. McKENZIE: Employees of 244, or those five people.

378. MS. SPENCE: I am talking about 244 right now.

MR. McKENZIE: Well, there is the problem. I am saying there are no employees. We have been through that already.

379. MS. SPENCE: We have not been through that already. If there are contractors or subcontractors, tell me the names of those individuals.

MR. McKENZIE: That could potentially be called if there is a problem? Okay...

380. MS. SPENCE: Presumably, if there is expertise that is unique to this facility, there is a particular person that has it, or a particular handful of people that have it. I can't believe that you have no idea who the individual you would call to have the specialized...

MR. McKENZIE: Well, give me a problem, and we will tell you...

381. MS. SPENCE: ...expertise is. No.

MR. McKENZIE: ...how it gets solved.

382. MS. SPENCE: Tell me who runs the thing?

MR. McKENZIE: Lots of people.

383. MS. SPENCE: Who?

MR. McKENZIE: Well, okay. If there is an electrical problem today...let's say there is an electrical problem...just hold on, okay? There are two possibilities. We will get you, yes, a Rolodex of the top three people who might be available to fix it and, if not, we will get out the Yellow Pages and say, "Could you go over there and change the fuse"?

384. MS. SPENCE: Mr. McKenzie, your answers are very contradictory, because you are telling me, on one hand, there is no manual. There is no document that tells you how to run the thing. It is based on some undefined know-how. And now, on the other hand, you are telling me that you can call anyone out of the Yellow Pages to fix it.

MR. McKENZIE: Well, what is the problem?

385. MS. SPENCE: How do those two answers go together?

MR. McKENZIE: What I am going to do...I am going to get you...I am not going to do this now, I am going to get you the last three e-mails from St. Marys that specifically outline the problem.

386. MS. SPENCE: I will take that, but that does not answer my question.

MR. McKENZIE: Well, I am only going to do it if it...we can get off this topic and say, "There is how they handled it". Okay, one was...I don't know, there was a frozen pipe at Christmas, just going loosely, because I was reading the file this morning, and it got handled. Now, do you want to know who called who, who called who, who called who, who called who? I am not sure that is relevant.

387. MS. SPENCE: No, I want to know where the know-how to run this facility resides.

MR. McKENZIE: It is...lots of people.

388. MS. SPENCE: Who are those people?

MR. McKENZIE: We are not going to go there, because they don't...they are not employed by these five companies.

389. MS. SPENCE: How...

MR. McKENZIE: I am saying...if you...

390. MS. SPENCE: It is 244 that I am talking about right now. Do they have a contract with 244?

MR. McKENZIE: I would have to check, I guess.

391. MS. SPENCE: Please undertake to produce those for me, please.

MR. McKENZIE: It is $20,000 a month...

392. MS. SPENCE: Exactly. It is $20,000 a month...

MR. McKENZIE: ...to keep it running.

393. MS. SPENCE: I want to know where that $20,000 a month goes...

MR. McKENZIE: Okay.

394. MS. SPENCE: ...and who it goes to.

MR. McKENZIE: Gas is one.

395. MS. SPENCE: Okay.

MR. McKENZIE: They have to pay the gas bill every month.

396. MS. SPENCE: That is not helpful.

MR. McKENZIE: And you guys holding up the money is making sure the gas bill is not getting paid. So, I am saying that is helpful. So, if the gas doesn't come, I guess you have got to phone the gas company. So, I am trying to help you understand...

397. MS. SPENCE: It appears to me that you are putting a lot of effort into evading the question of how this thing actually operates.

MR. McKENZIE: It appears to me that you are not understanding how this thing operates. It is like your car. You don't think about it until it doesn't start. And I am saying, "Who do you call?" You call your mechanic and he goes, "Oh, that is...the guys that manufactured it are in Florida, so I will call them to see why it is happening". I am saying this is know-how, expertise.

398. MS. SPENCE: I am not going to engage in your analogy, Mr. McKenzie. But I would like to know how 244 runs the cogen unit, how does it employ people who know how to

do that? Is there a manual? Is there an individual who knows how to do it? Who are those individuals? It is a straightforward question.

MR. McKENZIE: We will take that under advisement. It is not a straightforward question. U/A

399. MS. SPENCE: I understand the answer might not be straightforward.

MR. McKENZIE: Okay.

400. MS. SPENCE: The question is very straightforward.

MR. McKENZIE: A better idea would be give us a problem, and we will tell you...

401. MS. SPENCE: No.

MR. McKENZIE: ...how it gets solved. Well...

402. MS. SPENCE: No, that is not a better idea.

MR. McKENZIE: Well, there are things that haven't even happened yet.

403. MS. SPENCE: So, I am going to take this whole exchange as you refusing to answer the question of how the cogen is run by 244.

MR. McKENZIE: On a day-to-day basis? /R

404. MS. SPENCE: Yes.

MR. McKENZIE: I can tell you right now. When there is a problem, there is, I think, an e-mail, that comes...and/or a telephone call, presumably, to...you know, to OOM or whatever, whomever the guys are, to MCS, I can't remember the e-mail address, and then it gets answered. Or, they send somebody over. That is how it gets solved. And if you want to know the problems in the last year, I think we can help you there. If you want to know the problem that hasn't happened yet, I don't think we can help you.

405. MS. SPENCE: What about without problems? How does it run on a day-to-day basis? Is there an individual who sits somewhere, monitoring a computer, that is running the cogen unit?

MR. McKENZIE: That one?

THE DEPONENT: Sometimes there is, sometimes there isn't. That one, I don't know. I don't recall.

BY MS. SPENCE:

406. Q. So, you mentioned that the cogen unit at Leaside is run by a number of computers. Where are those computers situated?

A. Right on the site, on the machine.

407. Q. On site.

MR. McKENZIE: And computers is...just generically, you are asking a very simple question to an extremely complex... that is why I can't answer. And I don't mean to be rude, but this is an extremely complex process, and you can't ask a simple question. There is no simple question, and I know we get that all the time, a simple question to a very complex...there isn't a simple question. This thing is an integrated facility that is integrating a building, a generator, a utility, all sorts of different things. It is extremely complex. There is not a simple answer. You are looking for a simple answer that is not there.

408. MS. SPENCE: I appreciate that the answer might not be simple, but presumably there is an answer...there is an answer as

to how this thing runs.

MR. McKENZIE: How does the law work? It is a struggle in the industry always. You are asking, "How does the law work?" And I am going to have to...and I would break you down, which law, which country, which province? Where? Who is involved? It is very, very complex. It is not simple.

409. MS. SPENCE: Do you have...or does 244 have any licences from other software or mechanical providers to run this thing?

THE DEPONENT: Generally, I am not sure, but it is not uncommon to have a licence with maybe 50, 60, 70 different pieces of equipment, and then sublicence, because who knows when you bought a piece of equipment? It is actually using other pieces of equipment, and there could be sublicences within sublicences. It is very complex.

410. MS. SPENCE: Can you please produce any licences that 244 maintains for the running of the cogen facility at Leaside?

MR. McKENZIE: That is too farfetched. I am not understanding where this is going.

In other words, does the Receiver want to take over running it today? That is a different story. Get an engineering company and we will deal with them. But I am just saying...

411. MS. SPENCE: So, are you refusing to provide that undertaking?

MR. McKENZIE: You know, there is a proportionality problem. I have to go and ask Cummins Diesel whether they have sublicences. It is too complex.

412. MS. SPENCE: I am not asking for the sublicence. I am asking for any licences that 244 maintains for the various components of the cogen facility.

MR. McKENZIE: Licences?

413. MS. SPENCE: Licences. If portions of the cogen facility depend on licences for their operation, I would like to see a copy of them.

MR. McKENZIE: Subject to confidentiality problems, which we are going to need to solve, I will use a best efforts...I am going to send somebody over to the plant to get out the manuals and see if there is any licences. Because some of these...I don't know. I mean, I have seen these over my career. You know, there is a licence on one line in a fifty-page document or on the website.

414. MS. SPENCE: Well, I want the copies of the manuals, too. So...

MR. McKENZIE: Well, I understand, but I am saying we are going to do...well, I have already undertaken to do it, because you are digging down so deep into something that is impossible to answer. I am going to do, as I said, best efforts to satisfy what I think you need to know, which is how does it run on the day-to-day? And it runs just fine, until it doesn't. U/T

415. MS. SPENCE: Right. Well, I mean, the question about licences is also relevant to the nature of the asset, right? Crystal Wealth has security over the asset, which is a cogen facility. If, in fact, 244 does not own that cogen unit in its entirety because certain portions of it are licensed from elsewhere, that is squarely within the

bounds of what this examination is supposed to be getting at.

MR. McKENZIE: Ah. I can help you there. Okay, now that you have put it that way, we will use a best efforts undertaking to get back to you, I understand that completely. I have dealt with lots of receiverships and collections and stuff like that. I understand...

416. MS. SPENCE: Okay.

MR. McKENZIE: ...if the Receiver wants to put its arm around this as a unit and, you know, advertise it for sale or something, yes, absolutely.

417. MS. SPENCE: Okay.

MR. McKENZIE: We all want that to happen. We are trying to get that to happen right now.

418. MS. SPENCE: Okay.

MR. McKENZIE: So, that is okay. But to say...sorry, just off the record.

--- upon recessing at 11:45 a.m.

--- A BRIEF RECESS

--- upon resuming at 11:53 a.m.

CRAIG CLYDESDALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

419. Q. So, we were just talking about licences for the software that runs the cogen unit at the Leaside facility. Are there any other documents, other than licences and manuals, that speak to the intellectual property associated with that cogen unit?

MR. McKENZIE: I will give you a best efforts undertaking. U/T

420. MS. SPENCE: Okay.

BY MS. SPENCE:

421. Q. And we were talking a little bit about who owns the intellectual property for that system. Is any aspect of the intellectual property for that cogen unit owned by a different OOM company?

MR. McKENZIE: Same answer. We will give you a best efforts undertaking. U/T

422. MS. SPENCE: And, so, when you say "best efforts undertaking", you are going to produce to me documents? Is that the idea, if you have them...if they exist?

MR. McKENZIE: Well, I am looking at it

another way. You are a Receiver, Mr. Bando, and you are a lawyer. You can't run this thing. You might want to hire an engineer to run it, or somebody who knows what they are doing, which we doubt you can do, because these are sort of new ideas and things like that, but it will probably cost you three times what they are paying. And then there is...so, there is confidentiality that goes on, if you intend to do that. And I think you have to tell me. And then...so, we are telling you how to run it, and we are telling you if there are licences. I think you are really asking...if I were you, I would be asking, "Is there somebody that can shut this thing down because they have a licence?" And I say, "Well, if there is, we will have to pay them". We will have to figure that out, because you don't want it shut down, and we don't want it shut down, because it has got a lot of value. But the other way doesn't work, and if that is what you are after, I think we can make it work. But obviously, if some other engineering company is going to come in and take all of our secrets, that is a different story. So, I...

423. MS. SPENCE: Right, well...

MR. McKENZIE: ...am just trying to keep this thing running. We are going to work with you all day to keep it running, obviously, because it is worth a lot of money and it is generating a nice, healthy income.

424. MS. SPENCE: I mean, when you are talking about secrets, those are things that Crystal Wealth has access to as a secured creditor of 244. 244 is not paying Crystal Wealth the money that it owes, and it has granted security to Crystal Wealth over its assets, including its IP, then Crystal Wealth is entitled to take over those secrets.

MR. McKENZIE: I think I just answered that. You know, if Crystal Wealth came in and said, "Get out. We are taking this thing over. As of today, Miranda and Mr. Bando are going to run it today", we would say, "Good luck to you", because it is going to fail, because, you know, you don't have the skill set. You are going to have to hire another engineering firm. We know that. We don't think it would be a good idea, but it will cost you probably triple what it is costing, because you would have to figure how it all works.

425. MS. SPENCE: Right, and so...

MR. McKENZIE: So, you say they owe them things...we are agreeing there are...there is a certain know-how in any business that is between your ears and law is the same, which is you can't buy it. I mean, you can pay for it, but that doesn't mean that you own it. So, I think the basic premise that Crystal Wealth, even having crystallized and taking control of this gadget, is entitled to know how to run it, I am saying that is a stretch, but...so, hire an engineer, and they can run it for you. I am saying that is a stretch, but the next part, which is...I am having a lot of trouble with your logic.

BY MS. SPENCE:

426. Q. So, Mr. Clydesdale, is it your view that another operator would be able to run the cogeneration unit?

A. I couldn't comment on that. That is speculation. I wouldn't do it without speculation. If I was asked to run another facility, it would be very difficult. I can't speculate.

MR. McKENZIE: The track record is in this industry, you don't want to rebuild the whole thing. It is my...I mean, I know more about the industry, and I am saying, "Good luck". If you are going to do it, give me a call.

427. MS. SPENCE: And, so, you are taking that position because you think there are elements of this particular cogen unit that are unique?

MR. McKENZIE: They are all unique. That is the point.

428. MS. SPENCE: And who knows about how to run this particular unique project?

MR. McKENZIE: A bunch of people.

429. MS. SPENCE: And who are those people?

MR. McKENZIE: Well, as I said, there is...

430. MS. SPENCE: You can provide me a list of names.

MR. McKENZIE: No, no, the thing is...the problem is, they may not want to talk to you. And I am saying we have to respect that.

431. MS. SPENCE: Why?

MR. McKENZIE: So...if I said, you know, "Avis Brown is a guy that is happy to help St. Marys", and...

432. MS. SPENCE: I am not looking for...

MR. McKENZIE: ...244...

433. MS. SPENCE: ...people who are happy to help. I am looking for people who actually run the thing.

MR. McKENZIE: I am saying, "And what would you do?" You would phone them. He would say, "I don't want to talk to you, unless you pay me $5,000 up front. I am an engineer. I don't want to do this".

434. MS. SPENCE: That is not the question that I am asking.

MR. McKENZIE: Well, I am saying...but the problem I have is that I have to respect these people. They are not employees of this company. So, I am saying to give you their names...what are you going to do with them? I guess that is it. Tell me what you are going to do with them, and then I will ask them...

435. MS. SPENCE: That is not how this works, Mr. McKenzie. Please let me know who it is that has the know-how to run the cogen.

MR. McKENZIE: Okay. I am going to consider this, is give you the name of the security officer, or the person who is in charge of security and safety of all the people that are involved in this, and the confidentiality, and leave it to them to sort it out with you, because...

436. MS. SPENCE: I don't know what that means.

MR. McKENZIE: ...I am not going to give you the name of a guy that you are going to subpoena and bring down here for five days and say, "How do you hook up the pipe?" I think that should be that person's choice. $75 to sit here for two days? These guys would want $5,000 up front.

437. MS. SPENCE: Is there a...

MR. McKENZIE: I am saying they are just not going to...I am not going to allow Mr. Clydesdale to put them in jeopardy. If you wish, I will contact them, or have a security officer contact them to see if they help you out, but that is...I don't think that is fair, and it is not our job to do that.

438. MS. SPENCE: My question is for you to provide me with the names of the individuals who were involved with running the cogen unit. I take it that you are refusing to provide that information.

MR. McKENZIE: I will give you one name...

439. MS. SPENCE: And, so, this is...

MR. McKENZIE: ...after I talk to that person, say, "Here, you call Miranda, and she can clear protocol". It is not...I can't tell you. Some people don't like to...want to...

440. MS. SPENCE: So...

MR. McKENZIE: ...talk to them, I am sure.

441. MS. SPENCE: So, what is the one name

you are going to give me?

MR. McKENZIE: I said I will have to consult with that person. It is a security and privacy consultant that is in charge of this stuff. As you know...

442. MS. SPENCE: So, that is not someone who is running the cogen unit? It is a security or privacy officer?

MR. McKENZIE: Well, again...you know, again, it is...

443. MS. SPENCE: Does 244 have an in-house privacy officer? Is that who...

MR. McKENZIE: No, I am saying there is a person who worries about these things, and it is not me, but I am not going to jeopardize people so that you can dump subpoenas on them and ask them to come and produce 10,000 pages, unless they know what they are getting into and have their own counsel. I mean, these people are not employees, you know?

444. MS. SPENCE: Okay.

MR. McKENZIE: So, I think the fairer way to do it is to say, "Let's do this in baby steps", because I don't really know what you are after, because...

445. MS. SPENCE: You know exactly what I am after.

MR. McKENZIE: No.

446. MS. SPENCE: I have already told you, I am trying to understand how this thing works, who owns the intellectual property associated...

MR. McKENZIE: Okay.

447. MS. SPENCE: ...with it, and if the intellectual property does not exist in a particular document, you have told me there are no patents, there are no trademarks...

MR. McKENZIE: Right.

448. MS. SPENCE: ...there are no registered IP documents. So, apparently, it resides in the brains of certain individuals, and I am trying to understand...

MR. McKENZIE: Well...

449. MS. SPENCE: ...who those people are.

MR. McKENZIE: ...what if there is a patent to the generator that was bought from a generator producer, and it is in the 5,000-page manual that is online? And I am saying I don't want to...

450. MS. SPENCE: Well, that would be helpful, but I don't even know the name of the generator company.

MR. McKENZIE: Well, no...

451. MS. SPENCE: I don't know anything right now, because you are not telling me.

MR. McKENZIE: You are asking, and I am saying we have given you undertakings to do the best we can to help you in this...what appears to be a fishing expedition. I mean, you want to know how to run this thing? Call an engineering company, and pay them $50,000 up front, and I am sure they will tell you, it is complicated. So, you are trying to get that for...you know, and just...I am saying I don't know where we are going with this, but we are trying to get through this examination. So, I have given you the best answer we can. We are going to go home and think about this, because I don't know where it is going to lead us.

452. MS. SPENCE: Okay.

MR. McKENZIE: So go out to the plant. It is a box out there, that around it...well, it has got a lock on it, but I guess you own the lock, too. The Receiver owns the lock by now. Go in and have a look at it. It is like lifting the hood of a car and saying, "How does it work?" So, anyway, I think we have canvassed this, and I am saying...I think I hear you, and we can probably do this in writing to assist you when we know what you are after, but...

453. MS. SPENCE: Well, I have told you repeatedly...

MR. McKENZIE: ...this is going nowhere to me.

454. MS. SPENCE: ...what I am after, and I agree that it is going nowhere because you keep talking. And the question was, is it a refusal that you are going to not provide the names of the people? And it sounds like it is a no, or it is...you were taking it under advisement?

MR. McKENZIE: I am taking it under advisement. You will probably have to pass protocol from people that don't want to be bothered by lawyers and subpoenas. U/A

455. MS. SPENCE: And I don't know what that

means.

MR. McKENZIE: Well, I think you do know what it means. This is the fifth day we have been dragged down to downtown Toronto to answer questions...the same questions, by the way, that have been posed by other people in writing. And you have put documents in front of us, 100 pages that I have never seen before, and you wonder why people might not want to come here? Golly.

456. MS. SPENCE: Well, thank you for that.

MR. McKENZIE: On the other hand, you know, we meet off the record, we get a lot done. Why don't we adjourn for 20 minutes and talk to Mr. Bando about what you are trying to do?

457. MS. SPENCE: Well, we are trying to get the money back, the millions and millions of dollars that were advanced to Mr. Clydesdale's companies, with apparently nothing to show for it, other than this one cogen facility.

MR. McKENZIE: Exactly.

458. MS. SPENCE: So, that is what I am trying to get at.

MR. McKENZIE: And when I say "exactly", we are trying to get the money back. And sitting here all day isn't doing it. And if you think that a law firm is going to figure out how to run a generator, it is not going to happen, I am saying. But, anyway, listen, you have got...Miranda, I am not picking on you. You have got to do what you have got to do, but this is frustrating when about a half an hour meeting would get you what you want. Do you want to take over and run the generator?

459. MS. SPENCE: Well, frankly, Mr. McKenzie...

MR. McKENZIE: We can figure that out.

460. MS. SPENCE: ...we have met with you a number of other times, and you haven't provided us with this information or with the documents that we have requested. So, I don't agree with you...

MR. McKENZIE: Okay.

461. MS. SPENCE: ...that the half-hour meeting would resolve this, and I am going to continue...

MR. McKENZIE: To be clear...
462. MS. SPENCE: ...asking my questions.
MR. McKENZIE: Okay. What you just stated is wrong, Miranda. A) Yes, we met with you off the record and without prejudice; B) We have provided every document you have asked for.
463. MS. SPENCE: That is not true.
MR. McKENZIE: The OSC is loaded with documents you have asked for.
464. MS. SPENCE: In any event, let's move on.

BY MS. SPENCE:
465. Q. Who is Martin Vroegh?
MR. McKENZIE: Do you know who he is?
THE DEPONENT: I know of him.

BY MS. SPENCE:
466. Q. You know of him? Do you know who...what is his role in relation to these companies?
A. I don't know. I shouldn't say I don't know. I don't recall.
467. Q. You don't recall. So, you know him

socially?

MR. McKENZIE: He just said he doesn't recall.

468. MS. SPENCE: He just said that he knew him, and that...

THE DEPONENT: No, I...

469. MS. SPENCE: ...he didn't know in that capacity.

THE DEPONENT: ...know of him.

MR. McKENZIE: Do you want me to Google him?

470. MS. SPENCE: I am not going to Google him.

MR. McKENZIE: Well, I am going to Google him right now.

471. MS. SPENCE: I am asking for your information about who he is.

MR. McKENZIE: You are hiding...who is he? Tell us who he is, and we will...okay.

BY MS. SPENCE:

472. Q. So, my understanding is that he may have been someone involved in connecting St. Marys and your companies. Was he involved in that

interaction?

A. Again, I don't recall the specifics, but he was an employee at St. Marys at one point in time. That is all I know.

473. Q. Did you work with him in setting up the Energy Services Agreement?

A. I don't recall. There were lots of people there. Lots and lots and lots. And lawyers.

474. Q. Did he ever have shareholdings in any of your companies?

MR. McKENZIE: The five companies?

475. MS. SPENCE: The five companies.

MR. McKENZIE: Negative. Not...no.

476. MS. SPENCE: How do you know that if you don't know who he is?

MR. McKENZIE: I checked this morning the state of the minutebooks, which is a bit of a shemozzle.

477. MS. SPENCE: So, he does not appear on the share register for any of these five companies.

MR. McKENZIE: Correct.

BY MS. SPENCE:

478. Q. Did he ever receive any commission

from 244?

A. I have no idea. I don't recall.

479. Q. So, the cogen unit that we are talking about, my understanding from reviewing the Energy Services Agreement is that it is intended to provide power, heat and cooling to the facility.

A. That is a very simplified statement, and...yes, in a very simple statement.

480. Q. So, who does the maintenance for the unit?

A. I don't recall.

481. Q. And who operates the control system?

A. Again, it is a simple question to a very complex question.

482. MS. SPENCE: All right. So, will that be encompassed within your earlier question taken under advisement, to advise who the various individuals are involved in running the cogen unit?

MR. McKENZIE: Same issue.

483. MS. SPENCE: Yes, okay.

BY MS. SPENCE:

484. Q. As part of the arrangements between 244 and St. Marys, do St. Marys staff have any

know-how as to how to run the cogen facility?

A. I couldn't speak to that. I have no idea what St. Marys knows.

485. Q. So, you don't know what St. Marys knows, but do you know if 244 was supposed to provide them with any training, or other information...

A. I don't recall.

486. Q. ...about the running of the facility?

A. I don't recall.

487. Q. I am going to ask you to turn to tab 3 of the document in front of you. So, this is a letter dated February 22nd, 2018, addressed to you and to Morley Kocken, from WeirFoulds, counsel to St. Marys Cement.

MR. McKENZIE: Yes, with carbon copies to seven other people.

488. MS. SPENCE: Right. So, the Receiver and the Receiver's counsel received a copy of this letter. Are you familiar with it?

MR. McKENZIE: I have read it.

489. MS. SPENCE: You are laughing.

MR. McKENZIE: No, no, we are going... this is going to add to the complication about...squared by them sticking their nose in, but I will talk to Mr. Bando off...I think we may have solved it with WeirFoulds over the weekend. But that is another story, because...good lord.

490. MS. SPENCE: Well, yes, I am not asking about any without prejudice discussions...

MR. McKENZIE: No, no, but...

491. MS. SPENCE: ...or agreement that you may have made, but I do want to speak about the content of this letter. So...

MR. McKENZIE: Okay. First of all, I don't think Mr. Clydesdale has read it.

492. MS. SPENCE: Okay.

MR. McKENZIE: I am just saying, it is...I get it. It is a legal letter that is...wow. I am laughing because it takes a lot of people just to read it.

493. MS. SPENCE: Okay. There is a lot of that.

MR. McKENZIE: It is extremely complicated, and you are getting into some stuff...I am going to tell you right now that there are confidentiality agreements piled to the...quite high, with respect to all this stuff. And there are other parties involved. So, you know, you are better to stay out of it, if you ask me, and we can settle it today. But go ahead.

494. MS. SPENCE: Well, sir, let me...before I move on to my questions, you have mentioned a couple of times, confidentiality agreements. I have not seen one of those. Can you produce to us a copy of whatever confidentiality agreement that you say restrains you from answering some of these questions?

MR. McKENZIE: You could call Catherine Weiler, who is the OSC representative. I think...because I am afraid to even talk about what she is after. And there are...

495. MS. SPENCE: What does that mean?

MR. McKENZIE: Precisely. The thing is, I am gagged, full stop.

496. MS. SPENCE: By what?

MR. McKENZIE: I can't tell you. Ask her. If she gives permission, we can have this conversation. /R

497. MS. SPENCE: So, you are suggesting there is some sort of confidentiality

arrangement made between you, 244, and the OSC directly, that we don't know about?

MR. McKENZIE: I am not suggesting anything. You are the OSC representative. You live with them across the street.

498. MS. SPENCE: I am not the OSC representative. I told you, I am counsel to the Receiver.

MR. McKENZIE: Well, nice try, but the OSC is the applicant here, so...anyway. But I am saying, I have earlier e-mailed your office and said, you know, "Have her at the meetings, because I am gagged. I am not going to say one more word for fear of crossing a line that I am not allowed to cross". And the same with Mr. Clydesdale. So, if you would like to call her right now, be my guest.

499. MS. SPENCE: I don't know what that means...

MR. McKENZIE: We are stuck.

500. MS. SPENCE: ...Mr. McKenzie. Is there a confidentiality agreement? What is gagging you from...what is preventing you from answering these questions?

Presumably...

MR. McKENZIE: I am going to call Catherine Weiler and ask her to call you, you know, one of these days, because I am surprised you don't know what I am talking about, but I am not going to put it on the record. There are also other confidentiality agreements. There is one that is...actually, I should read it, but there is one that involves the people that are mentioned in here, and I should read it, because I am not even sure that I am allowed to tell you that there is a confidentiality agreement.

501. MS. SPENCE: Okay.

MR. McKENZIE: That is why I said, to get into...

502. MS. SPENCE: All right, well...

MR. McKENZIE: ...the morass that this letter creates is a very bad idea, because it is very simple to solve this. And...

503. MS. SPENCE: If we have to go into an undertakings and refusals motion arising out of this examination...and your refusals are being given on the basis of some sort

of confidentiality agreement, we will have to get to the bottom of it at that point. I have put on the record my request...

MR. McKENZIE: Yes.

504. MS. SPENCE: ...for whatever confidentiality agreement you say prevents you from answering these questions. We will move on.

MR. McKENZIE: I think what we would do, we would go back to the commercial list in an in-camera hearing, with documents that are in a sealed envelope given to the judge. I would do that, but I am not going to stretch my neck out with these situations. I mean, obviously...and it is extremely complicated and, frankly, I don't think you need to go here, but...

505. MS. SPENCE: I am just trying to understand the basis for some of the refusals you have given, but I don't want to spend any more time on that.

BY MS. SPENCE:

506. Q. So, let's turn back to this letter, dated February 22nd. So, I understand Mr.

Clydesdale may not have read the letter, but you are familiar with the existence of this letter, correct?

A. Again, I don't recall the letter, and I would have passed this on to my legal team.

507. Q. Well, that is about two weeks ago. You don't recall? All right. Let's turn to paragraph 9. On page 9, it says:

"...Despite repeated requests by a customer, the supplier [that is 244] has not provided necessary data and records relating to the MCS POD. The supplier has shown itself unwilling or incapable of keeping the necessary data and records as required by the ESA..."

Do you agree with that statement?

MR. McKENZIE: Okay, this letter is mostly wrong.

508. MS. SPENCE: Okay. So...

MR. McKENZIE: So...

509. MS. SPENCE: ...you don't agree with that statement?

MR. McKENZIE: Well, you can take it as a blanket, "It is mostly wrong". I mean, yes, it came from WeirFoulds. Yes, my client got it, and then it is a lot of posturing.

510. MS. SPENCE: I am not really interested in the blanket answers, either. This is a specific assertion in the letter that I am asking about. Is that untrue?

MR. McKENZIE: It is wrong.

511. MS. SPENCE: It is wrong, okay.

MR. McKENZIE: It is disagreed with.

512. MS. SPENCE: Thank you.

BY MS. SPENCE:

513. Q. So, then, this letter encloses some documents that Toronto Hydro...or some letters, I should say, that Toronto Hydro sent to St. Marys. Have you reviewed those letters?

MR. McKENZIE: I am going to say, there is a confidentiality problem. If you can get Toronto Hydro to say they are okay with answering questions, I can say yes, but we will stop it right there.

514. MS. SPENCE: Well, the Receivership order has a very broad provision that requires individuals and companies to cooperate with the Receiver, and to answer questions about those docuemnts.

MR. McKENZIE: Well, show me where it says that, "We are hereby abrogating all confidentiality agreements, all threats of contempt of court and all confidentiality in high secrecy". Show me that. I would love to see it. It would make everybody's job easier. You are not showing it to me.

515. MS. SPENCE: Mr. McKenzie, that is really not a helpful statement on your behalf.

MR. McKENZIE: Well, I just had to put that on the record, because I thought...you were flipping pages. I thought you were looking for it, and I wanted to put it on the record that...

516. MS. SPENCE: All right, let's...

MR. McKENZIE: ...you are not showing it to me. I don't recall seeing it, and I remain with my gag on, because I don't want me or my client to get into trouble with anybody.

517. MS. SPENCE: Okay. So, one of the attachments to the letter at tab 3 is a letter from Toronto Hydro dated June 9th, 2016.

MR. McKENZIE: So you say.

BY MS. SPENCE:

518. Q. Do you see it? Can you turn to it, please?

MR. McKENZIE: I have it in front of me.

BY MS. SPENCE:

519. Q. So I say, but do you disagree that that is an attachment to the letter?

MR. McKENZIE: Well, if you give me a minute, we probably have the letter here. And, again, I stated, really, it would have helped to send this stuff ahead of time so we don't have to keep digging around...

520. MS. SPENCE: Well, I...

MR. McKENZIE: But I am just saying, I can't...I have asked so many times for the documents, and it is frustrating to me. Okay, here is a letter...I think I have it here.

521. MS. SPENCE: I mean, did you disagree that the letter that is attached to the letter from WeirFoulds is the one that was sent? I mean, it is right there in front

of you.

MR. McKENZIE: Just wait a minute. Your question was, did the letter dated February 22nd have this as an attachment?

522. MS. SPENCE: Yes.

MR. McKENZIE: Unfortunately, the letter doesn't list the attachments that it has with it. So, what I am trying to do is find the letter that I imagine has a copy of what is sent and copied. Okay. We have got a letter that is nine pages. And it did have attached a letter dated June 9th, 2016, which is 18 months earlier, something like that.

523. MS. SPENCE: Okay.

MR. McKENZIE: So, yes, okay. So, we are looking at...this starts up at the top, Schedule B to Notice of Default, and it is three pages. Okay. So, go ahead. You are asking questions about that letter?

524. MS. SPENCE: Yes. Page 3 of that letter...

MR. McKENZIE: Sorry, go ahead.

BY MS. SPENCE:

525. Q. So, can I ask you to turn to page 3 of the letter, please? So, this letter identifies an eight-step connection process. Do you see that?

A. It says:

"...The applicable connection process is as follows..."

526. Q. Yes. And then there are eight bullets.

A. Yes.

527. Q. And the first one is:

"...Provide Toronto Hydro with a completed connection application form..."

Did 244 ever submit a connection application form to Toronto Hydro?

MR. McKENZIE: I am going to remind you of the confidentiality problem.

528. MS. SPENCE: Which you have not disclosed to me. You just say there is one.

MR. McKENZIE: But just going...but I think we can answer that question on the side. In other words, it may not be caught up in confidentiality. So, I will give you that undertaking to use my best efforts to determine...this is a connection application...

529. MS. SPENCE: Okay.

MR. McKENZIE: As I say, I want to read the confidentiality agreement before I do anything. But, you know, again, this is just low-end stuff, believe me.

530. MS. SPENCE: So, then, there is...if you flip forward a few pages, two pages, there is another letter from Toronto Hydro, dated July 19th, 2017. Do you see that?

MR. McKENZIE: Yes, it was attached to this letter. We have that in front of us now.

BY MS. SPENCE:

531. Q. And, so, if you...take a minute to look at it, if you like, but my understanding is, from having reviewed this letter, that the gist of it is that Toronto Hydro thought that the MCS POD, being the cogen unit, was not supposed to have been operating, since it was locked out by Toronto Hydro on July 9th.

MR. McKENZIE: You are saying that that is what Toronto Hydro thought?

532. MS. SPENCE: Well, that is what this

letter says.

MR. McKENZIE: Good luck to them. I mean, I am saying...

533. MS. SPENCE: So, sorry, let me...

MR. McKENZIE: The letter says what it says.

534. MS. SPENCE: It says what it says.

MR. McKENZIE: And...

535. MS. SPENCE: Okay, well, let me be a bit more specific, then.

MR. McKENZIE: Let me be more specific. This stuff is all wrong.

536. MS. SPENCE: Okay. Well, let me ask my specific questions arising from the letter.

MR. McKENZIE: On the subject you just asked about.

537. MS. SPENCE: On the second page of the letter, it says, on the third paragraph:

"...In our efforts to coordinate the site visit further described herein, OOM Energy informed us that the lock installed by Toronto Hydro on June 9th, 2016 had been removed..."

So, do you agree that on June 9th, Toronto Hydro put a lock on the cogen unit?

MR. McKENZIE: On when?

538. MS. SPENCE: June 9th, 2016. Mr. Clydesdale?

MR. McKENZIE: Just a second. We will have to look into that and let you know. In other words, you are asking specifically, "Did Toronto Hydro come on the site and put a lock on"...what?

539. MS. SPENCE: On the cogen unit.

MR. McKENZIE: I will use best efforts. U/T

540. MS. SPENCE: Okay.

BY MS. SPENCE:

541. Q. This is not familiar, Mr. Clydesdale?

A. I don't...

MR. McKENZIE: He doesn't recall.

542. MS. SPENCE: Are you objecting...

THE DEPONENT: I don't recall.

543. MS. SPENCE: Are you objecting on the basis of relevance? I am just asking because you waved your hand in front of Mr. Clydesdale as if to suggest that he shouldn't answer the question.

MR. McKENZIE: No, I am saying...

544. MS. SPENCE: But then you just reiterated that he doesn't recall.

MR. McKENZIE: Okay.

545. MS. SPENCE: So, are you suggesting that he shouldn't answer, or is there a specific...

MR. McKENZIE: No.

546. MS. SPENCE: ...refusal there?

MR. McKENZIE: First of all, you misinterpreted my gestures. I am a gesturing guy. And when I put my hand up, I told Mr. Clydesdale, "Stop talking, because I have something to say". I am his lawyer, and I am entitled...

547. MS. SPENCE: Right.

MR. McKENZIE: ...to do that.

548. MS. SPENCE: Right, but then you didn't give an objection. So...

MR. McKENZIE: I gave you the...I dealt with what you said. We will use our best efforts to find out if, on that date, whatever the undertaking was...

549. MS. SPENCE: Right.

MR. McKENZIE: ...that is a fair question. I mean, I am...

550. MS. SPENCE: I mean, typically I would expect that the way that would go is that Mr. Clydesdale would first say that he doesn't recall, and then you would give us the best efforts undertaking, not the other way around. I am expecting to hear from Mr. Clydesdale...

MR. McKENZIE: Well...

551. MS. SPENCE: ...first as to whether he has any current knowledge and, if he doesn't, then we can go into the undertakings.

MR. McKENZIE: Let me make something...I am going to say something to Mr. Clydesdale. Don't answer any questions with respect to Toronto Hydro until I hear them, because you could end up being in a serious mess by breaching confidentiality agreements. So, don't do it, Mr. Clydesdale. So, when I hold up my hand, I am going to hold it up for all these questions about Toronto Hydro, just to say...and then I am going to help you as best I can, Miranda. I am saying there is no magic to this, and it is two years ago, whatever.

552. MS. SPENCE: So, is your position that the question as to whether Toronto Hydro locked out the cogen unit on June 9th, 2016, is subject to a confidentiality agreement?

MR. McKENZIE: No, your question was, did they put a lock on it? And I said, "We will use our best efforts to see if they did". In other words...

553. MS. SPENCE: Okay. But are you saying that that is subject to a confidentiality agreement, that information?

MR. McKENZIE: I am going to double-check that, but I would say I am not sure that...I mean, that is a physical act, you know?

554. MS. SPENCE: Yes, no, I know. That is why...

MR. McKENZIE: And I have to...

555. MS. SPENCE: I would have thought it was a pretty straightforward answer.

MR. McKENZIE: Well, you have knowledge...why don't you call Toronto Hydro and ask them and put me out of my

misery? I mean, I am saying they go and
put a lock on that door? Golly. Send them
an e-mail. Ask them. I mean, they write
these letters up the wazoo. If this is
important, then be my guest. Give them a
call today, whoever it is that wrote this,
and say, "Did you guys put a lock on it"?
Ben LaPianta, executive vice-president. Be
my guest.

BY MS. SPENCE:

556. Q. It appears to me, Mr. Clydesdale,
that Toronto Hydro coming and putting a lock on your
facility would be an unusual or momentous event or
occurrence. So, it seems to me that that is
something you would remember?

MR. McKENZIE: Don't answer that
question. I can't tell you how many times
Toronto Hydro shows up at places and gets
nothing done, but that is another story.
So, "momentous event"?

557. MS. SPENCE: If they stop the cogen
facility from operating, you don't have any
recollection of whether...

MR. McKENZIE: He doesn't recall. That

is the point.

558. MS. SPENCE: Okay.

BY MS. SPENCE:

559. Q. So, going back to the letter that I was reading from, page 2, which is...all right, which letter are you on? You don't have the same pages as I do. It is the July 19th, 2017 letter. Page 2...

MR. McKENZIE: Yes, I have got it here.

560. MS. SPENCE: Yes.

MR. McKENZIE: So, page 2.

561. MS. SPENCE: Page 2. So, it says, again, in the third paragraph:

"...OOM Energy informed us that the lock installed by Toronto Hydro on June 9th, 2016 had been removed. Toronto Hydro was not previously advised of the removal of the lock, nor did Toronto Hydro authorize the removal of the lock..."

MR. McKENZIE: Okay. So, what is your question?

BY MS. SPENCE:

562. Q. Do you have any recollection of that

event?

MR. McKENZIE: Same problem. I mean, I will give you the same best efforts undertaking, because...your question is, was there a lock and was it removed? U/T

563. MS. SPENCE: Correct.

MR. McKENZIE: Right, okay, that is your question. Their allegations in here mean nothing.

564. MS. SPENCE: And as a further question, I want to know why 244 removed the Toronto Hydro lock.

MR. McKENZIE: If it did.

565. MS. SPENCE: If it did.

MR. McKENZIE: Thank you. And the answer is, same problem, but...

566. MS. SPENCE: The answer is you are going to provide me...

MR. McKENZIE: Best efforts...

567. MS. SPENCE: ...the answer by way of undertaking?

MR. McKENZIE: ...maybe undertaking, so under advisement, I guess, is the right word. U/A

568. MS. SPENCE: And if you refuse to answer

the question, I am going to ask for your position as to why it is not answerable.

MR. McKENZIE: It is not relevant, among other things, but sure. I have a feeling that when you hear the story off the record, the thing is still running.

569. MS. SPENCE: Okay.

BY MS. SPENCE:

570. Q. So, having reviewed the correspondence from WeirFoulds and the enclosed letters from Toronto Hydro, I understand that St. Marys had an issue with the services provided by 244, in the sense that the cogen unit could not be connected to the local power grid.

MR. McKENZIE: Your understanding is incorrect.

571. MS. SPENCE: Please correct me.

MR. McKENZIE: Well, maybe somebody in your firm has some expertise in this.

572. MS. SPENCE: I don't care about that.

MR. McKENZIE: Okay, read a few...

573. MS. SPENCE: I want to know...

MR. McKENZIE: Okay.

574. MS. SPENCE: ...how my understanding of

St. Marys' position is wrong.

MR. McKENZIE: I don't think you understand St. Marys' position. So, let me do it another way, which is there are laws, there are regulations, there are federal laws, there are federal acts, there are all these things. And generically, as we have said earlier, the contents of this letter are not correct generically.

575. MS. SPENCE: Is it true...

MR. McKENZIE: There is a lot of posturing.

576. MS. SPENCE: ...that the cogen facility at the Leaside plant is not connected to the Toronto Hydro grid?

MR. McKENZIE: That is...what does "connected" mean?

577. MS. SPENCE: Well, if there is some nuance to the connection, please explain it to me.

THE DEPONENT: It is an extremely complex...

MR. McKENZIE: I am just saying...

578. MS. SPENCE: No, please let him answer, Mr. McKenzie.

MR. McKENZIE: No, I was just going to say go ahead. Explain the nuance of what connecting...

THE DEPONENT: I can't tell you how complex that is.

579. MS. SPENCE: You can't tell me how complex it is?

THE DEPONENT: Tell me about the law.

BY MS. SPENCE:

580. Q. Okay.

A. It is extremely complex.

581. Q. So, you are telling me that when I say...when I summarize St. Marys' position, being that the cogen facility is not connected to the Toronto Hydro grid is wrong, I am asking you to please clarify why that summary is wrong.

MR. McKENZIE: I think it would be better if you go to WeirFoulds and ask them about islanding, because they hired a bunch of engineers around that topic. And I am saying...this is in 2016. The amount of water that has gone under the bridge is enormous, and I am saying...I know where you are trying to go here, but I am saying...it is complex, but it is simple, which is the thing still works, and it provides energy to St. Marys. I mean, I am going...where are you going with this? Because...just because posturing is going on in 2016...

582. MS. SPENCE: Okay, but St. Marys has had to pay Toronto Hydro for additional services, correct?

MR. McKENZIE: Oh, boy. If you want to get into that...I think we have it resolved over the weekend, but there may be a lawsuit one of these days. If they have told you that, tell me all about it.

583. MS. SPENCE: All right.

BY MS. SPENCE:

584. Q. Can I ask you to turn to the next tab in the document brief, please? Tab 4? This is a case of the Ontario Superior Court of Justice, dated May 25th, 2010, involving Buttcon Energy Inc. v. Ontario Lottery and Gaming Corporation. Do you see that?

MR. McKENZIE: We see it.

BY MS. SPENCE:

585. Q. So, my understanding from having reviewed this case is that it involved a company, Buttcon Energy Inc., of which Mr. Clydesdale was an officer and director at the time, correct?

MR. McKENZIE: Okay, we are not answering any questions whatsoever about this lawsuit. /R

586. MS. SPENCE: Okay.

MR. McKENZIE: Full stop.

587. MS. SPENCE: So...

MR. McKENZIE: It is irrelevant.

BY MS. SPENCE:

588. Q. ...my understanding, from reading this case, is that it involved a similar circumstance where Buttcon Energy Inc. was running an energy facility, and the recipient of those services initiated a lawsuit against Buttcon Energy Inc., because that electricity generation facility could not be connected to the local grid, correct? You are not answering those questions?

MR. McKENZIE: There are going to be no answers...this is...I mean, you are so far removed from the subject matter of what you are doing here that I can't imagine how it could be relevant. /R

BY MS. SPENCE:

589. Q. Okay, well, I am just going to put to you that the problem of commissioning a cogeneration facility, and then not being able to connect it to the local power grid, is a problem that you and your companies have experienced before?

MR. McKENZIE: Don't answer that. /R

BY MS. SPENCE:

590. Q. It is not the first time that you have been through this?

MR. McKENZIE: Don't answer that. /R

BY MS. SPENCE:

591. Q. Okay, and I am going to ask you to turn to tab 5, please. So, this is the unaudited financial statements of 244, dated...or for the year ending July 31st, 2016.

MR. McKENZIE: Yes, we sent these to you, along with a bunch of other documents.

592. MS. SPENCE: Right, you sent these to us.

BY MS. SPENCE:

593. Q. So, is July 31st, 2016 the company's year-end?

MR. McKENZIE: It says for the year ended July 31st, 2016. So, I am going to jump to the conclusion and say, yes, it must be, because...

594. MS. SPENCE: Well, I don't appreciate the sarcasm, but I am just asking you if that is the typical year-end for the company, July 31st.

MR. McKENZIE: No, it wasn't sarcastic. It was just I thought maybe you hadn't read it. And I am just pointing it out. So, I am saying...maybe your question would have been different to say, "It looks to me like it is July 31st", and I understand what you are saying. But what are you after?

595. MS. SPENCE: I am asking Mr. Clydesdale, is July 31st the year-end for the 244?

THE DEPONENT: I don't recall.

BY MS. SPENCE:

596. Q. You don't know. Okay. Are these the most recent financial statements that have been

prepared for this company?

MR. McKENZIE: As far as I know, they came from...yes, yes.

597. MS. SPENCE: As far as we know. Who else would know better?

MR. McKENZIE: Well, I checked with the accountant, Mr. Cole. He is not the accountant anymore, by the way, but I said, whatever was the last you did send them over. And this is what we got. And it says, "Draft" on it, and he said that is..."I did my job, and there you go".

598. MS. SPENCE: Okay.

MR. McKENZIE: So, that is the best I can do for you.

599. MS. SPENCE: Can I ask you to just turn very briefly back to tab 2, which is the 244 loan agreement with Crystal Wealth? And turn to page 8 of that document, please. So, item 2, under the "Covenant" section there, says that:

"...Upon written request from Crystal Wealth, the borrower shall provide Crystal Wealth with annual financial statements, review engagement report of the borrower

and the guarantor within three months of
its respective fiscal year-end..."
So, this suggests that the review engagement reports were the level of accounting that was contemplated when 244 entered into the loan with Crystal Wealth. Correct?
MR. McKENZIE: I am going to make two comments. First of all, I notice that this document that you have provided is not signed by Crystal Enhanced Mortgage Fund. and I would also...
600. MS. SPENCE: That is...
MR. McKENZIE: The document would have merged into the closing, and at the closing things changed. So, you need to look at the closing documents, not the... this is just a confirmation, you know, like a wish list letter. And I can't say because I haven't looked at it, whether...well, you can look at this. I sent you the closing documents, because my office closed the deal. And I can tell you right now, you heard Mr. Clydesdale say a lot of things changed. He went to their office and

signed a bunch of stuff, because they changed what they needed, and he just signed whatever they wanted.

601. MS. SPENCE: So, is your answer to my question that review engagement reports were not required?

MR. McKENZIE: I just...as I say, he signed whatever they wanted within reason, and then whatever the closing documents were, I sent them to you. So, I just want to finish my answer. So, what is the question?

602. MS. SPENCE: The question is why did 244 not provide review engagement report financial statements? Why have they only prepared Notice to Reader financial statements?

MR. McKENZIE: Well, I think it is the other way around. Whatever was produced, and you have them, it was produced.

603. MS. SPENCE: It was produced?

MR. McKENZIE: Full stop. If Crystal Wealth didn't...wasn't happy with them, I presume we would have heard, or my client would have heard. Things don't always happen the way they are written in the letter that actually was written prior to the closing and, as you know, during the closing, a lot of things change.

604. MS. SPENCE: Okay. So, the answer is you just didn't prepare review engagement reporting?

MR. McKENZIE: Okay, just a second. Don't even answer that question. I am...I should be asking Mr. Bando what that means, because that is an accounting term, right? But what I am saying...isn't what they sent...

605. MS. SPENCE: There are different levels of financial reporting, as you, I am pretty sure, are aware. This is Notice to Reader, and I am asking if there was another type of financial statement prepared.

MR. McKENZIE: That is what got prepraed.

606. MS. SPENCE: This is what was prepared.

MR. McKENZIE: So, whether it was under the...all these GAAP and IFRA (sic) and all these things, terms, who knows?

607. MS. SPENCE: Okay.

MR. McKENZIE: Hope I got that right, by the way. I am not an accountant.

608. MS. SPENCE: So, Ben T. Cole Professional Corporation, he was the accountant presumably?

MR. McKENZIE: He was.

609. MS. SPENCE: He was?

MR. McKENZIE: He is...

610. MS. SPENCE: So, was he terminated, or was his retainer terminated?

MR. McKENZIE: He is no longer the accountant.

611. MS. SPENCE: Because his retainer was terminated?

MR. McKENZIE: I think his position was...he is a small town accountant, and he said, "This is getting too big for me. You should go to the professionals". I mean, he is...he is not a little guy. He is a nice guy, but one or two companies, and it was, you know...so...

612. MS. SPENCE: So...

MR. McKENZIE: There was a letter sent, and he said, you know, "Good luck. Good startup. I can't do this anymore".

613. MS. SPENCE: Can you produce that letter?
MR. McKENZIE: I don't know if it was just a note from him. I mean, I know him, that is how it started. I am saying...I will see what I can do. And if it is relevant. I mean, he is not their accountant anymore. I can tell you that for sure. U/T

BY MS. SPENCE:
614. Q. Who are 244's accountants currently?
MR. McKENZIE: None.
615. MS. SPENCE: They have no accountants? So, you didn't replace Mr. Cole when his retainer was terminated?
MR. McKENZIE: We haven't seen the need to send...in other words, I am just saying you have the books, we have the books. If somebody wants to do the accounting, fair enough, but there is no...where is the money?
616. MS. SPENCE: You are no longer pleading any accounting for the company, Mr. Clydesdale?

MR. McKENZIE: He is not the accountant.

617. MS. SPENCE: I know, but he has not engaged anyone...who is going to prepare the tax return for 244 for 2017?

THE DEPONENT: I don't know.

BY MS. SPENCE:

618. Q. Do you have any plans to retain a new accountant?

MR. McKENZIE: We are not going to look that far...if we ever got paid, the last four months, we might pay some bills and hire some accountants, if you guys insist we should. On our side of the table, it is, like...

619. MS. SPENCE: I mean, that is a statutory obligation to file a tax return...

MR. McKENZIE: Well...

620. MS. SPENCE: ...and you did receive funds throughout 2017. So, presumably there will be another accountant engaged at some point.

MR. McKENZIE: Well, there you go. I mean, you know, four months missed payments kind of squashes the cash flow and postpones decisions like that. And it is a heck of a lot messier than that, because there are five companies involved for a year, and Crystal Wealth hasn't come through. So, we are all in this together, trying to maximize the thing, and I am saying if the Receiver wants to hire an accountant to do the books and pay for it, go for it.

621. MS. SPENCE: Can you please undertake to advise me if and when 244 retains a new accountant?

MR. McKENZIE: It hasn't happened.

622. MS. SPENCE: This is a future-looking undertaking. The obligation would be removed if 244 repays the loans as well as the other companies.

MR. McKENZIE: Yes.

623. MS. SPENCE: If they repay the loans, then undertaking is over. But until that time, we would want to be advised of 244 and the other companies retaining an accountant.

MR. McKENZIE: Well, you could look it the other way. The Receiver is running the show now. So, yes, we could work something out, but...

624. MS. SPENCE: Please just answer my question.

MR. McKENZIE: ...that is the problem. Okay. If 244 formally retains a chartered accountant to complete whatever kind of financial statements you were talking about, of course I will let you know. But would you remind me every three months? Because I hate forward-looking undertakings. Then a year from now, they said, "You promised". I am a lame-brain sometimes. So, I am putting this on you. Every three months, ask me again. So, for the next three months we will give you that undertaking and ask me again. U/T

625. MS. SPENCE: And, so, the same undertaking would apply that we want to receive the 2017 financial statements once they are prepared, and we also want to receive the tax return for 2017 once it is prepared. And that is for all five of the companies that we are talking about.

MR. McKENZIE: Remind me every three

months. U/T

626. MS. SPENCE: Okay, thank you. So, you are giving that undertaking? Thank you.

MR. McKENZIE: Yes.

627. MS. SPENCE: Okay.

BY MS. SPENCE:

628. Q. I am going to ask you to turn to page 3 of the financial statements. Under the "Assets" column, I see, "Equipment Generator" listed at $1.9 million and change. Do you see that?

MR. McKENZIE: Yes, go ahead.

629. MS. SPENCE: So, that is how you have valued the cogen unit as at July 31st, 2016. Is that correct?

MR. McKENZIE: Well, value is a different thing than the cost, right. So, they allocated these costs in that column, or in that category. I think you are right.

630. MS. SPENCE: Well, it says "the assets", so...

MR. McKENZIE: Well, you said "value". It is like a car. You might spend $10,000 for it. It is worth 20 or it is worth 5, so...

631. MS. SPENCE: Well, it reflects on its balance sheet a $1.6 million asset. So, presumably that is how much the cogen unit is worth as at that date.

MR. McKENZIE: $1,961,952 is...

632. MS. SPENCE: Yes.

MR. McKENZIE: ...an accountant's...Mr. Bando would know better, but they put it in a column of, "This is what it cost".

633. MS. SPENCE: So, do you agree that that is not what the cogen facility was worth as at that date?

MR. McKENZIE: Worth?

634. MS. SPENCE: Yes.

MR. McKENZIE: Well, that is a different story.

635. MS. SPENCE: We have just been through this. I am not going to do it again. It is in the assets column.

MR. McKENZIE: Right.

636. MS. SPENCE: It shows that is how much it is reflected as being an asset.

MR. McKENZIE: When you have an accountant, they do things a certain way, right? They book stuff...

637. MS. SPENCE: Is the answer you don't know?

MR. McKENZIE: What it is worth?

638. MS. SPENCE: Yes.

MR. McKENZIE: Well, it could be worth scrap value today if somebody doesn't pay the bills, or it could be worth a couple of million bucks on the market because it is a very solid project. So, I am saying that is "worth" as opposed to what the accountant writes on the book.

639. MS. SPENCE: Shall I repeat my question?

MR. McKENZIE: So, change it.

640. MS. SPENCE: Do you agree...

MR. McKENZIE: I think what your question is, is that the cost allocation...

641. MS. SPENCE: No, that is not my question. Do you agree that that is what it was worth?

MR. McKENZIE: Well, you have the answer, which is, "We don't know what it was worth".

642. MS. SPENCE: You don't know, okay. That is fine.

MR. McKENZIE: But that is the cost allocation...

643. MS. SPENCE: And so...

MR. McKENZIE: ...that was assigned to it by an accountant.

644. MS. SPENCE: Okay. So...

MR. McKENZIE: After he did the books.

645. MS. SPENCE: So, the cost allocation that you are saying is what this number reflects is higher in 2016 than in 2015. Is that...

MR. McKENZIE: We agree with that.

646. MS. SPENCE: ...because you spent money on the cogen facility in that time period?

THE DEPONENT: I definitely don't recall.

BY MS. SPENCE:

647. Q. You don't know?

A. No. I don't recall.

MR. McKENZIE: I am just smiling because, you know, it is like who paid for coffee this morning between he and I, and I can't even remember that sort of thing. He is not an accountant, obviously. But I am

saying...that sounds about right, Miranda.
I mean, if something got spent, the accountant added a number to his book, or whatever they call them. The key accounts or whatever you call them nowadays.

648. MS. SPENCE: Okay. How much do you say the cogen facility is worth today?

MR. McKENZIE: You mean fully running, and everybody lays their hands off it? Or the way it is being treated right now, as a piece of scrap? Because that is a really good question that we better get fixed right now. So, I am saying...on the market, if it was running like 100 percent fantastic, can you give a ballpark, because I know you are not...what you could sell this project for, probably?

THE DEPONENT: It is worth a lot.

649. MS. SPENCE: That is not helpful.

MR. McKENZIE: Well...

650. MS. SPENCE: Is there a number?

MR. McKENZIE: Within a million dollars?

THE DEPONENT: As a running facility? It could be worth $1.5 million.

BY MS. SPENCE:

651. Q. Okay. So, as a running facility, $1.5 million, and that is...so, that is installed?

MR. McKENZIE: Running.

THE DEPONENT: Running.

BY MS. SPENCE:

652. Q. Running. Installed and running, you think it is worth $1.5 million.

MR. McKENZIE: Well, I said within a million dollars.

653. MS. SPENCE: Right.

MR. McKENZIE: And it could be worth 2.5, depending on the buyer.

THE DEPONENT: Could be more.

654. MS. SPENCE: And the hardware itself, how much would you say that is worth?

THE DEPONENT: Scrap value? You can't price that because scrap value on equipment on this is unpriceable. It could be worth metal, $50,000.

BY MS. SPENCE:

655. Q. So...

A. It is unknown.

656. Q. So, if it is uninstalled, you say its only value is as scrap?

A. This type of a facility is similar to a truck or something. When you buy it and you start using it for a while, its resell value is...if it is being sold as scrap. So, it is significantly less.

MR. McKENZIE: It would be more like if you tore the engine out of a car and put it on Kijiji, you know, what would you get for it?

657. MS. SPENCE: Okay. So...

MR. McKENZIE: Okay, we will talk about that off the record.

BY MS. SPENCE:

658. Q. I am just thinking. Do these types of facilities ever sell used?

A. If it ends up on the used market, it is in the scrap level. So, it is worth pennies on the dollar.

659. Q. What about the software?

A. In general, I just want to comment on the software. Microsoft Windows is one of the software. So, is there a Microsoft Windows licence?

Probably. What is the software worth? Whatever licence the software is generally included in the equipment that is sitting there. So, if there is a piece of equipment, it typically has software on it, and it is part of whatever that is. Generally it is worthless, completely worthless, unless it is actually operating in the facility and then it has value.

660. Q. Okay. And you are going to provide me a list of the different pieces of the equipment and software, correct?

MR. McKENZIE: I gave you an undertaking. I don't remember what it was, or the best efforts, because...I mean, if they went and bought a scrap of garden hose at Canadian Tire. I am not going to go that deep in it. But they do that. You know, sometimes they have to cut a piece out and weld it together, because they have freezing pipe and stuff like that. So, I am trying to keep this in proportion.

The major components, I know one is a big gadget, the generator, right? And then it is in a house. I am not going to tell you how they built the house. It is sheet metal. Anyway, we will be reasonable here, but you are trying to get the value of it. Let me tell you, keep it running and it is worth a lot. Let it falter, and stop paying the bills, which has happened for four months, we are in serious danger. This thing is going to...like your car, if you don't change the oil and keep it full of gas, then what is it worth? So, again, we are as eager as anybody else to have this thing sold or refinanced and pay off Crystal Wealth, or paid off the Receiver.

661. MS. SPENCE: So, what...

MR. McKENZIE: We have already been through that discussion.

662. MS. SPENCE: What are the monthly expenditures associated with running this facility?

MR. McKENZIE: $20,000.

663. MS. SPENCE: And what is that made up of?

MR. McKENZIE: We would have to...I mean, we would have to break that down into so many pieces. Just hire an engineer and you will figure it out. It is way more than that if you do it independently.

664. MS. SPENCE: I don't know how the Receiver hiring an engineer is easier than you just telling me who you are paying $20,000 to every month.

THE DEPONENT: It is complicated.

665. MS. SPENCE: Who do you pay the $20,000 to every month?

THE DEPONENT: It is complicated.

MR. McKENZIE: I will write you a paragraph. I think he said it in his thing, but I will write you a paragraph of why...

666. MS. SPENCE: Well...

MR. McKENZIE: ...it is complicated.

667. MS. SPENCE: ...presumably payments are made from an account held by 244. Correct?

MR. McKENZIE: Yes, okay.

668. MS. SPENCE: And each of those payments is for something specific.

MR. McKENZIE: It is complicated, but I will write you a paragraph.

669. MS. SPENCE: I don't want a paragraph. I would like to have the documentary backup showing how those payments were arrived at.

MR. McKENZIE: Well, it is like I said before. If somebody calls somebody and says, "We need a new hose over here", it might not be documented. And that would have kept it running, because the hose exploded. And I am saying that is why it is complicated. We are not trying to help you learn how to run it. If you want to know why it costs $20,000, I am going to tell you, get another engineer to come in, and they will tell you that is a bargain.

670. MS. SPENCE: No...

MR. McKENZIE: And...no, I am just saying...

671. MS. SPENCE: That answer makes no sense, Mr. McKenzie.

MR. McKENZIE: I understand.

672. MS. SPENCE: How does that make any sense?

MR. McKENZIE: You are right.

673. MS. SPENCE: Your answer is...well, when I ask you, "Who are you paying $20,000 to every month?", you tell me to hire an engineer?

MR. McKENZIE: No, no, what I am saying

is...

674. MS. SPENCE: What does that mean?

MR. McKENZIE: ...if the Receiver intends to take over the operation of this thing, I could write you a book and you would not know how to do it. And I am saying, "So, get another engineer if that is what you are after". If you are after the costs...

675. MS. SPENCE: Yes.

MR. McKENZIE: ...of running it, for instance it uses gas...

676. MS. SPENCE: That is exactly what I am after.

MR. McKENZIE: Okay. So, I am just saying the gas company, presumably, gets X dollars a month, right? And I am saying I might be able to identify that, but what about the call on the weekend? Like, it is...you know, there is a generic, sort of...

677. MS. SPENCE: How do you run a business if you don't know who you are paying money to? That is the answer that you are giving me. "I don't know. If it is a small

expense, we don't track it". That doesn't make any sense.

MR. McKENZIE: Well, if one electrical company is working on six different projects and sends you a bill once a month, it doesn't break it down and you pay it. I mean, that is the problem.

678. MS. SPENCE: Well, then, I want to see the bill.

MR. McKENZIE: They are generic. Well, no, because that is...again, now you are going into other projects...

679. MS. SPENCE: So, now...

MR. McKENZIE: ...so I am saying...

680. MS. SPENCE: ...oh, now, it is confidential?

MR. McKENZIE: Okay. You know what we will do? As of today, we will stop operating this thing, and hire specific contractors to do it. The cost will be about $30,000 or $40,000, because these guys are smart at what they do, and I am saying...

681. MS. SPENCE: That is not what I asked for.

MR. McKENZIE: So, yes, I understand. So...
682. MS. SPENCE: I asked for you to...
MR. McKENZIE: I am going to...
683. MS. SPENCE: ...itemize the $20,000.
MR. McKENZIE: Okay. I am giving you a best efforts undertaking to say who gets paid to run this thing. Now, you want to go and talk to them and say, "Who do they pay to run the thing?" And who...fine. I am saying that is the problem. U/T
684. MS. SPENCE: Okay.
MR. McKENZIE: It is not that simple.
685. MS. SPENCE: Okay. So, you are going to produce for me a summary or a breakdown of the $20,000 monthly costs associated...
MR. McKENZIE: The monthly cost, $20,000, who it gets paid to.
686. MS. SPENCE: Okay, thank you.
MR. McKENZIE: Full stop. Back to the loan agreement at tab 2.
MR. McKENZIE: Sorry, we are going back to tab 2?
687. MS. SPENCE: Yes.
MR. McKENZIE: What did you call it?

Sorry, this is...oh, the loan agreement?

688. MS. SPENCE: Yes.

MR. McKENZIE: Yes, I see what you mean.

BY MS. SPENCE:

689. Q. And at page 3, you see there is the heading that says, "Security"?

A. Yes.

690. Q. Item number 3 is an assignment of the borrower's rights and entitlements under the Aon insurance policy. Do you see that?

A. I see it.

691. Q. So, I have already asked for a copy of the applicable insurance policy. Do you have an insurance certificate showing that the insurance policy is in effect?

MR. McKENZIE: I think it was sent to you, but...

692. MS. SPENCE: No.

MR. McKENZIE: ...Miller Thomson would have it for sure...

693. MS. SPENCE: We received...

MR. McKENZIE: ...because they closed the deal. Okay. You have permission to ask Miller Thomson who would have gotten it. Remember, this is not a closing document. This is an agreement which may not have gone this way and they did a lot of finagling, Miller Thomson, because they were...

694. MS. SPENCE: I have to think that if the security included an insurance assignment, that that would remain in the final document.

MR. McKENZIE: Well, I don't necessarily agree with you that...I think Mr. Clydesdale told you earlier, Miller Thomson sort of took command of closing the deal. He went to the office. I didn't go with him, and then they sent me some documents. And unless it was in the pile I sent you...I don't have it, but Miller Thomson may have it. I am presuming, by now, you have their files, or maybe they didn't get it. So, the answer is ask Miller Thomson, and if there is one, send it to us, and I will validate it or say, "That is it".

695. MS. SPENCE: So, you don't have it?

MR. McKENZIE: Well, we sent you a memory stick. Is it there?

696. MS. SPENCE: No.

MR. McKENZIE: I remember sending something about Aon, right?

697. MS. SPENCE: Yes, so I will show you what we have about Aon.

MR. McKENZIE: Sure.

698. MS. SPENCE: If you turn to tab 6...

MR. McKENZIE: Okay.

699. MS. SPENCE: ...this is an insurance proposal and summary for 2014 and 2015, prepared for MCS Energy, I don't know what that is, and 2363265 Ontario Inc. It is a draft effective October 2014.

MR. McKENZIE: Okay.

700. MS. SPENCE: So, that is what you provided to us in respect of the insurance. Evidently, this is not an operative insurance policy.

MR. McKENZIE: Okay. Now I know what you are after. May I interrupt you for a moment?

701. MS. SPENCE: Yes.

MR. McKENZIE: Okay. I am going to presume that, on closing, the lender, who worries about these things, got something from Aon. You are calling it...you are saying it should have been...what do they call it in this thing? An assignment of the borrower's rights and entitlements under the Aon insurance policy. Like you, I presume that Miller Thomson got that from the insurer.

702. MS. SPENCE: But you don't have it?

MR. McKENZIE: Well, if...Miller Thomson gave me some documents. And unless I sent it to you, and you say I didn't, it doesn't exist in the closing file. So, over to you.

703. MS. SPENCE: Okay, so...

MR. McKENZIE: You can ask Aon for it, or shall we jointly write a letter to Aon and say, "Could you send this to us"?

704. MS. SPENCE: I mean, leaving aside the assignment of it to Crystal Wealth as lender, you don't have a copy of your insurance policy?

MR. McKENZIE: He didn't say that. You are asking for the assignment. Remember, I told you...

705. MS. SPENCE: No, my initial request was

for the policy.

MR. McKENZIE: It is a global policy, but it is one size fits all, and then they issue...for an approved project, I guess, to the lender they issue something that says, "Okay, this policy"...it is like an endorsement...an insurance policy. I am presuming that would happen, but that is Miller Thomson's job. So, if you...I am happy to say...we can jointly write to Aon and say, "Did you issue an assignment of the borrower's rights in 2014?" Sure, but, again, we are both...we can solve that mystery together. But if I didn't send it to you, because I don't have a recollection of anything I sent to you, but we just dug out our file and sent you the stuff on closing.

706. MS. SPENCE: Okay.

BY MS. SPENCE:

707. Q. If we turn back to tab 5, which is the financial statements, and we look on page 4, see under "Expenses", there is a line for insurance?

A. Right.

708. Q. $44,894. Is that money that was paid to Aon?

MR. McKENZIE: Well, again, if you want to know, I think we already...we can find out. I am presuming it is, because somebody had to pay for the insurance, unless...

709. MS. SPENCE: And Aon...

MR. McKENZIE: ...Crystal Wealth paid for it.

710. MS. SPENCE: ...is the only applicable insurance, correct?

MR. McKENZIE: The breadth...

711. MS. SPENCE: Mr. Clydesdale was just shaking his head.

BY MS. SPENCE:

712. Q. Do you know the answer to that, Mr. Clydesdale?

A. I don't know. There might be more. I don't know.

713. MS. SPENCE: There might be more, okay. So, I am going to ask you to undertake to confirm what other insurance policies might exist, and to produce them for us.

MR. McKENZIE: For 244?

714. MS. SPENCE: 244.

MR. McKENZIE: I am going to give you the same thing. We will give you what we got. Like this one, this assignment, as I say...Miller Thomson, if anybody, would have it, and the insurer would have it. And I am saying, "Okay".

715. MS. SPENCE: Okay.

MR. McKENZIE: If there is another insurer other than Aon that insures something else on this project, I think that is fair to give it to you, yes. U/T

BY MS. SPENCE:

716. Q. And just...when we were looking at that insurance quote, it refers to MCS Energy. Do you know what that is, what that refers to?

A. I am not sure.

717. Q. It is not a legal entity, because it has...

MR. McKENZIE: So you say.

718. MS. SPENCE: ...just says "MCS Energy". You don't know what that refers to?

THE DEPONENT: I am not sure.

719. MS. SPENCE: All right. Why don't we take a break for lunch?

--- upon recessing at 1:05 p.m.

--- A LUNCHEON RECESS

--- upon resuming at 1:30 p.m.

CRAIG CLYDESALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

720. Q. Let's turn back to the loan agreement at tab 2.

MR. McKENZIE: Okay. Just...at lunchtime, I tried to call Dan Ferguson of WeirFoulds to give us some of the answers. And there is basically a crisis coming if we don't resolve this today about a payment making. So, I would like to have a meeting this afternoon with you guys so somebody can make a decision at the Receiver's office, because they have an idea...I have an idea. We have been discussing it for four days. And we just need, to avoid a crisis, some money to move...

721. MS. SPENCE: Sorry, I remind you that we are on the record now, and what you are

talking about is the subject of without prejudice discussions as between the Receiver, St. Marys and you. So, I am a bit curious as to why you are raising it right now.

MR. McKENZIE: No, I don't agree that the subject matter of having another meeting is without prejudice. I am making it with prejudice now. I am saying today...

722. MS. SPENCE: Well...

MR. McKENZIE: ...on the record, we need to address something that is about...could turn into a crisis, because there are three parties to it. So, if you could get some people organized today that can talk, we could get Mr. Ferguson on the phone, and talk without prejudice. But I am saying we need...you know, this is all great, having these questions that go on and on, but we have something that is...

723. MS. SPENCE: Okay.

MR. McKENZIE: ...in my opinion is urgent, but hopefully it is not.

724. MS. SPENCE: So, Mr. McKenzie, again, I

don't know where this is coming from. We had a call last Wednesday. You have our direction to St. Marys to pay the money to you. St. Marys refused. I don't know what else is on the Receiver's plate at this point...

MR. McKENZIE: Right.

725. MS. SPENCE: ...but if you are trying to put some sort of reflection on the record that, somehow, the Receiver is holding up your money, that is incorrect. And I object to you using this examination for that purpose.

MR. McKENZIE: Well, you...

726. MS. SPENCE: Let's have our discussion afterwards.

MR. McKENZIE: Yes.

727. MS. SPENCE: And...

MR. McKENZIE: We need to do that today.

728. MS. SPENCE: ...I am happy to continue to talk to you and to St. Marys' counsel, as we have been doing for the last several months.

MR. McKENZIE: Okay. Can we adjourn...

729. MS. SPENCE: No.

MR. McKENZIE: ...I am just going to send a message, at 3:30 and have this call?

730. MS. SPENCE: No.

MR. McKENZIE: Okay. Then I am turning off my phone, because there is no use taking a call from Mr. Ferguson.

BY MS. SPENCE:

731. Q. Can you turn to page 4 of the loan agreement, please?

MR. McKENZIE: That is tab 2, page 4.

732. MS. SPENCE: That is correct.

MR. McKENZIE: And you are saying it is a loan agreement. I am saying it is not signed and may not be a loan agreement.

733. MS. SPENCE: Well, it is signed by your client, so...

MR. McKENZIE: That doesn't make it an agreement. Crystal Wealth, last I looked, didn't sign it. So, just to be clear, we have been through this before, there are lots of documents floating around which are not in play. In other words, we get it, you have dragged out some documents without producing them all, and just going selectively, and I am saying...so, just to be clear, there might have been something else, and as I said this morning, at the closing a lot of things changed. But, anyway, go ahead.

734. MS. SPENCE: Item 4, under "The Conditions Precedent to Utilization of Loan", it says...so, the preamble to that section says that:

"...Crystal Wealth shall have no obligation to permit utilization of the loan unless it has been provided with all of the following to its complete satisfaction..."

Item number 2, start there, it says:

"...Completion of satisfactory due diligence..."

Did Mr. Clydesdale and/or 244 provide Crystal Wealth with any documentation to permit it to complete due diligence in advance of the signing of this loan?

MR. McKENZIE: As I said, he went to the office without a lawyer, and sat down with them and gave them a bunch of stuff.

735. MS. SPENCE: Sorry, if you are just summarizing...

MR. McKENZIE: And...

736. MS. SPENCE: ...the paragraph that Mr. Clydesdale read earlier, I will have the evidence from him, please.

MR. McKENZIE: I understand, and I just tried to get back to the question that he has already answered, so...

737. MS. SPENCE: He hasn't answered this question.

MR. McKENZIE: Okay.

738. MS. SPENCE: The question is, did 244 provide Crystal Wealth with any material so that Crystal Wealth could complete any due diligence in advance of this loan being signed?

MR. McKENZIE: We will have to look, because...

739. MS. SPENCE: Okay.

MR. McKENZIE: ...that is...I was hoping that it would be in this binder, that you...you got everything from Crystal Wealth to show us, because we are in the dark a bit. So, I am saying...

740. MS. SPENCE: Why would we do that?

MR. McKENZIE: Why would you do that?

You are the Receiver for Crystal Wealth. I am saying if they got due diligence... anyway, I don't want to get into an argument with you. But anyways, you have my position on it, which is...okay.

741. MS. SPENCE: Okay. So, my question is, if there is documentation that was provided to Crystal Wealth in advance of the loan being signed by 244, can you please produce it to us?

MR. McKENZIE: I am going to ask Miller Thomson to produce it...

742. MS. SPENCE: Okay.

MR. McKENZIE: ...with your permission.

743. MS. SPENCE: I am not sure why you need my permission, but I don't know that Miller Thomson has it.

MR. McKENZIE: You are the Receiver...I mean, you are Crystal Wealth.

744. MS. SPENCE: So...

MR. McKENZIE: Is it confidential? I don't know. I mean, I am just going...you are Crystal Wealth. Miller Thomson are your lawyers.

745. MS. SPENCE: Okay. Well, let's...

MR. McKENZIE: I am saying...do you have a problem if I ask him, on behalf of the guys that closed the deal? Because that is the best way to do it.

746. MS. SPENCE: I will take it as a two-part undertaking. First of all, can you advise if you did, in fact, provide any documentation to Crystal Wealth? That would be a yes or no answer.

MR. McKENZIE: Of what nature?

747. MS. SPENCE: In the nature of due diligence materials.

MR. McKENZIE: Be specific.

748. MS. SPENCE: No. I am looking at the conditions precedent set out in the loan agreement. I don't know what material might have been provided. I am asking you the question if anything was.

MR. McKENZIE: It goes the other way. If they ask for things, I presume they got them. But due diligence is a defined term, and I am saying, you know, sometimes you just drive over and take a look at the gadget, and that is due diligence. I do recall that Chris, Jonathan and...I think her name was Susan called Aon. They did their own due diligence, I guess. The reason I recall that is somebody asked me for a phone number or something like that, and they called them. So, is that due diligence that satisfied everybody? We wouldn't even know what happened in that call. So, again, why don't you go through a list of every item of due diligence that would be possible, and then...

749. MS. SPENCE: No, I am...of course I am not going to do that. That is a ridiculous response to my question. Do you know if you provided information to Crystal Wealth to convince them to sign this loan with you? Presumably, that is an answer that you can find out.

MR. McKENZIE: You just changed the topic. Due diligence is a very specific set of topics. Now, I am saying be specific and I will answer them, otherwise I am going to ask Miller Thomson what the due diligence requirements were. But I don't have...you know, usually you have the list. You sent me the A, B, C, D, E. And

I am saying we will do that for you, and see what they say.

750. MS. SPENCE: Are you going to answer any of my questions yes or no? When they are yes or no questions, I would appreciate a yes or no answer. The first undertaking that I asked for is, will you advise if you provided any documentation to Crystal Wealth in advance of this loan being signed as part of a due diligence process?

MR. McKENZIE: So I can define due diligence? Yes. U/T

751. MS. SPENCE: Okay. And the second part of that undertaking is please produce to us copies of any documentation provided to Crystal Wealth in that capacity.

MR. McKENZIE: Same answer. U/T

752. MS. SPENCE: Okay.

MR. McKENZIE: I am defining due diligence, because you won't define it or haven't defined it.

753. MS. SPENCE: Number 4 on this list of conditions precedent to utilization of loan on page 4 of the loan agreement at tab 2 says:

"...Documents relating to a lockbox arrangement to be entered into with a financial institution acceptable to Crystal Wealth, pursuant to which the payments due from SMC under the Energy Services Agreement will be deposited into a blocked account..."

Was a blocked account ever set up at any financial institution?

MR. McKENZIE: By Crystal Wealth?

754. MS. SPENCE: In satisfaction of this conditions precedent, or condition precedent.

MR. McKENZIE: Yes, the blocked account would be set up by Crystal Wealth. That is your question? We could tell you where the money was paid, but I don't even know what a blocked account is. I am just saying... Crystal Wealth is saying you have to send it to a blocked account, right?

755. MS. SPENCE: Well, the way I read this...

MR. McKENZIE: That is the account.

756. MS. SPENCE: ...it says that Crystal Wealth was saying, "244 has to set up a

lockbox arrangement".

MR. McKENZIE: What? Well, we disagree on who has to do it. I mean, I would presume the lender says, "Here is the account number to send the money to", his...and a blocked account, whatever a blocked account is. And a lockbox, gosh knows what that is. What we can do is say where the payments went, which, presumably did not displease Crystal Wealth or they would have complained, right? But...

757. MS. SPENCE: So, the answer is, no, there was no lockbox account?

MR. McKENZIE: What is it?

758. MS. SPENCE: What is it?

MR. McKENZIE: Yes.

759. MS. SPENCE: Why are you asking me questions? I am asking you whether this condition precedent was fulfilled.

MR. McKENZIE: Well, going over my file, I think it fell by the wayside...

760. MS. SPENCE: So, the answer is no...

MR. McKENZIE: ...during the close...

761. MS. SPENCE: ...again?

MR. McKENZIE: No, I didn't say no. I

am just going by recollection, by looking at my file. I don't see a lockbox arrangement or a blocked account in the closing file. If Crystal Wealth set one up after that, it is over to you, because you have their files. All we can do is tell you where the payment went.

762. MS. SPENCE: Okay. Where did the payment go?

MR. McKENZIE: Well, we will undertake to let you know. I mean, it was probably a wire transfer or something, right? Like, because it just was every month, I am presuming. But I will undertake to find out where the payment went... U/T

763. MS. SPENCE: So, you are talking about the payments due from...

MR. McKENZIE: To Crystal Wealth.

764. MS. SPENCE: No, that is not what this is about. Read the paragraph, please: "...Documents relating to a lockbox arrangement to be entered into with the financial institution acceptable to Crystal Wealth, pursuant to which the payments due from SMC under the Energy Services

Agreement will be deposited into a blocked account..."

According to this paragraph, St. Marys is supposed to pay the funds owing to 244 into a blocked account. This is not to do with Crystal Wealth. This is just so Crystal Wealth knows how 244 is receiving its revenue from St. Marys.

MR. McKENZIE: Okay. The position of 244 on this, as a result of efforts which were made to look, is that Crystal Wealth did not require this to happen. Their decision was not to require this to happen, and my suggestion...and I used to be a bank lawyer, Jonathan probably wouldn't be able to come up with an agreement that "lockbox"? Anyway, I hear you, but I am just saying the better idea is to...we will show you where the money went. Now, you can go to Crystal Wealth and say, "Did you get this?" Because that is not the information we have. This fell by the wayside. I mean, this...

765. MS. SPENCE: So, okay, again, if the answer is no, there was no lockbox or

blocked account, then that is the answer.

MR. McKENZIE: But we don't know. Was there one?

766. MS. SPENCE: This is as between 244 and St. Marys.

MR. McKENZIE: Well, I am going to tell you...

767. MS. SPENCE: St. Marys owes money to 244 under the Energy Services Agreement.

MR. McKENZIE: Right.

768. MS. SPENCE: Correct?

MR. McKENZIE: And...

769. MS. SPENCE: And this paragraph speaks to those amounts.

MR. McKENZIE: So you say, but I am saying, forgetting about the agreement, you are asking me if St. Marys...we know whether St. Marys paid to a lockbox. And the answer is, we will just get you the flow. In other words, we will say, "Here is where the money went. Here is where the money went. Here is where the money went", because that is just a transaction. You can decide whether it was a lockbox or a blocked account, which...my recollection, as I said, is Jonathan and I had a long conversation. "How do you do it?" Good luck with that. In other words, the logistics of getting a bank to set up something like this is a little more complicated.

770. MS. SPENCE: All right. So, you are undertaking to provide me with bank statements reflecting the flow of funds from St. Marys to 244?

MR. McKENZIE: Well, we will give you...I mean, it was just done every month. So, it was, like, a payment, St. Marys' paid...

771. MS. SPENCE: Can you just answer my question as to whether you are giving me that undertaking?

MR. McKENZIE: I am going to tell you where St. Marys paid the payment every month, full stop. U/T

772. MS. SPENCE: Thank you. And, so, then, presumably it was into a bank account?

MR. McKENZIE: Are you...

773. MS. SPENCE: Do you know? Was it into a bank account?

MR. McKENZIE: I am sort of losing my understanding of your question. I gather if it was money, it was paid into a bank account, yes. And we are going to be telling you what bank account...

774. MS. SPENCE: Okay.

MR. McKENZIE: ...it was paid into. Or maybe it wasn't a bank account. It might have been a trust company, I mean...

775. MS. SPENCE: Okay. So, you are going to advise me as to where the funds were paid, and provide evidence of those payments being made?

MR. McKENZIE: Best efforts, yes, and going...and presuming it was a cheque or a wire. I mean, it got paid...well, until lately.

776. MS. SPENCE: Okay. So, as you are aware, this loan is in default.

MR. McKENZIE: Well, the Receiver sent out notices and said it was in default, and...

777. MS. SPENCE: But you don't dispute that...

MR. McKENZIE: There is money owing,

that is for sure.

778. MS. SPENCE: Yes, okay.

MR. McKENZIE: I mean, that is what we would like to talk about, is the money owing, and how we can get it back by working together.

779. MS. SPENCE: And...

MR. McKENZIE: That is what we are really here for, but...

780. MS. SPENCE: ...the principal advanced under this loan agreement was $1.8 million, correct?

THE DEPONENT: I don't recall.

MR. McKENZIE: 2G was involved in it, right?

781. MS. SPENCE: Yes.

MR. McKENZIE: So, again, I don't know what...

782. MS. SPENCE: Well, if you look on the first page of the loan agreement, it says that the principal amount is $1.8 million.

MR. McKENZIE: Yes, but on closing, sometimes there are adjustments. Whatever the number was, ask Miller Thomson. I think they wrote the cheque that was held up for ten days.

783. MS. SPENCE: So, you have already undertaken to advise me...or to produce the bank statements showing the receipt of those funds, and the disbursement of those funds, correct?

MR. McKENZIE: I think we gave some undertakings about bank...I mean, I would have to have it read back to me, but...

784. MS. SPENCE: And 244 made payments to Crystal Wealth between April 2015 and March 2017, correct?

MR. McKENZIE: If you say so. I mean, again, that is just an accounting...I mean, you have all the books and you won't show them to us. If we had the books and you showed them to us, we would probably take five minutes to say you are correct. This is a guessing game now.

785. MS. SPENCE: Well, if you have any information to dispute the fact that 244 made payments on account of principal and interest under the loan from April 2015 through March 2017, you will advise me of that?

MR. McKENZIE: It made payments, and you have the records. Send them to me, and I will tell you if they are right, I mean...this is a very strange examination with no production from the other side, and it is a guessing game. I am saying I don't want to give undertakings all day when you have the information. Look, we know money is owing. We all agree on that, and we are trying to get it back to Crystal Wealth. And everything we are doing today is not getting us there, but it is your job, you know, whatever...

786. MS. SPENCE: And 244 stopped making payments to Crystal Wealth after March 2017, correct?

MR. McKENZIE: We will get back to you on that. Again, same answer. U/T

787. MS. SPENCE: But you don't dispute that it was in around the spring of this year that 244...

MR. McKENZIE: Well...

788. MS. SPENCE: ...stopped making payments?

MR. McKENZIE: There was a point at which the payments didn't go to the

Receiver, yes, I agree with that.

789. MS. SPENCE: What does that mean?

MR. McKENZIE: We don't have the date... well, I am saying...

790. MS. SPENCE: You stopped making payments on the loan?

MR. McKENZIE: No, no, just a second. The Receiver came in, now you are not paying Crystal Wealth, you are just paying the Receiver, I gather. I am saying there was a point at which the payments stopped. There is no doubt about that.

791. MS. SPENCE: Well, you have never made a payment to the Receiver, though, correct? For 244?

MR. McKENZIE: We don't know. As I say, can you give us the records? It would take five minutes to answer all these questions. It is very frustrating.

792. MS. SPENCE: I am asking for your answers on the basis of 244's records.

MR. McKENZIE: Okay. We will make inquiries and tell you, what, when the last payment was made to Crystal Wealth?

793. MS. SPENCE: It is really just an

illustrative question, and you are being very difficult and refusing to acknowledge very basic questions, which are, the payments stopped in the spring of this year, correct? 244 stopped making payments to Crystal Wealth or its Receiver?

MR. McKENZIE: I am very unhappy with the comment you just made, Counsel. I have asked you to put on the table the accounting at Crystal Wealth's side. They are the bankers. We will probably agree with it. What you are saying is the other, that we are supposed to run around and figure out the last payment that Crystal Wealth...from a memory contest. So, why don't you just ask the questions and not make editorial comments like that? Because it is...

794. MS. SPENCE: Thank you.

MR. McKENZIE: ...opposite...this is...you know, laborious, and you could fix it in ten seconds. Put the account on here. You have told the Court that 244 owed a round number. I can't figure out what that is because you haven't given me the books. And I am saying we could do this, you know, very simply. So, okay, keep to questions, but those kind of editorial comments are not helpful.

795. MS. SPENCE: I will ask you to give me the same indulgence, Mr. McKenzie, to cease any editorial comments. They are not helpful. Why did 244 stop making payments?

THE DEPONENT: I mean, I don't recall the facts of that, so I...

BY MS. SPENCE:

796. Q. You don't know?

A. I am not sure.

797. Q. Okay. How do you propose to repay the 244 loan?

MR. McKENZIE: If we could get cooperation from these three parties this afternoon...we have already gone through this. We could go out and refinance this or sell it. But the chaos that has been created in the last four months has stopped it. We actually had a deal with the Receiver, I thought...and I don't want to get it all on the record, which is they were cooperating, saying, "Let's keep this running and go and refinance it".

798. MS. SPENCE: Yes, we were cooperating.

MR. McKENZIE: And then it stopped again. I am saying...I know that is all off the record, but I am saying it is very frustrating.

799. MS. SPENCE: No cooperative efforts from the Receiver's part have ceased, and I object to your suggestion that they have.

MR. McKENZIE: Well, I disagree with you.

800. MS. SPENCE: But, in any event.

MR. McKENZIE: But...

801. MS. SPENCE: I don't know why you are raising that, when you are so adamant that all of those discussions be off the record and without prejudice, and now you are raising them while we are expressly on the record. So, I am a bit confused as to why you are doing that.

MR. McKENZIE: Well, do you want me to put on the record how we could fix it today?

802. MS. SPENCE: That is not what I am

asking questions about, okay? I am asking questions about how you propose to repay this loan. You have suggested refinancing. Have you made any efforts to refinance the loan?

MR. McKENZIE: It stopped when the payments stopped. How do you go to a bank and say, "They won't pay us, but we expect you to borrow against the cash flow"?

803. MS. SPENCE: So, the answer is no? Is that the answer?

MR. McKENZIE: Well...

804. MS. SPENCE: No, you have not made any efforts to refinance?

MR. McKENZIE: Talk is difficult. You have got to show people some cash flow. And for the last four months, you know as well as I do, it hasn't been paid. So, let's loosen this up and let's get out...as I said, I think the Receiver probably has people who would refinance it or buy it, because it is a good cash flow. But we are all stalled, unfortunately. That is one of those...

805. MS. SPENCE: All right, well...so, Mr.

McKenzie shared an investor presentation with the Receiver, which was presumably to be used for seeking interest in refinancing. Can you tell me which lenders you have shared that with?

MR. McKENZIE: No. /R

806. MS. SPENCE: Is that your only effort to refinance, is circulating that investor presentation deck?

MR. McKENZIE: Again, I don't want to repeat myself too much...how do you go with an investor and say, "The cash flow stopped"? It makes no sense to me.

807. MS. SPENCE: Well, okay, let's go that way, then. So, in order to...so, you are saying that in order to successfully refinance this loan, you are going to have to get the tap at St. Marys turned back on, correct?

MR. McKENZIE: That is a good way of putting it.

808. MS. SPENCE: So, what efforts have you undertaken to resolve your dispute with St. Marys?

MR. McKENZIE: Well, as I said, I just

got an e-mail from Mr. Ferguson at WeirFoulds. While we are going through this, I am trying to keep...he and I have been talking for the last few days, off the record, without prejudice. I think we have a solution, and I am...we are not going to put it on the record unless we go that way. You know, one of these days there is going to have to be a lawsuit if this doesn't resolve itself. But, you know, we are all good guys, we are all working together on the three sides to make it work. And I guess I will call him back at 4:30 when we are finished today and say, "Well, what have you got?" Because, I mean, I am just saying we have been having very good conversations. He is a good guy to work with, and so is, you know, St. Marys. And so are you guys, in that vein. You know, like, discoveries notwithstanding. So...

809. MS. SPENCE: Okay.

MR. McKENZIE: ...leave it with me, but...

810. MS. SPENCE: So, your intention, then, is to resolve matters with St. Marys, and

then seek to refinance this loan? Is that the idea?

MR. McKENZIE: That would be...that is the plan.

811. MS. SPENCE: That is the plan, okay.

MR. McKENZIE: I mean, that is a very expensive loan. I think it is 13 percent. It probably can be refinanced at 7 or 8 now. Because at the beginning, it is not running, and it is riskier. When it is running, you can get a lower interest rate, which was always the plan, by the way. I think that was a three-year commitment from Clayton or Crystal Wealth at the time. I am just going from memory here, so don't quote me on that, but the idea was we are going to refinance it. It is too expensive. I think it was 13 percent.

BY MS. SPENCE:

812. Q. Mr. Clydesdale, do you have any comments on the refinancing efforts?

A. No, we are trying our hardest to do what is best for everybody.

813. Q. Okay. And have you made any efforts

to seek alternate investors?

A. Specifically, I don't have an answer for that.

814. Q. Don't have an answer. So, do you have a plan as to who you are going to approach once you resolve the matters opposite St. Marys?

A. Yes.

815. Q. Can you tell me who those lenders are?

MR. McKENZIE: Same ones you have approached.

816. MS. SPENCE: Who would that be?

MR. McKENZIE: There are all in these office buildings around here.

817. MS. SPENCE: So, the big banks?

THE DEPONENT: The industry.

MR. McKENZIE: I am just trying to think. I mean, I had to make some calls this afternoon. Depends who has money. It is, like, where is TD Capital? They financed one a couple years...not this kind of business, but I am saying we called them and they said, "Yes, we can do it this afternoon", because they had the cash, so...you know, it is a process.

818. MS. SPENCE: Okay. And how long...

MR. McKENZIE: Sorry, that was more than a few years ago. Just a second. On the record. I am just trying to think when I...

819. MS. SPENCE: How long do you expect the refinancing effort to take? What is the time period you have in mind for...

MR. McKENZIE: Presuming everything was smooth, right, what do you...what is our best estimate? At this time of year, everybody is coming back from their holidays...I mean, everybody is away with their...lots of people are away with their kids on...I go, "Okay". I just saw a guy going to Palm Beach for the week. You know, his kids are down there, so... probably we would have some positive success in a month, if we could put it out there.

820. MS. SPENCE: Okay.

MR. McKENZIE: There are people that are interested in these kinds of things.

821. MS. SPENCE: So, you think a month is a reasonable period of time to refinance?

MR. McKENZIE: Now you are asking my peronal opinion?

822. MS. SPENCE: No, I am not asking your personal opinion...

MR. McKENZIE: No, I am just saying...I am saying...

823. MS. SPENCE: I am asking Mr. Clydesdale's opinion, actually...

MR. McKENZIE: Yes, well, if...

824. MS. SPENCE: ...but you seem to be answering for him.

MR. McKENZIE: ...we had everything to go today, and all the other ducks aligned, they can close the deal in a month, easy. It is a chicken and egg problem.

825. MS. SPENCE: All right. So, I just wanted to return briefly to one of the undertakings you gave earlier, which is to produce the bank statements showing the disbursements of the $1.8 million or thereabouts advanced by Crystal Wealth. And I just want to confirm, just so it is abundantly clear, that that undertaking that I asked for is to encompass any accounts that 244 holds. I am not sure if

all of the funds were advanced and disbursed from the same account, or if there were multiple accounts. So, I just want to make that clear.

MR. McKENZIE: Good point. Yes. U/T

826. MS. SPENCE: Thank you. And I wanted to turn back to the financial statement that you have produced for 244 at tab 5. So, under "Liabilities", on page 3 of that document, I see a number of loans that appear to me to be inter-company loans. So, you have got one due to 2404873 Ontario Corp., another one due to Magnitude CS Energy Inc., and the third one due to MCSnoxrecovery Inc. Do you see those?

MR. McKENZIE: Yes, we see them.

827. MS. SPENCE: Can I ask you to please produce the loan agreements in respect of those inter-company loans?

MR. McKENZIE: Best efforts, yes. U/T

828. MS. SPENCE: Thank you. And can I ask if the amounts reflected here were actually advanced?

MR. McKENZIE: That is the same question. We will get you what we can get you.

829. MS. SPENCE: Okay. So, that would be evidence of those advances actually being made.

MR. McKENZIE: Well, I think the bank account is going to show...

830. MS. SPENCE: Right, okay. So, presumably those...

MR. McKENZIE: Maybe they delivered... you know, I think you covered it, Miranda. I am just trying to say I hear you. You want to say, "If you sent money over me, show me the cheque..."

831. MS. SPENCE: Yes.

MR. McKENZIE: "...that went, and show me the promissory note", or whatever there might be, if there is anything. That is what I am chasing for you.

832. MS. SPENCE: Now, other than the amounts received from St. Marys under the Energy Services Agreement, and that initial advance from Crystal Wealth, does 244 have any other sources of income?

MR. McKENZIE: I will have to check.

833. MS. SPENCE: Okay. Can you undertake to

advise me of that, please?
MR. McKENZIE: Yes. If 244 has another source of income...
834. MS. SPENCE: Yes.
MR. McKENZIE: ...then we will let you know. U/T
835. MS. SPENCE: Okay. I am going to...so, I have a PPSA search for 244 that I am going to show you. So, this is current as at October 19th, 2017.
MR. McKENZIE: Yes.
836. MS. SPENCE: And if you look on the second page of the document, there is a secured party identified as Collicutt Energy Services Corp. Do you see that?
MR. McKENZIE: I am well aware of it.
837. MS. SPENCE: Okay. So, can you tell me the nature of the loan arrangements with Collicutt Energy Services?
MR. McKENZIE: Actually, the position that was taken was they should have never put that on. And you will see that it expired.
838. MS. SPENCE: Okay. So, was there ever any advance made by Collicutt to 244?

MR. McKENZIE: No. It was actually a lien matter. They put a construction lien on, and threw all of this stuff around. And it settled, and I think that has been explained in something I sent to the OSC that...

839. MS. SPENCE: Okay. So...

MR. McKENZIE: We had to...no, we had to...how do you get rid of a lien? You pay money into court. It is basically a wild goose chase if you are going to chase it, but, go ahead. I am saying it is done. It was a collection matter by DLA Piper.

840. MS. SPENCE: Okay.

MR. McKENZIE: They should not have put that on, and then it expired and it got worse. They put a lien on, and...I know, I litigated that file, so that is my recollection.

841. MS. SPENCE: So, currently there are no amounts owing by 244 to Collicutt?

MR. McKENZIE: Correct. It settled.

842. MS. SPENCE: Okay. One other registration relates to 2363265 Ontario Inc.?

MR. McKENZIE: Yes, that is the...

843. MS. SPENCE: I believe that might be a related company to one of the companies.

MR. McKENZIE: Well, I don't even know if it exists anymore, but, yes. It was part of the tactical battle, just so you know...I don't want to get into it. I will tell you off the record how it worked, but...

844. MS. SPENCE: Is that in respect of an actual advance made to 244?

MR. McKENZIE: Yes, yes, yes. It was a valid security, but there was a juggle going on, because they had to come up with $450,000 to put in to...pay into court to get rid of the lien...

845. MS. SPENCE: Okay.

MR. McKENZIE: ...and I don't...

846. MS. SPENCE: So...

MR. McKENZIE: Off the record, I can explain it to you...

847. MS. SPENCE: So, is that amount reflected in one of these liabilities on the balance sheet here?

MR. McKENZIE: Well, they are not

matching.
848. MS. SPENCE: I know they don't match, but I am just wondering...
MR. McKENZIE: No, no, what I mean is they are not matching in dates, see? This is...
849. MS. SPENCE: I am just trying to understand if this registration reflects a liability that doesn't otherwise show in the financial statements.
MR. McKENZIE: So, show me where the registration of 236...
850. MS. SPENCE: It is on page...
MR. McKENZIE: ...what date it was. Yes?
851. MS. SPENCE: ...page 4 of the PPSA search.
MR. McKENZIE: Okay, and what date was that? I am just trying to make my way around here.
852. MS. SPENCE: It looks like...
MR. McKENZIE: 2016/09...so, that is after the year-end. So, it wouldn't necessarily be reflected in the financial statements.

853. MS. SPENCE: Okay.

MR. McKENZIE: Maybe the next year it would, but I think it has been...I am now giving evidence here.

854. MS. SPENCE: And you say that registration is in respect of a $450,000 loan?

MR. McKENZIE: They cobbled together the money somehow, and I am saying that is all I can recall.

855. MS. SPENCE: But is that the amount?

MR. McKENZIE: They cobbled together the money somehow. I mean, this has all been explained in something that we sent to the OSC, by the way. I am surprised you are not privy to it, but it is done. So...

856. MS. SPENCE: Okay.

MR. McKENZIE: ...where are you going? Can I help you...

857. MS. SPENCE: Yes, I am trying to understand...so, when I see the liabilities reflected on this balance sheet, which is almost two years old, I am wondering if there are additional liabilities that are not reflected here. And it sounds like

there might be one, but I am not entirely sure what the conclusion that you are telling me is.

MR. McKENZIE: That makes two of us.

858. MS. SPENCE: Yes.

MR. McKENZIE: Why don't you ask a specific question, and we will have to look into it for you?

859. MS. SPENCE: Okay.

MR. McKENZIE: We are both in the same mystery here, which is who knows?

860. MS. SPENCE: Is any amount currently owing to 2363265 Ontario Inc.?

MR. McKENZIE: Currently?

861. MS. SPENCE: Currently.

MR. McKENZIE: We can give you that as an undertaking...

862. MS. SPENCE: Okay.

MR. McKENZIE: ...to find out. U/T

863. MS. SPENCE: And the amount?

MR. McKENZIE: And the amount. U/T

864. MS. SPENCE: Thank you.

BY MS. SPENCE:

865. Q. Looking at the balance sheet, one

last question under the assets, I see a deposit of $450,000, on page 3 of tab 5. What does that relate to?

A. I don't recall.

866. MS. SPENCE: You don't know? Can you undertake to find out?

MR. McKENZIE: I am going to say, subject to checking, that the customer made the deposit. I mean, what else would it be? But, if it is not that, we will let you know.

867. MS. SPENCE: Okay, well...because there is a deposit that is reflected of a liability from St. Marys at 339. So, I don't know if those somehow relate to one another.

MR. McKENZIE: Accountants are always doing things that I don't understand. So, I am saying we will...as I said, I am presuming it is the deposit. If it isn't...

868. MS. SPENCE: You will let us know?

MR. McKENZIE: ...we are going to tell you...

869. MS. SPENCE: All right.

MR. McKENZIE: ...I am going to make inquiries and tell you what I am told by somebody. U/T

870. MS. SPENCE: Okay, thank you. So, moving on to 2404873 Ontario Corp. Now, I do not believe this is one of the companies that we talked about earlier, but I have financial statements for that company that you have produced, which are found at tab 7 of the brief here.

MR. McKENZIE: Okay. Can I just throw in an editorial comment, which was...Miller Thomson did something. I think they created one of these companies because they didn't like the way it went. So, this...one of them...I think 240 became the holding company, because Crystal Wealth was going to finance a bunch of projects, and 240 was going to be the holding company, if that helps. In other words, it is a straight line and, of course, it all fell apart, but...anyway, I am just trying to help you there to say, it is not an operating...like, it doesn't run a gadget.

871. MS. SPENCE: It doesn't do anything. It

is not associated with any one project. There are no contracts...

MR. McKENZIE: It doesn't run a gadget, as I recall, I was looking this morning, and I think...we would have to check with Miller Thomson to make sure, 100 percent sure, because they did this, even though it was my client. I said, "Just do whatever you want. You are the banker. If you want to incorporate another company"...I think Susan, the helper, the young lady that was helping Jonathan, incorporated something. I wasn't even involved, and I said, "Whatever works for you guys", because they were just making Crystal Wealth happy. And I am saying I think this ended up being the holding company, because there was an assignment somewhere in there of the ESA, right? One to the other.

872. MS. SPENCE: Okay.

MR. McKENZIE: And I am going from memory, but...that is from memory and checking my end of the deal this morning.

873. MS. SPENCE: All right. So, it doesn't carry on any business?

MR. McKENZIE: As I understand...okay. It does not have a gadget...I mean...

874. MS. SPENCE: Yes.

MR. McKENZIE: ...the business is about a gadget. 244 is in the business of having a gadget that produces income. 240 is a holding company, and they do it for tax reasons, all that kind of stuff, I guess.

875. MS. SPENCE: Okay.

BY MS. SPENCE:

876. Q. So, Mr. Clydesdale, what is your role with that company?

A. Which company?

877. Q. 240...

MR. McKENZIE: Well, he is the...

878. MS. SPENCE: ...487...

MR. McKENZIE: ...president. He is an officer of the company.

BY MS. SPENCE:

879. Q. Right. You are the officer and director, presumably?

A. Yes.

880. Q. And sole shareholder...

MR. McKENZIE: We will have to check that...

881. MS. SPENCE: ...correct?

MR. McKENZIE: Don't answer that. That is not relevant who the shareholders are of these companies. But... /R

882. MS. SPENCE: And, so, when I look on the balance sheet that you have produced at tab 3, I am going to presume...so, this is the same situation as we had with the 244 balance sheet, which is that it is dated July 31st, 2016. It is an unaudited Notice to Reader statement, and it is marked "Draft". And...

MR. McKENZIE: So, where does it say "Notice to Reader"? I missed that part.

883. MS. SPENCE: On the first page...

MR. McKENZIE: You mean this part, on the...what the accountants sent, okay, I got it.

884. MS. SPENCE: Yes. And it says it on the title page also, on the very first page. It just means it is unaudited, right?

MR. McKENZIE: Whatever.

885. MS. SPENCE: Just...if you see on the

very first page, it says "Unaudited".

MR. McKENZIE: All right, whatever. Whatever that means...

886. MS. SPENCE: Okay.

MR. McKENZIE: Anyway, yes.

887. MS. SPENCE: But, in any event, the question that I ask is, is this the most recent financial statement available for this company?

MR. McKENZIE: Yes.

888. MS. SPENCE: And to the extent that more recent financial statements become available, you will produce them to us?

MR. McKENZIE: Well, whatever we said for 244...I mean, it is a straight line.

889. MS. SPENCE: Yes.

MR. McKENZIE: Although...you will have to check this, because I have asked you guys to do this. I believe that the Imaginea company is owned by 240.

890. MS. SPENCE: Okay.

MR. McKENZIE: I believe that, but Jonathan took the shares.

891. MS. SPENCE: Right, so...

MR. McKENZIE: And then locked them

somewhere. And that is why I was asking you last summer, if you could find out what is going on. I don't know whether they ever pulled the trigger on that one.

892. MS. SPENCE: Okay. But I do have that undertaking to produce any financial statements, should they become available?

MR. McKENZIE: Well, you are going to get the same one as 244, because the thing is dead in the water, I mean, in terms of producing energy.

893. MS. SPENCE: Can I ask you to turn to page 3 of the financial statements?

MR. McKENZIE: Is this for 240?

894. MS. SPENCE: Yes. So, it is tab 7.

MR. McKENZIE: Fire away.

895. MS. SPENCE: So, I see under the assets there is some cash, and then there appear to be some receivables from other numbered companies.

MR. McKENZIE: Yes.

896. MS. SPENCE: And we see 244, which we were just talking about, 236, which we were just talking about as a secured creditor on the PPSA search. Are there loan agreements

in respect of these amounts?

MR. McKENZIE: Well, you asked that earlier. The answer is he doesn't recall, and you asked for an undertaking and I gave one.

897. MS. SPENCE: Okay. So, I...

MR. McKENZIE: So, it would be the same undertaking that I gave on behalf of my client for the other...the last time.

898. MS. SPENCE: Okay. So, that will apply to this company, as well.

MR. McKENZIE: Yes.

899. MS. SPENCE: Presumably, there are different loan agreements. The 244 agreement would be in play, but this loan agreement between 240 and 236...I don't believe I asked about, but you are going to produce it...

MR. McKENZIE: Well...

900. MS. SPENCE: ...or make best efforts to produce it.

MR. McKENZIE: Yes. U/T

901. MS. SPENCE: And similarly, under "Liabilities", there are amounts reflected as owing to Magnitude CS Energy Inc. and

MCSnoxrecovery Inc. Can you please produce the loan agreements in respect of those companies?

MR. McKENZIE: Same answer, which is best efforts. If we can find such things, we will get them to you. U/T

902. MS. SPENCE: And in respect of all of these loans, can you produce evidence that the funds were actually advanced?

MR. McKENZIE: Same undertaking. I mean, I gave that earlier, which is we will give you...

903. MS. SPENCE: Well, that undertaking related to the bank accounts...

MR. McKENZIE: Well, I...

904. MS. SPENCE: ...the bank statements for 244.

MR. McKENZIE: We are going to presume that when money changes hands, it goes through banks. I think...

905. MS. SPENCE: Right.

MR. McKENZIE: So I am assuming when you get the bank statements, you will be able to connect the dots or not.

906. MS. SPENCE: I certainly hope so. I

just want to be clear that the earlier undertaking, which was to produce bank statements for 244, a similar undertaking will apply to this company, which is to produce...

MR. McKENZIE: Yes, I said that.

907. MS. SPENCE: ...bank statements for 240. Okay.

MR. McKENZIE: I am sorry. I didn't mean to interrupt you. But I said that. I mean, we are both in the same boat. We are trying to connect the dots. And, you know, accountants do what accountants do, but...

908. MS. SPENCE: I just want to be clear that I had made that request in respect of both companies.

MR. McKENZIE: Thank you.

909. MS. SPENCE: Okay. And you are aware that 240 is a guarantor of the 244 loan to Crystal Wealth, correct?

MR. McKENZIE: No.

910. MS. SPENCE: You don't admit...

MR. McKENZIE: Do you have a document we could see?

911. MS. SPENCE: I am not sure that I have

that document.

MR. McKENZIE: Okay. Say it is for a moment. What do you want to know? I mean...

912. MS. SPENCE: Well, I want to know...

MR. McKENZIE: ...I am not saying it is. As a matter of fact, I don't agree with you. In other words, if it was involved in the closing, which my office was involved in, it is a valid document. Otherwise, don't presume anything you have received from the other side is a valid document, because there is a lot of back and forth.

913. MS. SPENCE: All right, well, I am going to come back to that. So, one of the other companies that we are talking about today is MCSnoxrecovery Inc., correct?

MR. McKENZIE: Correct.

914. MS. SPENCE: We have already talked a little bit about it. I believe you told me that MCSnoxrecovery is the company that does something about purifying the air?

MR. McKENZIE: Environment.

915. MS. SPENCE: Environment...

MR. McKENZIE: It is an environmental

kind of gig.

916. MS. SPENCE: And does it have...and does MCSnoxrecovery have any current ongoing engagements?

MR. McKENZIE: That is pretty broad. Could we break that down into pieces?

917. MS. SPENCE: Sure.

MR. McKENZIE: I mean, engagements, again, is one of those words, you know...

918. MS. SPENCE: Well, is MCS being paid any money by anyone to do anything?

MR. McKENZIE: Okay. We could find that out for you.

919. MS. SPENCE: Okay. So, that is an undertaking?

MR. McKENZIE: Yes. U/T

920. MS. SPENCE: And as part of that undertaking, I would like to know with whom it is contracted, and how much it is receiving as a result of that contract, together with a copy of the contract.

MR. McKENZIE: Well, we have got three pieces in there. So...

921. MS. SPENCE: Yes.

MR. McKENZIE: ...if...

922. MS. SPENCE: Yes.
MR. McKENZIE: ...it is getting paid to do something, how much it is getting paid, and if there is a contract?
923. MS. SPENCE: Yes.
MR. McKENZIE: We will produce it to you?
924. MS. SPENCE: Yes.
MR. McKENZIE: The answer is yes to all of those. U/T
925. MS. SPENCE: Thank you. Can I ask you to turn to tab 8, please? Do you recognize this document?
MR. McKENZIE: Just a second. There are two different documents in this...
926. MS. SPENCE: Yes, there are two...
MR. McKENZIE: ...or maybe more...
927. MS. SPENCE: It looks like there is a memorandum of understanding, and then there is a loan agreement.
MR. McKENZIE: Can we do this in pieces?
928. MS. SPENCE: Sure.
MR. McKENZIE: You are asking about...there is a three-page document...
929. MS. SPENCE: Let's start with the

memorandum of understanding, which has...
MR. McKENZIE: Okay, so...
930. MS. SPENCE: ...three pages with a schedule.
MR. McKENZIE: ...who wrote that on the top there? Is that your notes?
931. MS. SPENCE: I actually don't know where those notes come from. So, we can...
MR. McKENZIE: Okay, so...
932. MS. SPENCE: I won't ask you to comment on them.
MR. McKENZIE: Well, no...you and me both. So, what is your question, specifically with respect to this four-page document?
933. MS. SPENCE: So, my question is just simply whether you are familiar with this document and the arrangement between MCSnoxrecovery and Pond.
MR. McKENZIE: Oh, Pond?
934. MS. SPENCE: Yes. So, and that...that question is directed at Mr. Clydesdale.
THE DEPONENT: Specifically that document, I don't know. I know we had discussions with Pond. Lots of them.

BY MS. SPENCE:

935. Q. And did MCSnoxrecovery have any ongoing arrangements with Pond?

MR. McKENZIE: Well, let's not do arrangements, because that is a messy question, a complicated question.

936. MS. SPENCE: Contracts?

MR. McKENZIE: Do you know?

THE DEPONENT: I don't know if we have any. I am not sure.

937. MS. SPENCE: You don't know?

THE DEPONENT: I don't know if we had any actual contracts.

BY MS. SPENCE:

938. Q. Okay. So...because it appears that MCSnoxrecovery was licensing some of Pond's technology. Does that sound familiar to you?

A. There were lots of discussions about us trying to figure out how to take exhaust and turn it into algae.

939. Q. Okay. Can you just sort of give me a general description of what was...what you were hoping to happen, what you were expecting to happen?

MR. McKENZIE: Hold it. Just let me

think about that. This is a three-year discussion, right? And Pond...you know a lot about Pond. They have been all over the map trying to raise money and technology and all this stuff. And I am saying...I am trying to break this in pieces, because...how about we do this? Generically, Mr. Clydesdale might tell you what he was trying to accomplish with Pond, and they...generically, because there is an enormous amount of back and forth. You know, talk and then...I mean, as a matter of fact, St. Marys met with Pond a bunch of times. So I am saying there is a lot of interaction going on.

940. MS. SPENCE: Okay.

MR. McKENZIE: Can you answer generically what the plan, the hope was with Pond?

THE DEPONENT: Yes, Pond had technology that could create algae, and we had exhaust that could help to create that algae. And, so, there were all sorts of discussions on how we could put that together to first accomplish that goal, and, secondly, was it ever commercialable? Is that something that could actually make money? So, there were all sorts of discussions on that, with St. Marys, with Pond and with ourselves.

BY MS. SPENCE:

941. Q. And did anything ever come of it? And by anything, I mean...

MR. McKENZIE: Yes, a bankruptcy.

942. MS. SPENCE: ...an executed agreement?

MR. McKENZIE: Well...

THE DEPONENT: I don't recall whether we actually got to a signed agreement.

BY MS. SPENCE:

943. Q. And in those discussions, was the idea that MCSnoxrecovery would be paying Pond, or Pond would be paying MCSnoxrecovery?

A. Everything and all around that. It is like a combination of all of that.

MR. McKENZIE: I should clarify the record. When I said before, "a bankruptcy", I said, "One of these guys is going to end up bankrupt, having spent a lot of money and not being able to finish...I mean, development there if you don't finish it". So, when I said "bankruptcy", I meant small "b". Somebody is going to be under water on this one unless it gets finished. So, I don't think it is technically bankrupt, because I think Pond is out trying to raise money or something like that. And St. Marys has got an investment in there that we had heard about, running around and...you know.

BY MS. SPENCE:

944. Q. Is MCSnoxrecovery still working with Pond?

A. I am not sure. Not that I recall.

945. Q. You are not personally engaged in any discussions with Pond?

A. Not that I recall.

946. Q. When...

A. Not for a while.

947. Q. When did that stop?

A. Over the last year, with all of this stuff going on. And I know Pond is doing something else in another market. So, the last year.

948. Q. Okay. So, then, if we turn to the

fourth page, it is a loan agreement dated March 8th, 2015.

MR. McKENZIE: Can I just see what... that is the fifth page, sorry.

949. MS. SPENCE: Yes.

MR. McKENZIE: Okay, pardon me. I can't count. So, this is a letter dated March 8th.

BY MS. SPENCE:

950. Q. So, just while Mr. McKenzie is looking at that, let me ask. The idea was the Pond bioreactor...sorry, the MCSnoxrecovery regenerator produces exhaust, or...what produces exhaust?

MR. McKENZIE: I think you have it backwards.

THE DEPONENT: Any time you turn an engine on, there is exhaust, yes.

BY MS. SPENCE:

951. Q. And the engine is something that is one of the OOM gadgets?

A. It is one of the pieces of a...from a cogeneration system, yes.

MR. McKENZIE: Did you get that

backwards? I am sorry, just to be clear...
952. MS. SPENCE: No, I think...
MR. McKENZIE: Did you say that Pond produces exhaust?
953. MS. SPENCE: No, I think I did and then I corrected myself.
MR. McKENZIE: Okay, that is fine. I am sorry...
954. MS. SPENCE: Yes.
MR. McKENZIE: ...because I was reading the document. I just want to make sure...
955. MS. SPENCE: Right, yes. So, it is the OOM company that produces exhaust, but not MCSnoxrecovery, because MCS NOC Recovery doesn't actually have its own generator, correct?
THE DEPONENT: Correct.
956. MS. SPENCE: Correct. And then...
MR. McKENZIE: That we know of. I mean, they might have a generator.
957. MS. SPENCE: Right.
MR. McKENZIE: They are trying to clean...
958. MS. SPENCE: The company that you control just happened to acquire its own

generator without your knowledge? That seems unlikely.

MR. McKENZIE: No, they are trying to clean the exhaust, just like they try to clean exhaust...

959. MS. SPENCE: Right.

MR. McKENZIE: ...from a car. The cleaner it is, the happier us people who are trying to breathe out here. So, I think that is what this was all about.

BY MS. SPENCE:

960. Q. And, so, is MCSnoxrecovery engaged in developing the technology that cleans the exhaust sufficiently for Pond to be able to use it?

A. That is not a direct line. It is a combination of there is exhaust and you can make algae, and trying to figure out how to do that, between...that is what it was. It was not that straight a line.

961. Q. Okay. How was St. Marys engaged in this whole thing? Just as a consumer of the electricity?

A. No, I don't know...I know that St. Marys had a long relationship with Pond, probably for the same idea. They are a cement company. They produce lots of CO_2. They were probably looking to Pond to help them. Maybe it was an investment. I don't know.

962. Q. But Pond, in both cases, would be taking the exhaust to produce algae?

MR. McKENZIE: Well, theoretically.

963. MS. SPENCE: Yes, theoretically. I am just trying to understand how it was intended to work.

THE DEPONENT: On the St. Marys side, it could have been an investment. There were lots of things going on outside of what I...

BY MS. SPENCE:

964. Q. So...

A. ...would have known.

965. Q. So, St. Marys engagement with Pond would have been different in kind than yours?

MR. McKENZIE: Don't answer that.

THE DEPONENT: I don't know. It is very, very complicated.

MR. McKENZIE: There has been interactions all over the place. And, as you know, there are investments by St. Marys with Pond, and Pond is trying to pay you guys back. We don't know the whole story.

966. MS. SPENCE: Okay.

MR. McKENZIE: This is the stuff I read, anyway. Maybe Mr. Clydesdale...

967. MS. SPENCE: So, turning to the loan agreement that we were just looking at, on the first page of it, the bottom, under "Purpose", it says that:

"...The loan shall be used by the borrower to finalize its licensing agreement with Pond Biofuels Inc., and to finance the first Pond algae bioreactor installation in St. Marys Cement, Leaside..."

So, that is the stated purpose of the loan. Is that what the funds were used for?

THE DEPONENT: I don't recall that, because...that is an interesting statement. I don't recall that.

BY MS. SPENCE:

968. Q. Was a licensing agreement finalized as between MCSnoxrecovery and Pond Biofuels?

A. I don't remember. I really don't.

969. Q. If you turn the page, it says: "...Availability: the loan shall be available by way of two advances upon satisfaction of the conditions precedent to advance the loan set out herein. The first advance is in the amount of $50,000 and the second advance is in the amount of $500,000..."

Do you recall why the loan was structured that way?

A. I do not recall.

MR. McKENZIE: If it was. I mean...

970. MS. SPENCE: Okay. So, I am going to ask for a similar undertaking to the one I asked for in respect of 244, which is that you produce to me the bank statements showing the receipt of these advances from Crystal Wealth, if any, together with bank statements that reflect the disbursement of these amounts.

MR. McKENZIE: If any...with the adjunct that if you had Crystal Wealth's records we could do this faster. We will use our best efforts to locate them. I mean, I am going...presumably, there is a bank account, but I don't know that there is, like, a single one, which would make it easy. If it gets complicated, I will get back to you, that is all. U/T

971. MS. SPENCE: Okay, well, I mean...I don't see it as being that complicated, because if it is your company, you should know what bank accounts the company has.

MR. McKENZIE: We agree it doesn't seem to be complicated, but...

972. MS. SPENCE: Right.

MR. McKENZIE: ...Mr. Smith had a way of doing things, as Mr. Clydesdale told you, he was the financial wizard, and things moved around, and we can't keep track of them. If we saw Crystal Wealth's bank account we might...how many funds are there? There are a dozen or more.

973. MS. SPENCE: Right, well...

MR. McKENZIE: I am saying...so, what we are going to do is use our best efforts to say, "Did that"...and, first of all, we don't know if this loan agreement ever closed. Second of all, there is a piece of paper right now, right? And it has got something on it. So, if there was an advance of $50,000, and we can see it, we are certainly going to show you. That is the best I can do, the same with 500, but you are presuming all of this document is accurate, and it happened, and the more I am seeing of this case, the more I am seeing of what he said this morning, "I just signed some stuff and he gave me money and then he took it back"...

974. MS. SPENCE: Okay. Well, I mean, if the funds advanced by Crystal Wealth were advanced in a circuitous manner, I am interested in that, as well.

MR. McKENZIE: Aren't we all?

975. MS. SPENCE: I appreciate that the undertaking that I am asking you for is simply to show the receipt of those funds into an MCSnoxrecovery Inc. account.

MR. McKENZIE: Yes.

976. MS. SPENCE: So, that is what I am asking for.

MR. McKENZIE: Yes, I got that. If I had the bank account from Crystal Wealth Management System Limited, or whatever books you have got, we could do it the other way, right? I am just saying, just so you know, it is a mystery on both sides.

977. MS. SPENCE: Right, well, I mean, you are suggesting to me that it might not have been advanced directly from the mortgage fund. So...

MR. McKENZIE: Well...

978. MS. SPENCE: ...I don't...

MR. McKENZIE: ...wait a minute. Crystal Wealth Management System Limited, whatever that is, because there is a pile of companies. And what I have seen and you have seen, it is not always easy to track what they were doing with the money.

979. MS. SPENCE: And the information as to what you did with the funds after they were received, that is certainly within your...

MR. McKENZIE: Well, I...

980. MS. SPENCE: ...knowledge.

MR. McKENZIE: That is in our business.

981. MS. SPENCE: Yes.

MR. McKENZIE: If these monies were received, you know, around those dates, of course...

982. MS. SPENCE: Okay.

MR. McKENZIE: ...we will say we got them, and here is where they went. I got it, but you can make the job easier...I mean, you know...it is a needle in a haystack situation. Sometimes you go and you go...that is not what Clayton ended up doing...Mr. Smith. He would come over and he would say, "I didn't do that, but here is a cheque for something else". You know, and that is the complication from both sides, right? I gather you are having...

983. MS. SPENCE: Right.

MR. McKENZIE: ...the same issues or you would have the books here.

984. MS. SPENCE: Right.

MR. McKENZIE: Make this a five-minute meeting.

985. MS. SPENCE: Okay. So, well, thank you for the undertaking. So, if you look at the next paragraph, under "Repayment"...

MR. McKENZIE: What page are you on there? Sorry.

986. MS. SPENCE: I am on page 2 of the loan agreement, which is just under the...we

were just looking at the paragraph that says "Availability"...

MR. McKENZIE: I got it.

987. MS. SPENCE: ...showing the two tranches.

MR. McKENZIE: Repayment...

988. MS. SPENCE: Repayment. So, this paragraph, you can see, identifies a number of...there are three different repayment dates, being the earlier of June 26, 2020; the second...this is the one I am going to ask you a question about:

"...The date upon which the borrower completes an equity financing transaction which results in the borrower receiving aggregate proceeds exceeding the principal amount of the loan..."

So, have you been engaged in any efforts to complete an equity financing transaction for this company?

MR. McKENZIE: Unless he has got another lawyer that I don't know about, the answer is no, because it would come to me...

THE DEPONENT: No.

MR. McKENZIE: ...to close.

989. MS. SPENCE: Mr. Clydesdale...
MR. McKENZIE: Do you have another lawyer that I don't know about, right now? I am just saying...he does, but I am just saying, not for this stuff. It would come to me to get it closed. They did no equity financing.
990. MS. SPENCE: Okay. Have there been any efforts to complete an equity financing?
THE DEPONENT: Not that I recall.
991. MS. SPENCE: Are you...
THE DEPONENT: Not that I recall.

BY MS. SPENCE:
992. Q. Are you seeking investors?
MR. McKENZIE: Crashed.
993. MS. SPENCE: Crashed.
MR. McKENZIE: No, no, this thing has crashed...
994. MS. SPENCE: Right.
MR. McKENZIE: ...as of the Receiver going in. I mean, this is one...
995. MS. SPENCE: I mean, this one didn't contemplate any further advances from Crystal Wealth, so I am not sure that your

statement that this crashed as a result of the Receiver coming in is accurate.

MR. McKENZIE: When I say "crashed", the Receiver would know, I gather, that Mr. Smith was going to advance funds to get this flying. And when the funds stopped, it is all...you know, it is a pretty soft business, trying to figure out how to make algae, trying to...and the same with Pond, I mean, they are the same, similar business. So, I am saying, when that stopped, Clayton's financing for the project stopped, it crashed. And there is no money to figure out how to do it.

BY MS. SPENCE:

996. Q. What does Pond do with the algae? Do you know?

MR. McKENZIE: Wait a minute.

THE DEPONENT: My...

997. MS. SPENCE: I won't hold you to it, because I know you are not speaking for Pond...

MR. McKENZIE: No, I just...

998. MS. SPENCE: ...I am just curious.

THE DEPONENT: Well, there is an industry in the world that, when you create algae, you can squish it and make things like oils and different things, and there is a belief that that is going to be a commercial opportunity in the future. And depending how you like to invest your money, there are lots of companies out there that are telling you who the best ones are, we don't know. But the idea is the algae can be used to create commercial products like oil.

BY MS. SPENCE:

999. Q. Are you engaged in any R&D or any development of any company that use the algae?

MR. McKENZIE: You mean Pond?

1000. MS. SPENCE: No, I am asking Mr. Clydesdale.

MR. McKENZIE: Him? He is not going to answer that question. That is off to the side, right? I am saying this deal is... the discussions about Pond and what it was trying to do, right? And it stopped because the money stopped, as I understand it. Now you are asking Mr. Clydesdale what else he is doing in his life? It is not relevant. /R

1001. MS. SPENCE: Well, I mean, to the extent that one of these companies was engaged in that, it would be relevant. I am looking for how the Receiver is going to get the investor money paid back.

MR. McKENZIE: Well, go off the record...

1002. MS. SPENCE: And, so...

MR. McKENZIE: ...and I am just saying this one, we better talk.

1003. MS. SPENCE: Okay. Can I ask you to turn to the next page of the loan agreement, please?

MR. McKENZIE: That is page 3 of the March 8th...

1004. MS. SPENCE: Yes.

MR. McKENZIE: ...letter, tab 8.

1005. MS. SPENCE: Okay.

BY MS. SPENCE:

1006. Q. So, you will see, tab...or item 2, under the security paragraph says:

"...If required by Crystal Wealth, an intellectual property security agreement, with a specific assignment by the borrower, of all of its patents and other material, intellectual property..."

Did Crystal Wealth ever require MCSnoxrecovery to enter into an IP security agreement?

A. I don't recall that.

1007. Q. Does MCSnoxrecovery own any patents?

A. I don't recall. I don't think so.

MR. McKENZIE: Take that as a no. Again, I presumably would know about them, but take it as a no, and we will tell you if we are wrong. U/T

1008. MS. SPENCE: Okay, so you will undertake...

MR. McKENZIE: Like patents...

1009. MS. SPENCE: You will undertake to advise me if there are any patents?

MR. McKENZIE: Well, that is what I am saying. I am saying the answer is no.

1010. MS. SPENCE: Okay.

MR. McKENZIE: Who knows? Some genius might have done it without anybody knowing.

I mean, some of these guys go out and patent stuff, you know, because they think they reinvented the universe or something.

BY MS. SPENCE:

1011. Q. And what is the current status of the relationship with Pond?

A. I know he was trying to go public. I don't know how that is going. Other than that, there really isn't any relationship that I am aware of...

1012. Q. Okay, there is...

A. ...that I can recall.

1013. Q. There is no ongoing licensing agreement that you are operating under, for example?

A. Not that I recall. I am not sure, but I don't think so.

1014. Q. Okay. Can I ask, is there another person who was involved with your companies...let's use MCSnoxrecovery as the first example, who has...is closer to the day-to-day operations of these companies? I am just asking because you seem to be giving a lot of, "I don't recall", "I don't know" answers, and I am curious as to whether there is another individual who would know.

MR. McKENZIE: Day-to-day operation is...I am going to have a little difficulty with that. You are talking about...what are you talking about?

1015. MS. SPENCE: So, let's say 244, for example. If there is a problem with the cogen facility, and St. Marys needs to e-mail you to fix a problem, who do they e-mail?

MR. McKENZIE: Well, that would be a triage, wouldn't it? I mean, in other words, it comes in the door to an assistant and if it is you, got to change the oil, you send it to somebody.

1016. MS. SPENCE: So...

MR. McKENZIE: I am saying you need to be more specific, because...

1017. MS. SPENCE: St. Marys doesn't...who is St. Marys' contact at 244?

MR. McKENZIE: Me, right now.

1018. MS. SPENCE: Right now, you, but for operations, presumably, it is not Mr. McKenzie.

MR. McKENZIE: Well, again, you are asking the question that I refused earlier, to start naming names of people who may not want us to divulge their information to the Receiver. And I told you why earlier, and I am saying if there is an issue, right...

1019. MS. SPENCE: Right, well, you are just...

MR. McKENZIE: ...then you need to ask me, and we will get you the answer. Like, if it is how to change the oil when the oil needs to be changed. But if you are going to say, "So-and-so is the person", and then you are all over them and drag them down here, we would like to get their permission and deal with their privacy and security issues. And we have a person that does that, so...be my guest.

1020. MS. SPENCE: The way that you have been describing the operation of your companies seems sort of mysterious, because, you know, I ask a question like, "Is there any ongoing dialogue between Pond and MCSnoxrecovery?" And the answer is, "I don't know". But, presumably, you would be the person having those discussions, and if you are not the peron having those discussions, I would be interested to know who that is.

MR. McKENZIE: Well, let's do it the other way, which is people go out all over, looking for two things in this business, just like a lot of businesses: customers to sign a contract, and money. And you are saying specifically...which deal are we talking about? Because they are different.

1021. MS. SPENCE: Well, I have given you two examples: the Pond deal and the St. Marys Cement/244 deal.

MR. McKENZIE: Okay.

1022. MS. SPENCE: In both of those circumstances, who is the contact at either 244 or MCSnoxrecovery?

MR. McKENZIE: We went through that. Bill Asselstine is the...

1023. MS. SPENCE: I know that he is the St. Marys guy, but who does he deal with?

MR. McKENZIE: Well...don't cut me off. Just a second. At 244, he is the go-to guy, I guess, and I gather he would send an e-mail, because he is a higher-up, he is a vice-president, to Mr. Clydesdale. Okay?

But if it is you have got to fix the heat, that is a different question, right? So, it is a scaling thing. Right now, we are involved with the head lawyer and head vice-president of St. Marys, as you know, and I am saying that is the day-to-day management problem today, to get that fixed. And then next week, it will be a pipe blew.

1024. MS. SPENCE: Okay. But...so, would 244 have provided to St. Marys a contact sheet to identify who should be contacted for each of these various issues?

MR. McKENZIE: It is rough and ready. There are lots of people on that side of it too.

1025. MS. SPENCE: Which side?

MR. McKENZIE: With St. Marys.

1026. MS. SPENCE: No, I...

MR. McKENZIE: There are secretaries involved. If their feet are cold...you know, I am going here...

1027. MS. SPENCE: I appreciate that, but you can...I am sure you can understand why this seems sort of mysterious to me, that the only person you identified as working for 244 is Mr. Clydesdale and Mr. McKenzie.

MR. McKENZIE: I am not working for them. I am their lawyer.

1028. MS. SPENCE: Right.

MR. McKENZIE: It is a different relationship, but I am saying when there is an issue with 244, yes. And if it is important enough, Mr. Clydesdale will have to deal with it, which, right now, there is a big issue because it is not in very good shape right now. Tomorrow it will be something else, so there is the answer.

1029. MS. SPENCE: Okay. So, you are not going to...there is not a general manager, for example, of the cogen facility at the St. Marys plant?

MR. McKENZIE: No, it doesn't work that way. Does it?

1030. MS. SPENCE: I don't...I am asking.

MR. McKENZIE: Well, nobody has to sit there all day. That is the point.

1031. MS. SPENCE: Okay. So, it runs itself, and the computers are on site. Are the computers remotely accessible?

THE DEPONENT: Generically sometimes, sometimes not, and I am not sure on these ones whether they are or not.

BY MS. SPENCE:

1032. Q. Back to the MCSnoxrecovery and Pond, would you have been the contact person that Pond would deal with, when you were having discussions?

A. In general, yes.

1033. Q. And was there a second-in-command who would be authorized to speak on behalf of the company?

MR. McKENZIE: Same objection. /R

1034. MS. SPENCE: And the objection...

MR. McKENZIE: I am not going to name names. I told you why already, but...what is the question?

1035. MS. SPENCE: If there is a second-in-command that Pond would have been negotiating with on behalf of MCSnoxrecovery.

MR. McKENZIE: Okay, well, I have given you a blanket refusal about naming people without consulting at the other end. And I am not sure it is relevant at all. I mean, you asked the question. We will get you the answers when we do undertakings.

1036. MS. SPENCE: Okay. So, you are going to consider those refusals when you are providing your answers?

MR. McKENZIE: I am not sure what that means, but...

1037. MS. SPENCE: I just mean that...

MR. McKENZIE: ...I think we are clear.

1038. MS. SPENCE: Okay.

MR. McKENZIE: Right.

1039. MS. SPENCE: All right. Do you want to take ten minutes?

--- upon recessing at 3:00 p.m.

--- A BRIEF RECESS

--- upon resuming at 3:25 p.m.

CRAIG CLYDESDALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

1040. Q. I am going to ask you to turn to tab 9 of the brief. This is a loan document dated November 2nd, 2016, Crystal Wealth Management System Limited as lender, and MCSnoxrecovery Inc. as borrower.

MR. McKENZIE: Sorry...okay, fire away.

1041. MS. SPENCE: Okay. So, this loan was in the principal amount of $2 million. You can see that. And, so, I am going to ask for the same undertaking as I have been asking throughout this examination, which is for bank statements showing the receipt and disbursement of that amount.

MR. McKENZIE: Well, I will give you the same undertaking, if in fact, I mean...

1042. MS. SPENCE: Yes.

MR. McKENZIE: ...we don't even know if this was operational, but...

1043. MS. SPENCE: Right.

MR. McKENZIE: ...it is a mystery to both of us. So, I will do what I can just like in the last undertaking. U/T

1044. MS. SPENCE: So, to the extent the funds are received, you will produce evidence of that, and then the same evidence with respect to any disbursements of those funds. And the purpose of this loan is identified as being:

"...To complete the first Pond algae bioreactor installation at St. Marys

Cement, Leaside, and for working capital purposes..."
Do you see that?
MR. McKENZIE: I see it.
1045. MS. SPENCE: Okay. So, I understand that MCSnoxrecovery Inc. does not have any operating gadget, which I presume means that they did not complete any installation at the St. Marys Leaside facility. Correct?
MR. McKENZIE: I mean, I am...so, specifically, you are saying did somebody put a gadget, an algae gadget...not a cogen gadget, on the site?
1046. MS. SPENCE: Well, no, I mean, the way that this purpose panel reads, it appeared as though MCSnoxrecovery was going to be installing an algae bioreactor at St. Marys...
MR. McKENZIE: Okay, if you are asking...
1047. MS. SPENCE: ...and that is...well, let me just finish my question.
MR. McKENZIE: Of course.
1048. MS. SPENCE: That is, to me,

inconsistent with what you have described
as MCSnoxrecovery's business, which you
have told me it was not intended to operate
any particular gadget.

MR. McKENZIE: Okay, stop right there.
I don't agree with what you said. It is
not inconsistent, if it indeed happened...
this is a big "if", whether this happened.
But I am saying if you are saying it is
inconsistent for a company to get some kind
of algae bioreactor started, you know, like
the preliminary steps of an installation,
that is not inconsistent with what my
client said.

1049. MS. SPENCE: Okay, well...

MR. McKENZIE: And I mean, read the
transcript back to me, but I am just saying
I...what I said to you, the project is
design, you know, science, blah, blah,
blah, and then...

1050. MS. SPENCE: Well...

MR. McKENZIE: ...the doing of it, and
then the starting up of it, and I am
saying...

1051. MS. SPENCE: Let me rephrase, then, because I wasn't trying to catch you out in anything by that question. But I guess... let me phrase it this way. This purpose, to me, suggests that there was going to be an algae bioreactor installation that would have been owned by MCSnoxrecovery. And correct me if that wasn't the intention behind...

MR. McKENZIE: Sorry, can you just simplify that? I mean, that was a three-part statement.

1052. MS. SPENCE: That was actually only one part.

MR. McKENZIE: Well, I...

1053. MS. SPENCE: The question is...

MR. McKENZIE: I lost you, then.

1054. MS. SPENCE: ...when I read this purpose, it sounds as though the borrower was going to be building an algae bioreactor at the St. Marys Leadside plant.

MR. McKENZIE: Building one?

1055. MS. SPENCE: Yes. And, so, can you tell me if that is accurate?

THE DEPONENT: I don't recall that conversation. Like I said before, I know there was Crystal Wealth and Pond and ourselves trying to come up with a way to build these things, in a variety of places, potentially. St. Marys has multiple sites. So, I don't recall that being that specific.

BY MS. SPENCE:

1056. Q. Okay. And presumably, there has not yet been an algae bioreactor installed at St. Marys, correct?

A. I don't think so, no. I am not sure.

1057. Q. And MCSnoxrecovery Inc. is not doing anything towards building such an installation?

MR. McKENZIE: At St. Marys?

1058. MS. SPENCE: Yes.

THE DEPONENT: Currently...not actively, as far as I know. Again, I am not totally sure.

BY MS. SPENCE:

1059. Q. Okay. So, let me just turn you to the security panel, which is page 3. It continues from page 2, and you can review what is identified as being the security given in support of this loan, is a general security agreement, and then, if required by Crystal Wealth, an intellectual property security agreement. So, let me just confirm that Crystal Wealth did not require MCSnoxrecovery to enter into that intellectual property security agreement, correct?

MR. McKENZIE: Sorry, didn't require?

1060. MS. SPENCE: Didn't require. So, it says...paragraph 2 of security panel says:

"...If required by Crystal Wealth, an intellectual property security agreement..."

MR. McKENZIE: Hang on, I thought we went through this...

1061. MS. SPENCE: Well, we did. The same obligation is set out in the other loan agreement for MCSnoxrecovery Inc.

MR. McKENZIE: Yes, the March 8th, 2015...

1062. MS. SPENCE: Yes.

MR. McKENZIE: ...and I don't remember what his answer was, but it is the same answer, isn't it?

1063. MS. SPENCE: Well, I presume it is the same answer, but because it is an obligation in respect...

MR. McKENZIE: Okay.

1064. MS. SPENCE: ...to a different loan agreement, I am asking the question.

MR. McKENZIE: I am going to turn it around and say, "So, you are asking me, was it required by Crystal Wealth?" And I am saying, "Get Crystal Wealth's file and we will have a look".

1065. MS. SPENCE: Okay.

MR. McKENZIE: That is...

1066. MS. SPENCE: Well, again, that is not the purpose of this exam...

MR. McKENZIE: No, I understand, but there is no record...I mean, this is what we were trying to get at. There is no record that this was signed between the parties. So, therefore, "if required" is irrelevant if it didn't happen. There is a difference between required and doing it, and I am saying, "You don't have a copy of the agreement, by the sounds of it". I don't think we can say we have a copy of the agreement, but we can look again. And

I am saying so, doesn't that answer the question?

1067. MS. SPENCE: Well, it doesn't have to be that difficult. If there is no agreement, you can just tell me that.

MR. McKENZIE: Well, I think we went through that with the last go-round, the earlier letter was the same thing. I mean, you have asked those questions, but does it change to, "Were you required to?", and I am going, "The deal didn't close or whatever"...is there a GSA?

1068. MS. SPENCE: I mean, I am really giving you an out by saying "if required by Crystal Wealth", and you can say they didn't require it...

MR. McKENZIE: Well...

1069. MS. SPENCE: ...and I can take that answer...

MR. McKENZIE: ...we can't even say that.

1070. MS. SPENCE: ...so apparently you don't know.

MR. McKENZIE: No, my client says, you know, it might have been required one day and waived the next day. So, that is the problem, but I am saying, is there a GSA? You must have searched it. Is there one?

1071. MS. SPENCE: I am not answering questions.

MR. McKENZIE: Well, no, but I am going...that is the answer, which is...okay.

1072. MS. SPENCE: Okay. I didn't ask about the GSA. I asked about the intellectual property security agreement identified in paragraph 2 of the security panel. Does such a document exist, to your knowledge?

MR. McKENZIE: Well, we answered that, to the best of my client's ability, which is if one shows up, we will certainly tell you. It would be the best answer we can give right now.

1073. MS. SPENCE: Okay.

MR. McKENZIE: And I, again, reiterate, no disclosure from your side, no disclosure from Miller Thomson is making my job extremely difficult. So, just to be clear. Maybe I would like to examine the Receiver someday, say what has he got? But I guess that is another story, just to make my job easier and the Court's job easier.

1074. MS. SPENCE: Can I ask you to turn to tab 10, please? So, these are the unaudited Notice to Reader financial statements of MCSnoxrecovery Inc. for the year end of July 31st, 2016, which you produced to the Receiver. Can I ask you to confirm whether these are the most recent financial statements available?

MR. McKENZIE: It is the same answer. These are the ones that were produced to the Receiver upon request. And upon search, at the time, were the latest ones produced. And then I think you then asked another undertaking to say, if there were later ones, would we get them to you? The answer is yes...

1075. MS. SPENCE: Okay.

MR. McKENZIE: ...but right now...

1076. MS. SPENCE: So, the same...

MR. McKENZIE: ...I don't think there are any. But, you know, that is just me talking. Maybe somebody knows something I don't know. We will let you know. U/T

1077. MS. SPENCE: Okay. Thank you. So, I will take that same undertaking in respect of this company, which is to produce to me any financial statements that may be prepared for the year ending 2017. And I would also ask for the tax returns for the 2017 year.

MR. McKENZIE: The answers as we gave with the last bunch, which is...

1078. MS. SPENCE: Thank you.

MR. McKENZIE: ...somebody lost $676...well, if it did... U/T

1079. MS. SPENCE: Okay. So, let me ask you to turn to page 3 of the financial statements. So, we have just gone through loan agreements showing that this company was paid over $2.5 million from Crystal Wealth by way of loans.

MR. McKENZIE: Maybe. Show us the books, and we will go over it with you.

1080. MS. SPENCE: Well...

MR. McKENZIE: Let's say there was an amount advanced. The amount is...you know it and the Receiver knows it, because they have the books, and we are going to get the bank accounts, and then maybe we will figure it out. But there was an amount of money, yes, we agree.

1081. MS. SPENCE: Okay. So, under "Assets", I see two receivables from related companies, 244 and 240. To the extent that this is not already covered by the undertakings given earlier, I would ask for copies of those loan agreements.

MR. McKENZIE: I think you have got those undertakings. I mean...

1082. MS. SPENCE: Yes.

MR. McKENZIE: ...as I said, we are going to try to make the...match the numbers.

1083. MS. SPENCE: Right. Under equipment, there is listed a bioreactor, which is apparently worth just under $1 million. Can you explain to me what that is?

MR. McKENZIE: Well, we told you already...I mean, I am just saying, this is an accounting entry in a T-account that is called "bioreactor". To dig out the...you want to hear the money, or the whatever, research or costs that were incurred.

Like, remember we did this last time, which is the actual versus what it is worth. And I want to be clear...

1084. MS. SPENCE: Right, but not...

MR. McKENZIE: ...that when you do research, and it doesn't get finished, it is worth zero. If we...

1085. MS. SPENCE: That is what I am trying to understand. So...

MR. McKENZIE: Yes, yes.

1086. MS. SPENCE: ...as we discussed, what I am trying to do here is to understand where the money went, and how it is going to get...

MR. McKENZIE: Yes, yes.

1087. MS. SPENCE: ...paid back. And, so, this appears that $1 million was spent on a bioreactor. And I also understand that this company is not operating anything. So, what is there to show for that million dollars?

MR. McKENZIE: Isn't that the same undertaking as we have been giving? You are saying, "Where did the money go?" I mean, it is the...

1088. MS. SPENCE: Yes.

MR. McKENZIE: ...accounting entries you are looking for, really, to say this got paid to A, B, C.

1089. MS. SPENCE: I mean, this one is a little bit different than the 244 one, because...so, in respect of 244, you have agreed to provide me with the bank statements showing the disbursement of funds from the loan. But in that case, I know where the money for the equipment went, because there is an operating generator at the St. Marys facility. In this case, we have $1 million spent on the bioreactor. And, from what I understand, there is no bioreactor that is operating, correct?

MR. McKENZIE: Yes, and right there... you are comparing apples and oranges. As I said, in a project, the first money you spend is on stuff you are not going to get back unless you complete the installation...

1090. MS. SPENCE: Right.

MR. McKENZIE: ...so it is soft money,

or whatever you want to call it. So, these are just accounting entries.

1091. MS. SPENCE: Right.

MR. McKENZIE: And I am not disagreeing with you, but I am saying, yes, we are going to get you what caused these entries, right? Which is, I guess, the costs that were spent on whatever the heck they were doing...

1092. MS. SPENCE: Yes, so...

MR. McKENZIE: ...whereas you are right, the 244, they finished the installation, and the deal closed, because I know the lawyers closed it. U/T

1093. MS. SPENCE: So I understand...and thank you for the undertaking given relating to the disbursements. What exists currently? Like, are there engineering drawings? What is the state of the research that this money was used for in relation to the bioreactor?

THE DEPONENT: I would have to look. I don't recall. I would have to look.

1094. MS. SPENCE: Okay.

THE DEPONENT: I don't know...

1095. MS. SPENCE: So...

THE DEPONENT: ...without looking.

1096. MS. SPENCE: ...it is currently on hold, from what I understand. Is there any potential plan to finish this work?

MR. McKENZIE: Well, money talks. I mean, I am just going...I was looking at the Pond entry, and it is like they show a jar of green stuff, and it is probably worth $2 million. Do you know what I am saying? I think the...as I said earlier, crashed, this one, it unfortunately is a mess because it got part of the way, and the rug was pulled out. And I am saying, is it now worse finding some money and pursuing, is the discussion I think we are having. And...

1097. MS. SPENCE: Who are you having that discussion with?

MR. McKENZIE: You. Not only you, but I mean, the Receiver. I am going...okay, we said this before in another one where I wrote you e-mails. "Are we going to get the rest of the money?" That was at Imaginea. And I am saying...I know it is not your job to answer, but the Receiver...we never got the money, so it got stalled. This one probably got stalled earlier in the process. So, the value of a...and I am making this up, one quarter-done research...I don't know. So, I am saying how can we help you get to the bottom of what you want to do, is to see if there is any recovery. Because from this end, it is, like, money is required to...

1098. MS. SPENCE: Right.

MR. McKENZIE: ...to produce value.

1099. MS. SPENCE: Okay. To me, the obvious answer is that you would find an alternate lender to step into Crystal Wealth's shoes to fund the money to finish this project.

MR. McKENZIE: Yes, wouldn't that be great?

1100. MS. SPENCE: And have you made any efforts in that regard?

MR. McKENZIE: Well, except for every day, you read about Crystal Wealth in the newspaper, with his name attached, and people saying, "He is not cooperating with the Receiver", it kind of complicates things. Believe me, in Toronto it does anyway. So, efforts on this one, have you made efforts to go and try to find an investor, I think is what you are asking, at all, to fund this thing?

THE DEPONENT: Again, generically, I would like this thing to be successful. And, yes, I have talked to lots of different people about is there potential for that specifically...I can't put details on it yet because of all of this stuff. But, absolutely, I still believe in the concept, and I believe that these things finished and operating provide very good commercial value.

BY MS. SPENCE:

1101. Q. Do you think that if Pond is no longer interested in working with this company, would there still be an end user or a partner?

MR. McKENZIE: No, that is speculative. Wait a minute, because...

1102. MS. SPENCE: Yes.

MR. McKENZIE: ...you are now talking about a company that is launching an IPO.

This guy is not going to answer that question, because...

1103. MS. SPENCE: I am...

MR. McKENZIE: ...if it gets out there, and I am just saying...and he doesn't believe in it, or he does believe in it?

1104. MS. SPENCE: No...

MR. McKENZIE: You are the OSC. You shouldn't be...

1105. MS. SPENCE: I am not asking...I am just saying if...so, I am not saying that we know that this is true or not, but I am just saying, is it possible that there would still be value in this project with a partner other than Pond?

MR. McKENZIE: Possible is always true. But Mr. Clydesdale just said...okay. Everybody wants to get CO_2, NO_x and SO_x out of the environment. Whoever comes up with the answer is going to make a lot of money. So the answer is yes. This one stalled for...not the Receiver's fault, not our side's fault, but it stalled. So, the answer I think you just said was, "Yes, I would love to make this work".

THE DEPONENT: Yes, there are...big picture, there are organizations out there that recognize the potential value of this. And, yes, probably.

BY MS. SPENCE:

1106. Q. Okay. And do you know how much additional funding would be required to bring that...

A. Again, funding...it could be $20 million. It could be, but it is very speculative.

MR. McKENZIE: What does Pond say in their prospectus right now?

THE DEPONENT: Yes.

MR. McKENZIE: Anyway, just...I am joking. I mean, I am saying it is not my business, but I haven't read their prospectus. How much do they need? $50 million, $20 million, $900 million?

BY MS. SPENCE:

1107. Q. Well, was it contemplated that the loans advanced by Crystal Wealth, being the $2 million and then the 5.5, were those going to be sufficient to build this thing out? Or were you always expecting other funding?

A. Again, without being specific, because I don't recall exactly, I think there was...had to be more funding certainly, we believed there was going to be lots more funding. St. Marys, Pond, Clayton, Crystal Wealth were all supposed to be contributing to this cause, and it looked like there was going to be lots of money, and this isn't a little...

1108. Q. Yes.

A. That is not a little thing, so...

1109. Q. Is there any documentation that you can produce showing the state of where it is at now?

MR. McKENZIE: Yes, the Pond prospectus. Because I am saying they allegedly have advanced the technology...or whatever they were doing. And why it stalled a year ago. Anyway, I shouldn't even be answering that. The answer is no. You can go on the Internet and look it up yourself. I mean, it is all over the map.

1110. MS. SPENCE: I mean, I understand that the Pond prospectus speaks to Pond's specific portion of whatever it is, but I understand that this is something that...I mean, it is showing on the MCSnoxrecovery balance sheet. So, presumably that is separate from what Pond owns.

MR. McKENZIE: I know, but in these kind of things, the race goes to the swiftest, and it is a year old now, with no action. It could be worth zilch because somebody has leapfrogged it.

1111. MS. SPENCE: Right.

MR. McKENZIE: And I am going...this is a nice discussion we are having, but this is a really tough one to tell about the future. I mean, if Mr. Clydesdale found a way to fund this with $10 million, would he be successful? Ask Pond, how are they doing? I am saying they are a good guinea pig to watch.

1112. MS. SPENCE: And, so, just so I am clear, you have agreed to produce to me the bank records reflecting the disbursements that will show where money was paid to in respect...

MR. McKENZIE: Well...

1113. MS. SPENCE: ...of this bioreactor.

MR. McKENZIE: ...we presume so.

1114. MS. SPENCE: Yes.

MR. McKENZIE: And I am saying, on each one of these, I have said, you know...yes, if the money came in, you know, it is going to be shown somewhere.

1115. MS. SPENCE: Yes.

MR. McKENZIE: And if the money went out, it is going to be shown somewhere. We have to do that. We all have to do that.

1116. MS. SPENCE: Just to be clear, I am reserving the right to ask those questions once we see it.

MR. McKENZIE: Yes, and you know, of course, that the general ledgers have already been supplied to the OSC. And I am surprised they are not here today, because Mr. Bando could help us because a general ledger is an accounting entry. These numbers would probably be substantiated, which is frustrating me, and I am going, you know...just remember, round and round we go. And you have got documents in here that I didn't know you had, and I presume there are some other ones that you don't know you have or something.

1117. MS. SPENCE: I hope not, because you told us that you have produced everything, so...

MR. McKENZIE: No, you guys have a ton of stuff you haven't produced. I mean, I looked at the notices you sent out, and I know you have got documents and you haven't produced them. And I am saying...it is just a mutual frustration of lawyers here, and going...normally people produce Affidavit of Documents...

1118. MS. SPENCE: Okay, well, this isn't...

MR. McKENZIE: ...on the other side of litigation.

1119. MS. SPENCE: Just to be clear, this is not litigation.

MR. McKENZIE: Yes, it is.

1120. MS. SPENCE: No, it is not. It is the Receiver carrying out its mandate. It is not a mutual obligation here.

MR. McKENZIE: Well, if it is the Receiver carrying out its mandate, we would go off the record now and solve the problem we have today. So, I am saying, no, this is a litigation file for you guys. Come on. Anyway, carry on.

1121. MS. SPENCE: I would hope not.

BY MS. SPENCE:

1122. Q. To move on, referring back to the balance sheet, page 3 that we have been looking at, I see a loan payable to Spectrum Canada in the amount of $500,000. What is Spectrum Canada?

A. I don't recall.

1123. Q. So, you know that Spectrum owes MCSnoxrecovery $500,000? No, sorry, the other way around.

MR. McKENZIE: Yes, well, okay, that is what it says. Isn't Spectrum...

1124. MS. SPENCE: You owe it to Spectrum.

MR. McKENZIE: ...one of the funds? Okay, I am just trying to read all these things in here.

1125. MS. SPENCE: You don't know what that is?

MR. McKENZIE: Well, what is the question? Do you want us to find...to...

1126. MS. SPENCE: Yes, I just want you...

MR. McKENZIE: I mean, I am presuming this is a T-account, and Mr. Bando will know what I mean, there is a T-account that says we owe $500,000 to Spectrum Canada, whatever that is.

1127. MS. SPENCE: Well, I just would like any documentation showing those advances and the loan agreement.

MR. McKENZIE: Yes, well, I was presuming it was one of the respondents. But it is the same undertaking. I mean, we are trying to get to the bottom of the accounting explanation, and we are going to do what we said for the other financial statements. We will just get you whatever we can. U/T

1128. MS. SPENCE: Does MCSnoxrecovery have any current sources of income?

MR. McKENZIE: Present income? I think you asked that already, but I think the answer is no. I mean, the revenue is zero in 2015 and 2016, and then the Receiver came in. But that is what this financial statement says.

1129. MS. SPENCE: All right.

BY MS. SPENCE:

1130. Q. So, at a certain point, you were making loan payments on this loan, correct?

A. Which loan now, sorry?

1131. Q. The MCSnoxrecovery loan, the $2 million loan.

A. I am not sure.

MR. McKENZIE: That will come out in the wash. I mean...

THE DEPONENT: I am not sure.

MR. McKENZIE: You have accounting records, we have accounting records.

1132. MS. SPENCE: Okay. And do you know...

MR. McKENZIE: It is not a mystery. It is just we don't have the records.

BY MS. SPENCE:

1133. Q. Do you recall why you stopped making interest payments?

A. I don't recall.

MR. McKENZIE: Don't answer that. There are too many ifs in there.

1134. MS. SPENCE: It was just one...actually, I don't think there are any.

MR. McKENZIE: Well, no, but...

1135. MS. SPENCE: Why did you stop making the payments?

MR. McKENZIE: ...you have to understand...okay...

1136. MS. SPENCE: No "if".

MR. McKENZIE: When the whole thing crashed, it all crashed at once. I mean, in other words, the Receiver came in, all the payments stopped, probably. I don't think the Receiver claiming that there were any payments made after that. And then why, since that date? Probably juggling the money, but before that, you want to know if there were payments? And I am saying...I think we have established we will let you know if we can figure that out.

1137. MS. SPENCE: Okay.

MR. McKENZIE: But then to say... assuming...I don't want to answer that question, why would they be stopped if they didn't exist? So, that is a refusal, because that is speculative. /R

1138. MS. SPENCE: Sorry, just so I am clear, the question that I asked was why did you stop making the loan payments.

MR. McKENZIE: Okay.

1139. MS. SPENCE: But if the answer is simply, "There was no money"...

MR. McKENZIE: Well, refusal, but I am saying I get you...you know, if you are right, and there were payments and they stopped, I see the wisdom in asking the next question, and I will get you there.

1140. MS. SPENCE: Okay. And what was the source of funds to make the initial payments that were made?

MR. McKENZIE: Well, here we go. You just...you haven't established that any payments were made. So, full stop. But let's say there were. What is your question?

1141. MS. SPENCE: Where did you get the money to make the payments?

MR. McKENZIE: Won't the books show that? We are going to give you the books.

1142. MS. SPENCE: I don't know if they will show that.

MR. McKENZIE: Well, we are going to give you the books, and then you can ask the next question.

1143. MS. SPENCE: Okay.

MR. McKENZIE: Just put it in writing, by the way. I don't want to come down to Toronto.

1144. MS. SPENCE: Let me try to ask it in a simpler way. Did this company ever have any income?

MR. McKENZIE: I think the answer has been, so far, no. Financial statements have a big goose egg, zero on there. And then the Receiver came in.

1145. MS. SPENCE: Right, okay, so...

MR. McKENZIE: So, the question is answered. I think you have asked it a couple of times.

1146. MS. SPENCE: Okay. And I think...I am not intending to repeat myself, but I may be. Are there any ongoing efforts to refinance this particular loan?

MR. McKENZIE: You are repeating yourself.

1147. MS. SPENCE: And the answer is no, right?

MR. McKENZIE: Well, the answer is...whatever his answer was stands. We are not saying yes or no. He said what he said which is, "It is out there, but it is a mess". I am summarizing what I think he said. If not, we can go back and read the answer, because I think that is what he said.

BY MS. SPENCE:

1148. Q. Are you waiting for a particular occurrence before you seek to refinance again?

A. This one? I mean...

MR. McKENZIE: Hold it. Hold it.

1149. MS. SPENCE: No, no, he can answer that.

MR. McKENZIE: An occurrence?

1150. MS. SPENCE: Yes. Like, are you saying, "After the receivership ends, then we will start looking to refinance", or, "After we enter into a forbearance agreement, then we will start to look for refinancing".

MR. McKENZIE: Well, if that is on the table...

1151. MS. SPENCE: Well, I am asking...

MR. McKENZIE: ...you know, if we got some cooperation from the Receiver, and we would like to have it off the record without prejudice, because there are some ideas, but they are not official, because it stalled by the receivership. And I am just saying, you know, I mean this is one...maybe it can be saved, but not by asking questions all day.

1152. MS. SPENCE: Right, because...so, the documents that we have looked at so far today suggest both equity...seeking equity participants...

MR. McKENZIE: Yes.

1153. MS. SPENCE: ...in the company, and there is also discussion of refinancing. So...and from what I understand, you are not engaged in either of those activities currently?

MR. McKENZIE: Well, what did you guys do with Pond? I mean, didn't they give you an IOU and say, "Let us go out and finance"? I don't want to have this conversation on the record, but I am saying that would seem to me an idea, but we never got around to having off the record meetings about these things. There are possibilities, yes, but they are just speculative now.

1154. MS. SPENCE: Okay, but...

MR. McKENZIE: I am saying...

1155. MS. SPENCE: ...that is something you would be interested in?

MR. McKENZIE: Absolutely. We have made this clear. We need...

THE DEPONENT: Absolutely.

1156. MS. SPENCE: Yes, no...

MR. McKENZIE: Just let me finish. Off the record and without prejudice...okay, we have some ideas. If we can all cooperate, we might be able to make this work. I mean, that is clear as anything we have ever said, but this way, sort of saying, "What are your ideas?", you know...

1157. MS. SPENCE: Okay, and I...just to clarify for the record, I believe Mr. Clydesdale said, "Absolutely", but it might have been drowned out.

MR. McKENZIE: Well, do you agree with what I just said?

THE DEPONENT: Yes.

MR. McKENZIE: All right.

1158. MS. SPENCE: Okay. I am going to ask you to turn to tab 11.

MR. McKENZIE: Excuse me for one second. This...Crystal Enlightened Income Fund? Crystal...can you just remind me? I am looking at the respondents, there are so many my eyes are going fuzzy here. Enlightened Hedge Fund is one on the thing. Sustainable Enlightened Bullion Fund. Enlightened Resources. Anyway, okay. I am just puzzling...it is not a name that I caught. But anyway...

1159. MS. SPENCE: So, just...in this agreement, the merchant is identified as being 2445958 Ontario Inc. Do you see that?

MR. McKENZIE: Yes, okay. Is this company in receivership?

1160. MS. SPENCE: Crystal Enlightened Income Fund?

MR. McKENZIE: Yes.

1161. MS. SPENCE: I believe so.

MR. McKENZIE: Well, can you...sorry to...I have the thing you gave me this morning, the Order, and my eyes go fuzzy when I am trying to read stuff. But, I mean...

1162. MS. SPENCE: Some of the funds have changed their names. This document is about three years old.

MR. McKENZIE: Where would I...

1163. MS. SPENCE: If that is going to be an issue, we can address that, but...

MR. McKENZIE: Well, I am sure we can fix it, but I am just asking dumb questions...

1164. MS. SPENCE: Okay.

MR. McKENZIE: ...because I tried to read everything, and I...okay, I am going...anyway. Look, ask the questions, and we can do this by mail or something. But I am just curious about how these things happen. If it has been changed, that is probably somewhere in the stuff that has been filed with the Court, I gather. Anyway, listen...

1165. MS. SPENCE: There are a couple of Enlightened respondents...

MR. McKENZIE: Well, I can see they are all Enlightened, which is, under the circumstances, a curious name. But, anyway...okay. The bottom line is, I think you want to ask some questions...

1166. MS. SPENCE: I do.

MR. McKENZIE: ...of my client, and we will...you and I, Miranda, or whoever, we need to try to get to the bottom of...anyway, I don't understand, but...

1167. MS. SPENCE: Okay. So, my understanding is that 2445958 Ontario Inc. is now known as Magnitude CS Energy Inc. Does that...

MR. McKENZIE: We will have to let you know. U/T

1168. MS. SPENCE: ...accord with your recollection?

MR. McKENZIE: It could be.

1169. MS. SPENCE: Okay.

BY MS. SPENCE:

1170. Q. Is this agreement familiar to you?

A. I don't recall this.

1171. Q. You don't know. Do you know what a factoring agreement is?

A. Not really. I could Google it.

1172. MS. SPENCE: Mr. McKenzie, are you familiar with this agreement?

MR. McKENZIE: Have I seen a factoring agreement before?

1173. MS. SPENCE: No, this particular...

MR. McKENZIE: I used to be a bank lawyer.

1174. MS. SPENCE: This particular one.

MR. McKENZIE: You are asking me to read a 20-page agreement in five minutes. Ask your questions, because I am going to go...

1175. MS. SPENCE: Okay.

MR. McKENZIE: I am totally confused by this document in the first place, just what you have shown me. And the second thing is, where are we going with this, right?

1176. MS. SPENCE: Well, so, it is a document executed...

MR. McKENZIE: Okay. So...

1177. MS. SPENCE: ...by your client in July 2015. It is one of the arrangements between Mr. Clydesdale's companies and Crystal Wealth.

MR. McKENZIE: I am not accepting any of what you just said, but if you want to ask questions about it, be my guest. Where are we going? Like, let's try to...can we help you get to where you want to go?

1178. MS. SPENCE: Okay. So, pursuant to this agreement, this Crystal Wealth entity was to advance funds to the company known as 2445958 Ontario Inc. You agree with that?

MR. McKENZIE: If this is a valid agreement that was implemented...

1179. MS. SPENCE: Yes.

MR. McKENZIE: ...I will read it, but...where does it say, "to advance funds"? Sorry, I am just reading it as quickly as I can here.

1180. MS. SPENCE: Well...

MR. McKENZIE: Purchase of receivables?

1181. MS. SPENCE: Right.

MR. McKENZIE: What? Okay. Purchase price, and then just...okay, well, you will just have to ask your questions, and I am going to...

1182. MS. SPENCE: So, the question I am...

MR. McKENZIE: ...have to deal with them.

1183. MS. SPENCE: ...going to ask is the same undertaking I have been asking for in respect of the other companies, which is to

receive from you banking records reflecting any amounts received from the Crystal Wealth entity pursuant to this agreement.
MR. McKENZIE: I am just going to give you refusals, blanket. So, put them all on, because there are many, many questions I have about this. As I said, we started off with I don't even know that it is in receivership right now. I am sure we can sort that out, but...
1184. MS. SPENCE: Okay.
MR. McKENZIE: ...what other questions do you have?
1185. MS. SPENCE: So, just to clarify for the record, this fund...
MR. McKENZIE: Yes.
1186. MS. SPENCE: ...the Crystal Enlightened Income Fund...
MR. McKENZIE: Yes.
1187. MS. SPENCE: ...is now known as Crystal Wealth Enlightened Factoring Strategy.
MR. McKENZIE: Okay. And where is that on here?
1188. MS. SPENCE: It is one of the respondents.

MR. McKENZIE: I am sorry, I am looking for it on the Order that you gave me this morning. Which one is it?

1189. MS. SPENCE: Crystal Wealth Enlightened Factoring Strategy.

MR. McKENZIE: Okay. It is about the middle of the page there. So, according to what you are saying, is this company has changed its name, and it is the same company, and it has not merged or anything. Okay, so say that is true, and I am sure you will send it to me...I mean, is this in the materials that I didn't see?

1190. MS. SPENCE: I mean, it is part of the receivership materials that are available online.

MR. McKENZIE: Okay. Can you remind me...I mean...

1191. MS. SPENCE: Sure.

MR. McKENZIE: ...would you send me the page? Because by now I am going blurry. I mean, I am going to take your word for it, Miranda, but I have got my job to do. Okay, so presume that is true, and presume that this company, the Enlightened whatever is, and the 244 is whatever you said it is, because they will have to check that, what is the question?

1192. MS. SPENCE: The question is how much money did the Clydesdale company receive under this agreement, and to produce bank records reflecting those receipts.

MR. McKENZIE: Okay. We already gave you the undertaking with the Magnitude company, which you say this has become. So, I think we are covered, right?

1193. MS. SPENCE: No. That was a different company.

MR. McKENZIE: Well, there are only four companies we have been talking about today. And I am saying Magnitude is one of the four companies, and...okay.

1194. MS. SPENCE: The one we were just talking about was MCSnoxrecovery.

MR. McKENZIE: Yes.

1195. MS. SPENCE: We are now talking about Magnitude CS Energy Inc.

MR. McKENZIE: Okay.

1196. MS. SPENCE: That is the company I would like that undertaking...

MR. McKENZIE: The banking...

1197. MS. SPENCE: The banking records reflecting the receipts from the Crystal Wealth entity, pursuant to this agreement.

MR. McKENZIE: Okay. So, presuming everything that we said before is accurate, because you are going to send me some documents, the answer is yes.

1198. MS. SPENCE: Okay. And...

MR. McKENZIE: And it is the same one, the banking records.

1199. MS. SPENCE: And I would ask for the same undertaking in respect of either... that you have already given for the other companies in respect of disbursements from those loan amounts. All right. So, to the extent that funds were received by...

MR. McKENZIE: Whatever I said...

1200. MS. SPENCE: ...Magnitude CS Energy Inc...

MR. McKENZIE: Whatever we undertook to do with respect to the earlier companies we talked to banking-wise, we will do it for this one. And disbursements, like the money...I called it connecting the money

dots, right? U/T
1201. MS. SPENCE: Yes. Okay. So, what I am going to ask, because you have indicated you are not familiar with this agreement, and given that it looks as though we are going to be back here tomorrow, would you mind reviewing it so that tomorrow you might have more familiarity with the document?
MR. McKENZIE: No. Ask the questions. I mean, I am saying...I am not going to read it. I don't agree that you can give me a document and say, "Be ready tomorrow morning" when it is 20 pages. I am a busy guy, and I am saying...so, ask your questions, I know what a factoring agreement is, and point to the specific areas that you want to ask about, and we might be able to answer them. But I don't need to read it overnight. As I said, I have read factoring agreements before...
1202. MS. SPENCE: Okay, well...
MR. McKENZIE: ...and...
1203. MS. SPENCE: ...frankly, the specific terms of the document are not that

interesting to me. What I am more interested in understanding is the purchase for which you entered into this agreement with Crystal Wealth.

MR. McKENZIE: Well, he didn't say he did, and he didn't say it is binding, so be careful there.

1204. MS. SPENCE: Okay. Are you...

MR. McKENZIE: And I am saying...

1205. MS. SPENCE: ...disputing the binding... are you disputing that this agreement is binding?

MR. McKENZIE: I have said this a couple of times, I think, and Mr. Clydesdale...I am repeating what he said, is there were certain times, when dealing with Mr. Smith, that there would be documents signed or words exchanged, and then they wouldn't work out that way. In other words, it was supposed to be documents signed, taken to Jonathan, the lawyer, close with McKenzie the lawyer. And when that didn't happen, it is wide open as to whether these are actual binding documents, right? And I am going...you know, if we had the financial records from your side, we might be able to do matches. But right now, it is impossible.

1206. MS. SPENCE: Okay. I am also going to ask you to produce whatever documentation you supplied to Crystal Wealth in order to receive advances under this agreement.

MR. McKENZIE: Well, first of all, nobody has said there were advances under this agreement.

1207. MS. SPENCE: Well, you have also asked me...

MR. McKENZIE: So...

1208. MS. SPENCE: ...to put my questions on the record, and...

MR. McKENZIE: Yes, yes, no, no...

1209. MS. SPENCE: ...so I am putting my question on the record.

MR. McKENZIE: Okay, and I understand that, but I am saying...

1210. MS. SPENCE: I don't need a long explanation as to why they are refused. You have already indicated that it is refused.

MR. McKENZIE: The documents...okay. If

you have documents that Crystal Wealth says are binding, show them to us, and...

1211. MS. SPENCE: Here.

MR. McKENZIE: You say this one?

1212. MS. SPENCE: Yes.

MR. McKENZIE: Okay. And what I am saying is, we will go back...right now, I am saying this is not acknowledged to be binding until we have to review...like I said, there was a shuffle. I don't mean...it may have been inadvertent, but I know about the first closing, what happened. There were some documents. They took them back, changed them, did things, and then we closed. The lawyers re-wrote the deal, basically, at Miller Thomson. And then that was the one that was organized. The rest of them were less organized because, as he said, he would meet with Mr. Smith. He would...Mr. Smith would say, "Sign this, sign this. I will take them to the lawyers". That is the last we heard of it. So, we are going to do our best to reconstruct for you, but...you know, under the circumstances, it

is a 17-page document I haven't seen
before.
1213. MS. SPENCE: Okay.

BY MS. SPENCE:
1214. Q. In or around 2015, what was the business that Magnitude CS Energy Inc. or its predecessor was engaged in?
A. I don't recall...2015, I don't recall.
1215. Q. Do you know what that business is currently doing?
MR. McKENZIE: Magnitude?
1216. MS. SPENCE: Yes.
MR. McKENZIE: It is moribund.
1217. MS. SPENCE: Right.
MR. McKENZIE: But I am saying nothing happens...
1218. MS. SPENCE: Right, but it was working towards something.
MR. McKENZIE: Well, Crystal Wealth was providing money so they could advance the technology, so they could do things and it all stopped. So, obviously that company...I call it moribund, just...dead

in the water.

1219. MS. SPENCE: Right. So, what specifically was it working towards?

MR. McKENZIE: Well, these projects.

1220. MS. SPENCE: All of them?

MR. McKENZIE: Well, the four projects...and we told you this morning, there was another one, MCS Energy, the Michigan company. That is another St. Marys project that has stalled.

1221. MS. SPENCE: Right. So I understand how each of those individual companies that were working on particular projects...I understand that. This company, what was it associated with? Was there a particular project?

MR. McKENZIE: Those projects.

1222. MS. SPENCE: All of those...so, what was its role in relation to each of those projects?

MR. McKENZIE: We will have to go and dig out the specific...because it just stopped. It was the Clayton, you know, group, that he was going to finance, and do these things as they signed more contracts with people, and it just stopped. So, that is what I said, "moribund", it stopped.

1223. MS. SPENCE: I know that it stopped, but what did it stop doing?

MR. McKENZIE: Well, I am just going... again, we have to go back and say, "We have certain contracts that are ESA-signed". The other company you are talking about was part of getting them signed, and helping get organized, but it didn't ever own, you know, one contract, you know, one gadget. It was...

1224. MS. SPENCE: So...

MR. McKENZIE: ...kind of like...I don't know, a facilitator. I am just saying...I am making this up. I am just going...if you look at it, you see money going in and out, right? And I think Clayton was... Crystal Wealth was giving money to that company, by the looks of it, and doing...trying to secure money that was going elsewhere, and then you had to get into the Pond thing, which...

1225. MS. SPENCE: All right, so...

MR. McKENZIE: There was money going

directly to Pond from Crystal Wealth that funded other things, and we need to have a look at the books.

1226. MS. SPENCE: So, this agreement is a factoring agreement, and you have said you know what a factoring agreement is. And it depends on that company having receivables. So, what was the service, or good, that this company was providing, which had receivables?

MR. McKENZIE: Well, we would have to look at the receivables, right? If you have the...

1227. MS. SPENCE: So, the definition of "receivable" in this agreement, which I see on page 2, says:

"...An account receivable arising under a contract between a debtor for the supply by the merchant of goods, or other materials and services, or a combination of goods, or other materials and services..."

MR. McKENZIE: Okay. So, let's say a receivable was created under this agreement, you are suggesting that it was automatically owing to Crystal Wealth as security, right? That is what a factoring agreement is. In other words, the debtor owes a receivable, but the factoring company is loaning against that cash flow, maybe. I am saying, okay...so, you are asking now, was there a receivable on July 31st, 2015?

1228. MS. SPENCE: No, I am asking what did this company do to get receivables?

MR. McKENZIE: Okay, well, we will have to give you a one-paragraph...I mean, that is a good question.

1229. MS. SPENCE: Okay. You don't know off the top of your head?

THE DEPONENT: No, I am confused.

1230. MS. SPENCE: Okay. I understand what you are saying, that the company is now not doing anything.

MR. McKENZIE: Yes.

1231. MS. SPENCE: But I am just wondering what it was supposed to be doing.

MR. McKENZIE: Well, it gets buried about a year ago, basically. And, again, those are bad words, but it gets buried, it is pushed aside. I mean, you could have it...you know, the point is it is not working, that is why I used the word "moribund", and whatever it was doing, it isn't doing it.

1232. MS. SPENCE: Right. So, what was it doing?

MR. McKENZIE: Well, facilitating. I mean, I am kind of going...

1233. MS. SPENCE: Right, but facilitating, you don't normally get a receivable out of it, unless there...you know, like...

MR. McKENZIE: I want to ask Clayton what he was thinking with this agreement...Mr. Smith. As I say, he is a nice guy, I guess, but I am going...like you, I am going, "Huh?"

1234. MS. SPENCE: Yes. "Huh", that is the answer?

MR. McKENZIE: But if...no, no, but if this was a valid contract, which we are still not agreeing with, "What were you thinking"...

1235. MS. SPENCE: I don't know what Mr. Smith was thinking.

MR. McKENZIE: No, no, no, what...no...

1236. MS. SPENCE: I am asking what your side of the equation was thinking.

MR. McKENZIE: Well, I understand, but my client has...to repeat myself , Mr. Smith would say, "Here is a bunch of contracts. I am taking them to the lawyer", and that is it. So, that is as far as he is going to go, and then it stopped. Maybe there would have been a receivable created next week if the Receiver hadn't have come in.

1237. MS. SPENCE: Okay.

MR. McKENZIE: The point is, you know, you are looking for value here, you know, a receivable. And I am saying, well, we will go and look in the books and see if there is...

1238. MS. SPENCE: Yes.

MR. McKENZIE: ...a receivable that you guys can collect. That is what you are after. U/T

1239. MS. SPENCE: So, yes, I will take that undertaking. Thank you for that. But I also am just, as a general proposition, curious as to what it was that this company was supposed to be doing.

MR. McKENZIE: Well, you heard...

1240. MS. SPENCE: And you said you can provide me a paragraph about that...

MR. McKENZIE: Well...

1241. MS. SPENCE: ...so I will take that.

MR. McKENZIE: ...we will go and ask around. U/T

1242. MS. SPENCE: Okay.

MR. McKENZIE: Because it was...

1243. MS. SPENCE: Go and ask around, and figure out what your own company was doing?

MR. McKENZIE: You know, you have to understand how startups work. You know, today they are selling popcorn and tomorrow somebody comes in and says they are going to sell applejacks.

1244. MS. SPENCE: Right.

MR. McKENZIE: And I am going it is not that simple. This isn't, you know, a Tim Hortons that sell donuts every day. That is the unknown with this.

1245. MS. SPENCE: Yes.

MR. McKENZIE: That was how we referred to...

1246. MS. SPENCE: No, I...

MR. McKENZIE: By the way, I mean, I have been trying to...the same thing. I mean, I am with you. I am saying, "Put this in a box", but it is not that simple.

1247. MS. SPENCE: No, I get it. I just...you know, it is a $3 million factoring arrangement, so I would have thought that you would know, at least, what the company was doing.

MR. McKENZIE: Well, was the money advanced?

1248. MS. SPENCE: I don't know. That is the question that I asked.

MR. McKENZIE: There you go. So, I am saying maybe they threw this in the garbage. That is...so...

1249. MS. SPENCE: Okay.

MR. McKENZIE: ...we are going to try to get there, Miranda.

1250. MS. SPENCE: Yes.

MR. McKENZIE: You and I are going to somehow get there, but...

1251. MS. SPENCE: Okay.

MR. McKENZIE: ...this is a lovely

conversation, but I am saying when you get to the end of all this, you are trying to find some money. And I am saying, we are trying to help you find some money.

1252. MS. SPENCE: Okay. And, so, just to give you a little more structure to these questions, if you look at the schedules to this agreement, the factoring arrangement, Schedule A, the first one identifies $3 million as the limit of this arrangement. Schedule A, supplementary, suggests that there was a draw of $400,000 on August 28th, 2015. Another supplement says that there was a $1 million advance on October 30th, 2015.

MR. McKENZIE: At 44.15 percent.

1253. MS. SPENCE: Yes. And then the last...

MR. McKENZIE: I think that was a typo.

1254. MS. SPENCE: ...Schedule A says...

MR. McKENZIE: Sorry.

1255. MS. SPENCE: ...there was a draw of $392,350 on January 15th, 2016.

MR. McKENZIE: Okay. So, the books, when we get them, will tell us if these things actually happened.

1256. MS. SPENCE: Yes.

MR. McKENZIE: And, again, the transcript doesn't tell I was chuckling going 44 percent; I think that might be against the law. I am only saying that not to chide anybody, but to go, "Oh, my gosh. If this is true, wow. What would that be worth now? $2.5 million with accrued interest?" Holy crow. We have a call at 4:30, just so you know. I am trying to get this settled, so...

1257. MS. SPENCE: Okay.

MR. McKENZIE: ...unless we are not coming back tomorrow, I will call him and tell him, you know...

1258. MS. SPENCE: All right. I think we are not going to get through this, so I think...

MR. McKENZIE: Okay.

1259. MS. SPENCE: ...that this is a good place to stop, actually.

MR. McKENZIE: Yes, sure.

--- upon adjourning at 4:20 p.m.

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Court File No. CV-1711779-OOCL

ONTARIO

SUPERIOR COURT OF JUSTICE

RJA/jlk

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED,
CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED,
CRYSTAL WEALTH MEDIA STRATEGY,
CRYSTAL WEALTH MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND,
CRYSTAL WEALTH MEDICAL STRATEGY,
CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY,
ACM GROWTH FUND, ACM INCOME FUND,
CRYSTAL MANAGEMENT HIGH YIELD MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED BULLION FUND,
ABSOLUTE SUSTAINABLE DIVIDEND FUND,
ABSOLUTE SUSTAINABLE PROPERTY FUND,
CRYSTAL WEALTH ENLIGHTENED HEDGE FUND,
CRYSTAL WEALTH INFRASTRUCTURE STRATEGY,
CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY,
CRYSTAL WEALTH RETIREMENT ONE FUND and CHRYSALIS YOGA INC.

Respondents

APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, AS AMENDED

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This is the Continued Examination of CRAIG CLYDESDALE, pursuant to a Receivership Order, taken at the offices of VICTORY VERBATIM REPORTING SERVICES INC., Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, on the 13th day of March, 2018.

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APPEARANCES:

MIRANDA SPENCE } DIANA SATURNO } (Articling Student) }	-- for Grant Thornton Limited, in its capacity as Receiver and Manager of Crystal Wealth Management System Limited, Clayton Smith, Crystal Wealth Media Strategy, Crystal Wealth Mortgage Strategy, Crystal Enlightened Resource & Precious Metals Fund, Crystal Wealth Medical Strategy, Crystal Wealth Enlightened Factoring Strategy, ACM Growth Fund, ACM Income Fund, Crystal Wealth High Yield Mortgage Strategy, Crystal Enlightened Bullion Fund, Absolute Sustainable Dividend Fund, Absolute Sustainable Property Fund, Crystal Wealth Enlightened Hedge Fund, Crystal Wealth Infrastructure Strategy, Crystal Wealth Conscious Capital Strategy, Crystal Wealth Retirement One Fund, CLJ Everest Ltd., and 1150752 Ontario Limited
K. WILLIAM McKENZIE	-- for Craig Clydesdale

ALSO PRESENT:
Bruce S. Bando

INDEX OF PROCEEDINGS

--- upon convening at 10:00 a.m.
--- upon commencing at 10:05 a.m.

CRAIG CLYDESDALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

1. Q. Good morning, Mr. Clydesdale, Mr. McKenzie.

A. Good morning.

2. MS. SPENCE: Before I begin, I just wanted to ask Mr. McKenzie. We didn't hear from you yesterday on a St. Marys settlement. We didn't hear from Mr. Ferguson at WeirFoulds either. So I presume there's no deal yet made with St. Marys on the 244 loan on that project?

MR. McKENZIE: Well, we will discuss it off the record. I would rather you get on with the examination. There are things going on as we speak.

3. MS. SPENCE: Okay.

MR. McKENZIE: I'm saying I am very confident that the continuing cooperation between Mr. Clydesdale and the Receiver is going to reap benefits, maybe as early as as soon as we finish today.

4. MS. SPENCE: Okay. Great.

MR. McKENZIE: So let's get on with it.

5. MS. SPENCE: So we will...

MR. McKENZIE: May I just add an item of housekeeping counsel?

6. MS. SPENCE: Yes.

MR. McKENZIE: You handed me...

7. MS. SPENCE: Yes, I didn't mark it.

MR. McKENZIE: I think you should mark it as an exhibit. Would you?

8. MS. SPENCE: I agree.

MR. McKENZIE: Or your copy, it doesn't matter.

9. MS. SPENCE: So I believe it would be Exhibit 2.

MR. McKENZIE: It's a PPSA registration printout.

10. MS. SPENCE: Yes. And you are content for that to be marked as a proper exhibit, or...

MR. McKENZIE: Well...

11. MS. SPENCE: Sure.

MR. McKENZIE: ...I'm presuming. It's got the big stamp of the Province of Ontario on it...

12. MS. SPENCE: Okay.

MR. McKENZIE: ...so it must be official, but it's kind of a multi-pages...it looks like it's ten pages. You have stapled it together and we will mark it...

13. MS. SPENCE: Exhibit 2. It's a PPSA search for 2441472 Ontario Inc. dated October 19th, 2017. Thank you. Thank you, Mr. McKenzie.

--- EXHIBIT NO. 2: PPSA search for 2441472 Ontario Inc. dated October 19, 2017

BY MS. SPENCE:

14. Q. So let's move on. We have been discussing the various loans as between the different Crystal Wealth Funds and the OOM companies at issue. I am going to now ask you about MCSAB10 Inc. So you at the outset of this exam indicated that this is a company engaged in a project in Alberta, correct?

A. Yes.

15. Q. And what is the purpose of that company? What is its business?

MR. McKENZIE: Keep your voice up, okay? It will make the reporter's job easier.

THE DEPONENT: To provide a cogen facility to provide energy to the end user client.

BY MS. SPENCE:

16. Q. And is there a particular end user client?

A. I believe...I am not sure, but I believe it is Imaginea. That's a nickname for me. I don't know.

17. Q. Yes. I am familiar with that. It's Imaginea Energy. Does that sound familiar?

A. I don't recall.

18. Q. Okay. And so, Imaginea is the end user. Do they have a particular facility for which they wanted power provided?

A. Yes. Imaginea had a gas facility that uses power and heat, and all those types of things.

19. Q. And what is the status of that project?

A. I am not sure right now.

20. Q. Has anything been built?

A. I don't know for sure.

21. Q. Are you currently advancing this project in any way?

A. I am not sure because I don't know the status of what is going on. So I am not sure.

22. Q. Okay. And is there somebody else who works for MCSAB10 Inc. or has a contract with MCSAB10 Inc. who is overseeing that project?

MR. McKENZIE: The same issues from yesterday. We are not going to answer the names of people for the same reasons as yesterday. But I can tell you that you have an e-mail from me back in August which is the status. Money was never advanced. The deal closed sort of, because the idea was it was all closed. And Miller Thomson took...I don't know what they did. They registered stuff and took the shares, and then the money didn't arrive. So that stalled right there. I mean, you can't even borrow when there's already a GSA on. So it stalled because of the advent of this receivership. /R

BY MS. SPENCE:

23. Q. So no further work has been done on that project since July?

MR. McKENZIE: Tidying up. That's not true. I mean, we have been...no, nothing to make it...to finish it. I mean, we have been trying to...on a scale. And we were talking yesterday, Imaginea has...Ms. Suzanne West died, unfortunately, and then there's a new gentleman. I think his name is Colin Davies. I would have to look it up. I contacted him. You have probably been in touch with him, "What's going on?" And him saying, "The money is coming from a fund". Not this fund by the way.

BY MS. SPENCE:

24. Q. From the perspective of the MCSAB10 Inc. company, they have not done any further work on the project since...

MR. McKENZIE: No. I would call it moribund again. You know, stalled by these events that we talked about that are still out there, which is...you know, I have questions, I am sure you have questions. And we should convene with the new gentleman. Colin, I think, his name is. I think we can cooperate and make something happen, because that's the best out for us.

BY MS. SPENCE:

25. Q. So what is Suzanne West, or what was Suzanne West's role in that project?

A. I believe she was the president of Imaginea. I am not sure, but I believe that was her role.

26. Q. Did you deal with Suzanne West directly?

A. Yes.

27. Q. How did you become connected with her?

MR. McKENZIE: No. We are not going to...it's just business.

BY MS. SPENCE:

28. Q. Was it...

A. I don't recall.

29. Q. Was it through Clayton Smith?

A. I don't recall. I doubt it. I don't recall.

30. Q. You don't recall?

A. No.

31. MS. SPENCE: And so, I have your position that you're not providing us with any names of anyone who works for any of the OOM companies, or is contracted to provide services for any of the OOM companies. We disagree with that position and can deal with that at a later date. But just so I am aware, without telling me the name of the person, is there somebody else who does work for MCSAB10 Inc. to advance this project?

MR. McKENZIE: Same answer as yesterday, so please don't keep beating this topic. Okay. /R

32. MS. SPENCE: Well, I have reframed the question...

MR. McKENZIE: It goes again...okay...

33. MS. SPENCE: ...to...

MR. McKENZIE: If you have a question...

34. MS. SPENCE: ...satisfy your concern as to confidentiality.

MR. McKENZIE: If you have...

35. MS. SPENCE: So I'm just wondering if it's Mr. Clydesdale who does the work, or

if there is somebody else, who I know you're not going to tell me their name, who does the work?

MR. McKENZIE: It's complicated as we said yesterday. If you have a question that needs to be put to someone, send it to me and I will deal with it.

36. MS. SPENCE: The question that I am putting...

MR. McKENZIE: To give you...

37. MS. SPENCE: ...to Mr. Clydesdale...

MR. McKENZIE: Let me finish.

38. MS. SPENCE: ...is he doing the work, or does somebody else do the work? That's not...

MR. McKENZIE: It's complicated. You know, it's a group interaction with people that don't really want you contacting them, I'm sure, or at least without their permission.

So if you have a question, we will get it answered for you. If you are going to take a list of names and start subpoenaing people and bringing them in and doing what is happening here, I don't think they are going to want to do that and, you know, it's not fair. So you have our position. We are not dodging the issue of what you need to know. But I said yesterday, I am going to stop right now.

39. MS. SPENCE: Mr. McKenzie...

MR. McKENZIE: The names of people and that is a problem for both of us.

40. MS. SPENCE: ...your objection is not responsive to my question, which is...

BY MS. SPENCE:

41. Q. Without telling me the name of the individual, is there someone else, other than you who advances the project for MCSAB10 Inc.?

MR. McKENZIE: It's complicated.

42. MS. SPENCE: Please explain.

MR. McKENZIE: Who, you know, did something in the development of it could be ten people that drew a drawing. It could be five people that...we were trying to explain this to you yesterday. The first part of the project is getting the conceptual part done. And I'm saying sometimes it's just a matter of phoning a friend and saying, "Would you put this on the back or the front of the..." As a matter of fact, this is what happened with one of them. "Should the pad be over here or over here", and they just talk. It could have been six people giving their opinions. And we would give you the six people. It wouldn't help you. That's my point. So it was in development stage and it's complicated. So what do you need to know? I am asking you now, what exactly do you need to know about this project? It got to a certain point and it stopped when the receivership started. Now, do you want to know exactly where it got to? We can help you with that.

43. MS. SPENCE: I want to know if someone other than Mr. Clydesdale was running it?

MR. McKENZIE: I hear you.

44. MS. SPENCE: And you're not answering that question?

MR. McKENZIE: Well, I have answered it, but please move on.

45. MS. SPENCE: That was not an answer. It's a "Yes" or "No" question. Was Mr.

Clydesdale running that project or not?

MR. McKENZIE: Move on. /R

46. MS. SPENCE: It's not that simple.

MR. McKENZIE: Mr. Clydesdale is the CEO and he's responsible for everything. But...

47. MS. SPENCE: Well, I...

MR. McKENZIE: ...he doesn't have a...

48. MS. SPENCE: ...I understand that.

MR. McKENZIE: ...memory of every person he talks to every day to decide whether to buy the generator at Canadian Tire or some place overseas. I mean, these are just things that happen in due course.

49. MS. SPENCE: So Mr. McKenzie...

MR. McKENZIE: It's complicated.

50. MS. SPENCE: ...I appreciate that what you're telling me, and what Mr. Clydesdale is telling me, is that he is the CEO and president of the company. He does not have knowledge of the minutia of the day to day operations of each of these companies. Okay? But at the same time, he can't tell me if any of these companies are even doing anything, in some cases, and he can't tell

me who else might be running the company, or doing any work on the company. So, you know, you are not giving me very much to work with here, and I find it hard to believe that you can say on one side that Mr. Clydesdale is the only person who we can talk to and the only person who you are going to put forward as running these projects, and at the same time the answer to the vast majority of the questions I pose is that Mr. Clydesdale doesn't recall.

MR. McKENZIE: If I gave you the name of another person, what are you going to do? Tell me. Make a commitment what you are going to do right now...

51. MS. SPENCE: I cannot do that, sir.

MR. McKENZIE: Well, okay. Then stop now. Just move on. We have agreed to disagree. Move on.

52. MS. SPENCE: Well, it doesn't...that objection does not respond to my question of whether Mr. Clydesdale is the one running the show for each of these projects, of if there is somebody else.

MR. McKENZIE: Ask him. He's the guy

ultimately who is running the show, because he is the president. So ask him and we will give you the answers, but let's stop...

53. MS. SPENCE: I have asked him and you are not giving me the answers.

MR. McKENZIE: No. Let's stop quibbling. What is the question? No, you are not going to get the name of one person that knows everything about this project. It's complicated. Full stop. I don't want to discuss it any more. Do what you have to do. Ask the next question, please.

54. MS. SPENCE: Okay. So I just want to be clear that you are refusing to answer the question of whether there is anyone other than Mr. Clydesdale who is running this particular project.

MR. McKENZIE: No. I said it's complicated. You have to ask me which question you need answered and you won't do that, so move on.

55. MS. SPENCE: I have asked you the question and you had answered multiple times, in multiple different ways, in a

manner that permits you to maintain your
objection and you're refusing to answer it.
I will move on.

BY MS. SPENCE:

56. Q. Can I ask you to turn to tab 15 of the binder?

MR. McKENZIE: We have it.

BY MS. SPENCE:

57. Q. Okay. So this appears to be a loan agreement entered into between MCSAB10 Inc. and Crystal Wealth Management System Limited dated November 28th, 2016. Do you see that?

MR. McKENZIE: We have it.

BY MS. SPENCE:

58. Q. And do you agree that this reflects the loan agreement that was made between these two entities?

MR. McKENZIE: No.

59. MS. SPENCE: And is that simply on the basis of the same objection you made in the past? What is your objection as to the validity of this loan agreement?

MR. McKENZIE: We answered the question. We don't agree with you. Mr Clydesdale...MCSAB10, I should say, doesn't agree with you.

60. MS. SPENCE: Do you agree that that's Mr. Clydesdale's signature on page 16 of this document?

MR. McKENZIE: I think his answer has always been, "It looks like mine". This is not an original copy.

BY MS. SPENCE:

61. Q. Okay. And so, if you turn to page 2 of the document you will see the purpose of the loan is identified as being:

"...used by the client to finance up to 90 percent of the installed cost of an MSC COGEN MARK 6 CoEnergyPoD to be deployed at the premises of Imaginea Energy Corp. located in Jenner, Alberta..."

Do you see that?

A. Yes.

62. Q. And that was the installation you were talking about earlier when you described the purpose of this company?

A. I believe so.

63. Q. And you don't know the current status of that installation?

MR. McKENZIE: It stopped.

64. MS. SPENCER: It stopped. Do you know at what stage in its process it stopped?

MR. McKENZIE: It was in the developmental stage.

65. MS. SPENCER: Developmental. So there is nothing physical that has yet been built, is that correct?

MR. McKENZIE: We will have to let you know. It's complicated. U/T

THE DEPONENT: I don't recall, sorry.

66. MS. SPENCE: Okay. So you will undertake to let me know what the status is of that unit?

MR. McKENZIE: Well, as I said, it stopped. So you want to know where it stopped?

67. MS. SPENCE: Yes.

MR. McKENZIE: Sure, yes. U/T

68. MS. SPENCE: Thank you.

BY MS. SPENCE:

69. Q. Now, did you provide Crystal Wealth with any information about this project in advance of this loan being entered into?
A. Specifically, I don't recall whether we did, or whether we didn't.
70. Q. Okay.
A. But clearly we must have had some discussions.
71. Q. All right. Can I ask you to undertake to review your records and see what you might have produced to Crystal Wealth in advance of this loan relating to this particular project?
MR. McKENZIE: With respect to this project, yes. U/T
72. MS. SPENCE: Thanks.

BY MS. SPENCE:
73. Q. Okay. First I am going to ask you to turn to Schedule C of this document. So this appears to reflect the dates and amounts of payments that were intended to be made under this loan. Does that look familiar to you?
MR. McKENZIE: Well, it's certainly the case, without parsing this document, that when the loan was fully closed and the

commissioning date, or it says, "Live generating electricity", in other words, when the thing starts, there would be monthly payments. Now, we don't have the ability right now to tell you that the calculation is accurate, but the idea was to retire the loan, obviously, you know, so there is certainly a repayment schedule that would have been put in place had the closing finished and had all the funds been advanced and had everything been finished. But that was in the future, when it stopped, when it stalled.

BY MS. SPENCE:

74. Q. So as far as you are aware, no repayments by MCSAB10 Inc. were made to Crystal Wealth, correct?

MR. McKENZIE: That is in the accounting we have asked you for. But we will say it didn't start generating electricity, so there was no revenue coming from Imaginea. So it is likely there were no payments made.

BY MS. SPENCE:

75. Q. And does MCSAB10 Inc. currently have any sources of revenue?

MR. McKENZIE: Well again, the answer is no. We will look. I mean, you know, whether they were giving free coffee or something. But I'm saying this thing stalled. U/T

76. MS. SPENCE: Right.

MR. McKENZIE: It's a standalone project like Leaside was. You either get the revenue from the generating contract or you don't. So I am saying likely not, but I will undertake to see if somebody got a free cup of coffee or something. But as I said, the deal didn't close so, you know, I am still after Miller Thomson and you guys to help me out there. I sent you the documents I have, but they have ones that we haven't seen.

77. MS. SPENCE: Okay. I am going to ask for a similar undertaking to the one I have been asking for with relation to all of these companies which is, to produce to us the bank statements showing the receipt of

any funds from Crystal Wealth by this company and the disbursement of those amounts, as well.

MR. McKENZIE: Yes. The same undertaking which was we will try to connect the dots. I mean money was... U/T

78. MS. SPENCE: Yes.

MR. McKENZIE: ...received, we agree, and money is owing, we agreed. We just are like you, I gather, having trouble figuring which pot it is in.

79. MS. SPENCE: Right.

MR. McKENZIE: But there is money owing. There definitely is money owing.

80. MS. SPENCE: I mean, to be clear though, the use of those funds, so by which I mean the disbursement of funds that MCSAB10 Inc. received, is solely within MCSAB10's knowledge. That's not something that Crystal Wealth would know because those are disbursements made from that company's bank account.

MR. McKENZIE: I don't agree with that. I think, if you remember, the statement yesterday, and I don't want to get into this, which is Mr. Smith had a way of calling and saying, "Well, don't do that, do this", and obviously, what Mr. Clydesdale said...you know, if he said, "Look, move the money over here for today". We heard one payment, and this is just gossip, that Mr. Smith was supposed to giving some money to one of these companies and instead said, "I will just pay Pond directly. You owe me". You know, whether it was documented or not, I mean, I am just saying my client is not that tidy about keeping all the details. That is why it's complicated because Mr. Smith and Crystal Wealth, as far as we can see, would get money from...I remember a Sharia fund, for instance. This is a conversation I had with Miller Thomson. They said, "Well, we have to change the game because the Sharia fund wants different security". "Okay". "Well, we have got to move the money over". "Yes, okay". I am just saying there was that kind of back and forth between Mr. Smith and Mr. Clydesdale that happened. So we have got to connect the dots. We have got to get the books and see where the money actually went. You have records which if you gave them to us we could get them reconciled.

81. MS. SPENCE: Right. So on that point, I do want to make clear that what I am asking for is copies of the bank statements for any accounts held by this company. And I understand you keep saying that we are going to connect the dots, et cetera, and I appreciate that, but I want to be clear that that doesn't derogate from the undertaking which I am asking for, which is that you produce all of the bank statements for any accounts...

MR. McKENZIE: You don't need to say that.

82. MS. SPENCE: ...held by this company.

MR. McKENZIE: When we give undertakings, we will satisfy them.

83. MS. SPENCE: Thank you.

MR. McKENZIE: So thank you, but you're right, I agree on the bank accounts. They are one thing that is going to be easy to find. We will go to the bank and get the bank statements. U/T

84. MS. SPENCE: Yes.

MR. McKENZIE: Presumably, they kept track. But that's the place to start. And if you have records, throw them on the table and with the genius of Mr. Bando, the accountant, we might be able to actually reconcile them faster than doing it this way. We have offered, and we are offering to cooperate in all those areas. All we want to know is how much money is owing.

85. MS. SPENCE: And all we want to know is where the money went and how it is going to be paid back, so...

MR. McKENZIE: Well, how will it be paid back...but I can tell you it was spent on projects. I presume that is what we'll find out, but sure.

86. MS. SPENCE: Okay.

BY MS. SPENCE:

87. Q. So I am going to ask you to turn to tab 16 of the brief. This is an undertaking executed by Mr. Clydesdale dated December 9th, 2016. Do you see that?

MR. McKENZIE: It's a letter dated December 9th. It says, "MCSAB10 Alberta" and at the bottom it has something that...is that your signature, Mr. Clydesdale?

88. MS. SPENCE: Well, what it...

MR. McKENZIE: He's shaking his head no.

THE DEPONENT: It's my name.

MR. McKENZIE: Okay. I'm just saying it looks...this is me talking. It looks different from the one we talked about earlier that said it looks like his signature which is squiggly.

89. MS. SPENCE: Yes.

MR. McKENZIE: There's another name.

90. MS. SPENCE: I want to clarify what I was saying. I might have misspoken there. It's a letter dated December 9th, 2016 which appears to be from Craig Clydesdale...

MR. McKENZIE: Right.

91. MS. SPENCE: ...president and CEO of MCSAB10 Alberta, addressed to Crystal Wealth Management System Limited.

MR. McKENZIE: Okay. That's what it

appears to be.

92. MS. SPENCE: Yes.

MR. McKENZIE: And, you know, we did mark this whole book for identification. Anyway, ask your questions, but I am saying we see it.

BY MS. SPENCE:

93. Q. Okay. Do you recall this document, Mr. Clydesdale?

A. No, I don't recall.

94. Q. Okay.

MR. McKENZIE: It looks like it came out...it's got a cerlox binder on the side, so I presume there is a whole book of these documents and some stuff on the bottom. So I am presuming there may be more to it, but anyway, fire away.

BY MS. SPENCE:

95. Q. So it says in the first line of this letter:

"...We refer to the commitment letter dated November 28th, 2016 entered into between the undersigned and Crystal Wealth

Management System Limited..."

So that, I am going to put to you, is the document that we were just looking at at tab 15. Do you agree?

MR. McKENZIE: Well, because we are not agree...I mean, that's what...the date is the same, yes. It looks like the dates are the same.

BY MS. SPENCE:

96. Q. And then if you read on in that paragraph it says that:

"...We hereby undertake and agree to deliver the following outstanding documents to Crystal Wealth within 30 days of the date hereof, and in any event, prior to any further advance of funds..."

And then it lists four items. Are you aware of whether any of these undertakings were, in fact, fulfilled?

MR. McKENZIE: Well, that would come to the lawyer, namely, my firm, and I sent you the file. This deal did not close in its entirety. That's all I can tell you.

97. MS. SPENCE: The deal didn't close in

its entirety, but funds were advanced, correct?

MR. McKENZIE: I am led to believe. I mean, it didn't go through my trust account, but I am led to believe, and we have had this conversation, that some money was advanced and the rest was not. That's all I can say. I think it's around $2 million that was advanced. But again, I am not the accountant...

98. MS. SPENCE: Right.

MR. McKENZIE: ...and I'm going now from gossip. So we will have to identify the number, but it was not, I'm sure, not fully advanced because I was after Miller Thomson. I looked this up. We sent the shares which were some kind of an escrow, I gather.

BY MS. SPENCE:

99. Q. So based on this letter, it appears that the deal closed in part without certain of these documents having been provided. Would you agree with that?

MR. McKENZIE: I think that's fair. I

mean, "in part" is the emphasis.

BY MS. SPENCE:

100. Q. And do you know why that would have happened? Was there some urgency as to receiving these funds from Crystal Wealth?

MR. McKENZIE: You mean at Crystal Wealth's end, or my client's end?

101. MS. SPENCE: I would have expected, based on the scenario that appears to have been in existence, that there would have been urgency on MCSAB10 Inc.'s part to receive funds without yet having completed all of the documents required to close.

MR. McKENZIE: It's the same as the other deal. Mr. Smith and Crystal Wealth want to get the money out the door when they have it. So I don't agree there was any urgency and, you know, these projects take as long to build as they do, and if the money is not available, you slow down.

102. MS. SPENCE: Right.

MR. McKENZIE: So that's a business judgment really, and I'm saying, maybe the urgency was at Crystal Wealth's end to get

the money out the door, because that is
what funds do.

BY MS. SPENCE:

103. Q. Do you have any recollection of the particular circumstances of this loan?

A. I don't recall any urgency or anything.

104. Q. Do you recall receiving the funds?

A. I don't recall.

105. Q. Do you know if any amounts from this loan were paid to Mr. Smith?

MR. McKENZIE: Full stop. I mean, that's an accounting. We have already said we will give you the bank records.

106. MS. SPENCE: Okay.

MR. McKENZIE: Again, that is murky...

107. MS. SPENCE: It's possible.

MR. McKENZIE: ...unanswerable at this moment without looking into it. And as I said, we will try to connect the dots. And I think my client read something that said, "He would tell me to do things and I would do them. He was the banker". So we will have to reconcile on both sides. I mean,

you have all these companies under your
control as we talked about yesterday and
Mr. Smith, so it is bank books too and we
can see.

BY MS. SPENCE:
108. Q. Okay. So the funds from this loan,
to your knowledge, were used for the development of
the pod for the Alberta Imaginea project?
MR. McKENZIE: To his knowledge, I think
he already said we can't...we need to...we
need to get you the books.
109. MS. SPENCE: Okay. So you will get us
the books.
MR. McKENZIE: Well, we talked about
that bank, whatever statements and that
already. U/T

BY MS. SPENCE:
110. Q. And so, I did not receive from you
any financial statements in relation to this
particular company. Are there any financial
statements that exist?
MR. McKENZIE: Well, I made inquiries
and sent you what I received, so there you

go. And I'm going...as I said yesterday, we have been sending stuff to the OSC. Ask them. Maybe it will cross paths with your or something, but I am saying...

BY MS. SPENCE:

111. Q. Can I ask you to undertake to review your records to determine if there are, in fact, any financial statements for MCSAB10 Inc. and to provide them to us?

MR. McKENZIE: Well, it's already been done. I mean I asked that they be reviewed and what I got, I sent to you...

112. MS. SPENCE: I just want to make sure there wasn't some sort of, you know, overlooking one document accidentally. Because you did provide us with the July 31st, 2016 year-end financial statements for the other companies, which we appreciate. And so, I just want to make sure that this one wasn't overlooked accidentally.

MR. McKENZIE: Well, the accountant would have...I mean, the accountant would have sent them to me. I asked them for them and they didn't arrive. So, okay, I will ask him again. U/T

113. MS. SPENCE: Thank you.

MR. McKENZIE: But the answer is no.

114. MS. SPENCE: Okay.

MR. McKENZIE: I'm just saying that anything can get overlooked, but I don't think an accountant would overlook doing financial statements because he gets paid to do them. So yes, I will ask him.

115. MS. SPENCE: Okay.

BY MS. SPENCE:

116. Q. And so, you know, without the benefit of the financial statements, it is more difficult for me to ask questions about the various assets and liabilities of this particular company. Are you aware of what assets this company holds?

A. No, I don't recall that.

117. Q. And was it contemplated that this company would earn income from any source other than Imaginea?

MR. McKENZIE: As I said, no. I mean, unless there's some shock here thing. The company was set up...likely...it has one asset which is the cogen that is put there. The income is to service a debt.

118. MS. SPENCE: Okay. So...

MR. McKENZIE: So I am saying the answer is no. I will make inquiries, as I say, in case somebody out in the field agreed to, you know, wash their windows while they were at it or something. I mean, I can't tell from looking at this, but we will ask people. U/T

BY MS. SPENCE:

119. Q. Did MCSAB10 enter into an energy services agreement with Imaginea?

MR. McKENZIE: You have it, don't you?

120. MS. SPENCE: I think we have it. I just...

MR. McKENZIE: I mean yes, for sure. I mean...

121. MS. SPENCE: Yes.

MR. McKENZIE: ...this wouldn't have been financed.

122. MS. SPENCE: Right.

MR. McKENZIE: It was get the agreement, get the financing, get started. So...

123. MS. SPENCE: So similar to the St. Marys Leaside project, there was an energy services agreement with Imaginea...

MR. McKENZIE: Yes.

124. MS. SPENCE: ...and you were working towards developing the cogen facility to operate there?

MR. McKENZIE: Yes. And I said yesterday, there is a lot of interaction with the customer, because often their plant is not up-to-date. You know, as I said, there have been debates about where to put it. You know, that might take three engineers to do soil tests. I mean, it is just very complicated. And then, this one just stopped somewhere in the middle of that which, you know...so the answer is I don't know what other information we can get. We have given undertakings to help.

125. MS. SPENCE: Okay. But there was an energy services agreement?

MR. McKENZIE: Absolutely. I am completely shocked here that...I mean, it's in Crystal Wealth's file for crying out loud.

126. MS. SPENCE: Right. Well, I just want to be clear that...that was the question. So everything else that you said was not really required to answer my question.

MR. McKENZIE: But I am trying to explain. I mean, I am sitting here while you're asking the question. Just, you know, nothing against you, Counsel, going...Crystal Wealth is asking us whether there was an energy service agreement and I'm saying, "Knock me off my chair". Like, "What?" Of course there was. I mean, I closed the deal with Miller Thomson. They scoured. I presume they did. And I'm going, "You know". So the question just surprised me a little bit.

127. MS. SPENCE: Okay.

BY MS. SPENCE:

128. Q. And so, did Imaginea pay a deposit to MCSAB10 under that agreement?

A. I don't recall.

129. MS. SPENCE: Mr. McKenzie, do you know?

MR. McKENZIE: I don't know. That's not...I mean, that would...well, don't know.

BY MS. SPENCE:

130. Q. Do you know who Core 4 Oil Corp is?

MR. McKENZIE: On information and belief, I will tell you because it's Colin Davies has Core 4 and there was an announcement in the paper about Suzanne. You probably know this. I read it in the paper...

131. MS. SPENCE: Right.

MR. McKENZIE: ...that there was a reorganization and Suzanne was...now, maybe, we understand that she was not well. But all of a sudden it was this gentleman Colin. You know, you know who he is and I e-mailed him and said, "We should talk to see if we can get this going. We would love to get it going".

132. MS. SPENCE: Okay.

MR. McKENZIE: Says my client, right? I mean...

133. MS. SPENCE: Yes. Well, that was going to be my question.

BY MS. SPENCE:

134. Q. Has there been any communication as between MCSAB10 and Core 4?

MR. McKENZIE: Okay. I e-mailed Mr...I think it's Davies, and don't hold me to that because I can't remember names and said, "We should talk. I see you're the new guy. Do you know if there's been any communication?

THE DEPONENT: No. I instructed Bill to have the conversation because of everything...

MR. McKENZIE: Well, it was in receivership by this time, so this lands on the lawyer at that point.

135. MS. SPENCE: Yes. So have they been receptive?

MR. McKENZIE: I haven't heard back from them.

136. MS. SPENCE: Okay.

MR. McKENZIE: I'm saying, "Do you want to have an off the record without prejudice meeting with this gentleman?

137. MS. SPENCE: So I understand that the status of that particular cogen unit is

that it is in the development phase, but no installation has yet occurred?

MR. McKENZIE: We will get back to you on that. I mean, those are complicated technical...if they started digging a hole, is that...

138. MS. SPENCE: Right. So...

MR. McKENZIE: Just so you know where we are going to go with this, the major components are ordering the big stuff because there is a lead time to it, right? I mean, if you order a generator from Europe today, you might not get it for nine months because they just build them in a queue, right? Once you are out of the queue...so I was going to make that inquiry for you to say, "Did we order it? Did we get it?" U/T

139. MS. SPENCE: Okay.

MR. McKENZIE: Right? In other words, when you said, "What stage is it at"...

140. MS. SPENCE: Okay. So you are going to make those inquiries and let us know?

MR. McKENZIE: Because we are trying to cooperate with the Receiver and get this back on track, right?

141. MS. SPENCE: Yes.

MR. McKENZIE: So I'm saying, yes, but...okay.

142. MS. SPENCE: Okay.

MR. McKENZIE: Colin Davies may be the key to this operation, if you could put us all in touch with each other.

143. MS. SPENCE: So what I am trying to get at is whether if Core 4 Oil Corp. is not responsive to getting the energy services agreement going with MCSAB10, if you think that a different end user could benefit from the work that has been done so far on that particular cogen unit?

MR. McKENZIE: Let's go off the record and have this chat about who is happy and who is unhappy. I mean, you know...

144. MS. SPENCE: I mean, that's a question about the nature of the asset.

MR. McKENZIE: Well, there's a contract. But I am just saying...I am not disagreeing with you. I mean, we are all here to salvage the best we can. We are not going to do it at an examination but, you know, we have made great progress with Leaside as best we can. And I'm saying, the rest of them are the same. If we don't all work together...

145. MS. SPENCE: Right. What you told me about the Leaside cogen facility, which is, in fact, operating, is that if you try to take it out you would effectively have to sell it for scrap. It would have no value except for in its installed state at the St. Marys plant.

And so, I am asking in relation to the Imaginea installation, which has not yet been installed, is that a different circumstance and is there more value in resale...

MR. McKENZIE: Yes.

146. MS. SPENCE: ...of the work that has been done so far on that particular...

MR. McKENZIE: That's the right question.

147. MS. SPENCE: And what is the answer?

MR. McKENZIE: Well, the answer is we are going to tell you where it is because I am going to go and make inquiries. It's complicated. And then say, you know, we are on first base. Here's how we get around to home, to use a baseball analogy, or we struck out. I don't know.

What is Colin Davies saying? I mean, they took over this project. They're the money, I guess, right, I mean because he is from a fund or something?

148. MS. SPENCE: Right. Well, you told me that it's complicated how it all works, so I am not entirely sure...

MR. McKENZIE: Well, it's not complicated for me.

149. MS. SPENCE: ...what Colin Davies' role is.

MR. McKENZIE: I would say, do you want this project finished or not? Yes? We need the rest of the money. It's probably more expensive now, because prices go up. Everybody wanted it finished, let's get on with it.

150. MS. SPENCE: Okay.

MR. McKENZIE: If not...well, you're now down to what can you salvage out of it, which would be unfortunate.

151. MS. SPENCE: Right.

MR. McKENZIE: So, I mean, we are having these conversations with all these projects. Some of them are in different stages.

152. MS. SPENCE: Okay. So you are going to...

MR. McKENZIE: The first one was really good. We met, we worked something out. And I hope by the end of today we will have everybody on the same page.

153. MS. SPENCE: So you will let me know if you think that there is something salvageable here if Core 4 doesn't want to move forward?

MR. McKENZIE: Well, are you going to do it the other way? Colin Davies didn't phone back. Have you subpoenaed him or something, because maybe he doesn't want to talk to me. I mean, I am just saying...I am just trying to help.

154. MS. SPENCE: I mean, presumably...

MR. McKENZIE: You have control over him because you know where he is and he is the new guy, and I think he said in an e-mail to all of us, "Let me think about it and I will get back to you". Well, he never got back to me.

155. MS. SPENCE: Right.

MR. McKENZIE: Maybe he got back to you. Maybe you should...

156. MS. SPENCE: Well, I will repeat that in this particular examination we are seeking information from you. So the information I am asking for is, will you please advise me what you think is salvageable out of this project if Core 4 does not want to move forward...

MR. McKENZIE: Well, that's a good question. I am not going to give that undertaking, but it is certainly something we need to know. We will talk about it off the record. /R

157. MS. SPENCE: Okay. I will take that as a refusal for now.

MR. McKENZIE: Take it as you wish. We are all cooperating to try to get the answers to these. And I repeat to you, this is not a pleasant experience for my client who got the rug got pulled out from under him in the middle of a project. It doesn't sit well with his business.

158. MS. SPENCE: Are you aware of how much funding is required to complete the cogen unit at the Imaginea site?

MR. McKENZIE: Well, as I said, the price has gone up. That's speculative.

159. MS. SPENCE: Do you have a ballpark in mind?

MR. McKENZIE: It has not been done.

160. MS. SPENCE: And you haven't done that analysis?

MR. McKENZIE: No. There is no need to until somebody comes to the party. As I reminded you last summer, you know, I said, where are the shares?

161. MS. SPENCE: Right.

MR. McKENZIE: And nobody has even told me that. I'm saying, let's get on the same page and see what we can do.

162. MS. SPENCE: Okay.

MR. McKENZIE: We have to cost it all over again. We might have to find another way to do it or...

163. MS. SPENCE: I mean, presumably if you

are going to go out to the market to seek an alternate financier, you will need to know how much money you need.

MR. McKENZIE: Yes, but we will also need to tell people that the Receiver and Crystal Wealth is not our fault, and then we can deal with that. I mean, the problem is it is out there and people know about this project and go, "Oh, that's one of the..."...anyway, I don't know. We are having this conversation on the record. But you understand what I am saying. Like, it's not that simple.

164. MS. SPENCE: Okay.

MR. McKENZIE: "Hi, we had the loan called. There is a mortgage on the property. It's not really finished. Are you willing?" That's a different kind of lender. And they're not so happy. And their rates are through the roof, you know. Maybe we should put this...I mean, I will go off the record. There's also insolvency possibilities, but I don't really want to talk about that right now.

165. MS. SPENCE: Okay. So you are aware

that the Receiver on behalf of Crystal Wealth made demand on MCSAB10 in the amount of approximately $2.2 million, correct?
MR. McKENZIE: Well, we got what we got. I mean, again, I accepted service on the phalanx of the usual...I haven't read them all to see if you missed a page, but good for you.
166. MS. SPENCE: Okay. But you are in general agreement that there is just over $2 million owing on this particular loan?
MR. McKENZIE: Okay. For the sake of the discussion today we will call it a ballpark number...
167. MS. SPENCE: Yes.
MR. McKENZIE: ...but we have to gel the number because the numbers you have got in your report to the...the Receiver's report are not accepted. But there is a number.
168. MS. SPENCE: Okay. But it's around $2 million?
MR. McKENZIE: I am going to use that for the sake of discussion today. If you want to say a ballpark $2 million...and we are short probably another million, okay,

because there's probably a $3 million contract today with all the complications that would be involved in salvaging this, as we cooperate.

169. MS. SPENCE: And how do you propose to repay that amount?

MR. McKENZIE: Well, if somebody could get out of the way and let us get on with the business and get it working, then it's worth something. Otherwise...

170. MS. SPENCE: Right.

MR. McKENZIE: ...like you said, it's...

171. MS. SPENCE: Well, you just told me though...

MR. McKENZIE: Let me finish. Otherwise it's a problem...

172. MS. SPENCE: M'hmm.

MR. McKENZIE: ...right, when you use this analogy. You build half the house, put a mortgage on it for the full amount of the loan, advance half and leave it for the winter while the elements destroy it, which is the metaphor I am using, you have got to back and see what you have got, and how much it is going to be to fix it. And I am saying that has not been done because we need to talk to the Receiver about whether that's viable with the Receiver.

173. MS. SPENCE: Okay.

MR. McKENZIE: So I am sure we can have that conversation off the record.

174. MS. SPENCE: So from my perspective, from what I have heard today, it seems to me that three things are necessary in order for you to repay the loan.

You need to make things right with your end user, Core 4, to ensure that they actually want the services. You need to figure out how much it is going to cost for you to complete the cogen unit to be able to provide those services. And then you need to get funding to get that work done and to pay out the original loan from Crystal Wealth. Is that...

MR. McKENZIE: And we need the full cooperation of the Receiver right across the board...

175. MS. SPENCE: Okay.

MR. McKENZIE: ...even to probably open that door, because right now they look from the outside like a block, right?

176. MS. SPENCE: Right.

MR. McKENZIE: I mean, people outside can see the newspapers and go..

177. MS. SPENCE: Okay.

MR. McKENZIE: So four things, and I think you summarized it well.

178. MS. SPENCE: And so, it sounds like though the first two you haven't done yet, correct?

MR. McKENZIE: Well we are talking...

179. MS. SPENCE: I appreciate...

MR. McKENZIE: ...off the record or on the record.

180. MS. SPENCE: We are on the record and you said you have reached out to Core 4 and you haven't heard back yet. But then you also said you don't know how much it's going to cost to finish the project.

MR. McKENZIE: Well, that's because prices change.

181. MS. SPENCE: Right.

MR. McKENZIE: I mean, how much will gas be next week?

182. MS. SPENCE: Okay. So...

MR. McKENZIE: So I am saying, that can be done within a ballpark. I gave you a number, right?

183. MS. SPENCE: No, you didn't.

MR. McKENZIE: A million.

184. MS. SPENCE: A million dollars?

MR. McKENZIE: Okay. We started off as being this much. It needs another million more than they thought because everything goes up.

185. MS. SPENCE: Okay.

MR. McKENZIE: And when you go back asking the same questions a second time and you didn't pay the guy the first time around, maybe he sold the machine already. I mean, as I said, these generators are like cars. They are in a queue in Germany. You didn't pay, no problem, sold it somebody else and now you're back in the back of the queue, so you know, it's complicated.

186. MS. SPENCE: Okay. So what steps will be required for you to determine how much more funding you need to finish this project?

MR. McKENZIE: It's a million dollars.

187. MS. SPENCE: It's a million dollars.

MR. McKENZIE: And I'm saying ballpark. You know if we were able to get the Receiver monkey off our back. That's a bad choice of words. The Receiver to cooperate and go to Colin Davies, or what did you call it, Core 4, and they wanted to do it, then somebody would sit down and requote it, I guess, right?

BY MS. SPENCE:

188. Q. Have you reached out to any alternate lenders to seek financing to complete this project?

MR. McKENZIE: About this? Not possible. I mean, I am just saying, unless you have. If anybody has talked to me I have said it's the Receiver is strangling. Bad choice of words, but we are stalled because I asked for the Receiver for the shares nine months ago and I haven't gotten them, so I don't know what to you tell you, folks. That's when people call me. So I am saying, maybe we can remedy that situation and reach out. But right now there is no potential lender on the horizon for this one until we straighten all this out. That's my information.

189. MS. SPENCE: Until you straighten out what?

MR. McKENZIE: The four things you had talked about.

190. MS. SPENCE: Right. Okay. So it sounds to me that a lot of that was on your end and you haven't done that. So I am just wondering when you intend to move forward?

MR. McKENZIE: Today. Okay. Write me a thing that says, "The Receiver gives you carte blanche to go and renegotiate this, to talk to Colin Davies. The Receiver will stay out of it and live with the deal we make". Write that today, that would get rid of number four. Then it would be worth doing the other three. We want to cooperate with the Receiver.

191. MS. SPENCE: Okay. And we want to cooperate with you too. To date I haven't received any request of the nature that you just described.

MR. McKENZIE: Where are the shares, Miranda? I asked you that last August or July. We don't have the shares. We can't even hold a darn meeting. This is an Alberta corporation. I mean, you know, how do you close a deal when you can't even have a shareholders...I am just saying, it's complicated. So I am saying, I think we can...I don't know why we are doing this on the record because it doesn't sit well, but I am saying, off the record, let's take a look at it. We cooperated with the first deal very well off the record.

BY MS. SPENCE:

192. Q. Are you aware of any potential lenders in Alberta?

MR. McKENZIE: Stop. Yes, I am.

193. MS. SPENCE: Okay. So you...

MR. McKENZIE: There's lots of lenders in Alberta. There's lenders all over the world.

194. MS. SPENCE: Okay. So your view is it would be possible to seek financing to take out the Crystal Wealth loan and to complete

the project?

MR. McKENZIE: Well, that's the hope we are talking about...

195. MS. SPENCE: Okay.

MR. McKENZIE: ...if we can cooperate. Do you want to take a two-minute break while you do that? I hate to see you trying to do two things at once.

196. MS. SPENCE: Yes. We can take five minutes.

MR. McKENZIE: Okay.

--- upon recessing at 11:00 a.m.

--- A BRIEF RECESS

--- upon resuming at 11:10 a.m.

CRAIG CLYDESDALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

197. MS. SPENCE: Before I move on, I did want to just pick up on something that Mr. McKenzie you were saying which is that you were making a suggestion that the Receiver has some sort of obligation towards your client's companies that it is not fulfilling. And I do want to put on the

record that that is not true. The situation is that the Receiver is administering Crystal Wealth's funds for the benefit of the investors. The loans made to your client's companies are all in default. We have issued Notices of Default. We have not received any payments since the date of the Receivership order. We have been working with you and asking you for information and documentation to complete the records and to understand what is going on, to understand what assets might be available to repay those loans. And that's where we are at. There is nothing that we ought to be doing that we haven't been doing and I just wanted to respond to your suggestion that that was not the case.

MR. McKENZIE: It was not a suggestion. And vice versa is true from this side of the table.

198. MS. SPENCE: That...

MR. McKENZIE: There's no use debating this. I am just saying, we don't agree, but we have done great things off the record. Let's leave it there. We don't need to quibble. We don't agree.

199. MS. SPENCE: I just want to make clear that the Receiver has no obligation to advance funds to your client's companies, which seems to be what you're asking for.

MR. McKENZIE: No.

200. MS. SPENCE: And that is just not an option, it's not possible. We are not going to do that. And we have been working with you. We have been asking for your cooperation. We are examining you now. We have received some answers. We have received a lot of question marks arising out of this examination. We are going to continue to administer the loans and we are going to continue to seek to have the loans repaid. That's where we are at.

MR. McKENZIE: So that's the argument you are making. I have, on behalf of my client, other arguments, but we would wasting our time...

201. MS. SPENCE: Mr. McKenzie, please. What other arguments? The loans are in default. The amounts are owing.

MR. McKENZIE: Okay. What is your next question?

BY MS. SPENCE:

202. Q. Okay. I am going to move on. I am going to hand you a document. You can take a minute to review it.

MR. McKENZIE: Go ahead, ask the question. This is the thing you were asking us to produce to you yesterday, and now it turns out you have it...

203. MS. SPENCE: Well...

MR. McKENZIE: ...and did not produce it. Okay. Go ahead.

204. MS. SPENCE: What I asked you for...I remind you that we have no production obligations to you because we are not in litigation opposite you. As I have said to you repeatedly, we have not sued your client yet.

MR. McKENZIE: Anyway, what's your question?

BY MS. SPENCE:

205. Q. I asked you yesterday for a current

org chart for the OOM companies. You advised that you did not have one. So what I have done here is I have found an org chart that says, "Org Chart, MCS" which I understand is the trade name that the OOM companies used to use. It's undated, so I am not aware of whether it's current. And I am putting it to you to let me know, firstly, whether this is a document that Mr. Clydesdale prepared or if someone prepared it on his behalf?

MR. McKENZIE: Okay. Number one, did you prepare this, Mr. Clydesdale?

THE DEPONENT: I don't recall.

MR. McKENZIE: Okay. We will mark it as further identification...

206. MS. SPENCE: Sure.

MR. McKENZIE: ...because that's as far as it can go.

207. MS. SPENCE: That's fine. You can hold onto it because I am going to ask you some more questions.

MR. McKENZIE: Okay. So that will be Exhibit B.

208. MS. SPENCE: Thanks.

--- EXHIBIT B: One-page document Org Chart - MCS, undated

BY MS. SPENCE:

209. Q. So I just want to go through a few of these names here.

MR. McKENZIE: You are just going to get a refusal on everyone, so if you just want to make it Exhibit B. I mean, there's no knowledge here on this side of the table about this document. Mr. Clydesdale doesn't identify it, so it's Exhibit B. So you will have to figure out who gave it to you and let us know.

210. MS. SPENCE: Okay.

MR. McKENZIE: So I'm just saying that it's just going to be a refusal because you are back into the same issues we have been talking about with people.

211. MS. SPENCE: Right. Well, I am entitled to ask my questions.

MR. McKENZIE: Yes.

212. MS. SPENCE: If you refuse them, then you refuse them.

MR. McKENZIE: Go ahead.

BY MS. SPENCE:

213. Q. Under the heading, "SVP Finance" I see two names, Pam Devine and Ben Cole. Is Ben Cole the accountant that we referred to yesterday?

MR. McKENZIE: Asked and answered.

BY MS. SPENCE:

214. Q. So in our discussion about Ben Cole's services yesterday, you indicated that he was the accountant for the OOM companies. This suggests that he had a more integral role to the companies. Did he have some sort of employment, or contract relationship with these companies?

MR. McKENZIE: He is an independent accountant in Orillia.

215. MS. SPENCE: Okay.

BY MS. SPENCE:

216. Q. And he is identified on here as the SVP Finance.

MR. McKENZIE: So you say. That's your version of what this says. Anyway, I have said...these are all being refused. /R

217. MS. SPENCE: Okay.

BY MS. SPENCE:
218. Q. How about Pam Devine?
MR. McKENZIE: Same answer. /R
219. MS. SPENCE: So you are not going to tell me if she was an employee of any of the OOM companies?
MR. McKENZIE: We talked about this yesterday. You have my position on identifying people. And if you have questions, we will do our best to get them answered. The questions, but not this going over people, or possible people. /R
220. MS. SPENCE: Under the second box it says, "Legal, Bill McKenzie". I presume that is you, Mr. McKenzie?
MR. McKENZIE: You are right on there. That's me.
221. MS. SPENCE: And so, are you somehow an employee of the company, or more integrated in the company than a typical employee...
MR. McKENZIE: As I said yesterday...
222. MS. SPENCE: ...or counsel/company relationship?
MR. McKENZIE: ...I am an independent lawyer that has been retained by this

company to do specified legal work, just the way you do. You probably have a retainer letter somewhere, and so do I when I am engaged by clients. But...

223. MS. SPENCE: But you are represented as being the legal arm of this company, correct?

MR. McKENZIE: We don't agree with this chart, so whatever you say, you haven't told me where you got it, who made it, et cetera. But I am an independent lawyer at my own law firm. I have multiple clients of which this company, whatever five companies we are talking about today, have retained me to deal with this situation that we are talking about, the receivership.

224. MS. SPENCE: Okay.

BY MS. SPENCE:

225. Q. Under Aon Insurance, SVP, Tom McBeath. Do you know if Tom McBeath is an employee of Aon Insurance?

MR. McKENZIE: It's always the same answer. You know, ask Aon, don't ask us.

Is he? /R

226. MS. SPENCE: I am wondering if he was Mr. Clydesdale's contact at Aon, or if he was somehow an employee, or subcontractor of a new company?

MR. McKENZIE: You have the document that was sent to you from Aon Insurance, I will study it and see if Mr. McBeath is on there. But, actually, probably better if you do it.

BY MS. SPENCE:

227. Q. So, Mr. Clydesdale, do you recall dealing with Mr. McBeath on behalf of Aon?

MR. McKENZIE: Don't answer. /R

228. MS. SPENCE: What's the basis for that refusal?

MR. McKENZIE: I don't have to give you one. I said, this...you are putting names on the table. If you want to know about Aon Insurance, give them a call.

229. MS. SPENCE: I want...

MR. McKENZIE: I am saying we have given you undertakings yesterday about Aon Insurance. And if you would like to add to the undertaking for me to ask Aon Insurance if Tom McBeath is the SVP under legal Bill McKenzie, I will ask him. But I know that not to be true. So now I am just saying this whole chart is a figment of something that...I can tell you the part I am involved in, legal, no, I am an independent lawyer. An arrow to Bill McKenzie from Aon Insurance, absolutely not. So if you want to call Aon Insurance and say who this guy is, be my guest. And we are going to just keep doing this. So why don't we just have a blanket...put your questions on the record and we will do it. These arrows have me puzzled. The whole thing has me puzzled, and we are taking up a lot of time for this.

230. MS. SPENCE: Okay.

BY MS. SPENCE:

231. Q. Under "CEO, Craig Clydesdale" I see SVP Operations, Morley Kocken". Who is Morley Kocken?

MR. McKENZIE: Stop. Don't answer. /R

BY MS. SPENCE:

232. Q. Is that individual an employee of one of the companies that you run, Mr. Clydesdale?

MR. McKENZIE: Same answer. Of the five companies? /R

233. MS. SPENCE: Of the five companies.

MR. McKENZIE: Same answer as we gave yesterday.

234. MS. SPENCE: That answer is you are not answering because you don't want to identify people who we might seek to ask questions of?

MR. McKENZIE: That's not what I said. I said, if you have a question, we will get you the answer if it's relevant.

235. MS. SPENCE: Okay. The question is, what is Morley Kocken's role with the OOM companies?

MR. McKENZIE: If he has a role with them.

236. MS. SPENCE: If he has a role with them, yes.

MR. McKENZIE: Okay. I will take that under advisement. U/A

237. MS. SPENCE: Okay. Thank you.

BY MS. SPENCE:

238. Q. And under that, "VP Process Engineering, Gary Smith".

MR. McKENZIE: Same answer. /R

239. MS. SPENCE: So as part of that answer, I am curious as to whether Gary Smith is retained directly by the OOM companies or if, for example, he is their contact at a separate engineering firm?

MR. McKENZIE: Same answer.

240. MS. SPENCE: Which is that you will let us know?

MR. McKENZIE: Under advisement. Every question with respect to this chart. U/A

241. MS. SPENCE: Okay.

BY MS. SPENCE:

242. Q. So Rick Golden, same question?

MR. McKENZIE: Same answer. Yes. U/A

BY MS. SPENCE:

243. Q. Peter Vercounteren. Same question.

MR. McKENZIE: Same answer. U/A

BY MS. SPENCE:

244. Q. And Scott Mander. Now, it appears to me from how Scott Mander's name appears on this chart, that he works for Ortech. Is that accurate?

MR. McKENZIE: Same answer. U/A

245. MS. SPENCE: Okay. So you will us know about all of those.

BY MS. SPENCE:

246. Q. I am going to ask you to turn back to document number 3 in the brief. So this is the letter from WeirFoulds that we were talking about yesterday. And in the letter from Toronto Hydro dated June 9th, 2016, which is one of the attachments, I just want to refer you to a paragraph in there.

MR. McKENZIE: So which one?

247. MS. SPENCE: The June 9th, 2016.

MR. McKENZIE: I got it.

BY MS. SPENCE:

248. Q. So in the second paragraph there's a line that reads:

"...On April 21st, 2016, St. Marys consultant, Peter Vercounteren, advised

that the generator is isolated and not
physically connected directly to any
distribution system..."

So according to this letter, Mr. Vercounteren is identified as St. Marys consultant. Are you aware of whether he was acting as St. Marys consultant in his capacity as an employee, or subcontracted for 244?

MR. McKENZIE: We have already said generically we disagree...my client disagrees with this letter, so you will have to ask St. Marys, I guess.

249. MS. SPENCE: But do you disagree that Mr. Vercounteren was working for 244?

MR. McKENZIE: Well, that's not what...wait a minute, which is it? Are you saying he worked for St. Marys or 244?

250. MS. SPENCE: I don't know the answer, that's why I'm asking you.

MR. McKENZIE: They don't...

251. MS. SPENCE: You don't know?

BY MS. SPENCE:

252. Q. Mr. Clydesdale, do you know?

MR. McKENZIE: He doesn't recall. I

mean this is 2016.

253. MS. SPENCE: I will have his answer, please.

MR. McKENZIE: Okay. Go ahead.

THE DEPONENT: I don't recall.

BY MS. SPENCE:

254. Q. Mr. Clydesdale, does Mr. McKenzie have any shares in any of the five companies that we are talking about today?

MR. McKENZIE: The answer is no. It's ridiculous. I mean I am just saying, how many times do I have to tell you? I am retained as a lawyer. My retainer is, obviously, privileged. Full stop.

BY MS. SPENCE:

255. Q. I am going to ask you to turn back to tab 1 in the brief. I would ask you to turn to page 19 of that document. Okay. So I think I have already asked you about Thomas McBeath. Who is Don Porter and what is his relationship to the OOM companies?

MR. McKENZIE: So that's two questions.

256. MS. SPENCE: Yes.

MR. McKENZIE: Do you know who Don Porter is? It looks like he is a vice-president of KSA Engineering, if this is true. And his e-mail address is ksaengineering. So my clue is you can probably find him at KSA Engineering. But do you have any specific knowledge of who he is, or what he is doing right now?

THE DEPONENT: I don't recall.

BY MS. SPENCE:

257. Q. You don't have any ongoing work with him that's occurring?

A. I don't recall.

258. Q. I would ask you to turn the page. So this is a list of contacts. Under "Legal" it says, "Legal advisor, Bill McKenzie". It identifies an e-mail address, bill@oomenergy.com. Does Mr. McKenzie have an e-mail address with the OOM companies?

A. I don't recall.

259. Q. And who is Lisa James? Is she also an independent counsel?

MR. McKENZIE: We are talking about an IP lawyer. I think she is the IP lawyer.

260. MS. SPENCE: She's the IP lawyer. Okay.

MR. McKENZIE: So...

261. MS. SPENCE: And I see that she has an OOM Energy e-mail address too. Is she an in-house lawyer for the OOM companies?

MR. McKENZIE: She's independent.

262. MS. SPENCE: Do you know what firm she is at?

MR. McKENZIE: A law firm.

263. MS. SPENCE: A law firm. You don't know which one?

BY MS. SPENCE:

264. Q. Mr. Clydesdale?

MR. McKENZIE: I think it's Lisa James Professional Corporation, but I could be wrong. It's one of those LLP or whatever.

265. MS. SPENCE: Okay.

BY MS. SPENCE:

266. Q. And then I see under "Financial, CFO Ben Cole". I see that Ben is also identified as having an Oomenergy.com e-mail address. So is he somehow an in-house person at the OOM companies?

MR. McKENZIE: Asked and answered.

BY MS. SPENCE:

267. Q. Okay. And similarly, Pam Devine, she is identified as the controller and she has an e-mail address pam@oomenergy.com.

MR. McKENZIE: Asked and answered. You can pretty well asked and answered for everybody on the page if you want to save yourself time.

268. MS. SPENCE: So you are not going to tell me if she's an in-house...

MR. McKENZIE: Well, let's start off with...

269. MS. SPENCE: ...accountant?

MR. McKENZIE: ...nobody has validated that this is even something that went to the public or it's been issued. So I am saying that it is all speculative. It has never been identified. And now you are saying, who are these people? I am saying, here we go again. Same undertaking. Same refusals as yesterday...

270. MS. SPENCE: Okay.

MR. McKENZIE: ...with respect to Bill McKenzie, you have got him here. And I am saying, while I am pleased to see that I am a legal advisor, but I have my own law firm and I have already told you all about that. Now that we are looking at that I think it would be trademark work, but I am going to double-check where that went. U/T

271. MS. SPENCE: Okay.

BY MS. SPENCE:

272. Q. I see also on this page that under the heading, "Regulatory" Peter Vercounteren is identified as having an e-mail address, peter@oomenergy.com. So will you confirm whether he is someone who is employed by the OOM companies?

MR. McKENZIE: Same answer. I mean, earlier you said he was employed by St. Mary's, so same answer. U/A

273. MS. SPENCE: He was identified as St. Marys consultant in the letter from Toronto Hydro.

MR. McKENZIE: Well, there you go.

274. MS. SPENCE: But that doesn't mean he was employed by St. Marys. This would suggest that he is employed by OOM Energy.

MR. McKENZIE: Same answer.

BY MS. SPENCE:

275. Q. So are you aware of that?

MR. McKENZIE: Same answer. U/A

276. MS. SPENCE: The answer being you are going to let us know?

MR. McKENZIE: No. Let's do this again for the nth time. Okay. These people, if you have a question that's regulatory, send it to me. I will get it answered if it's relevant.

277. MS. SPENCE: Because you have access...

MR. McKENZIE: Full stop.

278. MS. SPENCE: ...to these people because...

MR. McKENZIE: No.

279. MS. SPENCE: ...they were part of the OOM companies?

MR. McKENZIE: Because somebody is going to have to find out who has got the answer, rather than you taking a piece of paper that nobody has taken ownership of and say this must be true. Because I am looking on there and I'm seeing, bill@oomenergy.com, that's news to me.

280. MS. SPENCE: You don't use that e-mail

address?

MR. McKENZIE: My e-mail address is well-known to you because you e-mail me all the time. And I'm going, okay, well somebody must have had an imagination when they were writing this, or maybe they set up an e-mail address that I don't know about. That's why I say, the more I look at this, the more that I look it's a wish list. It's fictitious, and you know, you are writing it as if it is accurate. It might have been 26 drafts ago. Is there a date on it? No. So you are fishing, so let's go on.

281. MS. SPENCE: Okay.

MR. McKENZIE: Why does it matter who gives regulatory advice?

282. MS. SPENCE: All right. Thank you. That's enough.

BY MS. SPENCE:

283. Q. Can you turn back to page 17 of the document? This has a heading, "Related Projects". Mr. Clydesdale...

MR. McKENZIE: Okay. Full stop.

BY MS. SPENCE:

284. Q. ...are you familiar with these projects?

MR. McKENZIE: It's hearsay. It is not acceptable. This is not relevant. So whatever questions you are going to ask about Ciudad Pemx...that's C-I-U-D-A-D, P-E-M-X, I am stopping it right now. /R

285. MS. SPENCE: It won't be hearsay if Mr. Clydesdale answers the question about his direct evidence. I am trying to understand whether the OOM companies have successfully completed projects.

MR. McKENZIE: No. You're only talking about five companies here and you know they successfully completed Leaside. Full stop.

286. MS. SPENCE: Well, successful is...

MR. McKENZIE: We are not going to talk...

287. MS. SPENCE: ...debatable, because according to St. Marys, the cogeneration facility is not providing the services it was contracted to provide. So...

MR. McKENZIE: Well, according to our

side of it, everything was going fine until the Receiver told them there was a court order that they couldn't pay any more and that's when the payments stopped. Anyway, you know what, we are debating now.

288. MS. SPENCE: Well, that is irrelevant to St. Marys' position...

MR. McKENZIE: Okay. Well...

289. MS. SPENCE: ...which is that...

MR. McKENZIE: Okay.

290. MS. SPENCE: ...the services have never been provided as they were supposed to have been provided.

MR. McKENZIE: Okay. Anyway, we will deal with that in another place. But, anyway, this page, I am going to say...look, you know, we are just taking a lot of time, and I am not going to let him answer questions with respect to this document anymore. You know, we are looking at...

291. MS. SPENCE: I mean, I would have thought this would give you the opportunity to tell me all about how great the OOM companies are and how they have completed

many successful projects.
MR. McKENZIE: You know what, I argued a case successfully in the Supreme Court of Canada about 14 years ago. Let's talk about that because it's a lawsuit that had to do with a receivership...
292. MS. SPENCE: Well, despite...
MR. McKENZIE: ...and I am saying, that's how irrelevant this is. And I am saying, let's stop.
293. MS. SPENCE: Mr. McKenzie...
MR. McKENZIE: This document...
294. MS. SPENCE: ...despite how this examination is going, in fact, it's not your evidence that I am interested in, it's Mr. Clydesdale's evidence. You seem to be speaking for him continuously.
MR. McKENZIE: Okay.
295. MS. SPENCE: But I agree that something about a case that you argued is entirely irrelevant because you are not the deponent here today.
MR. McKENZIE: Okay. So I am looking at this page that says "Related Projects" on it and I am saying, refusal. It's outside

the boundary of what you are entitled to ask. So don't ask any questions, or send them to me in writing and I will refuse, because we are not going to spend an hour here talking about, you know, Pemx city...

296. MS. SPENCE: Right.

MR. McKENZIE: ...rebuild. I mean, goodness gracious.

297. MS. SPENCE: Well, the examination would go a lot more quickly if you would cease making your editorial comments and just answer the questions. But...

MR. McKENZIE: Okay.

298. MS. SPENCE: ...in any event...

MR. McKENZIE: You know what...

299. MS. SPENCE: ...I will move on.

MR. McKENZIE: ...you have a blanket refusal to answer anything on this page. So be my guest to send me the questions. /R

BY MS. SPENCE:

300. Q. Okay. So yesterday we were talking about the Magnitude CS Energy Inc. loans and we didn't finish going through all of those. So I am going to ask you turn to tab 12 of the brief. So

this appears to be a loan made by Crystal Wealth Management System Limited to Magnitude CS Energy Inc. dated July 6th, 2016. Do you see that?

MR. McKENZIE: We see the document.

BY MS. SPENCE:

301. Q. And it identifies the guarantor as being Mr. Craig Clydesdale. Do you see that, Mr. Clydesdale?

MR. McKENZIE: We see the document.

BY MS. SPENCE:

302. Q. Mr. Clydesdale, will you look at the document.

MR. McKENZIE: Look at the document. Just to go further, there are signatures on page 16. That looks like Mr. Clydesdale. If you can give us the original we can validate it. Otherwise, my client denies he has guaranteed or is responsible for anything personally.

BY MS. SPENCE:

303. Q. Mr. Clydesdale, what is the basis upon which you deny that you're a guarantor?

MR. McKENZIE: Legal advice and this deal didn't close the way you think it did.

BY MS. SPENCE:

304. Q. Will you acknowledge that funds were advanced to Magnitude CS Energy Inc., correct?

MR. McKENZIE: Until we get the accounting from your side and the accounting from our side, that's speculative.

BY MS. SPENCE:

305. Q. Did you get any money from Crystal Wealth on this loan?

MR. McKENZIE: Again...

306. MS. SPENCE: I will have his answer, please.

THE DEPONENT: I don't recall.

BY MS. SPENCE:

307. Q. Okay. So under "Purpose" the loan says:

"...The loan shall be used by the borrower for general operating expenses and working capital..."

Do you see that?

MR. McKENZIE: Where does it say that?

308. MS. SPENCE: On page 2.

MR. McKENZIE: Well, we are not going to deny it says what it says. What's the question?

309. MS. SPENCE: Right.

BY MS. SPENCE:

310. Q. So please look at it because it's helpful.

MR. McKENZIE: Well, I am not going to interpret the document. I'm saying, what's the question?

BY MS. SPENCE:

311. Q. The question is, to your knowledge, was this loan used for general operating expenses and working capital?

MR. McKENZIE: Well, that presumes there was a loan, and I am saying we are stuck back there.

312. MS. SPENCE: Okay.

MR. McKENZIE: So try it the other way which is...

313. MS. SPENCE: Mr. McKenzie, I am not entirely sure why you're taking this position opposite the loans. It's clear that there were loans entered into between Crystal Wealth and each of these five companies. That is why you are here today.

MR. McKENZIE: We have agreed on that.

314. MS. SPENCE: Right. So...

MR. McKENZIE: Okay. And...

315. MS. SPENCE: ...why are you now taking the position that there is no loan, and so how can we know what the loan is for?

MR. McKENZIE: Okay. Put the cheque on the table for this loan. You have access to the people who advanced money at Crystal Wealth. Could I see the cheque for $3 million, what day it went...

316. MS. SPENCE: This is...

MR. McKENZIE: Just let me finish. What day is was paid, and then we will work backwards and see if it has been repaid, which could be possible, or it has been shuffled, as I said, because Mr. Smith changed things.

317. MS. SPENCE: Okay.

MR. McKENZIE: And this deal, I know, did not close between the lawyers, at least not my law firm, but I'm saying...

318. MS. SPENCE: Mr. McKenzie...

MR. McKENZIE: I am just looking at something else.

319. MS. SPENCE: ...this is my examination. I am here to examine Mr. Clydesdale pursuant to a court order...

MR. McKENZIE: Yes.

320. MS. SPENCE: ...made in this receivership proceeding so that we can find out where funds went and how they will be repaid for the benefit of the investors.

MR. McKENZIE: Okay.

321. MS. SPENCE: Please stop asking me to produce documents to you. That is not what is happening here.

MR. McKENZIE: Okay. We have been through the connecting the dots on the money enough times now. So unless we do that, this is no help.

322. MS. SPENCE: Well, it is helpful to me to understand whether the funds advanced pursuant to this loan, which are identified

as being $3 million, were used by Mr. Clydesdale's company for general operating expenses and working capital.

MR. McKENZIE: Well, so you say, but look at the schedule, if it's accurate. "Advanced from Spectrum". Now you will have to tell me, who the heck is Spectrum? And then it says, "Payment from the Infrastructure to the Factoring Strategy". That sounds like one fund to the other. Then another one is "Payment from infrastructuring" and then "Payment directly". And this one is right up there which is "Advanced from Spectrum directly to Pond Technologies". It's charged to Magnitude? I am saying, we had better get an accounting. So I am saying...

323. MS. SPENCE: I see all that. Thank you for asking my questions for me.

MR. McKENZIE: Well, you said that the money has been advanced and I am saying, right in front of you it says I don't think so. Let's get the accounting.

324. MS. SPENCE: According to this document which your client signed...

MR. McKENZIE: No.

325. MS. SPENCE: ...those advances...

MR. McKENZIE: He didn't say...

326. MS. SPENCE: ...were to be made. So I can't explain why that is the case but Mr. Clydesdale, perhaps, can. So that's why I am here to ask him those questions.

MR. McKENZIE: Okay. And the answer continues to be, and I am keep repeating myself, let's get the accounting done, and if you help, it will go faster, but we will do the best we can. We have already given undertakings.

327. MS. SPENCE: Okay. Going back to my questions, if you turn to page 3 of the document...

MR. McKENZIE: Yes.

328. MS. SPENCE: ...it sets out the security for this loan.

MR. McKENZIE: Okay. I see page 3 and I see security.

329. MS. SPENCE: Yes. And you...

MR. McKENZIE: So...

330. MS. SPENCE: ...see that there are seven items listed under that panel. Were these

security documents executed by Mr. Clydesdale?

MR. McKENZIE: That's in your court. As I said yesterday, presumably the...this looks like a lawyer would have been involved. I presume the lawyer at Crystal Wealth's end has documents and I think...I would have to check, but you sent out notices under a general security agreement, so you must have it.

331. MS. SPENCE: That's not answering my question.

MR. McKENZIE: Yes. But at this end, as we have said in earlier things we don't have...

332. MS. SPENCE: Is your answer that you don't have...

MR. McKENZIE: ...a record of this.

333. MS. SPENCE: ...any of these documents?

MR. McKENZIE: Well, do you want me to read seven things?

334. MS. SPENCE: Yes.

MR. McKENZIE: I will give you an undertaking again, to dredge the files again... U/T

335. MS. SPENCE: All right.

MR. McKENZIE: ...and send you what we have. We have already done that once.

336. MS. SPENCE: Okay.

MR. McKENZIE: And the OSC and you have a ton of documents.

337. MS. SPENCE: I will take that undertaking.

MR. McKENZIE: There you go.

338. MS. SPENCE: Okay.

MR. McKENZIE: I think it has been asked and answered in the long set of questions you did, but I don't have it in front of me, so that may solve it.

339. MS. SPENCE: Okay.

BY MS. SPENCE:

340. Q. I will turn to Schedule A of the document.

MR. McKENZIE: So you are still in tab 12, Schedule A, Advances on Working Capital Loans?

341. MS. SPENCE: Correct.

MR. McKENZIE: Well, before you ask, we don't know without checking what happened, and some of them look like they didn't go to...

342. MS. SPENCE: Okay.

MR. McKENZIE: I mean, I...

343. MS. SPENCE: So, I think, perhaps the way I will do this, is that you have undertaken to provide me with bank statements reflecting the funds that Magnitude CS Energy Inc. received from Crystal Wealth. Once we have that information I will come back to the questions about this particular...

MR. McKENZIE: You could help by telling us who Spectrum is and who NBCN is.

344. MS. SPENCE: Okay. Again, this is my examination, not yours, sir.

MR. McKENZIE: Well, I understand that, but...okay. I am giving you a refusal because to answer a question that is unanswerable, without information, but again, we will do the best we can. These look to me like intercompany transfers, if they're accurate, and we wouldn't have them, would we? If it went from Infrastructure Strategy to Factoring

Strategy, that's an internal... /R

345. MS. SPENCE: Okay. Thanks...

MR. McKENZIE: ...document. No, just hear me out. Because it's an internal transfer...

346. MS. SPENCE: You have just said you don't know anything about this, so I...

MR. McKENZIE: No. I'm asking you to get it, or I will subpoena it, I guess. Maybe I will subpoena Crystal Wealth.

347. MS. SPENCE: Okay. Again, there's no proceeding in which you can subpoena anything, because there is no lawsuit. We are examining Mr. Clydesdale under the receivership pursuant to the order of Justice Myers.

MR. McKENZIE: You don't have to repeat that. I don't agree with you, but go ahead.

BY MS. SPENCE:

348. Q. I am going to ask you, Mr. Clydesdale, a few more questions about this Schedule A. I appreciate that you have said you don't know, but I have a few more documents that I am going to

put to you to see if this jogs your memory.

I'm handing you a demand promissory note dated May 20th, 2016.

MR. McKENZIE: Got it.

BY MS. SPENCE:

349. Q. Okay. It appears to be issued to Crystal Wealth Management System Limited and it's signed by 2445958 Ontario Inc., do you see that?

MR. McKENZIE: That's what it says on the page. We don't agree it's been signed by that company because this is a copy.

BY MS. SPENCE:

350. Q. Okay. It's a copy, but the signature that is the one that looks like your signature, correct?

A. It looks like my signature.

351. Q. Okay. And the principal of this promissory note is a maximum of $210,000, correct?

MR. McKENZIE: Sorry. You want me to read the thing? I will read it to you, "The principal of this note is a maximum of CDN $210,000". So you are correct.

BY MS. SPENCE:

352. Q. Okay. And then under item three of this note it says:

"...The proceeds of the loan shall be paid to Crystal Wealth Enlightened Factoring Strategy to pay part of the accrued interest for the factoring agreement signed between the debtor and the fund on July 11th, 2015..."

Do you see that?

MR. McKENZIE: That's what it says.

BY MS. SPENCE:

353. Q. Okay. And so, we yesterday were looking at the factoring agreement signed July 11, 2015, do you remember that?

MR. McKENZIE: I remember looking at a document and you did show it.

354. MS. SPENCE: Yes.

MR. McKENZIE: Isn't it in the book?

355. MS. SPENCE: It's at tab 11.

MR. McKENZIE: So you say these are the same document? I differ because the dates are different, but anyway, what is your question?

BY MS. SPENCE:

356. Q. And so, if you look back to Schedule A of the document at tab 12, it reflects an advance of $210,000 from Infrastructure Strategy to Factoring Strategy on May 26th, 2016, do you see that?

MR. McKENZIE: So if it's true, that means loans have partly repaid. Is that what you're after?

BY MS. SPENCE:

357. Q. Well, it appears that...so my broader question which I am going to ask on the basis of these documents, is that it appears that this OOM company, 2445958 Ontario Inc., subsequently renamed Magnitude CS, was borrowing funds from different Crystal Wealth funds to repay amounts owing to other Crystal Wealth funds. Is that generally how you understood the structure to work?

MR. McKENZIE: We are going to go by what he said yesterday which is his best recollection. He read you something. That's the best he could remember.

358. MS. SPENCE: That's all he knows?

MR. McKENZIE: The best he can remember.

359. MS. SPENCE: Okay. And so, he signed all of these documents...

MR. McKENZIE: No, we didn't say that. Again, don't put words in his mouth. We have said, when we do the accounting we will be able to find out the money and we will be able to agree with you then how much is owing.

360. MS. SPENCE: Okay.

MR. McKENZIE: But this is mystery stuff to everybody.

BY MS. SPENCE:

361. Q. So you just don't know?

MR. McKENZIE: Well, he doesn't recall.

THE DEPONENT: I don't recall.

362. MS. SPENCE: Okay. All right. So again, I am going to reserve my right to return to these questions once we have the bank statements from your answers to undertakings. Can I ask...

MR. McKENZIE: I am marking that as Exhibit C for further identification.

363. MS. SPENCE: Sure.

--- EXHIBIT C: Demand Promissory Note dated May 20, 2016, issued to Crystal Wealth Management System Limited, signed by 244958 Ontario Inc.

BY MS. SPENCE:

364. Q. Can I ask you to turn to tab 13, please? This is what is titled, "Business Consulting Agreement entered into between CLJ Everest Limited and Magnitude CS Energy Inc. dated July 6, 2016". Do you see that?

MR. McKENZIE: I have the document here.

BY MS. SPENCE:

365. Q. And to refresh your memory, July 6th, 2016 is also the date on which the $3 million loan that we were just looking at was entered into at tab 12.

MR. McKENZIE: So you say. What's the question?

BY MS. SPENCE:

366. Q. Okay. So in the preamble to this business consulting agreement it says:

"...CLJ is in the business of consulting..."

Can you please tell me what consulting CLJ Everest Limited was doing for Magnitude CS Energy Inc.?

MR. McKENZIE: He didn't say he agrees with that. But if you're asking him does he know CLJ Everest...

367. MS. SPENCE: Let's just have his answer.

MR. McKENZIE: No, you presume...

368. MS. SPENCE: Mr. McKenzie, you have answered every question for him today.

MR. McKENZIE: No. Your questions...

369. MS. SPENCE: I would like to hear from Mr. Clydesdale.

MR. McKENZIE: ...are unfair. Okay. Don't ask a question where you presume he answered.

370. MS. SPENCE: Okay. Well...

MR. McKENZIE: I'm saying, why don't you ask him properly which is, what is the CLJ Everest...does he know what they do, instead of saying, "You signed the document. It says...we are not agreeing with that. So I'm saying, why don't you do it the other way and I won't have to interfere.

371. MS. SPENCE: Well, it's a document with Mr. Clydesdale's signature on it.

BY MS. SPENCE:

372. Q. Mr. Clydesdale, did you sign this...

MR. McKENZIE: Well, just a moment.

BY MS. SPENCE:

373. Q. ...agreement?

MR. McKENZIE: Good start. Okay. So let's go to that page...

374. MS. SPENCE: Please, Mr. McKenzie, I don't appreciate those types of comments.

MR. McKENZIE: Well...

375. MS. SPENCE: Keep them to yourself.

MR. McKENZIE: Okay. I don't appreciate me interrupting you when your question is not clear and then you say that I am interfering. So go ahead and I will just...you know, if you just want me to object every time I will and it will take longer. Go ahead.

BY MS. SPENCE:

376. Q. Mr. Clydesdale, did you sign this agreement?

A. It looks like my signature. I don't recall.

377. Q. Okay. And are you aware of the company CLJ Everest Limited?

A. I don't recall.

378. Q. You don't know. And do you recall retaining CLJ to carry out consulting for Magnitude CS Energy Inc.?

A. I do not recall.

379. Q. Okay. Does it help you if I turn back to the signature page and point out to you that the CLJ Everest Limited signature line says, "Clayton Smith" underneath it? So it appears from this document that CLJ Everest Limited is a Clayton Smith company. Does that help you?

A. No, I don't recall.

380. Q. And it appears from this agreement that Clayton Smith's company was being retained by Magnitude CS Energy Inc. to perform consulting services. Does that...

A. I don't recall.

381. Q. ...sound familiar to you? It says under:

"...CLJ Duties, CLJ shall be responsible
for assisting MCS with all aspects of MCS's
business operations as requested by MCS..."

Do you see that?

A. I see that. I don't recall that.

382. Q. Okay. Did you pay any amounts to Mr. Smith pursuant to this agreement?

A. I don't recall.

383. Q. I am going to ask you to turn to tab 14 of the brief. This says:

"...Magnitude CS Energy Inc. Balance Sheet
as at October 31st, 2016..."

Do you see that?

A. I see it.

384. Q. Okay. So under, "Current Assets" there are a whole list of receivables which appear to be from related companies that we have talked about today. There are a few companies identified which appear to be companies within the OOM group that we didn't talk about. So, for example, MCSALTA30. We were talking about MCSAB10. I am presuming MCSALTA30 is also an OOM company but that we haven't talked about today. Do you agree with that?

MR. McKENZIE: What's the question?

385. MS. SPENCE: The question is...

MR. McKENZIE: That was a long preamble.

386. MS. SPENCE: Yes. So the question is, I would like to have you produce all of the agreements pursuant to which these amounts are owing. And I know you have given a similar undertaking with respect to the other companies. So to the extent that it's the same agreement, I don't need to see it, but any new agreements that reflect these loans, I would like to have, please.

MR. McKENZIE: Under advisement. U/A

387. MS. SPENCE: Okay.

BY MS. SPENCE:

388. Q. I see in the second to last, or third last item on that list it says, "Due from CLJ Everest Limited, $250,000". Do you see that?

A. I see it.

389. Q. I will ask you to please produce a copy of the agreement pursuant to which that amount is owing.

MR. McKENZIE: Under advisement. U/A

BY MS. SPENCE:

390. Q. Do you recall what that amount was for?

A. I don't recall.

MR. McKENZIE: If it got paid.

391. MS. SPENCE: Well, I mean, it just says "Due from CLJ Everest Limited" so I presume that CLJ Everest, for some reason, owed your company $250,000. I don't know if it was a loan or what, but you are going to produce the agreement so I can find out?

MR. McKENZIE: You're presuming something and I am presuming something, but the records when we get them will...

392. MS. SPENCE: Right.

MR. McKENZIE: ...tidy this up I am sure.

393. MS. SPENCE: Okay.

BY MS. SPENCE:

394. Q. So when I look at...other than cash in the amount of just under $200,000, it appears that all of this company's assets are receivables. Do you agree with that?

MR. McKENZIE: Well, again, we are looking at a document which, whatever it is...

395. MS. SPENCE: Yes. Well, this is the document that you produced to us.

MR. McKENZIE: If we look at the document, I think what they call a trial balance in accounting, but I am not an accountant and I am saying so, you're looking at liability, bottom part, and at the top is current assets. And "due from" I agree with you, if these are accurate representations, "due from" usually means at the time that it's compiled it is an account receivable. But until we get the accounting...

396. MS. SPENCE: Okay.

MR. McKENZIE: Remember, this is...

397. MS. SPENCE: So just...

MR. McKENZIE: ...almost a year before the receivership, 2016.

398. MS. SPENCE: Right. And so, this was the document that you produced to us in response to our request for financial statements.

BY MS. SPENCE:

399. Q. So are there no financial statements that were prepared by an accountant for this company?

MR. McKENZIE: I think we can be sure of that. I mean, again, a lawyer makes inquiries and I sent you what was given to me. And without, you know, knowing people can make mistakes, we sent you what exists.

400. MS. SPENCE: Okay.

MR. McKENZIE: It's a lawyer's job to say send me everything, but as you know that doesn't always work out. So...

401. MS. SPENCE: So as far as you know, these are the most recent financial statements?

MR. McKENZIE: Well, these are the ones that were sent to me. I had a list from your firm and it said, "Get us this stuff". I, you know, did what lawyers do. We say, "Send me the stuff" so we don't have to do this twice. It's the same as an Aff Docs and that's what I got and that's what I sent to you. It's a lawyer's job to say, "Give me everything".

402. MS. SPENCE: Okay. So I am going to ask

you for the same undertaking I have been asking for with relation to the other companies which is to please produce to us any more recent financial statements that may be prepared, as well as the tax return for this company for 2017.

MR. McKENZIE: Yes. I think we did that already yesterday for this company. So they're...

403. MS. SPENCE: Okay.

MR. McKENZIE: ...all on the record.

BY MS. SPENCE:

404. Q. Under "Capital Assets" I see a few items that I am going to ask you about. Capital asset number 1 listed at zero dollars, do you know what that was supposed to be?

A. I don't.

405. Q. Capital asset number 2, "Bioreactor" listed at just over $1.1 million. Which bioreactor does that refer to?

A. I don't recall.

406. Q. You don't know. Because from our discussion yesterday, I understood that this company was more of an operating company. It didn't have a

particular project. Is that accurate?

MR. McKENZIE: Well, you presume that and I think it's a safe guess because it didn't do projects. I mean we talked about that yesterday. It's a safe guess it might have been the coordinator, but...

407. MS. SPENCE: Okay.

MR. McKENZIE: ...if it didn't do specific projects like Leaside and Imaginea, which were set up to do one project.

408. MS. SPENCE: Okay.

BY MS. SPENCE:

409. Q. But this one does appear to have a bioreactor on its books, so I am just wondering what bioreactor that is.

A. I don't recall.

MR. McKENZIE: Good question.

BY MS. SPENCE::

410. Q. You don't know. Did Magnitude CS Energy Inc. enter into an energy services agreement with any other company?

A. I don't know.

MR. McKENZIE: Take that as a no. No. I am just saying...

411. MS. SPENCE: Mr. Clydesdale was answering. I don't need you to interrupt him.

MR. McKENZIE: Well, hold on. We scoured...I have done a better job than him. In other words, we scoured records and there is none.

412. MS. SPENCE: Okay.

MR. McKENZIE: I mean, unless you want to tell me some miracle happened that there is one that...

THE DEPONENT: I don't recall.

MR. McKENZIE: I'm talking to my client here.

BY MS. SPENCE:

413. Q. You don't know?

A. I don't recall.

414. MS. SPENCE: Okay. So can you please undertake to let me know what this capital asset number 2, bioreactor refers to?

MR. McKENZIE: Well, same. We will make best efforts to find out. I am saying that this is an accounting paper, whatever somebody wrote on a T-account.

BY MS. SPENCE:

415. Q. Okay. Capital asset number three, "Detroit" is listed as $182,000 and change. What does that refer to?

A. I don't recall.

416. Q. You don't recall?

A. I don't recall.

417. Q. It appears to suggest that you have some sort of installation in Detroit, but you don't know what that could possibly refer to?

MR. McKENZIE: Well, as we said yesterday, MCS12,Inc. or something like that, the Michigan project was in that area. I don't think it was in Detroit, but it was...

418. MS. SPENCE: Right.

MR. McKENZIE: ...in a subsidiary of Detroit. So...

419. MS. SPENCE: Right. So I am curious...

MR. McKENZIE: ...that's the best guess you are going to get...

420. MS. SPENCE: But it's not...

MR. McKENZIE: ...because he doesn't recall and we can't do more than that today.

421. MS. SPENCE: Okay. But I am curious as to why an asset related to that project run by a different company would be showing on this company's balance sheet.

MR. McKENZIE: Well, when we get the accounting we will figure out. And again, this is a trial balance, so...

422. MS. SPENCE: Okay.

MR. McKENZIE: ...they don't always end up the way the trial balance is, once the accountants get their hands on them.

423. MS. SPENCE: So you are going to undertake to let me know what capital asset number three Detroit refers to?

MR. McKENZIE: Well, I just said best efforts to find out. I mean, it's an entry, presumably and I am presuming this is an accurate representation of the books on that date. U/T

424. MS. SPENCE: M'hmm.

MR. McKENZIE: But that doesn't simplify. Whether the accountant and the tax accountants get their hands on things they sometimes move them around. And there might have been a repayment. We don't know because, as I said, we are lacking a lot of information with all these confusing agreements you have been showing today.

425. MS. SPENCE: All right. So you are going to let me know about that.

BY MS. SPENCE:

426. Q. Under "Office Furniture and Equipment" there is an entry $32,000. Did this company have an office space?

A. Again, I don't recall.

427. Q. You don't recall whether you had a company that had an office?

A. I don't recall.

428. Q. Did any of your companies have office space?

A. That's hypothetical.

429. Q. It's very much not hypothetical.

MR. McKENZIE: Why don't we find the furniture and have an auction. I mean, are we really going to get into how many chairs they bought?

430. MS. SPENCE: No, but I want to know if he has an office.

MR. McKENZIE: But he just said...

431. MS. SPENCE: It seems to be something that you could remember.

MR. McKENZIE: Well, on October 31st, 2016? I mean, I am going...

432. MS. SPENCE: Yes. That's...

MR. McKENZIE: Okay. We will find out for you. U/T

433. MS. SPENCE: ...less than 18 months ago.

MR. McKENZIE: Yes. We will find out for you.

434. MS. SPENCE: You will find out for me if...

MR. McKENZIE: Well, we...

435. MS. SPENCE: ...Mr. Clydesdale maintained an office...

MR. McKENZIE: I saw an office yesterday and we sent it to the OSC. Was it King Street or something? Anyway, I am just guessing, but I am saying, surely, we can...said "Deliver the desks down here tomorrow and you can have them". I mean, if...now we are getting...

436. MS. SPENCE: Okay. Again, Mr. McKenzie, you are going very far afield from what my question was, which was...

BY MS. SPENCE:

437. Q. Do you, Mr. Clydesdale, have an office for this company?

MR. McKENZIE: Okay. He said he doesn't recall. Right now does he...

438. MS. SPENCE: That's the answer.

MR. McKENZIE: ...have an office? We went through this...you asked right at the opening yesterday and we dealt with that. You can read the transcript back, if you like.

BY MS. SPENCE:

439. Q. Okay. Under "Long-Term Liability", the second page, I see, "Loans from shareholders, $2.5 million and change". Do you see that?

MR. McKENZIE: $1.5 million?

440. MS. SPENCE: Yes.

MR. McKENZIE: Ballpark, yes. We see it.

441. MS. SPENCE: Okay.

BY MS. SPENCE:

442. Q. What shareholder gave that loan?

A. I don't recall.

443. Q. You don't know. It wasn't you?

A. I don't recall.

444. MS. SPENCE: Can you produce a copy of that loan agreement, please?

MR. McKENZIE: If there is one. U/T

445. MS. SPENCE: Thank you.

MR. McKENZIE: Yes.

BY MS. SPENCE:

446. Q. Okay. So let me just understand then. What company do you say ran the project in Michigan? It wasn't this one?

MR. McKENZIE: Asked and answered.

447. MS. SPENCE: No. Please just refresh my memory, because we...

MR. McKENZIE: Asked and answered.

448. MS. SPENCE: ...didn't go through any financial statements.

MR. McKENZIE: Read the transcript. There's five companies in play here.

449. MS. SPENCE: Yes.

MR. McKENZIE: We are only talking about five companies. You have asked every question possible about these five companies as far as I am concerned, and I am saying...are you starting all over again? Asked and answered.

450. MS. SPENCE: No. I'm not starting over again.

MR. McKENZIE: This was discussed yesterday.

451. MS. SPENCE: We didn't talk about this project.

MR. McKENZIE: What? Which one?

452. MS. SPENCE: The Michigan one.

MR. McKENZIE: Well, I disagree with you. I mean, it's peripheral because it's not secured to Crystal Wealth, but we threw it in to say it's one that could be financed if we all cooperate and make some money for everybody.

453. MS. SPENCE: Well, because these financial statements appear to suggest that even though the loan was purportedly for working capital, the fact that it has a bioreactor and another Detroit capital

asset on its books, suggest that, in fact, that those funds were used for that project.

MR. McKENZIE: Yes. Your suggestion is understood. And when we get to the undertakings, it might all come out in the wash. But you're just speculating.

454. MS. SPENCE: Okay. Well, what is the status of that project?

MR. McKENZIE: Moribund. Same idea, which is...

455. MS. SPENCE: Right.

MR. McKENZIE: ...it's a signed contract that requires...it would be nice to get some capital to finish it.

456. MS. SPENCE: A signed contract with who?

MR. McKENZIE: It's St. Marys something. I mean, it's another...St. Marys has got plants all over the...

457. MS. SPENCE: So it's a different St. Marys plant in Detroit or in Michigan?

MR. McKENZIE: Well, yes. Leaside is not the same place as Detroit, yes. And it's a different state, so it's a Michigan corporation.

458. MS. SPENCE: Okay.

BY MS. SPENCE:

459. Q. And so, was this Magnitude CS Energy company involved in that project?

MR. McKENZIE: It's all wrapped up in the undertakings. His memory is not going to help today, and I am saying we will try to round it all up for you according to the undertakings we have given. It will all make sense, I think, when we cooperate and get the undertakings.

460. MS. SPENCE: Okay. So when you give the undertakings, you are also going to advise me the status of that project?

MR. McKENZIE: Well, the status of the project right now, it's moribund. It doesn't have financing. They started doing the stuff, measuring the...I think they were arguing about where to put the gadget, you know, on their property. You know, these are the things that happen in the development. I do recall that because I saw that in reading something. And I am saying, you want to know the status, it is stalled.

461. MS. SPENCE: Okay. And...

MR. McKENZIE: Because Crystal Wealth was supposed to finance it. That is the understanding, the bigger picture...

462. MS. SPENCE: Right.

MR. McKENZIE: ...and it stopped

463. MS. SPENCE: We know all that. My question is, in terms of the status of it. So I have asked this already and you've answered it in relation to the other projects, how much money would it take to get that project completed?

MR. McKENZIE: Well, it's the same answer as the last one, which is right now it is speculative.

464. MS. SPENCE: Right.

MR. McKENZIE: When it stops...

465. MS. SPENCE: Well, last time you said it was speculative and then you said it was a million dollars, so...

MR. McKENZIE: Well, I am picking a number. This one, what was it, a $12 million install? It's probably 15 now, just because my experience is...and I am saying...I am looking at Mr. Clydesdale because I am giving you round numbers. My experience is if you priced it two years ago and you didn't go ahead, it is going to be a lot more expensive to reprice it from what I have seen the way these projects go, and that's the bad part of having this receivership. Nothing against receivers, but Crystal Wealth...I think Mr. Clydesdale wishes he had had another finance company that was still alive because we wouldn't be in this situation. It can be saved, just like the gas and oil ones, if everybody works together, maybe.

466. MS. SPENCE: Okay.

BY MS. SPENCE:

467. Q. Does Magnitude CS Energy Inc. have any sources of income?

A. Again, I don't recall right now.

468. Q. Okay. How did you intend to repay this loan?

MR. McKENZIE: The same answer which is, get finished the projects and start a cash flow.

469. MS. SPENCE: This is why I am confused, because you initially told me that Magnitude CS Energy Inc. did not have a particular project, but now it appears that it might be related to the Detroit project.

MR. McKENZIE: Well, it might be related to all of them. Now that I see this it could be a facilitator. In other words, the core of the thing.

470. MS. SPENCE: Right. And so, how...

MR. McKENZIE: Because don't forget that when we were closing with Crystal Wealth, the idea was, as the deals closed, 240 would be the holding company. But until the financing came in, you wouldn't put the project company, owned by the holding company, because let's say somebody else wanted to lend the money, you wouldn't go near Crystal Wealth. So it all makes sense when you do the chart. And these, unfortunately, didn't close. If they had closed, I imagine Jonathan at Miller Thomson would have said, "Now, you have to roll the ownership of this project into the holding company 240", because they set that up. Miller Thomson set up the 240 holding company. And you can see Leaside is owned by...244 is owned by 240 and the one we just talked about, Imaginea. They did that too, partially, and I think that was the intention as they financed more. More money would come, you would finance another project and do all the stuff, but it never got that far. So to say what was it, it was a hope that these would all go that way. And if the money had kept coming, it would have all sorted out.

471. MS. SPENCE: Can you please produce to me a copy of that chart you just referred to?

MR. McKENZIE: Yes, I will do it right now. Give me a piece of paper.

472. MS. SPENCE: Well, do you have a...

MR. McKENZIE: Could I borrow a piece of paper? I mean, that was an imaginary chart, but I will draw it for you. 240 is here at the top, Leaside, 244 and MCSAB10. And that's where I don't know where the shares are right now. And then over here is project Detroit. Over here is NOx

Recovery maybe. In other words, as the financings closed, I'm putting a rolling arrow. I think it was Jonathan's intention to have 240 own these projects. And, of course, tax advice came into it, so there you go, Exhibit 3.

--- EXHIBIT NO. 3: Sketch prepared by K. William McKenzie on March 13, 2018

BY MS. SPENCE:

473. Q. Mr. Clydesdale, do you agree with that?

A. I agree with Bill.

474. Q. Okay. And 240 is 2404873 Ontario Corp?

MR. McKENZIE: You are going from memory. I don't have that in front of me. It started with 240. We call it 240. Where can I...sorry. Yes. I mean, I will say yes, but if I read the transcript and if it's got the digits backwards, we will let you know. U/T

475. MS. SPENCE: Okay.

MR. McKENZIE: You searched these

companies.

476. MS. SPENCE: Yes.

MR. McKENZIE: We have got PPSAs on them.

477. MS. SPENCE: So just so I am clear though, 240, the holding company at the top, did it also own Magnitude CS Energy Inc.?

MR. McKENZIE: No.

478. MS. SPENCE: So how is Magnitude CS Energy Inc. related to that?

MR. McKENZIE: It might have been.

479. MS. SPENCE: You don't know?

MR. McKENZIE: It was all in the air when the crash came, which was the receivership. It was all in the air. I mean, I am looking at all these documents that you gave us and saying, I presume Crystal Wealth got them prepared by Jonathan. And they were deals to be closed, or rejiggered at the last minute. That's what Mr. Clydesdale said yesterday. Documents would get signed, then they would go to Miller Thomsom, then everything would get changed. Not everything, but as happens in closings. So it was all in flux. So we will call it the "flux company".

BY MS. SPENCE:

480. Q. Okay. So I am just going to come back to my questions about Magnitude CS Energy Inc. because, you know, you have answered my questions in relation to the other projectcos as to, you know, what needs to be done in order to get refinancing and move forward. And with Magnitude CS Energy Inc. I don't have a clear picture of what that looks like because...I will tell you two reasons. Number one, the loans are structured differently than the loans for the other companies. We have that factoring agreement and then another loan agreement. And the loan agreement, as we just discussed, appears to be made for working capital purposes, not to finance a particular installation. But then when we look at the balance sheet, it does appear as though this company has on its books a particular installation in Detroit.

So I would like you to please provide me with some clarity on that circumstance. And one way to get at that would be to answer my question as to how you initially intended to repay those loans to Crystal Wealth. What was the end goal here?

MR. McKENZIE: Once the special projects were finished and commissioned like Leaside, the cash flow would start. That was the day where payments would start. I mean, that sounds like good business to me.

481. MS. SPENCE: So on this project, when the Detroit plant was commissioned, that is when payments would start, is that the idea?

MR. McKENZIE: Well, payment, there's an ESA that the payments would have started, I am presuming, on commissioning. I think they call it commissioning, but it is when the electricity is turned on and it generates electricity. That was what the SPVs were for...SPV. I should have said special purpose corporation, and that's my wording, which was Leaside, Alberta, Detroit.

482. MS. SPENCE: Right. But Detroit was a Michigan corporation, correct? The energy services agreement in Detroit is with a Michigan corporation?

MR. McKENZIE: Didn't I already say that somewhere?

483. MS. SPENCE: Right. I didn't expect Magnitude CS Energy Inc. to have entered into the energy services agreement with St. Marys Detroit.

MR. McKENZIE: It didn't.

484. MS. SPENCE: Right. But now I see that Magnitude CS Energy Inc. apparently owns the bioreactor, or advanced funds to build the bioreactor for a different company.

MR. McKENZIE: Okay. You know what, all of your speculation is healthy, but it was in flux at the time. And there's all sorts of tax and accounting, and all sorts of things that happened that didn't happen. So you are kind of going...the balloon is up in the air and you're saying, where was it going to land? Nobody knows because they are in flux. So...

485. MS. SPENCE: Well, I am just...

MR. McKENZIE: ...you can do this all day. You keep going. You know, I expect, or I presume, and I am saying, it's not getting us anywhere. Just finish the questions.

486. MS. SPENCE: Okay.

MR. McKENZIE: I understand where you are going and I am sympathetic to what you are doing, but I think when we get the undertakings and the accounting done, it will all make sense, hopefully.

BY MS. SPENCE:

487. Q. Was there an agreement made as between Magnitude CS Energy Inc. and the Detroit corporation, relating to these advances for building the bioreactor?

A. I don't recall.

488. Q. Was there an agreement as between them as to Magnitude CS Energy Inc. ultimately receiving funds from the energy services agreement?

A. Again, I don't recall.

489. MS. SPENCE: Okay. Can you take a look for those agreements, please, and let me know?

MR. McKENZIE: I'm just trying to think where we would get them. You can ask Miller Thomson. I am not going to waste my time. I mean, I presume...I mean, usually the document...I am looking here and I am saying, when the document was prepared, it came from the Crystal Wealth side, and I am presuming that was their lawyers, it may not be, but it looks like lawyers drafted them. /R

490. MS. SPENCE: M'hmm.

MR. McKENZIE: And I am saying...okay. So I am not going to do that.

491. MS. SPENCE: M'hmm.

MR. McKENZIE: But I will ask my client to have another look to see if there's more documents because they looked, but...

492. MS. SPENCE: Okay.

MR. McKENZIE: So the undertaking is to use best efforts to, as I say, scrape the bottom of the barrel and see if there's a document that got stuck under a drawer or something. U/T

BY MS. SPENCE:

493. Q. Just so I am clear, the amount outstanding from Magnitude CS Energy Inc. to Crystal Wealth is over $6 million. Would you agree with that...

MR. McKENZIE: No.

BY MS. SPENCE:

494. Q. ...ballpark figure?

MR. McKENZIE: No. Again, don't do numbers. We are not going to get anywhere doing numbers.

495. MS. SPENCE: Okay.

MR. McKENZIE: We have said, when the accounting happens there will be a number owing. There is no doubt there is a number owing. Well, there are so many companies to whom it could be owing and there's five companies it could be owing from. That's the best we are going to be able to do. And now that I see that Crystal Wealth was moving money from one company to another alleging, or possibly that it was a repayment of loans.

496. MS. SPENCE: Well, in accordance with a promissory note signed by your client.

MR. McKENZIE: Well, you are interrupting me, but I am saying the accounting really needs to be done now. So he was...

BY MS. SPENCE:

497. Q. Okay. So I am just going to show you. This is the demand letter that we sent to you on November 13th, 2017 in respect of Magnitude CS Energy Inc., do you see that?

MR. McKENZIE: If you say so. I mean, we got an avalanche from you guys, so we should mark that for further identification or something.

498. MS. SPENCE: Okay.

MR. McKENZIE: I mean, I am not going to argue that...

499. MS. SPENCE: Yes. Thank you.

MR. McKENZIE: Is that Exhibit 3? Okay. Thanks.

--- EXHIBIT NO. 4: Demand letter dated November 13, 2017 to Magnitude CS Energy Inc. from Aird & Berlis LLP

MR. McKENZIE: I am saying, look, I don't really want to take a lot of time. You sent a bunch of stuff to me. I got it, I have it here, and I am not going to read

all day to make sure it is the same document, but I will take your word for it.
So is there a question resulting from that?

BY MS. SPENCE:
500. Q. So the question arises from...I was giving you this document to support my suggestion to you that the amount owing from this company is over $6 million.
MR. McKENZIE: Well, we don't agree with that, so...
501. MS. SPENCE: You don't agree with the demand letter, okay.
MR. McKENZIE: So that's a second time. And I am saying, again, go back to the undertakings.

BY MS. SPENCE:
502. Q. But you agree that there is an amount owing from Magnitude CS Energy Inc. to Crystal Wealth?
MR. McKENZIE: Well, among these five companies, four really but somehow may be the fifth peripherally, yes, there is money

owing. We have said that many, many times.

503. MS. SPENCE: Right.

MR. McKENZIE: When we get to the number, that's going to be one thing, but the important thing is paying it back.

504. MS. SPENCE: And I still, despite all of my questions today, do not understand how this company ever intended to pay back that money. That is what I am trying to understand.

MR. McKENZIE: Yes, I agree with you. You don't understand.

505. MS. SPENCE: And so, can you please tell me.

MR. McKENZIE: He already answered all the questions you could possibly have.

506. MS. SPENCE: No, he didn't.

MR. McKENZIE: Let me reiterate, and we are going to stop right now. Should Crystal Wealth have come through with all the money it promised and these projects had all been completed, we wouldn't be here. That didn't happen for nobody's fault in this room, and that's the frustration we are having.

507. MS. SPENCE: Okay.
MR. McKENZIE: So...
508. MS. SPENCE: See, I...
MR. McKENZIE: ...when you finish a project and it's going to pay you back $250,000 a month, for instance, or whatever it is, there's ample money to pay everybody back, but it didn't happen. So you are saying, how is it going to happen? It was in flux, it stopped.
509. MS. SPENCE: Okay.
MR. McKENZIE: Everybody ran out. So...
510. MS. SPENCE: Let me try to get at this a different way. Each of the companies that we have been talking about, I am going to tell you what I understand from the examination.
MR. McKENZIE: Well, don't do that. Just ask questions.
511. MS. SPENCE: I am going to ask a question, but this is the backup that I need to ask my question.
MR. McKENZIE: No. Just ask questions. We keep doing this. You say you presume something and I have to say, well, you're

wrong, it's a different way. So just put the questions on the record...

512. MS. SPENCE: Okay.

MR. McKENZIE: ...because I think they are all going to be the same. "I don't recall and we'll have to get back to you".

BY MS. SPENCE:

513. Q. Okay. So 244 Ontario Inc., that's the Leaside St. Marys project, correct?

A. Correct.

514. Q. MCSAB10 Inc., that's the Alberta Imaginea project, correct?

MR. McKENZIE: Asked and answered, asked and answered. /R

BY MS. SPENCE:

515. Q. MCS NOx Recovery Inc., that's the Pond-affiliated pulling stuff out of the air project, correct?

MR. McKENZIE: Asked and answered. /R

516. MS. SPENCE: Well, if you disagree with me, let me know.

MR. McKENZIE: No, no. We went through this yesterday. He is not going to go over it again. Asked and answered. What's your question?

517. MS. SPENCE: I am getting to it.

BY MS. SPENCE:

518. Q. MCS Energy12 Inc. is a Michigan corporation, right?

MR. McKENZIE: Asked and answered.

BY MS. SPENCE:

519. Q. We don't have the loan agreement with that company.

MR. McKENZIE: Asked and answered.

520. MS. SPENCE: That has not been asked and answered.

MR. McKENZIE: Asked and answered.

521. MS. SPENCE: That's the first time I am asking that question. If you are going just be belligerent, then I am not going to...

MR. McKENZIE: Counsel, I am sitting back here as relaxed as you could imagine going...how many times are you going to ask the same questions?

522. MS. SPENCE: Well, I am asking...

MR. McKENZIE: I am saying, please...

523. MS. SPENCE: ...you questions, Mr. McKenzie, and you're saying asked and answered. It is not helpful.

MR. McKENZIE: I am saying...I am looking at my notes and I am going, we have been through this already. I don't want to take time to go back in the transcript, but what is the question? What are you trying to get at?

524. MS. SPENCE: Okay.

MR. McKENZIE: We know there's five companies. We have been through that. We know what they do and didn't do. What are you getting at?

525. MS. SPENCE: 2404873 Ontario Corp., that's the one that you were just...you made the diagram about as being the owner, the ultimate owner of the oil companies, correct?

MR. McKENZIE: Asked and answered.

526. MS. SPENCE: And then the last company, which I don't have any sort of project, or anything associated with, is Magnitude CS Energy Inc. and we have a demand letter

that shows there is over $6 million owing. So I am trying to understand what it is that that company was supposed to be doing so that we can try to understand how it's possible that those funds will be repaid.

MR. McKENZIE: Asked and answered. /R

527. MS. SPENCE: Okay. I am going to take that as a refusal because...

MR. McKENZIE: Okay.

528. MS. SPENCE: ...I am trying to understand what that company does and you're not giving me anything to work with.

MR. McKENZIE: You can...

529. MS. SPENCE: So I am going to take from your response, that that company does nothing, and you don't have any intention of repaying that amount.

MR. McKENZIE: That's a pretty unsafe supposition.

530. MS. SPENCE: Well, please correct me if I am wrong.

Okay. I am just about finished here. I am just going to take a few minutes to consult with my client and then we will hopefully be wrapped up.

MR. McKENZIE: Sure.

531. MS. SPENCE: Thanks.

MR. McKENZIE: How long do you need?

532. MS. SPENCE: Five minutes. Ten minutes, yes.

--- upon recessing at 12:30 p.m.

--- A BRIEF RECESS

--- upon resuming at 12:37 p.m.

CRAIG CLYDESDALE, resumed

CONTINUED EXAMINATION BY MS. SPENCE:

533. Q. We were looking at the balance sheet at tab 14 of the brief. Can you turn it up, please?

MR. McKENZIE: What's the question?

BY MS. SPENCE:

534. Q. I am going to refer to a line item under "Sales Revenue" and I am going to ask you a question about it.

MR. McKENZIE: Okay. Read it out, please.

535. MS. SPENCE: Are you refusing to look at the documents that I am referring to now?

MR. McKENZIE: Well, I need you to read

it out so I can find what you're reading.
Go ahead. Tell me what you're looking for
and I will...

BY MS. SPENCE:

536. Q. There's a line item that says "Project Management fee, $780,000". Do you see that?

MR. McKENZIE: Okay. What's your question?

BY MS. SPENCE:

537. Q. What is that for?

MR. McKENZIE: Okay. Same under advisement that we have been giving you all on other similar questions. U/A

538. MS. SPENCE: What is it? You're taking that question under advisement?

MR. McKENZIE: Yes.

539. MS. SPENCE: You don't know what the project management fee of $780,000 was for?

MR. McKENZIE: We will take it under advisement.

540. MS. SPENCE: Okay. And you will produce

to me a copy of any agreement relating to that project management fee?

MR. McKENZIE: If one exists. We will use our best efforts to dig one out, if there is one, yes. U/T

541. MS. SPENCE: Okay.

BY MS. SPENCE:

542. Q. You don't have any idea who would have paid this company $780,000 for project management?

MR. McKENZIE: It's still under advisement. U/A

543. MS. SPENCE: I mean, I see that question as being highly relevant to the question of how Magnitude CS Energy Inc. is going to repay the loans to Crystal Wealth. So I am not entirely sure why you're not answering the question.

MR. McKENZIE: Under advisement.

544. MS. SPENCE: Okay.

BY MS. SPENCE:

545. Q. Have any of the five companies that we have been talking about, ever secured debt

financing from a lender other than Crystal Wealth?

MR. McKENZIE: Under advisement. U/A

BY MS. SPENCE:

546. Q. And have any other lenders to date conducted due diligence on these projects, such that they might be potential refinanciers?

MR. McKENZIE: Refusal. /R

547. MS. SPENCE: Okay. Well, subject to any questions arising out of the answers to undertakings and refusals, those are my questions for today.

Sorry, my apologies. I have one more question.

MR. McKENZIE: Yes, go ahead. Let's finish.

BY MS. SPENCE:

548. Q. Have you ever had any business dealings with Jerry Froese?

A. I don't recognize the name, I don't recall.

549. MS. SPENCE: You don't know. Okay. Thank you. Again, subject to the earlier retainer of my right to ask questions

arising from the answers to undertakings, those are my questions.

MR. McKENZIE: I do hope we can do that in writing and not take up all of your valuable time.

-- upon adjourning at 12:39 p.m.

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REPORTER'S NOTE:

Please be advised that any undertakings, objections, under advisements and refusals are provided as a service to all counsel, for their guidance only, and do not purport to be legally binding or necessarily accurate and are not binding upon Victory Verbatim Reporting Services Inc.

I hereby certify the foregoing to be a true and accurate transcription of the above-noted proceedings held before me on the 13th DAY OF MARCH, 2018, and taken to the best of my skill, ability and understanding.

Certified Correct:

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Ryan J. Arndt
Verbatim Reporter