

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANNTRUST HOLDINGS INC., CANNTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.**

Applicants

**TRANSCRIPT BRIEF
(Sanction Hearing)
(Returnable June 11, 2021)**

June 10, 2021

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To: The Service List

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Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

TR/ias

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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This is the Cross-Examination of SERGE KALLOGHLIAN on
his Affidavit sworn the 2nd day of June, 2021, taken via
videoconference at the offices of VICTORY VERBATIM
REPORTING SERVICES INC., Suite 900, 222 Bay Street,
Toronto-Dominion Centre, Toronto, Ontario, on the 7th day
of June, 2021.

- - - - -

APPEARANCES:

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JUSTIN MANORYK	}	
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JONATHAN YANTZI		-- for the monitor
STEVEN WEISZ		-- CCAA representative counsel for the U.S. securities claimants
ALISTAIR CRAWLEY		-- for Peter Aceto (Canadian counsel)
DAVID WINGFIELD		-- for Serge Kalloghlian

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1 --- upon convening at 9:00 a.m.

2 --- upon commencing at 9:02 a.m.

3
4 SERGE KALLOGHLIAN, affirmed

5 CROSS-EXAMINATION BY MR. MORRIS:

6 1. Q. Good morning. You are Serge
7 Kalloghlian?

8 A. Yes.

9 2. Q. You probably better spell that for
10 the reporter.

11 A. S-E-R-G-E, last name
12 K-A-L-L-O-G-H-L-I-A-N.

13 3. Q. And you are a member of the Law
14 Society of Ontario?

15 A. Am I a member? Yes.

16 4. Q. You were called to the bar in 2008?

17 A. Yes.

18 5. Q. You're a partner at the law firm
19 Kalloghlian Myers LLP?

20 A. Right.

21 6. Q. Your practice focuses on
22 representing plaintiffs in class action proceedings?

23 A. Yes.

24 7. Q. With a focus on securities class
25 actions?

1 A. Yes.

2 8. Q. And that has been the case for most
3 of your career since you were called to the bar?

4 A. Yes.

5 9. Q. You've been sworn to tell the truth
6 in answering the questions I'm going to ask today?

7 A. Yes, I was affirmed.

8 10. Q. Affirmed. And if there is a
9 question you don't understand, you'll let me know?

10 A. Okay.

11 11. Q. And if you need a break at any time,
12 you'll let me know?

13 A. Okay.

14 12. Q. Now, since this examination is being
15 conducted remotely by videoconference, you'll also
16 let me know if you experience any technical
17 difficulties?

18 A. Okay.

19 13. Q. Are you presently located in the
20 City of Toronto?

21 A. Yes.

22 14. Q. And I take it there is nobody else
23 in the room with you right now?

24 A. No.

25 15. Q. On today's examination, I'll be

1 referring primarily to documents that are contained
2 in motion records previously filed in this matter.
3 And so to avoid any confusion, I don't propose to
4 mark those as exhibits. Is that acceptable?

5 A. That's fine with me.

6 16. Q. And if I do refer to any documents
7 that aren't contained in motion records, I provided
8 those to you in PDF this morning, did you receive
9 those?

10 A. Yes.

11 17. Q. Okay, so you're attending today
12 pursuant to a Notice of Examination delivered on
13 June 4th, 2021?

14 A. I don't remember when it was
15 delivered.

16 18. Q. Justin, can you pull up the notice
17 of examination on the screen? And can we scroll
18 down just so get the date on it? So, the date is
19 June 4, 2021, you don't have any issue with the date
20 of the notice, I take it?

21 A. No.

22 19. Q. And you're here to be cross-examined
23 on your affidavit on a motion to sanction
24 CannTrust's CCAA plan of arrangement?

25 MR. WINGFIELD: Amongst other things.

1 20. MR. MORRIS: I'm sorry, I didn't hear
2 that.

3 MR. WINGFIELD: Well, amongst other
4 things. I think you know we're also
5 seeking an order in relation to the
6 distribution of proceeds.

7
8 BY MR. MORRIS:

9 21. Q. Yes, that's fine. And your
10 affidavit in support of the motion was sworn June
11 2nd, 2021?

12 A. Yes.

13 22. Q. Do you have a copy of the affidavit
14 in front of you?

15 A. Yes.

16 23. Q. And the affidavit has Exhibits A
17 through P?

18 A. That's right.

19 24. Q. And it's contained in the motion
20 record of the CCAA representatives dated June 2nd,
21 2021?

22 A. That's right.

23 25. Q. Now, you also swore a confidential
24 affidavit in support of the motion, also on June
25 2nd, 2021?

1 A. Yes.

2 26. Q. And that's included in the same
3 motion record?

4 MR. WINGFIELD: It was filed separately.
5

6 BY MR. MORRIS:

7 27. Q. It's included in the table of
8 contents to the motion record, although it hasn't
9 been provided to us with the motion record?

10 A. Correct.

11 28. Q. And you'll be asking the court for a
12 sealing order in respect of that affidavit?

13 A. Yes.

14 29. Q. And that affidavit attaches the RSA
15 Supplementary Letter Agreement?

16 A. That's right.

17 30. Q. And that agreement, as I understand
18 it, is sealed by an order of the court dated January
19 29th, 2021?

20 A. I believe that's right.

21 31. Q. Okay. You reviewed both of your
22 affidavits in preparation for today's examination, I
23 take it?

24 A. Both of them, I reviewed...I mean,
25 yes.

1 32. Q. Are there any changes that you wish
2 to make to your affidavits before I get started?

3 A. Well, with respect to the affidavit
4 that was sworn in respect of the representation
5 order, there may be statements in there that were
6 true at the time, and I am just saying this because
7 of the amount of time that has passed.

8 So, there may have been statements in there
9 that were true at the time, but now, given that six
10 months have passed, that they aren't. So, with that
11 exception, then no, there are no other changes I
12 want to make.

13 33. Q. Okay, so when you said that, you
14 were referring to your January 20th, 2021 affidavit?

15 A. Yes. The statement I just made was
16 in respect of the affidavit sworn on January 20th.

17 34. Q. Okay, but in respect of the June
18 2nd, 2021 affidavit, there is no changes?

19 A. No change, no.

20 35. Q. And I take it you also reviewed the
21 most recent version of CannTrust's CCAA plan before
22 the examination today?

23 A. I've seen it.

24 36. Q. And this is the version dated June
25 2nd, 2021 I'm referring to.

1 A. I've seen it.

2 37. Q. Can we refer to that document on
3 today's examination simply as "the plan"?

4 A. Sure.

5 38. Q. Did you review any other documents
6 in preparation for your cross-examination today?

7 A. If I reviewed anything outside of
8 the materials that we filed, it doesn't immediately
9 jump to mind.

10 39. Q. Okay. So, your evidence on this
11 motion is on behalf of the CCAA representative
12 counsel listed at paragraphs 2 and 4 of your
13 affidavit, have I got that right?

14 A. My evidence is my evidence. To the
15 extent I make statements attributable to the counsel
16 group, then it says what it says, but I wouldn't go
17 as far as to say that when I speak, I am speaking as
18 representative counsel on behalf of all the
19 individual members.

20 40. Q. Okay, so the other members of the
21 representative counsel group haven't approved the
22 contents of your affidavit?

23 MR. WINGFIELD: That would be
24 privileged. The question is
25 objected to on the grounds of privilege.

/R

1
2 BY MR. MORRIS:

3 41. Q. And the evidence that you're
4 providing is in support of the position of the CCAA
5 representatives on the motion, correct?

6 A. Yes.

7 42. Q. And those representatives represent
8 the interest of the securities claimants in the
9 class proceedings in Ontario and in the U.S.?

10 A. I mean, I would have to go back and
11 look at the exact language of the representation
12 order. The people that you have just described
13 certainly fall under the definition of securities
14 claimants in the representation order. So, I mean,
15 to the extent that they are securities claimants,
16 then yes, and I think they all are.

17 43. Q. Okay. CCAA representative counsel
18 negotiated and agreed to the RSA on behalf of the
19 securities claimants, correct?

20 A. Ultimately, it's going to be for the
21 benefit of securities claimants. I mean, securities
22 claimants weren't party to the agreement, it was
23 between the CCAA representatives and the company
24 amongst others, but it's for their benefit.

25 44. Q. And you were personally involved in

1 those negotiations?

2 A. Yes.

3 45. Q. And it's CCAA representatives'
4 counsel's view that the RSA is fair and reasonable?

5 A. Yes.

6 46. Q. And that's your view as well?

7 A. Yes.

8 47. Q. And when you say "fair and
9 reasonable", you mean fair and reasonable to the
10 securities claimants?

11 A. Yes, that's my concern.

12 48. Q. Now, I take it that CCAA
13 representative counsel also negotiated and agreed to
14 a form of the plan?

15 MR. WINGFIELD: No, no. That wouldn't
16 be a fair characterization. We had input
17 into the plan insofar as it affected our
18 clients' interests, subject to the RSA.

19
20 BY MR. MORRIS:

21 49. Q. Certainly, there are no terms in the
22 plan that CCAA representative counsel is opposing?

23 A. I think that's right.

24 50. Q. And it's also CCAA representative
25 counsel's view that the plan is fair and reasonable?

1 A. Yes.

2 51. Q. And by that, you mean fair and
3 reasonable to the securities claimants?

4 A. I certainly mean that, yes.

5 52. Q. So, I would like to go to paragraph
6 38 of your June 2nd affidavit.

7 A. Okay.

8 53. Q. You say in paragraph 38 that,
9 "...Early in the mediation process, CCAA
10 representative counsel concluded that
11 CannTrust Holdings also had a potentially
12 valuable auditor's negligence claim against
13 KPMG..."

14 You see where I'm reading?

15 A. Yes.

16 54. Q. See, you say "early in the mediation
17 process". When did CCAA representative counsel come
18 to that conclusion?

19 MR. WINGFIELD: That's privileged.

/R

20 55. MR. MORRIS: Well, he has told us it's
21 early in the mediation process. I'm not
22 sure how it's any more privileged to put a
23 date on that, or at least a narrower date
24 than sometime between May 8th and January
25 2021.

1 MR. WINGFIELD: The actual time when
2 counsel came to that view is privileged.

3 56. MR. MORRIS: Can we narrow it down to
4 something less than eight months?

5 MR. WINGFIELD: No.
6

7 BY MR. MORRIS:

8 57. Q. So, the conclusion that CannTrust
9 had a potentially valuable claim against KPMG, I
10 take it, is based on CCAA representative counsel's
11 own evaluation?

12 A. Yes, for the most part.

13 58. Q. So, yes?

14 A. Yes, yes. It's based on our
15 evaluation, that's correct.

16 59. Q. And in arriving at that conclusion,
17 I take it that representative counsel considered
18 publicly available information from CannTrust?

19 A. That's right.

20 60. Q. So, I would like to turn to a
21 document, it's the August 9th, 2019 press release of
22 CannTrust, and it's in the brief of documents that I
23 sent you this morning. If you have got it, that's
24 great. If not, I can get Justin to put it up on the
25 screen.

1 A. I have it. What tab?

2 61. Q. It is at tab 3.

3 MR. WINGFIELD: Can you have Justin pull
4 it up on the screen, please?
5

6 BY MR. MORRIS:

7 62. Q. So, just for the record, this is the
8 August 9th, 2019 press release of CannTrust, it's
9 found in the motion record of KPMG dated March 17th,
10 2021. It's Exhibit E to the affidavit of Maria
11 Ferache in that volume. So, in making its
12 evaluation of the potential CannTrust claim against
13 KPMG, I take it representative counsel was aware
14 that KPMG had withdrawn its audit reports of
15 CannTrust for 2018, and Q1 of 2019?

16 A. Yes.

17 63. Q. And representative counsel was also
18 aware of this press release that CannTrust issued
19 when KPMG withdrew its audit reports?

20 A. Please repeat that.

21 64. Q. Representative counsel was aware, in
22 evaluating a potential claim by CannTrust against
23 KPMG, of this press release that CannTrust issued
24 when KPMG withdrew its audit reports?

25 A. I was aware about this. We were

1 aware of this, yes.

2 65. Q. And you had seen the third paragraph
3 here in this press release. It says,

4 "...KPMG's decision was prompted by recent
5 sharing with KPMG of newly uncovered
6 information from the special committee's
7 investigation, including information that
8 led to senior leadership changes announced
9 on July 25th, 2019.

10 KPMG was not aware of the
11 information recently shared by the company
12 when it issued the KPMG reports, and had
13 relied upon representations made by
14 individuals who are no longer at the
15 company..."

16 So, representative counsel was aware of that
17 inclusion in the press release when it was
18 evaluating its CannTrust claim against KPMG?

19 A. Yes, I saw the statement. As you
20 know, we do not agree with it.

21 66. Q. But representative counsel
22 considered that information in its evaluation of
23 CannTrust's potential claim against KPMG?

24 A. Yes.

25 67. Q. And in evaluating the claim

1 against...CannTrust's potential claim against KPMG,
2 representative counsel was aware that in the summer
3 of 2019, CannTrust was conducting an internal
4 special committee investigation?

5 A. I am aware that there was a special
6 committee investigation.

7 68. Q. And you were aware of that when you
8 were evaluating the potential claim against KPMG?

9 A. Yes.

10 69. Q. So, I would like to go to the next
11 tab in the document brief, which is CannTrust's July
12 11th, 2019 press release. And if we could just
13 scroll down a little bit, about half way down the
14 first page. And so this is the press release in
15 which CannTrust announced its special committee
16 investigation. I take it that the representative
17 counsel were aware of this press release when they
18 were evaluating a potential claim against KPMG?

19 A. Yes.

20 70. Q. Now, you say in your affidavit, and
21 I'm taking this from paragraph 54, that,

22 "...Representative counsel determined to
23 settle with certain officers and directors
24 with respect to whom no evidence of
25 wrongdoing was found during CannTrust's

1 internal investigation..."

2 Do you see where I'm reading from?

3 A. Yes.

4 71. Q. And the parties you're referring to
5 at paragraph 54 include the original settlement
6 parties other than CannTrust?

7 A. That's right.

8 72. Q. And later, at paragraph 74, you say
9 that you have also settled with Mark Litwin and Stan
10 Abramowitz, at least in part, on the basis that no
11 evidence of wrongdoing was found against them during
12 CannTrust's internal investigation?

13 A. That's right.

14 73. Q. Now, when representative counsel was
15 evaluating CannTrust's potential claim against KPMG,
16 I take it you were aware that the same internal
17 investigation didn't result in any findings of
18 wrongdoing against KPMG, correct?

19 A. I do not. My understanding is not
20 that there was a detailed investigation into KPMG's
21 conduct. So, these have nothing to do with each
22 other. They're not analogous.

23 74. Q. All right, well, representative
24 counsel was aware that, well, one of the
25 representative counsel, Mr. Wingfield, had written

1 to CannTrust to request that it commence a
2 derivative action against KPMG, right? You were
3 aware of that when you making an evaluation of a
4 possible case?

5 A. I don't know if I knew it at the
6 time. I know it now.

7 75. Q. But certainly other representative
8 counsel were aware of that?

9 A. Sure. Mr. Wingfield wrote the
10 letter.

11 76. Q. Right. Justin, can we bring that
12 letter up? It's at tab 5 of the document brief?
13 For the record, the document is a letter from Mr.
14 Wingfield to the directors of CannTrust dated August
15 20, 2019. It's found at KPMG's responding motion
16 record dated June 4th, 2021. It's Exhibit C to the
17 affidavit of Nancy Thompson.

18 So, this is the letter in which Mr.
19 Wingfield requested the board of directors to
20 commence a derivative action to commence, among
21 others, against KPMG?

22 A. It looks like it.

23 77. Q. And CannTrust's counsel responded to
24 that letter?

25 A. Are you asking me?

1 78. Q. Yes. To your knowledge, CannTrust's
2 counsel responded to that letter?

3 A. Yes.

4 79. Q. And that's the next tab in the
5 document brief, they responded on September 3rd,
6 2019 at Exhibit C to the Thompson affidavit in
7 KPMG's record. Do you see that letter before you?

8 A. Yes.

9 80. Q. And I want to go to page 4 of that
10 letter. In the second full paragraph on that page,
11 CannTrust's counsel writes,

12 "...The special committee is not aware of
13 any evidence that KPMG negligently
14 conducted its audit of CannTrust's
15 financial statements..."

16 Do you see where I'm reading that, halfway through
17 the second paragraph?

18 A. I do, and I don't think that they
19 conducted an investigation. That's not what the
20 sentence says. It says they're not aware of any
21 evidence.

22 81. Q. Correct. It says they're not aware
23 of any evidence of wrongdoing. And you considered
24 that when you were evaluating a potential CannTrust
25 claim against KPMG?

1 A. Yes. I did consider it.

2 82. Q. And so Mr. Wingfield wrote back to
3 CannTrust's counsel on September 6th, 2019, which is
4 the next document in the brief, and that's, again,
5 for the record, Exhibit C to the Thompson affidavit
6 in KPMG's June 4th record. And in this letter, Mr.
7 Wingfield asserts that,

8 "...The tests for a derivative action
9 against, among others, KPMG, is met..."

10 So, have you have a chance to review this letter,
11 Mr. Kalloghlian?

12 A. Not carefully, no. If you want me
13 to, I will.

14 83. Q. Well, maybe we can short-circuit
15 that. Do you agree with my assertion that Mr.
16 Wingfield is saying the test for a derivative action
17 against KPMG among others is met in this letter?

18 A. I would have to read it. If you
19 tell me the paragraph, I'll let you know.

20 84. Q. Well, it's a pretty short letter, so
21 let me take a look at it, and let me know when
22 you're doing.

23 MR. WINGFIELD: The letter speaks for
24 itself, obviously.

25 THE DEPONENT: There you go.

1 BY MR. MORRIS:

2 85. Q. So, you don't take issue with my
3 conclusion, Mr. Wingfield is asserting that the test
4 for the derivative action is met?

5 A. Why don't you just show me a
6 sentence, and I'll let you know, like...

7 86. Q. It's the very last sentence of the
8 letter.

9 A. Okay, he is saying that the second
10 test of what appears to be the derivative action
11 section is met.

12 87. Q. You are aware of no further steps
13 after this letter, by Mr. Wingfield or any of the
14 other representative counsel, to advance a
15 derivative claim against KPMG, are you?

16 A. Am I? I am not aware.

17 88. Q. And representative counsel
18 considered all of this correspondence with CannTrust
19 when it was evaluating CannTrust's potential claim
20 against KPMG?

21 A. Yes.

22 89. Q. And representative counsel was aware
23 when it was making its evaluation of a potential
24 claim by CannTrust against KPMG that no such claim
25 had actually been commenced by CannTrust as of the

1 date of the CCAA filing, right?

2 A. That's right. I was concerned by
3 that.

4 90. Q. And representative counsel was
5 aware, in making its evaluation, that CannTrust
6 hadn't tolled any claims against KPMG, right?

7 A. I wasn't aware of any of that, no.

8 91. Q. So, you were not aware...and I just
9 want to understand the timing, because we saw in
10 your affidavit at Exhibit G that there was some
11 correspondence requesting tolling. At the time you
12 were evaluating your claim, or CannTrust's potential
13 claim against KPMG, you were not aware that KPMG had
14 not tolled any claims? Have I got that right?

15 A. I was not aware of any discussions
16 regarding tolling of claims between CannTrust and
17 KPMG.

18 92. Q. Okay. And that was a factor in your
19 evaluation of the potential CannTrust claim against
20 KPMG?

21 A. Why? I don't understand.

22 93. Q. Did you consider the fact that no
23 claims had been tolled when you were evaluating your
24 claims against KPMG, or potential claims against
25 KPMG?

1 A. Well, as you know from the
2 correspondence, our position was that they were
3 tolled as of the issuance of the initial order. So,
4 I don't know what you mean, really.

5 94. Q. Well, you wrote to KPMG's counsel in
6 late April asking that claims be tolled. Have I got
7 that right? At Exhibit G of your affidavit.

8 A. Yes.

9 95. Q. So, I take it from that that you
10 were concerned that the claims may not be tolled?

11 A. That's right.

12 96. Q. And that was because you were not
13 aware of CannTrust itself having entered any tolling
14 with KPMG, right?

15 A. Yes, that's right.

16 97. Q. Okay. And you were aware that
17 CannTrust hadn't entered into any tolling with KPMG
18 at the time you were evaluating CannTrust's
19 potential claim against KPMG?

20 A. That's right.

21 98. Q. Okay, and that was a fact that you
22 considered in that evaluation, right?

23 A. Okay, yes.

24 99. Q. And you were also aware, when you
25 were making that evaluation, that CannTrust's

1 financial statements for 2018 and Q1 of 2019 had not
2 been restated, right?

3 A. They had not actually been restated,
4 but CannTrust had announced that they were likely to
5 be restated.

6 100. Q. Well, think they had announced that
7 they had been withdrawn, but I don't think they had
8 announced that they were likely restated. But in
9 any event, they had not been restated, correct?

10 A. They had not, because it was...yes,
11 that's right, they had not been.

12 101. Q. And to your knowledge, they haven't
13 been restated to date, right?

14 A. No, they haven't, because CannTrust
15 entered insolvency proceedings.

16 102. Q. And representative counsel was
17 aware, at the time it was evaluating a potential
18 claim against KPMG, that KPMG was still CannTrust's
19 auditor, right?

20 A. KPMG, at the beginning of the CCAA
21 proceedings, yes, was still CannTrust's auditor.

22 103. Q. And at the time you were evaluating
23 the claim to arrive at your conclusion that there
24 was a potentially valuable claim, KPMG was still
25 CannTrust's auditor?

1 A. That's right.

2 104. Q. And that was a factor that
3 representative counsel considered when it was
4 evaluating the claim, that KPMG sort of hadn't been
5 fired by CannTrust?

6 A. Yes, that was a big concern to us.

7 105. Q. But it was a factor in your
8 evaluation of the potential claim?

9 MR. WINGFIELD: That is privileged,
10 obviously. How representative counsel
11 weighed and considered various factors in
12 coming to the conclusion that KPMG is
13 liable to CannTrust for its failure to
14 perform an audit in accordance with
15 appropriate standards is something that is
16 subject to standard litigation and counsel
17 privilege.

/R

18 106. MR. MORRIS: Well, counsel has put it
19 squarely at issue in his affidavit, so I
20 reject that conclusion, but we'll move on.

21 MR. WINGFIELD: Where did he put that
22 issue in the affidavit? I don't see that.

23 107. MR. MORRIS: He has said that,
24 "...Counsel has made an evaluation of the
25 claim and determined it was potentially

1 significant..."

2 We're entitled to explore the bases for
3 that evaluation. As I said, I will move
4 on.

5
6 BY MR. MORRIS:

7 108. Q. So, at paragraph 42 of your
8 affidavit, you say that the value of the claim, and
9 this being the potential claim that CannTrust might
10 have against KPMG, is well in excess of 270 million
11 dollars?

12 A. It says,
13 "...We estimate potential damages in the
14 proposed action to be well in excess of 27
15 million..."

16 With reference to the damages analysis from Livent.

17 109. Q. And your estimate of 270 million you
18 say was arrived at in consultation with
19 representative counsel's expert?

20 A. Yes.

21 110. Q. And was that expert Dr. Surana?

22 A. No.

23 111. Q. It was a different expert?

24 A. Yes.

25 112. Q. And that expert's work is not in

1 evidence in this motion?

2 MR. WINGFIELD: Privileged.

/R

3 113. MR. MORRIS: That expert's work is not
4 in evidence in this motion?

5 MR. WINGFIELD: It is subject to
6 litigation privilege.

7 114. MR. MORRIS: So, the answer to my
8 question is no, it's not in evidence in
9 this motion?

10 MR. WINGFIELD: That's correct, it's
11 subject to litigation privilege.

12
13 BY MR. MORRIS:

14 115. Q. Now, my partner Ms. Laing asked you,
15 Mr. Kalloghlian, last Thursday for all
16 communications with CannTrust or its advisors during
17 the course of negotiations of the RSA that relate to
18 CannTrust's potential claim against KPMG. Do you
19 recall that?

20 A. Yes, she was asking me to breach the
21 mediation order, which I am declining to do.

22 116. Q. And that correspondence is at
23 Exhibit H to the Thompson affidavit in KPMG's June
24 4th record. So, I would like to bring that up,
25 that's at tab 9 of the PDF brief that I sent you

1 this morning. And you responded to Ms. Laing's
2 e-mail last Friday at 12:19 p.m. in the same e-mail
3 chain. Can we, Justin, scroll to that, Serge's
4 response, 12:19 on Friday? And you, among other
5 things, claim privilege over the communications
6 sought, correct?

7 A. Yes.

8 117. Q. And you maintain that position now?

9 A. Yes.

10 MR. WINGFIELD: Yes.

11
12 BY MR. MORRIS:

13 118. Q. I would like to focus on the last
14 sentence of your response in that 12:19 e-mail. You
15 write,

16 "...No documents responsive to your request
17 were exchanged with CannTrust that are by
18 themselves not subject to the mediation
19 order or applicable privilege, and
20 CannTrust provided no such documents that
21 were created before the mediation order..."

22 So, what you mean there is that CannTrust did not
23 provide any documents relating to a potential claim
24 against KPMG that were created before the date of
25 the mediation order? Have I got that right?

1 A. Yes.

2 119. Q. And the date of the mediation order
3 was May 8th of 2020? I'm basing that on paragraph
4 25 of your affidavit.

5 A. Yes.

6 120. Q. So, CannTrust didn't provide any
7 documents created before May 8th, 2020 to
8 representative counsel suggesting that a claim
9 against KPMG has potentially significant value?

10 MR. WINGFIELD: There were no documents,
11 so we're not going to talk about the
12 absence of information in this examination.
13

14 BY MR. MORRIS:

15 121. Q. And so any value that representative
16 counsel is placing on a potential claim against KPMG
17 is based on its own conclusions and not by analysis
18 from CannTrust, I take it?

19 MR. WINGFIELD: That would be
20 privileged, subject to paragraph 11 of the
21 mediation order.

/R

22 122. MR. MORRIS: I think privilege and
23 mediation order are two different things,
24 but we have your position.

25 MR. WINGFIELD: There is a

1 confidentiality protocol that applies to
2 the mediation order, and there is also a
3 privilege that would apply independently of
4 the confidentiality protocol.

5
6 BY MR. MORRIS:

7 123. Q. So, the CCAA representatives, as I
8 understand it, take the position on this motion that
9 the court should determine that the assignment of
10 claims to the litigation trust cannot be challenged.
11 Have I got that right?

12 MR. WINGFIELD: That is a legal issue,
13 that is not the subject of
14 cross-examination.

15 124. MR. MORRIS: Well, Mr. Kalloghlian is a
16 lawyer, and you have been involved in the
17 construction of this plan, and the question
18 is perfectly appropriate and can be
19 answered. I am asking what the position
20 being taken on the motion is. It's not a
21 legal question, I'm asking about the
22 position.

23 MR. WINGFIELD: No, the position will be
24 a brief in the facta. I think you can
25 examine Mr. Kalloghlian on questions on

1 fact, not on legal analysis, or submissions
2 that we intend to make before His Honour.

3 125. MR. MORRIS: The CCAA representatives
4 taking this position is a fact, is it not?

5 MR. WINGFIELD: The facts are found in
6 Mr. Kalloghlian's affidavit.

7 126. MR. MORRIS: Let's go to article...

8 MR. WINGFIELD: We're not going to
9 debate on the record legal arguments that
10 we intend to advance, or other arguments we
11 intend to advance with His Honour on
12 Friday.

13 127. MR. MORRIS: So, my colleague has
14 brought up section 8.2(s) of the plan. I
15 take it that the CCAA representatives are
16 concerned that if the court doesn't make a
17 determination that assignability can't be
18 challenged, that claims assigned to the
19 trust may turn out not to be assignable,
20 right?

21 MR. WINGFIELD: We're not getting into
22 issues of what we may or may not be
23 concerned about. That's clearly a matter
24 of privilege, or it's a question of
25 argument.

1 BY MR. MORRIS:

2 128. Q. Representative counsel has provided
3 a draft claim to KPMG, correct? At Exhibit F of
4 your affidavit?

5 A. Yes.

6 129. Q. And that draft claim could be the
7 claim that's ultimately pursued by the securities
8 claimants, if they are permitted to do that by the
9 court. Right?

10 A. It would look something like this,
11 yes.

12 130. Q. But the CCAA representatives are
13 reserving their rights to bring a different claim,
14 or a claim in a different form?

15 A. Yes.

16 131. Q. Now, I take it that the CCAA
17 representatives don't agree that the determination
18 of assignability should be based on an issued claim
19 and a proper record?

20 MR. WINGFIELD: Again, that's a question
21 of argument that we will undoubtedly be
22 addressing with His Honour on Friday. It's
23 not an appropriate subject for
24 cross-examination.

25 132. MR. MORRIS: So, you're saying the court

1 should be forced to make a determination
2 now? That's the position the CCAA
3 representatives are making on this motion?

4 MR. WINGFIELD: The position we are
5 taking on this motion, on this
6 cross-examination, is that question is
7 inappropriate.

8
9 BY MR. MORRIS:

10 133. Q. You will agree with me that the
11 assigned claims that are proposed in the plan would
12 be pursued for the benefit of the securities
13 claimants?

14 A. Yes.

15 134. Q. But that CannTrust retains a
16 residual interest in those claims?

17 A. I don't know what you mean.

18 135. Q. Well, if we look at article 4.2(d)
19 of the plan, as I read it, it says that,
20 "...If the securities claimant trust
21 recovers more than 250 million dollars,
22 CannTrust is entitled to start to be repaid
23 its 50 million dollar settlement
24 payment..."

25 You were aware of that component of the plan?

1 A. Yes.

2 136. Q. Now, the plan also contemplates that
3 CCAA representative counsel will appoint the
4 trustees of the securities claimant trust. Do you
5 agree with that?

6 A. That's right.

7 137. Q. And I take it that the intention of
8 representative counsel is to appoint itself as
9 trustee?

10 A. Yes, that's part of the agreement.

11 138. Q. And in representative counsel's role
12 as trustee, it will also appoint itself as counsel
13 to the securities claimant trust?

14 A. Yes, that's the intention.

15 139. Q. And in that capacity, representative
16 counsel will prosecute any of the assigned claims?

17 A. Correct.

18 140. Q. I take it that no trust terms have
19 been established for the securities claimant trust?

20 A. There is no agreement yet.

21 141. Q. So, there is no declaration of trust
22 that exists?

23 A. No.

24 142. Q. And there is no fee arrangement for
25 the prosecution of the assigned claims at this

1 point?

2 MR. WINGFIELD: That's a matter between
3 representative counsel and the class,
4 subject to the supervisory jurisdiction of
5 the court, not a question for you to be
6 asking or for us to be answering in this
7 cross-examination.

8 143. MR. MORRIS: I don't think there is any
9 magic to answer whether there is an
10 existence of a fee agreement at this point,
11 but...

12 MR. WINGFIELD: It's refused.

/R

13
14 BY MR. MORRIS:

15 144. Q. I take it no consideration has been
16 given as to whether representative counsel will
17 agree with itself to pursue the assigned claims on
18 contingency?

19 MR. WINGFIELD: Refused.

/R

20 145. MR. MORRIS: What's the basis for the
21 refusal?

22 MR. WINGFIELD: It's not an appropriate
23 subject of this cross-examination involving
24 KPMG. You can, in fact, infer that as
25 class action counsel, we do act on a

1 contingency basis. That I think is a
2 matter of common knowledge.
3

4 BY MR. MORRIS:

5 146. Q. Now, the proposed assigned claim
6 against KPMG is not a class action though, correct?

7 A. It's not a class action.

8 147. Q. So, the provisions of the Class
9 Proceedings Act wouldn't apply to it?

10 MR. WINGFIELD: Not necessarily.

11 THE DEPONENT: My intention is to
12 prosecute them concurrently, so, you know,
13 to the extent...it's possible that the
14 court may make an order that is
15 inconsistent with what you just asked.

16 148. MR. MORRIS: So then CCAA representative
17 counsel has turned its mind to whether it
18 would be seeking approval from the court
19 for events during the pursual of the
20 assigned claims?

21 MR. WINGFIELD: We have turned our mind
22 to that issue, and we are not going to be
23 answering questions on this examination
24 about the conclusions that we have come to
25 on that issue.

/R

1
2 BY MR. MORRIS:

3 149. Q. Now, I would like to discuss the RSA
4 supplemental letter agreement, and I understand this
5 is confidential and sealed by the court. I take it
6 that that letter agreement is the exhibit to your
7 confidential affidavit of June 2nd?

8 MR. WINGFIELD: It's sealed, so all
9 questions about the document are
10 inappropriate. /R

11
12 BY MR. MORRIS:

13 150. Q. I take it that CCAA representatives
14 wouldn't proceed with the plan in the absence of the
15 supplemental letter agreement, have I got that
16 right?

17 MR. WINGFIELD: That's refused. /R

18
19 BY MR. MORRIS:

20 151. Q. And that certain sections of the
21 plan are conditional on the terms of the
22 supplemental letter agreement being completed or
23 satisfied?

24 MR. WINGFIELD: The plan speaks for
25 itself. /R

1
2 BY MR. MORRIS:

3 152. Q. Now, the terms of the supplemental
4 letter agreement don't relate to the pursuit of the
5 ongoing litigation by CCAA representative counsel,
6 correct?

7 MR. WINGFIELD: That's refused. /R

8
9 BY MR. MORRIS:

10 153. Q. And the terms of the SLA don't
11 relate to fee arrangements for CCAA representative
12 counsel in respect of the class actions?

13 MR. WINGFIELD: That's refused. /R

14
15 BY MR. MORRIS:

16 154. Q. And the terms of the SLA don't
17 relate to the appointment of the trustee of the
18 securities claimant trust?

19 MR. WINGFIELD: That's refused. /R

20
21 BY MR. MORRIS:

22 155. Q. And the terms of the SLA don't
23 relate to the assignment of claims to the securities
24 claimant trust?

25 MR. WINGFIELD: That's refused. /R

1
2 BY MR. MORRIS:

3 156. Q. And the terms of the SLA don't
4 relate to the appointment of counsel to the
5 securities claimant trust?

6 MR. WINGFIELD: That is also refused. /R

7
8 BY MR. MORRIS:

9 157. Q. And the terms of the SLA don't
10 relate to the fee arrangements for CCAA
11 representative counsel?

12 MR. WINGFIELD: That is also refused. /R

13 158. MR. MORRIS: If we could just go off the
14 record for about three minutes, I think
15 those are my questions, but I just want to
16 confer with my colleagues briefly.

17
18 --- DISCUSSION OFF THE RECORD

19
20 BY MR. MORRIS:

21 159. Q. All right, I just have one more
22 question before I turn things over to Mr.
23 Krygier-Baum. I just want to go back to paragraph
24 42 of your affidavit, where you estimate the damages
25 of the claim to be in excess of 270 million dollars.

1 And I had asked earlier about expert work that you
2 had done on this, and there was a privilege claim
3 made. I just want to confirm that you are not
4 prepared to produce the expert work you've had done
5 at this juncture?

6 A. What was the question?

7 160. MR. MORRIS: Sorry, you're not prepared
8 to produce the expert work you've had done
9 in respect of the paragraph 42 estimate?

10 MR. WINGFIELD: Correct.

11 161. MR. MORRIS: And that's on the basis of
12 privilege?

13 MR. WINGFIELD: Correct.

14 162. MR. MORRIS: All right. Those are my
15 questions.

16
17 CROSS-EXAMINATION BY MR. KRYGIER-BAUM:

18 163. Q. Thank you. As you know, I am
19 counsel here on behalf of Newline. I am going to be
20 asking some questions. Same rules apply, I'm sure
21 you know, as my friend's at Blake's. If you have
22 any difficulty understanding, or if you would like
23 me to repeat it, just ask me, I'm happy to do so.
24 Can we please start at paragraph 30(k) of your
25 affidavit, do you have that before you?

1 A. Yes.

2 164. Q. So, you swear, and I'm starting at
3 the top,

4 "...In coming to these settlement
5 agreements, CCAA representative counsel
6 conducted extensive legal and factual
7 investigation, including..."

8 And then you skip down to subparagraph (k), you say,

9 "...Reviewing CannTrust Holdings'
10 responsive insurance policies..."

11 And I'm going to stop there. Did you personally
12 review these insurance policies?

13 MR. WINGFIELD: Refused.

/R

14 165. MR. KRYGIER-BAUM: How is that refused?

15 MR. WINGFIELD: You are aware, I assume,
16 of the provisions of the confidentiality
17 protocol from the mediation order, and any
18 statements and discussions, or other
19 considerations relevant to documents
20 provided as part of that mediation are
21 privileged from disclosure in any form, and
22 therefore the questions are being refused.

23 166. MR. KRYGIER-BAUM: Well, you know, I
24 don't agree with that, and I think we're
25 going to be taking the same positions as

1 our friends at Blake's. You are referring,
2 specifically, in your sworn affidavit, to
3 responsive insurance policies, and so
4 you're refusing as to identifying whether
5 in fact he did review those responsive
6 insurance policies?

7 MR. WINGFIELD: They were reviewed.
8 That is a statement of fact which is one
9 that we can confirm on the record is true.
10 But we are also relying on paragraph 11 of
11 the mediation order as one would expect,
12 and therefore any questions relating to
13 what happened as a result of any
14 examination of documents provided during
15 the mediation process is immune from
16 examination.

17 167. MR. KRYGIER-BAUM: Counsel, that is not
18 my question, at least at this point. I am
19 asking if he, Mr. Kalloghlian, reviewed
20 them.

21 MR. WINGFIELD: And you have my
22 position.

23 168. MR. KRYGIER-BAUM: You have provided the
24 answer that they have been reviewed. I'm
25 assuming you mean by some member of

1 representative counsel. Are you affirming
2 that, is that correct?

3 MR. WINGFIELD: You have my position on
4 the record.

5 169. MR. KRYGIER-BAUM: I'm not sure I do,
6 but okay. So, it's a refusal as to whether
7 the deponent, Mr. Kalloghlian, personally
8 reviewed the insurance policies, is that
9 correct?

10 MR. WINGFIELD: It is a refusal, and
11 it's a blanket refusal to answer any
12 questions relating to any document provided
13 under the terms of the mediation order.
14

15 BY MR. KRYGIER-BAUM:

16 170. Q. Okay. Well, let's work our way
17 through this, and we'll get your refusals as they
18 come. Do you prefer Serge or Mr. Kalloghlian? What
19 do you prefer to go by?

20 A. Serge, please.

21 171. Q. Perfect, I'm the same way. Serge,
22 can you identify who the insurers are on the various
23 responsive insurance policies?

24 MR. WINGFIELD: That's refused.

/R

1 BY MR. KRYGIER-BAUM:

2 172. Q. Serge, are you aware that there are
3 two of what we call two towers of insurance, an ABC
4 tower...

5 MR. WINGFIELD: That's refused. We can
6 short circuit this. All of the information
7 we have about the insurance arose after the
8 mediation order was entered into, and was
9 provided to us as part of the mediation
10 process with your clients, amongst others.

11 And pursuant to paragraph 11(b) of
12 the mediation order, all evidence about
13 those documents, or subject to the
14 disclosure in relation to insurance, are
15 immune from examination. These questions
16 are going to be refused. /R

17 173. MR. KRYGIER-BAUM: That's fine, so I'll
18 go through them, and you can refuse them
19 one by one.

20
21 BY MR. KRYGIER-BAUM:

22 174. Q. Sir, you're refusing as to which
23 policies were reviewed, that's a refusal?

24 MR. WINGFIELD: Refusal. /R

1 BY MR. KRYGIER-BAUM:

2 175. Q. You're refusing as to the identity
3 of the insurers, or other reference to pinpoint the
4 specific policies, is that a refusal?

5 MR. WINGFIELD: That's refused. /R

6
7 BY MR. KRYGIER-BAUM:

8 176. Q. Serge, do you appreciate that there
9 are two different broad types of insurance at issue
10 here, an ABC and just a Side A DIC insurance?

11 MR. WINGFIELD: That's refused. /R

12
13 BY MR. KRYGIER-BAUM:

14 177. Q. Do you appreciate that different
15 insurance policies will have different
16 responsiveness based on their own terms and
17 conditions and coverages provided?

18 MR. WINGFIELD: In relation to insurance
19 applicable to these proceedings, that
20 question is refused. /R

21 178. MR. KRYGIER-BAUM: Is that conditional?
22 I wasn't sure if there was a second part to
23 that.

24 MR. WINGFIELD: Well, as a general
25 matter, insurance policies are subject to

1 their terms. In relation to the insurance
2 policies applicable to this matter, the
3 question is refused, because those policies
4 were provided as part of the mediation
5 process.

6
7 BY MR. KRYGIER-BAUM:

8 179. Q. In paragraph 30, you identify
9 various experts which were, I guess, of assistance
10 in helping the CCAA representative counsel reach
11 certain determinations. Did you have any experts or
12 outside consultants that assisted with regard to the
13 responsiveness of insurance policies?

14 MR. WINGFIELD: That's also refused,
15 that's privileged, independently of
16 anything under the mediation protocol. /R

17
18 BY MR. KRYGIER-BAUM:

19 180. Q. If we could turn to paragraph 43 of
20 your affidavit, please? Let me know when you have
21 that in front of you.

22 A. I have that.

23 181. Q. Let me start with a bit of a broader
24 question. I think it's a fair read of your
25 affidavit to say that the CCAA representative

1 counsel's support of the current plan and the
2 sanction order is premised on what you see to be
3 value in claims of the directors and officers of
4 CannTrust as against their insurers, is that fair?

5 MR. WINGFIELD: No, if there is a
6 precise statement in the affidavit that you
7 wish to ask about, please identify that
8 statement.

9 182. MR. KRYGIER-BAUM: Counsel, I'm happy to
10 do so, but I am also entitled to ask
11 questions here, and I did say, you know, as
12 a general principle, as a broad statement,
13 and I'm entitled to his evidence on it.

14 MR. WINGFIELD: We're not answering a
15 gloss of what is a 35-page affidavit.

/R

16
17 BY MR. KRYGIER-BAUM:

18 183. Q. All right, paragraph 43. You start
19 with,

20 "...As indicated in previous affidavits
21 filed in these proceedings, CannTrust
22 Holdings' insurers have denied coverage to
23 it in respect of class action claims..."

24 Who are CannTrust Holdings' insurers that you refer
25 to in that paragraph?

1 A. If they're not described in the
2 previous affidavits, and I don't know if they are,
3 then they are under the mediation order, and I don't
4 recall off the top of my head if they are.

5 184. Q. Is my client Newline one of those
6 insurers you are referring to in the first sentence
7 of paragraph 43?

8 MR. WINGFIELD: Is it referred to in
9 previous affidavits? Can you help us as to
10 whether that...

11 185. MR. KRYGIER-BAUM: Sure, and I'm happy
12 to reread it. You say,
13 "...CannTrust Holdings' insurers have
14 denied coverage to it..."
15 "It", you know, by grammatical
16 construction, is CannTrust the entity as I
17 read that,
18 "...in respect of class action claims..."
19 Is my client, newline, one of those
20 insurers that has denied coverage to the
21 entity CannTrust?

22 MR. WINGFIELD: Is your client one of
23 CannTrust's insurers?

24 186. MR. KRYGIER-BAUM: Well, that's a
25 broader question, and I'm happy to have

1 that answered first, and then have the more
2 specific question answered after.

3 MR. WINGFIELD: This is a question for
4 you. All of the insurers have denied
5 coverage, as we understand it. If your
6 client is one of the insurers, then your
7 client would be encompassed by that broad
8 statement.

9 187. MR. KRYGIER-BAUM: Well, you know, today
10 is not my day to be answering questions.

11
12 BY MR. KRYGIER-BAUM:

13 188. Q. Serge, have you reviewed the
14 affidavit of Ben Forrest that we filed with regard
15 to this hearing, ascension order?

16 A. I did review it, but I don't have it
17 memorized.

18 189. Q. Okay. Do you recall seeing this
19 statement in it where he swore that as a Side A DIC
20 insurer, Newline does not provide coverage to
21 CannTrust the corporate entity itself? Do you
22 recall seeing that?

23 MR. WINGFIELD: Let me find it.

24 190. MR. KRYGIER-BAUM: Sure, thank you.

25 MR. WINGFIELD: You don't have it handy,

1 do you? I am going to have to be searching
2 for it.

3 191. MR. KRYGIER-BAUM: You know what? I
4 wish I had a Justin as well. We are a
5 smaller operation. I don't have it
6 immediately available. If you have
7 trouble, I could pull it up.

8 THE DEPONENT: I found it.

9 MR. WINGFIELD: Where is it?
10

11 BY MR. KRYGIER-BAUM:

12 192. Q. So, it's paragraph 3.

13 A. Yes, I have it.

14 193. Q. And I assume you're not
15 taking...it's not your position that Newline
16 provides coverage to CannTrust, the corporate
17 entity?

18 MR. WINGFIELD: It is neither our
19 position nor not our position. We are in
20 the process of mediating insurance coverage
21 issues with respect to all the insurers
22 that have made themselves part of insurance
23 towers, in this case, and therefore not
24 answering questions on this record about
25 the content about the mediation process.

1 194. MR. KRYGIER-BAUM: I'm not...Counsel,
2 and I've tried to be very clear on this,
3 I'm not asking for you to disclose what's
4 going on in the mediation process.

5 MR. WINGFIELD: You actually are.
6 You've taken positions in the mediation
7 process, and you are now asking questions
8 on the record in relation to issues that
9 have arisen in the mediation.

10 We'll know that. And it is entirely
11 inappropriate for you to be asking
12 questions of Mr. Kalloghlian, under
13 cross-examination, in relation to the very
14 matters that we have been discussing as
15 part of the mediation process. It is
16 entirely inappropriate.

17 195. MR. KRYGIER-BAUM: Counsel, I completely
18 disagree with that characterization. It's
19 overreaching, it's unfair, and it's just
20 simply inaccurate. Serge has sworn. He
21 says,
22 "...CannTrust Holdings' insurers have
23 denied coverage to it..."
24 I am simply asking what that means, what
25 these nouns are, you know, what these

1 subjects and objects of a sentence are.
2 And to say that, well, I'm trying to now
3 breach mediation protocol I think is...
4 it's unfair, and it doesn't do this
5 cross-examination process any good. But if
6 I'm going to have a refusal on that, that's
7 fine.

8 MR. WINGFIELD: Well, you've been
9 engaged in mediation with all the insurers
10 for eight months. To date, there have been
11 no provisions of insurance coverage
12 applicable to the claims that we have made,
13 or which we can settle in relation to that
14 insurance.

15 The insurers may have provided some
16 coverage to some people on some basis, not
17 in relation to what we have been
18 negotiating with the insurers. You know
19 that.

20 196. MR. KRYGIER-BAUM: Yes, and I really
21 don't think...well, obviously, I disagree
22 with the way that you are refusing things,
23 but I'll be moving on here.

24
25 BY MR. KRYGIER-BAUM:

1 197. Q. The last sentence of paragraph 43,
2 you swear,

3 "...In our view, the claims of CannTrust
4 Holdings and other settlement parties
5 against the insurers have significant
6 value..."

7 Do you see that?

8 A. Yes.

9 198. Q. It's my understanding that when you
10 say "against the Insurers", capital I, you are
11 including all insurers, ABC and DIC insurers?

12 A. Yes.

13 199. Q. Okay. And of course, that includes
14 my client Newline as a DIC insurer?

15 A. Yes.

16 200. Q. Okay. How did you reach that...so,
17 "other settlement parties", settlement parties, I
18 assume you're referring to the original settlement
19 parties and any additional settlement parties that
20 have come in, correct?

21 A. Yes. Those that have assigned
22 claims to us.

23 201. Q. Thank you. And this includes
24 directors and officers of CannTrust?

25 A. Right.

1 202. Q. So, settlement parties that...claims
2 they have against their insurers, this includes
3 claims of directors and officers against their D&O
4 insurers, correct?

5 A. That's right.

6 203. Q. And when you say "have significant
7 value", did you reach that determination for each
8 and every one of the directors and officers of
9 CannTrust?

10 MR. WINGFIELD: We reached that
11 conclusion based on the totality of the
12 claims and the insurance coverage.

13 204. MR. KRYGIER-BAUM: Counsel, you know, I
14 appreciate that you're both lawyers here.
15 You're not refusing, you're not objecting,
16 you are now simply answering questions.
17 It's not your affidavit. I would
18 appreciate it from Serge himself.

19 THE DEPONENT: We haven't gotten into
20 any detail. That sentence says what it
21 says: settlement parties collectively
22 against insurers collectively. For the
23 reasons Mr. Wingfield has stated, I don't
24 think it's appropriate to give any further
25 breakdown.

1 BY MR. KRYGIER-BAUM:

2 205. Q. So, and I'm not sure...I'm not
3 arguing, I just want some clarity. Are you saying
4 that you have not done it on an individualized basis
5 for directors and officers, or are you saying you're
6 refusing to answer that?

7 MR. WINGFIELD: Refusing.

/R

8 206. MR. KRYGIER-BAUM: Thank you.

9 MR. WINGFIELD: The latter, we're
10 refusing.

11
12 BY MR. KRYGIER-BAUM:

13 207. Q. Thank you. And what was the process
14 that you went through in determining that the claims
15 of directors and officers against their D&O policies
16 had significant value?

17 MR. WINGFIELD: It's refused.

/R

18 THE DEPONENT: It's refused.

19
20 BY MR. KRYGIER-BAUM:

21 208. Q. You're refusing that? Okay. What
22 was the value that you arrived at, or the range of
23 value that you arrived at for the claim of Mr. Paul
24 against his D&O insurers?

25 MR. WINGFIELD: That's refused.

/R

1
2 BY MR. KRYGIER-BAUM:

3 209. Q. Same question, Mr. Aceto.

4 MR. WINGFIELD: That's refused.

/R

5
6 BY MR. KRYGIER-BAUM:

7 210. Q. Same question for any of the
8 directors and officers.

9 MR. WINGFIELD: Refused.

/R

10
11 BY MR. KRYGIER-BAUM:

12 211. Q. In reaching the determination that
13 the claims by the D&Os against their D&O coverage
14 had significant value, did you have access to any
15 documentary production from any of the D&Os
16 themselves?

17 MR. WINGFIELD: Refused, that's subject
18 to confidentiality protocol.

/R

19
20 BY MR. KRYGIER-BAUM:

21 212. Q. Did you conduct any examinations
22 under oath of any of the directors and officers?

23 MR. WINGFIELD: No, that's a matter of
24 record.

25

1 BY MR. KRYGIER-BAUM:

2 213. Q. No, okay, you did not. Did you
3 obtain any will-say statements of other witnesses
4 concerning this issue?

5 MR. WINGFIELD: That would be
6 privileged.

/R

7
8 BY MR. KRYGIER-BAUM:

9 214. Q. Did you obtain any documentation
10 from CannTrust on this issue?

11 MR. WINGFIELD: That is subject to
12 confidentiality protocol.

/R

13
14 BY MR. KRYGIER-BAUM:

15 215. Q. Did you conduct any kind of audit or
16 forensic examination of computers belonging to any
17 of the directors and officers?

18 A. That is privileged.

/R

19
20 BY MR. KRYGIER-BAUM:

21 216. Q. Same question, their cell phones?

22 MR. WINGFIELD: Privileged.

/R

23
24 BY MR. KRYGIER-BAUM:

25 217. Q. Same question, CannTrust servers?

MR. WINGFIELD: Privileged.

/R

BY MR. KRYGIER-BAUM:

218. Q. Aside from what I think you referred to as the original or initial internal investigation at CannTrust, did you obtain any other evidence whatsoever regarding the directors and officers, in informing your opinion that their claims against their insurers had significant value?

MR. WINGFIELD: Privileged and refused. And once again, you know that what you're discussing are matters directly relevant to these questions in the context of the ongoing mediation with the insurers. So, these questions are entirely inappropriate. You're basing...it's a cross-examination of Mr. Kalloghlian in relation to the mediation process that we are engaged in right now with your very client, with your client.

219. MR. KRYGIER-BAUM: I am not part of that, Counsel, I am...

MR. WINGFIELD: It is entirely inappropriate what you're doing.

220. MR. KRYGIER-BAUM: We have heard

1 evidence from your client that the, you
2 know, assignment of these claims is
3 valuable, that it's...and I don't want to
4 put words in his mouth, but I understand
5 that, you know, it's a core component of
6 the plan implementation and the agreement
7 reached.

8 He has sworn in a few spots, it had
9 significant values, the claims against the
10 insurers. I am allowed to probe that, I am
11 allowed to test that, and I disagree with
12 kind of, in my view, going behind the veil
13 of mediation, saying that he is able to put
14 that statement out and I can't test it.
15 But I'll keep asking my questions.

16 THE DEPONENT: I have told you that in
17 our view, these have significant value.
18

19 BY MR. KRYGIER-BAUM:

20 221. Q. Right, and I'm...you've sworn
21 that...

22 A. Do you think I'm lying? Are you
23 suggesting that I'm lying that I don't have that
24 view? Because that's what the statement says. You
25 are asking me questions to explain how we came to

1 that view, which is...or whether that view is
2 correct or not. So, he's right, it's not
3 appropriate.

4 222. MR. KRYGIER-BAUM: I'm certainly not
5 suggesting you're lying. But Counsel, I
6 would think probably whenever you've
7 conducted a cross-examination, you've tried
8 to probe or test to get an explanation of
9 statements in an affidavit. I think that's
10 kind of one of the core purposes.

11 MR. WINGFIELD: Mr. Krygier-Baum, you
12 know full well what offers the insurers
13 have made to settle the claims against
14 them, and you know those offers have
15 considerable value. You know that.

16 223. MR. KRYGIER-BAUM: Mr. Wingfield, I
17 would caution now about mediation and
18 disclosure and settlement.

19 MR. WINGFIELD: Well, this is why your
20 questions are inappropriate and why they're
21 being refused, okay? You're asking
22 questions that you know are in the core of
23 the mediation process, and you know what
24 the answers are to these questions because
25 you're part of the mediation process. And

1 therefore, you are asking questions that
2 are entirely inappropriate.

3
4 BY MR. KRYGIER-BAUM:

5 224. Q. All right, I think we have your
6 position on this. We disagree, but that's fine.
7 Did you review...and maybe this is in your blanket
8 refusal, but I want to ask it anyways. Did you
9 review the terms of any of the policies, and whether
10 or not entering into the RSA, or the settlement in
11 general, would compromise or jeopardize coverage
12 under any of the policies?

13 MR. WINGFIELD: Refused.

/R

14
15 BY MR. KRYGIER-BAUM:

16 225. Q. And I'm asking that broadly, about
17 every D&O?

18 MR. WINGFIELD: Refused.

/R

19 226. MR. KRYGIER-BAUM: This does speed
20 things up, all those refusals, so if you'll
21 just bear with me for a moment.

22
23 --- upon recessing at 10:13 a.m.

24 --- A BRIEF RECESS

25 --- upon resuming at 10:20 a.m.

1 SERGE KALLOGHLIAN, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. KRYGIER-BAUM:

3 227. Q. Serge, if you could turn to
4 paragraph 54 of your affidavit, please?

5 A. Yes.

6 228. Q. So, in this paragraph, you're
7 talking about the original settlement parties, which
8 are defined elsewhere, but it's, you know, CannTrust
9 and certain of their officers and directors, and I
10 think holding company. Partway through the
11 paragraph, do you see where it says, "Our decision
12 not to"? Halfway down?

13 A. Yes.

14 229. Q. So, it reads,
15 "...Our decision not to require separate
16 contributions from such persons was
17 informed by the fact, as well as by our
18 understanding, that such persons were not
19 material sources of recovery because they
20 had limited legal or financial exposure
21 relative to the 50 million dollar
22 payment..."

23 And then it continues. And it is self-evident in
24 that first sentence of your paragraph, but aside
25 from CannTrust, none of the original settlement

1 parties made a cash contribution towards the
2 settlement, correct?

3 A. That's right.

4 230. Q. And aside from the CannTrust
5 internal investigation, did a representative of
6 plaintiffs, did you do anything to satisfy yourself
7 that there was no, quote, "evidence of wrongdoing"?

8 MR. WINGFIELD: Privileged.

/R

9
10 BY MR. KRYGIER-BAUM:

11 231. Q. Privileged, okay. But regardless,
12 you were satisfied that these D&Os that were part of
13 the original settlement parties didn't commit any,
14 quote, "wrongdoing"?

15 MR. WINGFIELD: Well, just a second.

16 THE DEPONENT: I'm just reading this.

17 232. MR. KRYGIER-BAUM: Sure, take your time.

18 MR. WINGFIELD: The question that you've
19 asked isn't what Mr. Kalloghlian said in
20 his affidavit.

21 233. MR. KRYGIER-BAUM: Well, that's why I'm
22 asking the question.

23 MR. WINGFIELD: Right, so the affidavit
24 is something Mr. Kalloghlian can speak to.

25 234. MR. KRYGIER-BAUM: It's, like, it's a

1 direct question from the affidavit,
2 Counsel. I do not know how that's being
3 refused.

4 MR. WINGFIELD: No, it's a twisted
5 interpretation of what Mr. Kalloghlian
6 says.

7 THE DEPONENT: What I explained here is
8 how we came to the conclusion. What you're
9 asking is a bit different. What I can say
10 is...

11
12 BY MR. KRYGIER-BAUM:

13 235. Q. Exactly, and that's why I'm asking
14 it.

15 A. Yes, okay. Well, what I will say
16 is, we believe that this settlement is fair and
17 reasonable.

18 236. Q. To the securities claimants, right?
19 That's what you mean by that statement.

20 A. Yes. Those are my clients.

21 237. Q. You haven't provided any assertion
22 that it's fair and reasonable to any of the
23 codefendants or any of the insurers, have you?

24 A. No.

25 238. Q. No, you have not.

2 239. Q. Okay.

3 A. Fair and reasonable to my clients.

240. Q. Right, and my question is...it's a direct question, I'm not sure why it would provoke that answer. But my question is, in coming to the settlement, were the representatives of the view that the D&Os in the original settlement parties had not conducted any wrongdoing?

240. Q. Right, and my question is...it's a direct question, I'm not sure why it would provoke that answer. But my question is, in coming to the settlement, were the representatives of the view that the D&Os in the original settlement parties had not conducted any wrongdoing?

5 direct question, I'm not sure why it would provoke

6 that answer. But my question is, in coming to the

7 settlement, were the representatives of the view

8 that the D&Os in the original settlement parties had

9 not conducted any wrongdoing?

10 MR. WINGFIELD: That is not what the
11 affidavit says.

11 affidavit says.

12 241. MR. KRYGIER-BAUM: Counsel, I have been
13 clear on this, and, you know, I don't think
14 your refusals and your interruptions are
15 constructive at all. And we may have to go
16 past 11 if this is the way things are
17 going. I know what the affidavit says. I
18 am asking a question at cross-examination.
19 I am entitled to do so.

13 clear on this, and, you know, I don't think

14 your refusals and your interruptions are

15 constructive at all. And we may have to go

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16         past 11 if this is the way things are
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17 going. I know what the affidavit says. I

18 am asking a question at cross-examination.

19 I am entitled to do so.

You could say that's not what the affidavit says. I could read probably decently, you know, I could see what the affidavit says. I am asking a question in cross-examination arising from...based on his affidavit. If you want to refuse it,

21 affidavit says. I could read probably

22 decently, you know, I could see what the

23 affidavit says. I am asking a question in

24 cross-examination arising from...based on

25 his affidavit. If you want to refuse it,

1 refuse it, but don't keep telling me that's
2 not what the affidavit says.

3 MR. WINGFIELD: If you put to the
4 witness, as a factual matter, that he
5 stated something in the affidavit which he
6 in fact did not state, then I'm objecting.

7 242. MR. KRYGIER-BAUM: Counsel, I didn't do
8 that.

9 MR. WINGFIELD: You did. Why don't you
10 ask a different question that is not
11 prefaced on a gloss on what Mr. Kalloghlian
12 said in paragraph 54, then feel free to ask
13 that question.

14
15 BY MR. KRYGIER-BAUM:

16 243. Q. Serge, we will all agree that you do
17 not say in paragraph 54 that in coming to the
18 settlement with the original settlement parties, the
19 representatives were of the view that the D&Os did
20 not conduct any wrongdoing. I agree with that.
21 That's not in the affidavit. The affidavit says
22 that CannTrust internal investigation didn't
23 disclose any evidence of wrongdoing. We can agree
24 that's what your affidavit says, correct?

25 A. That's right.

1 244. Q. Okay, we've got that basis, great.
2 My question, in cross-examination, not in asking to
3 photocopy the affidavit, but in cross-examination
4 is, in coming to the settlement with the original
5 settlement parties, are the representatives of the
6 view that the original settlement parties' D&Os did
7 not commit any wrongdoing?

8 A. I am trying to answer that without
9 breaching the mediation order or settlement
10 privilege.

11 245. Q. Sure, take your time.

12 A. I'm not really sure how to answer
13 without doing that.

14 MR. WINGFIELD: In which case, the
15 question is refused.

/R

16 THE DEPONENT: Yes.

17
18 BY MR. KRYGIER-BAUM:

19 246. Q. Okay, it's a refusal. You say later
20 on in that paragraph that the settling D&Os had
21 limited legal or financial exposure relative to the
22 50 million dollar payment. What do you mean by
23 "limited legal exposure"?

24 A. That means that if we were to pursue
25 the claims and obtain a judgment, then they would

1 have limited liability, pursuant to...as you know,
2 the part 23.1 regime has a liability limit built
3 into it.

4 247. Q. Is this assessment not based on
5 common law negligence as well?

6 A. It's an assessment based on
7 everything.

8 248. Q. Right, so when you say "limited
9 legal exposure", that's inclusive of common law
10 torts, negligence included, no?

11 A. It says,
12 "...Limited legal or financial exposure..."

13 249. Q. Right, and you chose to use two
14 different words?

15 A. Yes, legal or financial, or did not
16 have a capacity to pay.

17 250. Q. Right, so financial exposure, that's
18 one term, but legal exposure, limited legal
19 exposure.

20 A. Right.

21 251. Q. That includes an assessment of all
22 claims against them?

23 A. Yes.

24 252. Q. Thank you. Can you confirm that as
25 of today's date, no settlement has been reached with

1 any of the insurers?

2 MR. WINGFIELD: That is a subject of
3 ongoing mediation.

4 253. MR. KRYGIER-BAUM: Well, I'll tell you
5 why I think it's relevant. You're
6 supporting a plan, you're supporting a
7 sanction order, which has these bars and
8 releases, and these assignments. But I am
9 asking for confirmation, because I see lots
10 of other settlements referred to, but no
11 insurer has entered a settlement, is that
12 correct?

13 MR. WINGFIELD: I'm not sure that is
14 correct. The negotiations with the
15 insurers are rather fluid right now, so I'm
16 not entirely sure what you mean by that.
17 If you mean that there was no formal
18 settlement documentation executed with the
19 insurers, then that is correct.

20
21 BY MR. KRYGIER-BAUM:

22 254. Q. I'll take that answer. And in your
23 negotiations with any insurers, have insurers
24 insisted that there be a bar and release, and that
25 other insurers cannot claim against them as part of

1 their willingness to enter into a settlement?

2 MR. WINGFIELD: Obviously subject to the
3 mediation protocol.

4 255. MR. KRYGIER-BAUM: So, that's a refusal?

5 MR. WINGFIELD: Yes.

/R

6
7 BY MR. KRYGIER-BAUM:

8 256. Q. And you'll agree that, as currently
9 drafted and as supported by you, the bar and release
10 from any settling insurer is effective regardless of
11 that insurer's cash contribution to settlement?

12 MR. WINGFIELD: The plan has whatever
13 legal effect the plan has.

14 257. MR. KRYGIER-BAUM: Okay, I understand
15 that. I'm asking the question, though.

16 MR. WINGFIELD: It's not for us to gloss
17 the language of the plan in this
18 cross-examination.

19
20 BY MR. KRYGIER-BAUM:

21 258. Q. You'll agree that regardless of what
22 percentage of policy limits any insurer pays, or
23 where that insurer is positioned in any of the
24 insurance towers, it will be entitled to the benefit
25 of the full bar and release if it settles?

1 MR. WINGFIELD: That is a question of
2 interpreting the plan in relation to the
3 insurance, and again, that question is
4 refused on this cross-examination. /R

5
6 BY MR. KRYGIER-BAUM:

7 259. Q. Would the CCAA representatives
8 support a plan, and the implementation of a plan,
9 and a sanction order that does not include a bar and
10 release for settling insurers?

11 MR. WINGFIELD: That's a hypothetical
12 question, and it's refused. To the extent
13 that we have a view on that question, it
14 was
15 subject to normal privilege. /R

16
17 BY MR. KRYGIER-BAUM:

18 260. Q. Okay, I disagree with that, but
19 we're not going to get into too many arguments on
20 refusals. Would the CCAA representatives support a
21 plan and a sanction order which does not include the
22 assignment of claims by D&Os against their insurers?

23 MR. WINGFIELD: The same question you
24 asked a second ago, and I give you the same
25 answers. /R

1
2 BY MR. KRYGIER-BAUM:

3 261. Q. Okay, can you please turn to tab H
4 of your affidavit, this is the minutes of settlement
5 with Paul and the Paul Family Trust.

6 A. Yes.

7 262. Q. Do you have that in front of you?

8 A. Yes.

9 263. Q. Thank you. So, at paragraph 7, do
10 you see where it says...and I'll read it out,

11 "...If requested, Paul will provide
12 whatever assignment or similar agreement
13 may be necessary for the securities
14 claimant trust to assert without recourse
15 whatever rights he might have has against
16 the insurers, and to agree that any amount
17 paid by the insurers shall be the property
18 of the security claimants' trust..."

19 Do you see that?

20 A. Yes.

21 264. Q. Okay. I have not seen in the
22 evidence on this sanction hearing that's before the
23 court, I have not seen any assignment agreement, or
24 quote, "a similar agreement" entered into with Mr.
25 Paul. Does one exist?

1 A. There are assignment provisions
2 built into the plan.

3 265. Q. Okay, but this minutes of
4 settlement...I mean, the minutes of settlement, I
5 think you'll have to agree, is entered into, you
6 know, under the shadow of the plan. The plan has
7 been in existence much before the minutes of
8 settlement, correct?

9 A. These minutes of settlement are
10 meant to work with the plan.

11 266. Q. Right, and they make a reference to,
12 as I read it, a future, or future potential,
13 agreement. If requested, Paul will provide whatever
14 assignment or similar agreement may be necessary.
15 So, I'm asking about that assignment or similar
16 agreement. Does any such agreement exist?

17 A. There is not a separate agreement
18 from this with respect to that, what you just read
19 to me, no.

20 267. Q. Does a draft of that assignment or
21 similar agreement exist?

22 MR. WINGFIELD: The problem with that
23 question is that we are in the middle of a
24 mediation, and the issues are ones that we
25 have been considering and evaluating in the

1 context of the mediation against the
2 insurers.

3 So, when you ask about drafts, or
4 other attributes of an agreement that are
5 not memorialized in a formal agreement, we
6 are treading on very thin ice.

7 268. MR. KRYGIER-BAUM: Okay, but you'll
8 agree that in supporting this sanction
9 order, that no assignment or similar
10 agreement is getting put before the court?

11 MR. WINGFIELD: There is no memorialized
12 agreement that is going to be placed before
13 the court as of today.

14 269. MR. KRYGIER-BAUM: And the expectation
15 is that once the sanction order is in
16 place, once that's all done, then there
17 could be an assignment agreement, but we
18 don't have those terms?

19 MR. WINGFIELD: There very well could
20 be, yes.

21
22 BY MR. KRYGIER-BAUM:

23 270. Q. In that paragraph I just read you,
24 it says that,
25 "...Whatever rights he may have as against

1 the insurers..."

2 Have you formed an opinion or a conclusion or belief
3 on whatever rights, what you're referring to by
4 "whatever rights he may have"?

5 MR. WINGFIELD: We have, and that's
6 privileged. /R

7
8 BY MR. KRYGIER-BAUM:

9 271. Q. Okay. I understand that Mr. Aceto
10 has not entered into a minutes of settlement, or a
11 similar sort of settlement structure, is that true?

12 A. There was none appended to my
13 affidavit.

14 272. Q. I appreciate that first part of the
15 answer, now I'll ask for the rest of that answer,
16 please.

17 A. I'm not answering the rest of it.

18 273. Q. You are refusing to answer as to
19 whether, as of this moment, Mr. Aceto has tendered
20 into the settlement?

21 MR. WINGFIELD: That question is
22 privileged, it's subject to the mediation. /R

23
24 BY MR. KRYGIER-BAUM:

25 274. Q. Okay. You will agree, though, that

1 there is nothing in the evidentiary record about Ms.
2 Aceto settling, there is no minutes of settlement or
3 anything like that?

4 A. That's correct.

5 275. Q. And there is no assignment agreement
6 or "similar agreement" with Mr. Aceto in the
7 evidentiary record, correct?

8 A. Correct.

9 276. Q. And there is no assignment agreement
10 or "similar agreement" for any of the directors and
11 officers in the evidentiary record, is that correct?

12 A. I don't...are you talking about
13 standalone assignment agreements that are separate
14 from the minutes of settlement?

15 277. Q. That is a fair clarification. Yes,
16 the RSA makes some reference to an assignment. I'm
17 saying outside of the RSA.

18 A. That's right, there aren't separate
19 standalone assignment agreements for the settlement
20 parties.

21 278. Q. And when you say in this paragraph,
22 "...Assignment or similar agreement that
23 may be necessary for the security
24 claimants' trust..."

25 "Necessary", the people or the party determining

1 necessity are the security claimants, correct?

2 A. It would be their counsel, likely,
3 yes.

4 279. Q. Their counsel. So, this would be
5 something unilaterally determined by you?

6 A. I wouldn't say...I don't know if it
7 would be unilaterally, but the security claimants'
8 counsel would come to that. It would be made by the
9 CCAA representative counsel or other counsel to the
10 securities claimants, or the securities
11 claimants' trust, with input from the CCAA
12 representatives.

13 280. Q. And again, only after the sanction
14 hearing?

15 MR. WINGFIELD: Not necessarily. If we
16 were to settle with the insurers before the
17 sanction hearing, then this wouldn't be
18 necessary.

19 281. MR. KRYGIER-BAUM: Assuming no global
20 settlement with the insurers...

21 MR. WINGFIELD: I'm not prepared to make
22 that assumption, because we're in the
23 middle of mediation, and I'm not prepared
24 to make that assumption.

25 282. MR. KRYGIER-BAUM: Based on what's

1 currently in the evidentiary record, and I
2 think we have the answer, that the
3 assignment agreement or similar agreement,
4 which will be, you know, drafted based on
5 the strong, if not sole, input of security
6 claimants' counsel, that will only be done
7 after the sanction hearing. Based upon
8 what we have in front of us, three days,
9 four days before the motion.

10 MR. WINGFIELD: We don't know, for the
11 reasons that you and I are both aware of in
12 terms of the mediation process involving
13 the insurers.

14 283. MR. KRYGIER-BAUM: But you cannot point
15 to anything today that's in the evidentiary
16 record that would at all look like an
17 assignment or similar agreement that His
18 Honour can adjudicate on, and form a
19 conclusion on?

20 MR. WINGFIELD: Well, I believe Mr.
21 Kalloghlian said that there is no formal
22 executed document that is in the record.
23 That's his position. And there isn't, you
24 can look at the record.

25 284. MR. KRYGIER-BAUM: Would the assignment,

1 or similar agreement, require a consent to
2 judgment on behalf of the D&Os?

3 MR. WINGFIELD: Well, that's a legal
4 matter, we don't know...that's not an
5 appropriate question for this
6 cross-examination. /R

7
8 BY MR. KRYGIER-BAUM:

9 285. Q. I think it's okay, based on what he
10 has put on the record, but if you want to refuse it,
11 that's fine. And the D&Os, I understand, would have
12 to cooperate with the plaintiffs' representatives in
13 their claim against their D&O insurers?

14 A. Can you repeat that? Sorry.

15 286. Q. Sure. In any assignment, you know,
16 when the D&Os assign their claims over to the
17 representatives, I think it's implicit, but I'm
18 asking that the D&Os will be obligated to cooperate
19 and assist the assignees of the claim in advancing
20 the D&O's claim against their own D&O insurers.

21 A. I don't recall if that language is
22 in any of the agreements.

23 287. Q. In any of the, I assume, draft
24 agreements you're referring to? Because we haven't
25 seen any agreements.

1 A. Well, no, I'm referring to the
2 agreements that are in here that speak to
3 assignment.

4 288. Q. Right, and there is very, kind of,
5 cursory treatment of it in the RSA, but I'm talking
6 about the envisioned assignment over similar
7 agreements.

8 MR. WINGFIELD: That's something for the
9 future, it's not a matter for today. /R

10
11 BY MR. KRYGIER-BAUM:

12 289. Q. Would the D&Os that enter into
13 settlement, would they be entitled to cooperate and
14 assist their own D&O insurers in defending claims
15 made against them?

16 MR. WINGFIELD: That's really a legal
17 question that relates to the terms of the
18 policies, and again, that's not something
19 that we can answer today.

20 290. MR. KRYGIER-BAUM: Counsel, I'm not
21 asking about the terms of the policies, we
22 obviously have our position on the
23 policies. I'm asking about these
24 agreements that, you know, may or may not
25 exist. We haven't seen, we don't know what

1 they are, but the court is being asked to
2 make a ruling on.

3 MR. WINGFIELD: Right.

4 291. MR. KRYGIER-BAUM: I'm asking about what
5 you're entering into, what you're drafting.
6 I'm not asking about the insurance
7 policies.

8 MR. WINGFIELD: Right, and that's
9 privileged or subject to the mediation
10 protocol.

11 292. MR. KRYGIER-BAUM: So, it's another
12 refusal?

13 MR. WINGFIELD: It is.

/R

14
15 BY MR. KRYGIER-BAUM:

16 293. Q. Were there ever any negotiations
17 with the settling D&Os in which it was discussed
18 that they would make a larger cash contribution in
19 exchange for not assigning their claims?

20 MR. WINGFIELD: Privileged.

/R

21 294. MR. KRYGIER-BAUM: If you'll give me two
22 minutes, I think we're almost wrapped up,
23 if not wrapped up.

24
25 --- upon recessing at 10:43 a.m.

1 --- A BRIEF RECESS

2 --- upon resuming at 10:45 a.m.

3
4 SERGE KALLOGHLIAN, resumed

5 CONTINUED CROSS-EXAMINATION BY MR. KRYGIER-BAUM:

6 295. Q. If you could please turn to tab E of
7 your affidavit, which is the restructuring support
8 agreement?

9 A. I'm there.

10 296. Q. If you could go to article 602?

11 A. I'm there.

12 297. Q. Do you see it reads,
13 "...This agreement may not be assigned by
14 any agreement party without the prior
15 written consent of the other agreement
16 parties..."

17 Do you see that?

18 A. Yes.

19 298. Q. Why is there is no assignment clause
20 included in the RSA?

21 MR. WINGFIELD: That's privileged and
22 irrelevant.

/R

23
24 BY MR. KRYGIER-BAUM:

25 299. Q. Serge, you would agree that it is an

1 important contractual term of the RSA?

2 A. It is a term of the RSA.

3 300. Q. I know that, is it an important
4 contractual term from the perspective of the CCAA
5 representatives?

6 MR. WINGFIELD: Irrelevant, refused. /R

7
8 BY MR. KRYGIER-BAUM:

9 301. Q. Would they have entered into the RSA
10 if that clause, the no assignment clause, had not
11 been included?

12 MR. WINGFIELD: Irrelevant. /R

13
14 BY MR. KRYGIER-BAUM:

15 302. Q. You'll agree that there is no
16 guarantee that some or all of the insurers are going
17 to settle?

18 A. I am aware of that.

19 303. Q. Right, and if all of the insurers
20 don't settle, would you continue to support the
21 implementation of the plan, or would the plan be
22 killed?

23 MR. WINGFIELD: Well, that is an
24 entirely inappropriate question, for
25 obvious reasons. /R

1 aren't.

2 MR. WINGFIELD: It's actually not a
3 factual question, it's a question about a
4 hypothetical set of facts. We're refusing
5 the question on that basis, as well as the
6 fact that to answer the question requires
7 that you ask about our legal analysis,
8 which is a matter of privilege as well.

9 306. MR. KRYGIER-BAUM: It's not a legal
10 analysis, it's a position.

11 THE DEPONENT: We come to that position
12 through our legal analysis, and you're
13 asking us to disclose our strategic
14 thinking to you.

15
16 BY MR. KRYGIER-BAUM:

17 307. Q. You're saying you support the plan
18 as currently drafted, correct?

19 A. Yes.

20 308. Q. What I'm asking about is, you know,
21 if certain things came to pass, whether or not you
22 would still be supporting it. I don't think that's
23 asking you to disclose your legal analysis, but
24 that's a refusal?

25 MR. WINGFIELD: That's a refusal. You

1 have our position.

2
3 BY MR. KRYGIER-BAUM:

4 309. Q. And if settling insurers were
5 removed from the definition of additional settlement
6 party, would you continue to support the plan and
7 its implementation or not?

8 MR. WINGFIELD: You have our position.

9 310. MR. KRYGIER-BAUM: What's the position
10 on that?

11 MR. WINGFIELD: It's the same question
12 you asked previously, and we are providing
13 you the same answer to that question.

14 311. MR. KRYGIER-BAUM: So, it's another
15 refusal?

16 MR. WINGFIELD: It is a refusal. It is
17 a hypothetical question. To answer that
18 question, you are necessarily asking about
19 our legal analysis and our strategic
20 analysis, which is privileged.

/R

21
22 BY MR. KRYGIER-BAUM:

23 312. Q. Okay, and if the bar and release
24 terms of the plan did not apply to settling
25 insurers, but just to codefendants, would the

1 representatives continue to support the plan and its
2 implementation or not?

3 MR. WINGFIELD: Same answer to the
4 previous...this question as the previous
5 questions. /R

6
7 BY MR. KRYGIER-BAUM:

8 313. Q. Okay, is there a threshold or limit
9 of the contribution from all insurers or some
10 insurers, at which point the CCAA representatives
11 would not support the plan and its implementation?

12 MR. WINGFIELD: That question is refused
13 on the same basis as the previous questions
14 were refused. /R

15 314. MR. KRYGIER-BAUM: Thank you. I think I
16 am wrapped up, of course, subject to
17 refusals and any motions we may be bringing
18 on them, those are my questions. I'm not
19 sure if there is anything else anyone else
20 wanted to say, but for me and for today,
21 we're finished. Thank you.

22 MR. MORRIS: I would just add that our
23 exam is also subject to any refusals,
24 motions we may bring.
25

1 --- upon adjourning at 10:52 a.m.

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Tala Rida
Verbatim Reporter



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

Court File No. CV-20-00638930-OCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

TRANSCRIPT BRIEF
(Sanction Hearing)
(Returnable 11 June 21)

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