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COURT FILE NUMBER 1401-05797

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) LANNY K. McDONALD

DEFENDANT(S) BROOKFIELD ASSET MANAGEMENT INC.,
BROOKFIELD SPECIAL SITUATIONS
PARTNERS LTD., HAMMERSTONE
CORPORATION.

DOCUMENT Transcript of Oral Questioning of
RICHARD ANTHONY ENG
(on affidavit sworn June 19, 2014)

HELD AT Norton Rose Fulbright Canada LLP,
Calgary, Alberta

DATE August 19, 2014

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13 (Proceedings commenced at 11:46 a.m.)

14 RICHARD ANTHONY ENG, affirmed, questioned by Mr. McDonald:

15 Q. Mr. Eng, as a matter of formality, can you just put
16 your full name on the record?

17 A. Richard Anthony Eng.

18 Q. And can you tell me your current employer?

19 A. Brookfield Asset Management, and I'm currently seconded
20 to one of the companies within Brookfield.

21 Q. Can you give me the name of that company?

22 A. Ainsworth Lumber.

23 Q. And I'd ask you to tab up paragraph 3 of your
24 affidavit.

25 A. Okay.

26 Q. And it says in paragraph 3 that you reviewed the
27 amended Statement of Claim?

1 A. Yes.

2 Q. And you would be aware, then, that one of the facts
3 that we're basing the action on is some representations
4 that were published by Brookfield and Tricap on their
5 website?

6 A. Yes, I'm aware that's in the Statement of Claim.

7 Q. All right. And could I just deal with the quantitative
8 representations first, and you'll find those if you
9 want to put them in front of you, which I think is fair
10 to you, at tab 6 of your materials, and if you go to
11 the third paragraph -- when I say "quantitative," I
12 just want to ask questions on the 50 million to 500
13 million representation, and that's in the first
14 sentence. Could you just review that so it is fresh in
15 your mind?

16 A. Okay.

17 Q. And when you were reading, did you also read the
18 quantitative representation that Tricap is at a three
19 to seven-year investment horizon?

20 A. Yeah, that's what it says.

21 Q. So can you tell me -- and I think you can reference
22 from your memory, and I don't want to tab it up, the
23 receivership report, but did Tricap invest upwards of
24 \$50 million?

25 A. The investment was less than \$50 million.

26 Q. Correct. Thank you.

27 And can we also deal with the quantitative three

1 to seven years? Did Tricap or Brookfield fulfill that
2 representation that they would be, in this particular
3 case, of an investment horizon of three to seven years?

4 MR. GORMAN: Sorry, the reference to "fulfill"
5 is inappropriate.

6 MR. McDONALD: The reference to what?

7 MR. GORMAN: Did they fulfill any
8 representation. You can ask how long the --

9 MR. McDONALD: Okay. Let's rephrase it.

10 Q. MR. McDONALD: What was the length of the Tricap
11 investment? Can you answer that for me?

12 A. It would've -- the loan would've been closed at the end
13 of December 2007 and the company was in receivership in
14 November of 2008.

15 Q. So I calculate that as, I'll round it off, less than 12
16 months; am I correct?

17 A. Yes.

18 Q. And also, when I look at this statement on -- so Tricap
19 did not make it to the three-year period on this
20 investment?

21 A. It was less than three years.

22 Q. Correct. I just now want to bounce back, if I can, to
23 get an understanding of why this representation would
24 be made. Why would you make a representation? And I
25 think Brookfield and Tricap are both involved because
26 if you look at the heading it says "Brookfield Asset
27 Management," and then if you look at the second

1 paragraph, it says "Tricap invests," and we'll come
2 more back to the meaning of that word in the fullness
3 of time, but why did you put these words on a website;
4 is it for people to rely on them?

5 MR. GORMAN: I think that requires a legal
6 conclusion.

7 MR. McDONALD: It may.

8 A. But I can certainly address it from a marketing
9 perspective. You know, you've got companies that may
10 seek out financing, and it's very typical for any
11 provider of capital to provide some general parameters
12 around what they are interested in doing.

13 Q. MR. McDONALD: Right.

14 A. But it is very much driven as a marketing exercise so
15 that people understand whether they may want to call up
16 Tricap, maybe want to talk to Tricap.

17 Q. Well, that's good. So when it says: (as read)
18 Brookfield restructuring operation
19 invests and provides strategic
20 assistance to companies experiencing
21 financial or operational difficulty,
22 what would you interpret -- not a member of the public,
23 but what would you interpret the words "experiencing
24 financial or operational difficulties" to mean? That
25 is in the first sentence.

26 A. Sorry, the very first sentence here?

27 Q. Right. Yeah.

- 1 MR. GORMAN: If you had an understanding as to
2 what that was referencing, you can answer the question.
3 You don't need to speculate now.
- 4 A. I think those words are pretty straight-forward,
5 "experiencing financial or operational difficulty,"
6 which is challenged situations.
- 7 Q. MR. McDONALD: Correct. So your experience,
8 then, you've had obviously experience with Ainsworth,
9 and you've had experience with Birch Mountain, you
10 know, for start-ups in the resource business, you know,
11 is it common that they would have financial and
12 operational difficulties?
- 13 A. Is it common? Some companies have difficulties, some
14 don't. I'm not sure if I can answer that as is it
15 common.
- 16 Q. No, that's fair. That's fine. Did Birch Mountain,
17 were they experiencing -- you know, when you were
18 involved with them for the, I'm calling it the 12-month
19 period, were they experiencing financial and
20 operational difficulties?
- 21 A. So you're counting from the time of the \$31.5 million
22 loan, not the bridge loan earlier?
- 23 Q. Well ...
- 24 A. Because there was a bridge loan that preceded it,
25 right?
- 26 Q. Yeah. Well, then let's just make sure we include that
27 period?

1 A. Okay.

2 Q. So that would add, and I'm going to round it off,
3 another 12 months essentially, but we're still below
4 the three years?

5 A. Well, the bridge fund was a separate fund.

6 Q. Yeah.

7 A. And really was not a restructuring fund, and when we
8 were first introduced to the company in early 2007, it
9 was abundantly -- it was made abundantly clear to us
10 that the company was very close to securing a huge
11 amount of volume, and this was just a small little
12 pinch point where they needed a bridge loan that would
13 be repaid within one year.

14 Q. Right.

15 A. So I just want to make sure that that is distinguished
16 from restructuring.

17 Q. Yeah.

18 A. It was a plain vanilla bridge loan where we just earn a
19 coupon.

20 Q. Correct. Yeah. And then when you do the 31.5 million,
21 that loan gets repaid, the bridge -- the first bridge?

22 A. Yes, it did. Yes. There was no other path at the
23 time, given operating difficulties and the fact that
24 they were missing the numbers by a wide mark versus
25 what they told us they were able to do in 2007.

26 Q. Right.

27 A. We provided them with some waivers during the course of

1 the bridge loan, but there was no path to repay it
2 through cash flow.

3 Q. Right. And then --

4 A. So they went and enlisted some help and started looking
5 at some other options to deal with that upcoming bridge
6 loan that was not going to be refinanced out of cash
7 flow.

8 Q. Right.

9 A. And that's how they elected to go with our \$31.5
10 million loan at the end of 2007.

11 Q. Excellent. So at that time that you advanced the 31.5
12 million, were they experiencing financial or
13 operational difficulty?

14 A. They certainly, you know, had optimism about the
15 upcoming year, but it wasn't like an overnight switch
16 went on from the time of the day before the \$31.5
17 million loan and the 31.5, but we did give them
18 additional capital. We offered up advice, as much as
19 we could as a lender, and they also had a strategic
20 process that I recall meeting in early January 2008
21 where a board member indicated to us that they were
22 continuing to shop the company.

23 Q. Right. And, Mr. Eng, this can be a very pleasant
24 experience because Justice Streikaf is going to
25 evaluate my questions and is going to evaluate your
26 answers, but the question I'm trying to put to you is
27 when you did the loan for 31.5 million, you know, would

1 you in your thought process say, This is a company that
2 is experiencing financial and operational difficulty?

3 A. This company had not demonstrated that they had, you
4 know, sorted out their business plan, but they were
5 optimistic and moving towards that.

6 Q. Okay. We'll leave it at that, but I'm going to move
7 on, but I'm not sure that you've answered my question.
8 I was looking for an answer that might say did they
9 have enough financial experience or capability or
10 operational experience, you know, to get to the
11 profitability that we all anticipated the development
12 company is going to get?

13 A. It was still very much possible.

14 MR. GORMAN: I think you've now just asked four
15 questions.

16 MR. McDONALD: Yeah.

17 A. But I will answer them. I mean, it was very much
18 possible.

19 Q. MR. McDONALD: Okay. And the next one, it says
20 "Tricap Partners invest," and I just want to stop.
21 Maybe I will deal with it. I am going to come back to
22 it, but the word "investment" is used continuously. In
23 fact, I can count them up, or you can, but there is the
24 word "invest"/"investment" continuously used here, you
25 know, and it is going to be a big issue before Madam
26 Justice Streikaf.

27 Were you just making a loan, or were you making an

1 investment in this company as you've said here and in
2 many of the press releases? How would you answer that?

3 A. Well, I mean, it says the word "invest," but I'm quite
4 certain that in all of our materials we make it very
5 clear that it could be an equity investment or it could
6 be a loan; but, you know, "invest" is a general word
7 for it.

8 Q. So ...

9 A. In fact, I think in this paragraph here it says either
10 equity or debt, right.

11 Q. Or debt.

12 A. In the third paragraph.

13 Q. Right. But in our situation that we have here, this
14 fact situation, it was a convertible debenture,
15 correct?

16 A. Yes.

17 Q. So it had equity features to it?

18 A. Mm-hmm. Mm-hmm.

19 Q. And so, you know, the reference to the word "debt" is
20 changed a bit because it is really, you know, both in a
21 sense it can be debt if you don't convert, or it can be
22 equity if you do convert?

23 A. Yes. I mean, fundamentally it was a loan with
24 participation and upside, and, you know, assuming that
25 there were success in this business, then we would look
26 to be rewarded through the conversion.

27 Q. And then that is pretty clear that that is an

1 investment?

2 MR. GORMAN: I'm not sure that's --

3 A. Okay.

4 Q. MR. McDONALD: Well, is that an investment then?

5 A. Is what an investment?

6 Q. Well, let's assume if you did exercise the convertible
7 debenture, would you define that as an investment?

8 A. It would appear to me the loan feature is gone. You
9 know, you now own shares. You've, you know, fully
10 qualified it is an investment.

11 Q. Sure, sure, sure. It can't be a loan?

12 A. Yeah. Yeah. That's right, the loan is gone at that
13 point. You're a common shareholder.

14 Q. Okay.

15 A. Yeah.

16 Q. Okay. So it says: (as read)

17 Tricap invests in companies where it can
18 capitalize upon Brookfield's operating
19 experience and long-term perspective to
20 drive change and build value.

21 What in your experience -- or not your experience, but
22 what do you understand those words to mean where it
23 says "...long-term perspective to drive change and
24 build value"? What do those words mean to you?

25 A. That's what we would look to do, and that's it. I
26 mean, there's not much else to say other than the words
27 there in the materials.

1 Q. Right. And so now I'll continue on for a moment:

2 (as read)

3 Investment candidates typically have
4 attractive tangible assets with
5 significant operating capacity.

6 Would you consider that Birch Mountain and the AMEC
7 report indicated that they would have attractive an
8 tangible asset?

9 A. Yes.

10 Q. Thank you.

11 (As read):

12 ...and has proven operating history, but
13 are experiencing short-term duress.

14 So I'm not going to ask a question if they had proven
15 operating history, you know, because, you know, there
16 wasn't a long history to this company, Birch Mountain,
17 at that point and Quarry in the tar sands; am I correct
18 in that?

19 A. Yeah. They have been working on this since '05/'06.

20 Q. Right. But then it says "...but are experiencing
21 short-term duress." Now, Mr. Gorman said, Oh, they
22 could go raise 1.6 billion. That has not been my
23 experience, if you get an appraisal from someone like
24 AMEC, based on assumptions, that you're going to be
25 able to raise 1.6 billion on that.

26 But, you know, did Tricap or Birch Mountain look
27 at the AMEC report and make any conclusions as to

1 whether that report might be significant to alleviate
2 the short-term distress?

3 A. Sorry, I don't understand the question now.

4 Q. Yeah. Well, when Tricap and Birch Mountain decide that
5 they are going to invest the 31.5 million, take out the
6 bridge loan, why did you make that investment? Did you
7 consider, as part of that investment, the asset and the
8 appraised value of that asset?

9 A. As part of any due diligence we would look for
10 underlying asset value to protect our loan, yeah.

11 Q. Okay. Now, while we're on that point, then, can you
12 tab up in your affidavit, I'd like to take you right to
13 the very last tab, tab 'AA'.

14 A. Sorry, where?

15 Q. In your affidavit now. Just like Mr. Gorman, we're
16 going to jump around a bit.

17 MR. GORMAN: His are numbers. Yours are
18 letters to make it a little easier.

19 A. Okay.

20 Q. MR. McDONALD: It's the very last tab, 'AA', the
21 kind of marks I'm sure you got in school. I never
22 experienced any of those.

23 And can you look at the very first page of it, and
24 so the notice of the receiver, do you see mineral
25 properties just above the total at \$51,402,006?

26 A. Yes.

27 Q. And can you tell me from your accounting experience,

1 you know, is that in fact -- it says above, and I'll
2 just read it: (as read)

3 The assets at book value from the books
4 and records of the company as at
5 September 30, 2008 where...

6 And then it says "Mineral properties 51 million." I'm
7 going to round the number. Is that book value?

8 A. It says here that the assets are at book value, so I
9 assume so.

10 Q. Right. So that is likely what they paid for the
11 leases, you know, plus some costs that went into the
12 improvement of the leases? That's what I understand
13 book value to be?

14 MR. GORMAN: Less depreciation.

15 A. Yeah.

16 Q. MR. McDONALD: Yeah. Okay. So when it is time,
17 you know, to inform the receivership court, you know,
18 if a receivership might be appropriate, I notice in
19 your affidavit, your earlier affidavit in November
20 2008, and your subsequent affidavit in January, you
21 don't ever inform the Court as to the appraised value?

22 A. What's the appraised value?

23 Q. Well, I'm thinking of the AMEC report or other reports
24 that might be around. But the Court is never apprised
25 or informed as to what the AMEC report might say about
26 the asset; am I right on that?

27 A. I don't know if they were informed of that or made

1 aware of that, but I'm not sure under what form we
2 would make the Court aware of that.

3 Q. Let me rephrase the question. Your counsel has written
4 a very interesting paper, and I'll just read it to you.
5 And part of what he says on page 35, and I'll just read
6 this into the record first. He said: "In reviewing
7 such cases," and this is Mr. Gorman that says this:
8 (as read)

9 ...courts generally refer to the
10 existence of badges of fraud in
11 determining whether an attack on an
12 imprudent transaction can prevail. Such
13 badges of fraud typically consider the
14 relationship between the parties, the
15 severity of existing or impending
16 financial difficulties, the
17 reasonableness of the purported
18 consideration, and any secrecy with
19 respect to the transaction.

20 And so I guess what I'm exploring right now is it would
21 appear that we've got a conveyance from Birch Mountain
22 to the receiver. The receiver takes control of the
23 asset. He then conveys the asset to the numbered
24 company, which becomes Hammerstone Corporation, for
25 approximately \$42 million, you know, but there is an
26 appraisal that says the property might be worth 1.6
27 billion, and my question is, it would appear to me that

1 there is a conveyance at undervalue?

2 MR. GORMAN: Don't answer that question.

3 Reading from a fraudulent preference paper has nothing
4 do with this action. It is so far out of context it is
5 unconscionable.

6 OBJECTION TAKEN to answering the question: And so I guess
7 what I'm exploring right now is it would appear that we've
8 got a conveyance from Birch Mountain to the receiver. The
9 receiver takes control of the asset. He then conveys the
10 asset to the numbered company, which becomes Hammerstone
11 Corporation, for approximately \$42 million, you know, but
12 there is an appraisal that says the property might be worth
13 1.6 billion, and my question is, it would appear to me that
14 there is a conveyance at undervalue?

15 Q. MR. McDONALD: Okay. Well, let's forget the
16 paper for a minute. My question to you is, can you
17 point me to any document that was put before Justice
18 LoVecchio that says the mineral properties may be worth
19 considerably more than \$51 million? Can you point to
20 me any document where Justice LoVecchio was informed of
21 that? Because I've searched, and I can't find one.

22 A. I'm not aware whether LoVecchio had access to the 43101
23 report that was part of Birch Mountain's disclosures.

24 Q. Right. And in your affidavit it clearly wasn't there,
25 in your first affidavit?

26 MR. GORMAN: You reference his "first
27 affidavit," he only had one affidavit.

1 MR. McDONALD: Well ...

2 MR. GORMAN: The second document was a
3 receivership report.

4 MR. McDONALD: But did he not do -- who did the
5 January 8th affidavit?

6 MR. GORMAN: I don't believe there was an
7 affidavit. I believe there was a receiver's report
8 based upon the receiver's communication.

9 Q. MR. McDONALD: Okay. Okay. So in your
10 initial -- and if you want to tab it up, I've got it
11 for you here. If you want to just take a look at mine,
12 it was a four-page affidavit, you know, but there is no
13 reference to the AMEC report in it. All right. So if
14 the justice were to read that report, you know, he
15 wouldn't have any idea that -- he wouldn't even know
16 what the book value was, correct?

17 A. I don't see any reference to it in my affidavit.

18 Q. Okay. Well, let's move on.

19 This idea that is also in the third paragraph
20 where it says, second sentence: (as read)

21 When Tricap makes an equity investment,
22 it seeks to play a meaningful...

23 That would be tab 6 in my materials, and so I'm at the
24 second sentence when it says: (as read)

25 When Tricap makes an equity investment,
26 it seeks to play a meaningful role in
27 the restructuring process and governs

1 the recapitalized company.

2 You know, what -- in your words, you know: (as read)

3 A meaningful role in the restructuring

4 process and governance of the

5 recapitalized company,

6 what does that mean?

7 A. That's just what it describes there. If an equity
8 investment is made, Tricap plays a meaningful role in
9 the restructuring process and governance.

10 Q. Now, let me ask you a question: You, in this case, did
11 a 31.5 million, and we'll discuss the amending
12 agreement where it goes to 34.5, you know, but are you
13 saying now because that was a convertible debenture,
14 that this wouldn't be applicable because it wasn't an
15 equity investment?

16 A. Well, two things: Our agreement, there was a loan
17 agreement that had been agreed to between the company
18 and ourselves which lays out terms on both sides.

19 Q. Right.

20 A. And there was a loan agreement that was in place.

21 Q. Okay. Well, let's go -- I just want to close on two
22 small things. I'm going to go to the loan agreement in
23 a moment, and we'll explore that, but can you just go
24 to tab 69 of my materials? And if you go to the bottom
25 of the page, and I am going to read it so that Madam
26 Reporter can put it in the transcript: (as read)

27 Brookfield Asset Management Inc.

1 focussed on property, power, and
2 infrastructure assets, and has
3 approximately U.S. 80 billion of assets
4 under management.

5 I'm going to stop there, and I am going to flip the
6 page, and I'm going to read and ask you what Tricap
7 might have meant by this, or Brookfield, because it is
8 a Brookfield press release, and it says: (as read)

9 Tricap was established by Brookfield
10 Asset Management to provide a source of
11 patient long-term capital and strategic
12 assistance to mid-market companies based
13 in North America. With strong industry
14 and financial management expertise,
15 Tricap is well positioned to assist
16 companies in building value over the
17 long term.

18 Now, before I ask you a question, the date on this press
19 release, in fairness to you, is April 2nd of 2009, so,
20 you know, that's well after you own -- or in some
21 structure that I may not be aware of yet, you own 100
22 percent of the Quarry, and you're still advertising to
23 the world in your press releases that you provide
24 patient long-term capital, but we've pretty much
25 established that you didn't fulfill the quantitative
26 representation of 50 million, and you didn't fulfill
27 the three-year time limitation?

1 MR. GORMAN: There is no --

2 MR. McDONALD: Why are --

3 MR. GORMAN: There is no quantitative
4 representation in the loan documents, and you can't try
5 to put it in there by this line of questioning.

6 MR. McDONALD: Well, there is a body of law, but
7 it is a legal interpretation. I'm prepared to leave
8 it.

9 Q. MR. McDONALD: Can you flip the page to tab 70,
10 and I notice at page 533 -- and do you see, Mr. Eng, it
11 is underlined in yellow in your document, we have the
12 same representation there again, haven't we, where it
13 says -- but it is kind of a different announcement
14 because it says: (as read)

15 Tricap announces launch of Hammerstone
16 Corporation and the appointment of its
17 president.

18 And then you boldly assert again, you know, that you're
19 long term -- o patient long-term capital strategic
20 investors, correct?

21 A. Yes.

22 Q. It is there. The words are there, yeah. Okay. Well,
23 you're anxious to talk about the loan agreement. Let's
24 go there for a moment. I think you'll find it at
25 Exhibit 'N' of your materials.

26 MR. GORMAN: It is 10 of yours.

27 MR. McDONALD: Thank you, Howard.

1 Q. MR. McDONALD: And I want to deal with the
2 definition of "affiliate." Now, your counsel, do you
3 remember that he took my client, or Mr. Johnson, my
4 consultant, to the entire agreement clause that was on
5 the very last page, where it says it was 9.18 entire
6 agreement? So you'll recall he referenced the entire
7 agreement clause, or have you read the entire agreement
8 clause?

9 A. Yes.

10 Q. What does it mean to you?

11 A. This is just to establish that this document is the
12 loan agreement.

13 Q. Correct. Okay. So now let's go to the definition of
14 "affiliate," and you'll find that at the first page,
15 and I want to know what you mean, or what the words "de
16 facto control" mean to you. So we'll just read it
17 fairly quickly, it says: (as read)

18 "Affiliate" means in respect of any
19 person in which directly or indirectly
20 controls or is controlled by or under
21 common control of such first mentioned
22 person, and for the purpose of this
23 definition "control" (including for
24 relevant meaning the terms "controlled
25 by" and "under common control with,")
26 means the power, including de facto
27 control, to direct or cause to be

1 directed the management and policies of
2 a person.

3 And then it says: (as read)

4 Whether through ownership of voting
5 shares or units or by contract or
6 otherwise with respect to the borrowing
7 includes...

8 Sorry, I'll stop reading because I don't want those
9 definitions.

10 So you're a sophisticated business executive,
11 economics training, and a CA, and you're obviously
12 relying on this agreement, so what does the words
13 "including de facto control" mean to you?

14 MR. GORMAN: Answer if you had an understanding
15 at the time. You're not here to interpret a document.

16 A. I mean, in this context I don't -- I'm not going to
17 elaborate on it at this time just looking at it in
18 isolation.

19 Q. MR. McDONALD: Okay. Are you content, then,
20 that, you know, that that is going to be something that
21 Justice Streikaf is going to have to deal with? She is
22 fully capable of giving a legal interpretation to what
23 the words "de facto control" mean. Are you satisfied
24 with that then?

25 MR. GORMAN: We're satisfied with Justice
26 Streikaf making all sorts of decisions in this
27 proceeding.

1 MR. McDONALD: Well, that's exceptional. Let's
2 move on then.

3 Q. MR. McDONALD: Then I won't ask more questions on
4 what the words "directly" or "indirectly" mean, and I
5 won't ask more questions about what "including de facto
6 control" means, and I'll use these vague words -- or I
7 won't ask questions on the vague words, for example,
8 "or otherwise," what those words mean.

9 I do want to explore with you, though, what a
10 negative covenant is. So could you tab up for me -- I
11 think you'll find them at 6.4 on page 73 of the
12 document, and am I right in my interpretation of a
13 "negative covenant," that if I flip to the next page,
14 and it starts at 'A', and it goes 'A' through -- well,
15 there are many many pages of it, but it goes right
16 through to 'AA' again. So we've got 27 things that the
17 company cannot do without the approval of Tricap. Do I
18 properly understand what a negative covenant is by that
19 statement?

20 A. Yeah. That's what the agreement has here, yeah.

21 Q. So it would appear to me that Tricap, because of that
22 negative covenant, are clearly in control of Bridge
23 Mountain?

24 MR. GORMAN: That is a legal interpretation of
25 what "negative covenant" entails, and this witness is
26 not going to answer.

27 OBJECTION TAKEN to answering the question: So it would

1 appear to me that Tricap, because of that negative
2 covenant, are clearly in control of Bridge Mountain?

3 Q. MR. McDONALD: Are you content that Justice
4 Streikaf can make a legal interpretation to that
5 effect?

6 A. Yes.

7 Q. Thank you.

8 And I now I want to just close on something
9 related to what cash might have been available to the
10 receiver. And to close on that point could you tab up
11 your tab Exhibit 'C', and can you go to page 3, and am
12 I reading this document correctly, Mr. Eng, where it
13 says: (as read)

14 Upon the receivership appointment, the
15 receiver seized \$2,253,080 from bank
16 accounts maintained at the Royal Bank.

17 We're on page 3. Do you see under "Cash"?

18 A. Sorry, what was the question again?

19 Q. The question was I want to know if that document speaks
20 for itself that the receiver in fact seized \$2,253,080
21 from the bank account at the Royal Bank?

22 A. That's what it appears to say.

23 Q. So we've got that cash. Now, can you tell me if they
24 also got all of the restrictive cash? In the course of
25 the operation that the company has provided for certain
26 cash to be placed on deposit to meet obligations, the
27 balance on September 30 was \$4,813,698. Did they also

1 seize that restricted cash?

2 A. I don't recall that they "seized" that cash. It just
3 describes what the restricted cash was as part of the
4 assets.

5 Q. Okay. So because the words then aren't -- you're quite
6 right, it doesn't have the words "receiver seized." It
7 says: (as read)

8 In the course of operations, the company
9 has provided...

10 But just flipping the page, I don't understand the
11 bullet that says that: (as read)

12 \$1,813,698 was held by Macleod Dixon,
13 solicitors for Tricap. Tricap advised
14 that the funds are subject to their
15 setoff rights.

16 Do you know what Tricap was advising and why Macleod
17 Dixon were holding that 1,800,000?

18 A. I believe these to be any portions of the South Haul
19 Road funds that had not been requested for by the
20 company at the time.

21 Q. Good. And then let's explore the other two briefly.
22 The \$2 million investment certificate held by the RBC
23 Royal Bank to secure the letter of credit provided to
24 the Alberta Environment by the company that secured the
25 future environmental reclamation obligations, do you
26 know what might have happened to that \$2 million?

27 A. I don't recall.

- 1 Q. All right. And then I think the next one is the
2 crushing equipment. It says a million dollar
3 investment certificate held by the Canadian Western
4 Bank to secure an equipment loan from Canadian Western
5 Bank for crushing equipment. Do you know what happened
6 to that investment certificate?
- 7 A. I don't recall specifically other than Canadian Western
8 Bank was -- there was an equipment loan that was
9 outstanding that was assumed.
- 10 Q. Right. Now, then if I go to accounts receivable, and I
11 gather there was a huge discount on the accounts
12 receivable, but if you go to the second sentence:
13 (as read)
- 14 To date the receiver has collected
15 1,552,632 of the pre-receivership
16 accounts receivable, leaving a balance
17 of 364,767.
- 18 Do you know if that cash was available to the receiver
19 as they collected the receiverships; i.e., the
20 1,500,000 in round numbers?
- 21 A. Sorry, do I know whether the receiver collected it?
- 22 Q. Yeah. He says he collected it. I'm wondering if he
23 had that cash. Well, obviously he had the cash. I was
24 asking if you have knowledge on that?
- 25 A. It appears he collected it.
- 26 Q. Okay. And so, you know, we can all add, and I'll do
27 the addition and then use that as part of the advocacy.

- 1 MR. GORMAN: Well, happily the addition has
2 been done if you look at Schedule 'C'.
- 3 MR. McDONALD: Okay, then I'll do that.
- 4 MR. GORMAN: It's in the receiver's report, the
5 last page.
- 6 MR. McDONALD: I can't find it, Mr. Gorman.
- 7 MR. GORMAN: The receiver's report attaches the
8 Notice of Motion to it, if you flip back to the back of
9 the receiver's Schedule 'C', five pages from the back.
- 10 MR. McDONALD: I think I'm getting hot. All
11 right, yeah.
- 12 Q. MR. McDONALD: Right. Yeah. He shows the
13 million and a half, so you had that cash as well. Do
14 you recall on November 9th there was a document -- you
15 were present during Mr. Johnson's examination, you know
16 that the receiver was going to approach Tricap to get
17 financing to improve their cash position, correct? Do
18 you recall that? I can tab it up for you if you'd
19 like?
- 20 A. I recall that Tricap provided funding during the
21 receivership.
- 22 Q. Right. Now, just let me ask a general question: Why
23 would you not provide that funding directly to Birch
24 Mountain, you know, in accordance with, you know, the
25 spirit of your representations so they could get by the
26 hump and get to the serious development as opposed to
27 financing a receiver?

1 MR. GORMAN: We're not going to answer a
2 question with respect to the spirit of anything. If
3 you want to ask why they lent it to the receiver and
4 not the company, that's fine.

5 OBJECTION TAKEN to answering the question: Right. Now,
6 just let me ask a general question: Why would you not
7 provide that funding directly to Birch Mountain, you know,
8 in accordance with, you know, the spirit of your
9 representations so they could get by the hump and get to
10 the serious development as opposed to financing a receiver?

11 Q. MR. McDONALD: Well, on November 9th you're
12 prepared to lend to the receiver, but on November 4th
13 you weren't prepared to lend to Birch Mountain. If you
14 lent, for example, \$10 million, none of these bad
15 things probably would've happened?

16 MR. GORMAN: Don't answer that.

17 OBJECTION TAKEN to answering the question: Well, on
18 November 9th you're prepared to lend to the receiver, but
19 on November 4th you weren't prepared to lend to Birch
20 Mountain. If you lent, for example, \$10 million, none of
21 these bad things probably would've happened?

22 Q. MR. McDONALD: But you've represented that you'd
23 invest up to \$50 million, but you didn't do that, did
24 you?

25 MR. GORMAN: Don't answer that.

26 OBJECTION TAKEN to answering the question: But you've
27 represented that you'd invest up to \$50 million, but you

1 didn't do that, did you?

2 Q. MR. McDONALD: Do you agree with your counsel
3 that you shouldn't answer that question?

4 MR. GORMAN: Don't answer that.

5 OBJECTION TAKEN to answering the question: Do you agree
6 with your counsel that you shouldn't answer that question?

7 Q. MR. McDONALD: You can always say, you know, "I
8 don't recall," Mr. Eng?

9 MR. GORMAN: Well, if you ask a proper
10 question, he'll answer whether he recalls or not.

11 Q. MR. McDONALD: Well, you see, Tricap said all of
12 these great and wonderful things, and that's part of
13 what this lawsuit is about, the representation, and my
14 question is that on November 4th you're not prepared to
15 invest any monies to Birch Mountain, but on
16 November 9th you're prepared to invest cash out of the
17 pocket of Tricap to go to the receiver. My question is
18 why couldn't you have done that for Birch Mountain five
19 days earlier?

20 MR. GORMAN: There is no evidence of any
21 request for a million five from Birch Mountain.

22 MR. McDONALD: Well, no.

23 MR. GORMAN: So you can't say they refused to
24 do it as there is no evidence there was a request.

25 OBJECTION TAKEN to answering the question: Well, you see,
26 Tricap said all of these great and wonderful things, and
27 that's part of what this lawsuit is about, the

1 representation, and my question is that on November 4th
2 you're not prepared to invest any monies to Birch Mountain,
3 but on November 9th you're prepared to invest cash out of
4 the pocket of Tricap to go to the receiver. My question is
5 why couldn't you have done that for Birch Mountain five
6 days earlier?

7 Q. MR. McDONALD: Well, let's go to the amending
8 agreement. Do you recall in the amending agreement
9 there is really two covenants? There is the sale of
10 the company covenant?

11 A. Mm-hmm.

12 Q. But there is also a raise of \$10 million. Did Tricap
13 or Brookfield ever consider that they are the perfect
14 investment candidate for that \$10 million? I mean,
15 you're involved with them, you're only at 31.5 million,
16 invest another \$10 million, you're well below the 50
17 million. You know, you are prepared to invest up to
18 somewhere between 50 million and half a billion, why
19 didn't Tricap say, We've got an asset that might be
20 worth a lot of money, let's put in the money?

21 MR. GORMAN: The witness is here to answer
22 questions.

23 MR. McDONALD: Well --

24 MR. GORMAN: Not respond to speeches.

25 MR. McDONALD: That's not a speech. That's a
26 question.

27 OBJECTION TAKEN to answering the question: But there is

1 also a raise of \$10 million. Did Tricap or Brookfield ever
2 consider that they are the perfect investment candidate for
3 that \$10 million? I mean, you're involved with them,
4 you're only at 31.5 million, invest another \$10 million,
5 you're well below the 50 million. You know, you are
6 prepared to invest up to somewhere between 50 million and
7 half a billion, why didn't Tricap say, We've got an asset
8 that might be worth a lot of money, let's put in the money?

9 MR. GORMAN: It is not a question. If you want
10 to ask him does Tricap consider a \$2 million secured
11 loan to a receiver different than a \$10 million equity
12 loan, he can answer that.

13 Q. MR. McDONALD: Let's do it a different way. Did
14 you ever -- did Brookfield or Tricap, this billion
15 dollar corporation, ever consider a \$10 million
16 investment required by the amending agreement?

17 A. I don't recall.

18 Q. The position that we're going to advance at
19 certification is that, you know, the sale was already
20 negotiated and effectively completed as between Tricap
21 and the Pattison Group of Companies, and so that you
22 waited out the month of September in 2008 because you
23 knew what the amending agreement said. Am I factually
24 correct that Tricap and Brookfield and Pattison had
25 plans in place to utilize a court process to acquire
26 the asset in about the middle of September or in
27 September of 2008?

1 A. No, there was no such plan.

2 Q. Now, I want to just go to a different area, then, to
3 explore something, and I want to have a better sense,
4 and we can do it from your affidavit so you don't think
5 I'm borrowing from my affidavit. Can we go to tab 'X'?

6 A. Okay.

7 Q. Tab 'X', and these early warning reports, do you have
8 that in front of you now? And they never put the date
9 on the first page, which I always find bothersome, but
10 if you flip to page 3, it is December 10 of the year
11 2008, and can you read this document? And this is to
12 give public disclosure to public shareholders;
13 generally the purpose of that document.

14 Can you tell me if somebody reading that document
15 would have any idea that Mr. Pattison, or his group of
16 companies, are involved? Can you take your time and
17 read the document and answer that question for me?

18 A. I don't see any reference to Pattison in this document.

19 Q. All right. Now, having reviewed the document it will
20 be a little easier, but take your time and make sure
21 that you read it. When it says "non-cash
22 consideration," is there anything in this document that
23 would inform a member, a public shareholder, a
24 shareholder of Birch Mountain, as to what was meant by
25 "non-cash consideration"?

26 A. I don't know if there is anything here other than
27 "non-cash consideration" referenced.

1 Q. So it is pretty clear to me that we are both
2 familiar -- and I don't want to bounce around too much,
3 but if you want to go back to the assignment and option
4 agreement, and you'll find it at tab 'W', but because
5 Tricap was a party to the agreement and the numbered
6 company that ends up owning the asset 100 percent free
7 and clear, these options in paragraph 3, you must be
8 familiar with them because you're present when
9 Mr. Johnson was questioned on 3(b)(i). First of all,
10 why on that option agreement is the reference to
11 November 5th so dominant? For example, "From the date
12 hereof until November 5th," and then, "From and after
13 November 5th," and then in 3, "From and after
14 November 5th," it would appear to me that whoever was
15 drafting this agreement was tying it into the
16 receivership; am I right on that?

17 A. I don't specifically recall other than that
18 November 5th, 2009 date does appear to be the
19 receivership date.

20 Q. Right. And so now going back to this early warning
21 report, and I'm asking you to read it before you answer
22 my question.

23 MR. GORMAN: Hang on a second. The
24 receivership is November 5th, 2008. November 5, 2009
25 would be the one-year anniversary of the receivership.

26 A. Yes, yes, yes, yes. It is November 5th, 2008 the date
27 of the receivership.

1 Q. MR. McDONALD: Yes, good point. I accept that.

2 I am sorry to have misled you there, Mr. Eng.

3 But, you know, to rephrase the question, then, do
4 you know why the anniversary of November 5th, 2009;
5 i.e., an annual period, it anchors to the receivership
6 obviously?

7 A. I don't recall specifically, but those are the dates.

8 Q. Yeah. Okay. So now back to the early warning report,
9 is there any reference anywhere in this early warning
10 report where a Birch Mountain common shareholder would
11 know that Mr. Pattison gets options that nobody else in
12 the world gets?

13 A. So I assume when you say "options," you mean the other
14 non-cash consideration?

15 Q. That's correct, yeah. That's what it is?

16 A. Well, it was a private agreement where Tricap acquired
17 some debt from Pattison, so, you know, we did this
18 early warning report with advice from securities
19 lawyers, and this was considered appropriate in the
20 context of there is a private agreement of one debt
21 holder buying the debt of another debt holder.

22 Q. Right. Now, did anybody at any particular point, any
23 of these great and wonderful advisors, securities
24 lawyers or receivership lawyers, think that it might be
25 appropriate to advise the receiver so that the receiver
26 could advise the Court?

27 MR. GORMAN: Advise the receiver on what?

- 1 Q. MR. McDONALD: Did you ever discuss what you call
2 this private agreement with the receiver?
- 3 A. The ownership of these notes was in our offer to
4 purchase.
- 5 Q. Yes, I can see that.
- 6 A. Yes.
- 7 Q. The 29. But, you know, the fact that you've -- for
8 example, when somebody reads this early warning report
9 and they see "cash consideration," is there anything in
10 the report that would tell them that the cash
11 consideration is nominal?
- 12 A. Sorry, in this report?
- 13 Q. Yeah, in the early warning report.
- 14 A. It says "nominal cash consideration."
- 15 Q. So would somebody -- like, is that -- we're talking
16 millions of dollars here, would somebody think that is
17 a million, or would they think --
- 18 A. I do not know, but "nominal" is meant to indicate that
19 it was a small number.
- 20 Q. Right. So then that would throw the emphasis, am I
21 right, to the non-cash consideration?
- 22 A. I'm not sure I understand the question other than the
23 word "nominal" is not in front of "non-cash
24 consideration."
- 25 Q. Right. Okay. Well, we'll leave that. Can you go to
26 paragraph 9 of this early warning report; do you see
27 that on page 2?

1 A. Yes.

2 Q. It says (as read):

3 The names of any joint actors in
4 connection with the disclosure required
5 herein.

6 And it says "Tricap Partners," but it would appear to
7 me that a joint actor is Brookfield; am I right in
8 that?

9 MR. GORMAN: That may well appear to you, but
10 the early warning report is in the name of 143 and
11 Tricap.

12 Q. MR. McDONALD: And it would appear to me that
13 another joint actor would be the Pattison Group of
14 Companies. You know, they are the ones that received
15 the \$10, which is the cash consideration, and they are
16 the ones that received the options and were trying to
17 disclose fairly to the Birch Mountain shareholders. So
18 my question to you is, and it is simple, would you
19 consider in this circumstance when Great Pacific
20 Capital signs the agreement, they label it an option
21 agreement, the parties to it are Tricap and the
22 numbered company, wouldn't they be a joint actor?

23 A. It was determined that Tricap Partners Limited was the
24 appropriate filer, and that's what we did accordingly.

25 Q. Well, I put it to you, and my question is, is that not
26 a cover-up? Is that not misleading the public
27 shareholders?

1 MR. GORMAN: Come on, Mr. McDonald. You've
2 been counsel long enough to know that that is not an
3 appropriate question.

4 OBJECTION TAKEN to answering the question: Well, I put it
5 to you, and my question is, is that not a cover-up? Is
6 that not misleading the public shareholders?

7 Q. MR. McDONALD: Well, I think it is an appropriate
8 question because this is -- you know, I'm not going to
9 take you to your code of conduct for Brookfield and all
10 the references to disclosure and being fair and all the
11 rest of that, but Tricap is not -- and my question
12 is -- okay. My question is, is there any other joint
13 actors that you're aware of that was involved in the
14 acknowledgement or, what do you call it, the assignment
15 and option agreement?

16 A. Sorry, what joint actor? Explain.

17 Q. Well, there comes a point, Mr. Eng, that Justice
18 Streikaf is going to look at this, and she is going to
19 pretty much know what a joint actor is. And I'm asking
20 you, my question is, you know, the fact that on the
21 assignment and option agreement that Great Pacific
22 Capital Corp. and the numbered Alberta company are
23 parties to it, does that qualify them as joint actors
24 with Tricap? What is your answer to that?

25 A. This is a filing required for Tricap who was buying a
26 piece of paper which had the ability to convert into
27 shares, and, therefore, the requirement for an early

1 warning report.

2 Q. Right. And you don't -- the position we're going to
3 take is it is pretty important for the public to know
4 who had the right to convert?

5 MR. GORMAN: Wonderful. Wonderful. You can
6 take that position, but this was a sale of debt, not
7 shares.

8 MR. McDONALD: Well ...

9 MR. GORMAN: Take whatever position you'd like.
10 The conversion rights and priority to them as they
11 existed prior to the receivership.

12 MR. McDONALD: Well, we're going to do that,
13 Mr. Gorman, but thanks for reminding me that that is a
14 central issue for Justice Streikaf.

15 Q. MR. McDONALD: Paragraph 8 says: (as read)

16 The general nature and the material
17 terms of any agreement other than a
18 lending arrangement with respect to the
19 securities of the reporting issuer
20 entered into by the offerer or any joint
21 actor and the issuer of the securities
22 or any other person or company in
23 connection with the transaction or
24 occurrence giving rise to the news
25 release, including agreements with
26 respect to acquisition, holding,
27 disposition, or voting of any of the

1 securities.

2 And then it is answered on behalf of Tricap, "Not
3 applicable." And I'm just curious as to how the
4 numbered company and Tricap, who are the offerers, can
5 leave out any reference when they answered question 8
6 "Not applicable"? Can you answer that one for me?

7 A. At the time of the filing we worked with our securities
8 counsel, and this was not applicable.

9 Q. Okay. I think I am content to go with that.

10 I want to explore, if I can, just because I'm
11 right at tab -- I want to explore this consent business
12 for a moment, and I'm going to start -- okay. And I'll
13 start with tab 'U', and do you see at the bottom of the
14 page, tab 'U', where it says in the second sentence:

15 (as read)

16 In the event that the payment is not
17 made in full by close of business on
18 November 4th, 2008, or Tricap determines
19 that its collateral is at risk, Tricap
20 will take such steps as may be necessary
21 to protect its position.

22 And then it goes on to say: (as read)

23 To that end, it is Tricap's position
24 that it has provided Birch Mountain, by
25 virtue of various extensions, with ample
26 opportunity to restructure the business.
27 Unfortunately no satisfactory result has

1 been achieved.

2 Now, does it say anywhere there that on November 5th
3 the company is going to go into receivership?

4 A. The words "receivership" are not there, but there is a
5 notice of intention here, and --

6 Q. Well, that's fine. You've answered my question.

7 A. It shouldn't be a surprise from there.

8 Q. Well, the evidence is going to be that it was, and
9 perhaps what I'd better do --

10 MR. GORMAN: No, no, no, no, no. Your affiant
11 has filed his affidavit. He's filed his examination.
12 Don't be saying what the evidence in respect of this
13 application is. We've had an agreement as to the
14 timing of exchange of affidavits.

15 MR. McDONALD: Yeah.

16 MR. GORMAN: So I don't know how you think
17 you're inserting additional evidence. If you want to
18 ask this witness additional questions, and he answers
19 them and gives undertakings, that's your evidence, but
20 don't be predicting what his evidence is going to be.

21 MR. McDONALD: I'm content with that. And it
22 wasn't what his evidence is going to be, it is what our
23 evidence is going to be. There will be affidavits
24 coming from Mr. McDonald and Mr. Gerrish at the
25 certification should we be successful on this motion.

26 Q. MR. McDONALD: But can you go to tab 67 for a
27 moment, and tab 67. Mr. Eng, I used numbers because

1 Mr. Gorman used letters. I do that to try to make it
2 easier. So when I look at the parties that are present
3 on January 8th, which is the sale hearing, I don't see
4 that Birch Mountain was represented in anyway. Could
5 you confirm that for me? And I'm looking at the first
6 part on page 1, it does not look to me that they were
7 represented at all. Receiver is represented, Tricap is
8 represented, Canada Western Bank is represented, Royal
9 Bank is represented, Boart Longyear is represented,
10 Department of Justice and an individual, but there is
11 no representation for Birch Mountain?

12 A. Yes. As a solicitor, there does not appear to be
13 anyone for Birch Mountain.

14 Q. And we forwarded to your counsel, Mr. Gorman, if I can
15 find a copy of the proceedings on November 5th.

16 MR. McDONALD: And, Mr. Gorman, I would like to
17 hand your client, if I could, page 1 of that
18 transcript, or do you have it?

19 MR. GORMAN: I have the entire transcript here.

20 Q. MR. McDONALD: Yeah. Can you look over your
21 counsel's shoulders? I need to get the transcript
22 before the Court. I'll attach it as Schedule 'C' to my
23 packet.

24 MR. GORMAN: You can ask this witness to
25 confirm it as an exhibit being an accurate transcript
26 of the proceeding.

27 MR. McDONALD: Well, that's wonderful. Thank

1 you, Mr. Gorman, and I shall do that then. You are
2 very helpful, Mr. Gorman. Thank you.

3 Q. MR. McDONALD: Can you go to page 7, Mr. Eng, and
4 could you see where they say "Certificate of
5 Transcript," and do you see, you know, that the court
6 reporter talks about how she transcribed it, and it is
7 accurate, and so on and so forth?

8 A. Yes.

9 Q. And based on that certificate or the certification, if
10 we want to call it, can I introduce this as Exhibit 1
11 to this examination?

12 MR. GORMAN: Yes. We will agree this is an
13 accurate transcript of the November 5 proceeding.

14 EXHIBIT 1 - Transcript of the November
15 5 proceeding

16 Q. MR. McDONALD: And if you can now go to page 1,
17 and it says "For the defendant," and the defendant, I
18 think we can all agree in this particular case if you
19 go to page 1, is Birch Mountain, or, you know, I call
20 them the style of cause. I don't know what they call
21 them in Alberta. But on the very first page it says
22 "Birch Mountain Resources: Defendant," so that is a
23 defined term. And so it says that there was nobody
24 representing and no appearance by ...

25 A. Yes.

26 Q. Great. Perfect. Okay.

27 MR. GORMAN: If I could help with respect to

1 page 2 of the transcript, lines 10 and 11, there is
2 "Mr. Hub (phonetic)", that one should be Mr. Houghton;
3 and "Mr. McArthur" should be Mr. McCarthy.

4 MR. McDONALD: Okay. Mr. Hub, okay, I'm prepared
5 to accept that. You were there. So counsel for Birch
6 Mountain, Mr. Houghton and Mr. -- they are not here
7 today. You'll note that they consented to the early
8 enforcement. Yeah, that wording is right.

9 Q. MR. McDONALD: Okay. Back to Mr. Gorman's
10 letter, if we flip the page, then, and in my book there
11 was a blue sheet. So let's go right to the one that
12 was signed, and if I go to -- it is tab 'U', and go to
13 the signed notice of intention to enforce security, and
14 do you see paragraph 4 where it says: (as read)

15 The secured creditor Tricap will not
16 have the right to enforce the security
17 until after the expiry of the 10-day
18 period following a sending of this
19 notice unless the insolvent person
20 consents to early enforcement.

21 So is there any reference in that paragraph to the fact
22 that there was going to be a receivership?

23 A. No.

24 Q. Now if we can go over the page we've got the actual
25 consent, and I'm going to read paragraph (a), it says:
26 (as read)

27 Birch Mountain consents to the

1 enforcement by Tricap as a secured party
2 of the security described in paragraph 2
3 pursuant to Section 211(2) of the
4 Bankruptcy and Insolvency Act on
5 November 4, 2008.

6 Now, I don't want to make an issue out of it, but I
7 think Section 211 was repealed years ago, but let's
8 forget it. That's a technicality. Is there any
9 reference --

10 MR. GORMAN: That's a poor photocopy. I
11 believe those are 4s, it's 244 section.

12 MR. McDONALD: Oh, okay.

13 MR. GORMAN: Sorry, it is better on the
14 unsigned version upfront.

15 Q. MR. McDONALD: Okay. Is there any reference to
16 receivership there?

17 A. The word "receivership" is not there.

18 Q. Correct. And now if you flip down, and we are out of
19 context, but we are back to this -- I'm at tab 'V', and
20 this will be my last question, and then it is 1:00, for
21 this portion of the examination.

22 So we've got the November 3rd, 2008 press release
23 of Birch Mountain, and in the second sentence of the
24 second paragraph says: (as read)

25 Whether or not a receiver will be
26 appointed and whether or not a receiver
27 would continue the business operations

1 of the corporation is not known.

2 So to me -- or how do you interpret those words in that
3 press release?

4 A. Well, the preceding sentence is relevant, it says: (as
5 read)

6 Tricap will begin enforcement
7 proceedings, which may or may not result
8 in a receiver.

9 Q. Correct. So there is all kinds of ways you can go. So
10 I think you've answered my question, then, that some
11 sort enforcement proceeding is going to occur --

12 A. Yeah.

13 Q. -- but we don't know that it is a receivership? Birch
14 Mountain does not know that it is going to be a
15 receivership?

16 A. Right.

17 Q. Okay. Thank you. I believe you said "right."

18 (Proceedings ended at 12:59 p.m.)

19

20 (Proceedings to recommence at 1:30 p.m.)

21

22 (Proceedings recommenced at 1:28 p.m.)

23 RICHARD ANTHONY ENG, previously affirmed, questioned by

24 Mr. McDonald:

25 Q. Mr. Eng, I'm wondering if you can tab up Exhibit 1 to
26 this examination?

27 A. Oh, the first?

1 Q. Yeah. And I'd ask you, and it is not very long, and
2 I'm going to just ask you to read it, but I've read it,
3 and I don't see any evidence as to whether there was a
4 sense of urgency on this receivership, you know, if it
5 is something that we absolutely had to get through in
6 the timeline that it occurred. Could you read that
7 document and see if you can see any evidence of urgency
8 in that transcript? As I say, I've read it and I
9 don't.

10 A. I've read the transcript. I'm not really in a position
11 to weigh in on whether there was urgency or not. It
12 just seems like a procedural series of steps.

13 Q. Thank you.

14 Now, can you -- I want to ask some questions about
15 investment and loan, and I just want to direct your
16 attention to some documents to have this on the record.
17 So could you go to my affidavit tab 11? It appears in
18 Mr. Johnson's affidavit. No, that's the wrong book.

19 A. Did you say 11?

20 Q. Yeah, I did. Okay. You're in the right box.

21 A. Okay.

22 Q. Did you see at the bottom, second paragraph from the
23 bottom, and I'll just read it. First of all the date,
24 it is a Brookfield Asset Management news release dated
25 December 24th, if you want time to read it, please do;
26 but the paragraph I'm interested in is the second from
27 the bottom: (as read)

1 Tricap has acquired the debenture for
2 investment purposes and in connection
3 with refinancing of the existing credit
4 facility extended to the corporation by
5 an affiliate of Tricap.

6 So when it says "Tricap has acquired the debenture for
7 investment purposes," what is being communicated to
8 someone who reads that news release?

9 A. This news release outlines that Tricap had the
10 conversion right, and it lays out the terms around that
11 conversion right and the price, the exercise price of
12 that to turn that debenture into common shares.

13 Q. And specifically the words where it says "Tricap has
14 acquired the debenture for investment purposes," you
15 know, can I take those words at face value? Can
16 Justice Streikaf, to put it in another way, rely on,
17 you know, the everyday meaning of those words?

18 MR. GORMAN: In context of the entire document
19 which describes the investment.

20 MR. McDONALD: Sure.

21 A. It is just describing the right to convert.

22 Q. MR. McDONALD: No.

23 A. And, as you know, there is two pieces of documentation
24 that are on SEDAR. There is the loan document, and
25 there is a convertible debenture.

26 Q. No. I am just --

27 A. So this is relating to the convertible debenture.

1 Q. Yeah. And while we're on that, you know, it is going
2 to be an issue that -- you've read my Statement of
3 Claim, and you know that I'm basing the action on the
4 good faith doctrine, which I'm not exploring today, the
5 representations that were made and oppression. So if
6 you flip the page we see this representation again in
7 the news release, and it says: (as read)

8 Tricap was established by Brookfield
9 Asset Management to provide a source of
10 patient long-term capital and strategic
11 assistance to mid-market companies based
12 in North America. With strong industry
13 and financial management, Tricap is well
14 positioned to assist companies in
15 building value over the long term.

16 Do you know why that representation was included in this
17 news release?

18 MR. GORMAN: You continue to use the word
19 "representation." If you are not intending to argue a
20 legal interpretation with respect to it, then fine;
21 otherwise please say "these words" were contained in
22 the document.

23 Q. MR. McDONALD: Well, okay. I'm content with
24 "these words." Do you know why these words, words that
25 I just read in that paragraph would be attached to this
26 press release?

27 A. These are marketing words that would be attached to all

1 sorts of other press releases that we would do with
2 respect to companies that we've invested in or lent
3 money to.

4 Q. So when you say "marketing words," for example, the
5 shareholders of Birch Mountain, they don't have access
6 to that private agreement, do they?

7 MR. GORMAN: Between?

8 Q. MR. McDONALD: The loan agreement, the \$31.5
9 million loan agreement?

10 A. No, quite contrary. They're material agreements that
11 are posted on SEDAR.

12 Q. Right.

13 A. You'd probably still find them today posted on SEDAR.
14 Both the debenture and the loan agreement are posted on
15 SEDAR.

16 Q. Right.

17 A. That lays out all of the, you know, terms and
18 representations.

19 Q. And if a public shareholder doesn't know that and they
20 go to the news release, and then they go to the
21 website, and they see the words on the website and then
22 they see these words, do you think they would be
23 entitled to rely upon them?

24 MR. GORMAN: That is not an appropriate
25 question, don't answer it.

26 OBJECTION TAKEN to answering the question: And if a public
27 shareholder doesn't know that and they go to the news

1 release, and then they go to the website, and they see the
2 words on the website and then they see these words, do you
3 think they would be entitled to rely upon them?

4 MR. McDONALD: Okay. We'll let Justice Streikaf
5 answer that one then.

6 Q. MR. McDONALD: Can you now flip to -- before I
7 finish there, can you tell me who Jim Reid is of Tricap
8 Partners? I'm on page 1 of tab 11 and inquiring as to
9 who Jim Reid is?

10 A. Jim Reid is a colleague at Brookfield.

11 Q. And would he be senior to you at that time, or were the
12 two of you sharing equal responsibilities?

13 A. I was a vice-president. He was a managing partner. So
14 he would be senior to me.

15 Q. He is the one that has obviously chosen the words or
16 approved them. Can you tell me what his background
17 might be in terms of educational experience and
18 experience in the field, working experience?

19 A. He has been with Brookfield for a number of years and
20 he is a chartered accountant.

21 Q. Okay, we'll go with that then. And can you go to
22 tab 12, and can you go to paragraph 6, and the question
23 becomes important at paragraph 6, there is a point of
24 disclosure, and it says: (as read)

25 The purpose of the offerer and any joint
26 actors in effecting the transaction or
27 occurrence that gave rise to the news

1 release, including any future intention
2 to acquire ownership of or control over
3 additional securities of the reporting
4 issuer...

5 And then I won't read the paragraph, but we have
6 essentially the same paragraph that says Tricap
7 acquired the debenture for investment purposes. Do you
8 know what was being communicated there by the use of
9 those words?

10 A. This is again pertaining to the conversion capability
11 of these debentures, and it is a requirement to file an
12 early warning report once you are above a certain
13 threshold on an as-converted basis. So this wouldn't
14 be any different from my previous answer, it is just
15 describing the acquisition of this debenture, which
16 was one -- which one possibility was a conversion.

17 Q. Right.

18 MR. GORMAN: And I note that you stopped
19 reading the quote mid-sentence and omitted the words:
20 (as read)

21 ...and to refinance the existing credit
22 facility extended to the corporation by
23 an affiliate lender of Tricap.

24 So I would assume your mythical shareholder would've
25 read the entire sentence.

26 MR. McDONALD: Yes. Okay.

27 Q. MR. McDONALD: Turning now to -- let's see how

1 Birch Mountain referred to Tricap. So if I'm at tab 13
2 and we have the Birch Mountain news release on
3 December 24th of the year 2007, and do you see the
4 words again, "Tricap was established..."? I'll leave
5 it to you to read the balance of the words, but it
6 would appear to me that Birch Mountain are relying on
7 those words in the sense that they put them in their
8 website. Do you agree with me on that proposition?

9 A. The company was simply just including however Tricap
10 describes itself, and Birch Mountain cut and paste into
11 their press release to let people know who Tricap is.

12 Q. Right. But it appears to me it is something more than
13 that, you know, they are describing, you know, the
14 focus of Brookfield Asset Management to provide
15 long-term patient capital. That tells us if they put
16 it in their press release that that is what they
17 expected Brookfield to do. Could you comment on that?

18 A. No.

19 Q. Okay. We'll let Justice Streikaf interpret that for
20 us.

21 In the Statement of Defence, and I'll let
22 Mr. Gorman tab it up for you, but at paragraph 3, and I
23 am going to read it fairly slowly, the Statement of
24 Defence, paragraph 3, and it says: (as read)

25 Tricap's business included providing
26 debt and equity capital to companies
27 through private equity funds. Tricap

1 was and remains a subsidiary of
2 Brookfield Asset Management. Tricap is
3 an affiliate of Brookfield Bridge
4 Lending Inc., another subsidiary of
5 Brookfield Asset Management which
6 provides shorter-term debt capital to
7 companies through investments that
8 generally have lower risk and a lower
9 return profile than that targeted by
10 Tricap.

11 Now, again, I reference the word "investment." Do you
12 know why you used or Tricap used the word "investment"
13 in their Statement of Defence?

14 A. No. I think it precedes here actually that it was just
15 a drafting error. That it says: (as read)
16 Brookfield AM which provides
17 shorter-term debt capital to companies
18 through investments.

19 So they could've used, I guess, the word "debt," but it
20 is just drafting. It is pretty clear here that it's a
21 shorter-term debt capital.

22 Q. Yeah. It is also very clear that it is an investment
23 they've made? Like, they make investments?

24 A. I'm just reading the words here, and it says
25 "shorter-term debt capital to companies," shorter-term
26 debt capital.

27 Q. Well, we've been through that, and the fact is it is a

1 senior secured convertible investment or debt?

2 MR. GORMAN: Correct. And the paragraph you
3 read to him includes short-term debt capital loans by
4 Brookfield AM is also included in their term
5 investments. The word "investments" at the end of
6 paragraph 3 is not referring to Tricap, it is referring
7 to Brookfield Bridge Lending Fund, as it is now named,
8 which provides loans as investments.

9 Q. MR. McDONALD: And they are all affiliated
10 companies; am I correct on that?

11 A. Yes.

12 Q. So we've got all of these various affiliated companies
13 making investments, you know, and I'm -- and I don't
14 want to use the words "distressed companies," but
15 companies that may be in short-term financial and need
16 some assistance?

17 MR. GORMAN: That is a mischaracterization of
18 this paragraph. Brookfield Bridge Lending Fund, which
19 is the one that provides short-term debt capital to
20 companies, does not deal with distressed funds. Tricap
21 does. They both use the description of their loans or
22 debentures or convertible debentures as small-sized
23 investments.

24 Q. MR. McDONALD: Well, you use the word
25 "investment," and I am content with that, so we'll just
26 leave that then.

27 Do you know if the debentures were qualified to be

1 listed to be quoted on the Toronto Stock Exchange?

2 Maybe I better tab up the agreement for you so you're
3 not confused.

4 A. The debenture or the loan, because there is two
5 components?

6 Q. Yeah, I know.

7 A. It would be more than likely that the debentures would
8 relate to the TSX than the loan.

9 Q. Yeah. So if somebody lists on the Toronto Stock
10 Exchange, it would appear to indicate to me -- like, we
11 don't list loans on the Toronto Stock Exchange, we list
12 investments, like shares or debenture or whatever. So
13 that would be an indication to me that what Tricap is
14 involved with, if the senior security debentures were
15 going to be listed on the Toronto Stock Exchange, that
16 it is very very clear evidence that it was an
17 investment, not a loan?

18 MR. GORMAN: Okay. We've been through this
19 numerous times. "Investments," as a defined term, you
20 can't say "such as shares," and then move that to be
21 the premise for a question that this loan was for
22 shares.

23 MR. McDONALD: Sure. Well, let's leave it.

24 Q. MR. McDONALD: My understanding, and if I'm
25 wrong, and I believe I have the evidence, that there
26 was conditionally approved that debentures -- the
27 debentures shares, the shares that would come out of

1 the debenture if it were converted were conditionally
2 approved to be listed on the Toronto Stock Exchange.
3 So that, in my way of thinking, is conclusive evidence
4 as to the investment nature of what Tricap was up to?

5 MR. GORMAN: No. The TSX made considerable
6 approval that if there was a conversion to shares that
7 the shares were tradable. That has nothing to do with
8 respect to the non-defined word "investment" that you
9 keep putting to this witness. There is no doubt that
10 the documents say and the witness has repeatedly
11 admitted that there was a conversion right.

12 A. Which was not exercised.

13 Q. MR. McDONALD: Well, it didn't have to be
14 exercised. We're going to get into that legal
15 interpretation, but we're going to do that with Justice
16 Streikaf.

17 Just a general question: I notice that at all
18 times Tricap and Brookfield are very careful to spell
19 out if they've converted, if they'd exercised what
20 their percentage ownership would be. Do you know why
21 they were doing that?

22 A. It is a requirement.

23 Q. Of?

24 A. It is a securities requirement to disclose what you
25 have, you could convert to, even if you haven't
26 converted.

27 Q. Excellent. Perfect.

1 I just want to touch base into the loan amendment
2 agreement.

3 A. Which tab?

4 Q. Well, it is at my tab 31. I'm not sure where it is in
5 yours.

6 A. Well, we'll use yours.

7 Q. Great.

8 MR. GORMAN: Mr. Eng's 'S'.

9 Q. MR. McDONALD: And you go to page 9, I just want
10 to be sure that I understand the dates. Maybe I should
11 take you back to page 8 for a minute because the
12 financial covenant holiday has two portions to it, one
13 is the sale of the company on or before September 30th,
14 and we find that at 3.3(d)(i)(a), where it reads: (as
15 read)

16 Entered into a binding unconditional
17 subject only to customary third-party
18 approval agreement the sale by no later
19 than September 30 providing for...

20 And I'll stop reading there. And then if I go over the
21 page, that transaction contemplated had to be closed by
22 October 31st, correct?

23 A. Yes.

24 Q. And the \$10 million loan provision, I believe it's
25 subject to the same timing, and I just need to locate
26 that because it's in -- on page 9, it says: (as read)

27 The borrower has not completed the

1 equity financing by no later than
2 September 30, pursuant to which it has
3 raised no less than \$10 million in gross
4 proceeds and not less than 9 million in
5 net proceeds.

6 So I'm doing the stock reading. But I believe, and I
7 am -- my eyes just aren't picking it up right now, but
8 I believe that that loan agreement had to be completed
9 by October 31st as well?

10 MR. GORMAN: Okay. So first of all, there is
11 reference to an "equity financing loan agreement."

12 MR. McDONALD: There is what?

13 A. Where is the loan agreement?

14 MR. GORMAN: There is no reference to a \$10
15 million loan agreement. It is a \$10 million equity
16 financing.

17 MR. McDONALD: Right. What did I say?

18 MR. GORMAN: You keep saying "loan agreement."

19 MR. McDONALD: Oh, I'm sorry.

20 Q. MR. McDONALD: The borrower has not completed an
21 equity financing. And when did that have to be closed?
22 You know, it is not an easy agreement to read, as you
23 know?

24 A. It says by no later than September 30th for the equity
25 financing.

26 Q. Yeah, but I think there is a covenant somewhere in this
27 agreement. Well, I'll have it before I argue the

1 motion, but I think it is October 31st. So my
2 question, then, having premised it, you know, like, the
3 action that you take seems to be set, you know, by the
4 financial covenant holiday is over on October 31st?
5 Like, they had until October 31st to close these
6 transactions?

7 A. September 30th.

8 Q. Okay. Fine.

9 A. It is September 30th. And how this worked was in the
10 case of a sale of the company, which is 3.3(d)(i)(a),
11 there needed to be a binding agreement by September
12 30th, but the accommodation made was that in a sale of
13 a company there is some steps to actually get it
14 closed. So there was concession that if you have a
15 sale agreement in place by September 30th, you can
16 actually have until October 31st to close it because in
17 a sale of a company there is more steps involved.

18 Q. Right. So the equity financing you're saying -- and I
19 thought I'd seen it, but perhaps I have to study it
20 more carefully.

21 A. There is one date for the equity financing because
22 equity financings are a much shorter time frame to get
23 executed and closed.

24 Q. Oh, okay.

25 A. So really in this case there was no sale that had -- no
26 binding sale by September 30th, nor was there a closed
27 equity financing by September 30th.

1 Q. Mm-hmm.

2 A. So the clock -- that's when the reinstatement of the
3 covenants took place.

4 Q. And then all of the references in the agreement -- and
5 there are many, and I don't think I want to explore it
6 now. But all of the references to the dates after
7 October 31st, you know, why are those dates there?
8 Like, somebody is contemplating that things are going
9 to occur well after October 31st in this amending
10 agreement?

11 A. Sorry, I don't follow the question. You have to be
12 specific about where you are looking here.

13 Q. Okay. Well, let's see if I can find one for you then.
14 The release of the South Haul Road agreement proceeds.
15 Let's go to paragraph 5, and we'll just take one of the
16 dates. So I'm on page 5, article 2, and it says
17 "Release of South Haul Road proceeds," and if you go
18 down into the body of the agreement, and I don't know
19 if yours is underlined; it may not be. So see if you
20 can locate at the bottom of that large paragraph,
21 towards the bottom, it says: (as read)

22 The parties agree that for the purpose
23 of Section 210 of the loan agreement, if
24 the lender's counsel holds all or any of
25 the portion of the South Haul Road
26 proceeds other than the AE amount after
27 November 28th, 2008.

1 So whoever is drafting this agreement is contemplating
2 the survival of the agreement well after October 31 of
3 2008. That would be one example, and I know there are
4 many other examples of that. Somebody was
5 contemplating that this agreement, you know,
6 wouldn't -- like, the company wouldn't go into a death
7 on October 31st?

8 A. So this was an amendment. This was an amendment to an
9 existing agreement.

10 Q. Right.

11 A. So the existing agreement would also have potentially
12 contemplated dates that go beyond September 30th, but
13 there was a covenant relief that was extended so long
14 as certain conditions were met, which we just discussed
15 around the sale of the company or the raise of equity.

16 Q. Well, let's go to page 6(ii): (as read)

17 The lender otherwise directs that the
18 determination and documentation provided
19 for in section,

20 and I won't read it: (as read)

21 ...are not made or provided as the case
22 may be by January the 1st, 2009. In
23 such event the amount will be released
24 in accordance with the lender's
25 direction.

26 So, again, somebody is contemplating life and
27 transactions for Birch Mountain well after

1 October 31st? Do you see that on page 6?

2 A. Sorry, what is your question?

3 Q. My question is there is so many references to dates and
4 events that are going to be evaluated after
5 October 31st, you know, that this idea that the company
6 is going to get these notices of enforcement on
7 October 31st doesn't seem to fit with these dates I'm
8 pointing out to you. There is another one on page 8.
9 I believe I've underlined it as well.

10 MR. GORMAN: Okay. You're well into the area
11 of argument. At the point of time that this agreement
12 was executed, we didn't know if the \$10 million equity
13 raise was going to occur. We didn't know what was
14 going to happen with the company thereafter; and, yes,
15 some provisions could've occurred after September 30th,
16 but it is clear that the trigger with respect to the
17 waiver of default and default holiday expired
18 September 30th.

19 Q. MR. McDONALD: Then the agreement also -- you
20 know, we'll accept Mr. Gorman's answer for a moment;
21 we'll leave it for argument. But it also -- the
22 agreement also spells out the remedy as to what would
23 happen if these sales did not occur or the equity
24 financing didn't occur by a specific day, and that is
25 where you would get a certain representation on the
26 board. So those covenants are all set out in the
27 amending agreement?

1 MR. GORMAN: That is not how it reads, and you
2 know better than that. That is an additional potential
3 remedy. The loan agreement still exists. The defaults
4 under the debenture and loan agreement still exist, and
5 this does not replace each and every potential remedy.

6 MR. McDONALD: Well, it appears to say the exact
7 opposite to me, but I'm prepared to let it be dealt
8 with in argument. But just to fair to Mr. Eng,
9 5.3(v)(d)(i), if the corporation does not by no later
10 than September 30 enter into a binding unconditional
11 subject only to, and I'll say sale agreement, then
12 there is a remedy, and your remedy is representation on
13 the board of Bridge Mountain. So that has been
14 eviscerated and defeated as well.

15 MR. GORMAN: The wording starts, "The following
16 is added."

17 MR. McDONALD: Right.

18 MR. GORMAN: Is added. It doesn't replace all
19 other existing remedies. It is an additional potential
20 remedy.

21 Q. MR. McDONALD: Well, Mr. Eng, my question is, you
22 know, all you've done up until October 31st is say
23 there might be an enforcement procedure. That could be
24 an enforcement procedure; am I right?

25 A. Within the agreement it is very clear that the
26 obligation to comply with this financial covenant,
27 which there was holidays provided, that would be the

1 end of that holiday if those conditions around the sale
2 of the company or the raise of equity were not met.

3 Q. And it is equally clear that there were remedies set
4 out in this amending agreement?

5 A. There is some additional impacts if those items don't
6 occur, the sale of the company or the equity raised.

7 Q. Yeah. Now, I'm going to ask you, is there anything in
8 the amending agreement -- like, here is one remedy, but
9 can you take your time and read it, is there anything
10 in this agreement that says that the enforcement
11 provision will be receivership?

12 A. The agreement would be focussed on the financial
13 covenants applying again, and they did apply, and the
14 company was not meeting the covenants for the
15 measurement date that they began to apply. So as a
16 lender, you're in default.

17 Q. And ...

18 A. From a lender's perspective you're in default.

19 Q. Technically you're in default, but that's -- those are
20 all of my questions, Mr. Eng. I will point out to you
21 that, you know, we understand the nature of the
22 mathematics behind the default calculation, you know,
23 and they are very minor. We're going to argue that.

24 Those are all of my questions, Madam Reporter.

25

26 (Proceedings ended at 2:05 p.m.)

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Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 to 64 are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 21st day of August, 2014.

"Kaeli Campbell"

Kaeli Campbell, CSR(A)

Official Court Reporter

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- I N D E X -

RICHARD ANTHONY ENG

AUGUST 19, 2014

The following is a listing of exhibits, undertakings and objections as interpreted by the Court Reporter.

The transcript is the official record, and the index is provided as a courtesy only. It is recommended that the reader refer to the appropriate transcript pages to ensure completeness and accuracy.

EXHIBITS

EXHIBIT 1 - Transcript of the November 5 42
proceeding

OBJECTIONS

OBJECTION TAKEN to answering the question: And 16
so I guess what I'm exploring right now is it
would appear we have a conveyance from Birch
Mountain to the receiver, the receiver takes
control of the assets, he then conveys the
asset to the numbered company, which becomes
Hammerstone corporation, for approximately \$42
million, you know, but there is an appraisal
that says the property might be worth 1.6
billion, and my question is that it would
appear to me that there is a conveyance that
undervalues?

1 OBJECTION TAKEN to answering the question: So 23
2 it would appear to me that Tricap, because of
3 that negative covenant, are clearly in control
4 of Bridge Mountain?

5

6 OBJECTION TAKEN to answering the question: 28
7 Right. Now, just let me ask a general
8 question: Why would you not provide that
9 funding directly to Birch Mountain, you know,
10 in accordance with, you know, the spirit of
11 your representations so they could get by the
12 hump and get to the serious development as
13 opposed to financing a receiver?

14

15 OBJECTION TAKEN to answering the question: 28
16 Well, on November 9th you're prepared to lend
17 to the receiver, but on November 4th you
18 weren't prepared to lend to Birch Mountain. If
19 you lent, for example, \$10 million, none of
20 these bad things probably would've happened?

21

22 OBJECTION TAKEN to answering the question: But 28
23 you've represented that you'd invest up to \$50
24 million, but you didn't do that, did you?

25

26

27

1 OBJECTION TAKEN to answering the question: Do 29
2 you agree with your counsel that you shouldn't
3 answer that question?

4

5 OBJECTION TAKEN to answering the question: 29

6 Well, you see, Tricap said all of these great
7 and wonderful things, and that's part of what
8 this lawsuit is about, the representation, and
9 my question is that on November 4th you're not
10 prepared to invest any monies to Birch
11 Mountain, but on November 9th you're prepared
12 to invest cash out of the pocket of Tricap to
13 go to the receiver. My question is why
14 couldn't you have done that for Birch Mountain
15 five days earlier?

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1 OBJECTION TAKEN to answering the question: But 30
2 there is also a raise of \$10 million. Did
3 Tricap or Brookfield ever consider that they
4 are the perfect investment candidate for that
5 \$10 million? I mean, you're involved with
6 them, you're only at 31.5 million, invest
7 another \$10 million, you're well below the 50
8 million. You know, you are prepared to invest
9 up to somewhere between 50 million and half a
10 billion, why didn't Tricap say, we've got an
11 asset that might be worth a lot of money, let's
12 put in the money?

13

14 OBJECTION TAKEN to answering the question: 37
15 Well, I put it to you, and my question is, is
16 that not a cover-up? Is that not misleading
17 the public shareholders?

18

19 OBJECTION TAKEN to answering the question: And 49
20 if a public shareholder doesn't know that, and
21 they go to the news release, and then they go
22 to the website, and they see the words on the
23 website and then they see these words, do you
24 think they would be entitled to rely upon them?

25

26

27