Court File No. CV-16-11595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants

COMPENDIUM OF THE PLAINTIFF

August 8, 2017

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Court File No. CV-16-11595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants

INDEX

AMENDED THIS May 30, 2017 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)

☐ THE ORDER OF
L'ORDONNANCE DU
DATED/ FAIT LE

C. Irwin
REGISTRAR
SUPERIOR COURT OF JUSTICE
Registrar
COUR SUPÉRIEURE DE JUSTICE

1

Court File No. : CV-16-11595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants

AMENDED AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

~~CLAIM~~

1. The Plaintiff claims:

(a) against the Defendants VimpelCom Ltd. ~~and~~, UBS Securities Canada Inc. and Globalive Capital Inc., on a joint and several basis, damages in the amount of ~~$750,000,000~~ $1,300,000,000 for breach of contract and breach of confidence;

(b) against the Defendants Globalive Capital Inc., Tennenbaum Capital Partners LLC, 64NM Holdings GP LLC, 64 NM Holdings LP, LG Capital Investors LLC, Serruya Private Equity Inc., Novus Wireless Communications Inc., West Face Capital Inc., UBS Securities Canada Inc., ~~and Mid-Bowline Group Corp.,~~ on a joint and several basis:

(i) damages in the amount of ~~$750,000,000~~ $1,300,000,000 for misuse of confidential information, conspiracy, and inducing breach of contract; and

(ii) Punitive damages in the amount of $1,000,000;

(c) Against the Defendants John Doe #1 LP, John Doe #2 LP, and John Doe #3 LP, an Order tracing any portion of the proceeds from the sale of Wind (defined below) that were transferred to them by the Conspirators;

~~(c)~~(d) against all of the Defendants on a joint and several basis:

(i) Prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(ii) The costs of this action, plus the applicable taxes; and

(iii) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. ("Catalyst")

2. Catalyst is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as "special situations investments for control".

The Defendants

3. VimpelCom Ltd. ("VimpelCom") is a company subsisting under the laws of the Netherlands in the field of telecommunications services. Its headquarters is located in Amsterdam, Netherlands.

4. Globalive Capital Inc. ("Globalive") is private equity corporation based in Toronto. Globalive was one of the founders of Wind Mobile Canada ("Wind").

5. UBS Securities Canada Inc. ("UBS") is an investment bank that provides advisory services to clients.

6. Tennenbaum Capital Partners LLC ("Tennenbaum") is an alternative investment management firm headquartered in Los Angeles, California.

7. 64NM Holdings GP, LLC ("64NM GP") is the general partner of 64NM Holdings, LP ("64NM LP"), a limited partnership organized under the laws of the State of Delaware in the United States of America. 64NM GP is headquartered in New York, New York. 64NM was

formed by LG Capital Investors LLC ("LG") for the purpose of participating in the acquisition of Wind.

8. Serruya Private Equity Inc. ("Serruya") is a private equity investment fund headquartered in Markham, Ontario.

9. Novus Wireless Communications Inc. ("Novus") is a telecommunications provider based in Vancouver, British Columbia.

10. West Face Capital Inc. ("West Face") is a Toronto-based private equity corporation with assets under management of approximately $2.5 billion.

~~11. Mid-Bowline Group Corp. ("Mid-Bowline") is an entity incorporated by the members of the Consortium (defined below) for the purpose of purchasing VimpelCom's interest in Wind.~~

11. John Doe #1 LP, John Doe #2 LP and John Doe #3 LP are limited partners of Tennebaum, 64 NM GP, 64NM LP, LG and West Face. The Defendants refuse to disclose the identities of the limited partners. The Plaintiff will substitute the actual names after they are disclosed.

Wind Mobile's Inception

12. Wind was founded in 2008. It acquired Advanced Wireless Services spectrum licences during an auction open to small entrants in Canada's telecommunications industry held by the Government of Canada.

13. Wind was initially jointly owned by Globalive and Orascom Telecom Holdings ("Orascom") through a holding company called Globalive Investment Holdings Corp. ("GIHC"). Globalive indirectly held 67% of Wind's voting shares and 34% of its total equity. Orascom

indirectly held 100% of Wind's non-voting shares, 32% of its voting shares and 65% of its total equity. The remaining 1% of Wind's voting shares and total equity was held by a former Orascom employee.

14. In 2011, VimpelCom acquired the majority shareholder of Orascom, and, as a result, acquired Orascom's interest in GIHC and Wind.

15. In June 2012, VimpelCom and Globalive entered into negotiations to determine whether one could buy the other's interest in Wind. As the negotiations progressed, VimpelCom became increasingly interested in acquiring Globalive's interest in Wind and the parties ultimately entered into a share purchase agreement whereby VimpelCom agreed to purchase Globalive's equity in Wind. Ultimately, VimpelCom could not secure the required regulatory approval from Industry Canada ("IC") to purchase Globalive's equity and the agreement was terminated.

VimpelCom Intends to Exit Wind

16. In early 2013, VimpelCom engaged UBS for the purpose of finding a purchaser for its debt and equity interests in Wind.

17. At all material times, UBS was VimpelCom's agent for the purpose of finding a purchaser for VimpelCom's debt and equity interests in Wind and completing the transaction.

18. ~~17.~~ By the fall of 2013, VimpelCom had financed Wind's capital purchases and operating expenses through shareholder loans that Wind could not repay. As a result of Wind's massive debts owed to VimpelCom, VimpelCom controlled the sale process for Wind despite only owning a minority voting interest in the company.

~~19.~~ ~~18. In the fall of 2013 and winter of 2014, several parties, including Catalyst, expressed~~ an interest in purchasing VimpelCom's interest in Wind.

20. ~~19.~~ VimpelCom negotiated with numerous bidders in 2013, including Verizon Wireless, a U.S. wireless company, and Birch Hill, a private equity firm.

21. ~~20.~~ In December 2013, Catalyst negotiated in earnest potential terms for a deal with VimpelCom to acquire its interest in Wind. On January 2, 2014, Catalyst delivered a letter of intent to VimpelCom whereby it offered to purchase Globalive Wireless Management Corp. for C$550,000,000, all-cash on closing. VimpelCom did not accept Catalyst's offer.

Globalive Seeks a Financier

22. ~~21.~~ At the same time as VimpelCom was seeking to sell its interest in Wind, and entirely separate from that process, Globalive approached a number of parties, including Catalyst, in an attempt to find capital to purchase VimpelCom's shares in Wind. Globalive wanted to control the identity of the other shareholder of Wind.

23. ~~22.~~ Anthony Lacavera ("Lacavera") is the principal of Globalive. At all material times, Lacavera was the former chief executive officer of Wind. Lacavera directed Globalive to seek out funding to purchase VimpelCom's shares in Wind.

VimpelCom Writes Down its Investment in Wind

24. ~~23.~~ On March 6, 2014, VimpelCom announced that it had written off its investment in Wind as a result of challenges it was facing in the Canadian market. It was apparent to all bidders that VimpelCom was motivated to sell its share in Wind. It was also widely known to all

bidders that if VimpelCom did not receive a suitable offer for its interest in Wind, it would likely push Wind into insolvency proceedings.

25. ~~24.~~ VimpelCom continued to aggressively pursue purchasers for its interest in Wind. Given the nature of the sale process and the fact that Wind was a privately held company, VimpelCom demanded that interested bidders execute a non-disclosure agreement.

Catalyst Executes Confidentiality Agreement and Continues Negotiations with VimpelCom

26. ~~25~~. In March 2014, Catalyst re-engaged with VimpelCom through UBS.

27. ~~26.~~ On March 23, 2014, Catalyst executed a confidentiality agreement with VimpelCom and Global Telecom Holding S.A.E (the "Confidentiality Agreement"). The Confidentiality Agreement was intended in part, to protect the confidentiality of information exchanged during the diligence process. It also mandated complete confidentiality over the sale process:

> Agreement and Related Negotiations. Each Party agrees that, unless required (pursuant to the advice of reputable outside legal advisors) by applicable law or by the rules of any national stock exchange on which such Party's securities are listed or by any competent regulator authority (in any such case such Party will promptly advise and consult with the other Party and its legal advisers prior to such disclosure), without the prior written consent of the other Party, such Party will not, and will cause its Authorised Persons not to, disclose to any person other than the other Party and its Authorised Persons (a) the fact that discussions or negotiations are taking place with the other Party concerning the Project, (b) any of the terms, conditions or other facts related to the other Party's participation in the Project, including the status thereof, or (c) the existence of this Agreement, the terms hereof or that Confidential Information has been made available pursuant to this Agreement.

28. VimpelCom, Global Telecom Holding S.A.E and Catalyst are parties to the Confidentiality Agreement.

29. UBS was also bound by the terms of the Confidentiality Agreement:

> "**Authorized Person**" shall mean, in relation to a Party, any Affiliate, agent, director, officer, employee, representative or professional advisor (including without limitation legal advisors, auditors and accountants) and potential financing sources and the professionals advisors of such Party, excluding in relation to the Company only, the Dave Entities.

30. Pursuant to the Confidentiality Agreement, UBS could not reveal, *inter alia*, that Catalyst and VimpelCom were in negotiations to anyone other than a Party or Authorized Person, as defined by the Confidentiality Agreement.

31. ~~27.~~ Between March and May of 2014, Catalyst and UBS negotiated terms upon which Catalyst would acquire VimpelCom's interest in Wind.

Wind Defaults on Vendor Debt and Catalyst Negotiations Continue

32. ~~28.~~ On May 1, 2014, Wind defaulted on $150 million in vendor debt. It had until May 30, 2014 to cure the default.

33. ~~29.~~ On May 6, 2014, Catalyst and VimpelCom agreed to preliminary terms for an acquisition of Wind: Catalyst would purchase Wind based on an enterprise value of ~~$300 million~~ $1.3 billion, with a closing date of no later than May 30, 2014.

34. ~~30.~~ Catalyst's review of documents stored in VimpelCom's confidential "data room" commenced on May 9, 2014, after its meeting with Wind's management in Toronto.

35. ~~31.~~ Catalyst negotiated with VimpelCom and its advisors, UBS and Bennett Jones LLP, throughout May and June of 2014, but it could not finalize terms of a share purchase agreement during this period.

Other Suitors Pursue Transaction with VimpelCom

36. ~~32.~~ At the same time that Catalyst was negotiating with VimpelCom, VimpelCom was negotiating with other parties, including Tennenbaum and West Face.

37. ~~33.~~ In May 2012, Tennenbaum, together with an unknown partner, acquired certain vendor debt owed by Wind. During 2013 and 2014, Tennenbaum and its partner reached out to VimpelCom and Wind to offer to provide additional debt and equity capital to fund the business.

38. ~~34.~~ After Wind defaulted on its vendor debt on May 1, 2014, including the debt owed to Tennenbaum, VimpelCom informed Tennenbaum that it was selling its stake in Wind. Tennenbaum met with Wind's management in early May 2014 and started negotiating a proposal to acquire Wind. Tennenbaum's negotiations continued through May and June 2014.

39. ~~35.~~ While Tennenbaum negotiated with VimpelCom, it also began building a consortium of equity partners, including Oak Hill, Blackstone and LG. This initial consortium was permitted to conduct diligence on Wind.

40. ~~36.~~ In May 2014, West Face separately conducted diligence and negotiated with VimpelCom regarding a potential purchase of VimpelCom's interest in Wind.

41. ~~37.~~ West Face was unable to pursue the transaction on its own. In June 2014, it reached out to a strategic partner and worked with that partner on a potential acquisition of Wind, but ultimately the strategic partner backed out.

Catalyst Enters Into Exclusivity With VimpelCom

42. ~~38.~~ In July 2014, Catalyst reached a critical point with VimpelCom such that a deal was imminent. In an effort to control the negotiations, Catalyst proposed that the parties enter into an

exclusivity agreement which would allow Catalyst and VimpelCom to continue negotiating for a defined period without the possibility of a competing bid interfering with those negotiations.

43. ~~39.~~ On July 23, 2014, Catalyst and VimpelCom entered into an exclusivity agreement that provided for exclusive negotiations between the parties (the "Exclusivity Agreement"). The Exclusivity Agreement contained the following express and implied terms:

> (a) VimpelCom and Catalyst shall and shall cause their respective Affiliates to deal exclusively with each other in connection with the Transaction and VimpelCom shall use its reasonable efforts to ensure that GWMC and its subsidiaries deal exclusively with Catalyst and its respective Affiliates in connection with the Transaction;
>
> (b) VimpelCom shall not, shall ensure that its Affiliates will not, and shall use its reasonable efforts to ensure that GWMC and its subsidiaries do not, directly or indirectly, through any of its or their respective Representatives, solicit or encourage offers from, participate in any negotiations or discussions with, enter into any agreements with, or furnish any information to, any person regarding any alternative transaction to the Transaction (including but not limited to an acquisition, merger, arrangement, amalgamation, other business combination, joint venture or equity or other financing) involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets (an "Alternative Transaction");
>
> (c) VimpelCom shall, shall cause its Affiliates and its and their respective Representatives to and shall use its reasonable efforts to ensure that GWMC and its subsidiaries, (A) discontinue or cause to be discontinued any existing activity of the nature described in Section 2(a), including but not limited to precluding access to any due diligence data room (except for access provided to Catalyst and its Representatives) and (B) enforce and not release any third party from, or otherwise waive, any standstill covenants or obligations owed by any such third party to VimpelCom and/or its Affiliates and/or GWMC or its subsidiaries under any confidentiality agreement entered into with respect to a potential Transaction involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets; and

(d) VimpelCom and Catalyst would undertake to negotiate with each other in good faith during the exclusivity period and would not take any steps to undermine the purpose and intent of the Exclusivity Agreement.

44. Pursuant to the Exclusivity Agreement, VimpelCom and its agents and advisors, including UBS, were not permitted to negotiate with any party other than Catalyst during the term of the Agreement.

45. ~~40.~~ The Exclusivity Agreement also required that the parties and their agents and advisors, including UBS, keep the existence and terms of the Exclusivity Agreement confidential.

46. ~~41.~~ The Exclusivity Agreement is governed by the laws of the Province of Ontario.

47. ~~42.~~ VimpelCom instructed Wind's management, including Lacavera, that all discussions with any other prospective purchaser of GWMC, its subsidiaries or any of their material assets must cease until the end of the exclusivity period. Although not a party to the Exclusivity Agreement, Lacavera was obligated not to take any steps that undermined its purpose and intent.

48. ~~43.~~ Catalyst's reasonable expectation was that during the exclusivity period, VimpelCom and Lacavera could not and would not negotiate with any party, including West Face or Tennenbaum, regarding an alternative transaction, and that VimpelCom would honour its obligation to negotiate with Catalyst in good faith.

49. ~~44.~~ Catalyst also understood that during the exclusivity period, Wind's management, including Lacavera, was instructed to and was obligated to assist in exclusively attempting to conclude a deal between Catalyst and VimpelCom.

50. VimpelCom, UBS and Lacavera had no intention of abiding by the terms of the Confidentiality or Exclusivity Agreements.

Other Bidders for ~~the Consortium~~ Wind

51. Prior to July 21, 2014, Tennenbaum, West Face, LG, Serruya, and Novus engaged in discussions regarding the formation of a consortium to pursue the purchase of VimpelCom's interest in Wind (the "Consortium").

52. On July 21, 2014, West Face sought VimpelCom's permission to join the Consortium. VimpelCom consented.

53. ~~45. By July 2014, Tennenbaum, West Face, LG, Serruya, and Novus had formed a consortium to pursue the purchase of VimpelCom's interest in Wind (the "Consortium").~~The Consortium received Lacavera's and Globalive's support in the form of information provided to the Consortium by Lacavera and other senior managers of Globalive that was not provided to Catalyst.

54. At all material times, VimpelCom, UBS and Globalive knew of the existence of the Consortium and the Consortium's goal of concluding a transaction with VimpelCom for its debt and equity interests in Wind.

UBS and Globalive Inform Consortium of the Terms of the Exclusivity Agreement

55. While Catalyst and VimpelCom were negotiating the Exclusivity Agreement between July 21 to 23, 2014, Globalive and UBS revealed the state of these negotiations to Tennenbaum.

56. On July 23, 2014, UBS communicated to Oak Hill Capital ("Oak Hill"), a former member of the Consortium, Catalyst's confidential information, including the existence and

terms of the Exclusivity Agreement. UBS told Oak Hill that VimpelCom had entered into exclusivity with Catalyst at the "reserve price" and would be in exclusivity for five to seven days.

57. Oak Hill transmitted the confidential information received from UBS to Tennenbaum, LG and West Face.

58. On July 29, 2014, UBS and Globalive communicated Catalyst's confidential information to Tennenbaum, the specified date on which the term of the Exclusivity Agreement expired. Tennenbaum communicated this confidential information to West Face.

59. At all times, Tennenbaum, West Face and LG knew that information about the Exclusivity Agreement, that were communicated by UBS and Globalive was Catalyst's confidential information.

Catalyst Extends the Exclusivity Agreement

60. ~~46.~~ By way of written extensions to the Exclusivity Agreement, Catalyst and VimpelCom agreed to extend the exclusivity period to August 18, 2014.

61. ~~47.~~ On or about August 3, 2014, VimpelCom and Catalyst reached an agreement in principle for the purchase of Wind by Catalyst.

62. ~~48.~~ In violation of the Confidentiality Agreement and the Exclusivity Agreement, VimpelCom, UBS, and Globalive informed the Consortium that an agreement had been reached with Catalyst in principle.

The Consortium Forms a Conspiracy

63. ~~49.~~ On or around July 23, 2014, UBS breached the Exclusivity Agreement and revealed to the Consortium that VimpelCom had entered into the Exclusivity Agreement.

64. ~~50.~~ Further, or in the alternative, VimpelCom breached the Exclusivity Agreement and revealed to the Consortium that it had entered into the Exclusivity Agreement.

65. ~~51.~~ Together with Lacavera and Globalive, the Consortium began discussing how they might cause VimpelCom to breach the Exclusivity Agreement so as to prevent Catalyst from successfully acquiring Wind.

66. ~~52.~~ The Consortium's and Globalive's joint intention was to induce VimpelCom to breach the Exclusivity Agreement knowing that, in so doing, they would cause damage to Catalyst.

67. ~~53. In or About~~ On August 1, 2014, the members of the Consortium, Globalive, ~~and~~ Lacavera and UBS (together, the Conspirators") entered into a conspiracy. ~~t~~The predominant purpose of which was to induce VimpelCom to breach the Exclusivity Agreement, to cause VimpelCom to cease negotiating with Catalyst in good faith and to thereby cause harm to Catalyst (the "Conspiracy").

68. ~~54.~~ The following parties ~~met in in or about~~ attended a call on August ~~2016~~ 1, 2014 to discuss how to induce VimpelCom to breach the Exclusivity Agreement, as particularized below:

(a) Michael Leitner ("Leitner"), as the principal of Tennenbaum;

(b) Lawrence Guffy ("Guffy") and Hamish Burt, ("Burt") as principals of LG Capital Investors LLC ~~("LG")~~ and the manager of the managing member of 64NM GP;

(c) Greg Boland ("Boland"), Anthony Griffin ("Griffin"), Tom Dea ("Dea") and Peter Fraser ("Fraser"), as principals of West Face;

(d) Michael Serruya ("M. Serruya"), Aaron Serruya ("A. Serruya"), and Simon Serruya ("S. Serruya"), as principals of Serruya;

(e) Terence Hui ("Hui"), as principal of Novus; ~~and~~

(f) Lacavera, as the principal of Globalive ~~(together, the "Conspirators");~~ and

(g) Jonathan Herbst, on behalf of UBS (together, the "Conspirators").

69. By August 1, 2014, Globalive and UBS had communicated the following confidential information to the Conspirators:

(a) Catalyst and VimpelCom were negotiating a transaction to purchase VimpelCom's equity and debt interests in Wind;

(b) The structure of the deal that Catalyst proposed to VimpelCom;

(c) The price that Catalyst was offering to VimpelCom to purchase Wind.

(d) Catalyst and VimpelCom had entered into the Exclusivity Agreement; and

(e) The term of the Exclusivity Agreement.

70. ~~55.~~ The Conspirators knew that VimpelCom and Catalyst were party to the Exclusivity Agreement and were aware that a term of the Exclusivity Agreement was that VimpelCom could not negotiate a potential sale of its interest in Wind with any other purchaser during ~~the term of the Agreement~~ its term.

71. Between August 1 and 10, 2014, Lacavera and UBS provided confidential information to the other Conspirators concerning the state of negotiations between VimpelCom and Catalyst. In particular, Lacavera and UBS informed the other Conspirators about the structure of the deal that Catalyst believed it had with VimpelCom and the communication VimpelCom's Board of Directors were having about the negotiations with Catalyst.

72. On or about August 1, 2014, UBS and Globalive communicated the impending vote to Tennenbaum in contravention to the Confidentiality Agreement, the Exclusivity Agreement and their duty of confidence to Catalyst.

73. On August 1, 2014, Tennenbaum informed the Consortium that VimpelCom's Board of Directors intended to vote on the share purchase agreement proposed by Catalyst.

74. Tennenbaum and the other members of the Conspiracy knew that the information was confidential.

75. On August 4, 2014, the Consortium, including Lacavera, met to discuss the terms of their offer to VimpelCom to induce it to breach the Exclusivity Agreement.

76. ~~56.~~ Together, the Conspirators prepared terms of an offer to VimpelCom that were designed to induce VimpelCom to breach the Exclusivity Agreement and to cause VimpelCom to negotiate with Catalyst in bad faith during the terms of the Exclusivity Agreement. The Conspirators used their extensive knowledge of the Exclusivity Agreement to design their offer.

77. ~~57.~~ The Conspirators agreed that one of the terms they would offer to VimpelCom would be that the closing of their offer would not be conditional on any regulatory approval from IC.

The Conspirators included this term in their offer with the knowledge that Catalyst had not offered this term and would not do so.

78. ~~58.~~ Lacavera knew that the proposed offer that all the conspirators crafted would have the effect of causing VimpelCom to breach the Exclusivity Agreement and cause damage to Catalyst.

79. ~~59.~~ Leitner agreed to be the individual who would submit the terms agreed to by the Conspirators to VimpelCom. In so doing, Leitner was acting on his own behalf and on behalf of his fellow co-Conspirators, who in turn were acting for the benefit of the investments funds with which they were associated.

80. ~~60.~~ Tennenbaum is vicariously liable for all conduct of Leitner pleaded herein.

81. ~~61.~~ Lacavera agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy. Additionally, Lacavera agreed that Globalive would join the Conspiracy.

82. ~~62.~~ Globalive is vicariously liable for all conduct of Lacavera pleaded herein.

83. ~~63.~~ At all material times, Guffy was acting as principal of LG, 64NM GP and 64NM LP and agreed that LG, 64NM GP and 64NM LP would participate in the Conspiracy. Guffy agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

84. ~~64.~~ LG, 64NM GP and 64NM LP are vicariously liable for all conduct of Guffy pleaded herein.

85. ~~65.~~ At all material times, Burt was acting as principal of LG, 64NM GP and 64NM LP and agreed that LG, 64NM GP and 64NM LP would participate in the Conspiracy. Burt agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

86. ~~66.~~ LG, 64NM GP and 64NM LP are vicariously liable for all conduct of Burt pleaded herein.

87. ~~67.~~ At all material times, Boland, Griffin, Dea and Fraser were acting as principals of West Face and agreed that West Face would participate in the Conspiracy. Boland, Griffin, Dea and Fraser agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

88. ~~68.~~ West Face is vicariously liable for all conduct of Boland, Griffin, Dea and Fraser pleaded herein.

89. ~~69.~~ At all material times, M. Serruya, A. Serruya, and S. Serruya were acting as principals of Serruya and agreed that Serruya would participate in the Conspiracy. M. Serruya, A. Serruya, and S. Serruya agreed that Leitner should send an offer to VimpelCom in furtherance of the Conspiracy.

90. ~~70.~~ Serruya is vicariously liable for all conduct of M. Serruya, A. Serruya, and S. Serruya pleaded herein.

91. ~~71.~~ At all material times, Hui was acting as a principal of Novus and agreed that Novus would participate in the Conspiracy. Hui ~~instructed~~ agreed that Letiner should send an offer to VimpelCom in furtherance of the Conspiracy.

92. ~~72.~~ Novus is vicariously liable for all conduct of Hui pleaded herein.

93. At all material times, Herbst was acting on behalf of UBS and agreed that it would participate in the Conspiracy.

94. UBS is vicariously liable for all conduct of Herbst pleaded herein.

~~Misuse of Catalyst's~~ Lacavera Transmits Confidential Information ~~by~~ to the Consortium

95. ~~73.~~ While Tennenbaum and West Face were engaged in negotiations with VimpelCom beginning in May 2014, Lacavera was in constant communication with them in his capacity as Chief Executive Officer ("CEO") of Wind.

96. ~~74.~~ Lacavera had intimate knowledge of Catalyst's confidential negotiations with VimpelCom, which he received in his role as CEO of Wind, including Catalyst's regulatory strategy ~~and~~, its negotiating positions with VimpelCom and the terms of the Exclusivity Agreement ("Catalyst's Confidential Information").

97. ~~75.~~ Lacavera knew that if Catalyst was the successful bidder, it intended to terminate his position as CEO of Wind and to eliminate his equity position in the company. In order to prevent this from occurring, and contrary to his contractual obligations to Catalyst under the Confidentiality Agreement, Lacavera shared Catalyst's Confidential Information with West Face and Tennenbaum, including the fact that Catalyst was negotiating with VimpelCom with regard to Wind.

98. ~~76.~~ Between April 2014 and August 18, 2014, Lacavera repeatedly communicated Catalyst's Confidential Information to the Consortium, either jointly or to individual members of

the Consortium, to assist the Conspirators in their efforts to prevent Catalyst from successfully purchasing Wind.

~~77. The Confidential Information that Lacavera transmitted included critical information regarding Catalyst's confidential negotiation communications with VimpelCom.~~

99. After Lacavera and Globalive signed a support agreement whereby they agreed to support VimpelCom's negotiations, including the Exclusivity Agreement with Catalyst, Lacavera continued to communicate Catalyst's Confidential Information to the Consortium through Serruya.

100. ~~78.~~ Lacavera knew that ~~this~~ the information he was communicating was confidential and that information was shared with him on the condition that he not communicate this information to other parties bidding for Wind. In breach of this obligation, Lacavera shared this information with the other bidders, including West Face, to give those other bidders an unfair advantage in their pursuit of Wind.

101. ~~79.~~ The Consortium knowingly received and misused Catalyst's Confidential Information to create the Proposal and gain an unfair advantage over Catalyst in its negotiations with VimpelCom.

102. ~~80.~~ By wrongly transmitting Catalyst's Confidential Information to the Consortium, Lacavera, acting on behalf of Globalive, and, separate and apart from the interests of Wind and VimpelCom, knew that the transmission would (and did) cause damage to Catalyst.

UBS Transmits Confidential Information to the Consortium

103. UBS had intimate knowledge of Catalyst's Confidential Information, which it received in confidence by virtue of its relationship of confidence with Catalyst as VimpelCom's agent.

104. Between July 21 2014 and August 18, 2014, UBS repeatedly communicated Catalyst's Confidential Information to the Consortium, either jointly or to individual members of the Consortium, for the purpose of assisting the Conspirators in their efforts to prevent Catalyst from successfully purchasing Wind.

105. The Confidential Information that UBS transmitted included Catalyst's negotiating positions with VimpelCom, the terms of the Exclusivity Agreement, and the status of the negotiations between Catalyst and VimpelCom.

106. UBS knew that this information was confidential and that information was shared with it on the condition that it not communicate this information to other parties bidding for Wind. UBS repeatedly breached Catalyst's confidence by transmitting this information to the Consortium, including Tennenbaum and West Face, to give those other bidders an unfair advantage in their pursuit of Wind.

107. The Consortium knowingly received and misused Catalyst's Confidential Information to create the Proposal (defined below) and to gain an unfair advantage over Catalyst in its negotiations with VimpelCom.

108. UBS knowingly and willingly participated in the conspiracy by transmitting Catalyst's Confidential Information to the other Conspirators in furtherance of the Conspiracy's predominant purpose which was to induce VimpelCom to breach the Exclusivity Agreement.

109. By wrongly transmitting Catalyst's Confidential Information to the Consortium, UBS knew that the transmission would (and did) cause damage to Catalyst.

The Consortium Induces VimpelCom to Breach the Exclusivity Agreement

110. ~~81.~~ On August 6, 2014, acting in furtherance of the Conspiracy, Leitner sent a proposal to VimpelCom and UBS entitled "Superior Proposal to purchase WIND Canada" (the "Proposal"). The Proposal included the following terms:

(a) Binding commitments to purchase VimpelCom's equity and debt interests for a cash amount that approximates the net amounts distributed to VimpelCom based on the "reserve price";

(b) The proposal would not require regulatory approval and requires no engagement with regulatory authorities;

(c) The proposal would close quickly; and

(d) The Consortium would purchase Wind's Vendor Loans at par and refinance them.

111. ~~82.~~ Leitner delivered the Proposal with authorization and instructions from Tennenbaum, 64NM GP, 64NM LP, LG, Serruya, Novus, West Face, Globalive, Guffy, Burt, M. Serruya, A. Serruya, and S. Serruya, Hui, Boland, Griffin, Dea, Fraser and Lacavera.

112. ~~83.~~ In furtherance of the Conspiracy, Leitner submitted the Proposal with the intent that VimpelCom would breach the terms of the Exclusivity Agreement and prevent Catalyst and VimpelCom from completing any deal, thereby causing damage to Catalyst.

113. On August 8, 2014, West Face, in furtherance of the Conspiracy, contacted Felix Saratovsky of VimpelCom to discuss the Proposal. West Face told Saratovsky that it was sending further details about the Proposal.

VimpelCom Uses Catalyst as a Stalking Horse Bid and Causes Catalyst Harm

114. ~~84.~~ The Conspiracy had the desired effect of causing VimpelCom to breach the Exclusivity Agreement. Between August 6 and August 18, VimpelCom and UBS engaged in discussions and negotiations with the Consortium, Globalive and Lacavera over the Proposal, in breach of the Exclusivity Agreement.

115. ~~85.~~ Following receipt of the Proposal, on August 7 and 8, 2014, VimpelCom ceased negotiating with Catalyst in good faith. Instead, it used its negotiations with Catalyst as a stalking horse to improve the terms of the Proposal.

116. On or about August 8, 2014, VimpelCom instructed UBS to inform the Consortium that VimpelCom was interested in concluding a transaction with the Consortium.

117. On or about August 10, 2014, Leitner engaged in negotiations with UBS and provided details of further equity commitments to bolster the Proposal. Leitner intended that UBS transmit this information to VimpelCom in furtherance of the Conspiracy.

118. ~~86.~~ On or about August 11, 2014, VimpelCom and Catalyst contacted IC to provide an update on the negotiations. During the conference call, Catalyst and VimpelCom told IC that the "deal was done".

119. ~~87.~~ VimpelCom continually and repeatedly stalled its negotiations with Catalyst by, among other things, insisting on the need for approvals from its Board and its finance committee.

The Board and the finance committee then insisted on additional, commercially unreasonable terms with the knowledge and intent that Catalyst could not agree to these new terms.

120. While VimpelCom stalled negotiations with Catalyst, UBS, on VimpelCom's instruction, continued to communicate with the Consortium in contravention of the Exclusivity Agreement. On August 12, 2014, UBS informed Leitner of the term of the Exclusivity Agreement. and the state of negotiations between Catalyst and VimpelCom.

121. ~~88.~~ Despite the representations to IC on August 11, 2014 that the deal was, in fact, done, on or about August 15, 2014, VimpelCom demanded that Catalyst agree to a $5-20 million break-fee to be paid in the event that Catalyst's purchase of Wind did not receive regulatory approval. Prior to this date, VimpelCom had never requested a break fee from Catalyst.

122. ~~89.~~ VimpelCom's intention was to frustrate and defeat the purpose and intent of the Exclusivity Agreement so that its exclusivity period with Catalyst would expire without a signed agreement. While doing so, VimpelCom and the Conspirators continued to negotiate and discuss the terms of an agreement.

Exclusivity ~~W~~with Catalyst Ends

123. ~~90.~~ On August 19, 2014, the exclusivity between VimpelCom and Catalyst terminated without a signed agreement.

124. ~~91.~~ On September 15, 2014, the Consortium and VimpelCom announced an agreement by which the Consortium, through Mid-Bowline Group Corp., purchased VimpelCom's stake in Wind.

Harm to Catalyst

125. ~~92.~~ As a result of VimpelCom, UBS and Lacavera's breaches of the Confidentiality Agreement, the Exclusivity Agreement, and their duties of confidence, the Conspiracy was formed with the intent of harming Catalyst.

126. ~~93.~~ As a result of the misconduct of the Conspirators, VimpelCom and UBS breached the Exclusivity Agreement and breached ~~its~~ their duty of good faith during its negotiations with Catalyst. As a result, the Consortium was able to purchase Wind to Catalyst's detriment.

127. ~~94.~~ On or about January 2016, Shaw Communications ("Shaw") acquired Mid-Bowline, the corporation formed after the Consortium's acquisition of VimpelCom's interest in Wind, for $1.6 billion. As a result, the Consortium received a profit of over ~~$750,000,000~~ $1,300,000,000, thereby crystallizing Catalyst's damages as a result of the Conspirators' and VimpelCom's wrongful conduct, as described above.

Catalyst Discovers the Conspiracy in January 2015

128. ~~95.~~ In December 2014, Mid-Bowline commenced an application to seek Court approval of a plan of arrangement pursuant to which Shaw intended to acquire all of the equity in Mid-Bowline. ~~The application~~ (the "Arrangement Proceeding"). The Arrangement Proceeding originally sought a release of an unrelated claim by Catalyst to a constructive trust over West Face's interest in Wind.

129. ~~96.~~ In January 2015, Catalyst brought a motion to oppose the ~~plan of arrangement.~~ Arrangement Proceeding. In the course of those proceedings, Griffin filed an affidavit in support of the plan of arrangement. In it, Griffin described in detail the Consortium's efforts to purchase Wind.

130. ~~97.~~ Simon Lockie (Chief Legal Officer of Globalive) ("Lockie"), Leitner and Burt also filed detailed affidavits in support of the plan of arrangement. In each affidavit, the respective affiant described the Consortium's efforts to purchase Wind and Globalive's role in assisting the Consortium members.

131. ~~98.~~ Catalyst carefully reviewed the affidavits of Griffin, Lockie, Leitner and Burt after they were filed in the public record. This new evidence, when considered in the context of the timing of the Exclusivity Agreement and VimpelCom's change in negotiation posture with Catalyst in August 2014, as detailed above, revealed the details of the Conspiracy, including the common intent of the Conspiracy, Consortium's efforts to induce VimpelCom to breach the Exclusivity Agreement and the Consortium's misuse of Confidential Information.

132. ~~99.~~ The affidavits revealed to Catalyst for the first time that VimpelCom did, in fact, breach the Exclusivity Agreement and had failed to negotiate with Catalyst in good faith throughout the exclusivity period.

Damage to Catalyst

133. ~~100.~~ As a result of the Consortium's inducement of breach of contract and VimpelCom's breach of the Exclusivity Agreement, Catalyst has suffered damages, which are crystallized in the form of the profits realized by the Conspirators from the sale of Wind to Shaw, which Catalyst estimates to ~~$750,000,000~~ $1,300,000,000~~.~~ (the "Proceeds").

Distribution of Proceeds

134. The Plaintiff initially opposed the Arrangement Proceeding. During January and February 2016, the Plaintiff negotiated an agreement with the Applicants to withdraw its continued opposition to the Arrangement Proceeding in exchange for, among other things, the

right to pursue tracing claims against parties that received proceeds from the sale of Wind to Shaw.

135. On or about April 5 2017, the Plaintiff discovered, for the first time, that West Face had distributed a significant portion of the Proceeds to its limited partners after this action was commenced.

136. West Face refuses to disclose the identity of the limited partners in receipt of the distributed Proceeds.

137. Other Conspirators, including Tennenbaum, LG, 64NM, and Serruya, have also distributed their share of the wrongfully acquired Proceeds to their limited partners. Despite requests from the Plaintiff, the Conspirators have not disclosed the identity of the limited partners who received distributions of the proceeds. The Plaintiff do not know the identities of the recipients of the distributed Proceeds at this time.

138. John Doe #1 LP, John Doe #2 LP and John Doe #3 LP are wrongfully in receipt of any share of the Proceeds. The Proceeds were obtained by the Conspirators by unlawful means.

139. John Doe #1 LP, John Doe #2 LP and John Doe #3 LP received their share of the Proceeds with knowledge of the Plaintiff's claim against the Defendants and its entitlement to Proceeds.

Punitive Damages

~~134.~~140. ~~101.~~ Catalyst claims that the Defendants' egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst's

rights and interests so as to entitle Catalyst to a substantial award of punitive, aggravated and exemplary damages.

~~135.~~141. ~~102.~~ Accordingly, the Defendants are liable, on a joint and several basis, to Catalyst for $1 million in punitive damages.

Service *Ex Juris*

~~136.~~142. ~~103.~~ The Defendants' actions include torts committed in Ontario. At all material times, the Defendants carried on business in Ontario. The matters at issue in this proceeding concern contracts entered into and governed by the laws of Ontario.

~~137.~~143. ~~104.~~ Pursuant to the terms of the Exclusivity Agreement, VimpelCom attorned to the jurisdiction of the courts of the Province of Ontario.

~~138.~~144. ~~105.~~ Catalyst pleads reliance on Rule 17.02(f), (g) and (p) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

~~139.~~145. ~~106.~~ Catalyst proposes that this action be tried at Toronto.

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Lawyers for the Plaintiff

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AMENDED THIS Feb. 25/16 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / DAT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-16-11272-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

AMENDED AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $1,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed

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by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's Claim and $400.00 for costs and have the costs assessed by the Court.

Date June 25 /14
~~June 25, 2014~~
~~October 9, 2014~~
~~December 16, 2014~~
~~February 25, 2016~~

Issued by

"N. Mohammad"
Local Registrar

Address of court office: 393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

~~TO:~~ ~~Brandon Moyse~~
~~23 Brant Street, Apt. 509~~
~~Toronto ON M5V2L5~~

~~AND TO:~~ ~~West Face Capital Inc.~~
~~2 Bloor Street East, Suite 3000~~
~~Toronto, ON M4W 1A8~~

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
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Lawyers for the Defendant,
Brandon Moyse

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CLAIM

1. The Plaintiff claims:

(a) An interim, interlocutory and/or permanent injunction restraining the defendant Brandon Moyse ("Moyse"), his agents or any persons acting on his direction or on his behalf, and the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted, from:

(i) Soliciting or attempting to solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised or sponsored by Catalyst or the Catalyst Fund Limited Partnership IV (the "Fund") as at June 25, 2014, until June 25, 2015;

(ii) Interfering with the Plaintiff's relationships with its employees which, without limiting the generality of the foregoing, shall include any attempt to induce employees of the Plaintiff to leave their employment with the Plaintiff; and

(iii) Using or disclosing the Plaintiff's confidential and proprietary information (including, without limitation, (i) the identity or contact information of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of the Fund, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund (iv)

investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about Catalyst and employees of Catalyst (collectively, the "Confidential Information") in any way, including in relation to any present- and future-related business;

(b) An order requiring the defendants to immediately return to Catalyst (or its counsel) all Confidential Information in their possession or control;

(c) An order prohibiting any of the defendants from, in any way, deleting, modifying or in any way interfering with any of their electronic equipment, including computers, servers and mobile devices, until further Order of this Honourable Court;

(d) An interim, interlocutory and permanent injunction prohibiting the defendant Brandon Moyse ("Moyse") from commencing or continuing employment at the defendant West Face Capital Inc. ("West Face") until December 25, 2014;

~~(d.1) An interim, interlocutory and permanent injunction prohibiting West Face from voting its interest in Data and Audio Visual Enterprises Wireless Inc. in any proposed transaction involving Wind Mobile;~~

(d.1) General damages as against West Face in an amount to be particularized prior to trial;

~~(d.2) A constructive trust over all property, including, but not limited to, securities, security interests, debts and other financial instruments, acquired by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;~~

~~(d.2) In addition or in the alternative to the relief sought in paragraph 1(d.2), An accounting of all profits earned by West Face, its officers, directors, employees, agents, any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;~~

~~(d.3) In addition or in the alternative, general damages as against Moyse for spoliation;~~

(e) Punitive damages in the amount of $300,000, as against West Face, and $50,000, as against Moyse;

(f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) The plaintiff's costs of this action on a substantial indemnity basis, plus the applicable H.S.T.; and

(h) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. ("Catalyst")

2. Catalyst is a corporation with its head office located in Toronto, Ontario. Catalyst is widely recognized as the leading firm in the field of investments in distressed and undervalued Canadian situations for control or influence, known as "special situations investments for control".

3. Catalyst uses a "flat" entrepreneurial staffing model whereby its analysts are given substantial training, autonomy and responsibility at a relatively early stage in their career as compared to its competitors in the special situations investments for control industry.

4. Moreover, Catalyst uses a unique compensation scheme to compensate its employees – in addition to their base salary and annual bonus, employees participate in a "60/40 Scheme" whereby the "carried interest" of each Fund is allocated sixty per cent to the deal team and forty per cent to Catalyst. The carried interest refers to the twenty per cent profit participation Catalyst may enjoy, subject to certain conditions.

5. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. At all material times, Catalyst employed only two investment analysts, and the deal teams on which Moyse participated involved only three or four Catalyst professionals. The 60/40 Scheme granted Catalyst's employees a partner-like interest in the success of the company.

The Defendants

6. West Face is a Toronto-based private equity corporation with assets under management of approximately $2.5 billion. In December 2013, West Face formed a credit fund for the purpose of competing directly with Catalyst in the special situations investments for control industry.

7. Moyse is a resident of Toronto. Pursuant to an employment agreement dated October 1, 2012 (the "Employment Agreement"), Moyse was hired as an investment analyst by Catalyst effective November 1, 2012. Moyse had substantial autonomy and responsibility at Catalyst. He was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.

The Special Situation Investment Market in Canada

8. The Canadian market for special situations investing is very competitive. A small number of Canadian firms seek opportunities to invest in situations where a corporation is distressed or undervalued, or face events that can have a significant effect on the company's operations, such as proxy battles, takeovers, executive changes and board shake-ups.

9. In these special situations, an investment firm's strategic plans and investment models are crucial to successfully executing an investment plan. Confidentiality is paramount: if a competitor has access to a firm's plans and modelling for a particular special situation, the competitor can "scoop" the opportunity, or it can take an adverse investment position which make the firm's plans either too costly to execute or, depending on the timing of the adverse action, can cause the plan to incur significant losses after it is past the point of no return.

10. Depending on how advanced a firm is in executing its investment strategy, a competitor's adverse position can have disastrous, immeasurable effects on the firm's goodwill and/or will cause a firm to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

11. Within the special situations investment industry, "investment for control or influence" is a sub-industry with unique characteristics. "Investment for control or influence" refers to acquiring controlling or influential equity or debt positions in distressed companies in order to add value through operational involvement in an investment target by, among other things:

(a) Appointing a representative as interim CEO and other senior management;

(b) Replacing or augmenting management;

(c) Providing strategic direction and industry contacts;

(d) Establishing and executing turnaround plans;

(e) Managing costs through a rigorous working capital approval process; and

(f) Identifying potential add-on acquisitions.

12. The "investment for control or influence" sub-industry within the distressed investment industry has unique needs, including the need to ensure that employees are unable to resign and begin working for a competitor for a reasonable period of time in order to ensure that the competitor is unable to take advantage of the former employee's knowledge of the firm's strategic plans and models.

13. In the special situations for control industry, information is critical. The ability to collect and analyze information and to prepare confidential plans for complex investment opportunities is the difference between a plan's success or failure. For this reason, it is commonplace for firms specializing in the special situations for control or influence industry to require its employees to agree to a non-competition covenant prior to commencing employment. Likewise, when a competitor hires directly from a firm within the industry, it is commonplace for the competitor to respect the other firm's non-competition covenant by not directly employing a lateral hire in the same market as they worked for the competitor during the term of the non-competition covenant.

The Employment Agreement

14. Under the Employment Agreement, Moyse was paid an initial salary of $90,000 and an annual bonus of $80,000. Moyse was also granted options on equity in Catalyst and participated

in the 60/40 Scheme. Moyse's equity compensation (options and the 60/40 Scheme) was equal to or exceeded his base salary and annual bonus.

15. The Employment Agreement also included the following non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"):

> Non-Competition
>
> You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:
>
> (i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and
>
> (ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];
>
> Non-Solicitation
>
> You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:
>
> (i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or
>
> (ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

the 12 months prior to your ceasing to be an employee of [Catalyst].

Confidential Information

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation, (i) the identity of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of same, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund or any such partnership of or any such partnership or fund, (iv) investment strategies, (v) value realization strategies, (vi) negotiating positions, (vii) the portfolio of investments, (viii) prospective acquisitions to any such portfolio, (ix) prospective dispositions from any such portfolio, and (x) personal information about [Catalyst] and employees of [Catalyst] and the like (collectively "Confidential Information"). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute "Confidential Information".

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to [Catalyst] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

After your employment has ended, and for the following one year, you will not take advantage of, derive a benefit or otherwise profit from any opportunities belonging to the Fund to invest in particular' businesses, such opportunities that you become aware of by reason of your employment with [Catalyst].

16. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect. In addition, Moyse acknowledged that if he breached the terms of the Restrictive Covenants, it would cause Catalyst irreparable harm and that Catalyst

would be entitled to injunctive relief to prevent him from continuing to breach the Restrictive Covenants.

17. Under the Employment Agreement, Moyse was required to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

18. Moyse executed the Employment Agreement on October 3, 2012. In so doing, he acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyse Breaches the Employment Agreement

19. On May 26, 2014, Moyse informed Catalyst of his intention to resign from Catalyst and to begin working for West Face.

20. Through its counsel, Catalyst communicated its intention to enforce the Restrictive Covenants. Through their counsel, the Defendants responded by communicating their intention to breach the Restrictive Covenants, in particular the non-competition covenant.

21. Moreover, on our about June 18, 2014, Moyse's counsel communicated Moyse's intention to commence employment at West Face on June 23, 2014, prior to the expiry of the thirty-day notice period provided for in the Employment Agreement.

22. Catalyst continued to pay Moyse his salary until June 20, 2014, when it became clear to Catalyst that Moyse intended to breach the Employment Agreement.

The Misappropriation and Conversion of Catalyst's Confidential Information

23. As part of his deal screening/analysis responsibilities, Moyse performed valuations of companies using methodologies that are proprietary and unique to Catalyst in order to identify new investment opportunities for Catalyst.

24. Moyse received the Confidential Information in his capacity as an analyst at Catalyst, as acknowledged in the Employment Agreement.

25. In breach of his duty of confidence, Moyse forwarded the Confidential Information from his work email address – which is controlled by Catalyst – to his personal email address and to his personal Internet file storage accounts – which he alone controls – without Catalyst's knowledge or approval. The Confidential Information Moyse forwarded to his personal control includes information concerning projects Moyse was working on immediately prior to his resignation from Catalyst, including, but not limited to:

(a) Catalyst Weekly Reports – this document contains a summary of all existing investments and contemplated investment opportunities;

(b) Quarterly letters reporting on results of Catalyst's activities;

(c) Internal research reports;

(d) Internal presentations and supporting spreadsheets; and

(e) Internal discussions regarding the operations of companies in which Catalyst has made investments.

26. There was no legitimate business reason for Moyse to deal with the Confidential Information in this manner.

27. Moyse has wrongfully and unlawfully taken Catalyst's Confidential Information to advance his own business interests, and the interests of West Face, to the detriment of Catalyst. The Confidential Information was imparted to Moyse in confidence during the course of his employment with Catalyst and the unauthorized use of such information by the Defendants constitutes a breach of confidence.

West Face Induced Moyse to Breach the Employment Agreement

28. West Face and Moyse engaged in prolonged discussions regarding Moyse's resignation from Catalyst and immediate employment at West Face thereafter. During the course of these discussions, the parties discussed Moyse's contractual obligations to Catalyst.

29. Prior to Moyse's resignation from Catalyst, West Face was aware of the terms of the Employment Agreement and Moyse's duties and obligations to Catalyst, including the Restrictive Covenants. Nevertheless, West Face unlawfully induced Moyse to breach the Employment Agreement with, and his obligations owed to, Catalyst, including, but not limited to the Restrictive Covenants.

30. Moyse and West Face knew that Catalyst intended to promote Moyse to the position of "associate" in 2014. But for West Face's inducement to Moyse to resign from Catalyst and commence employment at West Face before the end of the six-month non-competition period, Moyse would still be employed at, and would continue to honour his contractual obligations to, Catalyst.

Catalyst Will Suffer Irreparable Harm

31. Catalyst will suffer irreparable harm as a result of West Face's unlawful inducement of Moyse to breach the Employment Agreement. In particular, without limiting the generality of the foregoing, Catalyst risks losing its strategic advantage with respect to distress for control investments it has been planning for several months of which Moyse, in his role as analyst at Catalyst, is aware.

32. If Moyse is permitted to commence employment at West Face, a direct competitor to Catalyst, before the expiry of the six-month non-competition period, West Face will gain an unfair advantage in the small distressed investing for control industry by learning about investment opportunities Catalyst was studying and Catalyst's plans for taking advantage of those opportunities.

33. These opportunities and strategies are unique to Catalyst and are crucial to its success – if those plans are compromised, Catalyst will suffer a loss that cannot be measured in mere damages. The damage will include damage to Catalyst's reputation as a leading distress for control investor and to its ability to solicit additional investments in its funds.

34. Moreover, by using the Confidential Information for their personal benefit and to Catalyst's detriment, Moyse and West Face will cause Catalyst to incur large financial losses that are difficult to accurately quantify given the unpredictable range of possible outcomes for a given investment.

West Face Misused Catalyst's Confidential Information Concerning the Wind Opportunity

34.1 One of the special situations that Catalyst was studying before Moyse terminated his employment with Catalyst concerned Wind Mobile ("Wind"), a Canadian wireless

telecommunications company. Moyse was a member of Catalyst's investment team studying the Wind opportunity and was privy to Catalyst's Confidential Information concerning its plans concerning Wind opportunity, which included a potential acquisition of Wind.

34.2 In June 2014, Catalyst brought a motion for interim and interlocutory relief seeking, among other things, the return of any and all Confidential Information from West Face and Moyse. In particular, Catalyst was concerned about the potential communication of its Confidential Information relating to the Wind opportunity.

34.3 Catalyst's motion for interim relief was heard on July 16, 2014 and settled on consent.

34.4 Catalyst's motion for interlocutory relief was scheduled to be heard on August 7, 2014 but was adjourned to October 10, 2014. ~~As a result, the motion for interim relief has not yet been determined.~~

34.5 On or about September 16, 2014, West Face publicly announced that it was leading a consortium of investors to purchase Wind. This was the very outcome Catalyst was concerned about when it learned that Moyse, a participant on Catalyst's Wind team, was joining West Face.

34.6 West Face wrongfully used Catalyst's Confidential Information, which it solicited and obtained from Moyse, to obtain an unfair advantage over Catalyst in its negotiations with Wind. But for the transmission of Confidential Information concerning Wind from Moyse to West Face, West Face would not have successfully negotiated a purchase of Wind.

34.7 As a result of West Face's misuse of Catalyst's Confidential Information, Catalyst has suffered damages, particulars of which will be provided prior to trial.

~~**Through Moyse, West Face has Catalyst's Confidential Information Concerning Mobilicity**~~

~~34.8 On September 29, 2013, Data & Audio Visual Enterprises Holdings Inc. ("Holdings") and its wholly owned subsidiaries, Data & Audio Visual Enterprises Wireless Inc. ("Wireless") and 8440522 Canada Inc. (collectively with Wireless and Holdings, the "Applicants" or "Mobilicity") filed an application for an Initial Order under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA") in order to restructure their business and affairs or complete a sale of their business and assets.~~

~~34.9 Catalyst owns over $60 million in First Lien Notes issued by Wireless pursuant to a First Lien Indenture dated April 20, 2011 (the "First Lien Notes").~~

~~34.10 West Face owns approximately $3 million in First Lien Notes.~~

~~34.11 For several months, both before and after Mobilicity applied for CCAA protection, Catalyst studied Mobilicity as a special situation. Moyse was a member of Catalyst's investment team in the Mobilicity situation. In that respect, Moyse was privy to Catalyst's confidential information concerning its analysis of the Mobilicity situation.~~

~~34.12 West Face has wrongfully used Catalyst's Confidential Information concerning the Mobilicity opportunity to obtain an unfair advantage over Catalyst with respect to that opportunity. If West Face is able to vote its interest in Mobilicity with the benefit of its wrongful possession of Catalyst's Confidential Information, Catalyst will suffer irreparable harm.~~

Unjust Enrichment

34.13 As a result of the foregoing, West Face has been enriched by its wrongful conduct. It has managed to acquire property, including, but not limited to, securities, secured debt and other

financial instruments, that it would not have been able to acquire but for its misuse of Catalyst's Confidential Information.

34.14 Catalyst suffered a deprivation that corresponds to West Face's enrichment. But for West Face's conduct, Catalyst would have acquired the property that West Face acquired through its misuse of Catalyst's Confidential Information.

34.15 There is no juristic reason for West Face's enrichment and it would be unjust for West Face to retain the property it acquired through its wrongful conduct. Catalyst is entitled to a constructive trust over all property acquired by West Face to remedy West Face's unjust enrichment resulting from its misuse of Catalyst's Confidential Information.

34.16 In addition or in the alternative, if a constructive trust is unavailable because West Face has sold the property it wrongfully acquired or for any other reason, Catalyst is entitled to an accounting of all profits earned by West Face as a result of its misuse of Catalyst's Confidential Information and payment of those profits to Catalyst.

Moyse Destroyed Evidence

34.17 On July 16, 2014, at the hearing of Catalyst's motion for interim relief, the parties consented to an interim order (the "Interim Order"), pursuant to which, *inter alia*:

a) The defendants agreed to preserve their records, whether electronic or otherwise, that relate to Catalyst and/or relate to their activities since March 27, 2014 and/or relate to or are relevant to any of the matters raised in the action, except as otherwise agreed to by Catalyst; and

b) Moyse consented to the creation of a forensic image of his personal computer, iPad and smartphone, to be held in trust by his counsel pending the outcome of the motion for interlocutory relief (the "Images").

34.18 Pursuant to the Interim Order, the Images were created on July 21, 2014.

34.19 On November 10, 2014, Justice Lederer granted Catalyst's motion for an Order authorizing an Independent Supervising Solicitor ("ISS") to analyze the Images created pursuant to the Interim Order. The parties retained Stockwoods LLP to act as the ISS, which then retained a forensic IT expert to assist with the analysis and review of the electronic data.

34.20 In its report, the ISS revealed that on the morning of July 16, 2014, Moyse downloaded and installed military-grade deletion software (known colloquially as "scrubbing software" and referred to herein as the "Scrubber") on his personal computer. On July 20, 2014, the night before the Images were created, Moyse launched the Scrubber program.

34.21 Moyse admitted to downloading the Scrubber and admitted to having deleted his Internet browsing history. By deleting his web browsing history, Moyse deleted evidence relating to his activities since March 27, 2014. The web browsing history included, among other things, his use of personal web-based email services such as "Gmail", evidence of Moyse's use of web-based storage services at issue in this action, and evidence of Moyse's web-searching activity.

34.22. Moyse intentionally destroyed evidence relevant to the wrongdoing of himself and West Face with the knowledge that doing so would harm Catalyst's ability to prove its claims in this Action.

34.20. As a result of Moyse's actions, Catalyst has been deprived of evidence of the wrongdoing of the Defendants, which deprivation has caused Catalyst damage.

Punitive Damages

35. Catalyst claims that the Defendants' egregious actions, as pleaded above, were so high-handed, wilful, wanton, reckless, contemptuous and contumelious of Catalyst's rights and interests so as to entitle ~~Execaire~~ Catalyst to a substantial award of punitive, aggravated and exemplary damages.

36. Accordingly, the Defendants are liable, on a joint and several basis, to the Plaintiff for punitive damages as described in subparagraph 1(e) above.

37. Catalyst proposes that this action be tried at Toronto.

CONFIDENTIALITY AGREEMENT

THIS **CONFIDENTIALITY AGREEMENT** (this "**Agreement**") is dated the 21st day of March 2014.

BY AND BETWEEN:

VimpelCom Ltd., a limited liability company under Bermuda law, having its business address at Claude Debussylaan 88, 1082MD Amsterdam, the Netherlands, and registered with the Dutch Commercial Register under the number 34374835 ("**VimpelCom**");

Global Telecom Holding S.A.E., a company under Egyptian law, having its business address at 2005A Nile City Towers, South Tower, Corniche El Nile, Ramlet Beaulac, 11221, Cairo, Egypt ("**GTH**");

and

The Catalyst Capital Group Inc., a subsisting corporation under the laws of Ontario, on behalf of Funds managed by it (the "**Company**")

(hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**").

*****

WHEREAS each Party has agreed to disclose to the other Party and has agreed to keep confidential certain Confidential Information (as defined below) subject to the terms and conditions hereinafter contained in relation to a potential transaction regarding the acquisition, merger, business combination, financing or other investment of and in VimpelCom's direct and indirect interest in Globalive Investment Holdings Corp. and its direct and indirect subsidiaries (the "**Project**");

NOW, THEREFORE the Parties have agreed as follows:

1. Definitions and Interpretation. The following expressions shall unless the context otherwise admits have the following meanings:

   "**Agreement**" has the meaning set out in the preamble to this Agreement.

   "**Affiliate**" shall mean any entity that controls, is controlled by, or is under common control with the Party (or such other entity for which such determination is being made).

   "**Authorised Person**" shall mean, in relation to a Party, any Affiliate, agent, director, officer, employee, representative or professional advisor (including without limitation legal advisors, auditors and accountants) and potential

financing sources and the professional advisors of such Party, excluding.in relation to the Company only, the Dave Entities.

"**Claim**" has the meaning set out in clause 18 of this Agreement.

"**Company**" has the meaning set out in the preamble to this Agreement.

"**Confidential Information**" means any and all non public, confidential and/or proprietary knowledge, data, or information of the Disclosing Party or its Affiliate, including, without limitation, any: (A) trade secrets, drawings, inventions, methodologies, mask works, ideas, processes, formulas, source and object codes, data, programs, software source documents, works of authorship, know-how, improvements, discoveries, developments, designs and techniques, and all other work product of the Disclosing Party or its Affiliate, whether or not patentable or registrable under trademark, copyright, patent or similar laws; (B) information regarding plans for research, development, new service offerings and/or products, marketing, advertising and selling, distribution, business plans, acquisition plans, business forecasts, budgets and unpublished financial statements, licenses, prices and costs, suppliers, customers or distribution arrangements; (C) any information regarding the skills and compensation of employees, suppliers, agents, and/or independent contractors of the Disclosing Party or its Affiliate; (D) concepts and ideas relating to the development and distribution of content in any medium or to the current, future and proposed products or services of the Disclosing Party or its Affiliate; (E) any other information, data or the like that is labelled confidential or orally disclosed as confidential; or (F) Notes. Confidential Information does not include any information that (i) becomes generally available to the public other than as a result of a disclosure by the Receiving Party or any of the Authorised Persons of the Receiving Party in violation of this Agreement; (ii) was in the Receiving Party's possession prior to the disclosure of the Confidential Information by the Disclosing Party pursuant to this Agreement, provided that the source of such information was not known by the Receiving Party to be subject to an obligation not to disclose such information; or (iii) becomes available to the Receiving Party or the Authorised Persons of the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or any Authorised Person of the Disclosing Party, provided that such source was not known by the Receiving Party to be subject to an obligation not to disclose such information;.

"**Disclosing Party**" shall mean the Party to which the Confidential Information relates.

"**GTH**" has the meaning set out in the preamble to this Agreement.

"**LCIA**" has the meaning set out in clause 18 of this Agreement.

"**Notes**" shall mean any memoranda, reports, analyses, extracts or notes that the Receiving Party or any Authorised Person of the Receiving Party produced that are based on, reflect or contain any of the Confidential Information.

"**Party**" has the meaning set out in the preamble to this Agreement.

"**Project**" has the meaning set out in the recital to this Agreement.

"**Purpose**" shall mean the analysis, evaluation, structuring and negotiation of the Project.

"**Receiving Party**" shall mean a Party that has received Confidential Information relating to the other Party.

"**VimpelCom**" has the meaning set out in the preamble to this Agreement.

2. Term of the Agreement. This Agreement shall remain in force until three years from the date hereof.

3. Obligations of the Receiving Party. Each Party shall agree that, as the Receiving Party, it and its Authorised Persons:

3.1. shall take all measures reasonably practicable to ensure the continued confidentiality of the Confidential Information;

3.2. shall not use the Confidential Information or any part of it for any purpose other than the Purpose;

3.3. shall not disclose the Confidential Information or any part thereof to any person other than an Authorised Person under the terms and conditions of clause 3.4;

3.4. shall (i) disclose the Confidential Information to an Authorised Person only to the extent necessary to allow such Authorised Person to assist the Receiving Party in the Purpose; (ii) prior to disclosing any Confidential Information to any Authorised Person, inform such Authorised Person of the confidential nature of the Confidential Information and of the terms of this Agreement; (iii) be responsible for any breach of this Agreement by any Authorised Person of the Receiving Party; and (iv) reimburse, indemnify and hold harmless the Disclosing Party and the Authorised Persons of the Disclosing Party from any damage, loss or expense incurred as a result of the use of the Confidential Information by the Receiving Party or any Authorised Person of the Receiving Party contrary to the terms of this Agreement;

3.5. shall not take any copies or make any summaries or transcripts of the whole or any part of the Confidential Information save as is necessary for the Purpose;

3.6. shall notify the Disclosing Party immediately, if it becomes aware that any Confidential Information has been disclosed to or is in the possession of any person who is not an Authorised Person; and

3.7. shall, upon termination of this Agreement or at the written request of the Disclosing Party, either destroy or return to the Disclosing Party (as the Disclosing Party may reasonably direct) the Confidential Information that is in tangible form, including any copies that the Receiving Party has

6. Ownership of Confidential Information. All Confidential Information shall be deemed to be (and all copies thereof or of any part or parts thereof shall become upon the creation thereof) and shall remain the property of the Disclosing Party.

7. Intellectual Property. This Agreement shall not operate as an assignment to the Receiving Party of any patents, copyrights, registered designs, unregistered designs, trademarks, trade names or other intellectual property rights of the Disclosing Party as may subsist in or be contained in or reproduced in the Confidential Information and the Receiving Party shall not, nor shall any Authorised Person of the Receiving Party or persons on the Receiving Party's or any Authorised Person's behalf, apply for any patent or registration of any trademark or design or any other intellectual property right in respect of the Confidential Information or any part thereof.

8. Right to Disclose. Each Party warrants that it has the right to disclose the Confidential Information that it discloses under this Agreement and such disclosure shall not violate any obligation, covenant or restriction imposed upon such Party pursuant to any agreement, regulation, law or otherwise.

9. No Further Obligations. Nothing in this Agreement shall impose or be deemed to impose on either Party an obligation to disclose Confidential Information or to enter into any agreement or transaction and in particular shall not oblige either Party to enter into any agreement with respect to the Project.

10. No Assignment. The Parties shall not assign or otherwise transfer their rights or obligations under this Agreement.

11. Damages. The Receiving Party acknowledges and agrees that the Disclosing Party would be damaged irreparably if any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. Accordingly, the Disclosing Party will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its provisions by an action or proceeding instituted in any court having jurisdiction over the Receiving Party. Except as expressly provided herein, the rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations or remedies otherwise available at law or in equity. Except as expressly provided herein, nothing herein will be considered an election of remedies.

12. Execution of Additional Documents. The Receiving Party shall, as and when requested by the Disclosing Party, do all acts and execute all documents as may be reasonably necessary to prevent any loss, misuse or unauthorised disclosure of the Confidential Information or any part of it by any of its Authorised Persons.

13. Severability. The illegality, invalidity or unenforceability of any part of this Agreement for any reason whatsoever shall not affect the legality, validity or enforceability of the remainder of this Agreement.

14. Agreement and Related Negotiations. Each Party agrees that, unless required (pursuant to the advice of reputable outside legal advisors) by applicable law or by the rules of any national stock exchange on which such Party's securities are

listed or by any competent regulatory authority (in any such case such Party will promptly advise and consult with the other Party and its legal advisers prior to such disclosure), without the prior written consent of the other Party, such Party will not, and will cause its Authorised Persons not to, disclose to any person other than the other Party and its Authorised Persons (a) the fact that discussions or negotiations are taking place with the other Party concerning the Project, (b) any of the terms, conditions or other facts related to the other Party's participation in the Project, including the status thereof, or (c) the existence of this Agreement, the terms hereof or that Confidential Information has been made available pursuant to this Agreement.

15. Entirety of the Agreement; Previous and Subsequent Agreements. This Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter and replaces all previous agreements between, or understandings by, the Parties with respect to such subject matter. This Agreement cannot be amended except by written instrument signed on behalf of both of the Parties.

16. Third Party Rights. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of this Agreement.

17. Applicable Law. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

18. Arbitration. Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "**Claim**"), may be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (the "**LCIA**"), which Rules are deemed to be incorporated by reference into this Clause 18. The dispute will be heard by a single arbitrator. If the Parties are unable to agree an arbitrator within 15 days, then any Party may ask the LCIA to appoint one. The arbitrator must have expertise in the matter(s) in dispute and not be a present or former officer, employee, director, consultant for, or a greater than 1% shareholder of any party to the arbitration. The place of arbitration will be the city of London, England. The language of the arbitral proceedings will be English, and the procedure (insofar as it is not governed by the Rules of the LCIA) will be governed by English law. Insofar as they are legally able to do so, the Parties hereby agree to exclude the jurisdiction of English courts. The decision of the arbitrators will be final, binding and enforceable against the Parties and a judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

19. Insider Trading. The Company hereby acknowledges that it is aware, and will inform its Authorised Persons, that the securities laws of the United States (as well as stock exchange regulations) and the securities laws of any other country applicable to the Company prohibit any person who has material, non-public information concerning VimpelCom and GTH or a possible transaction involving VimpelCom and GTH from purchasing or selling VimpelCom's and GTH's securities when in possession of such information and from communicating such

EXCLUSIVITY AGREEMENT

THIS EXCLUSIVITY AGREEMENT (the "**Exclusivity Agreement**") is made as of the 23rd day of July, 2014.

AMONG:

THE CATALYST CAPITAL GROUP INC., a corporation subsisting under the laws of Ontario, on behalf of Funds managed by it ("**Catalyst**")

AND:

VIMPELCOM LTD., a company subsisting under the laws of the Netherlands ("**VimpelCom**")

WHEREAS Catalyst and VimpelCom (the "**Parties**") are considering a possible business transaction involving the acquisition by Catalyst of 100% of the common shares of Globalive Wireless Management Corp. ("**GWMC**")(the "**Transaction**");

AND WHEREAS the Parties have entered into that certain confidentiality agreement dated March 21, 2014 (the "**Confidentiality Agreement**") in connection with the Transaction;

NOW THEREFORE THIS EXCLUSIVITY AGREEMENT WITNESSES that in consideration of each of the Parties continuing discussions concerning, and committing time and effort to assess, the Transaction and the negotiation of definitive agreements in respect thereof (the "**Transaction Agreements**"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

1. **Definitions**

In this Exclusivity Agreement, the following words, phrases and expressions shall have the following meanings, together with the definitions set out above:

(a) "**Affiliate**" means a person, company or other form of entity or enterprise which, directly or indirectly, Controls or is Controlled by a Party, or is under Control of a third party which also Controls a Party, where "**Control**" means possession, directly or indirectly, of the power to direct or cause direction of management and policies through ownership of voting securities, contract, voting trust or otherwise, provided; however, that, for purposes of this Agreement:

(i) Global Telecom Holding S.A.E., a company subsisting under the laws of the Netherlands and its subsidiaries (which term, as used in this Agreement, has the meaning attributed to it in the Ontario *Business Corporations Act*) shall be considered to be Affiliates of VimpelCom; and

(ii) AAL Telecom Holdings Incorporated, a company controlled by Anthony Lacavera, and its subsidiaries (which, for greater certainty do not include GWMC and its subsidiaries) are not Affiliates of VimpelCom;

(b) "**Alternative Transaction**" has the meaning given to such term in Section 2(b);

(c) "**Confidentiality Agreement**" has the meaning given to such term in the recitals;

(d) "**Parties**" has the meaning given to such term in the recitals;

(e) "**Representative**" means any director, officer, employee, agent, advisor, banker or consultant of a Party or any of such Party's Affiliates;

(f) "**Transaction**" has the meaning given to such term in the recitals;

(g) "**Transaction Agreements**" has the meaning given to such term in the recitals; and

(h) "**VimpelCom**" has the meaning given to such term in the recitals.

2. **Exclusivity**

From the date hereof until the earlier of (i) the execution of the Transaction Agreements, and (ii) 11:59 pm on July 30, 2014 (the "**Expiry Time**"):

(a) VimpelCom and Catalyst shall and shall cause their respective Affiliates to deal exclusively with each other in connection with the Transaction and VimpelCom shall use its reasonable efforts to ensure that GWMC and its subsidiaries deal exclusively with Catalyst and its respective Affiliates in connection with the Transaction;

(b) VimpelCom shall not, shall ensure that its Affiliates will not, and shall use its reasonable efforts to ensure that GWMC and its subsidiaries do not, directly or indirectly, through any of its or their respective Representatives, solicit or encourage offers from, participate in any negotiations or discussions with, enter into any agreements with, or furnish any information to, any person regarding any alternative transaction to the Transaction (including but not limited to an acquisition, merger, arrangement, amalgamation, other business combination, joint venture or equity or other financing) involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets (an "**Alternative Transaction**");

(c) VimpelCom shall, shall cause its Affiliates and its and their respective Representatives to and shall use its reasonable efforts to ensure that GWMC and its subsidiaries, (A) discontinue or cause to be discontinued any existing activity of the nature described in Section 2(a), including but not limited to precluding access to any due diligence data room (except for access provided to Catalyst and its Representatives) and (B) enforce and not release any third party from, or otherwise waive, any standstill covenants or obligations owed by any such third party to VimpelCom and/or its Affiliates and/or GWMC or its subsidiaries under any confidentiality agreement entered into with respect to a potential Transaction

involving GWMC or any of its subsidiaries, their respective voting or equity shares or any of their respective material assets; and

(d) VimpelCom shall:

(i) ensure that its Representatives who are aware of the potential Transaction are made aware of the provisions of this Section 2;

(ii) use its reasonable efforts to ensure that the Representatives of GWMC and its subsidiaries who are aware of the Potential Transaction are made aware of the provisions of this Section 2;

(iii) direct the Representatives referred to in (i) to comply with the terms of this Exclusivity Agreement; and

(iv) use its reasonable efforts to cause the Representatives referred to in (ii) to comply with the terms of this Exclusivity Agreement.

3. **No Obligation to Complete Transaction**

The Parties acknowledge that the terms of this Exclusivity Agreement do not obligate them to proceed with a Transaction and that no such obligations will arise unless and until written Transaction Agreements between the Parties have been executed and delivered.

4. **Confidentiality**

Each Party shall hold the existence and terms of this Exclusivity Agreement in confidence in accordance with the terms of the Confidentiality Agreement and shall only disclose the existence and terms of this Exclusivity Agreement to its Representatives who have a *bona fide* need to know such information in connection with such Party's evaluation of the Transaction.

5. **Binding Nature, Term and Termination of Exclusivity Agreement**

Pending the execution by the Parties of the Transaction Agreements, this Exclusivity Agreement shall constitute a legally enforceable agreement between the Parties. The execution of the Transaction Agreements does not constitute a condition precedent to this Exclusivity Agreement. This Exclusivity Agreement shall terminate without any further action of the Parties immediately upon the earliest of: (i) the execution of the Transaction Agreements, (ii) the Parties agreeing in writing to terminate this Exclusivity Agreement; and(iii) the Expiry Time. For greater certainty and notwithstanding any other provision hereof, the terms of Section 4 shall survive any such termination of this Exclusivity Agreement.

6. **General**

(a) Headings in this Exclusivity Agreement shall not affect the interpretation of this Exclusivity Agreement. If any provision or part of this Exclusivity Agreement is unenforceable, such unenforceability shall not affect the enforceability of the

balance of this Exclusivity Agreement which shall be interpreted as if the unenforceable provision had not been a part hereof.

(b) Neither Party may assign this Exclusivity Agreement or any part hereof without the other Party's prior written consent.

(c) Without prejudice to any other rights or remedies that Catalyst may have, Catalyst shall be entitled, without proof of special damages, to the remedy of injunction or such other equitable relief for any threatened or actual breach of this Exclusivity Agreement.

(d) This Exclusivity Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

(e) This Exclusivity Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and the Parties hereby attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

(f) This Exclusivity Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same document. This Exclusivity Agreement and any counterpart thereof may be delivered by facsimile or other electronic transmission and when so delivered will be deemed to be an original.

(g) This Exclusivity Agreement, together with the Confidentiality Agreement, constitutes the Parties' entire agreement and understanding relating to the subject matter hereof and supersedes all previous or contemporaneous agreements, arrangements, negotiations or understandings between the Parties (whether written or oral) with respect to the subject matter hereof.

(h) Time is of the essence of this Exclusivity Agreement.

IN WITNESS WHEREOF this Exclusivity Agreement has been executed by each of the Parties as of the date first written above.

THE CATALYST CAPITAL GROUP INC.,

on behalf of Funds managed by it

By: _____
Authorized Signatory

- Greg Boland

From: - Greg Boland
Sent: Monday, July 21, 2014 3:25 PM
To: Michael Leitner
Cc: Friesel, Jonathan
Subject: RE: RE: Update

We asked for that a couple times and didn't work.

From: Michael Leitner [mailto:Michael.Leitner@tennenbaumcapital.com]
Sent: Monday, July 21, 2014 2:33 PM
To: - Greg Boland
Cc: Michael Leitner; Friesel, Jonathan
Subject: Re: Update

I heard catalyst is seeking exclusivity this week.

Sent from my iPhone. Please excuse typos

On Jul 21, 2014, at 1:16 PM, "- Greg Boland" <greg.boland@westfacecapital.com> wrote:

Felix was contacted Friday. He is likely granting permission today.

<image001.jpg>

Greg Boland - President and CEO | West Face Capital Inc.
2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8901
Email: greg.boland@westfacecapital.com
Nikol 647-724-8918| nikol.markovic@westfacecapital.com

- Greg Boland

From: - Greg Boland
Sent: Tuesday, July 22, 2014 9:14 AM
To: Tom Dea
Subject: FW: FW:

From: Michael Leitner [mailto:Michael.Leitner@tennenbaumcapital.com]
Sent: Tuesday, July 22, 2014 8:32 AM
To: Tony Griffin
Cc: - Greg Boland; Michael Leitner; Peter Fraser
Subject: Re:

Cell 310 746 8098

Sent from my iPhone. Please excuse typos

On Jul 22, 2014, at 2:30 PM, "Tony Griffin" <tony.griffin@westfacecapital.com > wrote:

> Yes – Michael I can call you in approx 30 mins – what number can I reach you at ?
>
> ---
>
> **From:** Greg Boland <greg.boland@westfacecapital.com>
> **Date:** Tuesday, July 22, 2014 1:12 PM
> **To:** Michael Leitner <michael.leitner@tennenbaumcapital.com >, Anthony Griffin <tony.griffin@westfacecapital.com >
> **Cc:** Greg Boland <greg.boland@westfacecapital.com >, Peter Fraser <peter.fraser@westfacecapital.com >
> **Subject:** Re:
>
> Tony,
> Can you coordinate info exchange. I would like a consolidated model of cash flows so we are all speaking same language.
>
> I am around all day.
>
> G
>
> -------- Original message --------
> From: Michael Leitner
> Date:07-22-2014 2:49 AM (GMT-05:00)
> To: Tony Griffin
> Cc: - Greg Boland ,Peter Fraser
> Subject: RE:
>
> I spoke w Felix. We are free to work together. We should try and speak today. Catalyst may

have this in exclusivity by the end of the week

From: Tony Griffin [mailto:tony.griffin@westfacecapital.com]
Sent: Monday, July 21, 2014 8:17 PM
To: Michael Leitner
Cc: - Greg Boland; Peter Fraser
Subject:

Michael

I just spoke with Felix Saratovsky at VC – he is willing to provide consent for us to speak with you and exchange information – he did want to connect with you today to discuss.

Regards,

Tony Griffin
Off: 647.724.8912
Cell: 647.500.8912

- Greg Boland 60

From: - Greg Boland
Sent: Wednesday, July 23, 2014 10:42 AM
To: Peter Fraser; Tom Dea; Tony Griffin
Subject: FW: FW: Exclusivity Granted

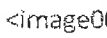
From: Friesel, Jonathan [mailto:JFriesel@oakhillcapital.com]
Sent: Wednesday, July 23, 2014 10:22 AM
To: Diesbach, Benjy; Michael Leitner (Michael.Leitner@tennenbaumcapital.com); Lawrence Guffey; PScott@qllc.com; alek.krstajic@gmail.com; - Greg Boland
Cc: Hahn, Adam; Li, David; Baker, Scott
Subject: Exclusivity Granted

Herbst called me to say that the company has entered into exclusivity at the reserve price - $150 million. As always, he is skeptical that they will get there. Nonetheless, the company is tied up for 5 to 7 days.

JONATHAN FRIESEL
Partner

Oak Hill Capital Management
2775 Sand Hill Road, Suite 220
Menlo Park, CA 94025
www.oakhillcapital.com

jfriesel@oakhillcapital.com
(650) 234-0520 tel
(650) 234-0525 fax
(415) 987-0520 cell

Peter Fraser | West Face Capital Inc.
2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8903 | Fax: 647-724-8910

Email: peter.fraser@westfacecapital.com

From: Michael Leitner [mailto:Michael.Leitner@tennenbaumcapital.com]
Sent: August-01-14 3:45 PM
To: Friesel, Jonathan; Lawrence Guffey (lg@lgcap.com); - Greg Boland; Tony Griffin; Peter Fraser; Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam; Levy, Kevin
Subject: RE: Process w VIP

I just heard that Vimpelcom is taking the Catalyst SPA to the board this weekend. There has been no retrade as of yet, but parties are bracing for it. Suggest we get on a call to discuss. Have some feedback on price levels as well. I'll make myself free for today, but suggest we get a quick call earlier the better .....I can do 1pm pst (in 15 min) if others can

---

From: Friesel, Jonathan [mailto:JFriesel@oakhillcapital.com]
Sent: Friday, August 01, 2014 10:36 AM
To: Michael Leitner; Lawrence Guffey (lg@lgcap.com); greg.boland@westfacecapital.com ; Tony Griffin; Peter Fraser (peter.fraser@westfacecapital.com); Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam; Levy, Kevin
Subject: RE: Process w VIP

We are OK with doing the work. Let's be efficient on the spend. Please include Kevin Levy on the drafts. Thanks.
JF

From: Michael Leitner [mailto:Michael.Leitner@tennenbaumcapital.com]
Sent: Friday, August 01, 2014 7:18 AM
To: Friesel, Jonathan; Lawrence Guffey (lg@lgcap.com); greg.boland@westfacecapital.com ; Tony Griffin; Peter Fraser (peter.fraser@westfacecapital.com); Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam
Subject: Process w VIP
Importance: High

Presuming we reconcile our models (which should be done today), my strong view is that we need to be in a position to send to VIP a letter summarizing our terms; work process and SPA before the end of their exclusivity. We may elect that we don't send for a variety of tactical reasons, but we should be in a position to do so. Summarizing our process and economic terms are straightforward, and we can hash out over a call amongst principals, but the SPA is not a short work process. We would need to start that today, which requires either MacMillan or Davies and the recognition by all that we're going to incur some additional costs.

Absent an SPA that is close to the last round of VIP comments we received (over the phone), I think our offer is weak. Others should chime in and we can get on a call early today to discuss, but if we're to move on this, we need to get one of our SPAs in a position to be sent out. This requires the weekend to get this into shape and buy in from all 4 co-investors.

Peter and I can work out whose draft to use, but I wouldn't delay on this if we are to be credible.

Peter Fraser

From: Peter Fraser
Sent: Thursday, August 07, 2014 6:47 AM
To: Tony Griffin; Tom Dea; John Maynard; Yu-Jia Zhu; Stephen Miller
Cc: Patrick Barry
Subject: Fw: Fw: Superior Proposal to purchase WIND Canada

Fyi.

From: Michael Leitner <Michael.Leitner@tennenbaumcapital.com>
Sent: Thursday, August 07, 2014 3:02:08 AM
To: Lawrence Guffey (lg@lgcap.com); - Greg Boland; Peter Fraser
Subject: FW: Superior Proposal to purchase WIND Canada

Tony is nervous with the risk he is bearing. He will push, but he's doing so gently. He wont push to the breaking point short of us backstopping his risks (which we wont do). Our only play is getting executed debt/equity commitments to him tomorrow and the APA over to Vimpelcom. With hard docs in hand at least they should add this to their board agenda. They have meetings tomorrow and on Friday but at least this will be on the docket on Friday. The commitments have a few subject to on docs so there are a few other items that can be finished up once these get out the door. At least with this, VIP will have 2 birds in hand

---

From: Michael Leitner
Sent: Wednesday, August 06, 2014 11:56 PM
To: Hasan, Faaiz; Felix Saratovsky (felix.saratovsky@vimpelcom.com); Jonathan Herbst (jonathan.herbst@ubs.com)
Cc: Lawrence Guffey (lg@lgcap.com); Peter Fraser (peter.fraser@westfacecapital.com); greg.boland@westfacecapital.com
Subject: Superior Proposal to purchase WIND Canada

Gentlemen,

Our Investor Group is pleased to provide you the outlines of a superior proposal to purchase WIND Canada that we will deliver to you and your Board of Directors for evaluation during your upcoming Board meeting. Over the course of the last month, we have further invested significant resources finalizing our technical and business diligence; and will be pleased to provide you binding commitments that contain no diligence outs.

- We intend to deliver to the Board binding commitments to purchase Vimpelcom's equity and debt interests, under a very straightforward securities purchase agreement, for a cash amount that will approximate the net amounts distributable to Vimpelcom based on the "reserve price". In order to simplify the engagement with our group, our purchase agreement is not for the Company, just for Vimpelcom's equity interests and shareholder loans. Our Group believes that we can finalize this simple purchase agreement construct in less than 24 hours.

- Our proposal will be superior to any other offer as our proposal will not require regulatory approval and our Investor Group will be able to close and fund the transaction within 24-48 hours after signing. Our transaction will not be a change of control of the Company, and as a result requires no engagement with the regulatory authorities.

- With the benefits of an immediate sign and close, our proposal will be economically superior to any other proposal by significantly reducing the accruing interest on the Company's Vendor Loans that will only reduce Vimpelcom's net distributable proceeds. Vimpelcom's net proceeds are reduced by $1.5M per month given the high default interest rates under Company's Vendor loans. Further, Vimpelcom will not face any further risk of funding working capital, or face any other adverse financial consequences, that may arise between signing and closing under a transaction that requires regulatory review.

- Our Investor Group has secured debt commitments to refinance the Vendor Loans, and our proposal contemplates purchasing the Vendor Loans at par upon the closing of our purchase of Vimpelcom's financial interests. We are pleased that our financing providers are also capable of paying out the Vendor Lenders on the same accelerated time frame as our Investor Group contemplates closing this transaction with Vimpelcom.

We intend to provide you all of the necessary documentation for your evaluation prior to your upcoming board meeting this week.

We realize the missteps we had in your process may have cast some doubts on our seriousness and commitment to conclude a transaction with you. We hope that our subsequent submission will allow you to conclude that our only intention is to conclude a transaction with you in a manner supportive of your process, and consistent with your objectives on value and over achieving your expectations on timing.

Best regards, Michael

Michael Leitner
Managing Partner
Tennenbaum Capital Partners
Michael.Leitner@tennenbaumcapital.com
310-566-1039

Michael Leitner

From: Michael Leitner
Sent: Friday, August 15, 2014 2:28 PM
To: - Greg Boland; Jordan Schwartz
Cc: Peter Fraser; Patrick Barry; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Serruya; Sean Berry; Nicholas Kim; Robert Goldschein
Subject: RE: RE: Equity Commitment

Agree this makes sense. Larry is going to call Michael Serruya

---

From: - Greg Boland [mailto:greg.boland@westfacecapital.com]
Sent: Friday, August 15, 2014 8:46 AM
To: Michael Leitner; Jordan Schwartz
Cc: Peter Fraser; Patrick Barry; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Serruya; Sean Berry; Nicholas Kim; Robert Goldschein
Subject: RE: Equity Commitment

Michael and Michael ,

I think it would be easy and painless to put in a letter enforcing willingness to provide equity financing. If the Catalyst deal gets wobbly the more heft we have in our syndicate the better. Is there any reason we can't do this asap to at leaf maximze our optionality?

From: Michael Leitner <Michael.Leitner@tennenbaumcapital.com>
Sent: August-14-14 20:15
To: Jordan Schwartz
Cc: Peter Fraser; Patrick Barry; - Greg Boland; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Serruya; Sean Berry; Nicholas Kim; Robert Goldschein
Subject: RE: Equity Commitment

All - ac ng entire team: The VIP board met last Thursday and Friday - ostensibly to approve the "bird in hand". It's now been almost one full week and no announcement. I spoke to UBS yesterday asking what the latest update is. Their words: "don't burn the file yet". I don't have any insight as to what the holdup is or what the issues are, but clearly there are issues, otherwise this would have been announced. Even VIP's corporate approval process doesn't take one week. I guess we will stay tuned on this, but no news is good news for us.

From: Jordan Schwartz [mailto:jordan.schwartz@i-mergence.com]
Sent: Wednesday, August 13, 2014 10:09 AM
To: Michael Leitner
Cc: Peter Fraser; Patrick Barry; - Greg Boland; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Serruya
Subject: Re: Equity Commitment

Hi Michael, are you available at 11 am Pacific? Michael S and I will call you.

Jordan

Sent from my iPhone

On Aug 12, 2014, at 4:54 PM, Michael Leitner <Michael.Leitner@tennenbaumcapital.com> wrote:

I'm happy to join a call, which should take place sooner rather than later. At this point, exclusivity was extended again which isn't a good sign, but its not over until signed.

From: Peter Fraser [mailto:peter.fraser@westfacecapital.com]
Sent: Tuesday, August 12, 2014 1:25 PM
To: Jordan Schwartz
Cc: Patrick Barry; - Greg Boland; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Leitner; Michael Serruya
Subject: RE: Equity Commitment

Hi Jordan:
I should be around tomorrow. Not too sure about Michael Leitner's availability. I'm rather concerned that we may be too late to the party – but it doesn't hurt to have a call.
Peter

Peter Fraser | West Face Capital Inc.
1 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8903 | Fax: 647-724-8913
<image001.jpg> email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@i-mergence.com]
Sent: August-12-14 2:39 PM
To: Peter Fraser
Cc: Patrick Barry; - Greg Boland; Lawrence Guffey; Tony Griffin; Patrick Scott; Michael Leitner; Michael Serruya
Subject: Re: Equity Commitment

Yes. Michael was traveling but can we set up a call for tomorrow morning?

Jordan

Sent from my iPhone

On Aug 12, 2014, at 11:15 AM, Peter Fraser <peter.fraser@westfacecapital.com> wrote:

> Hi Jordan:
> Any word from Michael S?
> Thanks!
> Peter
>
> ---
>
> **From:** Jordan Schwartz <jordan.schwartz@i-mergence.com>
> **Sent:** Sunday, August 10, 2014 10:19:46 PM
> **To:** Michael Leitner
> **Cc:** Barry, Patrick; Peter Fraser; - Greg Boland; Lawrence Guffey (lg@lgcap.com) (lg@lgcap.com); Tony Griffin; Patrick Scott
> **Subject:** Re: Equity Commitment
>
> I just got word from Michael that he is tied up now until 10 pm Pacific. If he were to be available then for a call could you take it (i.e. What's latest time you can take a call tonight) If not let's try to plan for first thing in the am (what's your availability like tomorrow am?)
>
> Jordan
>
> Sent from my iPhone
>
> On Aug 10, 2014, at 9:28 PM, Michael Leitner <Michael.Leitner@tennenbaumcapital.com> wrote:
>
> > Jordan is michael going to call me this evening?
> >
> > Sent from my iPhone. Please excuse typos
> >
> > On Aug 10, 2014, at 4:04 PM, "Jordan Schwartz" <jordan.schwartz@i-mergence.com> wrote:
> >
> > > Still trying to connect with Michael S.
> > >
> > > Sent from my iPhone
> > >
> > > On Aug 10, 2014, at 6:27 PM, Michael Leitner <Michael.Leitner@tennenbaumcapital.com> wrote:
> > >
> > > > It would be great to be able to send this in tonight. I took the liberty of mentioning to UBS that this last leg of the commitments may come this evening.
> > > >
> > > > ---
> > > >
> > > > **From:** Barry, Patrick [mailto:PBarry@dwpv.com]
> > > > **Sent:** Sunday, August 10, 2014 2:08 PM
> > > > **To:** 'Peter Fraser'; Jordan Schwartz
> > > > **Cc:** - Greg Boland; Lawrence Guffey (lg@lgcap.com) (lg@lgcap.com); Michael Leitner; Tony Griffin; Patrick Scott
> > > > **Subject:** RE: Equity Commitment
> > > >
> > > > [redacted]
> > > >
> > > > Pat
> > > >
> > > > image002.jpg
> > > >
> > > > Patrick Barry
> > > >
> > > > [redacted]
> > > >
> > > > DAVIES WARD PHILLIPS & VINEBERG LLP
> > > >
> > > > ---
> > > >
> > > > **From:** Peter Fraser [mailto:peter.fraser@westfacecapital.com]
> > > > **Sent:** August 10, 2014 1:20 PM
> > > > **To:** Jordan Schwartz
> > > > **Cc:** Barry, Patrick; - Greg Boland; Lawrence Guffey (lg@lgcap.com) (lg@lgcap.com); Michael Leitner (Michael.Leitner@tennenbaumcapital.com); Tony Griffin; Patrick Scott
> > > > **Subject:** Equity Commitment
> > > >
> > > > Hi Jordan:
> > > > I spoke with Pat Barry from Davies. He agrees that [redacted]
> > > >
> > > > [redacted]

Redacted

Peter Fraser West Face Capital Inc
2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
Tel: 647-724-8903 | Fax: 647-724-8910
<image001.jpg> Email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@[redacted]-mergence.com]
Sent: August-09-14 9:09 PM
To: Peter Fraser
Subject: Re: Call

Ok great. Speak then

Sent from my iPhone

On Aug 9, 2014, at 8:28 PM, Peter Fraser <peter.fraser@westfacecapital.com> wrote:

> Sure - That should be fine.
> I'm looking forward to speaking with you.
> Peter
>
> Peter Fraser | West Face Capital Inc.
> 2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
> Tel: 647-724-8903 | Fax: 647-724-8910
> <image001.jpg> Email: peter.fraser@westfacecapital.com
>
> ---
>
> **From:** Jordan Schwartz [mailto:jordan.schwartz@[redacted]-mergence.com]
> **Sent:** August-09-14 8:25 PM
> **To:** Peter Fraser
> **Subject:** Re: RE: RE: Re:
>
> Could you speak at 10:30?
>
> Sent from my iPhone
>
> On Aug 9, 2014, at 6:54 PM, Peter Fraser <peter.fraser@westfacecapital.com> wrote:
>
> > Hi Jordan:
> > Shall we say 9 AM?
> > Peter
> >
> > Peter Fraser West Face Capital Inc.
> > 2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
> > Tel: 647-724-8903 | Fax: 647-724-8910
> > <image001.jpg> Email: peter.fraser@westfacecapital.com
> >
> > ---
> >
> > **From:** Jordan Schwartz [mailto:jordan.schwartz@[redacted]-mergence.com]
> > **Sent:** August-09-14 6:53 PM
> > **To:** Peter Fraser
> > **Subject:** Re: RE: Re:
> >
> > Unfortunately I am not available this evening - could you speak tomorrow morning? I am around all day tomorrow.
> >
> > Jordan
> >
> > Sent from my iPhone
> >
> > On Aug 9, 2014, at 6:51 PM, Peter Fraser <peter.fraser@westfacecapital.com> wrote:
> >
> > > Hi Jordan:
> > > Would 7:30 this evening work for you?
> > > My cell coverage is poor right now and I hope to be able to take your call then.
> > > Thanks!
> > > 416 400 9708
> > > Peter
> > >
> > > Peter Fraser West Face Capital Inc
> > > 2 Bloor Street East, Suite 3000 | Toronto, ON M4W 1A8
> > > Tel: 647-724-8903 | Fax: 647-724-8910
> > > <image001.jpg> Email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@[redacted]emergence.com]
Sent: August-09-14 6:32 PM
To: Anthony Lacavera
Cc: Peter Fraser
Subject: Re:

Thanks Tony.

Peter, please let me know when might be a good time to connect by phone.

Regards,

Jordan

On Sat, Aug 9, 2014 at 6:16 PM, Anthony Lacavera <Anthony.lacavera@globalive.com> wrote:

Jordan, Peter,
Connecting you both via email as discussed with each of you.
Peter's mobile number is 416 400 5708
Jordan's mobile is 647 204 3064
Best regards
Tony

Peter Fraser

From: Peter Fraser
Sent: Tuesday, August 12, 2014 9:06 AM
To: Tony Griffin; - Greg Boland
Subject: Re: Re: <no subject>

Sure. I spoke to Leitner last night around 1130. No news or contact from Serruya at all. Herbst said he can't really talk but wasn't too encouraging. I said you could meet Felix in Amsterdam if he wanted.

From: Tony Griffin
Sent: Tuesday, August 12, 2014 8:25:15 AM
To: Peter Fraser
Subject: <no subject>

I have still seen nothing on Wind announced and the exclusivity was to expire yesterday. No word back from Felix either.
Should I fire off an email to Leitner to check in ?

Exh 70

CV15-11238-00CL

Commercial List Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

NOTICE OF APPLICATION

TO: THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE APPLICANT. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List at 330 University Avenue, 7th Floor, Toronto on ~~a date to be~~ January 4, 2016 established by the Commercial List Office at ~~10:00 a.m.~~ 9:30 a.m. or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application, or to be served with any documents in the Application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer and file it, with proof of service, in the court office where the Application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

EXHIBIT NO. 1 DATE: 06/28/2017
WITNESS: ANDREW CARLSON
CASE: CATALYST v. VIAPLECOM
NEESONS COURT REPORTING INC.

3287386

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 23, 2015

Issued by: _____

A. Arasimowicz
Registrar

Address of Court Office:
330 University Avenue
7th Floor
Toronto, ON M5G 1R7

TO: THE HOLDERS OF COMMON SHARES OR OPTIONS OF MID-BOWLINE GROUP CORP. SET OUT IN SCHEDULE "A"

AND TO: The Catalyst Capital Group. Inc.
77 King St. W.
Toronto ON M5K 2A1

APPLICATION

1. The Applicant, Mid-Bowline Group Corp. (the "Corporation"), makes application for:

(a) an order concluding as to the fairness to the shareholders and optionholders of the Corporation of, and approving and implementing, the plan of arrangement (the "Plan of Arrangement") proposed by the Corporation pursuant to section 182 of the *Business Corporations Act* (Ontario), as amended (the "OBCA"), substantially in the form attached as Appendix "A" to this Notice of Application; and

(b) such further and other relief as this Honourable Court deems just.

2. THE GROUNDS for the Application are:

(a) all statutory requirements under the OBCA have been fulfilled;

(b) the proposed Plan of Arrangement is in the best interests of the Corporation, is fair and reasonable to the stakeholders of the Corporation, and is put forward in good faith;

(c) section 182 of the OBCA;

(d) rules 14.05(2) and 38 of the *Rules of Civil Procedure*; and

(e) such further and other grounds as counsel may advise and this Honourable Court may permit.

SCHEDULE "A"

LIST OF SHAREHOLDERS

Globalive Turbine Corp. 1
Globalive Turbine Corp. 2
Globalive Turbine 3 LP
Serruya Private Equity Inc.
Luxembourg Famous Star SARL
Tennenbaum Opportunities Partners V, LP
Tennenbaum Opportunities Fund VI, LLC
Special Value Opportunities Fund, LLC
Special Value Expansion Fund, LLC
Tennenbaum Senior Loan Fund IV-B, LP
Tennenbaum Special Situations Fund IX, LLC
Tennenbaum Special Situations IX-O, LP
Siguler Guff Hearst Opportunities Fund, LP
Maycomb Holdings IV, LLC
WAL Telecom L.P.
64NM Holdings, LP
Robert MacLellan
David Carey
Hamid Akhavan
Peter Rhamey
Alek Krstajic

LIST OF OPTIONHOLDERS

Alek Krstajic
Glen Campbell
Bruce Kirby
Bob Boron
Brian O'Shaughnessy
Ted Flanigan
Tamer Saleh
Atif Ahmad
Nora Brooks
John Lucato
Jennifer Douglas
Dean Price
Asser El Shanawany
Hamid Akhavan
Ed Antecol
Radek Krasny
Frank Bassano
Amor Mohammed
Magued Sorial
Ronny Hanna
Charbel Rizk
Wendy Perego
Mathew Flanigan

1986 or any provision of provincial, state, local or foreign tax law, in each case as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Eligible Option Shares in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. The determination of whether an amount is required to be deducted or withheld shall be at the sole discretion of Guarantor and Purchaser.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances, adverse claims or other claims of third parties of any kind.

4.5 Paramountcy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein.

ARTICLE 5
AMENDMENTS

5.1 Amendments to Plan of Arrangement

(a) The Corporation, the Vendors' Representatives and Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must: (i) be set out in writing; (ii) be approved by the Corporation, the Vendors' Representatives and Purchaser; and (iii) be filed with the Court.

(b) Any amendment, modification or supplement to this Plan of Arrangement that is directed by the Court shall be effective only if: (i) it is consented to in writing by each of the Corporation, the Vendors' Representatives and Purchaser (in each case, acting reasonably); and (ii) if required by the Court, it is consented to by Shareholders, voting in the manner directed by the Court.

(c) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Purchaser, provided that it concerns a matter that is solely of an administrative nature required to better give effect to the administrative implementation of this Plan of Arrangement and is not adverse to the interests of any Former Shareholder or former holders of Options.

ARTICLE 6
FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as

Rocco DiPucchio
Direct (416) 598-2268 rdipucchio@counsel-toronto.com
File No. 13552

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King Street W, Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730 www.counsel-toronto.com

Lax O'Sullivan Lisus Gottlieb

January 6, 2016

BY EMAIL

WITH PREJUDICE

Matthew Milne-Smith/Andrew Carlson
Davies Ward Phillips & Vineberg LLP
Suite 400, 155 Wellington Street West
Toronto ON
M5V 3J7

Michael Schafler
Dentons
Suite 400, 77 King Street West
Toronto-Dominion Centre
Toronto Ontario M5K 0A1

Dear Counsel:

Re: Re. Mid-Bowline Group Corp.
Court File No. CV-15-11238-00CL

We write to express our concern at the manner in which your clients are attempting to mis-use the Plan of Arrangement process under the OBCA to determine and release our client's claim against West Face Capital for a constructive trust over West Face's interest in Mid-Bowline Group.

Initially, from our review of the Notice of Application you delivered last week, we understood that the purpose of hearing before Justice Newbould was to determine whether the Court has the jurisdiction to approve a Plan of Arrangement that seeks to release Catalyst's claim.

In light of our discussion on January 4 concerning the evidence Mid-Bowline expects to adduce at the hearing, we now understand that what is intended is a form of mini-trial of our client's claim for breach of confidence in the *Catalyst v. Moyse and West Face* action, notwithstanding the fact that Mid-Bowline and Shaw are not parties to that action, that the Commercial List has no authority to partially determine an action on the regular list and that the action is currently the subject of ongoing procedural motions, including our client's pursuit of the appeal against Justice Glustein's dismissal of the motion to authorize an ISS to review West Face's devices. This is to say nothing of the fact that the parties have not even begun the documentary and oral discovery phase in that proceeding.

It is now apparent to us that the only reason why Mid-Bowline and Shaw are proceeding with this transaction by way of a Plan of Arrangement is to seek to compromise and release Catalyst's claim against West Face. Your clients seek to use

the Plan of Arrangement provisions solely in an attempt to hijack the ongoing proceedings between Catalyst and West Face/Moyse, and in so doing deprive Catalyst of its procedural and discovery rights in pursuing that action.

We do not believe that the Court has the jurisdiction to grant the relief requested pursuant to the provisions of the OBCA. If you are aware of any case in Canada where a Plan of Arrangement has been used in this fashion, we invite you to share it with us at your earliest convenience. We also do not believe the Court has the jurisdiction to hear and determine the "trial" of our client's claim that Mid-Bowline has presently scheduled for the week of January 25, 2016 under the guise of its notice of application to approve the proposed Plan of Arrangement.

To be clear, Catalyst is not interested in holding up a sale of the shares of Wind to Shaw. To that end, it proposes the following compromise to resolve the situation so that the transaction can proceed in a manner that addresses the concerns of Shaw and Mid-Bowline, and removes the need for the four day hearing scheduled to commence in less than three weeks:

- West Face will agree to place the proceeds of the sale of Wind that it receives into escrow pending a final determination of Catalyst's claim;
- Catalyst will agree to amend its statement of claim to remove the claim for a constructive trust over West Face's shares in Wind and to restrict its claim to a tracing of the proceeds of the sale of Wind;
- Following this amendment, the Plan of Arrangement can proceed without objection from Catalyst;
- Catalyst and West Face will agree to the appointment of an ISS to review the electronic devices of an agreed upon set of custodians at West Face, pursuant to a document review protocol to be agreed upon or settled by the Court; and
- Catalyst and West Face will agree on an expedited discovery and trial schedule following receipt of the ISS report, with a goal of completing a trial of Catalyst's tracing claim by July 30, 2016.

We believe this proposed solution represents a fair compromise which protects Catalyst's rights in its existing action, while also acknowledging your client's and Shaw's alleged interest in proceeding with the sale transaction without delay. Under our proposed resolution, there is no need for the Plan of Arrangement to affect Catalyst's claim because Shaw will take the Wind shares free and clear of any ownership claim by Catalyst.

In light of the expedited schedule that West Face has imposed, we intend to bring our concerns and proposed solution to the attention of Justice Newbould at a 9:30 appointment at the earliest opportunity, and to raise the fairness and jurisdiction issues

as threshold matters that must be determined by the Court before it can consider what we now understand to be the true nature of your client's application.

May I please hear from you without delay so that we can, if necessary, schedule a 9:30 appointment with Justice Newbould this week or early next week?

Yours truly,

Rocco DiPucchio

RDP/AJW

Ex 2 79

Andrew Winton

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-06-16 1:26 PM
To: Lynn Rowley; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: RE: Mid-Bowline Group Corp.

Rocco,

Your proposed offer is unacceptable to West Face, and therefore to the shareholders of Mid-Bowline. I do not agree that we were anything but explicit in our intentions before Justice Newbould, but am available for a 9:30 appointment today, tomorrow, Monday or Tuesday.

Yours very truly,

Matt

DAVIES

Matthew Milne-Smith | Bio

155 Wellington Street West
Toronto, ON M5V 3J7

T 416.863.5595
mmilne-smith@dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

From: Lynn Rowley [mailto:lrowley@counsel-toronto.com]
Sent: January 6, 2016 12:56 PM
To: Milne-Smith, Matthew; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: Mid-Bowline Group Corp.

Please see the attached letter sent on behalf of Rocco DiPucchio.

Lynn Rowley
Assistant to Shaun F. Laubman
and Lauren P.S. Epstein
Direct: (416) 598-8051
lrowley@counsel-toronto.com

Lax O'Sullivan Lisus Gottlieb LLP
Suite 2750, 145 King Street West
Toronto ON M5H 1J8 Canada

Lax O'Sullivan Lisus Gottlieb

EXHIBIT NO. 2 DATE: 06/28/2017
WITNESS: Andrew Carlson
CASE: Cataclyst v. Vimetcom
NEESONS COURT REPORTING INC.

Date Jan 27

N - what is going to happen?
- witnesses?
- reporter?

KT - do you want it done electronically?
- use Neesons
- get daily transcript

N - yes

RDP - a lot to absorb in reasons
- we may be appealing
- may be getting new counsel

N - what in these gives rise to a a change in counsel?

RDP - questions re bona fides of our actions

N - not intended to do that

RDP - can't say any more

N - trial won't be delayed regardless of counsel

MS - Shaw wants an Order approving the Plan conditionally to Catalyst trial

N - can't do that, have it approved the Plan.

Date

MS - want this approved, world is watching, undertake to not close

N - can't do that

RDP - what would happen if Catalyst abandoned the constructive trust claim?
- then we make whatever arguments about the proceeds
- including inducing br

N - seems to be barred by release

RDP - not clear
- can we advance this claim? subject to any arguments my friends may make

KT - hands up amended language

RDP - your judgment doesn't preclude our starting step action for ~~[illegible]~~ injury br of K against anyone we want

N - no, subject to release language

MMS - not a contempt but we would argue based on reasons.

9:30 Date Feb 1

KT - don't want JR here
- don't want this in an affidavit

DS - here for ~~JR~~ personally
- concerns about findings
- Pope asked for opportunity to make submissions on standing + findings

N - can't change findings

RDP - discussions w Shaw on language
- agreed w Shaw on language
- DWPV sent back different language
- Sat said we had instructions to abandon constr. trust claim over shares
- understood the only reason for Plan was to deal w constr. trust
- we undertake to amend claim

MS - for Shaw, we

N - up to these guys

MS - we are negotiating a deal
- need all parties on board
- still going by Plan
- will have draft Order in 24-48 hrs
- hope to get s/th ~~to~~ today.

Date

N - issue of Pape
- findings, don't know what you can do.

DS - not trying to impede the final Order.

N - was asked to do this before
- Caupion asked me to change findings
- couldn't do it
- strict test

MMS - we were to come before you to talk about trial issues

N - what trial?

RDP - my proposal was to put off the trial
- no reason to do by ~~Feb~~ March

N - doesn't that make sense

MMS - that was the point of the de facto affidavit
- claim hanging out there puts them in untenable situation
- tracing remedy hanging over

N - they just disperse the funds

MMS - as fiduciaries, can't disburse on risk it could get traced

Date

JZ - for 3 other vendors
TC - for optionholders

RS - want this done as expeditiously as possible

RDP - can't do it in Feb
- GM trial
- offered dates in May

N - how serious is it

MMS - tracing remedy is an issue
- not like tort claim of inducing

N - claim against WF
- if judgment against WF, could do oppression claim for paying out, then go after people who got proceeds.

MMS - yes
- can't pay out in that scenario

N - you have GM

RDP - gotta get evidence in by end of Feb

MMS - we wanted Mar 21 wk

N - not here Mar 21, 28 April 4 wks

Date

N- what do you suggest

RDP- there are non-sit wks in May

KT- this is fast moving
- let's sort out drafting issues + scheduling
- come back tomorrow or Wed

N- 9am Wed morning

5168

Call w/ Rocco

Yes ?

416-596-2268

- free week May 16-20
May 23-27.

- second of those two weeks.

- Rocco: I believe they will prefer inducing break on May.

: involving a # of other parties.

Kent:

Assuming we could get other investors to agree to May?

Rocco: I guess so.

At end of day just talking about months.

Let me think about that. I may think it all fits together.

If we can accomplish everything by May.

In principle I'm not objecting to that.

You guys will be up following week in GM.

Thursday (Friday preceding week.

Rocio: Here's what will do.
I'll commit to blocking off those two weeks.
You want here from me.
At minimum we'll have trial of claim.

Feb 7, 2016

Call w/ Rocco and Rob (Carla, Kris,

Matt: First question is whether you intend to Amend?

Rocco: Yes — we probably will. But is your

Matt: First issue, second on other thing.

Rocco: Didn't mean to suggest other party not to

Likely will be amending the claim.

We have to reflect CA. endorsement re: Mayfair.

Spoliation of something.

Matt: That has to come before discoveries.

Rocco: Will look at what we need to sharpen up.

Rob: What about other potential defendants?

Rocco: plan isn't to roll these guys into this action?

Matt: might be inducing breach?

Rocco: My thought is separate action.

MNS: limited to so breach of confidence.

~~Matt~~ Rocco: Yes.

Matt: what about your productions?

Rocco: Person just walked out the door. Figure out how to staff this and see what we haven't even started that task.

MNS: we sent over letter with initial letter. we are being reasonable. keep us in loop to extent appropriate.

Rocco: Let me get clarity —

Rocco: once we get idea and have conversation about what to produce.

Start of what you put in your letter.

MMS: Core is Negotiations with Impellam. Confidential info that Brandon had.

Rocco: Additional days of discovery?

Matt: No more than that.

Rocco: Realistically — discoveries in early April is as good as we can do.

MMS: Discussion 3rd April targets agreed to. Idea of additional disclosure.

Rob: How we're going to use previous affidavits and existing crosses.

MMS: Witness - list. We may need experts back in if you pursue spoliation.

Rocco: Look at claim, make amendments, get handle on docs in short order.

I'll get handle on that.

Commercial List Court File No. CV-15-11238-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 3RD DAY
	)	
MR. JUSTICE NEWBOULD	)	OF FEBRUARY, 2016

IN THE MATTER OF the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, Section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.

ORDER

THIS APPLICATION, made by the Applicant, Mid-Bowline Group Corp. ("**Mid-Bowline**"), pursuant to section 182 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "**OBCA**"), for an Order approving a proposed Plan of Arrangement of Mid-Bowline was heard on January 25, 2016 at the Court House at 330 University Avenue, Toronto, Ontario, and Reasons for Judgment were released on January 26, 2016. These Reasons directed that the parties attend a 9:30 a.m. appointment on February 1, 2016. A further 9:30 a.m. appointment was held this day.

ON READING the materials filed by the Applicant and by The Catalyst Capital Group Inc. ("**Catalyst**"), and on hearing the submissions of counsel for the

SCHEDULE "A"

PLAN OF ARRANGEMENT
UNDER SECTION 182 OF THE
BUSINESS CORPORATIONS ACT (ONTARIO)

Exhibit D

Plan of Arrangement

FORM OF PLAN OF ARRANGEMENT UNDER SECTION 182 OF THE BUSINESS CORPORATIONS ACT (ONTARIO)

ARTICLE 1
INTERPRETATION

1.1 Definitions.

In this Plan of Arrangement, the following words and terms shall have the meanings hereinafter set forth:

"**Arrangement**" means the arrangement of the Corporation under section 182 of the OBCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations thereto made in accordance with the Arrangement Agreement and Section 5.1 hereof or made at the discretion of the Court in the Final Order (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably).

"**Arrangement Agreement**" means the Arrangement Agreement dated effective December 16, 2015 among Guarantor, Purchaser, the Corporation and the Vendors providing for, among other things, the Arrangement, as amended by amending agreement dated January 25, 2016, and as the same may be further amended, supplemented and/or restated from time to time.

"**Arrangement Resolution**" means a special resolution of Shareholders in the form of Exhibit A to the Arrangement Agreement.

"**Articles of Arrangement**" means the articles of arrangement of the Corporation in respect of the Arrangement that are required by the OBCA to be sent to the Director after the Final Order is made, which shall be in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably.

"**business day**" means a day, other than a Saturday or Sunday, on which commercial banks in Toronto, Ontario and Calgary, Alberta are open for business.

"**Cash Consideration**" means an amount per Purchased Share equal to the Purchase Price.

"**Certificate**" means the certificate of arrangement giving effect to the Arrangement, issued pursuant to subsection 183(2) of the OBCA after the Articles of Arrangement have been filed.

"**Corporation**" means Mid-Bowline Group Corp., a corporation existing under the OBCA.

"**Court**" means the Superior Court of Justice (Commercial List) in Toronto, Ontario.

"**Director**" means the Director appointed pursuant to section 278 of the OBCA.

"**Director Shares**" means any Purchased Shares registered in the name of a director or former director of the Corporation as at December 16, 2015 and as at the Effective Time.

"**Effective Date**" means the date of the Certificate.

"**Effective Time**" means 12:01 a.m. (Toronto time) on the Effective Date, or such other time as the Corporation, the Vendors' Representatives and Purchaser may agree to in writing before the Effective Date.

"**Election Deadline**" means 5:00 p.m. (Toronto time) on the business day which is five business days preceding the Effective Date.

"**Election Form**" means the election form delivered to and specified for use by holders of Eligible Option Shares and/or Director Shares, as applicable, in connection with the Arrangement.

"**Eligible Option Shares**" means Purchased Shares acquired pursuant to the exercise of Replacement Options that were issued in exchange for Management Options and Former Management Options.

"**Exchange Ratio**" means, subject to adjustment (if any) as provided in Section 3.5, the ratio of the Purchase Price to the Market Price.

"**Final Order**" means the order of the Court, in form and substance satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is satisfactory to the Corporation, the Vendors' Representatives and Purchaser, each acting reasonably) on appeal.

"**Former Shareholders**" means, at and following the Effective Time, the holders of Purchased Shares immediately prior to the Effective Time.

"**Former Management Options**" means the option commitments to acquire an aggregate of 300,000 shares in the capital of the Corporation at a price of $1.00 per share held by the Former Officers.

"**Former Officers**" means each of Simon Lockie and Brice Scheschuk, being the former Chief Regulatory Officer and Chief Financial Officer, respectively, of WIND Mobile Corp.

"**Globalive Options**" means the options to acquire an aggregate of 10,000,000 shares in the capital of the Corporation at a price of $1.00 per share held by Globalive Turbine Corp. 1.

"**Guarantor**" means Shaw Communications Inc., a corporation existing under the laws of the Province of Alberta.

"**Guarantor Shares**" means the Class B Non-Voting Participating Shares in the capital of Guarantor.

"**Letter of Transmittal**" means the letter of transmittal delivered to and specified for use by Shareholders in connection with the Arrangement in form and substance satisfactory to the Purchaser and the Vendors' Representatives, each acting reasonably; provided, however, that no Letter of Transmittal shall be required in respect of Purchased Shares issued pursuant to subsection 3.1(c).

"**Management Options**" means the options to acquire shares in the capital of the Corporation pursuant to the Option Plan as set out in Schedule B to the Disclosure Letter.

"**Market Price**" means a per share amount equal to the volume weighted average trading price of the Guarantor Shares on the TSX during the last 10 trading days occurring immediately prior to the Effective Date.

"**OBCA**" means the *Business Corporations Act* (Ontario).

"**Option Loan**" means the non-interest bearing loan made by the Purchaser to Globalive Turbine Corp. 1 in connection with the exercise or deemed exercise of the Globalive Options in accordance with this Plan of Arrangement, in an amount equal to the aggregate exercise price in respect of such Options as of the Effective Date.

"**Option Plan**" means the 2015 Stock Option Plan of the Corporation as adopted by the Board of Directors of the Corporation on September 24, 2015, effective as of March 23, 2015, and ratified on December 16, 2015, in the form provided to Purchaser.

"**Options**" means, collectively, the Management Options, the Globalive Options and the Former Management Options.

"**Plan of Arrangement**", "**hereof**", "**herein**", "**hereto**" and like references mean and refer to this plan of arrangement, as the same may be amended, supplemented and/or restated from time to time.

"**Purchase Price**" has the meaning set forth in the Arrangement Agreement, as such amount may be adjusted in accordance with the terms thereof.

"**Purchased Shares**" means the issued and outstanding shares in the capital of the Corporation as of the Effective Time, including any shares issued on the exercise or deemed exercise of Options in accordance with the Arrangement Agreement and this Plan of Arrangement.

"**Purchaser**" means 1503357 Alberta Ltd., a corporation existing under the laws of the Province of Alberta.

"**Replacement Option**" means an option to purchase shares in the capital of the Corporation granted in replacement of a Management Option or Former Management Option on the basis set forth in subsection 3.1(b);

"**Shareholders**" means the holders of Purchased Shares.

"**Share Consideration**" means a number (or fraction) of Guarantor Shares equal to the Exchange Ratio per Purchased Share.

"**Tax Act**" means the *Income Tax Act* (Canada).

"**TSX**" means the Toronto Stock Exchange.

"**Unvested Options**" means all Management Options and Former Management Options that are not Vested Options.

"**Vendors**" means each of the Persons listed on the execution page of the Arrangement Agreement under the heading "Vendors" and each holder of Purchased Shares who becomes a party to the Arrangement Agreement by executing (or being deemed to execute) a Joinder Agreement.

"**Vested Options**" means the Management Options and Former Management Options that have vested prior to the Effective Date in accordance with the terms of the Arrangement Agreement.

Words and phrases used herein that are defined in the Arrangement Agreement and not defined herein shall have the same meaning herein as in the Arrangement Agreement. Words and phrases used herein that are defined in the OBCA and not defined herein or in the Arrangement Agreement shall have the same meaning herein as in the OBCA, unless the context otherwise requires.

1.2 Interpretation Not Affected By Headings, etc.

The division of this Plan of Arrangement into Articles, Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Plan of Arrangement.

1.3 Article References

Unless the contrary intention appears, references in this Plan of Arrangement to an Article, Section or subsection by number or letter or both refer to the Article, Section or subsection respectively, bearing that designation in this Plan of Arrangement.

1.4 Number and Gender

In this Plan of Arrangement, unless the contrary intention appears, words importing the singular include the plural and vice versa, and words importing gender shall include all genders.

1.5 Date for Any Action

If the date on which any action is required to be taken hereunder by any of the parties is not a business day in the place where the action is required to be taken, such action shall be required to be taken on the next succeeding day which is a business day in such place.

1.6 Statutory References

Unless otherwise indicated, references in this Plan of Arrangement to any statute includes all regulations made pursuant to such statute and the provisions of any statute or regulation which amends, supplements or supersedes any such statute or regulation.

1.7 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

ARTICLE 2
ARRANGEMENT AGREEMENT

2.1 Arrangement Agreement

This Plan of Arrangement is made pursuant to, and is subject to the provisions of, the Arrangement Agreement. This Plan of Arrangement shall become effective at, and be binding at and after, the Effective Time on the Corporation, Guarantor, Purchaser, the Vendors and all Persons who were immediately prior to the Effective Time holders or beneficial owners of Purchased Shares or Options.

ARTICLE 3
ARRANGEMENT

3.1 Arrangement

Commencing at the Effective Time, the following events or transactions shall occur and shall be deemed to occur in the following sequence without any further act or formality:

(a) Purchaser will make the Option Loan to Globalive Turbine Corp. 1 and Globalive Turbine Corp. 1 will direct the Purchaser to pay the proceeds of the Option Loan to the

4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Purchased Shares that were exchanged pursuant to subsections 3.1(d) or 3.1(e) shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, Purchaser will deliver in exchange for such lost, stolen or destroyed certificate, the cash amount or the Guarantor Shares, or any combination thereof, that such Person is entitled to receive pursuant to subsection 3.1(d) or 3.1(e). When authorizing the delivery of such consideration in exchange for any lost, stolen or destroyed certificate, the Person to whom the consideration is being delivered shall, as a condition precedent to the delivery of such consideration, give a bond satisfactory to Guarantor and Purchaser in such sum as Guarantor and Purchaser may direct, or otherwise indemnify Guarantor and Purchaser in a manner satisfactory to Guarantor and Purchaser against any claim that may be made against Guarantor or Purchaser with respect to the certificate alleged to have been lost, stolen or destroyed.

4.3 Withholding Rights

Guarantor and Purchaser shall deduct and withhold from any consideration otherwise payable to any holder of Eligible Option Shares or Director Shares such amounts as Guarantor or Purchaser are required to deduct and withhold with respect to such payment under the Tax Act, the United States *Internal Revenue Code* of 1986 or any provision of provincial, state, local or foreign tax law, in each case as amended. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the holder of the Eligible Option Shares or Director Shares, as applicable, in respect of which such deduction and withholding was made, provided that such withheld amounts are actually remitted to the appropriate taxing authority. The determination of whether an amount is required to be deducted or withheld shall be at the sole discretion of Guarantor and Purchaser.

4.4 No Liens

Any exchange or transfer of securities pursuant to this Plan of Arrangement shall be free and clear of any Encumbrances, adverse claims or other claims of third parties of any kind.

4.5 Paramountcy

From and after the Effective Time: (i) this Plan of Arrangement shall take precedence and priority over any and all Purchased Shares or Options issued prior to the Effective Time; (ii) the rights and obligations of the Former Shareholders and the former holders of Options shall be solely as provided for in this Plan of Arrangement; and (iii) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Purchased Shares or Options shall be deemed to have been settled, compromised, released and determined without liability except as set forth herein; provided, however, that nothing in this section 4.5 shall be construed to extinguish any right of The Catalyst Capital Group Inc. to assert any of the following matters, with the exception of any constructive trust or equivalent remedy over the Purchased Shares, which shall be deemed to have been settled, compromised, released and determined without liability, along with all other claims in this section 4.5:

(a) its existing claims as asserted in the Amended Amended Statement of Claim as amended December 16, 2014 in the proceeding bearing Court File No.: CV-14-507120 in the Ontario Superior Court of Justice, against West Face Capital Inc. and Brandon Moyse;

(b) as against any person (as defined in the OBCA), any potential claim for a tracing of the money received by West Face Capital Inc. from the disposition of its interest in the Corporation pursuant to the Arrangement; or

(c) as against the Former Shareholders, any potential claim relating to their acquisition from VimpelCom Ltd. of their interest directly or indirectly in WIND Mobile Corp., including, to the extent permitted by law, for a tracing of the money received by them pursuant to the Arrangement.

ARTICLE 5
AMENDMENTS

5.1 Amendments to Plan of Arrangement

(a) The Corporation, the Vendors' Representatives and Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must: (i) be set out in writing; (ii) be approved by the Corporation, the Vendors' Representatives and Purchaser; and (iii) be filed with the Court.

(b) Any amendment, modification or supplement to this Plan of Arrangement that is directed by the Court shall be effective only if: (i) it is consented to in writing by each of the Corporation, the Vendors' Representatives and Purchaser (in each case, acting reasonably); and (ii) if required by the Court, it is consented to by Shareholders, voting in the manner directed by the Court.

(c) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Purchaser, provided that it concerns a matter that is solely of an administrative nature required to better give effect to the administrative implementation of this Plan of Arrangement and is not adverse to the interests of any Former Shareholder or former holders of Options.

ARTICLE 6
FURTHER ASSURANCES

6.1 Further Assurances

Notwithstanding that the transactions and events set out herein shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein.

Catalyst Capital Group Inc. v. Brandon Moyse and West Face Capital Inc.

Gabriel De Alba
on Wednesday, May 11, 2016

neesons

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pleadings aren't for inducing.

BY MR. MILNE-SMITH:

505 Q. Are you pursuing a claim in this proceeding that AAL Telecom Holdings Incorporated, any of its subsidiaries or any of its three principals that I will identify - Mr. Scheschuk, Mr. Lacavera or Mr. Lockie - are you pursuing a claim that any of those parties have breached any kind of legal duty or obligation to Catalyst in respect of their discussions with West Face?

MR. DIPUCCHIO: As part of this claim?

MR. MILNE-SMITH: Yes.

U/T MR. DIPUCCHIO: Let me consider that question and I'll get back to you on that, okay? I think the answer to that is no, obviously, but let me just consider that, okay?

BY MR. MILNE-SMITH:

506 Q. Let's go to CCG0012078.

MR. VERMEERSCH: Is there a parent to that document?

MR. MILNE-SMITH: 12076 is the parent.

BY MR. MILNE-SMITH:

507 Q. Anyway, 12078 is a Wind Mobile branded document?

MR. VERMEERSCH: We have it.

whom there had been some type of dialogue and proposals exchanged before.

MR. WINTON: I --

MR. MILNE-SMITH: Hang on. He's given the answer.

BY MR. MILNE-SMITH:

765 Q. You have no evidence that during the exclusivity period VimpelCom engaged in any negotiations with West Face and its consortium other than simply receiving an unsolicited offer?

MR. WINTON: I'm not comfortable with the way that question has been phrased, given the productions that have been made by West Face and given the restrictions on Mr. de Alba on what he personally has seen and knows.

BY MR. MILNE-SMITH:

766 Q. Are you aware of any communications --

MR. WINTON: You're asking if he is aware?

MR. MILNE-SMITH: Yes, I'll ask him and then I'll ask you.

BY MR. MILNE-SMITH:

767 Q. Are you aware of any communications by VimpelCom to West Face or any

member of its consortium during the exclusivity period?

A. I am not aware that indeed proposals were sent by West Face.

768 Q. That's not my question. My question is by VimpelCom to West Face.

A. The fact that West Face continued to send proposals means to me that there has been a dialogue.

769 Q. But you're just drawing an inference there; you have no direct knowledge?

A. Correct.

770 Q. Mr. Winton, if Catalyst intends to present any evidence of ongoing communications by VimpelCom to any member of the West Face consortium, I'd like to know what that is. Because that's not how we interpret any of the documents, but if you interpret them differently, I'd like to know what that is?

MR. WINTON: I think the documents recently produced to us by West Face, which we suspect are not the sum totality of those, but we rely on you to produce what you're going to produce, is already indicative of the fact that there were communications back and forth.

BY MR. MILNE-SMITH:

771 Q. I want to know which communications you say were in breach of the exclusivity agreement. I want to know what your case is going to be at trial as to which documents were in breach --

MR. WINTON: This case isn't about breach of the exclusivity agreement. So our case at trial isn't going to be about a breach of the exclusivity agreement. There is no claim in relation to that.

BY MR. MILNE-SMITH:

772 Q. If you are going to lead evidence at trial concerning a breach of exclusivity, I'd like to know what it is. If you're not raising it at this trial, that's fine. I just want to know what it is if it's going to be raised at trial.

U/A MR. WINTON: I'm going to take that under advisement because I think we have a different view as to what this case is about.

BY MR. MILNE-SMITH:

773 Q. VimpelCom never came to you and asked you -- sorry, let me take a step back.

I take it you're aware now of what the West Face consortium offer looked like because it's

In the Matter Of:

The Catalyst Capital Group Inc. v. Brandon Moyse et al

ANDREW CARLSON

June 28, 2017

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Court File No. CV-16-553800

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Responding Party

- and -

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICATIONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants/Moving Party

--- This is the Cross-examination of ANDREW CARLSON, upon his affidavit sworn December 7, 2016, taken at the law offices of Lax, O'Sullivan, Lisus, Gottlieb, 145 King Street West, Suite 2750, Toronto, Ontario, on the 28th day of June, 2017.

A. That's right.

11 Q. And at paragraph 37 states that the motivation for proceeding by way of Plan of Arrangement, was to transfer or sell the shares of Mid-Bowline to Shaw, free and clear of Catalyst's claim for Constructive Trust over West Face's interest in WIND, right?

A. That's correct.

12 Q. Now, your firm was counsel to Mid-Bowline on the application?

A. That's right.

13 Q. And you were also counsel to West Face at the same time?

A. We were counsel to West Face at the same time in connection with the Moyse action.

14 Q. And in connection with the application?

MR. MILNE-SMITH: Hang on a second. I'm just going to intervene here because I don't think Mr. Carlson was necessarily privy to the retainers in question. If it's okay with you, I will answer the question.

MR. WINTON: Sure.

MR. MILNE-SMITH: So we were counsel in Mid-Bowline. West Face was not a party to the

application. The application was by Mid-Bowline, not by any of the individual investors.

Obviously, Mid-Bowline was comprised of a number of different shareholders. And our brief as counsel for Mid-Bowline, was to represent all of their collective interests. And we had to take instructions from all of the shareholders.

So, we were not counsel to West Face on the Plan of Arrangement. As Mr. Carlson said, we were at the same time, counsel to West Face in the Moyse action, but we acted for all the shareholders of Mid-Bowline without favour or preference.

BY MR. WINTON:

15 Q. Thanks, that's helpful.

So I'm going to hand you a copy of Exhibit 22 to your affidavit.

A. Thank you.

16 Q. This starts with the Volume 1 of the application record for approval of the Plan of Arrangement. And what I've included here is the index, and then the note, the Notice of Application, which starts at page 2902 of the record.

A. I see that.

17 Q. Okay. And the Notice of

Yes. So I agree that these provisions are among the provisions that would have provided Shaw with free and clear title to the shares in question.

I don't remember if there are other provisions that also provide similar -- I don't know what kind of -- relief, I guess.

25 Q. Okay. Well, I'm going to ask then, my understanding had been that these were the two provisions.

And if you want to take a moment to review the plan then, and let me know if there are others that you thought would have had the same effect of compromising or releasing Catalyst's claim against West Face for a Constructive Trust so that we can address that in this cross, thank you.

A. (Witness reviews document).

Well, I just want to provide -- I just wanted to provide maybe an example right now for why I wasn't entirely certain.

26 Q. Okay.

A. So if you look at, for example, Section 3.1 D of the Plan of Arrangement.

27 Q. On page D-5?

A. That is correct. You'll see at

the bottom, the bottom of that paragraph:

"Purchaser shall be recorded as the registered holder of such purchase shares so transferred and shall be deemed to be the legal and beneficial owner thereof, free and clear of any encumbrances."

Now, I haven't tracked through all the definitions to see if these particular shares dealt with in this paragraph are the ones that West Face held indirectly. But I'm just using it as an example for how there may be other provisions in here, apart from 4.4 and 4.5, that ensure that Shaw was provided free and clear title to everything that it was purchasing.

MR. MILNE-SMITH: Counsel, it's trite, but perhaps worth saying nonetheless, that the agreement has to be read as a whole. And that there is definitions and other provisions that give life to Section 4.4 and 4.5 and other aspects like this, 3.1 D reflect what goes on in 4.4 and 4.5.

But I think subject to us informing you later, I think we're on safe ground that those were what the parties were focused on as the operative provisions in respect of extinguishing Catalyst's

claim for Constructive Trust.

MR. WINTON: Thanks. And just to pinpoint. When you say "those", you're referring to 4.4 and 4.5?

MR. MILNE-SMITH: Yes.

MR. WINTON: Thank you.

BY MR. WINTON:

28 Q. And if we look at 4.4 and 4.5 on page D-8 of the plan, 4.4 provides that the transfer of securities would be free and clear of encumbrances, adverse claims, or other claims of third parties of any kind.

And that we can agree is a reference to the Constructive Trust claim that Catalyst had advanced against West Face?

A. That's right.

29 Q. And if you then look at 4.5, and in particular the third part of that provision, it says that from and after the effective time -- I'm going to skip to number three:

"All actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any purchased

shares or options shall be deemed to have been settled, compromised released and determined without liability except as set forth herein."

And would you agree with me that that provision would not only affect Catalyst's claim to a Constructive Trust, but would also potentially affect the entire claim against West Face relating to or as set out in the Moyse action?

MR. MILNE-SMITH: I'm going to let him answer with the proviso that interpreting a legal document is, obviously, the role of the court. And any witnesses' evidence is nothing more than their own personal interpretation.

If you want to hear it, I'm fine to have him give it.

MR. WINTON: If I knew that we have a shared understanding, or if we don't and we have a different understanding, it may just narrow what we have to discuss with the court, right?

MR. MILNE-SMITH: Just keep in mind you're getting Andrew Carlson's interpretation, which may not be the same as mine, or Kent Thomson, or West Face's even.

there.

MR. MILNE-SMITH: That's the second set of notes?

MR. WINTON: Right.

BY MR. WINTON:

112 Q. So it was attached to Mr. Vermeersch's affidavit as Exhibit B.

A. Thank you.

113 Q. And perhaps you were still on your beach during all this?

A. That's right. I think the first attendance that I attended was the February 3rd.

114 Q. Okay. So then again, as with January 27th, you had no information or any reason to believe that Ms. Epstein's notes are inaccurate to what was said at the 9:30?

A. That's right.

115 Q. Okay. That's all I'm going to ask you about that.

And then you had notes of a --

MR. MILNE-SMITH: This is the call with DiPucchio?

MR. WINTON: Yes. I think this is Exhibit 34.

MR. MILNE-SMITH: Exhibit 31 is the

date because of the contemporaneous e-mails that I have.

119 Q. All right. And then so that's actually not in doubt. The question mark is there, but the date of the notes is not in doubt?

A. That's correct.

120 Q. In your mind?

A. That's right.

121 Q. And then the notes refer to the inducing breach claim, right? Mr. DiPucchio refers to an inducing breach claim?

A. That's right.

122 Q. And at the bottom Mr. DiPucchio -- Mr. Thomson asks if we can get the other investors to agree that that happens in May.

And Mr. DiPucchio says at the bottom, in principal he's not objecting to that, right?

A. That's correct.

123 Q. And at the end of his notes he says, "at minimum, we'll have trial of a claim."

Right? That's the last record you have of what was said on the call.

A. That's right.

124 Q. Okay. And you agree with me nowhere in the call is there a suggestion from

Mr. Thomson that the inducing breach claim had to be heard at the same time as the Moyse action?

A. Well, our position on the call was that Catalyst should bring all of its claims against West Face in the spring trial.

125 Q. Just go back to your notes, Mr. Carlson, that's not what you've recorded in your notes.

A. No, that's my memory of the call.

126 Q. Okay. Not recorded in your notes?

A. Well, if you see what Kent is saying --

127 Q. Yes?

A. -- I'm just saying, this is where it's reflective in my notes. The sentence, "assuming we can get other investors to agree to May", doesn't kind of come out of nowhere.

What we were talking about was Catalyst bringing its claim against West Face for inducing breach and against all the other parties against which it felt it had a claim for inducing breach.

And Kent was saying those claims should be heard in May, including against the other investors, assuming we can get them to agree.

128 Q. But you'll agree with me, nowhere

in your notes does it record Mr. Thomson is saying that they should be heard together?

MR. MILNE-SMITH: The notes say what they say. He's told you what import they have in terms of his memory.

MR. WINTON: Okay.

BY MR. WINTON:

129 Q. You next have notes from a call on February 7th. This is Exhibit 34 and 35 to your affidavit.

A. Yes.

130 Q. And again, in these notes, Mr. DiPucchio did not suggest that Catalyst was going to amend its claim to add an inducing breach claim; is that fair?

A. Can you just give me a minute to read through these?

131 Q. Sure.

A. Thanks, Andrew.

(Witness reviews document).

Right, right. Okay. So what Mr. DiPucchio told us was that Catalyst would be amending its claim, the Statement of Claim in the Moyse action. But his current thinking, subject to getting instructions, was that that amendment

wouldn't add the obligations of inducing breach.

132 Q. And he stated, "my thought is, that's a separate action"?

A. That's right.

133 Q. Okay. And Mr. Milne-Smith confirms. So the amendments or the claim is limited to breach of confidence?

A. That's right. Mr. Milne-Smith was clarifying that Catalyst's intention was to just keep the claim limited to breach of confidence as against West Face.

134 Q. Right.

A. That's right. Yeah, that's the message that was given to us on February 9th or 10th -- or 7th, I guess.

135 Q. And following that discussion on February 7th, there was no correspondence from West Face, by that I mean its counsel, that sets out this position you say Mr. Thomson took on February 2nd, that everything had to be heard and tried together.

A. Well, that's correct. There's no correspondence from West Face or its counsel, that I can recall.

MR. MILNE-SMITH: He told you one.

THE WITNESS: That's right.

BY MR. WINTON:

136 Q. Okay. Now in the current action, after the claim was served, you're aware that Vimpelcom was initially refusing to allow local counsel to accept service on its behalf?

A. I am not aware of that.

137 Q. Were you aware that as a condition of accepting service locally, Vimpelcom was insisting on having at least 60 days to respond to the claim?

A. I'm not aware. I know there was issues with service, and that's about what the level of my knowledge was.

138 Q. All right. Well, I'm going to hand you a letter from Mr. Agarwal of Norton Rose dated July 26, 2016. And I recognize you weren't copied on this letter, so it's really just a placeholder for the date than for any other reasons, so I don't expect you to have knowledge as to what led to this letter.

But my question is: Prior to July 26th, was your office in communication with lawyers from Norton Rose concerning this action?

R/F MR. MILNE-SMITH: We're not going to

Court File No. CV-16-11595-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

VIMPELCOM LTD., GLOBALIVE CAPITAL INC., UBS SECURITIES CANADA INC., TENNENBAUM CAPITAL PARTNERS LLC, 64NM HOLDINGS GP LLC, 64NM HOLDINGS LP, LG CAPITAL INVESTORS LLC, SERRUYA PRIVATE EQUITY INC., NOVUS WIRELESS COMMUNICAITONS INC., WEST FACE CAPITAL INC. and MID-BOWLINE GROUP CORP.

Defendants

ANSWERS TO UNDERTAKINGS AND QUESTIONS TAKEN UNDER ADVISEMENT AT THE CROSS-EXAMINATION OF ANDREW CARLSON HELD JUNE 28, 2017

Capitalized terms used in the chart below have the meanings given to them in the Affidavit of Andrew Carlson sworn December 7, 2016.

No.	Category	Question No.	Page No.	Undertaking / Question Taken Under Advisement	Answer
1	U/T	44-45	19-20	To review Davies' records and provide the dates in January 2016 on which the chambers appointments in the Plan of Arrangement Application took place.	As Mr. Milne-Smith answered on pages 21-22 of the transcript, chambers appointments in the Plan of Arrangement Application were held on Monday, January 4, and Monday, January 11, 2016. As

					further discussed on pages 32-33, 35-37, 42, & 45-46 of the transcript, further chambers appointments in the Plan of Arrangement Application were held on Monday, January 25 (in advance of the hearing of the Plan of Arrangement Application later that day), Wednesday, January 27, Monday, February 1, and Wednesday, February 3, 2016.
2	U/T	56-60	23-26	To review Davies' records and advise whether the email attached as Exhibit 1 to the Affidavit of Michael Leitner sworn January 7, 2016 (which was included in the Application Record of Mid-Bowline in the Plan of Arrangement Application served January 8, 2016) had been produced to Catalyst in the Moyse Litigation prior to January 2016.	The email attached as Exhibit 1 to the Affidavit of Michael Leitner sworn January 7, 2016 had not been produced to Catalyst in the Moyse Litigation prior to January 2016. However, as touched upon by Mr. Carlson on pages 24-25 of the transcript, this email was produced to Catalyst in the Moyse Litigation on Saturday, January 9, 2016, in conjunction with West Face's delivery of its Affidavit of Documents. To put this timing in perspective, Catalyst did not produce its documents in the Moyse Litigation until April 6, 2016.
3	U/T	64	27-28	To review Davies' records and advise whether West Face had, in the Moyse Litigation, produced to Catalyst any of West Face's correspondence with UBS or any member of the Consortium prior to January 2016.	Yes, prior to January 2016, West Face had, in the Moyse Litigation, produced to Catalyst some of West Face's correspondence with UBS and members of the Consortium. See, for example, Exhibits 2, 3, 4, 6, 21, & 22 to the Affidavit of Anthony Griffin sworn March 7, 2015, and Exhibits A, B, C, D, & E to the Affidavit of Anthony Griffin sworn May 6, 2015.
4	U/T	65-67	28-29	To confirm that Mr. Carlson did not attend the chambers appointment	As Mr. Carlson answered on page 30 of the transcript, he did not attend the

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and-

VIMPELCOM LTD. et al.
Defendants

Court File No. CV-16-11595-00CL

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PROCEEDING COMMENCED AT
TORONTO

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