

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

SUPPLEMENTARY RESPONDING MOTION RECORD OF THE PLAINTIFF

August 8, 2017

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West Face Capital Inc.

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TAB A

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

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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

AFFIDAVIT

I, Ashley McKnight, of the City of Oshawa in the Regional Municipality of Durham,
MAKE OATH AND SAY:

1. I am a legal assistant with the law firm of Lax O'Sullivan Lisus Gottlieb, the lawyers for the Plaintiff, and, as such, have knowledge of the matters contained in this affidavit.
2. Attached hereto as **Exhibit "1"** is an email chain with Anthony Lacavera, Newton Glassman and Gabriel de Alba ("de Alba"), dated July 29, 2014 (CCG0025823). This was Exhibit 5 to the trial affidavit of Simon Lockie, sworn June 6, 2016, which is attached to the West Face Motion Record at Volume 15, Tab 52, pgs. 6048-6067.
3. Attached hereto as **Exhibit "2"** is an email chain between Greg Boland ("Boland") and Michael Leitner ("Leitner"), dated July 21, 2014 (WFC0069995). This document is referenced in

the cross-examination of Anthony Griffin (“Griffin”), held June 9, 2016, the transcript of which is attached to the West Face Motion Record at Volume 17, Tab 66, pg. 7048.

4. Attached hereto as **Exhibit “3”** is an email being forwarded from Boland to Tom Dea (“Dea”), dated July 22, 2014 (WFC0059172). This was Exhibit 48 to the trial affidavit of Griffin, sworn June 4, 2016, which is attached to the West Face Motion Record at Volume 15, Tab 48, pgs. 5953-6003.

5. Attached hereto as **Exhibit “4”** is an email being forwarded from Boland to Peter Fraser (“Fraser”), Dea and Griffin, dated July 23, 2014 (WFC0048724). This was Exhibit 46 to the trial affidavit of Griffin, sworn June 4, 2016, which is attached to the West Face Motion Record at Volume 15, Tab 48, pgs. 5953-6003.

6. Attached hereto as **Exhibit “5”** is an email chain between Fraser, Leitner, Lawrence Guffey and others, dated August 1, 2014 (WFC0047832). This document was referenced in the cross-examination of Leitner, held June 9, 2016, the transcript of which is attached to the West Face Motion Record at Volume 17, Tab 70, pgs. 7264-7265.

7. Attached hereto as **Exhibit “6”** is an email being forwarded from Fraser to Griffin, Dea, John Maynard and others, dated August 7, 2014 (WFC0051622). This was Exhibit 51 to the trial affidavit of Griffin, sworn June 4, 2016, which is attached to the West Face Motion Record at Volume 15, Tab 48, pgs. 5953-6003.

8. Attached hereto as **Exhibit “7”** is an email chain between Leitner, Boland and Jordan Schwartz, dated August 15, 2014 (WFC0051186). This document was referenced in the cross-


examination of Griffin, held June 10, 2016, the transcript of which is attached to the West Face Motion Record at Volume 17, Tab 66, pg. 7124.

9. Attached hereto as **Exhibit “8”** an email chain between Fraser, Griffin and Boland, dated August 12, 2014 (WFC0051878). This document was referenced in the cross-examination of Griffin, held June 10, 2016, the transcript of which is attached to the West Face Motion Record at Volume 17, Tab 66, pg. 7122.

10. Attached hereto as **Exhibit “9”** are the answers to undertakings and questions taken under advisement at the cross-examination of Andrew Carlson, held June 28, 2017.

11. Attached hereto as **Exhibit “10”** are excerpts from the affidavit of Griffin, sworn March 7, 2015.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
August 8, 2017



Commissioner for Taking Affidavits
(or as may be)

Bradley W.T. Vermeersch
Barrister & Solicitor



ASHLEY MCKNIGHT

RCP-E 4D (July 1, 2007)

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT

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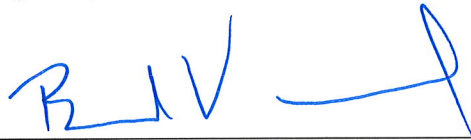
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Fax: 416 598 3730

Lawyers for the Plaintiff

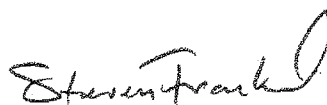
This is Exhibit "1" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. V.' followed by a stylized flourish.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

This is Exhibit "5" referred to in
the Affidavit of Simon Lockie
sworn before me this 6th day
of June, 2016

A handwritten signature in cursive script, appearing to read "Steven Frankel", written over a horizontal line.

A Commissioner, etc.

Steven G. Frankel

Message

From: Anthony Lacavera [AnthonyLacavera@Globalive.com]
Sent: 7/29/2014 11:52:38 AM
To: Glassman, Newton [nglassman@catcapital.com]; De Alba, Gabriel [gdealba@catcapital.com]
CC: Riley, Jim [jriley@catcapital.com]; Moshe Ronen [moshe@verdiroc.com]
Subject: RE: Confidential Updated Numbers

Hi Newton,

Thank you and all of the below is clear and understood. I am certainly positively supporting the Catalyst transaction, and will continue to do so on the basis that there is a potential investment participation opportunity in the go-forward. In fact I gave my necessary consent for the exclusivity with Catalyst when Vimpelcom approached me on that issue last week.

I continue to standby to assist where necessary/appropriate toward successfully concluding a transaction with Catalyst. My equity syndicate is also standing by to provide proof of funding in support of the transaction, and similar to your point below their support is of course subject to mutually agreeable terms with Catalyst, but diligence has been completed and the group is strategically beneficial to the go-forward business beyond their capital commitment. I maintain my commitment to investing a meaningful portion of my net worth as I believe so strongly in the opportunity.

If there is anything specific we can do to assist let us know, otherwise Brice and Simon will continue to advance the finance and regulatory issues and I can of course personally assist where needed, and meanwhile all of management is working on remaining diligence requests.

Best regards,

Tony

From: Glassman, Newton [mailto:nglassman@catcapital.com]
Sent: Tuesday, July 22, 2014 11:02 AM
To: Anthony Lacavera; De Alba, Gabriel
Cc: Riley, Jim; Moshe Ronen
Subject: Re: Confidential Updated Numbers

Hey, tony. As u can imagine, your email below puts us in a theoretically difficult position. IF we were in direct discussions w vimpelcom, we would most likely be subject to a confidentiality agreement that would prevent us from disclosing such and for sure the status of such wout their consent. If we r not involved w vimpelcom in such disclosing said lack of involvement could in theory hurt our position w other stakeholders in mobility. Therefore whether such is factually correct can neither be confirmed or denied.

The above being said, I can tell u the following in a theoretical way: if catalyst were in discussions or close to a deal as u allege below, 2 things r obvious:

1) we have always said and remain committed to the view that we would look to see if u could be involved SO LONG AS 2 conditions r met, namely that the terms of said involvement r economically reasonable and acceptable to catalyst AND that prior to such u personally IN NO WAY harmed or interfered w our getting an optimal deal done. That would include controlling any/all public statements etc that could hurt either a theoretical deal w vimpelcom or future discussions w the govt (whether such harm is/was intended or not);

2) anyone looking to do a 'build-out' will need enormous financial support and therefore ---in theory if catalyst were involved---it would absolutely and positively look to potentially include other like-minded investors. However, catalyst again would obviously only be positively inclined to include those that did not harm the process or catalyst's ability to optimally conclude a transaction in as timely a manner as possible.

Again, both the above r self-evident and would be true in ANY deal and obviously therefore neither confirms nor denies what u allege below.

Gabriel is the pt person on all catalyst telecom issues (including mobility) and will therefore confirm what I write above and when/if appropriate expand thereon--including reviewing any possible confi's that may or may not apply and/or discuss the situation w any counter-parties that may or may not have an interest in a situation and/or legal rights related thereto.

Hope all is well.

N.,

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Anthony Lacavera

Sent: Monday, July 21, 2014 11:07 PM

To: Glassman, Newton; De Alba, Gabriel

Subject: Re: Confidential Updated Numbers

Hi Newton, Gabriel,

I understand from Vimpelcom that we are close to a deal. Let me know if your intention is to include my own or my equity group or not (Michael and the other major investors which total 100m from 3 family offices are all standing by to confirm their firm intent with logical caveats - mainly that the first lien is sorted out and there is sufficient working capital to give the company ample runway to a new vendor facility and an LTE spectrum financing). I would like to contribute 15m myself, not in any way linked to my broader group's potential participation although they each can add value in different ways that I will outline.

Let me know if I/we are able to participate in your syndicate and on what terms.

Best regards,

Anthony

----- Original message -----

From: "Glassman, Newton"

Date: 07-20-2014 12:14 PM (GMT-05:00)

To: Anthony Lacavera, "De Alba, Gabriel"

Subject: Re: Confidential Updated Numbers

Hey, Anthony. Do u know if Michael is or come up to muskoka?

Newton Glassman
Managing Partner
Catalyst Capital Group Inc.,
TD Bank Centre
77 King St., W. Suite 4320
Toronto Ontario Canada
M5K 1J3

Office: (416)945-3030

Fax: (416)945-3060

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Anthony Lacavera

Sent: Sunday, July 20, 2014 10:00 AM

To: De Alba, Gabriel

Cc: Glassman, Newton

Subject: Confidential Updated Numbers

Hi Gabriel,

I have attached the updated numbers as discussed, please consider strictly confidential and not for circulation anywhere.

We have an assumption of a cost for spectrum of \$150m for AWS-3 or another spectrum solution from one of the other sources. We are of course going to be pushing for installment payments / payment terms with the government for AWS-3

Let me know when works to discuss, and when I may introduce you to Michael Serruya at this juncture if you would like to confirm the equity syndicate is real before going down this road given all of the starts and stops in the past.

Best regards

Tony

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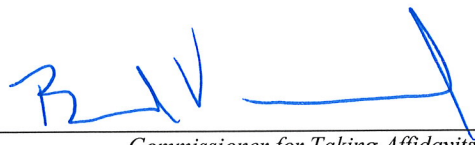
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This is Exhibit "2" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

- 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

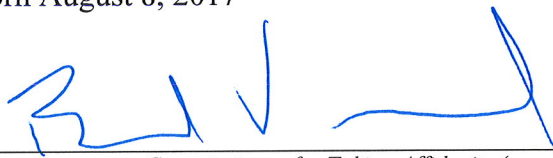
On Jul 21, 2014, at 1:16 PM, "- Greg Boland" <greg.boland@westfacecapital.com> wrote:

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

This is Exhibit "3" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

This is Exhibit "48" referred to in
the Affidavit of Anthony Griffin
sworn before me this 4th day
of June, 2016

A handwritten signature in black ink, appearing to be "RL", is written over a horizontal line.

A Commissioner, etc.

- 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

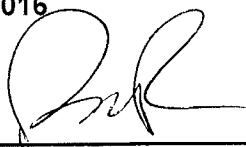
This is Exhibit "4" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

This is Exhibit "46" referred to in
the Affidavit of Anthony Griffin
sworn before me this 4th day
of June, 2016

A handwritten signature in black ink, appearing to be "D. K.", written over a horizontal line.

A Commissioner, etc.

- Greg Boland

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@qlc.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 120
Menlo Park, CA 94025
www.oakhillcapital.com

jfriesel@oakhillcapital.com
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(650) 234-0525 fax
(415) 987-0510 cell

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This is Exhibit "5" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017



Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

Peter Fraser

From: Peter Fraser
Sent: Friday, August 01, 2014 4:16 PM
To: Michael Leitner; Lawrence Guffey
Cc: Friesel, Jonathan; - Greg Boland; Tony Griffin; Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam; Levy, Kevin
Subject: RE: RE: Process w VIP

I will dial in then.
 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
 Email: peter.fraser@westfacecapital.com

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From: Michael Leitner [<mailto:Michael.Leitner@tennenbaumcapital.com>]
Sent: August-01-14 4:13 PM
To: Lawrence Guffey; Peter Fraser
Cc: Friesel, Jonathan; - Greg Boland; Tony Griffin; Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam; Levy, Kevin
Subject: RE: Process w VIP

Lets do 130pm pst/430pm est. JF cannot join, but just hung up with him. Lets use the number below

Int'l Di **Redacted**
 Dial In:
 Access

From: Lawrence Guffey [<mailto:lg@lgcap.com>]
Sent: Friday, August 01, 2014 1:04 PM
To: Peter Fraser
Cc: Michael Leitner; Friesel, Jonathan; - Greg Boland; Tony Griffin; Diesbach, Benjy; Patrick Scott; Robert Goldschein; Sean Berry; Hahn, Adam; Levy, Kevin
Subject: Re: Process w VIP

Also avail.

On Aug 1, 2014, at 3:46 PM, "Peter Fraser" <peter.fraser@westfacecapital.com> wrote:

I'm available.

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

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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 betterI 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

This message may contain information that is confidential. If you are not the intended recipient, any use or dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately. This communication constitutes neither an offer to sell nor a solicitation to purchase any investment product.

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.

This is Exhibit "6" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017



Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

This is Exhibit "51" referred to in
the Affidavit of Anthony Griffin
sworn before me this 4th day
of June, 2016

A handwritten signature in black ink, appearing to be "DML", is written above a horizontal line.

A Commissioner, etc.

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

This is Exhibit "7" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

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 least maximize 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 - cc'ing 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

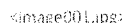
On Aug 12, 2014, at 4:54 PM, Michael Leitner <Michael.L@tennenbaumcapital.com> wrote:

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 it's 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.
 21000 Street East, Suite 3000 | Toronto, ON M4W 1A9
 Tel: 647.724.8903 | Fax: 647.724.8913

 Email: peter.fraser@westfacecapital.com

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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?
Thanks!
Peter

From: Jordan Schwartz <jordan.schwartz@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@jensenhaukecapital.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@mergence.com> wrote:

Still trying to connect with Michael S.

Sent from my iPhone

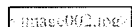
On Aug 10, 2014, at 6:27 PM, Michael Leitner <Michael.Leitner@jensenhaukecapital.com> wrote:

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@dwpx.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



Patrick Barry - Esq.

104 Water, Van Street Place 416.597.6957
Toronto, ON M5V 3A7 www.dwpx.com

DAVIES WARD PHILLIPS & VINEBERG LLP

For more information, please contact the sender or the person to whom this e-mail is addressed. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake. If you are not the named addressee and you are not sure whom you should contact, please contact the sender.

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@jensenhaukecapital.com); Tony Griffin; Patrick Scott
Subject: Equity Commitment

Hi Jordan:

I spoke with Pat Barry from Davies. He agrees that

Redacted

Redacted

Peter Fraser - West Face Capital Inc.
 2 Bloor Street East, Suite 3060 - Toronto, ON M4W 1A8
 Tel: 647-724-8903 Fax: 647-724-8910
 Email: peter.fraser@westfacecapital.com

<image001.jpg> Email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@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 3060 - Toronto, ON M4W 1A8
 Tel: 647-724-8903 Fax: 647-724-8910
 Email: peter.fraser@westfacecapital.com

<image001.jpg> Email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@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 3060 - Toronto, ON M4W 1A8
 Tel: 647-724-8903 Fax: 647-724-8910
 Email: peter.fraser@westfacecapital.com

<image001.jpg> Email: peter.fraser@westfacecapital.com

From: Jordan Schwartz [mailto:jordan.schwartz@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!
 416 409 5762
 Peter

Peter Fraser - West Face Capital Inc.
 2 Bloor Street East, Suite 3060 - Toronto, ON M4W 1A8
 Tel: 647-724-8903 Fax: 647-724-8910
 Email: peter.fraser@westfacecapital.com

<image001.jpg> Email: peter.fraser@westfacecapital.com

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

Thanks Tony,

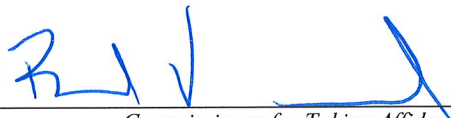
Peter, please let me know when might be a good time to connect by phone.

Regards,

Jordan

On Sat, Aug 9, 2014 at 6:16 PM, Anthony Lacavera
<AnthonyLacavera@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

This is Exhibit "8" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

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 ?

This is Exhibit "9" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017



Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

**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

**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 |

| | | | | | |
|---|-----|-------|-------|--|--|
| | | | | | <p>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.</p> |
| 2 | U/T | 56-60 | 23-26 | <p>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.</p> | <p>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.</p> |
| 3 | U/T | 64 | 27-28 | <p>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.</p> | <p>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.</p> |
| 4 | U/T | 65-67 | 28-29 | <p>To confirm that Mr. Carlson did not attend the chambers appointment</p> | <p>As Mr. Carlson answered on page 30 of the transcript, he did not attend the</p> |

| | | | | | |
|---|-----|-------|-------|---|--|
| | | | | held Monday, January 11, 2016 (in the Plan of Arrangement Application). | chambers appointment held Monday, January 11, 2016. |
| 5 | U/T | 68-69 | 29-30 | If Mr. Carlson attended the chambers appointment held Monday, January 11, 2016 (in the Plan of Arrangement), to produce any notes that he took of that appointment. | As Mr. Carlson and Mr. Milne-Smith answered on page 30 of the transcript, Mr. Carlson did not attend the chambers appointment held Monday, January 11, 2016 (and therefore has no notes of such appointment), and while Mr. Milne-Smith did attend that appointment, he took no notes of it. |

August 1, 2017

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSUC# 24264J)
Tel: 416.863.5566
Email: kentthomson@dwpv.com
Matthew Milne-Smith (LSUC# 44266P)
Tel: 416.863.5595
Email: mmilne-smith@dwpv.com
Andrew Carlson (LSUC# 58850N)
Tel: 416.367.7437
Email: acarlson@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Defendant
WEST FACE CAPITAL INC.

This is Exhibit "10" referred to in the Affidavit of Ashley McKnight
sworn August 8, 2017

A handwritten signature in blue ink, appearing to read 'B. Vermeersch', is written above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

BRADLEY VERMEERSCH

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

AFFIDAVIT OF ANTHONY GRIFFIN
(sworn March 7, 2015)

I, Anthony Griffin, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am one of four Partners of the Defendant/Responding Party West Face Capital Inc., a privately-held Toronto-based investment management firm with assets under management of approximately \$2.2 billion.¹ I have been a Partner of West Face since the Fall of 2006, shortly after West Face was founded. I was the Partner who initially had primary responsibility for the WIND transaction (discussed below), and continued to be involved throughout the transaction. I was also the Partner with primary responsibility for West Face's research regarding Callidus Capital Corporation. As such, I have personal knowledge of the information set out in this Affidavit, except

¹ Unless otherwise indicated, all dollar figures are in Canadian dollars.

- 2 -

where such knowledge is based on information from others, in which case I have stated the source of the information and believe it to be true.

2. I am swearing this Affidavit in response to the motion by the Plaintiff/Moving Party The Catalyst Capital Group Inc., seeking two forms of relief against West Face. First, Catalyst seeks an injunction restraining West Face from participating in the management and/or strategic direction of WIND Mobile Corp., a company in which West Face has invested more than \$150 million and in which funds controlled by West Face hold a 35.42% equity interest. Catalyst specifically seeks to enjoin West Face from participating in the advanced wireless services spectrum auction (the "**AWS-3 auction**")² that was recently conducted by Industry Canada. Second, Catalyst seeks an order authorizing an Independent Supervising Solicitor (an "**ISS**") to attend West Face's premises and create a forensic image of all of West Face's electronic devices, for the stated purpose of identifying whether West Face has misused any confidential information belonging to Catalyst.

3. Catalyst alleges that West Face misused confidential information disclosed to West Face by the Defendant/Responding Party Brandon Moyse. Mr. Moyse was a former junior employee of Catalyst who worked at West Face as a junior member of West Face's investment team for a three and a half week period in June and July 2014. On this motion, Catalyst alleges that Mr. Moyse disclosed, and that West Face has

² The AWS-3 auction is the auction of spectrum licenses for Advanced Wireless Services in the bands 1755-1780 MHz and 2155-2180 MHz (AWS-3). This is not to be confused with the auction of spectrum licenses for Broadband Radio Services (BRS) in the 2500-2690 MHz Band.

- 3 -

misused or will misuse, confidential information belonging to Catalyst and relating to three subjects:

- (a) the acquisition of WIND in September 2014 by a syndicate of investors that included West Face;
- (b) the AWS-3 auction recently conducted by Industry Canada, in which WIND participated; and
- (c) Callidus, a publicly-traded company owned 59.5% by Catalyst, and in particular the identity of companies to which Callidus has lent money.

4. None of these allegations is true. Catalyst has not identified any confidential Catalyst information in any way related to WIND, the AWS-3 auction, or Callidus that has been disclosed to West Face by Mr. Moyse. Further, as described below, the ISS appointed pursuant to a previous order of the court has conducted a review of Mr. Moyse's electronic devices, and found no evidence that Mr. Moyse disclosed to West Face any Catalyst confidential information in any way related to WIND, the AWS-3 auction, or Callidus.

Overview

5. West Face's interest in WIND dates back to at least November 2009, almost five years before Mr. Moyse joined West Face as a junior associate, and almost three full years before he was employed by Catalyst. Critically, the necessary deal elements for a successful bid to acquire WIND, including price, were not confidential to any particular bidder. Rather, VimpelCom Ltd. (WIND's principal equity-holder who controlled the sale process) and its financial advisor, UBS Investment Bank, had made it clear to all

- 4 -

interested purchasers, including West Face, that VimpelCom required an enterprise value of \$300 million and a transaction structure that minimized the regulatory risks that could prevent or delay closing.

6. Before Mr. Moyse joined West Face on June 23, 2014, West Face had already engaged in negotiations with VimpelCom to acquire WIND, had formulated a strategy to acquire WIND in concert with others, and had assembled the majority of the critical deal components that ultimately allowed it to participate successfully in the acquisition of WIND:

- (a) we had been in contact with Anthony Lacavera and Tennenbaum Capital Partners, both of which would ultimately form critical parts of the successful investor syndicate that acquired WIND as described below;
- (b) we had accepted VimpelCom's demand for an enterprise value in the range of \$300 million for WIND; and
- (c) we knew from our communications with VimpelCom's financial advisor UBS that VimpelCom wanted to sell its entire interest in WIND quickly, while minimizing risk of regulatory approval.

7. Tennenbaum and Mr. Lacavera ultimately proved critical in assisting West Face and its partners to structure a transaction that was satisfactory to VimpelCom.

8. Mr. Moyse worked at West Face as a junior associate for three and a half weeks, from June 23, 2014 to July 16, 2014. Before he even arrived at the firm, West Face implemented a confidentiality wall to ensure that Mr. Moyse did not disclose any confidential Catalyst information he may have possessed to West Face relating to WIND or the AWS-3 auction.

- 5 -

9. Specifically with respect to WIND, during the short period in which Mr. Moyse worked for West Face, West Face was pursuing the WIND transaction with another strategic partner that ultimately declined to participate. In other words, while Mr. Moyse was at West Face, we were pursuing what proved to be a dead end, and even so, Mr. Moyse had no involvement in those negotiations.

10. On July 16, 2014, Mr. Moyse agreed to an interim consent order (the "**July 16 Consent Order**") precluding him from working at West Face. At that time, Mr. Moyse was immediately placed on indefinite leave by West Face. Since then, Mr. Moyse has performed no work for West Face and has had no involvement in any investment analysis or decision-making at West Face.

11. One week after Mr. Moyse was placed on leave by West Face, Greg Boland, West Face's CEO, was informed by UBS that VimpelCom had granted another party (which we now know to be Catalyst) exclusive rights to negotiate a binding agreement to acquire WIND. By that time, Mr. Moyse was on leave from West Face, and West Face was shut out from negotiations. However, Catalyst failed to reach a definitive agreement with VimpelCom to acquire WIND during its exclusivity window, which expired on August 18, 2014. As described below, Catalyst's failure to do so was entirely its own doing, and was in no way attributable to West Face, Mr. Moyse, or any alleged disclosure of confidential information.

12. After Catalyst's exclusivity period expired on August 18, 2014, West Face and its partners, including Tennenbaum and Mr. Lacavera, moved swiftly to conclude a deal with VimpelCom. West Face had been working on-and-off with those partners for

- 6 -

months before Mr. Moyse ever joined West Face, and Mr. Moyse had already been on indefinite leave from West Face for over one month by that point. The first phase of the WIND transaction closed on September 16, 2014, less than one month later, on a basis consistent with the previously disclosed deal parameters demanded by VimpelCom and UBS.

13. Mr. Moyse remains on indefinite leave from West Face today, and therefore was on leave for the entire period of the negotiation and consummation of the WIND transaction. No members of West Face's WIND deal team communicated at all with him about WIND during this period, and he played no role whatsoever in the WIND transaction.

14. Not content with this result, Catalyst has now attacked West Face on multiple fronts. It makes a bald allegation that the WIND acquisition was achieved as a result of West Face obtaining and misusing unspecified confidential information belonging to Catalyst. It has alleged that West Face misused further unspecified confidential Catalyst information on WIND's behalf in the AWS-3 auction, an allegation that would now appear to be not only incorrect but also moot, as WIND has been reported to have been the only bidder on spectrum set aside for new entrants in Ontario, Alberta and British Columbia, based on comments made by the Honourable James Moore, Federal Minister of Industry. Catalyst has also alleged that West Face misused unspecified confidential information of Catalyst relating to its subsidiary Callidus.

15. Catalyst makes these allegations in the face of the ISS's conclusion that there is no evidence on Mr. Moyse's electronic devices that he disclosed Catalyst confidential

- 7 -

information to West Face concerning WIND, the AWS-3 auction, or Callidus. Dissatisfied with that result, Catalyst now also attacks the conclusions of the ISS.

16. To repeat, none of Catalyst's allegations about misuse of confidential information is true. In fact, Catalyst has not and cannot specify what confidential WIND, AWS-3 auction, or Callidus information Mr. Moyse is alleged to have disclosed to West Face, let alone how that information could have given West Face an advantage.

17. West Face, WIND, and WIND's other investors will be seriously damaged if West Face is enjoined from participating in the management and/or strategic direction of WIND and its affiliates and related parties, and particularly in respect of the AWS-3 auction. Spectrum auctions only occur infrequently when deemed appropriate by Federal authorities. West Face currently has two nominees to WIND's ten member board of directors, and plays an important role in providing strategic advice, direction and support to WIND, as it continues to challenge Canada's three incumbent national wireless service providers. Furthermore, as an investment manager, West Face has a fiduciary duty to manage its investments, including WIND, in the best interests of its many third-party investors. As the owner of 35% of WIND's equity, West Face is the natural lead investor for the current syndicate of investors of WIND. Enjoining West Face from participating in the management and/or strategic direction of WIND would prevent West Face from fulfilling this duty, and would harm West Face and its investors.

18. Granting the requested injunction would also interfere with Industry Canada's stated policy of encouraging the growth and viability of a fourth national wireless service provider (and WIND is currently the only solvent national challenger to the three

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incumbent national wireless providers). Wireless spectrum is the lifeblood of a wireless business like WIND, and it is essential that West Face, as the largest equityholder of WIND, be able to participate in that process.

19. Catalyst alleges in paragraph 90 of James Riley's Affidavit that West Face might harm "Catalyst's contingent interest in Wind". While there is no basis for Catalyst's claim that it is the beneficial owner of West Face's interest in WIND, to the extent that Catalyst now claims a constructive trust over West Face's interest in WIND, Catalyst's and West Face's interests are aligned. West Face has managed and will continue to manage its investment in WIND to maximize shareholder value.

20. Catalyst also appears to be trying to weaken WIND and disadvantage West Face by disseminating its allegations on this motion against West Face through the media. A National Post article dated November 24, 2014 quotes from Catalyst's Statement of Claim and quotes unnamed "people familiar with the sales process" for WIND, and based on my discussions with West Face's WIND deal team, none of them spoke to the media.³ As explained in more detail below, Catalyst even appears to have arranged for the court file (which it claimed on the earlier motions included its confidential information) to be unsealed and open for public view so that third parties, including the media, could review its allegations on this motion in order to disseminate them against West Face more broadly. Further, Catalyst has repeated its allegations in this motion to investors in West Face managed funds and others who do business with West Face,

³ A copy of the National Post article dated November 24, 2014 is attached as Exhibit "1".

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and encouraged them to withdraw their investments from investment funds managed by West Face and cease doing business with West Face.

About West Face

21. West Face is a Toronto-based investment management firm. It was founded in 2006. West Face employs 38 staff in Toronto (including two part-time employees), and manages a number of investment funds and accounts covering a broad range of investment strategies. West Face currently manages approximately \$2.2 billion in assets on behalf of third parties that have invested in funds managed by West Face.

22. West Face is led by its Chief Executive Officer, Greg Boland, along with three other Partners: Peter Fraser, Thomas Dea, and me. The four Partners have, on average, over twenty years of experience in the financial industry and draw on a deep network of strong relationships to provide a unique pipeline of investment opportunities.

23. As part of its business, West Face monitors and researches potential investments for the funds that it manages, including potential investments in privately-owned entities like WIND and publicly-traded entities like Callidus.

Background to the WIND Transaction

WIND and the Regulatory Environment

24. WIND is a Canadian wireless telecommunications provider that was originally formed in 2008 pursuant to a joint venture between two parties: (1) AAL Corp., which was the holding company of Mr. Lacavera and the owner of Globalive Communications

- 29 -

on the basis that such documents are not relevant to Catalyst's motion. Mr. Mitchell responded to Mr. Winton's letter on February 27, 2015.¹⁷

New Investor Syndicate Reaches Agreement to Acquire WIND

75. By early August 2014, Tennenbaum, West Face and LG Capital Investors (collectively, the "**New Syndicate**") began work on a proposal that would avoid the need for regulatory approval prior to the full exit of VimpelCom by leaving AAL in place as the majority owner of the voting shares of WIND, with the New Syndicate providing a majority of the financing to buy out VimpelCom. The New Syndicate would take non-voting shares and thereby largely assume the regulatory risk itself. WIND's existing third party debt would be refinanced by another investment firm with which Tennenbaum had a relationship.

76. The risk of this approach to the new investors was that AAL would have full voting control of WIND until regulatory approval was obtained, despite only contributing approximately 25% of the equity funding for the transaction. While AAL would commit to support a post-closing reorganization that would allow the New Syndicate members to acquire their proportionate shares of the voting interests in WIND, the reorganization would require regulatory approval. If that approval was denied, the members of the New Syndicate would have been required to remain in a non-voting equity position.

77. The advantage of this two-stage approach was to meet VimpelCom's need for a transaction that carried no regulatory risk to VimpelCom and that permitted VimpelCom

¹⁷ Copies of these pieces of correspondence are attached as Exhibits "**17**", "**18**", "**19**" and "**20**".

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to receive its consideration immediately upon signing of the purchase agreement, rather than waiting until after regulatory approval had been obtained. These advantages were only possible with the participation of AAL. West Face's relationships with AAL and Mr. Lacavera went back to at least November 2009, and had been more recently rekindled through my conversation with Mr. Lacavera on November 4, 2013, not from anything Mr. Moyse did or said. The New Syndicate submitted this proposal to VimpelCom on August 7, 2014, though we learned at that time that VimpelCom would not consider the proposal while it was engaged in exclusive negotiations.

78. However, also on August 7, 2014, AAL advised the New Syndicate that it had entered into a support agreement with VimpelCom and was required to cease discussions with the New Syndicate.¹⁸ The deal remained in Catalyst's hands at that time, and we believed that our chances of proceeding with the transaction were essentially nil.

79. The exclusivity period expired on August 18, 2014, and the New Syndicate moved quickly to get a deal done. On August 21, 2014, VimpelCom agreed with West Face that it would not enter into another exclusivity arrangement with any party until August 25, 2014. West Face's understanding was that the New Syndicate needed to present an acceptable deal structure by that time if it wanted to be considered for exclusive negotiations on that date.

80. On August 23, 2014, West Face's counsel delivered a revised proposal on behalf of the New Syndicate that addressed certain concerns raised by VimpelCom with the

¹⁸ A copy of Mr. Lacavera's email to this effect is attached as Exhibit "21".

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transaction structure in the New Syndicate's proposal from August 7, 2014. On August 25, 2014, West Face's counsel delivered to VimpelCom's counsel an executed conditional financing commitment letter on behalf of the New Syndicate, AAL and two other investors who would be co-investing with AAL.¹⁹ VimpelCom thereafter granted exclusive negotiating rights to the New Syndicate, and further negotiations continued. In particular, VimpelCom remained concerned that, notwithstanding the proposed two-stage transaction, Industry Canada would take the position that approval was required for the first stage. To alleviate VimpelCom's concerns, the New Syndicate gave a representation that no regulatory approval was required to close the first phase of the transaction (whereby VimpelCom would be paid), and also agreed to indemnify VimpelCom in the event this representation was wrong. Ultimately a definitive purchase agreement was signed and the transaction closed on September 16, 2014.²⁰

Events Subsequent to the July 16 Consent Order

81. The interlocutory motion was ultimately heard on October 27, 2014 by Mr. Justice Lederer. The court issued its decision on November 10, 2014 (the "**November Decision**"), granting an interlocutory injunction enjoining Mr. Moyse from disclosing any confidential information belonging to Catalyst, or competing with Catalyst until December 22, 2014 (being the date six months after he left employment with Catalyst), and directing the ISS to review the image of Mr. Moyse's personal electronic devices.

¹⁹ A copy of this letter is attached as Exhibit "**22**".

²⁰ A copy of a press release announcing the deal is attached as Exhibit "**23**".

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82. Following the November Decision, the parties negotiated and agreed to a protocol pursuant to which Mr. Moyse's forensic images were to be reviewed by the ISS. The protocol was signed by the parties on or about December 12, 2014 (the "**ISS Protocol**").²¹

83. As indicated in the ISS Protocol, West Face was not involved in the process leading up to the preparation of the ISS report. The only time that West Face was to become involved was if the ISS found in its report that Catalyst's confidential information was transferred to West Face, in which case West Face was entitled to disclosure of that portion of the report, and was entitled to seek further orders from the court for further productions of the report.

84. The ISS Protocol contemplated that a draft report would be prepared by the ISS, for comment by Mr. Moyse. Before receiving even a draft report from the ISS, on January 13, 2015, Catalyst served the original Notice of Motion for this motion. At that time, the motion was based on the number of "hits" resulting from the very general search terms that Catalyst had put forward.

85. On February 6, 2015, we received a copy of Catalyst's Amended Notice of Motion in which it alleges that Mr. Moyse has acted in contempt of the July 16 Consent Order. West Face had no involvement in the imaging of Mr. Moyse's hard drive or his use of his home and personal devices, and until reading the allegations contained in Catalyst's Amended Notice of Motion, had no information or knowledge of the assertions being made against him.

²¹ A copy of the ISS Protocol is attached as Exhibit "**24**".

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86. On February 10, 2015, after it had served its motion materials, Catalyst's counsel provided a redacted version of the draft ISS report to our counsel. It appears from the draft ISS report that Catalyst's assertion that there were an "unexplainably large number of 'hits'" referenced in its Amended Notice of Motion and stated as the basis for the claim of misuse of confidential information is not accurate. In fact, it appears from the ISS report that the ISS advised Catalyst as early as December 16, 2014 that the ISS was concerned that Catalyst's list of proposed search terms "might generate an excessively large number of 'hits'", because the keywords were insufficiently distinctive and as such might return large volumes of irrelevant or duplicative data.²²

87. The final ISS report was issued on February 17, 2015.²³ The ISS reviewed Mr. Moyse's hard drive, his smartphone and his iPad. The ISS found no evidence that Mr. Moyse had provided any of Catalyst's confidential information to West Face concerning WIND, the AWS-3 auction, or Callidus. The only evidence that the ISS found that Mr. Moyse had provided any kind of "confidential information" to West Face was an email in which Mr. Moyse provided West Face with his Catalyst employment contract, referred to in paragraph 42 of the ISS report. The ISS report also acknowledged at paragraph 43 that Mr. Moyse had previously sworn that he sent an email to West Face on March 27, 2014 (referred to above). Both of these transmissions occurred before Mr. Moyse was employed by West Face, were disclosed on the prior injunction motion, and they do not include any information about WIND, the AWS-3 auction or Callidus.

²² A copy of the redacted version of the draft ISS report is attached as Exhibit "**25**".

²³ A copy of the final ISS report is attached as Exhibit "**26**".

TAB B

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

ANDREW CARLSON

June 28, 2017

neesons

77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

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.

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

2

3 Andrew Winton, Esq., for the Plaintiff.

4

5 Matthew Milne-Smith, Esq., for the Defendant,
6 West Face Capital Inc.

7

8 Michael Bookman, Esq., for the Defendant,
9 Vimpelcom Ltd.

10

11 Caitlin Sainsbury, Esq., for the Defendant,
12 Globalive Capital Inc.

13

14 Kiran Patel, Esq., for the Defendants,
15 LG Capital Investors LLC,
16 64NM Holdings GP LLC
17 64NM Holdings LP
18 Tennenbaum Capital
19 Partners LLC.

20

21 Junior Sirivar, Esq., for the Defendant,
22 Novus Wireless
23 Communications Inc.

24

25 REPORTED BY: Judith M. Caputo, RPR, CSR, CRR

I N D E X

WITNESS: ANDREW CARLSON

PAGE

CROSS-EXAMINATION BY MR. WINTON..... 5

* * * The following list of undertakings,
advisements and refusals is meant as a guide only
for the assistance of counsel and no other purpose * * *

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T
and appear on the following pages: 19:21, 20:3,
26:6, 27:13, 29:10, 29:19

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
(None.)

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and
appear on the following pages: 52:25

INDEX OF EXHIBITS

| NUMBER/DESCRIPTION | PAGE NO. |
|---|----------|
| 1: Notice of Application dated December 23, 2015. | 10 |
| 2: E-mail from M. Milne-Smith to L. Rowley, et al, dated January 6, 2016. | 21 |
| 3: E-Mail from M. Milne-Smith to R. DiPucchio, et al, dated January 22, 2016. | 35 |
| 4: E-Mail Chain from R. DiPucchio to M. Milne-Smith, et al, dated January 26, 2016. | 38 |
| 5: E-Mail from M. Milne-Smith to R. DiPucchio, et al, dated January 26, 2016. | 41 |
| 6: E-Mail from T. Kent to R. DiPucchio, et al, dated January 31, 2016. | 44 |

1 -- Upon commencing at 10:07 a.m.

2

3 ANDREW CARLSON: AFFIRMED.

4 CROSS-EXAMINATION BY MR. WINTON:

5 1 Q. Good morning, Mr. Carlson.

6 A. Good morning.

7 2 Q. This is a cross-examination on the
8 affidavit you swore December 7, 2016, right?

9 A. Yes.

10 3 Q. You have a hardcopy of your
11 affidavit in front of you?

12 A. I do.

13 4 Q. If you can turn to paragraph 9, please.

14 A. Yes, I'm there.

15 5 Q. Now, in the body of the paragraph,
16 in the first sentence, your evidence was that
17 Catalyst was aware West Face had made an
18 acquisition proposal to Vimpelcom in August 2014.

19 And I just want to stop there, because
20 I want to clarify. Is the suggestion that Catalyst
21 was aware in August 2014 that West Face had made
22 the proposal? Or are you referring to the timing
23 of the proposal that was delivered by West Face?

24 A. Well, it's both.

25 So Mr. de Alba's evidence was, that he

1 was made aware of the August 7th proposal of the
2 new investor group as we have previously defined
3 them. And that he was aware of that proposal in
4 and around the time of the events in question.

5 6 Q. Okay. Well, I just want to
6 clarify, because in the quotation from
7 Mr. de Alba's cross-examination included in your
8 affidavit, would you agree that Mr. de Alba could
9 not pinpoint whether it was August or September of
10 2014?

11 A. I agree.

12 7 Q. And so his evidence was not it was
13 August; it was, to be more precise, it was August
14 or September?

15 A. That's correct.

16 8 Q. If you can turn to paragraph 35 of
17 your affidavit.

18 A. Yes.

19 9 Q. The application for approval of
20 the Mid-Bowline Plan of Arrangement was commenced
21 on December 23, 2016, right?

22 MR. DEFT: '15.

23 MR. WINTON: '15, thank you.

24 BY MR. WINTON:

25 10 Q. 2015; is that correct?

1 A. That's right.

2 11 Q. And at paragraph 37 states that
3 the motivation for proceeding by way of Plan of
4 Arrangement, was to transfer or sell the shares of
5 Mid-Bowline to Shaw, free and clear of Catalyst's
6 claim for Constructive Trust over West Face's
7 interest in WIND, right?

8 A. That's correct.

9 12 Q. Now, your firm was counsel to
10 Mid-Bowline on the application?

11 A. That's right.

12 13 Q. And you were also counsel to West
13 Face at the same time?

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

16 14 Q. And in connection with the
17 application?

18 MR. MILNE-SMITH: Hang on a second.

19 I'm just going to intervene here
20 because I don't think Mr. Carlson was necessarily
21 privy to the retainers in question. If it's okay
22 with you, I will answer the question.

23 MR. WINTON: Sure.

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

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

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

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

13 BY MR. WINTON:

14 15 Q. Thanks, that's helpful.

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

17 A. Thank you.

18 16 Q. This starts with the
19 Volume 1 of the application record for approval of
20 the Plan of Arrangement. And what I've included
21 here is the index, and then the note, the Notice of
22 Application, which starts at page 2902 of the
23 record.

24 A. I see that.

25 17 Q. Okay. And the Notice of

1 Application, if you turn to paragraph 2904 in
2 paragraph 1, attaches to it as Appendix A, a Plan
3 of Arrangement, right?

4 A. That's right.

5 18 Q. Okay. And so Appendix A is also
6 included in what I have handed out to you, and that
7 begins at page 2909 of the record. And that is the
8 Plan of Arrangement that Mid-Bowline was seeking to
9 have approved by the court, correct?

10 A. That's correct.

11 19 Q. And if you turn to the last page
12 of what I've handed you -- sorry, no. 2915 of the
13 record, which is page D-7 of the plan, ends at part
14 4.3 of the plan; do you see that?

15 A. I'm on page 2915, yes.

16 20 Q. Okay. And if you turn over the
17 next page, it immediately stops at the tab B. And
18 the reason I'm pointing this out is, it appears
19 that the complete Notice of Application or the
20 complete plan wasn't attached to your record.

21 A. Oh, I see that.

22 21 Q. And no doubt inadvertently.

23 So what I'm going to hand to you now is
24 just a freestanding copy of the Notice of
25 Application. And if you turn to page D-7 of the

1 plan attached here, you'll see it actually
2 continues on with two more pages of the plan.

3 A. Yes.

4 22 Q. No doubt were inadvertently left
5 out of the record?

6 MR. MILNE-SMITH: Thank you for
7 completing that.

8 MR. WINTON: Yes. And so I'll start by
9 asking if we can make this an exhibit to the
10 cross-examination.

11 MR. MILNE-SMITH: Please.

12 MR. WINTON: Okay. So I'll just mark
13 this at the top, Exhibit 1. And we'll get a stamp
14 later for it.

15 EXHIBIT NO. 1: Notice of Application
16 dated December 23, 2015.

17 BY MR. WINTON:

18 23 Q. And just to point out that the
19 portion of the plan that effects the Catalyst claim
20 is Sections 4.4 and 4.5 on page D-8 of the plan.
21 You can have a look at it if you want.

22 A. Sure, let me just read those
23 provisions.

24 24 Q. Sure.

25 A. (Witness reviews document).

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

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

8 25 Q. Okay. Well, I'm going to ask
9 then, my understanding had been that these were the
10 two provisions.

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

17 A. (Witness reviews document).

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

21 26 Q. Okay.

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

24 27 Q. On page D-5?

25 A. That is correct. You'll see at

1 the bottom, the bottom of that paragraph:

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

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

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

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

1 claim for Constructive Trust.

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

5 MR. MILNE-SMITH: Yes.

6 MR. WINTON: Thank you.

7 BY MR. WINTON:

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

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

16 A. That's right.

17 29 Q. And if you then look at 4.5, and
18 in particular the third part of that provision, it
19 says that from and after the effective time -- I'm
20 going to skip to number three:

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

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

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

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

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

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

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

1 MR. WINTON: Okay.

2 MR. MILNE-SMITH: But go ahead.

3 THE WITNESS: Yeah, that's right. And
4 I mean, we should also point out that this was, of
5 course, the Plan of Arrangement that was initially
6 attached to the Notice of Application, and it's not
7 the Plan of Arrangement that was ultimately
8 approved by the Court.

9 BY MR. WINTON:

10 30 Q. I'm well aware of that. That's
11 what part of the point of my question was --

12 A. Right.

13 31 Q. -- to whether the paramountcy
14 provision 4.5 as initially drafted and for which
15 approval was sought, would have actually released
16 the entirety of the claim against West Face that
17 had been advanced by Catalyst?

18 A. Sorry, the entirety of the Moyse
19 action?

20 32 Q. As against West Face.

21 A. Well, any part of that claim that
22 was based on, or in any way relating to any of the
23 purchase shares or options, would have been
24 released.

25 33 Q. Thank you.

1 A. But, you know, for example, at the
2 time the Statement of Claim in the Moyse action
3 also included allegations regarding Mobilicity.
4 And I doubt that those shares meet these
5 definitions of purchase shares or options, for
6 example.

7 34 Q. Okay. But to the extent that
8 there would have been a claim for damages in
9 relation to the purchase of WIND, that claim would
10 have been released?

11 A. That's right.

12 35 Q. If you turn to paragraph 41 of
13 your affidavit.

14 A. Yes, I'm there.

15 36 Q. Actually, let's start at
16 paragraph 40. You refer in paragraph 40 to a
17 series of 9:30 a.m. chambers appointments before
18 Justice Newbould in January 2016.

19 And if we just maybe go through that.
20 I think we're in agreement, do you recall, the
21 first of those appointments was held January 4,
22 2016?

23 A. I don't remember.

24 37 Q. Well, I'm going to hand you an
25 e-mail and see if this will assist your memory.

1 That's an e-mail -- and I actually only
2 printed one copy, but I think we can work off a
3 single copy.

4 It starts at the bottom with an e-mail
5 from Mr. Milne-Smith to really myself and
6 Mr. DiPucchio, I think you're copied. And it's
7 mid-day, January 4th, in which Mr. Milne-Smith
8 points out that while the Lax firm is just getting
9 up to speed on this application, wanted to know
10 what the position was, because the intention was to
11 file materials shortly. Is that a fair summary of
12 that e-mail?

13 A. Yes, that's a fair summary.

14 38 Q. And then the next response back
15 from Mr. DiPucchio is that there's an intention to
16 seek instructions that day, and after which there
17 would be a response from Catalyst?

18 A. Yes. He says he's seeking
19 instructions and will get back to us.

20 39 Q. Okay. And then there's a bit of
21 back and forth, I believe, between Mr. Milne-Smith
22 and Mr. DiPucchio. But the essence of it was, as
23 of January 4th, that was when there was the inquiry
24 from West Face and the response from Catalyst --
25 West Face's counsel and the response from Catalyst

1 counsel is, we'll make inquiries and get back to
2 you, fair?

3 A. Yes, about the nature of the
4 position that Catalyst would be taking in response
5 to the application.

6 40 Q. Okay.

7 MR. WINTON: I don't know if there's a
8 need to make that an exhibit in this cross. I try
9 to keep this kind of stuff out if we can help it.

10 MR. MILNE-SMITH: I don't need to if
11 you don't.

12 MR. WINTON: Thank you.

13 BY MR. WINTON:

14 41 Q. And then the response, or the
15 position that comes from Catalyst is set out in a
16 letter from Mr. DiPucchio dated January 6, 2016
17 which I've just handed to you --

18 MR. MILNE-SMITH: Sorry, just before
19 you go on.

20 MR. WINTON: Yes?

21 MR. MILNE-SMITH: I thought your point
22 about your January 4th e-mail was showing that
23 there's a case conference on that date. I didn't
24 see a reference to that.

25 MR. WINTON: Right. So let me --

1 BY MR. WINTON:

2 42 Q. Does it refresh your memory then
3 that the e-mail for Mr. Milne-Smith followed after
4 a 9:30 appointment before Justice Newbould?

5 A. It does not. I mean, I don't know
6 if the e-mail refreshes my memory, but I think
7 there was a 9:30 appointment on January 9th,
8 whatever the Monday was, and there may have been
9 one the week before, but I'm not sure.

10 So just to be clear. I did not attend
11 the January 9:30s, to my recollection.

12 43 Q. Oh.

13 A. Which is why I don't have a firm
14 memory of when they occurred.

15 44 Q. Okay. Well, I'll put it this way.
16 There's a reference in your affidavit
17 to a series of 9:30 appointments. Would it be
18 possible, Counsel, that Mr. Carlson can provide us
19 with the dates that those 9:30 appointments took
20 place?

21 U/T MR. MILNE-SMITH: We will review our
22 records and let you know what we can find. I'm
23 actually just trying to do that now.

24 BY MR. WINTON:

25 45 Q. And if you can find them, will you

1 just confirm what dates those appointments were
2 held?

3 U/T MR. MILNE-SMITH: Yes.

4 MR. WINTON: Thank you.

5 BY MR. WINTON:

6 46 Q. Now, you have the letter before
7 you from Mr. DiPucchio dated January 6th, marked
8 with prejudice, and it sets out the response.

9 And just on page 2 of the letter,
10 you'll see there was an offer, or proposal is how
11 it's termed, from Mr. DiPucchio, as to how to
12 compromise the situation in a manner that would
13 have, as Mr. DiPucchio puts it, "remove the need
14 for the four-day hearing scheduled later that
15 month"; do you see that?

16 A. I do.

17 47 Q. All right. And just to be clear
18 for the record, this proposal, or this letter is
19 part of Exhibit 26 to your affidavit. So it's
20 already in our motion record, and I just want to
21 give that reference.

22 And the response to that proposal was,
23 it was rejected by West Face. And because it was
24 rejected by West Face, it was therefore
25 unacceptable to Mid-Bowline; is that correct?

1 A. That's right.

2 48 Q. I should have handed you that
3 first, that's the e-mail from Mr. Milne-Smith that
4 confirms that the proposal is not acceptable to
5 West Face and, therefore, not to Mid-Bowline?

6 A. Yes, I remember this one. I knew
7 you were referring to this one.

8 MR. WINTON: Okay. I think I'll make
9 that as the next exhibit, because I'm not sure
10 that's in the record.

11 So this Exhibit 2 will be the e-mail
12 from Mr. Milne-Smith to Lynn Rowley and Andrew
13 Carlson and copied to Mr. DiPucchio, myself and
14 Lauren Epstein dated January 6, 2016.

15 EXHIBIT NO. 2: E-mail from M. Milne-Smith
16 to L. Rowley, et al, dated January 6, 2016.

17 BY MR. WINTON:

18 49 Q. Then following, or two days after
19 this e-mail from Mr. Milne-Smith is when
20 Mid-Bowline delivers its application record, which
21 if you look it's referred to in paragraph 41 of
22 your affidavit, right?

23 A. Right.

24 MR. MILNE-SMITH: Counsel, just pausing
25 there. I've checked my calendar, and I think this

1 would be the best we can do.

2 MR. WINTON: Yes.

3 MR. MILNE-SMITH: I have a reference to
4 a 9:30 appointment -- 9:30 appointments on
5 January 4th and January the 11th.

6 MR. WINTON: Thank you.

7 THE WITNESS: So those were the
8 Mondays.

9 MR. MILNE-SMITH: Right. Those were
10 the Mondays. Sorry to interrupt.

11 MR. WINTON: That's fine. Thank you
12 for that.

13 BY MR. WINTON:

14 50 Q. And then on the 8th when the
15 record is served, it includes among other things,
16 affidavits from Hamish Berg, Michael Leitner, who
17 are representatives of members of the consortium
18 that purchased WIND, right?

19 A. That's right.

20 51 Q. And then also the affidavit of
21 Simon Lockie, on behalf of Globalive, which is it
22 fair to say at that point was Globalive was also a
23 consortium member?

24 A. I think what we've been doing is
25 defining the zone consortium as all of the entities

1 that ultimately purchased WIND and owned WIND
2 through the Mid-Bowline entity.

3 52 Q. Globalive was one of those
4 entities?

5 A. That's right.

6 53 Q. All right. Thank you for that.

7 So three consortium members in addition
8 to West Face swore affidavit in support of the
9 application?

10 A. That's right.

11 54 Q. And you'd agree that prior to the
12 delivery of this application record, there had been
13 no evidence from those individuals in the Moyse
14 action?

15 A. Not from those individuals, no.

16 55 Q. Right. I left Mr. Griffin out of
17 that, because we know Mr. Griffin did swear his
18 affidavit in March of 2015, right?

19 A. That's right.

20 56 Q. And was cross-examined on that,
21 right?

22 And I'm going to hand you, as part of
23 Exhibit 9 of your affidavit, I'm handing you a copy
24 just of the affidavit of Mr. Griffin.

25 That's Mr. Griffin's affidavit, so that

1 is part of, as I said, Exhibit 9 to your affidavit.
2 And you may want to take a moment to review it, or
3 maybe we can do it this way. I'm going to hand you
4 now as well, a copy of Mr. Leitner's *g affidavit
5 in the application. This is part of Exhibit 22 of
6 your affidavit.

7 If you turn to Exhibit 1, so the very
8 end of Mr. Leitner's -- of what I've handed you as
9 Exhibit 1 of Mr. Leitner's affidavit, and that's
10 the e-mail dated August 7, 2014 from Mr. Leitner to
11 among others, Faaiz Hasan, Felix Saratovsky,
12 Jonathan Herbst, and just pausing there.

13 Would you agree with me that prior to
14 January of 2016, for example, this e-mail was not
15 part of the evidentiary record in the Moyse action?

16 A. I can go back and check that.

17 57 Q. Okay.

18 A. That accords with my recollection,
19 but of course there was a lot of material filed in
20 the action by that point. And I believe we
21 produced our Affidavit of Documents more or less
22 contemporaneously with the -- I believe we produced
23 our Affidavit of Documents in the Moyse action more
24 or less contemporaneously with the delivery of the
25 Notice of Application or sorry, with the

1 application record in the Plan of Arrangement
2 application.

3 58 Q. Okay.

4 A. And that production in the Moyse
5 action may well have included this e-mail. I don't
6 recall whether this e-mail had been previously
7 included in one of the prior motion records of
8 West Face.

9 59 Q. Right. And so I think the point
10 of my question was to focus on prior to
11 January 2016.

12 I think we're agreed that the Affidavit
13 of Documents you're referring to was delivered in
14 January 2016, right?

15 A. That's right.

16 60 Q. And so prior to January 2016, from
17 my review of the record, this e-mail had not been
18 disclosed or produced if -- I'll take it that
19 accords with your recollection, but I just want to
20 make sure we can get it to fin advance *g on that
21 point?

22 MR. MILNE-SMITH: I think we'll have to
23 review the records. He said he can't remember for
24 sure. We obviously know that the Griffin affidavit
25 referred to the August 2nd offer. Whether it was

1 produced as part of the cross-examinations, as part
2 of the production we did, we'll have to review the
3 record and get back to you.

4 MR. WINTON: Thank you. And you'll do
5 that?

6 U/T MR. MILNE-SMITH: Yes.

7 MR. WINTON: Thank you.

8 THE WITNESS: And I want to clarify
9 something earlier, too, the question about
10 paragraph 41 of my affidavit.

11 BY MR. WINTON:

12 61 Q. Yes.

13 A. I agreed that the individuals,
14 Mr. Burt, Mr. Leitner and Mr. Lockie had not
15 previously given evidence as part of either the
16 Plan of Arrangement application or the Moyse
17 action. But there had been a prior representative
18 of one of the WIND entities who had provided an
19 affidavit and been cross-examined. And that was
20 Asser El-Shanawany, I believe his name was. And so
21 he had delivered an affidavit as part of West
22 Face's responding motion record in March 2015.

23 62 Q. Right. And that individual did so
24 as a employee of WIND, correct?

25 A. I think that's right.

1 63 Q. Okay. Which was the subject of
2 the purchase, not a member of the consortium that
3 actually purchased it?

4 A. That's right. Yes, that's right.

5 64 Q. Thank you.

6 And then just to pick up where we left
7 off and to wrap up the point. If I can ask, from
8 my review of the record, I want to know if you'll
9 agree, that prior to January 2016, West Face did
10 not disclose to Catalyst any of its correspondence
11 with Globalive, UBS or other consortium members as
12 part of the Moyse action.

13 U/T MR. MILNE-SMITH: We'll have to review
14 the Court file. I mean, the Court file is what it
15 is. But voluminous as Mr. Carlson's memory is, I
16 wouldn't -- I think it's unfair to him to try to
17 answer that on the spot.

18 MR. WINTON: I don't wish to be unfair
19 to him.

20 MR. MILNE-SMITH: Okay.

21 MR. WINTON: So thank you, I'll wait
22 for that answer.

23 MR. MILNE-SMITH: What you're asking
24 for is any correspondence between West Face and any
25 other member of the consortium?

1 MR. WINTON: Or Globalive -- yes, I
2 guess or UBS, who technically isn't a member of the
3 consortium. But not looking for production of it,
4 just whether you can identify if it was disclosed
5 in the Moyse action prior to January 2016.

6 And by "disclosed" I don't mean
7 referred to within an affidavit. I mean that the
8 actual correspondence was disclosed.

9 MR. MILNE-SMITH: Yes, understood.

10 BY MR. WINTON:

11 65 Q. Thanks. So just to pick up on a
12 comment that you made earlier. Were you at the
13 January 11th case conference with Justice Newbould?

14 A. I don't think so, no.

15 66 Q. I know I wasn't, and I know why I
16 wasn't. I'm just surprised that you weren't.

17 A. Well, my recollection is that I
18 was not. And I think the reason was, I had been
19 focused on producing the Affidavit of Documents in
20 the Moyse action, and had been doing that, you
21 know, all night Friday and Saturday. And so it
22 wasn't Keane to --

23 MR. MILNE-SMITH: Come to a 9:30 on a
24 Monday.

25 THE WITNESS: Be at work at 9:30 on

1 Monday, exactly.

2 BY MR. WINTON:

3 67 Q. All right. Well, may I ask that
4 you check your records, to confirm that point.

5 MR. MILNE-SMITH: Are you interested in
6 both January 4 and 11?

7 MR. WINTON: No, just 11 for now.

8 MR. MILNE-SMITH: Just 11?

9 MR. WINTON: Yes.

10 U/T MR. MILNE-SMITH: We will undertake
11 whatever search we can. I'm not sure what we're
12 going to be able to come up with, so I'll provide
13 that setting of expectations in advance.

14 BY MR. WINTON:

15 68 Q. Understood. And if you were at
16 the 9:30 appointment on January 11th, and if you
17 took notes, and if you can locate those notes, can
18 you produce them to us?

19 U/T MR. MILNE-SMITH: He will.

20 Though, I will also advise you that the
21 practice at our firm from hard-earned experience is
22 generally not to take notes at 9:30 appointments
23 for fear of the eyer of the judge holding such case
24 conference.

25

1 BY MR. WINTON:

2 69 Q. Okay. But if they exist, you will
3 give me a copy?

4 MR. MILNE-SMITH: To the extent they do
5 not contain any privileged materials.

6 MR. WINTON: That's fine.

7 THE WITNESS: You know, I think we
8 can -- I'm confident that I was not there, so.

9 I'm thinking more about it, I was not
10 at that case conference; so I think we can
11 short-circuit those undertakings.

12 MR. MILNE-SMITH: I can certainly tell
13 you I didn't take notes.

14 MR. WINTON: Right.

15 BY MR. WINTON:

16 70 Q. So turning to paragraph 44 of your
17 affidavit, though, you do refer to that appointment
18 and the exchange of case conference memoranda by
19 the parties prior to that appointment, right?

20 A. That's correct.

21 71 Q. And is it fair to assume that
22 after the appointment Mr. Milne-Smith would have
23 briefed you on what was discussed, or the outcome
24 of that appointment?

25 A. Yes.

1 72 Q. And do you recall that one of the
2 outcomes of the January 11th appointment was
3 Justice Newbould informed the parties he would try
4 to set an expedited schedule for the hearing of
5 Catalyst's motions to extend time for its appeals
6 of Justice Glustein's decision?

7 A. Sorry can you repeat that?

8 73 Q. Sure. Do you recall that one of
9 the outcomes of that January 11, 9:30, was that
10 Justice Newbould was going to try and expedite the
11 hearing of the Catalyst motions to extend time to
12 appeal Justice Glustein's decision in Divisional
13 Court?

14 A. I know what ultimately happened --

15 74 Q. Yes?

16 A. -- was, I mean, I can't separate
17 what I kind of learned from being debriefed about
18 the January 11th appointment versus what happened.

19 75 Q. Yes.

20 A. I know what ultimately happened
21 was we did have a motion day for the hearing of
22 Catalyst's motions for leave to appeal and to
23 appeal the Glustein order, that happened shortly
24 after that.

25 76 Q. Right. Prior to January 11th,

1 those motions had been commenced but hadn't been
2 scheduled, right?

3 A. I believe that's correct, yes.

4 77 Q. All right. And you understood
5 part of Catalyst's position on the application was,
6 there are still interlocutory steps being taken in
7 the Moyse action that hadn't even been scheduled.
8 And their response with Justice Newbould is, "well,
9 I'll help you out. I'll get those heard within a
10 week or so"; fair?

11 A. That sounds fair.

12 78 Q. All right. And do you recall that
13 one of the outcomes of the January 11th case
14 conference with Justice Newbould held that a trial
15 of the Moyse action was not -- or the merits of the
16 Moyse action were not going to be argued at the
17 return of the application on January 25th?

18 A. I don't recall that.

19 MR. MILNE-SMITH: We don't agree with
20 that, obviously.

21 MR. WINTON: You don't, okay.

22 MR. MILNE-SMITH: This was the subject
23 of the case conference at 9:30 on the morning of --
24 what was it, the 25th or 26th that the application
25 was heard? And Mr. DiPucchio showed up and thought

1 that nothing was going to be argued, and we showed
2 up ready to argue.

3 Justice Newbould thought that everyone
4 was ready to argue, and you were given until
5 2 o'clock to show up with evidence. So we,
6 obviously, do not agree with that and neither did
7 Justice Newbould.

8 MR. WINTON: All right. Well...

9 MR. MILNE-SMITH: As I recall, we had
10 ordered a court reporter to be there on the 25th,
11 because we weren't sure if you were going to be
12 cross-examining our witnesses in the box, we had
13 all our witnesses there.

14 MR. WINTON: Well, okay. I'm going to
15 suggest that actually what Justice Newbould said on
16 the 11th was that the parties should go away and
17 discuss scheduling a trial of the claim, the Moyse
18 claim for March or May of 2016. And he said that
19 on January 11th.

20 MR. MILNE-SMITH: I certainly don't
21 recall that. Mr. Carlson wasn't there.

22 MR. WINTON: Right, I understand.

23 BY MR. WINTON:

24 79 Q. Now, just to pick up where
25 Mr. Milne-Smith left off.

1 The arrangement application was in fact
2 heard and argued on January 25th, correct?

3 A. That's correct.

4 80 Q. And I just want to show you
5 another e-mail, this is from Mr. Milne-Smith to
6 Mr. DiPucchio dated January 22nd.

7 If we can just get our days of the week
8 straight. That's a Friday, I believe, the 22nd was
9 the Friday --

10 A. That's right.

11 81 Q. -- and the 25th was a Monday?

12 A. That's right.

13 82 Q. So on the Friday, Mr. Milne-Smith
14 e-mails Mr. DiPucchio with a proposed amendment to
15 the plan that would exclude the claims in the
16 West Face and Moyse action from the release in the
17 plan?

18 A. (Witness reviews document).

19 Sorry, can you repeat the question?

20 83 Q. Sure. The e-mail from
21 Mr. Milne-Smith sets out a proposed amendment to
22 the plan that would have the effect of not
23 releasing the claim from West Face and Moyse, other
24 than the Constructive Trust claim?

25 A. That's right.

1 84 Q. All right.

2 MR. WINTON: Can we mark that as an
3 exhibit?

4 MR. MILNE-SMITH: Yes.

5 MR. WINTON: That will be Exhibit 3.

6 EXHIBIT NO. 3: E-Mail from
7 M. Milne-Smith to R. DiPucchio, et al,
8 dated January 22, 2016.

9 BY MR. WINTON:

10 85 Q. After the argument of the
11 application, which as Mr. Milne-Smith pointed out,
12 started the afternoon of January 25th, went on
13 almost into the evening; do you recall?

14 A. I don't recall, I wasn't there.

15 86 Q. Oh, okay. Do you recall the next
16 day, Justice Newbould through Alsou, had e-mailed
17 the parties requesting a 9:30 attendance on
18 Wednesday, January 27th?

19 A. I don't recall that.

20 87 Q. Well, let me hand you an e-mail.
21 This is a chain dated January 26th, and if you go
22 to the beginning of it, where Mr. Milne-Smith is
23 e-mailing with Alsou at the commercial list about
24 an appointment -- this is on January 26th, about an
25 appointment the next day.

1 And so Justice Newbould then asks the
2 parties to attend at 9:00 a.m. on the 27th. And
3 you'll see that what follows is the parties are all
4 available in that time for a 9:00 a.m. on the 27th
5 before Justice Newbould. And on the first page of
6 this e-mail chain, Mr. DiPucchio then asks if the
7 parties are going to have a discussion before that
8 appointment. And a call is --

9 MR. MILNE-SMITH: Sorry, where is
10 Mr. DiPucchio saying that?

11 MR. WINTON: At the bottom of the first
12 page he writes to counsel and says:

13 "You guys want to have a
14 discussion before we go in tomorrow?"

15 THE WITNESS: I don't think I have that
16 e-mail.

17 BY MR. WINTON:

18 88 Q. Oh, sorry. Then I only have one
19 copy. That's the full chain there.

20 A. Oh, I see.

21 89 Q. Right?

22 MR. MILNE-SMITH: Hang on. Let's just
23 identify this for the record.

24 MR. WINTON: Sure.

25 MR. MILNE-SMITH: So we've got a

1 different e-mail, it includes the chain in the
2 previous one you gave us, but this one continues
3 on. The lead e-mail in this chain is from Rocco on
4 January 26th at 1:31 p.m.

5 MR. WINTON: Right.

6 THE WITNESS: Yes. And I see the
7 e-mail from Rocco to us, among other people,
8 saying:

9 "You guys want to have
10 discussion before we go in?"

11 BY MR. WINTON:

12 90 Q. Right.

13 A. I see that.

14 91 Q. Do you recall if there was a
15 discussion that day, the 26th, before or at or
16 around 3:45?

17 A. I don't recall. And just for your
18 benefit, I was on vacation this week.

19 92 Q. Oh.

20 A. So I was gone from before the
21 Monday the 25th, I forget when I left. It might
22 have been the Thursday or Friday, the 21st or 22nd,
23 and I returned the following week.

24 So I was back, I believe by
25 January 29th. But you may notice on some of these

1 e-mails that a Davies associate named, "Nate
2 Read-Ellis" is copied instead of me, and that's
3 because I was gone. And so he was helping kind of
4 in my place.

5 93 Q. Okay.

6 A. So I was being kept apprised, and
7 you know, I would be e-mailed the parties' written
8 submissions, and I got Justice Newbould's judgment
9 of the January 26th, and I was back by the next
10 week and kind of working on the ground again. But
11 during this week, I was away.

12 94 Q. Okay.

13 MR. MILNE-SMITH: That's why he wasn't
14 at the hearing.

15 THE WITNESS: That's right. I was on a
16 beach while you guys were...

17 MR. WINTON: I wasn't there, either. I
18 was somewhere else, too.

19 All right. Is it okay, can I mark this
20 as the next exhibit? So this will be 4.

21 EXHIBIT NO. 4: E-Mail Chain from
22 R. DiPucchio to M. Milne-Smith, et al,
23 dated January 26, 2016.

24 BY MR. WINTON:

25 95 Q. I guess the question is, I'm

1 trying to think of how to do this.

2 Because you swore the affidavit for
3 this motion, and I want to just get the evidence,
4 make sure the evidence is complete. And I'm going
5 to suggest to you, there was a call amongst the
6 party's counsel on the 26th before Justice Newbould
7 released his reasons. And I'd like to get
8 confirmation of that fact.

9 MR. MILNE-SMITH: I think all I can do
10 is check my calendar, Counsel. Mine is more likely
11 to be accurate than Mr. Thomson's than it would've
12 been he and/or I.

13 So this would have been on the 26th.
14 My calendar indicates a call at 3:45 on the 26th of
15 January. I'm going to confess, I don't recall
16 anything of the substance of it.

17 MR. WINTON: That's fine.

18 MR. MILNE-SMITH: Because we got the
19 reasons that evening, right?

20 MR. WINTON: Yes, we're coming to that.

21 Yes, thank you. That's fine.

22 MR. MILNE-SMITH: I remember very
23 clearly getting the reasons, I remember where I
24 was. But I don't remember anything about this
25 call, I'm afraid, without correspondence to refresh

1 my recollection.

2 BY MR. WINTON:

3 96 Q. So I'm handing you an e-mail from
4 after 3:45 on the 26th, where Mr. Milne-Smith
5 writes further to our discussion, there's proposed
6 language on a tracing issue.

7 Which appears to suggest that there
8 was, before the reasons that Justice Newbould had
9 released, the parties were discussing whether there
10 were potential amendments to the plan that would
11 allow it to go ahead unopposed; is that a fair
12 characterization?

13 MR. MILNE-SMITH: Yes. You'll recall
14 there's the e-mail of the 22nd, you've taken us to
15 earlier.

16 MR. WINTON: Yes.

17 MR. MILNE-SMITH: And I sent an e-mail
18 saying, referring to "yesterday", so that was the
19 21st, which is when we were before Justice Swinton
20 in the Divisional Court.

21 It was at that meeting or sorry, at
22 that motion that we had a conversation with
23 Mr. DiPucchio, where for the first time sort of
24 understood what the nature of Catalyst's objection
25 to the plan was. We had been, from our perspective

1 at least, in the dark up until that point.

2 And so starting from after
3 Mr. DiPucchio disclosing Catalyst's position to us
4 on the 21st at the Divisional Court, I do recall a
5 series of conversations and negotiations where we
6 tried to come up with paramountcy language that
7 would be satisfactory to Catalyst.

8 MR. WINTON: Okay, thank you.

9 I'd like to enter that then as the next
10 exhibit if we can, that would be Exhibit 5.

11 EXHIBIT NO. 5: E-Mail from
12 M. Milne-Smith to R. DiPucchio, et al,
13 dated January 26, 2016.

14 BY MR. WINTON:

15 97 Q. And then the Justice Newbould's
16 reasons were released the evening of January 26th,
17 right?

18 MR. MILNE-SMITH: That's correct.

19 MR. WINTON: I have it in my notes that
20 it's 7:57 p.m., but is it enough to say it was
21 around that time of the evening that the reasons
22 were released?

23 MR. MILNE-SMITH: Yes, it was certainly
24 in the evening.

25

1 BY MR. WINTON:

2 98 Q. And then the case conference that
3 Justice Newbould called for January 27th was
4 obviously held in following the release of his
5 reasons, the evening before?

6 MR. MILNE-SMITH: Yes.

7 THE WITNESS: Yes.

8 BY MR. WINTON:

9 99 Q. And we have attached to
10 Mr. Vermeersch's affidavit, Lauren Epstein's notes
11 from that January 27th case conference. Which I'm
12 just going to show you, and these are attached as
13 Exhibit A to Mr. Vermeersch's affidavit.

14 And now that I understand you weren't
15 physically present, Mr. Carlson, I guess the only
16 question I can ask is whether you have any
17 information, understanding you weren't present,
18 that the notes are not an accurate reflection of
19 what was discussed at the case conference?

20 A. I have no evidence of that.

21 100 Q. All right.

22 A. (Witness reviews document).

23 Yeah, I have no evidence one way or
24 another whether they're accurate or not accurate,
25 or complete or incomplete, or...

1 101 Q. Thank you.

2 I'm handing you an e-mail chain, the
3 top e-mail is January 31st, but the first e-mail is
4 actually dated January 29th from Mr. Milne-Smith.
5 And on January 29th, Mr. Milne-Smith sends an
6 e-mail with, again, proposed language concerning
7 the paramountcy and release provisions, fair?

8 A. I see, yes, he attaches a proposed
9 amendment to Article 4.5 to the Plan of
10 Arrangement.

11 102 Q. And so this was just continuing
12 part of those discussions Mr. Milne-Smith referred
13 to earlier, where beginning approximately
14 January 21st and even after Justice Newbould's
15 reasons are released, the parties are still
16 negotiating the issue of the release and
17 paramountcy provisions of the plan?

18 A. That sounds correct. I mean,
19 ultimately, ultimately the parties did negotiate
20 language for the Plan of Arrangement, and it was
21 that language that was included in the Plan of
22 Arrangement that was approved by Justice Newbould
23 on February 3rd.

24 103 Q. Right.

25 A. So while I wasn't part of all of

1 the discussions, all the back and forth, I know the
2 result.

3 104 Q. Right.

4 A. Okay.

5 105 Q. Now, paragraph 53 -- so I'd like
6 to mark that as the next exhibit, if I may?

7 A. Sure. Do you want to include the
8 attachment if we're going to mark the exhibit?

9 106 Q. Yeah, I can do that.

10 I can find it -- I haven't printed it
11 out, but I have it and I can attach it. I'll send
12 it to ya'll to make sure you're comfortable with
13 it.

14 MR. MILNE-SMITH: That's fine.

15 EXHIBIT NO. 6: E-Mail from T. Kent to
16 R. DiPucchio, et al, dated January 31,
17 2016.

18 BY MR. WINTON:

19 107 Q. If you turn then to your
20 affidavit, paragraph 53.

21 A. Yes.

22 108 Q. You attach as Exhibit 28,
23 Mr. DiPucchio's January 31st e-mail where he
24 informs -- I'm just going to show you a copy of
25 Exhibit 28, where Mr. DiPucchio confirms that he

1 had instructions to withdraw its claim for a
2 Constructive Trust.

3 And at paragraph 54, you're suggesting
4 this -- what the effects of this were. And the
5 question for you is, you would agree this
6 withdrawal was part of the negotiations, or you
7 know, a piece of what was being negotiated between
8 the parties in terms of reaching a language on the
9 paramountcy provision in the plan that Catalyst was
10 withdrawing its claim to a Constructive Trust in
11 conjunction to the parties agreeing on appropriate
12 language in the plan?

13 A. I don't think I would agree with
14 that.

15 109 Q. No?

16 A. No. From what I recall, we hadn't
17 reached an agreement on the plan language at this
18 time. And we saw this more as a strategic response
19 to not have to go to a trial at the end of -- or to
20 a trial of an issue at the end of February.

21 110 Q. Okay. There was a further
22 attendance before Justice Newbould on February 1,
23 2016, correct?

24 A. I don't recall.

25 111 Q. Well, it may be that you weren't

1 there.

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

4 MR. WINTON: Right.

5 BY MR. WINTON:

6 112 Q. So it was attached to
7 Mr. Vermeersch's affidavit as Exhibit B.

8 A. Thank you.

9 113 Q. And perhaps you were still on your
10 beach during all this?

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

13 114 Q. Okay. So then again, as with
14 January 27th, you had no information or any reason
15 to believe that Ms. Epstein's notes are inaccurate
16 to what was said at the 9:30?

17 A. That's right.

18 115 Q. Okay. That's all I'm going to ask
19 you about that.

20 And then you had notes of a --

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

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

25 MR. MILNE-SMITH: Exhibit 31 is the

1 transcription of the note, Exhibit 30 are the
2 handwritten notes.

3 MR. WINTON: You're right.

4 BY MR. WINTON:

5 116 Q. So Exhibit 30 and 31 are your
6 notes of a call. So I'm going to hand you a copy
7 of those exhibits.

8 A. Thank you.

9 (Witness reviews document).

10 117 Q. Now I note that -- so this is
11 page 5168 of the motion record. I'm going to your
12 handwritten notes to start. There's a question
13 mark beside the date, February 2nd. And can you
14 explain why there's a question mark on the date of
15 these notes?

16 A. The reason is because I have a
17 practice of taking notes, but sometimes I don't
18 date the notes at the time that I'm taking them.
19 And then if I go back later and date them.

20 So if it was a couple of weeks later
21 that I was arranging these into the binder of notes
22 that I keep, I would have written the date down
23 with a question mark.

24 118 Q. Okay.

25 A. But I'm confident that that is the

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

3 119 Q. All right. And then so that's
4 actually not in doubt. The question mark is there,
5 but the date of the notes is not in doubt?

6 A. That's correct.

7 120 Q. In your mind?

8 A. That's right.

9 121 Q. And then the notes refer to the
10 inducing breach claim, right? Mr. DiPucchio refers
11 to an inducing breach claim?

12 A. That's right.

13 122 Q. And at the bottom Mr. DiPucchio --
14 Mr. Thomson asks if we can get the other investors
15 to agree that that happens in May.

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

18 A. That's correct.

19 123 Q. And at the end of his notes he
20 says, "at minimum, we'll have trial of a claim."

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

23 A. That's right.

24 124 Q. Okay. And you agree with me
25 nowhere in the call is there a suggestion from

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

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

6 125 Q. Just go back to your notes,
7 Mr. Carlson, that's not what you've recorded in
8 your notes.

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

10 126 Q. Okay. Not recorded in your notes?

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

13 127 Q. Yes?

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

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

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

25 128 Q. But you'll agree with me, nowhere

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

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

6 MR. WINTON: Okay.

7 BY MR. WINTON:

8 129 Q. You next have notes from a call on
9 February 7th. This is Exhibit 34 and 35 to your
10 affidavit.

11 A. Yes.

12 130 Q. And again, in these notes,
13 Mr. DiPucchio did not suggest that Catalyst was
14 going to amend its claim to add an inducing breach
15 claim; is that fair?

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

18 131 Q. Sure.

19 A. Thanks, Andrew.

20 (Witness reviews document).

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

1 wouldn't add the obligations of inducing breach.

2 132 Q. And he stated, "my thought is,
3 that's a separate action"?

4 A. That's right.

5 133 Q. Okay. And Mr. Milne-Smith confirms.
6 So the amendments or the claim is
7 limited to breach of confidence?

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

12 134 Q. Right.

13 A. That's right. Yeah, that's the
14 message that was given to us on February 9th or
15 10th -- or 7th, I guess.

16 135 Q. And following that discussion on
17 February 7th, there was no correspondence from West
18 Face, by that I mean its counsel, that sets out
19 this position you say Mr. Thomson took on
20 February 2nd, that everything had to be heard and
21 tried together.

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

25 MR. MILNE-SMITH: He told you one.

1 THE WITNESS: That's right.

2 BY MR. WINTON:

3 136 Q. Okay. Now in the current action,
4 after the claim was served, you're aware that
5 Vimpelcom was initially refusing to allow local
6 counsel to accept service on its behalf?

7 A. I am not aware of that.

8 137 Q. Were you aware that as a condition
9 of accepting service locally, Vimpelcom was
10 insisting on having at least 60 days to respond to
11 the claim?

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

15 138 Q. All right. Well, I'm going to
16 hand you a letter from Mr. Agarwal of Norton Rose
17 dated July 26, 2016. And I recognize you weren't
18 copied on this letter, so it's really just a
19 placeholder for the date than for any other
20 reasons, so I don't expect you to have knowledge as
21 to what led to this letter.

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

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

1 answer that question, it's privileged. If there
2 were any such communications, they would be common
3 interest privileged.

4 MR. WINTON: All right. Well, I guess
5 the concern I have with that is that if Norton Rose
6 wasn't accepting service on behalf of Vimpelcom,
7 then how could there be said to have common
8 interest privilege if you're having communications
9 with their office?

10 MR. MILNE-SMITH: I said "if there
11 were". And frankly, I don't remember if there were
12 communications before July 26th, I'd have to review
13 my files. But my point is, even there were no
14 communications, or if there were, they would've
15 been common interest privileged.

16 MR. WINTON: And so if that's the case,
17 then I want to restrict my question not to the
18 content of any such discussions, but I think if
19 those communications took place, and even if they
20 were privileged, I think we're entitled to know
21 that they actually took place.

22 MR. MILNE-SMITH: What are you trying
23 to get at here? I want to be helpful, but I don't
24 really understand the relevance.

25 MR. WINTON: I guess the question goes

1 to, as I understand the position on the motion from
2 West Face, to summarize it, Catalyst should have
3 amended its claim after February 3rd to add
4 inducing breach claim, so that all of its claims
5 concerning the WIND transaction were heard in one
6 action.

7 MR. MILNE-SMITH: At least as against
8 West Face.

9 MR. WINTON: As against West Face.

10 And if it intended to add other
11 parties, because that was the intention for the
12 same claims, it should have done so as part of its
13 amendment after February 3rd.

14 MR. MILNE-SMITH: That's up to you.

15 Our position is not to tell you with
16 hindsight, what you should have done. It's to say
17 that what you did do is an abuse of process and
18 barred by res judicata.

19 MR. WINTON: I understand. But
20 practically speaking then, because one has to look
21 at what practically could have happened. The
22 suggestion is that the trial of the inducing breach
23 claim as against West Face, should have been
24 included in the Moyse action, as an amendment to
25 that claim and heard at the trial that was

1 scheduled to start May 18th.

2 MR. MILNE-SMITH: If it wasn't going to
3 be barred by preclusion doctrines, yes.

4 MR. WINTON: What do you mean?

5 MR. MILNE-SMITH: Abuse of process and
6 res judicata.

7 MR. WINTON: So the position was, it
8 may have been abusive even if it would have been
9 added on February 3rd?

10 MR. MILNE-SMITH: No. I'm saying, if
11 you did not want to be barred by preclusion
12 doctrines, you needed to bring all claims against
13 West Face arising out of the same cause of action
14 at once.

15 MR. WINTON: Okay. And the inclusion
16 or not of other parties is not part of that fact
17 pattern?

18 MR. MILNE-SMITH: I mean, I think it's
19 relevant to their motions. I don't know that it's
20 relevant to mine.

21 MR. WINTON: Okay.

22 MR. MILNE-SMITH: But again, we're not
23 trying to say what Catalyst should have done.
24 We're just saying what the effect of what Catalyst
25 did is.

1 MR. WINTON: I understand.

2 BY MR. WINTON:

3 139 Q. Turning up paragraph 81 of your
4 affidavit, Mr. Carlson.

5 A. Yes.

6 140 Q. You've attached the transcript of
7 the Examination for Discovery of Mr. Griffin as
8 Exhibit 40.

9 My question is, does West Face intend
10 to rely on the contents of that transcript in
11 support of its motion in this action?

12 A. Yes.

13 MR. WINTON: Okay. Those are my
14 questions.

15 We're done. Thank you very much.

16 THE WITNESS: Thank you.

17

18 -- Whereupon the examination concluded at 11:23 a.m.

19

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REPORTER'S CERTIFICATE

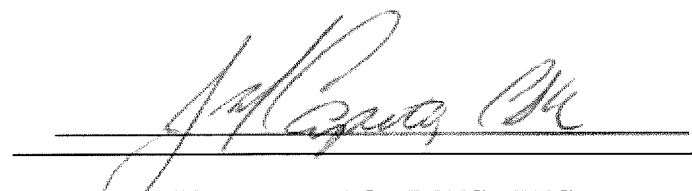
I, JUDITH M. CAPUTO, RPR, CSR, CRR,
Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 11th day of July, 2017.



NEESON COURT REPORTING INC.

PER: JUDITH M. CAPUTO, RPR, CSR, CRR

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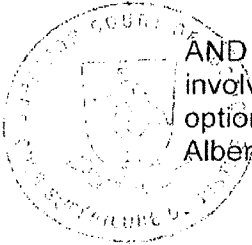
C15-11238-0001

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~~
established by the Commercial List Office at ~~10:00 a.m.~~ or as soon after that time as the
matter can be heard.

st
January
4, 2016

12:30pm

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: 20/28/2017

WITNESS: ANDREW CARLSON

CASE: CATALYST v. VIMARK.COM

NEESONS COURT REPORTING INC.

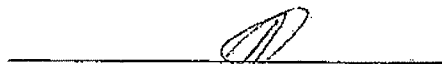
- 2 -

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:



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

A. A. Assimova
Registrar

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

- 3 -

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 |

APPENDIX A

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 the same may be 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.

"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 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".

"**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.

exercise price of such Option is divided by the Purchase Price; provided, however, that if the difference between the Purchase Price and the exercise price of any such Option produces a negative amount, then such Option shall be terminated and of no further force and effect. All terms and conditions of a Replacement Option shall be the same as the Option for which it was exchanged, except that each Replacement Option shall be exercisable pursuant hereto at a price of \$0.00001 per Purchased Share; notwithstanding the foregoing, if it is determined in good faith that the excess of the aggregate fair market value of the shares of the Corporation subject to a Replacement Option immediately after the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Replacement Option (such excess referred to as the "In the Money Amount of the Replacement Option") would otherwise exceed the excess of the aggregate fair market value of the shares of the Corporation subject to such Vested Option immediately before the issuance of the Replacement Option over the aggregate option exercise price for such shares pursuant to the Vested Option, (such excess referred to as the "In the Money Amount of the Vested Option"), the previous provisions shall be modified so that the In the Money Amount of the Replacement Option does not exceed the In the Money Amount of the Vested Option, but only to the extent necessary to qualify for the provisions of subsection 7(1.4) of the Tax Act.

- (c) each holder of Replacement Options will be deemed to have exercised all such Replacement Options and Globalive Turbine Corp. 1 will be deemed to have exercised the Globalive Options and (i) holders of Replacement Options will pay the exercise price in respect thereof to the Corporation in cash, (ii) the Purchaser will pay the aggregate amount loaned to Globalive Turbine Corp. 1 in Section 3.1(a) above to the Corporation in satisfaction of the exercise price thereof and each holder of Replacement Options and Globalive Turbine Corp. 1 shall be deemed to have received the number of Purchased Shares issuable in respect of each Replacement Option or Globalive Option, as applicable, exercised in accordance with this Section 3.1(c) and (iii) each holder of Options who becomes a holder of Purchased Shares pursuant to this Section 3.1(c) shall be deemed to have executed a Joinder Agreement to the Arrangement Agreement and shall be considered a Vendor thereunder;
- (d) (i) each outstanding Purchased Share (other than Eligible Option Shares) shall be transferred by the holder thereof to Purchaser in exchange for the Cash Consideration therefor, provided that Globalive Turbine Corp. 1 will be deemed to have directed Purchaser to retain an amount equal to the amount loaned by Purchaser to it to acquire Purchased Shares on exercise of the Globalive Options pursuant to Section 3.1(a) in repayment of the Option Loan, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Purchased Shares so transferred and (iii) Purchaser shall be recorded as the registered holder of such Purchased Shares so transferred and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances;
- (e) (i) each outstanding Eligible Option Share shall be disposed of by the holder thereof to Purchaser in accordance with the election or deemed election of such holder pursuant to Section 3.2 in exchange for the Cash Consideration or the Share Consideration therefor, (ii) the name of such holder shall be removed from the register of holders of Purchased Shares in respect of the Eligible Option Shares so transferred and (iii) the name of such holder shall be added to the register of holders of Guarantor Shares in respect of the Share Consideration received by such holder, and Purchaser shall be recorded as the registered holder of such Eligible Option Shares so exchanged and shall be deemed to be the legal and beneficial owner thereof, free and clear of any Encumbrances; notwithstanding the foregoing, if it is determined in good faith that the aggregate fair market value of the Guarantor Shares immediately after the issuance of the Guarantor Shares would otherwise exceed the fair market value of the Purchased Share exchanged

for such Guarantor Shares immediately before the issuance of the Guarantor Shares, the previous provisions shall be modified so that the aggregate fair market value of such Guarantor Shares does not exceed the fair market value of the Purchased Share exchanged for such Guarantor Shares, but only to the extent necessary to qualify for the provisions of subsection 7(1.5) of the Tax Act; and

- (f) the Option Plan and all Unvested Options shall be terminated and shall be of no further force or effect.

3.2 Election Regarding Eligible Option Shares

With respect to the exchange of Eligible Option Shares effected pursuant to subsection 3.1(e):

- (a) each holder of Eligible Option Shares may elect to receive either:
 - (i) Cash Consideration in respect of all Eligible Option Shares held by such holder (with a requirement in the Election Form for any holder other than a Former Officer to undertake to apply at least 50% of the net after tax proceeds from such Cash Consideration to acquire Guarantor Shares in the market through a broker designated by Guarantor);
 - (ii) Cash Consideration in respect of up to 50% of the Eligible Option Shares held by such holder and Share Consideration in respect of the remaining Eligible Option Shares held by such holder; or
 - (iii) Share Consideration in respect of all Eligible Option Shares held by such holder;
- (b) the election provided for in subsection 3.2(a) shall be made by each holder of Eligible Option Shares by delivery to Purchaser, prior to the Election Deadline, of a duly completed Election Form indicating such holder's election; and
- (c) any holder of Eligible Option Shares who does not deliver to Purchaser a duly completed Election Form prior to the Election Deadline shall be deemed to have elected to receive the Share Consideration pursuant to clause (iii) of subsection 3.2(a) in respect of such Eligible Option Shares.

3.3 Letters of Transmittal and Election Forms

Any Letter of Transmittal and Election Form, once delivered to Purchaser, shall be irrevocable and may not be withdrawn by a Shareholder.

3.4 No Fractional Guarantor Shares and Rounding of Cash Consideration

- (a) In no event shall any fractional Guarantor Shares be issued under this Plan of Arrangement. Where the aggregate number of Guarantor Shares to be issued to a Shareholder as consideration under this Plan of Arrangement would result in a fraction of a Guarantor Share being issuable, the number of Guarantor Shares to be issued to such Shareholder shall be rounded down to the closest whole number and no additional consideration shall be provided to such Shareholder in lieu of the issuance of a fractional Guarantor Share.
- (b) If the aggregate cash amount which a Shareholder is entitled to receive under this Plan of Arrangement would otherwise include a fraction of \$0.01, then the aggregate cash amount to which such Shareholder shall be entitled to receive shall be rounded down to the nearest whole \$0.01.

3.5 Adjustments to Exchange Ratio

The Exchange Ratio shall be adjusted to reflect fully the effect of any stock split, stock dividend (including any dividend or distribution of securities convertible into Guarantor Shares or Purchased Shares, other than stock dividends paid in lieu of ordinary course dividends), consolidation, reorganization, amalgamation, arrangement, recapitalization or other like change with respect to Guarantor Shares or Purchased Shares occurring after the date of the Arrangement Agreement (and not in breach of the terms of the Arrangement Agreement) and prior to the Effective Time.

ARTICLE 4 DELIVERY OF CONSIDERATION

4.1 Delivery of Share Consideration and Cash Consideration

- (a) At the Effective Time, upon confirmation by Purchaser that certificates representing all of the Purchased Shares (other than any certificates in respect of Purchased Shares issued pursuant to Section 3.1(c)) have been delivered to the Purchaser together with duly completed Letters of Transmittal in respect thereof, the Purchaser shall (i) pay, or cause to be paid to Davies Ward Phillips & Vineberg LLP, in trust for and on behalf of the Vendors, in cash by way of wire or electronic transfer of immediately available funds to such bank account specified in writing by the Vendors' Representatives (or such other means as may be agreed to by Purchaser and the Vendors' Representatives) an amount equal to the aggregate Cash Consideration payable pursuant to Article 3 less the amount of the Option Loan and (ii) deliver or caused to be delivered to the applicable Vendors certificates (or, at Purchaser's option, evidence of direct registration) representing the number of Guarantor Shares that each Vendor is entitled to receive under the Arrangement.
- (b) Subject to Article 10 of the Arrangement Agreement, the Vendors' Representatives shall cause Davies Ward Phillips & Vineberg LLP to release to each Vendor such portion of the aggregate Cash Consideration to which such holder is entitled pursuant to Article 3. For the avoidance of doubt, Globalive Turbine Corp. 1's entitlement to the aggregate Cash Consideration shall be calculated net of the amount of the Option Loan made to Globalive Turbine Corp. 1 in accordance with Section 3.1(a).

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 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 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

may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein.

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.

CHS-11238-6000

Commercial List File No.

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF APPLICATION

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington St. W.
Toronto, ON M5V 3J7

Matthew Milne-Smith (LSUC #44266P)

Tel: 416.863.5595

Andrew Carlson (LSUC #58850N)

Tel: 416.367.7437

Fax: 416.863.0871

Lawyers for the Applicant

Andrew Winton

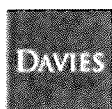
From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-06-16 1:26 PM
To: Lynn Rowley; Carlson, Andrew; 'michael.schafler@dentons.com'
Cc: Rocco DiPucchio; Andrew Winton; Lauren Epstein
Subject: RE: Mid-Bowline Group Corp.

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



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

This e-mail may contain confidential information which may be privileged, confidential or otherwise subject to legal proceedings. If you are not the intended recipient, please immediately notify us by e-mail so that we can take steps to correct the error and delete this e-mail and any copies.

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 Lissus Gottlieb LLP
 Suite 2750, 145 King Street West
 Toronto ON M5H 1J8 Canada



EXHIBIT NO. 2 DATE: 06/20/2017

WITNESS: Andrew Carlson

CASE: CATALYST v. Vimercan

NEESONS COURT REPORTING INC

T 416 598 1744 F 416 598 3730

counsel-toronto.com

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Ex 3

Andrew Winton

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-22-16 7:53 PM
To: Rocco DiPucchio; Lauren Epstein
Cc: Thomson, Kent; Michael Schafner; Ara Basmadjian; Mr. Robert A. Centa; Kris Borg-Olivier; Read-Ellis, Nathaniel
Subject: Monday

Rocco,

We were surprised to learn yesterday that Catalyst still reserved the right to oppose the Plan of Arrangement after receiving no indication of your intent to do so since the case conference on January 11, 2016. We have considered your objection to art. 4.5 of the Plan, and propose the following language to address your concerns at the end of art. 4.5:

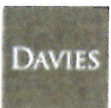
Provided, however, that nothing in this section 4.5 shall be construed to extinguish the right of The Catalyst Capital Group Inc. to continue to assert its claims against West Face Capital Inc. in Ontario Superior Court of Justice Court File No.: CV-14-507120 (provided that the potential liability of West Face Capital Inc. is limited to the net profit of West Face Capital Inc. in respect of this Arrangement), with the exception of any constructive trust or equivalent remedy which shall be deemed to have been settled, compromised, released and determined without liability, along with all other claims in this section 4.5.

On Monday, we intend to seek approval of the Plan of Arrangement, as amended by the language above. We also intend to schedule the hearing of your claim in the Moyse action, which has now been transferred to the Commercial List, and which I understand from you now only encompasses claims in respect of WIND Mobile.

Please be advised that should Catalyst oppose the Plan of Arrangement, West Face reserves the right to pursue a claim for tortious abuse of process in respect of any damages caused as a result of such opposition.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

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 Toronto, ON M5V 3J7

T 416.863.5595
 mmilne-smith@dwpv.com

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EXHIBIT NO. 3 DATE: 06/28/2017

WITNESS: Andrew Callson

CASE: CATALYST v. VIMPIR.COM
 NEESONS COURT REPORTING INC.

E x 4

Andrew Winton

From: Rocco DiPucchio <rdipucchio@counsel-toronto.com>
Sent: January-26-16 1:31 PM
To: 'Milne-Smith, Matthew'; 'Schafner, Michael'; Thomson, Kent; Robert A. Centa (robert.centa@paliaroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

I've got a call at 3 and one at 4:30. Do you want to try for 3:45?

Rocco Di Pucchio
 Direct: (416) 598-2268
rdipucchio@counsel-toronto.com

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



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From: Milne-Smith, Matthew [mailto:MMilne-Smith@dwvpv.com]
Sent: January-26-16 1:19 PM
To: Rocco DiPucchio; 'Schafner, Michael'; Thomson, Kent; Robert A. Centa (robert.centa@paliaroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

Rocco, are you available after 3 for a call?

From: Rocco DiPucchio [mailto:rdipucchio@counsel-toronto.com]
Sent: January 26, 2016 12:40 PM
To: Milne-Smith, Matthew; 'Schafner, Michael'; Thomson, Kent; Robert A. Centa (robert.centa@paliaroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

You guys want to have a discussion before we go in tomorrow?

Rocco Di Pucchio
 Direct: (416) 598-2268
rdipucchio@counsel-toronto.com

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 CASE: CATALYST v. VIMPRECON
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From: Milne-Smith, Matthew [<mailto:MMilne-Smith@dwvpv.com>]
Sent: January-26-16 12:13 PM
To: 'Schafner, Michael'; Rocco DiPucchio; Thomson, Kent; Robert A. Centa (robert.centa@paliareroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

Thanks everyone. We are confirmed for 9 a.m.

From: Schafner, Michael [<mailto:michael.schafner@dentons.com>]
Sent: January 26, 2016 12:04 PM
To: Rocco DiPucchio; Milne-Smith, Matthew; Thomson, Kent; Robert A. Centa (robert.centa@paliareroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

Yup.



Michael Schafner
 Partner

D +1 416 863 4457
michael.schafner@dentons.com
 Bio | Website

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 77 King Street West, Suite 400, TD Centre Toronto, ON M5K 0A1 Canada

大成 Salans FMC SNR Denton McKenna Long

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From: Rocco DiPucchio [<mailto:rdipucchio@counsel-toronto.com>]
Sent: 26-Jan-16 11:58 AM
To: 'Milne-Smith, Matthew'; Thomson, Kent; Schafner, Michael; Robert A. Centa (robert.centa@paliareroland.com)
Subject: RE: Re. Mid-Bowline Gorup Corp: Attendance before Justice Newbould [IWOV-CLIENT.FID57103]

No problem.

Rocco Di Pucchio
 Direct: (416) 598-2268
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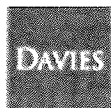
Andrew Winton

From: Milne-Smith, Matthew <MMilne-Smith@dwpv.com>
Sent: January-26-16 5:39 PM
To: Rocco DiPucchio; Lauren Epstein
Cc: Schafler, Michael (michael.schafler@dentons.com); Basmadjian, Ara (ara.basmadjian@dentons.com); Thomson, Kent; Read-Ellis, Nathaniel
Subject: Amended Plan of Arrangement.docx
Attachments: Amended Plan of Arrangement.docx

Rocco, further to our discussion, I attach proposed language on the tracing issue.

Yours very truly,

Matt



Matthew Milne-Smith | Bio

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EXHIBIT NO. 5 DATE: 06/28/2017
 WITNESS: Andrew Carlson
 CASE: CATALYST v. Vimercan
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Ex 6

Andrew Winton

From: Thomson, Kent <KentThomson@dwpv.com>
Sent: January-31-16 4:40 PM
To: Rocco DiPucchio
Cc: Milne-Smith, Matthew; Lauren Epstein; Schafler, Michael (michael.schafler@dentons.com); Robert A. Centa (robert.centa@paliarerland.com); Basmadjian, Ara (ara.basmadjian@dentons.com)
Subject: Re: WIND Mobile

Perfect. Thanks Rocco.

Sent from my iPad

On Jan 31, 2016, at 4:36 PM, Rocco DiPucchio <rdipucchio@counsel-toronto.com> wrote:

We will come armed.

Rocco DiPucchio
 Lax O'Sullivan Lisus Gottlieb LLP
 (416) 598-2268

----- Original message -----

From: "Thomson, Kent" <KentThomson@dwpv.com>
Date: 01-31-2016 16:12 (GMT-05:00)
To: "Milne-Smith, Matthew" <MMilne-Smith@dwpv.com>
Cc: Rocco DiPucchio <rdipucchio@counsel-toronto.com>, Lauren Epstein <lepstein@counsel-toronto.com>, "Schafler, Michael (michael.schafler@dentons.com)" <michael.schafler@dentons.com>, "Robert A. Centa (robert.centa@paliarerland.com)" <robert.centa@paliarerland.com>, "Basmadjian, Ara (ara.basmadjian@dentons.com)" <ara.basmadjian@dentons.com>
Subject: Re: WIND Mobile

To err on the side of caution, we should probably bring our gowns to Court tomorrow. Based on previous experiences, Newbould J may or may not want to hear from us in open Court.

K.

Sent from my iPad

On Jan 29, 2016, at 10:08 PM, Milne-Smith, Matthew <MMilne-Smith@dwpv.com> wrote:

Rocco,

EXHIBIT NO. 6 DATE: 06/28/2017

WITNESS: Andrew Carlson

CASE: CATALYST v. Vimprecon

NEESONS COURT REPORTING INC.

In paragraph 50(i) of his Reasons, Justice Newbould directed us to attend on February 1 at 9:30 to resolve the issues to be tried beginning February 22, 2016.

The defendants, West Face Capital Inc. and Brandon Moyse, propose the following issues for trial relating to Catalyst's claim for breach of confidence in respect of WIND Mobile:

1. Did Brandon Moyse convey confidential information belonging to Catalyst, about WIND Mobile, to West Face?
2. If the answer to the first question is "Yes", did West Face misuse such information in its efforts to acquire securities and any other interests in WIND Mobile in 2014?
3. If the answer to the second question is "Yes", what was the cause of Catalyst's failure to acquire those securities and any other interests in WIND Mobile, and was that cause attributable to West Face's conduct?

During our telephone conversation yesterday, you mentioned that Catalyst needs to conduct an examination for discovery of West Face before trial. While this is not contemplated by paragraph 50 of Justice Newbould's Reasons, in the spirit of co-operation West Face is willing to produce Tony Griffin for a full additional day of examination by Catalyst. Please advise at your earliest convenience when you wish to conduct the examination.

I also attach an amendment to art. 4.5 of the Plan of Arrangement that you and counsel to Shaw have proposed. I have used a clean version as we have re-structured the paragraph. We are willing to accept this language provided that we maintain the February 22, 2016 trial date.

Yours very truly,

Matt



Kent E. Thomson | Bio

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THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

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

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TORONTO

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OF THE PLAINTIFF**

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Lawyers for the Plaintiff