

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

**MOTION RECORD OF THE DEFENDANT/MOVING PARTY
WEST FACE CAPITAL INC.
(VOLUME 2 OF 19)**

December 7, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

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

Defendants

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Commissioner for Taking Affidavits (or as may be)

**Meera Amanda Persaud, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law,
Expires April 13, 2018.**

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Moving Party

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/Responding Parties

**MOTION RECORD
(Returnable March 19, 2015)**

February 18, 2015

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Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Plaintiff/Moving Party

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants/
Responding Party

AMENDED NOTICE OF MOTION

The Plaintiff ("Catalyst") will make a motion to a Judge on March 19, 2015 at 10:00 a.m., or as soon after that time as the motion can be heard at the court house, 393 University Avenue, 10th Floor, Toronto, Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The Motion is to be heard

orally.

THE MOTION IS FOR

- (a) If necessary, an Order abridging the time for delivery of this Notice of Motion;
- (b) An interim, interlocutory and/or permanent injunction restraining the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted from:

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- (i) Participating in the management and/or strategic direction of Wind Mobile Corp. and any affiliated or related corporations (collectively, “Wind”); and
 - (ii) Without limiting the generality of the foregoing, participating in the Spectrum Auction, as that term is defined below;
- (c) An Order authorizing an Independent Supervising Solicitor (“ISS”) to attend West Face’s premises to create forensic images of all electronic devices, including computers and mobile devices of West Face (the “Images”) and to prepare a report which shall:
- (i) identify whether the Images contain or contained Catalyst’s confidential and proprietary information (“Confidential Information”) and, if possible, provide particulars or where on the Images the Confidential information is located or was located, when it was accessed and by whom, and when it was copied, transferred, shared or deleted and by and to whom; and
 - (ii) in the case of any identified or recovered emails sent or received containing or referring to Confidential Information, provide the following particulars:
 - (1) who authored the email;
 - (2) to whom the email was sent, copied and/or blind copied;
 - (3) the date and time when the email was sent;
 - (4) the subject line of the email;

- (5) whether the email contains any attachments, and if so, the names of the attachments and associated file information (i.e., size, date information);
 - (6) the contents of the email; and
 - (7) if the email was deleted, when the email was deleted.
- (c.1) A declaration and finding that the Defendant Brandon Moyse (“Moyse”) is in contempt of the Order of Justice Firestone dated July 16, 2014;
- (c.2) An Order that Moyse be committed to jail for such period as the Court deems just;
- (c.3) In addition or in the alternative to paragraph (c.2) above, an Order that Moyse be fined in an amount to be determined by the Court;
- (c.4) An Order that Moyse reimburse Catalyst for the full costs of the ISS and forensic expert retained pursuant to a Document Review Protocol executed on December 12, 2014 and any related costs thrown away by Catalyst on account of related legal fees and disbursements, such amounts to be determined and fixed by the Court on a reference;
- (d) The costs of this motion on a substantial indemnity basis, plus applicable taxes; and,
- (e) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

The Parties to this Action

- (a) Catalyst is a corporation with its head office located in Toronto, Ontario. Catalyst is a world leader in the field of investments in distressed and undervalued Canadian situations for control or influence, known as “special situations investments for control”.
- (b) West Face is a Toronto-based private equity corporation with assets under management of approximately \$2.5 billion. In December 2013, West Face formed a credit fund for the purpose of competing directly with Catalyst in the special situations investments industry.
- (c) The defendant Brandon Moyses (“Moyse”) was an investment analyst at Catalyst from November 2012 to June 22, 2014. Moyse was one of only two analysts and had substantial autonomy and responsibility at Catalyst. He was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.
- (d) On May 26, 2014, Moyse informed Catalyst of his intention to resign from Catalyst and to commence employment at West Face prior to the expiry of a non-competition clause in his employment agreement with Catalyst (the “Non-Competition Covenant”).
- (e) On June 23, 2014, Moyse began working for West Face, in breach of the Non-Competition Covenant.

Moyle and West Face Falsely Assure Catalyst there has been no Wrongdoing

- (f) Between May 30 and June 19, 2014, counsel for the parties to this action exchanged correspondence and communicated by telephone. Catalyst's counsel tried, but failed, to get the defendants' counsel to agree to terms which would avoid the need for litigation.
- (g) In this exchange of correspondence, counsel for West Face and Moyle claimed that their clients were aware of and would respect Moyle's obligations to Catalyst regarding confidentiality. In particular, West Face's counsel wrote, "Your assertion that West Face induced Mr. Moyle to breach his contractual obligations to [Catalyst] is [...] baseless."
- (h) As discussed in detail below, this statement is wrong: in March 2014, Tom Dea, a Partner at West Face ("Dea"), expressly asked Moyle to send him samples of his work at Catalyst, and Moyle sent Dea four Catalyst investment analysis memos stamped "Confidential" and "For Internal Discussion Purposes Only".
- (i) On June 19, 2014, Moyle's counsel communicated Moyle's intention to commence employment at West Face effective June 23, 2014. Moyle and West refused to preserve the *status quo* while Catalyst sought to enforce restrictive covenants which prevented Moyle from working at West Face prior to December 22, 2014. On June 24, West Face rebuffed Catalyst's efforts to negotiate a resolution, following which Catalyst commenced this action and brought a motion for injunctive relief.

- (j) Notably, the defendants insisted on rushing to destroy the status quo even though West Face had no immediate need for Moyses's services: for the first two weeks of Moyses's employment at West Face, he was not assigned any tasks.

The Interim Injunction

- (j.1) On June 30, 2014, the parties attended Motion Scheduling Court to schedule the return of Catalyst's motion for interim relief. At this attendance, the Defendants' counsel agreed to preserve the status quo with respect to relevant documents in the Defendants' power, possession or control pending the return of the interim injunction motion on July 16, 2014.
- (k) On July 16, 2014, at the hearing of Catalyst's motion for interim relief, the parties consented to an order (the "Interim Order"), pursuant to which:
- (i) ~~West Face~~The Defendants agreed were ordered to preserve and maintain all records in ~~its~~ their possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to ~~West Face's~~ their activities since March 27, 2014, and/or relate to or are relevant to any of the matters raised in Catalyst's action against ~~West Face~~the Defendants;
 - (ii) Moyses agreed not to work at West Face pending the determination of Catalyst's motion for interlocutory relief;
 - (iii) Moyses ~~consented~~ was ordered to turn over his personal computer and electronic devices (the "Devices") for the creation of a forensic image of his personal computer, iPad and smartphone of the data stored on the

Devices, to be held in trust by his counsel pending the outcome of the motion for interlocutory relief; and

- (iv) Moyse agreed to swear an affidavit of documents setting out all documents in his power, possession or control that relate to his employment at Catalyst.
- (l) The affidavits of documents Moyse swore pursuant to the Interim Order revealed very damning facts which demonstrate that Moyse and West Face casually disregarded Catalyst's proprietary interest in its confidential information.

Moyse Communicated Catalyst's Confidential Information to West Face

- (m) As a result of the Defendants' refusal to respect the status quo in June 2014, Catalyst moved with urgency to seek interim relief and prepared its interim relief materials without the benefit of any evidence from the Defendants.
- (n) On July 7, 2014, Moyse and Dea swore responding affidavits which confirmed Catalyst's worst fear: Moyse had transferred Catalyst's confidential information to West Face, and West Face distributed that confidential information throughout the firm.
- (o) At a meeting with Moyse on March 26, Dea asked Moyse to send him research and writing samples so Dea could assess Moyse's writing and research ability.
- (p) In response to this request, Moyse sent Dea four memos, spanning over 130 pages, which related to actual or possible Catalyst investments (the "Investment Memos"). The Investment Memos contain Moyse's and other Catalyst

employees' analyses of investment opportunities and were marked "Confidential" and "For Internal Discussion Purposes Only".

- (q) Moyses admitted he did not consider these markings to have any meaning, that he knew what he did was wrong, and that he deleted his email to Dea.
- (r) Dea also admitted that after he received the Investment Memos, he reviewed them and saw that they were marked confidential. Dea admitted that West Face considered the types of documents Moyses sent him to be confidential and that he would not want Moyses to treat West Face's confidential information in a similar fashion.
- (s) Dea admitted that after he reviewed the documents and saw that they were marked "Confidential", he circulated the Investment Memos to his partners and to a vice-president at West Face.
- (t) West Face never informed Catalyst that Moyses had given it copies of Catalyst's confidential information. Instead, West Face attached the Investment Memos to its responding motion record and filed them in open court. West Face did not seek Catalyst's permission to do so or otherwise give Catalyst an opportunity to seal the court file prior to the hearing of the motion for interim relief on July 16.

Moyses Reviewed Confidential Information Unrelated to his Work before he Resigned

- (u) In addition to the Confidential Memos that he sent to West Face, on March 28, 2014, two days after Moyses met Dea, Moyses accessed, over a ten-minute span, several of Catalyst's letters to its investors (the "Investor Letters"), from the time

period when Catalyst was active in an investment in Stelco. Catalyst and West Face were in direct competition with respect to the Stelco situation. Ten minutes is an insufficient amount of time to read the Investor Letters, which had nothing to do with Moyses's duties or responsibilities to Catalyst.

- (v) On April 25, 2014, Moyses reviewed dozens of files related to Catalyst's investment in Stelco over a 75-minute period. Once again, there was no legitimate business reason why Moyses would review these documents, which he did in an insufficient amount of time to read the material he was accessing. Moyses admitted during cross-examination that he "routinely" reviewed transaction files from Catalyst's old transactions.
- (w) At all material times, Moyses had accounts with two Internet-based file-storage services. These services enable users to create a folder on their computer which is synchronized over the Internet so that files stored in the folder can be viewed from any computer with an Internet connection. The services are capable of moving large amounts of data in a relatively brief period of time without leaving a record of the activity on the computer from which it was copied.
- (x) In the opinion of Martin Musters, Catalyst's forensic IT expert ("Musters"), Moyses's conduct of reviewing several documents over a relatively brief period of time is consistent with transferring files to an Internet-based file storage account.

Moyse Retained Hundreds of Catalyst Documents After He Left Catalyst

- (y) In his first affidavit sworn in response to Catalyst's motion for injunctive relief, Moyse swore that Catalyst had not provided any "actual" evidence that Moyse had transferred information from Catalyst's servers to his personal devices.
- (z) However, pursuant to the Interim Order, Moyse provided Catalyst with two affidavits of documents which allegedly set out all of the documents in his power, possession or control that relate to his employment at Catalyst. Those affidavits disclosed over 830 Catalyst documents that remain in his possession. Just by reviewing the document titles alone, Catalyst identified 245 confidential documents that remained in Moyse's possession, power or control following his resignation from Catalyst and commencement of employment at West Face.
- (aa) Moyse also admitted that he frequently emailed Catalyst documents to his personal email accounts and that he retained those documents on his personal devices. Moyse could not say with absolute certainty that his most recent search has been exhaustive, and he admitted that he deleted documents between March and May 2014, that he did not inform Catalyst when he resigned that he had its confidential information and that he did not offer to return confidential information to Catalyst.
- (bb) Moyse's conduct fits the profile of an employee who took confidential information prior to his resignation from Catalyst.

West Face's Porous Confidential Wall

- (cc) Prior to his resignation from Catalyst, Moyse was part of a team working on a significant investment opportunity in the telecommunications industry – the potential acquisition by Catalyst of Wind, one of Canada's few remaining independent mobile telecommunications companies.
- (dd) Moyse had access to confidential information pertaining to Catalyst's plans for Wind.
- (ee) At some point after it commenced its discussions with Moyse to come work at West Face, West Face also took an interest in Wind.
- (ff) In addition, both West Face and Catalyst owned secured debt of Mobilicity, another mobile telecommunications company. Catalyst is Mobilicity's largest secured creditor while West Face owns or owned a much smaller portion of Mobilicity's secured debt.
- (gg) In June 2014, after Catalyst's counsel expressed concern to West Face's counsel about the implications of West Face's efforts to hire Moyse on the rival investment firm's pursuit of the Wind opportunity, West Face claimed to have erected a "confidentiality wall" to separate Moyse from its own pursuit of Wind.
- (hh) The "wall" erected by West Face was incredibly weak:
 - (i) it did not apply to all of West Face's employees;
 - (ii) it applied to Wind, but not to Mobilicity;

- (iii) West Face took no steps to obtain acknowledgments from its investment team that a wall had been established;
- (iv) No prohibition was imposed to prevent West Face's employees from accessing Moyse's data; and
- (v) West Face has refused to state what consequences, if any, an employee would face if he or she did not comply with the confidentiality wall.

West Face Purchased Wind Using Catalyst's Confidential Information

- (ii) In August 2014, Catalyst had an exclusive negotiation period to negotiate the purchase of Wind from its then-owners.
- (jj) Those negotiations failed and the exclusivity period expired. The negotiations failed on issues relevant to the regulatory regime affecting Wind.
- (kk) Within days of negotiations failing with Catalyst, West Face, together with partners in a syndicated investment group, successfully negotiated the purchase of Wind. Notably, the West Face syndicate waived any regulatory concerns that Catalyst continued to have.
- (ll) West Face could not have negotiated the deal it did with Wind without access to Catalyst's confidential information, which was provided to it by Moyse.
- (mm) Catalyst has amended its claim against West Face to seek a declaration that West Face holds its interest in Wind in trust for Catalyst.

The Interlocutory Injunction and the ISS

- (nn) On November 10, 2014, the Court released its decision in Catalyst's motion for interlocutory relief to prevent Moyse from working at West Face prior to the expiry of the Non-Competition Covenant and to authorize an ISS to review the Images of Moyse's personal devices.
- (oo) The Court granted the relief sought by Catalyst: Moyse was enjoined from working at West Face prior to December 22, 2014 and an ISS was authorized to review the Images and prepare a report.
- (pp) ~~The ISS is in the midst of preparing its report.~~ The ISS process involves a review of the Images using search terms submitted by Catalyst to determine whether the Images contain or contained Catalyst's confidential information;
- (qq) ~~The ISS's work is ongoing and its report is not yet final.~~ However, the ISS has reported on an interim basis on the number of "hits" that the search terms requested by Catalyst have generated. Among other things, the following search terms generated an unexplainably large number of "hits" on Moyse's personal computer:
 - (i) West Face: 5,360;
 - (ii) Callidus: 132;
 - (iii) Wind: 26,118;
 - (iv) Mobilicity: 768;

- (v) Turbine (Catalyst's codename for the Wind opportunity): 756;
 - (vi) Boland (West Face's CEO): 554;
 - (vii) Dea: 4,013;
 - (viii) Auction: 6,489;
 - (ix) Spectrum: 3,852.
- (rr) There is no legitimate business reason why these search terms would yield such a large number of hits on Moyse's personal computer. The inference to be drawn from these hits is that Moyse copied Catalyst's confidential information to his personal computer and transferred it to his new employer's at West Face, either before or after he officially commenced employment there in June 2014.
- (ss) Hard drives, mobile devices and Internet accounts that could be inspected to determine whether West Face possesses or possessed Confidential Information are beyond the control or possession of Catalyst.

Moyse's Contempt

(ss.2) On February 1, 2015, the ISS delivered a draft report (the "Draft ISS Report") to counsel for Catalyst and Moyse. Pursuant to the document review protocol agreed to and executed by the parties on December 12, 2014 (the "DRP"), Moyse has 10 business days to object to the inclusion of a document in the ISS's report. At the end of this 10-day period, the ISS's report becomes final.

- (ss.3) The Draft ISS Report revealed, among other things, that on July 16, 2014, at 8:53 a.m., approximately one hour before the commencement of Catalyst's motion for interim relief, Moyse installed a software programme entitled "Advanced System Optimizer 3". Advanced System Optimizer 3 includes a feature named "Secure Delete", which is said to permit a user to delete and over-write to military-grade security specifications data so that it cannot be recovered by forensic analysis.
- (ss.5) As set out above, at the interim injunction motion, which commenced at approximately 10:00 a.m. on July 16, 2014, Moyse consented to the Interim Order, which, among other things, ordered him to preserve the data on the Devices and to give the Devices to his counsel so that a forensic expert could create forensic images of the data on the Devices (the "Images").
- (ss.6) Between July 16 and July 18, 2014, counsel for the parties exchanged correspondence regarding the retainer of the forensic expert for the purpose of creating the Images.
- (ss.7) On Friday, July 18, 2014, H&A eDiscovery Inc. ("H&A") was retained to create the Images. The parties agreed that Moyse's Devices would be delivered to H&A on Monday, July 21, 2014.
- (ss.8) On Sunday, July 20, 2014, at 8:09 p.m., Moyse used the Secure Delete programme to delete files and/or folders from his personal computer. The date and time of this activity is recorded through the creation of a folder entitled "Secure Delete" on Moyse's computer. This folder is created when a user uses the

Secure Delete function to delete files and/or folders in such a manner that the files and/or folders cannot be recovered through forensic analysis.

(ss.9) It is impossible to tell what files and/or folders Moyse deleted on July 20, 2014.

(ss.10) By intentionally deleting data from his computer, contrary to the express terms of the undertaking given to the Court on June 30, 2014 and the terms of the Interim Order, Moyse has acted in contempt of Court.

(ss.11) The destruction of evidence caused by Moyse's breach of the Interim Order has prejudiced Catalyst's ability to obtain a fair trial of its claim on the merits.

(ss.12) The Interim Order with which Moyse intentionally did not comply clearly stated what was required of him and in particular Moyse knew that the use of the Secure Delete software programme on July 20, 2014, was a breach of the Interim Order.

(ss.13) It is impossible for Moyse to purge his contempt. The data he deleted can never be recovered.

(ss.14) Through his intentional conduct, Moyse has blatantly and intentionally disrespected this Court's Order and has demonstrated a pronounced disdain for the legal system and the courts.

(ss.15) Moyse has materially impaired and frustrated the ISS process ordered by Justice Lederer on November 10, 2014. The purpose of Interim Order and the ISS process was to determine through a forensic analysis of the Devices whether, among other things, Moyse had communicated Catalyst's Confidential

Information to West Face. By “scrubbing” data from his computer the night before he was to deliver it to H&A, Moyse knowingly rendered the forensic analysis largely useless.

(ss.16) As a result of Moyse’s wrongful conduct, the only source of evidence of potential communications between Moyse and West Face of Catalyst’s Confidential Information now resides on West Face’s computers and devices.

The Callidus Report

- (tt) Callidus Capital Corporation (“Callidus”) is a publicly traded corporation that specializes in innovative and creative financing solutions for companies that are unable to obtain adequate financing from conventional lending sources. Catalyst owns a 60 per cent interest in Callidus.
- (uu) In November 2014, shortly after Catalyst successfully argued the interlocutory motion, the share price of Callidus began to drop precipitously without any apparent reason for the rapid decline.
- (vv) Catalyst was initially unable to discover the cause of the price drop. However, based on confidential sources, it learned that West Face was “talking down” the stock on the street and had prepared a research report that purported to reveal problems with Callidus’s loan book.
- (ww) The identity of Callidus’s borrowers is, in large part, not public information. If West Face had access to information about Callidus’s borrowers, it obtained that information through improper means, likely from Moyse, who had no

involvement with Callidus and yet who had 132 Callidus “hits” on his personal computer.

- (xx) Despite repeated requests to West Face, it has refused to disclose its research report on Callidus. West Face’s conduct of talking down the stock was directed primarily at attempting to cause harm to Catalyst, a majority shareholder in Callidus.

The Upcoming Spectrum Auction

- (yy) In March 2015, Industry Canada is going to auction 30 MHz of AWS-3 spectrum to new entrants to the mobile telecommunications industry, including Wind and Mobilicity, to enable those new entrants to deliver services to more users at faster speeds (the “Spectrum Auction”).
- (zz) Bidders who intend to participate in the Spectrum Auction must submit a pre-auction financial deposit with their application to participate in the auction by no later than January 30, 2015.
- (aaa) Armed with Catalyst’s Confidential Information, which it obtained from Moyse, West Face will be able to help Wind compete unfairly against Mobilicity in the Spectrum Auction or otherwise use this information to its advantage in relation to Mobilicity.

Irreparable Harm

- (bbb) The damage to Catalyst caused by West Face’s conduct is not limited to monetary damages.

- (ccc) Absent injunctive relief, Catalyst will suffer irreparable harm.
- (ddd) Sections 101 and 104 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- (eee) Rules 1, 3, 37, 40, ~~and 57~~ and 60 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. and
- (fff) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The pleadings in this action;
- (b) The Reasons for Decision of Justice Lederer dated November 10, 2014;
- (b.1) The affidavit of Martin Musters, to be sworn;
- (c) The affidavit of James A. Riley, to be sworn; and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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~~January 13, 2015~~
February 6, 2015

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THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

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Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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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 MARTIN MUSTERS
(sworn February 15, 2015)

I, MARTIN MUSTERS, of the City of Oakville, in the Regional Municipality of Halton, MAKE OATH AND SAY:

1. I am the Director of Forensics at Computer Forensics Inc. ("CFI"), a computer security consulting firm based in Oakville, Ontario. In this capacity, I am responsible for all aspects of CFI's computer forensic services.
2. I previously swore an affidavit in this proceeding on June 26, 2014. That affidavit, without exhibits, is attached hereto as Exhibit "A" and I incorporate the evidence therein into this affidavit.

Expertise

3. My expertise as a forensic investigator is set out in my June 26, 2014 affidavit. A copy of my detailed *curriculum vitae* is attached hereto as Exhibit "B".

Review of Independent Supervising Solicitor's Draft Report

4. As explained in detail in my June 26, 2014, affidavit, on June 20, 2014, CFI was retained by Lax O'Sullivan Scott Lisus LLP, lawyers for the plaintiff, Catalyst Capital Group Inc. ("Catalyst"), to conduct a forensic analysis of a desktop computer that I was advised had

previously been used by Brandon Moyses ("Moyse"), a former employee of Catalyst, while Moyses was employed by Catalyst (the "Desktop Computer"). On June 21, 2014, CFI created a forensic image of the Desktop Computer and then conducted an analysis of the image. The results of that analysis are described in my June 26, 2014 affidavit.

5. Prior to swearing this affidavit I have reviewed the Order of Justice Firestone dated July 16, 2014 and the Order of Justice Lederer dated November 10, 2014. I understand from my review of those documents that:

- (a) On July 16, 2014, Moyses was ordered to preserve and maintain all records in his possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to his activities since March 27, 2014, and/or relate to or are relevant to any of the matters raised in this proceeding, except as otherwise agreed to by Catalyst;
- (b) On July 16, 2014, Moyses was ordered to turn over any personal and electronic devices owned by him or within his power or control to his legal counsel for the taking of a forensic image of the data stored on those devices; and
- (c) On November 10, 2014, Justice Lederer ordered that the forensic images created in compliance with the July 16, 2014 Order of Justice Firestone be reviewed by an independent supervising solicitor ("ISS") identified pursuant to a protocol to be jointly agreed to by counsel for the parties to this action, or, failing such agreement, by way of further direction of the Court.

6. Attached as Exhibit "C" to my affidavit is a copy of the document review protocol ("DRP") agreed to by the parties in December 2014. Pursuant to the DRP, after the ISS delivers a draft report to Catalyst and Moyses, Moyses has ten business days to object to the inclusion of a document or documents referred to in the draft report.

7. Now produced and shown to me and marked as Exhibit "D" to my affidavit is a redacted copy of the ISS's draft report dated February 1, 2015 (the "Draft ISS Report"). I am informed by Andrew Winton, counsel for Catalyst, and I believe, that on February 13, 2015, ten business days after the ISS delivered the Draft ISS Report to Catalyst and Moyses,

Moyse's counsel communicated Moyse's objection to the inclusion of dozens of documents referred to in the Draft ISS Report.

8. For the purposes of this affidavit, those objections are not relevant, as this affidavit only relates to information in the Draft ISS Report that does not concern the listing of specific documents referred to therein.

9. Rather, this affidavit concerns information set out in paragraphs 44 to 48 of the Draft ISS Report. According to the information set out in those paragraphs:

- (a) On Wednesday, July 16, 2014, an email message was sent to Moyse's Hotmail account. The email constituted a receipt and license key for a software product entitled "Advanced System Optimizier 3 [Special Edition]";
- (b) Based on the creation date of associated folders, the forensic IT expert assisting the ISS was able to determine that Advanced System Optimizer 3 was installed on Moyse's personal computer on July 16, 2014 at 8:53 a.m.; and
- (c) On July 20, 2014, at 8:09 p.m., a folder entitled "Secure Delete" was created on Moyse's personal computer.

10. Attached to my affidavit as Exhibit "E" is a copy of the promotional information for Advanced System Optimizer 3. Advanced System Optimizer 3 includes a "Secure Delete" tool, which is described in the promotional information as being capable of deleting files or folder from a computer in a manner that prevents recovery of the deleted data by forensic recovery tools:

Did you know that whenever you delete a file or folder from your system using the 'Delete' key or Recycle Bin, that item isn't permanently removed? In fact, it's quite an easy process to recover deleted files and folders using widely available data recovery utilities, leaving you open to identity theft, and loss of confidential information and trade secrets.

Secure Delete keeps the privacy and security of your system intact. By implementing a secure deletion method developed by the United States Department of Defense, Secure Delete ensures that no tool can ever recover your deleted files and folders! By

using Secure Delete to securely remove your sensitive files, deleted items are permanently removed from your system.

11. After I reviewed the Draft ISS Report, I downloaded the Advanced System Optimizer 3 software and installed it on my own personal computer to investigate how the software works.

12. In my own experience using the Secure Delete feature, merely downloading and installing the software on one's computer does not lead to the creation of a folder entitled "Secure Delete". That folder is only created when a user runs the Secure Delete feature to delete a file or folder from his computer.

13. Based on my own experience using the software, it is my opinion that someone using Moyse's computer on July 20, 2014 deleted one or more files or folders beginning at 8:09 p.m. Based on my experience using the software, there is no other explanation as to why a "Secure Delete" folder would be created on Moyse's personal computer on that date.

14. Because of the random data generated by Secure Delete to overwrite the data it is deleting, it is impossible for any forensic investigator to determine the extent to which the tool was used to delete individual files or folders. The software generates a random pattern of data to overwrite the deleted files, which leaves no trace of its use, other than the "Secure Delete" folder that is created when the tool is used.

15. As a result, it is impossible to tell what documents Moyse, or someone using his personal computer on Sunday, July 20, 2014 at 8:09 p.m., deleted on that date.

16. In my experience, in situations involving the departure of an employee to a competitor, when I encounter evidence that someone used a secure delete tool to delete data in such a way as to make it impossible to review through forensic analysis, the deletion was committed to hide evidence that the person took confidential information from a former employer and communicated it to their new employer.

17. Attached as Exhibit "F" is a signed Acknowledgment of Expert's Duty form, which I signed prior to swearing this affidavit.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 15, 2015



Commissioner for Taking Affidavits, etc.



MARTIN MUSTERS

THE CATALYST CONSULTING GROUP INC. -and-
Plaintiff

BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

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Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF MARTIN MUSTERS
(sworn February 15, 2015)

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Lawyers for the Plaintiff

This is Exhibit "A" referred to in the
Affidavit of Martin Musters,
sworn the 15th day of February, 2015.



Andrew Winton
A Commissioner for taking Affidavits

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 MARTIN MUSTERS
(sworn June 26, 2012)

I, MARTIN MUSTERS, of the City of Oakville, in the Regional Municipality of Halton, MAKE OATH AND SAY:

1. I am the Director of Forensics at Computer Forensics Inc. ("CFI"), a computer security consulting firm based in Oakville, Ontario. In this capacity, I am responsible for all aspects of CFI's computer forensic services.

Expertise

2. CFI specializes in the preservation and analysis of digital evidence to assist in criminal, civil, or labour relations investigations. In particular, CFI specializes in the retrieval of data from hard drives, servers, laptops, cell phones, PDA's and other devices, even when the user has deleted or otherwise removed (or attempted to remove) the data.

3. As the Director of Forensics at CFI, I have overseen and conducted computer forensic investigations regarding litigation, including forensic searches for confidential information. I have also been involved with law enforcement investigations, corporate investigations and data and password recovery projects.

4. I have extensive experience in information technology and computer forensics and have been involved in the field since 1979. I have received numerous professional certifications in the field of computer and electronic forensics. I am:

- (a) a Certified Information Systems Security Professional (CISSP);
- (b) a Certified Fraud Examiner (CFE);
- (c) a Certified Information Systems Auditor (CISA);
- (d) a Certified Protection Professional (CPP);
- (e) a Certified Stenographic Examiner;
- (f) trained in the use of Encase Forensic Software; and
- (g) certified in Advanced Cell Phone Forensics.

5. I have written numerous articles and spoken at numerous conferences in the field of computer forensics. I have also been certified as an expert witness in the field of electronic forensics by the Ontario Superior Court of Justice and the Ontario Court of Justice. A copy of my detailed *curriculum vitae* is attached as Exhibit "A" to my affidavit.

Investigation

6. On June 20, 2014, CFI was retained by Lax O'Sullivan Scott Lisus LLP, lawyers for the plaintiff, Catalyst Capital Group Inc. ("Catalyst"), to conduct a forensic analysis of a desktop computer that I was advised had previously been used by Brandon Moyse, a former employee of Catalyst, while Moyse was employed by Catalyst (the "Desktop Computer"). On June 21, 2014, CFI created a forensic image of the Desktop Computer and then conducted an analysis of the image.

7. As the investigator assigned to this matter, I conducted the examination of the Desktop Computer. As such, I have knowledge of the matters contained in this affidavit, which I am swearing to provide information to the Court, and for no other purpose.

8. I was able to determine from my review of the forensic image that Moyse had personal accounts with “Box” and “Dropbox”, two Internet-based file-storage services (together, the “Cloud Services”), and that he accessed the Cloud Services using the Desktop Computer. Attached as Exhibit “B” is a list of the Internet Uniform Resource Locators (“URLs”) for the Cloud Services that Moyse accessed from the Desktop Computer.

9. The Cloud Services are file-hosting services that offer cloud storage, file synchronization, personal cloud, and client software. They allow users to create a special folder on each of their computers, which they then synchronize so that it appears to be the same folder (with the same contents) regardless of which computer is used to view it. Files placed in this folder also are accessible through a website and mobile phone applications.

10. It is difficult to trace the use of Cloud Services to copy information from a hard drive. Unlike the copying of a file to a USB drive, which leaves a record of the file transfer activity on the hard drive, uploading documents to a Cloud Service such as Dropbox does not leave a similar record. Cloud Services can be used as a sophisticated way to copy large amounts of data in a relatively brief period of time.

11. I was also able to determine from my analysis of the Desktop Computer that Moyse accessed specific files on specific dates.

12. On March 28, 2014, over an eleven-minute period, Moyse accessed a series of files from an “Investors Letters” directory. Attached as Exhibit “C” is a table listing the files accessed by Moyse between 6:28 and 6:39 p.m. on March 28, 2014.

13. On April 25, 2014, over a seventy-minute period, Moyse accessed several files which contain the word “Stelco” in the file directory or in the filename. Attached as Exhibit “D” is a table listing the files accessed by Moyse between 2:36 and 3:47 on April 25, 2014.

14. On May 13, 2014, over a sixty-one-minute period, Moyse accessed several files through his Dropbox account which had the name “Masonite” in the filename. Attached as Exhibit “E” is a table listing the files accessed by Moyse from his Dropbox account between 6:59 and 8:00 p.m. on May 13, 2014.

15. Also on May 13, 2014, over a twenty-four-minute period, Moyse accessed several files from a "2014 Potential Investment" directory. Attached as Exhibit "F" is a redacted table listing the files accessed by Moyse between 8:39 and 9:03 p.m. on May 13, 2014. I am informed by James Riley, Catalyst's Chief Operating Officer, that the redactions to this table are necessary in order to maintain confidentiality concerning a potential investment that Catalyst is studying.

16. On May 26, 2014, at 12:31 p.m., Moyse accessed a document entitled "14-05-26 Notes" from a directory entitled "Monday Meeting", as shown on the table attached as Exhibit "G".

17. In my experience, Moyse's conduct of accessing several files from the same directory over brief period of time, as described above, is consistent with transferring files to a Cloud Service. It is my opinion that, based on the pattern of conduct described above, Moyse was very likely transferring the documents he reviewed on March 28, April 25 and May 13 from Catalyst's computers to his Dropbox or Box accounts, although I cannot say so definitively at this time.

18. I cannot conclusively determine whether Catalyst's files were transferred by Moyse to the Cloud Services and then from the Cloud Services onto any other computer or electronic device, such as an iPad, without access to those computers and/or devices that potentially had the files transferred to them.

19. Attached as Exhibit "H" is a signed Acknowledgment of Expert's Duty form, which I signed prior to swearing this affidavit.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
June 26, 2014



Commissioner for Taking
Affidavits, etc.



MARTIN MUSTERS

THE CATALYST CONSULTING GROUP INC. -and-
Plaintiff

BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF MARTIN MUSTERS
(sworn June 26, 2014)**

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8

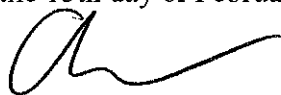
Rocco Di Pucchio LSUC#: 381851
rdipucchio@counsel-toronto.com
Tel: (416) 598-2268

Andrew Winton LSUC#: 544731
Tel: (416) 644-5342
awinton@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "B" referred to in the
Affidavit of Martin Musters,
sworn the 15th day of February, 2015.



Andrew Winton
A Commissioner for taking Affidavits

MR. MARTIN MUSTERS, B. MATH CISSP, CFE, CISA, PI

1011 Upper Middle Road East, Suite 1431
 Oakville, Ontario
 L6H 5Z9
 Cell: 647 302-0067

Email: MMUSTERS@COMPUTERFORENSICS.CA

OBJECTIVE

To provide professional services in the field of computer forensics.

EXPERIENCE

COMPUTER FORENSICS INCORPORATED (CFI)

Director of Forensics Jan 2003-present

- Analyze and investigate all types of computer related fraud
- Consultant for various police agencies with respect to electronic crimes
- Expert Witness Testimony in all courts of law

NCI (NET CYCLOPS)

Director of Forensics June 2006-October 2010

- Direct all aspects of the Forensics division, which includes Business Continuity and Disaster Recovery
- Physical Security Assessments (Completed assessments for all of the Ministry of Health buildings)
- Provide Expert Witness Testimony (Declared an expert by the Ontario Court of Justice)
- Corporate Investigations
- Police Investigations
- Anton Pillar Orders
- Advanced File/Data Recovery

BRUCE POWER

Corporate IT Security Officer May 2001 – June 2006

Bruce Power was formed when British Energy bought the Bruce Nuclear Power Development from Ontario Power Generation. Responsible for all aspects of IT Security for Bruce Power.

- Canadian Security Intelligence Service (CSIS) Clearance Level 2 – Secret
- Work with CSIS to establish clearance for all individuals entering "Protected Areas"
- Conduct Internal Employee Investigations.
- Member of the Code of Conduct investigation team
- Internal and external security awareness programs
- Establish corporate security framework
- Develop Security Policy
- Audit other departments for Security Policy Compliance
- Develop Internet, Computer Usage and Email policies
- Develop Network Standards for Security
- Installed ISS Real Secure Version 7.0 with Site Protector (13 Network Probes, 30 Server Probes)
- Installed Fusion and ISS Scanner modules

ONTARIO POWER GENERATION

Manager, Applications Transition Jan 2000-April 2001

Managed the transition of Applications from Ontario Power Generation (OPG) to Bruce Power. This involved breaking apart from OPG over 350 applications. Worked with New Horizon Solutions, now Cap Gemini, to provide common services for our larger applications (Passport, SAP).

ONTARIO POWER GENERATION

Manager, Customer Support Services Bruce Site, July 1995 – Dec 1999

Looked after all aspects of Customer Support Services at the Bruce Site,

- Managed Help Desk for 4000 Users
- Break/fix for 3000 p/c's
- Managed Computer Inventory
- Managed Procurement for all Computer related hardware/software

EXPERIENCE

...CONTINUED

ONTARIO POWER GENERATION

Programmer/Analyst Sept 1990-June 1995

Programmer/Analyst developing department based solutions for:

- Payroll
- Human Resources
- Finance
- Inventory Management and Procurement

GREY BRUCE REGIONAL HEALTH CENTRE.

Programmer/Analyst August 1986-August 1990

Major responsibilities of this role were:

- Support of Baxter Online Health Care System

BLACKWOOD HODGE

Director of Information Systems April 1984-July 1986

Major responsibilities of this role were:

- Managed Data Center, AS400 and Univac 90/60
- Responsible for all Applications Development
- Managed Budget

TEMPO COMPUTER SERVICES

Director, Product Development June 1980-Mar 1984

In this role I was responsible for the development of the companies software program (TRACS) an Online Order Entry, Inventory Control, Purchasing, Accounts Receivable and General Ledger Package. My duties included Managing the development of the package and tailoring the application to suit customers located in North America and Australia. There was extensive travel involved.

Sperry Univac

Technical Support Engineer May 1979-June 1980

In this role I assisted in pre-sales in closing deals

I was also contracted out as a consultant for services sold.

Hardware was Univac 9020, Univac 9030, Univac 9040, Univac 9060

POST SECONDARY EDUCATION

UNIVERSITY OF WATERLOO

Waterloo, Ontario

Bachelor of Mathematics and Computer Science (Honours), 1979 with minor in Business Administration

CERTIFICATIONS/ASSOCIATIONS

- Associate Member of the Canadian Association of Chiefs of Police
- Certified Fraud Examiner (CFE)
- Certified Information Systems Security Professional (CISSP)
- Certified Information Systems Security Auditor (CISA)
- Certified Protection Professional (CPP)
- Certified in Steganographic Analysis
- Certified in Advanced Cell Phone Forensics
- Member of the High Tech Crime Consortium (HTCC)
- Licensed Private Investigator in the Province of Ontario

EXPERT

-
- R. v. Agil, Khumane by the Ontario Superior Court, June 2012, Participation in a Criminal Organization. Declared an Expert in Computer Forensics
 - R. v. Prazeres by the Ontario Court of Justice in April 2008. Police officer charged with public mischief, conspiracy to prosecute a person for an alleged offence, fabrication of evidence and breach of trust. Declared an Expert in Computer Forensics

- R. v. Rogers by the Superior Court of Justice in March 2009. First Degree Murder x 2. Declared an Expert in Cell Phone Forensics and Call Detail Records
- R. v. Young Offender by the Superior Court of Justice in April 2009. Sexual Interference of a child under 14, Forcible Confinement and Sexual assault. Declared an Expert in Computer Forensics and Cell Phone Forensics.
- R. v. Brzezinski by the Superior Court of Justice. Possession of Child Pornography. Declared an Expert in Computer Forensics in September of 2009.

SPEAKING ENGAGEMENTS

- ACFE Certified Fraud Examiners Conference held in Toronto Sept 29, 2010
- ASIS-Best Practices Seminar Toronto, Ontario May 22, 2008
- Foresec Conference Regina, Saskatchewan Sept 17-18, 2008
- Canadian Technical Security Conference – Toronto May 16, 2007
- Association of Certified Fraud Examiners 13th Annual Conference in Toronto – May 2007 (Speaker)
- Golden Horseshoe homicide investigators conference (GHHIA) May 2006 (Speaker)
- Niagara International Fraud Conference May 2006 (Speaker)

PUBLISHED BOOKS

- ACFE Computer Fraud Case Studies by Joseph T. Wells – Contributing Author

PUBLISHED ARTICLES

- Steganography – Today's risk to your organization published Dec 2007
- Trends in Digital Forensics published Nov 2006
- Cell Phone Forensics published Feb. 2006
- The Trojan Horse Defense published Dec. 2005
- Preserving Digital Evidence published Sept. 2005
- Benford's Law and Fraud Detection published June 2005
- It Wasn't Me published May 2005
- Cyber Terrorism - Is it a Real Threat published Feb. 2005

TECHNICAL EDUCATION

EnCase – Advanced – April 2004

EnCase – Intermediate – October 2003

CSI (Computer Security Institute Conference) – Chicago May 2003

CISSP COMMON BODY OF KNOWLEDGE INSTRUCTOR ORIENTATION SEMINAR
International Information Systems Security Certification Consortium, Inc. (ISC2), Dec 2001

CISSP COMMON BODY OF KNOWLEDGE SEMINAR
International Information Systems Security Certification Consortium, Inc. (ISC2), Nov 2001
Sponsored by ISSA, Toronto Chapter

ISS REAL SECURE VERSION 6
Toronto, Ontario Dec 2001

INTERNATIONAL SECURITY FORUM CONFERENCE
Toronto, Ontario Oct 2001

CHECK POINT VPN-1/FIREWALL-1 MANAGEMENT 1
Toronto, Ontario June 2001

CHECK POINT VPN-1/FIREWALL-1 MANAGEMENT 2
Toronto, Ontario June 2001

WINDOWS NT CORE TECHNOLOGIES
Toronto, Ontario Sept 1997

ADVANCED PL/SQL

Toronto, Ontario Feb 1996

ORACLE DATA MODELING AND RELATIONAL DATABASE DESIGN

Toronto, Ontario Oct 1995

UNIX ADMINISTRATION AND TROUBLESHOOTING

TORONTO, ONTARIO MAR 1994

INTRODUCTION TO UNIX

Toronto, Ontario Sept 1993

Business and Technical Education ...continued

TECHNICAL SKILLS

- Extensive knowledge of the following operating systems and applications:
- Windows 98, Windows NT v3.51, 4.0 , Windows 2000, Windows XP, Vista
- Active Directory
- Windows 2003
- Novell NetWare 3.X
- Windows 3.1, Windows 95
- ISS Real Secure
- Entrust, PGP
- Encase
- ISS Scanner
- Nmap
- Cybercop

This is Exhibit "C" referred to in the
Affidavit of Martin Musters,
sworn the 15th day of February, 2015.



Andrew Winton
A Commissioner for taking Affidavits

Court File No: CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

DOCUMENT REVIEW PROTOCOL

Purpose:

To determine whether forensic images (the "Images") obtained from the personal electronic devices of the defendant Brandon Moyle ("Moyle") contain or contained The Catalyst Capital Group Inc.'s ("Catalyst's") confidential information (the "Catalyst Confidential Information").

To determine, if possible, what use was made of the Catalyst Confidential Information.

To ensure that the abovementioned tasks (the "Review") are completed and a report is delivered to counsel for Catalyst and Moyle (the "Report") by January 30, 2015.

To ensure that the Review is conducted in a manner that,

- a) protects Moyle's confidential information from being accessed by Catalyst or its counsel or their agents;
- b) protects Catalyst's confidential information from being accessed by West Face Capital Inc. ("West Face") or its counsel or their agents;
- c) protects West Face's confidential information from being accessed by Catalyst or its counsel or their agents; and
- c) maintains solicitor-client privilege (collectively, the "Restrictions").

-2-

Protocol:

1. Stockwoods LLP shall be appointed as an Independent Supervising Solicitor ("ISS") no later than December 15, 2014.
2. The costs of the ISS (including all fees and disbursements incurred by the ISS) shall be borne by Catalyst, subject to potential recovery in the cause.
3. The ISS shall,
 - a. be provided with copies of all pleadings and motion materials for Catalyst's motion heard October 27, 2014;
 - b. act as an independent officer of the Court; and
 - c. be at liberty, if necessary, to seek directions from the Court in regards to carrying out its mandate.
4. The ISS shall be instructed, in conjunction with a forensic expert to be retained by the ISS (the "Expert"), to carry out the Review subject to the Restrictions, and to prepare and to deliver the Report to counsel for Catalyst and Moyses by January 30, 2015. The ISS shall determine the identity of the Expert to be retained, but the Expert shall not be Computer Forensics Investigations Inc.
5. All communications to or from the ISS shall be conducted in writing, with copies of the correspondence to counsel for Moyses and Catalyst, or by way of a conference call with counsel for Moyses and Catalyst. Following each conference call, the ISS shall prepare a written summary of the conference call. All written communications shall be retained until the within matter is fully disposed of, including all appeals.
6. The ISS and/or the Expert may consult with Catalyst and/or its counsel in writing regarding search terms or other criteria to be used by the ISS and/or the Expert to identify the Catalyst Confidential Information. Catalyst shall submit any proposed search terms to counsel for Moyses and to the ISS. Moyses shall have five (5) business days to respond to the proposed terms for the purpose of objecting to the inclusion of any of the proposed terms. If Moyses does

-3-

so object, the ISS will decide, at its sole discretion, whether to use a proposed search term as part of its review of the Images.

7. Subject to further order of the court or the consent of Catalyst, Catalyst's proposed search terms will not be communicated to West Face or its counsel.
8. In order to ensure that the Restrictions are maintained and subject to further order of the court or the agreement of the parties, the ISS and the Expert shall not provide Catalyst or its counsel with access to the Images or any work product generated during the Review.
9. The Report shall,
 - a. identify whether the Images contain or contained the Catalyst Confidential Information and, if possible, provide particulars of where on the Images the Catalyst Confidential Information is located or was located, when it was accessed and by whom, and when it was copied, transferred, shared or deleted and by and to whom; and
 - b. in the case of any identified or recovered e-mails sent or received containing or referring to the Catalyst Confidential Information, provide the following particulars:
 - i. Who authored the e-mail;
 - ii. To whom the email was sent, copied and/or blind copied;
 - iii. The date and time when the e-mail was sent;
 - iv. The subject line of the e-mail;
 - v. Whether the e-mail contains any attachments, and if so, the names of the attachments and associated file information (i.e. size, date information);
 - vi. The contents of the e-mail, redacting any information that the ISS deems to be Moyses's confidential information or subject to solicitor-client privilege; and
 - vii. If the email was deleted, when the email was deleted.

10. The ISS shall disclose a draft Report (which will not include the information set out in paragraph 9(b)(vi)) to Catalyst and Moyses. Within ten (10) business days of receiving the draft Report, Moyses may object to the inclusion of a document or documents referred to in the draft Report.

- a. If Moyses does so object, he should set out the basis for his objection. If the ISS determines that an objection is justified, it will segregate the documents to which Moyses objected and remove information concerning those documents from the final report.
- b. Any document to which Moyses does not object to being included in the draft Report may be included in a final Report. The final Report will include the information set out in paragraph 9(b)(vi).

11. Both Moyses and Catalyst shall be provided with any documents referred to in the final Report. If Catalyst believes that a document has been improperly excluded from the final Report, it may bring a motion for production of that document.

12. West Face shall not be provided with a copy of the draft Report, the final report, or the documents referred to in the draft or final Reports, subject to further order of the court or the consent of Catalyst. However, if the ISS finds in its report that any Catalyst Confidential Information was transferred to West Face, that portion of the report will be provided to counsel for West Face, with appropriate redactions to protect the Catalyst Confidential Information, subject to West Face's right to seek an order from the court for further production of the Report.

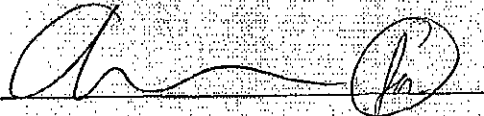
[The rest of this page is intentionally left blank]

13. The parties agree that this process shall be completed by January 30, 2015.

THE FOREGOING IS AGREED TO BY THE PARTIES AND THEIR COUNSEL

DATED AT TORONTO, ONTARIO this 12th day of December, 2014

LAX O'SULLIVAN SCOTT LISUS LLP



Lawyers for the Plaintiff

**GROSMAN, GROSMAN AND GALE
LLP**



Lawyers for Brandon Moyse

DENTONS CANADA LLP



Lawyers for West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and-

BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

DOCUMENT REVIEW PROTOCOL

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Toronto, Ontario M5H 1J8

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Andrew Winton LSUC#: 544731

awinton@counsel-toronto.com

Tel: (416) 644-5342

Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "E" referred to in the
Affidavit of Martin Musters,
sworn the 15th day of February, 2015.

A handwritten signature in black ink, appearing to read 'A. Winton', written over a horizontal line.

Andrew Winton
A Commissioner for taking Affidavits



Introducing Advanced System Optimizer 3

The most comprehensive, powerful and smartest system optimizer now includes -

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Advanced System Optimizer Version 2 was launched in the year 2004. Its tremendous success and feedbacks of more than 1 million users have really made the version 3 of Advanced System Optimizer state of the art product. It includes the most comprehensive set of utilities which will keep your PC running smooth, clean and error free.

!

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Highlights of Advanced System Optimizer 3



Smart PC Care^(New)

Smart PC Care feature of Advanced System Optimizer powered by Symantec Norton Secured provides you with a private virtual desktop at carrying out multiple tasks with ease. Several tasks such as file cleaning, registry cleaning, disk defragmentation etc. can be accomplished through a single click. This not only saves time but also makes the process of performing multiple tasks a breeze.

[Read More >](#)



Game Optimizer^(New)

Game Optimizer provides you with a private virtual desktop that's completely free of distractions – no music, no instant messaging, no other apps running except for your game. What's more, Game Optimizer actually reallocates system memory, guaranteeing that your game will have plenty of resources, and ensuring that your gaming session will be free from plummeting frame rates, stuttering audio, and all of those other annoyances!

[Read More >](#)



Driver Updater^(New)

[View > demo](#)

Driver Updater takes all of the tedious work out of keeping your system's drivers up to date! By scanning your system, Driver Updater is able to automatically download and install the latest updates for all of the drivers for all of your components. Of course, you'll be presented with a summary of all of your outdated drivers before Driver Updater goes to work – just select those that you want to update, and click!

[Read More >](#)



System Protector^(New)

[View > demo](#)

System Protector continually monitors the processes that are running on your PC for evidence of spyware-related activity. Using artificial intelligence, System Protector is capable of identifying, detecting, and cleaning malicious threats quickly and efficiently before they have an opportunity to do their dirty work.

[Read More >](#)



PC Fixer^(New)

PC Fixer scans your system, and it will present you with an easy-to-read summary list of common issues that negatively impact system performance and your user experience. The PC Fixer job list is sorted by category for your easy review - just click on a category like 'Control Panel' to see PC Fixer's recommended list of action items. Plus, if you're looking to fix or optimize a specific area, like your display settings, PC Fixer lets you search for specific items by keyword!

[Read More >](#)



Undelete^(New)

Undelete scans your entire system for deleted files and folders, giving you the opportunity to recover them as if they never left! Hard drives, partitions, external devices, even CD and DVD drives can be scanned for recoverable files by Undelete. You even have your choice of scan - just the Master File Table, for a quick scan, or a deeper scan which performs a sector-by-sector scan of the hard drive for file signatures.

[Read More >](#)



Registry Optimizer

[View ▶ emo](#)

Registry Optimizer builds a fresh copy of the Windows registry using information contained in your existing registry. In doing so, Registry Optimizer supercharges your system's performance by removing fragmentation, gaps, and deleted registry entries. The result is a cleaner, leaner registry that takes up less disk space and consumes fewer memory resources.

[Read More >](#)



Disk Explorer

The Disk Explorer utility features a Windows Explorer-style interface that displays all of the available drives on your system on the left, and all of the folders contained in the selected drive on the right. With the intuitive pie chart graphic, you'll be able to see, at a glance, what types of files take up the most space on your disk. Have you ever wondered how much of your disk space is taken up by music files? With Disk Explorer, this is no longer a mystery! Want to clean up your drive and free up some space? Disk Explorer provides you with a handy list of the 100 largest files on the drive.

[Read More >](#)



Memory Optimizer

Memory Optimizer resolves the most common causes of system crashes and application freezes! Memory Optimizer's colorful and intuitive memory graph shows you, at a glance, your total



Disk Optimizer^(New)

[View ▶ emo](#)

Disk Optimizer solves the problem of data fragmentation, bringing a renewed level of responsiveness to your applications and reducing the time it takes for your computer to boot! With Disk Optimizer, all of the fragments of data are rearranged back to a sequential order on your hard drive, greatly improving data access times. Whenever you're experiencing sluggish application response times, slow boot and restart cycles, and a general decline in system performance, it's time for Disk Optimizer!

[Read More >](#)



Registry Cleaner

[View ▶ emo](#)

Registry Cleaner finds and removes unnecessary and invalid entries in your Windows registry, reducing system response time and minimizing the risk of problems when installing new software applications. By ensuring that your registry contains only those entries that are necessary to support currently installed hardware and software items, Registry Cleaner reduces the likelihood of data corruption due to conflicting registry entries.

[Read More >](#)



System Cleaner

[View ▶ emo](#)

System Cleaner is specifically designed to identify these junk files that threaten to destabilize your system and compromise your identity. With System and Disk Cleaner, you are assured of the complete removal of these files, which are often missed by other utilities available in the market!

[Read More >](#)



Uninstall Manager

Uninstall Manager is the easy way to review and uninstall applications from your system! With Uninstall Manager, you'll be provided with a complete list of all of the programs that are installed on the system, their descriptions, file sizes, and date installed. It's all the information that you need to make an informed decision whether to keep or remove a program.

[Read More >](#)



Privacy Protector

[View ▶ emo](#)

Privacy Protector addresses this issue head-on! With Privacy Protector, your confidential information, including all traces of your usage history, is completely and securely erased from

memory, available memory, used memory, and the resources that are used by the system cache. By constantly monitoring your system, Memory Optimizer is able to reclaim valuable memory resources, making them available for your applications and ensuring the continued health of your operating system. Applications will perk up, running faster and with greater stability. You can even specify how much memory Memory Optimizer should reclaim each time it runs, tailoring the memory allocation process to the way that you work!

[Read More >](#)



Secure Delete

Secure Delete keeps the privacy and security of your system intact. By implementing a secure deletion method developed by the United States Department of Defense, Secure Delete ensures that no tool can ever recover your deleted files and folders! By using Secure Delete to securely remove your sensitive files, deleted items are permanently removed from your system.

[Read More >](#)



Disk Tools^(New)

Disk Tools performs diagnostic tests on your hard drive, informing you of any problem sectors and attempting to salvage any readable data that it finds in those bad sectors. Think about it - you may just think that you've lost an important file to a bad sector, but with Disk Tools, you may still be able to get it back!

[Read More >](#)



Duplicate Files Remover

Duplicate Files Remover thoroughly searches your hard disk and removes all duplicate files from your system, freeing up valuable disk space and increasing the efficiency of your file system.

[Read More >](#)



Secure Encryptor

Secure Encryptor allows you to encrypt your programs into a format that's unreadable to anyone who doesn't have the decryption password! With Secure Encryptor, you don't even have to worry if someone copies your most important files - in their encrypted form, they are all but useless.

[Read More >](#)



System & Security Advisor

System and Security Advisor is a unique tool that quickly scans your computer and provides you with helpful tips to improve your experience. With a single click, you'll be able to improve your system's performance by identifying the system settings that consume the most resources. The utility will also make recommendations on how to improve your system's security.




[Read More >](#)



Startup Manager

Startup Manager is your key to effortlessly managing Windows Start-Up programs. Using the intuitive Explorer-like interface, just add the applications that you want to load when Windows boots, or review your existing Start-Up items to see if any can be removed. If you aren't sure about a specific item, you can also use Startup Manager to temporarily disable it to see the affect on your system. Startup Manager displays helpful descriptions of each of the items in your Start-Up programs list.

[Read More >](#)

 <p>Free Scan Version</p> <p>Get Advanced System Optimizer free scan version</p> <p>Download Now</p>	 <p>Purchase Now</p> <p>Get Advanced System Optimizer for \$49.95 \$39.95</p> <p>Purchase Now</p>	 <p>Upgrade</p> <p>Upgrade ASO v2 to ASO V3 only for just \$49.95 \$18.95</p> <p>Click here to upgrade</p>
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Our Top Products



Advanced System Optimizer
An all in one PC tuneup suite



RegClean Pro
Software to optimize the registry



Advanced Driver Updater
Update, backup and restore drivers



Advanced System Protector
Anti-malware and spyware protection



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Clean junk files, remove fragments from disk drives

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Gold Application Development

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Introducing Advanced System Optimizer 3

The most comprehensive, powerful and smartest system optimizer now includes -

- Smart PC Care to fine tune your PC in single click
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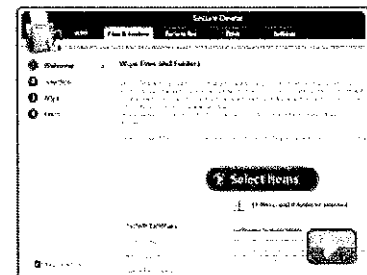
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Secure Delete keeps the privacy and security of your system intact. By implementing a secure deletion method developed by the United States Department of Defense, Secure Delete ensures that no tool can ever recover your deleted files and folders! By using Secure Delete to securely remove your sensitive files, deleted items are permanently removed from your system.

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This is Exhibit "F" referred to in the
Affidavit of Martin Musters,
sworn the 15th day of February, 2015.



Andrew Winton
A Commissioner for taking Affidavits

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

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Martin Musters. I live in Oakville, in the Province of Ontario.
2. I have been engaged by or on behalf of The Catalyst Capital Group Inc. to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date February 15, 2015


Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

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Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

ACKNOWLEDGMENT OF EXPERT'S DUTY

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Lawyers for the Plaintiff

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 JAMES A. RILEY
(Sworn February 18, 2015)**

I, JAMES A. RILEY, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. (“Catalyst”), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I have previously sworn three affidavits in this proceeding – on June 26, July 14 and July 28, 2014. Those affidavits, without exhibits, are attached to this affidavit as Exhibits “A”, “B” and “C”, respectively, and I adopt and re-state the facts set out in those affidavits in this affidavit. In some cases those facts are repeated in this affidavit to provide a consistent narrative flow of events.

The Parties

3. Catalyst is an independent investment firm that is considered a world leader in the field of investments in distressed and undervalued Canadian situations for control or influence. These are known in the investment industry as “special situations for control”. Catalyst currently has in excess of \$3 billion dollars under management.

4. Within Canada, the “special situations” investment industry is fairly small. “Special situations,” also known as “distressed investments,” is the term used to describe investment opportunities where a company is considered to be under-managed, under-valued, or poorly capitalized. The term “special situation” is also used to refer to significant corporate events such as a proxy battle, take-over or board shake-up.

5. In these cases, “special situations” investors try to find ways to find value and profit in the situation to purchase the debt or equity of the target company with the hope of making a significant gain on the investment.

6. Within the special situations investment industry, there is a small sub-group of investors who invest for control or influence. This is known as investing in “special situations for control”. “Control” often refers to acquiring a sufficient amount of debt or equity to gain control or influence at the company in order to be able to provide direct operational and/or strategic guidance. “Influence” can include acquiring a tactical “blocking position” in order to force management and other creditors/investors to consider Catalyst’s views.

7. In any situation, Catalyst’s confidential information is critical to the successful implementation of an investment plan to capitalize on a special situation. Catalyst spends

substantial time studying opportunities and planning its investment strategy before it decides to pursue a particular situation.

8. If a competitor learns of the opportunities Catalyst is considering or studying, the investment models it is using for a particular situation, the methodology Catalyst is considering for acquiring control or influence, or the turnaround plan Catalyst is considering once it acquires control, that competitor can use that information to acquire blocking positions to prevent Catalyst from implementing its plan or it can “scoop” the opportunity by acquiring the control position that Catalyst intended to acquire. Trading on this Confidential Information (as that term is defined in my affidavit dated June 26, 2014) may also be a breach of the Ontario *Securities Act* or other regulations that govern the investment industry.

9. In these situations, the loss of confidential information can cause significant harm to Catalyst, as explained in greater detail below.

10. The defendant Brandon Moyse (“Moyse”) is a former employee of Catalyst. Moyse worked at Catalyst as an investment analyst from November 1, 2012 until June 22, 2014.

11. The defendant West Face Capital Inc. (“West Face”) is a competitor to Catalyst. Like Catalyst, West Face investigates and invests in Canadian “special situations for control” opportunities.

Moyse Resigns, Breaches his Employment Agreement

12. As one of two investment analysts at Catalyst, Moyse was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.

13. Moyses's employment agreement with Catalyst included non-competition, non-solicitation and confidential information covenants (together, the "Restrictive Covenants"). In particular, the non-competition covenant prohibited Moyses from working in Ontario for a competitor of Catalyst for a period of six months following termination of his employment with Catalyst if Moyses resigned.

14. On Saturday May 24, 2014, Moyses gave Catalyst thirty days' notice of his intention to resign from the firm. On May 26, 2014, Moyses informed me that he had accepted a job at West Face. I understood from Moyses that he intended to begin working at West Face immediately after the thirty-day notice period expired, notwithstanding the clear terms of his Employment Agreement, which prohibited him from doing so.

15. Catalyst was troubled by the fact that Moyses intended to breach the Restrictive Covenants and it arranged for Moyses to work from home for the remainder of his thirty-day notice period.

16. Before he gave notice, Moyses had been working extensively on a particular opportunity in the telecommunications industry that Catalyst had been considering for several years. Catalyst was actively investigating the potential purchase of Wind Mobile, one of the Canadian wireless telecommunications industry's few "independent" wireless carriers. Before he resigned from Catalyst, Moyses was part of Catalyst's due diligence team for the Wind Mobile situation, which was known internally by the codename "Project Turbine".

17. The unique plans Catalyst was considering to execute were highly confidential to it. Among other things, Catalyst was thoroughly considering the regulatory risk of attempting to purchase a business that is heavily regulated by Industry Canada and the Canadian Radio-

Television and Telecommunications Commission (“CRTC”). Catalyst’s analysis of that risk was one of the issues actively reviewed by Catalyst while Moyses was part of the Project Turbine review team.

18. By choosing to leave Catalyst for West Face, which is located in Toronto, Moyses chose to transfer to one of the investment firms in Canada that falls within the scope of the non-competition covenant.

19. Catalyst was very concerned about West Face’s reasons for hiring Moyses when it knew, or ought to have known, of the Restrictive Covenants in Moyses’s employment agreement with Catalyst. If Moyses were to disclose Catalyst’s plans for Wind Mobile to West Face, West Face would be able to interfere with those plans by, among other things, scooping the opportunity, thereby causing immeasurable damage to Catalyst’s good will and investment losses that will be almost impossible to quantify given the many possible outcomes of any given investment.

The Defendants Refused to Respect the Restrictive Covenants

20. Between May 30 and June 19, 2014, Catalyst’s outside counsel, Rocchhho Di Pucchio (“Di Pucchio”), exchanged correspondence with Jeff Hopkins (“Hopkins”), Moyses’s counsel, and Adrian Miedema (“Miedema”), West Face’s outside counsel, in which Catalyst expressed its concerns over potential misuse by Moyses and West Face of Catalyst’s confidential information.

21. By June 19, 2014, the parties were at an impasse. West Face and Moyses had offered empty reassurances that they were aware of and would respect Catalyst’s confidentiality interests, but they refused to respect the terms of the non-competition covenant. Hopkins

informed Di Pucchio that Moyses intended to commence employment at West Face on Monday, June 23, 2014.

22. Having exhausted all efforts to resolve the situation without resort to litigation, by email dated June 19, 2014 (attached as Exhibit "D"), Di Pucchio informed Hopkins and Miedema that Catalyst had instructed him to commence legal proceedings against West Face and Moyses, which would include seeking injunctive relief to enforce the Restrictive Covenants. Di Pucchio wrote,

I will try to get our materials to you and to Mr. Miedema forthwith, but in the event that we cannot get the matter heard before next Monday, we trust that no steps will be taken by each of your clients to alter the existing status quo prior to the matter being heard by the Court.

23. By letter dated June 19, 2014, Miedema responded to Di Pucchio's email. Miedema wrote that Moyses has contractually agreed with West Face to maintain "strict confidentiality" over all confidential information obtained by him in the course of his employment with Catalyst, and that both Moyses and West Face take that obligation seriously. Miedema also wrote, "Your client has not provided any evidence that Mr. Moyses has breached any of his confidentiality obligations to Catalyst." Attached as Exhibit "E" is a copy of Miedema's letter to Di Pucchio dated June 19, 2014.

Catalyst Learns Moyses Gave its Confidential Information to West Face

24. Left with no other option, Catalyst began preparing for an action against Moyses and West Face and brought a motion for urgent interim and interlocutory relief to enforce the Restrictive Covenants.

25. Catalyst retained Martin Musters (“Musters”), a forensic IT expert, to conduct a forensic analysis of Moyse’s workplace computer. Musters’ findings are explained in detail in my June 26, 2014 affidavit and in an affidavit sworn by Musters on that date. Briefly stated, Musters analysis of Moyse’s computer revealed:

- (a) On March 28, 2014, between 6:28 p.m. and 6:39 p.m., shortly after Moyse met with Dea, Moyse reviewed Catalyst’s letters to investors in the Catalyst Fund Limited Partnership II (“Fund II”) sent between 2006 and 2011 (the “Investor Letters”). In the Investor Letters, Catalyst reported to our investors on events that transpired with respect to Fund II’s investments. The Investor Letters also contained forward-looking statements. The time period for which Moyse was reviewing the Investor Letters relates to activity on Catalyst’s Stelco investment, which was no longer active and in which Catalyst and West Face were in direct competition. Moyse accessed these files outside of regular office hours at Catalyst. Moreover, eleven minutes is insufficient time to read these letters.
- (b) On April 25, 2014, over a 75-minute period, Moyse reviewed dozens of files related to Catalyst’s investment in Stelco. There was no legitimate business reason why Moyse would review those documents. Moreover, 75 minutes was an insufficient amount of time to read all of the material Moyse was accessing.
- (c) On the evening of May 13, 2014, Moyse accessed several files relating to Project Turbine between 8:39 p.m. and 9:03 p.m. As on the other occasions described above, this was an insufficient amount of time for Moyse to read the documents he was accessing.

- (d) According to Musters, Moyses's conduct between March 27 and May 26, 2014, was consistent with uploading confidential Catalyst documents from Catalyst's server (which Catalyst controls) to Moyses's personal accounts with two Internet-based file storage services, "Dropbox" and "Box", which Catalyst does not control and cannot access.
- (e) Over the course of his employment at Catalyst, Moyses regularly emailed Catalyst's Confidential Information to his personal email accounts. There was no legitimate business reason for Moyses to do this, as Catalyst has a secure virtual private network that enables remote access to its servers.

26. Musters later analyzed the Blackberry smartphone Moyses used while he was employed at Catalyst, which belonged to Catalyst. Musters' analysis revealed that on June 18, 2014, prior to returning the Blackberry to Catalyst, Moyses "wiped" all of the data from his Blackberry such that it was incapable of being recovered through forensic analysis.

27. On July 7, 2014, Moyses and West Face filed responding records in Catalyst's motion for injunctive relief. In their records, for the first time, and without prior notice to Catalyst, Moyses and West Face confirmed that Moyses had transferred Catalyst's Confidential Information to West Face prior to giving notice of his intent to resign.

28. West Face attached the Confidential Information to its responding motion record and filed it in open court without notice to Catalyst. Catalyst later learned that this confidential information had been circulated to all of the partners and to a senior manager of West Face by Thomas Dea ("Dea"), the West Face partner who was primarily responsible for hiring Moyses.

29. In his responding affidavit, Moyse made the following statement concerning his conduct and the merits of Catalyst's action and its motion for interlocutory relief:

Furthermore, there is no basis to order a forensic review of my personal computer equipment and accounts, which is requested only as a fishing expedition. Despite retaining an expert to forensically examine my Catalyst computer, Catalyst was unable to provide any actual evidence that I transferred any confidential information to my personal equipment or accounts.

30. As explained below, this statement appears to have been intended to deceive the Court, as at this point Moyse knew or ought to have known that in fact he had retained hundreds of Catalyst documents on his personal devices after he resigned and started to work for West Face.

The Preservation Undertaking and the Interim Relief Order

31. On June 30, 2014, the parties' counsel attended Motion Scheduling Court to schedule Catalyst's motion for urgent interim relief. Attached to this affidavit as Exhibit "F" is a copy of Justice Himel's endorsement dated June 30, 2014 from that attendance. In her endorsement, Justice Himel records that Andy Pushalik of Dentons LLP, counsel for West Face and speaking for Moyse, agreed to preserve the status quo regarding documents, etc. The specific language of the undertaking is attached to the endorsement:

Defendants' counsel agree to preserve the status quo with respect to relevant documents in the defendants' power, possession or control.

32. Catalyst's motion for interim relief was on July 16, 2014. On that date, the parties consented to interim terms, which were incorporated into an Order of Justice Firestone (the "Interim Relief Order"). The Interim Relief Order is attached to this affidavit as Exhibit "G". Among other things, pursuant to the Interim Relief Order:

- (a) Pending a determination of an interlocutory injunction, Moyse was enjoined from misusing or disclosing any and all confidential and/or proprietary information of Catalyst, including all confidential information and/or proprietary information provided to Catalyst by third parties;
- (b) Pending a determination of an interlocutory injunction, Moyse was enjoined from engaging in activities competitive to Catalyst and was to fully comply with the restrictive covenants set forth in his employment agreement with Catalyst;
- (c) Moyse and West Face, and its employees, directors and officers, were to preserve and maintain all records in their possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to their activities since March 24, 2014, and /or relate to or are relevant to any of the matters raised in this action, except as otherwise agreed by Catalyst;
- (d) Moyse was to turn over any personal computer and electronic devices owned by him or within his power or control (the "Devices") to his legal counsel for the taking of a forensic image of the data stored on the Devices (the "Images"), to be conducted by a professional firm as agreed to by the parties;
- (e) The Images were to be held in trust by Moyse's counsel pending the outcome of the interlocutory motion; and
- (f) Prior to the return of the interlocutory motion, Moyse was to deliver a sworn affidavit of documents to Catalyst, including copies of Schedule "A" documents, setting out all documents in his power, possession or control, that relate to his

employment at Catalyst. Moyse was also to disclose whether any of the documents had been disclosed to third parties, including West Face, and the details of any such disclosure.

The Image is Created on July 21, 2014

33. After the parties consented to the Interim Relief Order, by emails dated July 16 and 17, 2014, Hopkins and Andrew Winton (“Winton”), outside counsel for Catalyst, agreed to retain Harold Burt-Gerrans of H&A eDiscovery (“H&A”) to create the Images. Attached to this affidavit as Exhibit “H” is a copy of the email correspondence between Hopkins and Winton dated July 16 and 17, 2014.

34. By email dated July 17, 2014, Hopkins forwarded a draft engagement letter from H&A to outside counsel for Catalyst and West Face. Attached to this affidavit as Exhibit “I” is a copy of Hopkins’ email of July 17, 2014, with the attached draft engagement letter. In his cover email, Hopkins wrote:

~~The imaging can be conducted (and I assume completed) on Monday, July 21. Given the need to complete the imaging prior to Mr. Moyse reviewing any Catalyst documents on his computer devices, we cannot commit to delivering the [affidavit of documents] on Tuesday, July 22. However, we should be able to deliver the [affidavit of documents] on the 23rd.~~

35. By email correspondence exchanged on Friday, July 18, 2014, counsel for Catalyst and Moyse agreed to amend the terms of H&A’s engagement. Attached to this affidavit as Exhibit “J” is a copy of the July 18, 2014 email correspondence between counsel.

36. After the parties agreed to terms, by email dated July 18, 2014, Hopkins forwarded a summary of the changes to H&A. Hopkins' email is attached to this affidavit as Exhibit "K". In his email, Hopkins wrote:

Mr. Moyse has confirmed he will be at our office by 10:00 am Monday with his three computer devices.

37. Hopkins' July 18, 2014 email to H&A included copies of his earlier correspondence with H&A. In that earlier correspondence, H&A informed Hopkins that it could create the Images on Friday, July 18 or Monday, July 21, 2014. Hopkins scheduled the Images to be created at his firm's office on July 21.

38. By email dated July 18, 2014, Hopkins forwarded a signed engagement letter with H&A. That email and the attached engagement letter are attached to this affidavit as Exhibit "L".

39. By email dated July 22, 2014, Hopkins forwarded a report from H&A on its creation of the Images. The report confirmed that the Images were created on Monday, July 21, 2014. Hopkins' July 22, 2014 email is attached to this affidavit as Exhibit "M".

Moyse Delivers Affidavits of Documents Disclosing Hundreds of Catalyst Documents

40. Pursuant to the Interim Relief Order, on July 22, 2014, Moyse swore an affidavit of documents which purported to disclose all of the documents belonging to Catalyst in his power, possession or control. Attached to this affidavit as Exhibit "N" is a copy of a cover letter from Hopkins dated July 22, 2014 and the enclosed affidavit of documents sworn by Moyse.

41. Despite having previously sworn an affidavit in which he attempted to suggest that he did not have any of Catalyst's proprietary or confidential information on his personal devices, the

July 22, 2014 affidavit of documents revealed that in fact there were hundreds of such documents in his power, possession or control.

42. As explained in my July 28, 2014 affidavit, Zach Michaud, a Catalyst employee, and I reviewed Moyses's affidavit of documents and we were able to identify approximately 250 confidential documents belonging to Catalyst in Moyses's possession.

West Face did not Require Moyses's Services in June/July 2014

43. On July 31, 2014, Moyses was cross-examined by Di Pucchio. During his cross-examination, Moyses admitted that for the first two weeks he was employed by West Face, he did not do any work, after West Face and Moyses had previously refused to postpone his employment at West Face to let the parties attempt to negotiate a resolution of their dispute.

West Face Purchases Wind Mobile Immediately after Catalyst's Negotiations Fail

44. In July and August 2014, Catalyst was negotiating with Vimpelcom Ltd. ("Vimpelcom") for the potential purchase of Wind Mobile. During this period, Catalyst had exclusive negotiating rights (the "Exclusivity Period").

45. During the Exclusivity Period, Catalyst and Vimpelcom were able to negotiate almost all of the terms of the potential sale of Wind Mobile to Catalyst. The only point over which the parties could not agree was regulatory approval risk -- Catalyst wanted to ensure that its purchase was conditional on receiving certain regulatory concessions from Industry Canada, but Vimpelcom would not agree to the conditions Catalyst sought.

46. The Exclusivity Period expired in mid-August 2014. Very shortly thereafter, Catalyst learned that a syndicate of investors led by West Face (the "Consortium") was negotiating with Vimpelcom to purchase Wind. Ultimately, the Consortium purchased Wind from Vimpelcom on what I believe were essentially the same terms as Catalyst had proposed, with the one exception that the Consortium waived the regulatory conditions Catalyst had been seeking.

47. I believe that Moyse may have communicated Catalyst's Confidential Information concerning its negotiation plans and concerns to West Face, based on the following facts:

- (a) Moyse was working on Catalyst's Wind project prior to his resignation from Catalyst;
- (b) West Face insisted on rushing ahead with Moyse's employment on June 23, 2014, even though it had no legitimate immediate use for his services;
- (c) The Consortium led by West Face was able to negotiate a deal with Vimpelcom very shortly after the Exclusivity Period ended by agreeing to the one term that Catalyst had been concerned about from the outset of its review of the Wind Mobile situation;
- (d) If West Face had been starting from scratch, without the benefit of inside information, it would not have been able to negotiate a deal with Vimpelcom that easily;
- (e) In Musters' opinion, Moyse's conduct is consistent with the pattern of employees who take confidential information from their former employer when they depart to immediately begin working for a competitor; and

- (f) As explained in greater detail below, Moyses breached the Interim Relief Order by using a software “scrubber” to permanently delete files and/or folders from his personal computer the night before the Images were created.

The Interlocutory Order

48. The parties argued Catalyst’s motion for interlocutory relief on October 27, 2014. On November 10, 2014, Justice Lederer released reasons for decision in which he granted Catalyst the interlocutory relief it sought. In particular:

- (a) Moyses was enjoined from working at West Face until his six-month non-competition covenant expired on December 22, 2014; and
- (b) The Court ordered that an ISS was to review the Images created on July 21, 2014 to determine if Moyses had taken any Catalyst Confidential Information and/or had communicated any Catalyst Confidential Information to West Face.

49. Attached to this affidavit as Exhibit “O” is a copy of Justice Lederer’s reasons for decision dated November 10, 2014. Attached to this affidavit as Exhibit “P” is a copy of the Order of Justice Lederer dated November 10, 2014 (the “Interlocutory Order”).

50. Moyses and West Face have sought leave to appeal the Interlocutory Order. Their motions for leave to appeal has not yet been determined by the Court.

The ISS Process

51. Pursuant to the Interlocutory Order, Stockwoods LLP was retained to act as the ISS. Between November 10 and December 16, 2014, the parties negotiated a document review

protocol (“DRP”) to govern the ISS’s review of the Images. The DRP executed by counsel for the parties is attached to this affidavit as Exhibit “Q”.

52. Among other things, pursuant to the DRP:

- (a) Catalyst provided the ISS with a list of search terms to use to help identify potential documents containing Catalyst’s Confidential Information;
- (b) Moyse had five business days to object to the use of a search term by the ISS;
- (c) Subject to further order of the Court or the agreement of the parties, the ISS was not to provide Catalyst or its counsel with access to the Images or any work product generated during the ISS’s review of the Images;
- (d) The ISS shall provide a draft report to Catalyst and Moyse. Moyse then had ten business days to object to the inclusion of a document or documents referred to in the draft report; and
- (e) If Catalyst believes that a document has been improperly excluded from the final report, it may bring a motion for production of that document.

53. By email dated December 23, 2014, Brendan van Neijenhuis of Stockwoods LLP (“van Neijenhuis”) shared with counsel for Catalyst and Moyse the results of an initial report from the ISS’s forensic expert as to the results of the search terms proposed by Catalyst. Van Neijenhuis’s email Attached to this affidavit as Exhibit “R” is a copy of Van Neijenhuis’ email dated December 23, 2014 and the attached search results.

54. The search results indicated that there was a significant number of “hits” for several search terms proposed by Catalyst that are unique to the Wind Mobile situation. Examples include:

- (a) Wind: 26,118 hits;
- (b) Turbine: 756 hits;
- (c) Spectrum: 3852 hits;
- (d) MHZ: 5885 hits;
- (e) Ministry of Industry: 105 hits; and
- (f) Industry Canada: 80 hits.

55. In addition, these results indicated there were 132 hits on Moyses’s personal computer for the term “Callidus”. Callidus Capital Corporation (“Callidus”) is a publicly-traded company in which investment funds managed by Catalyst now own a 60 per cent interest. Prior to April 2014, when Callidus completed an initial public offering, Callidus was wholly owned by investment funds managed by Catalyst.

56. During his employment at Catalyst, Moyses had no involvement with the operations of Callidus, so it was very suspicious that he would have any hits relating to Callidus on his personal computer.

57. Based on these hit results, and other activity by West Face concerning Callidus that is explained in greater detail below, by email dated January 8, 2015, Catalyst submitted additional search terms relating specifically to Callidus to the ISS. Attached to this affidavit as Exhibit “S”

is a redacted copy of the email from Winton to Van Neijenhuis dated January 8, 2015 asking for the additional search terms to be included in the ISS's review.

58. The ISS released its draft report (the "Draft Report") on February 1, 2015 and its final report (the "ISS Report") on February 17, 2015. Attached to this affidavit as Exhibit "T" is a copy of the ISS Report, without the appendices referred to therein.

59. The ISS listed hundreds of documents that it reviewed from the Images that it classified as containing Catalyst's Confidential Information. However, the ISS only identified a relatively small number of documents that were not already disclosed in Moyse's July 22, 2014 affidavit of documents. Based on my review of the ISS Report, it is my belief that the ISS did not disclose more documents because it made mistaken assumptions as to certain facts. The potential errors by the ISS concern Wind Mobile, Mobilicity and Callidus.

60. With respect to Wind Mobile, as explained above, the search terms indicated that there were hundreds of "hits" for many Wind-related search terms, such as "Turbine" and "Spectrum". While a word such as "wind" may have many contexts, there are many fewer contexts for a word such as "Turbine", which was Catalyst's codename for the Wind Mobile situation. I believe that the ISS must have inadvertently omitted relevant documents from the ISS Report based on a misunderstanding as to the origins of certain documents that were responsive to the search terms provided by Catalyst.

61. Mobilicity is another wireless telecommunications situation that both Catalyst and Wind are heavily involved with. Mobilicity is currently in CCAA proceedings. While he was employed at Catalyst, Moyse had some involvement with the Mobilicity situation. The search term results for his personal computer revealed a significant number of "hits" for Mobilicity-related terms

such as Mobilicity (765 hits), DAVE (2216 hits) and Data & Audio-Visual (36 hits). Again, it is likely that the ISS erred in excluding all of the documents that were responsive to these terms, as Catalyst has generated thousands of documents related to the Mobility situation.

62. With respect to Callidus, the ISS Report states that it found five documents that were solely responsive to the additional Callidus-related search terms submitted on January 8, 2015, but the ISS determined that none of the documents contained Catalyst's Confidential Information. This classification appears to be based on a misunderstanding as to the relationship between Callidus and Catalyst, as potentially any document in Moyse's possession that was responsive to the additional search terms by its nature very likely contained Catalyst's Confidential Information.

63. On February 12, 2015, the ISS and counsel for Catalyst and Moyse participated in a conference call to discuss Catalyst's concerns that its confidential information was potentially mistakenly omitted from the Draft Report. Minutes of that conference call taken by the ISS are attached to this affidavit as Exhibit "U".

64. As recorded in the minutes, during the call, Winton, on behalf of Catalyst, asked the ISS four questions:

- (a) The additional search terms that were supplied on January 8, 2015 apparently yielded only five independent documents for review by the ISS. Winton proposed to ask the ISS to indicate which specific terms yielded those results. Depending on which terms generated those "hits", Catalyst may or may not continue to have a concern that an error occurred in the evaluation having regard to the uniqueness of the terms, particularly with regard to "Callidus" and associated terms;

- (b) Catalyst proposed that the ISS also advise about the total number of hits which would have resulted, had the second set of terms been run without regard to de-duplicating previously-produced items (i.e., items produced as a result of raising a ‘hit’ under the original set of search terms supplied in December 2014);
- (c) Catalyst expressed the concern that the number of hits associated with Wind Mobile and directly related search terms such as “Turbine” exceeded the actual number of documents identified in the search process by a very wide margin. Winton proposed that ISS should provide an explanation, if possible, for the divergence between the number of “hits” and the ultimate number of documents found and identified in the report; and
- (d) Catalyst expressed the same concern with respect to hits associated to Mobilicity and directly-related search terms, asking again for an explanation as to the large difference between the raw hit-count identified in the initial results and the ultimate number of documents identified.

65. By email dated February 12, 2015, in response to Catalyst’s questions, Moyse’s counsel objected to letting the ISS answer the questions and insisted that Catalyst had to bring a motion if it wanted its questions answered. Attached to this affidavit as Exhibit “V” is a copy of the email from Hopkins to Winton sent February 12, 2015.

66. Catalyst’s position is simple: if Moyse had Wind Mobile or Mobilicity documents on his personal computer, those documents either originally belonged to Catalyst or they belonged to West Face. In either case, possession of those documents prejudices Catalyst:

- (a) If the documents belonged to Catalyst, then it is possible that Moyse shared those documents with West Face but covered up his actions by deleting files from his computer, as described below; or
- (b) If the documents belonged to West Face, then West Face and Moyse breached the “ethical wall” that West Face purported to erect on June 19, 2014 to prevent Moyse from participating in West Face’s involvement in the Wind Mobile and Mobilicity situations.

Moyse Scrubbed Data from his Computer Before the Images were Created

67. The Draft Report was not restricted to listing documents reviewed by the ISS that it classified as containing Catalyst’s Confidential Information. Paragraphs 44 to 48 of the ISS Report reveal that:

- (a) On Wednesday, July 16, 2014, an email message was sent to Moyse’s Hotmail account. The email constituted a receipt and license key for a software product entitled “Advanced System Optimizier 3 [Special Edition]”;
- (b) Based on the creation date of associated folders, the forensic IT expert assisting the ISS was able to determine that Advanced System Optimizer 3 was installed on Moyse’s personal computer on July 16, 2014 at 8:53 a.m.;
- (c) On July 20, 2014, at 8:09 p.m., a folder entitled “Secure Delete” was created on Moyse’s personal computer;

- (d) Due to the military-grade nature of the Secure Delete tool, the ISS's forensic expert was unable to determine what files were deleted on June 20, 2014.

68. I have reviewed the affidavit sworn by Musters on February 15, 2015, in which Musters confirms that the creation of the "Secure Delete" folder on Moyses's computer on July 20, 2014 at 8:09 p.m. can only result from the operation of the Secure Delete program.

69. Based on the correspondence attached to this affidavit which indicated that Moyses retained possession of his personal computer between July 16 and July 21, 2014, it is my belief that Moyses ran a military-grade software deletion program to hide evidence that he shared Catalyst's Confidential Information with West Face. I cannot think of any other reason why Moyses, whom I know to be an intelligent man, would knowingly breach a Court Order requiring him to preserve evidence.

The Callidus Report

70. While the ISS process was ongoing, West Face engaged in other conduct that I believe was intended to harm Catalyst by defaming Callidus.

71. In November 2014, West Face began a "whisper campaign" in which it suggested to other market participants that Callidus' loan book was not as strong as disclosed in its publicly filed information. Beginning in mid-November 2014, around the same time West Face commenced its whisper campaign, Callidus' share price began a rapid decline.

72. In December 2014, Callidus learned that West Face had prepared a research report on Callidus that it was circulated to market participants. By letter dated December 15, 2014, David Hausman ("Hausman"), Callidus' outside counsel, wrote to Greg Boland of West Face to seek

confirmation that a West Face report on Callidus exists and if so, to request a copy of that report. Attached to this affidavit as Exhibit “W” is a copy of Hausman’s letter dated December 15, 2014.

73. West Face did not reply to Hausman’s letter. By letter dated December 24, 2014, attached to this affidavit as Exhibit “X”, Hausman repeated his request for the report. Hausman noted that given the report would be producible in the context of litigation, it made sense for West Face to produce the report at that time so as to potentially avoid litigation.

74. By letter dated January 6, 2015, attached to this affidavit as Exhibit “Y”, Matthew Milne-Smith (“Milne-Smith”), outside counsel for West Face, responded to Hausman’s December 24 letter.

75. Among other things, Milne-Smith wrote:

- (a) “West Face is confident in the accuracy of its investment research”;
- (b) “It does not discuss companies with third parties without extensive research to supports its analysis”; and
- (c) Should Callidus commence defamation proceedings against West Face, West Face will vigorously defend itself in its Statement of Defence and **demonstrate the truth of any statements that it has made about Callidus**”. [Emphasis added.]

76. By letter dated January 13, 2015, attached to this affidavit as Exhibit “Z”, Di Pucchio responded to Milne-Smith on behalf of Callidus. Di Pucchio thanked Milne-Smith for

confirming that West Face prepared a report on Callidus that it has circulated to third parties and for the third time requested a copy of the report.

77. By letter dated January 14, 2015, attached to this affidavit as Exhibit “AA”, Milne-Smith responded to Di Pucchio to “clarify” his statements from his January 6 letter by stating that he had neither confirmed nor denied that a report existed. Apparently Milne-Smith was only speaking in generalities on January 6.

78. By letter dated January 16, 2015, attached to this affidavit as Exhibit “BB”, Di Pucchio asked Milne-Smith to clarify whether in fact a report exists and if so, was it shared with third parties. For the fourth time, Callidus’ outside counsel requested a copy of the report.

79. By letter dated January 20, 2015, attached to this affidavit as Exhibit “CC”, Milne-Smith stated that West Face is “neither required nor inclined to share its research with **the target** of such research, let alone a target majority-owned by one of West Face’s competitors” [emphasis added].

80. By letter dated January 26, 2015, attached to this affidavit as Exhibit “DD”, Di Pucchio questioned why it took an exchange of several letters for West Face to finally confirm that it had prepared a research report on Callidus.

81. The final letter in this exchange, dated January 28, 2015, is from Milne-Smith to Di Pucchio and is attached to this affidavit as Exhibit “EE”. In this letter, Milne-Smith denies any wrongdoing by West Face and indicates that it was not appropriate for the parties to engage in further correspondence since the matter was now before the Court.

82. Catalyst has found independent evidence that a West Face report exists and was shown to third parties in an effort to drive down Callidus' stock price. Attached to this affidavit as Exhibit "FF" is a copy of the "Stockchase" online blog report for Callidus and for Jerome Hass, the author of one of the comments published by Stockchase.

83. Mr. Hass's comment about Callidus, dated December 30, 2014, confirms that "a firm presented a very formidable 'Short' case recently, which is probably part of the reason for the selloff." I believe that Mr. Hass's comment referred to the West Face report.

84. Catalyst is concerned that Moyse had confidential information pertaining to Callidus on his personal computer that he shared with West Face and which West Face used to prepare its research report. That is one of the reasons why Catalyst attempted to clarify with the ISS why Callidus-related documents were not included in the Draft Report.

85. The correspondence with West Face's outside counsel and Moyse's objection to the questions Catalyst posed to the ISS are consistent with the way West Face and Moyse have dealt with Catalyst throughout this proceeding – first they deny that documents exist, or they admit documents exist but deny wrongdoing, and then they insist that Catalyst bring a motion or otherwise commence litigation to protect its interests.

Catalyst's Vulnerability to the Defendants' Unfair Competition

86. As indicated above, based on Moyse's conduct of breaching a Court Order by deleting files the night before his computer was to be imaged, I believe that Moyse destroyed evidence of serious wrongdoing.

87. I have already stated in my affidavit sworn June 26, 2014 how Catalyst is vulnerable to unfair competition by West Face. That vulnerability was borne out by West Face's apparent "scooping" of Wind Mobile, possibly through the use of Catalyst's Confidential Information.

88. If West Face was able to succeed in its negotiations with Vimpelcom through the wrongful use of Catalyst's Confidential Information, monetary damages will not give Catalyst an appropriate or adequate remedy. For this reason, Catalyst has amended its claim to seek a constructive trust over West Face's interest in Wind Mobile. Attached to this affidavit as Exhibit "GG" is a copy of Catalyst's Amended Amended Statement of Claim dated December 16, 2014.

89. In the interim, West Face continues to own a significant interest in Wind Mobile. Attached to this affidavit as Exhibit "HH" is a flowchart setting out the various beneficial interests in Wind Mobile owned by the Consortium members. This chart indicates that West Face controls 35 per cent of Wind Mobile and constitutes the largest of the four beneficial owner groups.

90. As the largest of the four shareholder groups, West Face can use its voting interest in Wind Mobile to harm Catalyst's long-term interest in Wind Mobile. Catalyst has a claim for a constructive trust over West Face's interest. In order to protect Catalyst's contingent interest in Wind Mobile, Catalyst seeks an order restraining West Face from participating in the operations of Wind Mobile pending the resolution of this action.

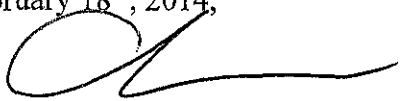
The Need to Conduct a Forensic Review of West Face's Computers and Electronic Devices

91. A forensic review of any computers or personal electronic devices such as smartphones or tablet computers owned by West Face or its partners will reveal whether Moyse in fact

communicated Catalyst's Confidential Information to West Face and what use West Face made of such information. Given Moyse's conduct of scrubbing his personal computer the night before he knew a forensic image was being made of that computer, after he had already consented to a preservation order, Catalyst has no other means of ascertaining this information.

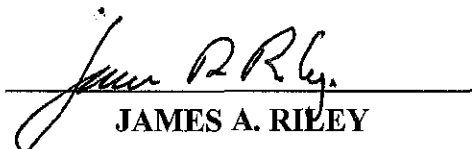
92. In light of (a) the suspicious nature of his actions to date, which only came to light because of Catalyst's forensic review of Moyse's hard drive; and (b) the fact that on June 19, the Defendants refused to agree to maintain the *status quo* pending the determination of Catalyst's motion for injunctive relief because Catalyst had not provided evidence that Moyse had breached his confidentiality undertakings to Catalyst, I have no confidence that Moyse will disclose this information honestly and forthrightly.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
February 18th, 2014,



Commissioner for Taking
Affidavits, etc.

ANDREW WINTON



JAMES A. RILEY

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF JAMES A. RILEY
(SWORN FEBRUARY 18, 2014)

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awinton@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "A" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of connected loops and a long horizontal tail.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

AFFIDAVIT OF JAMES A. RILEY
(Sworn June 26, 2014)

I, JAMES A. RILEY, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.

Nature of Our Firm and Our Industry

2. Catalyst is an independent investment firm that is considered a world leader in the field of investments in distressed and undervalued Canadian situations for control or influence. These are known in the investment industry as "special situations for control". Catalyst currently has in excess of \$3 billion dollars under management.

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3. Within Canada, the “special situations” investment industry is fairly small. “Special situations,” also known as “distressed investments,” is the term used to describe investment opportunities where a company is considered to be under-managed, under-valued, or poorly capitalized. The term “special situation” is also used to refer to significant corporate events such as a proxy battle, take-over or board shake-up.

4. In these cases, “special situations” investors try to find ways to find value and profit in the situation to purchase the debt or equity of the target company with the hope of making a significant gain on the investment.

5. Within the special situations investment industry, there is a small sub-group of investors who invest for control or influence. This is known as investing in “special situations for control”. “Control” often refers to acquiring a sufficient amount of debt or equity to gain control or influence at the company in order to be able to provide direct operational and/or strategic guidance. “Influence” can include acquiring a tactical “blocking position” in order to force management and other creditors/investors to consider Catalyst’s views.

6. Once a firm acquires a control or influence position at a company, it seeks to add value through operational involvement in the targeted company by, among other things:

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;
- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing operational turnaround plans;

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- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

7. In any situation, Catalyst's confidential information (described in detail below) is critical to the successful implementation of an investment plan to capitalize on a special situation. Catalyst does not invest for the "quick flip" – the average length of an investment is three to five years and can be substantially longer. Catalyst spends substantial time studying opportunities and planning its investment strategy before it decides to pursue a particular situation.

8. If a competitor learns of the opportunities Catalyst is considering or studying, the investment models it is using for a particular situation, the methodology Catalyst is considering for acquiring control or influence, or the turnaround plan Catalyst is considering once it acquires control, that competitor can use that information to acquire blocking positions to prevent Catalyst from implementing its plan or it can "scoop" the opportunity by acquiring the control position that Catalyst intended to acquire.

9. There is also the case when disclosure of such information leads to "front-running" on the situation, making it impossible or more expensive for Catalyst to execute on its investment strategy. Trading on this Confidential Information may also be a breach of the Ontario *Securities Act* or other regulations that govern the Ontario investment industry.

10. In these situations, the loss of confidential information can cause significant harm to Catalyst, as explained in greater detail below, and for these reasons the value and sensitivity of Confidential Information is clearly known by Catalysts employees.

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11. Catalyst uses a very flat, entrepreneurial staffing model. We only employ two investment analysts, who are given a lot of training, autonomy and responsibility as compared to their peers in the industry. Our employees, including our analysts, participate in a “60/40 Scheme” whereby the “carried interest” of each of our funds is allocated sixty per cent to the “deal team” and forty per cent to Catalyst.

12. The carried interest refers to the twenty per cent profit participation in a Fund that Catalyst may enjoy, subject to certain conditions. Points in each deal that forms part of the sixty per cent are allocated on a deal-by-deal basis. Deal teams are comprised of three or four professionals, so there are a lot of points to be shared among the 60/40 Scheme participants.

13. The 60/40 Scheme is unique to Catalyst, and is its way of giving its professional employees a partner-like interest in the success of our firm.

Brandon Moyse and the Employment Agreement

14. On October 1, 2012, Catalyst and Moyse entered into an employment agreement (the “Employment Agreement”), pursuant to which Catalyst hired Moyse as an investment analyst effective November 1, 2012. The Employment Agreement is attached as Exhibit “A”.

15. As one of two investment analysts at Catalyst, Moyse had substantial autonomy and responsibility. He was primarily responsible for analysing new investment opportunities of distressed and/or under-valued situations where Catalyst could invest for control or influence.

16. Under the Employment Agreement, Moyse was paid an initial salary of \$90,000 and an annual bonus of \$80,000. Moyse was also granted options to acquire equity in Catalyst and

participated in the 60/40 Scheme. Meoyse's equity compensation (options and participation in 60/40 Scheme) exceeded his base salary and annual bonus.

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

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

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

Confidential Information

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

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

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

18. Moyse agreed that the Restrictive Covenants were reasonable and necessary and reflected a mutual desire of Moyse and Catalyst that the Restrictive Covenants would be upheld in their entirety and be given full force and effect.

19. Moyses was obligated pursuant to the Employment Agreement to give Catalyst a minimum of thirty days' written notice of his intention to terminate his employment.

20. By signing the Employment Agreement, Moyses acknowledged that he reviewed, understood and accepted the terms of the Employment Agreement, and that he had an adequate opportunity to seek and receive independent legal advice prior to executing the Employment Agreement.

Moyse Resigns, Communicates His Intention to Breach of Employment Agreement

21. There are very few investment firms in Canada that invest in special situations for control or influence. It is a difficult market with high barriers to entry. One of Catalyst's few competitors in Canada is the defendant West Face Capital Inc. ("West Face").

22. Attached as Exhibit "B" is a copy of a newspaper article dated January 9, 2014, which reports on West Face's creation of a \$600 million special situations fund. The article recounts how in 2011, Greg Boland, the CEO of West Face ("Boland"), won a seat on the board of Maple Leaf Foods Inc. as part of an overhaul initiated by West Face. The Maple Leaf Foods situation is an example of a "special situations for control" type of investment.

23. Attached as Exhibit "C" is a copy of an email Moyses sent to a colleague on March 27, 2014 in which Moyses wrote that he had an "interesting conversation" with Tom Dea, a partner at West Face ("Dea"), over coffee. I believe, based on my review of this email, that it was around this time that Moyses began to plan to move from Catalyst to West Face.

24. I believe that Moyses knew that West Face competed directly with Catalyst, based on multiple internal discussions that occurred at Catalyst in Moyses's presence and based on my

review of an email Moyse wrote in February 2013. Attached as Exhibit “D” is a copy of an email Moyse wrote in response to a colleague who sent him a *Globe and Mail* article about West Face:

They’re very Ackman-like in their high-profile hits and misses. They’ve been hammered on one activist play we’re looking at (though we don’t like) – never good when we’re looking at something you bought – **and we’re fighting with them on a different distressed name right now.** [Emphasis added.]

25. I believe that the emphasized text in the quotation above refers to the telecom situation referred to in paragraph 30 below.

26. Based on a forensic review of Moyse’s work computer, as described in greater detail below and in the affidavit of Martin Musters, a forensic IT expert in computer forensics retained by Catalyst (“Musters”), I believe that between March 27, 2014, and May 15, 2014, Moyse met and exchanged emails with Dea and others at West Face to Moyse’s move from Catalyst to West Face.

27. By May 15, 2014, Moyse was aware that West Face was about to formally offer him a job. Attached as Exhibits “E” and “F” are copies of emails exchanged between Moyse and two people whom Dea had contacted on May 15, 2014, to conduct reference checks on Moyse. In my experience, by the time a company is performing these reference checks, they intend to offer the subject of the reference checks a position unless the checks reveal something unexpected, which almost never happens.

28. Attached as Exhibit “G” is an email from Moyse to a colleague dated May 19, 2014, in which Moyse stated that he had been offered a job by Dea and would likely take it.

29. Four days later, while he was away from the office on vacation, Moyse informed Catalyst by email that he was resigning from Catalyst. Attached as Exhibit "H" is a copy of Moyse's resignation email dated May 24, 2014. Moyse later orally informed Catalyst that he had resigned to go work at West Face.

30. Before he gave notice, Moyse had been working extensively on a particular opportunity in the telecommunications industry that Catalyst had been considering for several years. The unique plans Catalyst is considering to execute are highly confidential and cannot be disclosed. It is sufficient for the purposes of this motion to say that if these plans are disclosed to West Face, West Face would be able to interfere with Catalyst's plans by either creating a blocking position or by scooping the opportunity, thereby causing immeasurable damage to Catalyst's good will and investment losses that will be almost impossible to quantify given the many possible outcomes of any given investment.

31. Moyse also participated in Catalyst's Monday morning meetings, which are usually held weekly and where materials are distributed and there is a review of current and prospective opportunities. If the information discussed at these meetings was shared with West Face, it would be devastating for Catalyst, as it would give West Face a tremendous advantage in its deployment of its investors' equity to the detriment of Catalyst's investment funds.

32. Under the terms of the Restrictive Covenants included in the Employment Agreement, Moyse had agreed not to work at a competitor's firm located in Toronto for a period of six months following a termination of employment initiated by him (the "Non-Compete").

33. The Non-Compete is a crucial component of the Employment Agreement. It is designed to restrict an analyst's ability to directly compete against Catalyst within the limited geographic

area of Toronto for the minimum amount of time that is necessary to protect Catalyst from unfair competition. The Non-Compete is designed to protect Catalyst's vital interests with minimal restrictions on its investment analysts, in three ways:

- (a) The Non-Compete is narrowly restricted to firms that engage in the same undertaking as Catalyst, namely investing in special situations for control or influence. If an investment analyst were to lateral to a less specialized investment firm such as RBC Dominion Securities or Canaccord Genuity, the Non-Compete would not prevent the investment analyst from commencing employment as soon as their notice period ended;
- (b) After six months, the analyst's knowledge of Catalyst's plans would be "stale" and of little use to a competitor; and
- (c) Catalyst's market focus is in Canada and its immediate competitors are primarily based in Toronto, so if an analyst were to move to New York, Hong Kong or London, it would most likely not interfere with Catalyst's plans or cause any harm to Catalyst.

34. By choosing to leave Catalyst for West Face, which is located in Toronto, Moyse chose to transfer to one of the few investment firms in Canada that fall within the scope of the Non-Compete, and left Catalyst with no choice but to insist on strict enforcement of the Non-Compete in order to protect its interests.

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35. Although we reminded Moyses of his obligations under the Employment Agreement (as set out in greater detail below), Moyses gave us no assurance that he intended to adhere to his contractual obligations.

36. Since Moyses was contractually required to continue working for Catalyst for another thirty days, I immediately arranged for Moyses to work from home so as not to create a negative influence at Catalyst's office and to keep him isolated from any future discussions regarding upcoming investment opportunities.

The Defendants Refuse to Respect the Non-Compete

37. By letter dated May 30, 2014, Catalyst's outside counsel, Rocco Di Pucchio ("Di Pucchio"), wrote to Jeff Hopkins, Moyses's counsel ("Hopkins"), and to Boland to warn them that Moyses's and West Face's actions amounted to a breach of the Employment Agreement. Di Pucchio informed Hopkins and Boland that Catalyst would seek injunctive relief if necessary and invited them to make a proposal as to how the situation could be remedied to Catalyst's satisfaction. Di Pucchio's letter to Hopkins and Boland dated May 30, 2014, is attached as Exhibit "I".

38. By letter dated June 3, 2014, Adrian Miedema ("Miedema"), outside counsel for West Face, responded to Di Pucchio. On behalf of West Face, Miedema challenged the enforceability of the Non-Compete. Miedema also wrote that West Face "has impressed upon Mr. Moyses that he is not to share or divulge any confidential information that he obtained during his employment with [Catalyst]." Attached as Exhibit "J" is a copy of Miedema's June 3, 2014 letter.

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39. By letter dated June 5, 2014, Hopkins responded to Di Pucchio's letter. In his response, Hopkins acknowledged that Moyse was aware of up to five prospective investments by Catalyst but indicated that Moyse had no intention of disclosing Catalyst's Confidential Information. Hopkins also adopted Miedema's position that the Non-Compete is unenforceable. Attached as Exhibit "K" is a copy of Hopkins' letter dated June 5, 2014.

40. "Five prospective investments" represents a significant portion (more than twenty-five per cent) of the investments Catalyst would make over the life of any of its funds.

41. By letter dated June 13, 2014, Di Pucchio responded to Miedema and Hopkins to inform them that their "assurances" that Moyse would not share Catalyst's Confidential Information with West Face were insufficient. Di Pucchio suggested a conference call between counsel to discuss what assurances Catalyst would require from Moyse and West Face to avoid litigation. Attached as Exhibit "L" is a copy Di Pucchio's letter dated June 13, 2014.

42. I am informed by Di Pucchio that on June 18, 2014, the parties' counsel participated in a conference call that did not end with a resolution of the situation.

43. Then, by letter dated June 19, 2014, Hopkins informed Di Pucchio that Moyse intended to commence employment at West Face on June 23, 2014. Attached as Exhibit "M" is a copy of Hopkins' letter to Di Pucchio dated June 19, 2014. In his letter, Hopkins informs Di Pucchio that he was advised by Moyse that Moyse's knowledge of Catalyst's "deals" is not nearly as detailed as Catalyst believes.

44. As I have personal knowledge of meetings Moyse attended, I know that this statement is inaccurate. Moyse attended meetings with management teams and advisors about investments.

Moreover, along with the other professionals at Catalyst, he participated in our Monday morning meetings where all of our existing and potential deals were discussed. We are a small shop where everyone knows what everyone else is working on – Moyse has knowledge of every deal that Catalyst has made or considered since he commenced employment at Catalyst.

45. By email dated June 19, 2014 (attached as Exhibit “N”), Di Pucchio informed Hopkins and Miedema that Catalyst had instructed him to commence legal proceedings against West Face and Moyse, which would include seeking injunctive relief to enforce the Restrictive Covenants. Di Pucchio wrote,

I will try to get our materials to you and to Mr. Miedema forthwith, but in the event that we cannot get the matter heard before next Monday, we trust that no steps will be taken by each of your clients to alter the existing status quo prior to the matter being heard by the Court.

46. By letter dated June 19, 2014, Miedema responded to Di Pucchio’s email. Miedema wrote that Moyse has contractually agreed with West Face to maintain “strict confidentiality” over all confidential information obtained by him in the course of his employment with Catalyst, and that both Moyse and West Face take that obligation seriously. Miedema also wrote, “Your client has not provided any evidence that Mr. Moyse has breached any of his confidentiality obligations to Catalyst.” Attached as Exhibit “O” is a copy of Miedema’s letter to Di Pucchio dated June 19, 2014.

47. On June 24, 2014, Catalyst confirmed by reviewing Moyse’s LinkedIn profile (attached as Exhibit “P”) that Moyse had commenced employment at West Face. Catalyst attempted to resolve this impasse by negotiating directly with West Face. West Face rebuffed these efforts,

leaving Catalyst with no choice but to commence an action and to seek injunctive relief to protect its interests.

Catalyst Learns Moyses Removed its Confidential Information

48. In addition to the conduct described above, Catalyst recently learned, contrary to all of the assurances Moyses's and West Face's counsel were making about Catalyst's Confidential Information, that prior to his resignation Moyses accessed and was capable of transferring Catalyst's Confidential Information to his personal possession. This belief is based on information Catalyst received from Musters, whom Catalyst retained shortly after learning on June 19 that Moyses intended to commence employment at West Face before the parties could negotiate a resolution to their dispute.

49. The information set out below is derived from the report and affidavit of Musters, which I have reviewed prior to swearing this affidavit. Musters' affidavit explains Moyses's activity. The purpose of this section of my affidavit is to describe how the Confidential Information accessed by Moyses (as explained in Musters' affidavit) could be used by Moyses and West Face to unfairly compete with Catalyst.

50. I understand from Musters' report that Moyses's conduct between March 27 and May 26, 2014, is consistent with uploading confidential Catalyst documents from Catalyst's server (which Catalyst controls and can access) to Moyses's personal accounts with two Internet-based file storage services, "Dropbox" and "Box", which Catalyst does not control and cannot access.

51. As detailed below, the breadth and depth of Moyses's conduct is alarming. I am informed by Jonathan Moore, the team lead at Catalyst's external IT services supplier, that Moyses had no

reason to use Dropbox or Box for work purposes. Catalyst has remote access to its files and Moyse knew how to use these remote access services.

52. Based on a review of Moyse's file-access activity after March 27, 2014, I believe that shortly after Moyse met with Dea, he began to review Catalyst materials that had nothing to do with his immediate assignments, for the purpose of gaining as much knowledge of Catalyst's methods as he could before crossing the street to start working at West Face and possibly to transfer Catalyst's Confidential Information to his Dropbox and Box accounts.

53. Attached as Exhibit "Q" is a list of web addresses ("URLs") for Moyse's Box account. I note that according to this record, Moyse had a "Catalyst Capital" folder in his Box account on May 26, 2014, two days after he gave Catalyst notice of his intention to resign and begin working for West Face.

54. The following are some examples of the Confidential Information that Moyse reviewed after he met with Dea on March 27, 2014. The documents themselves, which are highly confidential and would prejudice Catalyst if publicly revealed, are not attached to my affidavit but the records of Moyse's conduct are attached as indicated.

Investment Letters

55. On March 28, 2014, one day after Moyse met with Dea, Moyse reviewed Catalyst's letters to investors in the Catalyst Fund Limited Partnership II ("Fund II") sent between 2006 and 2011 (the "Investor Letters"). Attached as Exhibit "R" is an excerpt from a summary of Moyse's file activity on March 28, 2014. This exhibit records Moyse accessing the Investor Letters, which have nothing to do with his duties and responsibilities at Catalyst.

- 16 -

56. In the Investor Letters, Catalyst reported to our investors on events that transpired with respect to Fund II's investments. The Investor Letters also contained forward-looking statements. The time period for which Moyse was reviewing the Investor Letters relates to activity on Catalyst's Stelco investment, which was no longer active and in which Catalyst and West Face were in direct competition.

57. Catalyst's records reveal that Moyse accessed these files between 6:28 p.m. and 6:39 p.m., outside of regular office hours at Catalyst. Moreover, eleven minutes is insufficient time to read these letters.

Stelco Files

58. On April 25, 2014, Moyse reviewed dozens of files related to Catalyst's investment in Stelco. Attached as Exhibit "S" is an excerpt from a summary of Moyse's file activity on April 25, 2014. I am aware of no legitimate business reason why Moyse would review these documents.

59. Catalyst's records reveal that Moyse accessed its Stelco material over an approximately 75-minute period on that day. That is an insufficient amount of time to read all of the material Moyse was accessing.

Masonite Files

60. On the evening of May 13, 2014, less than 48 hours before Dea started checking Moyse's personal references, and just before Moyse went on a one-week vacation, Moyse apparently accessed files related to Masonite International that were stored on his Dropbox account. These files are related to an opportunity Catalyst has been studying, but which Moyse was not working

on, in May 2014. I am aware of no legitimate reason why Moyse would copy these files to his Dropbox account in May 2014. Attached as Exhibit "T" is an excerpt from a summary of Moyse's file activity on May 13, 2014.

Telecom Files

61. As discussed above, Catalyst is working on a very sensitive and confidential opportunity in the telecommunications industry. This opportunity is referred to in general terms in the correspondence between counsel attached to this affidavit. As this is a situation that Catalyst is actively investigating and that I believe West Face is also investigating, Catalyst does not intend to disclose details about the situation, other than to say it is a significant opportunity which requires a lot of advance complex planning.

62. On the evening of May 13, 2014, shortly after he reviewed or transferred the Masonite International files referred to above, Moyse accessed several files related to this situation. Attached as Exhibit "U" is a redacted excerpt from a summary of Moyse's file activity on May 13, 2014.

63. This exhibit records Moyse accessing Catalyst files that are all related to this sensitive opportunity between 8:39 p.m. and 9:03 p.m. As on the other occasions described above, this is an insufficient amount of time for Moyse to read these documents.

Monday Meeting Notes

64. Two days after Moyse gave notice, Moyse apparently created a file containing his notes from our Monday morning meeting held on May 26, 2014. According to the record from

- 18 -

Moyse's hard drive, an excerpt of which is attached as Exhibit "V", Moyse accessed these notes at 12:30 p.m., which appears to be after the meeting ended.

65. The Monday morning meeting at Catalyst is where the firm reviews its existing investments and situations that Catalyst is studying on an ongoing basis, with updates and details of Catalyst's future plans. I am unaware of any legitimate reason why Moyse would be making notes of a meeting he attended after he had resigned.

Catalyst's Vulnerability to the Defendants' Unfair Competition

66. In light of, among other things, (a) Moyse's level of responsibility at Catalyst; (b) Moyse's suspicious accessing of Catalyst's Confidential Information for no apparent legitimate reason; (c) the fact that Moyse maintained personal Internet file storage accounts where he stored, and possibly continues to store, Catalyst's Confidential Information; (d) the fact that Catalyst and West Face are competitors in an industry where a small number of firms compete over the same investment opportunities; and (e) the fact that West Face and Catalyst are currently investigating the same opportunity in the telecommunications industry, Catalyst is extremely vulnerable to unfair competition by Moyse and West Face.

67. Unless Moyse is forced to comply with the Non-Compete and to return all of the Confidential Information to Catalyst, Catalyst is at risk of losing the telecommunications opportunity and possibly other special situations it is currently studying. It will also be at risk of having its secret methods for valuing and analyzing opportunities disclosed to a competitor, which may lead to further losses of future opportunities. West Face will have an unfair advantage if Moyse and other employees at West Face are able to use Catalyst's confidential methods and

investment models, which it developed through hard work and experience over several years, to compete with Catalyst in future special situations.

68. Allowing West Face and Moyse to violate Catalyst's rights will cause incalculable harm to Catalyst's business for which monetary damages will not give Catalyst an appropriate or adequate remedy.

69. The harm Catalyst will suffer if Moyse is not stopped from continuing to breach the Restrictive Covenants and to return our Confidential Information is incalculable. Mere damages cannot compensate for the inability to capitalize on a specific situation, as any losses Catalyst will suffer will be impossible to quantify given the unpredictable range of possible outcomes for a given investment.

70. Moreover, the ripple effect of losing out on a given special situation due to unfair competition is impossible to quantify – that is, it is impossible to determine what other special situations Catalyst will be unable to capitalize on because the initial special situation did not succeed. It is impossible to quantify in damages how misuse of Catalyst's Confidential Information will damage Catalyst's business in the long term.

71. Further, it is important to realize that it is impossible for Catalyst to know precisely why it was unable to successfully execute on a special situation. In most circumstances, the parties to a special situation will not want to become involved in a dispute between competitor investment firms and will offer Catalyst no assistance in disclosing how it is that Catalyst's plans failed or that West Face was able to successfully implement its investment in the situation.

72. Simply, it is impossible to accurately quantify how Moyses's immediate employment at West Face and possible misuse of Catalyst's Confidential Information will damage Catalyst in the long term. However, I believe that if Moyses is able to ignore the Restrictive Covenants in the Employment Agreement, Catalyst's long-term viability is at risk.

The Need to Conduct a Forensic Review of Moyses's Computers and Electronic Devices

73. A forensic review of any computers or personal electronic devices, such as an iPad, owned by Moyses or any computer used by Moyses at West Face may reveal whether Moyses in fact took Catalyst's Confidential Information and what use he made of such information. Catalyst has no other means of ascertaining this information.

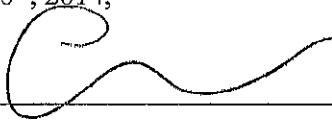
74. In light of (a) the suspicious nature of his actions to date, which only came to light because of Catalyst's forensic review of Moyses's hard drive; and (b) the fact that on June 19, the Defendants refused to agree to maintain the *status quo* pending the determination of Catalyst's motion for injunctive relief because Catalyst had not provided evidence that Moyses had breached his confidentiality undertakings to Catalyst, I have no confidence that Moyses will disclose this information honestly and forthrightly.

Undertaking as to Damages

75. I hereby undertake, on behalf of Catalyst, that if an injunction is granted the company will comply with any order regarding damages the Court may make in the future, if it ultimately appears that the injunction requested by the plaintiff ought not to have been granted, and that the granting of the injunction has caused damage to the defendants for which the plaintiff should compensate them.

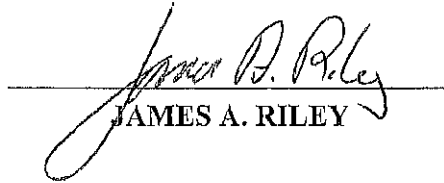
76. I swear this affidavit in support of Catalyst's motion for an injunction and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on June 26th, 2014,



Commissioner for Taking Affidavits, etc.

ANDREW WINTON


JAMES A. RILEY

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF JAMES A. RILEY
(SWORN JUNE 26, 2014)

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Andrew Winton LSUC#: 54473I
Tel: (416) 644-5342
awinton@counsel-toronto.com

Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "B" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**REPLY AFFIDAVIT OF JAMES A. RILEY
(SWORN JULY 14, 2014)**

I, James A. Riley, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.
2. I previously swore an affidavit in support of Catalyst's motion for interim relief on June 26, 2014. Since then, the defendants Brandon Moyse ("Moyse") and West Face Capital Inc. ("West Face") have served responding affidavits, which I have reviewed. The purpose of this affidavit is to briefly reply to matters raised in those responding affidavits.

Catalyst and West Face are Competitors

3. I note that both Moyse and Thomas Dea, a partner at West Face ("Dea"), attempt to describe West Face in a manner that suggests it is not a competitor to Catalyst. This suggestion is incorrect.

4. Dea's description of the Alternative Credit Fund that West Face launched in December 2013 is very similar to the investment approach that Catalyst takes in its investment funds: to commit capital to long-term investments that are immune to short-term vagaries of the market.

5. Notably, while Dea states that West Face's Alternative Credit Fund is not intended "primarily" to see a controlling interest or position of influence in a company, he indicates that this is a possible form of investment for this fund. Dea also confirms that West Face is active in the distressed investments industry.

6. While Dea attempts to contrast West Face's Long-Term Opportunities Fund with Catalyst's business model, he does not make the same distinction with the Alternative Credit Fund, which West Face expressly describes as a special situations and private credit fund and which competes directly with Catalyst.

Moyse's Comments Regarding Catalyst's Work Environment are Irrelevant to this Dispute

7. Paragraphs 23-26 of Moyse's affidavit refer to an alleged "toxic work environment" at Catalyst. I do not intend to dignify those comments with a response, other than to point out that when Moyse resigned from Catalyst, he told me that the reason he was leaving was because he was not interested in reviewing the operations of companies Catalyst had invested in, and that he wanted to devote more time to the "deal-making" side of the business. Moyse said nothing to me about an alleged "toxic work environment".

8. In any event, Moyse's alleged reasons for leaving Catalyst are irrelevant to the matters in dispute in this litigation.

Moyse had Accrued Significant Interest under the 60/40 Scheme

9. Moyse's statements in his affidavit about his compensation, and in particular about the 60/40 Scheme, are inaccurate. As of the date of his resignation, Moyse had accrued over \$500,000 in profit-sharing interest as compensation for his contribution to the deals he had worked on. This information would have been made available to Moyse had he asked.

10. It is true that Catalyst's employees only receive their 60/40 Scheme payments after a fund returns its capital and an eight per cent return to investors. This is consistent with Catalyst's "investors-first" approach to managing its funds. The 60/40 Scheme is potentially very lucrative, but Catalyst ensures that its investors receive a minimum rate of return before it begins to accrue profits for the firm, which are then shared on a 60/40 basis between employees and the firm, respectively.

11. Catalyst deliberately designed the 60/40 Scheme to function as a long-term incentive plan for its employees to align their interests with the interests of its investors and the firm. If Moyse had remained at Catalyst for the long-term, his 60/40 Scheme entitlement would likely have increased significantly by the time he was entitled to receive payment of his 60/40 Scheme interest. In this way, our employees accrue a partner-like interest in the performance of Catalyst's funds.

Moyse's and West Face's Treatment of Catalyst's Confidential Information

12. Apparently, in March 2014, Moyse intentionally sent Catalyst's confidential information to West Face as part of his efforts to secure employment there. Moyse's statement that these

documents did not contain any confidential information is incorrect. Moyses analyses of active and potential investments contain highly confidential information belonging to Catalyst which Moyses should not have shared with a competitor such as West Face under any circumstances.

13. Prior to receiving this affidavit, West Face did not inform us that it received this confidential information or that it intended to file Catalyst's confidential information as part of its responding motion record.

Moyses Wiped his Blackberry

14. I recently learned from Martin Musters, Catalyst's forensic IT expert, that Moyses wiped his company-issued Blackberry before he returned it to Catalyst. Attached as Exhibit "A" to my affidavit is a report from Mr. Musters regarding a forensic examination of the Blackberry smartphone Catalyst provided Moyses (the "Blackberry"). According to Musters' report, the Blackberry was "wiped" of all data sometime after June 17, 2014, thereby destroying evidence of, among other things, Moyses's communications with West Face.

15. I have made inquiries at Catalyst – no one at Catalyst wiped the Blackberry. I am certain that the Blackberry was wiped by Moyses before he returned it to Catalyst.

Moyses Emailed Catalyst Documents to his Personal Email Accounts

16. After Moyses's departure from Catalyst, Catalyst learned that Moyses operated personal "Hotmail" and "Gmail" accounts to which he often forwarded Catalyst documents. Attached as Exhibit "B" are just a few of the dozens of emails that Moyses sent to personal email accounts from his work email account, to which he attached Catalyst documents. These documents include:

-5-

- (a) A March 2014 presentation relating to an internal review of potential financing for a Catalyst investment;
- (b) A draft asset purchase agreement sent to Catalyst by U.S. counsel for internal review;
- (c) A document entitled "Weekly Report – w 8 2014 v 10CM"; and
- (d) A December 2013 Catalyst presentation to the U.S. Federal Trade Commission relating to Catalyst's efforts to purchase Advantage Rent A Car.

17. Moyses did not disclose this activity in his affidavit.

Catalyst's Former Employees Honoured their Non-Competition Covenants

18. In my original affidavit, I explained how Catalyst learned that Moyses was reviewing Catalyst's confidential documents in circumstances that Musters concluded are consistent with copying documents to an online file storage account. Moyses's reasons as to why he was reviewing these documents are illogical.

19. In particular, Moyses's suggestion that he was reviewing Catalyst's letters to its investors to look for comments about former Catalyst employees makes no sense. To the best of my knowledge, Catalyst has never "denigrated" a former employee in its investment letters.

20. Quite the contrary: I am unaware of any situation where another employee who resigned from Catalyst to work for a competitor did not comply with the non-competition covenant in his employment contract. In those situations, Catalyst and the former employees have remained on satisfactory terms.

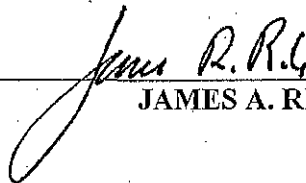
21. Moreover, to the best of my knowledge, Moyse is the only former Catalyst employee who has refused to comply with the non-competition covenant in his employment contract.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on July 14, 2014




Commissioner for Taking Affidavits
(or as may be)

ANDREW WINTON



JAMES A. RILEY

This is Exhibit "C" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

**REPLY AFFIDAVIT OF JAMES A. RILEY
(SWORN JULY 28, 2014)**

I, James A. Riley, of the City of Toronto, MAKE OATH AND SAY:

1. I am the Chief Operating Officer of The Catalyst Capital Group Inc. ("Catalyst"), the plaintiff in this proceeding, and, as such, have knowledge of the matters set out in this affidavit. To the extent my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.

2. I previously swore two affidavits in support of Catalyst's motion for interim relief, on June 26 and July 14, 2014. Since then, pursuant to a Court Order, the defendant Brandon Moyse ("Moyse") served an affidavit of documents dated July 22, 2014, in which Moyse disclosed all of the documents in his power, possession or control that relate to his employment at Catalyst (the "Disclosure Affidavit"). I have reviewed the Disclosure Affidavit and discussed its contents with Zach Michaud, a vice president at Catalyst ("Michaud"). Michaud also reviewed the Disclosure Affidavit.

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3. Attached as Exhibit "A" is a copy of the Disclosure Affidavit dated July 22, 2014. Attached as Exhibit "B" is a copy of the cover letter of Jeff Hopkins, Moyses's counsel ("Hopkins"), dated July 22, 2014, which accompanied the Disclosure Affidavit.

4. In his cover letter, Hopkins wrote:

Many (and possibly most) of the enclosed documents are public documents (publicly available financials/presentations/research, etc.) with many being duplicates and various versions of the same document.

5. This statement is incorrect. The Disclosure Affidavit listed 819 documents that were in Moyses's power, possession or control and which related to his employment at Catalyst. As explained below, just by reviewing the document titles, Catalyst has identified at least 245 confidential documents that were in Moyses's possession on July 22, 2014.

At Least 245 Documents in the Disclosure Affidavit are Confidential Documents

6. Prior to swearing this affidavit, I asked Michaud to review the Disclosure Affidavit. Neither Michaud nor I have had sufficient time to comprehensively review the USB key that accompanied the affidavit, so we have not reviewed the contents of these documents. However, through a review of the document titles alone, Michaud and I have identified 245 documents that contain Catalyst's confidential information. A list of those documents is attached as Exhibit "C".

7. For example, document 27 in the Disclosure Affidavit is a spreadsheet created by Catalyst to analyze the debt structure and asset valuation of the Homburg prospective situation, which Catalyst used to decide whether and how to invest in the situation and at what price.

8. Document 82 in the Disclosure Affidavit is a presentation Catalyst gave to potential investment bankers it was interviewing to walk them through a situation's concept, strategy and

-3-

results in order to explore the potential for debt and equity financing. Document 88 is related to this presentation – it is a spreadsheet containing full details of the company’s operating model, including projections on a granular, store-by-store basis.

9. In addition to documents that contain Catalyst’s confidential information, there are many documents listed in the Disclosure Affidavit that contain Catalyst’s analyses of information it received pursuant to non-disclosure agreements. Document 163 is one such document.

10. The confidential documents identified by Michaud and I contain information that is not publicly available. In many cases, the documents disclose Catalyst’s confidential financial modelling and/or analyses of situations and investments it is either considering or that it has invested in. In other cases, the documents shed insight into Catalyst’s management of its investments, including its associates, which if shared with a competitor would give that competitor an insight into Catalyst’s confidential operations.

11. In all cases, the documents contain information that Moyses, as a former employee of Catalyst, should not have retained in his power, possession or control when he resigned from Catalyst, especially when he intended to immediately begin working for a competitor to Catalyst in the special situations investment industry.

12. It is my belief that, after Catalyst is able to review the content of all 819 documents listed in Schedule “A” to the Disclosure Document, it will identify more of its confidential documents that were in Moyses’s power, possession or control as of July 22, 2014.

The Number and Scope of Catalyst “Associates” is Modest

13. The non-competition covenant in Moyses’s employment agreement with Catalyst is intended to prevent Moyses from working for a competitor to an “associate” of Catalyst located

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within Canada. It has been suggested by Moyse and West Face that this term unduly broadens the scope of the non-competition covenant. That is not the case.

14. Catalyst currently has only seven associates, as that term is defined under the Ontario *Business Corporations Act*:

- (a) Geneba Properties N. V., a European real estate company;
- (b) Advantage Rent a Car ("Advantage"), a car rental business;
- (c) Sonar Entertainment Inc., a television series, mini-series, and made-for-TV movie production company;
- (d) Natural Markets Restaurant Corporation ("NMRC"), a retail food and restaurant company;
- (e) Callidus Capital Corporation, a specialty asset-based lender;
- (f) Therapure Biopharma Inc., a contract manufacturer and developer of biological drugs; and
- (g) Gateway Casinos & Entertainment Inc., a gambling company.

15. These associates operate in distinct industries. Moreover, three of these associates, Geneba Properties N.V., Advantage and Sonar Entertainment Inc., are not located in Canada and therefore lie outside the scope of the non-competition covenant in Moyse's employment contract.

16. As an analyst at an "ordinary" investment firm, Moyse would have no reason to engage in business in these industries. The only situation in which an investment analyst such as Moyse

-5-

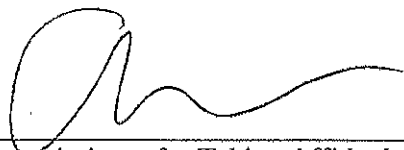
would engage in business in these industries is if he were to work at a “special situations” investment fund that competes with Catalyst.

17. By reason of its investment in these companies, Catalyst has access to extremely confidential information about them. It has a legitimate interest to prevent a Catalyst employee from resigning and immediately beginning to work for a competitor to a company that Catalyst is so heavily invested in.

18. For example, Moyse was involved in Catalyst’s investment in NMRC and had access to confidential information about NMRC’s operations. Catalyst has a proprietary interest in ensuring that Moyse could not resign from Catalyst and immediately begin working for a competitor to NMRC for a period of time.

19. Thus, the rationale behind the inclusion of Catalyst’s “associates” is intrinsically linked to the rationale for protecting Catalyst’s interests through a non-competition covenant – to ensure for a period of time after an employee leaves Catalyst, he is unable to use Catalyst’s confidential information to harm Catalyst’s investments in its associates.

SWORN BEFORE ME at the City of Toronto,
in the Province of Ontario on July 28, 2014



Commissioner for Taking Affidavits
(or as may be)

ANDREW WINTON



JAMES A. RILEY

This is Exhibit "D" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of connected loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Rocco DiPucchio
Sent: June-19-14 2:06 PM
To: Jeff C. Hopkins
Cc: adrian.miedema@dentons.com; Andrew Winton
Subject: RE: Brandon Moyse [IWOV-CLIENT.FID45653]

Jeff, in view of your advice in your correspondence sent today that Mr. Moyse is now planning to commence employment at West Face Capital next Monday, I have just received instructions to commence proceedings against Mr. Moyse and West Face Capital. Those proceedings will include a request for relief in the form of an interlocutory injunction to enforce the various covenants in Mr. Moyse's Employment Agreement with Catalyst Capital. I will try to get our materials to you and to Mr. Miedema forthwith, but in the event that we cannot get the matter heard before next Monday, we trust that no steps will be taken by each of your clients to alter the existing status quo prior to the matter being heard by the Court.

Rocco Di Pucchio

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

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From: Theresa (Terry) Vandervoort [<mailto:TerryV@grosman.com>]
Sent: June-19-14 12:53 PM
To: Rocco DiPucchio
Cc: adrian.miedema@dentons.com; Jeff C. Hopkins
Subject: Brandon Moyse

Good afternoon Mr. Di Pucchio,

Please see attached letter from Jeff Hopkins of our Firm with respect to the above subject matter.

Yours very truly,

Terry

Theresa (Terry) Vandervoort
 Legal Assistant to Jeff C. Hopkins & Justin Teireault

GROSMAN, GROSMAN & GALE LLP



Employment & Labour
Lawyers

390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2

Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

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This is Exhibit "E" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



Adrian Miedema
Partner

adrian.miedema@dentons.com
D +1 416 863 4878

Salans FMC SNR Denton
dentons.com

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

T +1 416 863 4511
F +1 416 863 4592

June 19, 2014

SENT VIA E-MAIL (rdipucchio@counsel-toronto.com)

Rocco Di Pucchio
Lax O'Sullivan Scott Lisus LLP
Suite 1920, 145 King Street West
Toronto ON M5H 1J8

Dear Mr. Di Pucchio:

Re: Brandon Moyse

This letter is further to the writer's discussion yesterday with you and Jeff Hopkins, counsel for Mr. Moyse. As Mr. Hopkins has advised, Mr. Moyse will be starting work with West Face Capital Inc. on Monday, June 23rd.

Mr. Moyse has agreed, contractually with West Face, to maintain strict confidentiality over all confidential information obtained by him in the course of his employment with The Catalyst Capital Group Inc. Both West Face and Mr. Moyse take that obligation very seriously. Your client has not provided any evidence that Mr. Moyse has breached any of his confidentiality obligations to Catalyst.

You mentioned yesterday that Catalyst is particularly concerned about Mr. Moyse's involvement in a "telecom deal". The writer has discussed that point with West Face. West Face has implemented a confidentiality wall that prevents Mr. Moyse from having any involvement in that potential transaction or from discussing any confidential information relating to that potential transaction with anyone at West Face, and vice versa. Mr. Moyse has not had, and will not have, any involvement with that potential transaction at West Face.

In the event that Catalyst commences proceedings, my colleague, Andy Pushalik, will be representing West Face in those proceedings. Any litigation-related materials or correspondence should be sent to Mr. Pushalik's attention.

Yours truly,
Dentons Canada LLP


Adrian Miedema

AJM/mf

c.c. Jeff Hopkins, counsel for Brandon Moyse

This is Exhibit "F" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Superior Court of Justice of Ontario

SCHEDULING COURT - FILE DIRECTION ORDER

Date June 30

The Honourable Madam Justice: Himel

Courtroom: 801 Court File No.: CV-14-507120

Short Title of Proceeding: Catalyst Capital v. Moyse & West

Counsel: Andrew Winton Telephone: 416-644-5342

Has requested a date for:

<u>Urgent / Short or Long</u>	Motion / Application
Summary judgment	Consent Order

Employment
disputing
employee
case
non-
competi.
claus.

Approved Date: July 16 / 14 Estimated duration: 3 hours

Nature of action: Mr. Winton's plaintiff and

Motion or application for: Mr. Huddell for Best Face Cap.

Central issue(s) to be decided: and speak for Mr. Moyse

Counsel seeks urgent motion
interim injunctive
relief party to serve & file
materials by July 2 / 14 and
resp. party by July 9 / 14.

Procedural orders: On consent, counsel

Time table: Attached agree to preserve statutes

Date: JUN 30 2014

Himel

 The Honourable Madam Justice Himel

For all hearings of one day's length or more, all materials must be filed in court no later than 4 weeks prior to the hearing date.

For all long motions, counsel must contact motions co-ordinator at michelle.chen@ontario.ca 4 weeks in advance of hearing date to advise of status. Please attach a copy of the endorsement from MSC to your status email.

MOTIONS TIMETABLE

STYLE OF CAUSE: THE CATALYST CAPITAL GROUP INC. v. MOYSE et al.

FILE NUMBER: CV-14-507120

SUMMARY JUDGMENT _____ MOTION X APPLICATION _____

APPROVED HEARING DATE: July 16 - 3 hours

Moving Party's Motion Record to be served & filed by: June 30/14 July 2/14

Responding Record to be served & filed by: July 7/14

Cross-Examinations to be completed by: _____

Moving Party's Factum to be served & filed by: June 30/14 July 2/14

Responding Factum to be served & filed by: July 7/14

Will *Viva Voce* Evidence be called? YES _____ NO X

Andrew Winton
MOVING PARTY COUNSEL: Andrew Winton Name/Phone Number/Email: 416-644-5342 awinton@counsel-toronto.com

Andy Puchalik
RESPONDING PARTY COUNSEL: Andy Puchalik Name/Phone Number/Email: 416-862-3468 / andy.puchalik@dentons.com

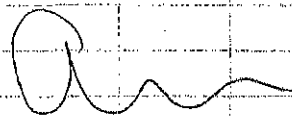
Jeff Hopkins
Name/Phone Number/Email: 416-364-9599 / jhopkinse@qrosman.com

CW-14-507120

CATALYST v.

MOYSE + WEST FACE

Defendants' counsel agree to
preserve the status quo with
respect to relevant documents
in ~~the~~ defendants' power,
possession or control.



Andrew Hinton for the
plaintiffs



Andy Pishalik for
the Defendants

This is Exhibit "G" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE JUSTICE FIRESTONE)

WEDNESDAY, THE 16TH
DAY OF JULY, 2014

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants



ORDER

THIS MOTION, made by the Plaintiff for interim relief, was heard this day at the court house, 393 University Avenue, Toronto, Ontario, M5G 1E6.

On being advised of the consent of the parties to the following interim terms up to and including August 7, 2014, the hearing of the Plaintiff's motion for injunctive relief,

1. THIS COURT ORDERS that pending a determination of an interlocutory injunction or until varied by further Order of this Court, the defendant Brandon Moyse ("Moyse"), or anyone acting on his behalf or at his direction, is enjoined from using, misusing or disclosing any and all confidential and/or proprietary information, including all records, materials, information, contracts, policies, and processes of The Catalyst Capital Group Inc. ("Catalyst") and all confidential information and/or proprietary third party information provided to Catalyst.

-2-

2. THIS COURT FURTHER ORDERS that until an interlocutory injunction is determined or until varied by further Order of this Court, Moyse is enjoined from engaging in activities competitive to Catalyst and shall fully comply with the restrictive covenants set forth in his Employment Agreement dated October 1, 2012.

3. THIS COURT FURTHER ORDERS that Catalyst shall pay Moyse his West Face Capital Inc. ("West Face") salary throughout this period.

4. THIS COURT FURTHER ORDERS that Moyse and West Face, and its employees, directors and officers, shall preserve and maintain all records in their possession, power or control, whether electronic or otherwise, that relate to Catalyst, and/or relate to their activities since March 27, 2014, and/or relate to or are relevant to any of the matters raised in this action, except as otherwise agreed to by Catalyst.

5. THIS COURT FURTHER ORDERS that Moyse shall turn over any personal computer and electronic devices owned by him or within his power or control (the "Devices") to his legal counsel, Grosman, Grosman and Gale-LLP ("GGG") for the taking of a forensic image of the data stored on the Devices (the "Forensic Image"), to be conducted by a professional firm as agreed to between the parties.

6. THIS COURT FURTHER ORDERS that the costs of the Forensic Image shall be sent to and borne by Catalyst.

7. THIS COURT FURTHER ORDERS that the Forensic Image shall be held in trust by GGG pending the outcome of the interlocutory motion.

-3-

8. THIS COURT FURTHER ORDERS that prior to the return of the interlocutory motion, Moyse shall deliver a sworn affidavit of documents to Catalyst, including copies of Schedule "A" documents, setting out all documents in his power, possession or control, that relate to his employment with Catalyst (the "Documents"). Moyse shall also advise whether any of the Documents have been disclosed to third parties, including West Face, and the details of any such disclosure.

9. THIS COURT FURTHER ORDERS that the above terms are being agreed to on a without prejudice basis and shall not be voluntarily disclosed by the parties. The parties are agreed and request that the Court hearing the interlocutory motion shall not consider or draw any inference from the terms of this Consent Order.

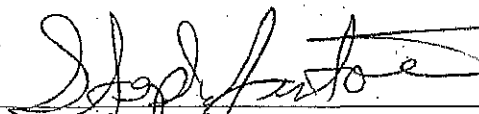

10. THIS COURT FURTHER ORDERS that the Court File in this matter (Court File No. CV-14-507120) shall be sealed pending the outcome of the interlocutory relief motion.

11. THIS COURT FURTHER ORDERS that costs of this interim relief motion shall be reserved to the judge hearing the interlocutory relief motion.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.:

JUL 2 2 2014

PER / PAR:


Justice Firestone

Justice Stephen E. Firestone

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 2750, 145 King Street West
Toronto, Ontario M5H 1J8

Rocco DiPucchio LSUC#: 38185I
rdipucchio@counsel-toronto.com
Tel: (416) 598-2268

Andrew Winton LSUC#: 54473I
awinton@counsel-toronto.com
Tel: (416) 644-5342
Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "H" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-17-14 1:57 PM
To: Andrew Winton; 'Jeff Mitchell (jeff.mitchell@dentons.com)'
Cc: Rocco DiPucchio
Subject: RE: Catalyst v. Moyse et al: Justice Firestone's endorsement attached [IWOV-CLIENT.FID45653]

Andrew:

I will forward the engagement letter for review once received, which I expect to be by day's end.

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Andrew Winton [<mailto:awinton@counsel-toronto.com>]
Sent: Thursday, July 17, 2014 1:54 PM
To: Jeff C. Hopkins; 'Jeff Mitchell (jeff.mitchell@dentons.com)'
Cc: Rocco DiPucchio
Subject: RE: Catalyst v. Moyse et al: Justice Firestone's endorsement attached [IWOV-CLIENT.FID45653]

Jeff,

Subject to our review of the estimate for the job, we agree that H&A can create the forensic images of Mr. Moyse's devices. If the estimate is approved, please pass along the following instructions to them re. imaging hard drives or USB keys:

The image must be taken of the entire drive (Physical) and must be done in an E01 format. I understand that "Encase" and "FTK imager" are capable of creating E01 images.

I believe Mr. Moyse also owns an iPad. For that device, we would appreciate if the technician at H&A consults with Mr. Musters about the software and steps they intend to use to image the device, as there are some detailed technical issues surrounding iPad imaging.

Mr. Musters will be out of town July 21-31, so if the technician can contact him tomorrow, that would be appreciated.

Regards,

Andrew

Andrew Winton
Direct: (416) 644-5342

This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

From: Jeff C. Hopkins [<mailto:jhopkins@grosman.com>]
Sent: July-16-14 4:28 PM
To: Andrew Winton; 'Jeff Mitchell (jeff.mitchell@dentons.com)'
Cc: Rocco DiPucchio
Subject: RE: Catalyst v. Moyse et al: Justice Firestone's endorsement attached [IWOV-CLIENT.FID45653]

Interim relief terms attached.

We've inquired with the forensic search / imaging firm H & A Forensics (<http://haforensics.ca/>) and will forward the pricing details shortly. We're advised they are able conduct the work immediately.

Jeff C. Hopkins
Partner

GROSMAN, GROSMAN & GALE LLP
 Employment & Labour
Lawyers
390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Andrew Winton [<mailto:awinton@counsel-toronto.com>]
Sent: Wednesday, July 16, 2014 4:00 PM
To: Jeff C. Hopkins; 'Jeff Mitchell (jeff.mitchell@dentons.com)'
Cc: Rocco DiPucchio
Subject: Catalyst v. Moyse et al: Justice Firestone's endorsement attached [IWOV-CLIENT.FID45653]

Counsel,

Attached is a copy of Justice Firestone's endorsement from today's motion.

Jeff H., can you please flip me the word doc you drafted so I can just cut and paste the terms into an order?

Regards,

Andrew

Andrew Winton
Direct: (416) 644-5342
awinton@counsel-toronto.com

Lax O'Sullivan Scott Lisus 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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This is Exhibit "I" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a wavy line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-17-14 4:03 PM
To: Rocco DiPucchio; Andrew Winton; Mitchell, Jeff (jeff.mitchell@dentons.com)
Cc: Theresa (Terry) Vandervoort
Subject: FW: Conflict Check
Attachments: H&A Letter of Engagement - B. Moyse - 2014-07-17.pdf

Counsel:

Attached is the (draft) engagement letter for review. While our Firm would be retaining H&A, I'm advised that the invoicing clause has a provision under which we would instruct H&A to redirect billing to Catalyst. I have not yet relayed Andrew's imaging requests, but I don't anticipate any issues.

The imaging can be conducted (and I assume completed) on Monday, July 21. Given the need to complete the imaging prior to Mr. Moyse reviewing any Catalyst documents on his computer devices, we cannot commit to delivering the AOD on Tuesday, July 22. However, we should be able to deliver the AOD on the 23rd.

Once I receive your confirmation that the engagement letter is agreeable, I will confirm with H&A for Monday.

Jeff C. Hopkins
 Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]
Sent: Thursday, July 17, 2014 2:55 PM
To: Jeff C. Hopkins
Subject: RE: Conflict Check

Good Afternoon Jeff

Please find attached the Letter of Engagement for the B. Moyse matter. Please return the executed copy via fax or email at your earliest convenience.

Thank-you for retaining us on this matter. I look forward to working with you and your team.

Regards,
 Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
 416-233-5577 or 1-866-233-5577 | HBurt-Gerrans@HAeDiscovery.com



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204 – 2680 Matheson Blvd E.,
Mississauga, ON L4W 0A5

HAEDISCOVERY.COM

July 17, 2014

PRIVILEGED & CONFIDENTIAL

VIA ELECTRONIC MAIL

Grosman Grosman & Gale LLP
390 Bay Street, Suite 1100,
Toronto, Ontario, M5H 2Y2

Attn: Mr. Jeff C. Hopkins, Partner

Dear Mr. Hopkins:

Re: Letter of Engagement to Provide Computer Forensic Services
B. Moyse matter

This letter of engagement will confirm that Grosman Grosman & Gale LLP (“Grosman”) have retained H&A eDiscovery Inc. (“H&A”) on behalf of its client, Mr. B. Moyse, as computer forensic experts, to assist with the forensic preservation of a laptop, iPad and a smart phone device.

This letter of engagement is based on the information provided in our telephone conversation on July 16, 2014.

SCOPE OF PROFESSIONAL SERVICES

Based on instructions received from you, the scope of our professional services will include, amongst others, the following:

- (1) Forensically Acquire Digital Evidence:
 - a. Capture forensic images of a laptop computer hard drive, an iPad and a smart phone device. The forensic images will be created using industry standard tools and methodologies. The images will be authenticated to be

Grosman Grosman & Gale
 July 17, 2014
 Page 2

true and accurate copies of the original media. All steps will be fully documented and supplemented by digital photographs, when appropriate.

- b. Create a working copy image of each forensic image and verify that each working copy image is a true and accurate copy of the original image.

(2) Formal Report:

If required, prepare a formal report which documents our analysis, findings and actions including schedules and appendices, where deemed necessary.

If additional professional services are required, we will prepare an addendum to this proposal detailing the scope and the associated estimated fees. No additional professional services will be rendered until verbal instructions and/or written approval is received from Grosman.

CONFIDENTIALITY

We understand that all communications between H&A and Grosman, either oral or written, as well as any materials or information developed or received by us will be treated by us as confidential. Accordingly, we agree, subject to applicable law(s) or court order(s), not to disclose any of our communications, or any of the information we receive or develop in the course of our work, to any person or entity apart from Grosman, or such other persons or entities as Grosman may designate.

If access to any of the materials in our possession relating to this engagement is sought by a third party, we will notify you immediately of such action and cooperate with you concerning our response thereto.

PROFESSIONAL FEE ESTIMATE

All billings for this project will be addressed to Grosman unless instructed otherwise. Our fees are not contingent upon the outcome of the proceedings or the quantum involved. They are charged strictly on a professional basis, e.g. for actual professional time expended on the engagement multiplied by the hourly rate of the professional involved.

Based on the work as detailed in the "Scope of Professional Services" section above, we estimate the professional fees, excluding applicable taxes and out-of-pocket disbursements, will be:

- a) Forensically image a laptop computer hard drive, an iPad and a smart phone device at the office of Grosman's and create working copies of the respective forensic images in our Mississauga office.(\$310 per hour)..... \$2,000 to \$2,500



Grosman Grosman & Gale
 July 17, 2014
 Page 3

b) Preparation of a Formal Report, if required.....To Be Determined

All billings are payable upon receipt.

CONFLICT OF INTEREST

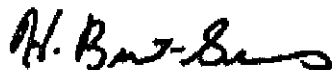
We have been provided the names of the parties involved in this matter and have conducted a firm wide conflict of interest check. We confirm that we do not have either a direct or perceived conflict of interest with the parties involved with this matter. Should a conflict arise, we will notify you immediately.

CONCLUSION

If the terms and conditions of this contract are acceptable to you, please sign this letter of engagement and return it to us. Upon receipt of the signed letter of engagement, we will commence the assignment.

We would like to take this opportunity to thank you for retaining our firm and we look forward to working with you. If you have any questions regarding the above, please do not hesitate to contact me directly.

Yours truly,



H&A eDISCOVERY INC.

Harold-Burt-Gerrans, B.Sc
 Director, Litigation Services

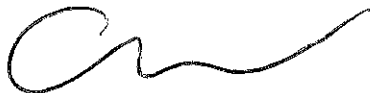
The above professional services and terms to be provided by H&A eDiscovery Inc. are hereby agreed to and accepted by:

 Jeff C. Hopkins, Partner
 Grosman Grosman & Gale LLP

 Date



This is Exhibit "J" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'AW', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-18-14 8:36 AM
To: Andrew Winton
Cc: Rocco DiPucchio; 'Andy Pushalik'
Subject: RE: Conflict Check [IWOV-CLIENT.FID45653]

We are fine with removing the confidentiality clause.

I will relay your other 2 requests, along with your earlier requests re: software.

Jeff C. Hopkins
 Partner

GROSMAN, GROSMAN & GALE LLP



Employment & Labour
 Lawyers

390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Andrew Winton [<mailto:awinton@counsel-toronto.com>]
Sent: Friday, July 18, 2014 12:28 AM
To: Jeff C. Hopkins
Cc: Rocco DiPucchio; 'Mitchell, Jeff (jeff.mitchell@dentons.com)'; 'Andy Pushalik'
Subject: RE: Conflict Check [IWOV-CLIENT.FID45653]

Jeff,

In the scope of services, paragraph 1(a), we cannot accept the vagueness of the phrase "created using industry standard tools and methodologies". They need to be more specific. There are three devices – a laptop, an iPad and a phone. For each device, H&A needs to specify what tools and methodologies they will use to take the forensic image before they start working so we can verify that the tools and methodologies meet our requirements.

Second, H&A needs to clarify what they mean by a "working copy" in the context of an iPad and smartphone.

Finally, the confidentiality clause should be struck in its entirety. All communications between Grosman, Grosman and Gale and H&A and any work-product of H&A relating to this retainer should be made available to us at our request.

Subject to these concerns, we are satisfied with the retainer.

Regards,

Andrew

Andrew Winton
 Direct: (416) 644-5342

This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

From: Jeff C. Hopkins [<mailto:jhopkins@grosman.com>]
Sent: July-17-14 10:21 PM
To: Jeff C. Hopkins
Cc: Rocco DiPucchio; Andrew Winton; Mitchell, Jeff (jeff.mitchell@dentons.com); Andy Pushalik
Subject: Re: Conflict Check

Rocco / Andrew: please advise ASAP so I can confirm with H & A for Monday.

On Jul 17, 2014, at 4:03 PM, "Jeff C. Hopkins" <jhopkins@grosman.com> wrote:

Counsel:

Attached is the (draft) engagement letter for review. While our Firm would be retaining H&A, I'm advised that the invoicing clause has a provision under which we would instruct H&A to redirect billing to Catalyst. I have not yet relayed Andrew's imaging requests, but I don't anticipate any issues.

The imaging can be conducted (and I assume completed) on Monday, July 21. Given the need to complete the imaging prior to Mr. Moyses reviewing any Catalyst documents on his computer devices, we cannot commit to delivering the AOD on Tuesday, July 22. However, we should be able to deliver the AOD on the 23rd.

Once I receive your confirmation that the engagement letter is agreeable, I will confirm with H&A for Monday.

Jeff C. Hopkins
Partner

GROSMAN, GROSMAN & GALE LLP



Employment & Labour
Lawyers

390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]
Sent: Thursday, July 17, 2014 2:55 PM
To: Jeff C. Hopkins
Subject: RE: Conflict Check

Good Afternoon Jeff

Please find attached the Letter of Engagement for the B. Moyses matter. Please return the executed copy via fax or email at your earliest convenience.

Thank-you for retaining us on this matter. I look forward to working with you and your team.

Regards,
Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
416-233-5577 or 1-866-233-5577 | HBurt-Gerrans@HAeDiscovery.com

<image001.png>

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<H&A Letter of Engagement - B. Moyses - 2014-07-17.pdf>

This is Exhibit "K" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-18-14 8:54 AM
To: 'Harold Burt-Gerrans'
Cc: Andrew Winton; Rocco DiPucchio; Pushalik, Andy (andy.pushalik@dentons.com)
Subject: RE: Conflict Check

Morning Harold:

The engagement letter has been reviewed by each party. Catalyst's legal counsel has the following comments / requested additions to the letter. (Mr. Andrew Winton who is cc'd on this email along with counsel to West Face).

1. The image must be taken of the entire drive (physical) and done in an E01 format. It is their understanding that "Encase" and "FTK imager" are capable of creating E01 images.
2. The scope of services, paragraph 1(a), "created using industry standard tools and methodologies", needs to be more specific (i.e., reference the three devices – a laptop, an iPad and an android phone. For each device, H&A needs to specify what tools and methodologies they will use to take the forensic image before it starts working so it can be verified that the tools and methodologies meet our requirements.
3. H&A needs to clarify what they mean by a "working copy" in the context of an iPad and smartphone.
4. Finally, the confidentiality clause should be removed (this is agreeable given the nature of the legal proceeding for which this activity is being conducted). All communications between Grosman, Grosman and Gale and H&A and any work-product of H&A relating to this retainer should be made available to Catalyst and / or West Face upon request.

Lastly, with respect to Mr. Moyses iPad, they ask that H&A consult with their technical consultant, Mr. Martin Musters (Director of Forensics at CFI -647 302 0067) about the software and steps H&A intend to use to image the device, as there are (apparently) some detailed technical issues surrounding iPad imaging. Please note that Mr. Musters is away next week, so hopefully you can reach out to him today.

If the above modifications to the letter are agreeable to H&A, please forward me a revised letter and I will sign and return immediately. For efficiency, if you have any questions regarding the above requests, please feel free to communicate directly with Mr. Winton via reply email, with all others cc'd of course.

Mr. Moyses has confirmed he will be at our office by 10:00 am Monday with his three computer devices.

Jeff.

Jeff C. Hopkins
 Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Harold Burt-Gerrans [mailto:HBurt-Gerrans@haediscovery.com]
Sent: Thursday, July 17, 2014 2:55 PM
To: Jeff C. Hopkins
Subject: RE: Conflict Check

Good Afternoon Jeff

Please find attached the Letter of Engagement for the B. Moyses matter. Please return the executed copy via fax or email at your earliest convenience.

Thank-you for retaining us on this matter. I look forward to working with you and your team.

Regards,
Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
416-233-5577 or 1-866-233-5577 | HBurt-Gerrans@HAeDiscovery.com



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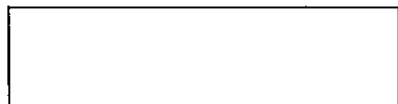
From: Jeff C. Hopkins [<mailto:jhopkins@grosman.com>]
Sent: Thursday, July 17, 2014 8:29 AM
To: Harold Burt-Gerrans
Subject: RE: Conflict Check

Hi Harold:

Look forward to receiving the engagement letter for review.

We're looking at 3 computer devices on Monday morning, at our office at 393 Bay St., Suite 2011 (Bay & Richmond).

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]
Sent: Wednesday, July 16, 2014 5:14 PM
To: Jeff C. Hopkins
Subject: Conflict Check

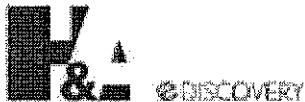
Good afternoon Mr. Hopkins

As per our discussion, we have completed the conflict check for the Moyse matter. I will put together a letter of engagement for the project, which should be ready for tomorrow. Imaging can be done onsite or in our office on Friday or Monday.

Regards,
Harold

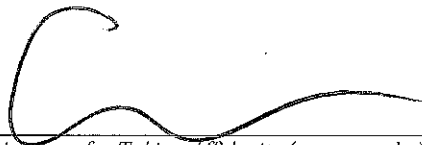
Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
416-233-5577 or 1-866-233-5577 | HBurt-Gerrans@HAeDiscovery.com



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This is Exhibit "L" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-18-14 11:46 AM
To: Andrew Winton; Rocco DiPucchio; 'Pushalik, Andy (andy.pushalik@dentons.com)'
Cc: 'Harold Burt-Gerrans'
Subject: RE: Conflict Check
Attachments: H&A eDiscovery (07.18.14).pdf

Counsel:

Attached is a copy of the signed engagement letter with H&A, which incorporates the changes below.

I'm advised that H&A and Mr. Musters have spoken, and Mr. Musters is satisfied with their imaging methodology for each device.

We are therefore confirmed for Monday and expect to deliver Mr. Moyses's sworn AOD and copies of documents by end of day Tuesday.

Jeff C. Hopkins
 Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Jeff C. Hopkins
Sent: Friday, July 18, 2014 8:54 AM
To: 'Harold Burt-Gerrans'
Cc: Andrew Winton (awinton@counsel-toronto.com); rdipucchio@counsel-toronto.com; Pushalik, Andy (andy.pushalik@dentons.com)
Subject: RE: Conflict Check

Morning Harold:

The engagement letter has been reviewed by each party. Catalyst's legal counsel has the following comments / requested additions to the letter. (Mr. Andrew Winton who is cc'd on this email along with counsel to West Face).

1. The image must be taken of the entire drive (physical) and done in an E01 format. It is their understanding that "Encase" and "FTK imager" are capable of creating E01 images.
2. The scope of services, paragraph 1(a), "created using industry standard tools and methodologies", needs to be more specific (i.e., reference the three devices – a laptop, an iPad and an android phone. For each device, H&A needs to specify what tools and methodologies they will use to take the forensic image before it starts working so it can be verified that the tools and methodologies meet our requirements.
3. H&A needs to clarify what they mean by a "working copy" in the context of an iPad and smartphone.
4. Finally, the confidentiality clause should be removed (this is agreeable given the nature of the legal proceeding for which this activity is being conducted). All communications between Grosman, Grosman and Gale and H&A

and any work-product of H&A relating to this retainer should be made available to Catalyst and / or West Face upon request.

Lastly, with respect to Mr. Moyses iPad, they ask that H&A consult with their technical consultant, Mr. Martin Musters (Director of Forensics at CFI -647 302 0067) about the software and steps H&A intend to use to image the device, as there are (apparently) some detailed technical issues surrounding iPad imaging. Please note that Mr. Musters is away next week, so hopefully you can reach out to him today.

If the above modifications to the letter are agreeable to H&A, please forward me a revised letter and I will sign and return immediately. For efficiency, if you have any questions regarding the above requests, please feel free to communicate directly with Mr. Winton via reply email, with all others cc.'d of course.

Mr. Moyses has confirmed he will be at our office by 10:00 am Monday with his three computer devices.

Jeff.

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]

Sent: Thursday, July 17, 2014 2:55 PM

To: Jeff C. Hopkins

Subject: RE: Conflict Check

Good Afternoon Jeff

Please find attached the Letter of Engagement for the B. Moyses matter. Please return the executed copy via fax or email at your earliest convenience.

Thank-you for retaining us on this matter. I look forward to working with you and your team.

Regards,
Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
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From: Jeff C. Hopkins [<mailto:jhopkins@grosman.com>]
Sent: Thursday, July 17, 2014 8:29 AM
To: Harold Burt-Gerrans
Subject: RE: Conflict Check

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We're looking at 3 computer devices on Monday morning, at our office at 393 Bay St., Suite 2011 (Bay & Richmond).

Jeff C. Hopkins
Partner



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From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]
Sent: Wednesday, July 16, 2014 5:14 PM
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Good afternoon Mr. Hopkins

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Regards,
Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
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204 - 2680 Matheson Blvd E.,
Mississauga, ON L4W 0A5

HAEDISCOVERY.COM

July 18, 2014

PRIVILEGED & CONFIDENTIAL

VIA ELECTRONIC MAIL

Grosman Grosman & Gale LLP
390 Bay Street, Suite 1100,
Toronto, Ontario, M5H 2Y2

Attn: Mr. Jeff C. Hopkins, Partner

Dear Mr. Hopkins:

Re: Letter of Engagement to Provide Computer Forensic Services
B. Moyse matter

This letter of engagement will confirm that Grosman Grosman & Gale LLP ("Grosman") have retained H&A eDiscovery Inc. ("H&A") on behalf of its client, Mr. B. Moyse, as computer forensic experts, to assist with the forensic preservation of a laptop, iPad and a smart phone device.

This letter of engagement is based on the information provided in our telephone conversation on July 16, 2014.

SCOPE OF PROFESSIONAL SERVICES

Based on instructions received from you, the scope of our professional services will include, amongst others, the following:

(1) Forensically Acquire Digital Evidence:

- a. Capture a forensic E01 formatted full disk image of a laptop computer hard drive. The forensic images will be created using industry standard tools (typically FTK Imager 3 or Encase 6, but other tools may be used as required), and methodologies. The image will be authenticated to be true

Grosman Grosman & Gale
July 18, 2014
Page 2

and accurate copy of the original medium. All steps will be fully documented and supplemented by digital photographs, where appropriate.

- b. Capture forensic images of an iPad and a smart phone device. The forensic images will be created using the latest release of Cellebrite and standard methodologies. The images will be authenticated to be true and accurate copies of the original media. All steps will be fully documented and supplemented by digital photographs, where appropriate.
- c. Create an additional copy of each forensic image referred to in paragraphs a) and b) above and verify that each copy image is a true and accurate copy of the original forensic image.

(2) Formal Report:

If required, prepare a formal report which documents, in detail, the work performed in paragraph 1 above.

If additional professional services are required, we will prepare an addendum to this proposal detailing the scope and the associated estimated fees. No additional professional services will be rendered until verbal instructions and/or written approval is received from Grosman.

PROFESSIONAL FEE ESTIMATE

All billings for this project will be addressed to Grosman unless instructed otherwise. Our fees are not contingent upon the outcome of the proceedings or the quantum involved. They are charged strictly on a professional basis, e.g. for actual professional time expended on the engagement multiplied by the hourly rate of the professional involved.

Based on the work as detailed in the "Scope of Professional Services" section above, we estimate the professional fees, excluding applicable taxes and out-of-pocket disbursements, will be:

- a) Forensically image a laptop computer hard drive, an iPad and a smart phone device at the office of Grosman's and create additional copies of the respective forensic images in our Mississauga office.(\$310 per hour)..... \$2,000 to \$2,500
- b) Preparation of a Formal Report, if required..... To Be Determined

.....All billings are payable upon receipt.....



Grosman Grosman & Gale
July 18, 2014
Page 3

CONFLICT OF INTEREST

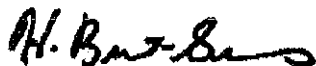
We have been provided the names of the parties involved in this matter and have conducted a firm wide conflict of interest check. We confirm that we do not have either a direct or perceived conflict of interest with the parties involved with this matter. Should a conflict arise, we will notify you immediately.

CONCLUSION

If the terms and conditions of this contract are acceptable to you, please sign this letter of engagement and return it to us. Upon receipt of the signed letter of engagement, we will commence the assignment.

We would like to take this opportunity to thank you for retaining our firm and we look forward to working with you. If you have any questions regarding the above, please do not hesitate to contact me directly.


Yours truly,

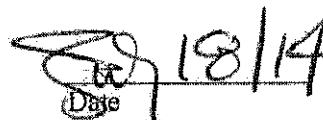


H&A eDISCOVERY INC.

Harold-Burt-Gerrans, B.Sc
Director, Litigation Services

The above professional services and terms to be provided by H&A eDiscovery Inc. are hereby agreed to and accepted by:



Jeff C. Hopkins, Partner
Grosman Grosman & Gale LLP
Date 7/18/14

This is Exhibit "M" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line extending to the right.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: July-22-14 11:24 AM
To: Rocco DiPucchio; Andrew Winton; Mitchell, Jeff (jeff.mitchell@dentons.com); Pushalik, Andy (andy.pushalik@dentons.com)
Cc: Justin Tetreault; Theresa (Terry) Vandervoort; Harold Burt-Gerrans (HBurt-Gerrans@haediscovery.com)
Subject: FW: B. Moyse Summary

Counsel:

Please see the email from H&A below.

Jeff C. Hopkins
 Partner

GROSMAN, GROSMAN & GALE LLP



Employment & Labour
 Lawyers

390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Harold Burt-Gerrans [<mailto:HBurt-Gerrans@haediscovery.com>]

Sent: Tuesday, July 22, 2014 11:21 AM

To: Jeff C. Hopkins

Subject: B. Moyse Summary

Good Morning Jeff

As discussed, here is a summary of the activities from yesterday:

- 1) Laptop: A successful complete disk image was created using Encase. The image was verified to be accurate and a second copy was made to a second drive.
- 2) Ipad: This model of iPad does not allow for a physical image to be captured, however a successful logical image was captured using Cellebrite. A second copy was made to the second drive.
- 3) Galaxy Phone: A physical image of the phone was successfully captured using Cellebrite. A second copy was made to the second drive.
- 4) brandonmoyses@hotmail.com: Using Microsoft Outlook, 2 full copies of the mailbox were captured as PST files, one using the "Imap" protocol and one using "Outlook Hotmail Connector". In both protocols, the complete message download was used prior to exporting to the final PSTs. A second copy of each of the PST files were made to the second drive.
- 5) bmy1987@gmail.com: Using Microsoft Outlook, the "ALL MAIL" folder was captured as a PST file using the "Imap" protocol. The complete message download option was used prior to exporting to the final PST. A second copy of each of the PST files were made to the second drive.

At this point, we are in possession of two copies of the images and email, and await further instructions regarding extraction of contents of these images.

Regards,
 Harold

Harold Burt-Gerrans

Director of Litigation Services | H&A eDiscovery | 2680 Matheson Blvd. E., Suite 204, Mississauga ON, L4W 0A5
416-233-5577 or 1-866-233-5577 | HBurt-Gerrans@HAeDiscovery.com



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This is Exhibit "N" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



GROSMAN, GROSMAN & GALE LLP
BARRISTERS & SOLICITORS

JEFF C. HOPKINS
E-mail: jhopkins@grosman.com

July 22, 2014

**COPY DELIVERED VIA ELECTRONIC MAIL
ORIGINAL VIA COURIER**

Mr. Andrew Winton
Lax O'Sullivan Scott Lisus LLP
Barristers and Solicitors
2750 - 145 King Street West
Toronto, ON M4H 1J8

Dear Mr. Winton:

Re: Catalyst Capital Inc. v. Moyses and West Face Capital Inc.

Please find enclosed a copy of Mr. Moyses's Affidavit of Documents, sworn July 22, 2014. We will be delivering copies of the Schedule "A" documents by USB device to your office later today.

We also note the following:

- Mr. Moyses did not store these documents on a USB device; this USB device and the documents contained within are a product of our office.
- Save the March 27, 2014 email from Mr. Moyses to West Face Capital, there has been no documentary disclosure or dissemination to any third-party.
- Many (and possibly most) of the enclosed documents are public documents (publicly available financials / presentations / research, etc.) with many being duplicates and various versions of the same document.

Please let me know if you have any questions or otherwise wish to discuss.

Yours very truly,

GROSMAN, GROSMAN & GALE LLP

For: Per: Jeff C. Hopkins

\cct

Enclosures

- c. Rocco Di Pucchio (by email to: rdipucchio@counsel-toronto.com)
Jeff Mitchell (by email to: jeff.mitchell@dentons.com)
Andy Pushalik (by email to: andy.pushalik@dentons.com)

T:\Client Files\MMoyse, Brandon\Letters\Winton 3 (07.22.14).doc

Court File No: CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

- and -

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

I, **BRANDON MOYSE**, of the City of Toronto, in the Province of Ontario, a Defendant in this action, **MAKE OATH AND SAY:**

1. I have conducted a diligent search of my records and have made appropriate enquiries of others to inform myself in order to make this affidavit. This affidavit discloses, to the full extent of my knowledge, information and belief, all documents relevant to any matter in issue in this action that are or have been in my possession, control or power.
2. I have listed in Schedule A those documents that are in my possession, control or power and that I do not object to producing for inspection.
3. I have listed in Schedule B those documents that are or were in my possession, control or power and that I object to producing because I claim they are privileged, and I have stated in Schedule B the grounds for each such claim.
4. I have listed in Schedule C those documents that were formerly in my possession, control or power but are no longer in my possession, control or power, and I have stated in Schedule C when and how I lost possession or control of or power over them and their present location.

5. I have never had in my possession, control or power any document relevant to any matter in issue in this action other than those listed in Schedules A, B and C.

SWORN before me at the City of Toronto)

on the 22 day of July, 2014)

)

Brandon Moyse

Paul Tetrad

Commissioner for taking Affidavits, etc.

LAWYER'S CERTIFICATE

I CERTIFY that I have explained to the deponent,

- (a) the necessity of making full disclosure of all documents relevant to any matter in issue in the action,
- (b) what kinds of documents are likely to be relevant to the allegations made in the pleadings, and
- (c) if the action is brought under the simplified procedure, the necessity of providing the list required under rule 76.03.

Date July 22/14

Paul Tetrad

(Signature of Solicitor)

SCHEDULE A

Documents in my possession, control or power that I do not object to producing for inspection.

Tab	File Name
1.	14-02-11 NMFG-Piper Jaffray Meeting Notes.docx
2.	14-02-19 BCG meeting.docx
3.	14-02-19 Minutes from NMFG-BCG Meeting.docx
4.	14-02-26 BCG Thoughts.docx
5.	14-02-26 NMFG Real Estate Committee Call.docx
6.	14-02-26 Notes from NMFG Support Call.docx
7.	Additional WIND Due Diligence Questions.docx
8.	Advantage Agenda - Nov18.docx
9.	Avis-Budget Earnings Summary.docx
10.	Bonding Analysis.xlsx
11.	Book1.xlsx
12.	Cash Rec.xlsx
13.	Catalyst Press Release - Mar4.pdf
14.	Catalyst Press Release - Mar4.pdf.docx
15.	Comps.docx
16.	Consultants Grid.xlsx
17.	EWR.xlsx
18.	Facility Comparison.pptx
19.	Flash Reports.pdf
20.	Flash Reports.xlsx
21.	Forward looking to actual.xlsx
22.	Fresh Market Earnings.docx
23.	Geneba Call Notes.docx
24.	HFC Post-petition Facility - Court Order.pdf
25.	HFC Post-Petition Facility Terms.pdf
26.	HII Analysis v79.xlsx
27.	HII Analysis v80.xlsx
28.	Natural Markets Restaurants Corp.docx
29.	NMFG Weekly Report - Week 8.pdf
30.	NMRC FAQs.docx
31.	NMRC Gant Chart.xlsx
32.	Notes for Auction.docx
33.	NYC-BWI Sensitivities.xlsx
34.	Preqin Data.xlsx
35.	Q1 2013 Letter V6.docx
36.	Sprouts Summary.docx
37.	What adjustments are in adjusted EBITDA each year.docx
38.	(Bonds) Updated RLI Insurance - General Indemnity Agreement 6-24-13 signed.PDF
39.	032014_AtlanticPower_DrewMallozzi_FINAL.pdf

40.	09-10-20 Credit Agreement (1st Amendment).pdf
41.	1- REC - Cover Pages 2.19.14.pdf
42.	11b 3376 Trends Brief 4Pass 110414.pdf
43.	12-01-01 Credit Agreement (1st A&R).pdf
44.	12-01-01 Trust Indenture (A&R).pdf
45.	121111 NOA Investment Memo v1.pdf
46.	13-01-04 Geneba News Tracker.xlsx
47.	13-01-25 DB Oil and Gas for Beginners.pdf
48.	13-02-09 Geneba News Tracker.xlsx
49.	13-02-16 Geneba News Tracker.xlsx
50.	13-02-23 Geneba News Tracker (1).pdf
51.	13-02-23 Geneba News Tracker.pdf
52.	13-02-23 Geneba News Tracker.xlsx
53.	13-04-30 Transaction Information Circular.pdf
54.	13-09-24 NMRC Presentation (2).pptx
55.	13-09-24 NMRC Presentation.pptx
56.	13-09-27 Funding Memo v2.docx
57.	13-10-11 Geneba News Tracker.xlsx
58.	13-10-25 Geneba News Tracker (1).xlsx
59.	13-10-25 Geneba News Tracker.xlsx
60.	13-11-01 Geneba News Tracker.xlsx
61.	13-11-15 Geneba News Tracker.xlsx
62.	13-11-28 MAG and Rent calculation.xlsx
63.	13-12-09 Geneba News Tracker.xlsx
64.	13-12-11 Concessions Analysis.xlsx
65.	13-12-14 Geneba News Tracker.xlsx
66.	13-12-16 Reservation Outlook.xlsx
67.	13-12-21 Geneba News Tracker.xlsx
68.	14-01-01 1st Supplemental Indenture.pdf
69.	14-01-01 Credit Agreement (2nd A&R).pdf
70.	14-01-06 Funding Memo.docx
71.	14-01-28 DIP Funding Request.xlsx
72.	14-02-08 NMRC Presentation Slide 2.pptx
73.	14-02-08 NMRC Presentation.pptx
74.	14-02-10 NMRC Presentation v10 (1).pptx
75.	14-02-10 NMRC Presentation v10 (2).pptx
76.	14-02-10 NMRC Presentation v10.pptx
77.	14-02-10 NMRC Presentation v12.pptx
78.	14-02-12 NMRC Presentation vF (1).PDF
79.	14-02-12 NMRC Presentation vF (2).PDF
80.	14-02-12 NMRC Presentation vF.PDF
81.	14-02-12 NMRC Presentation vF.pptx
82.	14-02-13 NMRC Presentation vF.pdf
83.	14-02-20 Airport Concessions.pdf
84.	14-02-20 Airport Concessions.xlsx

85.	14-02-21 NMFG Operating Model - BM version (1).xlsx
86.	14-02-21 NMFG Operating Model - BM version.xlsx
87.	14-02-25 NMFG Operating Model (1).xlsx
88.	14-02-25 NMFG Operating Model.xlsx
89.	14-04-04 SunTrust Presentation v10.pptx
90.	15939_PearsonAR12(1).pdf
91.	15939_PearsonAR12.pdf
92.	15939_Pearson_Per_sum12.pdf
93.	1644.pdf
94.	19-02-16 NMFG Operating Model - BM version.xlsx
95.	1st half on AUS Concession Agreement.PDF
96.	2- Mrs. Green's REC Presentation-Larchmont-2.19.14 - Larchmont.pdf
97.	2010 Q4.pdf
98.	2011 Initiating Coverage(1).pdf
99.	2011 Initiating Coverage.pdf
100.	2011 Q4.pdf
101.	2011 Results Presentation Slides.pdf
102.	2012 Initiating Coverage(1).pdf
103.	2012 Initiating Coverage.pdf
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578.	NMRC Operating Model (27 Jan 2014) (2).xlsx
579.	NMRC Operating Model (27 Jan 2014) (3).xlsx
580.	NMRC Operating Model (27 Jan 2014).xlsx
581.	NMRC Operating Model v42.xlsx
582.	NMRC Peers - 2-6-2014 (1).xlsx
583.	NMRC Peers - 2-6-2014.xlsx
584.	NMRC Run-Rate by Store (1).pdf
585.	NMRC Run-Rate by Store.pdf
586.	NMRC_09302013 Valuation Memo.pdf
587.	NMRC_12312013 Valuation Memo (1).pdf
588.	NMRC_12312013 Valuation Memo (2).pdf
589.	NMRC_12312013 Valuation Memo v3.pdf
590.	NMRC_12312013 Valuation Memo v4.pdf
591.	NMRC_12312013 Valuation Memo.pdf
592.	Non-Recurring Expenses (to PwC 21 Feb).xlsx
593.	Non-Recurring Expenses.xlsx
594.	OAK Monthly Revenue Report & CFC.pdf
595.	October 2013 Activity.xls
596.	October MAG & Rent JILL.XLSX
597.	Offsite Leadership Meeting Agenda[9].docx
598.	OKC Monthly Revenue Report.pdf
599.	OMA Monthly Revenue Report .pdf
600.	ONT Monthly Revenue Report & CFC.pdf
601.	OP model reconciliation v5.pptx
602.	Operating Summary v2.xlsx
603.	Operating Summary v3.xlsx
604.	Operating Summary v4.xlsx
605.	Operating Summary.xlsx
606.	operating-model.xlsx
607.	OperatingSummary 20131202.xlsx
608.	OperatingSummary 20131203 (1).xlsx
609.	OperatingSummary 20131203.xlsx
610.	OperatingSummary 20131204 (1).xlsx
611.	OperatingSummary 20131204.xlsx
612.	OperatingSummary 20131205 (1).xlsx
613.	OperatingSummary 20131205.xlsx
614.	OperatingSummary 20131206 (1).xlsx
615.	OperatingSummary 20131206.xlsx
616.	OperatingSummary 20131207 (1).xlsx
617.	OperatingSummary 20131207.xlsx
618.	OperatingSummary 20131208 (1).xlsx
619.	OperatingSummary 20131208.xlsx

620.	OperatingSummary 20131209 (1).xlsx
621.	OperatingSummary 20131209.xlsx
622.	OperatingSummary 20131210 (1).xlsx
623.	OperatingSummary 20131210 (2).xlsx
624.	OperatingSummary 20131210.xlsx
625.	OperatingSummary 20131211 (1).xlsx
626.	OperatingSummary 20131211.xlsx
627.	OperatingSummary 20131212.xlsx
628.	ORD Monthly Revenue Report.pdf
629.	ORD MonthlyCFC.pdf
630.	ORF Monthly Revenue Report & CFC.pdf
631.	Organizational Chart 2013-11-19 v1.3.pptx
632.	Organizational Chart Brandon.pptx
633.	OTA - EuropCar Cooperation Agreement dated 6-3-2013 (1).PDF
634.	OTA - EuropCar Cooperation Agreement dated 6-3-2013.PDF
635.	OTA Expedia Advantage - U-Save Advantage 2013 VRSA (SP 10-04-13) Fully Signed (2) (1).PDF
636.	P11 Cash Model v3.xlsx
637.	P11 Cash Model v4.xlsx
638.	P11 Funding Request.pdf
639.	P12 Cash Model v12.xlsx
640.	P12 Cash Model.xlsx
641.	P12 Funding Sources and Uses v5.xlsx
642.	Paul Finnegan's Catalyst case study (TID) (1).pdf
643.	Paul Finnegan's Catalyst case study (TID).pdf
644.	Payroll wire summaries 2014 - Canada and US.xlsx
645.	PBC 141013.pdf
646.	PDX Monthly Revenue Report.pdf
647.	Period 13 MDA (10 Jan 2014).pptx
648.	Period 4 2014 MDA (final).pptx
649.	PHX - Monthly Revenue Report & CFC.pdf
650.	PIT Monthly Revenue Report & CFC.pdf
651.	PNS Monthly Revenue Report & CFC.pdf
652.	presentation_12.pdf
653.	Project Turbine - Preliminary Diligence Request List.pdf
654.	Project Turbine - Preliminary Diligence Request List.xls
655.	PR_Catalyst Capital Group_27JAN2014_draft (1).pdf
656.	PR_Catalyst Capital Group_27JAN2014_draft (2).pdf
657.	PR_Catalyst Capital Group_27JAN2014_draft.pdf
658.	PR_Catalyst Capital Group_NMFG_LEK_Credentials.pdf
659.	PVD Monthly Revenue Report & CFC.pdf
660.	Q313financial(1).pdf
661.	Q313financial.pdf
662.	Q4 2013 & Year-end Conference Call_3_14_2014_9_47_51 AMCanexus-Q4-2013-Conference-Call-FINAL.pdf.pdf

663.	Q4 2013 Letter v7 - Newton's Mark Up.pdf
664.	Q4 SRPD Calc - December 31 2013 - v4.xlsx
665.	Quarterly Letter v3 (1).docx
666.	Quarterly Letter v3.docx
667.	Quarterly Letter v4.docx
668.	Quarterly Letter v4.pdf
669.	RBC update - Aug23(1).pdf
670.	RBC update - Aug23.pdf
671.	RDU Monthly Revenue Report.pdf
672.	Real Estate Development and Controls (27 Jan 2014) (1).pptx
673.	Real Estate Development and Controls (27 Jan 2014).pptx
674.	Real Estate Pipeline - IRR (8 Feb 2014).xlsx
675.	Real Estate Pipeline - IRR (9 Feb 2014).xlsx
676.	Real Estate Pipeline - IRR (v 2 Jan) v2.xlsx
677.	Real Estate Pipeline - IRR (v.2 Jan).xlsx
678.	Real Estate Pipeline - IRR (v.27 Dec).xlsx
679.	Real Estate Pipeline - P11 v3.xlsx
680.	Reforecast DIP Budget (WE12-7) (1).xlsx
681.	Reforecast DIP Budget (WE12-7).xlsx
682.	Research 1.pdf
683.	ResearchDocument.pdf
684.	Reservation Outlook 11252013nf (1).xlsx
685.	Reservation Outlook 11252013nf.xlsx
686.	Reservation Outlook 12022013nf (1).xlsx
687.	Reservation Outlook 12022013nf.xlsx
688.	Reservation Outlook 12092013nf (1).xlsx
689.	Reservation Outlook 12092013nf.xlsx
690.	Reservation Outlook 12162013nf (1).xlsx
691.	Reservation Outlook 12162013nf (2).xlsx
692.	Reservation Outlook 12162013nf.xlsx
693.	Reservation Outlook 12232013nf (1).xlsx
694.	Reservation Outlook 12232013nf (2).xlsx
695.	Reservation Outlook 12232013nf.xlsx
696.	Reservation Outlook 12302013nf (1).xlsx
697.	Reservation Outlook 12302013nf (2).xlsx
698.	Reservation Outlook 12302013nf (3).xlsx
699.	Reservation Outlook 12302013nf.xlsx
700.	Reservation Outlook 20140106nf.xlsx
701.	Review042012.pdf
702.	RLI Insurance-Updated GIA for Signed.pdf
703.	RNO Monthly Revenue Report .pdf
704.	RON Initial Memo v10.pdf
705.	RSW Monthly Revenue Report.pdf
706.	SAN Forecast.xlsx
707.	SAN Monthly Revenue Report & CFC.pdf

708.	SAT Monthly Revenue Report & CFC.pdf
709.	Scanned from a Xerox multifunction device (2).pdf
710.	Scanned from a Xerox multifunction device.pdf
711.	Scanned from a Xerox multifunction device[1].pdf
712.	scas cafr 2012.pdf
713.	Schedules B and C (HII-Shareco) - 2013-04-28(1).pdf
714.	Schedules B and C (HII-Shareco) - 2013-04-28(2).pdf
715.	Schedules B and C (HII-Shareco) - 2013-04-28.pdf
716.	Scott Paper Company.pdf
717.	SDF Exhibit I - Oct 2013.xlsx
718.	SDF Monthly Revenue Report &CFC.pdf
719.	SEA Monthly Revenue Report & CFC.pdf
720.	Seagate Technology Buyout.pdf
721.	Second Quarter 2010 Investor Call Presentation.pdf
722.	Second Quarter 2012 Investor Call Presentation(1).pdf
723.	Second Quarter 2012 Investor Call Presentation.pdf
724.	SFB Monthly Revenue Report & CFC.pdf
725.	SFO Monthly Revenue Report & CFC.pdf
726.	simply wheelz doc WL master lease agreement 20140220 (2).doc
727.	SJC Monthly Revenue Report & CFC.pdf
728.	SLC Monthly Revenue Report & CFC2.pdf
729.	SMF Monthly Revenue Report.pdf
730.	SNA Monthly Revenue Report.pdf
731.	Sprouts Farmers Market Investor Deck.pdf
732.	SRQ Monthly Revenue Report & CFC.pdf
733.	Standard & Poor's - Kardan NV (English) 8 2012(1).pdf
734.	Standard & Poor's - Kardan NV (English) 8 2012.pdf
735.	Statement of Work (SOW #1) FINAL EXECUTED COPY (1).pdf
736.	Statement of Work (SOW #1) FINAL EXECUTED COPY.pdf
737.	Statement of Work (SOW #2) FINAL EXECUTED COPY (1).pdf
738.	Statement of Work (SOW #2) FINAL EXECUTED COPY.pdf
739.	Strategic Initiative Update (final).pptx
740.	Strategic Initiative Update.pptx
741.	Summary of Advantage AP Agreements - 12-Dec-2013.doc
742.	Sunbeam-Oster Company, Inc..pdf
743.	TFM News 2013 5 29 Financial Releases.pdf
744.	The Conoco Split-off (A).pdf
745.	The Finova Group, Inc. (A).pdf
746.	The Loewen Group Inc..pdf
747.	Therapure - Advanced Manufacturing Fund - Proposal v7 without comments.docx
748.	Therapure Payroll - 3-21.pdf
749.	Third Quarter 2010 Investor Call Presentation.pdf
750.	Third Quarter Investor Call Presentation.pdf
751.	Thomson One (1)(1).pdf
752.	Thomson One (1).pdf

753.	Top 10 Locations.xlsx
754.	TPA Exhibit B - Oct 2013.xlsx
755.	TPA Monthly Revenue Report.pdf
756.	traf-ops-072013.xls
757.	Travelport Market Demand Data v1.xlsx
758.	Tuckamore Capital Management vF2.pdf
759.	TUL Monthly Revenue Report & CFC.pdf
760.	Turbine_v2.xlsx
761.	UAL Corporation.pdf
762.	Underperforming Stores Assessments and Action Planv3.pptx
763.	UNTITLED.PPTX
764.	Valuing Companies in Corporate Restructuring.pdf
765.	VINs at 11-5-13 v 12 19 (MASTER) 3.10.14.xlsx
766.	VPS Monthly Revenue Report & CFC.pdf
767.	W. R. Grace & Co. - Dealing with Asbestos Torts.pdf
768.	Weekly report - w 8 2014 v10CM (1).xlsx
769.	Weekly report - w 8 2014 v10CM.xlsx
770.	Weekly report - W18 2014.xlsx
771.	WFM-FiveYearTable-3Q13.xlsx
772.	Year End Results Presentation and Script.pdf
773.	Year End Summary2013.pdf
774.	Real Estate - REC - Summary Page - 2 18 14.pdf
775.	Arcan 2013 AIF.pdf
776.	Arcan 2013 Q4.pdf
777.	Arcan 2014 Q1.pdf
778.	Arcan Initiating Coverage.pdf
779.	Arcan Research 1.pdf
780.	Arcan Research 2.pdf
781.	DOOR Comps.xlsx
782.	Barclay'.pdf
783.	Bond Covenants 101.PDF
784.	CDI Handbook - 4th Edition.pdf
785.	CreditDerivativesInsights[1].pdf
786.	Damodaran - Value Creation.pdf
787.	Debt, Value and Leases - Damodaran.pdf
788.	Gateway - Canadian Restructuring and Gaming Regulation Overview Jefferies - 9.1.09.pdf
789.	Kirkland & Ellis - Chapter 11 Overview and Issues.pdf
790.	Kirkland & Ellis - Debt M&A - 4 Alternative Approaches.pdf
791.	Measuring Returns - Damodaran.pdf
792.	Moodys Covenant Assessment.pdf
793.	Moyer- Distressed Debt Analysis.pdf
794.	Operating Leases in Valuation - Damodaran.pdf
795.	Selling Your Torts Hofstra Law Review.pdf
796.	UBS Valuation Multiples Primer.pdf

797.	Valuation Multiples - 1st Principles.pdf
798.	Value of Control - Damodaran.pdf
799.	Value of Intangibles - Damodaran.pdf
800.	Valuing Commodity and Cyclical Companies.pdf
801.	Valuing Distressed and Declining Firms - Damodaran.pdf
802.	First-Out – Last-Out Intercreditor Presentation(1).pdf
803.	10-12-13 Oil Sands.pdf
804.	11-02-08 Oil Sands.pdf
805.	13-01-25 DB Oil and Gas for Beginners.pdf
806.	13-04-15 CIBC Oilfield Services.pdf
807.	catalyst.txt
808.	CS Oil and Gas Primer 2011.pdf
809.	E&P An Investors Guide - Dec 2005.pdf
810.	Energy Made Simple -- July 2012.pdf
811.	Feb 2014 - Scotia Energy Valuation Book.pdf
812.	JPM E&P Primer - Nov 2005.pdf
813.	13-02-24 Canadian Banking Primer.pdf
814.	catalyst.txt
815.	JPM 2013 USD Covered Bond Handbook.pdf
816.	13-04-30 Dundee I&C Report.pdf
817.	CEE Real Estate - 13-04-09.pdf
818.	April 2013 - MS Retail Softlines.pdf
819.	13-05-05 CIBC Steel Primer.pdf

SCHEDULE B

Documents that are or were in my possession, control or power that I object to producing on the grounds of privilege.

Letters, memoranda and other similar documents passing between Brandon Moyse and his solicitor or between solicitors for Brandon Moyse and West Face Capital Inc, either in the anticipation of this action, or since the commencement thereof, all of which are privileged communications passing between solicitor and client or attract litigation and/or common interest privilege.

SCHEDULE C

Documents that were formerly in my possession, control or power but are no longer in my possession, control or power.

Documents transferred to Brandon Moyse's personal accounts or devices in the normal course of business during his employment with The Catalyst Capital Group Inc. and deleted prior to litigation, a list of which is not available.

This is Exhibit "O" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of connected loops and a long horizontal tail.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

CITATION: The Catalyst Capital Group Inc. v. Moyse, 2014 ONSC 6442
 COURT FILE NO.: CV-14-507120
 DATE: 20141110

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
THE CATALYST CAPITAL GROUP INC.)	<i>Rocco DiPucchio & Andrew Winton, for the</i>
)	Plaintiff
Plaintiff)	
)	
- and -)	
)	
BRANDON MOYSE and WEST FACE)	<i>Jeff C. Hopkins & Justin Tetreault, for the</i>
CAPITAL INC.)	Defendant, Brandon Moyse
)	
Defendants)	<i>Jeff Mitchell & Matthew J.G. Curtis, for the</i>
)	Defendant, West Face Capital Inc.
)	
)	
)	
)	
)	HEARD: October 27, 2014

LEDERER J.:

INTRODUCTION

[1] This is a motion for an interlocutory injunction. The defendant, Brandon Moyse, has changed jobs. His former employer seeks to enjoin him from breaching a confidentiality clause that was part of his employment contract and compelling him to comply with a clause that, for a time, would prevent him from working for a competitor.

[2] An injunction is an equitable remedy. It has long been said that: "He who seeks equity must do equity" or "He who comes into equity must come to court with clean hands". This is not just true of those who ask for an injunction, but also to those who oppose it.

BACKGROUND

[3] Brandon Moyses was employed by the plaintiff, The Catalyst Capital Group Inc. ("Catalyst"), as an analyst. On March 14, 2014, Brandon Moyses sent an e-mail to Thomas Dea, a partner at the defendant, West Face Capital Inc. ("West Face"), expressing interest in "working with West Face".¹ At the time, West Face was recruiting analysts. They met on March 26, 2014. On May 19, 2014, West Face offered Brandon Moyses a job. On May 24, 2014, while on vacation, Brandon Moyses gave notice of his resignation to Catalyst, effective June 22, 2014.² The e-mail sent by Brandon Moyses made no reference to his plans or to having accepted employment with West Face. This information came to light within the following few days. By letter, dated May 30, 2014, counsel for Catalyst wrote to West Face and counsel for Brandon Moyses concerned about the implications of the departure of Brandon Moyses and his accepting employment with West Face, a competitor in a narrow field of investing. In particular, the letter states that the valuation methodologies used by Brandon Moyses, at Catalyst, were proprietary and that the information he received and generated was "highly sensitive and confidential". It relates Catalyst's concern that Brandon Moyses "has imparted or will be imparting Confidential Information to West Face that he acquired in the course of his employment with [Catalyst]." The letter refers to provisions in the Catalyst's Employment Agreement with Brandon Moyses dealing with confidentiality, "Non-Solicitation" and "Non-Competition".³

[4] Answers were not long in coming. On June 3, 2014, counsel for West Face responded, followed two days later by counsel for Brandon Moyses. The former took the position that the non-competition and non-solicitation clauses were both unenforceable. The latter agreed. Counsel for West Face said little about the concern for confidentiality indicating only that West Face "had impressed upon Mr. Moyses that he is not to share or divulge any confidential information that he obtained during his employment with [Catalyst]".⁴ Counsel for Brandon Moyses said more. He denied that Brandon Moyses had used "proprietary valuation methodologies" and said that Brandon Moyses did not understand what investment strategies were being referred to "in the context or proprietary information". Counsel assured the representatives of Catalyst that Brandon Moyses had no intention of revealing "any information which could reasonably be considered confidential or proprietary in nature". Counsel offered that Brandon Moyses would "abide by the confidentiality provisions contained in the [Catalyst] Employment Agreement".⁵

[5] A single reply was delivered by counsel for Catalyst. This letter, dated June 13, 2014, pointed out that the rejection of Catalyst's reliance on the non-competition and non-solicitation clauses failed to account for the fact that West Face was a direct competitor of Catalyst "...in a highly specialized field in which very sensitive and proprietary information is shared every day

¹ *Affidavit of Thomas Dea*, sworn July 7, 2014, at para. 20.

² *Affidavit of James Riley*, sworn June 26, 2014, at Exhibit H.

³ *Ibid*, at Exhibit I.

⁴ *Ibid*, at Exhibit J.

⁵ *Ibid*, at Exhibit K.

with trusted analysts such as Mr. Moyses". The response recognized the assurances provided in respect of confidential information, but concludes that they "do not go far enough."⁶

[6] These letters demonstrate two things of importance. The first is that West Face and Brandon Moyses, while they did not and do not dispute the enforceability of the confidentiality clause, were unprepared to recognize any substance to the concerns for confidentiality raised by Catalyst. The second is how quickly this turned litigious. In his first letter, counsel for Catalyst, having repeated the concern of his client that confidential information had been or would be given to West Face, said that the business interests of Catalyst "have been and will continue to be irreparably harmed" and referred to the "Remedies" provision in the agreement. The letter went on to say that Catalyst would consider any proposal that would answer "the current situation".⁷ In his response, the lawyer acting for West Face complained that "no evidence to support your allegation that your client has suffered irreparable harm"⁸ had been provided. This letter was written on June 3, 2014, which is to say, three weeks before Brandon was to start working at West Face (June 23, 2014) and only ten days after he had given his notice to Catalyst. It is difficult to see how such proof could be prepared so early and so quickly without any understanding of what Brandon Moyses had in his possession and could have or had delivered to West Face. West Face and Brandon Moyses simply gave their assurances; thereby denying there was any reason for concern. Their letters propose that either Catalyst accept their assurance or go to court. They volunteered nothing.

[7] Was Catalyst right? Was there any reason for concern?

MARCH 27, 2014 E-MAIL AND THE INVESTMENT MEMOS

[8] Thomas Dea deposed that, at the meeting on March 26, 2014, he requested that Brandon Moyses provide a copy of his resumé "so that I could circulate it to others at West Face".⁹ What Thomas Dea did not say was that, at the meeting, he also requested that Brandon Moyses deliver samples of his research and writing.¹⁰ Rather, further on in the affidavit, Thomas Dea indicated that "[s]ince the commencement of this litigation... West Face has conducted a diligent search of its emails to determine whether there was any information of Catalyst disclosed by Brandon". He says that, as a result of the search, West Face found an e-mail, dated March 27, 2014, which delivered examples of the written work of Brandon Moyses.¹¹

⁶ *Ibid*, at Exhibit L.

⁷ *Ibid*, at Exhibit I.

⁸ *Ibid*, at Exhibit J.

⁹ *Affidavit of Thomas Dea*, sworn July 7, 2014, at para. 21.

¹⁰ *Cross-examination of Thomas Dea*, July 31, 2014, at qq. 289-292, *Cross-examination of Brandon Moyses*, July 31, 2014, at q. 624. In making this request, Thomas Dea cautioned Brandon Moyses that these writing samples should not contain confidential material.

¹¹ *Affidavit of Thomas Dea*, sworn July 7, 2014, at para. 42.

[9] Brandon Moyses deposed an affidavit he said was in response to two affidavits made in support of the application for an injunction.¹² The first of these was an affidavit of James Riley, the Chief Operating Officer of Catalyst; and the second, an affidavit of Martin Musters, a consultant retained by counsel for Catalyst to undertake a forensic examination of a computer that had been used by Brandon Moyses during his employment with Catalyst. Neither of these affidavits refers to the e-mail of March 27, 2014 and attached memos. Presumably for that reason, there is no mention of them in the affidavit of Brandon Moyses. It was not referred to and so it was not part of the response.

[10] What Brandon Moyses did say is that he was aware of “three potential investments” being considered by Catalyst. He reviewed his involvement with each and described Catalyst’s interest and the information he had, and used, variously as “widely known”, available “to any potential purchaser”, “publically available” and containing “no confidential information”.¹³ He cited the paragraphs of the affidavit of James Riley this responds to and summarized them, as follows:

Contrary to the allegations at paragraphs 8 and 67 of Mr. Riley’s Affidavit, there was nothing confidential and proprietary in the methodology that I used to value certain investment opportunities while I worked at Catalyst. Rather, I used commonly used and well-known valuation methods.¹⁴

[11] In paragraph 8 of his initial affidavit, the first of the two paragraphs to which Brandon Moyses was responding, James Riley explained the harm that can arise if “... a competitor learns of the opportunities Catalyst is considering or studying, the investment models it is using for a particular situation, the methodology Catalyst is considering for acquiring control or influence, or the turnaround plan Catalyst is considering once it acquires control.”¹⁵ In paragraph 67, the second of the two paragraphs referred to, James Riley outlined the specific harm to Catalyst if Brandon Moyses is not compelled to comply with the non-compete clause and to return all confidential information to Catalyst.¹⁶

[12] James Riley swore a second and subsequent affidavit. It refers to the affidavit of Brandon Moyses and indicates that it was only upon its receipt that Catalyst learned that Brandon Moyses had sent “...Catalyst’s confidential information to West Face as part of his efforts to secure employment there”.¹⁷ James Riley deposed that, prior to receiving the affidavit of Brandon Moyses, West Face did not inform Catalyst that it had received the memos attached to the e-mail

¹² *Affidavit of Brandon Moyses*, sworn July 7, 2014, at para. 2.

¹³ *Ibid*, at paras. 9-13.

¹⁴ *Ibid*, at para. 15.

¹⁵ *Affidavit of James Riley*, sworn June 26, 2014, at para. 8.

¹⁶ *Ibid*, at para. 67.

¹⁷ *Affidavit of James Riley*, sworn July 14, 2014, at para. 12.

of March 27, 2014.¹⁸ He contested the assertions of Brandon Moyse that the information delivered was not confidential and publicly available:

Moyse's analysis of active and potential investments contain highly confidential information belonging to Catalyst which Moyse should not have shared with a competitor such as West Face under any circumstances.¹⁹

[13] What is clear from this review is that, despite their assurances that there was no reason for concern, West Face and Brandon Moyse were both aware that memos, regarded by West Face as confidential, had been sent by Brandon Moyse to Thomas Dea with the e-mail of March 27, 2014. The memos, as delivered, each say on the first page, "Confidential" and "For Internal Discussion Purposes Only".²⁰ There can have been little doubt that West Face would have and did understand the perspective of those at Catalyst. Having received the memos, Thomas Dea circulated them to the other partners and a Vice-President at West Face.²¹ He did this understanding that the information was confidential and of the concern associated with its disclosure. When he was cross-examined, Thomas Dea was asked and answered:

Q. Did any of the partners, or did Mr. Zhu express any concern about the fact that Mr. Moyse had sent West Face Catalyst's confidential information?

A. Yes. Prior to us extending the offer I discussed with one of the partners, with Tony, we were generally favourably disposed to his capabilities, but one concern we had was that he had conveyed confidential information to us, and I agreed with that, and so I asked our General Counsel to have a discussion with him specifically about that, to convey to him the seriousness with which we view the protection of confidential information, to make sure that -- and to explain that we'd have the highest expectation that he would uphold that if he were to come and work for us.²²

[14] For his part, when cross-examined, Brandon Moyse professed not to understand what makes a memo confidential:

Q. So what makes a memo confidential?

A. I'm not sure really.²³

¹⁸ *Ibid*, at para.13.

¹⁹ *Ibid*, at para. 12.

²⁰ *Affidavit of Thomas Dea*, sworn July 7, 2014, at Exhibit L (The e-mail of Mach 27, 2014 and the enclosed "writing samples").

²¹ *Cross-examination of Thomas Dea*, July 31, 2014, at q. 313.

²² *Ibid*, at q. 335.

²³ *Cross-examination of Brandon Moyse*, July 31, 2014, at q. 429.

And, later, in the same cross-examination, after some discussion about the substance of confidentiality:

Q. Right. Right? It's the level of analysis, that's the work product that's being performed for your employer; you surely understand that.

A. Yes.

Q. And that's what makes it confidential.

A. I don't know.

Q. Do you disagree with that?

A. I don't know what makes it confidential.²⁴

[15] I note that, during the course of his submissions, counsel for Brandon Moyes acknowledged that it was an error to deliver these memos to West Face. He referred to this as a "rookie mistake". I assume this refers to the idea that Brandon Moyes was young and inexperienced. He may be. Often, the term "rookie mistake" is used in the context of professional athletics. In hockey or football, or any other sport, a "rookie" (a first-year player) who makes a mistake, and in so doing breaks the rules, is penalized in the same way as a more experienced participant. The fact that Brandon Moyes is young, and may be inexperienced, does not serve to decrease any responsibility or liability for the harm that may attach to his actions.²⁵

[16] What appears to have happened is that, rather than be forthcoming and allow Catalyst to understand what had happened and to consider what, if any, impact there was to its business, West Face and Brandon Moyse determined to take the position that there was no impact. They sought to have Catalyst rely on their assurances that this was so. Once it became known that information that was considered by Catalyst to be confidential had been delivered, West Face and Brandon Moyse chose to argue that the information really should not be considered as being confidential or proprietary. On his cross-examination, Brandon Moyes was asked and said:

Q. Okay. And in terms of the actual confidential information, you say it didn't include any confidential information, you don't mean to suggest again that the analysis that you're performing is not confidential?

A. I don't believe it is. It was based on publicly available information.

²⁴ *Ibid.*, at qq. 435-437.

²⁵ During his cross-examination, Thomas Dea also referred to the delivery of these memos as a "rookie error" (*Cross-examination of Thomas Dea*, July 31, 2014, at q. 336). I confess I find this peculiar in circumstances where Thomas Dea says and Brandon Moyse acknowledges that when asked to provide samples of his written work, Brandon Moyse was cautioned not to send material that was confidential (see: fn. 10).

Q. Right. But lots of things are based on publicly available information, but the fact that you're performing an analysis that may not be readily available to the public is what makes it confidential. That's your work product is analyzing.

A. I agree it's a work product and proprietary.

Q. And that's what makes it confidential. That's what you're being paid for, to perform this analysis that's not publicly available.

A. I multiply publicly available numbers by publicly available numbers. Like-minded people would have done the same thing.²⁶

At this point, counsel for Catalyst makes the following comment and receives the following response:

Q. You do far more than multiply, Mr. Moyes. Let's be fair. Anybody can take a calculator. You're not hired to be a calculator. You're hired to bring your experience and expertise in performing an analysis, right? That's why you're being paid \$200,000 a year.

A. One sixty-two.²⁷

[17] Thomas Dea recognized that the information he received from Brandon Moyse was "confidential to Catalyst"²⁸. Nonetheless, West Face concluded that the information disclosed was not particularly sensitive or damaging to Catalyst. Based on a review of the documents, West Face had concluded that the information in the documents was primarily a recitation of public information and contained a pedestrian analysis.²⁹

[18] The determination of Brandon Moyse and those at West Face as to what constitutes confidential information that should be protected is too narrow. This is demonstrated by the assertion of Brandon Moyse that all he did he was to multiply publically-available numbers by publically-available numbers and that, in some way, this removes his work from being considered confidential. There is more to the question than that:

A person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication and springboard it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public . . . the possessor of the confidential information still has a long start over any

²⁶ *Cross-examination of Brandon Moyse*, July 31, 2014, at qq. 431-433.

²⁷ *Ibid*, at q. 434.

²⁸ *Cross-examination of Thomas Dea*, July 31, 2014, at q. 328.

²⁹ *Ibid*, at qq. 311-312.

member of the public . . . the possessor of such information must be placed under a special disability in the field of competition in order to ensure that he does not get an unfair start.³⁰

and:

Even when all of the information becomes public, if an ex- employee is able, by information provided by or developed for the previous employer, to gain an advantage that the ex-employee would not have had if he or she had to check only public sources such ex-employee would still be liable for breach of confidence despite public disclosure. This reflects an obligation to pay for the advantage gained from the 'convenient' confidential source, or the head start that the disclosure had given such employee over other members of the public.

What is really being protected in situations of this nature is the original process of mind. The protection is enforced against persons who wish to use the confidential information without spending time, trouble and expense of going through the same process. One can reconcile the springboard principle with the overriding principle denying confidence and information in the public domain, by describing the 'springboard' as a measure of the scope and duration of the obligation enforcing good faith upon an ex-employee while the rest of the world catches up.³¹

[19] When, in the letter sent by its counsel on June 3, 2014, West Face told Catalyst: "Your assertion that West Face induced Mr. Moyse to breach his contractual obligation to [Catalyst] is...baseless"³², it may have been technically accurate. (This depends on how you interpret the fact that Thomas Dea asked for the samples of the work of Brandon Moyse.) However, it is clear that this and the other assurances found in the letter were written knowing that West Face had received information marked "Confidential" and that West Face was sufficiently concerned that it felt it was necessary to remind Brandon Moyse of his obligations. Despite this, West Face said nothing to Catalyst other than to provide, what I believe can fairly be called, its ineffectual assurances.

³⁰ *Terrapin-Ltd.-v.-Builders-Supply-Co-(Hayes)-Ltd.*, [1967]-R.P.C. 375, at pp. 391-92, quoted in *Omega-Digital Data Inc. v. Airos Technology Inc.*, 32 OR (3d) 21, at p. [29].

³¹ *Matrox Electronic Systems Ltd. v. Godrow*, [1993] R.J.Q. 2249 (S.C.), at pp. 2463-64, quoted in *Omega Digital Data Inc. v. Airos Technology Inc.*, 32 OR (3d) 21, at p. [29].

³² *Supra*, (fn. 4).

[20] Similarly, Brandon Moyse knew he had sent material marked "Confidential" and "For Internal Discussion Purposes Only" to West Face. More than that, he knew that the information it contained was confidential and should not have been given to West Face. Having come to this realization, he had deleted the e-mail:

Q. Now, you yourself had actually deleted a copy of that March 27th email from your computer system, right?

A. Yes.

Q. And the reason you chose to delete that particular email, I take it, as opposed to other emails which you didn't delete, was because you thought that there was something perhaps improper about your having sent that email?

A. Upon, further reflection after sending it, yes.

Q. And that is what you thought was wrong about that? That you had disclosed confidential information to West Face?

A. That I had disclosed information to West Face.

Q. And you're not denying that your analysis and the analysis of other people at Catalyst in those memos that you did send to West Face was proprietary and that belonged to Catalyst?

A. I agree it's proprietary.

Q. And you're not denying I take it that the analysis that was performed, in particular – and we'll look in some detail at these presentations or memos. But some of the analysis that was performed was certainly confidential?

A. Yes.

Q. In other words, it wouldn't be known by third parties?

A. Yes.

Q. The, how long did it take you to come to that realization?

A. That I shouldn't have sent it?

Q. Yes.

A. I don't remember exactly.

Q. And was around the time that you came to that realization that you thought you might cover your tracks deleting it?

A. No. I deleted it within a week of sending it probably I just don't remember exactly the date.³³

[21] Yet, in the letter sent, on behalf of Brandon Moyse, on June 5, 2014³⁴, nothing was said about this. The letter makes the general assertion to the effect that Brandon Moyes, in performing valuations of companies, did not use "proprietary valuation methodologies" and that while he is aware of "3 to 5 prospective acquisitions", he would not disclose any confidential information concerning them. He said he is prepared to sign a letter confirming he would abide by the confidentiality provisions in his contract of employment, an agreement to which he was already bound.

[22] What is apparent is that both West Face and Brandon Moyse did not provide information or respond to the concerns of Catalyst, in a meaningful way, until the evolution of this motion required them to do so. They waited until Catalyst discovered that information it considered to be confidential had been delivered before acknowledging there was an issue and then proclaimed that, based on their analysis, the material should not be considered to be confidential.

[23] This is to be contrasted to the approach taken by the defendants in *GDL Solutions In. v. Walker*.³⁵ In that case, a business was sold. As part of the sale, a non-competition provision was negotiated and agreed to. The vendor and others joined a new company that was in direct competition with the business that had been sold. It was alleged that they had misappropriated confidential information. Upon the commencement of the ensuing action, they undertook to and did review their files and "promptly" returned all confidential proprietary information. They undertook to and did preserve the electronic and other records of the employees who had left.³⁶

[24] In the case I am to decide, it is a question whether, in the end, the approach adopted by Brandon Moyse and West Face will meet the test that allows a party to obtain equity.

[25] It is important to note that Catalyst is adamant that the investment memos delivered with the March 27, 2014 e-mail were sensitive and confidential.³⁷ For his part, Brandon Moyse acknowledged that these memos may disclose strategies that Catalyst could employ in a given situation. In his cross-examination, Brandon Moyes did agree that these memos contain information that Catalyst would not want disclosed to a third party.³⁸ Thomas Dea acknowledged

³³ *Cross-examination of Brandon Moyse*, July 31, 2014, at qq. 412-420.

³⁴ *Supra*, (fn. 5).

³⁵ [2102] O.J. No. 3768; 2012 ONSC 4378.

³⁶ *Ibid*, at para. 92.

³⁷ *Affidavit of James Riley*, sworn July 14, 2014, at para. 12.

³⁸ *Cross-examination of Brandon Moyse*, July 31, 2014, at qq. 685-691.

that West Face considered its investment strategies to be confidential and that West Face has a proprietary interest in protecting that confidentiality.³⁹

THE AFFIDAVIT OF DOCUMENTS

[26] This is not the first time this motion for an interlocutory injunction has been to court. On July 16, 2014, Mr. Justice Firestone made a consent order imposing interim terms that were to remain in place until August 7, 2014, the date it was, at that time, anticipated that this motion would be heard. It was subsequently re-scheduled to today. The order of Mr. Justice Firestone includes the following term:

THIS COURT FURTHER ORDERS that prior to the return of interlocutory motion, Moyses shall deliver a sworn affidavit of documents to Catalyst, including copies of Schedule 'A' documents, setting out all documents in his power, possession or control, that relate to his employment with Catalyst (the 'Documents'). Moyses shall also advise whether any of the Documents have been disclosed to third parties, including West Face, and the details of any such disclosure.

[27] By letter, dated July 22, 2014⁴⁰, counsel for Brandon Moyses delivered an Affidavit of Documents, as required by the order of Mr. Justice Firestone. Like the letter, the Affidavit of Documents is dated July 22, 2014.⁴¹ It lists 819 documents. The accompanying letter states that:

Many (and possibly most) of the enclosed documents are public documents (publicly available financials/presentations/research, etc.) with many duplicates and various versions of the same document.⁴²

[28] In a third affidavit, this one sworn on July 24, 2014, James Riley contests this understanding. From a review of the titles alone, he says that he, and a colleague, identified "at least 245 confidential documents that were in Moyses's possession on July 22, 2014".⁴³ He provides some examples:

- Document 27: a spreadsheet created by Catalyst to analyze the debt structure and asset valuation of an identified prospective investment. Catalyst used the spreadsheet to decide whether and how to invest in the situation and at what price.⁴⁴

³⁹ *Cross-examination of Thomas Dea*, July 31, 2014, at qq. 252-259.

⁴⁰ *Affidavit of James Riley*, sworn July 28, 2014, at Exhibit B.

⁴¹ *Ibid*, at Exhibit A.

⁴² *Supra*, (fn. 38).

⁴³ *Affidavit of James Riley*, sworn July 28, 2014, at para. 5.

⁴⁴ *Ibid*, at para. 7.

- Document 82: a presentation Catalyst gave to potential investment bankers it was interviewing to walk them through the concept, strategy and results of a situation. The aim was to explore the potential for debt and equity financing.⁴⁵
- Document 88: is related to the presentation referred to in Document 82. It is a spreadsheet containing full details of the company's operating model, including projections on a granular, store-by-store basis.⁴⁶
- Document 163: is one of many documents that contain Catalyst's analysis of information received pursuant to non-disclosure agreements.⁴⁷

[29] James Riley summarizes this portion of his affidavit of July 22, 2014 with the following two paragraphs:

The confidential documents identified by Michaud and I contain information that is not publicly available. In many cases, the documents disclose Catalyst's confidential financial modeling and/or analyses of situations and investments it is either considering or that it has invested in. In other cases, the documents shed insight into Catalyst's management of its investments, including its associates, which if shared with a competitor would give the competitor an insight into Catalyst's confidential operations.

In all cases, the documents contained in the information that Moyse, as a former employee of Catalyst, should not have retained in his power, possession or control when he resigned from Catalyst, especially when he intended to immediately begin working for a competitor to Catalyst in the special situations investment industry.⁴⁸

[30] As with the March 27, 2014 e-mail and enclosures, it took the processes of this motion before Catalyst learned that the documents it alleges are confidential had been retained by Brandon Moyse. In his initial affidavit, Brandon Moyse said:

It is noteworthy that neither Mr. Riley nor Mr. Musters provide any actual evidence that I transferred information, confidential or otherwise, from Catalyst's

⁴⁵ *Ibid*, at para. 8.

⁴⁶ *Ibid*, at para. 8.

⁴⁷ *Ibid*, at para. 9.

⁴⁸ *Ibid*, at paras. 10-11.

services to my Dropbox or Box accounts or other personal devices. Instead, Mr. Riley and Mr. Musters rely solely on unsupported speculation and innuendo.⁴⁹

[31] At his cross-examination, Brandon Moyse said that, when he made this statement, he did so in circumstances where his search of his personal electronic devices had not been “exhaustive enough”.⁵⁰ He conceded that, at the time, he did have “confidential information on [his] personal computer devices”.⁵¹

[32] It took the appearance before Mr. Justice Firestone and the order it produced to demonstrate that Brandon Moyse had retained documents belonging to Catalyst, some of them allegedly confidential. It is possible that there is more. At the cross-examination of Brandon Moyse, he could not say with absolute certainty that his most recent search had been exhaustive.⁵²

[33] It bears asking if a party questions the concerns of the other as “speculation and innuendo” when it knew or should have realized that it was wrong to do so, does it come to court in a fashion that allows it to ask that equity balance in its favour?

[34] Having said this, counsel for Brandon Moyse, joined by counsel for West Face, pointed out that there is no evidence to suggest that any of these documents have been delivered to, or are in the possession of West Face. In the letter enclosing the Affidavit of Documents, counsel for Brandon Moyes, in compliance with the order of Mr. Justice Firestone, states: “save the March 27, 2014 email from [Brandon] Moyse to West Face Capital, there has been no documentary disclosure or dissemination to any third-party.”⁵³

THE PERSONAL COMPUTER OF BRANDON MOYSE

[35] The order of Mr. Justice Firestone included the following provisions:

THIS COURT FURTHER ORDERS that Moyse shall turn over any personal computer and electronic devices owned by him or within his power or control (the “Devices”) to his legal counsel, Grossman, Grossman and Gale LLP (“GGG”) for the taking of a forensic image of the data stored on the Devices (the “Forensic Images”), to be conducted by a professional firm as agreed to between the parties.

[36] It is not just that documents thought by Catalyst to be confidential have been found in the possession of Brandon Moyse. On June 19, 2014, Catalyst learned that not only was Brandon

⁴⁹ *Affidavit of Brandon Moyes*, sworn July 7, 2014, at para. 36.

⁵⁰ *Cross-examination of Brandon Moyse*, at qq. 326-331.

⁵¹ *Ibid*, at qq. 343-344.

⁵² *Ibid*, at qq. 332-333

⁵³ *Affidavit of James Riley*, sworn July 28, 2014, at Exhibit B.

Moyse leaving Catalyst, but also that he had accepted employment with West Face. Catalyst sees West Face as a competitor. Although the factum filed on behalf of West Face tends to minimize competition between the two firms ("...while West Face and Catalyst do compete in certain respects, their primary business focuses are different"⁵⁴), at the hearing of the motion, counsel for West Face conceded the two firms do compete. The next day, on June 20, 2014, Computer Forensics Inc., a company that "...specializes in the retrieval of data from hard drives, servers, laptops, cell phones... and other devices"⁵⁵ was retained, on behalf of Catalyst, to produce a forensic image of a desktop computer that had been used by Brandon Moyse. Martin Musters is the Director of Forensics at Computer Forensics Inc. In the affidavit he swore, Martin Musters said that, as a result of the analysis undertaken in respect of the desktop computer, he was able to determine that, on specific dates, Brandon Moyse had accessed particular files⁵⁶:

- on March 28, 2014, over an eleven-minute period, Brandon Moyse accessed a series of files from an 'Investors Letters' directory;⁵⁷
- on April 25, 2014, over a seventy-minute period, Brandon Moyse accessed several files which contain the word 'Stelco' in the file directory or in the file name;⁵⁸
- on May 13, 2014, over a sixty-one-minute period, Brandon Moyse accessed several files through his Dropbox account which had the name 'Masonite' in the file name;⁵⁹
- also, on May 13, 2014, over a twenty-four-minute period, Brandon Moyse accessed several files from a '2014 Potential Investment' directory.⁶⁰
- on May 26, 2014, at 12:31 p.m., Brandon Moyse accessed a document entitled '14-05-26 Notes' from a directory entitled 'Monday Meeting'.⁶¹

[37] Brandon Moyse has answers that explain each of these inquiries. He wanted to review the Investment Letters (March 28, 2014) because he was thinking of leaving Catalyst and wanted to understand what might be said about him if he left.⁶² Brandon Moyse reviewed the Stelco files (April 25, 2014) out of personal curiosity. At the time, the transaction was no longer active.⁶³

⁵⁴ *Factum of the Defendant/Responding Party, West Face Capital Inc.*, at para. 18.

⁵⁵ *Affidavit of Martin Musters*, sworn June 26, 2014, at para. 2.

⁵⁶ *Ibid*, at para. 11.

⁵⁷ *Ibid*, at para. 12 and Exhibit C. The exhibit suggests that, at that time, Brandon Moyse accessed 18 "files".

⁵⁸ *Ibid*, at para. 13 and Exhibit D. The exhibit suggests that, at that time, Brandon Moyse accessed 63 "files".

⁵⁹ *Ibid*, at para. 14 and Exhibit E. The exhibit suggests that, at that time, Brandon Moyse accessed 43 "files".

⁶⁰ *Ibid*, at para. 14 and Exhibit F. The exhibit suggests that, at that time, Brandon Moyse accessed 29 "files".

⁶¹ *Ibid*, at para. 15 and Exhibit G.

⁶² *Affidavit of Brandon Moyse*, sworn July 7, 2014, at para. 45.

⁶³ *Ibid*, at para. 48.

The Masonite material (May 13, 2014) he reviewed was not found in files that belonged to Catalyst. It was part of an exercise associated with an interview process being conducted by, or on behalf of, Mackenzie Investments. The material was provided to Brandon Moyse by Mackenzie Investments or obtained from Masonite's website.⁶⁴ On May 13, 2014, Brandon Moyse also accessed files related to WIND Mobile. This was done as part of his duties at Catalyst. He was working on a chart to include in an investment memo.⁶⁵ Lastly, the reference to Monday Meeting Notes (May 26, 2014) were his notes for, not from, that meeting.⁶⁶

[38] Martin Musters has indicated that he cannot determine whether any Catalyst files were transferred by Brandon Moyse from his computer to any other device⁶⁷; for example; to any personal computer he owned. There is no evidence that any of the material accessed by Brandon Moyse through the files of Catalyst have been disclosed to West Face. On the other hand, there is no certainty that everything that was accessed has been disclosed or discovered through the work of Martin Musters. At his cross-examination, Brandon Moyse admitted that, between March and May 2014, he deleted documents.⁶⁸ As already noted, one of these was the e-mail of March 27, 2014.⁶⁹

[39] Pursuant to the order of Mr. Justice Firestone, forensic images of the electronic devices belonging to Brandon Moyse have been created. They are being held in trust by his counsel. At this point, it appears that any evidence of the presence and use of any confidential information belonging to Catalyst would be found on the personal computers and other electronic devices of Brandon Moyes.

THE MOTION

[40] On June 19, 2014, counsel for Brandon Moyse wrote to counsel for Catalyst reiterating the assurance that had already been given and that Brandon Moyse remained "amenable to confirming these legal obligations in writing".⁷⁰ Any effort to resolve the issues having failed, counsel for Catalyst responded by e-mail to counsel for Brandon Moyse, with a copy to counsel for West Face. He indicated that he had received instructions to commence proceedings and went on:

I will try to get our materials to you and [counsel for West Face] forth with, but in the event that we cannot get the matter heard before next Monday, we trust that

⁶⁴ *Ibid*, at paras. 51-52.

⁶⁵ *Ibid*, at para. 55.

⁶⁶ *Ibid*, at para. 60.

⁶⁷ *Affidavit of Martin Musters*, sworn June 26, 2014, at para. 18.

⁶⁸ *Cross-examination of Brandon Moyse*, at qq. 346-354.

⁶⁹ *Ibid*, at qq. 355-357; and, see para. [20], above.

⁷⁰ *Affidavit of James Riley*, sworn June 26, 2014, at Exhibit M.

no steps will be taken by each of your clients to alter the existing status quo prior to the matter being heard by the court.⁷¹

[41] The only response, also dated June 19, 2014, was from counsel for West Face. It said that Brandon Moyse had “agreed, contractually with West Face” that he would maintain confidentiality over any confidential information he had obtained through his employment with Catalyst. The letter reiterates that Catalyst had not provided any evidence that Brandon Moyse had breached those obligations and that a “confidentiality wall” had been put in place in respect of a “telecom deal” that had been a particular concern of Catalyst. The letter indicated that any “litigation-related material” be directed to a particular lawyer in the firm.⁷²

[42] Counsel for Catalyst took this as an indication that the status quo would not necessarily be maintained. On that basis, counsel “moved with urgency” to seek interim relief. Counsel for Catalyst says that receipt of the affidavits of Brandon Moyes and Thomas Dea, both sworn on July 7, 2014, “confirmed Catalyst’s worst fears: [Brandon] Moyse had transferred Catalyst’s confidential information to West Face...”.⁷³ I understand this to refer to the e-mail of March 27, 2014, and the accompanying four “Investment Memos”.

[43] As matters have developed:

- where West Face and Brandon Moyse provided assurance that no confidential information had been or would be received by West Face, material that Catalyst believes to be confidential had been delivered to West Face by Brandon Moyse; and,
- where Brandon Moyes challenged Catalyst on the basis that the allegation that he had maintained confidential information of Catalyst on his ‘personal devices’ was only speculation and innuendo, he has subsequently found such documents on a personal computer.

[44] Now, as part of the position taken on this motion, counsel for West Face and Brandon Moyse, submit that, in the absence of any immediate proof, the court should accept the assurances of Brandon Moyse that his accessing files of Catalyst between March 28, 2014 (two days after he met with Thomas Dea) and May 26, 2014 (two days after he resigned from Catalyst) was, in every respect, proper, innocent and should be of no concern to Catalyst.

[45] I repeat what was said at the outset. An injunction is an equitable remedy. Reliance on that premise is challenged where the assurances of parties who seek what equity offers are, based on past actions, open to question.

⁷¹ *Ibid*, at Exhibit N.

⁷² *Ibid*, at Exhibit O.

⁷³ *Plaintiff’s Factum (Motion for Interlocutory Relief)*, at para. 31.

[46] The test for an interlocutory injunction is well-known. It asks three questions:

- (i) Is there a serious issue to be tried?
- (ii) Will the moving party suffer irreparable harm if the injunction is not granted?
- (iii) Where does the balance of convenience lie?⁷⁴
 - (i) *Is there a serious issue to be tried?*

[47] There is a clause in the Employment Agreement signed by Brandon Moyses that deals with the requirement to maintain confidentiality. It says:

You understand that, in your capacity as an equity holder and employee, you will acquire information about certain matters and things which are confidential to the protected entities, including, without limitation... and the like (collectively 'Confidential Information'). Further, you understand that each of the protected entities' Confidential Information has been developed over a long period of time and at great expense to each of the protected entities. You agree that all Confidential Information is the exclusive property of each of the protected entities. For greater clarity, common knowledge or information that is in the public domain does not constitute 'Confidential Information'.

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

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

[48] It is not possible on an interlocutory motion to determine if such a clause has been breached. The threshold is low:

It is not possible on an interlocutory motion with conflicting affidavit evidence to determine finally whether or not the plaintiff is entitled to succeed at trial and whether or not the defendants are, in fact, guilty of copying or misappropriating confidential information acquired from the plaintiff. The test, as these cases hold,

⁷⁴ *R.J.R.- MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; [1994] S.C.J. No. 17, at paras. 82-85.

is whether there is a serious question to be tried. The Supreme Court in *RJR MacDonald* made it clear that, as Justices Sopinka and Cory put it: 'The threshold is a low one. The judge on the application must make a preliminary assessment of the merits. . . . A prolonged examination of the merits is generally neither necessary nor desirable'.⁷⁵

[49] It is necessary that the threshold be low in light of the evidentiary challenges which face a moving party in cases involving confidential business information:

In cases involving confidential business information misuse can rarely be proved by convincing direct evidence. In most cases employers must construct a web of perhaps ambiguous circumstantial evidence from which the Court may draw inferences which convince it that it is more probable than not that what employers alleged happened, did in fact take place. Against this often delicate construct of circumstantial evidence there frequently must be balanced the testimony of employees and their witnesses who directly deny everything.⁷⁶

[50] The parties agree that the Confidentiality clause applies to Brandon Moyse. It is enforceable. Given the evidence that the Investment Memos included with the e-mail of March 27, 2014 are marked confidential, were recognized as such by Thomas Dea and could demonstrate strategies in a narrow, competitive business, I have no trouble in finding that the standard has been met. There is a serious issue to be tried. This conclusion is strengthened by the demonstration that, despite his assurances to the contrary, there were confidential documents on personal electronic devices belonging to Brandon Moyse.

[51] This does not fully resolve the issue of whether the first of the three components of the test for an interlocutory injunction have been met. Counsel for Catalyst seeks an order that Brandon Moyse be prohibited from "commencing or continuing employment at [West Face] until December 25, 2014".⁷⁷ Counsel for West Face submitted that this request engages the non-competition clause also found within the Employment Agreement of Brandon Moyse. Counsel said only if that clause is enforceable and has been breached, can the court restrain Brandon Moyse from working. It is not clear that this is so. If it is apparent that without such restraint breaches of the confidentiality clause would or could be expected to continue and cause irreparable harm, why would it not be open to the court to require that a former employee not work in order to ensure the promised confidentiality is maintained? Thomas Dea had no compunction about taking documents he recognized as confidential and distributing them to other partners and senior management. Brandon Moyse had difficulty understanding the line that separates what is confidential from that which is not.

⁷⁵ *Omega Digital Data Inc. v. Airos Technology Inc.*, 32 O.R. (3d) 21, [1996] O.J. No. No 5382 (Gen. Div.), at para. 10.

⁷⁶ *Ibid.*, quoting *Matrox Electronic Systems Ltd. v. Godrow*, [1993] R.J.Q. 2249 (S.C.), at p. 2246.

⁷⁷ *Notice of Motion*, dated June 26, 2014, at para. (f).

[52] The non-competition clause found in the contract of employment of Brandon Moyse states:

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the 'protected entities'), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employees; and

(ii) render any service of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst].

[Emphasis by underlining added]

[53] It may be that covenants in restraint of trade are generally unenforceable as contrary to the public interest. Nonetheless, reasonable restraints of trade may be enforceable:

The jurisprudence has recognized the reasonableness of restrictive covenants in two circumstances: (i) covenants which restrain competition by an employee with his former employer, and (ii) those restraining the vendor of a business from competing with its purchaser.⁷⁸

[54] The validity of a restrictive covenant of employment is subject to a two-stage inquiry: the proponent of the covenant (in this case, Catalyst) must establish that it is reasonable, as between the parties, at which point the party seeking to challenge the covenant (in this case, Brandon Moyse) bears the onus of proving that the covenant is contrary to the public interest.⁷⁹

[55] Reasonableness is to be determined by examining the details of the case being considered:

The test of reasonableness can be applied, however, only in the peculiar circumstances of the particular case. Circumstances are of infinite variety. Other

⁷⁸ *The Dent Wizard (Canada) Ltd. v. Catastrophe Solutions International Inc.* 2011 ONSC 1456, at para. 10.

⁷⁹ *Ibid.*

cases may help in enunciating broad general principles but are otherwise of little assistance.

...

The validity, or otherwise, of a restrictive covenant can be determined only upon an overall assessment, of the clause, the agreement within which it is found, and all of the surrounding circumstances.⁸⁰

[56] In *The Dent Wizard (Canada) Ltd. v. Catastrophe Solutions International Inc.*⁸¹, Mr. Justice David Brown posited that, where the nature of the employment may result in the employee gaining significant influence over the employer's customers, a non-solicitation covenant might be inadequate to protect the employer's interests and a non-competition clause would be reasonable.⁸² Could it be that a similar idea is raised here? Could it be that the same principle applies to the potential harm arising from the misuse of confidential information? Counsel for Catalyst suggests that there may be circumstances where the advantage gained by the employee in taking and mis-using confidential information demonstrates that a confidentiality covenant will be inadequate to protect the employer's proprietary interests.

[57] In such circumstances, the non-competition clause would be available to protect against the harm caused by a breach of the confidentiality clause.

[58] For their part, counsel for West Face and Brandon Moyse say that the non-competition clause is ambiguous and overbroad and, on that basis, is unreasonable and unenforceable.⁸³ Counsel for West Face referred to the wording of the clause and pointed to the following areas of concern:

- What is the scope of the restraint? What "Fund" is being referred to? What businesses are caught by the terms "Associate" and "undertaking of the type conducted by Catalyst"?
- What is the time duration that would reasonably protect the interests of Catalyst, is it three months or six month?
- What is the reasonable geographic limit? Is it Ontario, as stated in the contract, or should it be Toronto?⁸⁴

⁸⁰ *Elsley v. J.G. Collins Ins. Agencies*, [1978] 2 S.C.R. 865, at pp. 923-924, quoted in *The Dent Wizard (Canada) Ltd. v. Catastrophe Solutions International Inc.*, *supra*, (fn. 75), at para. 11.

⁸¹ *Supra*, (fn. 75).

⁸² *Ibid*, at para. 17. In saying this, the Court referred to *Elsley v. J.G. Collins Ins. Agencies*, *supra*, (fn. 77), at 926-7.

⁸³ *KRG Insurance Brokers (Western) Inc. v. Shafron* 2009 S.C.C. 6, 2009 CarswellOnt 79, at para. 27.

⁸⁴ See para. [52], above where the non-competition clause is quoted and each of these terms underlined.

[59] This kind of dissection is not helpful. It considers the issue of whether the clause is reasonable out of any context and presumes no knowledge of the business involved:

It is important, I think, to resist the inclination to lift a restrictive covenant out of an employment agreement and examine it in a disembodied manner, as if it were some strange scientific specimen under microscopic scrutiny.⁸⁵

[60] Presumably, the requirement that a non-competition clause not be ambiguous is so that the limits it imposes are clearly understood by the employee. The prescription that it should not be overly-broad is to allow the employee to find work and not be limited in that regard by the overreaching of the employer. There is a question as to whether such concerns are warranted in the present case. In *GDL Solutions Inc. v. Walker*, in examining the scope of a restrictive covenant, Madam Justice C.J. Brown took into account what the employee would have known and understood:

The plaintiff submits that on cross-examination, Walker agreed that he understands what the terms ‘same as’ and ‘competitive with’ mean.⁸⁶

[61] It cannot be that Brandon Moyse was unaware that working for West Face was going to be a breach of the clause. The firms compete. Brandon Moyse knew it. In an e-mail, dated February 8, 2013, he observed:

They’ve [meaning West Face] been hammered on one activist play we’re [meaning Catalyst] looking at (though we don’t like)---and we’re fighting them on a different distressed name right now.⁸⁷

[62] In *GDL Solutions Inc. v. Walker*, the judge found that a non-competition clause covering businesses “similar to or competitive with” the business of concern (in that case, a business that had been sold) was not vague. “Similar to” is plain language. It is clear what it means.⁸⁸ The same could be said for “any business ... of the type conducted by [Catalyst].”⁸⁹

[63] For the purposes of the non-competition clause, “Associates” is to be taken as defined in the *Ontario Business Corporations Act*. Catalyst has only seven. The clause only applies to four of them. The other three are not located “within Canada”.⁹⁰ It may be, as suggested by counsel for West Face and Brandon Moyse, that as a result of there being an “Associate” in the restaurant business⁹¹, Brandon Moyse is unable, during the currency of the clause, to work in that

⁸⁵ *Elsley v. J.G. Collins Ins. Agencies, supra*, (fn. 77), at pp. 923-924, quoted in *The Dent Wizard (Canada) Ltd. v. Catastrophe Solutions International Inc., supra*, (fn. 75), at para. 11.

⁸⁶ *GDL Solutions Inc. v. Walker, supra*, (fn. 35), at paras. 61-63.

⁸⁷ *Affidavit of James Riley*, June 26, 2014, at Exhibit D.

⁸⁸ *GDL Solutions Inc. v. Walker, supra*, (fn. 35), at para. 63.

⁸⁹ See para. [52], above.

⁹⁰ *Ibid.*

⁹¹ National Markets Restaurant Corporation described as a retail food and restaurant company.

industry.⁹² I do not agree that this would have a “profound effect on [Brandon] Moyse’s career options”.⁹³ The clause, in these circumstances, is only effective for six months. It may be, as was suggested during the course of the hearing, that Brandon Moyse never did any work with the restaurant company, but he has made it plain that he reviewed files he was not working on. It is in the nature of its business that Catalyst would have various investments. I do not find it unreasonable that it would, for a brief time, seek to protect them all.

[64] Catalyst and West Face are in the same city. Regardless of whether “Ontario”, as used in the non-competition clause, is vague when examined outside any particular context or whether, as suggested on behalf of Catalyst, the boundaries of “Toronto” are difficult to determine with certainty, it must have been clear that going to work with a competitor in Toronto would offend the clause.⁹⁴

[65] It was suggested that there was some uncertainty as to how long the non-competition clause was to be effective. Was it six months? Was it three months?⁹⁵ The difference is both understandable and justified. When an employee leaves of his own volition or is terminated for cause, the company will not be ready. If the parting is cordial, or accompanied by working notice, the employer will be able to prepare. The employer will not require protection of the same duration.

[66] Taken as a whole, read in context, I would not be prepared to find the non-competition clause unreasonable.

[67] Little was said and I am not prepared to find that the public interest militates against the acceptance of this non-competition clause. There are two competing policy concerns. On the one hand, there is a reticence to allow a restraint of trade. On the other hand, parties should be left free to contract.⁹⁶ In this case, there was consideration to be accounted for by Brandon Moyse if he was considering leaving Catalyst. In addition to his base salary and annual bonus, Brandon Moyse participated in “Catalyst’s 60/40 Scheme”, whereby sixty percent of the carried interest from Catalyst’s investment funds is allocated to the professionals who participated on the deals made by the fund. By May 2014, that is, within one- and-a-half years of his joining Catalyst, Brandon Moyse had accrued over \$500,000 in this scheme.⁹⁷

[68] In the circumstances, I find that there is, at least, a serious case to be tried:

⁹² *Cross-examination of James Riley*, July 29, 2014, at q. 591.

⁹³ *Factum of the Responding Party, Brandon Moyse*, at para. 69.

⁹⁴ Catalyst is or was located at 77 King Street West, Royal Trust Tower, TD Bank Centre in Toronto (see: *Affidavit of James Riley*, sworn June 26, 2014, at Exhibit A) and West Face Capital is located at 2 Bloor St. East, in Toronto (see: *Statement of Claim*).

⁹⁵ See para. [52], above.

⁹⁶ *GDL Solutions Inc. v. Walker*, *supra*, (fn. 34), at para. 44, quoting *Elsley v. J.G. Collins Ins. Agencies*, *supra*, (fn. 79), at pp. 923-924.

⁹⁷ *Affidavit of James Riley*, sworn June 26, 2014, at paras. 11-13 and 16; *Affidavit of James Riley*, sworn July 14, 2014, at para. 9; and, *Cross-examination of Brandon Moyse*, July 31, 2014, at qq. 160-168.

- Was information confidential to Catalyst delivered to West Face and was it used by West Face to the detriment of Catalyst?

and

- Was the non-competition clause found in the employment contract of Brandon Moyle enforceable and, if it was enforceable, has it been breached?

[69] Counsel for West Face and counsel for Brandon Moyle say that, in the circumstances, this is not enough to demonstrate that the first test from *R.J.R.- MacDonald v. Canada (Attorney General)*⁹⁸ has been met. Counsel for Brandon Moyle relied on cases which demonstrate that “when the injunction sought is intended to place restrictions on a person’s ability to engage in their chosen vocation and to earn a livelihood, the higher threshold of a strong *prima facie* case is the more appropriate test to be applied”.⁹⁹

[70] In *Kohler Canada Co. v. Porter*,¹⁰⁰ the defendant had worked for Kohler, in its plumbing products business, since his graduation from university in 1988. He was promoted from time to time until he became Sales Manager for Central and Western Canada. In 2001, for the first time, he was asked to sign an employment contract. It contained a non-competition clause. He signed without giving the matter much thought. In 2002, he accepted a job, offered by a competitor, with more responsibility and better pay. Kohler sought an injunction to restrain its former employee from working for his new employer on the grounds that he was in breach of the agreement he had signed. The judge observed that the overwhelming preponderance of case authority supported applying the strong *prima facie* test in non-competition injunction cases. The higher standard was not met; the injunction was refused.

[71] In the case I am asked to decide, there is a strong *prima facie* case that Brandon Moyle had breached the confidentiality clause of his Employment Agreement. He has taken and delivered to his new employer confidential information which may demonstrate strategies his former employer used in a narrow and competitive business. Upon receipt, the new employer understood the material would be seen by the former employer as confidential, warned the employee that he should do nothing similar with any information he obtained while in its employ and distributed the information to each of the partners and a Vice-President. When the former employer raised concern, it was met with assurances that did not stand up. It is difficult to see how, in such circumstances, the higher standard should necessarily inure to the benefit of the employee and the new employer. Put another way, it is with this analysis that the direction that one who seeks equity should do equity becomes relevant to this situation.

⁹⁸ *Supra*, (fn. 72).

⁹⁹ *Jet Print Inc. v. Cohen*, 1999 CarswellOnt 2357 (Sup. Ct. J.), at para. 11, relying on *Gerrard v. Century 21 Armour Real Estate Inc.* (1991), 35 C.C.E.L. 128, 4 O.R. (3d) 191, 35 C.P.R. (3d) 448 (Ont. Gen. Div.); and see: *Kohler Canada Co. v. Porter* 2002 CarswellOnt 2009 14-16.

¹⁰⁰ *Ibid*, (*Kohler Canada Co. v. Porter*).

[72] In *Jet Print Inc. v. Cohen*,¹⁰¹ a principal of the plaintiff had two brothers. They worked for the company. They both fell out with their brother (the principal of the company): one because he was accused of submitting fraudulent invoices to the plaintiff; and the other because the plaintiff did not pay him a bonus he said he was owed. Subsequently, the brothers who had left went into business for themselves. The plaintiff brought a motion for an interlocutory injunction prohibiting the two brothers from soliciting the business of the plaintiff, contrary to the employment agreements they had entered into. The higher standard, the requirement that there be a strong *prima facie* case, was applied. The motion did not succeed. In that case, the non-competition clause was so onerous that it made it almost impossible for the two brothers to work. First, it applied for two years. Second, under the terms of the employment agreement, they were not permitted to solicit work from any client of the employer. "Client" was defined to include "...clients existing at the time of the termination of the contractual relationships together with any clients during the proceeding year [*sic*] and any prospective clients to which the Employer had a presentation within the proceeding two years [*sic*]." The employment agreement went on to specify that any breach of these restrictions "...will cause irreparable injury to the Employer and that any money damages will not provide an adequate remedy to the Employer".¹⁰² At the time the employment agreement was presented, the two brothers (the employees) were denied the time to seek legal advice. They were instructed that they must sign the agreements and were not provided with copies until after the litigation seeking the injunctions against them had been commenced. It is not difficult to see that these agreements were unremittingly burdensome, unfair and contrary to the broader public concern that people should be permitted to work. If the contract had been sustained, employers could effectively ruin the careers of former employees and make it impossible for them to continue to earn a living in areas of work with which they were familiar.

[73] This is not the case here. Where the employee left of his or her own volition, the non-competition clause at issue would apply for six months. Brandon Moyses left Catalyst on June 23, 2014. This matter was heard on October 27, 2014. If an order is made requiring Brandon Moyses to abide by the non-competition clause, it can be for no longer than to December 22, 2014, that is less than two months. Moreover, counsel for Catalyst, while not agreeing, acknowledged that it would be possible for the court to order that Catalyst pay the salary of Brandon Moyses for the few weeks remaining before the non-competition clause expires. This situation is not comparable to that confronting the two brothers in *Jet Print Inc. v. Cohen*. There is no long-term inability to work and there need be no short-term material loss.

[74] The better view is that the failure to satisfy the higher standard does not inexorably lead to the refusal of an interlocutory injunction. In *GDL Solutions Inc. v. Walker*, Madam Justice C. J. Brown considered the impact of any determination that there was more than a serious issue to be tried. She considered several lines of cases and opted for the view that, where a strong *prima facie* case can be made out, there is no need to give great regard to the second and third parts of

¹⁰¹ *Ibid.*

¹⁰² *Jet Print Inc. v. Cohen, supra*, (fn. 72), at para. 5.

the injunction test (irreparable harm and the balance of convenience). Where only a serious issue to be tried can be established, greater regard should be given to those considerations:¹⁰³

...[I]n the case of an interlocutory injunction to restrain a breach of a negative covenant, irreparable harm and the balance of convenience need to be still considered. The extent of the consideration, however, will be directly influenced by the strength of a plaintiff's case. Even where there is a clear breach of a negative covenant which is reasonable on its face, the issues of irreparable harm and balance of convenience cannot be ignored. They may, however, become less of a factor in reaching the final determination of the issue depending on the strength of the plaintiff's case.¹⁰⁴

[75] In this case, I do not propose to forego or limit consideration of the second and third parts of the test for an interlocutory injunction. For that reason, I see no reason to go beyond finding that there is a serious issue to be tried and, on that basis, to conclude that the first part of the test has been met. Before going further, it may be as well to recall that the three tests which mark the standard for the granting of an interlocutory injunction are, in any event, not to be seen as a checklist:

The list of factors which the courts have developed – relative strength of the case, irreparable harm and balance of convenience – should not be employed as a series of independent hurdles. They should be seen in the nature of evidence relevant to the central issue of assessing the relative risks of harm to the parties from granting or withholding interlocutory relief.¹⁰⁵

(ii) Will the moving party suffer irreparable harm if the injunction is not granted?

[76] I turn to irreparable harm. Catalyst is concerned that the delivery of confidential material will, or has, put it at a competitive disadvantage. In particular, reference was made to a “telecom situation”. This refers to a matter that was clearly of some sensitivity. West Face constructed a

¹⁰³ *GDL Solutions Inc. v. Walker, supra*, (fn. 35), at para. 34.

¹⁰⁴ *Van Wagner Communications Co., Canada v. Penex Metropolis Ltd.*, [2008] O.J. No. 190 (S.C.), at para. 39, leave to appeal refused, [2008] O.J. No. 1707 (Div. Ct.). In coming to this conclusion, Mr. Justice Pattillo “pointed to statements from *Canada (Attorney General) v. Saskatchewan Water Corp.*, [1991] S.J. No. 403, at para. 37 (Sask. C.A.), which had been adopted in *CBJ-International Inc. v. Lubinsky*, [2002] O.J. No. 3065 (Div. Ct.); and see Sharpe, *Injunctions and Specific Performance*, looseleaf, (Toronto: Canada Law Book, 2013, at para. 9.40:

...The stronger the plaintiff's case, however, the less emphasis should be placed on irreparable harm and balance of convenience and, in cases of a clear breach of an express negative covenant, interlocutory relief will ordinarily be granted.

¹⁰⁵ *Ibid.*, (Sharpe, *Injunctions and Specific Performance* looseleaf), at para. 2.630.

“confidentiality wall”. While there is considerable disagreement about its effectiveness, the fact that it was put in place substantiates the concern. As already noted, among the Catalyst documents accessed by Brandon Moyse on May 13, 2014, were files related to WIND Mobile.¹⁰⁶ As I understand it, this relates to the “telecom situation” of concern. The chart Brandon Moyse was working on was to be included with an investment memo. The delivery of the information it contained would be advantageous to West Face, which had an interest in the same opportunity. Unfair competition can lead to irreparable harm:

Cases of unfair competition have often been recognized as ones in which damages may not adequately compensate the plaintiff for the loss suffered due to the defendant’s conduct. Not only is it difficult to quantify the loss of goodwill or market share suffered by the plaintiff due to the defendant’s actions, but the damage to relationships with customers is inherently difficult to assess. In a competitive industry, where there can be considerable fluidity of customer allegiances, it may be difficult for the moving party to establish an accurate measure of damages.¹⁰⁷

[77] As this suggests, misappropriation and use of confidential information can give rise to irreparable harm:

Messa has no way of knowing the extent to which Phipps might be using successfully any confidential information from Messa to effectively compete with Messa; and therefore Messa cannot easily quantify damages in this action.¹⁰⁸

[78] In such circumstances, it is not possible to quantify the damage. The harm that may be caused would be irreparable. In this case, the problem is underscored by the apparent uncertainty of Brandon Moyse as to what is confidential information, that he accused Catalyst of innuendo and speculation as to the possibility that he had maintained confidential information when, in fact, he had and that information that was considered by Catalyst to be confidential and was marked as such had been delivered to West Face despite assurances that suggested the contrary. This points, again, to the proposition that those seeking to rely on equity must act in a fashion that is consistent with the request; they have to do equity. In this situation, how can the court be certain that, if Brandon Moyse goes to work for West Face, confidential information won’t slide through some crack in whatever protections are erected? I am not sure it can be. This is all the more true where Thomas Dea, rather than returning the material, decided, in effect on behalf of Catalyst, that the material was not confidential and distributed it to partners and a Vice-President at West Face.

¹⁰⁶ See para. [37], above.

¹⁰⁷ *Precision Fine Papers Inc. v. Durkin*, [2008] O.J. No. 703, at para. 25, which, in turn, refers to *EJ Personnel Services Inc. v. Quality Personnel Inc.* (1985), 6 C.P.R. (3d) 173 (Ont. H.C.J.); *Sheehan & Rosie Ltd. v. Northwood*, 2000 CarswellOnt 670 (S.C.J.); and, *KJA Consultants Inc. v. Soberman*, 2002 CarswellOnt 467 (S.C.J.).

¹⁰⁸ *Messa Computing Inc. v. Phipps*, [1997] O.J. No. 4255, at para. 32.

(iii) *Where does the balance of convenience lie?*

[79] To take into account the balance of convenience, I turn to the possible impact on Brandon Moyse. I cannot see how delaying his career at West Face until December 22, 2014 would have any lasting effect.

[80] I pause to point out that the order of Mr. Justice Firestone contains the following paragraph:

THIS COURT FURTHER ORDERS that the above terms are being agreed to on a without prejudice basis and shall not be voluntarily disclosed by the parties. The parties are agreed and request that the court hearing the interlocutory motion shall not consider or draw any inference from the terms of this consent order.

[81] I draw no inference from this order. On the other hand, it is difficult to ignore the fact that, pursuant to this order, Brandon Moyse agreed to be bound by the non-competition clause in his Employment Agreement until this interlocutory injunction is determined. This being so, he has not been at work. An order requiring him to continue to abide by the non-competition clause would prevent him from working at West Face for approximately seven more weeks. This does not, nor would the full six months, constitute irreparable harm. Nor will it have any short term effect if Catalyst is required to continue to pay Brandon Moyse while he waits for the period affected by the non-competition clause to wind down.

[82] The balance of convenience favours Catalyst.

CONCLUSION

[83] This is not a case where the actions of Brandon Moyse and West Face demonstrate that equity should balance in their favour. In the circumstances, I make the following orders:

In order to ensure that any information, confidential to Catalyst, that may remain in the possession of Brandon Moyse is not provided to West Face.

1. An interlocutory injunction enjoining the defendant, Brandon Moyse, or anyone acting on his behalf or at his direction from using, misusing or disclosing any and all confidential and/or proprietary information, including all records, materials, information, contracts, policies, and processes of The Catalyst Capital Group Inc.

To ensure that Brandon Moyse does not, through carelessness, by accident or with intention, communicate information, confidential to Catalyst, to representatives of West Face and, thus, create unfair competition.

2. A further interlocutory injunction enjoining the defendant, Brandon Moyes, from engaging in activities competitive to Catalyst in compliance with the non-competition clause of his employment agreement (clause 8) until its

expiry six months after his leaving his employment with The Catalyst Capital Group Inc., being December 22, 2014.

3. On the understanding that, as a result of this order, Brandon Moyle will be unable to commence his employment with West Face until December 22, 2014, The Catalyst Capital Group Inc. shall pay Brandon Moyle his West Face Capital Inc. salary until December 21, 2014.

Finally, counsel for Catalyst submitted that an independent supervising solicitor should be identified and required to review the forensic images that have been created and held in trust by counsel for Brandon Moyle to identify what, if any, material these images may contain that are confidential to Catalyst. What is personal to Brandon Moyle would be returned to him. Counsel for Brandon Moyle opposed this request. It would be an extraordinary order. It is the view of counsel for Brandon Moyle that material that is confidential to Catalyst will have to be produced. It should be left to Brandon Moyle to review and determine what must be produced. The difficulty with this is that it is another assurance where those made in the past were not sustained.

4. The forensic images that were created in compliance with the order of Mr. Justice Firestone shall be reviewed by an independent supervising solicitor identified, pursuant to a protocol to be jointly agreed to by counsel for the parties, or, failing such agreement, by way of further direction of the court.
5. The review of the forensic images by the independent supervising solicitor shall be completed before any examinations-for-discovery are conducted in this action.

[84] The order will recognize the undertaking made by The Capital Catalyst Group Inc. that it will comply with any order regarding damages the court may make in the future, if it ultimately appears that this order ought not to have been granted, and that the granting of this order has caused damage to Brandon Moyle and West Face Inc. for which The Capital Catalyst Group Inc. should compensate them.

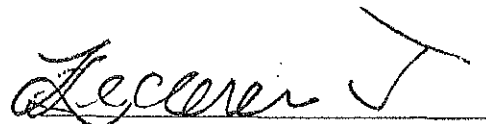
COSTS

[85] If the parties are unable to agree as to costs, I will consider written submissions on the following terms:

1. On behalf of The Catalyst Capital Group Inc., within fifteen days of the release of these reasons, such submissions are to be no longer than five pages, double-spaced, not including any Bill of Costs, Costs Outline or caselaw that may be referred to.
2. On behalf of Brandon Moyle, within ten days thereafter, such submissions are to be no longer than four pages, double-spaced, not including any Bill of Costs, Costs Outline or caselaw that may be referred to.

3. On behalf of West Face Capital Inc., within ten days thereafter, such submissions are to be no longer than four pages, double-spaced, not including any Bill of Costs, Costs Outline or caselaw that may be referred to.

4. If necessary, in reply, on behalf of The Catalyst Capital Group Inc., within five days thereafter such submissions to be no longer than four pages, double-spaced (two pages with respect to any submissions made on behalf of Brandon Moyse and two pages with respect to any submissions made on behalf of West Face Capital Inc.).


LEDERER J.

Released: 20141110

CITATION: The Catalyst Capital Group Inc. v. Moyse, 2014 ONSC 6442
COURT FILE NO.: CV-14-507120
DATE: 20141110

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

– and –

BRANDON MOYSE and WEST FACE CAPITAL
INC.

Defendants

JUDGMENT

LEDERER J.

Released: 20141110

This is Exhibit "P" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

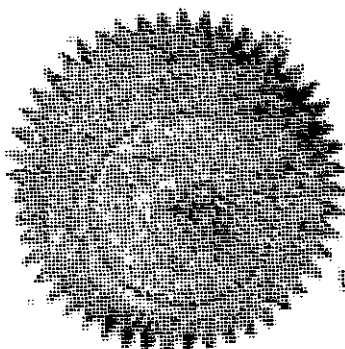
Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE LEDERER

)
)
)

MONDAY, THE 10TH
DAY OF NOVEMBER, 2014



THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

ORDER

THIS MOTION, made by the Plaintiff, was heard on October 27, 2014 at the court house, 393 University Avenue, 8th Floor, Toronto, Ontario, M5G 1E6.

ON READING the records and factums of the Parties, and on hearing the submissions of the lawyers for the Parties,

1. THIS COURT ORDERS that Brandon Moyse or anyone acting on his behalf or at his direction, is enjoined from using, misusing or disclosing any and all confidential and/or proprietary information, including all records, materials, information, contracts, policies, and processes of the Plaintiff ("Catalyst").

2. AND THIS COURT FURTHER ORDERS that Brandon Moyse shall be enjoined from engaging in activities competitive to Catalyst in compliance with the non-competition clause of his

employment agreement (Clause 8) until its expiry six months after his leaving his employment with Catalyst, being December 22, 2014.

3. AND THIS COURT FURTHER ORDERS that Catalyst shall pay Brandon Moyse his West Face Capital Inc. ("West Face") salary until December 21, 2014.

4. AND THIS COURT FURTHER ORDERS that the forensic images that were created in compliance with the Order of Mr. Justice Firestone dated July 16, 2014, shall be reviewed by an independent supervising solicitor ("ISS") identified pursuant to a protocol to be jointly agreed to by counsel for the Parties, or, failing such agreement, by way of further direction of the Court.

5. AND THIS COURT FURTHER ORDERS that the review of the forensic images by the ISS shall be completed before any examinations for discovery are conducted in this action.

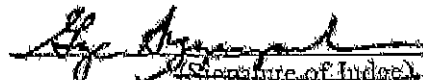
6. AND THIS COURT FURTHER ORDERS that Catalyst will comply with any order regarding damages the Court may make in the future if it ultimately appears that this Order ought not to have been granted, and that the granting of this Order has caused damage to Brandon Moyse and West Face for which Catalyst should compensate them.

7. AND THIS COURT FURTHER ORDERS that if the Parties are unable to agree as to costs, they may make written submissions in accordance with the terms set out in Paragraph 85 of the Reasons dated November 10, 2014.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 23 2014

PER/PAR:


(Signature of Judge)
G. Argyropoulos, Registrar
Ontario Superior Court of Justice

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Plaintiff

This is Exhibit "Q" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'Andrew Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Plaintiff

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

Defendants

DOCUMENT REVIEW PROTOCOL

Purpose:

To determine whether forensic images (the "Images") obtained from the personal electronic devices of the defendant Brandon Moyses ("Moyse") contain or contained The Catalyst Capital Group Inc.'s ("Catalyst's") confidential information (the "Catalyst Confidential Information").

To determine, if possible, what use was made of the Catalyst Confidential Information.

To ensure that the abovementioned tasks (the "Review") are completed and a report is delivered to counsel for Catalyst and Moyses (the "Report") by January 30, 2015.

To ensure that the Review is conducted in a manner that,

- a) protects Moyses's confidential information from being accessed by Catalyst or its counsel or their agents;
- b) protects Catalyst's confidential information from being accessed by West Face Capital Inc. ("West Face") or its counsel or their agents;
- c) protects West Face's confidential information from being accessed by Catalyst or its counsel or their agents; and
- c) maintains solicitor-client privilege (collectively, the "Restrictions").

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Protocol:

1. Stockwoods LLP shall be appointed as an Independent Supervising Solicitor ("ISS") no later than December 15, 2014.
2. The costs of the ISS (including all fees and disbursements incurred by the ISS) shall be borne by Catalyst, subject to potential recovery in the cause.
3. The ISS shall,
 - a. be provided with copies of all pleadings and motion materials for Catalyst's motion heard October 27, 2014;
 - b. act as an independent officer of the Court; and
 - c. be at liberty, if necessary, to seek directions from the Court in regards to carrying out its mandate.
4. The ISS shall be instructed, in conjunction with a forensic expert to be retained by the ISS (the "Expert"), to carry out the Review subject to the Restrictions, and to prepare and to deliver the Report to counsel for Catalyst and Moyse by January 30, 2015. The ISS shall determine the identity of the Expert to be retained, but the Expert shall not be Computer Forensics Investigations Inc.
5. All communications to or from the ISS shall be conducted in writing, with copies of the correspondence to counsel for Moyse and Catalyst, or by way of a conference call with counsel for Moyse and Catalyst. Following each conference call, the ISS shall prepare a written summary of the conference call. All written communications shall be retained until the within matter is fully disposed of, including all appeals.
6. The ISS and/or the Expert may consult with Catalyst and/or its counsel in writing regarding search terms or other criteria to be used by the ISS and/or the Expert to identify the Catalyst Confidential Information. Catalyst shall submit any proposed search terms to counsel for Moyse and to the ISS. Moyse shall have five (5) business days to respond to the proposed terms for the purpose of objecting to the inclusion of any of the proposed terms. If Moyse does

-3-

so object, the ISS will decide, at its sole discretion, whether to use a proposed search term as part of its review of the Images.

7. Subject to further order of the court or the consent of Catalyst, Catalyst's proposed search terms will not be communicated to West Face or its counsel.
8. In order to ensure that the Restrictions are maintained and subject to further order of the court or the agreement of the parties, the ISS and the Expert shall not provide Catalyst or its counsel with access to the Images or any work product generated during the Review.
9. The Report shall,
 - a. identify whether the Images contain or contained the Catalyst Confidential Information and, if possible, provide particulars of where on the Images the Catalyst Confidential Information is located or was located, when it was accessed and by whom, and when it was copied, transferred, shared or deleted and by and to whom; and
 - b. in the case of any identified or recovered e-mails sent or received containing or referring to the Catalyst Confidential Information, provide the following particulars:
 - i. Who authored the e-mail;
 - ii. To whom the email was sent, copied and/or blind copied;
 - iii. The date and time when the e-mail was sent;
 - iv. The subject line of the e-mail;
 - v. Whether the e-mail contains any attachments, and if so, the names of the attachments and associated file information (i.e. size, date information);
 - vi. The contents of the e-mail, redacting any information that the ISS deems to be Moyse's confidential information or subject to solicitor-client privilege; and
 - vii. If the email was deleted, when the email was deleted.

10. The ISS shall disclose a draft Report (which will not include the information set out in paragraph 9(b)(vi)) to Catalyst and Moyses. Within ten (10) business days of receiving the draft Report, Moyses may object to the inclusion of a document or documents referred to in the draft Report.

- a. If Moyses does so object, he should set out the basis for his objection. If the ISS determines that an objection is justified, it will segregate the documents to which Moyses objected and remove information concerning those documents from the final report.
- b. Any document to which Moyses does not object to being included in the draft Report may be included in a final Report. The final Report will include the information set out in paragraph 9(b)(vi).

11. Both Moyses and Catalyst shall be provided with any documents referred to in the final Report. If Catalyst believes that a document has been improperly excluded from the final Report, it may bring a motion for production of that document.

12. West Face shall not be provided with a copy of the draft Report, the final report, or the documents referred to in the draft or final Reports, subject to further order of the court or the consent of Catalyst. However, if the ISS finds in its report that any Catalyst Confidential Information was transferred to West Face, that portion of the report will be provided to counsel for West Face, with appropriate redactions to protect the Catalyst Confidential Information, subject to West Face's right to seek an order from the court for further production of the Report.

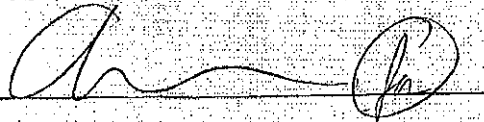
[The rest of this page is intentionally left blank]

13. The parties agree that this process shall be completed by January 30, 2015.

THE FOREGOING IS AGREED TO BY THE PARTIES AND THEIR COUNSEL

DATED AT TORONTO, ONTARIO this 12th day of December, 2014

LAX O'SULLIVAN SCOTT LISUS LLP



Lawyers for the Plaintiff

**GROSMAN, GROSMAN AND GALE
LLP**



Lawyers for Brandon Moyse

DENTONS CANADA LLP



Lawyers for West Face Capital Inc.

THE CATALYST CAPITAL GROUP INC. -and-
Plaintiff

BRANDON MOYSE et al.
Defendants

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

DOCUMENT REVIEW PROTOCOL

LAX O'SULLIVAN SCOTT LISUS LLP

Counsel

Suite 2750, 145 King Street West
Toronto, Ontario M5H 1J8

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Andrew Winton LSUC#: 54473I

awinton@counsel-toronto.com

Tel: (416) 644-5342

Fax: (416) 598-3730

Lawyers for the Plaintiff

This is Exhibit "R" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line extending to the right.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Brendan Van Niejenhuis <BrendanVN@stockwoods.ca>
Sent: December-23-14 4:18 PM
To: Andrew Winton
Cc: 'Justin Tetreault (jtetreault@grosman.com)'; Rocco DiPucchio; 'Jeff C. Hopkins'; Ben Kates
Subject: RE: The Catalyst Capital Group Inc. v. Moyse et al.: ISS search terms [IWOV-CLIENT.FID45653]
Attachments: SearchHits.png; SearchHits2.png

Andrew, and all,

I have had an initial report back from Digital Evidence as to the results of the search process. Attached are two image files which show the hit counts for the various search terms. These hit counts are solely from the computer hard drive, not the Apple or Samsung devices.

As you will see, the hit counts are very large, particularly for terms such as Pipeline (456,088 hits); Advantage (161,958 hits); Network (355,704); Equity (239,366); and Box (243,128) among others.

Given the timelines involved, it is very clear that we need to modify the approach to limit the scope of the review function. There are several options we need to consider in order to focus the review:

1. First, I recommend that we filter the results to restrict them to document types that are most likely to be relevant. For example, email messages, PDF documents, Word documents, Excel spreadsheets. Can you advise if you concur with applying this filter and, if so, whether there are other document formats that should be included in the filter.
2. Second, I recommend that we do the same on the Apple and Samsung devices, in these cases filtering only for email, text/iMessage, and documents.
3. Third, I would ask that you review the hit counts and advise me if there are search terms you would rather remove from the exercise than proceed to have us review.
4. Fourth, if there is a time-frame filter that we could apply, this could prove extremely helpful. The time-frame could either be used to filter what is sent to us, or as a limiter on what we review at first instance, leaving open the option of reviewing items outside the time-frame filter later if deemed desirable. This would be particularly useful in dealing with email files.

Please let me know your views on these areas. As will be fairly obvious, the volume of material that is generated by the current list of search terms is such that it is very unlikely we could provide a meaningful and complete report by the deadline of January 30 (and I recognize you have said you would prefer even sooner than that), if we had to perform a manual review of the search results generated to date.

Many thanks,

Brendan van Niejenhuis
STOCKWOODS LLP
 T: 416.593.2487
 F: 416.593.9345

From: Andrew Winton [mailto:awinton@counsel-toronto.com]
Sent: Wednesday, December 10, 2014 11:54 AM
To: Brendan Van Niejenhuis
Cc: 'Justin Tetreault (jtetreault@grosman.com)'; Rocco DiPucchio; 'Jeff C. Hopkins'

Subject: The Catalyst Capital Group Inc. v. Moyses et al.: ISS search terms [IWOV-CLIENT.FID45653]

Importance: High

Brendan,

The parties to the above-noted action have agreed to retain Stockwoods to act as the independent supervising solicitor ("ISS") for a review of forensic images ("Images") of electronic devices belonging to the defendant Brandon Moyses ("Devices"). The Devices are a hard drive from a personal computer, an iPad and a smartphone. Please forward us your proposed engagement letter at your earliest convenience. The costs of this engagement will be borne at first instance by The Catalyst Capital Group Inc.

The parties have not finalized all of the terms of the document review protocol that will apply to this retainer, but we have agreed to certain terms which will allow you to get started soon. One of the agreed-to terms is that the parties will not communicate unilaterally with you. I have copied Jeff Hopkins and Justin Tetrault of Grosman, Grosman and Gale LLP to this email – please be sure to include at least one of them on all correspondence with our office and/or we will set up conference calls or meetings for any oral discussions.

The parties have agreed that the ISS may retain any forensic IT expert it wants, save and except for you cannot retain Martin Musters of CFI. I ask that you please move forward with the retainer of your chosen expert so that your review of the Devices can proceed expeditiously, subject to the process described below.

Another agreed-to term grants Moyses and his counsel an opportunity to participate in the suggestion of search terms the ISS and its forensic expert should use during its review of the Images. Specifically, Moyses and his counsel have five business days to object to the use of any of the search terms proposed by Catalyst. The ISS may decide at its sole discretion whether to use a term to which Moyses objected.

Due to the need to move expeditiously, as directed by Justice Lederer at a recent case conference, we are sending you Catalyst's proposed search terms today so as to start the clock on Moyses's objection period so as to allow you to "hit the ground running" next week.

Catalyst proposes use of the following 67 search terms. Please note that pending further order of the Court, these terms cannot be shared with the other defendant, West Face Capital Inc., or its counsel:

1. West Face
2. Westface
3. Catalyst
4. Callidus
5. Wind
6. Globealive
7. Mobilicity
8. DAVE
9. Data & Audio-Visual
10. Opco
11. Holdco
12. Turbine
13. NMFG
14. NMRC
15. Natural Markets
16. Mrs. Green's
17. Therapure
18. HII
19. Homburg

20. Geneba
21. Advantage
22. CFLP
23. Fund
24. Initial
25. Stelco
26. Operating
27. Quarterly
28. Pipeline
29. Diligence
30. Boland
31. Singh
32. Dea
33. Fraser
34. Griffin
35. Zhu
36. Newton
37. Glassman
38. Jim
39. Riley
40. Gabriel
41. Alba
42. De Alba
43. Zach
44. Michaud
45. Bond
46. Equity
47. Morgan
48. Stanley
49. Spectrum
50. Network
51. Auction
52. 700
53. MHZ
54. AWS
55. Lacavera
56. Bryce
57. Minister of Industry
58. Industry Canada
59. Drysdale
60. Telephone
61. Wireless
62. Telephony
63. Cellular
64. Quebecor
65. Videotron
66. Dropbox
67. Box

Moyse and his counsel have until 5 p.m. Wednesday, December 17, to object to the use of one of these proposed search terms.

Regards,

Andrew

Andrew Winton

Direct: (416) 644-5342

awinton@counsel-toronto.com

Lax O'Sullivan Scott Lisus LLP

Suite 2750, 145 King Street West

Toronto ON M5H 1J8 Canada

T 416 598 1744 F 416 598 3730

counsel-toronto.com

**LAX
O'SULLIVAN
SCOTT
LISUS**

This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

Search Terms	Total Hits
West Face	5360
Westface	48
Catalyst	26789
Callidus	132
Wind	26118
Globealive	0
Mobilicity	765
DAVE	2216
Data & Audio-Visual	36
Opco	371
Holdco	1074
Turbine	756
NMFG	32932
NMRC	60483
Natural Markets	3368
Mrs Greens	322
Mrs Green	6104
Therapure	1128
HII	12605
Homburg	6988
Geneba	3151
Advantage	161958
CFLP	122
Fund	22754
Initial	36314
Stelco	208
Operating	119699
Quarterly	8349
Pipeline	456088
Diligence	2274
Boland	554
Singh	778
Dea	4013
Fraser	223
Griffin	376

Search Terms	Total Hits
Fraser	223
Griffin	376
Zhu	3059
Newton	1000
Glassman	1107
Jim	5821
Riley	1376
Gabriel	1314
Alba	1030
De Alba	612
Zach	3707
Michaud	247
Bond	14716
Equity	239366
Morgan	9675
Stanley	4441
Spectrum	3852
Network	355704
Auction	6489
700	171419
MHZ	5885
AWS	13966
Lacavera	7
Bryce	114
Minister of Industry	105
Industry Canada	80
Drysdale	0
Telephone	4603
Wireless	157395
Telephony	2137
Cellular	4057
Quebecor	111
Videotron	1109
Dropbox	82757
Box	243128

This is Exhibit "S" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

This is Exhibit "T" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'Andrew Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

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

REPORT OF THE INDEPENDENT SUPERVISING SOLICITOR

PART I - BACKGROUND & NATURE OF THE PROCESS

1. This report describes the results of the review by our firm as Independent Supervising Solicitor, of certain electronic data recovered through the forensic analysis of a personal computer, an Apple iPad device, and a Samsung Android smartphone device (the "Devices"), supplied by the Defendant Brandon Moyse ("Moyse") (the "Review"). Moyse is a former employee of the Plaintiff ("Catalyst") who departed his employment and took up employment with the Defendant West Face Capital Inc. ("West Face").

2. The three devices supplied by Moyse were imaged for purposes of preservation and potential review as a result of an interim consent order of Justice Firestone dated July 16, 2014. On November 10, 2014, after a contested motion, Justice Lederer ordered that the images were to be reviewed by an independent supervising solicitor in accordance with a protocol to be agreed upon by the parties (reported at 2014 ONSC 6442). The general purpose of the review, as characterized by Justice Lederman in paragraph 83 of his decision,

is “to identify what, if any, material these images may contain that are confidential to Catalyst”.

3. We were appointed to conduct that Review by the parties pursuant to, and in accordance with the terms of, a Document Review Protocol executed by counsel for all parties to this action on December 12, 2014 (the “Protocol”). A copy of the Protocol is attached hereto as **Appendix “A”**. While the specific language of the Protocol has governed the conduct of the Review, the process adopted was in essence designed to protect all three parties’ privacy/confidentiality interests, *i.e.* to protect:

- (a) Moyse’s confidential information from being accessed by Catalyst;
- (b) Catalyst’s confidential information from being accessed by its alleged competitor West Face; and
- (c) West Face’s confidential information from being accessed by Catalyst.

4. To that end, distinctive features of the Protocol adopted in this matter include:

- (a) A requirement that communications with the ISS remain in writing only unless they are by way of a minuted teleconference with counsel for Moyse and Catalyst;
- (b) A prohibition (subject to Court order or Catalyst’s consent) on Catalyst’s proposed search terms being disclosed to West Face by any party or by the ISS;
- (c) A prohibition on the ISS providing Catalyst with access to any of the images or “work product” generated during the Review;

- (d) The provision of a draft report to Moyses and Catalyst and a ten-day period for Moyses to object to the inclusion of any document referred to therein before the report is finalized;
- (e) The production, both to Moyses and to Catalyst, of all those documents referred to in the final report;
- (f) In the event that the ISS were to find evidence that Catalyst Confidential Information was transferred to West Face, the provision of a redacted version of the report to West Face.

PART II - THE CONDUCT OF THE REVIEW PROCESS

5. On December 10, 2014, I was supplied with a series of sixty-seven (67) proposed search terms by Catalyst counsel. These search terms were intended to be employed by the forensic expert selected and appointed by the ISS to run a keyword search of all of the data resident on the Devices and provide all those documents which contained one or more such keywords to the ISS for review. This communication from Catalyst counsel, including the list of keywords, is attached as **Appendix "B"**. Under the Protocol, Moyses's counsel was to have five business days to register any objection to any such search term. In the event of objection, ISS was to have sole discretion to decide whether or not to use such a term.

6. On December 15, 2014, the parties convened a conference call to discuss the process. On that call, the parties approved my proposed retainer of Digital Evidence International ("DEI") to serve as forensic expert. Moyses's counsel agreed to make arrangements to ship the images of the Devices directly to DEI. The parties confirmed as well that Moyses's counsel would be stating their position on the proposed search terms in writing. I also raised

with counsel the prospect that the list of keywords might generate an excessively large number of "hits", which in my experience often indicate that a keyword is insufficiently distinctive and is returning large volumes of irrelevant or duplicative data. The parties agreed that "if any of the search terms generate an excessive number of hits requiring a recalibration of the process, the parties will discuss that in a subsequent call and agree on an alternative approach." I undertook to ask DEI to report to me on this possibility at the earliest stage in the search process. Attached as **Appendix "C"** is a copy of the Minutes of this telephone conference, which I circulated and which counsel for Moyse and counsel for Catalyst subsequently approved.

7. Later on December 15, 2014, Moyse's counsel confirmed that they did not object to the search terms proposed, while expressing reservations about the possible over-responsiveness of certain terms such as "telephone", "cellular" and "box". I supplied the search terms to DEI thereafter.

8. On December 16, 2014, in response to direction from Moyse's counsel, the custodian of the images of the Devices advised that he would provide a copy of the images to DEI by courier on Thursday, December 18, 2014. On Friday, December 19, 2014, DEI confirmed to me and to Moyse's forensic expert that the images had been received at DEI's offices.

9. On December 22, 2014, I received initial feedback from DEI with respect to the number of "hits" generated by applying the search terms to the images. I was concerned with the large volume of overall "hits" in view of the parties' direction in the Protocol that this matter be concluded by January 30, 2015, or sooner if possible. Therefore, I sought further clarification and a breakdown of how many "hits" each search term was generating from DEI.

On Tuesday, December 23, 2014, Wayne Doney of DEI provided me with a full breakdown of the number of "hits" generated by each such search term. Mr. Doney also offered some suggested automated filtering techniques that could be used to reduce the number of actual files necessary for review while avoiding the exclusion of potentially relevant documents.

10. Accordingly, later on December 23, 2014, I wrote to counsel for Moyse and counsel for Catalyst by email. As contemplated by our December 15, 2014 telephone conference, I advised them that the search terms applied had resulted in what I regarded as an excessive number of "hits" for purposes of manual document review. I supplied two image files I had received from DEI which listed the number of hits generated by each search term, and indicated that it would be necessary to agree on filtering techniques in order to reduce potential duplication and capture of irrelevant material, and result in a manageable review process for ISS in view of the parties' desired timetable. I then proposed several methods of filtering and asked for the parties' approval to implement those filters. This correspondence of December 23, 2014 is attached hereto as **Appendix "D"**.

11. By January 5, 2015, I had not had a response or direction from either of the parties. Accordingly, I wrote to request a response to my December 23, 2014 correspondence. On January 6, 2015, counsel for Catalyst responded, accepting certain of my recommendations as to filters. In short, Catalyst agreed that in the case of keywords with extremely large "hit counts", I should restrict the file-types that I would receive to the most commonly used user files, *i.e.*, Microsoft Office documents, Adobe PDF documents, email messages, and applying similar restrictions to the items on the Apple iPad and Samsung Android smartphone.

12. In response, counsel for Moyse suggested that a time-frame filter be applied so that nothing dated prior to December, 2013 should be reviewed. Catalyst counsel objected to this proposal and asked that I review documents prior to that date as well. The parties were unable to come to an agreement on an approach after several further email exchanges, and so later on January 6, 2015 (at 5:09 p.m.), I informed the parties of the approach that I would take. A copy of that communication from myself is attached as **Appendix "E"**. Ultimately, given the number of documents eventually delivered (as set out below), I did not find it necessary to apply that date restriction. Instead, my colleague Naomi Greckol-Herlich and I reviewed all material from the beginning of Moyse's employment at Catalyst in November, 2012, to the date of the imaging of the Devices.

13. That same evening of January 6, 2015, I directed DEI to proceed to limit the data it produced to me in accordance with the limitations to which counsel for Catalyst had agreed in an effort to limit the number of actual documents provided. Furthermore, I directed DEI to automate the process of de-duplication, so that any document or file which was identified as a "hit" from more than one keyword would only be produced once, and not produced in multiple copies which would have to repetitively reviewed for no substantive reason. I directed DEI to nevertheless preserve a record of the number of "hits" each keyword had generated after applying the other agreed-upon filters, in the event such information later proved to be of interest or relevance. DEI confirmed to me that it would proceed in accordance with this direction.

14. The morning of January 7, 2015, counsel for Moyse and counsel for Catalyst had another disagreement as to how to proceed to review the material. In an effort to move

forward, I wrote to inform counsel for these parties how we would be proceeding. A copy of this communication is attached as **Appendix "F"**.

15. On January 8, 2015, Catalyst's counsel wrote me to request a more detailed breakdown of the number of "hits" that had been provided by file-type. In addition, Catalyst's counsel now requested that I have a further set of fourteen (14) keywords used to run a second search of the images of the Devices, subject to Moyse's right to object to those additional terms within a five-day period. (If Moyse were to object, then the Protocol provided for my absolute discretion in deciding whether to employ such terms or not). This communication including this second list of search terms is attached as **Appendix "G"**. I initially directed DEI to prepare the detailed breakdown of "hits" requested but, as matters developed and for reasons described below, did not ultimately obtain or provide this breakdown.

16. On January 13, 2015, DEI informed me that in the course of preparing the data for my review, they had determined that a very substantial amount of document duplication existed on the Devices particularly with respect to email messages. I was informed that this was due to Moyse's practice of using multiple archival functions on his various email accounts so that multiple copies of the same messages were stored in numerous places. I instructed DEI to de-duplicate the email messages to the greatest extent possible without disturbing the file structure of the archives.

17. On January 14, 2015, a further dispute emerged. I received correspondence from Jeff Hopkins, one of Moyse's counsel. Mr. Hopkins enclosed a Notice of Motion that had been served by counsel for Catalyst the previous day (January 13) which sought substantial relief

against West Face, including an order precluding West Face from “participating in the management and/or strategic direction” of Wind Mobile Inc., and from participating in the 30 mHz Wireless Spectrum Auction to be held by Industry Canada in March of this year. The notice of motion further sought an order directing an independent supervising solicitor to image West Face’s computers and mobile devices for purposes of a review similar in nature to the review I have conducted of Moyse’s Devices.

18. Mr. Hopkins’ letter expressed an objection to the Catalyst notice of motion because among the grounds listed by Catalyst for the relief it seeks are references to the number of “hits” generated by the original sixty-seven search terms, as described in Appendix “D”. Mr. Hopkins objected to any further provision of information to Catalyst until the provision of my report, including the then-outstanding request for further details on the nature of the “hits” generated by the various search terms. A copy of his letter is attached as **Appendix “H”**.

19. After considering Mr. Hopkins’ position, I became concerned that his objection meant that it would become impossible for me to seek direction from counsel jointly on technical issues without the ability to communicate about the output of DEI’s search and document production process. Accordingly, given the limited time remaining before the parties’ stated deadline of January 30, I wrote to counsel for Moyse and for Catalyst on January 15. I indicated that given this objection, I could only proceed if the parties agreed and/or clarified that I was to have sole discretion to make any decisions with respect to how to complete the review (including giving any direction or imposing any limitation I thought necessary to DEI in terms of what was produced for our manual review). Alternatively, I would move for directions. I attach my letter of January 14, 2015 as **Appendix “I”**.

20. On January 15, 2015, I received correspondence from Moyses's counsel confirming that Moyses agreed that I should have sole discretion in the circumstances to determine how to complete the process. Moyses's counsel also expressed an objection to the use of the additional list of fourteen (14) search terms supplied by Catalyst. Later on January 15, 2015, I received correspondence from Catalyst's counsel, again confirming that I should have sole discretion to determine how to complete the process. Catalyst advised that it wished me to over-ride Moyses's objection and to employ these further search terms. Ultimately, I determined that I would indeed use these search terms having regard to the volume of material involved, and I did review the material resulting therefrom. Attached as **Appendix "J"** are copies of both of these letters of January 15, 2015.

21. Late in the day on Friday, January 16, 2015, I received approximately 6.6 gigabytes of data from DEI contained on two DVD-ROM disks for our review, produced in accordance with my exchanges and instructions to them as described herein. We were able to have this data installed on our server for review at the outset of Monday, January 19, 2015. My associate Naomi Greckol-Herlich and myself began the physical process of document and email review that day and continued through the week and into the week of January 26, 2015 leading to the preparation of this report. My conclusions from that review are described in the next section. The total volume of the material provided, while occupying a large volume of data, consisted of only 1,197 unique file items (totalling approximately 3 gigabytes), with the balance consisting of email material. It is not possible to accurately quantify the total number of unique emails due to the fact that there remained substantial duplication, but in excess of 23,000 email items were provided to us in total (totalling, including attached files, approximately 3.6 gigabytes of data).

22. While we began the process of manual review, I next received correspondence from Jeff Mitchell, counsel to West Face, the evening of January 19, 2015. Mr. Mitchell's correspondence, attached as **Appendix "K"**, expressed further concerns about the content of the Catalyst notice of motion. Mr. Mitchell further requested that:

(a) I disclose to him the details concerning what "interim reporting" had been done to Catalyst which had led to the references to the "hit counts" in Catalyst's notice of motion;

(b) I attend at a scheduled attendance at Practice Court on Wednesday, January 21, booked to establish a timetable for the Catalyst motion, in order to answer any questions the Court might have about the Review.

23. While continuing the process of review, I replied to Mr. Mitchell on January 20, 2015, and attach this response as **Appendix "L"**. In short, I expressed the intention to attend Practice Court and provided limited disclosure (consistent with the restrictions in the Protocol) of the information that had been relayed to Catalyst's and Moyse's counsel for purposes of narrowing the manual review process. Subsequently, Catalyst's counsel expressed the position that if I were to attend Practice Court, that Catalyst would not accept responsibility for my fees for that attendance.

24. I elected to attend Practice Court on January 21, 2015 notwithstanding this position, and in the event no party will accept responsibility for my account for that attendance, I will seek directions in due course from the Court. By the time of that attendance, my review had progressed sufficiently to be able to advise the parties and the Court that I did expect, having regard to the volume of actual material to review after de-duplication, to complete my report

by January 30, 2015 and to provide it (in draft form in accordance with the Protocol) to counsel for Moyse and Catalyst.

25. Later on January 21, 2015, I received the exported content of Moyse's iPad and Samsung Android phone from DEI for manual review, and installed it in our file server for that purpose. Taking into account the de-duplication completed by DEI (resulting in no email messages being produced), the material reviewed consisted of the following:

- (a) A list of content resident in a Dropbox folder;
- (b) Twitter messages and postings;
- (c) Phone call logs;
- (d) Text messages;
- (e) A list of downloaded files and associated file-paths;
- (f) A list of contacts.

26. Later on January 21, 2015, I received further correspondence from West Face. West Face counsel expressed more concerns about the possibility that West Face confidential information was also contained within Moyse's Devices, and asked how I intended to protect that information. I ultimately replied on January 23, 2015 to address Mr. Mitchell's expressed concerns. Copies of these two letters are attached hereto as **Appendix "M"**.

27. Meanwhile, having regard to the progress of the review and in order to ensure that its objectives were met, I considered the further set of fourteen (14) search terms supplied by Catalyst. On January 22, I determined and proceeded to direct DEI to use these search terms

to search the Devices and to provide me with any results that were not duplicative of earlier provided documents or emails. This resulted in the provision of a very small number of unique additional items (5 files in total, and 179 emails) for review.

PART III - CONCLUSIONS AS TO CONFIDENTIAL CATALYST INFORMATION MAINTAINED ON MOYSE'S DEVICES

28. My colleague Naomi Greckol-Herlich and I manually reviewed each of the files and emails provided by DEI as described above. In doing so, we had regard to the two Affidavits of Documents sworn by Moyse on July 22 and July 29, 2014, which outline some 833 items (including duplicates) which Moyse acknowledges to either be items containing Catalyst confidential information, or items that are in any event relevant to the issues in this proceeding.

29. Owing to an earlier suggestion by Moyse's counsel that only documents subsequent to December 1, 2013 be reviewed (on the theory that Moyse had not begun to contemplate leaving Catalyst's employment until that time), we had directed DEI to segregate the files it provided so that those that were last accessed prior to December 1, 2013 were grouped together separately from those last accessed subsequent to December 1, 2013. We prioritized the review of the post-December 1, 2013 documents, but were ultimately able to review all of the material provided. In the interest of timely completion of this report, we have reported separately on the results of the two groups of documents.

30. In drawing conclusions as to what was Catalyst confidential information,¹ we had regard to (a) the motion material provided to us by Catalyst counsel; (b) the content of

¹ Including both matters appearing to be confidential to Catalyst itself, and information provided to Catalyst in confidence by its clients or other entities.

Moyse's email communications (reviewed separately as described below); and (c) the names and contents of the documents themselves. It is possible that some of the items may not contain "confidential information" based on (a) subsequent public release of such items; or (b) its public disclosure through other means. In a small number of cases, we were not able to determine the identity of the information source, but have included reference to these documents so that the parties can, through their further evidence, make submissions to the Court concerning the status of such materials if that proves necessary.

Post-December 1, 2013 Documents and Files

31. We first reviewed all documents with a date modified record after December 1, 2013 (a total of 845 documents). Among those items, we identified twelve (12) documents which appear to be West Face-related documents, six of which appear to contain confidential West Face information or analysis and five of which are duplicate copies of Moyse's employment contract.

32. Of the remaining documents, we have assessed the next listed items to contain Catalyst confidential information subject to the caveats expressed above. These items were found in several different source folders within Moyse's computer: "Users/Brandon Moyse/AppData.../Content.MSO"; "Users/Brandon Moyse/Documents"; and "Users/Brandon Moyse/Downloads". We also reviewed a series of files contained at "Users/Brandon Moyse/Desktop" and at "Users/Brandon Moyse/Dropbox" but identified no items there that contained Catalyst confidential information. We have grouped the following list according to the folder in which it was found. Where those documents have been previously disclosed by Moyse, we have made a notation to that effect in the final column, which cross-references the

document to the document numbering in Moyses's two affidavits of documents. Where the document is marked "N/A", the item was not disclosed in those affidavits.

Users/Brandon Moyses/AppData/Microsoft/Windows/Temporary Internet Files/Content.MSO

Filename	Description of item	Document #
2B65A333.wmf	Image file containing Catalyst financial analysis appearing to relate to Advantage Rent A Car	N/A
25BC51FF.emf	Image file containing Catalyst funding reconciliation related to Homburg restructuring	N/A
658831A1.wmf	Image file containing personnel analysis of Advantage Rent A Car	N/A
A32A9B98.wmf	Image file containing Catalyst financial analysis appearing to relate to Advantage Rent A Car	N/A
F522C3F4.emf	Image file containing Catalyst funding reconciliation related to Homburg restructuring	N/A

Users/Brandon Moyses/Documents²

Filename	Description of item	Document #
[Q1 2013 Letter V6.docx]	Contains file named "image1.emf" which contains Therapure financial data	35
14-02-11 NMFG-Piper Jaffray Meeting Notes.docx	Word document containing notes re team meeting	1
14-02-19 BCG meeting.docx	Word document containing notes re team meeting	2
14-02-19 Minutes from NMFG-BCG Meeting.docx	Word document containing notes re team meeting	3
14-02-26 NMFG Real Estate Committee Call.docx	Word document containing notes re team meeting	4
Additional WIND Due Diligence Questions.docx	Word document containing questions to be answered re WIND	7
Avis-Budget Earnings Summary.docx	Word document containing written synopsis of Avis' finances	9

² In the interest of timely completion of this report, we have not broken out each individual sub-folder, where applicable, in which these items were found.

Filename	Description of item	Document #
Bonding Analysis.xlsx	Excel spreadsheet containing financial data, client unknown	10
Cash Rec.xlsx	Excel spreadsheet containing financial data, client unknown	12
EWR.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data, revenue projections	17
Forward looking to actual.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data, revenue projections	21
Fresh Market Earnings.docx	Word document containing letter to "Team" and financial assessment of Fresh Market	22
Natural Markets Restaurants Corp.docx	Word document describing financial status of NMRC	28
NMFG Weekly Report - Week 8.pdf	Financial summary for NMFG	29
NMRC FAQs.docx	Word document setting out FAQ's re financial analysis of NMRC	30
NYC-BWI Sensitivities.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	33
Preqin Data.xlsx	Spreadsheet containing yearly analysis of multiple funds	34
Sprouts Summary.docx	Word document containing analysis re financial health of Sprouts	36
What adjustments are in adjusted EBITDA each year.docx	Word document explaining the use of EBITDA in NMFG reports	37

Users/Brandon Moyse/Downloads³

Filename	Description of item	Document #
032014_AtlanticPower_DrewMallozzi FINAL.pdf	Drew Mallozzi analysis re Atlantic Power	39
13-01-04 Geneba News Tracker.xlsx	Spreadsheet containing data re Geneba Properties	46
13-02-09 Geneba News Tracker.xlsx	Template for data re Geneba Properties	48
13-02-16 Geneba News Tracker.xlsx	Unopenable	49

³ In the interest of timely completion of this report, we have not broken out each individual sub-folder, where applicable, in which these items were found.

13-02-16	Geneba	News	Additional copy from folder "[14-01-28 Tracker.xlsx DIP Funding Request.xlsx]"	49
	13-02-23	Geneba	Data re Geneba Properties	50
News Tracker (1).pdf				
13-02-23	Geneba	News	Data re Geneba Properties	51
Tracker.pdf				
13-02-23	Geneba	News	Data re Geneba Properties	52
Tracker.xlsx				
13-09-24			NMFG Presentation "2013 Overview"	55
NMRC Presentation.pptx				
13-09-27			NMRC Funding Request	56
Funding Memo v2.docx				
13-12-09	Geneba	News	Unopenable	63
Tracker.xlsx				
13-12-11		Concessions	Financial data re Advantage Rent-a-Car concessions	64
Analysis.xlsx				
13-12-14	Geneba	News	Data re Geneba Properties	65
Tracker.xlsx				
13-12-16			Spreadsheet containing data on Advantage Rent-a-Car reservations	66
Reservation Outlook.xlsx				
13-12-21	Geneba	News	Spreadsheet containing data re Geneba Properties	67
Tracker.xlsx				
14-01-06			NMFG Funding request	70
Funding Memo.docx				
14-01-28	DIP	Funding	Spreadsheet containing financial data of Advantage Rent-a-Car	71
Request.xlsx				
14-02-08	NMRC	Presentation	Slide from NMRC presentation	72
Slide 2.pptx				
14-02-08	NMRC	Presentation	NMFG PowerPoint presentation February 2014	73
NMRC Presentation.pptx				
14-02-10	NMRC	Presentation	NMFG PowerPoint presentation February 2014	76
v10.pptx				
14-02-10	NMRC	Presentation	Duplicate	74
v10 (1).pptx				
14-02-10	NMRC	Presentation	Duplicate	75
v10 (2)				
14-02-10	NMRC	Presentation	NMFG PowerPoint presentation February 2014	77
v12.pptx				
14-02-12	NMRC	Presentation	PDF version of NMFG PowerPoint presentation February 2014	80
vF.PDF				
14-02-12	NMRC	Presentation	Duplicate	78
vF (1).PDF				
14-02-12	NMRC	Presentation	Duplicate	79
vF (2).PDF				
14-02-12	NMRC	Presentation	NMFG PowerPoint presentation February 2014	81
vF.pptx				
14-02-13	NMRC	Presentation	PDF version of NMFG PowerPoint presentation February 2014	82
vF.pdf				
14-02-20			PDF version of spreadsheet detailing	83
Airport Concessions.pdf				

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	Advantage Rent-a-Car airport locations	
14-02-20 Airport Concessions.xlsx	Spreadsheet detailing Advantage Rent-a-Car airport locations	84
14-02-21 NMFG Operating Model - BM version.xlsx	Spreadsheet containing NMFG financial data	86
14-02-21 NMFG Operating Model - BM version (1).xlsx	Duplicate	85
14-02-25 NMFG Operating Model.xlsx	Spreadsheet containing NMFG financial data	88
14-02-25 NMFG Operating Model (1).xlsx	Duplicate	87
14-04-04 SunTrust Presentation v10.pptx	PowerPoint presentation for NMFG "Management Update," April 4, 2010	89
19-02-16 NMFG Operating Model - BM version.xlsx	Spreadsheet containing NMFG financial data	94
2013_11_30ADVNov MTD Flash PL.pdf	PDF containing Advantage Rent-a-Car financial data	119
2013_12_05ADV Dec MTD Flash PL.pdf	PDF containing Advantage Rent-a-Car financial data	121
2013_12_05ADV Dec MTD Flash PL (1).pdf	Duplicate	120
2014 03 26 - Therapure payroll wire for approval - Cda.pdf	Fax re: Wire Transfer Directions	125
2014 03 26 - Therapure payroll wire for approval - Cda (1).pdf	Duplicate	124
2014 03 26 - Therapure payroll wire for approval - US.pdf	Fax re: Wire Transfer Directions	127
2014 03 26 - Therapure payroll wire for approval - US (1).pdf	Duplicate	126
2014 Operating Plan v5.pptx	PowerPoint presentation "2014 Operating Plan," February 6, 2014	129
2014 Operating Plan v6.pptx	Further version	131
2014 Operating Plan v6 (1).pptx	Duplicate	130
2014_Marketing_CA[2].pptx	PowerPoint presentation "2014 Marketing Overview," February 5, 2014	135
2014 Marketing_CA[6].pptx	Further version	137
20140204 Natural Markets Food Group.pdf	PDF titled "Natural Markets Food Group: Delivering Breakthrough Profitable Growth" authored by McKinsey, marked "proposal document" and "confidential and proprietary"	134
ABS deals.xlsx	Spreadsheet re Auto rental/leasing 2013 ABS transactions	156
ABQ Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	155

ADV - Feb 2014 sold days.xlsx	Spreadsheet re Advantage Rent-a-Car "Sold days"	159
ADV - Feb 2014 Stmt.pdf	Counter product Statement, February 2014 "Sold Days"	160
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20.xlsx	File unopenable – content assessed by name	163
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20 (1).xlsx	Duplicate	161
Advantage - Business Plan Model (11-15-13) DRAFT - 38 locations v20 (2).xlsx	Duplicate	162
Advantage - DIP Funding Borrowing Certificate 3-13-2014.pdf	DIP Loan facility agreement	165
Advantage - Fleet Planning Template 1.23.2014 v2.xlsx	Advantage Rent-a-Car fleet data	166
Advantage - FP - Master Copy 2 4 14 PM.xlsx	Advantage Rent-a-Car fleet financing data	167
Advantage - FP - Master Copy 2.4.14 PM.xlsx	Duplicate	168
Advantage - Funding Request #9 3-13-2014.xlsx	Advantage Rent-a-Car funding request	169
Advantage - Interest Rate Rider.pptx	Single PowerPoint slide showing Advantage Rent-a-Car fleet carrying costs, marked "confidential"	170
Advantage - Updated Business Plan Model - 1.16.2014 DRAFT for Mgmt.xlsx	File unopenable – content assessed by name	173
Advantage - Updated Business Plan Model - DRAFT - v3.xlsx	Financial data re Advantage Rent-a-Car, Simply Wheelz LLC	174
Advantage - Updated Business Plan Model - DRAFT - v5.xlsx	Further version	176
Advantage - Updated Business Plan Model - DRAFT - v5 (1).xlsx	File unopenable – content assessed by name	175
Advantage - Updated Business Plan Model - DRAFT - v6.xlsx	Further version	177
Advantage - Updated Business Plan Model - DRAFT - v7.xlsx	Further version	178
Advantage Catalyst Presentation March 2014 vF.PDF	Advantage Rent-a-Car presentation by Deutsche Bank marked "confidential"	179
Advantage corporate budget - FY2014 (1-24-14) DRAFT.xlsx	File is password protected. Content assessed by file name	180
Advantage Model.xlsx	Advantage Rent-a-Car "2014 Budget and 2015 Projection"	182

Advantage Overview Presentation 2-11-14.pdf	Presentation of strategic overview re Advantage Rent-a-Car	183
Advantage Preliminary Budget Review.pptx	Presentation re Advantage Rent-a-Car budget review	186
Advantage Rent A Car - 2014 Budget 2015 Projection (1-22-14) DRAFT.xlsx	File unopenable – content assessed by name	187
Advantage Rent A Car - 2014 Budget 2015 Projection (1-25-14) DRAFT.xlsx	File unopenable – content assessed by name	188
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT (1).xlsx	File unopenable – content assessed by name	189
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT (2).xlsx	File unopenable – content assessed by name	190
Advantage Rent A Car - 2014 Budget 2015 Projection (1-26-14) DRAFT.xlsx	File unopenable – content assessed by name	191
Advantage Rent A Car - 2014 Budget 2015 Projection (1-29-14) DRAFT v3.xlsx	File unopenable – content assessed by name	192
Advantage Rent A Car - 2014 Budget 2015 Projection (2-4-14) DRAFT.xlsx	File unopenable – content assessed by name	197
Advantage Rent A Car - 2014 Budget 2015 Projection (2-11-14) (1).xlsx	File unopenable – content assessed by name	193
Advantage Rent A Car - 2014 Budget 2015 Projection (2-11-14) DRAFT.xlsx	File unopenable – content assessed by name	195
Advantage Rent A Car - 2014 Budget 2015 Projection (2-11-14) DRAFT - Updated.xlsx	File unopenable – content assessed by name	194
Advantage Rent A Car - 2014 Budget 2015 Projection (2-11-14).xlsx	File unopenable – content assessed by name	196
Advantage Rent A Car - Bid Summary v1 (1).xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	200
Advantage Rent A Car - Bid Summary v1.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	201
Advantage Rent A Car - Reforecast DIP Budget (Through 4-5-14) v2 - Net Exposure.pdf	Unopenable – confidential contents inferred from file name	204
Advantage Rent A Car - Reforecast DIP Budget (Through	Unopenable – confidential contents inferred from file name	205

4-5-14) v2 - Net Exposure.xlsx		
Advantage Rent A Car - Reforecast DIP Budget (Through 4-5-14) v5 - Net Exposure.xlsx	Unopenable – confidential contents inferred from file name	208
Advantage Term Sheet 2-21-14 v2.docx	Advantage Rent-a-Car “Indicative Term Sheet”	209
AGS-FSNA SOW2 (Advantage) Amendment 1.pdf	Document titled “Statement of Work #2” as part of Master Services Agreement between Ahesi Global Services Inc. and Franchise Services of North America, marked confidential	211
Airport Agreements (1).xlsx	Duplicate	213
Airport Agreements.xlsx	Spreadsheet containing information on Advantage Rent-a-Car airport locations	214
Airport Concessions.xlsx	Spreadsheet containing information on Advantage Rent-a-Car airport locations	215
Airport Data.xlsx	Spreadsheet containing information on Advantage Rent-a-Car airport locations	216
ARAC Purchases 2013 -Mar 2014 8-31 v2.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	238
AT Kearney Qualifications for Catalyst Capital Group - Jan2014.pdf	Presentation re A.T. Kearney	240
AUS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	243
Balduccis-Kings backup.xlsx	Spreadsheet containing financial data re Balducci’s	244
Balduccis-Kings Summary v3.pptx	PowerPoint presentation re Balducci’s, marked confidential	245
BCG Grocery credentials 1-7-14 vF.pptx	PowerPoint presentation titled “BCG’s Retail Credentials for NMFG”	246
BCG NMFG - Economic proposal v3.pptx	PowerPoint presentation titled “Building the foundation for growth and expansion”	248
BCG NMFG - Economic proposal v3 (1).pptx	Duplicate	247
BCG NMFG Proposal Jan 30.pptx	PowerPoint presentation titled “Building the foundation for growth and expansion”	250
BCG NMFG Proposal Jan 30 (1).pptx	Duplicate	249
BOS Monthly Revenue Report & CFC2.pdf	Advantage Rent-a-Car location monthly revenue report	251
BTV Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	255
BUR Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly	257

	revenue report	
Catalyst - funds to be remitted March 19.xlsx	Spreadsheet containing financial data of Homburg Invest Inc.	260
Catalyst - NMFG Proposal 140130.pdf	Document prepared by Kurt Hammon titled "Natural Markets Food Group Strategic and Operational Plans" and marked confidential	263
Catalyst - NMFG Proposal 140130 (1).pdf	Duplicate of above item	261
Catalyst - NMFG Proposal 140130 (2).pdf	Duplicate of above item	262
Catalyst Capital - Grocery Assessment Proposal_1_6_14.pdf	Atlanta Retail Consulting proposal for professional services re Mrs. Green's, January 2013	264
Catalyst Capital - PwC Intro 011014vf.pdf	Titled "PwC Qualifications" and marked strictly private and confidential	265
Catalyst Capital Intro to Kurt Salmon 1-8-2014.pptx	PowerPoint titled "Introduction to Kurt Salmon" and marked confidential	266
Catalyst FTC Presentation v1.pptx	PowerPoint prepared by Catalyst re Advantage Rent-a-Car marked confidential	268
Catalyst FTC Presentation v2.pptx	Duplicate of above	271
Catalyst FTC Presentation v3.pptx	Duplicate of above	272
Catalyst FTC Presentation v12.pptx	Further version of above now titled "Presentation to the Federal Trade Commission regarding Advantage Rent-a-Car"	270
Catalyst FTC Presentation v12 (1).pptx	Duplicate	269
Catalyst Overview (2).pptx	PowerPoint presentation titled "The Catalyst Group Inc.: Overview" marked confidential	274
Catalyst_Advantage -- Consent Missing Information Checklist(1777867_4_CH...xlsx	Unopenable - content assessed by file name	278
CHS Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	298
CLE Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	299
CLT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	300
Concessions Overview.pdf	PDF titled "Advantage Rent-a-Car: Concessions Overview" marked confidential	306
Consolidated Forecast 2013-10-21 - Business Plan.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	310

Copy of 12-27 New Fleet Available as discussed.xlsx	Spreadsheet containing financial data of Advantage Rent-a-Car	311
Copy of Fleetjan1CATCAP.xlsx	Spreadsheet containing data re Advantage Rent-a-Car locations	312
Copy of P4 MDA Backupv5 LINKS BROKEN.xlsx	Spreadsheet containing NMFG data	316
COS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	317
CVG Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	320
DAL Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	322
DCA Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	328
DEN Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	332
DFW Monthly Revenue Report & CFC & CTC.pdf	Advantage Rent-a-Car location monthly revenue report	333
DIP Balance to December 19.xlsx	Spreadsheet containing financial data of Advantage Rent-a-Car	334
DIP Balance v8.xlsx	Spreadsheet containing financial data of Advantage Rent-a-Car	335
DRAFT Bridge Term Sheet_20140311.pdf	Document titled "Preliminary Summary of Indicative Terms and Conditions" and marked confidential	341
DSM - Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	342
EL-The Catalyst Capital Group Inc.pdf	Letter from Deloitte+Touch confirming retainer marked confidential	344
Europcar Agreement v2.pdf	Document summarizing Europcar agreement with Advantage Rent-a-Car	351
Europcar Cooperation Agreement dated 6-3-2013.pdf	Agreement between Europcar International and Franchise Services of North America	352
EWR-Newark Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	354
EWR-Wyndham Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	355
FinalMaster presentation vF.pdf	Presentation titled: "Board Meeting, Management Presentation, January 22, 2013"	362
Financing Facilities Comparison.pdf	Presentation for Advantage Rent-a-Car titled "Financing Facilities Comparison" marked confidential	363
Financing Facilities Comparison.pptx	PowerPoint version of above	364

Fleet Analysis 1-27-14.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	369
Fleet Composition Plan v3.xlsx	Spreadsheet containing Advantage Rent-a-Car fleet summary and analysis	370
Fleet Composition Plan v4.xlsx	Further version of above	371
Fleet Composition Plan v5.xlsx	Further version of above	374
Fleet Composition Plan v5 (1).xlsx	Further version of above	372
Fleet Composition Plan v5 (2).xlsx	Further version of above	373
FLL Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	376
Forward looking to actual v3.xlsx	Spreadsheet containing financial data and forecasts for Advantage Rent-a-Car	382
Forward looking to actual v3 (1).xlsx	Duplicate of above	381
Funding Memo (12 Mar 2014).pdf	NMRC March 12, 2014 Funding Request	393
Funding Memo (12 Mar 2014) (1).pdf	Duplicate of above	392
Funding Memo (27 Jan 2014 update).docx	NMRC January 27, 2014 Funding Request	394
Funding Memo Period 12 (final).docx	NMRC December 27, 2013 Funding Request	395
Funding Request #8 2-27-2014 v4.xlsx	Funding request from Advantage Rent-a-Car	400
Funding Request #8 2-27-2014 v4 (1).xlsx	Duplicate from above	398
Funding Request #8 2-27-2014 v4 (2).xlsx	Duplicate from above	399
Hawaii CFC Report.pdf	Advantage Rent-a-Car location monthly revenue report	415
HFC Presentation.pdf	Presentation titled "Advantage Rent-a-Car: Presentation to HFC"	418
HNL Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	420
Homburg Funding Reconciliation v2.xlsx	Spreadsheet containing Homburg financial information	423
Homburg Invest - Investment Memo.pdf	Catalyst confidential analysis memo re Homburg, May 2013	424
HOU Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	426
IAD Exhibit C - Oct 2013.xlsx	Advantage Rent-a-Car location monthly revenue report	429
IAD Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	430
IAH Monthly Revenue Report &	Advantage Rent-a-Car location monthly	431

CFC.pdf	revenue report	
Initial Memo ARN v2.docx	Catalyst prepared memo re Arcan, confidential	436
Initial Memo ARN v3.docx	Further version of above	437
Initial Memo ARN v5.pdf	Further version of above	438
Initial Memo DGI v1.docx	Catalyst memo re Data Group, confidential	440
Initial Memo LPR v2.docx	Catalyst memo re Lone Pine Group, confidential	442
Initial Memo LPR v2 (1)	Further version of above	441
Initial Memo LPR v2.docx	Further version of above	442
Initial Memo NSI v17.pdf	Catalyst memo re NSI NV, confidential	443
initial_financial_screening DGI v1.xlsm	Financial data re Arcan Resources Inc.	444
Investor+Presentation+September_ 2013.pdf	Unopenable	452
ITO Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	453
JAX Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	455
LAS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	461
LAX Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	462
LIH Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	463
Master Schedule for Concession and CFC Payments(4).xlsx	Unopenable	503
Master Schedule for Concession and CFC Payments February 2014.xlsx	Unopenable	502
MCO Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	505
MDW Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	506
MGM_Index-slide.pptx	PowerPoint slide containing Mrs. Green's financial data	507
MHT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	508
MIA Monthly CFC - Wells Fargo.pdf	Advantage Rent-a-Car location monthly revenue report	509
MIA Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	510
MKE Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	515

NMFG Model.xlsx	Spreadsheet containing NMFG financial data	526
NMFG Operating Model.xlsx	Spreadsheet containing NMFG financial data	561
NMFG Operating Model (1).xlsx	Duplicate	527
NMFG Operating Model (2).xlsx	Duplicate	528
NMFG Operating Model (3.12.14).xlsx	Further version of above	530
NMFG Operating Model (3.12.14) (1).xlsx	Further version of above	529
NMFG Operating Model (5.2.14).xlsx	Further version of above	532
NMFG Operating Model (5.2.14) (1).xlsx	Further version of above	531
NMFG Operating Model 2 4 14 v9.xlsx	Further version of above	533
NMFG Operating Model 2 6 14 v17.xlsx	Further version of above	534
NMFG Operating Model 2 6 14 v18 brs.xlsx	Further version of above	535
NMFG Operating Model 2 6 14 v18.xlsx	Further version of above	536
NMFG Operating Model 2 6 14 v25 (brs updated).xlsx	Further version of above	537
NMFG Operating Model 2 6 14 v26.xlsx	Further version of above	538
NMFG Operating Model 2 6 14 v27.xlsx	Further version of above	539
NMFG Operating Model 2 6 14 v28.xlsx	Further version of above	540
NMFG Operating Model 2 6 14 v30.xlsx	Further version of above	542
NMFG Operating Model 2 6 14 v30 (1).xlsx	Further version of above	541
NMFG Operating Model 2 6 14 v31.xlsx	Further version of above	543
NMFG Operating Model 2 6 14 v32.xlsx	Further version of above	547
NMFG Operating Model 2 6 14 v32 (1).xlsx	Further version of above	544
NMFG Operating Model 2 6 14 v32 (2).xlsx	Further version of above	545
NMFG Operating Model 2 6 14 v32 (3).xlsx	Further version of above	546
NMFG Operating Model 2 6 14 v33.xlsx	Further version of above	548

NMFG Operating Model 2 6 14 v34.xlsx	Further version of above	549
NMFG Operating Model v2 -- CHECK RX EXPENSES.xlsx	Further version of above	552
NMFG Operating Model v2.xlsx	Further version of above	553
NMFG Operating Model v3.xlsx	Further version of above	554
NMFG Operating Model v4.xlsx	Further version of above	555
NMFG Operating Model v5.xlsx	Further version of above	556
NMFG Operating Model v6.xlsx	Further version of above	557
NMFG Operating Model v7.xlsx	Further version of above	558
NMFG Operating Model v8.xlsx	Further version of above	559
NMFG Operating Model v9.xlsx	Further version of above	560
NMFG Operating Model v10.xlsx	Further version of above	550
NMFG Operating Model v11.xlsx	Further version of above	551
NMFG Overview v4.pptx	Presentation titled "Overview" for NMFG	562
NMFG Overview v5.pptx	Further version of above	563
NMFG Overview v6 (1).pptx	Further version of above	564
NMFG Overview v6.pptx	Further version of above	565
NMRC 2013-2014.pdf	Document containing NMRC financial data	568
NMRC Bank Presentation v1.pptx	Presentation titled "Natural Food Markets Group – Update 2013"	569
NMRC Board Presentation v11 (1).pdf	Duplicate of below	571
NMRC Board Presentation v11.pdf	Presentation titled "Natural Food Markets Group – Board of Directors Meeting, October 22, 2013"	572
NMRC comps v5.xlsx	Spreadsheet containing financial data and comparative analysis re NMRC, competitors	573
NMRC Model - Feb 2014 (PwC Model).xlsx	Spreadsheet containing NMRC financial data, analysis and forecast	574
NMRC Model - Feb 2014.xlsx	Spreadsheet containing NMRC financial data, analysis	575
NMRC Model Outputs.pdf	Document containing NMRC financial data	576
NMRC Operating Model (27 Jan 2014) (1).xlsx	Duplicate of below	577
NMRC Operating Model (27 Jan 2014) (2).xlsx	Duplicate of below	578
NMRC Operating Model (27 Jan 2014) (3).xlsx	Duplicate of below	579
NMRC Operating Model (27 Jan 2014).xlsx	Spreadsheet containing NMRC financial data	580

NMRC Peers - 2-6-2014 (1).xlsx	Duplicate of below	582
NMRC Peers - 2-6-2014.xlsx	Spreadsheet containing comparative analysis of NMRC competitors	583
NMRC Run-Rate by Store (1).pdf	Duplicate of below	584
NMRC Run-Rate by Store.pdf	NMRC store by store financial data	585
NMRC_09302013 Valuation Memo.pdf	Catalyst memo re NMFG valuation, September 30, 2013	586
NMRC_12312013 Valuation Memo (1).pdf	Duplicate of below	587
NMRC_12312013 Valuation Memo (2).pdf	Duplicate of below	588
NMRC_12312013 Valuation Memo v4.pdf	Duplicate of below	590
NMRC_12312013 Valuation Memo.pdf	Catalyst memo re NMFG valuation, December 31, 2013	591
OAK Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	594
OKC Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	598
OMA Monthly Revenue Report .pdf	Advantage Rent-a-Car location monthly revenue report	599
ONT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	600
Operating Summary v3.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	603
Operating Summary v4.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	604
OperatingSummary 20131202.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data by rental location	607
OperatingSummary 20131203 (1).xlsx	Duplicate of below	608
OperatingSummary 20131203.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	609
OperatingSummary 20131204 (1).xlsx	Duplicate of below	610
OperatingSummary 20131204.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	611
OperatingSummary 20131205 (1).xlsx	Duplicate of below	612
OperatingSummary 20131205.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	613
OperatingSummary 20131206 (1).xlsx	Duplicate of below	614
OperatingSummary 20131206.xlsx	Spreadsheet containing Advantage Rent-a-Car financial data	615

OperatingSummary (1).xlsx	20131207	Duplicate of below	616
OperatingSummary 20131207.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	617
OperatingSummary (1).xlsx	20131208	Duplicate of below	618
OperatingSummary 20131208.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	619
OperatingSummary (1).xlsx	20131209	Duplicate of below	620
OperatingSummary 20131209.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	621
OperatingSummary (1).xlsx	20131210	Duplicate of below	622
OperatingSummary (2).xlsx	20131210	Duplicate of below	623
OperatingSummary 20131210.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	624
OperatingSummary (1).xlsx	20131211	Duplicate of below	625
OperatingSummary 20131211.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	626
OperatingSummary 20131212.xlsx		Spreadsheet containing Advantage Rent-a-Car financial data	627
ORD Monthly Revenue Report.pdf		Advantage Rent-a-Car location monthly revenue report	627
ORD MonthlyCFC.pdf		Advantage Rent-a-Car location monthly revenue report	629
ORF Monthly Revenue Report & CFC.pdf		Advantage Rent-a-Car location monthly revenue report	630
P11 Funding Request.pdf		NMFG Funding request, November 25, 2013	638
P12 Cash Model v12.xlsx		Further version of below	639
P12 Cash Model.xlsx		Spreadsheet containing NMFG financial data and analysis	640
P12 Funding Sources and Uses v5.xlsx		Spreadsheet containing NMFG financial data	641
PDX Monthly Revenue Report.pdf		Advantage Rent-a-Car location monthly revenue report	646
Period 4 2014 MDA (final).pptx		Presentation titled "Period 4, 2014: Management Discussion and Analysis, May 2, 2014"	648
Period 13 MDA (10 Jan 2014).pptx		Presentation titled "Period 13, 2013: Management Discussion and Analysis, January 10, 2014"	647
PHX - Monthly Revenue Report &		Advantage Rent-a-Car location monthly	649

CFC.pdf	revenue report	
PIT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	650
PNS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	651
PR_Catalyst Capital Group_27JAN2014_draft (1).pdf	Duplicate of below	655
PR_Catalyst Capital Group_27JAN2014_draft (2).pdf	Duplicate of below	656
PR_Catalyst Capital Group_27JAN2014_draft.pdf	Report titled "Mrs. Green's Natural Market: Strategy, Execution and Roadmap Support," marked confidential	657
PR_Catalyst Capital Group_NMFG_LEK_Credentials.pdf	Report titled "Introduction to L.E.K. Consulting," marked confidential	658
Project Turbine - Preliminary Diligence Request List.xls	Document containing due diligence questions for project turbine	654
PVD Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	659
Q4 2013 Letter v7 - Newton's Mark Up.pdf	Document containing portfolio reports on Therapure, Advantage Rent-a-Car and Homburg, including handwritten revision notes	663
Quarterly Letter v3 (1).docx	Duplicate of below	665
Quarterly Letter v3.docx	Document containing narrative updates on numerous Catalyst clients, tracked changes	666
Quarterly Letter v4.docx	Letter containing updates on many Catalyst clients	667
Quarterly Letter v4.pdf	Duplicate of above, PDF format	668
RDU Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	671
Real Estate Development and Controls (27 Jan 2014) (1).pptx	Duplicate of below	672
Real Estate Development and Controls (27 Jan 2014).pptx	Presentation titled "Real Estate Development and Controls, January 27, 2014"	673
Reforecast DIP Budget (WE12-7) (1).xlsx	Duplicate of below	680
Reforecast DIP Budget (WE12-7).xlsx	Spreadsheet containing Advantage Rent-a-Car budget details, budget forecast	681
Reservation Outlook 11252013nf (1).xlsx	Duplicate of below	684
Reservation Outlook 11252013nf.xlsx	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by	685

		location	
Reservation Outlook 12022013nf (1).xlsx		Duplicate of below	686
Reservation Outlook 12022013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	687
Reservation Outlook 12092013nf (1).xlsx		Duplicate of below	688
Reservation Outlook 12092013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	689
Reservation Outlook 12162013nf (1).xlsx		Duplicate of below	690
Reservation Outlook 12162013nf (2).xlsx		Duplicate of below	691
Reservation Outlook 12162013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	692
Reservation Outlook 12232013nf (1).xlsx		Duplicate of below	693
Reservation Outlook 12232013nf (2).xlsx		Duplicate of below	694
Reservation Outlook 12232013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	695
Reservation Outlook 12302013nf (1).xlsx		Duplicate of below	696
Reservation Outlook 12302013nf (2).xlsx		Duplicate of below	697
Reservation Outlook 12302013nf (3).xlsx		Duplicate of below	698
Reservation Outlook 12302013nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	699
Reservation 20140106nf.xlsx	Outlook	Spreadsheet containing Advantage Rent-a-Car reservation outlook data by location	700
RNO Monthly Revenue Report .pdf		Advantage Rent-a-Car location monthly revenue report	703
RON Initial Memo v10.pdf		Catalyst memo re RONA Inc, November 2012, marked confidential	704
RSW Monthly Revenue Report.pdf		Advantage Rent-a-Car location monthly revenue report	705
SAN Forecast.xlsx		Spreadsheet containing financial data and forecasting for Advantage Rent-a-Car San Diego location	706

SAN Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	707
SAT Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	708
SDF Exhibit I - Oct 2013.xlsx	Spreadhseet for Advantage Rent-a-Car location monthly report	717
SDF Monthly Revenue Report &CFC.pdf	Advantage Rent-a-Car location monthly revenue report	718
SEA Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	719
SFB Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	724
SFO Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	725
simply wheelz doc WL master lease agreement 20140220 (2).doc	Draft of lease agreement between Westlake Inc. And Advantage Rent-a-Car, tracked changes	726
SJC Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	727
SLC Monthly Revenue Report & CFC2.pdf	Advantage Rent-a-Car location monthly revenue report	728
SMF Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	729
SNA Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	730
SRQ Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	732
Summary of Advantage AP Agreements - 12-Dec-2013.doc	Chart summarizing Advantage Rent-a-Car rental and lease agreements by location	741
TFM_News_2013_5_29_Financial_Releases.pdf	Unopenable	743
Therapure Payroll - 3-21.pdf	Fax re wire transfer directions for Therapure	748
Therapure - Advanced Manufacturing Fund - Proposal v7 without comments.docx	Report summarizing business and financial strategy of Therapure	747
TPA Exhibit B - Oct 2013.xlsx	Monthly rental activity for Tampa, FL Advantage Rent-a-Car location	754
TPA Monthly Revenue Report.pdf	Advantage Rent-a-Car location monthly revenue report	755
TUL Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	759
UNTITLED.PPTX	PowerPoint slides, client unknown, marked confidential	763
VINs at 11-5-13 v 12 19	Advantage Rent-a-Car fleet summary	765

(MASTER) 3.10.14.xlsx		
VPS Monthly Revenue Report & CFC.pdf	Advantage Rent-a-Car location monthly revenue report	766
Weekly report - W18 2014.xlsx	Spreadsheet containing Mrs. Green's financial data	770
Weekly report - w 8 2014 v10CM (1).xlsx	Further version of above	768
Weekly report - w 8 2014 v10CM.xlsx	Further version of above	769

33. We conclude that with respect to this group of post-December 1, 2013 documents, that all of the documents generated by the search process are items previously disclosed in Moyse's affidavit of documents, other than the five (5) image files identified in the "AppData...Content.MSO" folder and listed above.

34. We did not find specific evidence from this process concerning the possibility of Moyse supplying these documents to West Face. However, we note one issue of significance concerning the four documents contained in the Dropbox folder and listed above. Each of these documents has a "date modified" metadata record of June 24, 2014 (between 10:43 and 10:49 p.m.). We understand June 24, 2014 to have been Moyse's second day employed at West Face. The "date modified" entry is consistent with the document being added to the Dropbox, or accessed from the Dropbox by the user of Moyse's computer, on that date.

Pre-December, 2013 Documents and Files

35. We then reviewed all of the pre-December, 2013 documents and files generated. The following are documents which we concluded contain Catalyst confidential information. As in the previous table, where those documents have been previously disclosed by Moyse, we have made a notation to that effect in the final column, which cross-references the document

to the document numbering in Moyses's two affidavits of documents. Where the document is marked "N/A", the item was not disclosed in those affidavits.

Filename	Description of item	Document #
4F7F4274.emf	Image file containing an excerpt from an Excel spreadsheet of financial data from Geneba Properties NV.	N/A
Advantage Agenda - Nov18.docx	A meeting agenda for a meeting with Advantage Rent-A-Car on November 18, 2013	8
Catalyst Press Release - Mar 4.pdf	March 4, 2013 press release announcing Catalyst's participation in the CCAA proceedings associated with Homburg Investments	N/A
Catalyst Press Release - Mar 4.pdf.docx	Microsoft Word version of last document	N/A
HII Analysis v79.xlsx	Extensive analysis spreadsheet of Homburg Investments	26
HII Analysis v80.xlsx	Extensive analysis spreadsheet of Homburg Investments	27
NMRC Gant Chart.xlsx	Single-page spreadsheet of employee hiring process	31
Q1 2013 Letter V6.docx	Draft of results reporting letter addressed to Catalyst Fund Limited Partnership II/III/IV Investors	35
13-10-11 Geneba News Tracker.xlsx	Spreadsheet containing notes as to key developments affecting Geneba tenants, financial results, and regional economic data	57
13-10-25 Geneba News Tracker(1).xlsx	Different version of previous item	58
13-10-25 Geneba News Tracker.xlsx	Different version of previous item.	59
13-11-01 Geneba News Tracker.xlsx	Different version of previous item	60
13-11-15 Geneba News Tracker.xlsx	Different version of previous item	61
13-11-28 MAG and Rent Calculation.xlsx	A payables spreadsheet associated with Advantage Rent-A-Car	62
Advantage - Business Plan Model 11-15-13 DRAFT.xlsx	Large, multi-sheet spreadsheet outlining Advantage Rent-A-Car's business plan	164
Advantage - Memo 10 2013 v3.docx	Draft Catalyst analysis memo of Advantage Rent-a-Car	172
Advantage - Memo 10 2013 v15.docx	Different version of previous item	171

Filename	Description of item	Document #
Advantage Data.xlsx	Spreadsheet of rental data from Advantage Rent-A-Car	181
Advantage PPA (Concessions Summary) Updated.xlsx	Spreadsheet of value of airport concessions held by Advantage Rent-A-Car	184
Advantage PPA FINAL Report.pdf	KPMG valuation report of Advantage assets provided to Adreca Holdings Corp.	185
Advantage Rent A Car Additional Hertz KPI and Revenue Data(1).xlsx	Table of revenue data from Advantage Rent-A-Car	198
Advantage Rent A Car Additional Hertz KPI and Revenue Data.xlsx	Duplicate of previous item	199
Advantage Rent A Car – Hertz Discussion Materials (10-22-13).pdf	Presentation prepared for a without prejudice negotiation between Advantage and Hertz	202
Advantage Rent A Car – Operating Data Template for Review (11-30-13)	Table of operating data	203
Airport Schedule 11022013(1).xlsx	Table of airport based locations for Advantage Rent A Car	217
Airport Schedule 11022013.xlsx	Duplicate of previous item	218
Capital Call Out Section of LPA Fund III.pdf	Excerpt from Second Amended and Restated Limited Partnership Agreement for Catalyst LPA Fund III	258
Catalyst Credit Analysis – Tuckamore	Letter from Gabriel de Alba to Brandon Moyse instructing him to prepare a credit analysis on Tuckamore Capital Management	N/A
Catalyst Final Offer.pdf	Letter from Catalyst to Homburg Investments proposing investment terms, marked “strictly confidential” (undated)	267
Catalyst Overview(1).ppt	Four-page description of Catalyst Capital Management	273
Catalyst Overview.ppt	Duplicate of previous item	275
CH-1692782-v6 CatalystAdvantage – Asset Purchase Agreement.docx	Draft purchase agreement for Advantage Rent A Car	293
Concessions Overview(1).pptx	Airport locations information concerning Advantage Rent A Car	305
Concessions Overview.pptx	Duplicate of previous item	307
Copy of Master Bond List Projected Bons In-Force	List of bond obligations of Advantage Rent A Car	314

Filename	Description of item	Document #
as of 11-5-2013(2).xlsx		
Copy of P11 Funding Sources and Uses.xlsx	Budgeting spreadsheet for Natural Medicines Food Group	315
dpny-23799263-v1 Blue Amended and Restated Purchase Agreement – Dec 10....pdf	Marked Confidential, purchase agreement between Hertz and Adreca Holdings Inc. dated December 10, 2012	340
FSNA Memo v1.docx	Catalyst research memorandum concerning Franchise Services of North America Inc.	388
FSNA Memo v2.docx	Updated version of previous item	389
FullInventory(2).xlsx	Complete inventory of vehicles owned by Advantage Rent A Car	390
Funding Memo Period 12 – v1(1).docx	Funding proposal from Natural Market Restaurants Corp.	396
Funding Memo Period 12 – v1.docx	Duplicate of previous item	397
HII Analysis v94 – for memo.pdf	Spreadsheet containing Homburg financial data	419
Homburg analysis v31.xlsx	Spreadsheet containing analysis of Homburg	421
Homburg Analysis.pptx	PowerPoint presentation containing investment analysis of Homburg	422
Homburg Investment Overview.pdf	Spreadsheet containing investment analysis of Homburg	425
Impact of fleet mix change.xlsx	Spreadsheet containing analysis of Advantage rental fleet	435
Initial Memo BB v1.docx	Draft Catalyst memorandum concerning investment in BlackBerry	439
initial_financial_screening BB v1.xlsx	Spreadsheet containing financial modelling on BlackBerry	446
Location Review 0501nf.xlsx	Spreadsheet containing location-based revenue data for Advantage	465
Location Review 0603.xlsx	Different version of previous item	471
Location Review 0701nf.xlsx	Different version of previous item	473
Location Review 0730nf.xlsx	Different version of previous item	475
Location Review 0904nf.xlsx	Different version of previous item	477
Location Review 1001nf.xlsx	Different version of previous item	479
Location Review 1030nf.xlsx(1)	Different version of previous item	480
Location Review	Different version of previous item	482

Filename	Description of item	Document #
1030nf.xlsx		
Location Review 1127nf.xlsx	Different version of previous item	486
Master Schedule for Concession and CFC Payments(4).xlsx	Spreadsheet containing financial data for Advantage	503
Miscellaneous Info v2.xlsx	Spreadsheet containing financial and business information about Advantage	512
Miscellaneous Info v4.xlsx	Different version of previous item	513
Miscellaneous Info v7.xlsx	Different version of previous item	514
NMFG Team Assessment and HR Plan.pptx	Presentation on Natural Markets Foods Group personnel roles & capacities	566
NMRC Board Package.pdf	Natural Markets Restaurant Corp. Board agenda and material	570
NMRC Operating Model v42.xlsx	Financial model for Natural Markets Restaurant Corp.	581
October 2013 Activity.xlsx	Flight data for McCarran International Airport	595
October MAG & Rent JILL.xlsx	Payables spreadsheet for Advantage	596
OP Model Reconciliation v5.pptx	Presentation reconciling 2 operating models for Natural Markets Food Group	601
Operating Summary v2.xlsx	Revenue model for Advantage	602
Operating Summary.xlsx	Different version of previous item	603
Organizational Chart 2013-11-19 v.1.3.pptx	Organizational charts for Natural Markets Food Group	631
Organizational Chart Brandon.pptx	Presentation on Natural Markets Foods Group personnel roles & capacities	632
P11 Cash Model v3.xlsx	Revenue model for Natural Markets Food Group	636
P11 Cash Model v4.xlsx	Different version of previous item	637
Real Estate Pipeline – P11 v3.xlsx	Table of lease information for Natural Markets locations	679
Schedules B and C (HII- Shareco) – 2013-04- 28(1).pdf	Form of proxy for Homburg creditors	713
Schedules B and C (HII- Shareco) – 2013-04- 28(2).pdf	Duplicate of previous item	714
Schedules B and C (HII- Shareco) – 2013-04- 28.pdf	Duplicate of previous item	715

Filename	Description of item	Document #
Strategic Initiatives Update.pptx	Presentation on various initiatives of Natural Markets Food Group	740
Top 10 Locations.xlsx	Table of rental and revenue data for Advantage	753
traf-ops072013.xlsx	Table of flight data for Seattle-Tacoma International Airport	756
Travelport Market Demand.xlsx	Table of rental data for Advantage	757
Tuckamore Capital Management vF2.pdf	Catalyst investment memorandum re: Tuckamore prepared by Moyse	758
Tuckamore Capital Management vF.pdf	Different version of previous item	N/A

36. As is evident from the above, we found a further total of five (5) documents containing Catalyst confidential information which were not previously disclosed in Moyse's affidavits of documents within this pre-December 1, 2013 set of documents. Again, we did not identify specific evidence showing Moyse to have further disclosed these materials to West Face simply from the review of documents.

Files Recovered through application of second set of search terms

37. After considering the parties' respective positions, we decided to instruct DEI to employ the second set of search terms supplied by Catalyst counsel on January 8, 2015. A total of five non-duplicative, unique files were identified and supplied to us as a result of the use of this second set of search terms. We reviewed all of these items, and none of them bear any relevance to Moyse's employment with Catalyst, nor do they contain any confidential information.

Moyse's Email Accounts

38. We were provided with email messages responsive to the search terms provided from the following personal accounts maintained on Moyse's computer: bmy1987@gmail.com and brandonmoyse@hotmail.com. We reviewed all messages provided from November, 2012 onward (although a large volume of pre-2012 messages were included in the search results dating back as far as 2008). We also reviewed, in the same exercise, those additional emails that were provided after the application of the second set of search terms provided by Catalyst's counsel.

39. The large majority of messages were personal in nature. However, we identified a number of instances of Catalyst confidential information contained within emails, as follows:

Date	Description of item	Document #
April 18, 2013	Email from Moyse's Catalyst email account to his Gmail account forwarding diligence summaries and deal summaries concerning the Homburg transaction, from Stephen Eddy of McMillan LLP	820
April 19, 2013	Email from Moyse's Catalyst account to his Gmail account forwarding a draft Plan of Arrangement document with comments from McMillan LLP, together with draft Order and Motion documents with further comments from McMillan LLP, sent originally by Marc-André Morin of that firm. This material again relates to the Homburg transaction.	821
April 19, 2013	Email from Moyse's Catalyst account to his Gmail account forwarding McMillan's comments on the "Homco 61 Plan", again related to the Homburg transaction.	N/A
April 19, 2013	Email from Moyse's Catalyst account to his Gmail account attaching document markups from Sandra Abitan of Osler, Hoskin & Harcourt LLP on the draft HII/Shareco Plan related to the Homburg investment.	N/A
April 20, 2013	Email from Moyse's Catalyst account to his Gmail account forwarding comments from Greg McIlwain of McMillan	822

Date	Description of item	Document #
	LLP on the Information Circular for the Homburg matter.	
April 21, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding the revised HII/Shareco plan provided by Sandra Abitan of Osler, Hoskin & Harcourt LLP.	N/A
April 21, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding further revisions to the Amended and Restated HII Plan from McMillan LLP.	823
April 25, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding a draft letter from Marc-André Morin of McMillan LLP, to be sent to Osler, Hoskin & Harcourt in the event that negotiations are not successful.	824
April 27, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding comments from Zach Michaud on the Information Circular.	825
April 28, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding a Media Script proposed by public relations advisor Jessie Bullens relating to the Homburg transaction.	826
May 7, 2013	Email from Moyses's Catalyst account to his Gmail account forwarding the documents "Homburg Investment Overview.pdf" and "HII Analysis v94 - for memo.pdf"	828
September 2, 2013	Email from Moyses's Catalyst account to his Gmail account attaching a marked-up copy of a Business Plan for a new entity (Geneba Properties) incorporated in connection with the Homburg transaction.	830
September 24, 2013	Email from Moyses's Catalyst account to the address wabdullah@nmfg.com containing only an attachment, NMRC Operating Model v8.xlsx, appearing to be information pertaining to Natural Markets Food Group	N/A
November 21, 2013	Email from Moyses's Catalyst account to his Gmail account containing a 165-page Organizational Chart for Natural Markets Food Group	831
February 3, 2014	Email from Zach Michaud to Moyses's Gmail account forwarding an exchange with Andrew Tully of the firm Kurt Salmon, enclosing a document entitled "NMFG Proposal 140130.pdf", appearing to be an investment proposal concerning Natural Markets Food Group	N/A

40. As is evident from the above, we identified a total of five (5) email items containing Catalyst confidential information which were not disclosed in Moyses's affidavits of documents. Further, we note that the search process did not result in copies being returned for

documents 829, 832 or 833 listed in Moyses's affidavit of documents and we have not reviewed these items.

41. There are several further areas warranting comment arising from our review of the email messages that were generated in the search. First, we identified one email dated October 30, 2013, in which Moyses emails an individual named Ian Quint (iquint@quintcap.com) seeking information on the Dutch commercial real estate market such as cap rates and market values, and indicating that he is seeking to generate a rough estimate of what certain properties in the Netherlands might be worth. It appears this inquiry is related to the Homburg matter. There is no identifiable confidential information contained in the exchange, but since it is possible that such information might be inferred from the subject-matter of the inquiry, we have included reference to it.

42. Second, we did not find evidence contained within the email messages delivered to us of Moyses transmitting Catalyst investment documents or information to West Face. The only Catalyst document we found transmitted to West Face is contained in an email from Moyses (via his Hotmail account) to Alex Singh, West Face's General Counsel, on May 28, 2014, in which Moyses supplied Singh with a copy of his Employment Agreement. That document as sent to West Face was redacted to prevent disclosure of information "related to the equity/carry structure of the firm".

43. I am aware from paragraph 62 and 63 of Moyses's July 7, 2014 Affidavit that he acknowledges having sent four Catalyst "research pieces" to West Face to serve as "writing samples" in the course of seeking employment at that firm, and that he acknowledges having deleted these email messages. We did not, however, find the original copy of this email

message in our own review of the material provided through the search process, other than a forwarded version contained within a solicitor-client privileged communication.

44. Third, we located two email messages sent to Moyse's Hotmail account dated Saturday, July 12 and Wednesday, July 16, 2014, which require comment. These emails constitute payment receipts and license keys for a software product. The software product purchased on July 12, 2014 was "RegClean Pro" and it is indicated to include "Special Disk Cleaning Tools". The product purchased on July 16, 2014 was "Advanced System Optimizer 3 [Special Edition]" which is said to include "Free PhotoStudio" and "Special Disk Cleaning Tools". According to the promotional website for these products (<http://www.systweak.com/aso/>), Advanced System Optimizer 3 is software which includes a feature named "Secure Delete", that is said to permit a user to delete, and over-write to military-grade security specifications, data so that it cannot be recovered through forensic analysis.

45. Given the nature and timing of the software installed, I requested that DEI take steps to determine whether the product was installed and whether it could be determined if the product had been used to over-write data or files prior to the computer being imaged. DEI advised me that, based on the creation date of the associated folders, RegClean and Advanced System Optimizer 3 were installed on July 16, 2014 at 8:50 and 8:53 a.m. respectively. The executable files for the Secure Delete feature are contained within the Advanced System Optimizer 3 folder. On July 20, 2014 at 8:09 p.m., a folder entitled "Secure Delete" was created, which suggests that a user of Moyse's computer took steps to make the use of that function available at that point in time.

46. DEI reported to me that the Secure Delete feature of the software provides several options for over-writing (i.e., "securely deleting") files. By default, the setting is "Fast secure delete" which causes a single pass overwriting process in which data is over-written with random characters. The second option is to use three passes using random characters and the third option is the so-called "military-grade" option which uses seven passes overwriting with random characters.

47. In terms of what may be deleted using this feature, DEI reports that the user may select from any of the following options within the software:

- (a) To wipe specific, individual files or folders;
- (b) To wipe an entire drive;
- (c) To wipe only "free space", *i.e.* currently unused or unallocated space which may contain fragmentary data from deleted files which have not yet been over-written either through ordinary usage of the computer or through deliberate over-writing.⁴

48. I asked DEI to advise me whether there was evidence that the product had been used in any of these ways. DEI reported that the content of the Moyse computer was not consistent with any use of the Secure Delete function to delete all free space and thereby prevent forensic analysis of the drive as a whole, on the assumption that the product indeed writes

⁴ By way of a more detailed explanation, this technique could be used to destroy evidence that might otherwise be recoverable of "deleted files", *i.e.*, files which the user has instructed the operating system to delete. The ordinary "delete" function of common operating systems does not, when employed, actually result in the destruction of the underlying data, but simply records the file as "deleted" and makes it inaccessible without forensic recovery techniques. The underlying data will generally remain present in the "unallocated space" of the hard drive. Unallocated space is space that the operating system treats as available to use for the storage/writing of new data or files. Thus, after a period of ordinary use, unallocated space will gradually be populated or filled in with new data, over-writing the old. Until the unallocated space where a "deleted file" is resident is over-written with new data, forensic recovery software can recover the file. The purpose of over-writing software such as Secure Delete, when applied to wipe all "free space" (aka "unallocated space") is to force the over-writing, with random data, of the latent content. Multiple, repetitive over-writing then simply increases the likelihood that forensic recovery tools cannot be used to recover the "deleted" content.

with random characters as is claimed in the product literature. Further, it is clear that the function was not used to wipe the entire drive, since there were substantial volumes of data produced to us. DEI cannot determine whether or not the Secure Delete function may or may not have been used to delete an individual file or files and this report accordingly cannot express any conclusion on that possibility other than to note that it exists.

Samsung Android Smartphone

49. The Android phone contained reviewable, potentially relevant information of the following types: (a) the user's Contacts; (b) records of documents downloaded to the device; (c) records of documents accessed or accessible through the Dropbox cloud-storage application installed on the device; (d) SMS and MMS text messages; and (e) data recovered from the Twitter application installed on the device.

50. DEI produced spreadsheets with the content of each such category of information recovered from the device, which we reviewed. We found no relevant content (and therefore no record of Catalyst confidential information being communicated) from reviewing Moyses's Contacts, his SMS and MMS text messages, or the recovered content of the Twitter application.

51. With respect to the record of downloaded documents, the data on the device recorded only those downloads occurring from and after May 27, 2014 (and continuing to July 21, 2014). While there are several entries appearing to be West Face-related documents (potentially employment-related documentation), there are no documents recorded which provide any basis to conclude that they might contain Catalyst confidential information.

52. With respect to the Dropbox account, all but a small number of file records were contained in folders marked “/Education”, “/Camera Uploads” and “/Personal”. Although we are not able to actually access the files themselves (since they are stored not on the device, but on the cloud-based Dropbox storage facility), it can at least be said that the file names of the documents appear to be consistent with those categorizations, and they do not appear to be Catalyst-related. Of the other files contained in the Dropbox, none appear to contain Catalyst confidential information.

Apple iPad

53. The Apple iPad contained limited reviewable, potentially relevant information of two types: (a) records of documents accessible through the “Dropbox” cloud storage application, and (b) information derived from the user’s Twitter account.

54. DEI was able to generate a list of documents accessible from this device from the “Dropbox” iOS application. The iPad contained records for some 1,327 total documents which were recorded by the operating system as accessible to the user at some point in time. Of these documents, a total of 1,017 documents were contained in a folder entitled “Catalyst”. I have attached as **Appendix “N”** a copy of the list of all files contained within the “Catalyst” folder, from the data supplied by DEI. The data generated also include a record of the last time that each file was recorded to have been accessed by the user, which is contained within that spreadsheet. I note that there are no records of the documents in the Dropbox being reviewed on any date subsequent to April 16, 2014, and therefore no evidence that the Dropbox files were viewed subsequent to Moyse’s departure from Catalyst on the iPad device.

55. In addition, DEI recovered the Twitter direct messages and “tweets” associated with the account deployed on this device. I reviewed those items and identified nothing of relevance nor any confidential information contained therein belonging to any party to this action.

PART IV - OBJECTIONS TO THE DRAFT REPORT PURSUANT TO THE PROTOCOL

56. On February 1, 2015 we provided a draft report pursuant to paragraph 10 of protocol to counsel for Catalyst and Moyse.

57. On February 13, 2015 we received an email response from counsel for Moyse. The email contained a letter to me setting out a number of objections to documents that had been identified and included in the draft report. I have attached a copy of this email as “**Appendix O**”.

58. Pursuant to the Protocol, we have reviewed the objections raised by Moyse’s counsel, and made alterations to our report to exclude those objections we were able to conclude were valid. Accordingly, the documents to which Moyse’s counsel has objected, and which objections we have determined to be justified, have been excluded from the Report. The documents pertaining to objections that we determined were not justified remain included in this Report.

PART V - CONCLUSIONS AS TO THE PROVISION OF CONFIDENTIAL INFORMATION TO WEST FACE

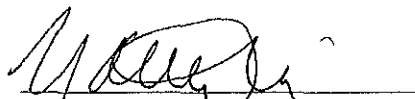
59. We found no further concrete evidence from our review of the files, their surrounding metadata, or Moyse’s email material or mobile devices, that confidential information

belonging to Catalyst was provided to West Face. That of course does not exclude the possibility that such information was transmitted to West Face in other ways, or that records of other confidential information could have been destroyed through deletion and overwriting, as noted above.

PART VI - CONCLUSION

60. The above represents the conclusions we have been able to draw with respect to the content of the Devices. If the parties require further information about our analysis to date, or the provision of copies of some or all of the documents, we await their direction or further direction from the Court as may be appropriate.

February 17, 2015



Stockwoods LLP
Barristers
TD North Tower
77 King Street West, Suite 4130
P.O. Box 140, Toronto Dominion Centre
Toronto, Ontario M5K 1H1

per **Brendan Van Niejenhuis** LSUC#: 46752J
Tel: 416-593-2487
Fax: 416-593-9345

Independent Supervising Solicitor

CATALYST CAPITAL GROUP INC. MOYSE *et al.*
Plaintiff and Defendants

Court File No: CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

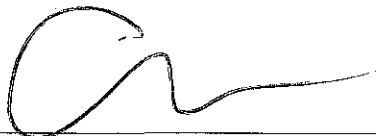
**REPORT OF THE INDEPENDENT
SUPERVISING SOLICITOR**

Stockwoods LLP
Barristers
TD North Tower
77 King Street West, Suite 4130
P.O. Box 140, Toronto Dominion Centre
Toronto, Ontario M5K 1H1

Brendan Van Niejenhuis LSUC#: 46752J
Tel: 416-593-2487
Fax: 416-593-9345

Independent Supervising Solicitor

This is Exhibit "U" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of connected loops and a long horizontal tail.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Minutes of Conference Call 12 February 2015 3:00 p.m.

For Catalyst Capital: Andrew Winton

For Brandon Moyses: Jeff Hopkins and Justin Tetreault

For ISS: Brendan van Niejenhuis

- At the outset, Moyses's counsel expressed the view that ISS has jurisdiction to make any necessary determination, and Catalyst cannot bypass the protocol and seek further information without a motion. Moyses's counsel also expressed the need for West Face to agree to any variation of the protocol, but indicated that subject to this being clear, they were content to hear Catalyst's comments and concerns.
- Catalyst's counsel indicated that Catalyst does not want to hold up finalization of draft report and indicated that if further work is needed, it take the form of a short supplementary report. He emphasized that the purpose of the discussion is to raise some areas of inquiry and make an effort to obtain answers without the necessity of a formal motion.
- Moyses's counsel agreed that he should proceed to outline the issues.
- Catalyst's counsel raised the following four issues:
 1. The additional search terms that were supplied on January 8, 2015 apparently yielded only five independent documents for review by the ISS. He proposed to ask the ISS to indicate which specific terms yielded those results. Depending on which terms generated those "hits", Catalyst may or may not continue to have a concern that an error occurred in the evaluation having regard to the uniqueness of the terms, particularly with regard to "Callidus" and associated terms.
 2. Catalyst proposed that the ISS also advise about the total number of hits which would have resulted, had the second set of terms been run without regard to deduplicating previously-produced items (i.e., items produced as a result of raising a 'hit' under the original set of search terms supplied in December).
 3. Catalyst expressed the concern that the number of hits associated with WIND Mobile and directly related search terms such as "Turbine" exceeded the actual number of documents identified in the search process by a very wide margin. He proposed that ISS should provide an explanation, if possible, for the divergence between the number of "hits" and the ultimate number of documents found and identified in the report.
 4. Finally, Catalyst expressed the same concern with respect to hits associated to Mobilicity and directly-related search terms, asking again for an explanation as to the large difference between the raw hit-count identified in the initial results and the ultimate number of documents identified.

- In each case, Moyse's counsel expressed an understanding of the purpose of the request, while also expressing concern that the process remain contained within the parameters of the Protocol. Moyse's counsel committed to consider the issue in good faith and to respond promptly with their position, possibly by the end of the day.
- During the articulation of Catalyst's concerns and in response to a specific question, ISS explained that deduplication had been directed and performed by the Expert at the stage the second set of search terms was run, for the purpose of not requiring re-production of items previously produced in the first set of search terms. Therefore, it is possible that the second set of search terms would have generated items that were also in place on the first list.
- At the conclusion of the call, Moyse's counsel confirmed that they were working on their objections which would be circulated by Friday, February 13. ISS advised that, subject to the nature and quantity of objections, it was likely that the Report could be finalized very shortly thereafter but noted his absence from Canada the week of February 16.
- The call concluded at 3:32 p.m.

This is Exhibit "V" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a wavy line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Andrew Winton

From: Jeff C. Hopkins <jhopkins@grosman.com>
Sent: February-12-15 4:27 PM
To: Andrew Winton; 'Brendan Van Niejenhuis'; Rocco DiPucchio; Justin Tetreault
Cc: 'Naomi Greckol-Herlich'; Theresa (Terry) Vandervoort
Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

Andrew:

After further consideration of Catalyst's requests our position remains the same.

As we outlined on the call, the information Catalyst seeks is work product, which it is explicitly excluded from receiving by the terms of the DRP. Providing Catalyst with data such as "hits" is not informative or helpful to the process given the fact that the ISS has reviewed the results of the hits and made the determination of what documents contained Catalyst's confidential information. Furthermore, the DRP does not require the ISS to explain why he did not consider certain documents to be confidential. In fact, to do so would reveal documents that are personal to Moyses and protected by the terms of the DRP.

Catalyst's requests seem to stem, not from the belief that any specific document has been inadvertently excluded but from Catalyst's belief that the ISS must have missed documents generally or mistakenly concluded that documents were not confidential. In fairness, rather than seeking clarification or clearing up a misunderstanding, these requests are better described as challenging the accuracy and / or completeness of the report. We have no reason to doubt that the ISS has properly fulfilled his mandate and cannot agree to any of Catalyst's requests. Accordingly, pursuant to paragraph 11 of the DRP Catalyst's recourse is to bring the appropriate motion.

Jeff.

Jeff C. Hopkins
 Partner

GROSMAN, GROSMAN & GALE LLP



Employment & Labour
 Lawyers

390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
 Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Andrew Winton [mailto:awinton@counsel-toronto.com]
Sent: Wednesday, February 11, 2015 2:21 PM
To: 'Brendan Van Niejenhuis'; Rocco DiPucchio; Justin Tetreault; Jeff C. Hopkins
Cc: 'Naomi Greckol-Herlich'
Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

Brendan,

I will try to clear this up. We would like to hold a conference call with you and counsel for Mr. Moyses to discuss the possibility that certain files were mistakenly classified as not containing Catalyst's confidential information.

We think that a brief conversation will go a long way towards helping us understand why certain decisions were made and to possibly identify a misunderstanding as to facts that led to documents being excluded in error.

We asked that Jim Riley of Catalyst participate to help explain, if necessary, why Catalyst would consider certain documents, which appear to have been omitted from the report, to be confidential.

We acknowledge that the Document Review Protocol ("DRP") does not expressly provide for this opportunity. It states at paragraph 11 that if Catalyst believes a document was improperly excluded, it may bring a motion for production of that document.

The goal of our request is to avoid the need for a motion if a short call is all it will take to clear up a misunderstanding that led to documents being excluded. We are trying to do things as efficiently as possible.

We would like to know if you and Naomi are willing to participate in such a call.

Thanks,

Andrew

Andrew Winton
Lax O'Sullivan Scott Lisus LLP

Direct: (416) 644-5342

This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

From: Brendan Van Niejenhuis [<mailto:BrendanVN@stockwoods.ca>]
Sent: February-11-15 1:39 PM
To: Rocco DiPucchio; Justin Tetreault; Jeff C. Hopkins; Andrew Winton
Cc: Naomi Greckol-Herlich
Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

All,

I'm not sure what response I can usefully give at this point. If there are concerns about the process that has been employed on our end, and there is room within the Protocol to address them, then I will do so when and if I know what they are. If there is no room for me to respond to them while remaining within the bounds of the Protocol, then depending on what they are I suppose I would either decline to do anything, or potentially seek direction on my own initiative from Justice Lederer. Beyond that I don't have anything to add for the moment.

Brendan.

Brendan van Niejenhuis
STOCKWOODS LLP
T: 416.593.2487
F: 416.593.9345

From: Rocco DiPucchio [<mailto:rdipucchio@counsel-toronto.com>]
Sent: Wednesday, February 11, 2015 10:31 AM
To: Justin Tetreault; Jeff C. Hopkins; Andrew Winton; Brendan Van Niejenhuis
Subject: Re: Conference call request [IWOV-CLIENT.FID45653]

Respond to what? I'm not aware of any restrictions on our ability to correspond with the ISS.

Sent from my Samsung Galaxy smartphone.

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

From: Justin Tetreault <jtetreault@grosman.com>

Date: 02-11-2015 10:21 AM (GMT-05:00)

To: Rocco DiPucchio <rdipucchio@counsel-toronto.com>, "Jeff C. Hopkins" <jhopkins@grosman.com>, Andrew Winton <awinton@counsel-toronto.com>, 'Brendan Van Niejenhuis' <BrendanVN@stockwoods.ca>

Cc:

Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

Rocco,

We would appreciate if you would give Brendan an opportunity to respond before you write to him with Catalyst's concerns.

Justin Tetreault



390 Bay Street, Suite 1100 Toronto, Ontario, M5H 2Y2

Tel: 416-364-9599 Fax: 416-364-2490

www.grosman.com

From: Rocco DiPucchio [<mailto:rdipucchio@counsel-toronto.com>]

Sent: Wednesday, February 11, 2015 10:12 AM

To: Jeff C. Hopkins; Andrew Winton; 'Brendan Van Niejenhuis'; Justin Tetreault

Subject: Re: Conference call request [IWOV-CLIENT.FID45653]

Jeff, we don't agree that our client would have no opportunity to discuss the report with the ISS, especially since your client is involved in any discussions. If you don't want to participate in a conference call, then we will likely write to the ISS and copy you.

Sent from my Samsung Galaxy smartphone.

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

From: "Jeff C. Hopkins" <jhopkins@grosman.com>

Date: 02-11-2015 10:07 AM (GMT-05:00)

To: Rocco DiPucchio <rdipucchio@counsel-toronto.com>, Andrew Winton <awinton@counsel-toronto.com>, 'Brendan Van Niejenhuis' <BrendanVN@stockwoods.ca>, Justin Tetreault <jtetreault@grosman.com>
Cc:
Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

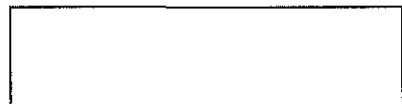
Rocco:

All we are saying is that the terms of the DRP are clear, and those terms don't give Catalyst the right to make what we view as essentially an objection to the findings of the draft report.

Moreover, since all parties are eager to conclude this process, this will only serve to further delay the final report. There is also the issue of Catalyst not being permitted to receive any work product from the ISS, which would make any discussion about what may be contained in the Image, or excluded from the report, difficult if not practically impossible.

Accordingly, subject to Brendon's thoughts, we simply feel that given the stated purpose below, a call for this purpose would not be proper or meaningful in the circumstances.

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
Tel: 416-364-9599 Fax: 416-364-2490
www.grosman.com

From: Rocco DiPucchio [<mailto:rdipucchio@counsel-toronto.com>]
Sent: Tuesday, February 10, 2015 10:24 AM
To: Jeff C. Hopkins; Andrew Winton; 'Brendan Van Niejenhuis'; Justin Tetreault
Subject: Re: Conference call request [IWOV-CLIENT.FID45653]

Jeff. Are you suggesting that we are not entitled to follow up at all with the ISS about the contents of his draft report and legitimate concerns we may have or even his final report for that matter? Please let me know whether that is the case as I would like to rely on your client's response for the record.

If you continue to object to a simple call which you can participate in, we will attend before Justice Lederer with the draft report in hand and seek his direction on the matter, with the ISS in attendance. I suggest that would be a waste of everyone's time.

Sent from my Samsung Galaxy smartphone.

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

From: "Jeff C. Hopkins" <jhopkins@grosman.com>
Date: 02-10-2015 9:59 AM (GMT-05:00)
To: Andrew Winton <awinton@counsel-toronto.com>, 'Brendan Van Niejenhuis' <BrendanVN@stockwoods.ca>, Justin Tetreault <jtetreault@grosman.com>
Cc: Rocco DiPucchio <rdipucchio@counsel-toronto.com>
Subject: RE: Conference call request [IWOV-CLIENT.FID45653]

Brendan, Rocco and Andrew:

We cannot provide an update on the status of Mr. Moyses's objections beyond stating that we will be objecting to certain documents, we are continuing to work on the objections, and we intend to comply with the timeline contained in the DRP.

With regard to your second point, we are unsure of the basis upon which Catalyst asserts that Confidential Information may have been excluded from the Draft Report. Catalyst has no access to the Images and thus no knowledge of the information contained within. The results contained in the Draft Report were based on the dozens of search terms provided by Catalyst to the ISS, who engaged in a comprehensive and exhaustive process to locate and identify Catalyst's Confidential Information. We have no reason to doubt that he has properly fulfilled his mandate and exercised his discretion to include documents that he believes contain Catalyst Confidential Information (subject to Mr. Moyses's objections). Finally, and most importantly, while the DRP provides an opportunity for Mr. Moyses to object to information that has been included in the Draft Report, Catalyst is not provided with a similar opportunity to object and, particularly, has no right to suggest that information has been improperly excluded.

As such, we do not think a conference call is necessary or appropriate at this time.

Jeff.

Jeff C. Hopkins
Partner



390 Bay Street, Suite 1100, Toronto, Ontario, M5H 2Y2
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From: Andrew Winton [<mailto:awinton@counsel-toronto.com>]
Sent: Monday, February 09, 2015 6:48 PM
To: 'Brendan Van Niejenhuis'; Jeff C. Hopkins; Justin Tetreault
Cc: Rocco DiPucchio
Subject: Conference call request [IWOV-CLIENT.FID45653]

Brendan, Jeff and Justin,

We would like to schedule a conference call for tomorrow to discuss two issues:

- 1) The status of Mr. Moyses's review of the draft report and/or intention to object to the inclusion of documents referred to in the draft report;
- 2) The possible exclusion of Catalyst Confidential Information from the draft report.

A call on these issues would be much more efficient than communicating via email or letter.

Also, if you all agree, Jim Riley from Catalyst would like to sit in on the call. Mr. Riley may be able to assist with the discussion as to why Catalyst believes confidential information may have been inadvertently excluded from the draft report.

Please let me know if you are available tomorrow and agree that we can speak.

Regards,

Andrew

Andrew Winton

Direct: (416) 644-5342

awinton@counsel-toronto.com

Lax O'Sullivan Scott Lisus 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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This is Exhibit "W" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to read 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

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416 366 8381 Telephone
416 364 7813 Facsimile
1 800 268 8424 Toll free

**FASKEN
MARTINEAU** 

David A. Hausman
Direct +1 416 868 3486
dhausman@fasken.com

December 15, 2014

By Email

Mr. Gregory Boland
Chief Executive Officer
West Face Capital Inc.
2 Bloor St. East, Suite 3000
Toronto, ON M4W 1A8

Dear Mr. Boland:

Re: Callidus Capital Corporation (“Callidus”)


We act as corporate counsel to Callidus.

Our client has received information from more than one investment dealer that West Face Capital has prepared or caused to be prepared, or has in its possession, a report or other document respecting Callidus that it is making available to third-parties.

Would you please confirm whether such a report or document, in fact, exists? If so, we are writing on behalf of Callidus to request a copy.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



David A. Hausman

DH/mk

This is Exhibit "X" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

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David A. Hausman
Direct +1 416 868 3486
dhausman@fasken.com

December 24, 2014

By Email

Mr. Gregory Boland
Chief Executive Officer
West Face Capital Inc.
2 Bloor St. East, Suite 3000
Toronto, ON M4W 1A8

Dear Mr. Boland:

Re: Callidus Capital Corporation ("Callidus")

We are writing to you again because we have not received a response to our letter of December 15, 2014.

As you have not confirmed that West Face does not have a report concerning Callidus, we can only assume that the information our client has received from third parties that such a report exists is accurate.

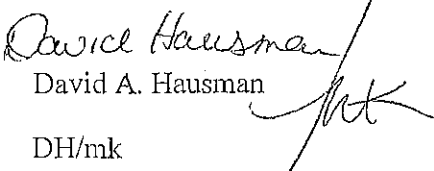
Based on Callidus' discussions with its investment dealer contacts regarding the report, it appears to contain incorrect or misleading information regarding Callidus that is defamatory. Accordingly, Callidus intends to refer this matter to its litigation counsel.

Given that the report would be producible in the context of litigation in any event, surely it makes sense for West Face to produce the report at this time so as to potentially avoid litigation and the associated costs.

We require a response as soon as possible.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP


David A. Hausman
DH/mk

This is Exhibit "Y" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to read 'Andrew Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

January 6, 2015

Matthew Milne-Smith
T 416 863 5595
mmilne-smith@dwpv.com

220844

BY E-MAIL

Mr. David A. Hausman
Fasken Martineau DuMoulin LLP
Suite 2400, Bay Adelaide Centre
333 Bay Street
Toronto, ON M5H 2T6

Dear Mr. Hausman:

West Face Capital Inc.


We are counsel to West Face Capital Inc., which has forwarded your letter of December 24, 2015 to me. It is unclear from your letter whether or not Callidus' "litigation counsel", to which you have indicated this matter will now be referred, is at Fasken Martineau DuMoulin LLP. As I am sure you know, Jonathan Levin of your firm has acted on a recurring basis for West Face in relation to its investment in Maple Leafs Foods. I trust that Faskens will not act against West Face.

With respect to the substance of your letter, we cannot respond directly to your vague allegations of "incorrect or misleading information regarding Callidus" without knowing what precisely you allege has been said, and why it is alleged to be incorrect or misleading. That said, speaking generally, West Face is confident in the accuracy of its investment research. It does not discuss companies with third parties without extensive research to support its analysis. Should Callidus commence defamation proceedings against West Face, West Face will vigorously defend itself in its Statement of Defence and demonstrate the truth of any statements that it has made about Callidus. West Face is also confident that the discovery process in any litigation commenced by Callidus will vindicate West Face's research.

West Face has also become aware that the C.E.O. of Callidus, Newton Glassman, has arranged a number of conference calls with various investment dealers. On these calls, we understand that Mr. Glassman slandered the principals of West Face by disparaging their honesty and integrity. As Mr. Glassman knows well, the investment dealers in question are key service providers to West Face, and Mr. Glassman's slander was intended to cause harm to West Face.

In addition to this slander, we understand that Mr. Glassman also intentionally interfered with West Face's contractual relations by explicitly encouraging clients of West Face to redeem their capital from West Face's funds. Again, Mr. Glassman's conduct appears to have been calculated specifically to cause harm to West Face. West Face reserves the right to seek damages from Mr. Glassman and Callidus, including damages for any loss of managed capital in its funds, for the harm done to West Face as a result of his and Callidus' ongoing conduct as described above.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Matthew Milne-Smith', with a stylized, flowing script.

Matthew Milne-Smith

MMS/ww

This is Exhibit "Z" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

ROCCO DI PUCCHIO
Direct: (416) 590-2260
rdipucchio@counsel-toronto.com
File No. 13230

LAX O'SULLIVAN SCOTT LISUS LLP
Suite 1920, 146 King Street West
Toronto ON M5H 1J8 Canada
Tel: 416 598 1744 Fax: 416 590 3730

**LAX
O'SULLIVAN
SCOTT
LISUS**

January 13, 2015

BY EMAIL

Mr. Matthew Milne-Smith
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto ON M5V 3J7

Dear Mr. Milne-Smith:

**Re: Callidus Capital Corporation ("Callidus") &
West Face Capital Inc. ("West Face")**

We are litigation counsel to Callidus. Please direct all future correspondence relating to this matter to our attention.

We have your letter to Mr. Hausman dated January 6, 2015. Thank you for confirming that West Face has prepared a research report on Callidus (the "Report") and that it has circulated the Report to third parties.

Your letter asks for particulars regarding West Face's misleading statements regarding Callidus without acknowledging Callidus' repeated requests for a copy of the Report. With respect, you are putting the cart before the horse.

Callidus should not have to resort to litigation to obtain a copy of the Report, which as you acknowledge in your letter West Face will have to produce in the discovery process. This is the third and final time Callidus will request a copy of the Report.

We note that the usual practice for parties in West Face's position, when they stand by their research, is to publish their report. West Face's refusal to do so in this situation is telling.

Yours truly,



Rocco Di Pucchio

RDP:AJW

This is Exhibit "AA" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'AW', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

January 14, 2015

Matthew Milne-Smith
T 416 863 5595
mmilne-smith@dwpv.com

220844

BY E-MAIL

Mr. Rocco DiPucchio
Lax O'Sullivan Scott Lisus
2750-145 King St. West
Toronto, ON M5H 1J8

Dear Mr. DiPucchio:

West Face Capital Inc.

Thank you for your letter of January 13, 2015. I would like to clarify two unfortunate misunderstandings in your letter.

Firstly, my letter to Mr. Hausman did not confirm or deny anything with respect to West Face and Callidus. It spoke in generalities about the quality and integrity of West Face's research, and the manner in which West Face would defend itself if any litigation were initiated against it. West Face stands by those assertions.

Secondly, with respect, it is not the duty of West Face to furnish Callidus with evidence that Callidus speculates is in our possession for the purpose of initiating a civil action. If your client believes that it has a proper factual foundation for a claim against West Face, it is free to commence litigation. West Face is confident it has done nothing wrong, and would vigorously defend itself from any such claim. If Callidus does not have such a factual foundation, then litigation is inappropriate and references to the discovery process are beside the point.

In summary, we do not believe any claim against West Face is justified and would defend against any such claim. If your client insists on proceeding, I have instructions to accept service of any Statement of Claim.

Yours very truly,

A handwritten signature in black ink, appearing to read "Matthew Milne-Smith".

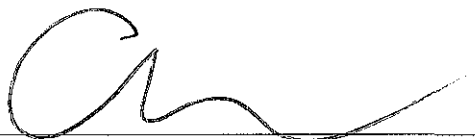
Matthew Milne-Smith

MMS/ww

Tor#: 3171433.1

DAVIES WARD PHILLIPS & VINEBERG LLP

This is Exhibit "BB" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to read 'Andrew Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

ROCCO DI PUCCHIO
Direct: (416) 598-2288
rdipucchio@counsel-toronto.com
File No. 13238

LAX O'SULLIVAN SCOTT LISUS LLP
Suite 1920, 145 King Street West
Toronto ON M5H 1J8 Canada
Tel: 416 598 1744 Fax: 416 598 3730

**LAX
O'SULLIVAN
SCOTT
LISUS**

January 16, 2015

BY EMAIL

Mr. Matthew Milne-Smith
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto ON M5V 3J7

Dear Mr. Milne-Smith:

**Re: Callidus Capital Corporation ("Callidus") &
West Face Capital Inc. ("West Face")**

Your letter dated January 14, 2015, which purportedly attempts to clarify, has only confused things further. The questions we have asked are straight-forward: Did West Face prepare a report on Callidus? If so, did it share that report with third parties? We had understood from your first letter that the answer to both questions is "yes", but your second letter equivocates on these simple questions by inexplicably refusing to either confirm or deny the existence of any report.

If West Face has prepared a report that has been shared with third parties, then that ought to be acknowledged and the report ought to be shared with us so that we can identify any potential defamatory statements and provide West Face with an opportunity to publish a retraction and an apology, if necessary. If West Face is so sure that it has done nothing wrong and stands behind its research, then show us the report and we can avoid unnecessary litigation.

We have unfortunately been through this before with West Face, and, as you will see from the enclosed decision, it did not end well for your client. As in that case, we would like to avoid having to resort to litigation to achieve a result that reasonable parties should be able to arrive at through rational discussion. I would suggest that playing a "cat and mouse game" in relation to the existence of a report does not serve anyone's best interests, and simply guarantees litigation where it may otherwise be avoided.

- 2 -

This is my client's fourth, and final, request: please answer the questions above and send us a copy of West Face's report on Callidus if one exists.

Yours truly,

A handwritten signature in black ink, appearing to read "Rocco Di Pucchio". The signature is fluid and cursive, with a prominent peak in the middle.

Rocco Di Pucchio

RDP:AJW

Enclosure

This is Exhibit "CC" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

January 20, 2015

Matthew Milne-Smith
T 416 863 5595
mmilne-smith@dwpv.com

220844

BY E-MAIL

Mr. Rocco DiPucchio
Lax O'Sullivan Scott Liss
2750-145 King St. West
Toronto, ON M5H 1J8

Dear Mr. DiPucchio:

West Face Capital Inc.

Thank you for your letter of January 15, 2015. I understand that your client wants access to West Face's proprietary research about Callidus. However, West Face is neither required nor inclined to share its research with the target of such research, let alone a target majority-owned by one of West Face's competitors.

You have repeatedly referred to the threat of litigation, but West Face does not know what you allege to be actionable. If you particularize the basis on which you believe West Face has breached any duty owed to Catalyst or Callidus, we may be better able to respond in a more productive and helpful manner. The more particulars you can provide about the basis for your threatened claim against West Face, the better we will be able to respond to such claims. It perhaps goes without saying that West Face does not believe it has committed any wrongdoing with respect to your clients, but it is willing to consider in good faith the particulars of any concerns you may have.

Yours very truly,

A handwritten signature in black ink, appearing to read "Matthew Milne-Smith".

Matthew Milne-Smith

MMS/ww

This is Exhibit "DD" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to read 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

ROCCO DI PUCCHIO
Direct: (416) 598-2268
rdipucchio@counsel-toronto.com
File No. 13238

LAX O'SULLIVAN SCOTT LISUS LLP
Suite 1920, 145 King Street West
Toronto ON M5H 1J8 Canada
Tel: 416 598 1744 Fax: 416 598 3730

**LAX
O'SULLIVAN
SCOTT
LISUS**

January 26, 2015

BY EMAIL

Mr. Matthew Milne-Smith
Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto ON
M5V 3J7

Dear Mr. Milne-Smith:

**Re: Callidus Capital Corporation ("Callidus") &
West Face Capital Inc. ("West Face")**

Your letter dated January 20, 2015 confirms what we had assumed in our first letter to you, and what your first letter to us was unable to confirm, namely that West Face has prepared a research report about Callidus. Moreover, your use of the word "target" to describe Callidus finally confirms that the report was shown to third parties.

Thank you also for confirming that West Face considers Catalyst to be a "competitor" -- we were surprised when Thomas Dea swore an affidavit last year on behalf of your client in which he denied this obvious fact. We are pleased we can now put that matter to rest.

With respect, the balance of your letter is disingenuous. If West Face truly wished to be "productive" and "helpful", as you put it, it would just send us a copy of its report and we can put an end to this merry-go-round of letter writing and get to the bottom of the matter.

You state that West Face does not believe it has committed any wrongdoing. With respect, it is not acting like an innocent party. It is acting like a party with something to hide.

We will not ask for the report for a fifth time -- it is clear West Face is determined, yet again, to force an aggrieved party to commence litigation before it will "come clean".

- 2 -

That said, as a matter of professional courtesy, I enclose a copy of a notice of motion filed last week in the proceeding I referred to in my previous letter. An earlier version of this notice was served on West Face on January 13.

Yours truly,



Rocco Di Pucchio

RDP:AJW

Enclosure

This is Exhibit "EE" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON



155 Wellington Street West
Toronto ON M5V 3J7
dwpv.com

January 28, 2015

Matthew Milne-Smith
T 416 863 5595
mmilne-smith@dwpv.com

220844

BY E-MAIL

Mr. Rocco DiPucchio
Lax O'Sullivan Scott Lisus
2750-145 King St. West
Toronto, ON M5H 1J8

Dear Mr. DiPucchio:

West Face Capital Inc.

Thank you for your letter of January 26, 2015. With respect, we do not accept the many inferences you purport to draw from our correspondence.

We are aware of your client's motion alleging that West Face has obtained and misused confidential information about Callidus from Mr. Moyse. Those allegations are incorrect, and will be refuted in accordance with the court-ordered schedule in that action. Given your client's motion, we do not think it appropriate to have any further correspondence about matters that are before the Court.

Yours very truly,

A handwritten signature in black ink, appearing to read "Matthew Milne-Smith".

Matthew Milne-Smith

MMS/ww

This is Exhibit "FF" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to be 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

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

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Callidus Capital Corp Stock Symbol: CBL-T









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Company Name	Symbol	Notes	Date	Signal	Expert	Opinion	Price
CBL-T			2014-12-30	COMMENT	Jerome Hass	<p>The only pure play in Canada on asset based lending, a type of lending that the banks tend to shy away from. Essentially more distressed borrowers, so in this environment investors are concerned about what their loan book is like. A firm presented a very formidable "Short" case recently, which is probably part of the reason for the selloff. On the 23rd, they came up with a very strong update in their portfolio, which surprised the market and the stock rallied. Thinks this is cheap. Trades at 10X earnings. Growing their book at a phenomenal pace. They only listed in April of this year, so a relatively new name. He would rather be in this than any of the banks.</p> <p>  / Be the first to comment</p> <p> Tweet #finance</p>	<p>Price: \$17.430 Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES Bias: UNKNOWN Owned: Unknown</p>
CBL-T			2014-11-28	BUY	Jason Donville	<p>This company's model is one where you should do well in a bad economy. People are more likely to use their services when they are a little bit stretched or have problems. It does well when a lot of the rest of the economies are not doing too well. Has a very high ROE in the 23%-24% range.</p> <p>  / Be the first to comment</p> <p> Tweet #finance</p>	<p>Price: \$21.500 Subject: GROWTH & FINANCIALS Bias: UNKNOWN Owned: Yes</p>
CBL-T			2014-11-26	COMMENT	Peter Imhof	<p>This is a lender. Went public at about \$14 and was heavily oversubscribed. Every quarter they have come out with very good earnings, and thinks they have a lot of runway here in doing other loans with higher fees. Expects the earnings to ramp up quite a bit. Trading at a low multiple compared to others. Management is quite adept at putting the money to work and having a good return on capital.</p> <p>  / Be the first to comment</p>	<p>Price: \$21.500 Subject: NORTH AMERICAN - SMALL Bias: CAUTIOUS Owned: Yes</p>

CBL-T

2014-10-21

TOP PICK

Jerome Hass

Tweet #finance

Long. A Pairs trade with a Short on Laurentian Bank (LB-T). This is an asset based lender, which he feels is an underserved niche in Canada. Although the big banks have them, it's not something they really embrace. They don't like high risk lending. An attractive growth story.

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Tweet #finance

Price: \$20.770
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: SELECTIVE
Owned: Yes

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Jerome Hass , Partner

Lightwater Partners



Address

120 Adelaide Street West, Suite 2400
 Toronto, On
 M5H 1T1

Contact Info



Telephone: +1 (416) 504-9767


Email: [Contact this Expert](#)

Website: <http://www.lightwaterpartners.com/home.html>

Bio:

Lightwater Partners is a Toronto-based alternative asset manager. Lightwater focuses on mid-cap Canadian stocks and long / short strategies. It manages two funds, the **Lightwater Long Short Fund** and the **Nimble Fund**. These two funds returned 46% and 53% respectively in 2013 (returns net of all fees and expenses). Lightwater was established in 2007 and it was one of the small number of Canadian managers who earned a positive return in 2008.

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




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A note about charts:

These are thumbnail sketches of the stock prices, from the time of the opinions. The charts are not detailed, and are meant only to give an overview (note the number of datapoints). The charts show one month of information or up to six months if you are a subscriber. Recent opinions will obviously have fewer datapoints than older opinions.

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Date	Signal	Chart	Symbol	Company	Opinion	Price
2015-02-10	N/A	Must be logged in to use chart	A Commentary	A Comment -- General Comments From an Expert	<p>Investing Style. He likes to look for names where there are zero, 1 or 2 analysts on the name when he initiates a position. Doesn't like being the 5th, 6th or the 20th person to look at a stock. Being early and looking at under-owned and under-researched names allows him to unearth some interesting opportunities, particularly in the mid-cap space. There are only about 450-500 names in this category in the Canadian market, so he typically invests in a maximum of 40 names, which means he is looking for less than 10% of them. Has a library of names that he knows, that he built up over the last 7 years, and he tends to stick with his knitting in those names. Has 4 components to his portfolios, but pair trading is the bulk of it. Two thirds of his portfolio is in pairs trading. This means going Long in one position and typically going Short a stock in the same industry. That helps you to take out market specific risks, but also industry specific risks. A great example of that would be Canadian National (CNR-T) versus Canadian Pacific (CP-T). As the market moves up or down, it is how they move together. Because they are in similar industries, you can offset the impact of rising or falling diesel prices, or weather, or currency impacts, so you can really isolate the alpha in those 2 trades. What people miss on pairs trading is that it is not in absolute terms what happens to the stock, it is how they react relatively. For example, in a falling market, both of them can fall in value, but as long as the Short position falls more than the Long position, you actually earn money. This means you can make money in any market condition.</p> <p>  / Be the first to comment</p> <p> Tweet #finance</p>	<p>Price: \$0.020 Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES Bias: UNKNOWN Owned: _N/A</p>
2015-02-10	CP-T	Must be logged in to use chart	ANY-Q	Sphere 3D	<p>(SHORT) He is somewhat skeptical of the technology. In order to hedge his position he sold his position and held the warrants, which essentially was a free option on the company to see if they succeeded or not. He kept waiting for their 1st major sale, but it just never came about. He got frustrated by the lack of any sales, so exercised his warrants. He has had this Short on for about 2 years now.</p> <p>  / Be the first to comment</p> <p> Tweet #finance</p>	<p>Price: \$3.660 Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES Bias: UNKNOWN Owned: Yes</p>

2015-02-10



SELL


Must be logged in to use chart

ARF-T

Armtec Infrastructure

Hasn't looked at this too seriously in the last 5 years. Cut the dividend dramatically in 2011 and it fell dramatically. Very oriented towards infrastructure. It is concrete and precast concrete. The headwinds that governments are facing and exposure to the oil patch and Western Canada are things you should be concerned about. If they couldn't do it before, he can't see them doing it now.

  / [Be the first to comment](#)

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Price: 562
\$0.230
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: UNKNOWN
Owned: No

2015-02-10



DON'T BUY

Must be logged in to use chart

BAD-T

Badger Daylighting

You need to be cautious on this. They have a lot of exposure to the oil/gas sector, which is very tough at this point with the hydro-vac's. About 25% of their business is directly affected. The Key Full (?) numbers are going to be very difficult for them and he wouldn't enter a position until they came out as a minimum.

  / [Be the first to comment](#)

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Price: \$25.750
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: UNKNOWN
Owned: No

2015-02-10

TOP PICK

Must be logged in to use chart

BMO-T

Bank of Montreal

(A Top Pick April 16/14.) (Short) Long Guardian Capital (GCG.A-T) and short Bank of Montréal (BMO-T). This and Guardian could both go up in absolute value, as long as your Long position goes up more than your Short position. It's all about the relative movement between the 2.

  / [Be the first to comment](#)

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Price: \$77.810
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: UNKNOWN
Owned: Yes

2015-02-10

COMMENT

Must be logged in to use

CLR-T

Clearwater Seafoods Inc.

Largest owner of shellfish quotas in North America, with monopolies on a lot of their quotas, at least in Canada. We are becoming increasingly conscious of proteins and benefits from sea foods. Conversely, supply is limited to declining, so it is great from a fundamental perspective. There is also a scarcity factor of consumer names within Canada, so it should probably trade at a higher valuation than it does. He likes that it has started to become an institutional stock and has picked up in coverage since he has been an owner. Has some very favourable

Price: \$13.270
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES

2015-02-10

DO NOT BUY

What has happened in the market

CNR-T

Canadian National R.R.

tailwinds coming in because of higher shellfish prices. Also, they do a lot of sales into the US, so will be the beneficiary of the stronger US\$.

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Still trading at about 17X forward earnings, so it is above its historical norm. Institutional investors trade this on a forward PE, and it is at the top end of that, so this is not a great entry point. However, as a long-term investment, it is a great proxy for the Canadian economy. Also, relatively modest in terms of its debt load. He just would not invest in it currently.

/ [Be the first to comment](#)

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Bias: UNKNOWN
Owned: Yes

Price: \$87.360
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: UNKNOWN
Owned: No

2015-02-10

PAST TOP PICK

What has happened in the market

CXI-T

Currency Exchange Intl.

(A Top Pick April 16/14. Up 105.63%.) This is essentially a wholesaler of foreign exchange. They supply the banks, credit unions and trust companies. Currently most of their sales are in the US, but he expects that they will get a lot more sales within Canada this year. The key catalyst for this is a bank license, and he expects they will get one within the 1st half of this year. As a consequence, they will be able to tap the Canadian banks in a relatively short order. Thinks that as soon as the bank license comes out, it will immediately gap up to \$30. Expects it will grow at 50% this year. Last year, even without the bank license, they grew revenues 40%.

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Price: \$26.150
Subject: CANADIAN MID-LARGE & SHORT-LONG STRATEGIES
Bias: UNKNOWN
Owned: Yes

2015-

What has happened

Counsel

A residential mortgage lender, but don't actually take the mortgage on their own Book. They act as a facilitator between a financial institution that wants to lend money, and a borrower who wants to borrow money. They would administer it, but it would immediately go off their books, so they don't have any default risks personally. It absolutely got pulverized by the market last year. It was down 24% in 2014 compared to their peers Home Capital Group (HCG-T) and Equitable Group (EQB-T), Equitable was up 29% and Home Capital was up 24%. Thinks it was really unfairly punished by the market. The Q3 numbers were the real

Price: \$1.930
Subject: CANADIAN MID-LARGE & SHORT-

02-10

COMMENT


in to
use
chart

CXS-T

Corporation

catalysts for the stock, which very much surprised the street, so that in the last 3 months, there has been a recognition, and the company is up 28%, where Home Capital is down about 18% and Equitable Group is down about 14%. Probably trades at about half the valuation of its peers. Expects the stock to grow at about 30% this year and is trading at only 6X forward earnings.

  / Be the first to comment

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564
LONG STRATEGIES
Bias:
UNKNOWN
Owned:
Yes

2015-02-10



COMMENT

Must
be
logged
in to
use
chart

DCL-T

DirectCash
Payments
Inc

The largest owner of the white label ATMs in Canada and Australia. The 3rd largest in the UK. They actually have a bigger network than all of the banks. A nice yield of about 8%. 8X EBITDA, which is pretty modest. Likes management. CEO owns about 12%. A name he is watching. May not be a good time to enter, but a good, long term holding.

  / Be the first to comment

 Tweet #finance

Price:
\$17.320
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES
Bias:
UNKNOWN
Owned:
No

2015-02-10

COMMENT


Must
be
logged
in to
use
chart

DIV-T

Diversified
Royalty
Corp.

Has been looking at this. The name is a bit of a misnomer. It is not yet a "diversified royalty" as they have only one investment which is in Franworks, a chain of casual diners and bars, primarily based in Western Canada. If you think about some of the macro headwinds facing Western Canada, he is somewhat concerned about their sole investment, so he is very cautious from that perspective. Prefers Grenville Strategic Royalty (GRC-X) instead.

  / Be the first to comment

 Tweet #finance

Price:
\$2.470
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES
Bias:
UNKNOWN
Owned:
No

2015-02-10

BUY on
WEAKNESS



Must
be
logged
in to
use
chart

DSG-T


Descartes

A low maintenance stock. Every portfolio should have a couple of these names in them. On the 1st day of a quarter, they know with 90% certainty what 90% of their earnings are going to be. They spend the next 90 days determining that last 10%. Because of this, their quarterly events tend to be a non-event, which from his perspective is great, because he loves avoiding surprises. This stock grows about 15% annually. They do a lot of small tuck-in acquisitions. A nice play on global logistics and global trade, as well as increasing security. They help to smooth the customs duties path for cargo. Buy on the dips and hold it for the long run.

Price:
\$18.940
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES
Bias:

  / [Be the first to comment](#)

565
UNKN
Owned:
Yes

 [Tweet #finance](#)

2015-02-10


COMMENT


Must be logged in to use chart

ECI-T

EnerCare Inc

He likes this company. Their main business is water heaters, primarily in southern Ontario. This should be a very, very sleepy business. Last year they had an exceptionally exciting year. Octavian, a US hedge fund, started shaking a few cages by talking a "go private" bid, which got the share price moving. Then they bought Direct Energy. Inexpensive at 8.5X EBITDA versus its peers at about 11X. About a 6.5% dividend yield. Great, long term investment. The market is not pricing in any of the growth from the sub-metering business, which will give it the kicker in the next 5 years going forward.

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 [Tweet #finance](#)

Price:
\$14.510
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES
Bias:
UNKNOWN
Owned:
Yes

2015-02-10



BUY

Must be logged in to use chart

EL-X

Engagement
Labs Inc

Interesting little company. Essentially they act as a marketing efficiency indicator. Think of them as what Nielsen is to the television space or comScore (SCOR-Q) to the Internet space, they are the social media space. They want to be the de facto standard for measuring the effectiveness of social advertising in social media. Got a lot of publicity during the Super Bowl. Just got a new CEO who came from comScore, and thinks he will grow the business. Still very much early days, but potentially could be something very big. Very small company, so you may want only a small portion of your portfolio in it.

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Price:
\$0.590
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES
Bias:
UNKNOWN
Owned:
Yes

2015-02-10

TOP PICK

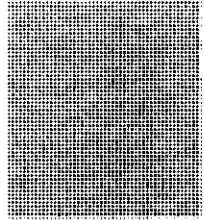
Must be logged in to use

GCG.A-T

Guardian
Capital
Group

(A Top Pick April 16/14. Down 0.87%.) Long Guardian Capital (GCG.A-T) and short Bank of Montréal (BMO-T). The whole rationale behind this was that in 2001 this company sold its mutual fund business to Bank of Montréal in exchange for 5 million Bank of Montréal shares. The company sat on these shares until about 18 months ago. They still hold 4.7 million shares. This large investment portfolio is currently worth about \$16.75. Their stock price today is \$16.95. Essentially you are paying \$0.20 for the business. Very good institutional managers, who have a large private wealth network as well. Recently made an acquisition in the UK. Yield of 1.54%.

Price:
\$16.950
Subject:
CANADIAN
MID-LARGE
& SHORT-
LONG
STRATEGIES



chart

Feels that Bank of Montreal, or one of the other banks, is going to take them out at a very healthy premium.

Bias: **566**
UNKNOWN
Owned:
Yes

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This is Exhibit "GG" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of connected loops and a long horizontal tail.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

Court File No. CV-14-507120

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

and

BRANDON MOYSE and WEST FACE CAPITAL INC.

AMENDED AMENDED STATEMENT OF CLAIM

PURSUANT TO CONFORMANCE A

AMENDED THIS MODIFIED

RULE/LA REGLE 26.02 (1)

THE ORDER OF L'ORDONNANCE DU JUGE

DATED / FAIT LE

Plaintiff

REGISTRAR
GRENIER
SUPERIOR COURT OF JUSTICE

TO THE DEFENDANT(S):

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

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

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

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

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

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

-2-

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

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

Issued by

N. Mohammed

Local Registrar

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

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

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

CLAIM

1. The Plaintiff claims:
 - (a) An interim, interlocutory and/or permanent injunction restraining the defendant Brandon Moyse ("Moyse"), his agents or any persons acting on his direction or on his behalf, and the defendant West Face Capital Inc. ("West Face"), its officers, directors, employees, agents or any persons acting under its direction or on its behalf, and any other persons affected by the Order granted, from:
 - (i) Soliciting or attempting to solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised or sponsored by Catalyst or the Catalyst Fund Limited Partnership IV (the "Fund") as at June 25, 2014, until June 25, 2015;
 - (ii) Interfering with the Plaintiff's relationships with its employees which, without limiting the generality of the foregoing, shall include any attempt to induce employees of the Plaintiff to leave their employment with the Plaintiff; and
 - (iii) Using or disclosing the Plaintiff's confidential and proprietary information (including, without limitation, (i) the identity or contact information of existing or prospective investors in the Fund and any such future partnership or fund, (ii) the structure of the Fund, (iii) marketing strategies for securities or investments in the capital of or owned by the Fund (iv)

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

- (b) An order requiring the defendants to immediately return to Catalyst (or its counsel) all Confidential Information in their possession or control;
- (c) An order prohibiting any of the defendants from, in any way, deleting, modifying or in any way interfering with any of their electronic equipment, including computers, servers and mobile devices, until further Order of this Honourable Court;
- (d) An interim, interlocutory and permanent injunction prohibiting the defendant Brandon Moyses ("Moyse") from commencing or continuing employment at the defendant West Face Capital Inc. ("West Face") until December 25, 2014;
- (d.1) An interim, interlocutory and permanent injunction prohibiting West Face from voting its interest in Data and Audio Visual Enterprises Wireless Inc. in any proposed transaction involving Wind Mobile;
- (d.2) General damages as against West Face in an amount to be particularized prior to trial;

(d.3) A constructive trust over all property, including, but not limited to, securities, security interests, debts and other financial instruments, acquired by West Face, its officers, directors, employees, agents or any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;

(d.4) In addition or in the alternative to the relief sought in paragraph 1(d.3), an accounting of all profits earned by West Face, its officers, directors, employees, agents, any persons acting under its direction or on its behalf, as a result of its misuse of the Confidential Information;

- (e) Punitive damages in the amount of \$300,000, as against West Face, and \$50,000, as against Moyse;
- (f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The plaintiff's costs of this action on a substantial indemnity basis, plus the applicable H.S.T.; and
- (h) Such further and other relief as to this Honourable Court may seem just.

The Plaintiff – The Catalyst Capital Group Inc. (“Catalyst”)

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

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

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

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

The Defendants

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

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

The Special Situation Investment Market in Canada

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

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

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

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

- (a) Appointing a representative as interim CEO and other senior management;
- (b) Replacing or augmenting management;

-8-

- (c) Providing strategic direction and industry contacts;
- (d) Establishing and executing turnaround plans;
- (e) Managing costs through a rigorous working capital approval process; and
- (f) Identifying potential add-on acquisitions.

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

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

The Employment Agreement

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

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

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

Non-Competition

You agree that while you are employed by the Employer and for a period of six months thereafter, if you leave of your own volition or are dismissed for cause and three months under any other circumstances, you shall not, directly or indirectly within Ontario:

(i) engage in or become a party with an economic interest in any business or undertaking of the type conducted by [Catalyst] or the Fund or any direct Associate of [Catalyst] within Canada, as the term Associate is defined in the *Ontario Business Corporations Act* (collectively the "protected entities"), or attempt to solicit any opportunities of the type for which the protected entities or any of them had a reasonable likelihood of completing an offering while you were under [Catalyst]'s employ; and

(ii) render any services of the type outlined in subparagraph (i) above, unless such services are rendered as an employee of or consultant to [Catalyst];

Non-Solicitation

You agree that while you are employed by the Employer and for a period of one year after your employment ends, regardless of the reason, you shall not, directly or indirectly:

(i) hire or attempt to hire or assist anyone else to hire employees of any of the protected entities who were so employed as at the date you cease to be an employee of [Catalyst] or persons who were so employed during the 12 months prior to your ceasing to be an employee of [Catalyst] or induce or attempt to induce any such employees of any of the protected entities to leave their employment; or

(ii) solicit equity or other forms of capital for any partnership, investment fund, pooled fund or other form of investment vehicle managed, advised and/or sponsored by any of the protected entities as at the date you ceased to be an employee of [Catalyst] or during

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

Confidential Information

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

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

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

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

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

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

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

Moyse Breaches the Employment Agreement

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

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

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

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

The Misappropriation and Conversion of Catalyst's Confidential Information

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

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

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

- (a) Catalyst Weekly Reports – this document contains a summary of all existing investments and contemplated investment opportunities;
- (b) Quarterly letters reporting on results of Catalyst's activities;
- (c) Internal research reports;
- (d) Internal presentations and supporting spreadsheets; and
- (e) Internal discussions regarding the operations of companies in which Catalyst has made investments.

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

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

West Face Induced Moyse to Breach the Employment Agreement

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

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

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

Catalyst Will Suffer Irreparable Harm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Unjust Enrichment

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

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

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

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

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

Punitive Damages

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

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

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

-18-

~~June 25, 2014~~
October 9, 2014

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
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Toronto, Ontario M5H 1J8

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Lawyers for the Plaintiff

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE and WEST FACE CAPITAL INC.
Defendants

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

LAX O'SULLIVAN SCOTT LISUS LLP
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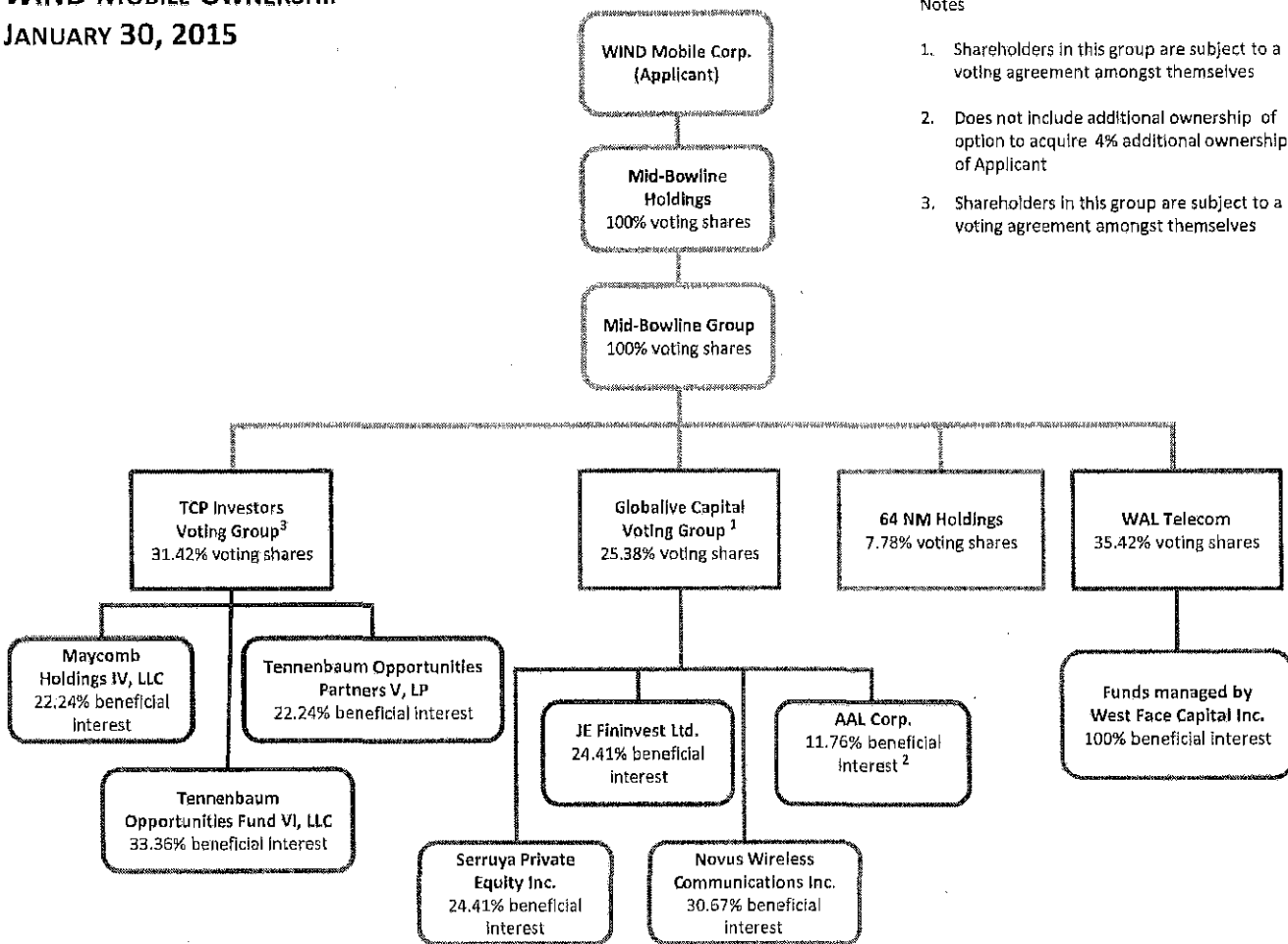
This is Exhibit "HH" referred to in the Affidavit of James A. Riley
sworn February 17, 2015

A handwritten signature in black ink, appearing to read 'A. Winton', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

ANDREW WINTON

**WIND MOBILE OWNERSHIP
JANUARY 30, 2015**



Notes

1. Shareholders in this group are subject to a voting agreement amongst themselves
2. Does not include additional ownership of option to acquire 4% additional ownership of Applicant
3. Shareholders in this group are subject to a voting agreement amongst themselves

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- BRANDON MOYSE et al.
Defendants

589

Court File No. CV-14-507120

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(MOTION RETURNABLE MARCH 19, 2015)

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Lawyers for the Plaintiff/Moving Party

THE CATALYST CAPITAL GROUP INC.
Plaintiff

-and- VIMPELCOM LTD. et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF
PROCEEDING COMMENCED AT
TORONTO**

**MOTION RECORD OF THE DEFENDANT/MOVING
PARTY WEST FACE CAPITAL INC.
(VOLUME 2 OF 19)**

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