

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

**SUPPLEMENTARY REPORT OF THE INDEPENDENT SUPERVISING
SOLICITOR**

PART I - BACKGROUND

1. On February 12, 2015, following the release of my draft Report, a conference call was convened among myself, Andrew Winton (one of the counsel for the Plaintiff) and Jeff Hopkins and Justin Tetreault (counsel for Moyse). In the course of that call, Plaintiff's counsel asked that Moyse's counsel consider agreeing to a request that I prepare a supplemental report addressing four inquiries as to the outcome of the search process. A copy of the Minutes of this conference call are attached as **Appendix "A"**.
2. After considering this proposal, Moyse's counsel replied later on February 13, 2015 advising that they did not consent to this supplemental report being prepared and released. A copy of this email correspondence is attached as **Appendix "B"**.
3. On March 12, 2015, I was advised by Mr. Winton by email correspondence that Moyse's new counsel had reconsidered this position and now agreed that the requested

supplemental report should be completed and provided. A copy of this email correspondence is attached as Appendix "C".

PART II - THE MATTERS IN ISSUE

4. This Report considers four issues summarized in the following headings, based on the Minutes reproduced at Appendix A.

(a) Which documents were produced as responsive to the second set of search terms supplied on January 8, 2015?

5. The following table contains filenames and descriptions of each of those documents, together with an indication of which search term the documents were responsive to:

Document name	Description	Search Term
Desert War Readme.doc	An instruction manual for the "Desert War" expansion for the computer game "Sid Meier's Civilization IV"	Leader
09-03-12 Brandon Moyse Cover Letter.pdf	A 2012 employment-seeking cover letter for Moyse while still employed by Credit Suisse in New York	Leader
Penn Alumni Interviews.docx	Reports on interviews by Moyse of candidates to enter the undergraduate program at the University of Pennsylvania	Leader
Redswoosh Click Thru.doc	A software end-user license agreement for the software "Redswoosh Library for Actionscript API"	Provision
Miami International Airport.pdf	A 2012 Airport Air Service Profile outlining traffic	Xchange

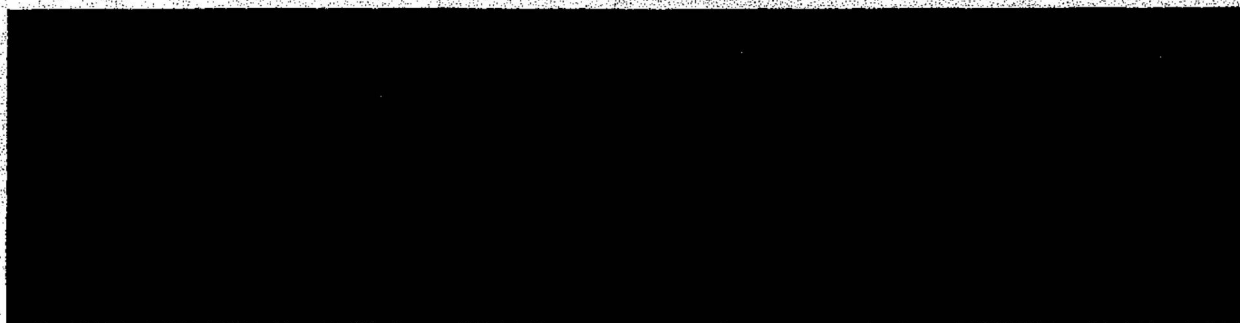
	patterns at Miami International Airport for 2012.	
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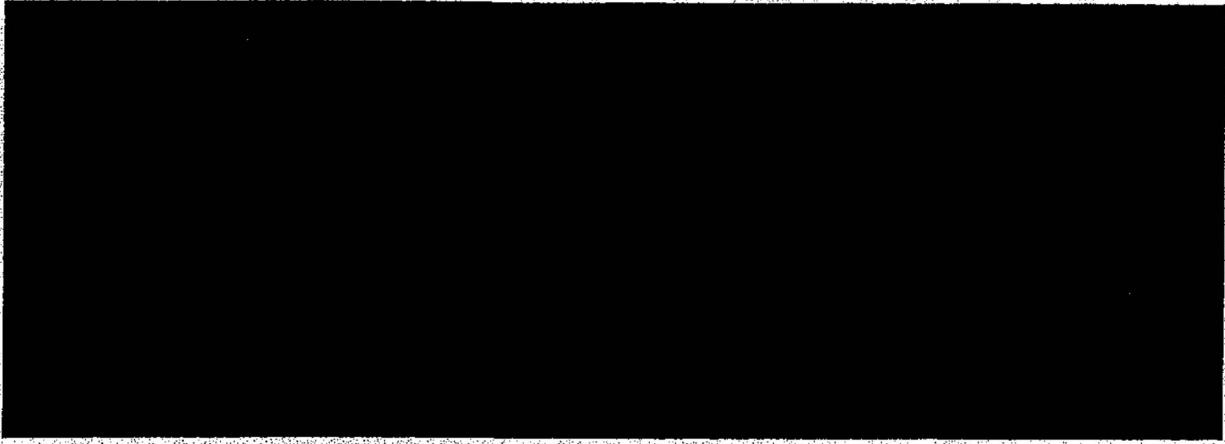
6. As is evident from our principal Report, none of these documents were judged to be relevant or to contain Catalyst Confidential Information.

7. In addition to these five documents, we were supplied with a further .pst file containing a total of 233 additional emails, all of which were reviewed. None of the emails related to Moyse's work at Catalyst, with the likely exception of numerous automatic "Google Alerts" emails which alert the subscriber to the appearance in the news media of a corporate search term. Terms which Moyse appears to have subscribed to using Google Alerts and which appear to relate to his work for Catalyst include Hertz, Avis, Europcar, Fresh Market and Whole Foods.

(b) What total number of hits would have resulted from the second set of search terms, had deduplication filters not been applied to exclude from production and review those items that had already been produced in response to the first set of search terms?

8. I requested that Wayne Doney of Digital Evidence International perform this analysis. On March 26, 2015 Mr. Doney advised me that he had done so and of the total number of hits reported by the forensic software on these search terms prior to deduplication, as follows:





9. As described below in response to questions (c) and (d), there are several factors which account for the divergence between these initial "hit counts" and the ultimate number of unique documents produced for our review.

(c) Explain the variance between the total number of hits resulting from the initial search terms related to WIND Mobile and "Project Turbine", and the number of total documents produced for our review.

10. On December 23, 2014, after Moyse's devices had been supplied and the search terms had begun to be run, I was advised by the forensic expert of the initial "hit count" reported in respect of the full list of search terms. This raw "hit count" included all instances of data resident on the hard drive of the computer in which the four characters "WIND" or the seven characters "TURBINE" appeared, whether or not contained in a contiguous file, or a user-readable file. This is an ordinary occurrence, and generally results in the need to make choices to limit the documents being produced through a variety of filters. In this case, multiple filtering techniques were adopted, dependent on the search term, as described in our earlier report.

11. In the case of "TURBINE", the initial hit count was 756. Ultimately, after de-duplication, a total of four unique documents were provided responsive solely to this search term. This total of four items does not include email items or their attachments.

12. In the case of "WIND", a total of 26,118 hits were initially generated. After de-duplication, a total of thirty-six unique documents were provided responsive solely to this search term. This total of thirty-six items does not include email items or their attachments.

13. I have again consulted with Mr. Doney to confirm and supplement my understanding of the reasons for the divergence in these cases, which is as follows:

(a) File-type exclusions. In the case of "WIND", we were instructed to systematically exclude all files which were "hits" from our review, unless they fell within an agreed list of document types which would ordinarily be expected to be user-readable, specifically: Microsoft Word documents; Microsoft Excel spreadsheets; Microsoft PowerPoint presentations; E-mail messages; and Adobe PDF files. (In the case of "TURBINE", which generated a far smaller number of hits, we were instructed to review all documents.) The "WIND" hits, therefore, would already be subject to a strict limiter that would remove the possibility of system files or fragments of deleted material from being provided for our review.

(b) Deduplication. In accordance with our advice, the parties agreed to automated deduplication. This process ensured that a document produced as responsive to one search term, would not then be produced a second time for duplicative manual review if it were to attract a second search term. Thus, while there may be more than thirty-six items containing the term "WIND" that we reviewed, the additional items would already have been produced as responsive to other search terms.

(c) E-mail Messages. Although included in the initial hit counts, e-mail messages were not then recorded among the individual files noted above. So while there may have been only thirty-six documents stored directly on Moyse's hard drive in native

format responsive to "WIND", this figure would not include e-mail messages containing that sequence of characters. The set of characters "WIND" also is a component of other English words, which likewise would have been produced for our manual review. We did manually review substantial volumes of email, much of which was (as noted in our earlier report) itself duplicative because Mr. Moyses appears to have structured his email accounts in such a fashion as to create multiple backup folders of the same items, and evaluated each such message to determine whether it was producible under the Protocol.

(d) Post-2007 Microsoft Office Document Fragmentation. Finally, Mr. Doney has advised that more recent versions of Microsoft Office (from the 2007 edition forward) employ a new file management method that also generates additional hit figures. These documents are those which utilize the file extensions ".xlsx", ".docx", ".pptx", etc., as opposed to the former extensions ".xls", ".doc", ".ppt" for Excel, Word and PowerPoint documents respectively. I understand from Mr. Doney that these files are stored in multiple parts such that, when a computer is forensically analyzed, each part or fragment of such a document will register as a separate "hit". When the documents are produced for manual review, they are produced as single readable items, and not as individual fragments.

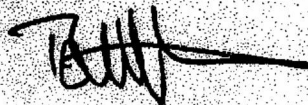
14. Other than the possibility of mechanical error, which we have no basis to believe at this stage was an issue in the forensic imaging or in the automated search and production process, we conclude that the above are the reasons for the divergence between the initial reported "hit count" and the final number of documents produced.

(d) Explain the variance between the total number of hits resulting from the initial search terms related to Mobilicity, and the number of total documents produced for our review.

15. In the case of "MOBILICITY", the initial hit count was 765. Ultimately, after de-duplication, there were zero unique documents provided responsive solely to this search term. Again, this does not include email items.

16. The same four reasons I have described in paragraph 12, above, are applicable to this instance. I asked Mr. Doney, in assisting my understanding of the technical reasons for the divergence, to confirm specifically in the case of Mobilicity that these factors accounted for it, and he confirmed this to be the case.

March 30, 2015



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