

This is Exhibit "40" referred to in  
the Affidavit of Anthony Griffin  
sworn before me this 2<sup>th</sup> day  
of June, 2016

A handwritten signature in black ink, appearing to be "P. R. L.", written over a horizontal line.

A Commissioner, etc.

• NATIONAL POST • NEWS • OPINION • MARKETS • INVESTING • PERSONAL FINANCE • MORTGAGES & REAL ESTATE • TECH • EXECUTIVE • ENTREPRENEUR • JOBS • SUBSCRIBE

NEWS FP STREET

## FP STREET *Follow the Money*

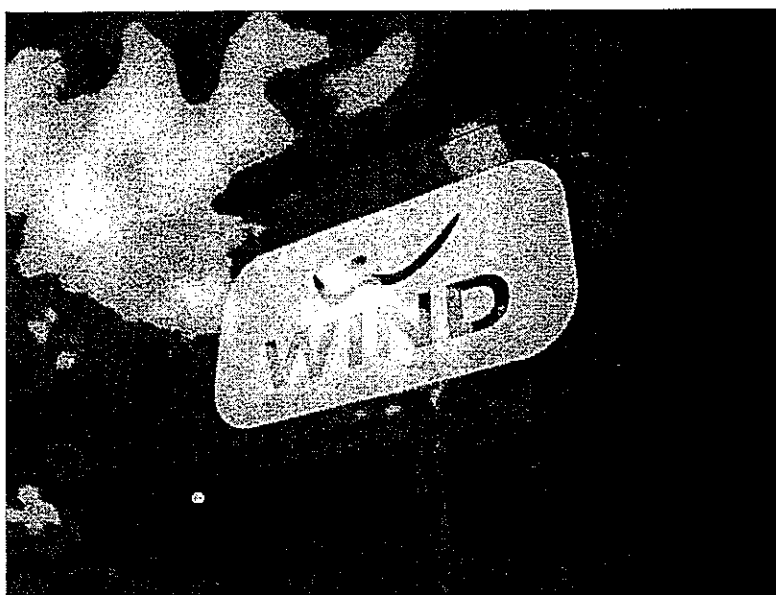
TRENDING PDAC | Greece | Oil | Keystone XL | RRSPs | BoC | Apple | Target | Bombardier

# Wind Mobile ownership under threat as Bay Street hiring tiff spirals into legal brawl



THERESA TEDESCO | February 4, 2015 | Last Updated: Feb 4 6:47 PM ET  
More from Theresa Tedesco | @tedescott

Republish  
Reprint



In a motion filed with the Ontario Superior Court of Justice, Catalyst is seeking a declaration ordering West Face to set aside its ownership in Wind Mobile and hold it in trust for Catalyst, claiming that the Toronto-based private equity fund used confidential information provided by a former employee to purchase its stake in the fledgling wireless carrier. At the same time, Catalyst is also seeking an injunction that would prevent West Face from "participating in the management and/or strategic direction" of Wind Mobile, including the upcoming federal spectrum auction scheduled for March 3. The hearing for Catalyst's motion before an Ontario judge is set for March 19.

The fallout from the breach of an employment contract is threatening to upset the ownership of Wind Mobile, currently the only viable fourth player in Canada's wireless industry.

What began as an innocuous employment tiff between two high-profile Bay Street investment funds over Brandon Moyse, a junior investment analyst who decamped from Catalyst Capital Group Inc. for West Face Capital Inc. last year, has now escalated into a potentially volatile legal brawl involving allegations over the deliberate misuse of critical confidential and proprietary information to gain a competitive edge.

In a motion filed with the Ontario Superior Court of Justice, Catalyst is seeking a declaration ordering West Face to set aside its ownership in Wind Mobile and hold it in trust for Catalyst, claiming that the Toronto-based private equity fund used confidential information provided by a former employee to purchase its stake in the fledgling wireless carrier. At the same time, Catalyst is also seeking an injunction that would prevent West Face from "participating in the management and/or strategic direction" of Wind Mobile, including the upcoming federal spectrum auction scheduled for March 3. The hearing for Catalyst's motion before an Ontario judge is set for March 19.

West Face, which manages assets of about \$2.5-billion, was among a group of investors that joined Globalive Capital, an investment company led by Wind's founder Anthony Lacavera, to acquire all of the direct and indirect debt and equity interests in the Canadian carrier for \$300-million in September.

Follow

In its court filings, Catalyst, the second-largest private equity fund in Canada and a specialist in distressed debt, outlined how it had an exclusive negotiation period to hammer out a deal to purchase a stake from VimpeCom Ltd., which owned a controlling interest in the small independent mobile carrier at the time. However, those negotiations failed "on issues relevant to the regulatory regime affecting Wind," the court papers outlined. However, within days of those ill-fated talks, Catalyst alleges West Face was able to successfully negotiate a deal with a syndicated investment group that "waived any regulatory concerns" that Catalyst had.

---

#### Related

Wind Mobile signs roaming deal, Telus likely partner

Ottawa approves Wind Mobile buyout deal with conditions

"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," the firm alleges in its court filings. In fact, Catalyst claims that not only did Mr. Moyse, who was primarily responsible for analyzing new investment opportunities from distressed situations, have access to confidential information about its plans for Wind — codenamed "Turbine" — it alleges West Face only began showing interest in the mobile carrier after the former Catalyst employee joined the firm.

A lawyer for West Face dismissed Catalyst's legal gambit as "without merit." Jeffrey Mitchell, a partner at Dentons in Toronto, who is representing West Face, told the *Financial Post* in an email that the "unsubstantiated allegations" against his client are "being pursued to damage West Face, and not for any proper purpose." He noted that Catalyst has filed a motion document containing "bald allegations only" with "no evidence" to back them up.

"We haven't seen any evidence yet," Mr. Mitchell said, adding if Catalyst does file evidence in the form of an affidavit, "we'll fight it vigorously."

The bitter dispute between the two Bay Street rivals has been gathering momentum since Mr. Moyse informed Catalyst of his intention to join West Face, a direct competitor in the private equity arena, in May, 2014. Catalyst balked, reminding Mr.

Moyse of the terms of his employment contract, which included a non-competition clause that restricted him from working at a competing firm for six months.

Despite warnings from Catalyst about Mr. Moyse's confidentiality obligations to his former employer, he began his job as an analyst at West Face in late June. Executives at Catalyst were convinced their former employee had walked away with critical information about the firm's strategy in the Canadian wireless industry, especially its interest in pursuing an ownership stake in Wind, and because both firms owned the secured debt of Mobilicity.

Inevitably, they wound up before a judge. During the legal process, Mr. Moyse consented to providing forensic images of his personal electronic devices as well as an affidavit outlining all of the documents in his possession. As a result, Catalyst claims its worst fears were realized in the form of 130 pages outlining actual or possible investments that were sent to Thomas Dea, a partner at West Face during the hiring process. "Moyse had transferred Catalyst's confidential information to West Face, and West Face distributed that confidential information throughout the firm," Catalyst claims in its filing.

A lawyer acting for Mr. Moyse called it "a rookie mistake" during a hearing last year.

Even so, Ontario Justice Thomas R. Lederer ruled last November that sending out confidential documents and possessing additional files belonging to Catalyst was a serious issue. In his order, he restrained Mr. Moyse from working at West Face for the remainder of his non-competition covenant, which ended Dec. 22.

More important, Justice Lederer authorized an independent supervising solicitor to examine Mr. Moyse's personal electronic devices and review the forensic images. Catalyst alleges in its filings that Mr. Moyse had more than 830 of the firm's documents in his possession when he resigned, of which 245 were deemed confidential.

And although a final report on the images on Mr. Moyse's electronic devices is not yet complete, the court filing alludes to an interim report that has underscored fears at Catalyst that confidential information may be transferred to one of its major rivals.

As a result, Catalyst is also seeking an order to authorize a forensic search of the computers, hard drives and mobile devices at West Face.



Find Financial Post on Facebook

#### Most Popular



Canada's economy grows faster than forecast, dimming...



Four myths about Canadian household debt — and a few...



Why Warren Buffett is worth \$73 billion — and you're not



Stephen Poloz's market muddling messages threaten...

Topics: FP Street, Catalyst Capital Group Inc., Telecom, West Face Capital Inc., Wind Mobile

Comments for this thread are now closed.

X

DRIVING THE WEB

WHAT'S THIS?

#### The Book Insider

Every Book Lover Is Asking: Why Didn't I Find Out About This Website Sooner?

#### OurCrowd

The Most Lucrative Investments You've Never Heard Of

#### ControlNow

IT Heroes: 10 proud moments for IT pros

#### DesignCrowd

8 Sites Where You Can Teach Yourself to Code: Get Started Today

#### ALSO ON FINANCIAL POST

Canada's economy grows at faster pace than forecast

30" 10/10/15

David Rosenberg's tough words for Bank of Canada boss ...

34" 10/10/15

PDAC 2015: CRU analyst sees base metals beating out bulk ...

11" 10/10/15

Millenials are going to inherit US\$30 trillion — yes, trillion — and ...

30" 10/10/15

8 Comments

Financial Post

Login

Sort by Best

Responses Show



ThatBCGuy • 1 month ago

Canadian law does not simply enforce all non-competition clauses. NCC are designed to protect confidential information such as client lists. You can't simply tell your employees they are barred from seeking employment in the same industry, that won't hold up in court and the employer might find themselves on the hook for lost wages of the employee.

Share



Mike Mikelson • ThatBCGuy • 1 month ago

Actually they do work particularly in the investment business. You can't say that they last two years or something but...

Follow

[Request Comment Removal](#)

See the recipes chefs created  
with IBM Watson.

Vote for  
your favourite ▶



POST POINTS | Earn rewards for being a loyal National Post Reader

Log Out

My Account

Follow



**THE GLOBE AND MAIL** \*

February 2, 2015

## Bay Street feud over analyst hire escalates in court

By TIM KILADZE

*Catalyst has filed a new motion against West Face*

The legal battle between two well-known Bay Street investment funds is heading back to court, and it has become more intense.

The fight started last May when an analyst at distressed debt specialist Catalyst Capital Group Inc. quit to join West Face Capital Inc. Catalyst, run by Newton Glassman, alleges that the low-level employee provided West Face, run by Greg Boland, with critical confidential information about its strategy and operations.

Catalyst argues this is a problem because both funds have business dealings with Canadian wireless companies Wind Mobile and Mobilicity.

The fight first landed in court last fall, where a judge ruled that the analyst could not start working at West Face until December 22 – six months after he left Catalyst.

Catalyst has since filed a new motion, asking for an injunction that would prevent West Face from "participating in the management and/or strategic direction of Wind Mobile" and from participating in the upcoming federal spectrum auction.

The motion centres on West Face's participation in the acquisition of Wind Mobile, which was announced in September. In the filing, Catalyst notes that it originally had an exclusivity agreement with Wind, but the talks ultimately fell through. "Within days," West Face and its partners negotiated the purchase of Wind.

"West Face could not have negotiated the deal... without access to Catalyst's confidential information, which was provided to it by [analyst Brandon] Moyse," Catalyst alleged in court filings.

Catalyst is now trying to prevent private information from being used again. "Armed with Catalyst's confidential information... West Face will be able to help Wind compete unfairly against Mobilicity in the spectrum auction," the investment fund alleged.

"Catalyst Capital's unsubstantiated allegations about West Face are without merit and their claim is being pursued to damage West Face, and not for any proper purpose," a lawyer for West Face wrote in an email. "West Face intends to defend the claim vigorously."

Because Catalyst has not filed an affidavit in court, West Face does not have specific allegations to which it can respond. Catalyst declined to comment.

When Catalyst first took the case to court, it argued that materials sent by the analyst to his new firm during the interview process were "highly sensitive and confidential," according to court documents, and that the partner at West Face who received them circulated the memos to other partners and a vice-president, "understanding that the information was confidential and of the concern associated with its disclosure." (Some

03/03/2015

The Globe and Mail: Bay Street feud over analyst hire escalates in court

1552  
814

of the memos were marked "confidential" and "for internal discussion purposes only.")

Now Catalyst is concerned about the files stored on the analyst's and West Face's electronic devices. In November the judge authorized a review of Mr. Moyse's personal devices, and interim reports, according to Catalyst, have revealed many mentions of important key words, such as "West Face" and "Wind," as well as "Turbine," Catalyst's codename for its potential Wind acquisition.

Catalyst is now asking for an order that also authorizes a forensic search of West Face's computers and mobile devices to see if its confidential information turns up.

However, its motion will be heard on March 19 and bids for the spectrum auction are due in early March. Once they are submitted, the auction quickly unfolds, which means any injunction may be too late.

*Editor's Note: An earlier version of this story stated West Face acquired Wind Mobile in September. As noted later in the story, West Face along with its partners negotiated the purchase. West Face was part of a consortium of financial investors that financed the transaction and also included Tennenbaum Capital Partners, LG Capital Investors, Serruya Private Equity, Novus Wireless Communications, and Globalive Capital (the holding company of Wind's founder Anthony Lacavera).*

The Globe and Mail, Inc.



The Globe and Mail Inc. All Rights Reserved.. Permission granted for up to 5 copies. All rights reserved.

You may forward this article or get additional permissions by typing <http://license.icopyright.net/3.2425?>

[icx\\_id=22743082](http://license.icopyright.net/3.2425?icx_id=22743082) into any web browser. The Globe and Mail, Inc. and The Globe and Mail logos are registered trademarks of The Globe and Mail, Inc. The iCopyright logo is a registered trademark of iCopyright, Inc.

THE CATALYST CAPITAL GROUP INC.  
Plaintiff

BRANDON MOYSE and WEST FACE  
CAPITAL INC.  
Defendants

Court File No. CV-14-507120

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF THE  
DEFENDANT, WEST FACE CAPITAL INC.  
(Returnable March 19, 2015)  
VOLUME II OF IV

DENTONS CANADA LLP  
77 King Street West, Suite 400  
Toronto, ON M5K 0A1  
Jeff Mitchell LSUC#40577A  
Andy Pushalik LSUC#54102P

Telephone: (416) 863-4660/(416) 862-3468  
Facsimile: (416) 863-4592

Lawyers for the Defendant/Responding Party,  
West Face Capital Inc.

– AND –

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

Matthew Milne-Smith LSUC#: 44266P  
Andrew Carlson LSUC#: 58850N  
Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Defendant/Responding Party,  
West Face Capital Inc.

1553

WFC0081343/8