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 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.

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;

(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.

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. Moyse'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. Moyse 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, Moyse 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 Moyse sent to a colleague on March 27, 2014 in which Moyse 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 Moyse began to plan to move from Catalyst to West Face.

24. I believe that Moyse knew that West Face competed directly with Catalyst, based on multiple internal discussions that occurred at Catalyst in Moyse'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.

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

36. Since Moyse was contractually required to continue working for Catalyst for another thirty days, I immediately arranged for Moyse 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, Moyse's counsel ("Hopkins"), and to Boland to warn them that Moyse'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. Moyse 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.

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 Moyse Removed its Confidential Information

48. In addition to the conduct described above, Catalyst recently learned, contrary to all of the assurances Moyse's and West Face's counsel were making about Catalyst's Confidential Information, that prior to his resignation Moyse 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 Moyse 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 Moyse's activity. The purpose of this section of my affidavit is to describe how the Confidential Information accessed by Moyse (as explained in Muster's affidavit) could be used by Moyse and West Face to unfairly compete with Catalyst.

50. I understand from Musters' report that Moyse'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 Moyse'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 Moyse's conduct is alarming. I am informed by Jonathan Moore, the team lead at Catalyst's external IT services supplier, that Moyse 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.

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

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 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 Moyse'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 Moyse 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 Moyse's Computers and Electronic Devices

73. A forensic review of any computers or personal electronic devices, such as an iPad, owned by Moyse or any computer used by Moyse at West Face may reveal whether Moyse 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 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.

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.

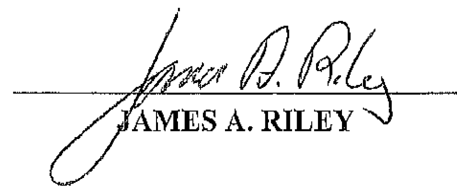
CAT000094/21
183106

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)

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

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

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

Fax: (416) 598-3730

Lawyers for the Plaintiff

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. Moyse's analyses 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.

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.

Moyse Wiped his Blackberry

14. I recently learned from Martin Musters, Catalyst's forensic IT expert, that Moyse 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 Moyse (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, Moyse'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 Moyse before he returned it to Catalyst.

Moyse Emailed Catalyst Documents to his Personal Email Accounts

16. After Moyse's departure from Catalyst, Catalyst learned that Moyse 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 Moyse sent to personal email accounts from his work email account, to which he attached Catalyst documents. These documents include:

(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. Moyse did not disclose this activity in his affidavit.

Catalyst's Former Employees Honoured their Non-Competition Covenants

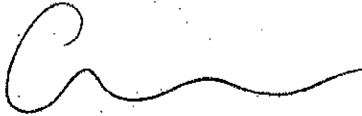
18. In my original affidavit, I explained how Catalyst learned that Moyse was reviewing Catalyst's confidential documents in circumstances that Musters concluded are consistent with copying documents to an online file storage account. Moyse's reasons as to why he was reviewing these documents are illogical.

19. In particular, Moyse'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.

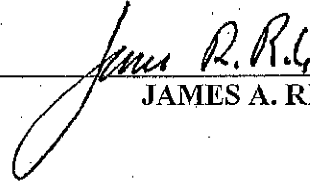
21. Moreover, to the best of my knowledge, Moyse is the only former Catalyst employee who has refused to comply with the non-competition covenant in his employment contract.

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

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.

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, Moyse'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 Moyse'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 Moyse'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

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 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.

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 Moyse'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 Moyse's employment agreement with Catalyst is intended to prevent Moyse from working for a competitor to an "associate" of Catalyst located

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

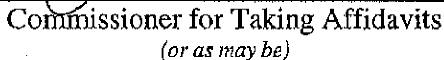
would engage in business in these industries is if he were to work at a "special situations" investment fund that competes with Catalyst.

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

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 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. Moyse'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 Moyse from working in Ontario for a competitor of Catalyst for a period of six months following termination of his employment with Catalyst if Moyse resigned.

14. On Saturday May 24, 2014, Moyse gave Catalyst thirty days' notice of his intention to resign from the firm. On May 26, 2014, Moyse informed me that he had accepted a job at West Face. I understood from Moyse 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 Moyse intended to breach the Restrictive Covenants and it arranged for Moyse to work from home for the remainder of his thirty-day notice period.

16. 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. 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, Moyse 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 Moyse was part of the Project Turbine review team.

18. By choosing to leave Catalyst for West Face, which is located in Toronto, Moyse 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 Moyse when it knew, or ought to have known, of the Restrictive Covenants in Moyse's employment agreement with Catalyst. If Moyse 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"), Moyse's counsel, and Adrian Miedema ("Miedema"), West Face's outside counsel, in which Catalyst expressed its concerns over potential misuse by Moyse and West Face of Catalyst's confidential information.

21. By June 19, 2014, the parties were at an impasse. West Face and Moyse 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 Moyse 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 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.

23. 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 "E" is a copy of Miedema's letter to Di Pucchio dated June 19, 2014.

Catalyst Learns Moyse Gave its Confidential Information to West Face

24. Left with no other option, Catalyst began preparing for an action against Moyse 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, Moyse's conduct between March 27 and May 26, 2014, was consistent with uploading confidential Catalyst documents from Catalyst's server (which Catalyst controls) to Moyse'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, Moyse regularly emailed Catalyst's Confidential Information to his personal email accounts. There was no legitimate business reason for Moyse 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 Moyse 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, Moyse "wiped" all of the data from his Blackberry such that it was incapable of being recovered through forensic analysis.

27. On July 7, 2014, Moyse 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, Moyse and West Face confirmed that Moyse 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 Moyse.

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 Moyse's affidavit of documents and we were able to identify approximately 250 confidential documents belonging to Catalyst in Moyse's possession.

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

43. On July 31, 2014, Moyse was cross-examined by Di Pucchio. During his cross-examination, Moyse admitted that for the first two weeks he was employed by West Face, he did not do any work, after West Face and Moyse 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, Moyse 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) Moyse 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 Moyse 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. Moyse 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 Moyse'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 byh Catalyst.

56. During his employment at Catalyst, Moyse 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;

CAT000066/20
153

(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 Moyse'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 Moyse retained possession of his personal computer between July 16 and July 21, 2014, it is my belief that Moyse 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 Moyse, 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.

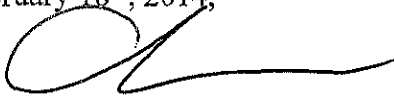
90. As the largest of the four shareholder groups, West Face can use its voting interest in Wind Mobile to harm Catalyst's long-term interest in Wind Mobile. Catalyst has a claim for a constructive trust over West Face's interest. In order to protect Catalyst's contingent interest in Wind Mobile, Catalyst 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.	**JAMES A. RILEY**
ANDREW WINTON	

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)

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

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

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

Fax: (416) 598-3730

Lawyers for the Plaintiff

CAT000066/28

CAT000382/1
430

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

SUPPLEMENTARY AFFIDAVIT OF JAMES A. RILEY
(Sworn May 1, 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 four affidavits in this proceeding – on June 26, July 14, July 28, 2014 and February 18, 2015. Those affidavits are not attached to this affidavit but I adopt and re-state the facts and defined terms set out in those affidavits in this affidavit.

3. This affidavit is sworn in reply to the affidavit of Anthony Griffin ("Griffin"), sworn March 7, 2015 (the "Griffin Affidavit"), which was sworn in response to my February 18, 2015 affidavit, and the affidavit of Brandon Moyse, affirmed April 2, 2015 (the "Moyse Affidavit").

West Face's Questionable Motivation to Sell Callidus Shares Short

4. Attached as Exhibit "A" is a copy of a report that sets out the total short sale interest in Callidus' shares and the daily closing share price (the "Callidus Short-Sale Analysis"). Short interest information is only updated twice a month, so the information concerning the current short position is based on the share balance as of April 15, 2015.

5. The Callidus Short-Sale Analysis suggests that prior to October 16, 2014, there were no short sales of Callidus shares. Then, between October 16 and November 15, 2014, a short interest of approximately 600,000 shares was accumulated. Based on the limited information disclosed in the Griffin Affidavit regarding West Face's trading activity, I believe that West Face, acting alone or in concert with other entities, was building up its short position over this period of time.

6. The Short-Sale Analysis also indicates that the short position in Callidus essentially peaked before December 15, 2014, which is around the same time that rumours began circulating on Bay Street that West Face was selling short Callidus shares. Immediately after these rumours started circulating, Callidus' share price dropped significantly, to the benefit of whoever had accumulated the short position in Callidus' shares before the rumours were circulated.

7. The Short-Sale Analysis also indicates that the short position was reduced by approximately 25 per cent between March 30 and April 14, 2015. This partial closing out of the short position is consistent with a market participant taking some profits shortly after West Face's attack on Callidus received widespread public attention, as shown in an article dated March 30, 2015, published on the Business News Network's website (attached as Exhibit "B").

8. Griffin's sworn evidence is that West Face had been monitoring Callidus since its IPO in April 2014 (the "IPO"). He claims that West Face "questioned" the premium trading value of Callidus' shares following the IPO, and that in October 2014, West Face made the decision to begin short selling Callidus' share price *before* West Face pursued any "detailed research" into Callidus.

9. It is my belief that Griffin's explanation lacks credibility. Rather, it is my belief that West Face's short attack on Callidus' stock was intended to open up another "front" in the pre-existing litigation between Catalyst and West Face in order to cause harm to Catalyst.

10. Moreover, I believe that West Face did not begin selling Callidus stock short on a "hunch", as suggested by Griffin in his affidavit, but on material, non-public confidential information about Callidus disclosed to it by Moyse that it believed supported a short-selling strategy.

11. My beliefs are based on the following facts:

(a) West Face began accumulating its short position in mid-October 2014, a few days after Catalyst amended its statement of claim in this action to plead that West Face had misused Catalyst's confidential information to acquire its interest in Wind Mobile. Attached as Exhibit "C" is a copy of Catalyst's amended statement of claim dated October 9, 2014, and the related affidavit of service dated October 10, 2014.

(b) In our industry, funds are often managed as limited partnerships, and fund managers such as West Face owe fiduciary obligations to their investors. In my

experience, it is virtually unheard of for an experienced and qualified investment fund manager to use its investors' funds to sell a stock short on the basis of a "hunch", as suggested by Griffin in his affidavit.

(c) In my experience, it would be bordering on negligent and possibly a breach of one's fiduciary obligations for a fund manager such as West Face to invest other people's money without conducting proper research and analysis beforehand.

West Face's "Research" is Deficient and Misstates Material Facts about Callidus

12. In his affidavit, Griffin sets out a detailed description of the research purportedly conducted by West Face in 2014 as part of its campaign to sell short the stock of Callidus, a company that is controlled by Catalyst. Griffin also implicitly admits, without giving details, that West Face circulated to third parties its "research" with respect to Callidus.

13. As it concerns Callidus, the Griffin Affidavit is replete with material misrepresentations of fact concerning the quality of Callidus' loan portfolio. Those misrepresentations are repeated in the "Callidus Analysis" attached as Exhibit 46 to the Griffin Affidavit. My affidavit will not list all of these misrepresentations, but Catalyst cannot allow the most egregious misrepresentations to pass without comment.

Misleading Excerpt from Callidus Conference Call

14. In his affidavit, Griffin included a short quotation from a conference call with Callidus investors held November 7, 2014. Although the full transcript is attached as Exhibit "42" to the Griffin Affidavit, the quotation is potentially misleading as to the statement made by Newton Glassman on that call. During the conference call, Mr. Glassman stated:

CAT000382/5
434

> So IFRS is a bit annoying. Technically, under IFRS, you have to allocate the provision on a loan-by-loan basis. So and I think we went through this in the IPO, but just to remind people, we set out a separate watch list, which is the stock that although performing, because we don't have a single loan in the portfolio that's not performing, and just to remind again everybody, performing means current in interest and all obligations.
>
> So we don't have a single loan in our book that is non-performing, but we do have loans that we are worried about, and put on what we call our watch list, which triggers a change in how we monitor those loans internally, they become much more actively reviewed daily. And then weekly, it's reviewed by everybody, especially the committee at least once, sometimes twice a week. Once it's on the watch list, we do something what we call VAR, which isn't really technically correct. VAR standing for value at risk and we analyze what we think the recovery will be, it: we had to sell the loan immediately or liquidate it.
>
> And in most cases, except for two currently that VAR is actually positive. In other words, we have excess collateral and we would actually yield more than what is necessary under the loans. In two cases, the VAR is slightly negative and it's actually not a meaningful number relative to the entire portfolio, it's quite, quite small. And in those two cases, where the VAR is negative, we actually attribute the provision against those loans specifically.
>
> […]
>
> And in both cases, **those two loans that have negative VAR, actually have a guarantee from Catalyst. So although we do have the provisions, the actual exposure for Callidus is zero, because they were loans that were purchased as part of the IPO and therefore, come with the guarantee. So the actual dollars at risk for Callidus is zero,** notwithstanding the fact that on the face of our financial statements, we actually have a dollar provision amount. [Emphasis added.]

15. The Griffin Affidavit reproduced a portion of the first paragraph of this quotation. By omitting the references to "value at risk" and the guarantee from Catalyst, which shortly follows the quotation in the Griffin Affidavit, the Griffin Affidavit provides a potentially misleading summary of Mr. Glassman's statements during the conference call and the risk to Callidus.

West Face Omitted Material Facts Concerning Callidus' Loans

16. The Griffin Affidavit included detailed analyses of certain loans made by Callidus. Those analyses are faulty and misrepresent the facts concerning the loans that a qualified analyst ought to know would potentially mislead investors. In this affidavit, I deal only with West Face's analysis of Arthon Industries ("Arthon"), which is indicative of the seemingly deliberate omission of relevant facts that permeates the other analyses.

17. Arthon was a construction holding company that owned, among other things, mining equipment, a coal mine and an aggregates (gravel) deposit. These assets were owned in separately owned subsidiaries commonly referred to as "Contractors", "Equipment", "Coalmont" and "Sandhill".

18. In November 2013, Arthon, Equipment and Coalmont, among others, applied for CCAA protection to restructure secured debt owed to HSBC. Sandhill was liable for the debts to HSBC and other Arthon creditors, but it did not seek or require CCAA protection.

19. In December 2013, Callidus assumed the position of HSBC ultimately at a substantial discount to the book value of the secured debt, thus assuming the position of the senior secured lender and debtor-in-possession ("DIP") lender.

20. Throughout 2014, Arthon engaged in restructuring activities. The ultimate outcome of the restructuring is that Equipment sold all of its assets to Arthon, and Arthon and Sandhill assumed joint responsibility for the secured debt owed to Callidus. After the assets were transferred out of Equipment and Coalmont, those corporations were assigned into bankruptcy.

21. Thus, in a little over a year, Callidus purchased approximately $50 million of senior secured debt and transferred the assets of an insolvent borrower to a related solvent company, which assumed responsibility for the full amount of the secured debt.

22. Arthon is the furthest thing from an "impaired" loan – it was a very successful workout situation where Callidus was able to use its unique expertise to identify and profit from a lending opportunity that traditional lenders could not take advantage of.

23. In its analysis, West Face selectively refers to facts that portray Arthon as a worthless company and all but accuses Callidus of throwing good money after bad. That portrayal is inconsistent with publicly known facts about Arthon and is the exact opposite of what actually happened.

24. By ignoring publicly available information and attempting to portray a fully secured CCAA workout situation as an impaired loan, West Face has either misapprehended facts that most analysts would be able to understand or it deliberately painted a misleading picture to support the short position it had already taken out.

West Face Improperly Compares Callidus to BDCs

25. In his affidavit and in the West Face analysis of Callidus, Griffin states that Callidus is trading at too high a multiple as compared to U.S. business development corporations ("BDCs"), which Griffin states are the appropriate comparable businesses to Callidus.

26. As with the Arthon analysis, this statement is either negligently or deliberately misleading. As anyone involved in distressed lending is aware, BDCs have several characteristics that are not shared with Callidus:

(a) BDCs tend to have external management, whereas Callidus is managed internally;

(b) BDCs are close-ended funds and are required to return cash to investors with a payout ratio of at least 90 per cent, whereas Callidus has publicly stated that it will not distribute dividends and re-invests its income for future growth;

(c) BDCs tend to finance subordinate debt and unsecured positions, including equity, whereas Callidus focuses almost exclusively on senior secured debt;

(d) BDCs are not taxable at the corporate level – they are taxed at the personal level because of the high distribution ratio.

27. For these reasons, it is misleading to refer to the gross yields commonly achieved by BDCs (in the 10-12% range) and suggest that that is the yield level that one can expect from Callidus in the future. Callidus has repeatedly publicly disclosed information that demonstrates that it is nothing like a BDC.

28. A less sophisticated investor may not be able to recognize the false comparison to a BDC in West Face's analysis, which may lead that investor to think that Callidus' stock is over-valued, as stated by West Face. In a hypothetical situation where an investor decides to sell his or her Callidus shares as a result of reviewing West Face's analysis, the stock price would decline, thus creating a profit for whomever sold the stock short.

West Face May Have Mis-stated Material Facts as Part of its Trading Strategy

29. Leaving aside other deficiencies in West Face's "analysis" of Callidus' loan portfolio, the obvious deficiencies in West Face's analysis of Callidus lead me to believe that West Face was

CAT000382/9
438

not conducting *bona fide* research into the quality of Callidus' loan portfolio, because any reasonably qualified analyst would avoid making these errors

30. These errors, West Face's conduct of selling Callidus' stock short *before* it began sharing its "research" with other market participants, and other facts about West Face and Moyse learned through the course of this litigation, lead me to believe that West Face may have engaged in a trading strategy with respect to Callidus' stock price that caused it to spread misleading information about Callidus *after* it had taken a short position on the stock.

31. If this is the case, then West Face profited from the selling activity of other market participants who relied on West Face's thesis to sell the shares *after* West Face had already placed a "bet" that Callidus' share price would decline. In this scenario, as the purveyor of information it knew or reasonably ought to have known was misleading, West Face induced other market participants to sell their shares based on misleading information, to the profit of West Face, which profited from the drop in Callidus' share price in November 2014.

32. My belief that West Face was not motivated by a good faith effort to profit from a market anomaly is re-enforced by West Face's refusal to share its report with Callidus despite Callidus' repeated requests that it do so in December 2014 and January 2015. Instead, the first time any "report" was shared with Catalyst was when the Griffin Affidavit was served on Catalyst. Had West Face shared its "research" with Callidus before it shared its findings with third parties, Callidus would have been able to show West Face its obvious error, which would have prevented the market from being misinformed about the quality of Callidus' loan portfolio.

33. Moreover, I note that the "report" attached to the Griffin Affidavit is dated March 2015 and recites facts about Callidus' loan book that post-date the period when West Face was

shorting the stock and sharing its "research" with other market participants in November and December 2014.

34. After the Griffin Affidavit was sworn but before it was filed, Catalyst's outside counsel attempted to engage with West Face's outside counsel to persuade West Face not to file the Griffin Affidavit in open court so as to avoid potentially misleading the market with its faulty analysis. Attached as Exhibit "D" is a copy of email correspondence between Catalyst's outside counsel and West Face's outside counsel between March 9 and 13, 2015. As shown in this correspondence, Catalyst's efforts were firmly rebuffed by West Face, which insisted on publicly filing the Griffin Affidavit even after it was warned that the affidavit contained material misstatements of fact about Callidus.

Moyse's Involvement with the Wind File was Much More than "Minimal"

35. In his affidavit, Moyse attempts to downplay his involvement in the Wind situation at Catalyst by describing his role as "minimal". This is simply untrue.

36. For example, Moyse refers at paragraph 19 of his affidavit to a PowerPoint presentation he helped create for Catalyst to show representatives of Industry Canada in early 2014. What he does not disclose is that the PowerPoint presentation primarily concerned Catalyst's plans for Wind and outlined regulatory concessions Catalyst needed in order to carry out a Wind transaction.

37. Through his assistance with this presentation and participation in other discussions concerning Wind, Moyse knew not only that regulatory risk was a major sticking point for Catalyst, but also what types of regulatory concerns Catalyst had with respect to Wind.

38. Moyse was a member of Catalyst's Wind and Mobilicity team up until May 26, 2014, when he informed us that he had resigned from Catalyst to take a job at West Face, whom Moyse knew was also working on the Wind situation. Up until that date, Moyse participated as an involved member of Catalyst's due diligence and financial analysis team and received dozens of emails relating to the Wind situation, many of which attached confidential documents concerning Catalyst's negotiation strategy for Wind and Mobilicity.

39. For example, on May 24, 2014, two days before Moyse was put on "garden leave", he received an email that was distributed to the entire Wind team at Catalyst. The email attached a draft share purchase agreement ("SPA") and a blackline to a previous draft of the SPA. That email and its attachments are attached as Exhibit "E".

40. As shown in the SPA, even at this early stage of the proposed transaction, Catalyst was concerned with regulatory risk and the SPA was conditional on Catalyst receiving Industry Canada's approval to acquire Wind.

41. I am informed by Gabriel de Alba ("de Alba"), a partner at Catalyst, that in early August 2014, de Alba and representatives of Vimpelcom participated in a conference call with representatives of Industry Canada. The purpose of the call was to inform Industry Canada that Catalyst had final, but unsigned, paperwork for a transaction to acquire Wind and that there were no significant gaps between the parties. The call was intended as a courtesy prior to Catalyst formally seeking Industry Canada's approval to acquire Wind.

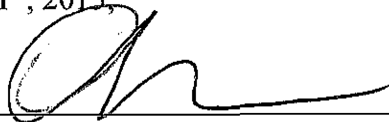
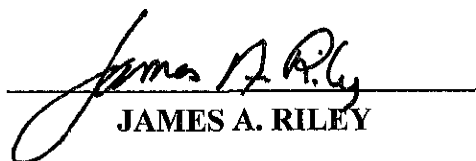
42. At the time, the anticipated deal with Vimpelcom was conditional on Industry Canada approval and the granting of certain regulatory concessions to a Catayst-owned Wind that in Catalyst's mind would make it easier for a fourth national carrier to succeed. These concessions

were essentially the same regulatory concessions summarized in the PowerPoint presentation Moyse helped create in early 2014.

43. I am informed by de Alba that shortly after the call with Industry Canada, Vimpelcom changed its negotiating strategy and began insisting that Catalyst yield on regulatory risk issues that had previously been agreed to by the parties.

44. As explained above, Moyse was an involved member of the Wind team and had full access to all of the relevant confidential information concerning Catalyst's due diligence, financial analysis, and regulatory drivers in the Wind situation. This involvement included knowledge of the precise regulatory concerns articulated by Catalyst to Industry Canada while it was negotiating to purchase Wind.

45. It is my belief that Vimpelcom changed its strategy after it received the unsolicited offer from West Face referred to at paragraph 77 of the Griffin Affidavit. I believe that West Face may have obtained confidential information from Moyse relating to Catalyst's confidential regulatory concerns and used that information to develop its Wind strategy, which ultimately led to West Face successfully purchasing Wind.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on May 1st, 2015.  Commissioner for Taking Affidavits, etc. **ANDREW WINTON**	 **JAMES A. RILEY**