

Commercial List Court File No. CV15-11238-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF *the Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, section 182

AND IN THE MATTER OF Rule 14.05(2) of the *Rules of Civil Procedure*

AND IN THE MATTER OF a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc. and 1503357 Alberta Ltd.

**AFFIDAVIT OF MICHAEL LEITNER  
(sworn January 7, 2016)**

I, MICHAEL LEITNER, of Los Angeles, in the State of California, United States of America, MAKE OATH AND SAY:

1. I am a Managing Partner of Tennenbaum Capital Partners, LLC ("**Tennenbaum**"), an investment management firm, and a Director of the Applicant Mid-Bowline Group Corp. ("**Mid-Bowline**"). Certain funds managed by Tennenbaum participated in the acquisition of WIND Mobile Corp. ("**WIND**") together with a group of investors (the "**Investors**") that included Globalive Capital Inc. ("**Globalive**"), 64NM Holdings, LP ("**64NM**"), and West Face Capital Inc. ("**West Face**"). I was directly involved in the Investors' negotiations for and purchase of the equity and debt of WIND formerly held by VimpelCom Ltd. ("**VimpelCom**") in September 2014. As such, I have personal knowledge of most of the matters set out in this Affidavit. Where I do not have

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personal knowledge, I have stated the source of my information and believe it to be true.

2. I swear this Affidavit in support of a plan of arrangement of Mid-Bowline, the holding company through which the Investors hold their equity in WIND. Pursuant to the plan of arrangement, Shaw Communications Inc. ("**Shaw**") will acquire WIND from the Investors. Certain funds managed by Tennenbaum own 31.45% of the Class A and C shares of Mid-Bowline to be purchased by Shaw.

3. I understand that The Catalyst Capital Group Inc. ("**Catalyst**") was another bidder for WIND and that it too was in negotiations with VimpelCom in the Summer of 2014. I have also learned from various conversations among the Investors that Catalyst has commenced a lawsuit for a constructive trust over West Face's interest in WIND. I am informed by Matthew Milne-Smith, counsel to West Face, and understand that Catalyst alleges that West Face acquired its 35% interest in WIND by misusing confidential information concerning Catalyst's regulatory strategy in its negotiations with VimpelCom.

4. I do not know whether West Face ever possessed any confidential information concerning Catalyst's regulatory strategy. However, I do know that West Face never communicated any such information to Tennenbaum, and that no such information was discussed among the Investors. Indeed, the transaction structure that the Investors ultimately proposed to VimpelCom, and which ultimately proved successful, was one that Globalive had socialized in the past and was apparent to any potential bidder. We

ultimately chose to adopt this structure based on creating the path of least resistance for VimpelCom to close a transaction.

### **Tennenbaum Capital Partners**

5. Tennenbaum is a leading alternative investment management firm founded by Michael Tennenbaum. It launched its first institutional fund in 1999. Since then, the firm has invested in excess of \$15.5 billion (US) in over 400 companies. Tennenbaum's investment vehicles include private funds, separate accounts, registered funds, and a publicly-traded business development company. Our investors include public and private pension funds, financial institutions, multi-national corporations, endowments and foundations, charitable organizations, and family offices.

6. Tennenbaum divides its investments into two broad investment strategies: "performing credit", and "special situations". Both types of Tennenbaum's investments are made primarily in North American middle-market companies. With respect to our "performing credit" strategy, we provide debt financing to meet the needs of middle-market companies in support of leveraged buy-outs, growth, acquisitions, and refinancings/recapitalizations, as well as expansion stage venture lending.

7. With respect to our "special situations" investments, we invest in companies undergoing operational, financial or industry change through both private lending activities (often referred to as rescue financing), structured equity investments and through secondary market purchases (which we refer to as both deep-value and distressed-for-control investing). We provide rescue financing to companies that do not have easy access to conventional capital sources and generally require capital to avoid

a restructuring or insolvency. In our deep-value and distressed-for-control investing, we purchase debt in the secondary market at a discount to what we believe is its intrinsic value.

8. Tennenbaum's investment team is organized by industry so that we can source, monitor, analyze, and engage in transactions with relevant knowledge, with speed, as needed. We consider ourselves to be experts in a number of industries, including Technology/Media/Telecom (or "TMT"). Our TMT investments comprise a significant portion (approximately 30 - 40%) of Tennenbaum's total portfolio.

9. I am the senior partner leading Tennenbaum's TMT practice, largely as a result of my extensive experience in this sector. In that regard, prior to joining Tennenbaum in 2005, I served as Senior Vice President of Corporate Development for WiTel Communications, and before that as President and CEO of GlobeNet Communications (which I led through a successful turnaround and sale). I was also Vice President of Corporate Development of 360networks, and served as Senior Director of Corporate Development for Microsoft, where I managed corporate investments and acquisitions in the telecommunications, media, managed services, and business applications software sectors. Prior to Microsoft I was Vice President in the M&A group of Merrill Lynch. Specifically in the TMT sector, I currently serve on the boards of directors of Integra Telecom and WIND, and recently just left the board of Primacom (Germany's fourth largest cable company) as a result of a recent sale.

### Tennenbaum's Investment in WIND

10. Tennenbaum's investment in WIND dates back to May 2012, when Q Advisors, a leading investment bank focused on the TMT industry (including in Canada, where Q Advisors have advised Public Mobile on a number of transactions, including its recent sale to Telus), introduced Tennenbaum to a debt investment opportunity in WIND. At the time, Nokia-Siemens Networks was looking to sell its approximately CAD\$55 million (the debt was in euros at the time and subsequently converted) vendor debt commitment (CAD\$46 million of which was drawn at the time) owed by WIND. Q Advisors informed us of this opportunity, and ultimately we partnered with Providence Equity Partners LLC ("**Providence**") to purchase Nokia-Siemens' vendor debt. Each of Tennenbaum and Providence took 50% of the committed and then outstanding Nokia-Siemens debt.

11. By March 2014, WIND had approximately \$150 million (US) in outstanding third party vendor debt (not to mention significantly more debt owed to its parent company, VimpelCom). In addition to the debt acquired by Providence and Tennenbaum, this third party debt was also held by Huawei and Alcatel-Lucent. Tennenbaum continued to hold the approximately \$25 million (US) in debt that we had acquired in May 2012. During 2013 and 2014, Tennenbaum and Providence repeatedly reached out to VimpelCom and WIND to provide additional debt and equity capital to fund the business on a go forward basis, including buying certain of VimpelCom's shareholder loans as part of a funding transaction.

12. The third party vendor debt (including that held by Tennenbaum) came due on April 30, 2014. In March and April 2014, WIND and VimpelCom reached out to the third

party lenders, including Tennenbaum, to seek an extension and/or refinancing of these instruments. No such agreements were made prior to the debts' maturity on April 30. Thus, as of May 1, WIND was in default on its debts to the third party lenders, including Tennenbaum.

13. Shortly if not immediately thereafter (*i.e.*, in very early May 2014), VimpelCom advised Tennenbaum that VimpelCom had decided to sell its debt and equity interests in WIND and that it had retained UBS to manage the sale process. That VimpelCom sought an exit strategy was not particularly surprising to me given that: (1) VimpelCom had just allowed WIND to default on its third party debts; (2) VimpelCom had recently withdrawn its financial support for WIND's bid in Industry Canada's 700 MHz spectrum auction held in January/February 2014 (which I believe signalled to many observers, including me, that VimpelCom had no interest in further supporting WIND's business); and (3) while VimpelCom had inherited a majority equity / minority voting position in WIND (through its acquisition of Orascom), it had never been able to acquire voting control of WIND due to the Canadian regulatory environment.

14. Upon being informed by VimpelCom that it was selling its interests in WIND in early May 2014, representatives of Tennenbaum, including me, in addition to our consultant Alek Krstajic (the ex-CEO of Public Mobile), travelled to Toronto to meet with WIND management where they delivered a management presentation and thorough update on WIND's business. Following the management presentation, Tennenbaum immediately began working on a proposal to acquire WIND. Among other things, Tennenbaum signed a non-disclosure agreement with VimpelCom on May 12, 2014,

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and was granted access to the WIND data room on the same day. We began conducting due diligence right away, and continued to do so throughout May and June.

15. We also immediately began canvassing for other investors who would be interested in joining us in the purchase of WIND. We spoke to a number of potential equity partners, initially including Oak Hill, Blackstone, LG Capital (whose principal is Larry Guffey, the founder of our ultimate investing partner 64NM), and Globalive. Our consortium (led by Tennenbaum, Oak Hill and Blackstone) submitted an initial indication of interest and we were allowed to proceed with continued diligence and access to management.

16. Tennenbaum, along with its other partners, continued to conduct due diligence throughout June and July 2014, and began negotiating a purchase agreement with VimpelCom. In particular, our due diligence efforts at that stage were focussed on learning more about WIND's wireless network and how the company would be able to obtain access to additional spectrum over time to create a competitive network to the incumbents (Rogers, Bell and Telus). Based on my experience in the wireless industry, network capacity is a crucial indicator of success, and Tennenbaum was not willing to acquire equity in WIND until it had sufficient comfort that there was a path forward. During this time, our group was introduced to West Face. We had very preliminary discussions with West Face about providing principally debt capital and a smaller minority equity position in support of our group's bid.

17. In late July 2014, Blackstone and Oak Hill's interests in pursuing WIND were waning for different reasons. We therefore resumed our discussions with West Face to

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partner alongside of Tennenbaum and LG Capital. At some point in late July we exchanged our financial modelling information with West Face, and the two firms joined together in our efforts to acquire WIND. We additionally shared our third party network and technology diligence with West Face, and they shared their third party diligence on the Canadian wireless market. None of these discussions concerned Catalyst's negotiating position or their plans to address VimpelCom's regulatory concerns.

18. On July 23, we were informed by UBS, VimpelCom's financial advisor, that VimpelCom had entered into exclusive negotiations with another party. We were fairly confident that this other party was Catalyst, given that Catalyst had been actively seeking financing in the market. To me, this signalled that VimpelCom and UBS felt that Catalyst had made a more advanced proposal that provided a clearer path to closing a deal at that time. I also knew from my discussions with VimpelCom and its advisors that they did not consider Tennenbaum to be a credible bidder for WIND at that time given the disclosure we made about certain partners and our failure to make a concrete proposal on acceptable terms.

19. Nevertheless, Tennenbaum was not ready to abandon the deal given the significant amount of time and effort we had already expended, and the fact that we were already a material stakeholder given our debt position. We continued working with West Face, Globalive (until August 7, when they signed a Support Agreement with VimpelCom as described below) and Mr. Guffey toward a stronger proposal for WIND.

20. In or around the very end of July or the first days of August, the "New Investors" (Tennenbaum, 64NM, and West Face) engaged in discussions regarding a new,



streamlined transaction structure whereby Globalive's equity would be left in place and the New Investors would simply step into the shoes of VimpelCom. While the concept behind this transaction structure was not new to the New Investors, we had not previously seriously considered putting forward such an aggressive proposal. By that point, however – and particularly given that VimpelCom was in exclusivity with another party – it was clear to us that the window of opportunity to acquire WIND was very quickly closing, and that we needed to put forward the best possible proposal in the hopes that VimpelCom would consider it as an alternative to insolvency if it was unable to reach an agreement with Catalyst.

21. The advantage of the New Investors' proposal was to meet VimpelCom's desire for a speedy transaction that carried little to no regulatory risk to VimpelCom. It permitted VimpelCom's interests in WIND to be bought out upon signing of the purchase agreement, rather than having to wait several months until regulatory approval had been obtained.

22. Further, we also felt that the simplicity of a securities purchase agreement limited the amount of documentation that needed to be negotiated and provided VimpelCom with the simplest and most straightforward agreement. Given that our firm was already a lender to WIND, we understood the rights of the various loans issued in the WIND capital structure and our group believed that if we successfully acquired the VimpelCom shareholder loans, we would have a path to full ownership under a CCAA or similar proceeding if necessary.

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23. The New Investors very quickly put together a proposal with this transaction structure and, close to midnight on August 6, 2014, I, on behalf of the New Investors, submitted an unsolicited offer for WIND that was conditional only on the participation of Globalive. A copy of this email is attached as Exhibit "1" to this Affidavit. We submitted a more formal proposal the next day, August 7. Our proposal was entirely unsolicited, and was entirely "blind", in the sense that we had had no substantive communications with VimpelCom since it entered exclusivity on July 23, 2014. We knew nothing about the status or nature of the negotiations between Catalyst and VimpelCom, nor did we at any time during their period of exclusivity.

24. Unfortunately for us, that same day (August 7), Anthony Lacavera of Globalive informed us that Globalive had signed a support agreement with VimpelCom, pursuant to which it agreed to support a sale transaction acceptable to VimpelCom. A copy of Mr. Lacavera's email to this effect is attached as Exhibit "2" to this Affidavit. Neither VimpelCom nor Globalive resumed or engaged in any negotiations with Tennenbaum or, to my knowledge, any of the New Investors from August 7 to August 18, 2014, and the New Investors made no further proposals to VimpelCom during this time period. It was only after exclusivity expired on August 18, 2014 that the New Investors joined with Globalive and resumed negotiations with VimpelCom.

#### **No Knowledge of Catalyst's Regulatory Strategy**

25. No one at Tennenbaum had any knowledge of the details of Catalyst's regulatory strategy concerning WIND, nor the details of its offer or its negotiations with VimpelCom during its period of exclusivity from July 23 to August 18. Neither VimpelCom nor Globalive told us anything about the negotiations with Catalyst, and we had no

negotiations with either of them after August 7, 2014. Furthermore, West Face never communicated any information about Catalyst's strategies or negotiations to Tennenbaum, and no such information was used by the Investors in developing the transaction structure that the Investors put forward to VimpelCom. On the contrary, the successful transaction structure was proposed to the New Investors by Mr. Guffey.

**The Arrangement is Fair and Reasonable**

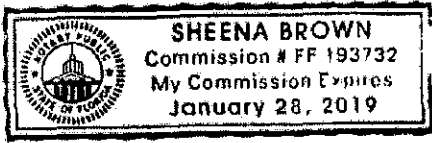
26. The Mid-Bowline board of directors unanimously approved the transaction. Attached as Exhibit "3" to this Affidavit is a unanimous written resolution of the board of directors of Mid-Bowline approving the Arrangement Agreement and Plan of Arrangement, executed by each of the directors. Mid-Bowline's shareholders also unanimously support the Arrangement. Attached as Exhibit "4" to this Affidavit is a unanimous written resolution of the shareholders of Mid-Bowline approving the Arrangement Agreement and Plan of Arrangement, executed by each shareholder. Among other things, these resolutions:

- (a) approve the proposed Arrangement Agreement and Plan of Arrangement;
- (b) confirm that the Arrangement, the Arrangement Agreement, the Plan of Arrangement, and the transactions contemplated therein are reasonable and fair to Mid-Bowline; and
- (c) authorize Mid-Bowline to take all necessary steps to execute the Plan of Arrangement and obtain a Final Order approving of the Plan of Arrangement.

SWORN before me at the City of Fort )  
Lauderdale in the State of Florida )  
this 7th day of January, 2016. )

S. Brown  
Commissioner for Taking Affidavits, etc.

[Signature]  
MICHAEL LEITNER



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Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL LEITNER**  
(Sworn January 7, 2016 )

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