File No. 09-8396-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Applicants

RESPONDING FACTUM OF THE AD HOC GROUP OF SHAREHOLDERS (REDACTED BRIEF)

June 17, 2010

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Robert W. Staley (LSUC# 27115J)
staleyr@bennettjones.com
Derek J. Bell (LSUC# 43420J)
belld@bennettjones.com
Jonathan Bell (LSUC# 55457P)
bellj@bennettjones.com
Tel: 416.863.1200
Fax: 416.863.1716

Lawyers for the Ad Hoc Group of Canwest Global Shareholders

TO: THE SERVICE LIST

CONFIDENTIALITY TREATMENT:

PLEASE NOTE THAT THE PUBLIC VERSION OF THIS
FACTUM HAS BEEN REDACTED IN ORDER TO RESPECT
A REQUEST FOR CONFIDENTIALITY MADE BY CANWEST GLOBAL.

THE SHAREHOLDERS AGREE WITH THAT CONFIDENTIALITY DESIGNATION.

THE CONFIDENTIAL VERSION CONTAINS YELLOW HIGHLIGHTING
INDICATING WHICH PORTIONS HAVE BEEN REDACTED IN THE PUBLIC VERSION.

TABLE OF CONTENTS

Court File No. 09-8396-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Applicants

RESPONDING FACTUM OF THE AD HOC GROUP OF SHAREHOLDERS

I. OVERVIEW

> Based on our review and our financial advisors we believe that this [9.5x multiple of EBIDTA] is much lower than the premium paid for comparable historical specialty transactions. The average over the last 10 years, for example, has been just over 15 times multiple for specialty channel transactions. **So we are buying this at a time when both the multiples are low and the EBIDTA has room for rebounds.** [...]
>
> Well, Greg, **the initial deal, the 20%** for CAD95 million and control, that was a somewhat imperfect deal but that **was the only deal that was on the table at the time.** We entered at that time and we were able to negotiate with the bondholders to be able to bring this out of the private company, which we thought was very positive but **it was the only game in town until we got into mediation with the Chief Justice.** [...]
>
> Goldman had a contract and there were many different views about what the potential outcome could have been in that. **One of the potential outcomes could have been that these channels could have gone to auction** and we wouldn't have had this opportunity with the loss that we have today. **And that would have been a very unfortunate situation for us.**

Steve Wilson, Shaw Communications Inc., May 3, 2010.[1]

---

[1] Final Transcript, Shaw Communications Conference Call to discuss Canwest Transaction, May 3, 2010, Exhibit "O" to the Affidavit of Leonard Asper sworn June 10, 2010 (the "Asper Affidavit"), Responding Motion Record of the Ad Hoc Group of Shareholders (the "Shareholders' Record"), Tab 1(O), pp. 90, 93-94 [emphasis added]

1. Until April 2010, the "only game in town" was an equity solicitation process for 20% of Canwest Global Communications Corp ("**Canwest Global**"). Canwest Global's Chief Restructuring Advisor (and former Stelco CRA[2]) Hap Stephen ("**Stephen**") never proposed to the Board the possibility of an auction for 100% of the equity of a Restructured Canwest. Not one of the 52 investors who expressed an interest and who received the "teaser" document was told that 100% of the equity of a Restructured Canwest was available. Simply put, there has never been a canvassing of the market for 100% of the equity of a Restructured Canwest, and there is no basis whatsoever to conclude that Canwest Global is receiving fair value for these assets. To the contrary, all of the evidence points to the exact same conclusion that Shaw Communications Inc. ("**Shaw**"), itself reached: an auction would have been "very unfortunate" for Shaw because in all likelihood a higher bidder would have emerged.

2. Additionally, the "only game in town" until April 2010 was one that saw 2.3% equity value being conferred to existing shareholders of Canwest Global. This was a term of an Order that this Honourable Court issued on February 12 and the transaction approved therein (the "**Shaw 1 Transaction**"), and which shareholders reasonably relied on, including those who purchased more than 50 million shares after the deal was announced. This was a fundamental term of the CCAA prepack, and it was not open to the Noteholders, Goldman Sachs and Shaw to take that away.

3. Since the conclusion of the first Shaw transaction approved by this Honourable Court, nobody has meaningfully protected the interests of shareholders of Canwest Global. The deal was concluded with Canwest Global not even being at the table – Chief Recapitalization Officer Thomas Strike ("**Strike**") was simply "sitting and waiting", and Strike admitted on cross-

[2] Transcript of Cross-Examination of Thomas Strike held June 15, 2010 (the "Strike Transcript"), Q. 12, Brief of Transcripts and Exhibits, Tab 1, p. 4.

examination *that Canwest Global did not even know that negotiations were going on* after the mediation was adjourned at the end of March.[3] Clearly, neither Goldman Sachs nor Shaw had any reason to protect the interests of shareholders. The Noteholders – who are being made whole in this transaction – had no interest in protecting the interests of the shareholders. Even the last line of defence for shareholders – a white knight bidder – is unavailable, because Canwest Global dealt away the "fiduciary out" in the 20% equity solicitation process and there is no evidence that Canwest Global made any effort to regain it after the Shaw 2 Transaction emerged.

4. The process leading up to this transaction was designed for a radically different transaction. The Noteholders were going to convert their debt to equity, but needed a Canadian partner for CRTC Canadian-content rules. *That* was the reason why Canwest Global expended resources to run an equity solicitation process to seek out a 20% partner. *That* was the market that was "thoroughly canvassed", as this Honourable Court previously ruled. But the deal that emerged has *never* been subject to the rigours of an auction. Canwest Global pleads that the deal should be approved because it is the only transaction available. But that is the point. It should not be the only transaction available. An auction is needed to surface the other interested investors, such as Quebecor or Catalyst, who have already expressed interests in investing in Canwest Global.

5. None of the facts asserted by the Shareholders have been seriously contested by Canwest Global. Strike admits Stephen never recommended to the Board an auction for 100 percent of the equity of a Restructured Canwest.[4] Canwest Global tendered no evidence to counter the

---

[3] Strike Transcript, Q. 59-60, Brief of Transcripts and Exhibits, Tab 1, p. 15.

[4] Strike Transcript, Q. 17, Brief of Transcripts and Exhibits, Tab 1, p. 5.

shareholders' expert on company auctions, James Kofman ("**Kofman**"), who testified that no reasonable participant in the 20% equity solicitation process who received the teaser or confidential information memorandum would ever have thought 100% of the Restructured Canwest was available.[5] As for the 2.3% equity value for shareholders that had been promised, Strike himself advocated to the parties (after the deal had been concluded) that the Shaw 2 Transaction should include the 2.3% equity value to shareholders. Why? As Strike admitted, "Because it was in the original Shaw deal."[6]

6. The weak justification that Canwest Global offers in support of the Shaw 2 Transaction can be summarized as follows: (a) Canwest Global does not have the ability to run an auction for 100% of the equity; and (b) we had no choice. The first argument is entirely disingenuous. Of course Canwest Global cannot run an auction that would include an immediate acquisition of the Goldman Sachs (now Shaw) equity position in the underlying operating company. But Canwest Global *can* run an auction for 100% of the equity of the control vehicle – the Restructured Canwest – which carries with it the right to acquire Shaw's position in nine months time using Canwest Global's call rights. That auction would be for 100% of the equity of Restructured Canwest – i.e., the 20% they already auctioned, *plus* the 80% that the Noteholders desired so much throughout this CCAA process up until they changed their views a month ago. What is the value of that bundle of assets – the 100% equity position with Goldman Sachs/Shaw's position being unaffected? We have no market process to answer that question, because that was never put to auction, although that is what Shaw received.

---

[5] Report of James E. Kofman (June 10, 2010) (the "Kofman Report"), paras. 4-11, Exhibit "B" to the Affidavit of James E. Kofman sworn June 10, 2010, Shareholders' Record, Tab 2(B), pp. 196-199.

[6] Strike Transcript, Q. 74, Brief of Transcripts and Exhibits, Tab 1, p. 18.

7. As for the claim that Canwest Global had no choice but to agree with the transaction, that is simply false. It did have a choice. It did not have to provide its consent (which was required) for the transfer of Goldman Sachs' shares to Shaw. But even if the Board believed they had no choice but to accept the deal, this Honourable Court does have a choice. It can dismiss this motion, and not let this unique and extremely important asset be sold without a rigorous testing of the market. With the Noteholders being made whole, and unsecured creditors receiving $38 million, an auction would only have to yield as little as $72 million more in order to make all unsecured creditors whole, and anything above that $72 million would enure to shareholders. On a $2 billion transaction, it defies credulity to suggest that an auction would not yield such a result. But, incredibly, nobody from Canwest Global even testified to having such a belief.

8. There has never been a "business critical" reason to compromise Goldman Sachs (now Shaw). Under no circumstances is the Goldman Sachs/Shaw shareholder rights package a liability for CMI, and therefore it is not a business critical requirement of the restructuring plan. The sole reason to compromise Goldman Sachs was to enhance value for the Noteholders' equity position in Restructured Canwest. With the Noteholders now demonstrating a willingness to simply be bought out (at par), that "business critical" rationale has entirely disappeared.

9. Canwest Global's motion should be dismissed, for four reasons:

(a) Canwest Global did not make sufficient efforts – or *any* efforts – to obtain the best price for 100% of the equity of a Restructured Canwest. Its only efforts to date have been to solicit an equity partner for a minority position to sit alongside the Noteholders' converted equity position and fight with Goldman Sachs. That is not what has been obtained by Shaw.

(b) The interests of shareholders have been fundamentally disregarded by Canwest Global, and the fundamental bargain struck in the CCAA prepack was that shareholders would get 2.3%. The Noteholders benefited from that agreement through a series of transactions. It was not available to be taken away. Moreover, once the Noteholders were made whole, nobody was negotiating for the benefit of shareholders, and seeking a process to ensure that the entirety of Canwest Global would not be sold without a rigorous auction process.

(c) Canwest Global has failed to prove the efficacy and integrity of the process that would lead to obtaining the highest possible price for the assets that were sold. To the contrary, they ran a process (fairly, as this Honourable Court has ruled) for an entirely different asset. The deal for 100% of the equity of a Restructured Canwest was negotiated without Canwest Global even knowing the negotiations were going on. They were just "sitting and waiting".

(d) The working out of the process was fundamentally unfair to shareholders. The process excluded the three largest and most likely strategic buyers who would have the most synergies with Canwest Global, and seven of the largest private equity funds in North America – Rogers, Astral, Quebecor, OMERS, CPP, ONEX,, The Carlyle Group, KKR, The Blackstone Group, Bain Capital all stayed away from this process.[7] The process was for a different asset. The "process" was a negotiation for a sale of the entirety of Restructured Canwest, and the company did not even know that the negotiation was taking place. Nobody was

[7] Strike Transcript, Q. 30-40, 148, Brief of Transcripts and Exhibits, Tab 1, pp. 8-9, 36.

there to defend all stakeholders interests while the entire company was being negotiated away.

II. FACTS

A. Background

10. Canwest Global was founded by Israel Asper, and the Asper family has always had a controlling interest in the company. Israel Asper started with a television station in Pembina, North Dakota, to build Canada's largest media company. All of the Aspers have been extensively involved in managing the growth and success of the company.[8]

11. Today, Canwest Global is a leading Canadian media company with interests in free-to-air television stations and subscription-based television channels. Through its subsidiary, Canwest Television Limited Partnership ("**CTLP**"), Canwest Global owns and operates the Global Television Network which is comprised of 12 free-to-air television stations. Canwest Global, through its subsidiaries, also owns and operates a portfolio of leading subscription-based national specialty television channels, including 17 leading specialty television channels which were held jointly with Goldman Sachs Capital Partners ("**Goldman Sachs**") in CW Investments Co ("**CW Investments**").[9]

12. Until recently, Canwest Global (i) had significant interests in newspaper publishing operations, principally through its subsidiary Canwest Limited Partnership ("**Limited Partnership**") and (ii) indirectly through its subsidiary, CanWest MediaWorks Ireland Holdings

---

[8] Asper Affidavit, para. 10, Shareholders' Record, Tab 1, p. 6.

[9] Asper Affidavit, para. 8, Shareholder Record, Tab 1, p. 5.

("**CMIH**"), was the majority and controlling shareholder of Ten Network Holdings Limited ("**Ten Holdings**"), which was the owner and operator of various businesses in Australia.[10]

B. The Ad Hoc Shareholder Group

13. The Ad Hoc Group of Canwest Shareholders (the "**Shareholder Group**") was formed immediately after the Shaw 2 Transaction was announced.[11] The Shareholder Group consists of shareholders holding 49% of the equity and 88% of the voting rights in Canwest Global. Specifically, the Shareholder Group consists of:[12]

(a) Leonard Asper ("**Asper**"), who holds roughly 24 million multi-voting shares and 4 million single-voting shares. Asper joined Canwest Global in 1991 as Associate General Counsel for the Global Television Network in Ontario. Thereafter, he held various positions within Canwest Global, ultimately becoming a director of Canwest Global in January 1997 and taking over as President and Chief Executive Officer of the company in September 1999. He resigned as director, President and Chief Executive Order on March 3, 2010;

(b) David Asper ("**David**"), who holds roughly 24 million multi-voting shares and 2 million single-voting shares. David had been with Canwest Global since 1992 and served as an Executive Vice-President and the Chairman of Canwest Global's subsidiary, the National Post Company. David was a director of Canwest Global from 1997 until his resignation in February 2010;

---

[10] Asper Affidavit, para. 9, Shareholder Record, Tab 1, p. 5.

[11] Asper Affidavit, para. 76, Shareholders' Record, Tab 1, p. 22.

[12] Asper Affidavit, paras. 11-14, 16, Shareholders' Record, Tab 1, pp. 6-7.

(c) Gail Asper ("**Gail**"), who holds roughly 24 million multi-voting shares and 1 million single-voting shares. Gail had been with Canwest Global since 1989, serving as General Counsel until 1998 and as Corporate Secretary from 1990 to January 2008. Gail was a director of Canwest Global from 1992 until her resignation in February 2010;

(d) The Asper Foundation, which holds roughly 246,000 single-voting shares;

(e) Blott Asset Management LLC;

(f) Two U.S. equity funds; and

(g) Four Canadian individuals holding shares as private investors.

C. The Canwest Restructuring Process

14. On February 19, 2009, the Board struck a special committee of directors (the "**Special Committee**") with a mandate to explore and consider strategic alternatives in order to maximize value in light of the financial difficulties being experienced by Canwest Global. Given that the Special Committee was to be composed of independent directors who were not shareholders, Asper was not appointed to the Special Committee.[13]

15. Asper (with the knowledge and support of the Special Committee and Thomas Strike ("**Strike**"), who was appointed as the Recapitalization Officer on April 21, 2009), attempted to work with the Noteholders (the "**Noteholders**") of Canwest Media Inc.'s ("**CMI**") 8% Senior Subordinated Notes (the "**Notes**") and potential new investors to source the financing necessary

[13] Asper Affidavit, para. 18, Shareholders' Record, Tab 1, p. 8.

to restructure Canwest Global.[14] The Limited Partnership had been financed by the Bank of Nova Scotia without recourse to the CMI Entities.

16. While the Special Committee originally contemplated finding a new investor to make a $300 to $600 million equity investment in Canwest Global as a whole (including the newspaper assets), by May 2009, the Bank of Nova Scotia, who continued to operate the credit facility for the Limited Partnership, proposed that the restructuring for the Limited Partnership and Canwest Global's television interests become separate processes.[15]

17. Accordingly, in accommodation of the Limited Partnership creditors, as of June 2009, the Limited Partnership was excluded from the process of creating a restructured Canwest Global ("**Restructured Canwest**") that would control Canwest Global's television interests. At that time, and throughout the majority of the period leading up to and including the ultimate equity solicitation in late 2009, the Noteholders indicated their desire was to convert their debt to a majority interest of the equity in Restructured Canwest as a means to obtain benefit from my compromise of the Goldman Shareholders Agreement. However, as became clear in Asper's discussions with Golden Tree Asset Management, LP ("**Golden Tree**") (detailed below), the vast majority of the Noteholders were American and, accordingly, in order to comply with the Canadian Radio-television Telecommunications Commission's (the "**CRTC**") Canadian control requirements, the Noteholders needed a Canadian equity partner who was also willing to compromise the Goldman Sachs Shareholders Agreement.[16]

---

[14] Asper Affidavit, para. 19, Shareholders' Record, Tab 1, p. 8.

[15] Asper Affidavit, paras. 20-21, Shareholders' Record, Tab 1, p. 9.

[16] Asper Affidavit, para. 22, Shareholders' Record, Tab 1, p. 9.

D. The Genesis of the Shareholders' 2.3%

18. Throughout all negotiations with Noteholders, it was always contemplated that Canwest shareholders would receive a portion of the new equity of a restructured Canwest. It also was always contemplated that the Noteholders would be converting their debt to equity as a means of benefiting from any successful compromise of the Goldman Sachs Shareholder Agreement under the Act.

19. The first contact Asper had with the Noteholders was with Golden Tree, which held the largest number of Notes. Asper met representatives of Golden Tree in or about May 2009. This was a high-level meeting, but during the meeting, Golden Tree said that it viewed itself as a long-term holder of Canwest Global and that it was seeking to recover its interests in the Notes through long-term appreciation of the value of the Restructured Canwest shares. Golden Tree advised that it was their view that there was an opportunity for existing equity holders in Canwest Global to negotiate value for themselves in a Restructured Canwest.[17]

20. Asper met with Golden Tree again a few weeks later. At that meeting, the parties discussed a possible framework for the deal that would see the Noteholders convert their debt to an equity interest. While specific numbers were not discussed, Tananbaum stated that while the bondholders would receive an "overwhelming" majority of the equity of Restructured Canwest, equity holders of Canwest Global would also receive some equity in Restructured Canwest.[18] This was the genesis of the 2.3%.

21. Asper and the Noteholders then exchanged term sheets over the course of the next couple months. Asper and his advisors met with the Noteholders and their advisors to negotiate

---

[17] Asper Affidavit, paras. 23, 25, Shareholders' Record, Tab 1, pp. 9-10.

[18] Asper Affidavit, para. 27, Shareholders' Record, Tab 1, p. 10.

valuations. The first term sheet that was exchanged was proposed by Golden Tree on June 16, which stated that an undetermined percentage of the common shares of Restructured Canwest would be issued to existing shareholders of Canwest Global in order to facilitate listing on the TSX and liquidity for creditors (the term sheet also anticipated that additional common shares of Restructured Canwest would be issued to certain creditors of CMI).[19]

22. This term sheet formed the basis of ongoing negotiations. As the negotiations progressed, the parties agreed that the current equity holders of Canwest Global would receive 1% of the equity of Restructured Canwest, which at the time still included the Limited Partnership and Ten Holdings.[20]

23. It was ultimately agreed that the Noteholders and Asper would seek a new Canadian equity holder to hold 20% of CMI which would fill the need for Canadian ownership. Restructured Canwest would own the remaining 80% equity interest in CMI.[21]

24. On July 11, 2009, Asper exchanged emails with Golden Tree confirming that they had substantially agreed on the terms of a deal. Asper said that he was "satisfied that we have the commercial terms settled", and Steve Shapiro of Golden Tree replied "Terrific. Thanks. Look forward to partnering on this."[22]

25. On July 15, 2009, the Noteholders counsel provided Asper's counsel a draft term sheet reflecting their understanding of the agreement between Asper and the Noteholders. Under this

---

[19] Asper Affidavit, paras. 28-29, Shareholders' Record, Tab 1, p. 11.

[20] Asper Affidavit, para. 30, Shareholders' Record, Tab 1, p. 11.

[21] Asper Affidavit, para. 31, Shareholders' Record, Tab 1, p. 11.

[22] Asper Affidavit, para. 32, Shareholders' Record Tab 1, p. 12; Email exchange between Asper and Steve Shapiro dated July 11, 2009, Exhibit "C" to the Asper Affidavit, Shareholders' Record, Tab 1(C), p. 30.

term sheet, existing equity holders of Canwest Global were to receive 1% of Restructured Canwest that would own an 80% share in the holding company that would hold the CMI television assets. The Aspers and another Canadian equity provider (the identity of which, as discussed below, was yet to be determined) were going to invest $65 million and receive the remaining 20% share in the CMI holding company (representing an agreed upon $325 million plan value).[23]

26. All subsequent term sheets that were exchanged from July 15 on contemplated existing equity holders receiving shares of Restructured Canwest.[24]

E. Negotiations with Equity Partners Similarly Contemplated Recovery for Shareholders

27. Asper also assisted to locate a new equity investor for Canwest Global. Those negotiations all proceeded on the basis that there would be recovery for Canwest Global shareholders.

28. Asper began this process by speaking with a high net worth Canadian and his U.S. partners in March and April 2009. A proposal was made to the company; however, these negotiations were unsuccessful.[25] Subsequently, Asper began to negotiate a deal with a large Canadian financial institution. This institution was interested in providing equity of up to $200 million in a restructuring of CMI's assets.[26] On May 5, 2009, the institution and the Aspers signed a deal that would see the equity holders of Canwest Global receive 9%, subject to the

---

[23] Asper Affidavit, para. 33, Shareholders' Record, Tab 1, p. 12.

[24] Asper Affidavit, paras. 34-35, Shareholders' Record, Tab 1, p. 12.

[25] Asper Affidavit, para. 37, Shareholders' Record, Tab 1, p. 13.

[26] Asper Affidavit, para. 38, Shareholders' Record, Tab 1, p. 13.

institution's ability to negotiate same with the Noteholders.[27] However, this deal failed because the institution wanted to receive senior secured notes or some other form of preferred securities in Restructured Canwest that would have priority over the Noteholders' equity and the Noteholders would not agree to such a structure.[28]

29. In late August 2009, a Canadian institutional Noteholder contacted Asper and the Noteholders and proposed that it was interested in partnering with the Aspers to provide $65 million for 20% equity in the CMI holding company.[29] Negotiations with that individual Noteholder continued in September, and on September 2, 2009, counsel to the Noteholders circulated a term sheet that contemplated the individual Noteholder partnering with the Aspers to be the new Canadian equity partner. The term sheet contemplated a certain percentage of the equity in Restructured Canwest being held by the existing equity holders of Canwest Global, although the precise amount had yet to be negotiated.[30] This deal ultimately failed because of valuation issues, among other things.[31]

30. Once those negotiations broke down, Asper resumed negotiations with Golden Tree for an updated transaction based on their July agreement described above. That agreement contained a "hole" for a Canadian investor, which included equity for the Aspers and the other Canwest Global shareholders.[32]

---

[27] Asper Affidavit, para. 39, Shareholders' Record, Tab 1, p. 13.

[28] Asper Affidavit, para. 40, Shareholders' Record, Tab 1, p. 13.

[29] Asper Affidavit, para. 42, Shareholders' Record, Tab 1, p. 14.

[30] Asper Affidavit, para. 43, Shareholders' Record, Tab 1, p. 14.

[31] Asper Affidavit, para. 44, Shareholders' Record, Tab 1, p. 14.

[32] Asper Affidavit, para. 45, Shareholders' Record, Tab 1, p. 14.

31. As a result, it was clear in all negotiations – whether with Noteholders or with prospective equity investors – that the existing shareholders of Canwest Global would participate in any restructuring of Canwest Global. It was a fundamental term of the restructuring.

F. The Sale of Ten Holdings

32. One of Canwest Global's lucrative assets was an Australian company called Ten Holdings. The shareholders allowed that company to be sold and the proceeds to be given to one stakeholder – the Noteholders – on reliance that Canwest Global shareholders would be participating in a Restructured Canwest. Ten Holdings was sold via a block trade that settled on October 1, 2009, for approximately $634 million.[33]

33. Asper did not believe that the sale of Ten Holdings made any sense, given that he was aware that (i) several operating issues would increase the value of Ten Holdings in the near term and (ii) improving markets would provide further upside and that they were leaving several hundred million dollars on the table. However, the uncontradicted evidence is that based on his belief that equity holders were being compensated for their cooperation, he ultimately consented to the transaction.[34]

34. In accordance with the Cash Collateral and Consent Agreement entered into between CMI and the ad hoc committee of Noteholders, the proceeds from the sale of Ten Holdings were paid to fund transaction costs, repay a credit facility, provide a bridge, if necessary, to equity injection, and the remainder was paid to the Noteholders.[35]

---

[33] Asper Affidavit, para. 47, Shareholders' Record, Tab 1, p. 15.

[34] Asper Affidavit, para. 48, Shareholders' Record, Tab 1, p. 15.

[35] Asper Affidavit, para. 49, Shareholders' Record, Tab 1, p. 15.

35. Asper's concerns about this transaction have been proven correct. Today, the CMI Entities' equity stake in Ten Holdings (which was sold for $634 million) is now worth approximately $857 million and at various times since its sale, Ten Holdings has been worth as much as $953 million.[36]

G. The CCAA Prepack Included the 2.3%

36. Six days after the sale of Ten Holdings was completed and most of the proceeds were paid to Noteholders, on October 6, 2009, Canwest Global filed for CCAA protection through a prepackaged filing.[37]

37. The prepackaged filing was similar in structure to the term sheets that were discussed above. The Noteholders' debt would be converted to equity and a new Canadian equity investor would be sought to partner with the Aspers (who the Noteholders had agreed could contribute up to $15 million in connection with the recapitalization) to invest a minimum of $65 million.[38]

38. Shareholders did not need to read the fine print of a plan of arrangement to see what they would be getting in exchange for, among other consideration, consenting to the Ten Holdings sale and not objecting to the pre-filing cash sweep of the proceeds. Canwest Global's October 6, 2009 press release from Canwest Global stated clearly: "[E]xisting shareholders of the Company will receive 2.3% of the shares of a restructured Canwest".[39] This number was adjusted from the

---

[36] Asper Affidavit, para. 51, Shareholders' Record, Tab 1, p. 15; Table Demonstrating the Trading Value and Price/Volume Chart of Ten Networks Holding Limited, Exhibit "D" to the Asper Affidavit, Shareholders' Record, Tab 1(D), p. 32.

[37] Asper Affidavit, para. 52, Shareholders' Record, Tab 1, p. 16.

[38] Asper Affidavit, para. 53, Shareholders' Record, Tab 1, p. 16.

[39] Canwest Press Release, October 6, 2009, Exhibit "E" to the Asper Affidavit, Shareholders' Record Tab 1(E), p. 44.

previously agreed upon 1% to reflect the distribution of the proceeds from the sale of Ten Holdings.[40]

39. The deal announced by the company was a reflection of the bargain struck between the Aspers and the Noteholders. This was not a gift from the Noteholders. Asper himself wrote to the Noteholders, saying "[W]e have a deal. It is not what we wanted, entirely, but on reflection we can live with it." Shapiro of Golden Tree responded "Glad we got there."[41]

40. Asper did not oppose the CCAA prepackaged filing because shareholders would be receiving the 2.3%. He did not oppose the sale of Ten Holdings or the use of proceeds by the Noteholders because shareholders would be receiving the 2.3%.[42] Asper lived up to his end of the bargain. As discussed below, the Noteholders are asking this Honourable Court to be relieved of their obligation to do the same.

H. Post CCAA Filing, Noteholders Confirm Intent to Receive Equity

41. Asper had further discussions with Angelo Gordon (who had purchased Golden Tree's position in the Notes) in October and November 2009. During these discussions Angelo Gordon's representative told Asper that he believed that the Notes could be worth up to 120 cents on the dollar, particularly with the potential upside if Canwest Global won the regulatory "value for signal" application it had ongoing before the CRTC. He further told Asper that Angelo

---

[40] Asper Affidavit, para. 53, Shareholders' Record, Tab 1, p. 16.

[41] Asper Affidavit, para. 54, Shareholders' Record, Tab 1, p. 16; Email exchange between Shapiro and Asper dated October 5, 2009, Exhibit "F" to the Asper Affidavit, Shareholders' Record, Tab 1(F), p. 47.

[42] Asper Affidavit, para. 55, Shareholders' Record, Tab 1, p. 16.

Gordon was a long term holder that had invested in a depressed market with the intention of becoming an equity holder and that it was not interested in being bought out.[43]

42. There is no dispute in the evidence that, since the day the Special Committee was formed, right up until the date the mediation was adjourned, the Noteholders always wanted to convert to equity, and never would have contemplated being bought out (effectively selling the 80% equity they would have received in a Restructured Canwest). This was not the view of any lone Noteholder, acting alone. Strike admits that this was the view of the Ad Hoc Committee as a whole, stating:[44]

> [T]he members of the Ad Hoc Committee were, until very recently, looking to have a substantial ownership interest in a restructured Canwest Global. It was only in the context of the Mediation that the members of the Ad Hoc Committee determined that they were no longer seeking an ownership interest in a restructured Canwest Global.

43. That is an admission that Canwest Global never ran an auction for 100% of the equity of a Restructured Canwest. That admission should be considered when evaluating Canwest Global's arguments about the "minimum 20%" and "alternative transactions" parts of the earlier equity solicitation process, addressed below.

I. The 20% Equity Solicitation Process

44. On November 2, 2009, RBC commenced the equity solicitation process to identify potential new investors. While 90 investors were originally solicited, only 56 expressed an

---

[43] Asper Affidavit, para. 59, Shareholders' Record, Tab 1, p. 17.

[44] Reply Affidavit of Thomas C. Strike sworn June 14, 2010, para. 8, Supplementary Motion Record of the Applicants, Tab 1, p. 3.

interest and only 22 potential investors executed the non-disclosure agreement (the "**NDA**") required to receive confidential information.[45]

45. A number of the parties who did not sign the NDA told Asper that they did not want to get involved in the process that RBC had set up, in particular, because of the prohibition against communications with the Aspers and Goldman Sachs.[46] Moreover, a number of the most likely purchasers for 100% of the equity of a Restructured Canwest did not participate. None of Rogers, Quebecor, Astral, OMERS, CPP, Onex, The Carlyle Group, Thomas H. Lee Partners, KKR, The Blackstone Group and Bain Capital LLC made a bid, and Strike could not recall any of them even signing an NDA.[47]

46. The initial "teaser" document made it clear that Canwest Global was selling off a portion, not all, of a Restructured Canwest. Specifically, the teaser document said:

> The financial restructuring is intended to create a restructured Canwest that will be a stronger industry competitor with a de-leveraged and strengthened balance sheet by means of a recapitalization transaction involving a conversion of its currently outstanding debt (excluding the debt of the CW Media Group and the LP Group) to equity. [emphasis added][48]

47. Obviously, if Canwest Global was auctioning off 100% of the equity of Restructured Canwest, there would not be any conversion of its outstanding debt into equity. The opportunity offered by RBC to invest as a minority shareholder alongside credit opportunity hedge funds was not compelling for the vast majority of large Canadian media companies and large private equity

---

[45] Asper Affidavit, para. 61, Shareholders' Record, Tab 1, p. 18.

[46] Asper Affidavit, para. 61, Shareholders' Record, Tab 1, p. 18.

[47] Strike Transcript, Q. 30-40, Brief of Transcripts and Exhibits, Tab 1, pp. 8-9.

[48] Asper Affidavit, para. 62, Shareholders' Record, Tab 1, p. 18; Canwest Global Communications Corp. Teaser Document dated November 2009, Exhibit "G" to the Asper Affidavit, Shareholders' Record, Tab 1(G), p. 50.

firms with media industry experience who would have considered a 100% sale, and understood the assets and history of the Alliance Atlantis transaction and CMI's partnership with Goldman Sachs and the Shareholder Agreement.[49]

48. RBC also sent prospective investors who executed the NDA a CMI Investor Presentation and an Equity Term Sheet.[50] The CMI Investor Presentation stated [redacted][51] It also contained [redacted][52] As for the Term Sheet, it stated clearly that [redacted][53]

49. The Shareholder Group tendered the evidence of an undoubted expert in the area of auctions, James E. Kofman. As head of Mergers & Acquisitions and Vice Chairman of UBS Securities Canada Inc., Mr. Kofman has run many domestic and international auctions involving companies of similar size as Canwest Global and those much larger, including the largest transaction ever in Canada. His uncontradicted expert evidence on these documents is:[54]

---

[49] Asper Affidavit, para. 63, Shareholders' Record, Tab 1, p. 19.

[50] Asper Affidavit, para. 64, Shareholders' Record, Tab 1, p. 19.

[51] [redacted]

[52] [redacted]

[53] [redacted]

[54] Kofman Report, paras. 4, 6-8, 11, Shareholders' Record, Tab 2(B), p. 196-199.

(a) *On the Teaser*: "Nowhere in the Teaser does it indicate control or 100% of Canwest would be available."

[redacted]

(c) *On the Term Sheets and the Chart*: "In my experience running auctions, a prospective investor reviewing this chart would be led to believe they are investing beside the other parties (the Public and the Creditors and Noteholders) and they would not expect that 100% of the company could be available."

(d) *On all the Marketing Materials:* "By focusing on Canadians the process was by definition a restricted solicitation process. It was signalling the process was not open to the much larger pool of capital that exists outside of Canada. Further, there are many prospective purchasers who would not be attracted by an investment opportunity where they would have to partner with U.S. based debt funds who were in the 'loan to own' business."

(e) *On the Suggestion that the 20% Was only a "Minimum":* "Any informed party would not interpret the term 'minimum' as implying control could be available. By definition marketing materials are designed to highlight the key investment attributes. If control or 100% was being marketed, the Marketing Materials would have highlighted this or they would be incomplete."

(f) *On the Suggestion that "Alternative Proposals Would be Considered":* "A sale of the whole company is fundamentally different than what was being solicited and

potential buyers would be unlikely to interpret an 'alternative transaction' as including an outright sale. In my experience a sale of a company is a fundamentally different process than the solicitation of an equity interest, it is not simply an 'alternative'."

J. Shaw Emerges for 20% in Restructured Canwest, Promises 2.3% to Shareholders

50. On February 12, 2010, Canwest Global announced that it had secured an equity investment commitment from Shaw to invest in Restructured Canwest (the "**Shaw 1 Transaction**").

51. Canwest Global's press release clearly stated that Canwest Global's existing shareholders would receive cash for their shares in Canwest Global.[55]

52. The terms of the transaction, including the fact that existing shareholders of Canwest Global would receive a cash payment based on their pro rata entitlement to 2.3% of the equity value of Restructured Canwest, was fully detailed in Strike's affidavit sworn February 12, 2010.[56]

K. The Court Approves the 2.3% Deal and This is Publicly Announced

53. On February 19, 2010, this Honourable Court made an order approving and authorizing the Shaw 1 Transaction including the Amended Support Agreement that stipulated that each of the existing shareholders of Canwest Global would receive a cash payment based on their pro rata entitlement to 2.3% of the equity value of Restructured Canwest.[57]

---

[55] Asper Affidavit, para. 66, Shareholders' Record, Tab 1, p. 19.

[56] Asper Affidavit, para. 67, Shareholders' Record, Tab 1, p. 20; Affidavit of Thomas C. Strike sworn February 12, 2010, Exhibit "J" to the Asper Affidavit, Shareholders Record, Tab 1(J), p. 60.

[57] Asper Affidavit, para. 68, Shareholders' Record, Tab 1, p. 20.

54. On February 19, 2010, Canwest Global announced the Shaw 1 Transaction. The press release specifically stated that Canwest Global's shareholders "will receive cash payments in exchange for their shares equivalent in the aggregate to 2.3% of the implied equity value of Restructured Canwest, or approximately $11 million in aggregate."[58]

55. Between February 12, 2010 and April 30, 2010 (the last trading day before May 3, 2010, when the Shaw 2 Transaction was announced), 50,232,762 shares in Canwest Global were traded.[59] On April 30, 2010, Canwest Global's share price closed at 16 cents. The 10-day volume weighted average of Canwest Global's share price after the deal breaching the commitment to existing equity holders was announced on May 3, 2010 was 9 cents.[60]

L. The Mediation

56. The Shaw 1 Transaction contained one significant wild card: Goldman Sachs. In light of the Noteholders' desire to extract value from Goldman Sachs through disclaimer or resiliation of the Shareholders Agreement, the Goldman Sachs issue still had to be resolved. The parties asked for a court-supervised mediation.[61] After discussing with the parties their willingness to attend, this Honourable Court directed the CMI Entities, Goldman Sachs, Shaw and members of the Noteholders to attend a mediation (the "**Mediation**") to be conducted by Chief Justice Winkler.[62]

---

[58] Asper Affidavit, para. 69, Shareholders' Record, Tab 1, p. 20, para. 69; Canwest News Release dated February 19, 2010, Exhibit "L" to the Asper Affidavit, Shareholders" Record, Tab 1(L), p. 75.

[59] Asper Affidavit, para. 70, Shareholders' Record, Tab 1, p. 20; Table Particularizing Daily Trading Volume of Canwest Global between February 12, 2010 and April 30, 2010, Exhibit "M" to the Asper Affidavit, Shareholders' Record, Tab 1(M), p. 78.

[60] Asper Affidavit, para. 73. Shareholders' Record, Tab 1, p. 21.

[61] Affidavit of Thomas Strike, sworn June 7, 2010 (the "Strike Affidavit"), para. 40, Motion Record of the Applicants (the "Applicants' Record"), Tab 2, p. 15.

[62] Strike Affidavit, para. 42, Applicants' Record, Tab 2, p. 16.

57. The Mediation took place from March 29 to March 31, 2010. While Strike, Stephen and legal counsel attended on behalf of the CMI Entities, they did not actively participate in the Mediation as the negotiations were principally between Goldman Sachs and Shaw.[63]

58. After three days, Chief Justice Winkler adjourned the Mediation. The adjournment took "everyone by a bit of surprise".[64] At the time of the adjournment, the concept of Shaw purchasing 100% of the equity of a Restructured Canwest had not been put on the table.[65]

59. After the adjournment, Goldman Sachs and Shaw continued to negotiate. Canwest Global did not even know the negotiations were taking place, and did not participate in any way with respect to those negotiations that ultimately led to the framework for the Shaw 2 Transaction. Canwest Global was just "sitting and waiting".[66]

60. In his affidavit sworn June 3, 2010, John Maguire of Canwest Global testified that on April 16, 2010, Chief Justice Winkler:

> advised the parties that the GS Parties, Shaw and the Ad Hoc Committee had reached a settlement effecting a resolution of all of the existing and potential issues in respect of, *inter alia*, the treatment of the Shareholders Agreement, the Shaw Transaction and the Amended Recapitalization Transaction (the "**Settlement**").[67]

---

[63] Strike Transcript, Q. 56, Brief of Transcripts and Exhibits, Tab 1, p. 12.

[64] Strike Transcript, Q. 57, Brief of Transcripts and Exhibits, Tab 1, p. 13.

[65] Strike Transcript, Q. 61, Brief of Transcripts and Exhibits, Tab 1, p. 14.

[66] Strike Transcript, Q. 59-60, Brief of Transcripts and Exhibits, Tab 1, pp. 13-14.

[67] Asper Affidavit, para. 71, Shareholders' Record, Tab 1, p. 21; Affidavit of John E. Maguire, sworn June 3, 2010, Exhibit "N" to the Asper Affidavit, para. 99, Shareholders' Record, Tab 1(N), p. 81.

61. This was confirmed in Strike's evidence.[68] The Shareholder Group asked for a copy of the email plainly described in Strike's affidavit that communicated this settlement (which was only disclosed to Shareholders two weeks later, after another 14.4 million shares traded). Canwest Global confirmed the email existed, but Canwest Global has refused to produce the document.[69]

62. That deal was the Shaw 2 Transaction which does not provide for Canwest Global's shareholders to receive the promised 2.3% equity stake in Restructured Canwest (or cash equivalent). This fundamental term of the CCAA prepack, which Asper relied on to permit the CCAA filing and to permit the proceeds of Ten Holdings to be given to one creditor on the eve of an insolvency filing, was breached.

M. Post-Settlement Efforts for Shareholders

63. After Canwest Global had been advised that a deal had been struck to sell the entirety of its enterprise, contrary to the auction it had previously run, Stephen and Strike asked about how the Shaw 2 Transaction would treat shareholders. They obviously knew about the fundamental bargain, and wanted to know why it was not being respected. On cross-examination, Strike acknowledged that the reasons he provided to Shaw and the Noteholders for providing for equity holders was "Because it was in the original Shaw deal."[70]

64. The deal having been concluded, neither Shaw nor the Noteholders were willing to abide by the bargain struck with Asper. Even Special Committee Chair Derek Burney ("**Burney**") weighed in to try to get the Noteholders to abide by the bargain struck. However, by April 26,

---

[68] Strike Affidavit, para. 46, Applicants' Record, Tab 2, p. 17.

[69] Responses to the Questions Taken Under Advisement at the Cross-Examination of Thomas C. Strike dated June 15, 2010, Q. 64.

[70] Strike Transcript, Q. 74, Brief of Transcripts and Exhibits, Tab 1, p. 18.

2010, it was clear to the Special Committee and the company as a whole, that this was not possible. By April 26, 2010, the Shareholders had been wiped out.[71]

65. Canwest Global never issued a material change report to Shareholders disclosing that a deal had been reached that would have given them none of the previously disclosed and court-ordered consideration for another full week. It was only on May 3, 2010, that Canwest Global issued its material change report.[72] Strike confirmed on cross-examination that he did not think that Canwest Global filed a confidential material change report with the OSC prior to May 3.[73]

66. After it became clear that the Shareholders had been wiped out, Canwest Global turned its attention to increasing recovery for unsecured creditors. Strike's affidavit said "Once it became apparent that there would be no value allocated to Canwest Global's existing shareholders, the CMI Entities used that fact to negotiate for a greater recovery for the Affected Creditors."[74] In other words, Canwest Global leveraged the fact that the Shareholders were being wiped out in order to benefit another stakeholder, the unsecured creditors. They were successful in using the fact of the shareholders being wiped out in order to increase recovery for unsecured creditors.

N. Shaw Announces Deal for 100% of Canwest Global

67. On May 3, 2010 – two weeks after being advised of a deal being concluded in an email that Canwest Global refuses to produce, and one week after determining that there was no possibility for recovery for shareholders – Shaw announced that it had reached a deal with

---

[71] Responses to the Undertakings Given at the Cross-Examination of Thomas C. Strike dated June 15, 2010 (the "Responses to Undertakings"), Q. 143 p.2.

[72] Material Change Report, Exhibit 2 to the Strike Transcript, Brief of Transcripts and Exhibits, Tab 1.

[73] Strike Transcript, Q. 96, Brief of Transcripts and Exhibits, Tab 1, p. 24.

[74] Strike Affidavit, para. 47, Applicants' Record, Tab 2, p. 28.

Goldman Sachs and Canwest Global whereby it would purchase 100% of Canwest Global and Goldman Sachs' interest in CW Investments for approximately $2 billion (the "**Shaw 2 Transaction**").[75]

68. The Shaw 2 Transaction is a perfect solution for those parties that were actually invited to the negotiation table. The Noteholders are made whole, receiving 100 cents on the dollar recovery (note, Strike had no idea why the Noteholders would be entitled to that amount – he simply relied on counsel because "they're the insolvency experts, I'm not", and he took no steps to independently verify this[76]). Goldman Sachs received $709 million for an asset they purchased for $480 million two years earlier, a +19% internal rate of return. Shaw received 100% of the equity of Restructured Canwest, without ever having to compete with another bidder for that asset.[77]

69. But for those not at the negotiation table, the Shaw 2 Transaction represents a failure to run an auction for the asset actually sold, and for good measure, also takes away the fundamental promise to Shareholders in the form of 2.3% equity value, which was announced to the market when the company filed for CCAA, and announced to the market when this Honourable Court ordered that shareholders would receive that amount. It also represents a compromise of all unsecured creditors, with between $110 million and $150 million worth of unsecured claims being compromised for $38 million.[78]

---

[75] Asper Affidavit, para. 74, Shareholders' Record, Tab 1, p. 21.

[76] Strike Transcript, Q. 83, Brief of Transcripts and Exhibits, Tab 1, p. 21.

[77] Asper Affidavit, para. 6(d), Shareholders' Record, Tab 1, p. 4.

[78] Strike Transcript, Q. 81, Brief of Transcripts and Undertakings, p. 20.

O. The Value of the Shaw 2 Transaction, According to Shaw

70. After it announced the Shaw 2 Transaction, Shaw held a conference call with industry analysts. The transcript of that conference call is telling, in that it demonstrates that: (a) Canwest Global never held an auction for 100% of the equity of a Restructured Canwest; (b) the transaction is an opportunistic deal for Shaw at a time when multiples are low; and (c) Shaw thought they would do worse in an auction. Shaw's representatives states on that call:[79]

> Based on our review and our financial advisors we believe that this [9.5x multiple of EBIDTA] is much lower than the premium paid for comparable historical specialty transactions. The average over the last 10 years, for example, has been just over 15 times multiple for specialty channel transactions. So we are buying this at a time when both the multiples are low and the EBIDTA has room for rebounds. [...]
>
> Well, Greg, the initial deal, the 20% for CAD95 million and control, that was a somewhat imperfect deal but that was the only deal that was on the table at the time. We entered at that time and we were able to negotiate with the bondholders to be able to bring this out of the private company, which we thought was very positive but it was the only game in town until we got into mediation with the Chief Justice. [...]
>
> Goldman had a contract and there were many different views about what the potential outcome could have been in that. One of the potential outcomes could have been that these channels could have gone to auction and we wouldn't have had this opportunity with the loss that we have today. And that would have been a very unfortunate situation for us.

P. The Significantly Improved Position of Canwest Global

71. Not only was the Shaw 2 Transaction the product of an extremely flawed process, it also resulted in a manifestly improvident bargain. The uncontradicted evidence is that at the time the Second Shaw Transaction was presented to Canwest Global, the company was in a very different position than it was in when the November equity solicitation process had been run. The

---

[79] Final Transcript, Shaw Communications Conference Call to discuss Canwest Transaction, May 3, 2010, Exhibit "O" to the Asper Affidavit, Shareholders' Record, Tab 1(O), pp. 90, 93-94

November equity solicitation process followed a weak spring and summer for the conventional television (over the air) market. However, by late 2009 and throughout 2010, the outlook for Canadian advertising markets has strengthened considerably.[80]

72. Moreover, the Global Television Network, along with all other private networks, obtained a significant victory from the CRTC. On March 22, 2010, the CRTC decided that private networks should be able to seek compensation from cable and satellite carriers (like Shaw) for their signals. This victory for the private television networks significantly increased the value of Canwest Global, particularly for cable providers.[81]

73. In addition, Canwest Global has stronger earnings this year as a result of the company's sale of an unprofitable series of channels known as the E! Network. This results in a higher estimated earnings before interest, taxes, depreciation and amortization ("**EBITDA**") in 2010 than what would have existed in 2009.[82]

74. Further, over the course of the fall of 2009 and spring of 2010, it became apparent that Canwest Global's new programming purchases made in May of 2009 had performed extremely well, were being renewed by the U.S. networks, and therefore would be likely to return to Global's schedule for the fall of 2010 forward. At the end of May 2010, Global Television Network confirmed that it has renewed the rights to broadcast all of the key hit television shows that drive its results and to some extent, the results of the CMI and CW entities as a whole.[83]

---

[80] Asper Affidavit, para. 80, Shareholders' Record, Tab 1, p. 22.

[81] Asper Affidavit, para. 81, Shareholders Record, Tab 1, p. 23.

[82] Strike Transcript, Q. 129-131, Brief of Transcripts and Exhibits, Tab 1, pp. 30-31.

[83] Asper Affidavit, para. 82, Shareholders' Record, Tab 1, p. 23.

75. Finally, the debt and equity markets were significantly improving over this same time period. From December 2009 to April 2010, the global equity and lending markets improved resulting in an increased availability of capital and decrease in the cost of borrowing money. The uncontradicted evidence is that there can be no doubt, based on virtually all metrics and actual transactions in the marketplace that it would have been easier for a prospective purchaser of Canwest Global to raise money in April 2010 than it was in December 2009.[84]

76. A good measure of the value of the Restructured Canwest in this process is the trading price of the Notes.[85] The first trade of the Notes after filing was for 72 cents on the dollar. Even before the Shaw 2 Transaction was announced, the Notes traded for roughly 98 cents on the dollar.[86]

77. All of the foregoing, combined with the publicly released financial results from February 28, 2010, formed part of Asper's view that the EBITDA of the media assets of Canwest Global for Fiscal 2010 was approximately $225 million.[87]

78. The estimate of $225 million is conservative based on the actual EBITDA figures of Canwest Global's television assets. Based on actual results to date and the other factors already described in the Asper Affidavit, EBITDA for 2010 is closer to $250 million. As of February 28, 2010, the actual six month EBITDA for Canwest Global's media assets was $165,934,000.[88]

---

[84] Asper Affidavit, para. 83, Shareholders Record, Tab 1, p. 23.

[85] Asper Affidavit, para. 84, Shareholders' Record, Tab 1, p. 24.

[86] Canwest Media Inc. 8% Senior Subordinated Notes due 2012: Trade History, Exhibit "S" to the Asper Affidavit, Shareholders' Record Tab 1(S), p. 113..

[87] Asper Affidavit, para. 85, Shareholders' Record, Tab 1, p. 24.

[88] Supplemental Affidavit of Leonard Asper sworn June 15, 2010 (the "Asper Surreply Affidavit"), para. 5, Supplemental Responding Motion Record of the Ad Hoc Group of Shareholders (the "Shareholders' Supplemental Record"), Tab 1, p. 2; Canwest Global's Interim Consolidated Financial Statements for the Three

The nine month EBITDA for Canwest Global has been produced subject to a confidentiality undertaking, and will be addressed at the hearing.

Q. The Evidence on Valuation

79. The Shareholders led valuation evidence, but it should be recognized that this is not a hearing where the Court is charged with the task of determining the actual value of all of the equity of a Restructured Canwest. That is the function of the market – which has yet to be tested for this asset.

80. The Shareholders led evidence of Mr. Glenn Bowman, managing partner of Capital Canada Limited, a Canadian investment banking firm. His evidence related to the *multiples* of EBITDA that an asset like Canwest Global would yield. His testimony was that, based on an analysis of comparable transactions, companies such as Canwest Global yield multiples in the range of 10.5 times to 11.5 times EBITDA.[89]

81. Canwest Global led no evidence to suggest anything different. No expert report was filed on behalf of Canwest Global to suggest that some lower multiple, such as 8.5 times to 9.5 times, would be appropriate.

82. Instead, Canwest Global challenged Mr. Bowman – who used an estimated EBITDA provided by Asper, and did not purport to be opining on the accurate EBITDA – on the accuracy of the EBITDA number. Canwest Global never cross-examined the source of that EBITDA number, being Asper.

---

and Six Months Ended February 28, 2010, Exhibit "A" to the Asper Surreply Affidavit, Shareholders' Supplemental Record, Tab 1(A), p. 5.

[89] Expert Report of Glenn Bowman, Exhibit "B" to the Affidavit of Glenn Bowman dated June 10, 2010 [note, this was ultimately sworn on June 15, 2010], Shareholders Record, Tab 3(B), p. 228.

83. There were three principal challenges to the EBITDA number put to Mr. Bowman. First, Canwest Global suggested to Bowman that the EBITDA provided by Asper did not account for minority interests in determining the appropriate EBITDA. However, Asper already testified that the minority interests in question account for less than 10% of the overall business, and as such, would not affect the multiples that a purchaser would be willing to pay.[90] Strike was given an opportunity on re-examination to comment on parts of this affidavit (which was only served shortly before the cross-examination), he was never asked by Canwest Global's counsel to comment on this point made by Asper. Canwest Global's other witness, Mr. Buzzi from RBC Capital went one step further, going so far as to *agree* with Asper's point when the question was put to him by Canwest Global's counsel:[91]

> Q. Do you agree with the statement: The minority interest in question counts for less than 10 per cent of the overall business and would not affect value multiples?
>
> A. Yeah, that one I wouldn't disagree.

84. The second challenge was that Asper's EBITDA did not take into account a reduction in multiples of EBITDA relating to corporate costs. Strike opined that that would result in a reduction of EBITDA by $7 million.[92] But Strike admitted on cross-examination that he had no idea how that number was generated, and in fact, that was a number generated by someone else at Canwest Global who never swore an affidavit.[93] Strike made no effort to independently verify the number and could not even hazard a guess as to its constituent parts.[94] Asper, who was the

---

[90] Asper Surreply Affidavit, para. 9, Shareholders' Supplemental Record, Tab 1, p. 4.

[91] Transcript of Cross-Examination of Peter Buzzi held June 15, 2010, Q. 41, Brief of Transcripts and Exhibits, Tab 2, p. 13.

[92] Reply Affidavit of Thomas Strike sworn June 14, 2010 (the "Buzzi Transcript"), para. 20, Supplementary Motion Record of the Applicants, Tab 1, p. 9.

[93] Strike Transcript, Q. 124, Brief of Transcripts and Exhibits, Tab 1, pp. 29-30.

[94] Strike Transcript, Q. 121, 125, 159, Brief of Transcripts and Exhibits, Tab 1, pp. 29-30, 40

CEO of the company for more than a decade, found Strike's number to be inflated, and stated that the proper number was closer to $2 million. Canwest Global elected not to cross-examine Asper.

85. The third challenge was that Asper's estimate of Q3 and Q4 EBITDA (which at the time were not known), which referenced last year's Q3 and Q4 earnings as a reference, was inaccurate, in that there were amortization costs shifted to Q3 and Q4 of this fiscal year, whereas that was not the case in the prior year. However, on cross-examination, Strike admitted that he was only talking about a $20 million difference. The question was then put to Mr. Bowman on re-examination – if he used Canwest Global's actual EBITDA for Q1 and Q2 FY2010, and then added EBITDA from Q3 and Q4 of FY2009, and then subtracted this $20 million, what would be his result based on the unchallenged evidence that the appropriate multiple would be in the range of 10.5 to 11.5 times EBITDA? Mr. Bowman's response was: $2.415 billion to $2.645 billion.[95] This was an even *higher* estimate than what Mr. Bowman put in his own report.

86. It is also important to note that Canwest Global tendered no evidence of any expert to refute Mr. Bowman's actual report, which was based on the appropriate *multiples* of EBITDA for these kinds of transactions. The only evidence proffered by Canwest Global was the evidence of Mr. Buzzi, a non-independent party who was in charge of this process. Mr. Buzzi only went so far as to opine that "valuations by their very nature are highly subjective exercises."[96] Obviously this is true. But that is the Shareholders' point: the only way to properly determine the actual value of a Restructured Canwest is to let the market decide.

---

[95] Transcript of Cross-Examination of Glenn Bowman held June 15, 2010, Q. 124, Brief of Transcripts and Exhibits, Tab 3, p. 27.

[96] Affidavit of Peter Buzzi Affidavit sworn June 14, 2010, para. 7, Supplementary Motion Record of the Applicants, Tab 2, p. 17.

R. Canwest Global's Justification for Wiping out Shareholders

87. Strike gives four reasons to eliminate shareholder recovery in the Shaw 2 Transaction. Those reasons, Strike says, are:

a) all affected creditors will not have their claims satisfied in full;

b) there is no need for a public "float" to implement the Amended Shaw Transaction as Restructured Canwest will be a private company which will be wholly-owned by Shaw, which is a "Canadian";

c) there is no benefit to be derived from the cooperation of the existing shareholders of Canwest Global to implement the Recapitalization Transaction; and

d) the CCAA amendments which recently came into force disentitling recoveries for shareholders would have made confirmation of the plan questionable.[97]

88. Every one of those facts were equally true when the First Shaw Transaction (under which the shareholders were receiving a cash payment equivalent to 2.3%) was approved:

(a) all affected creditors did not have their claims satisfied in full;

(b) there was no need for a public "float" given that Restructured Canwest would be a private company with Shaw serving as the Canadian equity holder;

(c) there was no benefit to be derived from the cooperation of the existing shareholders of Canwest Global in implementing the Recapitalization Transaction; and

(d) the CCAA amendments were already in force in February 2010.[98]

---

[97] Strike Affidavit, para. 75, Applicants' Record, Tab 1, p. 37.

[98] Asper Affidavit, para. 88, Shareholders' Record, Tab 1, p. 25.

89. There is no legitimate reason to eliminate all recovery for Shareholders. Based on the Shareholders' uncontested evidence on appropriate multiples, and by any reasonable estimate of EBITDA (including the information provided in the confidential answers to undertakings), Canwest Global left hundreds of millions of dollars on the table by not insisting on an auction when it became clear that 100% of the equity (with the exception of the Goldman Sachs / Shaw position in the operating subsidiary) was now available. And there was no legitimate reason to allow Shaw and Goldman Sachs to negotiate a transaction in Canwest Global's absence, which took away a fundamental term of the prepack that Shareholders and Asper reasonably relied on.

III. LAW AND ARGUMENT

A. The Importance of Fairness in CCAA Proceedings

90. Fairness is one of the fundamental values underlying CCAA proceedings. It is fundamental to the goal of maximizing value for the benefit of all stakeholders. Where there is a sales process, there must be fairness and transparency to that process.[99]

91. The Applicants are seeking this Honourable Court's approval of the Shaw 2 Transaction. That approval is *required* (as opposed to merely requested) because the Shaw 2 Transaction is manifestly different from the Shaw 1 Transaction that was approved by the Court. As stated above, the process leading up to this transaction was designed for a radically different transaction, being a debt-for-equity scenario where a Canadian partner was needed for a minority equity position. The only process this Honourable Court has approved was for an auction for 20% of the equity, where the bidders all knew that they would have to be a minority equity partner with US hedge funds. That is a very different value proposition than being the sole owner of 100% of the equity of a Restructured Canwest.

---

[99] *Stelco. Inc. (Re.)* 2005, 75 O.R. (3d) 5 (C.A.); *Stelco Inc. (Re.)* (2005), 75 O.R (3d) 31 (C.A.); *Ivaco Inc. (Re.)* (2004), 3 C.B.R. (5th) 33 (Ont. Sup. Ct. J. [Commercial List]).

B. The Applicable Test is Soundair

92. The test for approving a transaction such as this is not "low", as Canwest Global suggests. The test for approving this transaction is exactly the test that this Honourable Court applied in its March 10, 2010 reasons approving the Shaw 1 Transaction. The Shaw 2 Transaction is a completely different deal, and a deal for 100% of the company should be analyzed on no less of a standard than the one applied for a 20% stake in the company. The appropriate test is set out in *Royal Bank of Canada v. Soundair Corp.*[100] *Soundair* establishes four factors that the Court must consider when deciding whether or not to approve the Shaw 2 Transaction:

1. whether the Applicants made sufficient effort to get the best price and have not acted improvidently;
2. the interests of all parties;
3. the efficacy and integrity of the process by which offers are obtained; and
4. whether there has been unfairness in the working out of the process.[101]

93. Although a failure to satisfy any one of these conditions is sufficient for a motion to approve a transaction to fail, in this case, Canwest Global fails on every one of these criteria.

C. The Applicants did not Make Sufficient Efforts to Get the Best Price and Acted Improvidently

94. Insolvent companies cannot sell their assets unless satisfying the Court that it made all reasonable efforts to get the best price for that asset. They also cannot sell their assets where it has been shown that the bargain struck is improvident. This is the first criterion of *Soundair*.[102]

---

[100] *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) [*Soundair*].

[101] *Ibid.* at 6.

1. Market Knows Best

95. There is a difference between selling a peculiar and esoteric asset (like Air Toronto, the asset in *Soundair*, which would only have two natural bidders) and selling a commercially viable asset that is likely to attract multiple bidders. In the latter case, an auction would virtually always be required. For instance, in *re Boutique Euphoria Inc.*,[103] the assets in question were 15 retailers and 2 wholesalers that the Court held could be commercially viable in the correct circumstances. In such a situation, the Court refused to accept the Court officer's process which failed to tender the assets to the open market:

> Here, the Court is not convinced that the Monitor has made sufficient efforts to get the best price at the stalking horse bid level. He merely focussed on one alternative, with no consideration for the others. Even in the context of a CCAA restructuring, this is hardly acceptable.[104]

96. The presumption is, and should be, that the best way to maximize value in a going concern sale of assets is to conduct an auction for the assets being sold. In *Laurentian Bank of Canada v. World Vintners Corp.*, the Ontario Superior Court of Justice concluded that: "the only path to confidence in a 'going-concern' sale is through a competitive bidding process in the marketplace with a reasonable opportunity for informed arms-length purchasers to bid." [Emphasis added][105]

97. In *Pente Investment Management Ltd. v. Schneider Corp.*,[106] the Ontario Court of Appeal favourably cited U.S. case law for the proposition that:

---

[102] *Ibid.* at 6.

[103] *Re Boutique Euphoria inc. (Re)*, 2007 QCCS 7129.

[104] *Ibid.* at para. 60.

[105] *Laurentian Bank of Canada v. World Vintners Corp.* (2002), 35 C.B.R. (4th) 144 (Ont. Sup. Ct.) at para. 26.

[106] *Pente Investment Management Ltd. v. Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.) [*Pente*].

> When it becomes clear that a company is for sale and there are several bidders, an auction is an appropriate mechanism to ensure that the board of a target company acts in a neutral manner to achieve the best value reasonably available to shareholders in the circumstances. When the board has received a single offer and has no reliable grounds upon which to judge its adequacy, a canvass of the market to determine if higher bids may be elicited is appropriate, and may be necessary.[107] [Emphasis Added]

98. As was explained by the United States Supreme Court in *Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership*,[108] a plan that grants an exclusive right and makes no provision for competing bids or competing plans means that "any determination that the price was top dollar would necessarily be made by a judge in bankruptcy court, whereas the best way to determine value is exposure to the market."[109]

99. The genius of an auction is its open nature. As one Canadian insolvency publication explains:

> The defining feature of an auction is its open nature. All bidders are aware of the other bidders' bid terms and conditions. At its basic level, an auction requires that subsequent bidders exceed the terms of the previous bid. At the end of the auction, the highest bidder is successful, and other bidders have had the opportunity to make a definitive choice as to whether or not to win the bid. In effect, every unsuccessful bidder makes a choice not to buy.[110] [Emphasis added]

100. If further support is needed for this proposition, one need go no further than this Honourable Court's own statements *in the Canwest proceedings*. On the L.P. sale, this Court said:

---

[107] *Ibid.* at para. 63.

[108] *Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership,* 526 U.S. 434 (1999).

[109] *Ibid.* at 457.

[110] Daniel R. Dowdall and Jane O. Dietrich, *Do Stalking Horses Have a Place in Intra-Canadian Insolvencies?,* Annual Review of Insolvency Law, 2005 (Toronto: Carswell, 2006) at 3.

> [T]he Monitor will supervise a vigorous and lengthy solicitation process to thoroughly canvass the market for alternative transactions. The solicitation should provide a good indication of market value. [111]

101. What vigorous and lengthy solicitation process thoroughly canvassed the market for alternative transactions in this case? All that happened was that Canwest Global ran an equity solicitation process, thoroughly canvassing the market for a completely different asset. What path to confidence has Canwest Global offered to suggest that it obtained the highest price for the prized asset of the Canwest Global broadcasting empire? The most likely bidders for that asset were never at the table – because they were never told that that asset was available for sale. What confidence can the Court have that Canwest Global secured the best price for this asset, when the terms of the deal were being negotiated at a time when the company was oblivious to the fact that its equity was being negotiated away?

102. This process resulted with a single bidder – the only one provided with: (a) confidential information about Canwest Global; (b) the opportunity to negotiate with Goldman Sachs directly (and apparently in the absence of even Canwest Global); and (c) the opportunity to bid on 100% of the equity of the Restructured Canwest.

103. The process adopted by the Applicants to sell a 20% stake in a Restructured Canwest cannot satisfy the first factor of the *Soundair* test, now that 100% of a Restructured Canwest is being sold. In *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa*,[112] the Alberta Court of Appeal recently held that Courts should consider the following factors to determine whether the deal was improvident or the process failed to get the best price:

---

[111] *Re Canwest Publishing Inc.*, 2010 ONSC 222 (S.C.J.) at para. 39.

[112] *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa* (2010), 469 A.R. 333 (C.A.).

(a) whether the offer accepted is so low in relation to the appraised value as to be unrealistic;

(b) whether the circumstances indicate that insufficient time was allowed for the making of bids;

(c) whether inadequate notice of sale by bid was given; or

(d) whether it can be said that the proposed sale is not in the best interest of either the creditors or the owner.[113]

104. The process adopted by the Applicants in arriving at the Shaw 2 Transaction offends all four of these factors. As outlined above, on a valuation basis, the price Shaw proposes to pay is woefully inadequate. It has not been tested against the market. Bidders other than Shaw were provided no notice or opportunity to bid on 100% of the equity of Restructured Canwest. Such a process is certainly unfair to both Affected Creditors (who will likely be made whole through a value maximization process) and shareholders who have been deprived of the residual value that would arise from a value maximization process.

105. The process that ultimately resulted in the Shaw 2 Transaction must be evaluated on its own merits. Tellingly, the Applicants do not try to defend their efforts to maximize the sale price of the Shaw 2 Transaction. Instead, in the portion of their factum applying the *Soundair* test, the Applicants merely cite nine findings of this Honourable Court in its reasons regarding the Shaw 1 Transaction.[114] Nowhere in the Applicants' materials do they make any reference to any independent process they developed to maximize the price that Shaw ultimately agreed to pay for the CMI Entities. That is because there was no such process. In such circumstances, this Honourable Court's findings regarding the Shaw 1 Transaction process are simply irrelevant to the inequity and improvidence of the process adopted for the Shaw 2 Transaction.

---

[113] *Ibid.* at para 13.

[114] Factum of the CMI Entities at paras. 53 & 54.

2. It was Inappropriate to Deal Away the Fiduciary Out For Nothing

106. The Shareholders' expert on auctions provided testimony on the impact of dealing away the "fiduciary out" in this process for the sale of 100% of the equity of a Restructured Canwest. His evidence was neither refuted by a contrary affidavit, nor by cross-examination. Therefore the only evidence before this Honourable Court on the lack of a fiduciary out is as follows:[115]

> The absence of a fiduciary out would act as an absolute block to any party that was interested in acquiring 100% of Canwest on terms superior to those in the Shaw transaction. It is extremely rare in public company transactions in Canada for there not to be a fiduciary out. In the rare circumstances where directors have elected to forego a fiduciary out it is where they are satisfied beyond a doubt that there has been an auction process and that it is not reasonable to expect that another party would be prepared to make a superior bid.
>
> In my opinion, it was highly unusual in the Shaw Canwest transactions for the parties to have entered into an agreement without a fiduciary out. Given the auction process was focused on the sale of a minority stake and there was insufficient communication that control was available, it would be difficult to conclude that a full and informed auction had been conducted. Fiduciary outs are not to be taken lightly and directors recognize the important role of a fiduciary out in protecting stakeholder interests. Fiduciary outs are based on the premise that it is shareholders (or in certain circumstances other stakeholders), not directors who should ultimately have the right to decide on the sale of a company. In my experience prospective buyers would not expect that an auction focused on a 20% stake could have ended up as a sale of all of the company and that there would be no fiduciary out. Given the nature of the disclosure in the Marketing Materials, in my opinion the absence of a fiduciary out was detrimental to stakeholders.

107. Fiduciary outs are arguably most important in the context of the sale of distressed assets where market efforts can be made by opportunistic buyers to siphon value away from stakeholders. Distressed targets can, like Canwest Global was in this case, feel as though they have no alternative but to accede to the demands of the buyer. A fiduciary out serves the fundamental purpose of providing an "escape hatch" should the company strike an improvident deal and a better deal is presented. It maximizes value for affected creditors and shareholders.

---

[115] Kofman Report, paras. 12-13, Shareholders' Record, Tab 2(B), pp. 199-200.

108. More perplexing than the agreement of the CMI Entities to the Shaw 2 Transaction in the absence of a "fiduciary out", however, is the complete absence of any evidence in the Applicants' materials that they received any consideration whatsoever for agreeing to give up the "fiduciary out". There is not a scintilla of evidence to suggest that anyone from Canwest Global made any effort whatsoever to extract higher value in exchange for agreeing to a deal that had no fiduciary out.

109. Instead, Canwest Global seeks to hide behind the cloak of this Honourable Court's March 1, 2010 Reasons for Decision. In those reasons, this Honourable Court was not impressed by Canwest Global dealing away the fiduciary out, even for 20% stake in the company, finding that "ideally the fiduciary out provision would not have been negotiated away." However, based on the specific facts presented to this Court about the thorough canvassing of the marketplace for a 20% stake in Restructured Canwest, this Court was not willing to reject the deal on that basis alone. But that finding cannot be grafted onto the complete absence of any meaningful process used to determine the true market worth of the complete package of assets contemplated to be sold in the Shaw 2 Transaction.

110. This is not the first case where Ontario courts have considered fiduciary outs, and there can be no question that as a result of this Court and the Court of Appeal's decision in *Ventas,* coupled with the decision of the Supreme Court of Canada in *BCE*, the U.S. case law relating to maximizing shareholder value when a company is "in play" is not the law of Ontario. The Shareholders do not ask for this Court to retreat from that position.

111. However, this is a unique set of facts presented to the Court, where the winner of a 20% equity solicitation process has walked away with something not made available to any other

bidder. In those circumstances, the Shareholders submit that it is worth considering some of the reasons *underlying* the U.S. case law, and ask why those reasons should not be applicable here.

112. The seminal case on fiduciary outs in the United States is *Omnicare Inc. v. NCS Healthcare Inc.*[116] There, a failing company (NCS) began a search for a potential acquirer and two interested parties, Omnicare and Genesis, emerged. Eventually, Genesis made a final offer. To protect the deal represented by the offer, protection measures were enacted:

> 1) the board was obliged to present the offer to the shareholders regardless of their recommendation;
>
> 2) two of the shareholders, who were also members of the Board, executed voting agreements committing themselves to vote for the Genesis offer -- these two shareholders represented over 65% of the voting power of NCS stock; and
>
> 3) there was no fiduciary out provision.[117]

113. The majority of the Court concluded that the defensive measures made it "mathematically impossible" and "realistically unattainable" for the Omnicare transaction or any other proposal to succeed, no matter how superior the proposal. The Court found that a "fiduciary out" clause was required in this transaction because its absence:

> completely prevented the board from discharging its fiduciary responsibilities to minority stockholders when Omnicare presented its superior transaction. To the extent that a [merger] contract, or a provision thereof, purports to require a board to act or not act in such a fashion as to limit the exercise of fiduciary duties, it is invalid and unenforceable.[118]

---

[116] *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A. 2d 914 (Del. Sup. Ct. 2003) [*Omnicare*].

[117] *Ibid.*

[118] *Ibid.* at 936.

114. The Court explained that it was the combined effects of the first two otherwise valid defensive mechanisms with the lack of a fiduciary out that led to its conclusion that the directors had contracted out of their fiduciary duties owed to shareholders:

> ...Just as defensive measures cannot be draconian, however, they cannot limit or circumscribe the directors' fiduciary duties. Notwithstanding the corporation's insolvent condition, the NCS board had no authority to execute a merger agreement that subsequently prevented it from effectively discharging its ongoing fiduciary responsibilities.
>
> The stockholders of a Delaware corporation are entitled to rely upon the board to discharge its fiduciary duties at all times. The fiduciary duties of a director are unremitting and must be effectively discharged in the specific context of the actions that are required with regard to the corporation or its stockholders as circumstances change...
>
> The NCS board was required to contract for an effective fiduciary out clause to exercise its continuing fiduciary responsibilities to the minority stockholders. The issues in this appeal do not involve the general validity of either stockholder voting agreements or the authority of directors to insert a Section 251(c) provision in a merger agreement. In this case, the NCS board combined those two otherwise valid actions and caused them to operate in concert as an absolute lock up, in the absence of an effective fiduciary out clause in the Genesis merger agreement. [emphasis added][119]

115. By analogy, under this CCAA restructuring where shareholders also have no influence upon the outcome, the Board needed to ensure that the Shaw 2 Transaction contained a "fiduciary out" to fulfill their fiduciary duties. Given that the shareholders do not have a say in the acceptance or rejection of the Shaw 2 Transaction, the shareholders are completely at the mercy of the Board to protect their interests. Instead of protecting those interests, neither the Board nor its representatives participated in the ultimate negotiations that led to Shaw's purchase of 100% of the equity of Restructured Canwest. Moreover, approving the Shaw 2 Transaction which did not contain a "fiduciary out", in an environment where shareholders would not get to

---

[119] *Ibid.* at 938-939.

vote on the transaction, deprived Canwest Global's shareholders of receiving value from a superior offer.

116. This Honourable Court ought not condone a process that leaves shareholders resigned to their fate in such a manner. In the United States, Courts considering *Omnicare* have held that:

> To the extent that a contract, or a provision thereof, purports to require a board to act in such a fashion as to limit the exercise of fiduciary duties, it is invalid and unenforceable.[120]

and:

> Generally speaking, these cases stand for the proposition that a contract is unenforceable if it would require the board to refrain from acting when the board's fiduciary duties require action.[121]

117. It is important to note that this line of American cases does not stand for the proposition that a fiduciary out is always needed. In fact in *Phelps Dodge Corporation v. Cyprus Amax Minerals Company*,[122] the Court held that:

> I also need not rescue the shareholder from losing out on a premium bid, as they simply can vote down the Cyprus/Asarco transaction... When such self help measures are clearly available... it is not for this court to ride to their rescue.[123]

118. This was similar to the Court of Appeal's finding in *Ventas*, where it was acknowledged that the shareholders could always vote against the transaction if they thought it was not in their interests to do so:

> From Sunrise's perspective, the safety valve lies in the unitholders' meeting. If the unitholders believe that there is a more favourable offer available – one worth

---

[120] *Paramount Communications Inc. v. QVC* Network Inc., 637 A.2d 34 (Del. Sup. Ct. 1993) at 55.

[121] *Unisuper Ltd. v. News Corporation*, 2005 WL 3529317 (Del. Ch.2005) at 7.

[122] *Phelps Dodge Corporation v. Cyprus Amax Minerals Company.*, 1999 WL 1054255 (Del. Ch.1999) [*Phelps*].

[123] *Ibid* at 2.

> the risk of rejecting the Ventas proposal – they may well vote to reject the Ventas proposal at their meeting on March 30. [124]

119. The line of American cases described above and *Ventas* share a thematic similarity: if shareholders no longer have a voice to exercise or to influence corporate behaviour, then it is the responsibility of the board to do so on their behalf. The rationale for the necessity of the fiduciary out in certain circumstances is that it prevents the board from abandoning its responsibility to shareholders in those moments when shareholders are most vulnerable and are *necessarily* relying on the board to protect their interests. If, as the court noted in *Phelps*, shareholders are able to do this on their own behalf (i.e. protect their own interests) then the rationale for the fiduciary out is absent and thus the clause is not required.

120. The Board's decision not to include a "fiduciary out" in the Shaw 2 Transaction represents a breach of its fiduciary duty. Canwest Shareholders had lost their ability to protect their interests, having no vote, no say and no influence on this process. The Board did not fulfill its fiduciary duties when it allowed the Noteholders to not only hijack the purported value maximization process but also to contract away a "fiduciary out" in a sale for 100% of the equity of Restructured Canwest, a collection of assets which had never been tendered for auction to the open market. The Board's abdication of its duties to protect shareholders is all the more problematic given that the Noteholders are creditors who ultimately stand to be made whole through this process and, accordingly, would receive no additional value for obtaining a higher purchase price for the CMI Entities. It is only the affected creditors and the shareholders, two stakeholders who did not participate in the negotiations that ultimately led to the Shaw 2 Transaction, who lose as a result of this flawed process that has failed to maximize value.

---

[124] *Ventas Inc. v. Sunrise Senior Living Real Estate Investment* (2007), 85 O.R. (3d) 254 (C.A.) at para. 29.

D. The Interests of All the Parties

121. At the second stage of the *Soundair* test the Court must consider the interests of all the parties.

122. Throughout their factum and materials, the CMI Entities repeatedly suggest that shareholders' interests are irrelevant in a CCAA restructuring. This assertion is not accurate and misses the point entirely. Notwithstanding that the Shaw 2 Transaction excludes Canwest Global's shareholders, it is not reflective of the overall value of the enterprise. The Shareholders' point is that an auction would result in all unsecured creditors being made whole *and* having residual value for shareholders. As explained in Roderick Wood's text, bankruptcy and insolvency law, the likelihood of shareholder recovery is what dictates how their interests ought to be considered:

> Although courts have not hesitated to eliminate shareholder equity in restructuring proceedings where it is obvious that the interest of shareholders is clearly of no economic value, the same approach should not be applied where there is legitimate uncertainty or disagreement over the going-concern value of the firm. If there is a reasonable possibility that the interest of the shareholders retain some value, the shareholders may legitimately expect to participate in the restructuring.[125]

123. A liquidation or a going concern sale that wipes out existing equity is not the inevitable conclusion of every CCAA proceeding. A CCAA proceeding is a debtor in possession remedy, not a creditor in control remedy, like a bankruptcy. Properly managed, a company with liquidity issues can emerge from a CCAA proceeding without compromising shareholders. That is exactly what the Shareholders expect to happen here, if this deal is rejected.

124. Accordingly, the interests of both the Affected Creditors and the shareholders should have been meaningfully considered in designing a process that would maximize value.

---

[125] Roderick J. Wood, *Bankruptcy & Insolvency Law* (Toronto: Irwin Law, 2009) at 444.

Nonetheless, the CMI Entities allowed the Noteholders, a creditor who was ultimately made whole and accordingly had no incentive to increase value, to dictate the process. That process resulted in a deal that not only dealt away a different asset, but also deprived Canwest Global's shareholders of their promised 2.3% equity stake in Restructured Canwest without compensation. The interests of shareholders have been fundamentally disregarded.

E. The Efficacy, Integrity and Fairness of the Process

125. The third and fourth criteria of the *Soundair* test require the Court to consider the efficacy, integrity and fairness of the process adopted.

126. A lack of sufficient transparency and open disclosure results in a process lacking the degree of integrity and fairness necessary when the court is involved in a public sale of assets under the CCAA.[126] The nature of a court-supervised process demands a process that meets at least minimal requirements of fairness and openness.[127] Lop-sided auctions where different bidders are privy to different information and bound by different constraints lacks integrity and fairness.[128]

127. Given that Shaw was the only market participant that was ever provided with an opportunity to bid on 100% of the equity of Restructured Canwest, and for that matter, the only market participant that was ever aware that 100% of the equity was even available, the solicitation process leading to the Shaw 2 Transaction was at best, a lop-sided auction process. This does not satisfy the minimal requirements of fairness and openness demanded by a court-supervised sale process.

---

[126] *Re Calpine Canada Energy Ltd.* (2007), 28 C.B.R. (5th) 185.

[127] *Ibid.* at para. 31.

[128] *Ibid.* at para. 33.

128. Moreover, it cannot be seriously suggested that this process was fair and open, given that the Shareholders were never made aware, let alone invited to participate in, the process that resulted in the Shaw 2 Transaction which, if approved by this Honourable Court, will deprive them of (i) the residual equity value that would result from a proper auction and value maximization process; and (ii) their agreed upon 2.3% equity stake in Restructured Canwest. Such a process is neither fair nor open and it ought not be approved by this Honourable Court.

129. The only party who will suffer if this transaction is rejected is Shaw. But Shaw will be entitled to the $5 million "break fee" it will receive if the Shaw 2 Transaction is not approved. Moreover, the value of its holdings purchased from Goldman will remain intact, as will the "put" rights it has also acquired from Goldman. On the evidence, Shaw could receive approximately $900 million in nine months' time for its $709 million investment[129] – a tidy return of 21% in nine months, or 28% return on an annualized basis.

F. The Board's Disclosure Obligations Under the *Securities Act*

130. As explained above, the CMI Entities were informed of the framework that would constitute the Shaw 2 Transaction on April 16, 2010. During his cross-examination (and subsequent answers to undertakings), Strike testified that as of April 26, 2010, it became clear to Burney as well as to Canwest Global that there was no longer any recovery available for Canwest Global's shareholders and that the cash payment representing the 2.3% equity stake in Restructured Canwest was off the table.[130] Nevertheless, the Board did not issue a press release nor did they file a material change report disclosing that they no longer believed that Canwest

[129] Buzzi Transcript, Q. 42-43, Brief of Transcripts and Exhibits, Tab 2, p. 13.

[130] Strike Transcript, Q. 141, Brief of Transcripts and Exhibits, Tab 1, p. 34; Responses to Undertakings Given Q 143, p. 2.

Global's shareholders would receive cash payments equivalent to 2.3% of Restructured Canwest until May 3, 2010.

131. Under section 75 of the *Securities Act* (Ontario), a corporation has a responsibility to disclose all material changes in a timely manner.[131] A material change is defined as any change that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer.[132] In *AiT Advanced Information Technologies Corp. Inc., Re*,[133] the Ontario Securities Commission held that when dealing with a potential merger or acquisition, the duty to disclose does not arise when the deal is finalized but rather "when a decision has been made indicating a substantial likelihood that implementation will be forthcoming."[134] The Commission explained that in order to find that there had been a substantial likelihood that a proposed transaction will be completed, there needs to be sufficient signs of commitment on behalf of all the parties involved to proceed with the transaction.[135]

132. By failing to disclose that there was a substantial likelihood that Canwest Global's shareholders would not receive cash payments representing 2.3% of the equity stake of Restructure Global as of April 26, 2010, there is good reason to be concerned about the extent to which the Board and Canwest Global adhered to their disclosure obligations under the *Securities Act*. The Board cannot absolve itself of this conduct by contemptuously dismissing the shareholders at whose sufferance they serve as "speculators", as they do in paragraphs 75-76 of the Applicants' factum.

---

[131] *Securities Act*, R.S.O. 1990, c. S.5 at s. 75.

[132] *Ibid.* at s. 1(1).

[133] *AiT Advanced Information Technologies Corp., Re* (2007), 40 B.L.R. (4th) 242.

[134] *Ibid.* at para. 224.

[135] *Ibid.*

133. The fact that the Board had concluded that the transaction with Shaw would wipe out shareholders, which had the foreseeable effect of halving the market price of the shares, has to be a consideration in determining the fairness, integrity, and efficacy of the process.

G. Direct Responses to the Applicants' Factum

134. The foregoing arguments are sufficient to conclude that the Applicants' motion should be dismissed. However, Canwest Global has made a variety of other arguments that are easily answerable.

The Process Leading to the Shaw 2 Transaction was not Court Supervised

135. At paragraph 2 of the CMI Entities' Factum, it is asserted that the Shaw 2 Transaction is the result "of a robust court-supervised and directed process". This is simply not the case. This Honourable Court did not approve a process to sell 100% of the equity of Restructured Canwest. It made no such order. And, in terms of the mediation, the Chief Justice was charged with the task of solving the Goldman Sachs "problem", which was really only a problem insofar as the Noteholders wanted to extract value from Goldman Sachs. There is no evidence that he was ever charged with the mandate of acting as a judicial officer with the power to direct the sale of an asset never put to auction.

It is not Clear that the CMI Entities are Insolvent

136. At paragraph 8 of their factum, the CMI Entities state that the "evidence is clear that the CMI Entities are insolvent". Respectfully, the evidence is not at all clear. As described above, the valuation numbers supported by Canwest Global's own financial statements indicate that the CMI Entities are likely no longer insolvent, if the entire company is put up for auction, leaving the Goldman Sachs/Shaw position in tact. The fact that the CMI Entities adopted a flawed process that failed to maximize value can not be used as "clear" evidence that they are insolvent.

The Two "Business Critical Decisions" were not Business Critical

137. At paragraph 17 of the Applicants' factum, they reiterate the argument that the two "business critical" conditions for the recapitalization transaction were identifying a Canadian that would invest at least $65 million and amending or restating the shareholders agreement with Goldman Sachs. Neither of these conditions were in fact "business critical". In fact, it can be inferred that amending or restating the shareholders agreement with Goldman Sachs was not "business critical", but was rather "Noteholder critical", in that it was designed to improve the emerging equity value of the Noteholders' equity stake in a Restructure Canwest. Similarly, identifying a Canadian that would invest at least $65 million was "business critical" only so long as the Noteholders planned to participate as 80% equity holders.

138. At paragraph 18 of their factum, the CMI Entities claim that had these criteria not been met, the Noteholders would have been entitled to trigger a default and jeopardize the entire CCAA restructuring. This doomsday scenario is not realistic. This is a CCAA restructuring and this Honourable Court could always prevent a creditor from triggering a default that would jeopardize the entire restructuring process. Moreover, there is no evidence that the Noteholders are anything other than reasonable economic actors who would not choose to jeopardize a restructuring process where there is clearly sufficient value to make them whole. The Noteholders were allowed to dictate and manipulate this process for their own ends

There was no Need to Disclaim the Shareholders Agreement with Goldman Sachs

139. At paragraphs 58 and 59 of their factum, the CMI Entities assert that had they been unable to negotiate an agreement with Goldman Sachs, the CMI Entities "<u>may</u> have been required to seek approval to disclaim or resiliate the shareholders agreement with Goldman Sachs" [emphasis added] which would have resulted in extensive litigation. At paragraph 59, the

CMI Entities state that had they successfully disclaimed the shareholders agreement with Goldman Sachs, there was a material risk that Goldman Sachs would have had such a significant damages claim to provide a "blocking position" in relation to the CCAA restructuring.

140. This doomsday scenario assumes that the CMI Entities needed to disclaim or resiliate the shareholders agreement with Goldman Sachs. However, the shareholders agreement with Goldman Sachs did not need to be disclaimed or resiliated. In fact, at paragraph 38 of the CMI Entities factum they reference Goldman Sachs' support of the competing bid by The Catalyst Capital Group Inc. ("**Catalyst**") in February 2010. The Catalyst bid did not seek to disclaim or resiliate the shareholders agreement with Goldman Sachs evidencing that it was not necessary to do so. All the CMI Entities had to do to avoid the extensive litigation with Goldman Sachs that is articulated at paragraphs 58 and 59 of the CMI Entities' factum, was choose not to disclaim or resiliate the shareholders agreement.

141. Moreover, on May 3, 2010, Canwest Global, CMI, CW Investments, Shaw and Goldman Sachs all signed a mutual release meaning that the prospect of litigation against Goldman Sachs is no longer a relevant consideration for this Honourable Court in deciding whether to approve the Shaw 2 Transaction.[136]

The CMI Entities Can Certainly Sell 100% of Their Own Equity

142. At paragraph 71 of their factum, the Applicants claim that they are now prohibited from auctioning 100% of the equity in Restructured Canwest. They cite two propositions for this conclusion: (i) any plan not supported by the Noteholders is doomed to fail; and (ii) they are bound by the Shaw 1 Transaction. Both of these propositions are flawed.

---

[136] June 7 Affidavit, para. 52, Applicants' Motion Record, tab 1, p. 30.

143. The Noteholders cannot prevent this Honourable Court from only approving a fair process that will lead to value maximization for all stakeholders. Furthermore, it strains credulity to suggest that the Noteholders would not support a plan arising from an auction for 100% of the equity of Restructured Canwest that would ultimately make the Noteholders whole, which is what the Shareholders are asking for.

144. An auction process can be held quickly, because of the public nature of Canwest Global's affairs through public reporting, the Monitor's reports, and the disclosure on CRTC's website of profits of every Canwest Global channel. Sophisticated parties can move extremely quickly. Moreover, the evidence produced to date demonstrate categorically that the company's fortunes are improving, not declining. The company is not drawing down on its CIT Credit Facility. It has ample ability to conduct an auction.

145. The second proposition advanced by the CMI Entities, that they are bound by the Shaw 1 Transaction, is equally flawed. There is a new transaction being put before the Court, the Shaw 2 Transaction. A new auction for the 100% equity of Restructured Canwest, would also result in a new transaction being put before the Court. It is of no moment that the Shaw 1 Transaction has a "no fiduciary out" clause, any more than the Shaw 1 Transaction also had a requirement that Shareholders receive 2.3% equity value. In other words, if this Honourable Court can amend its order approving the Shaw 1 Transaction to approve the Shaw 2 Transaction, then it can equally amend its order approving the Shaw 1 Transaction to order an auction for 100% of the equity in Restructured Canwest. The Shareholder Group relies upon whatever authority the CMI Entities rely upon for the proposition that the Court has the authority to amend the order approving the Shaw 1 Transaction.

146. There is no reason that the CMI Entities cannot conduct an auction for 100% of the equity in Restructured Canwest. Furthermore, a prospective purchaser could effectively purchase all of the assets that are being purchased in the Shaw 2 Transaction by simply choosing to exercise the 2011 call rights against Shaw (formerly Goldman Sachs) in the shareholders agreement governing CW Investments that is referenced in subparagraph 65(b) of the Monitor's 15th Report. While the Monitor notes that the call rights are at 12 times EBITDA, which is higher than the upper range selected by Bowman, and that the EBITDA may be unknown, the Monitor fails to note that the ultimate purchaser would first benefit from a higher EBITDA as the owner of a higher percentage of the combined company's earnings when the companies are combined.

147. The Monitor's assertion that the EBITDA calculable on the call rights might be unknown is also at odds with the expert testimony of Buzzi, who during cross examination testified that the value of the call rights was easily calculable once a purchaser had a projected view of the EBITDA. He acknowledged this was not a "mystery number". Mr Buzzi also agreed that a purchaser would already have to have a view of the projected EBITDA if they were going to make a bid for the company.[137] The price of taking out Shaw is easily calculable and within a narrow range, in fact, Mr Buzzi did not hesitate to come up with a number of "a little bit in excess of $900 million."[138] Furthermore, the purported litigation threat of Goldman Sachs was self-inflicted and could have been stopped at any point.

[137] Buzzi Cross-examination at Q 44-45, Tab 2, Brief of Transcripts and Exhibits.

[138] Buzzi Cross-examination at Q43, Tab 2, Brief of Transcripts and Exhibits.

H. Conclusion

148. The Asper family and the Ad Hoc Group of Canwest Shareholders respectfully request that the Applicants' motion be dismissed, for failing to satisfy the requirements set out in *Soundair*. All that the Shareholders ask for is the opportunity to put one of Canada's most prized collection of assets to market, and not be dealt away to a single bidder outside of an auction process. They ask for the opportunity for all creditors to be made whole, and for the residual value of the company to be returned to the shareholders. They also ask that the fundamental bargain for 2.3% of the equity value of Restructured Canwest, which conferred real benefits to the Noteholders, be respected.

IV. ORDER REQUESTED

149. The Ad Hoc Group of Canwest Shareholders respectfully requests that the Applicants' motion be dismissed, with costs payable on a full indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Robert W. Staley per J Bell

ROBERT W. STALEY

Derek J. Bell per J Bell

DEREK J. BELL

J. M. Bell

JONATHAN BELL

SCHEDULE "A"

1. *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.).
2. *Stelco Inc. (Re)* (2005), 75 O.R (3d) 31 (C.A.).
3. *Ivaco Inc. (Re)* (2004), 3 C.B.R. (5th) 33 (Ont. Sup. Ct. J. [Commercial List]).
4. *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.).
5. *Boutique Euphoria inc. (Re)*, 2007 QCCS 7129.
6. *Laurentian Bank of Canada v. World Vintners Corp.* (2002), 35 C.B.R. (4th) 144 (Ont. Sup. Ct.).
7. *Pente Investment Management Ltd. v. Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.).
8. *Bank of America National Trust and Savings Association v. 203 North LaSalle Stree Partnership,* 526 U.S. 434 (1999).
9. Daniel R. Dowdall and Jane O. Dietrich, *Do Stalking Horses Have a Place in Intra-Canadian Insolvencies?,* Annual Review of Insolvency Law, 2005 (Toronto: Carswell, 2006).
10. *Re Canwest Publishing Inc.,* 2010 ONSC 222 (S.C.J.).
11. *River Rentals Group Ltd. v. Hutterian Brethren Church of Codesa* (2010), 469 A.R. 333 (C.A.).
12. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. Sup. Ct. 2003).
13. *Paramount Communications Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. Sup. Ct. 1993).
14. *Unisuper Ltd. v. News Corporation*, 2005 WL 3529317 (Del. Ch. 2005).
15. *Phelps Dodge Corporation v. Cyprus Amax Minerals Co*mpany, 1999 WL 1054255 (Del. Ch. 1999).
16. *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust* (2007), 85 O.R. (3d) 254 (C.A.).
17. Roderick J. Wood, *Bankruptcy & Insolvency Law* (Toronto: Irwin Law, 2009).
18. *Re Calpine Canada Energy Ltd.* (2007), 28 C.B.R. (5th) 185.
19. *AiT Advanced Information Technologies Corp., Re* (2007), 40 B.L.R. (4th) 242.

SCHEDULE "B"

Securities Act, R.S.O. 1990, c. S.5

Interpretation, other general matters
Definitions

1. (1) In this Act, ...

"material change",

(a) when used in relation to an issuer other than an investment fund, means,

(i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or

(ii) a decision to implement a change referred to in subclause (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, and

(b) when used in relation to an issuer that is an investment fund, means,

(i) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, or

(ii) a decision to implement a change referred to in subclause (i) made,

(A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,

(B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or

(C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable; ("changement important")

Publication of material change

75. (1) Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior

officer disclosing the nature and substance of the change. R.S.O. 1990, c. S.5, s. 75 (1); 1994, c. 11, s. 349.

Report of material change

(2) Subject to subsection (3), the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs. R.S.O. 1990, c. S.5, s. 75 (2).

Idem

(3) Where,

(a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsections (1) and (2) would be unduly detrimental to the interests of the reporting issuer; or

(b) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, in lieu of compliance with subsection (1), forthwith file with the Commission the report required under subsection (2) marked so as to indicate that it is confidential, together with written reasons for non-disclosure. R.S.O. 1990, c. S.5, s. 75 (3); 2002, c. 22, s. 180 (1); 2004, c. 31, Sched. 34, s. 3.

Idem

(4) Where a report has been filed with the Commission under subsection (3), the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in clause (3) (b), until that decision has been rejected by the board of directors of the issuer. R.S.O. 1990, c. S.5, s. 75 (4).

Same

(5) Although a report has been filed with the Commission under subsection (3), the reporting issuer shall promptly generally disclose the material change in the manner referred to in subsection (1) upon the reporting issuer becoming aware, or having reasonable grounds to believe, that persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed. 2002, c. 22, s. 180 (2).

Re. Canwest Global Communications

Court File No. 09-8396-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

RESPONDING FACTUM
OF THE AD HOC GROUP OF SHAREHOLDERS

BENNETT JONES LLP
Barristers and Solicitors
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario M5X 1A4

Robert W. Staley (LSUC #27115J)
Tel. (416) 777-4857
Derek J. Bell (LSUC #43420J)
(416) 777-4638
Jonathan G. Bell (LSUC #55457P)
(416) 777-6511
(416) 863-1716 (fax)

Lawyers for the Ad Hoc Group of Canwest Global Shareholders.