

Court File No.

COURT OF APPEAL FOR ONTARIO

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

**AND IN THE MATTER OF A PLAN
OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER
APPLICANTS LISTED ON SCHEDULE "A" (collectively the "APPLICANTS" or
"Canwest")**

Applicants

**MOTION RECORD OF
GS Capital Partners VI Fund L.P.,
GSCP VI AA One Holding S.ar.l and
GS VI AA One Parallel Holding S.ar.l
(collectively "GSCP")**

March 9, 2010

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TO: SERVICE LIST

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 PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP.
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Applicants

CANWEST SERVICE LIST, FEBRUARY 23, 2010

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Schedule "A"

Applicants

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. MBS Productions Inc.
4. Yellow Card Productions Inc.
5. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
6. Canwest Television GP Inc.
7. Fox Sports World Canada Holdco Inc.
8. Global Centre Inc.
9. Multisound Publishers Ltd.
10. Canwest International Communications Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Western Communications Inc.
13. Canwest Finance Inc./Financiere Canwest Inc.
14. National Post Holdings Ltd.
15. Canwest International Management Inc.
16. Canwest International Distribution Limited
17. Canwest MediaWorks Turkish Holdings (Netherlands)
18. CGS International Holdings (Netherlands)
19. CGS Debenture Holding (Netherlands)
20. CGS Shareholding (Netherlands)
21. CGS NZ Radio Shareholding (Netherlands)
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.

24. 30109, LLC

25. CanWest MediaWorks (US) Holdings Corp.

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**MOTION RECORD OF
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TAB	DESCRIPTION
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B.	Amended and Restated Shareholders Agreement as of August 15, 2007
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DESCRIPTION

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NOTICE OF MOTION

(motion for leave to appeal)

The Respondents GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.l and GS VI AA One Parallel Holding S.ar.l (collectively, "GSCP") will make a motion, which will be heard by the court in writing 36 days after service of GSCP's motion record and factum or on the filing of GSCP's reply factum, if any, whichever is earlier (unless otherwise directed by order of a judge of this court).

PROPOSED METHOD OF HEARING: The motion is to be heard in writing (unless otherwise directed by order of a judge of this court).

THE MOTION IS FOR:

1. an order granting leave to appeal the following orders of the Honourable Justice Pepall communicated from the bench on February 19, 2010 (the "Orders") with written reasons delivered on March 1, 2009:

- (a) an order granting approval of the Shaw Agreement in accordance with the Shaw Approval Motion, (the “Shaw Approval Order”); and
 - (b) an order dismissing the request of GSCP (the “GSCP Adjournment Motion”) in which GSCP sought to adjourn the Applicants’ motion for, *inter alia*, approval of a Subscription Agreement (the “Shaw Agreement”) between Shaw Communications Inc. (“Shaw”) and Canwest (the “Shaw Approval Motion”) (the “Adjournment Order”);
2. costs of this motion; and
 3. such further and other relief as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

4. The *motions judge erred* in failing to determine that the Shaw Agreement and the process leading up to it (the “Solicitation Process”) were fundamentally flawed and did not meet the requirements of the CCAA, notably the tests from *Royal Bank v. Soundair Corp. et al.* and *Nortel Networks Corporation (Re)* and accordingly should not be approved;
5. The *motions judge erred* in failing to conclude that, in the Solicitation Process, the holders of notes (the “Noteholders”) issued by Canwest Media Inc. (“CMI”) are biased and adversarial parties to GSCP whose aim is to wrongfully confiscate GSCP’s rights for their own benefit, and that the Noteholders should not be permitted to control the Solicitation Process to Canwest’s detriment;

6. The *motions judge erred* in failing to conclude that the board of directors and the Special Committee had wrongfully abdicated, in favour of the Noteholders, their fiduciary duty to Canwest and their duty of care to all stakeholders;
7. The Noteholders are in total effective control of the affairs of Canwest and its CCAA restructuring, as a result of loan covenants and the CCAA Support Agreement entered into by Canwest;
8. On the day prior to the CCAA filing, Canwest—at the behest of the Noteholders—caused a solvent subsidiary, 4414616 Canada Inc. (“441”), to transfer to its insolvent parent, CMI, all of its shares and interests in CW Investments Co. (“CWI”), which holds Canwest’s profitable specialty television business (the “Specialty TV Business”);
9. The transfer served no legitimate business purpose; rather it was done to cause the disclaimer, or threat of disclaimer, of the CWI shareholders agreement containing contractual protections of GSCP’s equity capital contribution of more than US\$500 million;
10. The Noteholders, the would-be beneficiaries of this wrongful confiscation of GSCP’s rights, have used their control over the restructuring to design the Solicitation Process to find a bidder to implement their scheme, while excluding bids and bidders that do not further their attempt to wrongfully confiscate GSCP’s rights;
11. The *motions judge erred* in failing to grant an adjournment of the hearing, which would have enabled the Monitor, Canwest’s board of directors, and the parties to fulfill their fiduciary and other duties by properly assessing the competing offer made by Catalyst Group Inc.;

12. GSCP was justified in believing that a standstill agreement providing seven days notice was in place when it received, on a Friday evening of a three-day weekend, notice of the hearing to approve the Shaw Agreement on the following Friday, effectively giving it only three business days notice and insufficient time to properly prepare for the hearing;

13. The motion materials served upon GSCP were incomplete, and did not include the Shaw Agreement itself;

14. The *motions judge erred* in denying GSCP the right to cross-examine on affidavit evidence that was “strongly” relied upon by the Monitor in making its recommendations to the court, and relied upon by the motions judge in her reasons;

The Leave to Appeal Test is Met

15. An appeal of the Shaw Approval Order is *prima facie* meritorious, and an appeal of the Adjournment Order is *prima facie* meritorious; the issues on appeal are of real and significant interest to the parties, the insolvency practice and this proceeding; and the appeals would not unduly hinder the progress of the proceeding;

16. The moving parties also rely upon:

- (a) the CCAA;
- (b) section 14 of the CCAA and Rule 61.03.1 of the *Rules of Civil Procedure*; and
- (c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

17. Excerpts from the record before the motions judge, including evidence filed in these CCAA proceedings.

18. Such evidence as counsel may advise and this Honourable Court may permit.

March 9, 2010

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Solicitors for GSCP Capital Partners VI Fund,
L.P., GSCP VI AA One Holding S.ar.l, GSCP
VI AA One Parallel Holding S.ar.l.

TO: SERVICE LIST

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

IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP. ET AL.

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

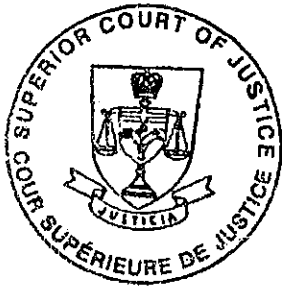
NOTICE OF MOTION

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Lawyers for GSCP
1112567



Court File No. CV-09-8396-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 19th DAY
)
)
MADAM JUSTICE PEPALL) OF FEBRUARY, 2010

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

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

Applicants

**ORDER
(Approval of Subscription Agreement)**

THIS MOTION, made by Canwest Global Communications Corp. ("Canwest Global") and the other Applicants listed on Schedule "A" hereto (collectively, the "Applicants") and the Partnerships listed on Schedule "B" hereto (the "Partnerships" and, together with the Applicants, the "CMI Entities"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the CMI Entities, the Affidavit of Thomas C. Strike sworn February 12, 2010 (the "Strike Affidavit"), the Tenth Report of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the CMI Entities (the "Monitor"), including the Confidential Supplement thereto (the "Confidential Supplement"), and on hearing from counsel for the CMI Entities, the Monitor, the *ad hoc* committee of holders of 8% senior subordinated notes issued by Canwest Media Inc., CIT Business Credit Canada

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Inc., Shaw Communications Inc. ("**Shaw**") and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and any further service of the Notice of Motion and the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that

(a) the Subscription Agreement and the Subscription Term Sheet attached as Schedule "A" thereto (collectively, the "**Subscription Agreement**") dated February 11, 2010 between Canwest Global and Shaw,

(b) the Amended Support Agreement (as defined in the Strike Affidavit) dated February 11, 2010 between the CMI Entities and certain holders of 8% Senior Subordinated Notes issued by Canwest Media Inc. (the "**Consenting Noteholders**"), and

(c) the Shaw Support Agreement (as defined in the Strike Affidavit) dated February 11, 2010 between Canwest Global, Shaw, and the Consenting Noteholders,

are hereby approved and the entering into, execution and delivery of the Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement by the CMI Entities and the performance by the CMI Entities of the Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement in accordance with their terms and conditions is hereby authorized and approved.

3. **THIS COURT ORDERS** that the CMI Entities are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions and the satisfaction of the obligations contemplated by the Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement.

4. **THIS COURT ORDERS** that the CMI Entities shall be required to comply with their obligations under the Subscription Agreement and the Shaw Support Agreement. Prior to exercising any and all rights and remedies they may have against the CMI Entities under or in respect of the Subscription Agreement and the Shaw Support Agreement, in accordance with the terms of such agreements, Shaw and the Consenting Noteholders, as applicable, shall be required to obtain a further order of the Court, other than in respect of contractual termination rights under the Subscription Agreement and the Shaw Support Agreement.

5. **THIS COURT ORDERS** that Shaw shall be entitled to the benefit of and is hereby granted a charge (the "**Investor Charge**") on the CMI Property (as defined in the Initial Order of this Honourable Court dated October 6, 2009 (the "**Initial Order**")) to secure the payment of the Termination Fee pursuant to Section 4.6 and the expense reimbursement payable pursuant to Section 9.2 of the Subscription Agreement.

6. **THIS COURT ORDERS** that paragraph 47 of the Initial Order be amended to read as follows:

47. **THIS COURT ORDERS** that the deposit accounts containing cash collateral pledged to The Bank of Nova Scotia and referred to in Section 6.11 of the Collateral Agency Agreement (as defined below) as the "Cash Management Collateral Account" (the "**Excluded Accounts**") shall not form part of the CMI Property, shall be excluded from the CMI DIP Charge, the KERP Charge, the Directors' Charge, and the Administration Charge and the Investor Charge (as defined in the Order of this Court made in these proceedings on February 19, 2010), except as provided in paragraph 48 hereof, and shall remain subject to the existing liens in favour of The Bank of Nova Scotia in connection with the CMI Entities' obligations to The Bank of Nova Scotia in connection with overdrafts and related liabilities arising from cash consolidation, electronic funds transfer arrangements, treasury, depository and cash management services or in connection with any automated clearing house transfers of funds in an aggregate amount not to exceed \$2,500,000 (the "**BNS Cash Management Obligations**").

7. **THIS COURT ORDERS** that paragraph 48 of the Initial Order be amended to read as follows:

48. **THIS COURT ORDERS AND DECLARES** that notwithstanding any stay of proceedings imposed by this Order, The Bank of Nova Scotia shall be entitled to seize and dispose of any collateral on deposit in the Excluded Accounts and apply such proceeds to any and all outstanding BNS Cash Management Obligations, provided that, notwithstanding anything herein, upon payment and satisfaction of the BNS Cash Management Obligations in full and the return of any remaining collateral in the Excluded Accounts to the CMI Entities, such collateral shall then form part of the CMI Property charged by the Directors' Charge, the Administration Charge, the KERP Charge, and the DIP Lender's Charge and the Investor Charge.

8. **THIS COURT ORDERS** that paragraph 55 of the Initial Order shall be amended to read as follows:

55. **THIS COURT ORDERS** that the priorities of the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge (as defined below), and the CMI DIP Charge, and the Investor Charge, as among them and the Existing Security, ~~solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement,~~ shall be as follows:

First – CMI Administration Charge;

Second – The Existing Security, solely to the extent that such Existing Security secures existing and future obligations under the CIT Credit Agreement;

Third – CMI DIP Charge; and

Fourth – CMI Directors' Charge and CMI KERP Charge, save and except that these Charges shall be postponed in right of payment to the extent of the first \$85,000,000 payable under the Secured Note;

Fifth – Existing Security in respect of the balance of the obligations secured thereunder; and

Sixth – Investor Charge.

9. **THIS COURT ORDERS** that paragraph 56 of the Initial Order shall be amended to read as follows:

56. **THIS COURT ORDERS** that the filing, registration or perfection of the CMI Directors' Charge, the CMI Administration Charge, the CMI KERP Charge, and the CMI DIP Charge and the Investor Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record, or perfect.

10. **THIS COURT ORDERS** that paragraph 57 of the Initial Order shall be amended to read as follows:

57. **THIS COURT ORDERS** that, the CMI Directors' Charge, the CMI Administration Charge, the CMI DIP Charge, and the CMI KERP Charge and the Investor Charge shall constitute a charge on the CMI Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected purchase money security interest in favour of a secured creditor or any statutory Encumbrance existing on the date of this Order in favour of any Person which is a "secured creditor", as defined in the CCAA, in respect of any of source deductions from wages, employer health tax, workers compensation, GST/QST, PST payables, vacation pay and banked overtime for employees, amounts under the Wage Earners' Protection Program that are subject to a super priority claim under the BIA.

11. **THIS COURT ORDERS** that paragraph 58 of the Initial Order is amended to read as follows:

58. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the CMI Entities shall not grant any Encumbrances over any CMI Property that rank in priority to, or *pari passu* with, any of the Charges, unless the CMI Entities also obtain the prior consent of the Monitor, the CMI DIP Lender and the beneficiaries of the Charges or upon further Order of this Court.

12. **THIS COURT ORDERS** that paragraph 59 of the Initial Order is amended to read as follows:

59. **THIS COURT ORDERS** that the Charges and the CMI DIP Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”), the rights and remedies of the CMI DIP Lender under the CMI DIP Definitive Documents, the rights and remedies of Irish Holdco under the Secured Note, and the rights and remedies of the Consenting Noteholders under the Use of Collateral and Consent Agreement and the Support Agreement, the rights and remedies of Shaw Communications Inc. under the Subscription Agreement and the rights and remedies of Shaw Communications Inc. and the Consenting Noteholders under the Shaw Support Agreement (as those terms are defined in the Order of this Court made in these proceedings on February 19, 2010) shall not otherwise be limited or impaired in any way, subject to the provisions of paragraph 53 herein, by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the CMI Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

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(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note, ~~or~~ the Unsecured Note, the Subscription Agreement or the Shaw Support Agreement shall create or be deemed to constitute a breach by any of the CMI Entities of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the CMI Entities entering into the CIT Credit Agreement or any other CMI DIP Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the CMI Definitive Documents; and

(c) the CIT Credit Agreement, the CMI DIP Definitive Documents, the Use of Collateral and Consent Agreement, the Support Agreement, the Secured Note, ~~and~~ the Unsecured Note, the Subscription Agreement and the Shaw Support Agreement, the payments made by the CMI Entities pursuant to the foregoing or pursuant to the terms of this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

13. **THIS COURT ORDERS** that all provisions of the Initial Order applicable to the "Support Agreement" (as defined in the Initial Order) shall be applicable in all respects to the Amended Support Agreement.

14. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to post a copy of the Confidential Supplement containing a copy of the Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement (all without signature pages) on the Monitor's website established with respect to this CCAA proceeding at <http://cfcanada.fticonsulting.com/cmi> and to send a copy of the Confidential Supplement containing a copy of the Subscription Agreement, the Amended Support Agreement and the

Shaw Support Agreement (all without signature pages) by electronic transmission to the service list maintained with respect to this CCAA proceeding.

Spall, J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 22 2010

PER / PAR: JSN

Joanne Nicoara
Registrar, Superior Court of Justice

Schedule "A"

Applicants

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. MBS Productions Inc.
4. Yellow Card Productions Inc.
5. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
6. Canwest Television GP Inc.
7. Fox Sports World Canada Holdco Inc.
8. Global Centre Inc.
9. Multisound Publishers Ltd.
10. Canwest International Communications Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Western Communications Inc.
13. Canwest Finance Inc./Financiere Canwest Inc.
14. National Post Holdings Ltd.
15. Canwest International Management Inc.
16. Canwest International Distribution Limited
17. Canwest MediaWorks Turkish Holdings (Netherlands)
18. CGS International Holdings (Netherlands)
19. CGS Debenture Holding (Netherlands)
20. CGS Shareholding (Netherlands)
21. CGS NZ Radio Shareholding (Netherlands)
22. 4501063 Canada Inc.
23. 4501071 Canada Inc.

24. 30109, LLC

25. CanWest MediaWorks (US) Holdings Corp.

Schedule "B"

Partnerships

26. Canwest Television Limited Partnership
27. Fox Sports World Canada Partnership
28. The National Post Company/La Publication National Post

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985, c.C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST
GLOBAL COMMUNICATIONS CORP., AND THE OTHER APPLICANTS LISTED ON
SCHEDULE "A"

Court File No: CV-09-8396-00CL

APPLICANTS

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER
(Approval of Subscription Agreement)

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Lawyers for the Applicants

CITATION: Re: Canwest Global Communications Corp., 2010 ONSC 1176
COURT FILE NO.: CV-09-8396-00CL
DATE: 20100301

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, 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**

2010 ONSC 1176 (CanLII)

COUNSEL: *Lyndon Barnes, Jeremy Dacks and Shawn Irving* for the CMI Entities
Mario Forte for the Special Committee of the Board of Directors
David Byers and Maria Konyukhova for the Monitor, FTI Consulting Canada Inc.
Hilary Clarke for the Administrative Agent of the Senior Secured Lenders'
Syndicate
Benjamin Zarnett and Logan Willis for the Ad Hoc Committee of Noteholders
Robin B. Schwill and Vincent A. Mercier for Shaw Communication Inc.
Kevin McElcheran and Malcolm Mercer for the GS Parties
Gavin Finlayson and S.R. Orzy for Catalyst Capital Group Inc.
Edmond Lamek for Leonard Asper et al.
Steve Weisz for CIT Business Credit Canada Inc.
Hugh O'Reilly for Canwest Retirees/ Canadian Media Guild

REASONS FOR DECISION

PEPALL J.

Introduction

[1] When the CMI Entities filed for *Companies' Creditors Arrangement Act*¹ protection, their stated intention was to pursue a recapitalization transaction. The anticipated plan of arrangement or compromise would implement the recapitalization transaction and creditors compromised, including the 8% Senior Subordinated Noteholders, would receive shares in a restructured Canwest Global Corporation Corp. ("Canwest Global"). To that end, in November, 2009, the CMI Entities commenced an equity solicitation process. RBC Capital Markets

- 2 -

("RBC") assisted them with that process. The extensive process resulted in a bid from Shaw Communications Inc. ("Shaw") that was acceptable to the CMI Entities and others. The CMI Entities now seek approval of the subscription agreement dated February 11, 2010 between Shaw and Canwest Global and other related documents (the "Shaw Definitive Documents") and other ancillary relief. The approval motion was served on February 12, 2010 returnable February 19, 2010. If not approved by the court, the Shaw bid expired on February 19, 2010. The Monitor served its 10th Report on February 14, 2010. In its Report, the Monitor expressed support for the relief requested by the CMI Entities.

[2] A condition of completion of the Shaw transaction is amendment or disclaimer of the CW Investments Shareholders' Agreement to which GS Capital Partners VI Fund L.P. and its affiliates (collectively the "GS Parties") and Canwest Media Inc. ("CMI") are parties. The GS Parties oppose any such amendment or disclaimer.

[3] The GS Parties served materials opposing the relief sought in the late afternoon of February 18, 2010. In addition, in the wee hours of the morning of February 19, 2010 (3:38 a.m. to be exact according to the Monitor), counsel for Catalyst Capital Group Inc. ("Catalyst") served an affidavit enclosing a competing bid to that of Shaw. The Catalyst bid required no amendment or disclaimer of the CW Investments Shareholders' Agreement and was supported by the GS Parties.

[4] Given the afternoon and twilight hour service of the GS Parties' and Catalyst materials, the CMI Entities and the Ad Hoc Committee of 8% Senior Subordinated Noteholders ("the Ad Hoc Committee") then responded with service of numerous affidavits and materials of their own including an affidavit of Richard Grudzinski of RBC and a factum from the CMI Entities. These were emailed to the court commencing at about 5:30 the morning of the motion. Such was the state of play when court commenced at 10 o'clock. Some might call this real time litigation; others surreal time litigation. In my view, this late breaking flurry of activity was unnecessary.

¹ R.S.C. 1985, c. C. 36, as amended.

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[5] Perhaps not surprisingly, the GS Parties and Catalyst requested an adjournment of the CMI Entities' approval motion for at least two weeks. The adjournment would allow the Monitor, the court and interested parties to review the terms of the Catalyst proposal with a view to determining whether the terms contained therein were superior to the terms of the Shaw subscription agreement. The CMI Entities, the Special Committee, the Ad Hoc Committee and Shaw all opposed the adjournment request. The Monitor took no position. I heard extensive argument on the request for an adjournment². As mentioned, the Shaw bid was conditional on court approval by February 19, 2010, the date of the hearing. Shaw was not prepared to extend its deadline. The issue was expressly raised with Shaw in court but Shaw maintained its position. I refused the adjournment request but in the absence of evidence of the Monitor's position, asked the Monitor to provide evidence on its position with respect to the Catalyst proposal. Counsel could then make inquiries and submissions once the Monitor had done so. In a certain sense, so-called real time litigation begets more real time litigation.

[6] The Monitor proceeded to prepare a supplementary Report. Perhaps in keeping with the subject matter of this CCAA proceeding, the supplementary Report contained more "late breaking news" including correspondence from Quebecor Media Inc. to the effect that it would be prepared to consider an alternative proposal if the solicitation process was reordered and transparent.

[7] Following receipt of the Monitor's supplementary Report and completion of argument, I granted the relief requested with reasons to follow. These are they.

[8] I do not propose to embark on a review of the history of the CMI Entities' CCAA proceeding nor the players all of which has been discussed in detail in past decisions. By way of introduction, it will be recalled that the CMI Entities entered into a Support Agreement with members of the Ad Hoc Committee and that Agreement had attached to it the Restructuring Term Sheet that set out the summary terms and conditions of a consensual recapitalization transaction. The Support Agreement provided that the CMI Entities would pursue a Plan on the

² During which time counsel not yet retained by certain noteholders who are not represented by the Ad Hoc Committee appeared to advise the court that his potential clients might not agree with the position of the Ad Hoc Committee.

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terms set out in the Restructuring Term Sheet in order to implement the recapitalization transaction as part of the CCAA proceeding. An equity investment of at least \$65 million was to be pursued. This brings me to the equity solicitation process.

Equity Solicitation

[9] On November 2, 2009, RBC commenced the equity solicitation process to identify potential new investors. They had to be Canadian so as to satisfy the ownership requirements that apply to parent corporations of a corporation that is in receipt of a television license from the Canadian Radio-Television and Telecommunications Commission. It was contemplated that the new investment would amount to at least \$65 million. The process was run by RBC, not the Monitor, although the Monitor did receive periodic updates during the process. RBC had been working with Canwest Global since December 10, 2008, and therefore had developed detailed and intimate knowledge of the business of the CMI Entities.

[10] The process proceeded in two phases. In the first phase, RBC contacted about 90 potential investors to inquire whether they would be interested in making a minimum 20% equity investment. During the course of initial discussions with potential investors, it was recognized that alternative proposals would be considered. The list of potential investors included both strategic and financial investors and qualified high net worth individuals in Canada and was generated by RBC through its own internal sources and in consultation with the CMI Entities, the CMI CRA, and the Ad Hoc Committee. 52 potential investors expressed interest and were sent "teaser" documents. These included an overview of the investment opportunity and a form of non-disclosure agreement ("NDA") to sign. According to Mr. Grudzinski of RBC, the form of NDA was standard for a process such as this equity solicitation and restrictions on discussions with entities involved in the business are commonplace. Ultimately, 22 potential investors executed NDAs, a take up Mr. Grudzinski viewed as being generally in line with similar investment processes. They then received a more comprehensive confidential information memorandum and access to an internet-based data room containing further confidential information. Those investors were then invited to submit non-binding proposals along with a markup of a proposed equity investment term sheet by December 2, 2009. By that date, six

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potential investors had submitted initial proposals, five of whom were invited to participate in phase two of the process.

[11] Catalyst, a private equity firm specializing in investments in distressed companies, submitted a commitment letter on December 2, 2009. It reflected a \$65 million investment representing 25% of the total equity of a restructured Canwest Global. Catalyst was prepared to increase the equity investment up to \$165 million for an additional pro rata equity percentage acceptable to Catalyst in conjunction with potential transactions related to CW Investments Co. The cover email described the spirit of the deal as being "a fully funded, fully executable proposal in order to get the Estate out of insolvency protection as soon as possible" and that its transaction had "no due diligence requirement, no financing conditions and no CW Investments Co. condition." This latter reference presumably referred to the CW Investments Shareholders' Agreement with the GS Parties. The commitment was also stated to be in accordance with the Support Agreement negotiated between the CMI Entities and the Ad Hoc Committee. The cover e-mail enclosing the commitment letter stated: "We also understand and adopt the terms and the fact that the Board, management and the other stakeholders have set up a process and the terms of a Plan which we certainly support." The proposal was to be considered withdrawn if Catalyst had not received an executed counterpart to the commitment letter by December 8, 2010.

[12] Catalyst had not executed an NDA. Gabriel De Alba of Catalyst states that notwithstanding Catalyst's attempts to open a dialogue with RBC, its proposal expired and other than an acknowledgement of receipt, Catalyst was not contacted.

[13] On December 21, 2009, Mr. Grudzinski of RBC advised Catalyst that it would not be permitted to participate further in the process unless it executed an NDA. Catalyst states that it would not agree to this for two reasons. Firstly, its proposal was not conditional on due diligence and as it did not need confidential information, there was no reason for it to execute an NDA. Secondly, the NDA included "offensive and problematic provisions that did not appear appropriate as conditions precedent to submitting a bid including one that would have precluded Catalyst from having discussions with a number of parties, including the GS parties. Given the GS parties' importance to any deal involving Canwest Global, that provision was highly

2010 ONSC 1176 (CanLII)

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inappropriate in this context and would have severely limited the ability of Catalyst"... "to complete a transaction."

[14] RBC commenced phase two shortly after receipt of the non-binding initial proposals. As part of phase two, RBC and the senior management team of CMI Entities met with and provided each phase two participant with a detailed management presentation and confidential information and ongoing access to business and legal due diligence sessions. RBC also advised the phase two participants that they would have the opportunity to meet with members of the Ad Hoc Committee before submitting their proposals. One of the five participants withdrew. On January 20, 2010, RBC advised the remaining four that formal binding offers were required by January 27, 2010, and provided them with a proposed equity subscription agreement and attached term sheet. RBC also advised the phase two participants of criteria Canwest Global and RBC would consider in evaluating offers. These included confirmation that the proposed investor would be willing to proceed with its investment on the basis that the CW Shareholders' Agreement with the GS Parties would be amended on terms acceptable to the proposed investor.

[15] Two bids were received by January 27, 2010, and RBC and the CMI Entities had discussions with those bidders.

[16] Mr. De Alba of Catalyst states that Catalyst directly and through counsel complained to RBC about the process. He states that because the process was not being overseen by the court, Catalyst had no recourse until the next time the process was referred to the court which was this motion.

[17] Ultimately, the CMI Entities selected Shaw's bid as the best overall offer received. The bid contemplates that:

- Canwest Global will be a private company the shareholders of which will be Shaw or its subsidiary and those noteholders and other creditors who elect to receive equity shares and who would hold at least 5% of the equity shares following completion of the transaction.

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- Creditors holding less than 5% of the equity shares on completion of the recapitalization transaction (the "non-participating creditors") and existing shareholders would receive cash to extinguish their interests to be effected pursuant to the Plan. The cash the non-participating creditors would receive would be equal to the value of the equity they would have received under the originally proposed recapitalization transaction but using the higher implied equity value contained in Shaw's bid.
- Shaw will subscribe for Class A voting shares representing a 20% minimum equity subscription in the capital of a restructured Canwest Global and an 80% voting interest. A portion of the proceeds will be distributed to the noteholders pursuant to the Plan in partial payment of the secured intercompany note and the balance will be for working capital purposes.
- In addition to this amount, Shaw would subscribe for an additional commitment of shares at the same price per share to fund the cash payments to the non-participating creditors and the existing shareholders subject to the right of members of the Ad Hoc Committee to elect to participate *pro rata* with Shaw in funding this additional commitment.
- Shaw meets the Canadian requirement, has adequate financial resources on hand to complete the recapitalization transaction, and there are no financing conditions in favour of Shaw.
- A \$5 million termination fee may be paid by Canwest Global to Shaw in certain circumstances. It is payable in the event that the Shaw subscription agreement is terminated by Shaw if the closing has not occurred on or before August 11, 2010, solely because of a failure to satisfy certain closing conditions. It is also payable if the agreement is terminated by Canwest Global prior to the implementation of the recapitalization transaction in order to enter into a definitive amendment and restatement of the CW Investment Shareholders' Agreement with the GS Parties that is acceptable to both Canwest Global and the Ad Hoc Committee but that is

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not acceptable to Shaw. In the event that a termination event has occurred, the Shaw subscription agreement provides that in addition to the termination fee, Canwest Global will reimburse Shaw in an amount of up to \$2.5 million for any out-of-pocket fees and expenses relating to negotiation of the transaction. The subscription agreement contemplates that the termination fee and expense reimbursement fee will be secured by a charge over all of the assets, property and undertaking of the CMI Entities ranking after the existing charges.

[18] RBC advised the CMI Entities that the bid submitted by Shaw was the best overall offer received considering various criteria. The bid provided significant value to Canwest Global in exchange for the equity investment, gave affected creditors the opportunity to get cash rather than shares, and provided a long-term solution and stability for a restructured Canwest Global through the involvement of a strategic investor with significant experience in the media industry.

[19] The Special Committee of the Board of Directors of Canwest Global considered the bids having regard to the best interests of Canwest Global and recommended for approval the Shaw Definitive Documents to the Board of Directors of Canwest Global. The Board provided approval. All of the CMI Entities' senior management, the CMI CRA, and the Ad Hoc Committee supported the entering into of the Shaw Definitive Documents.

[20] Catalyst's late February 19, 2010 offer arose outside the process adopted by RBC and the CMI Entities. Catalyst's bid this time was stated to contemplate a fully funded unconditional investment of \$120 million representing 32% of the total equity of a restructured Canwest Global. The proposal again did not require any amendment or disclaimer of the CW Investments Shareholders' Agreement.

[21] In court on February 19, 2010, counsel for the CMI Entities, the Special Committee and the Ad Hoc Committee all expressed continued support for the Shaw Definitive Documents. Counsel for the Monitor advised that the CMI CRA also was in favour. In addition, an affidavit of Mr. Grudzinski of RBC was filed stating, amongst other things, that the Shaw transaction represented the best transaction available to Canwest Global in the circumstances. The material non-financial terms of the Shaw Definitive Documents were disclosed in the materials before the

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court but the Definitive Documents themselves were filed on a confidential basis. The CMI Entities were of the view that disclosure would be extremely detrimental if the approval order was not provided.

Absence of Standstill Agreement

[22] There had been recent without prejudice negotiations between the Ad Hoc Committee and the GS Parties. The GS Parties thought that the negotiations were subject to a standstill agreement which provided that absent seven days' notice, neither the Ad Hoc Committee nor the GS Parties would initiate or encourage any other person including Canwest Global to initiate any proceeding with respect to the insolvency proceeding of Canwest Global. Negotiations between the GS Parties and the Ad Hoc Committee were ongoing when the GS Parties were served with the CMI Entities' motion on February 12, 2009. In argument, counsel for the GS Parties did not press this point. It appeared from the materials filed by counsel for the Ad Hoc Committee that due to a computer glitch, agreement was not reached on any seven day standstill. It is fair to conclude from all of the evidence on this issue that firstly, the Ad Hoc Committee had not agreed to a seven day standstill and secondly, the GS Parties reasonably believed that it had. In any event, the GS Parties knew by February 12, 2010 that the CMI Entities were seeking approval of the Shaw Definitive Documents on February 19, 2010.

Monitor's 10th Report

[23] The Monitor reported extensively on the Shaw transaction in its 10th Report. Dealing firstly with the subject of the CW Investments Shareholders' Agreement, the Monitor noted that Shaw, Canwest Global, and the Ad Hoc Committee had agreed to jointly pursue in good faith an amendment to the CW Investments Shareholders' Agreement with the GS Parties and to cooperate with each other in those negotiations. The Monitor also observed that a resolution of outstanding issues with the GS Parties is a material condition of the CMI Entities' successful emergence from CCAA protection on a going concern basis and that the introduction of other stakeholders may be a complicating factor.

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[24] Secondly, the Monitor stated that RBC had circulated to phase two participants a proposed form of subscription agreement that contained a fiduciary out provision that would allow Canwest Global to accept an offer that it determined in good faith to be superior to the offer submitted by the winning bidder and, following payment of a \$2.5 million topping fee, be released from its obligations to the winning bidder under the subscription agreement. The Monitor observed that the Shaw subscription agreement did not include this fiduciary out provision.

[25] The Monitor reported that the Shaw transaction if completed would satisfy one of the major requirements of the original recapitalization transaction, assist with the CMI Entities' successful emergence from CCAA protection, and allow them to continue operating on a going concern basis thereby preserving, *inter alia*, enterprise value for their numerous stakeholders.

[26] The Monitor concluded by stating that it supported approval of the transaction agreements reflecting the Shaw proposal. At the time of the filing of the 10th Report, the February 19, 2010, Catalyst proposal had of course not yet been received by the Monitor.

Monitor's Supplementary Report

[27] In its supplementary Report, the Monitor stated that its support of the Shaw transaction was unaffected by the Catalyst proposal.

[28] The Monitor observed that the Shaw subscription agreement including the amount of the proposed equity investment had a higher implied equity value than did the Catalyst proposal. On the other hand, the Catalyst proposal did not require an amendment or disclaimer of the CW Investments Shareholders' Agreement which is a condition of the Shaw transaction. The Monitor noted that the Catalyst proposal was subject to the negotiation and entering into of definitive documentation.³ The Catalyst proposal was subject to approval pursuant to a Plan which must be approved by the majority of the CMI Entities' creditors and the Ad Hoc Committee had informed the Monitor that it would not support any Plan that included Catalyst's proposal. The Monitor noted that no Plan can be approved by the creditors of the CMI Entities

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without the support of the Ad Hoc Committee because, amongst other things, it holds a blocking vote. The GS Parties have stated that the amount of their claim that would result from any disclaimer would result in the GS Parties holding a blocking vote in any vote on the Plan proposed by the CMI Entities. No request for the Monitor's consent to a disclaimer has been forthcoming and the Monitor was not in a position to estimate the quantum of any such claim by the GS Parties. The Monitor also reported that the Ad Hoc Committee disagrees with the GS Parties' assessment in this regard.

[29] The Monitor also reported on the concerns it had expressed about the removal of the fiduciary out provision in the Shaw subscription agreement. Although each of the Ad Hoc Committee, RBC and the CMI Entities had used their best efforts to include such a provision in the Shaw subscription agreement, Shaw had refused to include such a provision. In spite of its absence, RBC, the CMI Entities' Board of Directors, the Special Committee and the Ad Hoc Committee all concluded that the Shaw subscription agreement was the best that had resulted from the process. The form of subscription agreement with a fiduciary out provision was only provided to the four phase two participants so there could be no suggestion of reliance on same by Catalyst or the GS Parties. The Monitor noted Mr. Grudzinski's representation that the potential market for Canadian equity investors to invest had been fully canvassed. The Monitor also observed that the NDA requested to be executed by potential bidders was customary for an equity solicitation process. In spite of these factors, the Monitor continued to be supportive of the Shaw Definitive Documents.

Issues

[30] The issues for me to consider were:

- a) Should I grant the adjournment requested?
- b) What is the applicable legal test for approval of the Shaw Definitive Documents?
- c) Should I approve the Shaw Definitive Documents and the request for ancillary relief?

³ In argument, this condition was waived by Catalyst.

Adjournment

[31] Having heard extensive submissions, I decided not to grant the adjournment requested by Catalyst and the GS Parties. Firstly, it was clear from the evidence before me that there was no meeting of the minds with respect to any standstill agreement between the GS Parties and the Ad Hoc Committee. As such, the Ad Hoc Committee was not obliged to give seven days' notice before the CMI Entities brought the approval motion. I also note that legitimately, counsel for the GS Parties did not press this argument. While the GS Parties might reasonably have believed that there was a seven day standstill, once the materials were served on February 12, 2010, it was obvious that at least one party did not consider itself bound to any such agreement. Inexplicably, the GS Parties waited until the afternoon of February 18 to serve their materials and Catalyst waited until the wee hours of February 19 to serve its materials. It seems to me that the mayhem of the moment and the false urgency was largely created by the GS Parties and Catalyst.

[32] Furthermore, Catalyst opted not to participate in RBC's and the CMI Entities' process. I do not find Catalyst's rationale for not having done so to be very persuasive. I do not accept that it had no recourse to address process. The late breaking offer scenario could easily have been avoided by Catalyst. Additionally an adjournment could put the Shaw bid at risk. I concluded that an adjournment was not merited in the circumstances. At the court's request, the Monitor provided evidence to address the Catalyst proposal. In my view, this was a satisfactory approach to the conditions largely created by Catalyst. The court did have some concerns with the deadline imposed by Shaw and agreed to by the CMI Entities and the Ad Hoc Committee. In future, absent compelling reasons, court hearings should not be scheduled for the same day that court approval is required.

Legal Standard

[33] The next issue to consider is the standard applicable to the relief requested. The CMI Entities submit in their factum that I should approve the Shaw subscription agreement and the related documents on the basis that they are fair and reasonable, benefit the stakeholders of the CMI Entities as a whole, and do not result in any confiscation of rights held by the GS Parties. In oral argument, without acknowledging that there has been any confiscation of rights, counsel

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for the CMI Entities refined the standard to the first two elements. In essence the CMI Entities submit that the court should approach the analysis from the perspective of approval of an agreement during a CCAA process. In that regard, they rely on *Re: Air Canada*⁴, *Re: Calpine*⁵ and *Re: Sammi Atlas Inc.*⁶.

[34] In contrast the GS Parties and Catalyst submit that although *RBC v. Soundair Corp.*⁷ dealt with an asset sale, the principles set forth in that case are applicable. Specifically, a court should consider:

- a) whether the CMI Entities have made a sufficient effort to get the best price and have not acted improvidently;
- b) the interests of all parties;
- c) the efficacy and integrity of the process by which offers are obtained; and
- d) whether there has been unfairness in the working out of the process.

[35] In addition the GS Parties submit that approval should also be tested against the factors enumerated by Morawetz J. in *Nortel Networks Corp.*⁸ dealing with approval of a sale process under the CCAA, namely:

- a) Is a sale transaction warranted at this time?
- b) Will the sale benefit the whole "economic community"?
- c) Do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- d) Is there a better viable alternative?

[36] The cases referred to by counsel did not deal with equity solicitations. Given the nature and extent of the equity solicitation in this case, it seems to me that a fair and reasonable test is too limited and the principles enunciated in *Soundair* are more appropriate. To these principles I

⁴ (2004), 47 C.B.R. (4th) 169 (Ont. S.J.).

⁵ 2007 A.B.Q.B. 504.

⁶ (1998), 3 C.B.R. (4th) 171.

⁷ (1991), 4 O.R. (3rd) 1.

⁸ (2009) 55 C.B.R. (5th) 229 at para. 49.

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would add that the court should consider the position of the Monitor. This is a factor to be considered when approval of an asset sale outside the ordinary course of business is sought pursuant to s. 36 of the CCAA. In my view, this is a useful factor to consider in circumstances such as those before me in this case. I do not believe that the *Nortel* process approval factors need be addressed. They are either largely subsumed by the *Soundair* principles or are unhelpful where the result of the equity solicitation process is before the court for approval not the process itself. That said, even if I were to consider the *Nortel* process approval factors, I would reach the same conclusion.

Approval

(a) Parties' Positions

[37] In brief, the parties' positions were as follows. The CMI Entities submit that the Shaw transaction is fair and reasonable and that it is beneficial to the stakeholders of the CMI Entities, viewed as a whole. It is the product of a comprehensive equity investment solicitation process conducted by a sophisticated financial advisor and reflects the exercise of the business judgment of the Board of Directors of Canwest Global on the recommendation of the Special Committee and the CMI CRA as to the best interests of the CMI Entities. The CMI Entities state that the GS Parties have no contractual or legal right to dictate the terms of the equity solicitation process and they are advancing objections to obtain further negotiating leverage. They are not creditors and none of their rights will be affected or confiscated if the Shaw Definitive Documents are approved. Those Documents expressly provide that the parties will jointly pursue any consensual amendment to the Shareholders' Agreement; the parties are not required to pursue disclaimer of the Shareholders' Agreement; and the Ad Hoc Committee and the CMI Entities can pursue an agreement to amend the Shareholders' Agreement with the GS Parties that is not agreed to by Shaw. The Shaw transaction satisfies a crucial step in the restructuring. The members of the Ad Hoc Committee are the CMI Entities' largest creditor group and if the CMI Entities hope to emerge from this restructuring successfully, the members of the Ad Hoc Committee must necessarily vote in favour of the Plan. There was nothing unfair or unbalanced about the process and all potential bidders had equal access to information.

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[38] The Special Committee, the Ad Hoc Committee, and Shaw all supported the position of the CMI Entities.

[39] The GS Parties submit that approval is being sought on an incomplete record and in circumstances where there are significant issues about the integrity of the process and whether the best available transaction has emerged. It is premature to conclude that the Shaw transaction represents the best available agreement taking into account the interests of all stakeholders. They complain about the absence of a fiduciary out-provision. Furthermore, they state that they were completely shut out from the process even though any restructuring transaction must ultimately contend with their rights in CW Investments Co. The transaction structure appears to have been controlled by the Ad Hoc Committee to serve its own interests. The GS Parties state that the Shaw transaction enables the Ad Hoc Committee to extract certain minimum cash levels immediately. They also complain that the treatment of the noteholders' claims is proposed to be very different than the treatment of other affected creditors. There are powerful incentives for the CMI Parties to adhere to the terms of the agreements negotiated with the Ad Hoc Committee and in these circumstances, deference should not be given to the exercise of business judgment.

[40] The GS Parties state that lack of disclosure and discussions have substantially impaired their ability to place an alternative to the Shaw transaction before the court. The process was never approved by the court and the Monitor's involvement has been limited to periodic updates. As such, the process and the result are not entitled to deference and should be carefully scrutinized. Others were not prepared to sign the NDA and this constraint and others limited participation in the process. They were also prohibited from engaging in discussion with the GS Parties as a condition of participation. The GS Parties state that they have a limited interest in who ultimately controls Canwest Global given that control of Canwest Global results in control of CWI and the specialty television business. This interest has been ignored. Furthermore, it is a condition of the Shaw transaction that the CW Investments Agreement be disclaimed or amended in a manner agreed to by Canwest Global, the Ad Hoc Committee and Shaw. The exclusion of the GS Parties from the process, the targeting of the rights and interests of the GS Parties under the CWI Agreement, and the prohibition of discussions between the GS Parties and

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Shaw before court approval are all fundamental failures to consider the legitimate interest of the GS Parties.

[41] Catalyst supported the position of the GS Parties.

(b) Discussion

[42] It is clear that the CMI Entities did make a sufficient effort to obtain the best offer. RBC established and published a process with which the GS Parties and Catalyst now take issue. There was nothing stopping either of them from challenging the process at an earlier stage or alternatively, participating in it. Indeed, as evident from the email enclosing its first bid, Catalyst stated that: "We also understand and adopt the terms and the fact that the Board management and other stakeholders have set up a process and the terms of a Plan which we certainly support." RBC fully canvassed the market. It is unnecessary for the court to be given the identity of prospective investors in the face of the overwhelming evidence of an extensive market canvass.

[43] As noted by the Monitor and many others, no Plan can be approved by the creditors of the CMI Entities without the support of the Ad Hoc Committee which holds a blocking vote. That said, I am also satisfied that the interests of all parties were considered. While one may reasonably question whether the strategy of postponement of the issues relating to the CW Investments Shareholders' Agreement and the GS Parties is or is not wise, the CW Investments Shareholders' Agreement is unaffected by the Shaw Definitive Documents. The GS Parties are in no worse position with respect to the CW Investments Shareholders' Agreement. The GS Parties are not creditors. In addition, the Definitive Documents provide that the parties will jointly pursue any consensual amendment to the Shareholders' Agreement; the parties are not required to pursue disclaimer of the Shareholders' Agreement; and the Ad Hoc Committee and the CMI Entities can pursue an agreement to amend the Shareholders' Agreement with the GS Parties that is not agreed to by Shaw. The evidence before me suggests that the CMI Entities did turn their minds to the interests of others and the Board of Directors concluded that the Shaw Definitive Documents were in the best interests of Canwest Global and by inference, given that it was an equity solicitation, its stakeholders.

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[44] As to the efficacy and integrity of the process by which offers were obtained, there was a fair and thorough canvass of the market and a level playing field. As to whether there has been unfairness in the working out of the process, while the Monitor favoured inclusion of a fiduciary out provision and while one may argue that ideally the fiduciary out provision would not have been negotiated away, this did not constitute unfairness in the working out of the process or a lack of efficacy or integrity in the process. The evidence before me suggests that there were good faith efforts made by RBC, the CMI Entities and the Ad Hoc Committee to maintain that provision but Shaw successfully negotiated for its omission. On balance, all of them were of the view that the merits of the Shaw transaction outweighed the benefit of insisting on the inclusion of the fiduciary out provision. It should also be noted that the Catalyst proposal does not include a fiduciary out provision. Furthermore, in spite of the lack of a fiduciary out provision, the Monitor is supportive of the Shaw Definitive Documents and was not critical of the process. Additionally, there is support from the Special Committee of the Board, the Board of Directors of Canwest Global, the CMI CRA and the Ad Hoc Committee.

[45] I should also stress that there appears to be a reasonable basis for this support. Amongst other things, Shaw is experienced in the media industry, financing is not an issue, the offer is for a substantial amount and has a substantially higher implied equity value than that proposed by Catalyst. One should also not overlook the fact that the transaction is necessary at this time. The CMI Entities do not have unlimited time within which to conduct the equity solicitation process and, subject to closing, a major objective underpinning the initial CCAA filing has now been accomplished. The transaction provides some confidence that the CMI Entities will be able to continue as going concerns. I reiterate my view that the Shaw Definitive Documents should be approved and the ancillary relief granted. With respect to the latter, the amounts of the termination fee and the expense fee and the proposed charge itself are fair and reasonable in the circumstances. They are also consistent with giving the CMI Entities leeway to address outstanding issues with the GS Parties but in a manner that is fair to Shaw's commercial interests.

[46] Lastly, among other representations and warranties given by Canwest Global to Shaw, Canwest Global has covenanted to use its commercially reasonable efforts to cause its affiliates

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to terminate the participation of any employee of Canwest LP, CCI and their subsidiaries in a pension or benefit plan of Canwest Global or its other subsidiaries and to terminate all intercompany plan participation agreements between a specified affiliate and Canwest Global and one of its subsidiaries. This covenant is intended to cause the CMI Entities to use commercially reasonable efforts to realign certain employees of the specified affiliates who, for various reasons, participate in a pension plan which is sponsored by the CMI Entities and enable those employees to participate in a pension plan which is sponsored by the specified affiliate. Counsel for the CMI Entities confirmed that they had no intention of terminating pension benefits; this was merely to realign the plans with the appropriate entities.

Conclusion

[47] For these reasons, I granted the relief requested. A major question continues to revolve around the CW Investments Shareholders' Agreement and the relationship between the CMI Entities and the GS Parties. As is evident from paragraph 75 of their factum and their counsels' submissions, the GS Parties' key concern is that the CCAA proceeding is designed by the Ad Hoc Committee to achieve a disclaimer of the CW Investment Shareholders' Agreement and to take value away from the GS Parties. I continue to be of the view that a commercial and negotiated resolution of that issue is in the best interests of all concerned. I have approved the Shaw Definitive Documents and ancillary relief. The parties must now move forward and have a reasonable dialogue.

Pepall J.

DATE: March 1, 2010

CITATION: Re: Canwest Global Communications Corp., 2010 ONSC 1176
COURT FILE NO.: CV-10-8533-00CL
DATE: 20100301

ONTARIO

**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, 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**

REASONS FOR DECISION

Pepall J.

2010 ONSC 1176 (CanLII)

Released: March 1, 2010

Court File No. CV-09-8396-00 CL

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

Applicants

**AFFIDAVIT OF GABRIEL DE ALBA
(Sworn February 19, 2010)**

I, Gabriel De Alba, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Managing Director and a Partner of The Catalyst Capital Group Inc. ("Catalyst"). Where I have obtained information from other persons or sources, I have stated the source of the information and verily believe it to be true. In addition, I have reviewed and am familiar with relevant records upon which the facts herein are based.
2. This affidavit is sworn in connection with the Applicants' motion to, *inter alia*, have the Court approve the subscription agreement dated February 11, 2010 between Canwest Global Communications Corp. ("Canwest" or the "Company") and Shaw Communications Inc. ("Shaw") and related agreements (collectively, the "Subscription Agreement").

3. Catalyst is a private equity firm specializing in investments in distressed companies. It has experience in the media and telecommunications business through, among other investments, its investments in AT&T Canada, Call-Net and Cable Satisfaction International Inc.

Initial Proposal

4. Following Canwest's filing for protection under the *Companies' Creditors Arrangement Act*, Catalyst became interested in making a bid to become the New Investor (as that term is defined in the Affidavit of John E. Maguire sworn October 5, 2009).

5. On December 2, 2009, Catalyst sent a letter attaching terms and conditions of Catalyst's proposed \$65 million investment (the "Initial Proposal") to Canwest and RBC Capital Markets, Canwest's financial advisor. Attached hereto as Exhibit "A" is a copy of the Initial Proposal.

6. The Initial Proposal was fully funded and unconditional. Of particular note, the Initial Proposal was created in accordance with the Support Agreement (as that term is defined in the Affidavit of John E. Maguire sworn October 5, 2009) which was supported by Canwest and the Ad-hoc Committee of Noteholders. Furthermore, it did not require:

- (i) any due diligence; or
- (ii) any amendment to the CW Investments Shareholders Agreement (as that term is defined in the Affidavit of Thomas C. Strike sworn February 12, 2010).

7. In other words, Catalyst provided a proposal that could have proceeded to a closing expeditiously, in accordance with the Support Agreement, and without the need to solicit

amendments and compromises from important stakeholders such as GS Capital Partners VI Fund, L.P. and its affiliates ("Goldman Sachs").

8. To the best of my knowledge, the Initial Proposal was the only proposal received by Canwest and/or RBC Capital Markets that was not conditional on an amendment to the CW Investments Shareholders Agreement.

9. Although the Initial Proposal complied with the terms of the Support Agreement, Catalyst received no effective response from Canwest or RBC Capital Markets. Notwithstanding Catalyst's numerous attempts to open a dialogue with RBC Capital Markets following the delivery of the Initial Proposal, the Initial Proposal expired without Catalyst ever being contacted, other than initially to acknowledge receipt.

10. In or about December 21, 2009, and only after the Initial Proposal expired and I contacted him on several more occasions, Richard Grudzinski ("Grudzinski") of RBC Capital Markets engaged with me in discussions regarding the Initial Proposal. Grudzinski informed me in very vague terms that the Initial Proposal was not acceptable and that Catalyst would not be permitted to participate further in the process unless it executed a non-disclosure agreement ("NDA"). No consideration appears to have been given to the non-cash benefits of the Initial Proposal, such as the removal of substantial uncertainty by proposing a deal that did not require an amendment of the CW Investments Shareholders Agreement.

11. Catalyst would not agree to execute that particular NDA for two reasons:

- (i) since the Initial Proposal was not conditional on conducting due diligence and Catalyst did not require or want any confidential information, there was no reason to execute an NDA at that point in the process, and
- (ii) the NDA was much more than a mere confidentiality agreement. It included a number of offensive and problematic provisions that did not appear appropriate as conditions precedent to submitting a bid, including one that would have precluded Catalyst from having discussions with a number of parties, including Goldman Sachs. Given Goldman Sachs' importance to any deal involving Canwest, that provision was highly inappropriate in this context and would have severely limited the ability of Catalyst (and, I would argue, any reasonable investor) to complete a transaction. In essence, executing the NDA would have made it virtually impossible for Catalyst to advance a transaction without being totally subject to the control, and dependent upon the cooperation at each step, of those running the process.

12. From Catalyst's perspective, the process utilized by RBC Capital Markets to solicit a New Investor, which was never disclosed to or approved by the Court, has lacked transparency and the appearance of fairness. Catalyst was and is certainly prepared to be a part of a process that has withstood the scrutiny of a Court and a Monitor in its design and implementation, but this process seems clearly to have been designed to limit the ability of certain types of bidders to participate fully and without being subject to undue restriction.

Second Proposal

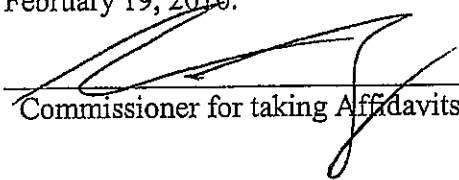
13. Despite being shut out of the process by Canwest and RBC Capital Markets, Catalyst remained interested in being the New Investor. Catalyst, directly and through counsel, complained to RBC Capital Markets on a number of occasions about the process, but it was clear that those complaints would get nowhere. Because the process was not being overseen by the Court, Catalyst had no recourse until the next time the process was referred to the Court, which is this motion.

14. On February 19, 2010, Catalyst submitted a superior second proposal to be the New Investor (the "Second Proposal"). Attached hereto as Exhibit "B" is a copy of the Second Proposal. The Second Proposal contemplates a fully funded unconditional investment of \$120 million. Once again, Catalyst has its proposal fully funded and is confident that it will be able to complete this transaction expeditiously. Catalyst anticipates no problems with CRTC approval, since it has received such approval for other transactions previously.

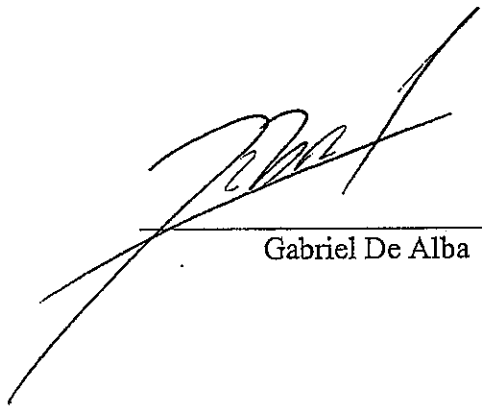
15. Although it is impossible to know for certain because the Subscription Agreement has inexplicably been filed confidentially, I believe the Second Proposal is very likely to be a superior proposal to Shaw's proposal in any event. Further, by eliminating the cost, delay and significant legal risk associated with proceeding in a way unacceptable to Goldman Sachs, the Second Proposal clearly adds value for the creditors well in excess of its nominal stated value. The Second Proposal should at least have an opportunity to be properly considered, including the opportunity for this Honourable Court to hear from the Monitor after it has had an opportunity to review the Second Proposal and to evaluate the issues, concerns and conclusions referred to above.

16. I swear this affidavit in opposition of the motion brought by the Applicants for, *inter alia*, an Order approving the Subscription Agreement, and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February 19, 2010.




Commissioner for taking Affidavits



Gabriel De Alba

THIS IS **EXHIBIT "A"** REFERRED TO
IN THE AFFIDAVIT OF GABRIEL DE
ALBA SWORN FEBRUARY 19, 2010.



Commissioner for taking Affidavits

From: De Alba, Gabriel
To: 'Grudzinski, Richard' ; 'hstephen@stonecrestcapital.com'
Cc: Glassman, Newton
Sent: Wed Dec 02 17:20:44 2009
Subject: Catalyst Proposal

Dear Richard and Hap:

As per our previous discussions, please find attached our commitment to act as the New Investor on Canwest's Recapitalization. As you will see, amongst other things, the transaction has no due diligence requirements, no financing conditions and no CW Investments Co. condition. The spirit of the deal is for us to provide you with a fully funded, fully executable proposal in order to get the Estate out of Insolvency protection as soon as possible. We also understand and adopt the terms and the fact that the Board, management and the other stakeholders have set up a process and the terms of a Plan which we certainly support.

As you review the commitment, please feel free to call us with any questions.

Best regards,

Gabriel de Alba
Managing Director & Partner
The Catalyst Capital Group Inc.
Ph: 1.416.945.3020
Mobile Toronto: 1.416.276.1377
Mobile New York: 1.917.312.6701
gdealba@catcapital.com

03/12/2009

The Catalyst Capital Group Inc.

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Toronto, Ontario M5K 1J3
Telephone: 416.945.3000
Facsimile: 416.945.3060

December 2, 2009

Richard Grudzinski
RBC Capital Markets
5th Floor, South Tower
Royal Bank Plaza
200 Bay Street
P.O. Box 50
Toronto, Ontario
M5J 2W7

Hap Stephen
Canwest Global Communications Corp.
3100 Canwest Global Place
201 Portage Avenue
Winnipeg, MB
R3B 3L7

Re: Cdn.\$65 million Common Stock Equity Investment

Dear Sirs:

Reference is made to:

- (a) the Companies' Creditor Arrangement Act proceedings, Court File No. CV-09-8396-00CL (the "CCAA Proceedings") of Canwest Global Communications Corp. and the other applicants (collectively, the "Applicants"), currently pending before the Ontario Superior Court of Justice (the "Court");
- (b) the Support Agreement and to the Recapitalization Transaction dated October 5, 2009, which is to be approved or implemented as part of a plan of arrangement (the "Plan");
- (c) the Use of Cash Collateral and Consent Agreement dated September 23, 2009 (the "Cash Collateral Agreement") filed with the Court as part of the Initial Application Record.

Capitalized terms used in this letter agreement and the attached term sheet (collectively, the "Commitment Letter") and not otherwise defined herein shall have the meanings provided in the Plan, Support Agreement and Cash Collateral Agreement.

The Catalyst Capital Group Inc. ("Catalyst"), on behalf of investment funds managed by it, a Canadian investor within the meaning of the Canadian ownership and control requirements contained in the Direction to the CRTC (the "Direction"), will arrange for one or more of its investment funds to make the Equity Investment (as defined below).

Catalyst is pleased to present to you the proposed general terms and conditions of an equity investment for Cdn.\$65 million representing 25% of the total equity of Restructured Canwest Global (the "Equity Investment"). Catalyst is prepared to increase the Equity Investment up to Cdn.\$165 million for an additional pro rata equity percentage acceptable to Catalyst in conjunction with potential transactions related to CW Investments Co. Catalyst is also prepared to consider other shareholder and governance structures as long as they offer comparable economics to Catalyst and are acceptable to the CRTC. The use of the proceeds of the Equity Investment shall be as outlined in the Recapitalization Transaction.

The equity of the Restructured Canwest Global will be comprised of the classes of shares contemplated by Part A, Section 3 of the Recapitalization Transaction Term Sheet. No multiple voting shares will be created or issued in the capital of Restructured Canwest Global. The Equity Investment will be made in Class A Subordinated Voting Shares (the "Class A Shares").

Catalyst will have the right to elect four (4) board members. The Class B Shares, as a class, will have the right to elect three (3) Canadian (within the meaning of the Direction) board members, and two (2) independent Canadian (within the meaning of the Direction) board members will be elected jointly by Catalyst and the Class B Shares.

The initial CEO of the Restructured Canwest Global will be selected by a majority of the Catalyst nominee directors provided that the appointee is acceptable to at least one Class B nominee director. Thereafter, the CEO will be appointed and removed at the will of the Board. It is expected that the CEO will also be a member of the Board.

The initial Board members will be selected no later than the Effective Date. Catalyst is prepared to discuss the participation of the Asper family in the Equity Investment on terms acceptable to Catalyst.

The right to elect the number of directors for each class of shares set out above will remain in place until 18 months after the Effective Date. Thereafter, the number of directors to be elected by the Class B Shares at an annual meeting will be determined at the time of the board meeting at which the date of the meeting is established, based on the following percentage of the total outstanding Class A Shares and Class B Shares comprised of Class B Shares:

Equal to or greater than 50% - 3 directors

Equal to or greater than 30% but less than 50% - 2 directors

Equal to or greater than 10% but less than 30% - 1 director

Less than 10% - no directors

The calculation of the percentage of the total outstanding Class A Shares and Class B Shares comprised of Class B Shares will be made using the number of shares outstanding on the date after the last general meeting and prior to the board meeting at which the date of the annual meeting is established at which the lowest number of Class B Shares were outstanding.

Subject to CRTC approval, until the earlier of (a) such time as the holders of Class B Shares are not entitled to nominate any directors and (b) 18 months from the Effective Date, the articles of the Restructured Canwest Global will require the approval of not less than a majority of the directors (including at least one director elected or appointed by the holders of Class B Shares) for the following matters:

- any material change to the scope or nature of the business or operations of Restructured Canwest Global or any of its subsidiaries considered on a consolidated basis;
- aggregate capital expenditures of Restructured Canwest Global and its subsidiaries in any calendar year in excess of a threshold to be agreed;
- the incurring by Restructured Canwest Global or its subsidiaries of funded debt in excess of a threshold to be agreed or the changing of any material terms of any material debt incurred;
- any consolidation or merger with another person of Restructured Canwest Global or any of its subsidiaries, the sale or transfer of all or a substantial portion of the assets of Restructured Canwest Global and its subsidiaries (on a consolidated basis) to another person or the entering into any other similar business combination other than a consolidation, merger, sale or transfer of any wholly owned subsidiary into or to Restructured Canwest Global or another wholly owned subsidiary of Restructured Canwest Global;
- any sale, lease or transfer of assets by Restructured Canwest Global or its subsidiaries where such assets have a value in excess of a threshold to be agreed in any one transaction or related transactions;
- the declaration or payment by Restructured Canwest Global of any dividends or the making of any distributions on its shares or the redemption or repurchase of shares or any other securities, except in connection with the conversion of Class A Shares into Class B Shares or Class B Shares into Class A Shares;
- any authorization, issue or sale of or agreement of Restructured Canwest Global to issue or sell any shares;
- the entering into by Restructured Canwest Global of any transactions with any current shareholder, director or officer or employee other than transactions in the ordinary course of business;

- any amendment to the articles or by-laws of Restructured Canwest Global;
- the adoption or amendment of any stock option plan, bonus plan, management incentive plan or other employee benefit plan of Restructured Canwest Global;
- any delegation of material board authority by Restructured Canwest Global to a committee, such as an executive committee;
- any material investment in excess of a threshold to be agreed by Restructured Canwest Global in any other company, partnership, association or other form of joint venture;
- the guarantee of any liabilities by Restructured Canwest Global of a third party, other than indemnification of directors and officers of Restructured Canwest Global and its subsidiaries in accordance with the CBCA; and
- any material transaction by Restructured Canwest Global outside the normal and ordinary course of business.

Whether or not the transactions contemplated hereby are consummated, the Applicants agree to indemnify and hold harmless Catalyst and their respective general partners, members, managers and equity holders, and the respective officers, employees, affiliates, advisors, agents, attorneys, financial advisors, accountants, consultants of each such entity, and to hold the Catalyst and such other persons and entities (each an "Indemnified Person") harmless from and against any and all losses, claims, damages, liabilities and expenses, joint or several, which any such person or entity may incur, have asserted against it or be involved in as a result of or arising out of or in any way related to this Commitment Letter, the matters referred to herein, the Plan, the use of proceeds or any related transaction or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any of such Indemnified Persons is a party thereto, and to reimburse each of such Indemnified Persons upon 10 days of demand for any legal or other expenses incurred in connection with any of the foregoing; provided, however, that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they have resulted from the willful misconduct or gross negligence of such Indemnified Person. Notwithstanding any other provision of this Commitment Letter, no Indemnified Person will be liable for any special, indirect, consequential or punitive damages in connection with its activities related to the Commitment Letter. The terms set forth in this paragraph survive termination of this Commitment Letter and shall remain in full force and effect regardless of whether the documentation for the Commitment Letter is executed and delivered. The Court will also allow for a charge on assets ranking immediately below with the CMI Administration Charge (as defined in the initial order of the Court) for the aforementioned indemnity.

This Commitment Letter (a) is not assignable by the Applicants without the prior written consent of Catalyst (and any purported assignment without such consent shall be void), and (b) is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favour of, any person other than the parties hereto. Notwithstanding the foregoing, Catalyst may assign all or any portion of their obligations hereunder with the consent of CMI, not to be unreasonably withheld or delayed.

This Commitment Letter sets forth the proposal of Catalyst to fund the Equity Investment on the terms described herein and shall be considered withdrawn if Catalyst has not received a fully executed counterpart to this Commitment Letter on or before December 8, 2009 at 12:00 PM (ET), unless such deadline is extended by Catalyst in writing.

The obligations of Catalyst to fund the Equity Investment shall terminate and all of the obligations of the Applicants (other than the obligations of the Applicants to (i) pay the reimbursable fees and expenses, (ii) satisfy their indemnification obligations and (iii) pay the Break Up Fee, in each case, as set forth herein) shall be of no further force or effect, upon the giving of written notice of termination by Catalyst in the event that any of the items set forth in the Equity Investment Term Sheet under the heading "Termination of Equity Investment" occurs, each of which may be waived in writing by Catalyst. The obligations of the Applicants under this Commitment Letter shall terminate and all of the obligations of the Applicants (other than the obligations of the Applicants to (i) pay the reimbursable fees and expenses, (ii) satisfy their indemnification obligations and (iii) pay the Break Up Fee, in each case, as set forth herein) shall be of no further force or effect, upon the giving of written notice of termination by the Applicants, in the event of a Superior Proposal as set forth in the Equity Investment Term Sheet under the heading "Break Up Fee".

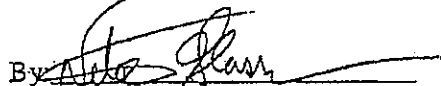
THIS COMMITMENT LETTER WILL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE PROVINCE OF ONTARIO.

This Commitment Letter may not be amended or waived except in writing signed by the Applicants and Catalyst. This Commitment Letter may be executed in any number of counterparts, each of which will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of this Commitment Letter by facsimile or portable document format (PDF) will be effective as delivery of a manually executed counterpart of this Commitment Letter.

This Commitment Letter constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof and shall become effective and binding upon (i) the mutual exchange of fully executed counterparts and (ii) the entry of the Approval Order.

Very truly yours,

The Catalyst Capital Group Inc.

By: 
Name: Newton Glassman

Title: Managing Partner

By: 
Name: Gabriel de Alba

Title: Managing Director & Partner

COMMITMENT ACCEPTED AND AGREED TO
THIS ____ DAY OF DECEMBER, 2009

CANWEST GLOBAL COMMUNICATIONS CORP.

On behalf of itself and the Applicants

By: _____

Name: _____

Title: _____

Cdn.\$65 million in Common Shares
Summary of Terms and Conditions

The following Summary of Principal Terms (this "Equity Investment Term Sheet") provides an outline of a proposed offering by the Issuer identified below of Cdn.\$65 million in Common Shares in connection with and upon the emergence of Canwest Global Communications Corp. and its affiliates (collectively, the "Applicants") from CCAA proceedings pursuant to a CCAA plan of reorganization, the terms of which are described in more detail in the Plan. The final terms and conditions related to the Common Shares purchase are subject to execution and delivery of definitive legal documentation, by all required parties and such other terms and conditions as are determined by the parties. This Equity Investment Term Sheet and the information contained herein is strictly confidential and may not be shared with any person or entity without the prior written consent of Catalyst. Unless otherwise defined herein, each capitalized term used in this Equity Investment Term Sheet shall have the same meaning ascribed to such term in the Plan, the Support Agreement, Cash Collateral Agreement or the letter included as part of this Commitment Letter.

ISSUER:	Restructured Canwest Global (the "Issuer")
SECURITIES OFFERED:	Cdn.\$65 million of Common Shares of the Issuer.
FINANCING CONDITION:	None.
DUE DILIGENCE CONDITION:	None.
CW INVESTMENTS Co. CONDITION:	None. No amendment to the CW Investments Co. Amended and Restated Shareholders Agreement will be required.
CONDITIONS PRECEDENT TO CLOSING:	The agreement of the Equity Investment hereunder is conditioned upon satisfaction of each of the conditions, except B(z), set forth in the Recapitalization Transaction as agreed between Catalyst and the parties thereto and the entry of an order of the Court on or before December 11, 2009, in form substance satisfactory to Catalyst, which order shall (without limitation) authorize the Applicants to incorporate this Commitment Letter into the Recapitalization Transaction and authorize and approve the transactions contemplated herein, including (without limitation) the payment of all consideration and fees contemplated herein and therein, and authorize the indemnification provisions set forth in this Commitment Letter, which order shall become a final order not subject to stay, appeal or modification (absent the prior written consent of the Catalyst) on or before December 15, 2009 (the "Approval Order").
OFFERING:	The Common Shares representing 25% of the total equity of the Issuer on the Effective Date (as defined below).
USE OF PROCEEDS:	The use of the proceeds of the Equity Investment shall be used as outlined in the Recapitalization Transaction.

BREAK UP FEE:

The Applicants are entitled to terminate this Commitment Letter by written notice to Catalyst to enter into a definitive written agreement with respect to a Superior Proposal (as herein defined); provided that if the Applicants terminate or if the Court approves and sanctions a transaction other than the Equity Investment, the Applicants shall pay to Catalyst at the Effective Time a fee in the amount equal to 3.0% of the enterprise value of the Restructured Canwest Global at the Effective Time (the "Break-Up Fee"), payable in full in cash and/or warrants, said warrants will be issued at Plan value for the equivalent dollar amount of the Break Up Fee, at Catalyst's discretion. The Court will also allow for a charge on assets ranking immediately below the CMI Administration Charge (as defined in the initial order of the Court) for Catalyst's fees and expenses subject to the existing charges on assets. For the purposes of this Commitment Letter, the term "Superior Proposal" means a *bona fide* written proposal by a third party to enter into any transactions in connection with the Plan, other than the Equity Investment on the terms set out herein, which provides for an investment that values the equity of the Restructured Canwest Global at a value of at least \$10 million more than the Equity Investment.

COMMITMENT FEE:

The Applicants will pay Catalyst Cdn.\$500,000 as a commitment fee for the Equity Investment. This fee shall be fully paid within two (2) business days after entry of the Approval Order.

**TERMINATION OF
COMMITMENT
LETTER:**

The commitment of Catalyst to purchase the Equity Investment as set forth in the Commitment Letter shall terminate and all of the obligations of the Applicants (other than the obligations of the Applicants to pay the reimbursable fees and expenses and the Break Up Fee and to satisfy their indemnification obligations set forth in the Commitment Letter) shall be of no further effect, at the election of and upon the giving of written notice of termination by Catalyst, if any of the termination events in the Support Agreement, Plan or Cash Collateral Agreement occur, in the event any covenant in the Support Agreement, Plan or Cash Collateral Agreement is breached and/or if any representation/warranty in Support Agreement, Plan or Cash Collateral Agreement is discovered to be false, each of which may be waived in writing by the Catalyst.

EFFECTIVE DATE:

The effective date of the Plan as ordered by the Court, it being a condition that such date will occur on or before April 15, 2010 (the "Effective Date").

EXPENSES:

Whether or not the transactions contemplated hereunder or the Commitment Letter are consummated, the Applicants shall pay within 10 days of demand the reasonable and documented fees, expenses, disbursements and charges of Catalyst incurred previously or in the future relating to the exploration and discussion of the restructuring of the Applicants, alternative financing structures to the Equity Investment or to the preparation and negotiation of the Commitment Letter, the Plan, this Equity Investment or the Plan documents and, in each of the foregoing cases, the proposed documentation and the transactions contemplated thereunder, including, without limitation, the fees and expenses of counsel to Catalyst.

EQUITY INVESTMENT

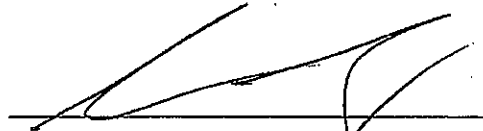
The Equity Investment documents will be prepared by the legal counsel to

DOCUMENTS: Catalyst unless otherwise agreed and will contain representations and warranties, terms, conditions and provisions, in each case as are customary for transactions of this type or deemed appropriate by Catalyst and the Applicants for this transaction in particular.

GOVERNING LAW: Ontario

MISCELLANEOUS: This Commitment Letter does not constitute or give rise to any obligation, on the part of Catalyst or any of its affiliates to negotiate, proceed with or provide any financing or participate in any transaction until it has been accepted by Canwest Global Communications Corp. on behalf of itself and the Applicants in accordance with its terms and approved by the Court, and does not set forth all matters on which agreement must be reached for any financing or transaction to be consummated.

THIS IS EXHIBIT "B" REFERRED TO
IN THE AFFIDAVIT OF GABRIEL DE
ALBA SWORN FEBRUARY 19, 2010.



Commissioner for taking Affidavits

February 19, 2010

Hap Stephen
Canwest Global Communications Corp.
3100 Canwest Global Place
201 Portage Avenue
Winnipeg, MB
R3B 3L7

Greg Watson
FTI Consulting
TD Canada Trust Tower
161 Bay Street
Toronto, Ontario
M5J 2S1

Robert Chadwick
Goodmans LLP
Bay Adelaide Centre
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Toronto, Ontario
M5H 2S7

Richard Grudzinski
RBC Capital Markets
5th Floor, South Tower
Royal Bank Plaza
200 Bay Street
P.O. Box 50
Toronto, Ontario
M5J 2W7

Re: Cdn.\$120 million Investment

Dear Sirs:

Reference is made to:

- (a) the Companies' Creditor Arrangement Act proceedings, Court File No. CV-09-8396-00CL (the "CCAA Proceedings") of Canwest Global Communications Corp. and the other applicants (collectively, the "Applicants"), currently pending before the Ontario Superior Court of Justice (the "Court");

- (b) the Support Agreement and to the Recapitalization Transaction dated October 5, 2009, which is to be approved or implemented as part of a plan of arrangement (the "Plan");
- (c) the Use of Cash Collateral and Consent Agreement dated September 23, 2009 (the "Cash Collateral Agreement") filed with the Court as part of the Initial Application Record.

Capitalized terms used in this letter agreement (the "Commitment Letter") and not otherwise defined herein shall have the meanings provided in the Plan, Support Agreement and Cash Collateral Agreement.

Investors

The Catalyst Capital Group Inc. ("Catalyst"), on behalf of investment funds managed by it, a Canadian investor within the meaning of the Canadian ownership and control requirements contained in the Direction to the CRTC (the "Direction"), will arrange for one or more of its investment funds together with the Asper Family, other Canadian investors and Goldman Sachs entities to make the Equity Investment (as defined below) (together, the "Catalyst Sponsored Group").

Investment Amount

The Catalyst Sponsored Group is pleased to present to you the proposed general terms and conditions of an equity investment for Cdn.\$120 million representing 32% of the total equity of Restructured Canwest Global (the "Equity Investment"). The use of the proceeds of the Equity Investment shall be as outlined in the Recapitalization Transaction as well as the backstop of up to Cdn.\$40 million for certain potential liabilities.

Investment Structure

The equity of Restructured Canwest Global will be comprised of the classes of shares contemplated by Part A, Section 3 of the Recapitalization Transaction Term Sheet. No multiple voting shares will be created or issued in the capital of Restructured Canwest Global unless required to prevent a change of control. The Equity Investment will be made in Class A Subordinated Voting Shares (the "Class A Shares").

Board Composition and Other Governance Matters

The initial Board members will be selected no later than the Effective Date, subject to prior consultation with the 8% bondholders. The Board selection process is intended to prevent the triggering of any change of control issues with the CRTC and/or other Canadian regulatory bodies.

The Catalyst Sponsored Group shall propose to the new Board that the CEO of Restructured Canwest Global be Rael Merson. Thereafter, the CEO will be appointed and removed at the will of the Board. It is expected that the CEO will also be a member of the Board. The Catalyst Sponsored Group shall propose to the new Board that Len Asper be appointed Non-Executive Chairman of the Board.

Subject to CRTC approval, until the earlier of (a) such time as the holders of Class B Subordinate Voting Shares (the "Class B Shares") are not entitled to nominate any directors and (b) 18 months from the Effective Date, the articles of Restructured Canwest Global will require the approval of not less than a majority of the directors (including at least one director elected or appointed by the holders of Class B Shares, if any) for the following matters:

- any material change to the scope or nature of the business or operations of Restructured Canwest Global and its subsidiaries considered on a consolidated basis;
- aggregate capital expenditures of Restructured Canwest Global and its subsidiaries in any calendar year in excess of a threshold to be agreed;
- the incurring by Restructured Canwest Global or its subsidiaries of funded debt in excess of a threshold to be agreed or the changing of any material terms of any material debt incurred;
- any consolidation or merger with another person of Restructured Canwest Global or any of its operating subsidiaries, the sale or transfer of all or a substantial portion of the assets of Restructured Canwest Global and its subsidiaries (on a consolidated basis) to another person or the entering into any other similar business combination other than a consolidation, merger, sale or transfer of any wholly owned subsidiary into or to Restructured Canwest Global or another wholly owned subsidiary of Restructured Canwest Global;
- any sale, lease or transfer of assets by Restructured Canwest Global or its subsidiaries where such assets have a value in excess of a threshold to be agreed in any one transaction or related transactions;
- the declaration or payment by Restructured Canwest Global of any dividends or the making of any distributions on its shares or the redemption or repurchase of shares or any other securities, except in connection with the conversion of Class A Shares into Class B Shares or Class B Shares into Class A Shares;
- any authorization, issue or sale of or agreement of Restructured Canwest Global to issue or sell any shares;
- the entering into by Restructured Canwest Global of any transactions with any current shareholder, director or officer or employee other than transactions in the ordinary course of business;
- any amendment to the articles or by-laws of Restructured Canwest Global;
- the adoption or amendment of any stock option plan, bonus plan, management incentive plan or other employee benefit plan of Restructured Canwest Global;
- any delegation of material board authority by Restructured Canwest Global to a committee, such as an executive committee;

- any material investment in excess of a threshold to be agreed by Restructured Canwest Global in any other company, partnership, association or other form of joint venture;
- the guarantee of any liabilities by Restructured Canwest Global of a third party, other than indemnification of directors and officers of Restructured Canwest Global and its subsidiaries in accordance with the CBCA; and
- any material transaction by Restructured Canwest Global outside the normal and ordinary course of business.

CW Investments Co. Amended and Restated Shareholders Agreement

No amendment to the CW Investments Co. Amended and Restated Shareholders Agreement will be required.

Other Conditions Precedent to Closing

The agreement of the Equity Investment hereunder is also conditional upon satisfaction of each of the conditions, except B(z), set forth in the Recapitalization Transaction as agreed between Catalyst and the parties thereto and the entry of an order of the Court, in form substance satisfactory to Catalyst.

Equity Investment Documents

The Equity Investment is also conditional upon the completion by legal counsel to Catalyst and agreed to by all applicable parties of documents containing representations and warranties, terms and provisions in each case as are customary of transactions of this type or deemed appropriate by Catalyst for this transaction in particular.

This Commitment Letter (a) is not assignable by the Applicants without the prior written consent of Catalyst (and any purported assignment without such consent shall be void), and (b) is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favour of, any person other than the parties hereto. Notwithstanding the foregoing, Catalyst may assign all or any portion of their obligations hereunder with the consent of CML, not to be unreasonably withheld or delayed.

This Commitment Letter will remain outstanding until withdrawn by Catalyst.


This Commitment Letter will be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario.

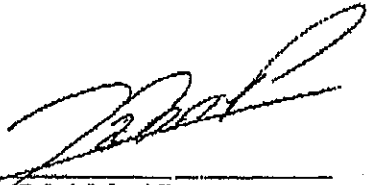
This Commitment Letter may not be amended or waived except in writing signed by the Applicants and Catalyst. This Commitment Letter may be executed in any number of counterparts, each of which will be an original, and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of this Commitment Letter by facsimile or portable document format (PDF) will be effective as delivery of a manually executed counterpart of this Commitment Letter.

This Commitment Letter constitutes the entire understanding among the parties hereto with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof.

Very truly yours,

The Catalyst Capital Group Inc.

By: 
Name: Newton Glassman
Title: Managing Partner

By: 
Name: Gabriel de Alba
Title: Managing Director & Partner

COMMITMENT ACCEPTED AND AGREED TO

THIS, ___ DAY OF FEBRUARY, 2010

CANWEST GLOBAL COMMUNICATIONS CORP.

On behalf of itself and the Applicants

By: _____
Name: _____
Title: _____

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST GLOBAL
COMMUNICATIONS CORP. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Court File No. CV-09-8396-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

AFFIDAVIT OF GABRIEL DE ALBA
(Sworn February 19, 2010)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4
Fax: 416-863-1716

S. Richard Orzy LSUC #: 2381811
Tel: 416-777-5737
Email: orzyr@bennettjones.com

Gavin H. Finlayson LSUC #: 44126D
Tel: 416-777-5762
Email: finlaysong@bennettjones.com

Sean H. Zweig LSUC #: 573071
Tel: 416-777-6254
Email: zweigs@bennettjones.com

Counsel for The Catalyst Capital Group Inc.

Court File No. CV-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 PLAN OF COMPROMISE
OR ARRANGEMENT OF CANWEST GLOBAL COMMUNICATIONS
CORP., AND THE OTHER APPLICANTS LISTED ON EXHIBIT "A"**

**AFFIDAVIT OF ROBERT J. CHADWICK
(sworn February 19, 2010)**

I, Robert J. Chadwick, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner and member of the Executive Committee at the law firm of Goodmans LLP ("Goodmans"), which acts for the *ad hoc* committee of holders of the 8% Senior Subordinated Notes (the "Ad Hoc Committee") in connection with the restructuring of Canwest Global Communications Corp. and certain of its subsidiaries and related entities. I have personal knowledge of all matters to which I refer in this affidavit. Where I do not have personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
2. This affidavit is sworn for the limited purpose of clarifying certain facts pertaining to the counsel agreement (the "Counsel Agreement") between Goodmans and McCarthy Tetrault LLP ("McCarthys"), as counsel for Goldman Sachs Capital Partners ("GSCP"), which is referenced in paragraph 8 of the Affidavit of Gerald Cardinale sworn February 18, 2010 in connection with these proceedings.
3. The Counsel Agreement was entered into by way of an exchange of emails between Garth M. Girvan, on behalf of McCarthys, and me, on behalf of Goodmans.
4. At 3:08 p.m. on December 15, 2009, I emailed Mr. Girvan to propose terms governing without prejudice discussions between GSCP and the Ad Hoc Committee in relation to the CW Investments Co. Shareholders Agreement. My email was sent in advance of the release of the decision of the Honourable Justice Pepall relating to the motions of Canwest Media Inc. and

GSCP that were heard on December 8, 2009. My email of December 15, 2009 is attached hereto as Exhibit "A".

5. On December 18, 2009 at 1:54 p.m., Mr. Girvan emailed me in response to my email of December 15, 2009 to propose revisions to the terms set out in my email (the "**December 18 Email**"). Attached as Exhibit "B" is a copy of the December 18 Email we received from Mr. Girvan.

6. It appears that all parties agree that the Counsel Agreement is governed by the December 18 Email, but there is a factual disagreement between Goodmans and the Ad Hoc Committee, on one hand, and McCarthys and GSCP, on the other hand, with respect to the terms of the December 18 Email.

7. McCarthys and GSCP maintain that a certain standstill provision (the "**Standstill Provision**") was included in the December 18 Email. However, The Standstill Provision does not appear in the version of the December 18 Email that was received by Goodmans, nor does it appear in any other string of emails received or forwarded by Goodmans that attaches the December 18 Email.

8. I am advised by Dick Jensen, Director of Technology of Goodmans, and verily believe that the reason the Standstill Provision does not appear in the December 18 Email received by Goodmans or any other string of emails attaching the December 18 Email received by Goodmans is that the original December 18 Email was "corrupted". In general terms, I understand that there was an underlying technical problem with the December 18 Email sent by Mr. Girvan that caused the "corrupted" portion of the email to be rejected by Goodmans' office email system (*Microsoft Outlook 2007*). As a result, Goodmans' office email system only displayed and forwarded the non-corrupted portion of the email. The Standstill Provision was part of the "corrupted" portion of the December 18 Email, so the Standstill Provision did not appear when the December 18 Email was received or forwarded by Goodmans' office email system. A more detailed explanation of the "corruption" in Mr. Girvan's email is provided in the memorandum attached as Exhibit "C", which was provided to McCarthys on February 17, 2010.

9. A review of the relevant emails from my office computer reveals the following:
- a) As outlined in paragraph 7, the Standstill Provision does not appear in the December 18 Email I received from Mr. Girvan at 1:54 p.m. on December 18, 2009.
 - b) The Standstill Provision does not appear in the December 18 Email I forwarded to Benjamin Zarnett, Celia Rhea and Logan Willis at 1:57 p.m. on December 18, 2009. A copy of that email is attached hereto as Exhibit "D".
 - c) The Standstill Provision does not appear in the December 18 Email I forwarded to the members of the Ad Hoc Committee at 2:01 p.m. on December 18, 2009. A copy of that email is not attached because it contains client confidential information.
 - d) The Standstill Provision does not appear in the December 18 Email attached to the email I sent to Mr. Girvan at 11:57 a.m. on December 21, 2009 in reply to the December 18 Email. A copy of that email is attached hereto as Exhibit "E".
 - e) The Standstill Provision does not appear in the December 18 Email attached to Mr. Girvan's email to me at 12:13 p.m. on December 21, 2009. A copy of that email is attached as Exhibit "F".
10. Immediately after receiving a copy of the letter from McCarthys to the Monitor dated February 13, 2010, which alleged that the Ad Hoc Committee had breached the Standstill Provision, I advised Mr. Girvan that neither Goodmans nor the Ad Hoc Committee had seen or agreed to the Standstill Provision and that we would investigate and review the exchange of emails relating to the Counsel Agreement.
11. On February 13, 2010, after discussions with Mr. Girvan about whether the Standstill Provision was in fact included in the Counsel Agreement, Mr. Girvan again emailed me his record of the original December 18 Email. Once again, the Standstill Provision did not appear in that email. A copy of Mr. Girvan's email of February 13, 2010 is attached hereto as Exhibit "G".

12. In the opening paragraph of the December 18 Email, Mr. Girvan refers to a "form of hiatus period". On December 23, 2009, I spoke with Mr. Grivan about a hiatus period relating to the potential disclaimer of the CW Investments Co. Shareholders Agreement.

13. On December 23, 2009, I emailed Mr. Girvan to propose alternate language for the Counsel Agreement that contained no reference to a hiatus period. A copy of this email is attached as Exhibit "H". Mr. Girvan replied by email at 9:56 a.m. on December 24, 2009 (the "**December 24 Email**") to indicate that GSCP believed the terms of the December 18 Email were reasonable and appropriate. The December 24 Email made reference to a "standstill provision" but did not include a paragraph containing the terms of any such provision. Consequently, I believed that Mr. Girvan's reference to the "standstill provision" was a reference to the "form of hiatus" period referenced in the December 18 Email. A copy of the December 24 Email is attached hereto as Exhibit "I".

14. On January 4, 2010, Mr. Girvan and I again discussed the concept of a "standstill" or "hiatus" period in relation to the potential disclaimer of the CW Investments Co. Shareholders Agreement. At 1:59 p.m. on January 4, 2010, Mr. Girvan sent me an email containing a single paragraph (with no blacklining) that set out a standstill concept relating only to the potential disclaimer of the CW Investments Co. Shareholders Agreement. A copy of that email is attached as Exhibit "J".

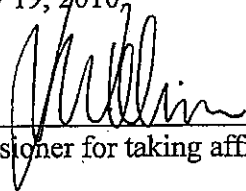
15. On January 4, 2010, following receipt of this email, I contacted Mr. Girvan by telephone to inform him that the Ad Hoc Committee would not accept the paragraph proposed in his email earlier that day, but that the Ad Hoc Committee would be willing to accept the terms of the December 18 Email, which Goodmans and the Ad Hoc Committee believed did not contain the Standstill Provision and contained only a reference to a "form of hiatus period". Based on my discussions and exchange of emails with Mr. Girvan, it was my understanding that the "form of hiatus period" was in relation to the potential disclaimer of the CW Investments Co. Shareholders Agreement.

16. Following this conversation, I emailed Mr. Girvan to confirm that we would agree to the terms of the December 24 Email, which in turn referenced the December 18 Email. Goodmans' agreement in this regard was in relation to the version of the December 18 Email received by

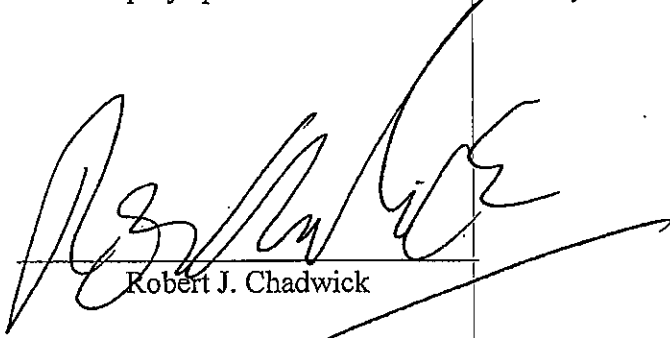
Goodmans, which did not contain the Standstill Provision. A copy of my email of January 4, 2009 is attached hereto as Exhibit "K".

17. As set out in the Monitor's Tenth Report, dated February 14, 2010, I emailed to the Monitor on February 14, 2010 to confirm that Goodmans and the Ad Hoc Committee do not believe that there are any restrictions or terms in the Counsel Agreement or otherwise that directly or indirectly affect the motion for approval of the equity sponsor transaction on February 19, 2010.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
February 19, 2010,



Commissioner for taking affidavits



Robert J. Chadwick

Chadwick, Robert

From: Chadwick, Robert
Sent: Tuesday, December 15, 2009 3:08 PM
To: 'Girvan, Garth M.'
Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
3. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

This is Exhibit..... "A" referred to in the
 affidavit of..... Robert Chadwick
 sworn before me, this..... 19th
 day of..... February 20..10.....

 A COMMISSIONER FOR TAKING AFFIDAVITS

Chadwick, Robert

From: Girvan, Garth M. [GGIRVAN@MCCARTHY.CA]
Sent: Friday, December 18, 2009 1:54 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin; Farley, James; Mercer, Malcolm M.
Subject: RE: Canwest - Without Prejudice Discussions

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions concerning CanWest Media Inc. (CanWest) on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
3. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential (except as otherwise contemplated herein) and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless disclosure is required by law or unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs, provided however that the Ad Hoc Committee and Goldman Sachs and their respective advisors shall be entitled to advise the Monitor of such discussions and the terms of this agreement.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tétrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. "

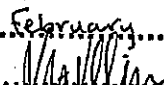
Garth M. Girvan

Garth M. Girvan
Partner
Business Law
T:/Tél : 416-601-7574
F:/Télé : 416-868-0673
E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

Please THINK GREEN before printing.
PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

This is Exhibit "B" referred to in the
affidavit of Robert Chadwick
sworn before me, this 19th
day of February 2009.

A COMMISSIONER FOR TAKING AFFIDAVITS

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]
Sent: Tuesday, December 15, 2009 3:08 PM
To: Girvan, Garth M.
Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

4. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
5. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
6. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

We're Moving!

Goodmans' Toronto office will be located at Bay Adelaide Centre as of December 22nd, 2009.

Our new address will be:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Our email addresses, telephone and fax numbers will remain the same.

Until December 22nd, you may contact us at our current address.

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

=====
This e-mail may contain information that is privileged, confidential and/or exempt from disclosure.

No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s).

Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify the sender and destroy all copies of this e-mail. Our privacy policy is available at www.mccarthy.ca.

Goodmans LLP

This is Exhibit "C" referred to in the
 affidavit of Robert Chadwick
 sworn before me, this 19th
 day of February 2010
 A COMMISSIONER FOR TAKING AFFIDAVITS

Memorandum

TO: McCarthy Tetrault LLP

February 16, 2010

FROM: Goodmans LLP

SUBJECT: Canwest Global Communications Corp. et al.

The purpose of this memorandum is to outline certain facts relating to the exchange of emails between McCarthy Tetrault LLP ("McCarthys") and Goodmans LLP ("Goodmans") in respect of the counsel agreement (the "Counsel Agreement") governing certain discussions between Goldman Sachs Capital Partners ("GSCP") and the *ad hoc* committee of holders of 8% senior subordinated notes issued by Canwest Media Inc. (the "Ad Hoc Committee").

I. BACKGROUND

There is a factual disagreement between Goodmans and McCarthys with respect to the terms of the Counsel Agreement. In particular, McCarthys and GSCP maintain that the following paragraph (the "Standstill Provision") is included in the Counsel Agreement:

3. For the period of time from the date hereof until the date discussions are terminated as permitted below (the Discussion Period), neither the Ad Hoc Committee nor Goldman Sachs shall initiate, or encourage any other person (including CanWest) to initiate, or accept, approve, or provide any consent to the initiation of, any proceeding (including the filing of any motion or affidavit or the taking of any step in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party) in any court with respect to the insolvency proceeding of CanWest. Either party may terminate the Discussion Period by written notice to the other in which case this agreement shall terminate 7 days after receipt of such notice. In the event of termination the dates referred to in the Support Agreement dated September 24, 2009 and the Use of Cash Collateral and Consent Agreement between CanWest and certain members of the Ad Hoc Committee shall be extended by the number of days comprising the Discussion Period, and the parties shall cooperate in obtaining the agreement of CanWest and the court to such extension.

Goodmans and the Ad Hoc Committee maintain that they never agreed to the inclusion of the Standstill Provision in the Counsel Agreement and that the Standstill Provision therefore does not form part of the Counsel Agreement.

II. TERMS OF THE COUNSEL AGREEMENT**(A) *The Counsel Agreement***

The Counsel Agreement was entered into by way of an exchange of emails between Garth M. Girvan, on behalf of McCarthy Tetrault LLP, and Robert J. Chadwick, on behalf of Goodmans LLP. The Counsel Agreement consists of three emails:

- a) an email from Mr. Girvan to Mr. Chadwick, dated December 18, 2009, in which Mr. Girvan provides comments on language previously provided to Mr. Girvan on December 15, 2009 (the "**December 18 Email**");
- b) an email from Mr. Girvan to Mr. Chadwick, dated December 24, 2009, in which Mr. Girvan states that GSCP is of the view that the terms set out in the December 18 Email are reasonable and appropriate (the "**December 24 Email**"); and
- c) an email from Mr. Chadwick to Mr. Girvan, dated January 4, 2010, in which Mr. Chadwick affirms agreement to the terms outlined in the December 24 Email.

The effect of this series of emails is that the Counsel Agreement is governed by the terms of the December 18 Email.

(B) *The Standstill Provision*

Goodmans in is in receipt of the letter from McCarthys addressed to Stikeman Elliott LLP, dated February 13, 2010 (the "**McCarthy Letter**"). The McCarthy Letter makes reference to the Standstill Provision as being part of the Counsel Agreement, and it alleges that the Ad Hoc Committee breached the Standstill Provision by consenting to the CMI Entities' motion for approval of the transaction recently agreed to with Shaw Communications Inc. ("**Shaw**") on or about February 11, 2010 (the "**Shaw Transaction**").

Goodmans and the Ad Hoc Committee did not expect to be confronted by allegations that the Ad Hoc Committee had breached the Standstill Provision, as neither Goodmans nor the Ad Hoc Committee believed that the Standstill Provision formed part of the Counsel Agreement. In fact, the standstill concept previously proposed by McCarthys had been rejected by Goodmans in earlier discussions with representatives of McCarthys.

Goodmans subsequently performed an internal review of emails to determine whether the Standstill Provision in fact appeared in the December 18 Email. Our review revealed that there were two irreconcilable versions of the December 18 Email in circulation, one in which the Standstill Provision appeared and one in which the Standstill Provision did not appear. In particular, our review revealed the following:

- a) After receiving the December 18 Email from Mr. Girvan at 1:54 p.m. on December 18, 2009, Mr. Chadwick forwarded the December 18 Email internally to Benjamin Zarnett, Celia Rhea

and Logan Willis at 1:57 p.m. The Standstill Provision did not appear in this version of the December 18 Email.

- b) Mr. Chadwick forwarded the December 18 Email to the members of the Ad Hoc Committee at 2:01 p.m. on December 18, 2009. The Standstill Provision did not appear in this version of the December 18 Email.
- c) Mr. Chadwick sent Mr. Girvan an email on December 21, 2009 in reply to the December 18 Email. The Standstill Provision did not appear in the version of the December 18 Email attached to Mr. Chadwick's reply.
- d) On February 13, 2010, David Byers of Stikeman Elliott LLP forwarded Mr. Chadwick an email he had received from Mr. Girvan on January 5, 2010, which attached the December 18 Email. The Standstill Provision did appear in this version of the December 18 Email.
- e) A review of Mr. Chadwick's email inbox over Goodmans' remote Webmail system on February 13, 2010 revealed a record of the December 18 Email in which the Standstill Provision did appear.
- f) A review of Mr. Chadwick's email inbox over Goodmans' remote Citrix system on February 13, 2010 revealed a record of the December 18 Email in which the Standstill Provision did not appear.
- g) When the original December 18 Email was forwarded from Mr. Chadwick's inbox to Mr. Willis on February 13, 2010, the Standstill Provision did not appear in the email received by Mr. Willis.

(C) *The Email Received from McCarthys was "Corrupted"*

In an effort to explain these seemingly anomalous results, we asked Goodmans' Technology Department to investigate the December 18 Email to determine whether it was possible that there was a glitch in the email that would cause the Standstill Provision to appear in the some instances but not others.

The Director of Goodmans' Technology Department, Dick Jensen, has advised that he and his staff have deconstructed the December 18 Email and have reviewed it at its underlying Hyper Text Markup Language (HTML) level. Mr. Jensen advises that his staff discovered a "corruption" in the HTML code of the original December 18 Email received from McCarthys. The effect of this "corruption" is that the December 18 Email displays differently depending on the email system that is used to view it. In particular, when the December 18 Email is viewed using *Microsoft Office Outlook 2007*, the Standstill Provision does not appear. In addition, the numbering in the email attached below it appears as "4, 5, 6" rather than "1, 2, 3" (for example, see the email Mr. Chadwick sent to Mr. Girvan on December 21, 2009 in reply to the December 18 Email). Mr. Jensen advises that the December 18 Email may appear correctly if another email system is used to view the email.

Goodmans' office email systems and its remote Citrix system both use *Microsoft Office Outlook 2007* to view and manage emails. Consequently, when the December 18 Email was viewed by Mr. Chadwick and forwarded internally and to the members of the Ad Hoc Committee on December 18, 2009, the Standstill Provision did not appear in the email.

The Standstill Provision did not appear in the version of the December 18 Email received and forwarded by Goodmans on December 18, 2009. Accordingly, when Goodmans and the Ad Hoc Committee subsequently agreed to the terms of the December 18 Email, they did so under the assumption that the Standstill Provision did not form part of the Agreement.

On February 14, 2010, Goodmans terminated the Counsel Agreement by way of an email from Mr. Chadwick to Mr. Girvan. As communicated to McCarthys previously, it is Goodmans' position that regardless of whether the Counsel Agreement includes the Standstill Provision, neither Canwest's motion for approval of the Shaw Transaction nor the Ad Hoc Committee's support of that motion would directly or indirectly contravene the terms of the Counsel Agreement.

V5815862

Chadwick, Robert

From: Chadwick, Robert
Sent: Friday, December 18, 2009 1:57 PM
To: Zarnett, Benjamin; Rhea, Celia; Willis, Logan
Subject: FW: Canwest - Without Prejudice Discussions

Robert J. Chadwick
Goodmans LLP
Direct Line: 416-597-4285
Email: rchadwick@goodmans.ca
Fax: 416-979-1234

Goodmans LLP
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6
General:416-979-2211

This is Exhibit....."D".....referred to in the
affidavit of.....Robert Chadwick.....
sworn before me, this.....19th.....
day of.....February.....20.....10.....
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

From: Girvan, Garth M. [mailto:GGIRVAN@MCCARTHY.CA]
Sent: Friday, December 18, 2009 1:54 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin; Farley, James; Mercer, Malcolm M.
Subject: RE: Canwest - Without Prejudice Discussions

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions concerning CanWest Media Inc. (CanWest) on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
3. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential (except as otherwise contemplated herein) and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless disclosure is required by law or unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs, provided however that the Ad Hoc Committee and Goldman Sachs and their respective advisors shall be entitled to advise the Monitor of such discussions and the terms of this agreement.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. "

Garth M. Girvan

Garth M. Girvan

Partner

Business Law

T:/Tél : 416-601-7574

F:/Télé : 416-868-0673

E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300

Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

www.mccarthy.ca

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PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]

Sent: Tuesday, December 15, 2009 3:08 PM

To: Girvan, Garth M.

Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

4. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
5. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
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Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tétrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

We're Moving!

Goodmans' Toronto office will be located at Bay Adelaide Centre as of December 22nd, 2009.

Our new address will be:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Our email addresses, telephone and fax numbers will remain the same.

Until December 22nd, you may contact us at our current address.

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

=====

This e-mail may contain information that is privileged, confidential and/or exempt from disclosure.

No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s).

Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify

the sender and destroy all copies of this e-mail. Our privacy policy is available at www.mccarthy.ca.

Chadwick, Robert

From: Chadwick, Robert
Sent: Monday, December 21, 2009 11:57 AM
To: 'ggirvan@mccarthy.ca'
Subject: Re: Canwest - Without Prejudice Discussions

Gary, I left you a voice mail on Friday but have not heard back from you. Let me know a convenient time to talk and I will call you. Regards, Rob Chadwick

Robert J. Chadwick
Goodmans LLP
Direct Line: 416-597-4285
Email: rchadwick@goodmans.ca
Fax: 416-979-1234

Goodmans LLP
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6
General:416-979-2211

This is Exhibit "E" referred to in the affidavit of Robert Chadwick sworn before me, this 19th day of February 20 10
Malcolm M.
A COMMISSIONER FOR TAKING AFFIDAVITS

From: Girvan, Garth M. <GGIRVAN@MCCARTHY.CA>
To: Chadwick, Robert
Cc: McElcheran, Kevin <kmcelcheran@mccarthy.ca>; Farley, James <jfarley@mccarthy.ca>; Mercer, Malcolm M. <MMERCER@MCCARTHY.CA>
Sent: Fri Dec 18 13:54:11 2009
Subject: RE: Canwest - Without Prejudice Discussions

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions concerning CanWest Media Inc. (CanWest) on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
3. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential (except as otherwise contemplated herein) and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless disclosure is required by law or unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs, provided however that the Ad Hoc Committee and Goldman Sachs and their respective advisors shall be entitled to advise the Monitor of such discussions and the terms of this agreement.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by

McCarthy Tétrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee."

Garth M. Girvan

Garth M. Girvan

Partner

Business Law

T:/Tél : 416-601-7574

F:/Télé : 416-868-0673

E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300

Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

www.mccarthy.ca

Please THINK GREEN before printing.

PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]

Sent: Tuesday, December 15, 2009 3:08 PM

To: Girvan, Garth M.

Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

4. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
5. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
6. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tétrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

We're Moving!

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Goodmans LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Our email addresses, telephone and fax numbers will remain the same.

Until December 22nd, you may contact us at our current address.

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Chadwick, Robert

From: Girvan, Garth M. [GGIRVAN@MCCARTHY.CA]
Sent: Monday, December 21, 2009 12:13 PM
To: Chadwick, Robert
Subject: RE: Canwest - Without Prejudice Discussions

I will free up mid afternoon and will call you Rob

Garth M. Girvan
Partner
Business Law
T:/Tél : 416-601-7574
F:/Télé : 416-868-0673
E:/Courriel : ggirvan@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.
Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

Please THINK GREEN before printing.
PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

This is Exhibit... "F" ... referred to in the
affidavit of... Robert Chadwick...
sworn before me, this... 19th ...
day of... February ... 20... 10 ...
[Signature]
A COMMISSIONER FOR TAKING AFFIDAVITS

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]
Sent: Monday, December 21, 2009 11:57 AM
To: Girvan, Garth M.
Subject: Re: Canwest - Without Prejudice Discussions

Gary, I left you a voice mail on Friday but have not heard back from you. Let me know a convenient time to talk and I will call you. Regards, Rob Chadwick

Robert J. Chadwick
Goodmans LLP
Direct Line: 416-597-4285
Email: rchadwick@goodmans.ca
Fax: 416-979-1234

Goodmans LLP
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6
General: 416-979-2211

From: Girvan, Garth M. <GGIRVAN@MCCARTHY.CA>
To: Chadwick, Robert
Cc: McElcheran, Kevin <kmcelcheran@mccarthy.ca>; Farley, James <jfarley@mccarthy.ca>; Mercer, Malcolm M. <MMERCER@MCCARTHY.CA>
Sent: Fri Dec 18 13:54:11 2009
Subject: RE: Canwest - Without Prejudice Discussions

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

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Garth M. Girvan

Garth M. Girvan

Partner

Business Law

T:/Tél : 416-601-7574

F:/Télé : 416-868-0673

E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300

Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

www.mccarthy.ca

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PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]

Sent: Tuesday, December 15, 2009 3:08 PM

To: Girvan, Garth M.

Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

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the sender and destroy all copies of this e-mail. Our privacy policy is available at www.mccarthy.ca.

Chadwick, Robert

From: Girvan, Garth M. [GGIRVAN@MCCARTHY.CA]
Sent: Saturday, February 13, 2010 6:33 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin
Subject: FW: Canwest - Without Prejudice Discussions

This is the earlier email which I referred to in my Dec 24 email. We have called David Byers to ask him to hold off for now.

From: Girvan, Garth M.
Sent: Friday, December 18, 2009 1:54 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin; Farley, James; Mercer, Malcolm M.
Subject: RE: Canwest - Without Prejudice Discussions

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

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Garth M. Girvan

Garth M. Girvan
Partner
Business Law
T:/Tél : 416-601-7574
F:/Télé : 416-868-0673
E:/Courriel : ggirvan@mccarthy.ca
McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.
Suite 5300
Toronto Dominion Bank Tower

This is Exhibit....."6".....referred to in the
affidavit of.....Robert Chadwick.....
sworn before me, this.....19th.....
day of.....February.....20.....10.....
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Toronto, Ontario
Canada M5K 1E6
www.mccarthy.ca

Please THINK GREEN before printing.
PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]
Sent: Tuesday, December 15, 2009 3:08 PM
To: Girvan, Garth M.
Subject: Canwest - Without Prejudice Discussions

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the sender and destroy all copies of this e-mail. Our privacy policy is available at www.mccarthy.ca .

Chadwick, Robert

From: Chadwick, Robert
Sent: Wednesday, December 23, 2009 4:11 PM
To: 'Girvan, Garth M.'
Subject: RE: Canwest - Without Prejudice Discussions

Gary, further to our discussion of this today, let me know if the below works (I have made changes in CAP LETTERS to make it easier to follow). If you confirm it is acceptable, we can confirm the terms on a clean version. Regards, Rob Chadwick

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Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

This is Exhibit....."H".....referred to in the
 affidavit of..... Robert Chadwick.....
 sworn before me, this... 19th.....
 day of..... February..... 20... 10.....

 A COMMISSIONER FOR TAKING AFFIDAVITS

This is Exhibit.....referred to in the affidavit of Robert Chadwick.....

Chadwick, Robert

From: Girvan, Garth M. [GGIRVAN@MCCARTHY.CA]
Sent: Thursday, December 24, 2009 9:56 AM
To: Chadwick, Robert
Subject: RE: Canwest - Without Prejudice Discussions

sworn before me, this 19th.....
day of February.....2009.....
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Rob, after consideration, my client is of the view that what was sent to you in our last email was reasonable and appropriate. They are prepared to agree to an arrangement as set out in that email and most importantly the standstill provision. They are not prepared to proceed on the basis you have set out below. If there are to be discussions, our client's position is that they can only productively proceed if the parties stand back from initiating further court proceedings against each other during the course of such discussions.

From: Chadwick, Robert [rchadwick@goodmans.ca]
Sent: Wednesday, December 23, 2009 4:10 PM
To: Girvan, Garth M.
Subject: RE: Canwest - Without Prejudice Discussions

Gary, further to our discussion of this today, let me know if the below works (I have made changes in CAP LETTERS to make it easier to follow). If you confirm it is acceptable, we can confirm the terms on a clean version. Regards, Rob Chadwick

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Chadwick, Robert

From: Girvan, Garth M. [GGIRVAN@MCCARTHY.CA]
Sent: Monday, January 04, 2010 1:59 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin; EMRosof@WLRK.com
Subject: FW:

Rob please have a look at this suggested revision to Para 3 of our email. We will call to discuss

Garth M. Girvan
Partner

Business Law
T:/Tél : 416-601-7574
F:/Télec : 416-868-0673
E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

Suite 5300
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Canada M5K 1E6
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affidavit of... Robert Chadwick
sworn before me, this... 19th ...
day of... February... 20... 10...
.....
A COMMISSIONER FOR TAKING AFFIDAVITS

From: EMRosof@WLRK.com [mailto:EMRosof@WLRK.com]
Sent: Monday, January 4, 2010 1:57 PM
To: Girvan, Garth M.; McElcheran, Kevin
Cc: DKMayer@WLRK.com
Subject: RE:

Cleaned-up a bit:

3. For the period of time from the date hereof until the date discussions are terminated as permitted below (the Discussion Period), neither the Ad Hoc Committee nor Goldman Sachs shall initiate or encourage any other person (including CanWest) to initiate, or accept or approve, or provide any consent to the initiation of, any proceeding in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party in any court. Either party may terminate the Discussion Period by three day's prior written notice to the other in which case this standstill arrangement shall terminate; provided that upon such termination either party may inform the Court of the existence of, but not the substance of, the discussions. If CanWest delivers a notice of disclaimer or resiliation (a Disclaimer Notice), both parties will work together with the Monitor and CanWest to establish a timetable for the hearing of the disclaimer or resiliation , including examinations and cross examinations and related production and discovery and the Ad Hoc Committee will not initiate, or accept or approve, or provide any consent to the initiation of, and will encourage Canwest not to seek, any hearing on such disclaimer or resiliation prior to the 30th day following the delivery of the Disclaimer Notice.

Any tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties and is not intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement.

Please be advised that this transmittal may be a confidential attorney-client communication or may otherwise be privileged or confidential. If you are not the intended recipient, please do not read, copy or re-transmit this communication. If you have received this communication in error, please notify us by e-mail (helpdesk@wlrk.com) or by telephone (call us collect at 212-403-4357) and delete this message and any attachments. Thank you in advance for your cooperation and assistance.

www.wlrk.com

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This is Exhibit "k" Motion Re: Page 88 the affidavit of... Robert Chadwick... sworn before me, this 19th day of... February... 20... 10...
A COMMISSIONER FOR TAKING AFFIDAVITS

Chadwick, Robert

From: Chadwick, Robert
Sent: Monday, January 04, 2010 6:29 PM
To: 'Girvan, Garth M.'
Subject: RE: Canwest - Without Prejudice Discussions

Gary, as discussed with you in more detail this afternoon, we are prepared to agree to the terms outlined in your email of December 24. Please confirm (or have your client confirm directly with our clients) the time, attendees and logistics for the proposed principals conference call on Wednesday and the in person principals meeting on Friday, once you have had a chance to confirm matters with your client. Regards, Rob Chadwick

-----Original Message-----

From: Girvan, Garth M. [mailto:GGIRVAN@MCCARTHY.CA]
Sent: Thursday, December 24, 2009 9:56 AM
To: Chadwick, Robert
Subject: RE: Canwest - Without Prejudice Discussions

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Sent: Wednesday, December 23, 2009 4:10 PM
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Subject: RE: Canwest - Without Prejudice Discussions

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS Court File No.: CV-09-8396-00CL
AMENDED

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

**ONTARIO
COURT OF APPEAL**

Proceeding commenced at Toronto

**AFFIDAVIT OF
OF ROBERT J. CHADWICK**
(sworn February 19, 2010)

GOODMANS LLP

Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Canada M5B 2M6

Benjamin Zarnett LSUC#: 17247M
Robert J. Chadwick LSUC#: 35165K
Logan Willis LSUC#: 53894K
Tel: 416-979-2211
Fax: 416-979-1234

Lawyers for Ad Hoc Committee

Court File No. CV-09-8396-00 CL

**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 PLAN
OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS
LISTED ON SCHEDULE "A" (collectively the "APPLICANTS" or "Canwest")**

**AFFIDAVIT OF GERALD J. CARDINALE,
SWORN FEBRUARY 18, 2010**

I, Gerald J. Cardinale, of the City of New York, in the State of New York, in the United States of America, MAKE OATH AND SAY:

1. I am a Managing Director of Goldman, Sachs & Co. ("Goldman Sachs"). GSCP Capital Partners VI Fund, L.P., GSCP VI AA One Holding S.ar.l and GSCP VI AA One Parallel Holding S.ar.l. (collectively "GSCP") opposes the granting, at this time, of the order sought in the motion of the Applicants that was served on the evening of February 12, 2010. GSCP also seeks an adjournment of the motion for two weeks in compliance with express terms on which GSCP agreed to enter into negotiations with the Ad Hoc Committee of noteholders.

2. I have sworn three previous affidavits in these proceedings in support of the motions by GSCP seeking relief relating to the transactions that the Applicants entered into and completed the day before they filed for relief under the CCAA in these proceedings. For the reasons issued by this Court on December 8, 2009, the motions previously filed by GSCP have been stayed but remain outstanding.

- 2 -

Overview

3. GSCP is a critical party to any restructuring because GSCP is co-shareholder in CW Investments ("CWI"), the owner of the Specialty TV business, and has the largest financial interest in CWI of any shareholder. GSCP is also a party to the CWI Shareholders Agreement (the "CWI Agreement") that sets out the relative interests, rights and obligations of GSCP, CWI and Canwest Global's subsidiaries in the Specialty TV business.
4. Despite the critical importance of GSCP in the restructuring process and the stated desire of the Applicants and the Ad Hoc Committee of Canwest's noteholders to negotiate amendments to the CWI Agreement, GSCP has been systematically excluded from the restructuring process.
5. In particular, and as confirmed by my letter of February 17, 2010 a true copy of which is Exhibit "A" hereto, GSCP has been isolated and entirely kept in the dark about the RBC equity solicitation process. With one exception, all participants in that process have been prohibited by Canwest, the Ad Hoc Committee and by RBC from having any communication with GSCP. The one exception was a party that was finally permitted to call GSCP on the day before the Shaw Communications Inc. ("Shaw") proposal was accepted by Canwest. That party was not Shaw.
6. Although the Shaw agreements are not yet public, it appears from the affidavit of Thomas Strike sworn on February 12, 2010 (the "Strike Affidavit") that they are premised upon the successful negotiation of amendments to the CWI Agreement that are acceptable to Shaw. Obviously, had the parties included GSCP in the process, they could have known with certainty whether acceptable amendments were available. Instead, by continuing to exclude GSCP entirely, the entire restructuring is subject to uncertainty and potentially needless costs (including a potential termination fee payable to Shaw if acceptable amendments cannot be negotiated).
7. The strategy of excluding GSCP is not only illogical, since it is clear that GSCP must ultimately be dealt with, but also has more practical consequences. First, such a strategy raises significant concerns as to whether the RBC process has been tainted by the restrictive terms that governed participation in the process. It is now apparent from the Strike Affidavit that bidders

- 3 -

were required to submit their proposals only on the basis that the CWI Agreement would be amended and that no participant in the process could speak to GSCP about proposed amendments (or anything else for that matter). These requirements in fact excluded a number of potential bidders who are as qualified as Shaw to acquire the Applicants' interest in Specialty TV. No one can know whether another bidder who was excluded from the equity solicitation process would have made a better restructuring proposal.

8. Second, the strategy of excluding GSCP and the secrecy surrounding the entire process renders this application premature. In early January, GSCP agreed with the Ad Hoc Committee on the ground rules for a without prejudice negotiation with them. Those ground rules as proposed by GSCP included a standstill against any applications being made in these proceedings until the negotiations had been terminated on 7 days' notice. The Ad Hoc Committee, through its counsel, claims that when the ground rules were agreed, the Ad Hoc Committee did not understand that a standstill was included because of what appears to have been a computer problem. Nevertheless, GSCP proceeded on the basis that a standstill was in place and participated in the discussions on the basis that they would receive a notice of termination 7 days in advance of any motion being brought or supported by the Ad Hoc Committee.

9. In addition, it remains to be seen whether GSCP will be able to negotiate an agreement with Shaw or any other party to amend its existing CWI Agreement. No one has told GSCP what amendments Shaw requires and, in fact, Shaw has been prevented from meeting with GSCP to negotiate any amendments. Further, GSCP has not been permitted to review any of the agreements with Shaw or discuss Shaw's plans for the Specialty TV business it proposes to co-own with GSCP.

10. I reached out to Shaw to discuss its proposal for restructuring Canwest, but unfortunately, Shaw has advised that it is not permitted to meet with GSCP until after approval of its agreement with Canwest.

- 4 -

11. In short, until much more is known about the process, Shaw meets with GSCP to discuss amendments and the standstill period on which the GSCP relied is permitted to run, this motion is premature and must be adjourned.

GSCP's attempts to be constructive

12. In her reasons for staying the motions brought by GSCP in these proceedings, Justice Pepall made it clear that business discussions that included GSCP would be preferable to litigation of the issues raised in the outstanding motions filed by GSCP. GSCP has genuinely attempted to have the business discussions recommended by Her Honour but has been consistently rebuffed and excluded by the Ad Hoc Committee. From the outset – which included the filing of these proceedings with no prior notice to GSCP – the strategy of Canwest and the Ad Hoc Committee has been to foreclose any involvement by GSCP, even though any restructuring as proposed ultimately will require GSCP's agreement in the form of amendments to the CWI Agreement or disclaimer.

13. As I have stated in my previous affidavits, GSCP desires nothing more than a fair opportunity to resolve any issues between it and the Applicants, their subsidiaries and their creditors, by negotiation. Unfortunately, despite Her Honour's encouragement to the Applicants and the Ad Hoc Committee of noteholders to engage in bona fide negotiations with GSCP, the Ad Hoc Committee has continued to systematically exclude GSCP from the equity process and to prevent any useful discussion (1) between GSCP and the Applicants and (2) between GSCP and any potential equity investor including Shaw.

14. The single-minded determination to exclude GSCP and to force potential investors to target the CWI Agreement has fundamentally corrupted the equity solicitation process. The result is an agreement that is conditioned on either an amendment of the CW Shareholders Agreement (when Shaw has been prohibited from discussing any such amendment with GSCP) or an attempt to disclaim the CWI Agreement (which will be vigorously opposed by GSCP and which will subject this restructuring process to lengthy litigation challenges).

- 5 -

15. The court should not approve the Shaw agreement while it is conditioned on either hard-fought and uncertain litigation or amendments that the Ad Hoc Committee and the Applicants have prevented Shaw from even proposing to GSCP.

16. For months, both before Her Honour's decision and after it, GSCP has sought to engage the Ad Hoc Committee in negotiations of amendments that they sought in the CW Shareholders Agreement. GSCP's requirement of meeting was for the Ad Hoc Committee, which was seeking amendments, to tell us what amendments they sought. They would not even provide that basic information.

17. Finally, in early January, with the help of the Monitor, the parties agreed on the terms of meetings between the Ad Hoc Committee and GSCP. The discussions in the meetings are privileged. Attached as Exhibit "B" is a copy of the e-mail as sent from our counsel to counsel for the Ad Hoc Committee that sets out the terms for our meetings. Exhibit "C" hereto is a copy of the e-mail as received accepting those terms.

18. As noted above, the proposed terms included a standstill provision. The relevant text is set out below:

3. For the period of time from the date hereof until the date the discussions are terminated as permitted below (the Discussion Period), neither the AD Hoc Committee (sic) nor Goldman Sachs shall initiate, or encourage any other person (including CanWest) to initiate, or accept, approve, or provide any consent to the initiation of, any proceeding (including the filing of any motion or affidavit or the taking of any step in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party) in any court with respect to the insolvency proceeding of CanWest. Either party may terminate the Discussion Period by written notice to the other in which case this agreement shall terminate 7 days after receipt of such notice...

19. Under the CCAA Support Agreement, the Applicants cannot file any motion in these proceedings except with the approval of the Consenting Noteholders. As the Applicants can do virtually nothing without approval of the Noteholders, the result of the standstill agreement, as understood by GSCP, was that the Applicants could not bring any motions, including this motion to approve the Shaw agreement, without terminating the standstill on 7 days notice.

- 6 -

Significance of the exclusion of GSCP

20. The systematic exclusion of GSCP and the targeting of the CWI Agreement that has characterized this entire restructuring are seriously jeopardizing a negotiated solution to the Applicants' insolvency. As outlined in my previous affidavits, the Applicants have been severely restricted, by agreements with the Ad Hoc Committee since May, 2009, in their ability to talk to GSCP – an extraordinary situation given GSCP's investments in CW Investments and the Applicants' status as a public company.
21. Prior to the Applicants' filing for CCAA protection on October 6, 2009, the Applicants had no discussions with GSCP even though the agreements and transactions entered into immediately prior to the commencement of this application were clearly intended to prejudice the rights of GSCP for the benefit of the noteholders represented by the Ad Hoc Committee. Further, the Applicants gave no notice at all of the CCAA proceedings that were commenced on the next day even though the Initial Order had the intended affect of staying contractual rights under the CWI Agreement.
22. After being advised of the CCAA proceedings after the fact, GSCP sought out opportunities to meet with the Ad Hoc Committee, as it was clear both from our discussions with the CRA and from the court materials filed that the Ad Hoc Committee was the only group with any power in this restructuring. The Applicants appeared to have entirely subordinated their decision making processes to the Ad Hoc Committee.
23. As previously stated, GSCP was unable to engage in substantive negotiations with the Ad Hoc Committee because the Ad Hoc Committee was not prepared to advise GSCP what amendments they wanted GSCP to agree to make to the CWI Agreement.
24. In this context, the discussions in December that led to an agreement on the terms for negotiations to be conducted between GSCP and the Ad Hoc Committee marked a potential breakthrough in the restructuring process.

- 7 -

25. The standstill provision was critical to GSCP. GSCP was aware that the equity solicitation process being conducted by RBC was continuing. GSCP was also aware that a number of obvious potential investors would not participate in the RBC process because the non-disclosure agreement (NDA) required by RBC prohibited potential investors involved in the RBC process from speaking with GSCP. I personally know this for two reasons. First, because I was contacted by a number of potential investors, including a number of well known and well capitalized pension funds, private equity funds and strategic media companies, who told me that they would not sign the NDA which prohibited them from speaking to GSCP because they considered the prohibition counterproductive and inappropriate and for other reasons. Second, through counsel, we obtained a copy of the pro-forma NDA that each potential investor in the RBC process was required to sign.

26. The exclusion of so many credible investors from the RBC process was alarming and a direct result of the requirement that all potential equity participants commit to becoming adversarial to GSCP as the price of admission to the RBC Process. It was clear to me that the Ad Hoc Committee was not trying to find an investor to refinance the business that Canwest owns. Instead, all that was sought was a Canadian investor who would provide funds to be paid to the noteholders and who would support the objective of confiscating value from GSCP.

27. In order to ensure that all potential investors had an opportunity to consider the investment opportunity, we advised the excluded potential investors that we would be prepared to discuss with them an alternative restructuring proposal that would have our support.

28. GSCP understood that the standstill agreement with the Ad Hoc Committee and the requirement that notice be given to terminate the standstill before either party sought or supported a court application, gave GSCP the opportunity to bring forward an alternative restructuring plan prior to the hearing of any motion by or supported by the Ad Hoc Committee. The fact that GSCP has been excluded from the process has substantially impaired the ability of GSCP to place an alternative to the Shaw transaction before the Court. As such, I do not think it

acceptable for this motion for approval to have been served while negotiations were ongoing without any prior discussion or disclosure.

29. GSCP has continued discussions with parties excluded from the RBC process and we hope to be in a position shortly to advise the court and the parties of an alternative proposal.


Conclusion

30. This motion should be adjourned for proper disclosure to GSCP to be made and for parties to consider alternative proposals in advance of the hearing of any motion to approve Shaw's agreement with the Applicants.

SWORN BEFORE ME at the City of)
New York, in the state of New York,)
in the United States of America, this)
18th day of February, 2010.)



GERALD J. CARDINALE



A Notary Public under the laws of the
State of New York

LESLIE A. LUCAS
Notary Public, State of New York
No. 01LU8192030
Qualified in New York County
Commission Expires August 25, 2012

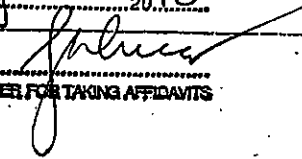
Goldman, Sachs & Co. | 85 Broad Street | New York, New York 10004
Tel: 212-902-6182 | Fax: 212-357-5505 | e-mail: gerry.cardinale@gs.com

Gerry Cardinale
Managing Director
Principal Investment Area

This is Exhibit "A" referred to in the
affidavit of Gerald J. Cardinale
sworn before me, this 18th
day of February, 2010.

Goldman
Sachs

Stonecrest Capital Inc.
Suite 3130, Royal Trust Tower
77 King Street West
Toronto Ontario M5K 1B7


A COMMISSIONER FOR TAKING AFFIDAVITS

LESLIE A. LUCAS
Notary Public, State of New York
No. 01LU8192030
Qualified in New York County
Commission Expires August 28, 2012

Attention: Hap Stephen, Chief Restructuring Advisor

Dear Hap:

Re: **Canwest Restructuring - your letter of February 16, 2010**

I have your letter of February 16, 2010. I disagree with your letter in a number of respects and I am troubled that you have sent such a letter on the eve of Canwest's motion to approve a transaction that GSCP knows nothing about.

We disagree with your statement that Canwest has been pursuing a recapitalization transaction for the benefit of "all of" its stakeholders. Rather and for good reason, we believe that Canwest has been conducting a recapitalization process for the exclusive benefit of the 8% Noteholders under the control of the Noteholders' Ad Hoc Committee. The objective evidence, including the CCAA Support Agreement and the proposed transaction with Shaw, demonstrates that our perception is correct.

We also disagree with the statement in your letter that Canwest has endeavoured to engage us in discussions of the proposed recapitalization plan. Canwest's endeavours have been limited to encouraging GSCP to engage in discussions with the Ad Hoc Committee, which we have done.

GSCP has been given no forum for participation in the equity solicitation process and Canwest has put the restructuring in jeopardy precisely by its consistent exclusion of GSCP from the process. Rather than engage us, Canwest has chosen to avoid any bilateral discussions with us and to use confidentiality agreements to prevent any potential equity investor from speaking to GSCP about their plans as co-shareholder with GSCP in the Specialty TV Business. Given GSCP's critical role in the future of this business, this systematic exclusion of GSCP is counterproductive.

While your characterization of GSCP's interest in becoming involved in discussions as a "current desire" could not be further from reality, we continue to prefer a negotiated restructuring over extended litigation, as we have expressed all along, and have advised the Monitor that we are supportive of the Monitor's initiative to encourage resolution.

- 2 -

Sincerely,



Gerald J. Cardinale

c: D. Burney

McElcheran, Kevin

From: Girvan, Garth M.
Sent: Friday, December 18, 2009 1:54 PM
To: Chadwick, Robert
Cc: McElcheran, Kevin; Farley, James; Mercer, Malcolm M.
Subject: RE: Canwest - Without Prejudice Discussions

This is Exhibit 11B referred to in the
affidavit of Gerald J. Cordiale
sworn before me, this 18th
day of February, 2010

LESLIE A. LUCAS
Notary Public, State of New York
No. 01108192030
Qualified in New York County
Commission Expires August 25, 2011

Rob: sorry to take so much time in getting back to you on this. GS is prepared to commit to the arrangement in your email with some changes which I have marked below in red. The idea is that while we are in discussions, there would be a form of hiatus period with respect to the proceedings. Please review our suggested changes and let me know your thoughts.

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions concerning CanWest Media Inc. (CanWest) on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.
3. For the period of time from the date hereof until the date discussions are terminated as permitted below (the Discussion Period), neither the AD Hoc Committee nor Goldman Sachs shall initiate, or encourage any other person (including CanWest) to initiate, or accept, approve, or provide any consent to the initiation of, any proceeding (including the filing of any motion or affidavit or the taking of any step in furtherance of the disclaimer of any contract to which Goldman Sachs or an affiliate is a party) in any court with respect to the insolvency proceeding of CanWest. Either party may terminate the Discussion Period by written notice to the other in which case this agreement shall terminate 7 days after receipt of such notice. In the event of termination the dates referred to in the Support Agreement dated September 24, 2009 and the Use of Cash Collateral and Consent Agreement between CanWest and certain members of the Ad Hoc Committee shall be extended by the number of days comprising the Discussion Period, and the parties shall cooperate in obtaining the agreement of CanWest and the court to such extension.
4. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential (except as otherwise contemplated herein) and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors, unless disclosure is required by law or unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs, provided however that the Ad Hoc Committee and Goldman Sachs and their respective advisors shall be entitled to advise the Monitor of such discussions and the terms of this agreement.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee."

Garth M. Girvan

Garth M. Girvan

Partner

Business Law

T:/Tél : 416-601-7574

F:/Télec : 416-868-0673

E:/Courriel : ggirvan@mccarthy.ca

McCarthy Tétrault LLP / S.E.N.C.R.L., s.r.l.

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Toronto Dominion Bank Tower

Toronto, Ontario

Canada M5K 1E6

www.mccarthy.ca

Please THINK GREEN before printing.
PENSEZ À L'ENVIRONNEMENT avant d'imprimer ce message.

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]

Sent: Tuesday, December 15, 2009 3:08 PM

To: Girvan, Garth M.

Subject: Canwest - Without Prejudice Discussions

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions on the following terms:

1. Anything said or any information shared in the discussions between representatives of the Ad Hoc Committee and Goldman Sachs shall be considered without prejudice and shall not be raised or relied on in any court proceeding or other proceeding.
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Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tétrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

We're Moving!

Goodmans' Toronto office will be located at Bay Adelaide Centre as of December 22nd, 2009.

Our new address will be:

Goodmans LLP

02/18/2010

From: Girvan, Garth M.
Sent: Thursday, December 24, 2009 9:56 AM
To: Chadwick, Robert
Subject: RE: Canwest - Without Prejudice Discussions

Rob, after consideration, my client is of the view that what was sent to you in our last email was reasonable and appropriate. They are prepared to agree to an arrangement as set out in that email and most importantly the standstill provision. They are not prepared to proceed on the basis you have set out below. If there are to be discussions, our client's position is that they can only productively proceed if the parties stand back from initiating further court proceedings against each other during the course of such discussions.

From: Chadwick, Robert [rchadwick@goodmans.ca]
Sent: Wednesday, December 23, 2009 4:10 PM
To: Girvan, Garth M.
Subject: RE: Canwest - Without Prejudice Discussions

Gary, further to our discussion of this today, let me know if the below works (I have made changes in CAP LETTERS to make it easier to follow). If you confirm it is acceptable, we can confirm the terms on a clean version. Regards, Rob Chadwick

Further to our discussion, we wish to confirm that the Ad Hoc Committee and Goldman Sachs will proceed with their discussions concerning CanWest Media Inc. (CanWest) on the following terms:

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Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

Goodmans' Toronto office has moved to Bay Adelaide Centre.

Our new address:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Our email addresses, telephone and fax numbers remain the same.

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

This is Exhibit 4 C 11 referred to in the
 affidavit of Gerald J. Cordingle
 sworn before me, this 18th
 day of February 2010

From: Chadwick, Robert [mailto:rchadwick@goodmans.ca]
 Sent: Monday, January 04, 2010 6:29 PM
 To: Girvan, Garth M.
 Subject: RE: Canwest - Without Prejudice Discussions

Gary, as discussed with you in more detail this afternoon, we are prepared to agree to the terms outlined in your email of December 23, 2009. Please confirm (or have your client confirm directly with our clients) the time, attendees and logistics for the proposed principals conference call on Wednesday and the in-person principals meeting on Friday, once you have had a chance to confirm matters with your client. Regards, Rob Chadwick

ACCOMPLISHED BY LESLIE A. LUCAS
 Notary Public, State of New York
 No. 011UG192030
 Qualified in New York County
 Commission Expires August 25, 2012

-----Original Message-----

From: Girvan, Garth M. [mailto:GGIRVAN@MCCARTHY.CA]
 Sent: Thursday, December 24, 2009 9:56 AM
 To: Chadwick, Robert
 Subject: RE: Canwest - Without Prejudice Discussions

Rob, after consideration, my client is of the view that what was sent to you in our last email was reasonable and appropriate. They are prepared to agree to an arrangement as set out in that email and most importantly the standstill provision. They are not prepared to proceed on the basis you have set out below. If there are to be discussions, our client's position is that they can only productively proceed if the parties stand back from initiating further court proceedings against each other during the course of such discussions.

From: Chadwick, Robert [rchadwick@goodmans.ca]
 Sent: Wednesday, December 23, 2009 4:10 PM
 To: Girvan, Garth M.
 Subject: RE: Canwest - Without Prejudice Discussions

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2. No agreement shall be considered as having been reached in the discussions unless confirmed in writing by the Ad Hoc Committee and Goldman Sachs and signed by them.

3. The nature and scope of the discussions and the fact that the discussions are taking place or have taken place shall be kept confidential (except as otherwise contemplated herein) and all materials and information with respect to such discussions shall remain confidential between the Ad Hoc Committee, Goldman Sachs and their respective advisors; unless disclosure is required BY ORDER OF A COURT OR ADMINISTRATIVE TRIBUNAL OF COMPETENT JURISDICTION or unless otherwise agreed in writing by the Ad Hoc Committee and Goldman Sachs, provided however that the Ad Hoc Committee and Goldman Sachs and their respective advisors shall be entitled to advise the Monitor AND THE COMPANY OF the terms of this agreement AND THE FACT THAT CONFIDENTIAL DISCUSSIONS ARE TAKING PLACE.

Please confirm on behalf of your client that Goldman Sachs shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee. Subject to such confirmation by McCarthy Tetrault, we confirm on behalf of the Ad Hoc Committee that the Ad Hoc Committee shall be bound to the foregoing terms as part of any discussions between representatives of Goldman Sachs and the Ad Hoc Committee.

Goodmans' Toronto office has moved to Bay Adelaide Centre.

Our new address:

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Our email addresses, telephone and fax numbers remain the same.

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

=====
This e-mail may contain information that is privileged, confidential and/or exempt from disclosure.
No waiver whatsoever is intended by sending this e-mail which is intended only for the named recipient(s).
Unauthorized use, dissemination or copying is prohibited. If you receive this email in error, please notify the sender and destroy all copies of this e-mail. Our privacy policy is available at www.mccarthy.ca.

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

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

Court File No. CV - 09-8396-00 CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

AFFIDAVIT OF GERALD J. CARDINALE

McCarthy Tétrault LLP
Suite 4700, Box 48
Toronto Dominion Bank Tower
Toronto-Dominion Centre
Toronto, ON M5K 1E6

Kevin McElcheran LSUC# 22119H
Tel. (416) 601-7539

Malcolm Mercer LSUC# 23812W
Tel: (416) 601-7659
Fax: (416) 868-0673

Solicitors for GSCP Capital Partners VI Fund, L.P.
GSCP VI AA One Holding S.ar.l, GSCP VI AA
One Parallel Holding S.ar.l.

Court File No. CV-09-8396-00 CL

**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 PLAN
OF COMPROMISE OR ARRANGEMENT OF
CANWEST GLOBAL COMMUNICATIONS CORP. AND THE OTHER APPLICANTS
LISTED ON SCHEDULE "A" (collectively the "APPLICANTS" or "Canwest")**

**AFFIDAVIT OF SUSAN KRAKER,
SWORN FEBRUARY 18, 2010**


I, Susan Kraker of the Town of Richmond Hill in the Regional Municipality of York,
MAKE OATH AND SAY:

1. I am a legal assistant in the firm of McCarthy Tétrault LLP ("McCarthys") and as such have knowledge of the matters hereinafter deposed to.
2. Exhibit "A" hereto is true copy of a letter dated February 16, 2010 to the lawyers for the Applicants ("Oslers") containing a Request to Insepct Documents.
3. Exhibits "B", "C" and "D" hereto are true copies of subsequent letters exchanged between Oslers and McCarthys.
4. Exhibit "E" hereto is a true copy of the "teaser document" mentioned in Exhibit "B".
Exhibit "F" hereto is a true copy of the form of NDA mentioned in Exhibit "B".
5. The following are true copies of certain documents exhibited to the Affidavit of John E. Maguire sworn October 5, 2009:

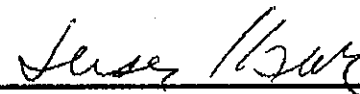
- (a) Exhibit "G" hereto is a true copy of the Use of Collateral and Consent Agreement;
- (b) Exhibit "H" hereto is a true copy of the Support Agreement;
- (c) Exhibit "I" hereto is a true copy of the Recapitalization Term Sheet;
- (d) Exhibit "J" hereto is a true copy of the Secured Senior Promissory Note; and
- (e) Exhibit "K" hereto is a true copy of the unsecured Promissory Note.

6. This affidavit is sworn in support of the position of GSCP on the motion to be heard tomorrow and for no other or improper purpose.

SWORN BEFORE ME at the City of)
Toronto, this 18th day of February,)
2010.)


_____)

A commissioner etc



Susan Kraker

Barristers & Solicitors
Patent & Trade-mark Agents

McCarthy Tétrault

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Telephone: 416 362-1812
Facsimile: 416 868-0673
mccarthy.ca

Malcolm Mercer
Direct Line: (416) 601-7659
E-Mail: mmercer@mccarthy.ca

February 16, 2010

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6600 P.O. Box 50
Toronto ON M5X 1B8

Attention: Mr. Lyndon A.J. Barnes

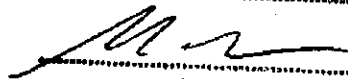
Re: Canwest

Dear Sirs:

This is a Request to Inspect Documents pursuant to Rule 30.04(2) in respect of documents referred to in the Motion Record of the Applicants (Approval of Subscription Agreement) served on February 12, 2010.

Specifically, inspection of the following documents is requested:

1. The 22 non-disclosure agreements mentioned in paragraph number 7 of the grounds alleged in the Notice of Motion.
2. The six non-binding proposals mentioned in paragraph number 8 of the grounds alleged in the Notice of Motion.
3. The two Formal Bids mentioned in paragraph number 9 of the grounds alleged in the Notice of Motion.
4. The recommendation of the Special Committee, if in writing, mentioned in paragraph number 12 of the grounds alleged in the Notice of Motion.
5. The Subscription Agreement mentioned in paragraph number 14 of the grounds alleged in the Notice of Motion.
6. The Subscription Term Sheet mentioned in paragraph number 14 of the grounds alleged in the Notice of Motion.

"A"
 This is Exhibit referred to in the
 affidavit of..... Susan Kraker
 sworn before me, this..... 18th
 day of..... February 20, 10

 A COMMISSIONER FOR TAKING AFFIDAVITS

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Lyndon A.J. Barnes

7. The Shaw Support Agreement mentioned in paragraph number 17 of the grounds alleged in the Notice of Motion.
8. The Amended Support Agreement mentioned in paragraph number 20 of the grounds alleged in the Notice of Motion.
9. The Shaw Definitive Documents mentioned in paragraph number 23 of the grounds alleged in the Notice of Motion.
10. The Subscription Agreement, Subscription Term Sheet, Amended Support Agreement and the Shaw Support Agreement mentioned in paragraph 2 of the Strike Affidavit.
11. The agreement with RBC mentioned in paragraph 10 of the Strike Affidavit.
12. The "teaser document" and the form of NDA mentioned in paragraph 12 of the Strike Affidavit.
13. The 22 executed NDAs mentioned in paragraph 12 of the Strike Affidavit.
14. The more comprehensive confidential information memorandum mentioned in paragraph 12 of the Strike Affidavit.
15. The proposed equity investment term sheet mentioned in paragraph 13 of the Strike Affidavit.
16. The advice, if in writing, mentioned in the first sentence of paragraph 14 of the Strike Affidavit.
17. The six Initial Proposals mentioned in paragraph 16 of the Strike Affidavit.
18. The proposal submitted by an additional prospective investor outside of the equity investment solicitation process mentioned in paragraph 16 of the Strike Affidavit.
19. The detailed management presentation, if in writing, mentioned in paragraph 17 of the Strike Affidavit.
20. The detailed and confidential information, if in writing, mentioned in paragraph 17 of the Strike Affidavit.
21. The management presentations, if in writing, mentioned in paragraph 17 of the Strike Affidavit.

McCarthy Tétrault

February 16, 2010

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Lyndon A.J. Barnes

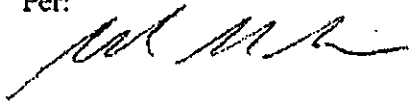
22. The form of proposed equity subscription agreement and the attached form of term sheet mentioned in paragraph 20 of the Strike Affidavit.
23. The communication, if in writing, and the criteria, if in writing, mentioned in paragraph 21 of the Strike Affidavit.
24. The two Formal Bids mentioned in paragraph 22 of the Strike Affidavit.
25. The Shaw Communications' Formal Bid mentioned in paragraph 22 of the Strike Affidavit.
26. The recommendation of the Special Committee, if in writing, mentioned in paragraph 28 of the Strike Affidavit.
27. The Subscription Agreement mentioned in paragraph 30 of the Strike Affidavit.
28. The Subscription Term Sheet mentioned in paragraph 45 of the Strike Affidavit.
29. The Amended Support Agreement mentioned in paragraphs 46 and 47 of the Strike Affidavit.
30. The Shaw Support Agreement mentioned in paragraph 49 and following of the Strike Affidavit.

I look forward to hearing from you as soon as possible.

Yours very truly,

McCarthy Tétrault LLP

Per:



Malcolm M. Mercer

MMM/mm

cc: Jeremy E. Dacks
Shawn T. Irving
Kevin. P. McElcheran

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February 16, 2010

Lyndon A.J. Barnes
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LBarnes@osler.com

Sent By Electronic Mail

Malcolm Mercer
McCarthy Tetrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Attention: Mr. Malcolm Mercer

Dear Sir:

Canwest Global Communications Corp. ("Canwest Global")

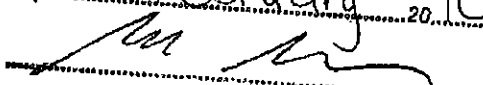
We are in receipt of your correspondence dated February 16, 2010 requesting the inspection of documents referred to in the Motion Record of Canwest Global et al (the "CMI Entities") concerning the approval of the Shaw Subscription Agreement and related documents (the "Shaw Transaction Documents").

We disagree that your clients are a "party" as that term is used in Rule 30.04 of the *Rules of Civil Procedure* and thus disagree that your clients are entitled to rely on Rule 30.04(2) to obtain copies of the documents set out in your letter.

In any event, as you are aware from the Monitor's 10th Report, Shaw Communications Inc. ("Shaw") and Canwest Global have agreed that redacted versions of the Shaw Transaction Documents removing the proposed transaction's economic terms will be made available to your clients provided they agree to appropriate confidentiality and standstill provisions (the "Confidentiality Agreement"). A copy of a draft Confidentiality Agreement in a form acceptable to Canwest Global, Shaw, the ad hoc committee of Canwest Media Inc.'s senior subordinated noteholders and the Monitor was provided to you on February 15, 2010. We have not had any response to that correspondence. Upon execution of the Confidentiality Agreement, your clients will be provided with redacted copies of the documents referred to in paragraphs 5, 6, 7, 8, 9, 10, 27, 28, 29 and 30 of your letter.

We also note the following with respect to paragraphs 4, 11, 12 and 26 of your letter:

1. The recommendation of the Special Committee was an oral recommendation;
2. The RBC Agreement was attached as Exhibit "U" to the Affidavit of John Maguire dated October 5, 2009 and filed in these proceedings; and

"B"
 This is Exhibit referred to in the
 affidavit of..... Susan Kratzer
 sworn before me, this..... 18th
 day of..... February..... 20.10

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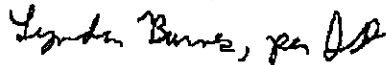
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3. Copies of the "teaser document" and form of NDA mentioned in paragraph 12 of the Strike Affidavit are attached. We understand that you may have been previously provided with a copy of the form of NDA by the Monitor.

The other requests set out in your letter seek disclosure of documents that are confidential and commercially sensitive to Canwest Global's equity investment solicitation process and are either (i) documents that were only provided to parties in the equity investment solicitation process after they signed a confidentiality agreement or (ii) documents provided by such parties on the basis that they were participating in a confidential equity investment solicitation process. The disclosure of confidential and commercially sensitive information concerning the equity investment solicitation process would cause serious prejudice to both the entities that entered into the process on a confidential basis and to Canwest Global should it need to continue with a similar or alternative process if the Shaw transaction not be approved or closed.

We are available to discuss the foregoing at your convenience.

Yours very truly,



Lyndon A.J. Barnes

LAJB:jd

Enclosure

c: David Byers – *Stikeman Elliott LLP*