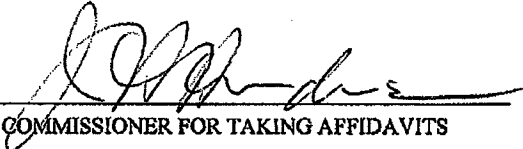


TAB F

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF JOHN E. MAGUIRE
SWORN BEFORE ME
ON THIS 23RD DAY OF MARCH, 2010



A COMMISSIONER FOR TAKING AFFIDAVITS

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA,
APPOINTMENT EXPIRES MAY 14, 2010.

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 SCHEDULE "A"

Applicants

**AFFIDAVIT OF THOMAS C. STRIKE
(Sworn February 12, 2010)**

I, Thomas C. Strike, of the City of Winnipeg, in the Province of Manitoba,
MAKE OATH AND SAY:

1. I am the President, Corporate Development & Strategy Implementation and Recapitalization Officer of Canwest Global Communications Corp. ("**Canwest Global**"). I am also a director of Canwest Media Inc. ("**CMI**") and an officer and/or director of certain of the Applicants listed in Schedule "A" hereto (the "**Applicants**"). As such, I have personal knowledge of the matters deposed to herein. Where I have relied upon other sources for information, I have specifically referred to such sources and verily believe them to be true.
2. This affidavit is sworn in support of a motion brought by Canwest Global and the other Applicants listed in Schedule "A" hereto and the Partnerships listed in Schedule "B" hereto (the "**Partnerships**" and, together with the Applicants, the "**CMI Entities**") seeking an Order (the "**Approval Order**"), *inter alia*, (i) approving the Subscription Agreement dated February 11, 2010 (the "**Subscription Agreement**") between Shaw Communications Inc. ("**Shaw Communications**") and Canwest Global, including the subscription term sheet appended thereto (the "**Subscription Term Sheet**"); (ii) approving an amendment and restatement dated February 11, 2010 (the "**Amended Support Agreement**") of the Support Agreement and Restructuring Term Sheet (both as defined below) made between the 8% Senior Subordinated Noteholders (as

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defined below) party thereto and the CMI Entities and approved by this Honourable Court on October 6, 2009; (iii) approving the support agreement dated February 11, 2010 (the “**Shaw Support Agreement**”) between Shaw Communications, Canwest Global and the 8% Senior Subordinated Noteholders party thereto (the “**Consenting Noteholders**”); (iv) authorizing and approving the entering into, execution and delivery of the Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement by Canwest Global and the performance by Canwest Global of those agreements in accordance with their terms and conditions; and (v) declaring that the assets, property and undertaking of the CMI Entities are subject to a charge ranking after all existing charges as at the date of the Approval Order in order to secure the payment of the Termination Fee (as defined below) and the Expense Reimbursement (as defined below).

BACKGROUND

3. The CMI Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 6, 2009. FTI Consulting Canada Inc. was appointed at that time to act as monitor (the “**Monitor**”) in this CCAA proceeding.

4. The Initial Order, a copy of which is attached as Exhibit “A” to this Affidavit, granted, *inter alia*, a stay of proceedings (the “**Stay Period**”) until November 5, 2009, or such later date as this Honourable Court may order. On October 30, 2009, the CMI Entities obtained an Order, *inter alia*, extending the Stay Period until January 22, 2010. On January 21, 2010, the CMI Entities obtained a further Order extending the Stay Period until March 31, 2010. A copy of the January 21, 2010 extension Order is attached as Exhibit “B” to this Affidavit.

5. Further details regarding the background to this CCAA proceeding are set out in the affidavits sworn by John E. Maguire on October 5, 2009 (the “**Initial Order Affidavit**”), October 22, 2009, October 27, 2009, November 27, 2009 and January 18, 2010, and unless relevant to the present motion, are not repeated herein. A copy of the Initial Order Affidavit, without exhibits, is attached as Exhibit “C” to this Affidavit.

6. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Initial Order Affidavit.

RECAPITALIZATION TRANSACTION

7. As set out in the Initial Order Affidavit, on October 5, 2009, the CMI Entities agreed to enter into a Support Agreement (the “**Support Agreement**”) with the members of an *ad hoc* committee (the “**Ad Hoc Committee**”) representing over 70% of the holders of CMI’s 8% Senior Subordinated Notes due 2012 (the “**8% Senior Subordinated Noteholders**”). The Support Agreement had attached to it a recapitalization transaction term sheet (the “**Restructuring Term Sheet**”) that set out the summary terms and conditions of a consensual recapitalization transaction involving the CMI Entities (the “**Recapitalization Transaction**”). The Support Agreement and Restructuring Term Sheet represented the culmination of many months of arm’s length negotiations between the CMI Entities and the Ad Hoc Committee. Certain milestone dates set out in the Support Agreement have been extended during the course of this CCAA proceeding. Copies of the Support Agreement and Restructuring Term Sheet that were attached to the Initial Order Affidavit (without signature pages and excluding Schedules F and G) are attached as Exhibit “D” to this Affidavit.

8. The Support Agreement provided that the CMI Entities will pursue a plan of arrangement or compromise on the terms set out in the Restructuring Term Sheet (the “**Plan**”) in order to implement the Recapitalization Transaction as part of this CCAA proceeding. The Restructuring Term Sheet provided, *inter alia*, that creditors of the CMI Entities whose claims are compromised under the Plan, including the 8% Senior Subordinated Noteholders, would receive shares of a restructured Canwest Global (“**Restructured Canwest Global**”) which would be a publicly-listed company on the TSX.

9. In addition, the Restructuring Term Sheet provided, *inter alia*, that one or more Canadians (the “**New Investors**”) (as defined in the *Direction to the CRTC (Ineligibility of Non-Canadians)*) (the “**CRTC Direction**”) would invest at least \$65 million in Restructured Canwest Global. The New Investors must qualify as Canadians in order to satisfy ownership requirements that apply to broadcasters operating under licence from the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”). The equity investment in Restructured Canwest Global must be acceptable to CMI and the Ad Hoc Committee.

EQUITY INVESTMENT SOLICITATION PROCESS

10. On or about December 10, 2008, Canwest Global, on behalf of itself and its subsidiaries, entered into an agreement with RBC Dominion Securities Inc., a member company of RBC Capital Markets (“RBC”), relating to RBC’s provision of investment banking services to Canwest Global and its subsidiaries. Since that time, and as described in the Initial Order Affidavit, the CMI Entities have worked closely with RBC in developing the proposed Recapitalization Transaction. During the course of its engagement, RBC has developed detailed and intimate knowledge of the business of the CMI Entities and has been uniquely positioned to design and conduct an equity investment solicitation process on behalf of the CMI Entities to attract the New Investors required to implement the Recapitalization Transaction.

11. On or about November 2, 2009, RBC commenced an equity investment solicitation process required to implement the Recapitalization Transaction and, in particular, to identify potential New Investors that, among other things, would satisfy the requirement of being Canadian for purposes of the CRTC Direction. RBC conducted the equity investment solicitation process in two phases. The CMI Entities’ Chief Restructuring Advisor (the “CMI CRA”) was actively involved in all aspects of the equity investment solicitation process. The Monitor was provided with periodic updates during the process.

12. In the first phase of the equity investment solicitation process (“Phase 1”), RBC contacted approximately 90 potential investors to inquire whether they would be interested in making a minimum 20% equity investment in Restructured Canwest Global. During the course of initial discussions with potential investors that indicated an interest in an alternative transaction, 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. In total, 52 potential investors expressed interest in the investment opportunity and were sent a “teaser” document and a form of non-disclosure agreement (“NDA”). The “teaser” was based upon public information and provided a high-level overview of the investment opportunity and the equity investment solicitation process, and was designed to assist potential investors in determining whether to execute a NDA and receive more detailed and confidential information regarding the CMI Entities. Ultimately, 22 potential investors executed NDAs and received a more

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comprehensive confidential information memorandum and access to an internet-based data room containing further confidential information including financial models and operational information. Throughout the equity investment solicitation process, RBC and the CMI Entities continued to update the internet-based data room to ensure that accurate and timely information was provided to the participants in the process.

13. Potential investors that executed a NDA were invited to submit non-binding proposals, along with a mark-up of a proposed equity investment term sheet provided to them by RBC on behalf of the CMI Entities, by no later than December 2, 2009. Potential investors were advised to specifically raise significant proposed modifications to the proposed equity investment term sheet, and it was recommended that RBC be given advance notice of significant structuring issues or other significant changes that potential investors were going to propose to the term sheet. RBC also advised the potential investors that any party seeking to pursue a potential equity investment in Restructured Canwest Global was expected to prepare and submit a non-binding proposal (the "**Initial Proposal**"). Potential investors were informed that Canwest Global would favour investors that placed the highest equity value on Restructured Canwest Global and demonstrated the ability and willingness to complete due diligence and documentation within the required timeline.

14. The potential investors were advised to address a number of matters in the Initial Proposal, including, *inter alia*:

- (a) the dollar amount being proposed to be invested in cash on the date of emergence of Restructured Canwest Global and the other CMI Entities from the CCAA proceeding (the "**Emergence Date**");
- (b) the proposed equity ownership stake to be acquired by the potential investor as a percentage of total equity ownership of Restructured Canwest Global;
- (c) a description of the entity that would be making the proposed equity investment, the principals/shareholders of the investing entity and confirmation that the investing entity would be a "Canadian" as defined in the CRTC Direction;

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- (d) information on the anticipated sources of capital, preliminary evidence of the availability of such capital, and the steps and associated timing to obtain the capital;
- (e) a detailed description of the additional due diligence and/or information that would be required by the prospective investor in order to provide a binding equity investment proposal;
- (f) an indication of the level of review and approval that the Initial Proposal had received, as well as any additional corporate or other internal approvals required prior to executing a definitive agreement; and
- (g) any regulatory approvals, consents or other conditions (other than CRTC approval) necessary to complete the proposed equity investment.

15. Participants in Phase 1 were also informed that if an interested party's Initial Proposal met Canwest Global's objectives, then that party would be invited to commence the next phase of the process, and would be allowed to perform confirmatory due diligence and would have the opportunity to meet with Canwest Global's senior management team.

16. As of December 2, 2009, six potential investors submitted Initial Proposals as part of the equity investment solicitation process. Based upon the recommendation of RBC, five of the six potential investors that submitted Initial Proposals as part of the formal process were invited to participate in phase 2 of the equity investment solicitation process ("**Phase 2**"). An additional prospective investor submitted a proposal outside of the equity investment solicitation process. This investor was unwilling to execute a NDA in order to receive the confidential information available to parties during Phase 1 of the process. Accordingly, further discussions with this investor were not pursued, although further attempts were made by RBC to encourage this potential investor to execute a NDA and enter the equity investment solicitation process.

17. RBC commenced Phase 2 shortly after the receipt of the non-binding Initial Proposals. As part of Phase 2, the CMI Entities' senior management team, together with RBC, met with and provided each Phase 2 participant (collectively, "**Phase 2 Participants**") with a detailed management presentation as well as further detailed and confidential information regarding the investment opportunity to facilitate each party's ongoing due

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diligence. The management presentations provided the opportunity for Phase 2 Participants to ask RBC and senior management of the CMI Entities specific questions about the business and the investment opportunity. Further, RBC arranged, to the extent required, for additional business and legal due diligence sessions with the CMI Entities' management and their legal and financial advisors as part of Phase 2. The CMI Entities continued to add further information to the internet-based data room in response to information requests from the Phase 2 Participants.

18. On December 22, 2009, RBC informed the Phase 2 Participants that the deadline for the submission of final binding offers would likely be during the latter half of January 2010. RBC informed the Phase 2 Participants that, in addition to ongoing access to the CMI Entities' senior management team and RBC, they would also have the opportunity to meet with members of the Ad Hoc Committee prior to submitting their proposals. In advance of any such meetings, RBC requested that Phase 2 Participants provide certain additional information, including the status of due diligence and any further information requests and their then current thinking on the proposed ownership/governance structure of Restructured Canwest Global, taking into account CRTC requirements.

19. Four of the five Phase 2 Participants met with the CMI Entities, RBC, the CMI CRA and certain representatives of the Ad Hoc Committee to discuss the potential equity investment. The fifth Phase 2 Participant withdrew from the equity investment solicitation process.

20. On January 20, 2010, RBC informed the four remaining Phase 2 Participants that final binding offers (the "Formal Bids" and each a "Formal Bid") were required to be received by 5:00 p.m. on January 27, 2010. The Phase 2 Participants were provided with a copy of a proposed equity subscription agreement together with an attached term sheet for the proposed equity investment. The attached term sheet was based upon the form of term sheet provided in Phase 1, amended to be consistent with the provisions incorporated in the proposed subscription agreement.

21. In order to assist the parties with their Formal Bids, RBC communicated to Phase 2 Participants a number of criteria that Canwest Global and RBC would consider in evaluating any offers (many of which were similar to the criteria communicated prior to the receipt of the Initial Proposals), including, *inter alia*:

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- (a) the dollar amount being proposed to be invested in cash on the Emergence Date;
- (b) the proposed equity ownership stake to be acquired as a percentage of the total equity ownership of Restructured Canwest Global;
- (c) confirmation that the investing entity is a "Canadian" as defined in the CRTC Direction;
- (d) the nature and extent of any changes to the proposed subscription agreement (including the equity investment term sheet attached thereto). It was again noted that potential investors should specifically raise significant proposed modifications to the proposed subscription agreement (including the equity investment term sheet attached thereto) and that RBC be given advance notice of significant structuring issues;
- (e) sources of financing and confirmation that the offer would not be subject to any financing conditions;
- (f) preference being given to offers that would not be subject to any further due diligence;
- (g) confirmation that all required corporate approvals would have been obtained and that no additional approvals would be required to implement the offer;
- (h) confirmation that the offer and proposed subscription agreement would remain open, binding, enforceable and in effect on a confidential basis for a period of not less than 14 days from the deadline for submission of offers; and
- (i) confirmation that the proposed investor would be willing to proceed with its investment on the basis that the Amended and Restated Shareholders Agreement with GS Capital Partners VI Fund, L.P. and its affiliates ("Goldman Sachs") concerning CW Investments Co. (the "CW Investments Shareholders Agreement") would be amended on terms acceptable to the proposed investor.

Offers Received

22. Two Formal Bids were received from Phase 2 Participants (the “**Formal Bidders**”) by RBC prior to the January 27, 2010 deadline, one of which was the Formal Bid from Shaw Communications. Both Formal Bids included mark-ups of the proposed equity subscription agreement and subscription term sheet for the proposed equity investment. RBC and the CMI Entities, in consultation with the Ad Hoc Committee and the CMI CRA, proceeded to discuss each Formal Bid with each of the Formal Bidders in an attempt to reach an agreement with a prospective New Investor that would secure the best possible transaction in the circumstances and which would allow the CMI Entities to proceed to finalize the Plan and seek to emerge from CCAA protection as a viable going concern business.

Shaw Communications' Formal Bid

23. Rather than restructure Canwest Global as a public company as was originally contemplated in the Support Agreement and as was proposed in the form of subscription agreement and subscription term sheet that accompanied RBC's solicitation of Formal Bids, the Formal Bid by Shaw Communications contemplated that Restructured Canwest Global would be a private company, the shareholders of which would be comprised of Shaw Communications or a direct or indirect wholly-owned subsidiary of Shaw Communications that is Canadian as defined in the CRTC Direction (Shaw Communications and any such designated wholly-owned subsidiary being collectively referred to herein as “**Shaw**”) and those 8% Senior Subordinated Noteholders and other creditors of Canwest Global that elected to receive equity shares of Restructured Canwest Global and that would hold at least 5% of the equity shares of Restructured Canwest Global following the completion of the proposed Recapitalization Transaction (collectively, the “**Participating Creditors**”). Creditors that would hold less than 5% of the equity shares of Restructured Canwest Global upon completion of the Recapitalization Transaction (the “**Non-Participating Creditors**”) and existing shareholders of Canwest Global (the “**Existing Shareholders**”) would receive cash payments (rather than equity shares of Restructured Canwest Global) to extinguish their interests to be affected pursuant to the Plan. The amount of cash to be distributed to each Non-Participating Creditor would be equal to the value of the equity they would otherwise have received under the Recapitalization Transaction as originally proposed but using the higher implied equity value contained in the Formal Bid by Shaw Communications.

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24. Shaw Communications' Formal Bid contemplated that, prior to or as soon as reasonably practicable following the successful completion of the Recapitalization Transaction, Restructured Canwest Global would apply to be de-listed from the TSX Venture Exchange and would apply to cease to be a reporting issuer for purposes of Canadian securities laws.

25. Other basic elements of Shaw Communications' Formal Bid were as follows:

- (a) Shaw would subscribe for that number of Class A Voting Shares in the capital of Restructured Canwest Global (the "Securities") that would represent a 20% minimum equity subscription by Shaw in the capital of Restructured Canwest Global in a specified amount and an 80% voting interest in Restructured Canwest Global immediately following completion of the Recapitalization Transaction (the "Minimum Shaw Commitment");
- (b) a portion of the net cash proceeds received from the Minimum Shaw Commitment would be distributed to the 8% Senior Subordinated Noteholders pursuant to the Plan in connection with the partial payment of the Secured Intercompany Note (as defined in the Initial Order Affidavit) and the balance would be used for working capital purposes;
- (c) in addition to the Minimum Shaw Commitment, Shaw would subscribe for an additional commitment of equity shares of Restructured Canwest Global at the same price per share (the "Additional Commitment") in order to fund cash payments which would be made to the Non-Participating Creditors and the Existing Shareholders pursuant to the Recapitalization Transaction (as amended), subject to the right of the members of the Ad Hoc Committee to elect to participate *pro rata* (based upon the *pro forma* ratio of equity in Restructured Canwest Global allocated to Shaw to equity allocated to the Ad Hoc Committee) with Shaw in the funding of the Additional Commitment;
- (d) confirmation that Shaw would be Canadian in order to comply with the CRTC Direction;
- (e) confirmation that Shaw had adequate financial resources on hand to complete the Recapitalization Transaction;

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- (f) none of Shaw's Formal Bid, the Subscription Agreement or the proposed Amended Support Agreement would be subject to financing conditions in favour of Shaw;
- (g) the Formal Bid was subject to confirmatory due diligence with respect to certain matters identified by Shaw; and
- (h) Shaw confirmed that no additional internal approvals were required.

26. Over the next several days, numerous follow-up discussions were held with RBC, the CMI Entities, the CMI CRA, the Ad Hoc Committee and Shaw and their respective advisors to negotiate the terms of the Subscription Agreement (together with the Subscription Term Sheet), Amended Support Agreement and Shaw Support Agreement. The Monitor and its counsel were provided with drafts of the documents and participated in discussions with the advisors to the CMI Entities. The CMI Entities also provided information to Shaw to allow it to complete its confirmatory due diligence. At the same time, discussions were also held between RBC, the CMI Entities, the Ad Hoc Committee and the other Formal Bidder and their respective advisors, in respect of the other Formal Bid.

27. I am advised by Richard Grudzinski, a Managing Director of RBC, and believe that it is RBC's view that the Formal Bid submitted by Shaw, as documented by the Subscription Agreement, Subscription Term Sheet, Amended Support Agreement and Shaw Support Agreement, is the best overall offer received by the CMI Entities, considering various criteria and as set out in paragraph 28 below, including those communicated by RBC to the participants in the equity investment solicitation process. Specifically, among other things, Shaw's Formal Bid provided (i) significant value to Restructured Canwest Global in exchange for the equity investment; (ii) affected creditors the opportunity to receive cash distributions from a Plan as opposed to shares in Restructured Canwest Global; and (iii) a long-term solution and stability for Restructured Canwest Global through the involvement of a strategic investor with significant experience in the media industry.

28. On February 11, 2010, after many days of extensive, arm's length negotiations between RBC, the CMI Entities, the Ad Hoc Committee and the Formal Bidders and their respective advisors, the Special Committee of Canwest Global (the "Special Committee") met

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to consider the Formal Bids. The Special Committee duly considered the Formal Bids, having regard to the best interests of Canwest Global. After due consideration, the Special Committee recommended to the board of directors of Canwest Global (the "Board") that it approve, and the Board approved, the Subscription Agreement (together with the Subscription Term Sheet), Amended Support Agreement and Shaw Support Agreement. The CMI Entities' senior management, the CMI CRA, and the Ad Hoc Committee support the entering into of such agreements. The Subscription Agreement, the Amended Support Agreement and the Shaw Support Agreement have been executed by the respective parties thereto (including, in the case of the Shaw Support Agreement and the Amended Support Agreement, by the members of the Ad Hoc Committee) and, should the Approval Order requested of this Honourable Court be granted, such agreements will become effective and legally binding on the parties thereto.

Subscription Agreement

29. Subject to the terms of the Subscription Term Sheet, Shaw has agreed in the Subscription Agreement to subscribe for the Minimum Shaw Commitment and the Additional Commitment. If agreed by Canwest Global, Shaw and the Ad Hoc Committee, Restructured Canwest Global will be a newly created corporation. Shaw has agreed not to revoke its subscription for the Securities prior to the proposed Approval Order being granted by the Court. If the Approval Order is not granted by February 19, 2010, the Subscription Agreement will have no further force and effect and neither party would be required to perform its obligations thereunder. Copies of the Subscription Agreement (together with the Subscription Term Sheet), the Amended Support Agreement and the Shaw Support Agreement (without signature pages) will be attached to the Confidential Supplement to the Monitor's Tenth Report which will be filed in respect of this motion. These agreements are being filed on a confidential basis with the material non-financial terms of such agreements being disclosed in this Affidavit, in order to ensure the integrity of the equity investment solicitation process and to protect Canwest Global and Shaw which has, in the opinion of RBC and the CMI Entities, put forward the best offer after a lengthy and exhaustive equity investment solicitation process. It is my belief that disclosing the Subscription Agreement (together with the Subscription Term Sheet), the Amended Support Agreement and the Shaw Support Agreement at this time would be extremely detrimental to the CMI Entities' interest as it would significantly weaken Canwest Global's ability to bargain with other potential investors which may later wish to make an equity investment in Restructured Canwest Global in the event that the Approval Order is not granted, as, among other things, the

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financial terms that the CMI Entities were prepared to accept will have been disclosed to the market. It is proposed that the Monitor will post copies of the executed Subscription Agreement (together with the Subscription Term Sheet), Amended Support Agreement and Shaw Support Agreement (without signature pages) on the Monitor's website and will distribute copies of such agreements (without signature pages) to the service list should the Approval Order be granted by this Honourable Court.

30. The Subscription Agreement contains certain customary deal protection provisions, including an "exclusivity" provision and a "termination fee" provision in favour of Shaw. In particular, the Subscription Agreement provides that Canwest Global shall not, directly or indirectly, through any officer, director, employee, representative or agent (collectively, "**Representatives**" and each a "**Representative**") of Canwest Global or any Representative of any of its affiliates,

- (a) solicit, initiate, knowingly facilitate or knowingly encourage (including by way of furnishing information or entering into any agreement) any inquiries or proposals regarding an Acquisition Proposal (as defined below);
- (b) participate in any substantive discussion or negotiations with any person (other than Shaw) regarding an Acquisition Proposal;
- (c) accept, approve, endorse or recommend or propose publicly to accept, approve, endorse or recommend any Acquisition Proposal; or
- (d) enter into, or publicly propose to enter into, any agreement in respect of an Acquisition Proposal.

31. Canwest Global is required, with limited exception, to terminate any existing solicitations, discussions or negotiations with any person (other than Shaw) that has made or may make, an Acquisition Proposal. Canwest Global has also agreed not to release any third party from any standstill covenant to which it is a party, or amend, waive or modify in any way any such standstill covenant.

32. Canwest Global is further required, with limited exception, to promptly notify and apprise Shaw in the event that Canwest Global or its Representatives receives, after the date of

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the Subscription Agreement, any Acquisition Proposal or any request for information or discussions with respect to an Acquisition Proposal.

33. The term "Acquisition Proposal" is defined in the Subscription Agreement as any proposal other than from Shaw that:

- (a) relates to the emergence from creditor protection under the CCAA of Canwest Global and its affiliates (other than Canwest Limited Partnership ("Canwest LP") and Canada (Canada) Inc. ("CCI") and their subsidiaries); and
- (b) involves (i) any merger or tender offer made in respect of Canwest Global and its affiliates (other than Canwest LP and CCI and their subsidiaries); (ii) any sale of assets having a value over \$5 million of Canwest Global or any of its affiliates (other than Canwest LP and CCI and their subsidiaries); (iii) the acquisition of any equity interest in Canwest Global or Restructured Canwest Global or the issuance of any debt securities of Canwest Global or Restructured Canwest Global; (iv) any transaction similar to those described in the foregoing clauses involving Canwest Global's affiliates (excluding Canwest LP and CCI and their subsidiaries); or (v) any inquiry, proposal, offer or public announcement of an intention to do any of the foregoing,

but excluding the Recapitalization Transaction and the Subscription Agreement.

34. The Subscription Agreement provides that it may be terminated at any time prior to the Effective Date:

- (a) by mutual written agreement of the parties;
- (b) by Shaw, at any time prior to the Effective Time, if:
 - (i) certain conditions relating to the "bring-down" of representations and warranties and the performance of covenants have not been satisfied;
 - (ii) certain conditions that are set forth in the Subscription Agreement have not been satisfied, and such conditions are incapable of being satisfied on or before a date that is six months from the date of the

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Subscription Agreement (*i.e.*, August 11, 2010) (the “**Outside Date**”) and Shaw has not waived such conditions;

(iii) any of the Participating Creditors breach, in any material respect, any of their representations, warranties, covenants or agreements set forth in the Shaw Support Agreement which breach would result in a failure to satisfy any of the conditions; or

(iv) the Shaw Support Agreement is terminated by the Consenting Noteholders in accordance with its terms.

(c) by Canwest Global, at any time prior to the Effective Time, if:

(i) the Shaw Support Agreement is terminated by Canwest Global in accordance with section 8(d) of the Shaw Support Agreement, which provision, as noted below, allows Canwest Global to terminate that agreement in circumstances where a definitive GS Amending Agreement (as defined below) with Goldman Sachs is acceptable to both Canwest Global and the Ad Hoc Committee but is not acceptable to Shaw;

(ii) certain conditions in favour of Canwest Global that are set forth in the Subscription Agreement are not satisfied or cannot reasonably be expected to be satisfied on or before the Outside Date and Canwest Global has not waived such conditions; or

(iii) the Shaw Support Agreement is terminated by the Consenting Noteholders in accordance with its terms.

35. The Subscription Agreement provides for a termination fee in the amount of \$5 million (the “**Termination Fee**”) to be paid by Canwest Global to Shaw in the event that:

(a) the Subscription Agreement is terminated by Shaw at any time prior to the implementation of the Recapitalization Transaction (the “**Effective Time**”) as a result of a failure by Canwest Global to satisfy certain closing conditions (relating to the “bring-down” of representations and warranties and the performance of

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covenants) and the closing has not occurred on or before the Outside Date solely because of a failure to satisfy such condition; or

- (b) the Subscription Agreement is terminated by Canwest Global at any time prior to the Effective Time as a result of the Shaw Support Agreement being terminated in accordance with section 8(d) of the Shaw Support Agreement (described above),

(each, a “**Termination Event**”).

36. In the event that a Termination Event has occurred, the Subscription Agreement provides that, in addition to the Termination Fee, Canwest Global will reimburse Shaw up to \$2.5 million for any and all out-of-pocket fees and expenses incurred by Shaw or its affiliates in connection with the negotiation and entering into of the Subscription Agreement and the Recapitalization Transaction (the “**Expense Reimbursement**”). The Expense Reimbursement is also payable to Shaw upon closing of the Recapitalization Transaction.

37. Among other representations, warranties and covenants, Canwest Global has covenanted to use its commercially reasonable efforts to, or to cause its affiliates to, terminate the participation of any employee of Canwest LP, CCI and their subsidiaries (the “**Specified Affiliates**”) in a pension or benefit plan of Canwest Global or its other subsidiaries (other than the Specified Affiliates), and to terminate all inter-company plan participation agreements between a Specified Affiliate and Canwest Global and one of its subsidiaries (other than a Specified Affiliate). 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 Affiliates.

38. As noted above, the Subscription Agreement also requires the proposed Approval Order to provide for a charge over all of the assets, property and undertaking of the CMI Entities (as defined in the Initial Order) ranking after all existing charges at the date thereof to secure the payment of the Termination Fee and the Expense Reimbursement.

Subscription Term Sheet

39. The principal terms of the subscription transaction by Shaw (the “**Shaw Transaction**”) are more fully set out in the Subscription Term Sheet. The Subscription Term

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Sheet does not create any obligation on the parties until the Subscription Agreement has become binding and effective.

40. The Subscription Term Sheet contemplates that, after the closing of the Shaw Transaction and the completion of the Recapitalization Transaction, the shareholders of Restructured Canwest Global will consist of:

- (a) Shaw, which will hold a minimum of 20% of the outstanding equity shares of Restructured Canwest Global that are issued and outstanding immediately after giving effect to the Recapitalization Transaction; and
- (b) the Participating Creditors.

41. The share capital of Restructured Canwest Global will be comprised of the following classes of shares:

- (a) Class A Voting Shares issued to Shaw;
- (b) Non-Voting Shares issued to Participating Creditors; and
- (c) Class B Subordinated Voting Shares issued to Participating Creditors,

provided that: (i) the Non-Voting Shares and the Class B Subordinated Voting Shares will trade as a unit; and (ii) a fraction of a Class B Subordinated Voting Share will attach to each whole Non-Voting Share such that immediately following the Recapitalization Transaction, Class B Subordinated Voting Shares will represent, in aggregate, 20% in number (and, for greater certainty, 20% of the total votes) of the total outstanding Class A Voting Shares and Class B Subordinated Voting Shares.

42. The Subscription Term Sheet provides that Restructured Canwest Global, Shaw and the Participating Creditors will enter a definitive shareholders agreement which will govern their interests in, and the operation of, Restructured Canwest Global. The shareholders agreement will provide for matters such as board composition, management team composition, pre-emptive rights, capital calls, restrictions on share transfers, liquidity rights and such other terms as are customary for a shareholders agreement in such circumstances.

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43. With respect to board composition in particular, the Subscription Term Sheet provides that the initial board of directors of Restructured Canwest Global (the “**Restructured Board**”) will be comprised of eleven or nine directors as follows: (i) six nominees (all of whom must be Canadian as defined in the CRTC Direction) selected by Shaw in the event that Shaw holds at least 50% of the equity shares of Restructured Canwest Global at any time following the Restructuring Transaction or four nominees (all of whom must be Canadian as defined in the CRTC Direction) selected by Shaw in the event that Shaw holds less than 50% of the equity shares of Restructured Canwest Global at any time following the Restructuring Transaction; (ii) three nominees selected by the Participating Creditors; (iii) one Independent Director (who must be Canadian as defined in the CRTC Direction) mutually agreed by Shaw and the Participating Creditors; and (iv) the Chief Executive Officer of Restructured Canwest Global (who must be Canadian as defined in the CRTC Direction). The Subscription Term Sheet also sets out procedures for board nomination rights and a method to replace vacancies on the Restructured Board.

44. With respect to liquidity rights, appended to the Subscription Term Sheet is a schedule which sets out certain liquidity rights which will govern the parties, including the method by which shares will be valued, in the event that (i) one or more of the Participating Creditors wish to sell their shares in Restructured Canwest Global to Shaw; (ii) the shareholders of Restructured Canwest Global receive an unsolicited *bona fide* fully financed and unconditional offer from an arm's length financially-qualified third party for all of the outstanding equity shares of Restructured Canwest Global; (iii) one shareholder wishes to sell at least 5% of the outstanding equity shares or if less, all of such shareholder's equity shares in Restructured Canwest Global; (iv) a shareholder receives an unsolicited *bona fide* fully financed and unconditional offer from an arm's length financially qualified third party for at least 5% of the outstanding equity shares or if less than 5%, all of such shareholder's shares, in Restructured Canwest Global; or (v) Shaw wishes to sell all or some of its equity shares in Restructured Canwest Global.

45. The Subscription Term Sheet provides that it will terminate and be at an end in the event that the Recapitalization Transaction is not completed on or before the Outside Date (*i.e.*, August 11, 2010) or such later date as Shaw and Canwest Global may determine from time to time.

Amended Support Agreement

46. As the Subscription Agreement contemplates that Restructured Canwest Global will be a private company, as opposed to a publicly-traded entity (as was contemplated in the original Support Agreement and Restructuring Term Sheet), the CMI Entities and the Ad Hoc Committee have agreed to enter into the Amended Support Agreement in order to amend and restate a number of the terms of the Support Agreement and the Restructuring Term Sheet so that each will conform with the Subscription Agreement.

47. Some of the material amendments or revisions set out in the Amended Support Agreement (not otherwise discussed above) are as follows:

- (a) if an affected creditor (including an 8% Senior Subordinated Noteholder), would, individually or on a *pro forma* basis, hold at least 5% of the outstanding equity shares of Restructured Canwest Global if it elected to receive shares in full satisfaction of any of its proven claims and other payment entitlements under the Amended Support Agreement, then such affected creditor may elect to receive shares of Restructured Canwest Global in full satisfaction of all such claims;
- (b) each affected creditor (including an 8% Senior Subordinated Noteholder) that is not permitted to, or otherwise elects not to, receive shares of Restructured Canwest Global, shall receive a cash payment equal in dollar value (based upon the implied equity value of Restructured Canwest Global under the Subscription Term Sheet (the “Equity Value”)) to its *pro rata* entitlement to the equity shares of Restructured Canwest Global that it would have otherwise received under the Subscription Term Sheet in full and final satisfaction of its claims. As a result, it is expected that the vast majority of affected creditors under the Plan will receive cash distributions in lieu of shares in Restructured Canwest Global at a value greater than the implied equity value contemplated in the initial Restructuring Term Sheet approved by this Honourable Court;
- (c) each affected creditor (including a 8% Senior Subordinated Noteholder) that is a Participating Creditor (*i.e.*, permitted to and otherwise elects to receive shares of Restructured Canwest Global) will receive shares in Restructured Canwest Global representing a percentage ownership of the outstanding equity shares of

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Restructured Canwest Global equal to such Participating Creditors' *pro rata* entitlement to the applicable equity percentages outlined in the Subscription Term Sheet;

- (d) each of the shareholders of record of Canwest Global will, in exchange for its existing shares in the capital of Canwest Global, receive a cash payment equal to such shareholder's *pro rata* entitlement (based upon the number of shares owned by such shareholder of Canwest Global and, for greater certainty, without taking into account the number of votes attributed to each such share) to the amount obtained by multiplying (i) the Equity Value by (ii) the percentage of the Equity Value to be allocated to the existing shareholders of Canwest Global as set out in the initial Restructuring Term Sheet;
- (e) Restructured Canwest Global, Shaw and the Participating Creditors shall enter into a definitive shareholders agreement governing their interests in, and the operation of, Restructured Canwest Global in a form acceptable to Restructured Canwest Global, Shaw and the Ad Hoc Committee; and
- (f) creditor approval of the Plan shall have occurred by April 15, 2010, and the Plan shall have been implemented by no later than the Outside Date (*i.e.*, August 11, 2010) unless such dates are extended. The Use of Cash Collateral and Consent Agreement has been amended to conform with the new milestone dates.

48. The Amended Support Agreement also amends certain conditions of the Restructuring Term Sheet by, among other things: (a) requiring *Competition Act* (Canada) approval in a form of a final non-appealable decision on terms satisfactory to the CMI Entities and the Ad Hoc Committee; (b) requiring Canwest Global to apply to cease to be a "reporting issuer" and to delist its securities from the TSX Venture Exchange; and (c) requiring that the subscription by Shaw be completed in accordance with the Subscription Agreement. The Amended Term Sheet also removes conditions with respect to, among other things, the listing of Canwest Global's securities on the TSX.

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Shaw Support Agreement

49. The obligations of Shaw and the Ad Hoc Committee to support the Recapitalization Transaction are subject to the conditions set out in the Shaw Support Agreement. The agreement contains representations, warranties and covenants of Canwest Global, Shaw and the Consenting Noteholders, many of which are similar to those contained in the Support Agreement. In particular, each of the Consenting Noteholders covenants to pursue, support and use its commercially reasonable efforts to complete the Recapitalization Transaction and implement the Plan (as modified to reflect the contemplated equity subscription by Shaw and the contemplated private company transaction) in good faith and to do all things necessary and appropriate in furtherance of the Recapitalization Transaction. Similarly, Shaw agrees to pursue, support and use its commercially reasonable efforts to complete the Recapitalization Transaction and implement the Plan in good faith, as well as to perform all of its covenants under the Subscription Agreement. Subject to limited exceptions, each Consenting Noteholder further covenants that, to the extent eligible to do so, it will elect to receive shares of Restructured Canwest Global.

50. The Shaw Support Agreement also formalizes the agreement between Shaw and the Consenting Noteholders with respect to the contemplated equity subscription by Shaw and its impact on the Recapitalization Transaction as it was originally contemplated under the Support Agreement (to which Shaw is not a party). It also provides for the support by the Consenting Noteholders of Shaw's equity investment on the terms set out in the Subscription Agreement. In particular, the Shaw Support Agreement expressly provides that the Restructuring Term Sheet may not be amended in a manner that materially adversely affects Shaw without the prior written consent of Shaw (although amendments that affect matters as between affected creditors only are generally permitted).

51. Among other things, pursuant to the Shaw Support Agreement, it is a condition of each party's obligation to consummate the Shaw Transaction that:

- (a) the CW Investments Shareholders Agreement shall have been amended and restated or otherwise addressed in a manner agreed to by Shaw, Canwest Global and the Ad Hoc Committee, subject to CRTC approval, if required; or

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- (b) the CW Investments Shareholders Agreement shall have been disclaimed or resiliated in accordance with the provisions of the CCAA and the CMI Claims Procedure Order and, if applicable, the Court issues an Order that such agreement be disclaimed or resiliated, and such Order shall not have been amended, varied or stayed and all appeal periods shall have expired or, in the event of an appeal, a final determination dismissing such appeal shall have been made.

52. The foregoing condition in the Shaw Support Agreement is subject to a proviso that such condition as it relates to Shaw shall be satisfied if either clause (a) or (b) above is satisfied and as it relates to Canwest Global and the Consenting Noteholders shall be satisfied, at their election, if clause (a) or (b) above is satisfied and that, notwithstanding any other provision of the Shaw Support Agreement, the Subscription Agreement or the Subscription Term Sheet, neither Canwest Global nor the Consenting Noteholders shall be obligated to pursue a disclaimer or resiliation of the CW Investments Shareholders Agreement.

53. In order to satisfy the condition that the CW Investments Shareholders Agreement shall have been amended and restated or otherwise addressed, Shaw, Canwest Global and the Ad Hoc Committee have agreed to jointly pursue in good faith an amendment and restatement of the CW Investments Shareholders Agreement with Goldman Sachs (a "GS Amending Agreement"). Shaw, Canwest Global and the Ad Hoc Committee have agreed to cooperate with each other in the joint pursuit of such amendment or restatement and each party has agreed to keep the other parties fully and timely informed concerning the development and progress of any such discussions. If Shaw, Canwest Global and the Ad Hoc Committee determine that it is advisable for Canwest Global to enter into a GS Amending Agreement, then each of them shall, immediately prior to or concurrently with the execution and delivery of the definitive agreements, execute and deliver to each other a side letter confirming that the condition has been satisfied. As noted above, Canwest Global is not required to take any steps towards disclaiming or resiliating the CW Investments Shareholders Agreement.

54. The decision with respect to whether it is advisable for Canwest Global to enter into a GS Amending Agreement is to be made jointly by mutual agreement, provided, however, that Canwest Global and the Ad Hoc Committee may, at any time, notify Shaw that the form of a proposed GS Amending Agreement is acceptable to each of them. If Shaw advises Canwest

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Global and the Ad Hoc Committee that the proposed GS Amending Agreement is not acceptable, then Canwest Global may enter into a GS Amending Agreement provided that immediately prior to entering into such GS Amending Agreement, Canwest Global shall immediately terminate the Shaw Support Agreement and the Subscription Agreement and shall pay the Termination Fee and Expense Reimbursement to Shaw.

55. Each of Canwest Global, Shaw and the Ad Hoc Committee have the right to terminate the Shaw Support Agreement in specified circumstances, including by mutual agreement, in the event that the Support Agreement is terminated and for failure to consummate the subscription transaction by the Outside Date or to satisfy closing conditions or comply with certain covenants.


Conclusion

56. The CMI Entities believe that the Subscription Agreement (including the Subscription Term Sheet), Amended Support Agreement and Shaw Support Agreement together represent the best available transaction for the equity investment required by the Recapitalization Transaction and are a crucial step towards the finalization of the Plan. It follows a lengthy and comprehensive equity investment solicitation process – one that has had a very high degree of public visibility given the nature of the assets available – conducted by RBC, Canwest Global's financial advisor, and is the result of extensive arm's length negotiations between the parties. The CMI Entities also believe that the Termination Fee and the Expense Reimbursement and deal protection provisions are reasonable and necessary in the circumstances.

SWORN BEFORE ME at the City of
Winnipeg, in the Province of Manitoba,
on February 12, 2010.



Commissioner for Taking Affidavits



Thomas C. Strike

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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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Schedule "B"

Partnerships

1. Canwest Television Limited Partnership
2. Fox Sports World Canada Partnership
3. The National Post Company/La Publication National Post

TAB G

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF JOHN E. MAGUIRE
SWORN BEFORE ME
ON THIS 23RD DAY OF MARCH, 2010



A COMMISSIONER FOR TAKING AFFIDAVITS

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA,
APPOINTMENT EXPIRES MAY 14, 2010.



SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

361 University Avenue
Toronto, ON M5G 1T3

Telephone: (416) 327-5284 Fax: (416) 327-5417

FAX COVER SHEET

Date: March 1, 2010

TO:

FAX NO.:

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Mario Forte	416-216-3930
David Byers / Maria Konyukhova	416-947-0866
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Benjamin Zarnett / Logan Willis	416-979-1234
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Gavin Finlayson / S.R. Orzy	416-863-1716
Edmond Lamek	416-364-7813
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Hugh O'Reilly	416-964-5895

FROM: Eartha Reid, Secretary to The Honourable Madam Justice Pepall

TOTAL PAGES (INCLUDING COVER PAGE): 20

MESSAGE:

Please see attached Reasons for Decision of Justice Pepall dated March 1, 2010. Thank you.

The information contained in this facsimile message is confidential information. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address

Original will NOT follow. If you do not receive all pages, please telephone us immediately at the above number.

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

COUNSEL: *Lyndon Barnes, Alex Cobb and Duncan Ault* 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

¹ R.S.C. 1985, c. C. 36, as amended.

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("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.

[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

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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 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.

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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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 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

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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 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

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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.
- 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.

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- 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 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.

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[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 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

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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.

[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'

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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 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

³ In argument, this condition was waived by Catalyst.

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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?

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.

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[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 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;

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.

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- 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 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,

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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.

[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 notcholders' claims is proposed to be

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

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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 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.

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[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.

[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.

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[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 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

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Hoc Committee to achicve 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.



J. Repall, J.
Repall 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.

Released: March 1, 2010

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 29 st DAY
)	
MADAM JUSTICE PEPALL)	OF MARCH, 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
(Stay Extension Motion)**

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 John E. Maguire sworn March 23, 2010, the 12th Report of FTI Consulting Canada Inc. in its capacity as court-appointed monitor of the CMI Entities (the "Monitor"), 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 Inc., Shaw Communications Inc., and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

Draft

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 the Stay Period, as defined in the Initial Order dated October 6, 2009, and as subsequently extended, is hereby extended from March 31, 2010 until June 15, 2010.
-

Draft

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**

1. Canwest Television Limited Partnership
2. Fox Sports World Canada Partnership
3. The National Post Company/La Publication National Post

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

Ontario

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS
(STAY EXTENSION MOTION)**

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