

Name of Deponent: Michael Costello
Affidavit sworn: August 8, 2005

ACTION NO: 0401-19905

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

IN THE MATTER OF

**TITAN INVESTMENTS LIMITED PARTNERSHIP, and TITAN GENPAR INC,
and EVOLUTION CAPITAL MANAGEMENT LTD, and THE ESTATE OF
DAVID COMTE, DECEASED, and THE COMTE FAMILY TRUST and
PREDATOR HOLDINGS LTD.**

**IN THE MATTER OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2,
and RULES 467 and 468 OF THE ALBERTA RULES OF COURT**

A F F I D A V I T

I, MICHAEL COSTELLO, CA•CBV, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am an associate with Alger & Associates Inc. (the "Receiver"), and as such, have knowledge of the matters hereinafter deposed to, save where stated to be based on information and belief, in which case I verily believe the same to be true.
2. Except as otherwise expressly defined herein, capitalized terms shall have the meaning as defined in the Receiver's First Report and Second Report. The term partner and investor are used interchangeably throughout this affidavit. All funds, unless specifically denoted to be otherwise, are in U.S. dollars.

Formulation of the Re-Distribution Formula

3. Since the formation of the Investors Committee by Order of the Honourable Mr. Justice LoVecchio on January 21, 2005, the members of the Investors Committee have discussed with the Receiver the potential recovery of monies on behalf of the Titan

Partnership, the eventual distribution of monies to the investors therein and the issues that may arise on these matters. On January 22, 2005, David Miller, a member of the Investors Committee, distributed a sample distribution formula to the other members of the Investors Committee and to the Receiver for consideration and discussion. Mr. Miller's proposed formula was intended to be applied uniformly to avoid the need to address individual legal arguments and circumstances which may be advanced by each investor in the Titan Partnership. Recognizing that other approaches may be costly and uneconomic, the initial formula sought recovery of only the False Profits received by the Overpaid Partners and to distribute these and other assets realized by the Titan Partnership to Unpaid Partners based upon their remaining net investment in the Titan Partnership (i.e. investments less distributions received). Attached hereto as Exhibit "A" to this my Affidavit is a true copy of the Sample Distribution Formula circulated on January 22, 2005 to the members of the Investors Committee and the Receiver by David Miller.

4. At that time, the Receiver's primary concern was the realization of assets by the Titan Partnership and other entities under the Receiver's control or influence. However, the Receiver was available to the Investors Committee to provide information, advice and guidance with respect to an appropriate distribution formula.

5. Between January and March 2005, the Receiver engaged in numerous discussions with the members of the Investors Committee regarding various alternatives to Mr. Miller's proposal.

6. On February 19, 2005, Jay Fiset, a member of the Investors Committee, emailed to the Receiver and other members of the Investors Committee an alternative gross investment-based distribution and loss sharing formula. Attached hereto as Exhibit "B" to this my Affidavit is a true copy of the description of the formula components and tests for equality provided by Mr. Fiset to me and to the members of the Investors Committee. Subject to the Receiver's review for fairness and revision for mathematical integrity, this formula was ultimately approved by the Investors Committee and was included in the

Joint Notice of Motion filed by the Receiver and the Investors Committee on March 18, 2005 as the proposed "Re-Distribution Formula".

7. Two members of the Investors Committee, Croft Axsen and Jay Fiset, actually experience (in Mr. Fiset's case via his corporation) greater losses under the gross investment-based Re-Distribution Formula than under the net investment-based distribution and loss sharing formula proposed by David Miller on January 22, 2005. However, both Mr. Axsen and Mr. Fiset have expressed that they recognize that this gross-investment basis Re-Distribution Formula is the fairest and most cost-effective method to allocate losses, as all investors suffer the projected losses proportionately, rather than just those who had a remaining net investment in Titan.

8. Additionally, unlike a modified net investment formula, whereby, in order to allocate the losses more equitably than under the pure net investment method noted in paragraph 6, certain distributions were to be excluded from the net investment definition (for example, distributions made during a certain time frame, or distributions in excess of a certain percentage of gross investments), the gross investment method involves no such arbitrary determinations regarding which distributions to include or exclude.

9. The Receiver viewed (and continues to view) this gross investment-based Re-Distribution Formula to be the fairest and most cost-effective method to allocate the Titan Partnership's losses, for the reasons set out above.

10. The re-distribution figures included in my Affidavit sworn March 18, 2005 were amended in Exhibit "H" of the Receiver's Second Report dated April 14, 2005, as is set out at sections 6.2, 6.2.7 and 6.3 of that Report. In particular, upon receiving Proofs of Investment from certain investors in the Titan Partnership, the Receiver was able to identify errors in relation to improper accounting by the Titan Partnership on its Partner Cards as follows:

- (a) Non-cash transfers – this error overstated a Partner's investment and redemption figures between entities under common control, but not the overall

net investment total, with the exception of one Partner, whose net investment total was understated;

- (b) Non-cash transfers from Comte Global Partners to Titan – this error overstated the investment and redemption figures but not the net investment total, and
- (c) Investments and subsequent redemption within Prometheus partnership prior to its acquisition by Titan – this error understated the Partner’s investment and redemption accounts with a negligible effect on the net investment total.

11. The Receiver identified all of the investors affected by these errors and amended the Partner Cards accordingly. These non-cash transfer amendments were necessary in order to remove “fictitious” investments from the gross investment base, which, if not amended, would result in these partners suffering a loss on an investment that was never made into Titan in cash form and a required repayment of an amount never received in cash, but was merely a “book accounting” error made by David Comte. Attached hereto as Exhibit “C” to this my Affidavit is a summary of the non-cash transfers in the Titan Partnership or its predecessors.

Affidavit of Tad Sudol sworn August 3, 2005

12. With respect to the facts outlined in Mr. Sudol’s Affidavit at paragraph 19 regarding the discussions that I had with Mr. Sudol in my conversation of February 10, 2005 about the investments of Technology & Research Inc. (“TRI”), Technology & Research Co. Inc. (“TRCI”) and MS Computing Ltd. (“MS”), I do not recall any discussions regarding transfers between those companies and the reasons for accomplishing same. I do recall discussing receipt of the Proofs of Investments filed for the three companies, their reconciliation with the records of the Titan Partnership, and the status of overall asset realizations at that time. These were the only matters discussed that would have been of immediate interest to me, as discussions regarding distribution formula matters were at very early stages and the focus of the Receiver was on the realization of assets and the agreement of Proofs of Investment to Titan’s records.

13. With respect to Mr. Sudol's assertion at paragraph 20 of his Affidavit that the Investors Committee might seek to recover funds at his expense, as is set out above, the Re-Distribution Formula proposed by the Receiver and the Investors Committee works to the disadvantage of two members of the Investors Committee, relative to the net investment basis formula proposed prior to that formula. Despite this, these members of the Investors Committee have approved this formula, as it represents the fairest and most cost-effective method to allocate losses in the circumstances. It is a formula that the Investors Committee had hoped would lead to the least amount of conflict, notwithstanding the inherent divisive nature of any distribution formula, and the fact that the Investors Committee recognized that there is no perfect re-distribution formula.

14. With respect to Mr. Sudol's assertion in paragraph 22 (a) of his Affidavit that making a distinction between non-cash transfers and cash transfers is unfair and unreasonable, this distinction by the Receiver is founded on the basis that the former involves simply a "book" entry wherein no partnership cash changes hands and all of the assets remain within the partnership at all times, whereas in the latter the transferor obtains receipt of the cash from the partnership and a subsequent cash investment is made into the partnership in the name of another entity. In Mr. Sudol's case, the subsequent investment was made by a different entity owned and controlled by a family member.

15. With respect to Mr. Sudol's assertion in paragraph 22 (b) of his Affidavit that he is unique amongst Titan's investors regarding his situation, I believe that he lacks knowledge regarding the detailed investment activity of the vast majority of the partners listed in Exhibit A to the Receiver's Second Report. Furthermore, I specifically informed Mr. Sudol in my email to him of March 24, 2005, which is attached as Exhibit B to his Affidavit, that Croft Axsen was noted as being in a similar situation to his.

16. With respect to Mr. Sudol's assertion in paragraph 22 (c) of his Affidavit that a net investment formula is less arbitrary, if the majority of the Titan partners are to have their net investments amended for certain allegedly preferential payments in order to more equitably share losses amongst partners, it will require an arbitrary determination

regarding which distributions to include and which to exclude, a factor not present in a gross investment based formula.

17. With respect to Mr. Sudol's assertions in paragraph 23 of his Affidavit that the Receiver had simply become the mouthpiece for the Investors Committee, that the Receiver would defer to the Investors Committee and defend them, as an independent Officer of the Court, the Receiver is aware of its duties and responsibilities and believes that it has fulfilled them to date with respect to this matter in general and with respect to the Receiver's Re-Distribution Formula review and approval in particular.

18. With respect to Mr. Sudol's assertion in paragraph 26 of his Affidavit that he believes Mr. Axsen's statement in his affidavit of March 18, 2005 to be that the cost of readjusting the formula adopted by the Investors Committee would exceed \$600,000 (based on \$5,000 for each of the 128 Titan investors) this cost was intended to represent the estimated cost to address all of the individual change of circumstance arguments that could be put forward by all of the Titan investors in the event that this change of circumstance was allowed as a defense to the Re-Distribution Formula and not the cost of revising the schedules themselves.

19. With respect to Mr. Sudol's assertion in paragraph 26 of his Affidavit that the cost of amending the Re-Distribution Schedules for his investment will be insignificant, if this is required to be accomplished pursuant to Court direction, the Receiver is aware of two other investors that have stated that they may seek independent counsel to consider their interests in making a similar application and a third investor who has requested an adjournment to address his unique situation. I am informed that this application will be heard at a later date.

The Receiver's position on revision of the Re-Distribution Formula

20. Although the Receiver, like the Investors Committee, realizes that there is no perfect formula, and that there are dissenting investors (and may continue to be dissenting investors) with respect to the Re-Distribution Formula, and that such investors may wish

to submit their cases to the Court for its determination, should any dissenting investor assert their individual circumstances, the costs incurred by the Receiver, the Investors Committee and legal counsel to address these individual circumstances ought not to be borne by the investors as a whole. If individual cases are to be addressed for the benefit of these individuals, the burden of such review should also be borne by these individuals; otherwise an undue burden will be borne by the other investors. If this principle is adopted by the Court, this should also dissuade any immaterial objections, the cost of which could well exceed the benefits to be gained by the dissenting investor.

21. In Mr. Sudol's case, the projected increased recovery by his "related group" will be between \$6,800 and \$24,300, assuming that a repayment by the Overpaid Investors is ordered by the Court and is accomplished by the Receiver and further, that no similar situations to Mr. Sudol's are successfully argued before the Court, which would serve to dilute these increased recoveries by Mr. Sudol. Attached hereto as Exhibit "D" is an analysis that I prepared of the effect of the Re-Distribution Formula upon TRI, TRCI and MS, as well as an analysis of the re-distribution that we believe is proposed by Mr. Sudol.

22. I make this Affidavit in relation to the relief sought in the Joint Amended Notice of Motion filed by the Receiver and the Investors Committee.

SWORN BEFORE ME at the City of)
Calgary, in the Province of Alberta,)
this 8th day of August, 2005.)

N.D. Souza

A COMMISSIONER FOR OATHS)
in and for the Province of Alberta)

NATALIE M. D'SOUZA
MY COMMISSION EXPIRES
DECEMBER 26, 2006

Mike Costello

MICHAEL COSTELLO

Sample Distribution Formula

(For Discussion Purposes Only)

THIS IS EXHIBIT
referred to in the Affidavit of
MICHAEL COSTELLO
Sworn before me this 8th
day of August, A.D. 20 05
N. D'Souza
A Commissioner in and for the Province of Alberta

NATALIE M. D'SOUZA
MY COMMISSION EXPIRES
DECEMBER 26, 2006

Principal Base ["PB"]:

Total amount of capital invested since the inception of the Titan LP
My understanding is that this is aprox. \$10,000,000 USD – pls. confirm

Principal Invested ["PI"]:

Original invested capital per LP holder

Principal Returned ["PR"]:

Capital returned equal to or less than the PI per LP holder

Adjusted Principal Base ["APB"]:

PB less principal returned (the sum of all PR's) since the inception of the Titan LP

Recovered Capital ["RC"]

Equal to: Funds paid to LP holders in excess of PI + Tax Recovery (GST etc.) + Comte
Estate Assets + Funds on Deposit on behalf of the Titan LP - Costs

Formula:

$$[(PI \text{ less } PR) / APB] * RC$$

Sample Calculation:

$$[(\$500,000 \text{ less } \$175,000) / \$7,500,000] * \$4,500,000$$

$$= \$ 195,000$$

referred to in the Affidavit of
MICHAEL COSTELLO
Sworn before me this 8th
day of August A.D. 20 05

N.D. Souza
NATALIE M. D'SOUZA
MY COMMISSION EXPIRES
A Commissioner in and for the Province of Alberta
DECEMBER 26, 20 06

The Formula Components:

Projected Recovered Capital "PRC"

(This is basically the same as Davids Formula but I added the word projected to account for the variables we will face in our collection process. As well it will include the contribution of the % loss from the overpaid partners

Equal to: (Funds paid to LP holders in excess of PI – their portion of the partnership loss)+ Tax Recovery (GST etc.) + Comte Estate Assets + Funds on Deposit on behalf of the Titan LP et al + Assets in Janet Comte's name – Costs

GUESSTIMATE= \$7,000,000

Principal Base ["PB"]:

Total amount of capital invested since the inception of the Titan LP
= \$13,569,928

Adjusted Principal Base ["APB"]:

PB less principal returned (the sum of all PR's) since the inception of the Titan LP
= \$8,269,928

Partners Payouts "PP"

=PB-APB
= \$5,300,000

Loss Ratio "LR" NOTE: This ratio changes significantly based changes to the projected recovered capital

=(PRC+PP)/PB
=.9064

Total Individual Investment "TII"

The total amount of capital invested into the partnership

Payout "PO"

All payouts received by the partner from TITAN

The 3 Formulas are as follows:

Partners with False Profits:

$PO - (TII * LR) = \text{Payment to receiver for redistribution}$

Partners with NO payouts

$TII * LR = \text{Payout to the partner}$

Partners with partial payments

$(TII * LR) - PO = \text{Payout to the partner}$

Tests for Equality:

200,000 in and 300,000 out, this must use the partners with false profits formula

Partners with False Profits:

$PO - (TII * LR) = \text{Payment to receiver for redistribution}$

$300000 - (200000 * .9064) = 118,716.80$

Partners Retained Capital = 181,283.20

200,000 in and 0 out, this must use the partners with no payouts formula

Partners with NO payouts

$TII * LR = \text{Payout to the partner}$

$200,000 * .9064 = 181,280.20$

Partners Returned Capital = 181,280.20

200,000 in and 100,000 out, this must use the partners with partial payments formula

Partners with partial payments

$(TII * LR) - PO = \text{Payout to the partner}$

$(200,000 * .9064) - 100,000 = 81,283.20$

Partners Returned Capital = $100,000 + 81,283.10 = 181,283.20$

I believe that these formulas above treat everyone equally, I believe that because of this it may in fact assist us to get the blanket judgment that Frank Deerlove was talking about based on equality. It eliminates all of the potential whining and complaining about the committee did not do it fairly.


I am open to suggestions or ideas regarding any of this, as it is intended for discussion purposes only at this stage. In closing I want to reiterate that at this point I think that this would only work IF we can take the approach of the "blanket judgment" so we do not find ourselves in court with half of the overpaid partners.

Test the formulas with your specific situation and let me know what you think, this approach takes my returned capital from \$114,100 using David's formula down to \$100,127, which I am not thrilled about but I do think it is more fair.

I look forward to your thoughts.

Jay

**Titan Investments LP (and Comte Global Partners ("CGP") predecessor)
Non-Cash Transfers**

referred to in the Affidavit of
MICHAEL COSTELLO
Sworn before me this 8th
day of AUGUST A.D. 20 05

A Commissioner in and for the Province of Alberta
NATALIE M. D'SOUZA
MY COMMISSION EXPIRES
DECEMBER 26, 20 06

A Affected by David Comte within Titan-CGP records
(i.e. no amendment of Titan Partner Card records required by Receiver)

1	Christom Holdings Ltd. Pearson, Thomas	Transferor Transferee
2	JAV International Ventures Ltd. Reitman, Vladimir & Ljubov	Transferor Transferee
3	Nelson, Ed 819680 Alberta Ltd.	Transferor Transferee
4	Dewey, Tobias Dewey, Gina 4513517 Manitoba Ltd.	Transferor Transferor Transferee
5	Maher, Adrian Maher, Nancy Maher's Polypipe Ltd.	Transferor Transferor Transferee

B Affected by Receiver by amending Titan-CGP Partner Card records
(i.e. through efforts noted in section 6.2.7 of second Receiver's report - April 14, 2005)

**Non-cash
Amount**

1	Kurtz, Kristy Kurtz, Stephen Kurtz Farm Acct (S&K) 1071784 Alberta Ltd.	Transferor Transferor Transferor Transferee	(68,751) (161,968) (12,500) 230,719
2	Moldowan, Marilyn 706889 Alberta Ltd.	Transferor Transferee	(30,000) 30,000
3	Gelineau, Guy Chaque Investments LP	Transferor Transferee	(85,720) 85,720
4	Morris, Corrine Hailey Investment Corp.	Transferor Transferee	(28,335) 28,335
5	Moher, Sean Moher, Sheri Moher Sales and Marketing Inc.	Transferor Transferor Transferee	(20,513) (24,575) 45,088

Non-cash transfers

referred to in the Affidavit of
MICHAEL COSTELLO
 Sworn before me this 8th
 day of August A.D. 20 05
N. D'Souza
 A Commissioner in and for the Province of Alberta

**Titan Investments Limited Partnership
 Analysis of Respondents' situation
 US '000's**

**NATALIE M. D'SOUZA
 MY COMMISSION EXPIRES
 DECEMBER 26, 20 06**

PRESENT SITUATION		LOW RECOVERY	HIGH RECOVERY
A	Total gross investment per Table 8.2.1 of second Receiver's report - April 14, 2005	12,052	12,052
B	Projected recovery per Table 8.2.2 of second report (incl. prior dist.)	9,039	11,209
C	Realization % (B/A)	75%	93%
D	Total investment of Respondents per Exhibit A of second report		
	MSCL	110	
	TRI	150	
	TRCI	185	
		445	445
E	Projected Respondents' co.'s realization (C*D)	334	414
	Less: Pre-receivership distributions to Respondents per Exhibit A of second report		
	TRCI	(100)	(100)
	Projected Respondents' co. recoveries via Receiver	234	314

ALTERNATIVE SITUATION UPON SUCCESSFUL ARGUMENT BY RESPONDENTS		LOW RECOVERY	HIGH RECOVERY
A	Total gross investment per Table 8.2.1 of second report	12,052	12,052
	Less: Reduction in investment for Respondents	(100)	(100)
		11,952	11,952
B	Projected recovery per Table 8.2.2 of second report (incl. prior dist.)	9,039	11,209
	Less: Reduction in distribution for Respondents	(100)	(100)
		8,939	11,109
C	Realization % (B/A)	74.8%	92.9%
D	Total investment of Respondents per Exhibit A of second report, as adj.		
	MSCL	110	110
	TRI	150	150
	TRCI	185	85
		345	345
E	Projected Respondents' realization (C*D)	258	321
	Less: Pre-receivership distributions to Respondents per Exhibit A of second report, as adj.		
	TRCI	100	(100)
	Projected Respondents' recoveries via Receiver	258	321

Increased potential recovery for Respondents and reduced recovery for other partners	24.3	6.8
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NOTE: This analysis assumes that none of the other partners make similar arguments for reductions in their investment and distribution figures for similar or other successfully argued situations, which, if they were applicable would serve to otherwise reduce the incremental recovery figures for Respondents above. Similarly, this analysis does not factor in the incremental costs associated with this application and related follow-up to both the Respondents or the other partners.

Name of Deponent: Michael Costello

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A F F I D A V I T

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