

Name of Deponent: Croft Axsen
Affidavit Sworn: June 1, 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, Croft Axsen, of the City of Calgary, in the Province of Alberta, Businessman,
MAKE OATH AND SAY THAT:

1. My wife and I have both sustained significant losses as investors in the business known as Titan Investments Limited Partnership (the "Titan Partnership"). I have also been appointed and acted as a member of the Investors Committee appointed pursuant to the Order of the Court dated January 21, 2005, and as such, I have a personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief, in which case I verily believe the same to be true. I am authorized to swear this Affidavit on behalf of the Investors Committee.

2. Except as otherwise expressly defined herein, capitalized terms shall have the meaning as defined in the Receiver's First Report and Second Report. All funds, unless specifically denoted to be otherwise, are in U.S. dollars.

3. The Investors Committee has received considerable legal advice from its legal counsel, and has had extensive discussions with the Receiver and the Receiver's counsel

with respect to the potential arguments that could be advanced in an application seeking recovery of the funds distributed by the Titan Partnership to certain of the investors therein, and specifically in relation to an application against those investors that have received distributions from the Titan Partnership in an amount that is greater than seventy-five per cent (75%) of the value of their investment in the Titan Partnership (the "Overpaid Investors"), which distributions were made to the detriment of those investors in the Titan Partnership that have not received distributions from the Titan Partnership in an amount that is greater than seventy-five per cent (75%) of the value of their investment (the "Unpaid Investors").

4. In particular, the Investors Committee has considered legal advice provided by its counsel in relation to arguments of fraudulent preferences, fraudulent conveyances, fraud, deceit, conversion, mistake, unjust enrichment, constructive trust and resulting trust. The Investors Committee has also discussed each of these arguments with the Receiver and its counsel.

5. Attached hereto as Exhibit "A" is a true copy of a letter from counsel for the Investors Committee to all Unpaid Investors in the Titan Partnership, which provides further detail as to the legal advice received by the Investors Committee. As is set out in the letter, on the basis of the legal advice provided by its counsel and its discussions with the Receiver and its counsel, the Investors Committee has decided not to advance arguments of deceit, conversion, mistake, unjust enrichment, constructive trust or resulting trust.

6. As stated in the letter attached hereto as Exhibit "A", the Receiver and the Investors Committee brought an application before the Honourable Mr. Justice LoVecchio on May 25, 2005 for an Order releasing the Receiver and the Investors Committee from any liability whatsoever for not advancing arguments of deceit, conversion, mistake, unjust enrichment or constructive trust before the Court on behalf of the Unpaid Investors or on behalf of the Titan Partnership. The letter requested that if any Unpaid Investor opposed the application, that they advise counsel for the Investors

Kelsey Drozdowski
 Direct Line: 403.298.3323
 e-mail: drozdowskik@bennettjones.ca
 Our File No.: 54784-1

May 19, 2005

Via E-Mail or Fax

THE UNPAID INVESTORS IN
 TITAN INVESTMENTS LIMITED PARTNERSHIP
 AS LISTED ON THE ATTACHED SERVICE LIST

Dear Sirs or Madams:

Re: Titan Investments Limited Partnership ("Titan Partnership")

We act as counsel to the Investors Committee. The Investors Committee represents those investors that have not been paid out their investment in the Titan Partnership (the "Unpaid Investors"), excepting those who have sought independent legal representation. We are writing to you to advise of applications that the Investors Committee intends to make on behalf of the Unpaid Investors in the Titan Partnership next Wednesday, May 25, 2005, and to seek your assistance in gathering evidence. **Please direct your urgent attention to this letter.**

Joint application brought by the Receiver and the Investors Committee

As you are aware, the Receiver and the Investors Committee have brought a joint application for a Court Order directing, in part, that those investors in the Titan Partnership who have received distributions from the Titan Partnership (the "Overpaid Investors") repay those distributions to the Receiver, in accordance with the Re-Distribution Schedule, as revised, attached as Exhibit "D" to the Affidavit of Michael Costello sworn March 18, 2005, failing which the Receiver and/or Investors Committee shall be entitled to judgment against those parties for the amounts unpaid by them under the revised Re-Distribution Schedule (the "Joint Application").

The Joint Application was and will be brought pursuant to the *Fraudulent Preferences Act* and the *Statute of Elizabeth* on the grounds that the distributions made to the Overpaid Investors constitute fraudulent preferences and should be declared void. A similar argument can be made pursuant to the *Bankruptcy and Insolvency Act*; this latter argument has not been advanced at this time.

It is our view that there are other grounds for the Joint Application. Arguably, the distributions to the Overpaid Investors were made as a result of the fraud and deceit of David Comte upon the Titan Partnership, were a conversion of the monies by David Comte for the benefit of the recipients, or

THIS IS EXHIBIT " A " referred to in the (Affidavit Declaration) of Croft Axsen Sworn Declared) before me this 1st day of June A.D. 2005
[Signature]
 A Commissioner for Oaths in and for the Province of Alberta
 A Notary Public

Kelsey J. Drozdowski
 Barrister and Solicitor

were otherwise paid by mistake of the Titan Partnership, albeit arising from the intentional acts of David Comte. The distributions are accordingly unjust enrichments of the Overpaid Investors, resulting in the remedy of constructive trust or resulting trust in favour of the Titan Partnership. On April 18, 2005, counsel for the Receiver wrote to counsel for certain of the Overpaid Investors to advise that the Receiver reserves its right to advance these arguments by way of a separate application, and noted that this separate application will not be necessary if the Joint Application brought on the grounds of fraudulent preferences is successful.

The reason for reserving these arguments, rather than advancing them at the same time as the fraudulent preference arguments which are the subject of the currently-scheduled Joint Application, is that these additional arguments give rise to certain defences which are specific to each Overpaid Investor. It is our view that addressing each of the defences that are raised in response to the additional arguments will require the Receiver and the Investors Committee to incur substantial legal costs, which will essentially deprive the Unpaid Investors of the benefit of the estate of the Titan Partnership. Furthermore, it will take significantly longer – perhaps a matter of years – to reach a conclusion to these arguments, during which time the monies paid to the Overpaid Investors will likely continue to disappear. Even if the Receiver and the Investors Committee are successful with these arguments, collecting the amounts paid to the Overpaid Investors, for the benefit of the Unpaid Investors, may be difficult, time-consuming and expensive. Simply put, it is our view that if the Receiver and/or Investors Committee pursue these additional arguments of fraud, deceit, conversion, mistake, unjust enrichment and constructive trust, the costs may exceed the benefits resulting in less money available to be redistributed to the Unpaid Investors.

The Joint Application was scheduled to be heard on May 11, 2005. At the hearing on that date, the Joint Application was adjourned. The Honourable Mr. Justice LoVecchio held that all arguments to be raised by the Receiver and/or the Investors Committee are to be advanced at the same time. He requested that the Receiver and the Investors Committee advise the Court at a meeting in Chambers on May 25, 2005 at 9:00 a.m., whether the Receiver and/or the Investors Committee intend to raise the additional arguments, or any of them, at the Joint Application.

It is our view that advancing the additional arguments will be uneconomical for the Unpaid Investors. Accordingly, in order to expedite these matters and to bring them to a conclusion, cost-efficiently, the Investors Committee intends to advise the Court on May 25, 2005 that it will be proceeding with its Joint Application on the grounds that the distributions made to the Unpaid Investors constitute fraudulent preferences, pursuant to the *Fraudulent Preferences Act*, the *Statute of Elizabeth* and, as an additional argument that has not already been advanced, pursuant to the *Bankruptcy and Insolvency Act*. The Investors Committee does not intend to advance additional arguments of fraud, deceit, conversion, mistake, unjust enrichment and constructive trust, to the extent that these arguments are not already advanced by the Investors Committee in its Notice of Motion filed on March 18, 2005 (notably, the Notice of Motion does seek a declaration that the creation, operation and all activities related to the Titan Partnership constitute a fraud on the investors therein; arguments of fraud will be raised in this context).

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The Receiver shares the concern that pursuing these additional arguments will be uneconomical to the Unpaid Investors. However, as a Court-appointed Receiver, the Receiver has an obligation to raise all reasonable arguments that are available to it to recover the assets of the Titan Partnership.

To address this concern, the Investors Committee and the Receiver intend to bring a Court application on May 25, 2005, for an Order releasing the Receiver and the Investors Committee from any liability whatsoever for not advancing arguments of deceit, conversion, mistake, unjust enrichment or constructive trust before the Court on behalf of the Unpaid Investors or on behalf of the Titan Partnership. Please find enclosed the Joint Notice of Motion with respect to this application.

We are writing to give you, the Unpaid Investors in the Titan Partnership, the opportunity to respond to our application for an Order absolving the Receiver and the Investors Committee of liability. Should you intend to oppose the application, kindly advise us before the application at 9:00 a.m. on May 25, 2005, and attend the application before Mr. Justice LoVecchio on May 25, 2005 at 9:00 a.m. If you have not responded to us that you intend to oppose the application before 9:00 a.m. on May 25, 2005, and you do not attend the application before Mr. Justice LoVecchio on May 25, 2005 at 9:00 a.m., you may be deemed to authorize and consent to the Order releasing the Receiver and the Investors Committee from liability for not advancing the additional arguments.

Proposed settlement offer

The Investors Committee is also seeking authorization from the Unpaid Investors to advance a settlement proposal to the Overpaid Investors on behalf of the Receiver and all Unpaid Investors. While we believe that our argument on the grounds of fraudulent preference is strong, no one can predict the outcome with certainty. Furthermore, we recognize that our ability to realize upon any judgment granted in favour of the Receiver and/or the Investors Committee for those amounts unpaid by the Overpaid Investors under the revised Re-Distribution Schedule is unpredictable, given that Investors are spread out across the country.

In an effort to resolve this matter expeditiously, the Investors Committee and the Receiver will seek authorization from the Court to advance a settlement proposal to each of the Overpaid Investors in the Titan Partnership. The terms of the settlement proposal will be that the Receiver and the Investors Committee, and each of them, agree not to proceed with the Joint Application to recover the amounts distributed by the Titan Partnership against those Overpaid Investors that repay the full amount received by them from the Titan Partnership that is over and above the principal amount invested by those Overpaid Investors (ie. the "false profit amount") to the Receiver on or before a date in 2005, which is prior to the Court hearing our principle Joint Application. The Investors Committee and the Receiver will proceed with the Joint Application to seek recovery of the principal amounts (or rather, that portion of the principal amounts that will put the Overpaid Investors on par with the recovery level of the Receiver) and the "false profit amounts" distributed to those Overpaid Investors that do not repay the false profit amount that they have received to the Receiver by that date.

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As set out in the enclosed Notice of Motion, the Receiver and the Investors Committee will be seeking an Order at the application on May 25, 2005 approving that this settlement proposal be advanced by the Investors Committee and the Receiver to the Overpaid Investors, and that the said settlement proposal, if accepted, shall be binding upon all Unpaid Investors in the Titan Partnership, the Investors Committee, and the Receiver.

Please contact us before the application at 9:00 a.m. on May 25, 2005 to advise whether you authorize the Investors Committee and the Receiver to advance the settlement proposal, in the terms set out above, on your behalf. Should you intend to oppose the application for an Order approving that the binding settlement proposal be advanced, kindly advise us before the application at 9:00 a.m. on May 25, 2005, and attend the application before Mr. Justice LoVecchio on May 25, 2005 at 9:00 a.m. If you have not responded to us that you intend to oppose the application before 9:00 a.m. on May 25, 2005, and you do not attend the application before Mr. Justice LoVecchio on May 25, 2005 at 9:00 a.m., you will be bound by any Order approving that the settlement proposal to the Overpaid Investors.

Evidence regarding circumstances of Unpaid Investors

We would appreciate your assistance in compiling evidence of the impact of the fraud perpetrated by David Comte on your personal financial situation. Should you wish to include your personal circumstances as evidence submitted to the Court to consider, kindly send a written description of those circumstances to me by June 3, 2005. Responses can be sent by email to drozdowskik@bennettjones.ca or by fax to (403) 265-7219, addressed to my attention.

Responses requested

Thank you for directing your attention to these matters. Should you have any questions or concerns about this letter, or about the Joint Application of the Receiver and the Investors Committee generally, please do not hesitate to contact me at the email address above, or by phone at (403) 298-3323.

Alternatively, for further clarification, please contact Guy Gelineau or Jay Fiset, members of the Investors Committee, by email or by phone:

Guy Gelineau: Email: guy50@telus.net
Phone: (403) 860-4317.

Jay Fiset: Email: jay_fiset@personalbestseminars.com
Phone: (403) 215-6856

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Thank you for your assistance.

Yours truly,

BENNETT JONES LLP



Kelsey Drozdowski

KD/ct

cc: Clive Llewellyn
Frank Dearlove

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Affidavit Sworn: June 1, 2005

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A F F I D A V I T

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