

STATEMENT OF CLAIM

1. The Plaintiff, SaltWire Network Inc. ("SaltWire"), is a body corporate, incorporated pursuant to the laws of the Province of Nova Scotia. SaltWire's registered office is suite 900, 1959 Upper Water Street, Halifax, Nova Scotia. SaltWire is a Canadian newspaper publishing company, which owns and publishes dozens of daily and weekly newspapers in Atlantic Canada.
2. The Defendant, Transcontinental Nova Scotia Media Group Inc., is a body corporate incorporated pursuant to the laws of Canada. Transcontinental Nova Scotia Media Group Inc.'s registered office is Suite 3315, 1 Place Ville Marie, Montreal Quebec.
3. The Defendant, Transcontinental Atlantic Media Group G.P., is a partnership registered in the Province of Nova Scotia. Transcontinental Atlantic Media Group G.P.'s registered office is Suite 900, 1959 Upper Water Street, Halifax, Nova Scotia.
4. The Defendant, Transcontinental Printing Inc., is a body corporate incorporated pursuant to the laws of Canada. Transcontinental Printing Inc.'s registered office is Suite 3315, 1 Place Ville Marie, Montreal Quebec.
5. The Defendant, Transcontinental Printing 2005 G.P., is a partnership registered in the Province of Nova Scotia. Transcontinental Printing 2005 G.P.'s registered office is 11 Ragged Lake Boulevard, Halifax, Nova Scotia.
6. The Defendant, Optipress Printing G.P., is a partnership registered in the Province of Nova Scotia. Optipress Printing 2005 G.P.'s registered office is located at suite 900, 1959 Upper Water Street, Halifax, Nova Scotia.
7. The Defendants, Transcontinental Nova Scotia Media Group Inc., Transcontinental Atlantic Media Group G.P., Transcontinental Printing Inc., Transcontinental Printing 2005 G.P., and Optipress Printing G.P. are collectively referred to herein as "Transcontinental". Transcontinental is part of a Montreal, Quebec based international conglomerate with significant interests in publishing, media and marketing.
8. In or about October, 2016, representatives of Transcontinental contacted the principals of SaltWire and indicated that Transcontinental was interested in divesting certain of its assets in Atlantic Canada. The principals of SaltWire owned and operated publishing, media

and marketing assets in Atlantic Canada and, to Transcontinental's knowledge, they were interested in growth opportunities. The principals of SaltWire confirmed to Transcontinental that they were willing to explore the possibility of acquiring some or all of the Atlantic Canadian assets which Transcontinental intended to divest.

9. Dealings between Transcontinental and the principals of SaltWire occurred thereafter and included Transcontinental providing various information and making verbal and written representations to the principals of SaltWire concerning the assets which Transcontinental wished to divest, and the business performance of those assets. As the owner of the assets in question, Transcontinental had full knowledge of and access to all relevant information concerning the assets. In their dealings, SaltWire expected and trusted that Transcontinental was providing it with accurate and complete information concerning the assets which Transcontinental intended to divest and concerning the business performance of those assets.

10. Included among the information provided to the principals of SaltWire by Transcontinental was an October, 2016 prospectus slide presentation setting out details about the Transcontinental organization and about the assets which Transcontinental intended to divest, which were called the "English Local Solutions Atlantic Provinces" (the "Assets"). Almost all of the information represented to the principals of SaltWire by Transcontinental was unavailable in the public record. That information included the following:

- (i) The Assets were together expected to generate over \$69.5 million in revenue in 2016;
- (ii) The Assets were expected to generate over \$12.6 million in earnings before interest, taxes, depreciation and amortization ("EBITDA") in 2016;
- (iii) The Assets provided diversified revenue streams and the October, 2016 prospectus slide presentation indicated that the Assets would generate substantial growth in digital advertising;
- (iv) The networks of newspaper and flyer distribution which were part of the Assets had a population reach of 68% in Nova Scotia, Prince Edward Island and Newfoundland and Labrador, with about 1.4 million readers weekly;
- (v) The Assets had a "household distribution coverage of 98%" in Prince Edward Island, Nova Scotia and Newfoundland and Labrador;

- (vi) The Assets included a "leading door-to-door distributor of promotional materials" with both owned operations and third party agreements;
- (vii) The assets included a "Geo Targeted Bundle" advertising tool which was launched in 2014 and was expected to reach close to \$3 million in sales by 2017;
- (viii) The Assets presented a "cost synergy opportunity" of over \$3.4 million; and
- (ix) The Assets presented an opportunity to improve content, production and administrative costs through consolidation.

11. Based on the representations from Transcontinental and other information available to them, the principals of SaltWire considered the Assets to be a business opportunity. Further discussions concerning the potential transaction occurred and eventually, a February 1, 2017 letter of intent was provided to a senior officer of the Transcontinental conglomerate by the principals of SaltWire. The letter contemplated the purchase of certain assets listed, including those which were the subject-matter of the October, 2016 prospectus slide presentation described above. The letter of intent was accepted on behalf of Transcontinental on February 2, 2017 (the "LOI").

12. Clause 16 of the LOI set out the following obligation of Transcontinental:

[Transcontinental] agrees to make available to the Purchaser all financial, personnel, corporate, business, and other information regarding the Assets and the Business for the purpose of enabling the Purchaser to evaluate the Transaction described herein and to confirm the terms set out in this letter are appropriate.

13. While the transaction was pending, the principals of SaltWire had no way to meaningfully verify whether Transcontinental was fulfilling the obligations in clause 16 of the LOI.

14. Relying almost exclusively upon the information provided by Transcontinental and Transcontinental's commitment in clause 16 of the LOI, the principals of SaltWire determined that they would proceed with the Asset acquisition. SaltWire was incorporated on March 22, 2017 for purposes of entering into the Asset transaction with Transcontinental and on or about that date, all rights and interests concerning the Asset transaction which were held by the principals of SaltWire were transferred to SaltWire.

15. An Asset Purchase Agreement dated April 12, 2017 and signed by Transcontinental and SaltWire sets out the terms and conditions of SaltWire's purchase of the Assets from Transcontinental (the "APA"). Particulars of the APA will be relied upon at trial for their full force and effect. The APA includes the following Vendors' Representations and Warranties at clause 3.1:

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 **Vendors' Representations and Warranties.** Subject to the disclosures made in the Schedules hereto, each of the Vendors, jointly and severally represents and warrants to the Purchaser and acknowledges that the Purchaser is relying upon such representations and warranties in connection with its purchase of the Assets:

(e) **Condition of Fixed Assets** - Except as set out in Schedule 3.1(e), there are no material defects in any of the Fixed Assets and the Vendors have and will maintain the Fixed Assets in good operating condition, reasonable wear and tear excepted having regard to their usage and age. All maintenance and repairs have been made to the Fixed- Assets in the ordinary course, and to the Knowledge of the Vendors there is no deferred maintenance with respect to any of the Fixed Assets.

(f) **Books and Records** - The Books and Records provided by the Vendors to the Purchaser have been properly kept and completed in all material respects and all financial transactions of the Vendors have been accurately recorded in such Books and Records.

(o) **Unusual Transactions** - Except as otherwise required by this Agreement, since the Financial Year End, the Business has been carried on in the ordinary course and the Vendors have not:

(i) suffered a Material Adverse Change with respect to the Assets or the Business;

(ii) suffered any extraordinary loss or entered into any commitment or transaction not in the ordinary course where such loss, rights, commitment or transaction is or would be material in relation to the Vendors or the Business, as the case may be;

(w) **Real Property**

- (iii) The Buildings and Improvements have been maintained, in good operating condition, reasonable wear and tear excepted having regard to their usage and age. To the knowledge of the Vendors, all maintenance and repairs have been made to the Building in the ordinary course.

16. Article 9.2 of the APA provides that the Representations and Warranties set out above survive the Closing of the transaction contemplated therein for a period of 18 months and that any claim re respect thereof (except a claim based on an intentional misrepresentation and/or fraud) is to be made within that 18-month period.

17. The APA also includes the following provisions concerning Indemnification at Article 8.1

ARTICLE 8 - INDEMNIFICATION

8.1 **Indemnification by the Vendors.** The Vendors agree, jointly and severally, to indemnify and save and hold harmless the Purchaser, and their respective officers, directors, employees or agents (the "Purchaser Indemnified Parties") from and against any and Claims suffered or incurred by them as a result of, arising out of or relating to:

- (a) any violation, contravention or breach of any covenant, agreement or obligation of the Vendors under or pursuant to this Agreement;
- (b) any breach of any representation or warranty made by the Vendors under or pursuant to Section 3.1 of this Agreement;

8.6 **Exclusive Remedy.** The parties' sole and exclusive remedy with respect to any and all matters arising out of, relating to or connected with this Agreement, and the transactions contemplated hereby, whether in respect to a breach of warranty, representation or covenant by the Vendors or Purchaser hereunder, shall be pursuant to the indemnification provisions set forth in Section 8.1 or 8.2, as applicable. Notwithstanding the foregoing, the parties shall not be prohibited from seeking specific performance or injunctive relief in the event of the breach of any restrictive covenants provided under this Agreement or the Ancillary Agreements.

18. In the months that followed the signing of the APA and SaltWire's acquisition of the Assets from Transcontinental, SaltWire experienced significant problems and substandard performance in relation to many of those Assets. Through detailed, contemporaneous

investigations which were not possible prior to SaltWire acquiring the Assets from Transcontinental, SaltWire determined that Transcontinental had made material misrepresentations relating to important aspects of the Assets and had otherwise breached both section 16 of the LOI and the Representations and Warranties set out in Article 3 of the APA.

19. The breach of section 16 of the LOI include Transcontinental's failure to provide: (i) timely and accurate financial information; (ii) complete personnel information; and (iii) access to allow inspection of some of the Assets.

20. The misrepresentations and breach of Representations and Warranties are the following:

- (i) Prior to April 12, 2017, Transcontinental provided inflated circulation information to its flyer customers and sold and printed flyers in those inaccurate quantities. After April 12, 2017, customers learned that they had been misled and SaltWire was required to remedy the wrongdoing by providing significant credits to customers for the non-existent circulation, and otherwise taking steps to remedy the related harm to its flyer business and reputation. SaltWire claims this is a breach of Article 3.1(f) of the APA and that it has suffered damages as a result. Those damages include overpayment for the Assets due to the false flyer-related information provided by Transcontinental;
- (ii) SaltWire discovered that more than 141,000 flyer packages were not delivered by Transcontinental's agent in Western Newfoundland during the period prior to April 12, 2017. Significant damages have resulted from the requirement to clean-up those materials, and the need to compensate the client which did not receive the products and services promised. SaltWire says this is another breach of Article 3.1(f) of the APA and that it has suffered damages as a result. SaltWire also claims damages for the resulting harm to its reputation and the negative effect on its client relationship from this misconduct by Transcontinental;
- (iii) Many of the assets acquired pursuant to the APA were not properly maintained by Transcontinental and this fact was known to Transcontinental prior to April 12, 2017. SaltWire has incurred significant

repair expenses. Transcontinental's failure to properly maintain the assets is a breach of Article 3.1(e) of the APA for which SaltWire claims damages;

- (iv) "Between October 30, 2016 and April 13, 2017, there was a material drop-off in the EBITDA (\$9 million annualized) associated with the Assets and SaltWire has determined that the EBITDA set out in the October, 2016 prospectus, and the EBITDA normalization information, both provided by Transcontinental, were unrealistic and inflated by Transcontinental. SaltWire has suffered significant damages as a result of this misrepresentation and those damages include overpayment for the Assets;
- (v) Transcontinental's representation as to the so-called synergies available to SaltWire as a result of the Asset purchase was overstated. Also, changes to the business implemented by Transcontinental prior to April 12, 2017 negatively impacted any synergistic opportunities, causing further damage to SaltWire. SaltWire claims that this is a breach of Article 3.1(o) of the APA for which it claims damages;
- (vi) Transcontinental reduced and eliminated its sales infrastructure for the Assets prior to April 12, 2017, and those changes negatively impacted SaltWire's ongoing operation of the Assets after April 12, 2017. SaltWire says that this too is a breach of Article 3.1(o) of the APA for which it claims damages. Further, in an effort to mitigate the damages suffered as a result of Transcontinental's breach, SaltWire has incurred a number of one-time cost to restructure and rebuild the substandard sales operations and it claims damages for those costs;
- (vii) Transcontinental made material misrepresentations in relation to its digital business revenues. First, approximately 50% of the so-called digital revenue was actually distribution that Transcontinental purchased from one or more third parties. It amounted to a pass-through of funds only with no incremental revenue accruing from the transactions. Second, Transcontinental's representation as to the digital revenues from the Geo

Targeted Bundle was grossly overstated. SaltWire has suffered damages as a result of these misrepresentations; and

- (viii) Transcontinental imprudent conduct in relation to its legacy legal issues have impacted SaltWire's operations. In addition to the significant employee time required to deal with these matters, SaltWire has suffered reputational damage from ongoing negative publicity.

21. SaltWire repeats the foregoing paragraphs and says that Transcontinental's multiple misrepresentations and breach of the APA have caused SaltWire to suffer significant damages and loss. SaltWire says that in these circumstances, each of the Defendants hereto is jointly and severally liable to SaltWire.

22. The APA contemplated a Transition Services Agreement whereby Transcontinental would be responsible for providing services to SaltWire for a period of time after the April 12, 2017 transactions. A Transitional Services Agreement dated April 12, 2017 and signed by Transcontinental and SaltWire sets out the obligations of Transcontinental in relation to Transcontinental's provision of those services to SaltWire (the "TSA"). Particulars of the TSA will be relied upon at trial for their full force and effect. The services which Transcontinental agreed to provide to SaltWire pursuant to the TSA included accounting services.

23. Article 8 of the TSA states the following in relation to Transcontinental's performance of services pursuant to the TSA:

8. Performance of Services. The Service Provider shall use commercially reasonable efforts to perform, and to cause any third party it engages to perform, all Transition Services in good faith at the same level as the Transition Services were performed by the service Provider prior to Closing Date, subject to variation in the provision of such Transition Services agreed to by the Parties hereunder. The Parties Agree to cooperate, to provide such information and to take such other actions as may be reasonably required to assist the Service Provider in performing the Transition Services. Each Party agrees to maintain the confidentiality of all non-public, confidential information relating to the other Party and its Affiliates provided to it pursuant to this Agreement, except as may be in, or later comes into, its possession or generally becomes available to the public through no fault of it, or as required to be disclosed by law. Any

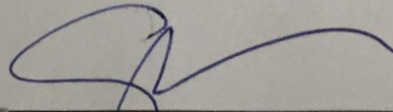
amendment, supplement, variation, alteration or modification to any agreed to Transition Services must be made in writing and signed by an authorized representative or agent of each of the Parties hereto. Where necessary for the performance of the Transition Services hereunder, the Requesting Party shall designate the Service Provider as its authorized agent.

24. In or about November, 2017, SaltWire learned that Transcontinental had breached the TSA by failing to remit a total of about \$1,700,000 of HST to the Canada Revenue Agency as required. SaltWire says this was gross negligence and it is entitled to recover damages from Transcontinental as a result. SaltWire claims that in these circumstances, each of the Defendants hereto is jointly and severally liable to SaltWire for the breach of the TSA.

25. SaltWire repeats the foregoing paragraphs and claims against all of the Defendants, on a joint and several basis, as follows:

- (a) Special damages particulars of which will be provided prior to trial;
- (b) General damages;
- (c) Aggravated and punitive damages;
- (d) Interest pursuant to Article 8.9 of the APA;
- (e) Costs; and
- (f) Such further and other relief as This Honourable Court shall allow.

SIGNED AT Halifax, Nova Scotia, this 10th day of April, 2019.



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