

CANADA / JUDGMENT

AFX Mixing & Pumping Technologies Inc. v. McKinon

2025 BCSC 1717

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Supreme Court of British Columbia

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2025 BCSC 1717 AFX Mixing & Pumping Technologies Inc. v. McKinon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

AFX Mixing & Pumping Technologies Inc. v. McKinon,

2025 BCSC 1717

Date: 20250828

Docket: S253992

Registry: Vancouver

Between:

AFX Mixing & Pumping Technologies Inc.

Plaintiff

And

Shaune McKinon, Vanessa McKinon,

Kirsty McKinon and Macworx Inc.

Defendants

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

S.H. Coulson

Counsel for the Defendants:

S.K. Patro

Place and Dates of Hearing:

Vancouver, B.C.

August 18-19, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 28, 2025

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Introduction

- [1] The plaintiff ("AFX") seeks an interlocutory injunction to restrain the defendants from possessing, or using, its confidential business documents and data described in the notice of application ("Documents"). It seeks a companion order to serve interrogatories for the specifics of what Documents the defendants have in their possession and to whom they have been disclosed.
- [2] The defendant Shaune McKinon was AFX's managing director and senior person in Canada from 2014-2025. The other defendants are his family members, each of whom worked for AFX at different times.
- [3] AFX alleges that the defendants: (a) conspired to misappropriate the Documents, contrary to their duties of confidentiality and to Shaune McKinon's fiduciary duties; and (b) through their family company, Macworx Inc. ("Macworx"), are now using this information in their business relationship with one of AFX's global competitors.
- [4] The defendants oppose the injunction, submitting, among other things, that they do not have the Documents, and, in any event, are not competing with AFX or taking any opportunities available to it.
- [5] In my view, AFX has established: (a) a strong initial case that the Documents were confidential and misappropriated by Shaune McKinon contrary to his fiduciary duties; (b) the use of that information, by some or all of the defendants, threatens irreparable harm to AFX; and (c) the balance of convenience strongly favours granting AFX the injunction sought.
- [6] I therefore grant the interlocutory injunction sought by AFX and grant it leave to serve its proposed interrogatories.

Background Facts

Parties

- [7] AFX is incorporated pursuant to the laws of British Columbia. It is owned 80% by AFX Holdings (Pty) Ltd. ("AFX Holdings"), a South African company, and 20% by the defendant Shaune McKinon.
- [8] AFX is in the business of selling and distributing in North America the products of its affiliated South African companies AFX Holdings and Afromix Technologies (Pty) Ltd. ("Afromix").
- [9] Shaune McKinon was AFX's only director in Canada, and its managing director from its incorporation in January 2014 until March 2025.

- [10] Vanessa McKinon, Shaun's wife, was AFX's administration manager from 2015 until March 2025. Their daughter, Kristy McKinon, was employed from 2019-2024 in marketing and administrative support. Their son, Kent McKinon, was a project coordinator from around April-November 2020.
- [11] Macworx is a BC company. The evidence of its ownership and management is incomplete. It appears that Shaune and Kirsty are its shareholders, and Kirsty and Kent its directors. The defendants acknowledge that, in 2025, MacWorx entered into an agreement to promote and distribute in Canada the products of Mixtec North America, Inc. ("Mixtec"), which is a global competitor of AFX and its related companies.

The AFX Group

- [12] Mr. Eugene Els provided most of the evidence on behalf of AFX. He is a trained mechanical engineer and the founder of the AFX group of companies. He is a director of AFX.
- [13] Mr. Els' evidence is that Afromix and AFX Holdings produce and sell sophisticated industrial mixing and pumping equipment - more specifically agitators and peristaltic pumps - and hoses and related parts. They do so by using a specialized software system to analyze and create technical specifications for client projects.
- [14] Mr. Els describes the business as including: technical and engineering expertise; analysis and modelling for customer projects by its proprietary software; manufacturing; project management; supply and logistics; and repair and maintenance.
- [15] AFX supplies and services these agitators and pumps for Canadian clients, using outputs from the Afromix software. It pays for the rights to use the outputs of the Afromix designs and technical drawings and specifications. The output which AFX receives from Afromix, including technical drawings, allows it to connect the specific agitator or peristaltic pumps with the appropriate parts.

AFX's Confidential Business Information

- [16] Mr. Els alleges that Shaune McKinon and the other defendants had access to confidential and proprietary information, communicated to them in confidence, that was the property of AFX, the disclosure of which would cause harm to AFX and its group of companies.
- [17] Mr. Els' evidence is that Shaune had complete control over the day-to-day running of AFX's business. Thus, he had access to hundreds of outputs from the AFX software and hundreds of proprietary designs developed for client projects and applications, price lists and client lists. Mr. Els' evidence is that AFX and the AFX Group never shares these outputs outside of required employees or contractors and clients.
- [18] His evidence is that the confidential information made available to Shaune in the course of his employment with AFX included:

- a. the outputs of the AFX Software;
- b. details of AFX's contracts with suppliers, manufacturers and customers;
- c. AFX product specifications, including the specifications generated by AFX's proprietary software program;
- d. Information regarding AFX's prospective customers;
- e. bids, proposals and/or other cost calculations AFX had prepared for customers, suppliers and/or manufacturers;
- f. AFX's financial information, including but not limited to pricing, margins, budgets and revenues;
- g. Technical, manufacturing and general arrangement drawings;
- h. marketing material and strategies; and
- i. business document templates.

[19] Mr. Els alleges that this information would allow the defendants to compete with AFX for specific AFX clients, as they would have all of the technical information needed to fulfil the clients' needs. His evidence is that, without that technical information, they would be unable to compete with AFX for these clients as they would not have the requisite technical information to design support structures, or supply parts or replacement parts. Such services require the specific engineering parameters and recommended components generated by the Afromix software.

[20] Mr. Els' evidence is that it is theoretically possible for a person, with enough outputs from the Afromix software for particular client projects, and the technical expertise, to reverse engineer the AFX Holdings' proprietary models and calculations used in the Afromix software.

Shaune's Departure

[21] In January 2025, Shaune advised Mr. Els he wished to leave AFX, and they began negotiating the potential purchase of his shares. Shaune resigned from AFX on March 8, 2025. He alleges that he was constructively dismissed.

[22] There was a written employment contract prepared for Shaune in 2014, which he did not sign and denies agreeing to. AFX submits that the contemporaneous correspondence indicates he did agree. The document does not contain express confidentiality obligations.

[23] Kirsty had a written employment agreement, effective September 3, 2019, which contained a confidentiality clause:

Duty of Confidence: All confidential information pertaining to the business must be kept confidential and may not be disclosed by you or used by you for your own purposes. This duty shall survive the termination of your employment.

[24] Vanessa and Kent did not have employment contracts.

AFX's Investigation

[25] In early 2025, the AFX board hired John Stapelberg as a new AFX employee in Canada. He is now a director of AFX and its general manager.

[26] After Shaune's departure, Mr. Stapelberg conducted an investigation which AFX submits led to its discovery that Shaune was operating Macworx while still at AFX, and was sending AFX information such as copyrighted customer equipment designs and drawings to Kent's Macworx email from as early as September 2019.

[27] On March 26, 2025, Mr. Stapelberg informed Mr. Els of his conclusions that:

- i. Shaune had instructed AFX's IT contractor Jeremy Bartel to export Shaune's entire email account database and a copy of AFX's entire server to Shaune for his departure.
- ii. There was a Western Digital USB drive attached to the AFX server that was removed on March 8, 2025, the day Shaune resigned from AFX, which Mr. Stapelberg was unable to locate.
- iii. Shaune and his family had been sending emails to and from their AFX email accounts to their "mac-worx.com" email addresses.

[28] Mr. Bartel has sworn an affidavit for AFX. He is an independent contractor who provided computer and other tech support to AFX starting in late 2021.

[29] Before this litigation, he thought that Shaune was the sole owner of AFX. In 2025, Shaune asked him to export a copy of Shaune's entire AFX email account and AFX's entire server, together with passwords, so Shaune would have these after he left the company. In March 2025, Shaune asked if Mr. Bartel had these ready because his departure was approaching. Mr. Bartel attaches texts between him and Shaune in February-March 2025 which support Mr. Bartel's evidence. Counsel for AFX points to exhibits to Shaune's affidavit that are emails and letters from his time at AFX.

[30] Shaune's evidence in response to Mr. Bartel is that his requests for his email account occurred well before he left AFX and were for AFX business purposes. He says he does not know why Mr. Bartel waited until his departure to provide him with the archive of his AFX emails, and that he has not accessed the link Mr. Bartel sent him. His evidence regarding the AFX server is that any requests of Mr. Bartel about this were just about ensuring it was backed up in the cloud. In his evidence, he admits taking a hard drive with him when he left but says it was by mistake.

Macworx

- [31] In his evidence, Shaune denies involvement in Macworx's business apart from "technical communications". He and Kent both say that Kent has been operating the business.
- [32] There is evidence, however, that Shaune has a mac-worx.com email address, active from 2019 to 2025. Kirsty also has such an account. His affidavit also contains much detail about Macworx's business, including about its advertising, responses to requests for proposals, and its various services for clients. He describes the latter as follows:
100. Further to paragraph 58 of Eugene's Affidavit, Macworx:
- (a) does not advertise Mixtec's products on its website;
 - (b) responds to requests for proposals, public tenders and clients that contact it directly with requests about agitators;
 - (c) works with clients or prospective clients to determine the specifications for an agitator suited to their needs using tools provided by Mixtec;
 - (d) works with its clients and Mixtec to finalize the technical specifications for agitators' orders;
 - (e) assists clients with support and services after a Mixtec agitator has been ordered, delivered and installed;
 - (f) attends to customer requests for equipment assessment and optimization; and
 - (g) reviews clients' existing equipment coupled with process details and requirements with regard to equipment replacement.
- [33] Mr. Els' evidence is that Macworx engages in the following business:
- a. Supplying parts such as tanks, valves, and peristaltic pumps to AFX clients as part of AFX projects for those clients;
 - b. Supplying and installing pumps from AFX competitors to AFX clients while AFX was not aware of this; and
 - c. Supplying sourcing, project management and coordination, installation and design services to AFX clients.
- [34] Counsel for AFX says that Shaune's evidence indicates that Macworx engages in the following business, all of which were opportunities for AFX:
- a. Sales of flow meters and valves;
 - b. Design of agitator support structures, including for AFX clients and in relation to AFX supplied agitators;

- c. Sales of tanks, and related equipment such as rubber parts, including to AFX clients to which AFX was supplying agitators requiring the use of tanks;
 - d. Verification of structural design loads and services related to that verification with vendors that supply structural supports that would be integrated into the Afromix products that AFX had sold to AFX clients;
 - e. Assisting AFX clients with structural support steel work in relation to the installation of AFX agitators;
 - f. Coordination of services to AFX clients relating to vendors required in the installation process for AFX supplied agitators and equipment, including confirming with fabricators and accommodating the planned mounting dimensions for the equipment AFX sold so that it could be installed properly;
 - g. the business of providing equipment packages including air compressors, spare parts and ancillary equipment, volumetric scanning equipment, pumping equipment, pressure vessels, tanks and associated items and fabricated structures, including to AFX clients;
 - h. business that dealt with industrial equipment; and
 - i. since 2025, the sale and distribution of Mixtec agitators in Canada.
- [35] Shaune denies that AFX did provide, or could have provided, the services now performed by Macworx. Mr. Els disagrees. He alleges that Macworx only obtained the business opportunities with AFX's clients because Shaune was a director and employee of AFX and diverted the opportunities to Macworx. His evidence is that he would never have approved diverting these business services to Macworx if Shaune, as a fiduciary, had disclosed what he and his family were doing. He says that AFX could have provided clients with these services had he been aware of these opportunities. His evidence is that AFX Holdings and its related companies regularly engage in this kind of business.

Litigation

- [36] AFX's NoCC was filed on May 30, 2025.
- [37] On June 9, 2025, Mr. Coulson wrote a demand letter to then-counsel for the defendants, requesting preservation of documents and the identification of any confidential information (as defined in the NoCC) in their possession or control.
- [38] On July 4, 2025, counsel for the defendants responded, advising that their clients denied possession or control of any such confidential information.
- [39] AFX's notice of application ("NoA") seeks the following injunction:
- a. Prohibiting the Defendants from possessing, using, selling, or distributing the following confidential information of AFX:

- i. All data and documents containing AFX pricing information;
- ii. All AFX client questionnaires, including agitator and pump questionnaires;
- iii. All outputs of the AFX Software (as defined in the Amended Notice of Civil Claim);
- iv. All AFX layouts, designs, drawings, and engineering specifications;
- v. All AFX costing sheets, quotations from AFX suppliers, and quotations to AFX clients;
- vi. All data and documents containing AFX client names and contact details;
- vii. All data and documents containing AFX supplier names, contact details, and pricing information;
- viii. All data and documents relating to AFX clients including, specifically, Ph7 Technologies;
- ix. All AFX account credentials, passwords, and IT security information; and
- x. All AFX email account archives, contents, copies, backups, and data from AFX email accounts, including copies or records of information derived from data and documents contained within AFX email accounts.

(the "Confidential Information")

- b. Requiring the Defendants to return the Confidential Information to AFX within 10 days following pronouncement of this order.

[40] I note that during the hearing counsel for AFX agreed that (i) and (vi)-(viii) should begin with the words "All AFX data "

Governing Law

Injunctions

- [41] Generally, injunctive relief is available to an applicant who demonstrates that: (a) there is a serious question to be tried; (b) they will suffer irreparable harm if the injunction is refused; and (c) the balance of convenience lies with them (RJR -- MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311).
- [42] AFX submitted that the order sought for the return of its confidential information might be a mandatory injunction, in that it required the defendants to take positive action, as opposed to refraining from doing something. If so, then the merits test steepens to demonstrating a strong initial (or prima facie) case (R. v. Canadian Broadcasting Corp., 2018 SCC 5, paras. 15-16).

[43] In my view, the order sought for return of the Documents is a prohibitive, not a mandatory, injunction. In substance, its overall effect is to restore the status quo and restrain the defendants from using AFX's confidential business information. Having said that, for the reasons provided below, I see AFX as having met the test of demonstrating a strong initial case that Shaune has misappropriated AFX's confidential business information and that the defendants are misusing it contrary to AFX's business interests.

Fiduciary Duties

[44] Directors owe a fiduciary duty of utmost good faith and loyalty to the corporation, imposed both by common law and statute. The scope of the duty includes:

- (a) acting in the best interests of the corporation;
- (b) avoiding conflicts of interest;
- (c) keeping confidences; and
- (d) fully disclosing all material information that may affect the corporation's decisions.

BCE Inc. v. 1976 Debentureholders, 2008 SCC 69 at paras. 36-38, 89.

[45] EnWave Corporation v. Dehydration Research, LLC, 2022 BCSC 637, considered the contents of that duty and explained:

[97] This fiduciary duty requires that Dr. Durance and Dr. Sandberg:

- a) avoid all conflict of interest with EnWave;
- b) act only in the best interest of EnWave; and
- c) not profit as a result of their positions at EnWave.

See: GasTOPS at para. 86.

[98] Fiduciaries are under a duty not to compete with their employer post-employment for a reasonable period of time to be determined by the court. Fiduciaries are also precluded from soliciting their employer's customers or prospective customers either while employed or after leaving employment. Fiduciaries post-employment are further disallowed from soliciting other employees of their former employer: GasTOPS at paras. 87-89, 98, 112-116, 144.

[Emphasis added.]

[46] These duties, including the duty not to compete, may survive the termination of the fiduciary relationship depending on the circumstances (Can. Aero v. O'Malley, [1974] S.C.R. 592, Ignite International Brands, Ltd v. Bilzerian, 2025 BCSC 566, para. 57, EnWave).

[47] Can. Aero described the following factors for whether the fiduciary duties extend after the relationship with the company had ended (at 620):

Among them are the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificity and the director's or managerial officer's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or, indeed, even private, the factor of time in the continuation of fiduciary duty where the alleged breach occurs after termination of the relationship with the company, and the circumstances under which the relationship was terminated, that is whether by retirement or resignation or discharge.

Confidential Information

[48] A misappropriation of confidential business information by former employees can give rise to injunctive relief and liability in damages (EnWave, para. 76).

[49] The factors for assessing whether information has the necessary quality of confidence to found an action for breach of confidence, or breach of a generic confidentiality clause, include the value of the information and the measures taken to guard its secrecy. Additional factors can be:

- the extent to which the information is known outside the owner's business
- the extent to which it is known by employees and others involved in the owner's business
- the amount of money or effort expended by him in developing the information
- the ease or difficulty with which the information could be properly acquired or duplicated by others [i.e. by their independent endeavours].

Quick Pass Master Tutorial School Ltd. v. Zhao, 2022 BCSC 1846, para. 82; Foreman v. Chambers, 2006 BCSC 1244, paras. 61-66.

Analysis

Serious Question

[50] In my view, AFX has a strong initial case that the defendants are unlawfully in possession of AFX's confidential business documents and data as described in the NoA, and are using it to pursue potential AFX business opportunities, customers or potential customers, and doing so while in business with one of AFX's competitors. It therefore has demonstrated a strong initial, or prima facie, case for the defendants' legal obligation to return the Documents and refrain from using the information therein.

[51] Based on the evidence of Mr. Bartel, who appears to be an independent witness, AFX has a strong initial case that, at the time of his departure, Shaune took with him copies of his AFX email account and the information on AFX's server.

- [52] It is uncontested that, while working for AFX, Shaune become a shareholder of a family business that is now doing business with AFX's competitor, Mixtec, and in fact, his own evidence suggests that he led the negotiations between Macworx and Mixtec resulting in their business relationship. AFX has also put in compelling evidence that it would not have agreed to Shaune and his family members taking these opportunities had Shaune disclosed the circumstances to AFX, as it would appear he had a fiduciary obligation to do.
- [53] The Documents AFX seeks in this application are paradigmatic confidential business information. For purposes of this application, I accept Mr. Els' evidence of their confidential nature and competitive significance. I have seen nothing in the evidence to suggest these documents or data are publicly available. I reject the defendants' argument that the information sought to be protected is too broad. The NoA identifies the categories of documents in question with adequate precision.
- [54] While a director, Shaune was required to avoid conflicts of interest and act only in AFX's best interests. AFX has a strong argument that, not only did Shaune have no legal right to possession of its confidential business information upon his departure, but that he has a continuing fiduciary obligation not to use that information contrary to AFX's best interests, including to use it in soliciting its customers or potential customers or doing business with its competitor. Given that he was a director of AFX, and the extent of his control over its business from its inception until 2025, AFX has a strong initial case that his fiduciary obligations continue for a reasonable time after his departure.
- [55] I agree with counsel for AFX that Shaune's evidence suggests a lack of understanding of the extent of his fiduciary obligations to AFX, when he says this at para. 95:

I do not understand what Eugene means by his assertion that Macworx is or was in the business of providing installation and design services to AFX's clients. I have never understood that AFX owns its clients or that others in my family who are not engaged in a business that competes with AFX are not permitted to deal with AFX clients or that Macworx should refuse work from those clients.

- [56] The defendants argued that AFX failed to differentiate between their respective roles and legal obligations. I do not accept that argument. It seems to me that, on the current record, only Vanessa could argue that there is no evidence of her possible involvement in the alleged conspiracy against AFX. She has not sworn an affidavit however denying her involvement, and I see her inclusion in the injunction as in the interests of justice in case she has possession or control of any of the information in question.
- [57] I also do not accept the defendants' argument that AFX lacks standing for the injunction because it does not own the proprietary information in question. For this, the defendants relied on the decision in *African Mixing Technologies (PTY) Limited v. Canamix Processing Systems Ltd.*, 2014 BCSC 2130.

- [58] The 2014 case dealt with an alleged agreement between Afromix and its competitor, Canamix, which was also in the business of manufacturing agitators and peristaltic pumps, and claimed rights to directly use the Afromix software and Afromix proprietary technical data, which Afromix disputed. The rights and information in question were thus to Afromix's software and the manufacture of its products, which are not the rights and information in issue in this case.
- [59] In this application, the documents and data AFX seeks to repossess relate to its business of selling and distributing Afromix's products in North America. AFX's evidence is that it pays for and has rights to use the outputs of the Afromix software relating to AFX's customers, as well as the associated designs and technical drawings and specifications for its customers. It is thus the owner of the confidential business information in issue.

Irreparable Harm

- [60] I find a real risk of irreparable harm if the Documents remain in the hands of the defendants. Given the evidence about AFX's business and the information in question, I accept AFX's submission that permanent harm could be done to it in the marketplace with this information by Macworx and Mixtec.
- [61] I accept Mr. Els' description of the particular irreparable risks:
- i. If the Confidential Information was passed to a competitor like Mixtec, it would be very useful to Mixtec and Macworx as it would give them design guidelines such as power, speed, impeller diameters, flows, velocities, etc., that are required for any installation of industrial equipment for a particular industrial application. Moreover, Mixtec would have their pricing list and margins, which is highly confidential competitive information.
 - ii. Possession of AFX's software outputs can be used to undercut AFX pricing. AFX's stocking program covered a broad range of solutions and dovetailed with the AFX software outputs that were designed to make a product cheaper. The outputs allow a competitor to know which part was chosen and thus determine pricing, not to mention that pricing lists are also AFX Confidential Information.
 - iii. The AFX Group also has experience with suppliers and fabricators trying to reverse engineer and copy AFX Group equipment and designs. This is an ongoing threat to AFX's business.
 - iv. In short, possession or disclosure of the Confidential Information by Shaune, Vanessa, Kirsty, Kent, or Macworx is like a sucker punch to AFX and gives each of them and any person or business to which they disclose the Confidential Information an unfair advantage over AFX in the marketplace.
- [62] In my view, an order requiring the defendants not to possess, use, sell or distribute this information is a reasonable and necessary step in attempting to prevent irreparable harm to AFX.

Balance of Convenience

- [63] Weighing in favour of the injunction is the strength of AFX's initial case that the defendants have possession of its confidential business information and the risk of irreparable harm this poses.
- [64] In my view, the defendants have identified no prejudice to them of abiding by the orders in question. They do not allege any legal right to the information in question or any need of it for legitimate business purposes. Shaune's evidence is that "because of the fundamental differences between the businesses of Macworx and AFX, none of the Plaintiff's Confidential Information is of interest to me or [Macworx]".
- [65] I reject the defendants' argument that, weighing in its favour, is AFX's delay in bringing this application. Shaune departed in March 2025 and the record indicates that AFX and its lawyers have worked assiduously since then in investigating the situation and preparing its evidence, application and submissions.
- [66] The only factor weighing against granting the injunction is the possibility that it is unnecessary because, as Shaune and Kent attest, the defendants do not actually have possession or control of the Documents. At this stage, however, given the evidence of Mr. Bartel, there is strong evidence casting doubt on their denials and so the injunction is in the interests of justice.

Interrogatories

- [67] Given the strength of AFX's case that its confidential information has been obtained and used in breach of fiduciary duty, in my view the interrogatories are justified.
- [68] Rule 7-3(1) of the Supreme Court Civil Rules states:
- A party of record to an action may serve interrogatories in Form 24 on any other party of record, or on a director, officer, partner, agent, employee or external auditor of a party of record, if
- (a) the party of record to be examined consents, or
 - (b) the court grants leave.
- [69] A key purpose of interrogatories is to enable the party delivering them to obtain admissions of fact to establish its case and to provide a foundation upon which cross-examination can proceed when examinations for discovery are held (Source Electrical Services Ltd. v. Freeport Construction Management Ltd., 2021 BCSC 2278, para. 13).
- [70] The proposed interrogatories are narrowly drafted and relate only to material facts required by AFX to make out its case. The answers would seem readily available to the defendants, will help narrow and focus the issues, provide a foundation for examination for discovery, and assist in the just, speedy, and inexpensive determination of issues for trial (Source Electrical Services, para. 13.).

[71] To the extent that AFX has disclosed in this application some of its confidential business information, such as customer names, in my view it should still be entitled to know whether the defendants themselves have documents or data containing that information.

Conclusion

[72] I grant the injunction sought in para 1(a) of the NoA, though (i) and (vi)-(viii) should begin with the words "All AFX data and documents ...", etc.

[Discussions with counsel regarding balance of orders.]

"Coval J."

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