

**Court File No. CV-12-9930-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED**

**IN THE MATTER OF THE RECEIVERSHIP OF  
FIRST LEASIDE WEALTH MANAGEMENT INC. AND  
THE APPLICANTS LISTED ON SCHEDULE "A" (collectively "FIRST LEASIDE")**

**EIGHTH REPORT TO COURT OF GRANT THORNTON LIMITED  
IN ITS CAPACITY AS RECIEVER OF FIRST LEASIDE**

**MAY 7, 2021**



**Grant Thornton Limited,  
in its capacity as the Court-  
appointed receiver of First Leaside  
and not in its personal or corporate  
capacity**

200 King Street West  
11<sup>th</sup> Floor  
Toronto, Ontario, M5H 3T4

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April 22, 2021 R&D

## INTRODUCTION

1. This eighth report (the “**Eighth Report**”) is filed by Grant Thornton Limited (“**GTL**”) in its capacity as receiver (the “**Receiver**”) without security of all assets, undertakings and properties of First Leaside.<sup>1</sup>
2. GTL was appointed Receiver over First Leaside pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 7, 2012 (the “**Receivership Order**”).
3. First Leaside was a group of companies that promoted and sold investments in various proprietary investment products, primarily investments in real estate projects. To facilitate its business model, one of the First Leaside entities, First Leaside Securities Inc. (“**FLSI**”), was an investment dealer under Ontario securities law, subject to the jurisdiction of the Ontario Securities Commission (the “**OSC**”). Background information pertaining to First Leaside, including the circumstances leading to the appointment of the Receiver, is contained in the affidavit of Gregory MacLeod, sworn December 3, 2012 (the “**MacLeod Affidavit**”) and filed in support of the application to seek the appointment of the Receiver. A copy of the Receivership Order, the MacLeod Affidavit and all other court materials filed and orders made in these proceedings are accessible on the Receiver’s case website at [www.grantthornton.ca/firstleaside](http://www.grantthornton.ca/firstleaside) (the “**Case Website**”).

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<sup>1</sup> “First Leaside”, as used in this Eighth Report, refers collectively to First Leaside Wealth Management Inc. and the applicants listed on the Schedule “A” of the title proceedings.

## DISCLAIMER

4. In preparing this Eighth Report, the Receiver has relied upon certain unaudited information from AST Trust Company (Canada) (“**AST**”) and Link Shareholder Services (“**Link**”) (collectively, the “**Distribution Agent**”). While the Receiver reviewed various documents provided by the Distribution Agent and believes that such information therein provides a fair summary of the information as reflected in the documents, the Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
5. In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the financial information in the records of First Leaside and certain of its former management, within the context in which such information was presented.
6. This Eighth Report has been prepared solely for the use of this Court and First Leaside’s stakeholders in and for this proceeding. Accordingly, the reader is cautioned that this Eighth Report may not be appropriate for any other purpose.
7. All references to dollars are in Canadian currency unless otherwise noted. Balances denominated in U.S. currency have been converted to Canadian currency at par.

## BACKGROUND

8. The First Leaside receivership administration was protracted and extended over a period of approximately nine years. On July 23, 2019, the Receiver filed its Seventh Report to Court (the “**Seventh Report**”) which set out, among other things, a path to completion of the receivership administration, including a plan to distribute the residual proceeds in the estate to Investors (the “**Final Distribution**”). A copy of the Seventh Report, without appendices, is attached hereto as **Appendix “A”**.
9. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Seventh Report.
10. Therein, the Receiver detailed a plan to engage the Distribution Agent to facilitate the Final Distribution, which provided for multiple rounds of distributions to Investors until the balance available to distribute was diminished. As at the date of this Eighth Report, the Distribution Agent has fulfilled its responsibilities under the agreement with the Receiver. However, notwithstanding a robust effort by the Distribution Agent, there remains significant undistributed funds as at the date of this Eighth Report, as well as additional net proceeds recovered by the Receiver in the intervening period which can also be distributed to Investors.

## **PURPOSE OF EIGHTH REPORT**

11. The purpose of this Eighth Report is to provide the Court and stakeholders of First Leaside with a summary of the Receivership Proceedings since the date of the Seventh Report, and to provide information in support of the Receiver's motion for an order:

- (i) approving the Eighth Report and the conduct and activities of the Receiver as described herein;
- (ii) authorizing and directing the Receiver to retain the Distribution Agent to complete one further distribution to First Leaside Investors pursuant to the proposed Surplus Distribution Procedure;
- (iii) approving the Surplus Distribution, which includes the Additional Net Recoveries (as defined herein) by the Receiver, directly to such affected Investors;
- (iv) increasing the Fee Accrual of the Receiver and its counsel from \$150,000 to \$220,000, and approving additional fees in the amount of \$10,000 for Representative Counsel, to complete the receivership administration, and
- (v) approving the April 22, 2021 R&D.

## **ACTIVITIES OF THE RECEIVER**

12. Since the date of the Seventh Report, the Receiver's activities have been focused on reporting to and communicating with Investors, coordinating

distributions to Investors, working with the Distribution Agent, recovering additional proceeds, ensuring Investor tax forms were completed and sent, and transitioning the books and records of First Leaside back to the Company's former principal.

13. At the time of the Seventh Report, the Receiver had estimated certain out of pocket expenses associated with completion of the administration, including expenses related to record destruction, tax filings and forms, storage costs, and certain costs of the Distribution Agent (each as detailed in the Seventh Report). Certain of the actual disbursements to complete the receivership administration were less than the Receiver's estimates, as many of the steps were undertaken directly by the Receiver rather than handled through third parties and billed as a disbursement, in order to expedite the process. Further, the Receiver filed certain incremental HST returns for First Leaside entities, and recovered additional proceeds on account of same. The Receiver holds approximately \$39,213 as surplus proceeds related to these efforts.
14. In addition, at the time of the Seventh Report, the Receiver estimated that there would be no further recoveries of the Comfort Deposit (as defined in the Seventh Report) from Fidelity Clearing Services, given the amount of work anticipated to close off investor accounts and related matters. Since the date of the Seventh Report, the Receiver has worked with Fidelity, and has recovered an additional \$87,712 from Fidelity as a surplus funds from the Comfort Deposit.

15. In addition to the work done directly by the Receiver in lieu of the outsourced services, to complete and file the HST returns and to secure the balance of the Comfort Deposit, the Receiver also had to deal with significant unexpected tax and account inquiries from Investors, as well as requests for information from the former principal to transition the books and records. These additional requests caused the Receiver to incur greater than anticipated fees.
16. All of the Receiver's fees for the period ending June 30, 2019, as described in the Seventh Report, were approved by the Court by order dated July 31, 2019 (the "**Approval and Discharge Order**"), as well as the fees and disbursements of the Receiver to complete the Receiver's remaining duties, estimated not to exceed \$100,000 (plus HST).<sup>2</sup>
17. Given the additional work, unexpected complications discussed herein and the need for the Surplus Distribution (defined below), the Receiver estimates that its fees to complete the administration will be \$60,000 higher than the \$150,000 originally anticipated in the Seventh Report.
18. All of the Receiver's counsel, Blake, Cassels & Graydon LLP's ("**Blakes**") fees for the period ending June 30, 2019 were approved in the Approval and Discharge Order, as well as the fees and disbursements of Blakes to

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<sup>2</sup> While the Approval and Discharge Order stated that the estimated fees to complete the Receiver's duties would not exceed \$100,000, the Seventh Report in fact disclosed that such amount was anticipated to be \$150,000, which higher number was not reflected in the Approval and Discharge Order. The Receiver is accordingly seeking to correct this error in the present motion, and seeking approval of an aggregate of \$210,000 in fees post-June 30, 2019, which is \$60,000 greater than what was sought in the Seventh Report.

complete the remaining work in the proceedings, estimated not to exceed \$50,000 (plus HST).

19. Blakes has incurred total fees in the amount of \$44,148 since June 30, 2019 (primarily in July 2019, in connection with the motion seeking the Approval and Discharge Order), and anticipates that its fees to complete these proceedings will be \$10,000 higher than the \$50,000 originally anticipated (primarily in connection with the present motion and ongoing consultations with the Receiver).
20. Finally, all of Representative Counsel's fees for the period ending December 31, 2018 were approved by the Approval and Discharge Order, together with fees and disbursements necessary to complete Representative Counsel's remaining work, estimated not to exceed \$25,000 (plus HST).
21. Representative Counsel has advised the Receiver that it has exhausted this fee accrual since December 31, 2018, primarily in connection with answering questions from Investors. Representative Counsel accordingly requires an additional \$10,000 of fees to complete its duties, including notifying Investors of this present motion and answering any questions about the Final Distribution. In the Receiver's view, this is a reasonable amount, and the continued participation of Representative Counsel is constructive and beneficial for Investors.
22. Accordingly, the Receiver is seeking an order increasing the Fee Accrual from \$150,000 to \$220,000, and seeking the approval of an additional \$10,000 of fees for Representative Counsel.

23. However, notwithstanding the higher fees, there are still additional net recoveries estimated at \$46,925 available for Investors beyond the amount available for the Final Distribution (the “**Additional Net Recoveries**”), on account of the Receiver’s lower than anticipated disbursements, the return of the Comfort Deposit and the HST refunds.

## **PROPOSED SURPLUS DISTRIBUTION**

24. As set out in the Seventh Report and approved by the Court, the Receiver and the Distribution Agent followed a robust process to facilitate the Final Distribution. Multiple rounds of distributions were made to Investors to ensure the balance of the proceeds on hand were distributed, and investigative efforts were undertaken by Link to locate Investors who had not cashed their Final Distribution cheques.
25. The Final Distribution procedure provided that if the balance held by AST after several distributions was greater than \$100,000, such proceeds were to be distributed to the Investors who had previously cashed their cheques, pro rata. Alternatively, if the balance remaining was not greater than \$100,000, the Distribution Agent would be required to return such unclaimed or un-cashed amounts to the Receiver, who would then pay such proceeds to the Canadian Foundation for Advancement of Investor Rights, which is a charitable organization, or such other recipient as the Court may direct (the “**Charity**”).
26. The Receiver and Distribution Agent followed the Final Distribution procedure approved by the court and set out above. Six months after the

Second Distribution Date, there remained approximately \$318,438 in undistributed proceeds. Following the Second Distribution and additional efforts to locate Investors, the Distribution Agent and the Receiver received several inquiries from Investors who had not received a distribution, and based on those inquiries the Distribution Agent was able to make a distribution to them. As at the date of this Eighth Report, there is currently \$289,333 remaining with the Distribution Agent. The Distribution Agent has yet to apply their service fees for 2020 and 2021 in the amount of \$5,000 plus HST per year. Accordingly, there remains \$278,033 in distributable proceeds with the Distribution Agent.

27. While a path to complete the receivership as set out in the Seventh Report was anticipated to bring the administration to a timely end, the inherent difficulties of locating and making distributions to such a large number of Investors who may be deceased or have moved addresses has resulted in a greater than expected remaining amount of proceeds. Such amount is almost three times the amount of the threshold approved for distribution to the Charity.
28. Accordingly, the Receiver proposes a final distribution strategy as follows (the “**Surplus Distribution Procedure**”):
  - (i) Within 10 days of a Court order approving same, the Receiver will pay to the Distribution Agent the Additional Net Recoveries, which will be added to the remaining amounts held by the Distribution Agent.

- (ii) Within 15 days of the Distribution Agent receiving funds in accordance with subparagraph (i), the Distribution Agent will pay the Additional Net Recoveries plus the remaining proceeds it holds (defined as the “**Surplus Distribution**”), pro-rata to all Investors who have previously cashed the distribution from the Distribution Agent as at April 22, 2021. For greater certainty, any Investor who has not cashed a distribution cheque as at April 22, 2021 will be ineligible for the Surplus Distribution. Based on the records of the Distribution Agent, there are approximately 1259 Investors who would be eligible to receive their proportionate share of the Surplus Distribution, which is estimated at approximately \$325,000 net of the Distribution Agents estimated disbursements. Accordingly, each eligible investor would receive a cheque for approximately \$250.
- (iii) Any uncashed distribution cheques outstanding on December 21, 2021 (approximately 6 months after the distribution of the Surplus Distribution) will be returned by the Distribution Agent to the Receiver, and such proceeds, regardless of the amount, will be paid to the Charity.

29. In the Receiver’s view, the proposed Surplus Distribution Procedure is fair and equitable, and represents the most efficient and most appropriate resolution to these proceedings, including because:

- (i) Investors who the Receiver and/or the Distribution Agent were able to contact will receive an additional distribution;

- (ii) The Receiver and Link will avoid the potentially excessive costs of further investigations to locate Investors, when there is no guarantee that further investigations will yield any results;
- (iii) The process will ensure that these receivership proceedings will ultimately be brought to an end.

## **RECEIVER'S AMENDED FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS**

30. A copy of the Receiver's amended final statement of receipts and disbursements dated April 22, 2021 (the "**April 22 2021 R&D**") is attached as **Appendix "B"**. The April 22, 2021 R&D reflects the Additional Net Recoveries as well as the revised Fee Accrual with an additional \$60,000 for the Receiver, \$10,000 for Blakes and \$10,000 for Representative Counsel.

## **CONCLUSION**

31. If the relief sought by the Receiver is granted and the Surplus Distribution Procedure is conducted, the Receiver can then complete the Remaining Activities as reflected in the Seventh Report, with anticipated completion of its administration before the end of 2021.

32. In light of the foregoing, the Receiver respectfully requests that the Court  
issue orders in the form included in the Receiver's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,**  
**in its capacity as court-appointed receiver of the First Leaside Group of**  
**Companies and its related entities, and not in its personal or corporate**  
**capacity**

**Per:**

A handwritten signature in black ink, appearing to be 'J. Krieger', written over a horizontal line.

Jonathan Krieger, CPA, CA, CIRP, LIT  
Senior Vice President



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED**

**IN THE MATTER OF THE RECEIVERSHIP OF  
FIRST LEASIDE WEALTH MANAGEMENT INC. AND  
THE APPLICANTS LISTED ON SCHEDULE "A" (collectively "FIRST LEASIDE")**

**SEVENTH REPORT TO COURT OF GRANT THORNTON LIMITED  
IN ITS CAPACITY AS RECIEVER OF FIRST LEASIDE**

**JULY 23, 2019**



**Grant Thornton Limited,  
in its capacity as the Court-  
appointed receiver of First Leaside  
and not in its personal or corporate  
capacity**

200 King Street West  
11<sup>th</sup> Floor  
Toronto, Ontario, M5H 3T4

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## **APPENDICES**

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## INTRODUCTION

1. This seventh report (the “**Seventh Report**”) is filed by Grant Thornton Limited (“**GTL**”) in its capacity as receiver (the “**Receiver**”) without security of all assets, undertakings and properties of First Leaside.<sup>1</sup>
2. GTL was appointed Receiver over First Leaside pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated December 7, 2012 (the “**Receivership Order**”).
3. Background information pertaining to First Leaside, including the circumstances leading to the appointment of the Receiver, is contained in the affidavit of Gregory MacLeod, sworn December 3, 2012 (the “**MacLeod Affidavit**”) and filed in support of the application to seek the appointment of the Receiver. A copy of the Receivership Order, the MacLeod Affidavit and all other court materials filed and orders made in these proceedings are accessible on the Receiver’s case website at [www.grantthornton.ca/firstleaside](http://www.grantthornton.ca/firstleaside) (the “**Case Website**”).

## DISCLAIMER

4. In preparing this Seventh Report, the Receiver has relied upon certain unaudited financial information, First Leaside’s books and records, financial information provided by First Leaside, First Leaside’s former management and certain of First Leaside’s former employees. While the Receiver

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<sup>1</sup> “First Leaside”, as used in this Seventh Report, refers collectively to First Leaside Wealth Management Inc. and the applicants listed on the Schedule “A” of the title proceedings.

reviewed various documents provided by First Leaside and its former management and employees and believes that such information therein provides a fair summary of the transactions as reflected in the documents, the Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

5. In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the financial information in the records of First Leaside and certain of its former management, within the context in which such information was presented.
6. This Seventh Report has been prepared solely for the use of this Court and First Leaside’s stakeholders in and for this proceeding. Accordingly, the reader is cautioned that this Seventh Report may not be appropriate for any other purpose.
7. All references to dollars in this Canadian currency unless otherwise noted. Balances denominated in U.S. currency have been converted to Canadian currency at par.

## **BACKGROUND**

### Background to CCAA

8. First Leaside was a group of companies that promoted and sold investments in various proprietary investment products, primarily investments in real estate projects. To facilitate its business model, one of the First Leaside entities, First Leaside Securities Inc. ("**FLSI**"), was an investment dealer under Ontario securities law, subject to the jurisdiction of the Ontario Securities Commission (the "**OSC**").
9. In March, 2011, in connection with an investigation by the OSC into the affairs of First Leaside, GTL was retained as a consultant by legal counsel to First Leaside to review, report and make recommendations regarding First Leaside's business, assets, affairs and operations.
10. First Leaside subsequently consented to a voluntary cease trade order in October, 2011. G.S. MacLeod & Associates Inc. was retained as the chief restructuring officer (the "**CRO**") by the independent committee of the board of directors in December, 2011. The CRO subsequently determined that the best course of action was for First Leaside to undertake an orderly wind-down of operations. Given the complexity of the structure and holdings, the CRO determined that a court supervised process pursuant to the Companies' Creditors Arrangement Act (the "**CCAA**") was the most appropriate forum for this wind-down.
11. On February 23, 2012, an application was made to the Court by First Leaside Wealth Management Inc. ("**FLWM**") and certain related parties (the "**CCAA Applicants**") to commence proceedings under the CCAA (the "**CCAA Proceedings**"). On that date, the Court issued an order (as amended by the Court from time to time, the "**Initial Order**"), *inter alia*,

granting the CCAA Applicants the protection of a stay of proceedings and appointing GTL as monitor (the “**Monitor**”), G.S. MacLeod & Associates Inc. as the CRO and Fraser Milner Casgrain LLP as representative counsel to approximately 1,200 investors (the “**Investors**”) who were clients of FLSI. Fraser Milner Casgrain LLP became Dentons Canada LLP, which was subsequently replaced as representative counsel by order of Mr. Justice Wilton-Siegel dated March 14, 2014 by Cassels Brock & Blackwell LLP. The applicable representative counsel from time to time is referred to herein as “**Representative Counsel**”.

12. The Initial Order also provided for a general stay of all proceedings against the CCAA Applicants and against any former, current or future director or officer of the CCAA Applicants with respect to any claim against any director or officer that arose before the date of the Initial Order relating to any obligation in which such director or officer was alleged to be liable in their capacity as director or officer, or the payment or performance of such obligations. Such stay of proceedings in respect of the directors and officers was terminated on February 19, 2013.
13. During the course of its CCAA proceedings, First Leaside, under the direction of the CRO, undertook to liquidate its assets for the benefit of its stakeholders, including mortgagees, Investors, and other Creditors.
14. On December 7, 2012, the CRO brought a motion to terminate the CCAA Proceedings and appoint the Receiver in an effort to, among other things, realize on remaining assets, reduce administration costs and ultimately

facilitate distributions to stakeholders under the supervision of this Court (the “**Receivership Proceedings**”).

#### The Receivership Proceedings

15. On December 7, 2012, the Court issued an order approving a procedure for the determination and resolution of claims filed against First Leaside (the “**Claims Procedure**”). The results of the Claims Procedure are detailed in the Receiver’s third report to the Court dated July 17, 2013 (the “**Third Report**”). The Claims Procedure enabled the Receiver to call, assess and ultimately finalize the claims of Creditors and Investors against First Leaside, on the basis of which the Receiver is able to make the proposed distributions for which approval is sought herein.
16. Also on December 7, 2012, pursuant to a further order (the “**Discharge and Transition Order**”), the Court authorized and approved, among other things, the activities of the CRO and the Monitor, the fees and disbursements of the Monitor and its counsel for the period up to and including November 30, 2012, the release and discharge of the Monitor and the CRO, as well as the transitioning of certain orders that were made in the CCAA proceedings, including the continued appointment of Representative Counsel, in the Receivership Proceedings.
17. On July 24, 2013, the Court issued an order (the “**July 24, 2013 Order**”) approving an interim distribution (the “**Interim Distribution**”) of proceeds of realization to known creditors of First Leaside (“**Creditors**”) and some of the Investors. As further described in the Third Report, the Receiver developed

- a detailed distribution matrix (the “**Interim Distribution Matrix**”) to provide for the Interim Distribution.
18. Also on July 23, 2013, the Court issued an order (the “**US Funds Approval and Vesting Order**”) approving the transfer by the Receiver of its interest in the following entities (referred to as the “**US Funds**”) to certain purchasers:
- (i) Wimberly Fund;
  - (ii) First Leaside Fund;
  - (iii) First Leaside Properties Fund; and
  - (iv) First Leaside Mortgage Fund.
19. The last material assets of the First Leaside estate that had not been liquidated consisted of First Leaside’s claims against various related parties, including in particular claims against First Leaside principal David Phillips (“**Mr. Phillips**”) and his wife, Margaret Davis (“**Ms. Davis**”), seeking damages on account of unpaid loans and improper payments of funds out of First Leaside.
20. Mr. Phillips was adjudged bankrupt on July 24, 2017 after his proposal to creditors was rejected, and so the claims against Mr. Phillips became claims against his bankrupt estate.
21. On February 24, 2017, the Court approved a settlement between the Receiver and the trustee in bankruptcy of Mr. Phillip’s estate, A. Farber & Partners Inc. (in such capacity, the “**Phillips Trustee**”), in respect of claims

- by the Receiver against Mr. Phillips and by Mr. Phillips against the Receiver, which resulted in a net-payable of \$4,847,132.67 to the Receiver. The Phillips Trustee accepted this amount as a proven claim in the bankruptcy proceedings.
22. At the same time as Mr. Phillips was adjudicated bankrupt, another First Leaside principal David Wilson (“**Mr. Wilson**”) was also adjudicated bankrupt, and A. Farber & Partners Inc. was appointed as trustee in bankruptcy (in such capacity, the “**Wilson Trustee**”, and together with the Phillips Trustee, the “**Trustee**”).
23. On July 10, 2019, the Court approved a global settlement among the estates of Mr. Phillips and Mr. Wilson, Ms. Davis, the Receiver, the OSC, and a number of other First Leaside parties (the “**July Settlement**”). The July Settlement fully and finally resolved the Receiver’s claims against the First Leaside principals and related parties, as well as claims against them by the OSC.
24. The July Settlement provided for the aggregate amount of \$625,000 to be paid by Mr. Phillips, Mr. Wilson, Ms. Davis and certain other related parties to the Receiver, and the Trustee. This settlement payment was allocated \$100,000 to the Receiver, and \$525,000 to the Trustee.<sup>2</sup>

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<sup>2</sup> The Receiver, the OSC and Investment Industry Regulatory Organization of Canada (“**IIROC**”) are the primary creditors of both Mr. Phillips and Mr. Wilson, and accordingly a large proportion of the July Settlement proceeds directed to the Trustee will be distributed to the Receiver, the OSC and IIROC as distributions in the bankruptcies. The OSC and IIROC’s distributions are, in turn, being paid to the Receiver to be distributed to investors (referred to respectively, as the “**OSC Contribution**” and “**IIROC Contribution**” below).

25. The July Settlement also provided for the granting of orders formally dismissing a civil action brought by First Leaside against Mr. Phillips and Mr. Wilson (among other related parties), and for the discharge from bankruptcy of Mr. Phillips and Mr. Wilson.
26. With the Court approval of the July Settlement being granted, all of the material assets of First Leaside have been liquidated, and all that remains in this Receivership Proceeding is to make a final distribution, completed a number of administrative steps and discharge the Receiver. The Receiver is now seeking this relief.

#### **PURPOSE OF SEVENTH REPORT**

27. The purpose of this Seventh Report is to provide the Court and stakeholders of First Leaside with a summary of the Receivership Proceedings since the date of the Sixth Report, and to provide information in support of the Receiver's motion for an order:
- (i) approving the Seventh Report and the conduct and activities of the Receiver as described therein and herein;
  - (ii) authorizing and directing the Receiver to retain AST Trust Company (Canada) and Link Shareholder Services (an affiliate of AST) (collectively the "**Distribution Agent**") pursuant to the term sheet dated July 23, 2019 (the "**Term Sheet**") attached hereto as **Appendix "A"**, to complete a final distribution to First Leaside investors pursuant to the proposed Final Distribution (as defined herein);

- (iii) approving the Final Distribution, including the distribution of the Final Distribution to Investors with Fidelity Clearing Canada ULC (“**Fidelity**”) accounts directly to such Investors;
- (iv) directing the destruction or turn over of the Books and Records (as defined herein);
- (v) approving the professional fees and disbursements of the Receiver and its counsel, Blake, Cassels & Graydon LLP (“**Blakes**”), and Lax, O’Sullivan, Scott, Lisus & Gottlieb LLP (“**Lax O’Sullivan**”) each for the period from April 1, 2017 to June 30, 2019, and Representative Counsel for the period from April 1, 2017 to December 31, 2018 as well as the Fee Accrual (as defined herein); and
- (vi) discharging the Receiver and Representative Counsel upon the filing of a certificate confirming that the Receiver has completed the Remaining Activities (as defined herein), and releasing the Receiver, its counsel and Representative Counsel from any and all liability that they now have or may hereafter have by reason of, or in any way arising out of their respective acts or omissions, save and except for any gross negligence or willful misconduct;

28. An order dismissing the action styled as *First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc. and FL Securities Inc. v. David Phillips, Margaret Davis and 970877 Ontario Inc.*, Court File No. CV-12-9821-00CL (the “**Civil Action**”), which was

commenced by the CRO and continued by the Receiver upon its appointment.

29. An Order discharging the certificate of pending litigation registered on September 28, 2012 as No. DR1126692 on the property described as PT W 1/2 LT 31 CON 4 Uxbridge, PT 1, 40R1921; Township of Uxbridge and municipally known as 430 Regional Rd 8, Uxbridge (the “**CPL**”).

## **ACTIVITIES OF THE RECEIVER**

30. The First Leaside insolvency proceedings, made up of these Receivership Proceedings and the preceding CCAA Proceedings, has carried on for over seven years, with the last several years almost exclusively spent in respect of advancing protracted litigation against First Leaside’s principals and servicing investors’ needs with respect to tax filings, tax slips and their accounts at Fidelity.
31. The Receiver’s activities to June 27, 2019 are described in the Receiver’s previous reports and have been approved by the Court. The Receiver’s activities since June 27, 2019, for which approval is now being sought, include:
  - a) maintaining and reconciling the many bank accounts of First Leaside;
  - b) meeting and corresponding with the Receiver’s independent counsel, Blakes, on matters related to concluding the Receivership Proceedings;

- c) correspondence with Representative Counsel regarding the conclusion of these Receivership Proceedings;
- d) correspondence with investors;
- e) working in respect of assisting investors with tax documentation related to their investments;
- f) preparing and calculating the Final Distribution;
- g) corresponding and providing updates on the Receivership Proceedings to the OSC and IIROC;
- h) negotiating with the Distribution Agent and finalizing the Term Sheet;
- i) negotiating and settling with certain of First Leaside's former employees and Investors regarding loans made by FLWM to such parties;
- j) maintaining the Case Website and updating same on a regular basis;
- k) corresponding with the Office of the Superintendent of Bankruptcy regarding statutory filings;
- l) preparing statutory notices pursuant to section 246(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**") pursuant to the Joint Administration Order; and
- m) preparing this Seventh Report.

## FIDELITY ACCOUNTS

32. On December 7, 2012, the Court issued an Order authorizing the CRO to execute on behalf of FLSI a Custodial and Services Agreement (the “**Custodial Agreement**”) with Fidelity, as successor custodian to Penson Financial Services Canada Inc. (“**Penson**”). The Custodial Agreement is discussed in detail in the Fourth Report of the Receiver, dated May 25, 2017 (the “**Fourth Report**”).
33. Pursuant to the terms of the Custodial Agreement, Fidelity agreed to hold securities of clients of FLSI including, without limitation, securities held in registered accounts. Accounts held by Fidelity are held in the name of FLSI’s customers, not FLSI. Trades on behalf of FLSI clients of cash and securities in the applicable accounts would be cleared by Fidelity, subject to the CRO instructing Fidelity to refuse to clear a trade.
34. In order to incentivize Fidelity to agree to the services provided under the Custodial Agreement in circumstances where FLSI was insolvent and subject to Court proceedings, FLSI (by its CRO) agreed to make a \$300,000 deposit, to be increased as agreed to meet margin and risk requirements, to secure Fidelity’s costs (the “**Comfort Deposit**”). The Custodial Agreement furthermore provided for a monthly charge of \$5,000 to be paid by FLSI (the “**Monthly Fidelity Fee**”).
35. The Custodial Agreement provides that Fidelity will not generally accept instructions directly from FLSI clients and contemplates that trade

instructions would come from the CRO only, which instructing authority was transferred to the Receiver when the CRO was discharged. However, the Receiver's ability to give instructions was terminated when, on July 24, 2013, the Receiver transferred its interests in the US Funds (which were the entities that issued the securities in the Fidelity accounts) pursuant to the US Funds Approval and Vesting Order.

36. Pursuant to the Custodial Agreement, Fidelity continued to hold securities of the US Funds on behalf of clients of FLSI following the transfer of the US Funds authorized by the US Funds Approval and Vesting Order. Because the Receiver transferred all of its interests in the US Funds, the Receiver had no mandate or jurisdiction with respect to the securities of the US Funds and could not give or approve instructions with respect to the distribution of any proceeds thereof to clients of FLSI.
37. The Receiver worked extensively with Fidelity and with the trustees of the US Funds in order to coordinate an orderly wind-down of the Custodial Agreement structure, with the goal to achieve maximum efficiencies for the Receiver and the First Leaside estate, minimal exposure to Fidelity and minimal prejudice to former FLSI investors.
38. On June 6, 2017, the Court granted an order (the "**Fidelity Wind-down Order**") attached as **Appendix "B"**. The objectives of the Fidelity Wind-down Order were twofold: (a) terminate the Custodial Agreement so that the Receiver would not be contractually required to give instructions to Fidelity when it lacked the ability to do so, and (b) close out and deregister Investor

accounts on a coordinated basis, including accounts of unresponsive Investors. To achieve these objectives, the Fidelity Wind-down Order provided:

- (i) Fidelity would continue to hold the remaining portion of the Comfort Deposit until the last First Leaside account has been closed, at which time the remainder of the Comfort Deposit (if any) would be transferred to the Receiver;
- (ii) Fidelity would apply certain charges in accordance with Schedule A of the Custodial Agreement in respect of deregistration of accounts, transfers, cheque issuances, client and payment processing.
- (iii) If there was insufficient cash in any account (following the liquidation of any marketable securities), Fidelity would deduct the applicable charges for that account from the Comfort Deposit.
- (iv) Any charges associated with the transfer of securities out of accounts that did not have cash in them would be paid by the account holder, and Fidelity would not apply any such charges against the Comfort Deposit;
- (v) Representative Counsel would notify all holders of First Leaside accounts maintained by Fidelity of these wind-down terms within 14 calendar days (the “**Notice**”) of the Fidelity Wind-down Order;
- (vi) For all First Leaside accounts containing assets that had not been transferred within 120 calendar days of the Notice being given,

- Fidelity would be entitled to: (i) liquidate any marketable non-cash assets held in such accounts, or (ii) treat any non-marketable non-cash assets as defunct securities and place them into a defunct account (the “**Defunct Account**”);
- (vii) Fidelity would charge an account dormancy fee of \$25 per month (the “**Account Dormancy Fee**”) if no action was taken by any account holder to transfer his or her account within 90 calendar days of the liquidation of the last security holding in the account;
  - (viii) All reasonable legal fees incurred by Fidelity in connection with the First Leaside insolvency proceedings and related administrative matters would be paid from the Comfort Deposit;
  - (ix) Fidelity would provide an accounting of fees and expenses, including the application of funds from the Comfort Deposit and monthly fees paid by the Receiver, in form and substance acceptable to the Receiver (the “**Initial Report**”), within 14 calendar days from the issuance of the Fidelity Wind-down Order;
  - (x) Fidelity would provide the Receiver with reports, including an accounting of fees and expenses, on a bi-monthly basis, in form and substance acceptable to the Receiver, beginning two weeks after the delivery of the Initial Report;
  - (xi) The Custodial Agreement would terminate, effective upon the issuance of the Fidelity Wind-down Order; and
  - (xii) The Receiver would cease paying the Fidelity Monthly Fee, effective September 30, 2017.

39. The implementation of the Fidelity Wind-down Order did not occur as expected. The Receiver has been advised that the accounts were not wound down on the timeline contemplated, and the status updates expected by the Receiver were not provided by Fidelity. The Receiver understands that the primary reason for this was that Fidelity encountered unforeseen difficulties in transferring securities to Defunct Accounts because many accounts held both First Leaside securities and other, liquid securities which could not be put in the Defunct Account.
40. The first objective of the Fidelity Wind-down Order has been achieved: the Custodial Agreement has been terminated. Due to the unforeseen difficulties encountered by Fidelity, the second objective has not been completed, as all of the accounts have not been closed out. However, the Receiver understands that Fidelity will take instructions from individual account holders regarding the securities in their accounts.
41. Accordingly, given (a) that all Investors with Fidelity accounts were notified of the Fidelity Wind-down Order by Representative counsel, (b) the dormancy of the relevant accounts, (c) the relatively immaterial amounts contained therein, (d) the ability of Investors to independently instruct Fidelity, and (e) the fact that the Receiver is now in a position to make the Final Distribution (including to Fidelity account holders), in the Receiver's view, it is reasonable and appropriate for the Receiver to seek its discharge notwithstanding Fidelity has not completed the implementation of the

Fidelity Wind-Down Order. The Receiver does not believe that there is any prejudice to Investors in doing so.

42. In the Receiver's view, the Comfort Deposit has been earned by Fidelity, taking into account the work done by Fidelity and that may be required from Fidelity in the future. Moreover, the Receiver anticipates that an attempt to recover the remainder of the Comfort Deposit from Fidelity would be met with resistance, giving rise to delay and costs. It is therefore appropriate, in the Receiver's view, for the remainder of the Comfort Deposit to remain with Fidelity.

## **OUTSTANDING FLWM LOANS**

43. In the Receiver's Third and Fourth Reports, the Receiver described its efforts in collecting the loans from 42 Investors, directors and former employees (each, a "**FLWM Debtor**") evidenced by one or more promissory notes issued by each of them.
44. The Receiver sent demand letters to those FLWM Debtors who had not paid the amounts outstanding under their promissory notes and issued statements of claim seeking payment to 12 FLWM Debtors.
45. The Receiver pursued, collected, settled or abandoned the majority of these loans, as discussed in the Fourth Report. Despite the Receiver's efforts, there remained four loans uncollected, designated in the Fourth Report as

Loans H, J, L and M.<sup>3</sup> A copy of the Fourth Report (without Appendices) is attached hereto as **Appendix “C”**, for reference.

46. The Receiver has determined that these final outstanding loans cannot be efficiently recovered. It has accordingly entered into settlements and releases with each of the applicable borrowers, and has agreed to discontinue pursuing the loans in exchange for an assignment of distributions owing to the borrowers, if any. These assignments will permit the Receiver to distribute approximately \$187,000 that was being held-back pending resolution of the FLWM loans.
47. In the Receiver’s view, taking into account the cost, time and likelihood of success of a protracted civil action, these settlements and corresponding assignment of distributions is the most prudent course of action.

#### **THE OSC AND IIROC CONTRIBUTIONS**

48. The largest creditor in the bankruptcies of Mr. Phillips and Mr. Wilson is the OSC, on account of substantial amounts payable under a sanction order made on January 14, 2015. The Receiver is the second largest creditor.
49. After the OSC and the Receiver, the next largest creditor in the bankruptcies of Mr. Phillips and Mr. Wilson bankruptcies is IIROC, on account of a monetary penalty awarded against Mr. Phillips and Mr. Wilson in respect of IIROC’s regulatory proceedings.

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<sup>3</sup> Loans have been designated with letters to protect the privacy of the debtors.

50. The OSC and IIROC are expected to receive net dividends from the Trustee in the amount of approximately \$370,000 and \$35,000, respectively, on account of their proven claims in the bankruptcies. The OSC and IIROC have agreed to turn over their dividends to the Receiver (the “**OSC and IIROC Contribution**”) for distribution to the First Leaside Investors. The OSC specifically directed the Receiver to pay the OSC Contribution to as many First Leaside Investors as possible.
51. In the Receiver’s view, the distribution of an equal amount to each First Leaside Investor, irrespective of the particular First Leaside entities in which they invested or the amounts invested, is the most utilitarian and cost-effective means of accomplishing this direction from the OSC. The OSC and IIROC are supportive of this manner of distribution of the OSC and IIROC Contribution. Representative Counsel has also advised the Receiver that it is supportive of this distribution rationale.

## **SUMMARY OF REALIZED ASSETS**

52. The proceeds of the July Settlement represent the final material asset of the First Leaside estate that the Receiver has left to realize. The Receiver currently holds the following assets (or expects to hold the following assets at the time of distribution), grouped into general categories for the purposes of this Seventh Report:
- (i) The proceeds of the July Settlement, in the amount of approximately \$1,150,000, which includes certain settlement holdbacks;

- (ii) The Receiver's distribution in the bankruptcies of Mr. Phillips and Mr. Wilson, in the amount of approximately \$46,000;
- (iii) The OSC and IIROC Contribution, in the amount of approximately \$400,000;<sup>4</sup>
- (iv) A holdback, in the amount of approximately \$600,000, on account of the remaining amounts withheld from the Interim Distribution as a reserve to fund the Civil Action;
- (v) Claims Holdbacks, in the amount of \$187,247, on account of FLWM Loans, which have now been assigned to the Receiver as part of the FLWM loan settlements discussed above; and
- (vi) Retainers, which were advanced by First Leaside to certain professional service firms during the CCAA Proceedings and will be returned to the Receiver for distribution to stakeholders.

53. These remaining assets are either explicitly proceeds of litigation, such as the proceeds of the July Settlement and claims holdbacks, or tangentially proceeds of litigation, such as the administrative holdback to fund the administration of the Civil Action that as a result of the July Settlement are free to distribute.

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<sup>4</sup> While not technically realized assets of the estates, the OSC and IIROC Contribution will be disbursed to the Receiver for the explicit purposes of re-distributing it to the Investors in an efficient manner concurrent with the Receiver's distributions.

54. This characterization fundamentally underlies the Receiver's proposal for how the amounts should be distributed, as discussed in detail in the next section of this Seventh Report.

## **PROPOSED FINAL DISTRIBUTION**

55. As described in detail in this section of the Seventh Report, the Receiver proposes to make a final, equal distribution of the remaining proceeds it holds to all Investors, irrespective of which First Leaside units they hold, and irrespective of the amount of their original investment or interim recoveries (the "**Final Distribution**"). The Receiver does not propose to make any distribution to Creditors, nor to any transferees of First Leaside units.
56. In the Receiver's view, the proposed Final Distribution is the most reasonable, equitable, efficient and appropriate means of distributing the remaining First Leaside assets.

### *Rationale of the Interim Distribution*

57. In accordance with the Court order dated July 24, 2013 (the "**Interim Distribution Order**"), the Receiver made the Interim Distribution to the Creditors and Investors.
58. The rationale behind the Interim Distribution was based on entity-by-entity accounting. Assets realized in one of the 161 entities in the First Leaside group of companies and partnerships were distributed to the Creditors and Investors of that same entity, after accounting for potential intercompany payables and receivables. The underlying principle was that funds traceable to a specific entity should be paid to the Creditors and Investors in that same

entity. Recoveries varied from entity to entity and investor to investor, based on which units that investor owed.

59. As set out in the Third Report, the accounting underlying this distribution matrix was complicated, extensive and time consuming, but was necessary and appropriate in the context of the Interim Distribution as the source of the funds that were being disbursed were generally recoveries from real estate assets owned by each applicable entity.
60. In the Receiver's view, it is not appropriate to replicate the complicated Interim Distribution Matrix for the remaining funds.

*Rationale of the Final Distribution*

61. All of the remaining funds are direct or indirect proceeds of litigation. In the case of the proceeds of the July Settlement, they are proceeds of litigation in respect of First Leaside's principals. In the Receiver's view, these proceeds cannot be allocated to any one particular First Leaside entity as an asset. The proceeds represent damages and recoveries on a global basis. Therefore, unlike what was done in the Interim Distribution, these proceeds ought to be distributed to Investors equally, without regard to the specific First Leaside entity in which they invested.
62. All Investors were prejudiced by the acts and omissions underlying the Civil Action, and so all Investors ought to share in the recoveries for those acts and omissions, irrespective of which particular First Leaside units they bought. This rationale applies to the balance of the proceeds to be distributed, and to the OSC and IIROC Contributions, which were given to

- the Receiver with the explicit instruction that they be paid equitably to Investors.
63. Moreover, in the Receiver's view it is appropriate that all Investors receive an equal amount of the remaining proceeds, regardless of the size of their original investments, for the reasons set out below. Distribution on a "head count" rather than a "pari passu" basis would result in approximately 1400<sup>5</sup> investors receiving an equal share of approximately \$2,523,000<sup>6</sup> to be distributed, resulting in an estimated \$1,775 to \$1,825 distribution to each Investor.
64. The Receiver believes that an equal, rather than rateable, distribution is appropriate in the circumstances because:
- (i) *The Nature of the Proceeds*: The proceeds to be distributed in the Final Distribution are not allocable to individual First Leaside entities. The Interim Distribution was more or less favourable to Investors depending on which First Leaside entities they owned units. Certain entities happened to hold assets of greater value than other entities as at the date of the Receivership Order. When the proceeds to be distributed were directly linked to the assets in specific entities, it was appropriate that some Investors received greater proportionate amounts than others. However, because the proceeds being distributed in the proposed Final Distribution are in

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<sup>5</sup> The Receiver has estimated the number of Investors entitled to the Final Distribution. The actual number may change immaterially.

<sup>6</sup> This is an estimate and may change subject to certain final calculations and the exact amounts that are distributed by the Trustee to the Receiver.

most cases not allocable to individual entities and do not result from specific investments, taking into account the amounts invested (or the amounts recovered by individual Investors in connection with the Interim Distribution) is not necessary or appropriate, and each Investor should receive the same amount;

- (ii) Maximum Recoveries. The proposed Final Distribution will ensure that as many Investors as possible receive some recovery, whereas a distribution based on amounts invested or based on which units were owned (like the Interim Distribution) would result in some Investors being entitled to nothing, or being entitled to an amount too small to efficiently and effectively distribute;
- (iii) Logistical Efficiency. For the reasons set out in (ii), the proposed Final Distribution will result in fewer un-cashed cheques for the Distribution Agent to follow up on, because there will be fewer small cheques – this will increase the net amount available to Investors by reducing costs;
- (iv) Stakeholder Support. Representative Counsel, the OSC and IIROC support the proposed Final Distribution, and the Receiver has given considerable weight to their views; and
- (v) No Windfalls. No Investor will receive more than it invested, because the Receiver does not intend to include in the Final Distribution Investors who previously received 100% return of their principal investment through the CCAA Proceedings or

Receivership Proceedings. These include Investors that purchased a syndicated mortgage investment in the properties known as:

- a) 90 King Street
- b) Mill Street
- c) Cemetery Road

*No Distribution to Transferees*

65. The Receiver proposes to make the Final Distribution based on the First Leaside records as of the date of the Receiver's appointment. Some Investors may have sold or traded units since the Receiver's appointment without the Receiver's knowledge, and it would be an inefficient use of limited estate assets for the Receiver to track down these private trades. If an Investor sold its entitlement to the Final Distribution, that is between the Investor and the purchaser.

*No Final Distribution to Creditors*

66. Given the nature of the proceeds to be distributed, the Receiver is not proposing to make distribution to Creditors. Some Creditors were paid in full pursuant to the Interim Distribution, but there remain approximately 60 creditors with an aggregate of \$1 million in unpaid, unsecured creditor claims across all of the First Leaside entities. For scale, unpaid Investor claims total over \$275 million.
67. Distributing only to Investors is appropriate given the nature of the proceeds, for the same reasons discussed above. The bulk of the proceeds

- to be distributed cannot be allocated to individual First Leaside entities, and there are not clear entitlements of creditors of those individual entities.
68. Moreover, the OSC and IIROC Contributions were only given to the Receiver on the basis that they would be redistributed to Investors. These funds are not First Leaside assets, and would never have been subject to creditor claims.

*Distribution to Fidelity Investors*

69. Pursuant to the terms of the Fidelity Wind-down Order, the Court approved the termination of the Custodial Agreement. Given the nominal nature of the Final Distribution compared to the overall amount of Investor's claims, and the provisions of the Fidelity Wind-down Order, it is prudent and efficient for the Receiver to make the Final Distribution directly to Fidelity account holders directly, as opposed to facilitating that distribution through Fidelity.
70. The Receiver respectfully requests that this Court authorize and direct it to make the Final Distribution to First Leaside's Investors directly, regardless of whether their existing investment was held in a registered or non-registered account. This relief was also granted, on the same basis of administrative efficiency, in the Interim Distribution Order.

*Final Distribution Protocol & The Distribution Agent*

71. The Receiver has had the last known addresses of First Leaside Investors since its appointment. Any changes to such contact information that have been communicated to the Receiver since its appointment are reflected in its records. These records were used to make the Interim Distribution.

72. The administrative costs and expenses of making the Interim Distribution were considerable, and in the Receiver's view can be minimized for the purposes of the Final Distribution by out-sourcing the task to a third party.
73. The Receiver has accordingly retained the Distribution Agent for the purposes of making the Final Distribution, on terms of the Term Sheet, subject to the approval of the Term Sheet by the Court.
74. The Receiver proposes the following process for the Final Distribution, subject to the Court's approval of the Term Sheet:
- (i) The Receiver will provide to the Distribution Agent, within sixty days of the Court's approval of the Term Sheet: (a) the current contact information of each Investor and (b) each Investor's entitlement to the Final Distribution. Investor information disclosed to the Distribution Agent at this time will not include social security numbers or other personal information. Any Investor that wishes to update their address after the date when the Receiver provides the Distribution Agent with the Investor contact information must contact the Distribution Agent directly;
  - (ii) The Receiver will transfer to the Distribution Agent the amounts to be distributed, which will be held in a segregated account by the Distribution Agent;
  - (iii) Within thirty days of receiving the funds from the Receiver, the Distribution Agent will make a distribution to each Investor, by cheque mailed to that Investor's last known address, in the amount

set forth in the Final Distribution. The date that cheques are sent to investors shall be the “**First Distribution Date**”;

- (iv) On the date that is six months after the First Distribution Date, the Distribution Agent will cancel any cheques that have not been cashed, and the Receiver will provide social insurance numbers to the Distribution Agent for the applicable Investors who have not received and cashed a distribution, to facilitate the Distribution Agent locating a current address;
- (v) The Distribution Agent will use commercially reasonable best efforts to locate Investors with returned or uncashed cheques, and re-send cheques to any contact information discovered as a result. The date of the sending of this second round of cheques shall be the “**Second Distribution Date**”;
- (vi) The Distribution Agent shall provide the Receiver with monthly report of cheques that have been cashed by investors, commencing on the first month after the First Distribution Date;
- (vii) If, after six months of the Second Distribution Date, following the Distribution Agent’s efforts to locate Investors pursuant to commercially reasonable efforts:
  - a) unclaimed or un-cashed final distribution amounts exceed \$100,000 in aggregate, the Distribution Agent shall re-distribute such unclaimed amounts, equally to Investors that cashed their distributions (being either

the first distribution or the second distribution)  
cheques;

- b) unclaimed or un-cashed final distribution amounts that do not exceed \$100,000 in aggregate, the Distribution Agent shall return such unclaimed or un-cashed amount to the Receiver, who shall pay such proceeds to the Canadian Foundation for Advancement of Investor Rights, which is a charitable organization, or such other recipient as the Court may direct.

- 75. The Term Sheet sets out the Distribution Agent's fee structure, which includes (a) a \$5,000 annual management fee, (b) a \$37,500 setup and service fee, (c) a variable asset recovery fee (to locate investors who have moved, passed away, etc) that will be determined based on the number of Investors who do not cash their first distribution cheque, which amount is payable and deducted from the distribution proceeds attributable to the specific Investor in respect of whom the asset recovery services are required, and (d) a nominal printing, stationary and mailing fee.
- 76. In the Receiver's view, this compensation structure is reasonable and efficient. It will ensure that Investors who have maintained contact information with the Receiver do not bear the costs of the Distribution Agent's time seeking out Investors who must be located after the six month anniversary of the First Distribution Date.
- 77. The Distribution Agent's gross compensation for effecting the Final Distribution will be materially lower than the estimated costs that would be

incurred by the Receiver and its counsel to undertake the Final Distribution directly.

#### *Tax Treatment of Final Distribution*

78. The Receiver has considered the tax treatment of the Final Distribution in the hands of the Investors, and concluded that it is most efficient and prudent for each Investor to consult with its tax advisor as to any taxes payable on their distribution. The Receiver is not withholding, issuing any tax forms or otherwise accounting for any possible taxes payable by Investors.

#### **DISMISSAL OF CIVIL ACTION**

79. The Minutes of Settlement that set out the terms of the July Settlement require that the Receiver seek an order dismissing the Civil Action, and an order discharging the CPL, each on a consent basis.
80. The Receiver has obtained, or expects to obtain, the signed consents of each applicable party, in accordance with the terms of the July Settlement, and consistent with its obligations thereunder, is seeking orders dismissing the Civil Action and discharging the CPL.

#### **BOOKS AND RECORDS**

81. During the course of the Receivership Proceedings, the Receiver has obtained certain books and records of First Leaside (the “**Books and Records**”), comprised of approximately 1,000 boxes of hard copy records

plus certain computer equipment and electronic data that are currently stored or maintained in a third-party storage facility.

82. The cost of the third-party maintenance of First Leaside server and electronic data has been significant as it is maintained on an old server and operating system that cannot be easily duplicated or replaced. The electronic records have been accessed from time to time by the Receiver and/or an accountant engaged by the Receiver to assist with the Receiver's administration. The Receiver anticipates that it will no longer require access to the server or information stored thereon.
83. With the completion of the Receivership Proceedings, the Receiver has no need to retain any of the Books and Records.
84. The Receiver communicated with the Trustee and the OSC to inquire whether such parties would be interested in taking over possession of the Company's Books and Records. As of the date of this report, no party has expressed an interest in the Company's Books and Records.
85. Accordingly, unless Mr. Phillips, the CRA (who will be served with the Receiver's motion) or another entity with a legitimate interest in the Books and Records requests from the Receiver possession of the Books and Records in their entirety, at their cost, the Receiver is seeking the Court's authorization to destroy the Books and Records within 60 days of the order authorizing such destruction.

86. The Receiver submits that 60 days after the date of the order sought herein ought to be a sufficient period of time for any party interested in the Books and Records, at their cost, to decide if they require the Books and Records.
87. If any party with a legitimate interest in the Books and Records reasonably objects to the destruction of the Books and Records, the Receiver will work with them to resolve the issue, failing which the Receiver may seek the advice and direction of the Court.

#### **RECEIVER'S FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS**

88. A copy of the Receiver's final statement of receipts and disbursements dated July 24, 2019 (the "**July 2019 R&D**") is attached as **Appendix "D"**. The July 2019 R&D reflects the Final Distribution, various settlement amounts paid or received, and the Fee Accrual, as discussed further below. The Receiver respectfully seeks the Court's approval of the July 2019 R&D.

#### **REMAINING ACTIVITIES**

89. The Receiver has substantially completed its duties as set out in the BIA, the Receivership Order and the subsequent Orders of the Court made in these Receivership Proceedings, except for the following outstanding matters (collectively, the "**Remaining Activities**"):
- (i) coordinating the payment of the Final Distribution, in cooperation with the Distribution Agent, subject to Order of this Court;

- (ii) arranging for the destruction of any Books and Records or facilitating their transfer, at the cost of the requesting party;
- (iii) preparing the final report of the Receiver pursuant to section 246(3) of the BIA;
- (iv) preparing final tax forms on behalf of the First Leaside entities;
- (v) other administrative matters incidental to GTL's appointment as Receiver; and
- (vi) filing the Certificate (as defined below).

90. The Receiver is of the view that it is appropriate at this time to seek an order of this Court discharging the Receiver, subject to the Receiver filing a certificate (the "**Certificate**") with this Court confirming that the Remaining Activities have been completed. The Receiver proposes that the discharge of the Receiver be operative on the filing of the Certificate.

91. The Receiver is furthermore of the view that the releases sought by the Receiver and its counsel are reasonable and appropriate in the circumstances.

## **PROFESSIONAL FEES AND DISBURSEMENTS**

92. The Receiver, the Receiver's legal counsel, and Representative Counsel have maintained detailed records of their professional time and costs since the Initial Order (as amended) and the Receivership Order were granted, and have continued to do so in these receivership proceedings.

93. Lax O'Sullivan was specifically engaged in respect of the litigation FLWM commenced against Mr. Phillips and Ms. Davis. Cassels Brock is acting as Representative Counsel. Blakes is acting as independent counsel in respect of all other matters.
94. Pursuant to paragraphs 30 to 32 of the Receivership Order, the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court, and shall pass their accounts before the Court. The Receiver and its counsel have expended significant effort and time to carry out the administration of these Receivership Proceedings.
95. The total fees charged by the Receiver during the period from April 1, 2017 to June 30, 2019 amount to \$198,688.64, together with disbursements in the sum of \$47.47, and HST in the amount of \$25,835.70, totaling \$224,571.81. Time spent by the Receiver is more particularly described in the Affidavit of Jonathan Krieger, the Senior Vice-President of GTL having carriage of this proceeding as the Receiver, sworn July 22, 2019 in support hereof (the "**Krieger Affidavit**").
96. The total legal fees charged by Blakes in its capacity as Receiver's Counsel during the period from April 1, 2017 to June 30, 2019 amount of \$103,914.50, together with disbursements in the sum of \$2,439.70, and HST in the amount of \$13,760.19, totaling \$120,114.39. The time spent by Blakes is more particularly described in the Affidavit of Chris Burr sworn July 23, 2019 in support hereof (the "**Burr Affidavit**").

97. The total legal fees charged by Lax O'Sullivan in its capacity as counsel to First Leaside and special litigation counsel to the Receiver during the period from April 1, 2017 to June 30, 2019, amount to \$42,039.00 together with disbursements in the sum of \$317.79, and HST in the amount of \$5,506.48, totaling \$47,863.27. The time spent by Lax O'Sullivan is more particularly described in the Affidavit of Matthew Gottlieb, sworn July 8, 2019 in support hereof (the "**Gottlieb Affidavit**").
98. The total legal fees charged by Cassels Brock in its capacity as Representative Counsel for the period from April 1, 2017 to December 31, 2018 amount to \$54,934.58, together with disbursements in the sum of \$98.83, and HST in the amount of \$7,154.36, totaling \$62,187.69. The time spent by Cassels Brock is more particularly described in the Affidavit of Shayne Kukulowicz, sworn June 27, 2019 in support hereof (the "**Kukulowicz Affidavit**", together with the Krieger Affidavit, the Burr Affidavit and the Gottlieb Affidavit, the "**Fee Affidavits**").
99. Copies of each of the Fee Affidavits will be filed with the Court, posted on the Case Website and made available to parties on the Service List who request copies of same.
100. Provided that there is no opposition to the relief being sought, the Receiver and Blakes estimate that they will incur further fees in the amount of approximately \$150,000 and \$56,500 (inclusive of HST) plus disbursements in each case, to complete the administration of these receivership proceedings (the "**Fee Accrual**"). The Fee Accrual was

calculated to be sufficient to allow the Receiver to complete the Remaining Activities.

101. The Receiver is currently holding a retainer of \$150,000, from the date of its appointment as Monitor in 2012, which the Receiver will retain in trust for the Fee Accrual.
102. Blakes is currently holding a retainer of \$100,126.33, from the date of its engagement as counsel to the Monitor in 2012. Blakes has advised the Receiver that it shall draw the amount of \$27,151.92 on account of its June 2019 fees and disbursements (subject to Court approval), retain \$56,500 in trust for the Fee Accrual, and return the balance of \$16,474.41 to the Receiver for distribution to Investors. Blakes has advised the Receiver that it shall remit any additional balance of the retainer to the Receiver to be distributed to the Investors upon the completion of its work in these Receivership Proceedings.
103. Cassels Brock is currently holding a retainer of \$25,000 from when it was first engaged as Representative Counsel. Representative Counsel advises that they will charge the remainder of their fees to the completion of these proceedings against the retainer and remit the balance to the Receiver to be distributed to the Investors.
104. The Receiver is of the view that the fees and disbursements incurred by it and its counsel (including the Fee Accrual in each case), and by Representative Counsel, are fair and reasonable. Accordingly, the Receiver

respectfully requests this Court's approval of such fees and disbursements,  
as more particularly set out in the Fee Affidavits.

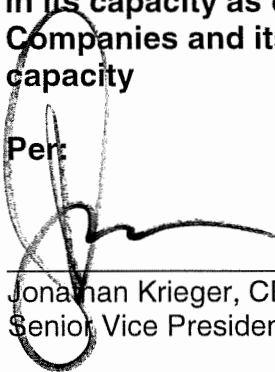
## **CONCLUSION**

105. In light of the foregoing, the Receiver respectfully requests that the Court  
issue orders in the form included in the Receiver's motion record.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,  
in its capacity as court-appointed receiver of the First Leaside Group of  
Companies and its related entities, and not in its personal or corporate  
capacity**

**Per:**



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Jonathan Krieger, CPA, CA, CIRP, LIT  
Senior Vice President



District of Ontario  
Division – 09 - Toronto  
Estate No.: 31-457262  
Court File No.: CV-12-9930-00CL

**IN THE MATTER OF THE RECEIVERSHIP OF  
FIRST LEASIDE WEALTH MANAGEMENT INC. AND  
THE APPLICANTS LISTED ON SCHEDULE "A"**

**FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS (AMENDED)  
FOR THE PERIOD ENDING APRIL 22, 2021**

|                                                                            |                         |
|----------------------------------------------------------------------------|-------------------------|
| <b><u>Cash Receipts</u></b>                                                |                         |
| Proceeds from Asset Sales                                                  | \$ 14,034,720.48        |
| Cash in Bank                                                               | 5,915,674.67            |
| Government Refunds                                                         | 1,669,079.75            |
| Funds from Retainer                                                        | 108,904.25              |
| Mortgage Principal Collected                                               | 1,000,000.00            |
| Accounts Receivable                                                        | 841,689.38              |
| Interest on Deposits                                                       | 129,197.02              |
| Miscellaneous Refunds                                                      | 50,035.54               |
| Settlements                                                                | 608,960.86              |
| Investment redemption                                                      | 87,712.31               |
| Rental Income                                                              | 16,369.00               |
| HST collected                                                              | 442.50                  |
| <b>Total Cash Receipts</b>                                                 | <b>\$ 24,462,785.76</b> |
| <b><u>Cash Disbursements</u></b>                                           |                         |
| Accounting Services                                                        | \$ 185,607.40           |
| Filing and Licensing Fees                                                  | 176,259.52              |
| IT Services                                                                | 195,195.76              |
| HST paid                                                                   | 110,095.47              |
| Consulting                                                                 | 77,756.96               |
| Commissions                                                                | 85,940.48               |
| Bank Charges                                                               | 85,746.17               |
| Storage / Moving Costs                                                     | 68,411.18               |
| Distribution Agent Fees                                                    | 42,500.00               |
| Mortgage Interest Collected and Disbursed                                  | 27,513.02               |
| Occupation Rent                                                            | 14,253.64               |
| Repairs and Maintenance                                                    | 12,782.85               |
| Operating Expenses                                                         | 18,407.79               |
| Utilities and Telephone                                                    | 10,210.92               |
| Property Taxes                                                             | 5,975.93                |
| Advertising re: Claims Process                                             | 4,780.28                |
| Insurance                                                                  | 4,406.43                |
| Postage                                                                    | 1,759.57                |
| <b>Total Cash Disbursements</b>                                            | <b>\$ 1,127,603.37</b>  |
| <b>Net Cash Receipts Before Professional Fees and Distributions</b>        | <b>\$ 23,335,182.39</b> |
| <b><u>Professional Fees</u></b>                                            |                         |
| Receiver's Fees                                                            | \$ 1,634,569.15         |
| HST on Receiver's Fees                                                     | 212,493.87              |
| Legal Fees                                                                 | 2,446,655.03            |
| HST on Legal Fees                                                          | 316,320.32              |
| <b>Total Professional Fees<sup>2</sup></b>                                 | <b>\$ 4,610,038.37</b>  |
| <b><u>Distributions</u></b>                                                |                         |
| Distribution to Shareholders                                               | \$ 15,912,171.80        |
| Distribution to Unsecured Creditors                                        | 1,196,046.43            |
| Distribution to Secured Creditors                                          | 1,000,000.00            |
| Settlement                                                                 | 570,000.00              |
| <b>Total Distributions</b>                                                 | <b>\$ 18,678,218.23</b> |
| <b>Additional Net Recoveries</b>                                           | <b>\$ 46,925.79</b>     |
| <b>Proposed Payment to Distribution Agent of Additional Net Recoveries</b> | <b>\$ 46,925.79</b>     |
| <b>Receipts Less Disbursements following Distribution</b>                  | <b>\$ (0.00)</b>        |

**Notes:**

<sup>1</sup> Pursuant to paragraph 2 of the Joint Administration Order dated December 27, 2012, by the Ontario Superior Court of Justice (Commercial List), the Receiver is authorized to administer the Receivership Estate as if such Receivership Estates were a single receivership estate for the purposes of its administrative duties and responsibilities to the OSB under Section 246 of the Bankruptcy and Insolvency Act.

<sup>2</sup> Includes Additional Accruals for fees to complete administration for the Receiver, its counsel and Representative Counsel