Court File No.: CV-12-9617-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc., and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

SECOND REPORT TO COURT OF REPRESENTATIVE COUNSEL TO THE INVESTORS

INTRODUCTION

1. Pursuant to the order of the Ontario Superior Court of Justice (the "**Court**") made on February 23, 2012 (the "**Initial Order**") in the proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of First Leaside Wealth Management Inc. ("**FLWM**") and certain of its affiliates (together with FLWM, "**First Leaside**"), Dentons Canada LLP (Formerly, Fraser Milner Casgrain LLP) ("**Dentons**"), was appointed to act as representative counsel ("**Rep Counsel**") to all persons who are clients of First Leaside Securities Inc. (the "**Investors**") with respect to First Leaside's proceedings under the CCAA.

2. At a hearing on June 28, 2012, the Honourable Mr. Justice Campbell requested that Rep Counsel report to the Court regarding their activities to date. On August 21, 2012 Dentons provided the Court with the First Report to Court of the Representative Counsel to the Investors (the "**First Report**"). Since the First Report, Rep Counsel has engaged in numerous activities on behalf of the Investors, which are described herein.

3. The appointment of Rep Counsel made in the CCAA proceedings was continued in these receivership proceedings by order of Justice Wilton-Siegel made on December 7, 2012.

COMMUNICATIONS AND ACTIVITIES WITH INVESTORS

REPORTING LETTERS

4. Rep Counsel has prepared and delivered a total of nine formal reporting letters to the Investors, the contents of the initial five letters (dated February 28; March 16; April 20; June 20 and August 2, 2012) were discussed in the First Report. Since the First Report, Rep Counsel has delivered four letters to Investors (dated September 7, 2012; October 17, 2012; December 21, 2012 and April 26, 2013 (collectively, the "**Reporting Letters**")). Copies of the Reporting Letters are attached as **Appendix A** hereto. The Reporting Letters were sent by e-mail with hard copies only being delivered to those Investors who had specifically requested such. All Reporting Letters have been posted by the Monitor/Receiver on their website.

5. The Reporting Letters were sent to the Investors to provide them with information about, among other things:

   (a) ongoing activities of Dentons as Rep Counsel;

   (b) Rep Counsel's ongoing consultation with the steering committee of Investors (the "**Steering Committee**");

   (c) updates in the CCAA proceedings;

   (d) the status of the sale of First Leaside's assets;

   (e) the commencement of receivership proceedings;

   (f) updates on Investment Industry Regulatory Organization of Canada ("**IIROC**") disciplinary hearing against Dave Phillips and John Wilson;

   (g) updates on Ontario Securities Commission ("**OSC**") hearing against Dave Phillips and John Wilson; and

   (h) Rep Counsel's dealings with the Canadian Investor Protection Fund ("**CIPF**");

TELEPHONE TOWN HALL MEETINGS

6. Along with the previously reported meetings on April 3, 2012 and on May 10, 2012, Rep Counsel organized and hosted telephone town hall meetings with the Investors on January 9 and July 16, 2013. The Investors, along with representatives of Grant

Thornton Limited in its capacity as court-appointed Receiver (the "**Receiver**") were invited to attend. Together with the Receiver, Rep Counsel addressed various questions the Investors posed to Rep Counsel about tax returns, the transfer of investment accounts and the values ascribed to investments, assistance with CIPF claims, the sale of First Leaside's assets and distribution of proceeds related to any such assets, timing of distributions to Investors and the quantum of distributions to Investors.

MEETINGS WITH THE STEERING COMMITTEE OF INVESTORS

7. As previously reported, a Steering Committee of interested Investors was formed to consult with Rep Counsel about issues that are of interest to the Investors. On a regular basis, Rep Counsel has continued to host meetings with the Steering Committee, the majority of which have been attended by the Receiver, along with their respective counsel. The focus of these meetings has been to address questions the Steering Committee has with regard to the financial condition of First Leaside, strategy to maximize realizations for the Investors, proposed rescue plans for certain First Leaside properties by certain Investors, the involvement David Phillips (the former chief executive officer of First Leaside) has continued to have with the Investors and certain properties located in the state of Texas, the Receiver's proposed distributions and discussions with CIPF.

8. The Receiver produced a preliminary report to the Steering Committee dated June 27, 2013 related to the financial position of First Leaside and a proposed interim distribution. Rep Counsel held a meeting with the Steering Committee, attended by the Receiver on June 27, 2013 to discuss the interim distribution and other financial affairs of First Leaside.

E-MAIL UPDATES AND COMMUNICATIONS WITH INDIVIDUAL OR GROUPS OF INVESTORS

9. Rep Counsel continues to maintain an electronic database containing contact information and investment holdings for the over 1,200 known Investors. As required, the database has been updated to account for new contact information for each Investor. Included in the database is a mechanism which allows Rep Counsel to track all e-mail

correspondence with each individual Investor and provides Rep Counsel with the ability to send mass e-mail correspondence to the Investors.

10. Rep Counsel continues to maintain, monitor, and reply to a dedicated e-mail address and telephone hotline for the Investors. Investors continue contact Rep Counsel on a regular basis to seek assistance on many issues including, but not limited to, the nature of their investments, the status of the insolvency proceedings and the CIPF claims process. Where possible and appropriate, Rep Counsel sends e-mail updates to all Investors collectively in an effort to reduce duplicating the comments provided to them.

11. The Investors represent a diverse group of individuals in terms of their age, level of financial literacy and knowledge about their particular investments, understanding about the CCAA process, understanding about the receivership process, and direct involvement with First Leaside. Therefore, given the complex structure of First Leaside, and the unique portfolio of investments that each Investor holds, Rep Counsel must frequently tailor its response to address individual Investor queries or queries from groups of Investors that hold investments in a particular First Leaside security. To date, Rep Counsel has handled approximately 2043 emails and 523 phone calls from Investors.

CANADIAN INVESTOR PROTECTION FUND ("CIPF")

12. As previously reported, on June 28, 2012, the Court approved the expansion of Rep Counsel's mandate to include assisting Investors with the filing of claims with CIPF and the coordination of the CIPF claims process with any future claims process that may be conducted in the within proceedings.

13. Rep Counsel subsequently met with CIPF to discuss the extension of the CIPF deadline and a combined CIPF claims process with the CCAA claims process. On August 8, 2012, CIPF confirmed the deadline was extended.

14. In the initial meetings, CIPF counsel and staff members of CIPF appeared to be amenable to discussing the logistics of a dual CIPF and CCAA/Receivership claims process ("**Dual Claims Process**"). Despite the commercial efficiencies that would accompany a Dual Claims Process for all interested parties, CIPF counsel later communicated that CIPF was

unwilling to partake in the Dual Claims Process. As a result, all Investors are required to deal with separate claims forms in order to receive a distribution under the receivership and, if available, any compensation from CIPF.

15. On November 15, 2012, Rep Counsel once again met with CIPF to discuss a coordinated claims process and the possibility of a practical solution for resolving numerous claims that were expected to be asserted by the Investors under CIPF's claims policy. While there was no agreement regarding a modified claims process, Rep Counsel, as discussed during the meetings, provided CIPF with the details of the Investors' claims position and discussed the possibility of a resolution of claims on a global basis.

16. On April 11, 2013, CIPF published a notice on the CIPF website that the deadline for submission of claims to CIPF would be October 12, 2013. Rep Counsel understands that CIPF has also sent letters to Investors to this effect.

17. On April 15, 2013, Rep Counsel sent a letter to CIPF which outlined the basis for Investor coverage and which requested a meeting with CIPF staff, and as appropriate CIPF's board, to discuss the possibility of a global resolution to the claims of the Investors against CIPF (the "**Global Coverage Letter**"). A copy of the Global Coverage Letter is attached hereto as **Appendix B**.

18. On June 14, 2013, CIPF provided a response letter to Rep Counsel (the "**Responding Letter**"). The Responding Letter addressed the procedural aspects of CIPF's coverage policy and stated that "allegations must be advanced by customers on a case-by-case basis" and "CIPF must (and will) assess customer claims on a case-by-case basis based on the particulars of any alleged loss." The Responding Letter did not provide a response regarding the substantive issues of coverage or the merits of trying to resolve the claims in a streamlined process. A copy of the Responding Letter is attached hereto as **Appendix C**.

19. On July 15, 2013, Rep Counsel sent a further letter to CIPF's counsel reaffirming a willingness to discuss the substantive issues of Investors on a collective or individual basis. A copy of that letter is attached hereto as **Appendix D**.

20. As a result of the requirement that Investors submit a separate CIPF proof of claim form, Rep Counsel has prepared and will distribute a precedent proof of claim form that may assist the Investors in making a claim that falls within CIPF's coverage policy. Investors will have the opportunity to tailor the forms to fit their individual circumstances as they see fit.

ATTENDANCE AT COURT PROCEEDINGS

21. Rep Counsel has attended at Court for all motions that have been brought by First Leaside in the CCAA proceedings or by the Receiver. Rep Counsel reviews all materials that are filed with the Court, including the Monitor/Receiver's Reports to the Court and related motion records and communicates with the Steering Committee and Investors regarding such.

All of which is respectfully submitted this 19th day of July, 2013.

Dentons Canada LLP

Dentons Canada LLP in its capacity as
Court-appointed representative counsel to the Investors

Schedule A – List of Additional Receivership Applicants

First Leaside Finance Inc.
First Leaside Securities Inc.
FL Securities Inc.
Mill Street Limited Partnership
Harmony Townhomes Limited Partnership
First Leaside Management Inc.
Development Notes Limited Partnership
Special Notes Limited Partnership
First Leaside Accounting and Tax Services Inc.
2086056 Ontario Inc.
First Leaside Properties Limited Partnership
First Leaside Realty Inc.
First Leaside Realty Limited Partnership
First Leaside Realty II Inc.
First Leaside Investors Limited Partnership
First Leaside Premier Limited Partnership
First Leaside Progressive Limited Partnership
First Leaside Realty II Limited Partnership
First Leaside Ultimate Limited Partnership
First Leaside Universal Limited Partnership
Uxbridge Development Limited Partnership
First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
965010 Ontario Inc.
Wimberly Apartments Limited Partnership
1045517 Ontario Inc.
The Shores Limited Partnership
1024919 Ontario Inc.
Old Mill Pond Apartments Limited Partnership
1031628 Ontario Inc.
1056971 Ontario Inc.
The Bluffs of Lakewood Limited Partnership
1376095 Ontario Inc.
F.L. Spring Valley Limited Partnership
1437290 Ontario Ltd.
First Leaside Partners Limited Partnership
First Leaside Opportunities Limited Partnership
1244428 Ontario Ltd.
Preston Racquet Club Real Estate Limited Partnership Series 910PA
Preston Racquet Club Real Estate Limited Partnership Series 910PB
Preston Racquet Club Real Estate Limited Partnership Series 910PC
Preston Racquet Club Real Estate Limited Partnership Series 910PD
PrestonOne Development (Canada) Inc.
PrestonTwo Development (Canada) Inc.

PrestonThree Development (Canada) Inc.
PrestonFour Development (Canada) Inc.
2088543 Ontario Inc.
2088544 Ontario Inc.
F.L.W. Pond Master Ltd.
2088545 Ontario Inc.
F.L.W. Shores Master Ltd.
1331607 Ontario Inc.
First Leaside Acquisitions Limited Partnership
Queenston Manor General Partner Inc.
Queenston Manor Limited Partnership
2107738 Ontario Inc.
First Leaside Advantage Limited Partnership
2128054 Ontario Inc.
First Leaside Elite Limited Partnership
1132413 Ontario Inc.
First Leaside Entities Limited Partnership
2067171 Ontario Inc.
First Leaside Expansion Limited Partnership
2085306 Ontario Inc.
First Leaside Growth Limited Partnership
2086218 Ontario Inc.
First Leaside Unity Limited Partnership
First Leaside Visions Management Inc.
2007804 Ontario Inc.
First Leaside Wealth Management Limited Partnership
First Leaside Fund Management Inc.
F.L. Beverages Group Limited Partnership
First Leaside Global Limited Partnership
Special U.S. Notes Limited Partnership
FLWM Holdings Limited Partnership
First Leaside Select Limited Partnership
Cherry Park Retirement Residences Limited Partnership
First Leaside Retirement Residences (Okanagan) Limited Partnership
Orchard Valley Retirement Residences Limited Partnership
The Shores Retirement Residences Limited Partnership
F.L. PrimeTime Living Limited Partnership

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Appendix A

FMC
LAW

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Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511
FAX 416 863 4592

September 7, 2012

BY EMAIL

To all persons who are clients of First Leaside Securities Inc. (the "Investors")

Dear Sirs/Mesdames:

RE: ***Companies' Creditors Arrangement Act*** **("CCAA") proceedings involving First Leaside Wealth Management Inc. ("FLWM") and certain of its affiliates subject to the Initial Order of the Ontario Superior Court of Justice (the "Court") dated February 23, 2012 ("First Leaside")**

AND RE: **Sixth Reporting Letter to Investors by Fraser Milner Casgrain LLP as Court-appointed representative counsel for the Investors ("Rep Counsel")**

This sixth reporting letter is intended to update you on the status of the CCAA proceedings and the activities that we are currently engaged in on your behalf in our capacity as Rep Counsel.

1. **Statement of Claim against David Phillips and Margaret Davis**

Attached at **Appendix A** is a copy of the Statement of Claim by First Leaside, as plaintiff, against, among others, David Phillips and Margaret Davis (the wife of David Phillips), each as defendants, which was issued by the Court on August 28, 2012. Among other things, First Leaside's Statement of Claim alleges that due to fraudulent misrepresentation, breach of contract, breach of fiduciary duty, oppression, conversion, conspiracy and unjust enrichment by David Phillips and Margaret Davis, damages are owed to First Leaside, including damages for the following sums:

(a) $202,420.00 for loans made by FLWM to Mr. Phillips;

(b) $160,000 for loans made by FLWM to Ms. Davis;

(c) $3,843,549.92 for funds allegedly diverted from First Leaside by Mr. Phillips to himself and Ms. Davis; and

(d) $2,541,419.50 for funds allegedly diverted from FL Securities Inc. and First Leaside Securities Inc. by Mr. Phillips to Ms. Davis directly, or to benefit and improve the property located at 430 Regional Road #8 in Uxbridge, Ontario, which is the personal residence of Mr. Phillips and Ms. Davis and that is held in the name of Ms. Davis (the "**Uxbridge Property**").

The Statement of Claim also requests, among other things, the following relief from the Court:

(a) an interim, interlocutory and permanent injunction enjoining Ms. Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;

(b) an order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property;

(c) a declaration that Ms. Davis holds the Uxbridge Property in trust and on behalf of First Leaside; and

(d) an order to preserve, trace, locate and account for all funds which Mr. Phillips and Ms. Davis have taken from First Leaside.

We have been advised that the Statement of Claim has been served on Mr. Phillips and is in the process of being served on Ms. Davis. As matters in this regard progress, we will notify the Investors of any pertinent details.

2. <u>Order with respect to the various First Leaside Funds</u>

On August 31, 2012, the Court issued an Order (the "**August 31st Order**") with respect to the wind-down of First Leaside entities located in the U.S. and relieving First Leaside and the court-appointed chief restructuring officer, G.S. MacLeod and Associates (the "**CRO**") from taking any steps to "manage, administer or maintain" any of the following:

> "limited partnerships, corporations, trusts or properties located or subsisting in the United States in which First Leaside has a direct or indirect equity or other interest, including, without limiting the generality of the foregoing, properties held directly or indirectly by Wimberly Apartments Limited Partnership, 2088544 Ontario Inc., 2088545 Ontario Inc., 2088543 Ontario Inc., FL Master Sherman GP, Inc., FL Master Texas, Ltd., FL Master Sherman Ltd., or F.L. US Holdings GP, Inc., except for Sherman Church property municipally known as 920 South Heritage Parkway, Sherman, Texas and the Spring Valley Mall property municipally known as 7800-7798 Spring Valley Road, Dallas, Texas (collectively, the "**U.S. Entities**")."

As part of the wind-down of the U.S. Entities, Rep Counsel discussed at length in meetings with the Steering Committee (i) the position taken by the Trustees of the First Leaside Properties Fund, First Leaside Fund and the Wimberly Fund (collectively the "**Funds**") that the Trustees ought to be in control of the U.S. Entities, (ii) the fact that First Leaside, through its CRO, does not have the corporate authority to deal with the U.S. properties or any of the Funds, and (iii) the relief sought by First Leaside in the proposed August 31st Order to cease taking any further steps in respect of the U.S. Entities. After discussions with First Leaside, the CRO, the court-appointed monitor, Grant Thornton Limited (the

"**Monitor**"), and Rep Counsel (with the support of the Steering Committee), the Trustees agreed not to oppose the relief requested by First Leaside in the proposed August 31st Order.

The August 31st Order provided for the following: (i) First Leaside is authorized and directed to "take no steps to manage, administer or maintain" the U.S. Entities, (ii) the CRO is directed to transfer the funds available in the First Leaside Mortgage Fund (the "**Mortgage Fund**") bank account held with TD Bank to Torkin Manes LLP (counsel to the Trustees of the Mortgage Fund), in trust on behalf of the Mortgage Fund, (iii) First Leaside is authorized "to attend to the preparation and filing of tax returns for the US Entities for the 2011 taxation year", and (iv) First Leaside is authorized to "deliver copies of any business or corporate records in its possession relating to the U.S. Entities to an officer or director of the relevant U.S. Entity."

The Court agreed to grant the relief requested by First Leaside and issued the August 31st Order on the basis that each of the Funds will call and hold a meeting of their respective trust unitholders within sixty (60) days of August 31, 2012. The August 31st Order also states that the Court was advised that the purpose of the meeting to be held by the Trustees of the Funds is for the Trustees to provide a report to the trust unitholders and for an election of the Trustees to take place. A copy of the August 31st Order of Justice Newbould can be found at the following website: www.grantthornton.ca/firstleaside.

We have been made aware that the Trustees of the First Leaside Fund, Wimberley Fund and First Leaside Properties Fund have invited the unitholders of each of these Funds to attend an information meeting on Wednesday, September 12, 2012, at 7:30 p.m at the Sheraton Parkway Toronto North Hotel & Suites, 600 Highway 7 East, Richmond Hill, Ontario, in the Grand York C Room. Attached at **Appendix B** is a copy of the notice of the meeting. **Please be advised that Rep Counsel does not endorse all the facts as stated by the Trustees in their notice**. That said, Rep Counsel is providing a copy of the letter to ensure that those unitholders who have an interest in these Funds have been provided with the necessary information should they wish to attend this meeting.

3. **Order with respect to the sale of certain First Leaside assets**

On August 23, 2012, the Court issued an Order (the "**August 23rd Order**") granting the relief requested by First Leaside with respect to, among other things, the approval of the sale of certain businesses carried on by First Leaside and the sale of First Leaside's interests in certain businesses, including the following:

- **Bramtree Property.** The Court approved the proposed sale of the property located at 36 Bramtree Court, Brampton, ON, which is owned by First Leaside Growth LP, which is in turn owned by First Leaside Expansion LP, to Outset Media Corporation for the purchase price of $5,600,000. According to the affidavit of the CRO with respect to this transaction, "the sale price is in excess of the amount provided for in both valuation opinions from C.B. Richard Ellis Limited ("**CBRE**") and from Colliers International Canada ("**Colliers**")."

- **Harmony Townhomes.** The Court approved the proposed sale of the property located at 65 Fort Street, Tilbury, ON, which is owned by Harmony Town Homes LP, which is in turn owned by First Leaside Investors LP, to Skyline Real Estate Acquisitions (II) Inc. for the purchase prince of $2,600,000. According to the affidavit of the CRO in respect of this transaction, "the sale price is consistent with the upper end of the appraisals that First Leaside obtained from CBRE and Colliers."

- **Accounting Practices.** The Court approved the proposed settlement of the interest of First Leaside Accounting and Tax Services Inc. ("**FLAT**") in certain accounting practices in western Canada, pursuant to two term sheets.

  (i) **Hampton Term Sheet.** The first sale of FLAT's interest is pursuant to a term sheet entered into between FLAT, Joanna Hampton, TD Canada Trust ("**TD**"), and Jim Brander ("**Brander**"), by which Hampton Holdings Inc. ("**Hampton Inc.**") will acquire FLAT's interest in McMillan Thorn & Co. Ltd., a B.C. accounting firm; D. McCormack & Company Inc., a B.C. accounting firm; and Allan Welsh & Company, an Alberta accounting firm, for $734,000. This amount is comprised of (i) a cash payment to FLAT in the amount of $150,000, and (ii) an assumption of approximately $584,000 of the amount owing by FLAT to TD. In return for FLAT agreeing to the sale and surrendering its interest in the aforementioned firms, TD has agreed that FLAT is released from liability under a loan made by TD to FLAT in the amount of $1,173,500.

  (ii) **Brander Term Sheet.** The second sale of FLAT's interest is pursuant to a term sheet entered into between FLAT, Brander, Jim Brander Professional Corporation ("**JBPC**"), Brander Professional Corporation ("**BPC**"), TD, Hampton Inc., Smart Books Accounting Services Inc. ("**SBAS**") and Matthew E. Bakker Professional Corporation ("**MEB**"), by which FLAT will provide Brander, JPBC, BPC and SBAS a release of its interests in the Rodney M. Coppcock Professional Corporation accounting practice. As consideration for the release of FLAT's interest, Brander, JBPC and SBAS agree to compensate FLAT for $374,000. This amount is comprised of (i) a cash payment of $150,000 by Brander to FLAT; and (ii) an assumption of approximately $224,000 of the amount owing by FLAT to TD.

A copy of the August 23rd Order of Justice Strathy, the Monitor's report and an affidavit by the CRO with respect to the aforementioned can be found on the Monitor's website: www.grantthornton.ca/firstleaside.

4. <u>The Canadian Investor Protection Fund ("CIPF")</u>

In an e-mail update that was sent to the Investors on August 8, 2012, Rep Counsel advised the Investors that CIPF agreed to extend the deadline for submitting a CIPF claim until such later date that will be determined by CIPF on the basis of a dual purpose claims process in conjunction with the CCAA proceedings.

Several individual Investors have sent their CIPF claims to Rep Counsel. We wish to remind the Investors that it is not necessary to send us this information; our involvement with the Investors CIPF claims is only intended to supplement the claims that Investors have already filed with CIPF or will eventually file either (i) as part of a dual CCAA/CIPF claims process, or (ii) further to an extended deadline (CIPF advises they will provide Investors with reasonable notice of the new deadline once it has been determined). A copy of the new notice issued by CIPF in this regard is attached at **<u>Appendix C</u>** and can also be found at the CIPF website: www.cipf.ca.

5. Distributions to Investors of the Beverages Mortgage

As discussed in our fifth reporting letter to Investors, dated August 2, 2012 (the "**Fifth Reporting Letter**"), First Leaside Beverages Limited Partnership was sold to Provincial Beverages of Canada Inc. ("**Provincial**") on May 17, 2012. The mortgage registered against the property in the amount of $1,000,000, was assumed by Provincial (the "**Beverages Mortgage**"). With respect to those Investors who hold an interest in the Beverages Mortgage through mortgage participation ownership certificates (90 King Ste. E. MPOC 6%) (the "**Beverages MPOC's**"), the Beverages MPOC's continue to be held at Penson Financial Services Inc. ("**Penson**"). We advised you that FL Nominee Services Inc. ("**Nominee Services**") continues to collect the monthly interest payments on the Beverages Mortgage and that interest payments are up to date.

Our Fifth Reporting Letter also advised the Investors that Rep Counsel was notified that the process for distributing the funds was delayed because Penson needs IIROC's approval in order to distribute the funds. Counsel to **IIROC has advised us that the information we received was inaccurate.** The distribution of such interest payments to the relevant Investors is (i) not an IIROC matter; and (ii) IIROC's approval is not required, nor is it within IIROC's jurisdiction to either approve or deny these distributions. According to IIROC, these payments should be handled by Penson in the normal course and in accordance with Penson's general policies and procedures. IIROC has advised Penson accordingly. Rep Counsel has also sent a formal request to Penson to advise us when the Investors can expect to receive such distributions.

6. Penson Transfer Fees

Several of the Investors have contacted us to express their concern that Penson is charging the Investors a $125.00 transfer fee for each account that an Investor holds with Penson, which they transfer to a new broker. Some Investors have also advised Rep Counsel that the request to initiate such transfers came directly from Penson in a letter Penson sent to each Investor and that the Investors were not notified in this letter that they were being charged transfer fees by Penson.

Rep Counsel has sent formal letters to Penson requesting them to provide us with a copy of the contract between Penson and the Investors, which gives Penson the right to charge such transfer fees and pay itself from the cash that is held in the Investors accounts with Penson. To date, we have not received a response from Penson. However, we are aware of Penson waiving transfer fees in limited circumstances, particularly in respect of direct Investor complaints.

7. Ontario Securities Commission ("OSC") Proceedings

As Rep Counsel previously reported, the OSC has started proceedings against David Phillips and John Wilson and issued a Notice of Hearing and Staff's Statement of Allegations against Mr. Phillips and Mr. Wilson on June 4, 2012. The hearing in this matter, which was scheduled to be held on August 28, 2012, was adjourned to February 11, 2013. Information regarding the OSC proceedings against Mr. Phillips and Mr. Wilson can be found at the OSC website: http://www.osc.gov.on.ca.

8. Additional Communications from FLIPA

Attached at **Appendix D** is a copy of a notice provided to us by the First Leaside Investor Protection Association ("**FLIPA**") of a meeting that FLIPA is holding on Monday, September 10, 2012. FLIPA has invited all of the Investors to attend this meeting. Any opinions expressed at this meeting do not represent the official views or opinions of Rep Counsel.

If you have any questions or concerns, please contact us through our hotline at 416-863-4414 (within the GTA)/ 1-877-669-4414 (outside the GTA) or by email at FirstLeaside@fmc-law.com.

Yours Truly,

Fraser Milner Casgrain LLP

Shayne Kukulowicz

cc: Jane Dietrich, Fraser Milner Casgrain LLP
cc: Greg MacLeod, G.S. MacLeod & Associates Inc.
cc: John Birch, Cassels Brock & Blackwell LLP
cc: David Ward, Cassels Brock & Blackwell LLP
cc: Jonathan Krieger, Grant Thornton Limited
cc: Daniel Sobel, Grant Thornton Limited
cc: Pamela L. Huff, Blake, Cassels & Graydon LLP

Appendix A

Statement of Claim

CV/12-9821-00CL
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

B E T W E E N:

FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC. and FL SECURITIES INC.

Plaintiffs

- and -

DAVID PHILLIPS, MARGARET DAVIS and 970877 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400 for costs and have the costs assessed by the Court.

Date August 28, 2012 Issued by ______________________
Local Registrar A. Anissimova Registrar

Address of court office: ~~393 University Avenue, 10th Floor Toronto ON M5G 1E6~~

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1R7

TO: David Phillips
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: Margaret Davis
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: 970877 Ontario Inc.
430 Durham Road
Suite #8
Uxbridge, ON L9P 1R1

CLAIM

1. The plaintiffs, a group of affiliated companies (collectively, the "FL Plaintiffs"), claim, as set out herein:

(a) As against the defendant, David Phillips ("Phillips"). and, as set out below, 970877 Ontario Inc. ("970877"), damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $202,420.00 representing loans made by First Leaside Wealth Management ("FLWM") to Phillips, as evidenced by two promissory notes dated December 31, 2009 and December 24, 2010 in the amounts $50,000.00 USD (converted at the time to $52,420.00 CAD) and $150,000.00 respectively, signed by Phillips in favour of FLWM;

(ii) An Order for recovery of $3,843,549.92 of funds improperly diverted from the FL Plaintiffs by the defendant, Phillips, to himself and to his wife, the defendant, Margaret Davis ("Davis"), directly, or to benefit Phillips and Davis, including:

(1) $44,800.38 in improper payments caused by Phillips to be made from FL Securities Inc. ("FL Securities") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(2) $459,418.86 in improper payments caused by Phillips to be made from FLWM to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(3) $49,384.14 in improper payments caused by Phillips to be made from First Leaside Securities Inc. ("FLSI") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year; and

(4) $657,696.54 in improper lump sum payments caused by Phillips to be made from several of the FL Plaintiffs to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year, comprising:

  (A) improper payments amounting to $131,093.74 caused by Phillips to be made to 970877, a company owned by Phillips, from FLWM; and

  (B) improper payments amounting to $526,602.80 caused by Phillips to be made to 970877 from First Leaside Finance Inc. ("First Leaside Finance");

(5) $2,632,250.00 of funds improperly diverted from FLWM by Phillips by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, which dividends Phillips subsequently caused to be paid from 970877 to himself personally, dating from 2004 to 2010;

(iii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI by the defendant, Phillips, to Davis directly, or to benefit and improve the property located at 430 Regional Road #8 in Uxbridge, Ontario (the "Uxbridge Property"), which property is in the name of Davis and is the personal residence of Phillips and Davis, as evidenced by:

(1) $1,687,564.00 in improper leasehold improvements to the Uxbridge Property caused by Phillips to be paid by FL Securities;

(2) $267,855.50 in improper payments towards a windmill on the Uxbridge Property caused by Phillips to be paid by FL Securities; and

(3) $586,000.00 in improper "rent" payments caused by Phillips to be paid by FLSI to Davis directly;

(b) As against the defendant, Davis, damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $160,000.00 representing loans made by FLWM to Davis, as evidenced by two promissory notes dated December 24, 2010 in the amounts of $150,000.00 and $10,000.00 respectively, signed by Davis in favour of FLWM;

(ii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI and paid to Davis directly, or to benefit and improve the Uxbridge Property, as described above;

(iii) An interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;

(iv) An Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property (as further described in Schedule "A" hereto); and

(v) A declaration that Davis holds the Uxbridge Property in trust and on behalf of FL Securities;

(c) An Order, injunctive or otherwise, interim and permanent to preserve, trace and locate all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(d) An Order for an accounting of all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(e) Pre-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(f) Post-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) The costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

(h) Such further and other relief as to this Honourable Court may deem just.

The Parties

The Plaintiffs

2. The plaintiffs, First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc. and FL Securities (as above, the "FL Plaintiffs"), are a group of affiliated companies. The four FL Plaintiffs form part of a greater enterprise that comprises a large number of affiliated companies and limited partnerships (collectively, "First Leaside"). First Leaside is currently under *Companies' Creditors Arrangement Act* ("CCAA") proceedings and is managed and controlled by a Chief Restructuring Officer, discussed in detail below at paragraphs 20 to 28.

3. At the relevant times, First Leaside ran numerous businesses, including the operation and development of commercial and multi-residential properties and retirement residences. It provided investment and wealth management services to investors who had invested with First Leaside. Specifically, First Leaside raised debt and equity, and sought investments with the objective of providing investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions.

4. There are significant interrelationships between the various entities in First Leaside which results in a complex corporate structure. Primarily, First Leaside's operations were centred on two principal companies:

(a) First Leaside Wealth Management Inc. (as above, "FLWM"), a holding and operating company and the ultimate parent of the First Leaside group of companies; and

(b) First Leaside Securities Inc. (as above, "FLSI"), a wholly-owned subsidiary of FLWM, and an investment dealer under Ontario securities law and is regulated by the Ontario Securities Commission ("OSC") and the Investment Industry Regulatory Organization of Canada ("IIROC").

5. At the relevant times, FLWM was owned and controlled by Phillips and Davis. Phillips made all business decisions related to First Leaside including what investments First Leaside would make.

6. FLSI is the company through which First Leaside clients invested their money. Clients used FLSI to manage a portfolio of non-proprietary investment products, typically consisting of more conservative investments such as bonds, treasury bills, and marketable securities as well as proprietary equity (such as limited partnership units) and debt securities issued by First Leaside.

7. In addition to FLSI, FLWM has five other wholly-owned subsidiary companies, including the plaintiffs First Leaside Finance Inc. (as above, "First Leaside Finance") and FL Securities Inc. (as above, "FL Securities").

8. First Leaside Finance is a conduit through which First Leaside facilitated intercompany financial arrangements. In addition to its capacity as a 'central bank' for First Leaside, from time to time First Leaside Finance also acted as a buyer of client positions in investment products through FLSI.

9. FL Securities is an exempt market dealer that is registered with the OSC. It acted as an asset manager and promoter of real estate assets and charged fees for these services.

10. Until recently, First Leaside's head office was located at 430 Regional Road #8 in Uxbridge, Ontario (as above, the "Uxbridge Property"). Approximately 90% of the business of First Leaside was operated out of an apportioned 3,200 square feet of the Uxbridge Property. The Uxbridge Property is also Phillips and Davis' personal residence.

The Defendants

11. The defendant, David Phillips, is an investment advisor and trader.

12. Phillips founded First Leaside in 1989. From that time until November 2011, Phillips controlled the operations of First Leaside and was its primary directing mind. Phillips and Davis had signing authority in respect of all payments made from various First Leaside entities. Among other titles, Phillips was the President, CEO and Secretary of FLSI and the President and a director of FLWM. Phillips and Davis owned 100% of the common shares of FLWM.

13. 970877 Ontario Inc. (as above, "970877") is a holding company wholly owned by Phillips.

14. The defendant, Margaret Davis, is Phillips' wife. She is also a Director and Officer of a number of First Leaside entities. At the relevant times, her day-to-day duties included acting as

supervisor of all banking operations for all First Leaside entities. Since 1999, Davis has been the sole owner of the Uxbridge Property.

The Uxbridge Property

15. Davis purchased the Uxbridge Property from FL Securities in 1999 for $400,000.00. At the time of the purchase, the Uxbridge Property was a modest bungalow on approximately eighteen acres of land. Since that time, it has served as Phillips and Davis' personal residence.

16. On January 1, 2004, Davis entered into a lease agreement with FL Securities (the "Office Lease Agreement") setting out the financial terms of an agreement to run and operate First Leaside from the Uxbridge Property. (Prior to the events leading to the CCAA filing, discussed below, 90% of First Leaside's business was operated out of the Uxbridge Property under Phillips' direction.)

17. Pursuant to the Office Lease Agreement, the term of the lease is seven years, running until January 1, 2011. The Office Lease Agreement further provides, *inter alia*:

(a) "The said Lessee shall pay to the Lessor seventy-five percent (75%) of all electricity costs and forty-four percent (44%) of all other expenses, including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements (the "Rent")"; and

(b) "The Lessee hereby covenants with the Lessor that the Lessee will pay the Rent herein reserved at the times and in the manner aforesaid."

18. In 2008, Toronto-Dominion Bank ("TD") was granted a mortgage on the Uxbridge Property for $900,000.00.

19. On June 20, 2012, the Uxbridge Property was listed for sale at a listed selling price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

Events Leading to First Leaside CCAA Filing

20. In the fall of 2009, the OSC commenced an audit of First Leaside. In or about March 2010, the OSC escalated the audit to an investigation of First Leaside.

21. On March 5, 2011, and in connection with the OSC investigation, First Leaside, through its counsel ("Counsel"), engaged an independent consultant, Grant Thornton Limited ("GTL") to review its business operations, assess its overall viability, and report and make recommendations about First Leaside's business, assets and operations.

22. GTL released a report on August 19, 2011 (the "August 19 Report"). The August 19 Report advised, *inter alia*, that First Leaside was facing serious cash flow and operational challenges, had weak financial reporting protocols, and proposed several recommendations.

23. On November 3, 2011, the Board of Directors of FLWM appointed an independent committee (the "Independent Committee") to assume all decision-making authority in respect of First Leaside and to oversee its operations. The decision to appoint the Independent Committee was made in consultation with Counsel and with the OSC.

24. On November 4, 2011, First Leaside retained GTL as an independent monitor to, in part, satisfy the OSC that First Leaside was implementing a restructuring plan.

25. In late October 2011, the OSC advised First Leaside that it intended to bring proceedings against it. First Leaside then negotiated and implemented a voluntary cease-trade order over all of its entities on November 7, 2011.

26. In early December 2011, the Independent Committee appointed G.S. MacLeod & Associates Inc. as Chief Restructuring Officer of First Leaside ("CRO"). The Independent Committee asked the CRO to develop a workout plan for First Leaside.

27. In late January 2012, the CRO concluded that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations. The CRO's recommendation to the Independent Committee was that First Leaside should undertake an orderly wind-down of operations. The Independent Committee approved the proposed wind-down and the resultant *Companies' Creditors Arrangement Act* ("CCAA") filing.

28. On February 23, 2012, a number of First Leaside affiliated companies and limited partnerships (the "Applicants") made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") to commence proceedings under the CCAA (the "CCAA Proceedings"). On February 23, 2012, the Court issued an initial Order pursuant to the CCAA (the "Initial Order"). Among other things, the Initial Order affirmed the appointment of the CRO and gave the CRO the power and authority to manage the affairs of First Leaside, including the commencement of legal proceedings.

The Defendants' Unlawful Conduct is Revealed

29. Since the Initial Order was granted, First Leaside has discovered that Phillips and Davis had for some time been improperly diverting and converting the assets of the FL Plaintiffs to their own use and for their own use.

Accounts Receivable

30. Phillips exercised his powers over the FL Plaintiffs in order to improperly divert $3,843,549.92 of the FL Plaintiffs' funds away from the FL Plaintiffs and to Phillips and to Davis directly, or to benefit Phillips and Davis directly.

31. Specifically, Phillips and Davis lived an extravagant personal lifestyle, which was funded, directly or indirectly, by each of the FL Plaintiffs. For example, with further details to be provided prior to trial, Phillips and Davis caused the FL Plaintiffs:

(a) to pay for landscaping, renovation, repair, utilities, telephone and other household expenses relating to the Uxbridge Property, with title taken in Davis' name to shield the Uxbridge Property from Phillips' creditors;

(b) to pay the salaries of household staff, including a housekeeper, a dogsitter and a gardener;

(c) to fund the purchase of luxury goods, including rare wines and expensive art for Phillips and Davis' own benefit;

(d) to pay Phillips' life insurance policy;

(e) to purchase Phillips' vehicles, and pay for vehicle costs, including gas, repairs and other expenses;

(f) to pay personal credit card debts and other personal obligations;

(g) to pay Phillips' and Davis' personal taxes; and

(h) to pay for Phillips' and Davis' personal travel, hotel and meal expenses.

32. The improper payments listed above were not approved by either the FLWM Board of Directors or the Independent Committee.

33. Further, First Leaside has discovered that Phillips caused a further $2,632,250.00 of funds to be diverted from FLWM by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, a company owned by Phillips, and subsequently caused by Phillips to be paid by 970877 to himself personally. The $2,632,250.00 in improper dividend payments were made between 2004 and 2010.

34. Phillips made no requests of the FLWM Board of Directors to declare the dividends, nor were any resolutions passed by the FLWM Board of Directors with respect to the payment of dividends to 970877. Rather, the dividend payments were unauthorized and made unilaterally by Phillips for Phillips's personal gain.

35. Together, the costs, payments, expenses and improper dividend declarations listed above, and others, were made entirely for the personal benefit of Phillips and Davis and in no way benefitted First Leaside. These funds were diverted from the FL Plaintiffs exclusively for Phillips and Davis' personal gain.

36. Accordingly, the FL Plaintiffs seek an order requiring that Davis, Phillips and 970877 reimburse the FL Plaintiffs for the full $3,843,549.92 in personal costs and expenditures improperly charged to the FL Plaintiffs, and unauthorized dividends improperly paid by the FL Plaintiffs, as set out above, plus additional amounts, the details of which will be provided prior to trial.

Loans Receivable

37. Phillips and Davis have also received improper and unauthorized loans from FLWM.

38. Phillips has received loans from FLWM in the amount of $202,420.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 31, 2009 in the amount of $50,000.00 USD (converted at the time to $52,420.00 CAD) with an interest rate of 4% per annum. The second is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. Both promissory notes are signed by Phillips in favour of FLWM.

39. Similarly, Davis has received loans from FLWM in the amount of $160,000.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. The second is also dated December 24, 2010 in the amount of $10,000.00 with an interest rate of 7.5% per annum. Both promissory notes are signed by Davis in favour of FLWM.

40. The loans to Phillips and Davis set out above were not approved by the FLWM Board of Directors.

41. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips pay FLWM for the full $362,420.00 representing the funds loaned to them, plus interest in accordance with the amounts prescribed in the promissory notes, and as evidenced by the promissory notes referred to above.

Improvements to the Uxbridge Property Funded by the FL Plaintiffs

42. In addition to the $3,843,549.92 of funds caused by Phillips to be improperly diverted from the FL Plaintiffs to fund Phillips and Davis' personal lifestyle, Phillips also caused a total of

$2,541,419.50 of improper payments to be made by FL Securities and FLSI to Davis directly, or to benefit and improve the Uxbridge Property, and thus to ultimately benefit Davis directly, as evidenced by:

(a) $1,687,564.00 in leasehold improvements to the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Leasehold Improvement Payments");

(b) $267,855.50 in payments towards the purchase and maintenance of a windmill on the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Windmill Payments"); and

(c) $586,000.00 in improper rent payments caused by Phillips to be paid from FLSI (the "Rent Payments") to Davis.

Leasehold Improvement Payments

43. As set out above, the Office Lease Agreement pertaining to the Uxbridge Property provides that the lessee, FL Securities, shall pay 44% of all expenses (the "FL Securities Allocation"), including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements.

44. The Office Lease Agreement was entered into for the sole purpose of improperly enriching and benefitting Phillips and Davis and was not in the best interests of FL Securities. Simply, the Office Lease Agreement was a vehicle pursuant to which Phillips and Davis diverted money from FL Securities to themselves to fund their lifestyle and increase the value of the Uxbridge Property.

45. The Office Lease Agreement is oppressive and was entered into in breach of the defendants' duties owed to the FL Plaintiffs. The Office Lease Agreement is void and/or should be set aside.

46. Since 2004, Phillips and Davis have directed the following leasehold improvements to be made to the Uxbridge Property using money of FL Securities:

(a) extensive renovations and upgrades to the bungalow, including additions, renovations and improvements to the living quarters, the establishment of a fitness room and a rooftop deck;

(b) significant landscaping development, including the development of a pond and well on the property;

(c) development of a stone pathway entrance to the home and wrought-iron fencing;

(d) development of a spa, swimming pool and waterfall on the property; and

(e) the addition of a large garage with a fully finished loft therein on the property, which garage also housed an atrium and a greenhouse.

47. Further in spite of the FL Securities Allocation, Phillips has, since 2004, directed FL Securities to pay 100% of all expenses in respect of all leasehold improvements to the Uxbridge Property, and FL Securities has done so at Phillips' direction. Although 56% of leasehold improvements were notionally allocated back to Davis (the "Davis Allocation") in accordance with the Office Lease Agreement, the Davis Allocation was charged to a loan receivable account due from David Phillips on the books of FL Securities. As a result, FL Securities has effectively

paid for 100% of the leasehold improvements to the Uxbridge Property. Neither Phillips nor Davis has paid for any portion of the leasehold improvements personally.

48. In any event, none of the leasehold improvements giving rise to the $1,687,564.00 of leasehold improvement payments paid by FL Securities are in any way linked to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each and every one of the leasehold improvements was made to personally benefit Phillips and Davis.

49. As a result, the leasehold improvement payments caused by Phillips to be made from FL Securities to benefit the Uxbridge Property were made in breach of Phillips and Davis' fiduciary duties and duties of loyalty, and constitute oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt.

50. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $1,687,564.00 representing the total amount of leasehold improvement payments caused by them to be paid by FL Securities to benefit the Uxbridge Property.

51. As a result of the leasehold improvement payments, the value of the Uxbridge Property has been greatly increased at the expense of the FL Plaintiffs and for the sole benefit of Davis and Phillips.

52. The Uxbridge Property, purchased by Davis for $400,000.00 in 1999, was listed for sale on June 20, 2012 at a listed price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

53. As a result of the above, the FL Plaintiffs seek an interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets, as well as an Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property

Windmill Payments

54. In addition to the $1,687,564.00 in improper leasehold improvement payments benefitting the Uxbridge Property and the defendants paid for by FL Securities as set out above, Phillips and Davis also caused FL Securities to make $267,855.50 in improper payments towards the purchase and maintenance of a windmill on the Uxbridge Property.

55. The windmill is owned by F.L. Research Management, a company that is owned by Phillips and Davis. The windmill in no way connected to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each of the improper windmill payments was made for the personal benefit and enjoyment of Phillips and Davis.

56. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $267,855.50.

Rent Payments

57. In addition to the Leasehold Improvement Payments and Windmill Payments detailed above, all of which served to benefit and improve the Uxbridge Property and thus benefit Davis

and Phillips directly, since January 2005, Phillips and Davis caused an additional $586,000.00 of "rent" payments to be paid by FLSI directly to Davis.

58. Specifically, Phillips directed FLSI to improperly pay Davis $6,000.00 in January and February 2005, and for every month thereafter until November 2011, Phillips directed FLSI to improperly pay Davis $7,000.00 per month.

59. These lump sum payments are not authorized by the Office Lease Agreement or by any other agreement and are entirely improper. The payments were made directly to Davis for her personal benefit and at Phillips' direction. Accordingly, the FL Plaintiffs seek an order requiring that Davis repay FLSI the sum of $586,000.00 representing the total amount of "rent" payments she received from FLSI.

60. As the primary directing mind of First Leaside and as President, CEO and Secretary of FLSI, Phillips is jointly liable by causing the monthly "rent" payments to be made by FLSI to Davis.

Damages Suffered by the FL Plaintiffs as a Result of the Defendants' Wrongful Acts

61. The FL Plaintiffs plead that they have suffered enormous pecuniary losses as a result of the defendants' extensive wrongful conduct as pleaded in this Statement of Claim.

62. The defendants' wrongful conduct has been ongoing for years. As a result, the FL Plaintiffs have suffered exponential losses for which the defendants are liable. The gains that the defendants have received from their wrongful conduct have funded the defendants' extravagant personal lifestyle. The gains from the defendants' wrongful conduct have also funded extensive renovations to the defendants' real estate, including the Uxbridge Property, and expenditures on

assets related to the Uxbridge Property, which have drastically increased the value of the Uxbridge Property at the expense and to the detriment of the FL Plaintiffs.

The FL Plaintiffs are Entitled to the Relief Claimed

63. The FL Plaintiffs are entitled to all of the relief requested herein, including the interim remedies, interim and interlocutory orders which they seek as a result of the defendants' actions as set out above.

Misrepresentation and Fraudulent Misrepresentation

64. As the sole directing mind of First Leaside and as President, CEO and Secretary of FLSI and President and director of FLWM, Phillips owed a duty of care to First Leaside, including all of its entities.

65. However, Phillips has made inaccurate and misleading statements to the FL Plaintiffs with respect to his use of the FL Plaintiffs' funds. He falsely represented that the FL Plaintiffs' moneys were being used exclusively for proper purposes, when they were in fact being used for improper personal purposes; specifically, to benefit and enrich himself and Davis personally, and to benefit and improve the Uxbridge Property.

66. Phillips made these false representations with the knowledge and intent that the FL Plaintiffs would rely on them. Phillips' representations were false and, as a result, the FL Plaintiffs have suffered the damages pleaded herein.

Breach of Contract, Fiduciary Duty and Duty of Loyalty

67. As the sole directing mind of First Leaside, and as President, CEO and Secretary of FLSI and President and a director of FLWM, Phillips was in a fiduciary relationship with First Leaside and owed all of First Leaside, including all of the FL Plaintiffs, the commensurate duties and

obligations. He had a duty to act in the best interests of the FL Plaintiffs, to conduct himself honestly and in good faith, and to avoid conflicts of duty and self interest in accordance with the duty of loyalty.

68. Phillips did none of the above. Instead, he misappropriated, diverted and converted the FL Plaintiffs' funds to himself and to Davis and for his and Davis' personal use and benefit. In flagrant breach of his fiduciary duties to the FL Plaintiffs, including his good faith obligations and duty to avoid conflicts of duty and self interest, Phillips took advantage of his position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

69. Similarly, Davis was in a fiduciary relationship with First Leaside, including the FL Plaintiffs, due to her position as a Director and Officer of a number of First Leaside entities and her role as supervisor of all banking operations for all First Leaside entities. Like Phillips, Davis also misappropriated, diverted and converted the FL Plaintiffs' funds to herself and to Phillips for her and Phillips' personal use and benefit. In flagrant breach of her fiduciary duties to the FL Plaintiffs, Davis took advantage of her position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

70. The FL Plaintiffs seek an accounting from Phillips and Davis and the entities related to Phillips and Davis for all funds improperly taken and profits earned therefrom as pleaded herein. Further, the FL Plaintiffs seek disgorgement of all funds improperly taken and profits earned therefrom as pleaded herein and/or equitable and common law damages, in amounts to be determined prior to trial.

Oppression

71. At the relevant times, Phillips had the *de jure* control of both FL Securities and FLSI.

72. As sole shareholder of FL Securities and FLSI, FLWM has standing as a "complainant", as that term is defined in section 238 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("*CBCA*"), to seek a declaration pursuant to section 241 of the *CBCA* that Phillips and Davis have exercised their powers over FL Securities and FLSI in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM.

73. As pleaded herein, Phillips improperly diverted funds from FL Securities and FLSI to himself and Davis directly, or to benefit himself and Davis, and to benefit and improve the Uxbridge Property. Davis, with the knowledge and support of Phillips, also diverted funds from FL Securities and FLSI to herself and Phillips or to benefit herself and Phillips, and to benefit and improve the Uxbridge Property.

74. These acts were committed by Phillips and Davis for the wrongful purpose of enriching themselves at the expense of FL Securities and FLSI. These actions violated FLWM's interests and expectations as sole shareholder of FL Securities and FLSI and were not in the best interests of the companies.

75. FLWM reasonably expected that FL Securities and FLSI would continue to operate as profitable ventures for many years to come. FLWM also reasonably expected that the companies would be operated and managed responsibly by Phillips and that FLWM would enjoy a long-term interest in the increasing value of these businesses. However, Phillips pursued a course of conduct designed to deprive FL Securities and FLSI of many of their assets in order to fund Phillips and Davis' personal lifestyle and to benefit and improve the Uxbridge Property. These wrongful

actions unfairly disregarded the interests and expectations of FLWM and were not in the best interests of the companies.

76. As a result of Phillips and Davis' wrongful acts, the plaintiff FLWM seeks a declaration pursuant to section 241 of the *CBCA* that the defendants have exercised their powers in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM, and damages caused by their actions.

Conversion

77. The defendants, Phillips and Davis, by their misconduct, wrongfully converted the FL Plaintiffs' funds for their own use, as pleaded herein.

78. The wrongful conversion of Phillips and Davis stems from their misappropriation of the FL Plaintiffs' funds and their transfer of the FL Plaintiffs' funds to their own personal use. In doing so, Phillips and Davis intentionally exercised control over the funds of the FL Plaintiffs in a manner that impeded the possessory rights of their rightful owners – FLWM, FLSI, FL Securities, and First Leaside Finance.

79. In taking the FL Plaintiffs' funds for their own personal use, Phillips and Davis knowingly and wrongfully converted the funds by treating them as if they were their own and exercising unauthorized control over their use; for instance, to pay extravagant personal living costs, personal debts, obligations and other expenditures, and to pay for leasehold improvements and additions to the Uxbridge Property, as set out in detail above.

80. Further particulars of the conduct of the defendants are within their knowledge.

81. As a result of the conduct of the defendants, the FL Plaintiffs have suffered significant financial damages and losses as pleaded herein.

Conspiracy

82. Together, Phillips and Davis agreed upon and coordinated a deceitful scheme, the predominant purposes of which were to commit a series of unlawful acts, namely the wrongful acts of enriching themselves and injuring the FL Plaintiffs by misappropriating, diverting and converting the FL Plaintiffs' funds for the purpose of achieving personal gain, and to ensure that the FL Plaintiffs remained unaware of their unlawful behaviour.

83. Further, the conspiracy between Phillips and Davis was planned and conducted in such a way that Phillips and Davis knew or ought to have known that injury to the FL Plaintiffs would be likely to result from their wrongful actions. As a result of the defendants' actions, the FL Plaintiffs have suffered damages as pleaded herein.

Unjust Enrichment

84. The defendants, Phillips and Davis, have been unjustly enriched by their misconduct. As described above, the defendants have benefited from their wrongful misappropriation and misuse of the FL Plaintiffs' funds, despite having no juristic reason for this enrichment. The FL Plaintiffs have correspondingly been deprived of the benefits of ownership over their own funds, as described above. The defendants should not benefit from their misconduct. The enrichment they have enjoyed from the misuse of Company money should be accounted for and disgorged to the FL Plaintiffs.

Knowing Assistance and Knowing Receipt

85. The defendants, Phillips and Davis, knowingly assisted one another in breaches of their obligations to the FL Plaintiffs, specifically, in breaches of their fiduciary duties and their duties of trust and loyalty, in order to misappropriate, divert and convert the FL Plaintiffs' funds for their own use and benefit.

86. Phillips and Davis had actual knowledge of, or were reckless or wilfully blind to, one another's wrongful misappropriation and misuse of the FL Plaintiffs' funds, and assisted one another in breaching their obligations to the FL Plaintiffs.

87. Davis has also knowingly and willingly accepted the fruits of Phillips' wrongful misappropriation and misuse of the FL Plaintiffs' funds. As described above, both Phillips and Davis have been greatly enriched by Phillips' breaches of his obligations owed to the FL Plaintiffs and his wrongful misuse and misappropriation of the FL Plaintiffs' funds to benefit and improve the Uxbridge Property.

Place of Trial

88. The plaintiffs propose that this action be heard in Toronto.

August 28, 2012

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
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Toronto, ON M5H 1J8

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Tel: (416) 646-7998
Fax: (416) 598-3730

Lawyers for the Plaintiffs

SCHEDULE "A"

Part of West half of Lot 31 Concession 4, Uxbridge, Part 1, 40R1921, PIN 26856-0058 (LT), Township of Uxbridge, Regional Municipality of Durham

FIRST LEASIDE WEALTH MANAGEMENT INC. ET AL. and DAVE PHILLIPS ET AL.
Plaintiffs Defendants

CV12-9821-00CL
Court File No.

We hearby accept service of a true copy

of the within____________________

on this____day of__________,20____

Per:__________________
Lawyers For

We hearby accept service of a true copy

of the within____________________

on this____day of__________,20____

Per:__________________
Lawyers For

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

Appendix B

Notice of Meeting re Funds

September 5, 2012

Dear Unitholders,

The undersigned Trustees are writing this correspondence to provide you with notice that we are holding an information meeting for the Unitholders of First Leaside Fund, Wimberly Funds and First Leaside Properties Fund (the "**Funds**"). The details of the meeting are set out below.

The purpose of the meeting is to provide the Unitholders with current information about the Texas properties (the "**US Properties**") which Wimberly Apartments Limited Partnership ("**WALP**") directly or indirectly owns or controls, being Master Texas Ltd. (which is the Master Texas Limited Partnership), F.L. Master Sherman Ltd. (which is the Master Sherman Limited Partnership) and First Leaside Properties Limited Partnership (collectively, the "**US Limited Partnerships**").

Until August 31, 2012, the Properties were managed by Leaders Management Inc. ("**Leaders**"), who reported to Gregory MacLeod, of G.S. MacLeod & Associates Inc. (the "**CRO**"). The CRO was appointed by the Court as the Chief Restructuring Officer of various First Leaside entities ("**First Leaside**"), including the US Limited Partnerships, pursuant to proceedings that were commenced under the *Companies' Creditors Arrangement Act* (the "**CCAA**") on February 23, 2012. Pursuant to the terms of the initial order that was issued by the Court (the "**Initial Order**"), the CRO was authorized and empowered to operate and manage the affairs of First Leaside during the CCAA proceedings.

According to the CRO in his Affidavit sworn February 22, 2012, First Leaside would not continue as a going concern, but would be liquidated. As part of the wind-down of First Leaside, the CRO's intention was to sell the U.S. Properties. At meetings held with FMC, representative counsel for clients of First Leaside, and at other meetings attended by the trustees which included representatives of the CRO and Grant Thornton, several issues arose that caused the trustees to have concerns. The issues included, without limitation, the following:

1. The CRO, Grant Thornton and various law firms have an administrative charge for legal and other professional fees that rank in priority to the interests of all other creditors of First Leaside. Given that it was the stated intention of the CRO to sell the US Properties, the trustees had concerns that the US Properties would be sold and the net proceeds of sale (after mortgages and other trade creditors were paid) would be brought to Canada and used by the CRO to fund ongoing restructuring costs, which is permitted under the Initial Order, as amended;

2. The CRO was initially of the view that the US Limited Partnerships were indebted to WALP in the approximate amount of US$22,000,000 and that any amounts received by the US Limited Partnerships from the sale of the US Properties would have to be shared between the Funds and WALP on a *pro rata* basis. The result of a *pro rata* sharing would have been to significantly dilute any recovery to the Funds.

Grant Thornton undertook a review of the intercompany debt and other matters as among the US Limited Partnerships and WALP and in July, 2012, Grant Thornton published a report in which it disclosed two significant findings:

i. First Leaside has no corporate authority to manage the US Properties. David Phillips, as sole director and officer of the relevant US general partners, is the only person who has the authority to manage the US Properties; and

ii. the books and records of First Leaside disclosed that WALP has no direct creditor claim against Master Texas or Master Sherman. Based upon information made available to the trustees, the Funds are the only creditors of Master Texas or Master Sherman.

As a result of the review conducted by Grant Thornton, the CRO made a determination that it no longer wished to be involved in the management of the US Properties. The CRO sought an order of the Court, which was issued by Mr. Justice Newbould on August 31, 2012, pursuant to which the CRO was authorized not to take any steps to manage the US Properties. Without Mr. Phillips' involvement in management of the US Properties, there would have been no effective oversight of onsite management and the US Properties would most likely have been taken over by the mortgage companies that hold mortgages against these properties. Accordingly, at the request of the trustees, Mr. Phillips, in his capacity as director and officer of the US general partners agreed that he would resume management of the US Properties.

Effective August 31, 2012, the general partner appointed Myan Management Inc., a veteran property management firm that was highly recommended and which was also recognized by the CRO as being a reputable management firm, to manage the US Properties. Myan manages more than 12,000 apartments in Texas and frequently works with banks and loan servicers in undertaking property workouts. Myan's reputation is impeccable.

Operationally, the transition of management of the US Properties was a smooth one, as the vast majority of onsite employees are choosing to remain and accept employment with Myan.

As the general partner has only recently resumed management, there have been delays in obtaining current information with respect to the amount of money required to continue to operate the US Properties and to ultimately realize maximum value from the US Properties for the benefit of Unitholders.

The Trustees will be holding a further meeting of Unitholders to review a plan to address the issues relating to the US Properties and to the Funds generally, which meeting will be called as soon as all information required for the Unitholders to make informed decisions about the US Properties and the proposed plan is available. The second meeting will be held no later than October 30, 2012, but the Trustees are hopeful that the meeting will actually be held much sooner than that date. A broad outline of the proposed plan will be discussed at the information meeting.

There are compelling options for your consideration and the Trustees will be looking for a sense of what direction Fund Unitholders would now like to take to preserve and to enhance value in the US Properties.

We have booked the Grand York C room at the Sheraton Parkway Toronto North Hotel & Suites, 600 Highway 7 East, Richmond Hill, Ontario on Wednesday evening, September 12th at 7:30 PM for an information meeting of Fund Unitholders.

Regards,

Henry Wemekamp K Rice

Henry Wemekamp Ken Rice

On behalf of the Trustees of First Leaside Fund, Wimberly Fund and First Leaside Properties Fund

Appendix C

New Notice from CIPF

CIPF
Canadian Investor Protection Fund

NOTICE ISSUED AUGUST 16, 2012

To: **Customers of First Leaside Securities Inc. (FLSI)**

Please be advised that the deadline to submit claims to the Canadian Investor Protection Fund (CIPF) has been extended to align with a claims bar date to be established by the Court in First Leaside's Companies' Creditors Arrangement Act (CCAA) proceedings.

CIPF is working with Fraser Milner Casgrain LLP, the representative counsel for FLSI customers to establish a coordinated claims process.

For more information on CIPF coverage and the claims process, you may contact CIPF at 416 866 8366 or toll-free at 1 866 243 6981 or visit CIPF's website at cipf.ca.

Appendix D

Notice of FLIPA Meeting

First Leaside Investor Protection Association

Meeting Monday September 10, 2012

Albion Bolton Recreation Centre (Auditorium)

150 Queen Street South Bolton Ontario L7E 1E3

Click on this link for a map http://mapq.st/IqXGNa

Meeting Agenda

09:00 to 10:00	Registration
10:00 to 10:15	Directors Reports
10:15 to 10:45	Report on Canadian Properties sales
10:45 to 11:00	Coffee & Break
11:00 to 11:30	Foreclosure and Sale of Family Tree by David Phillips
11:30 to 12:00	Report on Texas Properties what can be done?
12:00 to 1:30	Lunch brown bag or local restaurants
1:30 to 2:00	First Leaside Trusts and Trustees and their actions
2:00 to 3:00	Removal of David Phillips General Partner of Texas Prop
3:30 to 4:30	Open Discussion
4:30 PM	Adjourn

This is a critical meeting for those with investment in the First Leaside Mortgage Fund, WALP and First Leaside Properties fund.

We will have legal representation and a Business Manager at the meeting to provide expert advice as well as other experts.

Cost $20.00 per FLIPA Member, Guests $30.00 per person

Free Parking at the Albion Bolton Recreation Centre

FMC
— LAW —

Fraser Milner Casgrain LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511
FAX 416 863 4592

October 17, 2012

BY EMAIL

To all persons who are clients of First Leaside Securities Inc. (the "Investors")

Dear Sirs/Mesdames:

RE: ***Companies' Creditors Arrangement Act*** **("CCAA") proceedings involving First Leaside Wealth Management Inc. ("FLWM") and certain of its affiliates subject to the Initial Order of the Ontario Superior Court of Justice (the "Court") dated February 23, 2012 ("First Leaside")**

AND RE: Seventh Reporting Letter to Investors by Fraser Milner Casgrain LLP as Court-appointed representative counsel for the Investors ("Rep Counsel")

This seventh reporting letter is intended to update you on the status of the CCAA proceedings and the activities that we are currently engaged in on your behalf in our capacity as Rep Counsel.

1. **<u>IIROC Notice of Hearing</u>**

On October 2, 2012, the Investment Industry Regulatory Organization of Canada ("**IIROC**") issued a notice of hearing for October 17, 2012, (the "**IIROC Notice**") in order to set a date for a disciplinary hearing against David Phillips and John Wilson. Among other things, IIROC alleges that both Phillips and Wilson "misrepresented the risk level of certain securities, issued and distributed misleading marketing materials, failed to ensure that recommendations were made and orders accepted in accordance with clients' risk tolerances, and preferred their own interests ahead of their clients' interests in soliciting sales of certain securities." IIROC also alleges that Phillips failed to address a conflict of interest with his clients and in doing so, failed to act in the best interests of his clients. Attached at **<u>Appendix A</u>** is a copy of the IIROC Notice.

2. **<u>Certificate of Pending Litigation issued against the Uxbridge Property</u>**

Attached at **<u>Appendix B</u>** is a copy of the endorsement issued by Justice Cumming granting a motion brought by First Leaside for leave to issue a Certificate of Pending Litigation ("**CPL**") against the property known as 430 Regional Road #8, Uxbridge Ontario (the "**Uxbridge Property**"). The purpose of issuing a CPL against the Uxbridge Property (the residence of Phillips and his wife Margaret Davis) is to prevent the sale of this property without regard to claims by First Leaside, as a sale was scheduled to close on October 1, 2012, until the merits of the lawsuit brought by First Leaside, as plaintiff, against, among others, Phillips and Davis, have been resolved. We understand that the sale of the property was not completed. Without ruling on the merits of the case, Justice Cumming found that First Leaside established that there is "a triable issue", and noted that if the plaintiffs were to win, there is a "strong possibility" that they "would effectively be without any practical remedy" if a CPL is not granted.

3. <u>Upcoming Court Proceedings</u>

Late in the evening on October 15, 2012, First Leaside served Rep Counsel with a copy of its motion record (the "**Motion Record**") for a motion scheduled to be heard in Court on October 22, 2012. First Leaside is seeking Court approval for, among other things, the following:

- **Distribution to the Mortgage Holders of the Bramtree Property.** Authorization to distribute the sum of $3,597,672.50 plus per diem interest of $632.50 after September 24, 2012 (less fees) from the net proceeds of the sale of the Bramtree property to the Investors that hold an interest in the mortgage over the Bramtree property (the "**Bramtree Mortgage**") through mortgage participation ownership certificates (Bramtree Crt MPOC 6%).

- **Reservation from distribution to certain Investors.** Certain Investors, including Investors who hold an interest in the Bramtree Mortgage, also owe money to First Leaside on account of monies advanced to them by other First Leaside entities. As a result, First Leaside may be in a position to assert set-off in respect such advances. First Leaside is seeking authorization to withhold distributions to these Investors in the amount of money they owe to First Leaside until such set-off issues are determined.

- **Distribution to the Mortgage Holders of the Thornbury Property.** Provincial Beverages of Canada Inc. (the purchaser of First Leaside's interest in Beverages LP) continues to make monthly payments of principal and interest to the Investors that hold an interest in the mortgage over the Thornbury property through mortgage participation ownership certificates (90 King St. E. MPOC 6%). First Leaside Nominee Services Inc. has continued to collect monthly mortgage payments since that transaction closed and seeks authorization to distribute the $38,500 in accumulated payments.

- **Sale of retirement residences managed by PrimeTime Living LP.** After extensive negotiations between First Leaside and BayBridge Seniors Housing Inc. ("**BayBridge**"), each of Venture LP, First Leaside Okanagan LP, Cherry Park LP, Orchard Valley LP, The Shores LP and Retirement Residences LP (collectively, the "**Vendors**"), entered into a purchase agreement with BayBridge. The Vendors agreed to sell:

  (a) the interest of Venture LP, First Leaside Retirement Residences (Okanagan) LP, Cherry Park LP, Orchard Valley LP, and The Shores LP in certain retirement residences, including the shares of 0742962 B.C. Ltd. (the holder of the undeveloped lands at 3211 Alexis Park, Vernon, B.C.) and all assets related thereto; and

  (b) all of Retirement Residences LP's interest in: (i) the limited partnership units of PrimeTime Living LP and PrimeTime Management LP and (ii) the shares of PrimeTime Living GP Inc., the sole general partner of PrimeTime Living LP and PrimeTime Management LP.

  To protect the integrity of the sales process in the event that this transaction does not close, the details of this transaction and underlying negotiations have been kept strictly confidential. However, the Transaction Subcommittee (composed of members of the Steering Committee) and Rep Counsel have had the opportunity to discuss the details of the transaction.

For more detailed information regarding First Leaside's upcoming motion, you can obtain a copy of the Motion Record at www.grantthornton.ca/firstleaside.

4. **The Canadian Investor Protection Fund ("CIPF")**

In an e-mail update that was sent to the Investors on August 8, 2012, Rep Counsel advised the Investors that CIPF agreed to extend the deadline for submitting a CIPF claim until such later date that will be determined by CIPF on the basis of a dual purpose claims process in conjunction with the CCAA proceedings. Rep Counsel has requested a meeting with CIPF to discuss the status of the claims process and related issues. As soon as we have any information in this regard, we will notify the Investors.

5. **Update regarding the meeting with the Trustees of the various Funds**

The Court endorsed a motion by counsel for the Trustees of the various First Leaside Funds (the "**Funds**") for an extension of the date when a meeting will be held by the current Trustees with the Investors of those Funds. The endorsement by the Court states that "having heard from counsel to the Trustees of the difficulties involved in preparing the necessary and relevant information for Investors" a meeting will be held with the Investors of the Funds "no later than January 4, 2013."

If you have any questions or concerns, please contact us through our hotline at 416-863-4414 (within the GTA)/ 1-877-669-4414 (outside the GTA) or by email at FirstLeaside@fmc-law.com.

Yours Truly,

Fraser Milner Casgrain LLP

Shayne Kukulowicz

cc: Jane Dietrich, Fraser Milner Casgrain LLP
cc: Greg MacLeod, G.S. MacLeod & Associates Inc.
cc: John Birch, Cassels Brock & Blackwell LLP
cc: David Ward, Cassels Brock & Blackwell LLP
cc: Jonathan Krieger, Grant Thornton Limited
cc: Daniel Sobel, Grant Thornton Limited
cc: Pamela L. Huff, Blake, Cassels & Graydon LLP

Appendix A

IIROC Notice of Hearing

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

DAVID CHARLES PHILLIPS & JOHN RUSSELL WILSON

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada ("IIROC"), a set-date hearing will be held before a hearing panel of IIROC ("Hearing Panel") on Wednesday, October 17, 2012 at the offices of IIROC, in the British Columbia Room, 121 King St. West, Suite 2000, Toronto, at 10 a.m., or as soon thereafter as this matter can be heard.

TAKE FURTHER NOTICE that, pursuant to Rule 6.2 of IIROC's Dealer Member Rules of Practice and Procedure ("Rules of Practice and Procedure"), the hearing shall be designated on the:

☐ The Standard Track

☒ The Complex Track

THE PURPOSE OF THE HEARING is to determine whether David Charles Phillips and John Russell Wilson (together, the "Respondents") committed the following contraventions that are alleged by the staff of IIROC ("Staff") on behalf of IIROC:

Misrepresentation of Fund Products

i. Between January 2009 and October 2011, David Charles Phillips ("Phillips") misrepresented, and allowed First Leaside Securities Inc. ("FLSI") sales staff to misrepresent to clients, that the proprietary fund products recommended and sold by the firm were low or medium risk, when, in fact, they were high risk, contrary to Dealer Member Rule 29.1;

ii. Between January 2009 and October 2011, John Russell Wilson ("Wilson") misrepresented to clients that the proprietary fund products which he recommended and sold were low or medium risk, when, in fact, they were high risk, contrary to Dealer Member Rule 29.1;

Marketing Materials

iii. Between November 2009 and September 2011, Phillips authorized the preparation and issuance of marketing materials for investment products sold at FLSI, which included statements which were misleading and failed to fairly present the potential risks of those products to the client, and provided these marketing materials to his clients, contrary to Dealer Member Rule 29.7(1);

iv. Between November 2009 and September 2011, Wilson provided marketing materials for investment products sold at FLSI to his clients and potential clients, which included statements which were misleading and failed to fairly present the potential risks of those products to the client, contrary to Dealer Member Rule 29.7(1);

Risk Tolerance on NAAF

v. In and throughout 2009, 2010 and 2011, Phillips and Wilson failed to ensure that the recommendations which were made and orders which were accepted were in accordance with the risk tolerance stated on clients' New Account Application Form ("NAAF"), contrary to Dealer Member Rules 1300.1(o), (p) and/or (q);

Sales of Properties Fund

vi. Between January 1, 2010 and May 1, 2011, Phillips and Wilson solicited sales of First Leaside Properties Fund from clients, while failing to ensure that those transactions were suitable for the clients or within the bounds of good business practice, and preferred their own interests ahead of the clients, contrary to Dealer Member Rules 1300.1(o) and (q) and 29.1; and

Conflict of Interest

vii. Between January 2007 and October 2011, Phillips as the General Partner ("GP") of certain First Leaside Limited Partnerships ("LPs") was in a conflict of interest with clients who invested in those LPs, which was not addressed in a fair and equitable manner and in a manner that considered the best interests of the clients, contrary to Dealer Member Rule 29.1 and NI 31-103.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by the Staff at the hearing:

A. OVERVIEW

1) David Phillips and John Wilson told clients they wanted to protect their clients' invested capital and maximize their returns and in so doing earned their clients' trust. They then proceeded to abuse that trust, and repeatedly and consistently placed their own interests ahead of those of their trusting clients. Contrary to their obligations to their clients and the industry, they misrepresented their products and failed to consider the suitability of their products for their clients. Phillips also acted in a direct conflict of interest in connection with some of his products.

2) Phillips owned and controlled a corporate enterprise called the First Leaside Group ("FL Group"). In 2010 and 2011, the FL Group was losing money. In order to ensure the ongoing viability of the FL Group, new investor funds were continuously required. During this time, Phillips solicited investment funds from clients without regard for the industry rules and regulations which exist to protect investors.

3) FLSI, an IIROC Dealer Member, was part of the FL Group. Phillips was the President and Ultimate Designated Person ("UDP") of FLSI. He approved all trades made by clients through FLSI. He was also an RR at FLSI and, as such, was directly involved in the sale of securities, as described more fully below, to his own clients.

4) Wilson was an RR at FLSI. However, he was not just an RR. Wilson had been an investor with the FL Group since 1991. He was Director, Investor Relations, for FLSI. He was also a part of the management of the FL Group and was a Director or a Trustee for several other FL Group entities which his clients invested in.

5) FLSI's main business was the sale of proprietary products manufactured by the FL Group. There were two main types of products – LPs and fund products ("Funds").

6) Consequently, FLSI's client accounts were principally invested in FL Group products.

7) Phillips, as UDP and an RR at FLSI, oversaw and was involved, as was Wilson, in the making of trade recommendations and the sales of the Funds to clients, all of which

were characterized as medium risk or low risk products when in fact, they were speculative and/or high risk.

8) Consequently, clients who had no tolerance for high-risk investments had a portion or all of their registered account(s) invested in the high risk Funds, which were unsuitable for them.

9) In addition, although the LPs were high risk investments, Phillips acting as both FLSI's UDP and an RR, and Wilson, acting as an RR, failed to ensure that only clients who had tolerance for high risk as recorded on their NAAF invested in these products.

10) Consequently, on the whole, client funds were invested in LPs and Funds in a manner that was inconsistent with the risk tolerances identified on the clients' NAAFs.

11) In connection with the sales of these high risk investments, Phillips and FLSI sales staff, including Wilson, also distributed marketing material to clients and the public which failed to fairly present the potential (or any) risks of those investments to clients. The marketing materials were also misleading with respect to their statements regarding the alleged success of Wimberly Apartments Limited Partnership ("WALP"), a First Leaside investment.

12) Phillips and other FLSI sales staff, for whom he was responsible, including Wilson, advised certain clients to sell a particular FL Group product for the sole purpose of allowing new clients to invest their funds with the FL Group.

13) Lastly, because of his many roles within the FL Group, Phillips had multiple conflicts, the most notable of which was with respect to fees which were paid from investors' funds. Phillips' conflict of interest with respect to fees he earned from the LPs, despite being disclosed to clients, were not addressed in a fair and equitable manner and was not in the clients' best interest. As such, that conflict ought to have been avoided by Phillips.

B. Membership in IIROC

FLSI

14) FLSI was admitted to membership in IIROC effective March 1, 2004, as a Dealer Member.

15) FLSI was an Introducing Broker with Penson Financial Services Canada Inc. as its Carrying Broker.

16) FLSI's head (and only) office was in Uxbridge, Ontario.

17) On February 23, 2012, a judge of the Ontario Superior Court of Justice granted an Order declaring that certain of the FL Group entities (including FLSI) were companies to which the *Companies' Creditors Arrangement Act* ("CCAA") applied and were insolvent. As a result, these entities are currently undergoing a court-supervised orderly wind-down of operations, under the direction of a court approved Chief Restructuring Officer ("CRO").

18) On February 24, 2012, IIROC Staff made an application to an IIROC Hearing Panel and was granted an order suspending FLSI's membership on the basis that it was in such financial or operating difficulty that it could not be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation.

19) FLSI remains under suspension. It has limited staff remaining, and is not conducting any business. Under the terms of the suspension order, upon completion of the transfer of client accounts, and determination of any claims against FLSI, IIROC Staff may move, without notice to FLSI, for an order terminating the membership of FLSI.

Phillips

20) During the material time, Phillips was the directing mind of the FL Group and all of the entities within it, including FLSI.

21) He was the President and a director of the parent company of FLSI, First Leaside Wealth Management Inc. ("FLWM"). Phillips also owned FLWM.

22) As of the date of FLSI's suspension, Phillips was registered as the President and UDP of FLSI. He was also registered as an RR.

23) Phillips' registration history is as follows:

Marchment & MacKay	November 1981-October 1984	RR
Midland Doherty Limited	October 1984-May 1985	RR

Moss Lawson & Co. Limited	May 1985-May 1987	RR
Richardson Greenshields of Canada	June 1987 – November 1988	RR
McConnell & Company Limited	November 1988 – December 1989	RR
McDermid St. Lawrence Limited	February 1990-October 1990	RR
F.L. Securities Inc.	February 1988 – February 2004	OSC Registration as LMD (RR)
First Leaside Securities Inc.	March 2004 – February 2012	UDP, RR

24) Phillips' registration with IIROC ceased on February 29, 2012 when his employment was terminated by FLSI (through the CRO).

Wilson

25) Wilson had been employed with FLSI since it became an IIROC Dealer Member in December 2004. During his employment with FLSI, Wilson was registered with IIROC as an RR.

26) During the material time, Wilson also held the title of "Director, Investor Relations" at FLSI. He was described by FLSI to clients as being "one of First Leaside's founding partners and a long-serving member of the Board".

27) Wilson was also considered a mentor within the entire FL organization.

28) Wilson had one of the largest books of business at FLSI. For the year ending 2010, in addition to his salary, he earned a bonus of almost $800,000, while the next highest bonus paid to an RR was in the amount of $177,000.

29) Wilson held the following positions within the FL Group:

i. Director, Investor Relations at FLSI;
ii. Director of FLSI;
iii. Director of First Leaside Wealth Management Inc. (FLWM);
iv. Director of the General Partner of Wimberly Apartments Limited Partnership (WALP);
v. Trustee of FLEX Fund;
vi. Trustee of FLWM Fund;
vii. Trustee of FL Mortgage Fund; and

viii. Director of First Leaside Realty II, which is the General Partner for several FL LPs.

30) Prior to being registered with IIROC, Wilson was employed with F.L. Securities Inc. ("FL Securities") an exempt market dealer, from November 2002. FL Securities was also part of the FL Group.

31) Wilson has no other securities industry experience.

32) Wilson's registration with IIROC ceased on February 29, 2012, when his employment was terminated by FLSI (through the CRO).

C. The FL Group of Companies

33) There are over 100 entities within the FL Group; the relevant entities for this proceeding are:

i. FLSI, the Dealer Member;
ii. F.L. Securities Inc., the exempt market dealer;
iii. FLWM, the parent company; and
iv. FL Finance, the banking arm.

Attached as Appendix "A", is a listing of the companies which were included in the CCAA application and a listing of the associated LPs.

34) Although clients purchased securities through FLSI, they were referred to by Phillips, Wilson, and other FLSI sales staff, and in marketing material as being clients or "partners" of the FL Group. There was no clear distinction made to clients between the role of FLSI and the role of the other entities within the FL Group with respect to client investments.

D. The Business of the First Leaside Group

The Products

35) The FL Group manufactured, marketed and sold the LPs and Funds primarily for real estate property investments (together, the "FL Products"). Each year, new LPs were formed and sold to clients.

36) With one exception, the FL Products were sold by Offering Memorandum ("OM") as exempt securities.

37) All investors who purchased FL Products did so through client accounts at FLSI, and Phillips approved every trade.

38) There was no market/liquidity for the FL Products. In circumstances where a client wanted to sell his units, Phillips created a secondary market by using FL entities or other FL clients to buy those units. Except for WALP, these transactions always took place with the units priced at $1.

FLSI – The Dealer Member

39) FLSI's main source of revenue was from its sale of FL Products. Specifically, FL Securities paid FLSI 'advisory fees' for each new FL Product that was sold, and FLSI received an 'agency fee' for each FL Product. The money to pay these fees came from the funds raised from investors.

40) Clients of FLSI generally held two types of securities: FL Products, and non-FL fixed income securities such as real return bonds, government bonds and treasury bills.

41) Generally, FLSI only recommended securities from the two categories described above. No other equities, mutual funds or other securities were solicited for purchase.

42) In the majority of cases, client holdings of FL Products were shown at $1.00 per unit on their statements.

WALP – The Cornerstone of the FL Group

43) WALP was the cornerstone of the FL Group. It was the largest and oldest LP and figured prominently in all FL Group promotional material. WALP indirectly owns real estate properties in Texas, USA.

44) Since its formation in 1992, WALP has raised over $100 million from investors.

45) Phillips was the President and a Director of the General Partner of WALP. Wilson was also a Director of the General Partner of WALP.

E. The High Risk Funds Were Misrepresented as Medium Risk or Low Risk

46) During the material time, Phillips, Wilson and FLSI misrepresented the risk assessment of the FL Funds as medium risk, when, in fact, they were all clearly speculative and/or high risk investments. The one exception was Mortgage Fund, which was misrepresented as low risk, when it was also high risk.

47) During the material time, FLSI sold units of the following Funds:

i. First Leaside Wealth Management Fund ("FLWM Fund");
ii. First Leaside Expansion Fund ("FLEX Fund");
iii. Mortgage Fund;
iv. First Leaside Fund;
v. Wimberly Fund; and
vi. First Leaside Properties Fund.

48) As a result of the misrepresentations and recommendations made by Phillips, Wilson and FLSI, FL Funds were purchased by clients who had no tolerance for high risk products, as evidenced by the information recorded on their respective NAAFs.

a) *Representation of the Funds as "Medium Risk" or "Low Risk"*

49) The FLSI NAAF contained four risk categories:

i. Conservative Income/Low Risk;
ii. Income/Low Risk;
iii. Balanced/Medium Risk; and
iv. Growth/High Risk.

50) The FLSI NAAF stated that "Balanced/Medium Risk" included (but was not limited to) First Leaside Fund products or their equivalent. The LPs were referenced in the "Growth/High Risk" category.

51) Some FLSI clients also received detailed proposals outlining their assets (non-FL) and proposed investments to be made in FL Products. These proposals were in spreadsheet form and contained a heading for "Medium Risk". Wilson created this spreadsheet template and prepared such a detailed proposal for some of his own clients. Other FLSI RRs also provided this spreadsheet to their own clients.

52) Where a Fund product was part of the proposal, it was included in the column for "MEDIUM RISK – Income". The only exception was Mortgage Fund which was listed as "Low Risk".

53) None of the OMs or prospectus for the Funds (except for Mortgage Fund) contain a specific categorization as to the risk of the investment. The OM for Mortgage Fund indicates that it is a "speculative investment".

54) Similarly, there is no indication of the risk rating of the investment and no discussion of risk factors in any of the marketing material for the Funds.

b) Factors Which Make All the Funds High Risk

55) The Funds, except for Mortgage Fund, shared the following factors which made them speculative and/or high risk:

i. Their only assets were unsecured promissory notes from another FL entity;
ii. Payment of the interest was not guaranteed;
iii. The debtor company, at its discretion, could forego the interest payment and add the interest payable to the principal amount of the notes;
iv. There was no secondary market for the units; and
v. There was a credit risk that other FL Group members who have received or may receive loans from the Fund and the debtor company may not be able to repay those loans when due.

56) The OM for Mortgage Fund stated that it *intends* to acquire secured first mortgages. Although the OM describes Mortgage Fund as a speculative offering, Wilson and other FLSI sales staff advised clients it was a low risk investment.

57) As at December 31, 2011, $11M had been invested in Mortgage Fund. However, only half of that amount had in fact been invested in mortgages, with the balance being loaned to "related parties" – i.e., another FL entity.

c) *Additional High Risk Factors for the WALP Funds*

58) FL Fund, Wimberly Fund and Properties Fund (together, the "WALP Funds") had additional risks which contributed to their high risk profile, as a result of their associations with WALP.

59) The WALP Funds were debt vehicles for WALP, and each Fund lent monies to an entity within WALP.

60) Each of the financial statements for WALP for the years ended December 31, 2006 - 2010, all contained a "going concern note" disclosure which stated that WALP did

not have sufficient cash on hand to meet its obligations, including, among others, regular principal repayments of mortgages payable, redemptions of promissory notes (including those held by the WALP Funds) and other current liabilities and funding of future operating losses.

61) The "going concern note" also stated:

The Partnership has been experiencing significant negative cash flow from operations over a number of years and such negative cash flows are expected to continue as it proceeds with its plan to rehabilitate its properties.

62) Furthermore, the 2009 and 2010 Auditors' Report contains the "Emphasis of Matter" paragraph to highlight the going concern issue:

Without qualifying our opinion, we draw attention to Note 1(a) in the consolidated financial statements which indicates the existence of material uncertainties that may cast significant doubt about the ability of Wimberly Apartments Limited Partnership to continue as a going concern.

63) The financial statements also contained the following information:

Year Ended	**Partners Deficiency**	**Overall Loss For The Year**
December 31, 2007 audited	$32M	$8M
December 31, 2008 audited	$41M	$7M
December 31, 2009 (draft as at September 2010)	$61M	$10M
December 31, 2009 audited	$61M	$18M
December 31, 2010 audited	$77M	$17M

64) For the WALP Fund purchasers, the financial health of WALP, and the fact that the going concern note specifically questioned WALP's ability to fund redemptions of the promissory notes held by the WALP Funds, were particularly relevant and significantly increased the risk associated with these products.

d) Conclusion – Count 1

65) All of the Funds were speculative and/or high risk. However,

i. The NAAF indicated the Funds were "balanced/medium risk";
ii. The proposal spreadsheets indicated the Funds were "medium risk" or "low risk"; and
iii. Phillips, Wilson and the rest of the FLSI sales staff advised clients that the Funds were low, medium or moderate to high risk.

66) Phillips and Wilson knew or ought to have known that the Funds were high risk and/or speculative investments. Nonetheless:

i. Phillips as UDP allowed the NAAFs and spreadsheets to be provided to clients which clearly indicated that the Funds were less than high risk;

ii. Wilson created the spreadsheet template and provided spreadsheets to his clients which clearly indicated that the Funds were less than high risk;

iii. Phillips and Wilson failed to advise his clients who purchased the Funds that they were high risk investments; and

iv. Phillips failed to ensure that the sales staff knew and understood the product they were selling and that it was high risk.

67) Consequently, during the material time, clients were not informed that the Funds were high risk, and almost 100 FLSI clients, including clients of Wilson, who had no indication at all of high risk on their NAAF purchased Funds. Many other clients had some high risk tolerance (including clients of Wilson) but had that amount exceeded by purchases of the Funds.

e) Examples of Clients Impacted by Count 1

68) Clients Mr. and Mrs. A opened accounts with FLSI in 2008. Mrs. A advised Wilson that she did not want any risk in her account. Wilson advised her that her account was guaranteed by CIPF and that FLSI was "safer than the banks". As a result, and on Wilson's recommendation, Mrs. A commuted her Ontario university pension and invested the entire proceeds with FLSI.

69) The pension proceeds were transferred to her LIRA account at FLSI, where she initially purchased exclusively Canadian Treasury Bills ("T Bills"). Subsequently, in the summer of 2010, she sold the T Bills and used the proceeds to purchase two FL

Products, including Mortgage Fund. Consequently, the risk profile of that account rose to 100% high risk.

70) Mr. B opened an account at FLSI in 2007 when he was 45 years old. Mr. B had a medical condition which rendered him legally blind. Both Phillips and Wilson were aware of his condition. Although he was able to continue to work, he advised Wilson that his prognosis was unknown, and at any time he may become completely blind and unable to work. Consequently, his expectation was for safe and secure investments which may ultimately be required to support him and his young family.

71) Mr. B's risk tolerance as recorded on his NAAF was 15% high risk, 20% medium risk and 65% low risk for his registered accounts.

72) Mr. B purchased various FL Funds in his registered accounts. As at September 2011, 59% of the monies invested in his registered accounts (approximately $150,000) were in FL Funds, thereby causing the accounts to be 59% high risk.

73) Mr. B's wife also opened her accounts at the same time with the same risk tolerances. Wilson was also RR responsible for her account. As at September 2011, 58% of her Spousal RSP ($107,000) was invested in high risk FL Funds, and 100% of her TFSA was invested in high risk FL Funds.

F. Marketing Material Was Misleading

74) Various forms of marketing material were made available to FLSI clients, including:

i. One page marketing sheets specific to individual FL products (the "One-Pagers");
ii. A brochure for FLWM and the First Leaside Group of Companies; and
iii. Brochures specific to individual FL products (including WALP).

75) The One-Pagers were in multi-colour and showed the rate of return in very large font (the largest font used on the page). The One-Pagers were also available on the FL Group's website.

a) Misleading with respect to WALP

76) Much of the FL Group marketing material that was made available to existing and prospective investors during the material time emphasized the historical success of WALP.

77) Despite the fact that the financial statements showed major losses for WALP, and demonstrated that WALP was not funding its distributions during the material time through its revenues, marketing material continued to tout the alleged success of WALP.

78) Marketing material dated 2010 stated:

> *Wimberly Partners, as well as participants in subsequent First Leaside partnerships, have enjoyed some of the highest investment returns generated by our industry. Since 1992, an original Wimberly Partner has received a rate of return of more than 9%,* net of tax, *per annum.*

79) Marketing material for First Leaside Fund dated 2009 stated:

> *First Leaside's Wimberly Apartments Limited Partnership (WALP) has a proven **16-year** track record and more than a **9% after-tax** annualized return. Since inception, Wimberly has produced more than **190 consecutive monthly cash distributions.***

80) Marketing material for Wimberly Fund, dated 2010 contained similar content:

> *Wimberly Fund is a RRSP/RRIF/RESP/TFSA-eligible investment that participates in the performance of a large apartment portfolio in the Dallas-Fort Worth Metroplex: Wimberly Apartments Limited Partnership (WALP). As First Leaside's original real estate partnership, WALP owns and manages approximately 2,200 apartments, with a proven **18-year** track record of success in the real estate industry. Since inception, this partnership has produced more than **200 consecutive monthly cash distributions.***

81) Marketing material for First Leaside Universal Limited Partnership and First Leaside Ultimate Limited Partnership, dated 2010, and for First Leaside Global Limited Partnership dated 2011, state:

> *... Wimberly Apartments Limited Partnership still generates – after 18 years – continuous monthly cash distributions for hundreds of investing partners.*

82) However, from 2007-2010, WALP was not generating adequate cash flow from operations to pay the distributions to clients in those years, including payment of the interest to the WALP Funds.

83) Despite these losses, WALP continued to pay the following amounts in distributions and interest to unitholders of WALP and the WALP Funds:

Year	Overall Loss	Distributions Paid	Interest Paid
2007	$8M	$1.1M	$1.3M
2008	$7M	$1.2M	$1.5M
2009	$18M	$2.7M	$3.2M
2010	$17M	$2M	$4.9M

84) These distributions and interest payments were not funded by revenue from operations in WALP. In fact, the source of these payments was partly monies borrowed from other FL Group entities, which received funds from other investors.

85) Investors were unaware that the distributions and interest payments they were receiving were funded in this manner.

86) The references to WALP having "investment returns", "generating" or "producing" distributions is misleading given WALP's financial state during the material time, and the fact that it relied on money borrowed from other FL Group entities to pay those distributions.

b) *Rate of Return and No Mention of Risk*

87) Furthermore, each "One-Pager" contains a reference to the annual distribution or interest rate of the product, with no indication that this is not a guaranteed rate of payment to clients.

88) While the OMs for the FL Products (which were anywhere from 87 to 168 pages long) contained discussions of the risks associated with those Products, there was no mention of those risks in the more accessible, easier to read One-Pagers.

89) There is no indication in the marketing materials as to the risk (or any risk) associated with these investments. The marketing materials fail to fairly present the potential risks to the client.

90) While the marketing materials describe the alleged success of WALP and the years of paying distributions, none of the marketing material made available to clients contains any discussion of the potential risks associated with the various investments, nor of the actual financial situation of WALP and the risks associated therewith.

G. Lack of Consideration Given to Risk Tolerances Recorded on NAAF

91) FLSI RRs, including Phillips and Wilson, completed a NAAF for each client who opened a registered and/or non-registered account.

92) As set out above, there were four risk categories on the NAAF. The NAAF stated that "*All First Leaside account holdings will be compared to the RISK and OBJECTIVES percentages indicated in this table*".

93) The NAAF required that a percentage figure be entered for each risk category and for each type of account (i.e., registered and non-registered). For each account, the percentages were required to total 100%.

94) As set out above, the NAAF made specific reference to "First Leaside limited partnerships" in the High Risk category.

95) However, based on a sampling of 70 client accounts, 84% of client accounts were found to have purchased securities that exceeded the client's risk tolerance documented in their NAAFs as at October 2011.

96) Based on the same sample, over 75% of Wilson's client accounts were found to have purchased securities that exceeded the client's risk tolerance documented in their NAAFs as at October 2011.

97) Within the sample some clients had no high risk tolerance recorded on the NAAF yet had purchased only FL LPs which caused their account and their holdings to be 100% high risk.

98) The accounts in the sample included those for which Phillips, Wilson and 8 other FLSI RRs were responsible.

99) Phillips and Wilson and other FLSI sales staff repeatedly recommended and solicited the purchase of FL LPs or Funds which would cause and did cause the client's risk tolerance, as identified on the NAAF to be exceeded.

100) Phillips and Wilson and the FLSI sales staff, for which Phillips was ultimately responsible, failed to give due consideration to the risk tolerances of clients as recorded on the NAAF.

Example of Clients Impacted by Count 3

101) Mr. B (referenced above in paragraphs 61-63), also opened a cash account with FLSI. His risk tolerance for that account, as recorded on his NAAF was 50% medium risk and 50% high risk.

102) Mr. B purchased LPs and First Leaside Wealth Management Preferred Shares, all of which were high risk investments. As at October 2011, 100% of the monies ($460,000) which had been invested in Mr. B's cash account were invested in high risk products.

H. Solicited Sales of Properties Fund With No Consideration of the Best Interests of the Client

103) First Leaside Properties Fund ("Properties Fund") was the only First Leaside product sold by prospectus. Accordingly, Properties Fund was the only First Leaside product which non-accredited investors could purchase.

104) Properties Fund held unsecured promissory notes from another FL entity, FL Master Sherman Ltd.

105) The prospectus for Properties Fund was dated March 16, 2009. According to the prospectus, the initial closing date was March 26, 2009. The final closing was on or about June 3, 2009.

106) In 2010 and 2011, there were no units of Properties Fund available for sale from the initial offering, and there was no other FL Product available for purchase by FLSI clients who did not meet the accredited investor requirements.

107) FL had non-accredited investors holding cash in their RRSP and TFSA accounts at FLSI. As it was not invested, this cash was not available to Phillips and the FL Group.

108) Rather than develop a new FL product which would require a prospectus, Phillips and Wilson decided to arrange for the sales of units of Properties Fund from existing clients.

109) As a result, Phillips and Wilson began to solicit sales of Properties Fund from clients who were already accredited investors and could purchase any other FL Product (the "Selling Clients").

110) This then allowed other FL clients who were not accredited to purchase Properties Fund. This was the basis for the solicitations and recommendations to sell. Phillips discussed this with Wilson and was aware that Wilson was also soliciting the sales.

111) Generally, the Selling Clients had their units purchased by FL Finance or F.L. Securities Inc. Those units were in turn sold by FL Finance or F.L. Securities to the non-accredited clients.

112) Phillips and Wilson then recommended to the Selling Clients that they purchase another FL product with the proceeds from the sale.

113) All of these transactions took place with the units priced at $1.

114) In 2010 and 2011, 65 clients sold units of Properties Fund.

115) Phillips and Wilson contacted clients who held units of Properties Fund and recommended that they sell their units without any consideration of whether such a trade was in the Selling Client's best interests, and whether such a trade was suitable for the client. In so doing, Phillips and Wilson placed their own interests and those of FLSI and the FL Group ahead of the interests of their clients, and/or preferred one client's interest over another.

I. <u>Fees Paid to Phillips and FL Entities Created A Conflict</u>

116) Several of the LPs offered for sale during the material time were what are known as 'blind pool' investments, for which there was no specific use to which the investment funds would be put at the time the capital was raised. These included, but are not limited to:

i. First Leaside Select LP ("FL Select");
ii. First Leaside Investors LP ("FL Investors");
iii. First Leaside Progressive LP ("FL Progressive"); and
iv. First Leaside Premier LP ("FL Premier").

117) Phillips was the President and controlling shareholder of the General Partner for each of these LPs.

118) The OMs for these LPs indicated that certain fees would be paid to FL entities for business development and project evaluation.

119) Although the OM did not contain a set limit as to the percentage of the monies raised that would be used for the payment of FL-related fees, in describing the use of net proceeds an estimate of 35% in fees was used as an illustration. That illustrative percentage was frequently exceeded and in one case, described below, it was exceeded by over 25%.

120) The working capital available for these LPs was immediately reduced by the amount of fees described above.

121) The fees were typically paid to FLSI and FL Securities.

122) The fees charged were as follows:
i. 5% to FLSI as agent;
ii. estimated 15% to related parties for "Business Development Fees"; and
iii. estimated 15% to FLSI or FL Securities for promotion and project evaluation.

123) The "Business Development Fees" included payment to FLSI or FL Securities of $75,000 per project for "evaluating" each project.

124) The "promotion and project evaluation" fees, included payment to FLSI or FL Securities of $50,000 per market for evaluating each potential market.

125) As directing mind of these FL entities, Phillips would decide when, how and in what amount these fees would be billed to the LPs.

126) As the GP of the LPs, Phillips would decide when, how and in what amount these fees would be paid.

127) For example, for the following 4 LPs, as at December 31, 2010, fees of over 45% of the total capital raised had been paid to FL entities:

FL LP	**Fees Paid** (as percentage of capital raised)
FL Select (2007)	61.6%
FL Investors (2008)	54.2%
FL Progressive (2009)	46.0%
FL Premier (2009)	47.1%

128) As at December 31, 2010, the only assets owned by FL Select and FL Premier were cash plus promissory notes from another FL Group entity.

129) As at December 31, 2010, FL Investors' primary assets were revenue producing properties and cash. However, the revenue producing properties represented only 42% of the total capital raised from investors and debt.

130) As at December 31, 2010, the only assets owned by FL Progressive were cash, monies due from other FL entities and investments in other FL LPs.

131) In addition, distributions were paid to unitholders in those LPs, also from the total capital raised. Ultimately, the working capital available for each of these entities was considerably reduced.

132) In causing in excess of 50% of the capital raised to be paid in fees to companies he controlled, Phillips preferred his own interests ahead of his clients.

133) There existed an inherent conflict between Phillips and FLSI clients who purchased these LPs. Phillips, as RR and UDP, was required to act in the best interests of his clients.

134) However, as GP, he had the ability and opportunity to determine how much of investor funds would be paid to himself, through companies which he owned and/or controlled.

135) This was a conflict which Phillips failed to address in a fair, equitable and transparent manner and consistent with the best interest of the client and, as such, ought to have been avoided by Phillips.

J. <u>The Voluntary Cease Trade and Grant Thornton Report</u>

136) On November 7, 2011, Phillips advised FLSI clients that the FL Group had agreed to voluntarily stop trading units in all LPs and Funds. No payments have been made since that date.

137) On November 28, 2011, Phillips advised FLSI clients that all payments to investors (including interest payments and distributions) would be stopped immediately.

138) Phillips also advised FLSI clients that as at December 31, 2010, it appeared that WALP's liabilities exceeded the appraised value of its assets. Phillips also advised clients that WALP had been a significant drain on the resources of the FL Group.

139) As at June 2011, there were approximately 1200 FLSI clients, who had invested a total of $284M in FL Products since 2004.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to IIROC's Rules of Practice and Procedure.

TAKE FURTHER NOTICE that, pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondents are entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondents must serve upon Staff a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondents fail to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

(a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondents;

(b) accept as proven the facts and contraventions alleged by the Staff in the Notice of Hearing; and

(c) order penalties and costs against the Respondents pursuant to IDA By-laws 20.33, 20.34 and 20.49 and/or IIROC Dealer Member Rules 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondents or any of them did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may, pursuant to IDA By-laws 20.33 and 20.34 and/or IIROC Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval of the IIROC; or

(i) any other fit remedy or penalty.

Where the Respondent is/was a Member firm:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the Member by reason of the contravention;

(c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for any period of time and upon any conditions or terms;

(d) terms and conditions of continued Membership;

(e) termination of the rights and privileges of Membership;

(f) expulsion of the Member from membership in the IIROC; or

(g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondents or any of them did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to IDA By-law 20.49 and/or IIROC Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Toronto, this 2nd day of October, 2012.

JEFFREY KEHOE
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
Suite 2000, 121 King Street West
Toronto, Ontario M5H 3T9

<u>Appendix B</u>

Endorsement re Certificate of Pending Litigation

CITATION: First Leaside Wealth Management Inc. v. Phillips, 2012 ONSC 5443
COURT FILE NO.: CV-12-9821-00CL
DATE: 20121001

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

RE: **FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC. AND F.L. SECURITIES INC., Plaintiffs**

AND:

DAVID PHILLIPS, MARGARET DAVIS AND 970877 ONTARIO INC., Defendants

BEFORE: **CUMMING J.**

COUNSEL: **Matthew P. Gottlieb and J. Renihan, for the Plaintiffs**

Lisa S. Corne and Elisa G. Giacomelli, for the Defendants

HEARD: **SEPTEMBER 27, 2012**

ENDORSEMENT

The Motions

[1] The Plaintiffs bring a motion pursuant to s. 103 of the *Courts of Justice Act* for leave to issue a Certificate of Pending Litigation ("CPL") against the property known as 430 Regional Road #8, Uxbridge, Ontario (the "Uxbridge Property") or for alternative relief by way of any sale proceeds being paid into court as security or in the further alternative, interlocutory injunctive relief.

[2] In the course of the hearing in respect of the Plaintiffs' motion, the Plaintiffs indicated the sole form of relief they sought was a CPL order. Neither side was prepared to agree that in the event the Plaintiffs were successful that security in respect of the sale proceeds could be given in lieu of a CPL being issued.

[3] The Defendant, Margaret Davis ("Davis"), brings a cross-motion to strike certain paragraphs of the affidavit of Greg MacLeod, sworn September 14, 2012, filed in support of the Plaintiffs' motion.

[4] The motions were heard September 27 in a full day hearing. A decision was required by September 28. I communicated my decision the morning of September 28 that the cross-motion was dismissed and the Plaintiffs' motion for leave to issue a CPL was granted, with written reasons to follow. These are my reasons.

Background

[5] The four Plaintiffs (referred to as the "FL Plaintiffs") are a group of affiliated corporations, now insolvent and currently under *Companies' Creditors Arrangement Act* ("*CCAA*") proceedings, commenced on February 23, 2012. They are controlled by a court-appointed Chief Restructuring Officer ("CRO").

[6] The FL Plaintiffs are part of an enterprise of a much larger number of affiliated corporations involved in the operation and development of commercial properties and the provision of investment and wealth management services to over 1000 investors (the collective larger group or overall enterprise, inclusive of the FL Plaintiffs, is referred to as "First Leaside").

[7] The Defendant, David Phillips, has been the primary directing mind of the First Leaside enterprise. The Defendant Davis is Mr. Phillips' spouse. She was an officer and director of the Plaintiff, First Leaside Wealth Management Inc. ("FLWM"), a holding and operating company and the ultimate parent corporation in the First Leaside group. From its incorporation until November 2011, Mr. Phillips was the Chief Executive Officer of FLWM. Mr. Phillips and Ms. Davis each had signing authority in respect of payments made by First Leaside entities. The Defendant, 970877 Ontario Inc. ("970"), is a holding company wholly owned by Mr. Phillips. Mr. Phillips is the sole common shareholder of the overall First Leaside enterprise.

[8] Ms. Davis is the owner of the Uxbridge Property, in which she and Mr. Phillips reside. The record indicates the home was transferred from the Plaintiff, First Leaside Securities Inc. ("FL Securities"), a wholly owned subsidiary of FLWM, in 1999 for the transfer amount of $400,000.

[9] A portion of the Uxbridge Property was used to operate First Leaside with its head office located there.

[10] The Uxbridge Property is the subject of a present Agreement of Purchase and Sale by Ms. Davis, with the sale by her scheduled to close October 1, 2012.

[11] The Ontario Securities Commission ("OSC") undertook an investigation into First Leaside about March 2010 following an audit commenced in the fall of 2009. In November 2011, an Independent Committee was appointed to oversee First Leaside's operations in place of Mr. Phillips. In December 2011, G. S. MacLeod & Associates was appointed CRO of the FL Plaintiffs. In the course of the CRO's examination of the financial records of the FL Plaintiffs,

the CRO formed the view that Mr. Phillips and Ms. Davis improperly diverted and converted assets of the FL Plaintiffs to their own use.

[12] On June 4, 2012, the OSC issued a Statement of Allegations against Mr. Phillips and John Russell Wilson, a senior sales person at the Plaintiff FL Securities. The OSC alleges that between August 22 and October 28, 2012 Mr. Phillips "a founder and the directing mind of the First Leaside Group...intentionally deceived investors by selling and overseeing the sales of almost $19 million in securities while withholding important information".

[13] On June 20, 2012, Ms. Davis listed the Uxbridge Property for sale and the Agreement of Purchase and Sale was entered into August 7, 2012, with the closing date of October 1, 2012.

[14] The FL Plaintiffs filed a Statement of Claim on August 28, 2012, which alleges, *inter alia*, that Mr. Philips and Ms. Davis caused the FL Plaintiffs, in particular, FL Securities, to make improper payments for renovations, maintenance and improvements of the Uxbridge Property and caused FL Securities to make improper rent payments to Ms. Davis for the use of the Uxbridge Property under one or more purported office lease agreements. It is alleged the Defendants breached fiduciary duties owed to the Plaintiffs, made fraudulent misrepresentations and converted the Plaintiffs' assets.

[15] The Plaintiffs claim a tracing order and a constructive trust in respect of the alleged improper payments made in respect of the Uxbridge Property. The Plaintiffs by their motion at hand seek to preserve their claimed rights in the Uxbridge Property.

[16] The Defendants Phillips and Davis say that they are impecunious and require the sale of the Uxbridge Property for ongoing living expenses. The FL Plaintiffs say that, if the Uxbridge Property is sold and the proceeds paid out to Ms. Davis, effectively the FL Plaintiffs will be precluded from ever being able to recover some $4,000,000 alleged to have been misappropriated for maintenance and improvements to the Uxbridge Property.

The Cross -Motion

[17] The Defendant, Ms. Davis, brings the cross-motion under Rules 25.1.1 and 39.01(4) to strike out portions of Mr. MacLeod's affidavit on the asserted basis they are "scandalous, irrelevant, inserted simply for the purpose of atmosphere, are not based upon personal knowledge and do not specify the source of the deponent's information".

[18] The paragraphs in issue are: the second, third and fourth sentences of paragraph 2, paragraph 28, exhibit H, paragraph 29, the third sentence of paragraph 35, the second last sentence of paragraph 40, the last sentence of paragraph 42, the last sentence of paragraph 51, paragraph 52, paragraphs 53, 56, 57 and 62.

[19] In my view, there is no merit to the cross-motion and it is properly dismissed. The complained of provisions are informational, contextual and relevant to the issues at hand, are based upon the forensic investigation of the accounting and financial records, and are necessary

and appropriate to the narrative of Mr. MacLeod as to what his investigation on behalf of the CRO revealed.

The Evidence on the Main Motion seeking Leave to issue a CPL

[20] A CPL operates to protect a claimed interest in land by effectively preventing disposition of the property in issue prior to judgment following a trial on the merits. To succeed in obtaining a CPL, it must be established there is a triable issue as to whether the plaintiff has an interest in the land and the issuance of a CPL must be just in light of all relevant factors. *G.P.I. Greenfield Pioneer Inc. v. Moore* (2002), 58 O.R. (3d) 87 (C.A.); *Roseglen Village for Seniors Inc. v. Doble* (2010), 100 C.P. C. (6th) 183 (Ont. S. C.).

[21] Where the interest claimed is a constructive trust, as in the instant situation, the question is simply whether there is a triable issue in respect of such interest claimed, not whether the plaintiff will likely succeed ultimately at trial. It is enough to establish that a constructive trust is a possible remedy at trial based upon the evidentiary record at this point. Moreover, the Court does not "assess the credibility of deponents or decide disputed issues of fact" at the juncture of an interlocutory motion for a CPL. *Golden Bull Estates Ltd. v. Generex Biotechnology Corp.*, 2012 ONSC 4975 at paras. 2,10 and 11.

[22] The evidence on the return of the FL Plaintiffs' motion, through the 19 page affidavit of Mr. MacLeod setting forth his examination of the financial and accounting records, demonstrates that leasehold improvements and property maintenance expenses in respect of the Uxbridge Property have been funded by the FL Plaintiffs, in particular, FL Securities, in the amount of some $4,000,000. This assertion is not disputed.

[23] These monies were used to maintain and improve the Uxbridge Property by way of such things as extensive landscaping, a home gym, windmill, sauna, multiple ponds, pool and waterfalls, garage, greenhouse and guest house. The FL Plaintiffs asset that these expenditures had no conceivable business purpose.

[24] The position of the Defendants is that the payments by FL Securities were commercially reasonable and were properly and lawfully approved by First Leaside and, in particular, by FL Securities and FLWM. The Defendants assert that the By-Laws of the FL Plaintiffs provide that any contract is binding on the corporations if signed by any one director and the authorization of the Board of Directors is not required. Moreover, Mr. Phillips says he believed that the Director of Finance and in-house legal counsel had obtained all requisite approvals for compensation paid to him. Hence, the Defendants ask that the motion be dismissed.

[25] Ms. Davis and FL Securities entered into a lease agreement on January 1, 2005, effective January 1, 2004, whereby FL Securities would pay 44% of certain maintenance expenses and in respect of capital improvements relating to the Uxbridge Property. It seems that three other lease agreements were later entered into.

[26] The financial records suggest that from, 2004 to 2011, FL Securities paid at least $742,528.16 in respect of its 44% allocation for leasehold improvements. Moreover, the FL

Plaintiffs assert that some $334,344.16 relating to the 56% allocation to Ms. Davis in respect of leasehold improvements was improperly allocated to Mr. Phillips' loan receivable account and never repaid.

[27] The records indicate as well that, from 2004 to 2009, the FL Plaintiffs paid some $2,590,000 (some $1,326,000 as the FL Securities' 44% allocation and $1,264,486.94 as the 56% allocation to Ms. Davis) in property maintenance expenses related to the Uxbridge Property.

[28] The FL Plaintiffs claim the lease agreement is oppressive and entered into breach of the duties of directors owed to the FL Plaintiffs.

[29] The record indicates that the 56% allocation of leasehold improvements to Ms. Davis under the lease agreement were typically paid by FL Securities and recorded as a loan by FL Securities to Mr. Phillips, with FL Securities offsetting the outstanding loans payable at the end of the financial year by the issuance of bonuses and dividends within the corporate group to Mr. Phillips.

[30] The FL Plaintiffs allege that the directors of FLWM and FL Securities (other than Mr. Phillips and Ms. Davis) were never made aware of the lease agreements or allocation payable by FL Securities under the lease agreements. The FL Plaintiffs claim that the annual bonuses and dividend payments used as crediting offsets against the outstanding loans were unauthorized. The Defendants claim that all payments were properly and lawfully authorized by the boards of directors and that the lease agreements were approved.

[31] Ms. Joan L. Wilson, in her affidavit sworn September 17, 2012, states that she is a chartered accountant who was an employee of the Plaintiff FLWM between September 2004 and April 2008. She states that, although the company records suggest she was a director of FL Securities, she does not believe she ever knew she was a director and that, while Mr. Phillips advised her at one point that she was the "President" of FL Securities, she did not in any way act as President, nor was she treated as President, and that she signed an office lease agreement dated January 1, 2005 on behalf of FL Securities in respect of the Uxbridge Property simply because she was asked to do so by Mr. Phillips.

[32] Mr. Leo de Bever, a former independent director of FLWM, states in his affidavit that the directors of FLWM were never asked to vote on a resolution to approve the compensation paid to the Defendants Phillips and Davis, were never shown the details of compensation paid to them, never authorized dividends, and were not asked to approve financial statements for most fiscal years.

[33] Mr. John Wilson, an affiant for the Defendants, states that he has been a director of FLWM from 2003 to the present. He says that the compensation payable to Mr. Phillips was transparent to the board of directors as were "the leasing, occupancy and capital improvement costs paid by [FLWM] subsidiary companies in connection with the Uxbridge Property....".

[34] It is noted incidentally that the Agreement of Purchase and Sale provides for a $25,000 deposit, a further $875,000 on closing and a vendor take-back mortgage for the balance payable in 54 months with interest only payable in the interim. With an outstanding first mortgage of some $687,000 in favour of the TD Bank, there would be a minimal cash balance on closing.

[35] However, it is also noted that the financial records indicate that in 2010 and 2011, FL Securities paid a total of $320,744.76 on account of the 56% allocation for improvements and maintenance to Ms. Davis, which had been charged to Mr. Phillips' loan receivable account but (unlike previous charges) not purportedly offset for those years through bonuses and dividends, due to the CRO's assumption of management of First Leaside in 2011. Thus, the full $320,744.76 arguably remains outstanding as a debt of Ms. Davis to FL Securities in all events, notwithstanding the bookkeeping paper entry recognition of her debt as a loan to Mr. Phillips.

[36] A claim based upon the doctrine of constructive trust and the right to trace funds in respect of property may give rise to an interest in the property such as to be the subject of a CPL.

[37] In my view, the FL Plaintiffs have established on the evidentiary record to date that there is a triable issue as asserted in the Statement of Claim that there has been a misappropriation of FL Plaintiffs' monies through unauthorized payments in respect of rent, maintenance and improvements relating to the Uxbridge Property owned by Ms. Davis such as to be an unjust enrichment and subject to a constructive trust.

[38] There are triable issues as to alleged unauthorized conversion of debts owed by Ms. Davis to FL Securities into purported loans receivable from Mr. Phillips. There are triable issues as to the arguably unlawful and unauthorized purported offsets to these asserted loans through arguably unauthorized compensation, bonuses and dividends to Mr. Phillips' credit. There are triable issues as to the alleged breach of directors' duties and as to the alleged oppressive conduct.

[39] The Defendants raise a host of defences to the asserted claims of the FL Plaintiffs and their counsel made forceful arguments in respect thereof. However, this hearing was not, of course, properly to equate to a trial of the issues; rather, the question is simply whether or not there are triable issues such that a CPL should properly issue pending the ultimate determination of the issues at trial.

[40] It is not disputed that some $4,000,000 of the FL Plaintiffs' monies were expended in respect of the Uxbridge Property which is now the subject of the Agreement of Purchase and Sale for $2,235,000. In my view, given the triable issues, as I have found, as to whether those monies are properly subject to a constructive trust, there is an 'interest' in the Uxbridge Property on the part of the FL Plaintiffs such as to support their request for a CPL.

[41] The record establishes a strong possibility that the FL Plaintiffs and their underlying investors would effectively be without any practical remedy if successful at trial and a CPL were not to be granted.

[42] The Defendants argue that if the CPL is granted then they will not only have lost access to funds for which there is an immediate need because of their claimed present impecuniosity but if they are ultimately successful at trial they may well face an unfavourable price as compared to that seen in the present Agreement of Purchase and Sale.

[43] In my view, and I so find on the basis of the evidentiary record, the balance of convenience favours the FL Plaintiffs.

Disposition

[44] For the reasons given, the FL Plaintiffs' motion for leave to issue a CPL in respect of the Uxbridge property is granted. The requisite Order was signed Friday, September 28, 2012, following upon my advising counsel as to my decision.

[45] If the parties cannot agree on the question of costs, the parties may make written submissions. In such event, the FL Plaintiffs shall make their submission by October 10, 2012, the Defendants shall make their submission by October 18, 2012 and the FL Plaintiffs may make any reply thereto by October 22, 2012.

Peter A. Cumming J.

CUMMING J.

Date: October 1, 2012

FMC
— LAW —

Fraser Milner Casgrain LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

MAIN 416 863 4511
FAX 416 863 4592

December 21, 2012

BY EMAIL

To all persons who are clients of First Leaside Securities Inc. (the "Investors")

Dear Sirs/Mesdames:

RE: ***Companies' Creditors Arrangement Act*** **("CCAA") proceedings involving First Leaside Wealth Management Inc. ("FLWM") and certain of its affiliates subject to the Initial Order of the Ontario Superior Court of Justice (the "Court") dated February 23, 2012 ("First Leaside")**

AND RE: Eighth Reporting Letter to Investors by Fraser Milner Casgrain LLP as Court-appointed representative counsel for the Investors ("Rep Counsel")

This eighth reporting letter is intended to update you on the status of the CCAA proceedings and the activities that we are currently engaged in on your behalf in our capacity as Rep Counsel.

1. <u>Termination of the CCAA Proceedings and Appointment of Grant Thornton as Receiver</u>

On December 7, 2012, the Court approved First Leaside's application to appoint Grant Thornton Limited ("**Grant Thornton**") as the court-appointed receiver of First Leaside (in such capacity Grant Thornton is referred to as the "**Receiver**"). Concurrently with such application, the Court made an order (i) terminating the stay of proceedings imposed by the Initial Order issued by Superior Court of Justice on February 23, 2012 in respect of First Leaside pursuant to the CCAA proceedings and terminating the CCAA proceedings, subject to certain transitional provisions (note, there is still a stay of proceedings in the receivership proceedings); (ii) discharging the CRO, Greg MacLeod & Associates Inc., and discharging Grant Thornton as Monitor upon its appointment as Receiver, subject to certain transitional provisions; (iii) releasing the Monitor and the CRO from liability (with the exception of liability for acts of gross negligence or willful misconduct) that may have arisen or may arise in the future, due to acts or omissions of the Monitor or CRO while they acted in such capacities pursuant to their mandate in the CCAA proceedings; (iv) continuing the appointment of Rep Counsel in the receivership proceedings; and (v) approving the fees and disbursements of the Monitor, the CRO and their respective counsel. Rep Counsel's fees and disbursements were approved by the Court on Monday December 17, 2012.

2. <u>Approval of the Claims Process</u>

On December 7, 2012, the Court approved a claims procedure order (the "**Claims Procedure Order**") to, among other things, (i) provide notice to creditors, which includes the Investors of First Leaside, about the upcoming claims process; (ii) establish deadlines for the Receiver to mail acknowledgments of claims forms to the Investors (the "**Acknowledgement of Claim Form**"); (iii) establish a claims bar date, being 5:00 p.m. EST on February 28, 2013 (the "**Claims Bar Date**"), for Investors to submit amendments to the Acknowledgements of Claim Form or to file a Proof of Claim; and (iv) develop a procedure for determining and adjudicating claims.

According to the Claims Procedure Order, an "Investor Claim" is defined as the following:

> any claims of any Investor of First Leaside Securities Inc. derived from such client's investment in First Leaside proprietary products. . .which right is based in whole or in part on facts existing on or prior to February 23, 2012 or which would have been claims provable in bankruptcy on February 23, 2012.

The following summarizes the steps an Investor will encounter in the course of the upcoming claims process:

Acknowledgement of Claim Form

Grant Thornton, in its capacity as Receiver, will send known Investors a package which includes the Acknowledgement of Claim Form by January 15, 2013. Each Investor Claim as set out in the Acknowledgement of Claim Form will be based on First Leaside's books and records. **Unless the Investor elects to complete and file a Request for Amendment and submits supporting documentation to dispute the accuracy of the Acknowledgement of Claim Form, the information contained therein will be deemed to be confirmed in all respects by the Investor.** For further clarity, if you agree with the amounts in the Acknowledgement of Claim Form, you are not required to take any further action.

Request for Amendment

If an Investor submits a Request for Amendment to their claim (as it is set out in the Acknowledgement of Claim Form) to the Receiver, the Receiver will review and consider such request. After reviewing the requested amendment, the Receiver may (i) accept the requested amendment or (ii) revise or disallow the requested amendment by sending the Investor a Notice of Revision or Disallowance of Claim.

Any Request for Amendment **must** be submitted to the Receiver on or before the Claims Bar Date. Otherwise, the Acknowledgement of Claim Form and the information contained therein is considered final and binding on the Investor and can be relied on by the Receiver in valuing an Investor Claim. Moreover, the Investor will be barred from making any further claim that is inconsistent with the information contained in the Acknowledgement of Claim Form.

Filing a Proof of Claim if you do not receive an Acknowledgement of Claim Form

If you are an Investor and you do not receive an Acknowledgement of Claim Form from the Receiver by January 23, 2013, please consider contacting Grant Thornton at 1-855-883-2474. Otherwise, where an Investor does not receive an Acknowledgment of Claim Form, a Proof of Claim must be completed and submitted by the Investor to the Receiver by 5:00 pm EST on the Claims Bar Date.

A sample of the Proof of Claim form and the Acknowledgement of Claim Form, along with a complete copy of the Claims Procedure Order, can be found online on Grant Thornton's website: www.grantthorton.ca/firstleaside at Appendix 6 to the "Combined Seventh Report of the Monitor and Proposed Receivers Report dated December 5, 2012".

If you have further questions about the Claims Procedure Order, please contact Grant Thornton at 1-855-883-2474.

3. <u>Transfer of Investor Accounts from Penson Financial Services Canada ("Penson") to Fidelity Clearing Canada ULC ("Fidelity")</u>

On December 7, 2012, the Court granted an order authorizing the CRO, to execute a Custodial Services Agreement with Fidelity on behalf of First Leaside. Fidelity has agreed to become the successor custodian to Penson in respect of all Investor accounts that currently remain with Penson. The agreement contemplates that Fidelity will hold all Investor securities, including securities registered in each Investor account. As Penson is ceasing its operations in Canada, the remaining accounts need to be transferred to a new custodian. The seventh report from the Monitor, Grant Thornton, further elaborates on the nature of this arrangement and is available on Grant Thornton's website: www.grantthorton.ca/firstleaside.

To the extent that you have any questions about the transfer of Investor accounts from Penson to Fidelity, we urge you to contact either (i) Christine Chang at First Leaside at 905-852-1430 or (ii) Grant Thornton at 1-855-883-2474.

4. <u>Canadian Investor Protection Fund ("CIPF") Claims Process</u>

We have had a number of meetings with CIPF and we have discussed with them the form of claims process and issues regarding CIPF coverage. Despite originally indicating they would be willing to coordinate a claims process with the Receiver's claims process, CIPF has now indicated that they are no longer agreeable to such. To date, CIPF has still not set a deadline for filing a CIPF claim and we will continue to keep Investors up to date about our discussions with CIPF in this regard.

<u>On the issue of coverage, while we have had discussions with CIPF, Investors need to recognize that CIPF may not pay any compensation for Investor Claims and we have no commitment to date on any claims coverage or the type of Investor Claims that they may compensate.</u>

At our last meeting with CIPF, dealing specifically with the issue of rescue plans, CIPF, on a without prejudice basis, did make some statements that Rep Counsel conceptually agrees with, namely: (i) the date for determining any potential claim will likely be the date of the Initial Order (February 23, 2012), so the claim would be calculated as of that date and it would be reduced for any subsequent recoveries (either by reduction of the claim or assignment of those recoveries to CIPF); and (ii) Investors should not be penalized for trying to mitigate their losses (i.e. though a rescue plan) but they should also be aware that any recoveries may reduce the CIPF claim or be assigned to CIPF, if CIPF in fact pays out based upon the full value of a claim. We do not know enough about the rescue plans to understand whether this is an issue or not.

Notwithstanding the second point, if you transfer, trade or assign your units or interest in any First Leaside security to any other party, we would be concerned that you may no longer be in a position to assert a claim against CIPF.

5. **Telephone Town Hall**

All Investors are invited to attend a telephone town hall meeting with Rep Counsel and the Receiver, which is taking place on Wednesday, January 9, 2013, from 2:00pm until 4:00pm (EST). The purpose of this call is to provide you with an update on the status of the claims process in the context of the receivership proceedings, the CIPF claims process, and to answer Investor questions regarding same.

The teleconference call-in details are as follows:

Local:	416-695-7806
Outside the GTA:	1-888-789-9572
Passcode:	5370624

During the call, you will be invited to queue up to ask questions by hitting the pound key on your phone. In an effort to maximize the time we have to answer your questions, and to help avoid duplication of your questions during the meeting, we request that you forward to us any questions you have in advance, by email to FirstLeaside@fmc-law.com.

Yours Truly,

Fraser Milner Casgrain LLP

Shayne Kukulowicz

cc: Jane Dietrich, Fraser Milner Casgrain LLP
cc: Greg MacLeod, G.S. MacLeod & Associates Inc.
cc: John Birch, Cassels Brock & Blackwell LLP
cc: David Ward, Cassels Brock & Blackwell LLP
cc: Jonathan Krieger, Grant Thornton Limited
cc: Daniel Sobel, Grant Thornton Limited
cc: Pamela L. Huff, Blake, Cassels & Graydon LLP
cc: Katherine McEachern, Blake, Cassels & Graydon LLP

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Salans FMC SNR Denton
dentons.com

April 26, 2013

BY EMAIL

To all persons who are clients of First Leaside Securities Inc. (the "Investors")

Dear Sirs/Mesdames:

RE: Ninth Reporting Letter to Investors by Dentons Canada LLP as Court-appointed representative counsel for the Investors ("Rep Counsel")

This ninth reporting letter is intended to update you on our discussions with the court-appointed receiver, Grant Thornton Limited (the "Receiver"), and the activities that we are currently engaging in on your behalf in our capacity as Rep Counsel.

As a part of an international combination with Salans LLP and other members of SNR Denton Group, Fraser Milner Casgrain LLP has changed its name to Dentons Canada LLP ("Dentons"). This amalgamation will not change the professionals acting as Rep Counsel and those previously representing the Investors will continue to represent the Investors going forward.

1. Status of claims process

Investor Claims

The Receiver has advised that approximately 5,500 claim forms were distributed to Investors in the context of the claims process (the "Claims Process") approved by the court on December 7, 2012 (the "Claims Procedure Order"). Of those forms distributed, only 302 forms were returned requesting amendments. The Receiver is focusing the majority of its efforts on approximately 115 of the requested modifications where the amendments are material and the Investors are potentially going to receive a distribution. As a result of the Claims Process for Investor claims, the Receiver acknowledged approximately $327 million of Investor claims.

Creditor Claims

In excess of 100 proof of claim forms totaling approximately $9.3 million have also been received from creditors in the context of the Claims Process. This amount does not include the creditor claims of the various trusts (e.g. FLWM Trust Fund), which are included in the Investor claims discussed above. The Receiver is currently assessing the amounts of all of the creditor claims.

The Receiver continues to work on determining the precise manner and details for a distribution based on all of the Investor and creditor claims, and estimates that, barring any unforeseen difficulties, within approximately two months authorization to make a distribution to the main body of Investors and creditors (while maintaining a hold back for those claims which are disputed and have not yet been resolved) will be requested from the Court.

2. Timing of distributions to the syndicated mortgage Investors

The sale of the Cemetery Road property, previously reported on, has been completed. There is also a conditional agreement for the sale of the Mill Street property, but the transaction has not yet received court approval or closed.

We understand that the Receiver intends to seek Court approval in the near future with respect to distributing the proceeds of the Cemetery Road property (and the Mill Street property if such transaction closes).

3. Outstanding loans to employees, officers and/or directors

The Receiver has advised that First Leaside has outstanding loans of approximately $2,300,000 to Investors, $700,000 to employees, and $300,000 to third parties. The Receiver is in the process of demanding payment of these loan amounts.

Those Investors that receive a demand for payment from the Receiver should seek independent legal advice. Dentons is unable to advise those individual Investors regarding their legal rights to a demand for payment as doing so would be a conflict of interest given our mandate to represent the Investor group as a whole.

4. Status of the transaction with the Funds trustees

The Receiver has advised that in its view the substantive negotiation of the prospective transaction with the trustees of Wimberly Fund, First Leaside Fund and First Leaside Mortgage Fund (collectively, the "Funds") is well advanced. However, as the transaction is very complex the documentation is still being negotiated.

5. Canadian Investor Protection Fund ("CIPF") claim

CIPF has recently begun to deliver notices to Investors regarding the claims procedure. The deadline for submission of claims to CIPF has been set by CIPF as **October 12, 2013**. More information can be found at www.cipf.ca.

We have already spoken with CIPF regarding the claims process. The current CIPF claims process is designed for individuals, not groups, to put forward their claims and to have those claims dealt with on an individual basis. We have met with the Investors' Steering Committee to discuss a strategy, and proposed plan to work with CIPF so that may have the vast majority of Investors claims dealt with on a more efficient and expeditious basis. When we have more to report in that regard we will reconnect with the group of Investors as a whole.

Yours truly,
Dentons Canada LLP

Shayne Kukulowicz

cc: Jane Dietrich, Fraser Milner Casgrain LLP
cc: Jonathan Krieger, Grant Thornton Limited
cc: Daniel Sobel, Grant Thornton Limited
cc: Pamela L. Huff, Blake, Cassels & Graydon LLP
cc: Katherine McEachern, Blake, Cassels & Graydon LLP

Appendix B

DENTONS

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April 25, 2013

VIA COURIER & EMAIL

WITHOUT PREJUDICE FOR SETTLEMENT PURPOSES

Mr. Craig J. Hill
Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West, 44th Floor
Toronto ON M5H 3Y4

Dear Mr. Hill:

Re: Insolvency of First Leaside Securities Inc.

We write to you in your capacity as counsel to the Canadian Investor Protection Fund ("CIPF").

As court-appointed representative counsel for the hundreds of eligible customers affected by the insolvency of First Leaside Securities Inc. ("FLSI" or the "Member"), we write further to our previous meeting with both you and your client and to provide notice of our clients' intention to bring claims under CIPF's existing coverage policy for losses incurred as a result of the Member's insolvency.

While we were disappointed that we were unable to agree upon a mutually acceptable claims resolution process, our meeting in November was useful insofar as it allowed the parties' to begin to understand each other's concerns. As such, and prior to the Member's customers incurring the significant expense and further delay inherent in submitting numerous individual claims, we hope to build upon that understanding by drawing CIPF's attention to the factual and legal background underlying our clients' request for coverage and to ascertain whether, in CIPF's view and given its mandate *"to contribute to the security and confidence of customers of Canadian investment dealers"*, there is an opportunity to reach a negotiated resolution of our clients' claims on a global basis.

Factual Background

On February 23, 2012, FLSI was declared insolvent having made an application to the Ontario Superior Court of Justice under the provisions of the *Companies' Creditors Arrangement Act* (the "*CCAA*"). Prior to its insolvency, and the related suspension of its securities registration, FLSI was a member of the First Leaside Group of Companies ("First Leaside"). Though now suspended, FLSI was, and had consistently marketed itself as being a CIPF member since 2004.

At the time of its insolvency, FLSI customers had, in the aggregate, invested approximately $335 million in accounts held with FLSI through its carrying broker, Penson Financial Services Canada Inc., which funds were to have been invested in proprietary First Leaside products on the understanding that such funds would be invested in those products for the primary purpose of funding the acquisition and/or development of various real estate projects.

Of the $335 million noted above, approximately $160 million was solicited from customers and deposited with FLSI following January 1, 2009 (the "Funds"). We now know that, dating back to at least the start of 2009 and through to November 2011, the Funds were not used for the intended investment purpose, but rather were unlawfully converted by First Leaside for its own use. In this regard, and unbeknownst to the customers who deposited the Funds with FLSI during this period of time, First Leaside was the subject of an ongoing Ontario Securities Commission ("OSC") investigation. The significant internal and regulatory concerns which lay at the heart of that investigation ultimately led to the retention of a consultant, Grant Thornton Limited ("Grant Thornton"), to review and prepare a report on First Leaside's operations and financial viability. Upon completing that review, Grant Thornton, in a report provided to First Leaside on August 19, 2011 (the "Grant Thornton Report", a copy of which is attached hereto at Tab "A"), concluded that without the infusion of new capital First Leaside would likely be unable to continue to operate:

> The future viability of [First Leaside] is contingent on their ability to raise new capital...If [First Leaside] was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects
>
> * * *
>
> We have also reviewed the Asset Valuation of [First Leaside] using the highest third party valuation figures available for the WALP properties...In this regard, there is also a significant equity deficit based on the Asset Valuation.[1]

Despite the concerns which had been identified by early 2009, and the release of the Grant Thornton Report in August 2011, it was not until three months later, in November 2011, that the Member's customers were first advised that the OSC had been investigating First Leaside and had told the company that it was "not appropriate to use money raised from new investors to fund the operating losses, rehabilitation costs and distributions of existing limited

[1] The OSC has since commenced formal enforcement proceedings against David Phillips, First Leaside's founder and directing mind, and John Wilson, a senior salesperson employed by FLSI, based primarily upon allegations that they intentionally concealed from investors the fact that invested capital was being misused in the manner described herein and that the future viability of First Leaside was contingent upon its ability to raise new capital.

partnerships".[2] Indeed, it was only at this late date that First Leaside was prevented from raising further capital from customers.[3]

In the result, from January 2009 (by which time First Leaside was well aware of its untenable financial position and significant regulatory concerns regarding the inappropriate use of customer funds) through to November 2011, FLSI solicited, accepted and proceeded to use the Funds in a manner which was contrary to the customers' rights in and to that money and for its own purposes - all while intentionally misleading those same customers as to why First Leaside actually required, and how it intended to use, the customers' money.

The customers of FLSI have had very little success in recovering the Funds unlawfully converted by the Member. In this regard, it is acknowledged that a percentage of the Funds were returned to customers by way of distributions made during the relevant period of time and that a further, though again limited amount (which had been placed in a syndicated mortgage in February 2011) has since been returned to customers through the *CCAA* proceeding. With the exception of these amounts, however, FLSI's customers have not realized any further recovery. Going forward, we estimate that, through the receivership process, customers of FLSI can expect to recover on average no more than 10% of the Funds which have not previously been returned – leaving those customers with a financial loss still measured in the tens of millions of dollars (the "Potential Claim Amount"[4]).

Legal Background

The Member's solicitation and use of the Funds in the manner described above represented an unlawful conversion of those monies.

In particular, in soliciting and accepting the Funds while knowingly concealing from customers that First Leaside's financial viability was entirely contingent on the Member's ability to obtain such funds, the Member unlawfully induced its customers to make cash deposits into their accounts. In such circumstances, any direct or implied consent which FLSI's customers may have

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[2] See: letter from First Leaside to customers dated November 7, 2011, attached hereto as Tab "**B**".

[3] The unlawful conversion of customer funds occurred both prior to and following the release of the Grant Thornton Report on August 19, 2011 - following which date the Member solicited, received and unlawfully converted over $16 million in customer deposits. See: Confidential Report to Investors prepared by Grant Thornton dated May 1, 2012, a copy of which is attached hereto as Tab "**C**".

[4] We also acknowledge that the Potential Claim Amount may properly be reduced by excluding certain investments (i.e. syndicated mortgages).

provided to withdraw the Funds from their accounts in order to purchase investment products offered by First Leaside was vitiated and of no force or effect.[5]

In the result, the Member's customers are entitled to have the Potential Claim Amount returned to them. The Potential Claim Amount cannot be characterized as having resulted from an "unsuitable investment", the "changing market value of the security purchased" or the "default of the issuer of the security" as, given the Member's unlawful conduct, no valid instructions were ever provided to withdraw the Funds from the customers' accounts.

Request for Coverage

From a factual perspective, it is our view that the losses suffered by FLSI's customers have been occasioned solely as a result of the Member's insolvency and subsequent failure to return the majority of the Funds which it had unlawfully converted. As such, those losses fall squarely within the parameters of CIPF's coverage policy.

From a policy perspective, there is no doubt that the insolvency (and related suspension of FLSI's registration) was effected, in large part, so as to protect future investors from the systemic misuse of funds by the Member. There is similarly no doubt that that same insolvency rendered the Member unable to return the Funds to existing customers. In such circumstances, it cannot have been intended that the Member's existing customers (who are victims of the same misconduct which the regulators acted to prevent) should alone have to bear the burden of that policy decision - particularly given CIPF's express mandate to contribute to the security and confidence of customers of Canadian investment dealers by maintaining adequate resources to return assets to eligible customers in cases where a Member becomes insolvent.

It is our clients' belief that the misconduct described above occurred throughout FLSI's eight year tenure as a Member of CIPF. That said, and in an effort to address our clients' concerns in a manner which will also allow CIPF to fulfill its mandate, we are proposing that the majority of our clients' coverage claims can be resolved, on a global basis, by way of a payment from CIPF's coverage fund which is significantly less than the total invested amount at the date of insolvency.[6]

At our prior meeting it was suggested that we set out our clients' request for coverage on a global basis in anticipation of a subsequent meeting with CIPF's board to discuss same. Having now done so, we would welcome the opportunity to continue our discussions with CIPF staff

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[5] See: Tab "D"; *American Financial Services Group v. Treasure Bay Gaming and Resorts Inc.*, 2000 WL 815894 (SDNY).

[6] We acknowledge that there may be some individual customers who choose to put forward their own, individual coverage claims on the same or a differing basis from that set out herein. That said, we currently anticipate that should CIPF be prepared to consider a resolution of customer claims on a global basis, relatively few of the Member's customers will choose not to participate.

regarding the client concerns set out herein and, as appropriate, to also meet with CIPF's board to discuss a negotiated resolution of those concerns. Of course, should CIPF be prepared to consider a resolution of our clients' claims on a global basis, we would look to work co-operatively with your client to resolve any procedural issues or concerns which may arise.

Yours truly,
Dentons Canada LLP

R. Shayne Kukulowicz

Appendix C

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Borden Ladner Gervais

June 14, 2013

Dentons Canada LLP
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Toronto, Ontario M5K 0A1

Attention: R. Shayne Kukulowich

Dear Sirs:

Re: First Leaside Securities Inc. ("FLSI")

We acknowledge receipt of your letter dated April 25, 2013.

We understand that the fundamental purpose of your letter is to set out your request for coverage on behalf of the various former customers of FLSI that are represented by Dentons Canada LLP ("Dentons"). As a result, it appeared appropriate to clarify the claims process in place within the CIPF structure and also to respond to certain statements contained in your letter.

As we indicated in our prior meeting with Dentons and certain members of the steering committee, CIPF's coverage policy (which is set out on the CIPF web site) provides:

> CIPF covers customers of Members who have suffered or may suffer financial loss solely as a result of the insolvency of a Member. Such loss must be in respect of a claim for the failure of the Member to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property, received, acquired or held by or in the control of, the Member for the customer, including property unlawfully converted. The Board of Directors of CIPF may exercise its discretion in respect of determining the customers eligible for protection and the financial loss suffered.

As you have indicated in your letter, coverage extends to a loss in respect of a claim for the failure of the Member to return or account for security, including property unlawfully converted. To determine the extent of customer losses, if any, that might be subject to CIPF's coverage policy, CIPF has instituted a claims procedure and notified all former customers of FLSI of the right to file claims in connection with any such loss. Customers must provide sufficient detail of the particulars of any loss, including any allegations of unlawful conversion. Those allegations must be advanced by customers on a case-by-case basis. As we indicated in our previous meeting, CIPF is unable to assess the merits of any particular claim unless it is advanced by or on behalf of an individual customer. CIPF does not have the authority to consider (or compensate) claims on an aggregate or omnibus basis. Omnibus claims, and any underlying allegations that support the omnibus claims, are not consistent with CIPF's coverage policy or capable of proper assessment in a manner consistent with CIPF policies and guidelines.

While CIPF recognizes the right of representative counsel to assist customers with filing claims with CIPF, CIPF coverage policy and its practice and procedures remain unaffected by the representative counsel orders. CIPF must (and will) assess customer claims on a case-by-case basis based on the particulars of any alleged loss. Former customers of FLSI have been notified of this fact and provided with proofs of claim and explanatory letters with respect to the CIPF procedures. The claims that are received by CIPF in accordance with the claims procedure will be assessed by CIPF in due course following receipt of the claims.

We note that, in the last paragraph of your letter, you indicated that "it was suggested that we set out our client's request for coverage on a global basis in anticipation of a subsequent meeting with CIPF's Board to discuss same." We do not believe that such a process was indicated during our last meeting and it is unfortunate that this is the impression you may have drawn from our meeting. We believe that you indicated that you would be filing a claim on a global basis. We indicated to you (as CIPF has now done) that CIPF would be instituting an independent claims process for former customers of FLSI to advance their individual claims and that those persons that have previously filed claims would not be required to re-file additional claims. However, we do not propose, nor do we think it necessary, for a meeting to be held between the representative counsel and the CIPF Board. To the extent that individual customers have any concerns with respect to the treatment of their claims pursuant to the coverage policy, such claimants may have access to some or all of the Board members for further consideration of their claims.

Yours very truly,

Craig J. Hill

CJH:mjs

TOR01: 5214353: v1

Appendix D

DENTONS

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Salans FMC SNR Denton
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July 15, 2013

VIA COURIER & EMAIL

Mr. Craig J. Hill
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Toronto ON M5H 3Y4

Dear Mr. Hill:

Re: Insolvency of First Leaside Securities Inc. ("FLSI")

We are in receipt of your letter dated June 14, 2013.

We are disappointed that almost two months after receiving our letter of April 25, 2013, you have responded by advising us of CIPF's claims process (which we were already aware of before we sent our April 25th letter) and CIPF's coverage policy (which we were aware of more than a year ago).

We are more disappointed at CIPF's apparent reluctance to engage in any meaningful dialogue regarding coverage for the losses collectively suffered by the customers of FLSI, one of CIPF's member firms. Notwithstanding our effort to detail the unlawful conversion by FLSI that impacted hundreds of Investors and the basis for CIPF coverage, your response is simply that there is a CIPF claims process and CIPF will consider the customers on a "case by case basis". This is frustrating. The Receiver of First Leaside group has already conducted a claims process (that CIPF refused to participate in) and the losses suffered by the customers of FLSI are readily available.

Our letter of April 25th reflected an attempt to work with CIPF in good faith to provide some compensation to the victims of FLSI in common circumstances, with the losses quantified in a practical manner. If there was a willingness by CIPF to do something other than simply run a pro forma claims process, we collectively could have fashioned the mechanics to comply with any policies and guidelines.

Unfortunately, we view your response and CIPF's approach to be inconsistent with its mandate "to contribute to the security and confidence of customers of Canadian investment dealers".

We remain willing to engage CIPF to the extent it is prepared to discuss the substantive issues on a collective or individual basis. In the meantime, we put CIPF on notice that we expect the individual investors will be filing claims or supplemental claims (in the event that certain claims have previously been filed) prior to CIPF's October 2013 deadline.

Yours truly,

Dentons Canada LLP

R. Shayne Kukulowicz

RSK*mk

Court File No. CV-12-9617-00CL

IN THE MATTER OF THE RECEIVERSHIP OF First Leaside Wealth Management Inc., and the Applicants Listed on Schedule "A" (collectively, "**First Leaside**")

ONTARIO

SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

SECOND REPORT TO COURT OF REPRESENTATIVE COUNSEL TO THE INVESTORS

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