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

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"**)

MOTION RECORD OF DAVID CHARLES PHILLIPS AND JOHN RUSSELL WILSON

(Motion returnable Wednesday, July 24, 2013)

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

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AND TO:	**Christine Chang** 350 O'Beirn Road Goodwood, ON L0C 1A0 Email: christinehychang@hotmail.com	**AND TO:**	**Brian Sutton** 120 Adelaide Street West Suite 2500 Toronto, ON M5H 1T1 Email: bsutton@sbgregulatory.com
AND TO:	**LENCZNER SLAUGHT ROYCE SMITH GRIFFIN LLP** 130 Adelaide St. West, Suite 2600 Toronto, ON M5H 3P5 Linda Fuerst Tel: (416) 865-3091 Fax: (416) 865-9010 Email: lfuerst@litigate.com Lawyers for Cassels Brock Blackwell LLP		

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TAB 1

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

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"**)

NOTICE OF MOTION
(Returnable July 24, 2013)

David Charles Phillips and John Russell Wilson, will bring a Motion before a Judge presiding over the Commercial List on Wednesday, July 24, 2013 at 9:30 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: This Motion is to be heard:

[ ] in writing under subrule 37.12.1(1);

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR:

(a) An Order, if necessary, validating and abridging the time for service of this Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and the Motion Record be dispensed with such that this motion is properly returnable on Wednesday, July 24, 2013;

(b) An Order authorizing and directing Grant Thornton Limited (**"GTL"**), in its capacity as Court-appointed receiver and manager (the **"Receiver"**), without security, of all of the assets, undertakings and properties of First Leaside, to waive privilege belonging to First Leaside Wealth Management Inc. ("**FLWM**"), First Leaside Securities Inc. ("**FLSI**"), F.L. Securities Inc. ("**F.L. Securities**") and 965010 Ontario Inc. ("**965010**") over solicitor and client communications with Cassels Brock & Blackwell LLP recorded in minutes of a November 13, 2011 meeting of the Independent Committee of the Board of Directors (the "**Minutes**") relating to disclosure of the GTL Confidential Report of Consultant – Financial Review – First Leaside Group of Companies dated August 19, 2011 (the "**Report**");

(c) In the alternative, and in the event that anyone opposes the relief sought in paragraph (b), an order scheduling the hearing of the within motion on an expedited basis, and

(d) Such further and other relief as to this Honourable court may seem just.

THE GROUNDS FOR THE MOTION ARE:

(a) Mr. Phillips and Mr. Wilson are responding to a proceeding commenced against them by Staff of the Ontario Securities Commission (the "**OSC Proceeding**");

(b) In order to defend themselves in the OSC Proceeding, Mr. Phillips and Mr. Wilson sought to waive privilege belonging to FLWM, FLSI, F.L. Securities and 965010 over solicitor and client communications with Cassels Brock & Blackwell LLP relating to the commissioning and completion of the Report up to, and including, discussions during the September 5, 2011 meeting of the board of directors of FLWM (collectively, the "**Communications**");

(c) On June 19, 2013, the Honourable Mr. Justice Morawetz ordered that the Receiver has the rights to assert or waive privilege in respect of the Communications and that it was authorized and directed to waive any privilege belonging to FLWM, FLSI, F.L. Securities and 965010 in respect of the Communications;

(d) On June 24, 2013, Douglas Hyatt, chairman of the board of FLWM testified before the Commission. Dr. Hyatt testified that during a September 5, 2011 meeting of the FLWM and 965010 boards, Peter Dunne advised that the Report could not be disclosed;

(e) On June 24, 2013, Peter Dunne, a partner at CBB testified before the Commission. Mr. Dunne testified that he did not recall being asked during the September 5th board meeting whether the Report could be disclosed;

(f) The Moving Parties seek an order waiving privilege over the Minutes in order to adduce them as evidence in the Proceeding;

(g) Rules 1.04, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, reg. 194 as amended; and

(h) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) The affidavit of Clarke Tedesco; and

(b) Such further and other evidence as the lawyers may advise.

July 15, 2013

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Lawyers for David Charles Phillips and John Russell Wilson

TO: THE ATTACHED SERVICE LIST

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

TAB 2

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

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"**)

AFFIDAVIT OF CLARKE TEDESCO
(Sworn: July 15, 2013)

I, Clarke Tedesco, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate at Crawley MacKewn Brush LLP, counsel to David Phillips and John Wilson (the "**Moving Parties**"). As such, I have personal knowledge of the matters to which I hereinafter depose below, save and except where I have been provided with information by others or learned information from my review of documents. Where I do not have personal knowledge, I have indicated the source of my information and I believe the information to be true.

2. In June 2012, staff ("**Staff**") of the Ontario Securities Commission (the "**OSC**" or the "**Commission**") commenced a proceeding against Mr. Phillips and Mr. Wilson. Staff alleges that Mr. Phillips and Mr. Wilson:

(a) Committed a fraud, pursuant to section 126.1 of the *Securities Act,* R.S.O. 1990, c. S.5 (the "***Act***");

(b) Breached section 44(2) of the *Act*;

(c) Breached section 2.1 of Commission Rule 31-505; and

(d) Acted contrary to the public interest.

A copy of the Amended Statement of Allegations, dated April 25, 201, is attached as Exhibit "A"

3. The alleged fraudulent conduct was that Mr. Phillips and Mr. Wilson sold securities to investors, during the period of August 22, 2011 to October 29, 2011, without disclosing:

(a) That Grant Thornton Limited ("**GTL**") was retained on March 5, 2011 to conduct a viability study of the First Leaside Group;

(b) That GTL drafted a report on the viability of the First Leaside Group dated August 19, 2011 (the "**Report**"); and

(c) The Report.

4. The allegations relating to section 44(2), section 2.1 of Commission Rule 31-505 and conduct contrary to the public interest rest on the same facts as set out above.

5. Staff alleges that Mr. Phillips and Mr. Wilson failed to disclose the Report prior to or in the course of making sales and that such failure to disclose was a fraud.

6. The issue to be determined in the OSC proceeding is whether the non-disclosure relating to GTL was fraudulent or otherwise breached securities laws as alleged by Staff.

7. As part of Mr. Phillips' and Mr. Wilson's defence they intend to rely on the legal advice they were given by Cassels Brock & Blackwell LLP ("**CBB**"). This advice goes directly to elements of the allegations made against them, including: (1) whether the non-disclosure was fraudulent; and (2) whether Mr. Phillips and Mr. Wilson were duly diligent in carrying out their duties.

8. Mr. Phillips and Mr. Wilson sought to waive privilege belonging to First Leaside Wealth Management Inc. ("**FLWM**"), First Leaside Securities Inc. ("**FLSI**"), F.L. Securities Inc. ("**F.L. Securities**") and 965010 Ontario Inc. ("**965010**") over

solicitor and client communications with CBB relating to the commissioning and completion of the GTL Confidential Report of Consultant – Financial Review – First Leaside Group of Companies dated August 19, 2011 (the "**Report**") up to, and including, discussions during the September 5, 2011 meeting of the board of directors of FLWM (collectively, the "**Communications**").

9. On June 19, 2013, the Honourable Mr. Justice Morawetz ordered that the Receiver has the rights to assert or waive privilege in respect of the Communications and that it was authorized and directed to waive any privilege belonging to FLWM, FLSI, F.L. Securities and 965010 in respect of the Communications.

10. On June 24, 2013, Douglas Hyatt, chairman of the board of FLWM testified before the Commission. Dr. Hyatt testified that during a September 5, 2011 meeting of the FLWM and 965010 boards, Peter Dunne advised that the Report could not be disclosed. A copy of the transcript excerpt containing this testimony is attached as Exhibit "B".

11. On June 24, 2013, Peter Dunne, a partner at CBB testified before the Commission. Mr. Dunne testified that he did not recall being asked during the September 5th board meeting whether the Report could be disclosed. A copy of the transcript excerpt containing this testimony is attached as Exhibit "C".

12. On July 3, 2013, Dr. Hyatt's counsel wrote to our firm expressing concern over a newspaper article reporting on Mr. Dunne's evidence. Dr. Hyatt's counsel made reference to minutes of a November 13, 2013 meeting of the Independent Committee of the Board of Directors (the "**Minutes**"). According to Dr. Hyatt's counsel, the Minutes reflect a discussion that is relevant to the issue of whether FLWM was given advice regarding the disclosure of the Report. A copy of this letter is attached as Exhibit "D".

13. I am advised by Dr. Hyatt's counsel, and verily believe, that the relevant portion of the Minutes is the third paragraph under the second heading, which is entitled "Timeline for Response to the Grant Thornton Report…". I am advised by the Moving Parties and verily believe that they have never seen this paragraph.

14. Mr. Phillips and Mr. Wilson seek a limited waiver of privilege over solicitor and client communications recorded in the Minute.

15. I swear this affidavit for the purpose of the within motion and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 15th day of July, 2013.	
Commissioner for Taking Affidavits *(or as may be)*	**CLARKE TEDESCO**

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
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Uxbridge Development Limited Partnership
First Leaside Retirement Residences Limited Partnership
First Leaside Venture Limited Partnership
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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

This is Exhibit "A" referred to in the
Affidavit of CLARKE TEDESCO
sworn before me this 15th day of June, 2013

Commissioner for Taking Affidavits
(or as may be)

Ontario

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON

AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

1. This case revolves around David Charles Phillips, a founder and the directing mind of the First Leaside Group, who intentionally deceived investors by selling and overseeing the sales of almost $19 million in securities while withholding important information.

Overview

2. David Charles Phillips ("Phillips") was a founder and the directing mind of a group of at least 161 companies (the "First Leaside Group"). Phillips directed all significant aspects of the business and growth of the First Leaside Group from its inception in the late 1980s until at least November 2011. John Russell Wilson ("Wilson") was a senior salesperson employed by First Leaside Securities Inc. ("FLSI"), an investment dealer and one of the companies in the First Leaside Group. Wilson worked closely with and reported directly to Phillips.

3. Between August 22 and October 28, 2011 (the "Sales Period"), Phillips directed and oversaw sales of First Leaside Group equity and debt offerings which raised about $18.76 million from investors. Phillips and Wilson were directly responsible for about 66% of the sales. Phillips sold about $3.38 million directly to investors, and Wilson sold about $8.95 million directly to investors.

4. Phillips and Wilson effected these sales knowing that an independent accounting firm, Grant Thornton Limited ("Grant Thornton"), had conducted an extensive six month review of the First Leaside Group and had delivered a report on August 19, 2011 (the "Grant Thornton Report"). The Grant Thornton Report included findings that the future viability of the First Leaside Group was contingent on its ability to raise new capital and that there was a significant equity deficit.

5. The fact that Grant Thornton was reviewing the First Leaside Group, the existence of the Grant Thornton Report and the Grant Thornton Report were important facts investors should have known. During the Sales Period, Phillips did not disclose these important facts to the First Leaside Group salespeople, nor did Phillips and Wilson disclose them to investors to whom they sold directly. By concealing these facts while selling to investors, and in Phillips' case, supervising the entire sales effort, Phillips and Wilson dishonestly placed investors' pecuniary interests at risk.

6. Each of Phillips and Wilson breached subsection 126.1(b) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities which they each knew, or reasonably ought to have known, would perpetrate a fraud on investors. Each of Phillips and Wilson also breached subsection 44(2) of the *Securities Act*, section 2.1 of Ontario Securities Commission (the "Commission") Rule 31-505, and acted contrary to the public interest.

The First Leaside Group

7. The First Leaside Group included First Leaside Wealth Management Inc. ("FLWM"), which owned FLSI and an exempt market dealer, F.L. Securities Inc. ("F.L. Securities"). FLWM has never been registered under the *Securities Act*.

8. FLSI was registered with the Commission as an investment dealer from March 1, 2004 until February 24, 2012, when its registration was suspended. FLSI was also registered as a dealer member with the Investment Industry Regulatory Organization of Canada ("IIROC"). FLSI's IIROC membership was suspended on February 24, 2012.

9. F.L. Securities was registered with the Commission as a limited market dealer from March 1, 1991 until September 28, 2009, and as an exempt market dealer from September 28, 2009 until February 28, 2012, when its registration was suspended.

The Respondents

Phillips

10. Phillips is an Ontario resident, and has been registered with the Commission in various capacities since 1981. Phillips was the Chief Executive Officer, President, Secretary and a director of the investment dealer FLSI, and the President and a director of FLWM. Phillips owned 100% of the common shares of FLWM.

11. In respect of FLSI, Phillips was registered with the Commission in various capacities from March 1, 2004 to February 24, 2012, and was registered as the ultimate designated person from January 11, 2010 to February 24, 2012. In respect of F.L. Securities, Phillips was registered with the Commission in various capacities from April 14, 2000 to February 27, 2004, and was approved as a shareholder from March 17, 2004 to February 28, 2012.

12. Phillips' registration with FLSI and F.L. Securities was suspended on February 24 and 28, 2012, respectively, pursuant to subsection 29(2) of the *Securities Act*.

Wilson

13. Wilson is an Ontario resident, and has been registered with the Commission in various capacities since 2003. Wilson was a director of FLWM. Wilson commenced employment with FLSI in 2005 and was employed with FLSI until February 2012.

14. In respect of FLSI, Wilson was registered as a salesperson from April 12, 2005 to February 24, 2012 and approved as an officer and director from March 29, 2011 to February 24, 2012.

15. Wilson's registration with FLSI was suspended on February 24, 2012, pursuant to subsection 29(2) of the *Securities Act*.

First Leaside Group's Clients and Business

16. On or about August 19, 2011, the First Leaside Group had at least 1,000 clients, most of whom were residents of Ontario. The First Leaside Group sold proprietary equity and debt offerings that were invested directly or indirectly within the First Leaside Group, and offered full brokerage and financial planning services administered by a carrying broker.

17. The First Leaside Group's proprietary equity and debt offerings typically consisted of units in limited partnerships ("LPs") and funds ("Funds"). The LPs primarily held real estate, including multi-unit residential properties in Canada and Texas. The Funds primarily held promissory notes in LPs which, in turn, held real estate. The real estate included 10 properties held by a member of the First Leaside Group, the Wimberly Apartments LP ("WALP"), through its subsidiaries.

18. At all times during the Sales Period, Phillips continued to be the directing mind of the First Leaside Group. Until at least November 3, 2011, Phillips was responsible for all aspects of the First Leaside Group, including capital raises, deal origination, deal negotiation and structuring and internal administration.

The Grant Thornton Report

19. In the months leading up to the Sales Period, significant real estate assets were being appraised and the business and operations of the First Leaside Group were under review by independent third parties.

20. In November 2010, Staff of the Commission ("Staff") sought an accurate, third party market valuation for the WALP properties in Texas and an additional property held by First Leaside Partners LP. The First Leaside Group engaged CB Richard Ellis and Joseph J. Blake and Associates Inc., which delivered their valuation reports to the First Leaside Group by January 2011.

21. In February 2011, due to concerns stemming from the valuation reports, Staff urged the First Leaside Group to retain an independent accounting firm with recognized expertise

in restructuring and insolvency matters to conduct a viability study of the First Leaside Group.

22. In March 2011, Grant Thornton was retained by Cassels Brock & Blackwell LLP ("Cassels Brock") to review, report on and make recommendations in respect of the business, assets, affairs and operations of the First Leaside Group. Cassels Brock was counsel to Phillips and to the First Leaside Group.

23. Between March and August 2011, Grant Thornton performed its review of the First Leaside Group, and on August 19, 2011, delivered its report. The Grant Thornton Report included the following findings:

> The future viability of the [First Leaside] Group is contingent on their ability to raise new capital. One of the largest sources of revenue in the [First Leaside] Group is the fees it generates in FLWM on the raising of new capital. If the [First Leaside] Group 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 the [First Leaside] Group, using the highest third party valuation figures available for the WALP properties. In this regard, we have calculated an aggregate equity surplus (represented as asset FMV, less third party mortgages and investor debt) of approximately $67M, while there is raised equity in the [First Leaside] Group of approximately $200M. In this regard, there is a significant equity deficit based on the Asset Valuation.

24. Phillips and Wilson were aware that Grant Thornton had been retained to review the First Leaside Group, and each received the Grant Thornton Report on or shortly after August 19, 2011.

25. Despite knowing about the engagement of Grant Thornton, the existence of the Grant Thornton Report and having received the Grant Thornton Report, Phillips directed and oversaw a sales effort, and he and Wilson each sold securities directly to investors while concealing these important facts.

Phillips' and Wilson's Conduct During the Sales Period

26. During the Sales Period, about $18.76 million was raised from investors through sales of units in the following offerings:

Entity	Cost of Units Sold
Special Notes LP	$8,077,328
First Leaside Expansion LP	3,927,102
Flex Fund – Class B and C	3,029,990
First Leaside Venture LP	1,921,359
FLWM Fund	1,265,931
First Leaside Primetime Living LP	335,000
First Leaside Beverages Group LP	130,010
Wimberly Apartments LP	78,448
Total	**$18,765,168**

27. During the Sales Period, Phillips sold units directly to investors, supervised all of the salespeople and approved each sale, and Wilson sold units directly to investors. Phillips' direct sales totalled about $3,388,626, and Wilson's direct sales totalled about $8,945,865 for a combined total of $12,334,491 or about 66% of sales.

28. Phillips and Wilson each sold units in the Special Notes LP, First Leaside Expansion LP, Flex Fund Class B and C, First Leaside Venture LP, FLWM Fund and WALP directly to investors. Wilson also sold units in First Leaside Primetime Living LP and First Leaside Beverages Group LP directly to investors.

29. Phillips did not disclose to the First Leaside Group salespeople, and Phillips and Wilson did not disclose to investors the fact that Grant Thornton had reviewed the First Leaside Group, the existence of the Grant Thornton Report or the Grant Thornton Report.

30. As registrants, each of Phillips and Wilson had an obligation to deal honestly, fairly and in good faith with their clients. In supervising and conducting sales in the circumstances described, Phillips failed to discharge this obligation. In conducting sales in the circumstances described, Wilson failed to discharge this obligation.

***Companies' Creditors Arrangement Act* Proceeding**

31. On February 23, 2012, less than 4 months after the end of the Sales Period, FLWM, FLSI, F.L. Securities and other members of the First Leaside Group obtained an order from the Ontario Superior Court of Justice that the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 applies to them and they are now subject to a court-supervised wind-up.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

32. Phillips and Wilson each directly or indirectly engaged or participated in an act, practice or course of conduct relating to securities which he knew, or reasonably ought to have known, would perpetrate a fraud on investors, contrary to subsection 126.1(b) of the *Securities Act*.

33. Phillips and Wilson each made statements a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, which statements were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to subsection 44(2) of the *Securities Act*.

34. Phillips and Wilson each failed to deal fairly, honestly and in good faith with their clients, contrary to section 2.1 of Commission Rule 31-505.

35. Phillips and Wilson each engaged in conduct contrary to the public interest and harmful to the integrity of the capital markets.

36. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 25th day of April 2013.

This is Exhibit "B" referred to in the
Affidavit of CLARKE TEDESCO
sworn before me this 15th day of June, 2013

Commissioner for Taking Affidavits
(or as may be)

expressing that view at the September 5th meeting?

A. Yes.

Q. Okay. Was that a view that you shared?

A. Yes.

Q. Okay. Did other directors say anything at that meeting that suggested they shared the same view?

A. Yes.

Q. Did anyone at the meeting, any of the directors or anyone else there, take the position that the report was bad or saying not viable.

A. No.

Q. Were there any discussions about the ability to disclose the Grant Thornton report at that September 5th meeting?

A. Yes.

Q. Okay. What were those discussions?

A. The discussion was that because the Grant Thornton report formed part of the investigation, the OSC investigation, and as a consequence the report could not be disclosed.

Q. Okay. And do you remember who said that?

A. Mr. Dunne said that.

This is Exhibit "C" referred to in the
Affidavit of CLARKE TEDESCO
sworn before me this 15th day of June, 2013

Commissioner for Taking Affidavits
(or as may be)

Q. And the recommendations contained in the Grant Thornton report, were they the subject of discussion both at the September 5th board meeting and by the independent directors subsequently?

A. Yes. They were the focal point of both discussions.

Q. Now, at the September 5th board meeting do you recall being asked whether the Grant Thornton report could be disclosed to First Leaside investors and clients?

A. I don't specifically being asked to comment on disclosure of the report.

Q. Okay. If I was to advise you that Mr. Phillips and Mr. Hyatt both recall you discussing disclosure of the Grant Thornton report, would that help refresh your memory?

A. I still don't remember a discussion, but ... my view of the report and disclosure at the time is that it would be problematic to disclose the report just as a standalone proposition.

My thinking on that front was driven by two considerations:

The first consideration is the report was confidential, so First Leaside wouldn't be in a position to make a unilateral decision to disclose the report in whole or in part without seeking the consent of the authors.

The second consideration was that this report was so inextricably linked to the investigation process and would be such a stark departure for the company to just produce that, that it occurred to us that anybody looking at that report might ask how did this come about and a truthful answer to that question raised real challenges for dealing with the obligations under section 16.

Q. Okay. Now, we spoke briefly before about discussions resuming with OSC staff at the end of October 2011.

If I could just for the purpose of jogging your memory ask you to turn to tab 44. The first question is whether you're able to identify these notes?

A. These are Ellen's notes.

Q. Okay.

A. Ellen Bessner.

Q. And they're dated October 28th, 2011. Do you recall the discussions with OSC staff on or about October 28th, 2011?

A. I do.

This is Exhibit "D" referred to in the
Affidavit of CLARKE TEDESCO
sworn before me this 15th day of June, 2013

Commissioner for Taking Affidavits
(or as may be)

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July 3, 2013

File: 13-531

By Email ***acrawley@cmblaw.ca***

Alistair Crawley
Crawley MacKewn Brush LLP
800-179 John Street
Toronto, ON M5T 1X4

Dear Mr. Crawley:

Re: First Leaside

I have been retained by Mr. Douglas Hyatt, who as you know was a director of First Leaside Wealth Management Inc.

Mr. Hyatt was surprised to read in a June 24, 2013 Financial Post article that Peter Dunne testified at the OSC hearing last week that he did not recall advising First Leaside on the issue of disclosure of the Grant Thornton report.

My client has provided me with what I understand are the unredacted November 13, 2011 Minutes of the Independent Committee of the Board of Directors of First Leaside (the "**Minutes**"). The Minutes reflect a discussion that is relevant to the issue of whether legal advice was given to First Leaside regarding disclosure of the Grant Thornton report.

I understand that an order was previously obtained from Justice Morawetz authorizing and directing the receiver to waive any legal privilege in respect of solicitor-client communications with Cassels Brock & Blackwell LLP up to and including September 5, 2011, which may not encompass the communications reflected in the Minutes.

I suggest you consider whether Justice Morawetz's order needs to be amended so that the unredacted Minutes can be disclosed and the OSC proceeding can be decided on a complete record.

Yours truly,

WARDLE DALEY BERNSTEIN LLP

Daniel Bernstein
DB/mc

cc. Bruce O'Toole (*by email: botoole@cmblaw.ca*)

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 24th
	)	
JUSTICE MORAWETZ	)	DAY OF JULY, 2013

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

ORDER

This motion, brought by David Charles Phillips and John Russell Wilson (the "**Moving Parties**"), for an Order authorizing and directing Grant Thornton Limited ("**GTL**"), in its capacity as Court-appointed receiver and manager (the "**Receiver**"), without security, of all of the assets, undertakings and properties of First Leaside, to waive privilege belonging to First Leaside Wealth Management Inc. ("**FLWM**"), First Leaside Securities Inc. ("**FLSI**"), F.L. Securities Inc. ("**F.L. Securities**") and 965010 Ontario Inc. ("**965010**") over solicitor and client communications with Cassels Brock & Blackwell LLP recorded in the minutes of a November 13, 2011 meeting of the Independent Committee of the Board of Directors (the "**Minutes**") relating to disclosure of the GTL Confidential Report of Consultant – Financial Review – First Leaside Group of Companies dated August 19, 2011 (the "**Report**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and Motion Record, filed, and on hearing the submissions of counsel for the Moving Parties, the Receiver, Representative Counsel and Staff of the Ontario Securities Commission and no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Mary Anne Milligan sworn July [ ], 2013, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and that

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any requirement for service of the Notice of Motion and the Motion Record is hereby dispensed with and that service in the manner effected by the Moving Parties is validated in all respects.

2. **THIS COURT ORDERS** that the Receiver has the rights to assert or waive privilege in respect of the Minutes and is hereby authorized and directed to waive any privilege belonging to FLWM, FLSI, F.L. Securities and 965010 in respect of the Minutes.

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

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

Court File No: CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

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Lawyers for David Phillips and John Wilson

IN THE MATTER OF THE RECEIVERSHIP OF FIRST LEASIDE WEALTH MANAGEMENT INC. *ET AL.*

Court File No: CV-12-9930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

MOTION RECORD OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON
(MOTION RETURNABLE WEDNESDAY, JULY 24, 2013)

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