

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

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FRIDAY, THE 7th

JUSTICE WILTON-SIEGEL

)

DAY OF DECEMBER, 2012

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
First Leaside Wealth Management Inc., First Leaside Finance Inc., First
Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc.,
First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc.,
2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First
Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc.,
1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971
Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd.,
PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada)
Inc., PrestonThree Development (Canada) Inc., PrestonFour Development
(Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc.,
1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario
Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212
Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc.,
2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside
Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804
Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628
Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc.,
and First Leaside Fund Management Inc.

DISCHARGE AND TRANSITION ORDER

This motion ("**Motion**"), made by the Applicants and the entities listed on
Schedule "A" (collectively, "**First Leaside**") to the Initial Order of the Honourable Mr.
Justice Brown dated February 23, 2012, as amended ("**Initial Order**"), for an order

- (a) approving a Custodial and Services Agreement (the "**Custodial
Agreement**") between First Leaside Securities Inc. ("**FLSI**") and Fidelity

Clearing Canada ULC ("**Fidelity**"), and authorizing and directing the CRO (as defined below) to execute and carry out the terms of the Custodial Agreement;

- (b) terminating and discharging these CCAA proceedings forthwith and providing for the transition of these proceedings to a receivership of First Leaside by order of this Court ("**Receivership Order**"), pursuant to section 101 of the *Courts of Justice Act*, R.S.C. 1990, c. C.43, as amended ("**CJA**");
- (c) approving the activities of G.S. MacLeod & Associates Inc. ("**MacLeod & Associates**") in its capacity as Chief Restructuring Officer ("**CRO**") and Grant Thornton Limited ("**GTL**") in its capacity as Court-appointed monitor (the "**Monitor**"), both appointed by the Initial Order to date;
- (d) approving the fees and disbursements of the Monitor, the Monitor's independent counsel and Fraser Milner Casgrain LLP in its capacity as representative counsel ("**Representative Counsel**") appointed by the Initial Order for the interests of the nearly 1,200 investors of FLSI in these proceedings, for the period up to and including November 30, 2012;
- (e) releasing and discharging MacLeod & Associates and GTL from any and all liability that they may have arising out of their acts or omissions while acting in their capacities as, respectively, CRO and Monitor, save and except for any gross negligence or wilful misconduct on their part; and
- (f) such further and other relief as this Honourable Court may deem just

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Gregory MacLeod, sworn December 3, 2012, the Seventh Report (the "**Seventh Report**"), of GTL, as Monitor of First Leaside,

counsel for the OSC, counsel³ for IIBOC, and counsel for the Independent Committee of the Board of Directors of First Leaside Wealth Management Inc., counsel for

dated December 4, 2012, and on hearing the submissions of counsel to First Leaside, the Monitor and Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Patricia Hoogenband sworn December 4, 2012 and Maria Konidis sworn December 5, 2012, filed: *the Trustees of the First Leaside Fund and Winberg Fund.*

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged and that the Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that the Custodial Agreement between FLSI and Fidelity, as described in the Seventh Report, be and is hereby approved, and the CRO is hereby authorized and directed to execute and carry out the terms of the Custodial Agreement in the name of FLSI, including the provision to Fidelity of a deposit in the amount of \$300,000 (the "Deposit").

3. **THIS COURT ORDERS** that Fidelity shall be entitled to and is hereby granted a first priority charge over the Deposit, notwithstanding the other charges provided for and/or continued under this Order or the Receivership Order.

4. **THIS COURT ORDERS** that paragraphs 5, 12, 13, 14, 15, 16, 17, and 18 of this Order shall become effective upon the issuance of the Receivership Order appointing GTL as receiver and manager (the "Receiver") of First Leaside and shall bind: *and 19*

(a) the Receiver or any other receiver appointed pursuant to the Receivership Order or otherwise; and

(b) any trustee in bankruptcy of any of the corporations or limited partnerships which constitute First Leaside.

5. **THIS COURT ORDERS** that these CCAA proceedings and the Stay Period (as defined in the Initial Order and amended most recently on October 22, 2012) shall

be terminated. Notwithstanding the termination of these CCAA proceedings, other than as expressly provided in this Order or the Receivership Order, all orders issued in these CCAA proceedings shall continue to be in full force and effect. Nothing in this Order shall diminish or alter the rights or obligations of any person arising under the Initial Order which had vested or accrued prior to the granting of this Order. Any pleadings, motions, evidence and reports filed in the CCAA proceedings (and which were not sealed) shall be available for use in the receivership as though the same were filed in the receivership, without the necessity of having such documents filed again in the receivership.

APPROVAL OF CRO'S AND MONITOR'S ACTIVITIES

6. **THIS COURT ORDERS** that the activities of MacLeod & Associates as Court-appointed CRO and GTL, as Monitor, as disclosed in the affidavits of Gregory MacLeod sworn November 13, 2012 and December 3, 2012 and the Sixth Report of the Monitor and the Seventh Report of the Monitor be and are hereby approved.

APPROVAL OF FEES

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, in the amount of \$682,638.99, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of Jonathan Krieger sworn December 4, 2012, be and are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Monitor, Blake, Cassels & Graydon LLP ("**Monitor's Counsel**"), in the amount of \$786,794.66, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of Matthew Kanter sworn December 4, 2012, be and are hereby approved.

~~9. **THIS COURT ORDERS** that the fees and disbursements of Representative Counsel in the amount of \$874,762.24, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of R. Shayne Kukulowicz sworn December 4, 2012, be and are hereby approved.~~ *HTS*

10. **THIS COURT ORDERS** that the Monitor, Monitor's Counsel and Representative Counsel shall be at liberty, upon further motion brought in the receivership proceedings bearing Court File No. CV-12-9930-00CL (the "**Receivership Proceedings**"), to seek approval of their fees and disbursements for the period from and after December 1, 2012, provided that such fees and disbursements are invoiced in accordance with the preliminary billing protocol set out in paragraphs 21-23 of the Monitor's First Report dated March 21, 2012.

11. **THIS COURT ORDERS** that the allocation of all fees and costs of the CRO, the Monitor, the Monitor's Counsel, Representative Counsel, and First Leaside's counsel incurred during the CCAA proceedings or under the authority of this Order shall be subject to approval of the Court in the Receivership Proceedings on motion by the Receiver.

RELEASE AND DISCHARGE OF CRO AND MONITOR

12. **THIS COURT ORDERS AND DECLARES** that upon the appointment of the Receiver, MacLeod & Associates is discharged as CRO of First Leaside and its appointment is terminated, and GTL is discharged as Monitor of First Leaside and its appointment is terminated. MacLeod & Associates and GTL, together with their officers, directors, partners, employees and agents (collectively, "**Released Parties**") shall be released and discharged from any and all liability that the Released Parties now have or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Released Parties while acting in their respective capacities herein, save and except for any gross negligence or wilful misconduct on the part of the Released Parties. Without limiting the generality of the foregoing, the Released Parties shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these CCAA proceedings, save and except for any gross negligence or wilful misconduct on the part of the Released Parties.

13. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against MacLeod & Associates, GTL or any of the other Released

Parties in any way arising from or related to their capacity or conduct as, respectively, CRO or Monitor in connection with First Leaside, except with prior leave of this Court on at least seven days' prior written notice to the CRO or Monitor, as applicable.

14. **THIS COURT ORDERS** that notwithstanding any provisions of this Order, the termination of the CCAA proceedings and the discharge of the CRO, MacLeod & Associates may continue, as a consultant, to assist the Receiver with respect to any matters the Receiver may request on such terms as the Receiver and MacLeod & Associates may agree, without further order or approval of this Court, and MacLeod & Associates may carry out such functions and duties as may be incidental to the termination of the CCAA proceedings and the transition to a receivership of First Leaside pursuant to the Receivership Order, including dealing with the transition of any bank accounts over which the CRO has signing authority. In carrying out such functions and duties, MacLeod & Associates shall continue to have the benefit of all orders made in these CCAA proceedings (including all protections and stays of proceedings) and nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the CRO pursuant to paragraphs 27, 30, 31 and 32 of the Initial Order, which paragraphs shall continue to apply in the receivership, *mutatis mutandis*.

15. **THIS COURT ORDERS** that notwithstanding any provisions of this Order, the termination of the CCAA proceedings and the discharge of the Monitor, the Monitor may carry out such functions and duties as may be incidental to the termination of the CCAA proceedings and the transition to a receivership of First Leaside pursuant to the Receivership Order. In carrying out such functions and duties, the Monitor shall continue to have the benefit of all orders made in these CCAA proceedings (including all protections and stays of proceedings) and nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor pursuant to paragraphs 36, 37 and 38 of the Initial Order, which paragraphs shall continue to apply in the receivership, *mutatis mutandis*.

COURT-ORDERED CHARGES

16. **THIS COURT ORDERS** that notwithstanding any provisions of this Order or the termination of the CCAA proceedings, and subject to paragraph 3 of this Order, the Directors' Charge, the Administration Charge and the Inter-Company Charge, created by paragraphs 31, 41 and 49A(b) of the Initial Order, shall continue to constitute a charge on all of the assets, undertakings and remaining properties of First Leaside acquired for, or used in relation to a business carried on by First Leaside, including all proceeds thereof, in accordance with the terms, limitations and priority provided in paragraphs 31, 32, 41, 49A, 49B and 50 through 55 of the Initial Order.

COMPLETION OF EXISTING TRANSACTIONS AND PAYMENTS

17. **THIS COURT ORDERS** that notwithstanding any provisions of this Order or the issuance of the Receivership Order, First Leaside and/or the Receiver are authorized and directed to pay the following on behalf of, or in the name of, First Leaside:

- (a) amounts that may be payable as post-filing obligations, including payroll obligations, in the CCAA proceedings;
- (b) cheques that have been issued by First Leaside, but which are outstanding and have not cleared First Leaside's bank accounts as of December 7, 2012; and
- (c) unpaid professional fees that have been incurred by counsel for First Leaside, the Monitor, Monitor's Counsel, Representative Counsel, and the CRO and counsel to First Leaside as provided for in the Initial Order.

18. **THIS COURT ORDERS** that notwithstanding any provisions of this Order and the issuance of the Receivership Order, certain transactions begun during the CCAA

proceedings but not fully completed may be completed by First Leaside and the CRO, as appropriate, including the following:

- (a) the sale of First Leaside Tax and Accounting Services Inc.'s interest in four accounting firms in Western Canada to Joanna L. Hampton Holdings Inc. and Jim Brander Professional Corporation, as approved by this Court on August 23, 2012 and
- (b) the entry into, and implementation of, the Custodial Agreement;
- (c) the completion of the Structform Transaction (as defined in the order of Mr. Justice Newbould dated November 20, 2012); and
- (d) post-closing activities and adjustments arising out of the Transaction (as defined in the Amended Sale and Vesting Order of Mr. Justice Pattillo dated October 22, 2012, as amended on November 28, 2012).

19. ~~18.~~ **THIS COURT ORDERS** that, to aid in the transition to receivership, First Leaside Realty II Inc. is hereby directed, as general partner of First Leaside Properties Limited Partnership, which controls F.L. Master Sherman Ltd. ("**Master Sherman**") to direct Master Sherman to pay funds that it currently holds to the Receiver in trust, pending further order of this Court.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 10 2012

A. Anissimova
Registrar

**IN THE MATTER OF THE COMPANIES' CREDITORS' ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRST LEASIDE WEALTH MANAGEMENT ET AL.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

DISCHARGE AND TRANSITION ORDER

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