Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO **HOLLINGER INC.**, **4322525 CANADA INC.** and **SUGRA LIMITED**

Applicants

REPLY MOTION RECORD OF THE APPLICANTS
(re: settlement approval motion)

January 18, 2012

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TAB 1

Court File No. 07-CL-7120

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AFFIDAVIT OF RANDALL D. LEHNER
(Sworn on January 17, 2012)

I, Randall D. Lehner, attorney-at-law, of the City of Chicago, in the state of Illinois, of the United States of America, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner at the law firm of Ulmer & Berne, LLP, located in Chicago, Illinois. For more than fifteen years, I have practiced law with a focus on securities litigation and enforcement defense, including the defense of corporations, directors and officers and regulated professionals.

2. I have been involved in numerous enforcement and litigation matters initiated by the United States Securities and Exchange Commission ("**SEC**"), including insider trading, accounting fraud, corporate mismanagement, misrepresentations and omissions in the offer and sale of securities, registration revocations, unregistered offerings of securities,

and financial statement filings. I also have conducted dozens of internal investigations concerning potential securities violations and financial fraud and gross negligence on behalf of government agencies, corporations and investment advisers. In addition, I have an extensive commercial litigation practice, involving claims relating to director and officer liability, consumer fraud, breach of fiduciary duty, and class actions.

3. I have spoken and written on a variety of securities and commercial litigation issues. In particular, I am the author of an article entitled "Can You Rely on Compliance as a Defense to an SEC Enforcement Action?" which was published in the July 2010 edition of Bank Accounting and Finance.

4. Prior to entering private law practice, I served as a law clerk for the Honorable Elaine E. Bucklo, United States District Judge in the Northern District of Illinois from 1996-1997. I graduated with high honors in 1996 from Duke University School of Law, where I was the senior note editor for the Duke Law Journal, and I also hold a bachelor of arts from the University of Michigan, where I was a member of Phi Beta Kappa.

5. I have been retained by Hollinger Inc. ("**Hollinger**") to provide an analysis and understanding of the allegations against Conrad Black ("**Black**") contained in the First Amended Complaint for Permanent Injunction and Other Equitable Relief ("**Complaint**") filed in the case captioned, *United States Securities and Exchange Commission v. Conrad M. Black, et al.,* Case No. 1:04 CV 7377, pending in the United States District Court for the Northern District of Illinois, Eastern Division (the "**SEC Case**"). Attached hereto and marked as Exhibit "A" to this Affidavit is a copy of the Complaint.

6. As part of my analysis of the Complaint, I reviewed the following public documents relating to or filed in the SEC Case:

   (a) The SEC Complaint, dated March 10, 2005;

   (b) Black's Answer and Affirmative Defenses to the SEC Complaint, dated July 12, 2005 ("**Answer**");

   (c) Opinion and Order in the SEC Case, dated Sept, 24, 2008 ("**Black Judgment Order**");

   (d) Opinion and Order in the SEC Case, dated April 30, 2009 ("**Black Disgorgement Order**");

   (e) Offer of Settlement of Hollinger, dated January 21, 2008, in SEC Administrative Proceeding, *In the Matter of Hollinger Inc.*;

   (f) Consent of Hollinger, dated January 21, 2008, in the SEC Case; and

   (g) Affidavit of Lisa Munro, dated December 22, 2011, and accompanying exhibits;

7. My analysis is also based on my years of experience litigating securities enforcement actions in United States courts and before the SEC.

8. As such, I have personal knowledge of the matters to which I hereinafter depose, except where my knowledge is based on information and belief, in which case I believe such information to be true.

THE ALLEGATIONS IN THE COMPLAINT AGAINST BLACK

9. The Complaint was filed by the SEC on March 10, 2005 against Black, F. David Radler ("**Radler**"), and Hollinger Inc. Black is the only remaining defendant in the case.

10. In the Complaint, the SEC alleges that Black engaged in "a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc." and conceal that "self –dealing from Hollinger International's public shareholders." (Compl. ¶ 1). Black allegedly executed this fraudulent and deceptive scheme by arranging for payments for purported non-competition agreements to be paid directly to him and others as part of the sale of assets by Hollinger International to various third-parties. (*Id.* ¶¶ 2, 46-48, 51-52).

11. The Complaint also alleges that Black made numerous omissions and misrepresentations of material fact to Hollinger International's Board of Directors and Audit Committee regarding these non-competition agreements and payments. (*Id.* ¶¶ 58, 70, 82, 124-25, 180-183, 190-193). Likewise, Black also allegedly made misrepresentations of material fact to Hollinger International's shareholders regarding the purported non-competition agreements. (*Id.* ¶¶ 152-153, 199-202).

12. The Complaint further alleges that Black "orchestrated the sale of Hollinger International's newspaper publications at below-market prices to another company owned and controlled by Black and Radler." (*Id.* ¶ 3). Black allegedly did so by failing to inform the Hollinger International Board of Directors about other, more valuable offers for these publications and about secret arrangements made by Black and others to acquire these publications for their own benefit. (*Id.* ¶¶ 218, 220, 222, 232, 238).

13. The Complaint alleges that Black authorized an investment in a venture capital fund, in which Black and two other Hollinger International directors were affiliated, using $2.5 million of Hollinger International's funds. (*Id.* ¶¶ 4, 257-261). Because of the affiliated nature of this transaction, the Complaint alleges that Hollinger International's Board of

Directors or Audit Committee had to approve the transaction, but Black authorized it without such approval. (*Id.* ¶¶ 260, 265-66).

14. In addition, the Complaint alleges that Black misled the investing public "about his intention to devote his time to an effort to sell Hollinger International assets for the benefit of all of Hollinger International shareholders . . . and not to undermine the process by engaging in transactions for the benefit of himself and Hollinger Inc." by drafting and approving the issuance of a press release from Hollinger International containing this information. (*Id.* ¶¶ 5, 285-86). Black allegedly did not intend to devote his time to this effort to benefit Hollinger International and its shareholders. (*Id.* ¶¶ 287, 292).

15. At the time of the conduct described and cited to above in paragraphs 9-13, Black was the CEO and Chairman of the Board of Hollinger International Inc. (as it was then known). (*Id.* ¶¶ 15, 18).

16. Based on the above-described conduct, the SEC alleged that Black violated numerous U.S. securities laws, including:

   (a) Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder (for making false statements or omissions of material fact in connection with the purchase or sale of securities) (Compl., Count I, ¶¶ 298-302);

   (b) Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§ 240.14a-3 and 240.14a-9] thereunder (prohibiting the solicitation of a proxy in violation of SEC rules requiring that proxy statements contain certain information, including related party transactions, and prohibiting use of proxy statements containing materially false or misleading statements) (Compl., Count II, ¶¶ 303-305);

(c) Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)] and Rules12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder and Section 20(a) of the Exchange Act [15 U.S.C. §20(a)] (creating control person liability for a securities issuer's filing of reports containing materially inaccurate or misleading information) (Compl., Count III, ¶¶ 306-309);

(d) Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)] and Section 20(a) of the Exchange Act [15 U.S.C. §20(a)] (creating control person liability for a securities issuer's failure to make and keep books and records that accurately and fairly reflect transactions and dispositions involving its assets and to have a system of internal accounting controls to ensure the preparation of financial statements in conformity with generally accepted accounting principles) (Compl., Count IV, ¶¶ 310-314);

(e) Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] and Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)](prohibiting the falsification of books or records or causing books and records to be falsified)(Compl., Counts V and VI, ¶¶ 315-320); and

(f) Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14](requiring that the CEO certify that the issuer's annual 10-K statement does not contain any untrue statement of material fact or omit to state a material fact necessary to not make the statements misleading) (Compl. Count VIII, ¶¶ 325-328).

17. For those alleged violations of the U.S. securities laws, the SEC seeks disgorgement, civil monetary penalties and permanent injunctive relief against Black. (Compl., Relief Requested, at p. 75-76).

18. The SEC already has obtained a partial judgment of liability and disgorgement against Black for many of the claims alleged in the Complaint based on Black's prior criminal conviction for fraud. (*See* Black Judgment Order (attached hereto as Exhibit B); Black Disgorgement Order (attached hereto as Exhibit C)).

19. Based on my review of the Complaint and other related court documents, as well as my experience as a securities litigation lawyer, the allegations in the Complaint pertaining to Black are based solely on his actions as the Chairman of the Board and CEO of Hollinger International and do not relate to his actions as a director or officer of Hollinger.

20. This conclusion is supported by numerous paragraphs in the Complaint that demonstrate that Black's conduct allegedly violating United States securities laws could be done only in his capacity as a director or officer of Hollinger International.

21. With respect to approval of the asset sales, execution of non-competition agreements, and the accompanying payments for those non-competition agreements, the Complaint repeatedly identifies Hollinger International's Board and/or its Executive Committee, both of which included Black, as the body that approved those sales, agreements and/or payments without full disclosure of all material facts from Black. (*See, e.g.* Compl. ¶¶ 66, 81, 92, 99, 112, 120, 124, 182, 214, 218, 237-238). No allegations have been made against Black as a director or officer of any other entity regarding his approval of such transactions without full disclosure of all material facts about those transactions.

22. Black is alleged to have been a control person over Hollinger International with respect to the actions of Hollinger International in filing its Forms 10-Q and 10-K with the SEC and in keeping accurate books and records. (Compl., Counts III and IV, ¶¶ 306-314). To show control person liability, the SEC must show that "Black exercised general control over the operation of International and that he possessed the power or ability to control the reporting of the pertinent payments in the Forms 10-K." (Black Judgment Order, at 37). There are no counts for relief in the Complaint relating to Black's control over any other corporate entity.

23. From 1999-2003 Black, as the Chairman, CEO and a director of Hollinger International, signed Hollinger International's Forms 10-K. (Compl. ¶ 19; Answer ¶ 19)(attached hereto as Exhibit D). Black also certified Hollinger International's 2002 Form 10-K and its Forms 10-Q for the quarters ending March 31, 2003 and June 30, 2003 (Answer ¶ 19), all of which were filed with the SEC and contained material misrepresentations of fact. (*See, e.g.* Compl. ¶¶ 147, 197, 272; Black Judgment Order at 24). Those certifications could only have been made by Black in his role as CEO of Hollinger International and not in his capacity as a director or officer of any other company. (Exchange Act Rule 13a-14).

24. In addition, Hollinger International's 2002 proxy statement contained material misstatements or omissions regarding the non-competition payments made to Black and others (*see* Compl. ¶148-149) because Black omitted that information from the Hollinger International Proxy Questionnaire for Directors and Executive Officers that was completed by Black on January 31, 2002. (Black Judgment Order, at 27, 33). That proxy

questionnaire, by its title and its purpose, was sent to directors and executive officers of Hollinger International.

25. Similarly, Hollinger International's 2001 proxy statement contained material misstatements or omissions regarding the sale of assets by Hollinger International to companies affiliated with Black and others. (Compl. ¶¶ 223-227, 252-256). This information was based, in part, on disclosures made by Black in his response to Hollinger International's 2001 proxy questionnaire, which like the 2002 one, was sent to directors and officers of Hollinger International. (*See* Compl. ¶ 220).

26. Black, as the CEO, also signed Hollinger International's 2002 proxy statement containing both a solicitation to appear at the Hollinger International annual meeting or sign a proxy to vote for the nominated directors as well as inaccurate information about the amount and purpose of the non-competition payments. Black knew of this inaccurate information when he signed the proxy statement containing the solicitation. (Black Judgment Order, at 29, 33).

27. Likewise, Black, in his role as CEO of Hollinger International allegedly negotiated and authorized the use of $2.5 million of Hollinger International funds for the venture capital fund investment. (*See, e.g.* Compl. ¶¶ 257-258, 260-261). He is not alleged to have used the funds of any other company for this investment, and he could not have negotiated and authorized the use of Hollinger International's funds in that alleged instance but for his position as CEO.

28. Furthermore, the alleged misstatements and omissions of material fact made by Black to the investing public and Hollinger International shareholders were made in his capacity

as CEO and Chairman of the Board of Hollinger International. (*See, e.g.* Compl. ¶¶ 152, 199-200). Only in that role could he have been making statements to shareholders and other investors about Hollinger International's business, asset disposition and other transactions. As alleged in the Complaint, Hollinger, Inc. had no operations. (Compl. ¶ 49). Accordingly, only Hollinger, International had the newspaper publication assets to be sold that were the subject of Black's misleading statements.

SUBSCRIBED AND SWORN TO before me this 17th day of January, 2012.

Notary Public

OFFICIAL SEAL
KRISTIN J. DUEWERTH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 1-2-2013

RANDALL D. LEHNER

TAB A

JH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

05 MAR 10 PM 4:33
CLERK
U.S. DISTRICT COURT

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. CONRAD M. BLACK, F. DAVID RADLER AND HOLLINGER, INC. Defendants.	)	Case No. 1:04 CV 7377 Judge William T. Hart

FILED
MAR 10 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on this the 10th day of March 2005, Plaintiff United States Securities and Exchange Commission caused to be filed the attached United States Securities and Exchange Commission's First Amended Complaint for Permanent Injunction and Other Equitable Relief, which adds Count IX and amends paragraphs 39, 168, 173, 176, 186, 188, 192, 193, 262, 263 and 265 of the Complaint and paragraph VI of the "Relief Requested."

Dated: March 10, 2005

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I, Carol L. Tate, hereby certify that on the 10th day of March 2005, I caused true and correct copies of the foregoing United States Securities and Exchange Commission's First Amended Complaint for Permanent Injunction and Other Equitable Relief to be served via federal express upon the following persons:

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ED-6
05 MAR 10 PM 4:08
U.S. DISTRICT COURT

FILED
MAR 10 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	CIVIL ACTION
v.	FILE NO. 1:04 CV 7377
CONRAD M. BLACK, F. DAVID RADLER AND HOLLINGER, INC.	JURY TRIAL DEMANDED
Defendants.	

UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff United States Securities and Exchange Commission ("Commission") alleges as follows:

NATURE OF THE ACTION

1. During the period from at least 1999 to at least 2003, Defendants Conrad M. Black ("Black") and F. David Radler ("Radler") engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc. ("Hollinger International"), a public company that owns and operates newspaper publishing businesses in the United States and abroad, and to conceal their self-dealing from Hollinger International's public shareholders.

2. Black, Hollinger International's former Chairman and Chief Executive Officer ("CEO"), and Radler, its former Deputy Chairman, President and Chief Operating Officer ("COO"), conducted their scheme through a series of related party transactions

involving, among other things, purported "non-competition payments" by which Black and Radler diverted to themselves, to Defendant Hollinger, Inc., a Canadian public holding company controlled by Black, and to other corporate insiders approximately $85 million of the proceeds from Hollinger International's sale of newspaper publications to third parties.

3. Black and Radler also orchestrated the sale of Hollinger International's newspaper publications at below-market prices to another privately-held company owned and controlled by Black and Radler, including a $1.00 transaction.

4. In addition, in February 2003, Black authorized the investment of $2.5 million of Hollinger International's funds in a venture capital fund with which Black and two other directors of Hollinger International were affiliated.

5. Moreover, in November 2003, Black approved a press release issued by Hollinger International in which he misled the investing public about his intention to devote his time to an effort to sell Hollinger International assets for the benefit of all of Hollinger International shareholders (the "Strategic Process") and not to undermine that process by engaging in transactions for the benefit of himself and Hollinger, Inc.

6. To perpetrate their scheme, Black and Radler misrepresented and omitted to state material facts regarding the related party transactions to Hollinger International's Audit Committee and Board of Directors. Black and Radler also misrepresented and omitted to state material facts regarding these related party transactions in Hollinger International's filings with the Commission and during Hollinger International shareholder meetings.

7. Black and Radler, directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Sections 10(b), 13(b)(5) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78n(a)] and Rules 10b-5, 13b2-1, 14a-3 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-3 and 240.14a-9] thereunder, and, as control persons of Hollinger International, Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder.

8. Black, directly and indirectly, has also engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Exchange Act Rule 13a-14 [17 C.F.R. §§ 240.13a-14].

9. Hollinger, Inc., directly and indirectly, has engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Sections 10(b), 13(a), 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a) and 78m(b)(5)] and Rules 10b-5, 13a-1, 13a-16 and13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13a-1, 240.13a-16 and 240.13b2-1] thereunder and, as a control person of Hollinger International, Sections 13(a) and 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), 78n(a)] and Rules 12b-20, 13a-1, 13a-13, 14a-3 and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.14a-3 and 240.14a-9] thereunder.

10. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Sections 20(a), 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78t(a), 78u(d), and 78u(e)].

JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78aa] and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

12. The acts, practices and courses of business constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

13. Black, Radler and Hollinger, Inc. (collectively "Defendants"), directly and indirectly, made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein.

14. Defendants will, unless enjoined, continue to engage in the acts, practices and courses of business set forth in this complaint, and acts, practices and courses of business of similar purport and object.

DEFENDANTS

CONRAD M. BLACK

15. Black, age 60, is a British citizen who has residences in London, England, Palm Beach, Florida and Toronto, Canada. From approximately 1978 until November 19, 2003, Black was the CEO of Hollinger International. From approximately October 1995 until January 17, 2004, Black was the Chairman of the Board of Directors

of Hollinger International ("Board") and was a member of the Board's Executive Committee (the "Executive Committee").

16. During the period from at least 1998 through November 2, 2004, Black was the Chairman of the Board of Directors and CEO of Hollinger, Inc. Black, through his personal holding company The Conrad Black Capital Corporation, owns 65.1% of The Ravelston Corporation Limited ("Ravelston"), a private Canadian corporation. Ravelston, directly and indirectly, owns approximately 78% of Hollinger, Inc.'s stock. Black is the Chairman and CEO of Ravelston.

17. Black is also a member of the Strategic Advisory Board of Trireme Partners LP, a venture capital fund. In 2003, Hollinger International made a $2.5 million investment in Trireme Associates LLC, the general partner of Trireme Partners, LP.

18. From at least 1999 through 2003, Black signed Hollinger International's annual reports on Forms 10-K as Chairman, CEO and a Director of Hollinger International. From approximately August 2002 to August 2003, Black also certified Hollinger International's annual and quarterly reports filed with the Commission pursuant to the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act").

19. In 1982, in SEC v. Norcen Energy Resources, Ltd. and Conrad M. Black, Exchange Act Release No. 9719, 1982 SEC LEXIS 1253 (July 20, 1982), Black consented to the entry of a Final Judgment of Permanent Injunction enjoining him from further violations of Sections 10(b), 13(d) and 14(e) of the Exchange Act and Rules 10b-5, 12b-20, 13d-1 and 13d-2 thereunder in connection with the common stock of M.A. Hanna Company or any security of any other issuer.

F. DAVID RADLER

20. Radler, age 61, is a Canadian citizen and resides in Vancouver, Canada. During the period 1999 through November 2003, Radler resided in Chicago, Illinois and worked out of the Chicago Sun-Times building in Chicago, Illinois. From at least 1998 until his resignation on November 17, 2003, Radler was Deputy Chairman, President, COO and a Director of Hollinger International. Radler was also a member of Hollinger International's Executive Committee.

21. Radler is also the Deputy Chairman and COO of Hollinger, Inc. Radler owns approximately 14.2% of Ravelston stock through F.D. Radler Limited. He is also the President of Ravelston.

22. From at least 1999 through 2003, Radler signed Hollinger International's annual reports on Forms 10-K as Deputy Chairman, President, COO and Director of Hollinger International.

HOLLINGER, INC.

23. Hollinger, Inc. is a publicly-held Canadian company with its principal place of business located in Ontario, Canada. Hollinger, Inc. is a foreign private issuer registered with the Commission pursuant to Section 12(g) of the Exchange Act. Hollinger, Inc.'s shares are traded on the Toronto Stock Exchange under the symbol HLG.

24. Hollinger, Inc. failed to file its 2003 Form 20-F with the Commission. Hollinger, Inc.'s 2003 Form 20-F was due on June 30, 2004.

25. Hollinger, Inc. is a mutual fund company whose primary holding is its shares of Hollinger International stock. During the relevant period, Hollinger, Inc. had no operations.

26. During the period from at least 1998 through the present, Hollinger, Inc. has been the controlling shareholder of Hollinger International through its direct and indirect ownership of all of the shares of Hollinger International's Class B Common Stock, which has a 10-to-1 voting preference over shares of Hollinger International's Class A Common Stock.

27. Other shareholders hold the majority of the Class A shares and together own the majority of the equity in Hollinger International. As of the date of the filing of this action, Hollinger, Inc. owns approximately 18.2% of the combined equity but holds approximately 68% of the combined voting power in Hollinger International.

OTHER RELATED ENTITIES AND INDIVIDUALS

28. **Hollinger International** is a Delaware corporation, with its principal place of business in Chicago, Illinois. Hollinger International is a public company that owns and operates newspaper publishing businesses in the United States and abroad. Hollinger International's shares are registered with the Commission under Section 12(b) of the Exchange Act, and its Class A common stock shares are traded on the New York Stock Exchange under the symbol HLR. Hollinger International's Class B Common Shares are directly and indirectly owned by Hollinger, Inc.

29. From approximately 1998 through June 2004, Hollinger International owned, through its wholly-owned subsidiaries, the Chicago Sun-Times, The Daily Telegraph in London, England, The Jerusalem Post in Israel and several other

publications. On July 30, 2004, Hollinger International sold The Daily Telegraph for approximately $1.3 billion to Press Acquisitions Limited ("Press Acquisitions"), a company owned by David Barclay and Frederick Barclay (the "Barclays"), two brothers who own several media and retail assets in England and Europe.

30. **Ravelston** is a privately-held Canadian corporation. Ravelston beneficially owns approximately 78% of Hollinger, Inc.'s stock. Ravelston is the controlling shareholder of Hollinger, Inc. Ravelston is owned and controlled by Black and Radler, who, through the Conrad Black Capital Corporation and F.D. Radler, Limited, indirectly own 65.1% and 14.2% of Ravelston, respectively. Black is the Chairman and CEO of Ravelston. Radler is the President of Ravelston.

31. **Horizon Publications, Inc.** ("Horizon") is a private Delaware corporation. Since its formation in 1999, Black and Radler, directly or indirectly, have owned approximately 75% of Horizon. Horizon has several wholly-owned subsidiaries which are directly or indirectly controlled by Black and Radler. Black is the Chairman and CEO of Horizon. Radler is the President and COO of Horizon.

32. **Trireme Associates LLC** is the general partner of **Trireme Partners LP**, a venture capital fund. Trireme Associates LLC receives approximately 20% of the profits of Trireme Partners LP, after initial invested capital repayments are made. Trireme Associates LLC controls Trireme Partners LP. Trireme Partners LP is managed by **Trireme Management LLC** which has its principal office in New York.

33. **Peter Y. Atkinson** ("Atkinson"), age 57, is a Canadian citizen who resides in Canada. From 1996 until April 27, 2004, Atkinson served as an Executive Vice President and Director of Hollinger International. During the period 1996 through

2001, Atkinson was the Vice President and General Counsel of Hollinger, Inc. In 2002 or 2003, Atkinson became the Executive Vice President of Hollinger, Inc. and remained in that position until January 2004, when he resigned. Atkinson directly or indirectly owns approximately 0.98% of Ravelston.

34. **John A. Boultbee** ("Boultbee"), age 61, is a Canadian citizen who resides in Canada. From 1990 until 1995, Boultbee served as a Director of Hollinger International. From 1995 through 2002, Boultbee served as Hollinger International's Chief Financial Officer ("CFO"), and in 1998, Boultbee became Executive Vice President of Hollinger International. During the period 1999 through 2002, Boultbee signed many of Hollinger International's quarterly reports on Forms 10-Q as Executive Vice President and CFO of Hollinger International.

35. From 1998 through the present, Boultbee has been a member of Hollinger, Inc.'s Board of Directors and has held various positions as an officer, including Vice President of Finance and Treasury, Executive Vice President and CFO. Boultbee is also an Executive Vice President of Ravelston. Boultbee directly or indirectly owns 0.98% of Ravelston.

36. **Mark S. Kipnis** ("Kipnis"), age 56, resides in Northbrook, Illinois. From January 1998 until November 2003, Kipnis served as the Secretary and Vice President, Law of Hollinger International. Kipnis also served as general counsel for Hollinger International's Chicago owned and operated papers.

37. Kipnis signed Hollinger International's proxy statements and the Notices of Annual Meeting of Stockholders which were filed with the Commission.

Kipnis also signed Hollinger International's filings on Forms 8-K as Vice President, Corporate Counsel and Secretary of Hollinger International.

38. **Richard N. Perle** ("Perle"), age 63, resides in Chevy Chase, Maryland. Perle has been a Director of Hollinger International since 1994. From 1994 until 1998, Perle served on the Audit and Compensation Committees of Hollinger International's Board. From 1994 until November 2003, Perle served on the Executive Committee of Hollinger International, which was comprised of Perle, Black and Radler. From 1996 through November 2003, Perle was the Co-Chairman of Hollinger Digital, a subsidiary of Hollinger International.

39. Perle is a member of Trireme Management LLC, the company that manages Trireme Partners LP. Perle is entitled to receive approximately 4% of the 20% share of the profits that Trireme Associates LLC receives from Trireme Partners LP. Perle solicited Dr. Henry A. Kissinger ("Kissinger"), an outside director on Hollinger International's Board, to become a member of the Strategic Advisory Board of Trireme Partners LP, along with Black.

BLACK CONTROLS HOLLINGER INTERNATIONAL THROUGH AN INTRICATE OWNERSHIP AND CORPORATE STRUCTURE

40. Black, through The Conrad Black Capital Corporation, owns approximately 65.1% of Ravelston. Black is also the Chairman and CEO of Ravelston. Black controls Ravelston.

41. Ravelston owns approximately 78% of Hollinger, Inc.'s common stock and controls Hollinger, Inc. Black, through Ravelston, controls Hollinger, Inc. Until November 2, 2004, Black also controlled Hollinger, Inc. as its Chairman and CEO.

42. From at least 1998 to the present, Hollinger, Inc. has been the controlling shareholder of Hollinger International through its direct and indirect ownership of all of Hollinger International's Class B Common Stock, which has a 10-to-1 voting preference over shares of Hollinger International's Class A Common Stock. During the period 1998 through the present, Hollinger, Inc. also held several million shares of Hollinger International's Class A Common Stock.

43. By virtue of its ownership of Hollinger International's stock, Hollinger, Inc. is in a position to direct management policy, strategic decisions and financial decisions of Hollinger International and to control substantially all actions requiring the approval of Hollinger International shareholders.

44. Black, through his ownership and control of Ravelston, controls Hollinger, Inc., and through his ownership and control of Hollinger, Inc., controlled Hollinger International through at least 2003.

45. From at least 1998 through at least 2003, Black held himself out to the world as being able to control Ravelston, Hollinger, Inc. and Hollinger International.

THE FRAUDULENT NON-COMPETITION TRANSACTIONS

46. From approximately 1999 through 2001, Black and Radler fraudulently diverted at least $85 million from Hollinger International to themselves, Hollinger, Inc., Ravelston and other corporate insiders in the form of purported "non-competition" payments.

47. The purported non-competition payments were made in connection with Hollinger International's sales of its U.S. and Canadian newspaper properties in a series of transactions known as the American Trucker; Community Newspaper Holdings,

Inc. ("CNHI I"); Horizon; Forum Communications Company ("Forum"); PMG Acquisition Corporation ("Paxton"); Newspaper Holdings, Inc. ("CNHI II"); and CanWest Global Communications Corporation ("CanWest") transactions.

48. As a result of these purported non-competition payments, portions of the sale proceeds which should have gone to Hollinger International were diverted to Black, Radler, Hollinger, Inc. and their associates.

49. In 1999 and 2000, Hollinger, Inc. received purported non-competition payments totaling $16.55 million in connection with Hollinger International's sale of U.S. newspaper properties. During this period, Hollinger, Inc. was a Canadian mutual fund company with no operations. The purchasers of these newspaper properties did not request that Hollinger, Inc. execute non-competition agreements.

50. Of the $16.55 million in total purported non-competition payments made to Hollinger, Inc., $15.2 million was received in 1999. This $15.2 million constituted approximately 15.6% and 27% of the reported total income and net income, respectively, on Hollinger, Inc.'s unconsolidated statement of income and expenses for the 1999 fiscal year. Hollinger, Inc. used this money to repay debt it owed to Hollinger International.

51. In 2000 and 2001, Black and Radler each received purported non-competition payments totaling approximately $19 million in connection with the sales of Hollinger International's U.S. and Canadian newspaper properties. Atkinson and Boultbee each received purported non-competition payments totaling approximately $1.9 million. Ravelston received a purported non-competition payment of approximately $26.3 million.

52. None of the purchasers of Hollinger International's U.S. newspaper properties requested that any individual officer of Hollinger International sign a non-competition agreement. Black, Radler, Atkinson and Boultbee did not execute non-competition agreements in connection with certain of the U.S. newspaper sale transactions. On one occasion, Black and Radler engineered purported non-competition payments to themselves for their agreements not to compete with a wholly-owned subsidiary of Hollinger International in the absence of any purchase or sale of newspapers.

53. The $15.2 million in purported non-competition payments made to Hollinger, Inc. in 1999 constituted approximately 3.7% of Hollinger International's reported earnings before income taxes, minority interest and extraordinary items ("pretax income") and 6.2 % of its reported net earnings for the 1999 fiscal year.

54. Approximately $63.4 million in purported non-competition payments were made to Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee in 2000. These payments constituted approximately 11.6% of Hollinger International's reported pretax income and 54.2% of its reported net earnings for the 2000 fiscal year.

55. Black, Radler, Boultbee and Atkinson received a total of at least $6,100,000 in purported non-competition payments in 2001. In 2001, Hollinger International reported a pretax loss of ($361,620,000) and net loss of ($337,506,000).

56. The approximately $84.7 million in total purported non-competition payments constituted approximately 14.1% of Hollinger International's total pretax income and 340.1% of its net earnings for the three-year period from 1999 through 2001.

57. Pursuant to Hollinger International policy and practice, related party transactions were to be reviewed and approved by the Audit Committee of Hollinger International's Board of Directors ("Audit Committee").

58. To perpetrate their scheme, Black and Radler made misstatements and omissions of material fact, as described in greater detail below, regarding the purported non-competition payments to Hollinger International's Audit Committee and to Hollinger International's Board.

59. Black and Radler also signed Hollinger International's filings with the Commission which contained misstatements and omissions of material fact regarding the purported non-competition payments.

60. Hollinger, Inc. made misstatements and omissions of material fact regarding the purported non-competition payments in its responses to Hollinger International's proxy questionnaires and in Hollinger, Inc.'s filings with the Commission.

THE AMERICAN TRUCKER TRANSACTION

61. On or about May 11, 1998, Hollinger International and a Hollinger International subsidiary entered into an asset purchase agreement to sell certain assets, including the American Trucker publication, to Intertec Publishing Corporation ("Intertec") for approximately $75 million (the "American Trucker transaction").

62. Hollinger International and the subsidiary executed a non-competition agreement as part of the American Trucker transaction. The asset purchase agreement provided that $2 million would be paid to Hollinger International as consideration for the non-competition agreement at closing.

63. Radler signed the asset purchase agreement and the non-competition agreement on behalf of the subsidiary and Hollinger International.

64. Hollinger, Inc. was not a party to and did not sign the asset purchase agreement or the non-competition agreement.

65. The transaction closed in May 1998, and $2 million was paid to Hollinger International as consideration for the non-competition agreement.

66. On or about May 1, 1998, the Hollinger International Executive Committee, consisting of Black, Radler and Perle, approved the proposed sale to Intertec for approximately $75 million and Hollinger International's execution of a non-competition agreement in exchange for consideration of approximately $2 million.

67. In or about February 1999, Radler caused $2 million to be paid by Hollinger International to Hollinger, Inc. as a purported non-competition payment in connection with the American Trucker transaction.

68. Hollinger, Inc. used this payment to repay debt it owed to Hollinger International.

69. Hollinger, Inc. failed to disclose the $2 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

70. Black and Radler failed to disclose the $2 million purported non-competition payment to Hollinger, Inc. to Hollinger International's independent directors or to its Audit Committee.

71. The $2 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

72. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $2 million purported non-competition payment to Hollinger, Inc.

THE CNHI I TRANSACTION

73. On or about February 1, 1999, Hollinger International entered into an asset exchange agreement to sell certain of its assets to Community Newspaper Holdings, Inc. and its subsidiary, Newspaper Holdings, Inc. (collectively, "CNHI"), for approximately $450 million, $50 million of which was allocated as consideration for a non-competition agreement (the "CNHI I transaction").

74. Hollinger, Inc. was not a party to the asset exchange agreement. However, Hollinger, Inc. was identified in the asset exchange agreement as a party to the non-competition agreement along with Hollinger International.

75. CNHI did not request a non-competition agreement from Hollinger, Inc.

76. However, in or about January 1999, Radler caused Hollinger, Inc. to be added as a party to the non-competition agreement. Radler signed the non-competition agreement on behalf of Hollinger, Inc.

77. Neither the asset exchange agreement nor the non-competition agreement specified how, if at all, the $50,000,000 in consideration was to be allocated

between the seller, Hollinger International, and Hollinger, Inc. Radler caused Hollinger, Inc. to be paid $12 million of the $50 million as consideration for the non-competition agreement.

78. In February 1999, Hollinger, Inc. received a purported non-competition payment of $12 million in connection with the CNHI I transaction.

79. Hollinger, Inc. used this payment to repay debt it owed to Hollinger International.

80. Hollinger, Inc. failed to disclose the $12 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

81. Radler presented the CNHI I transaction and Hollinger International's non-competition agreement to Hollinger International's Board for approval on November 30, 1998. Black was present at this Board meeting. The Hollinger, Inc. non-competition agreement and the $12 million purported non-competition payment to Hollinger, Inc. were not disclosed to or approved by Hollinger International's independent directors or its Audit Committee.

82. Later, during a February 26, 1999 Board meeting, Black told the Hollinger International Board that the CNHI transaction was successfully concluded. Radler was also present at this meeting. Neither Black nor Radler disclosed to Hollinger International's Board that Hollinger, Inc. had signed a non-competition agreement and had received $12 million as a purported non-competition payment in connection with the CNHI transaction.

83. The $12 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

84. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $12 million purported non-competition payment to Hollinger, Inc.

THE HORIZON TRANSACTION

85. On or about March 31, 1999, Hollinger International entered into an agreement to sell certain of its newspaper publications to Horizon, a company owned and controlled by Black and Radler, for a purchase price of approximately $46 million, $5 million of which was allocated to a non-competition agreement (the "Horizon transaction").

86. Hollinger, Inc. was not a party to the asset exchange agreement. However, Hollinger, Inc. was identified in the asset exchange agreement as a party to the non-competition agreement along with Hollinger International.

87. Radler caused Hollinger, Inc. to be inserted as a party to the non-competition agreement.

88. Neither the asset exchange agreement nor the non-competition agreement specified how, if at all, the $5,000,000 in consideration was to be allocated between the seller, Hollinger International, and Hollinger, Inc.

89. Radler caused Hollinger, Inc. to receive $1.2 million of the $5 million as consideration for the non-competition agreement.

90. In or around August 1999, Hollinger Inc. received from Horizon $1.2 million of the total non-competition agreement allocation related to the Horizon transaction.

91. Hollinger, Inc. failed to disclose the $1.2 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

92. Radler presented the Horizon transaction to Hollinger International's Board for approval on November 30, 1998. Black was present at this Board meeting. The Hollinger, Inc. non-competition agreement and $1.2 million purported non-competition payment to Hollinger, Inc. were not disclosed to or approved by Hollinger International's independent directors or its Audit Committee.

93. The $1.2 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

94. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $1.2 million purported non-competition payment to Hollinger, Inc.

CNHI II TRANSACTION

95. On or about September 28, 2000, Hollinger International entered into an asset purchase agreement to sell to Newspaper Holdings, Inc. certain newspapers for a purchase price of approximately $90 million, $3 million of which was allocated as consideration for a non-competition agreement (the "CNHI II transaction").

96. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger, Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

97. CNHI did not request a non-competition agreement from Hollinger, Inc. However, Radler caused Hollinger, Inc. to be included as a party to a non-competition agreement in the asset purchase agreement.

98. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or $750,000, of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or $2.25 million.

99. On September 15, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to CNHI and execution of a non-competition agreement by Hollinger International and Hollinger, Inc. for an aggregate purchase price of approximately $90 million after assignment by CNHI to Horizon of the right to acquire two California newspapers, the Bishop and Blackfoot properties.

100. CNHI did not request that any individuals be added as parties to the non-competition agreement. However, at or around the time of closing, Radler caused Black, Radler, Atkinson and Boultbee to be included as parties to the non-competition agreement. No dollar amounts were mentioned in the revised non-competition agreement.

101. Black and Radler caused $9.5 million in purported non-competition payments to be made to Black, Radler, Atkinson and Boultbee.

102. The $9.5 million in purported non-competition payments to Black, Radler, Atkinson and Boultbee were not made at the request of CNHI and were not required under the asset purchase agreement or non-competition agreement. The additional $9.5 million in purported non-competition payments did not increase the total purchase price paid by CNHI.

103. The $9.5 million was initially to be paid as follows: $4.5 million to Black, $4.5 million to Radler, $250,000 to Atkinson and $250,000 to Boultbee. Black and Radler subsequently reduced the purported non-competition payments to themselves to $4.3 million each and increased the payments to Boultbee and Atkinson to $450,000 each. Radler authorized a bonus to Kipnis in the amount of $100,000.

104. Checks were issued to the individuals in these amounts on or about November 21, 2000.

105. Hollinger, Inc. received a $750,000 purported non-competition payment in connection with the CNHI II transaction when the transaction closed.

106. Black and Radler failed to disclose the $4.3 million purported non-competition payments to themselves in their responses to Hollinger International's proxy questionnaires for the 2000 fiscal year.

107. Hollinger, Inc. failed to disclose the $750,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

FORUM TRANSACTION

108. On or about September 30, 2000, Hollinger International entered into an asset purchase agreement to sell certain of its assets to Forum Communications

Company ("Forum") for approximately $14 million, of which $400,000 was allocated as consideration for a non-competition agreement (the "Forum transaction").

109. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger, Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

110. Forum did not request that Hollinger, Inc. be included as a party to the non-competition agreement. However, Radler caused Hollinger, Inc. to be included as a party to the non-competition agreement.

111. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or $100,000, of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or $300,000.

112. On September 19, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to Forum and the execution of a non-compete agreement by Hollinger International and "certain executive officers of [Hollinger] International" for an aggregate purchase price of approximately $14 million.

113. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with or non-competition payments to any individual executive officers of Hollinger International.

114. In or about October 2000, Hollinger, Inc. received a non-competition payment of $100,000 in connection with the Forum transaction.

115. Hollinger, Inc. failed to disclose the $100,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

PAXTON TRANSACTION

116. On or about October 2, 2000, Hollinger International entered into an asset purchase agreement to sell certain of its assets to PMG Acquisition Corporation ("Paxton") for approximately $59 million, $2 million of which was allocated as consideration for a non-competition agreement (the "Paxton transaction").

117. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger, Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

118. Paxton did not request that Hollinger, Inc. be included as a party to the non-competition agreement. However, Radler caused Hollinger, Inc. to be included as a party to the non-competition agreement.

119. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or $500,000, of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or $1.5 million.

120. On September 18, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to Paxton and the execution of a non-compete agreement by Hollinger International and "certain executive officers of Hollinger International."

121. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with or non-competition payments to any individual executive officers of Hollinger International.

122. In or about October 2000, Hollinger, Inc. received a non-competition payment of $500,000 in connection with the Paxton transaction.

123. Hollinger, Inc. failed to disclose the $500,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

BOARD "RATIFICATION" REGARDING THE
CNHI II, FORUM AND PAXTON TRANSACTIONS

124. Black presented the Executive Committee's authorization and approval of the sale of certain assets to CNHI (CNHI II), Forum and Paxton to Hollinger International's Board for confirmation and ratification on December 4, 2000. Radler was present at this Board meeting.

125. Neither Black nor Radler disclosed to the Board that Hollinger, Inc. had executed a non-competition agreement in connection with the CNHI II, Forum and Paxton transactions, that individuals had executed a non-competition agreement in connection with the CNHI II transaction, or that Hollinger, Inc. or any executive officers of Hollinger International had or would receive purported non-competition payments in connection with the transactions.

126. Although the Board minutes purport to incorporate by reference the September 15, 18, and 19, 2000 Executive Committee consents, the Board was not given a copy of the resolutions. The purported non-competition payments to Hollinger, Inc.,

Black, Radler, Atkinson and Boultbee were not reviewed or approved by the Audit Committee or Board.

ADDITIONAL NON-COMPETITION PAYMENTS FROM FORUM AND PAXTON RESERVES

127. In early 2001, Hollinger International and/or its subsidiaries maintained unallocated accounting reserves from certain of its transactions, including reserves from the Forum and Paxton transactions.

128. In 2001, Black and Radler caused additional purported non-competition payments to be made from the reserves of the Forum and Paxton transactions to themselves in the amount of $285,000 each, and to Atkinson and Boultbee in the amount of $15,000 each. None of these payments were made at the request of Forum or Paxton.

129. Black and Radler received these payments on or about April 9, 2001, several months after these transactions closed.

130. Neither Black, Radler, Atkinson nor Boultbee executed a non-competition agreement in connection with their receipt of these payments.

131. Black and Radler did not present the purported non-competition payments to themselves, Atkinson and Boultbee to Hollinger International's Board or to its Audit Committee for review or approval.

132. The purported non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the CNHI II, Forum and Paxton transactions were not disclosed in any of Hollinger International's public filings with the Commission until April 1, 2002, when Hollinger International filed its 2001 Form 10-K. However, as

discussed below, the disclosure in Hollinger International's 2001 Form 10-K regarding these payments contained misstatements and omissions of material fact.

THE AMERICAN PUBLISHING COMPANY "TRANSACTION"

133. In or around February 2001, Black and Radler caused themselves, Atkinson and Boultbee to receive approximately $5.5 million in additional purported non-competition payments pursuant to purported non-competition agreements with American Publishing Company (the "American Publishing transaction"). American Publishing Company was a wholly-owned subsidiary of Hollinger International.

134. There was no reason for the individuals to execute the non-competition agreements or to receive payment of any consideration for their agreements not to compete with American Publishing Company. These payments were not made in connection with any sale or transfer of newspapers by Hollinger International.

135. In February 2001, Black, Radler, Atkinson and Boultbee executed these purported non-competition agreements, which were backdated to December 31, 2000.

136. Radler caused Hollinger International to issue checks for $2,612,500 each to himself and Black and $137,500 each to Atkinson and Boultbee in connection with the purported "non-competition" agreements with American Publishing Company in February 2001. The checks for these purported "non-competition" payments were backdated to December 31, 2000.

137. Black and Radler did not present the American Publishing Company purported non-competition payments to themselves, Atkinson and Boultbee to Hollinger International's Board or to its Audit Committee for review or approval.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER INTERNATIONAL'S FILINGS REGARDING THE NON-COMPETITION PAYMENTS TO HOLLINGER, INC. AND THE INDIVIDUALS

138. The purported non-competition payments made to Hollinger, Inc. in connection with the CNHI II, Forum and Paxton transactions were not disclosed in any of Hollinger International's filings with the Commission until they were disclosed in a November 17, 2003 press release filed with a Form 8-K.

139. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $1,350,000 in purported non-competition payments made to Hollinger, Inc. in connection with the CNHI II, Forum and Paxton transactions.

140. The purported non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the CNHI II transaction were not disclosed in Hollinger International's proxy statement for the 2000 fiscal year or in its 2000 Form 10-K.

141. Black and Radler knew or were reckless in not knowing that Hollinger International's filings with the Commission prior to April 1, 2002, including its 2000 Form 10-K filed April 2, 2001 and 2001 proxy statement filed March 27, 2001, were materially false and misleading because they failed to disclose the $8.6 million in total purported non-competition payments to themselves and $900,000 in total purported non-competition payments to Atkinson and Boultbee.

142. The non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the above-mentioned transactions were first disclosed in Hollinger International's 2001 Form 10-K, which states:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $0.6 million. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15 million. Such amounts were paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

143. Hollinger International's 2002 Form 10-K contained disclosures concerning the non-competition payments that were nearly identical to the disclosure contained in its 2001 Form 10-K.

144. Hollinger International's 2002 Form 10-K states:

> During 2000, we sold most of our remaining U.S. community newspaper properties, for total proceeds of approximately $215 million. In connection with those sales, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $0.6 million. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15 million. Our independent directors approved the terms of these payments;

and

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $600,000. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15,000,000. Such amounts were

paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

145. The disclosures in Hollinger International's 2001 and 2002 Forms 10-K contained misstatements and omissions of material fact because, among other things:

(a) The purported non-competition payments made in connection with the American Publishing Company transaction were not in connection with the sale of newspaper properties;

(b) Black, Radler, Atkinson, and Boultbee did not enter into non-competition agreements with purchasers in connection with the American Publishing Company, Forum or Paxton transactions;

(c) Black, Radler, Atkinson and Boultbee did not enter into any non-competition agreements "to satisfy a closing condition" of any purchaser of Hollinger International's U.S. newspapers because none of the purchasers requested that any of the individuals enter into non-competition agreements;

(d) Approximately $9.5 million was paid in 2000 and another approximately $6 million was paid in 2001 as consideration for the purported non-competition agreements; and

(e) The payments were not approved by Hollinger International's independent directors.

146. Black and Radler signed Hollinger International's 2001 and 2002 Forms 10-K.

147. Black also certified Hollinger International's 2002 Form 10-K pursuant to Section 302 of the Sarbanes-Oxley Act as the CEO of Hollinger International.

148. Hollinger International also disclosed the payments in its proxy statement filed on or about April 2, 2002, which states:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger Inc., the Company, Lord Black and Messrs. Radler, Atkinson and Boultbee entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 and 2000 of $15,600,000, consisting of $7,197,500 paid to Lord Black, $7,197,500 paid to Mr. Radler, $602,500 paid to Mr. Atkinson and $602,500 paid to Mr. Boultbee.

149. Hollinger International's 2002 proxy statement contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(e), above. In addition, this disclosure identified Hollinger, Inc. as a party to a non-competition agreement(s), but failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to believe that no non-competition payments were made to Hollinger, Inc., when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

150. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 and 2002 Forms 10-K and 2002 proxy statement filed on or about April 2, 2002, were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

151. The misstatements and omissions in Hollinger International's 2001 and 2002 Forms 10-K and 2002 proxy statement were not disclosed in any of Hollinger International's filings with the Commission until they were disclosed in a November 17, 2003 press release filed with a Form 8-K.

MISSTATEMENTS AND OMISSIONS DURING HOLLINGER INTERNATIONAL'S MAY 2002 SHAREHOLDER MEETING

152. During a Hollinger International shareholder meeting held in May 2002, at which Radler was present, Black responded to a shareholder's question regarding the purported non-competition agreements as follows:

> You're right that there were some non-competes in the American Community sales, but that wasn't as dissimilar as it seems from the Canadian situation. In those papers, they wanted some assurance that we wouldn't come back with shoppers, which is always a threat to those small newspapers and indeed, there's been some incidence in the history of that business of people doing just that...

153. Black's statement contained misstatements and omissions of material fact because, among other things, Black, Radler, Atkinson and Boultbee did not enter into non-competition agreements or receive the purported non-competition payments at the request of the purchasers and did not execute non-competition agreements in connection with the Forum and Paxton transactions. In addition, there was no sale of newspapers associated with the purported non-competition agreements and payments in the American Publishing Company transaction.

154. Black and Radler knew or were reckless in not knowing that Black's statements to Hollinger International's shareholders were materially false and misleading.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER, INC.'S FILINGS REGARDING THE NON-COMPETITION PAYMENTS

155. On or about April 23, 2002, Hollinger, Inc. disclosed the non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the U.S. newspaper sales in its proxy statement filed on Form 6-K.

156. Hollinger, Inc.'s 2002 proxy statement reads:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger [Inc.], Hollinger

> International, Lord Black and Messrs. Radler, Atkinson and Boultbee entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 and 2000 of U.S.$15,600,000, consisting of U.S.$7,197,500 paid to Lord Black, U.S.$7,197,500 paid to Mr. Radler, U.S.$602,500 paid to Mr. Atkinson and U.S.$602,500 paid to Mr. Boultbee.

157. This disclosure contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(e), above. In addition, this disclosure identified Hollinger, Inc. as a party to a non-competition agreement(s), but failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to conclude that no non-competition payments were made to Hollinger, Inc. when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

158. Hollinger, Inc.'s 2001 Form 40-F filed with the Commission on or about May 22, 2002 contains the following disclosure regarding the non-competition payments:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger International, Lord Black and three senior executives entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of US $600,000 ($917,000). These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of US $15.0 million ($22.5 million). All such amounts were paid to Lord Black and the three senior executives. The independent directors of Hollinger International have approved the terms of these payments.

159. Similar disclosures were made in Hollinger, Inc.'s 2002 Form 20-F and amended 2002 Form 20-F filed on or about June 27, 2003, and September 17, 2003, respectively. The disclosures in Hollinger, Inc.'s 2001 Form 40-F and 2002 Form 20-F

and amended 2002 Form 20-F contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(e), above. In addition, these disclosures failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to conclude that no non-competition payments were made to Hollinger, Inc. when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

160. Hollinger, Inc. knew or was reckless in not knowing that its 2002 proxy statement and its 2001 Form 40-F and 2002 Forms 20-F were materially false and misleading.

THE CANWEST TRANSACTION

161. On July 30, 2000, Hollinger International and its subsidiaries executed a transaction agreement to sell several of its Canadian newspapers to CanWest for a purchase price of approximately Cdn. $3.8 billion (approximately U.S. $2.6 billion), of which Cdn. $80 million (approximately U.S. $51.6 million) was allocated as consideration for non-competition agreements (the "CanWest transaction"). An amending agreement was executed at the time of closing on or about November 15, 2000.

162. Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee were not parties to the transaction agreement. However, Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee were identified in the transaction agreement as parties to the non-competition agreement along with Hollinger International.

163. Neither the asset purchase agreement nor the non-competition agreement specified that the Cdn. $80 million was to be paid to anyone other than the seller, Hollinger International.

164. At no time did CanWest negotiate or specify an amount as to the value of the non-competition agreements, nor did CanWest specify that Ravelston or any of the individuals would receive any consideration allocated to the non-competition agreements.

165. Black personally negotiated the CanWest transaction on behalf of Hollinger International.

166. Black and Radler determined the amounts that were allocated to the various individuals and entities.

167. CanWest did not request a non-competition agreement from Atkinson or Boultbee. Rather, Atkinson asked Black if he and Boultbee could be given "non-competition" payments to serve as bonuses for their work on the CanWest transaction. Black agreed to add Atkinson and Boultbee to the non-competition agreement so that they could be given "non-competition" payments to serve as bonuses for their work on the CanWest transaction.

168. On or about July 25, 2000, the Hollinger International Board received a summary of the proposed CanWest transaction. The summary stated that "The purchase price was increased as a result of a reduction of Management Services Fees to be charged by Ravelston with respect to ongoing management of the Newspaper Assets. Prior to closing, Ravelston and the Audit Committee will negotiate an appropriate sharing of such Purchase Price increase."

169. The summary also included a reference to the non-competition agreements and stated that Ravelston, Hollinger, Inc., Black and Radler were required to execute non-competition agreements and that "consistent with prior transactions," the Audit Committee would negotiate what portion of the purchase price should be allocated

to the non-competition agreements prior to closing. The Audit Committee had not previously negotiated what portion of a purchase price would be allocated to a non-competition agreement, and it did not do so in the CanWest transaction.

170. On July 26, 2000, Black confirmed that the Board had received the summary and made a general presentation about the CanWest transaction to the Hollinger International Board. The minutes reflect that Black stated that certain monetary allocations would be made to Ravelston and those parties required to sign non-competition agreements and that related party issues would be resolved prior to closing by the Audit Committee.

171. The transaction agreement was signed on July 30, 2000. The CanWest transaction did not close and fund until November 2000.

THE SEPTEMBER 2000 REPRESENTATIONS TO
<u>THE AUDIT COMMITTEE AND BOARD</u>

172. On or about September 1, 2000, Kipnis sent the Hollinger International Audit Committee a memorandum concerning the non-competition agreements in preparation for the September 11, 2000 Audit Committee meeting.

173. The memorandum stated that "Conrad M. Black, F. David Radler, Hollinger International, Ravelston, Peter Atkinson, and Jack Boultbee have each been requested to execute noncompetition agreements.... The total portion of the purchase price allocated to the non-competition agreements is Cdn. $50 million, approximately 1.4% of the Cdn. $3.5 billion purchase price (allocated Cdn. $19 million each to Messrs. Black and Radler, Cdn. $4 million each to Hollinger and Ravelston, and Cdn. $2 million each to Messrs. Atkinson and Boultbee)."

174. The memorandum also stated that Ravelston had a long-term management agreement in place with Hollinger International, that the CanWest purchase price was based upon earnings before income taxes, depreciation and amortization ("EBITDA"), and that during the negotiations, Ravelston had agreed to reduce its ongoing management fee by approximately $11 million and the CanWest purchase price was accordingly adjusted upward by approximately Cdn. $110 million. The memorandum proposed that Ravelston receive a purchase price allocation of Cdn. $30 million, approximately 0.9% of the purchase price, "in consideration for Ravelston reducing its management fee and consenting to CanWest having an early termination of its management arrangements."

175. The CanWest payments were discussed at the September 11, 2000 Audit Committee meeting. Radler was present at and participated in this meeting.

176. According to the minutes of the September 11, 2000 Audit Committee meeting, Kipnis told the Audit Committee that "the execution of a noncompetition agreement by Messrs. Black and Radler, individually, was a requirement of CanWest and that CanWest originally insisted that Messrs. Black and Radler each receive Cdn. $26 million... Black and Radler negotiated Cdn. $12 million be reallocated to cover bonuses for senior management, which reallocation would save the Company additional bonus costs."

177. Kipnis further informed the Committee that Ravelston "would be willing to reduce its service fees...which would have the effect of increasing the Canadian Group's EBITDA figure (thereby increasing the purchase price the Company would receive for the CanWest Transaction by 10 times the amount forgiven)" and would

be willing to waive the six month's notice it was entitled to under the Services Agreement and that in consideration for these concessions, Ravelston was requesting an early termination fee equal to approximately 0.9% (Cdn. $30 million) of the purchase price.

178. Based on the September 11, 2000 memorandum and meeting, the Audit Committee approved the fairness of the non-compete allocations and "early termination fee."

179. The Cdn. $50 million non-competition payment and Cdn. $30 million "early termination" fee were subsequently presented to the Board by Audit Committee Chairman James R. Thompson ("Thompson"). Radler was present at this meeting. Based upon the Audit Committee's recommendation, the Board approved the fairness of these allocations.

180. The September 11, 2000 Audit Committee and Board approval of the non-competition payments were based on misstatements and omissions of material fact, because, among other things:

(a) CanWest did not demand non-competition agreements from Atkinson or Boultbee and the payments to Atkinson and Boultbee were bonuses;

(b) CanWest did not specify an amount as to the value of the non-competition agreements;

(c) The amounts allocated to the various individuals and entities were not determined by CanWest but by Black and Radler;

(d) CanWest did not demand that Ravelston or the individuals receive any money or any specific amounts of money as a non-competition payment; and

(e) the explanation provided for the "early termination fee" to Ravelston was baseless.

181. The CanWest transaction closed on or about November 15, 2000. Black and Radler each received approximately Cdn. $18.4 million (U.S. $11.9 million), Ravelston received approximately Cdn. $40.9 million (U.S. $26.3 million) and Atkinson and Boultbee each received approximately Cdn. $2.0 million (U.S. $1.3 million) in non-competition payments. These amounts included an additional (aggregate) Cdn. $1.7 million (U.S. $1.1 million) in interest payments calculated from the initial July 30, 2000 transaction agreement.

182. Black began the December 4, 2000 Hollinger International Board meeting with a brief summary of the concluded CanWest transaction. He also presented to the Board a resolution approving and adopting the minutes of the September 11, 2000 Board meeting as accurately reflecting the meeting. Radler was also present at this meeting.

183. Black and Radler did not disclose that there were any errors in the information provided to the Audit Committee or Board in September 2000. The Board approved the September 11, 2000 Board minutes at the December 4, 2000 Board meeting.

THE MAY 2001 REPRESENTATIONS TO THE AUDIT COMMITTEE AND BOARD

184. Hollinger International did not disclose the CanWest non-competition payments in its 2000 Form 10-K filed on or about April 2, 2001 or in its 2001 Proxy statement filed on or about March 27, 2001.

185. In a memorandum dated May 1, 2001, Hollinger International's Board was informed that "in a number of inadvertent respects" the September 11, 2000 materials "did not reflect the documentation for the CanWest Transaction" because it "could be deemed to imply that Non-Competition Consideration received by certain individuals was in lieu of compensation and that the Non-Competition Consideration received by Ravelston was an 'early break fee' in respect of its management services agreement with the Corporation and its principal Canadian subsidiary."

186. The memorandum stated that the Transaction Agreement "established an amount of Cdn. $80 million as consideration for the receipt by CanWest of non-competition agreements. No allocation of the Non-Competition Consideration among the recipients was made by CanWest." The memorandum further stated that "[t]he Non-Competition Consideration was allocated by the recipients among Ravelston and the other Obligors on what they determined to be a fair and appropriate basis in the circumstances" and that Ravelston received Cdn. $38 million, Black and Radler received Cdn. $19 million and Atkinson and Boultbee received Cdn. $2 million.

187. According to the memorandum, "[T]he Non-Competition Consideration paid by CanWest to the individual Obligors does not, and because it was paid by CanWest cannot, have the character of compensation to the recipients thereof contrary to a comment which so suggests in the September 11th Audit Committee meeting."

188. The memorandum also stated that the "Non-Competition Consideration paid by CanWest to Ravelston does not represent any compromise of rights or entitlements of Ravelston pursuant to its existing Management Services

Agreements with the Corporation and its subsidiaries contrary to the discussion thereof in the minutes of the September 11th meetings" and that the minutes and memorandum "incorrectly characterized the Non-Competition Consideration received by Ravelston as an 'early break fee.'" The memorandum advised that "[n]o amendment or termination of these Management Services Agreements was made or contemplated as a consequence of the CanWest transaction. The management fee... for the year 2000 was established early in 2000 as Cdn. $18.5 million and this amount was paid without reduction."

189. The memorandum finally requested that the Audit Committee conclude that the non-competition consideration was fair under the circumstances because, among other things, "the delivery of the non-competition agreements by the Obligor was a critical condition of the completion of the Corporation's sale to CanWest" and "the Non-Competition Consideration was established in the Transaction Agreement and reflected the value attributed by CanWest to the Obligors' non-competition agreements."

190. Black and Radler received and reviewed the May 1, 2001 memorandum.

191. The May 1, 2001 memorandum corrected some of the misstatements and omissions in the September 11, 2000 representations, but it, too, contained misstatements and omissions of material fact because, among other things:

(a) CanWest did not request non-compete agreements from Boultbee and Atkinson and the payments to Atkinson and Boultbee did have the character of compensation;

(b) the non-competition consideration did not reflect the value attributed by CanWest to the non-competition agreements because CanWest did not specify an amount as to the value of the non-compete agreements, or that any payment would be made to Ravelston or any individuals for their agreement to not compete;

(c) the memorandum failed to disclose that the individuals and Ravelston received Cdn. $1.7 million in interest on the non-competition payments; and

(d) it falsely characterized the misrepresentations on September 11, 2000 as "inadvertent."

192. Based upon the information in the May 1, 2001 memorandum, the Audit Committee and Board both ratified the fairness of the payments on May 14, 2001 and May 17, 2001, respectively.

193. Radler attended the May 14, 2001 Audit Committee meeting. Black and Radler both attended the Board meeting. Black and Radler did not correct any of the misrepresentations or omissions of material fact in the May 1, 2001 memorandum.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER INTERNATIONAL'S FILINGS REGARDING <u>THE CANWEST NON-COMPETITION PAYMENTS</u>

194. Hollinger International first disclosed the non-competition payments made in connection with the CanWest transaction in its Form 10-Q for the quarter ended March 31, 2001, which provided:

> Also, as required by CanWest as a condition to the transaction, Ravelston, Hollinger Inc. and Messrs. Black, Radler, Boultbee and Atkinson, entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to CanWest for a five year period, subject to certain limited exceptions, for aggregate consideration received by Ravelston and the executives of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above, consisting of Cdn. $38

million paid to Ravelston, Cdn. $19 million paid to Mr. Black, Cdn. $19 million paid to Mr. Radler, Cdn. $2 million paid to Mr. Boultbee and Cdn. $2 million paid to Mr. Atkinson.

195. Hollinger International's 2001 Form 10-K contained similar disclosures regarding the CanWest non-competition agreements:

> Also, as required by CanWest as a condition to the transaction, the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian business sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above of which Cdn. $38 million ($25.2 million) was paid to Ravelston and Cdn. $42 million ($27.8 million) was paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

196. Hollinger International's 2002 Form 10-K filed on or about March 31, 2003 also contained similar disclosures concerning the CanWest transaction:

> Further, CanWest required as a condition to the transaction that the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian business sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above of which Cdn. $38 million ($25.2 million) was paid to Ravelston and Cdn. $42 million ($27.8 million) was paid to Lord Black and the three senior executives. The Company's independent directors approved the terms of these payments.
>
> and
>
> Further, CanWest required as a condition to the transaction, that the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives enter into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80,000,000 ($53,000,000) paid by CanWest in addition to the purchase price referred to above. Of that consideration, Cdn. $38,000,000 ($25,200,000) was paid to Ravelston and Cdn. $42,000,000

($27,800,000) was paid to Lord Black and the three senior executives. The Company's independent directors approved the terms of these payments.

197. Hollinger International's Form 10-Q for the quarter ended March 31, 2001 and its 2001 and 2002 Forms 10-K contained misstatements and omissions of material fact because, among other things:

(a) The Cdn. $80 million non-competition payment was not made "in addition" to the purchase price; rather, it was allocated from the purchase price and thus reduced the amount of the total purchase price received by Hollinger International;

(b) CanWest never required that Boultbee or Atkinson enter into non-competition agreements. Rather, Black included them at Atkinson's request in order to pay them tax-free bonuses;

(c) The disclosures lead the reader to conclude that CanWest required the payment of these amounts to Ravelston and the individuals. However, CanWest did not determine the amount of the non-competition payment, the amount to be paid to Ravelston and the individuals, or that any amount would be paid to Ravelston or any individuals;

(d) The disclosures also failed to include that additional interest totaling Cdn. $1.7 million was received by the individuals and Ravelston;

(e) The specific amounts of money received by the individuals in Canadian dollars were incorrect; and

(f) The disclosures failed to state that the Board's "approval" was based upon misstatements and omissions of material fact.

198. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 and 2002 Forms 10-K and Form 10-Q for the quarter ended March

31, 2001 were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

MISSTATEMENTS AND OMISSIONS DURING HOLLINGER INTERNATIONAL'S MAY 2002 SHAREHOLDER MEETING

199. During an annual Hollinger International shareholder meeting held in May 2002, at which Radler was present, Black made the following statements about the CanWest non-competition payments:

> Mr. Asper demanded that there be a non-compete arrangement and effectively the independent directors of this company determined that since he wished — that it was something that he was paying valuable consideration for and some of that should come to us and not to this company. And that was not a matter negotiated directly by us.
>
> . . . we leave the determination of these matters in the hands of disinterested people, who do, as I said in my remarks, conduct whatever analysis they think is appropriate. It's not for us to tell them what to do. . .
>
> [CanWest] attached significant commercial value to a non-compete agreement with us. Not with [Hollinger] . . . . And, I accept that there's a conundrum as to the division between the company's interest and our own in a thing like that, so we effectively handed it to the independent directors to determine, stayed above the 10 times multiple, shrunk our own incomes, undoubtedly saved all of the shareholders a tremendous inconvenience by doing these deals that have enable this company to sail relatively painlessly through a difficult time. . . .
>
> And in all of the circumstances, the independent directors felt this was the fair thing to do and I must say, I agree. . . .
>
> You're dealing with a best efforts attempt to accommodate to industry practice and do what's equitable as determined by independent directors who are as a group quite a distinguished group.

200. During that meeting, Black also told Hollinger International's shareholders that the non-competition payments in the CanWest transaction did not reduce the amount of money paid to Hollinger International, stating:

> [t]he answer is that it was in our opinion not[,] technically speaking[,] a reduction of the compensation paid to this company. The consideration was not reduced there by the acquirer in the principle case that you're referring to, the CanWest deal. ...Now the issue of it and the extent to which it was an allocation of ultimate purchase price was factored into the overall negotiations, starting from the premise of a 10 times multiple.

201. Contrary to Black's statements to Hollinger International's shareholders:

(a) the non-competition payments were not negotiated by the Audit Committee; rather, Black and Radler determined the amounts of the payments and to whom they would be made;

(b) all, not "some," of the non-competition consideration was paid to Black, Radler, Ravelston and the other individuals; none of it was retained by Hollinger International;

(c) CanWest did not specify the amounts of the non-competition payments or that Ravelston or the individuals should receive non-competition payments;

(d) The "approval" of the payments by Hollinger International's Audit Committee and Board was based on misstatements and omissions of material fact; and

(e) the non-competition payments reduced the sale proceeds to Hollinger International by approximately U.S. $53 million.

202. Black and Radler knew or were reckless in not knowing that Black's statements to Hollinger International's shareholders were materially false and misleading.

THE DIVERSION OF HOLLINGER INTERNATIONAL NEWSPAPERS TO HORIZON

203. As part of their scheme to defraud, Black and Radler also diverted newspaper assets from Hollinger International to their privately-held corporation, Horizon.

204. Among other things, Horizon engaged in a transaction with Hollinger International in which it received a newspaper for $1 after Black and Radler misled the Hollinger International Audit Committee and Board about the paper's worth and the existence of other buyers. In addition, in at least one instance, Black and Radler caused Horizon to obtain newspapers without any review by the Hollinger International Board or Audit Committee.

205. Black and Radler also made misstatements and omissions of material fact regarding these transactions in Hollinger International's filings with the Commission.

THE BISHOP/BLACKFOOT ASSIGNMENT

206. In September 2000, Hollinger International sold newspaper properties located in Bishop Lakes, California ("Bishop") and Blackfoot, Idaho ("Blackfoot") to Horizon through a pre-arranged assignment from CNHI (the "Bishop/Blackfoot Assignment").

207. By obtaining these newspapers through an assignment from CNHI, Black and Radler circumvented the review of this related party transaction by Hollinger International's Audit Committee and Board.

208. In May 2000, Morgan Stanley, who was assisting Hollinger International in selling its newspapers, advised Hollinger International that the Bishop and Mammoth Lakes ("Mammoth") newspapers should be considered one unit for purposes of selling the papers. The papers were in close proximity and Bishop's printing facility was used to print the Mammoth paper.

209. On or about July 27, 2000, Hollinger International received an offer to purchase Mammoth and Bishop for $3 million, plus another possible $1 million contingent on the profits of the papers.

210. On August 2, 2000, a representative of Hollinger International told the potential purchaser that its offer could not be accepted because "[a] company affiliated with Hollinger decided to purchase Bishop..." The representative also stated that this affiliated company decided not to buy Mammoth Lakes because of other commitments.

211. In September 2000, Bishop (but not Mammoth) was sold to Horizon through CNHI in the CNHI II transaction. However, CNHI had not sought to purchase the Bishop and Blackfoot papers as part of the CNHI II transaction.

212. At Radler's direction, CNHI was solicited to accept the Bishop and Blackfoot newspapers as part of the CNHI II transaction whereby pursuant to an assignment clause, CNHI would assign those papers to Horizon. CNHI agreed to do the assignment so long as it had no obligation to pay for and keep the properties.

213. Provisions were added to the CNHI II asset purchase agreement wherein Bishop and Blackfoot were included among the properties to be purchased by CNHI but CNHI could prior to the closing, assign its rights and obligations with respect to Bishop and Blackfoot. While the total purchase price in the contract was listed as $95.2 million, including Bishop and Blackfoot, CNHI was to pay, after the assignment, only $90 million, leaving the remaining $5.2 million to be paid by the assignee.

214. On September 15, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to

CNHI for an aggregate purchase price of approximately $90 million after assignment by CNHI to Horizon of the right to acquire the Bishop and Blackfoot properties.

215. CNHI and Hollinger International closed the deal at the end of September 2000. CNHI assigned Bishop and Blackfoot to Horizon. However, Horizon paid only $4.1 million to Hollinger International, and not the $5.2 outlined in the CNHI purchase agreement.

216. Prior to the transaction, there was no disclosure to the Audit Committee or Board that Bishop and Blackfoot would be sold to Horizon.

217. Several months later, on December 4, 2000, Black presented the September 15, 2000 Executive Committee approval of the CNHI II transaction to the Board for ratification. Radler was present at the Board meeting.

218. Black and Radler failed to disclose to the Board and Audit Committee that the Bishop and Blackfoot properties had been assigned to Horizon as part of the CNHI II transaction. They also failed to disclose that another purchaser had offered $3 million for the Mammoth and Bishop properties.

219. Although the Board minutes purport to incorporate by reference the September 15, 2000 Executive Committee consents, the Board was not given a copy of the consents. Thus, the Bishop and Blackfoot assignment to Horizon was never presented to the Audit Committee or Board.

220. Black disclosed in his response to Hollinger International's 2001 proxy questionnaire that he "indirectly through Conrad Black Capital Corporation, a stockholder of a privately held company, Horizon Publications, Inc., which through its

subsidiaries: (i) acquired the right from Newspaper Holdings, Inc. (*an unaffiliated party*) to purchase newspaper assets from the company…."

221. Radler disclosed in his response to Hollinger International's 2001 proxy questionnaire that he "indirectly through F.D. Radler Ltd., a stockholder of a privately held company, Horizon Publications, Inc., which through its subsidiaries (i) acquired the right from Newspaper Holdings, Inc. *an unaffiliated party*, to purchase newspaper assets from the company…."

222. Black's and Radler's responses failed to disclose that they decided to purchase Bishop and Blackfoot for Horizon prior to the CNHI II transaction and that Radler had arranged for CNHI to act as a mere conduit to convey the properties to Horizon as part of the CNHI II transaction. They also failed to disclose that they paid less than the value assigned to the properties in the CNHI II asset purchase agreements and that the assignment was never presented to the Audit Committee or Board for review and approval.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER INTERNATIONAL'S FILINGS REGARDING THE BISHOP AND BLACKFOOT TRANSACTIONS

223. Hollinger International disclosed the Bishop/Blackfoot assignment in its 2001 proxy statement, which stated:

> Effective November 1, 2000, Horizon acquired two properties in California and Idaho in a transaction valued at approximately $4.1 million. The Company had previously contracted to sell such properties to Newspaper Holdings, Inc. as part of a larger transaction, but conveyed title to those two properties directly to Horizon pursuant to an assignment to Horizon from Newspaper Holdings, Inc.

224. The proxy statement described Horizon as "a company formed by a former Vice President of American Publishing and having certain members of the Board of Directors and senior management of the Company as shareholders."

225. This proxy statement was incorporated by reference into Hollinger International's 2000 Form 10-K.

226. The disclosure regarding the Bishop and Blackfoot transaction contained misstatements and omissions of material fact because, among other things, it: (a) stated that Hollinger International had previously contracted to sell the properties to CNHI, when in fact Radler arranged for CNHI to act as a mere conduit to convey the properties to Horizon; (b) failed to disclose that the assignment was never presented to the Audit Committee or Board for review and approval; (c) failed to disclose that Bishop and Blackfoot were valued at $5.2 million in the CNHI II asset purchase agreement; and (d) failed to specifically state that Horizon was owned and controlled by Radler and Black.

227. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 proxy statement and 2000 Form 10-K were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

THE MAMMOTH TIMES

228. On August 1, 2001, Black and Radler, through Horizon, purchased Mammoth for $1.00 and no working capital adjustment, and secured the more valuable pairing of Bishop and Mammoth.

229. Hollinger International had purchased Mammoth in 1999 for $1.75 million.

230. In May 2000, Morgan Stanley advised Hollinger International that following its acquisition of Mammoth in 1999, Mammoth generated revenue of $400,000 and EBITDA of nearly $27,000 through the end of the year. Morgan Stanley also stated that although this represented an EBITDA margin of only 6%, margins were expected to grow to 20% in 2000 with revenues of over $1.7 MM.

231. As discussed above, on July 27, 2000, Hollinger International had received a previous offer for Mammoth and Bishop for $3 million, plus another possible $1 million contingent on the operating profits of the papers.

232. Black and Radler knew that there was an offer for Mammoth for over $1 million. On August 1, 2000, a few days after the offer, Radler, in a memorandum to Black and others, stated there was a possible $2 million sale for "Monmouth"[sic].

233. In the August 2, 2000 letter rejecting its offer to purchase both Bishop and Mammoth, the potential purchaser was told by a representative of Hollinger International that "Mammoth has great potential, but is too far from our office to allow for much managerial involvement, and therefore we are going to sell it as a stand-alone property. This property is budgeted to generate revenues of $1.766MM in 2000 with an operating margin of approximately $325,000. There are a lot of efficiencies to be realized at this property which have not been realized as yet."

234. In November of 2000, the same potential purchaser sent another letter offering to purchase only Mammoth for $1.25 million.

235. The Mammoth transaction was not reviewed by the Audit Committee or Board prior to the closing date in August of 2001. The Mammoth transaction was presented to the Audit Committee for ratification on September 10, 2001, after the transaction had closed.

236. Radler attended the September 10, 2001 Audit Committee meeting, and directly or through one of his assistants, reported that Mammoth was sold for $1 and that Mammoth lost $70,000 the year before the sale and $6,000 the month before the sale. The Audit Committee was also told that there were no other buyers found. The Audit Committee then ratified the sale of Mammoth to Horizon for $1.00.

237. At a Board meeting held that same day, Thompson reviewed the "disposition of the Mammoth Times," and referred the Board to the resolutions that stated that Mammoth was being sold for $1.00 and that it lost $70,000 the year before the sale and $6,000 the month before the sale. The Board confirmed and approved the Audit Committee's ratification of the Mammoth transaction.

238. Black and Radler were present at the September 10, 2001 Board meeting. Black and Radler did not inform the Audit Committee or Board of the full prospects for the paper or that there had been another buyer willing to pay $1.25 million for the paper.

THE SKAGIT VALLEY ARGUS AND SAN JUAN JOURNAL TRANSACTIONS

239. On or about May 1, 2000 (effective March 31, 2000), Horizon purchased from Hollinger International The Skagit Valley Argus ("Argus") and The Journal of the Island of San Juan ("San Juan Journal") newspaper publications for $1.00 "plus or minus a working capital adjustment."

240. On or about February 1, 2000, one of Radler's assistants sent Hollinger International's Audit Committee a memorandum recommending the disposition of the Argus, San Juan Journal and another paper to Horizon.

241. The February 1, 2000 memorandum stated that the San Juan Journal had lost $63,000 the previous year and was unlikely to meet its budget for the year 2000. The memorandum further stated that the Argus had lost a considerable amount of money for each of the last few years and should be closed or sold. The memorandum stated that a loss of approximately $215,000 could be expected for the three papers together in 2000, and that even that would be a big achievement. It further stated that it was in the best interests of Hollinger International to accept the offer from Horizon to acquire these papers for the "value of the working capital" and that the proposed transaction would save the cost of severance and undesired publicity of closing newspapers.

242. However, seven months earlier, in July 1999, Radler received a memorandum from the same assistant discussing these papers in a more favorable light. That memorandum stated that the San Juan Journal was "coming along nicely," that the "EBITDA has improved from a loss of $40,000 last year to a profit of $27,000 this year," and that there was no need to "discuss major changes to this operation at this time." The memorandum also stated that the Argus' losses had increased from the prior year but attributed some of this result to poor management and discussed possibly acquiring a neighboring publication to solve the newspaper's problems. The memorandum stated that "if we are to make a go of the Skagit Valley Argus, the combination of our activity together with the [neighboring publication] will give us a revenue base of approximately $1.5 million."

243. The Argus and San Juan Journal transactions were presented to the Audit Committee and Board on February 22, 2000. Radler attended the Audit Committee meeting on February 22, 2000. Radler's assistant recommended "the proposed disposition of three (3) losing papers to Horizon Publications Inc. for the value of their working capital" to the Audit Committee. The Audit Committee approved the transfer of these papers to Horizon.

244. Black and Radler were present at a Board meeting later that same day at which Thompson presented the Audit Committee's approval of the sale of these newspapers to Horizon to the Board. The Board and Audit Committee were not told of the full prospects for the newspapers.

245. In late April 2000, another potential purchaser made an offer to buy the assets of the San Juan Journal at a purchase price equal to one times revenue. The San Juan Journal's revenue was approximately Cdn. $1.1 million in 1999. This offer was made after the transaction with Horizon was first presented to the Audit Committee but before the Argus and San Juan Journal sale to Horizon closed.

246. The transaction closed on or about May 1, 2000. A negative working capital adjustment resulted in Hollinger International owing Horizon approximately $162,000 to take the papers from Hollinger International.

247. In or about October 2000, Horizon sold the Argus to Skagit Valley Publishing. On information and belief, the Argus was sold for approximately $450,000.

248. The Argus and San Juan Journal dispositions were again presented to the Audit Committee for ratification in February 2001, several months after the transaction had closed. Radler was present at the February 2001 Audit Committee

meeting. During the meeting, one of Kipnis's assistants presented for approval the "small dispositions" of the "Saagit [sic] Valley Argus . . . and the Journal of the San Juan Islands," for a purchase price of "$1 plus or minus working capital adjustments." The Audit Committee was told that "each [was] a cash flow drain and [that] we believe that fair market value was obtained."

249. The Audit Committee was not told that a negative working capital adjustment resulted in Hollinger International owing Horizon approximately $162,000 to take the papers from Hollinger International; that an alternate buyer had offered to buy the San Juan Journal for a significant sum prior to the closing of the transaction; or that Horizon sold the Argus for approximately $450,000 in October 2000.

250. The Audit Committee "approved and ratified" the sale of the Argus and San Juan Journal to Horizon.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER INTERNATIONAL'S FILINGS REGARDING THE MAMMOTH, SKAGIT VALLEY ARGUS AND SAN JUAN JOURNAL TRANSACTIONS

251. The Argus and San Juan Journal transactions were not disclosed in Hollinger International's 2000 Form 10-K.

252. Hollinger International's 2001 proxy statement stated only that Hollinger International had "sold the stock of Westbourne Investments, Inc. to Horizon," and failed to disclose material facts regarding the transactions because it failed to describe the transaction with any specificity and for the reasons stated below.

253. The Mammoth, Skagit Valley Argus and San Juan Journal transactions were disclosed in Hollinger International's proxy statement filed on or about April 2, 2002, which stated:

> The Company consummated two transactions with Horizon Publications Inc., a company formed by a former Vice President of American Publishing Company and controlled by certain members of the Board of Directors and senior management of the Company as shareholders, which were unanimously approved by the Audit Committee and the independent Directors of the Company as market value transactions. American Publishing Company transferred assets in Saagit [sic] Valley and San Juan Islands, Washington and Mammoth Lakes, California in exchange for net working capital.

254. The disclosure contained misstatements and omissions of material fact regarding the transactions because, among other things:

(a) The Mammoth sale was for $1, not net working capital;

(b) it failed to disclose that Hollinger International's Board and Audit Committee were falsely told that the newspapers were of little value in the market, when, in fact, they were economically viable;

(c) it failed to disclose that third parties had offered significant sums for these properties and that the Board and Audit Committee were not made aware of these offers to purchase the papers; and

(d) it failed to disclose that the "net working capital" adjustment in the sale of the Skagit Valley Argus and San Juan Journal resulted in Hollinger International owing Horizon approximately $162,000 to take the newspapers; and

(e) it failed to specifically state that Horizon was owned and controlled by Radler and Black.

255. This proxy statement was incorporated by reference into Hollinger International's 2001 Form 10-K.

256. Black and Radler knew or were reckless in not knowing that Hollinger International's 2002 proxy statement and 2001 Form 10-K were materially false and

misleading because they contained the misstatements and omissions of material fact discussed above.

HOLLINGER INTERNATIONAL'S INVESTMENT IN
<u>TRIREME ASSOCIATES LLC</u>

257. From approximately October 2002 through December 2002, Black and Perle, a Hollinger International director and member of Hollinger International's Executive Committee, negotiated an investment by Hollinger International in Trireme Associates LLC, the general partner of a venture capital fund known as Trireme Partners LP (the "Trireme investment"). On December 25, 2002, Perle executed a subscription agreement purportedly committing Hollinger International to invest $25 million in Trireme Associates LLC.

258. The investment was scaled back to $2.5 million. On February 12, 2003, Black authorized Atkinson to sign a commitment on behalf of Hollinger International to invest $2.5 million in Trireme Associates LLC with the possibility of further investment up to $25 million.

259. Prior to the investment, Black was informed by Atkinson that the Trireme investment would require the approval of the independent directors of Hollinger International.

260. Black ignored this advice and authorized the Trireme investment without seeking or obtaining approval from Hollinger International's Board or Audit Committee.

261. Hollinger International transferred $2.5 million to Trireme Associates LLC on or about March 28, 2003.

262. At the time of the Trireme investment, Trireme Associates LLC, as general partner of Trireme Partners LP, was to receive 20% of the profits of Trireme Partners LP ("the Distribution") after repayment of invested capital. The Distribution was to be made to holders of Trireme Associates LLC Class B units. As a result of the Trireme investment, Hollinger International held 25% of the Class B units. The remaining 80% of the profits of Trireme Partners LP was to be distributed to Trireme Associates LLC and the limited partners of Trireme Partners LP based upon their invested capital.

263. At the time of the Trireme investment, Perle, who was a Hollinger International director, Executive Committee member and Co-Chairman of Hollinger International's subsidiary, Hollinger Digital, was also an equity holder in Trireme Associates LLC holding an approximate 4% interest in the Distribution to Trireme Associates LLC.

264. Trireme Management LLC, the designated manager of Trireme Partners LP, was to receive a management fee from Trireme Partners LP. Perle was a member of management of Trireme Management LLC.

265. At the time of the Trireme investment, Black and another Hollinger International director, Kissinger, were members of the Strategic Advisory Board of Trireme Partners LP.

266. The Trireme investment was a related party transaction that required approval from the outside directors on Hollinger International's Board or its Audit Committee.

MISSTATEMENTS AND OMISSIONS IN HOLLINGER INTERNATIONAL'S FILINGS REGARDING THE TRIREME INVESTMENT

267. In March 2003, Hollinger International filed its 2003 proxy statement for its annual shareholder meeting on May 22, 2003. The proxy statement did not contain any disclosure concerning the Trireme investment.

268. Similarly, Hollinger International's 2002 Form 10-K, which was filed on or about March 31, 2003, after the investment was made, did not contain any disclosure concerning the Trireme investment.

269. Hollinger International first disclosed the Trireme investment in its Form 10-Q for the quarter ended March 31, 2003, which stated: "[d]uring the quarter, the Company made a venture capital investment of $2.5 million in a fund in which a director of the Company has a minority interest."

270. In its Form 10-Q for the quarter ended June 30, 2003, Hollinger International again discussed the Trireme investment, stating:

> During the first quarter of 2003, the Company made an investment of $2.5 million in a limited liability company in which a director of the Company is a principal and has a minority interest. The funds invested are to be used for a subsequent investment in a venture capital limited partnership.

271. Both of these disclosures misstated and omitted to state material facts because, among other things, they did not identify the investment by name, did not identify the director who had an interest in the fund, did not disclose Black's or Kissinger's involvement in Trireme, and did not disclose that the investment was not reviewed or approved by Hollinger International's Audit Committee or the independent members of Hollinger International's Board.

272. Black certified Hollinger International's Forms 10-Q for the quarters ended March 31, 2003 and June 30, 2003 pursuant to the Section 302 of the Sarbanes-Oxley Act of 2002. He also certified Hollinger International's 2002 Form 10-K.

273. Black knew or was reckless in not knowing that Hollinger International's 2002 Form 10-K and Forms 10-Q for the quarters ended March 31, 2003 and June 30, 2003 were materially false and misleading for the reasons stated above.

THE SPECIAL COMMITTEE INVESTIGATES

274. On or about June 17, 2003, after other Hollinger International shareholders raised allegations of unauthorized transfers of corporate assets, Hollinger International's Board established a Special Committee of independent directors (the "Special Committee") to investigate possible misconduct, initiate and prosecute litigation based on its investigation, recover misappropriated assets, and protect the interest of all Hollinger International shareholders.

275. On November 6, 2003, the Special Committee sent letters to Black, Radler, Atkinson and Boultbee requesting information concerning each non-competition payment made in connection with the American Trucker, CNHI I, Horizon, CNHI II, Forum, Paxton and American Publishing Company transactions and informing them that the Special Committee was not aware of any form of proper authorization for the transfer of these funds out of Hollinger International.

276. In a letter dated November 10, 2003, Black, through his counsel, provided his version of how the non-competition payments were made. Black also proposed that Hollinger International's Board should engage in a strategic process to

evaluate proposals for a range of financial alternatives, including the sale of some or all of Hollinger International's assets, and should announce the process to the public.

277. Hollinger International's Board decided to engage in a strategic process in order to evaluate Hollinger International's alternatives to sell some or all of its assets ("the Strategic Process"). Black and Hollinger International made a formal contract to address Black's obligations with respect to the non-competition payments and the Strategic Process.

278. In a Restructuring Proposal executed on November 15, 2003, Black admitted that the $16.55 million in non-competition payments paid to Hollinger, Inc. and the $7.2 million that Black and Radler received "was not properly authorized on behalf of the Company." Black agreed to repay Hollinger International the full amount that he received, and to seek repayment from Hollinger, Inc. of the amounts it received.

279. Black also agreed that he would resign as CEO of Hollinger International but would stay on as Chairman and "devote his principal time and energy to pursuing the Strategic Process with the advice and consent of the Executive Committee and Board;" and that "during the pendency of the Strategic Process, in his capacity as the majority stockholder of [Hollinger, Inc.], [he] will not support a transaction involving ownership interests in [Hollinger, Inc.] if such transaction would negatively affect [Hollinger International's] ability to consummate a transaction resulting from the Strategic Process unless the [Hollinger, Inc.] transaction [was] necessary to enable [Hollinger, Inc.] to avoid a material default or insolvency. In any such event, [he] shall give the Company as much advance notice as reasonably possible of any such proposed [Hollinger, Inc.] transaction."

BLACK CONTINUES TO MISLEAD THE PUBLIC

280. On November 17, 2003, Hollinger International issued a press release ("the November 17, 2003 Press Release"). Among other things, the press release announced the Special Committee's then-current findings concerning its investigation.

281. The press release stated that a total of $32.15 million in payments styled as "non-competition payments" were made to Hollinger, Inc., Black, Radler, Atkinson and Boultbee in connection with the sale of Hollinger International's U.S. newspaper properties that were not authorized or approved by either the Audit Committee or the full Board of Directors of Hollinger International. The press release also stated that Hollinger International's prior public disclosure regarding these matters was incomplete or inaccurate in some respects.

282. The press release stated that the $16.55 million in payments to Hollinger, Inc. were not previously disclosed in the notes to Hollinger International's financial statements or in its filings with the Commission. The press release further stated that although the $15.6 million in payments to the four individuals were disclosed in Hollinger International's Form 10-K filed in March 2002, this prior disclosure stated that the payments in question had been authorized by the independent directors of the Board, which did not occur, and that the payments were made "to satisfy a closing condition," which was not accurate. In addition, $5.5 million of such payments were reported to have occurred in 2000 rather than in 2001, when such payments were actually made.

283. The press release further announced that Black and Radler had agreed in writing to repay Hollinger International the full amount of unauthorized payments

received by them, with interest, and that Black had agreed to seek repayment in full from Hollinger, Inc. of the amounts received by it, with interest, no later than June 1, 2004.

284. The November 17, 2003 press release also announced the Strategic Process. The press release announced that Hollinger International's Board had retained Lazard LLC to review and evaluate its strategic alternatives, including a possible sale of Hollinger International, a sale of one or more of its major properties, or other possible transactions.

285. The November 17, 2003 Press Release further stated that:

(a) Lord Conrad M. Black of Crossharbour... has advised the board that, in light of the Strategic Process, he will retire as [CEO] . . . and that he will devote his time and attention primarily to pursuing the Strategic Process.

(b) Lord Black said: "Now is the appropriate time to explore strategic opportunities to maximize value for all shareholders of Hollinger International. We are delighted that Bruce Wasserstein and his team at Lazard will be working with us to ensure the market is well aware of the substantial value of [Hollinger International's] assets. Reflecting my full support of this process, I will be devoting my attention in coming months to achieving a successful outcome for all Hollinger shareholders. . . ."

(c) Lord Black has also agreed that during the pendency of the Strategic Process, in his capacity as the majority stockholder of [Hollinger, Inc.], he will not support a transaction involving ownership interests in [Hollinger, Inc.] if such transaction would negatively affect [Hollinger International's] ability to consummate a transaction resulting from the Strategic Process unless any such transaction involving [Hollinger, Inc.] meets certain limited conditions, and after reasonable prior notice to Hollinger [International].

286. Black assisted in the drafting of and approved the November 17, 2003 Press Release prior to its publication. Black understood that the press release would

constitute a public disclosure of his intentions with respect to the Strategic Process as of November 17, 2003.

287. When Black approved the November 17, 2003 Press Release, he was not and had no intention of devoting his time and attention primarily to pursuing the Strategic Process.

288. The Barclays had for years been interested in purchasing Hollinger International's London Daily Telegraph, but Black had repeatedly rebuffed their offers.

289. In or about September 1, 2003, David Barclay, in a letter to Black, renewed his interest in purchasing the Telegraph and, in connection with that, offered to discuss helping Hollinger, Inc. with its financing and becoming an investor in Hollinger, Inc. and suggested a meeting between Black and himself or his son, Aidan Barclay. Black responded that although he was willing to meet with the Barclays, the Telegraph was not for sale.

290. On or about October 31, 2003, David Barclay again wrote to Black reaffirming his interest in the Telegraph and proposing to meet. On November 3, 2003, Black wrote back to David Barclay that the Telegraph was not for sale. However, on November 11, 2003, the day after he responded to the Special Committee's letter, Black wrote to David Barclay that Black had a "thought worthy of discussion."

291. Shortly thereafter, during the week before the press release was issued, Black met with Aidan Barclay to discuss effectuating a transaction at the Hollinger, Inc. level which would allow the Barclays to control Hollinger International's Daily Telegraph newspaper. Black did not inform Hollinger International's Board of his dealings with the Barclays.

292. As of November 15, 2003, the date that Black executed the Restructuring Proposal with Hollinger International, Black worked ceaselessly to effectuate a transaction to sell his interest in Hollinger, Inc. for his own benefit rather than for the benefit of all of Hollinger International's shareholders. As of November 15, 2003, Black was secretly negotiating to sell his interest in Hollinger, Inc. to the Barclays, among others.

293. On January 17, 2004, Black unveiled a transaction with the Barclays which, if consummated, would have prevented Hollinger International from realizing the benefits of the Strategic Process by ending the process before the bidding had even begun. Black revealed that he and the Ravelston intended to enter an agreement with Press Holdings under which Press Holdings would purchase Ravelston's controlling interest in Hollinger, Inc. and make a tender offer to purchase all of the shares of Hollinger, Inc. (the "Barclay Transaction")

294. On or about January 19, 2004, Hollinger International filed suit (the "Delaware Action") against Black, Hollinger, Inc. and Press Holdings to, among other things, obtain a preliminary injunction to prevent the Barclay Transaction and to prevent Black and Hollinger, Inc. from circumventing the Strategic Process.

295. On February 26, 2004, following a three-day trial and based upon a voluminous evidentiary record, Vice Chancellor Strine issued a comprehensive 130-page decision finding in favor of Hollinger International and against Hollinger, Inc. and Black on all of the claims that were the subject of the evidentiary proceeding. Hollinger International, Inc. v. Conrad M. Black, 844 A.2d 1022 (Del Ch. 2004).

296. Among other things, Vice Chancellor Strine found that from November 15, 2003 through at least January 18, 2004, Black, by and through Hollinger, Inc., "persistently and seriously" violated his fiduciary duties and the Restructuring Proposal to the detriment of International and its non-controlling, majority shareholders. Vice Chancellor Strine further found that "... on November 17, 2003, Black began to turn the Barclays away from their interest in a direct purchase of The Daily Telegraph and towards a purchase of [Hollinger,] Inc."

297. Vice Chancellor Strine further found that "[s]tated bluntly, Black steered the Barclays toward doing an end-run around the Strategic Process . . . ." Vice Chancellor Strine concluded that ". . . .Black was supposed to be devoting his principal time and energy to direct the [Hollinger] International Strategic Process in order to maximize the value of the Telegraph and other assets owned by [Hollinger] International for all [Hollinger] International stockholders. Instead, he devoted his principal energy to crafting methods by which he could sell [Hollinger] Inc. to the Barclays and assure them that they would be able to stymie any sale of the Telegraph by International's board."

COUNT I

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder

(Defendants Black, Radler and Hollinger, Inc.)

298. Paragraphs 1 through 297 are realleged and incorporated by reference herein.

299. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc., in connection with the purchase and sale of Hollinger International's securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and course of business which operated or would operate as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of such securities.

300. Defendants knew or were reckless in not knowing of the facts and circumstances described in paragraphs 298 and 299 above.

301. The knowledge of Black and Radler is imputed to Hollinger, Inc.

302. By reason of the activities described in paragraphs 298 through 301 above, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§ 240.14a-3 and 240.14a-9] Thereunder

(Defendants Black and Radler)

303. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

304. From at least 1999 through at least 2003, Defendants Black and Radler, by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange or otherwise: solicited or permitted the use of their names to solicit proxies, consents, authorizations or notices of meetings in respect of Hollinger International's securities which contained statements which were false and misleading with respect to material facts or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading and which failed to furnish information required under Exchange Act Rule 14a-3.

305. By reason of the activities described in paragraphs 303 and 304 above, Black and Radler violated Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

COUNT III

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] Thereunder by Black, Radler and Hollinger, Inc. as control persons under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)]

(Defendants Black, Radler and Hollinger Inc.)

306. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

307. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to file or caused a failure to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger International's annual and periodic reports on Forms 10-Q and 10-K and annual proxy statements, and also failed to include in those reports such further material information, as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

308. By reason of the activities described in paragraphs 306 and 307 above, Hollinger International violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] promulgated thereunder.

309. By reason of the activities described in paragraphs 306 through 308 above, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Black, Radler and Hollinger, Inc. are liable for Hollinger International's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] promulgated thereunder.

COUNT IV

Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(A)] by Black, Radler and Hollinger, Inc. as Control Persons under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)]

(Defendants Black, Radler and Hollinger, Inc.)

310. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

311. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to make and keep books, records, records and accounts, which in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of Hollinger International.

312. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

313. By reason of the activities described in paragraphs 310 through 312 above, Hollinger International violated Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(A)] promulgated thereunder.

314. By reason of the activities described in paragraphs 310 through 313 above, and pursuant to Section 20(a) of the Exchange Act, Black, Radler, and Hollinger, Inc. are liable for Hollinger International's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

COUNT V

Violations of Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

(Defendants Black, Radler and Hollinger, Inc.)

315. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

316. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc., directly and indirectly, falsified or caused to be falsified books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

317. By reason of the activities described is paragraphs 315 and 316 above, Black, Radler and Hollinger, Inc. violated Rule 13b2-1 [17 C.F.R. § 240.13b2-1] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

COUNT VI

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)]

(Defendants Black, Radler and Hollinger, Inc.)

318. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

319. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc. knowingly circumvented or knowingly failed to implement a system of internal accounting controls and knowingly falsified books, records, and accounts described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

320. By reason of the activities described in paragraphs 318 and 319 above, Black, Radler and Hollinger, Inc. violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

COUNT VII

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-16 [17 C.F.R. § 240.13a-1 and 17 C.F.R. § 240.13a-16] Thereunder

(Defendant Hollinger, Inc.)

321. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

322. Hollinger, Inc. failed to file or caused a failure to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger, Inc.'s 2001 Form 40-F, 2002 Forms 20-F and 2002 proxy statement on Form 6-K, and also failed to include in those reports such further material information, as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

323. Hollinger, Inc. failed to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger, Inc.'s 2003 Form 20-F.

324. By reason of the activities described in paragraphs 321 through 323 above, Hollinger Inc., violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]

and Rules 13a-1 and 13a-16 [17 C.F.R. §§ 240.13a-1 and 240.13a-16] promulgated thereunder.

COUNT VIII

Violations of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14]

(Defendant Black)

325. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

326. From at least March 31, 2003 until at least August 2003, Black certified Hollinger International reports filed on Forms 10-Q and Form 10-K pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 and Rule 13a-14 promulgated thereunder, stating that: he had reviewed each report; based upon his knowledge, the reports did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and based upon his knowledge, the financial statements and information contained in each report fairly present in all material respects the financial condition, results of operations and cash flows of the issuer.

327. Black knew or was reckless in not knowing that the reports he certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which the statements were made, not misleading.

328. By reason of the activities described in paragraphs 325 through 327 above, Black violated Rule 13a-14 [17 C.F.R. § 240.13b2-1] promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

COUNT IX

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§ 240.14a-3 and 240.14a-9] Thereunder by Hollinger, Inc. as a Control Person under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)]

(Defendant Hollinger, Inc.)

329. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

330. From at least 1999 through at least 2003, Hollinger International, under the control of Hollinger, Inc., by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange or otherwise: solicited or permitted the use of its name to solicit proxies, consents, authorizations or notices of meetings in respect of Hollinger International's securities which contained statements which were false and misleading with respect to material facts or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading and which failed to furnish information required under Exchange Act Rule 14a-3.

331. By reason of the activities described in paragraphs 329 and 330 above, Hollinger International violated Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

332. By reason of the activities described in paragraphs 329 through 331 above, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Hollinger,

Inc. is liable for Hollinger International's violations of Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

I.

Finding that each of the Defendants Black, Radler and Hollinger, Inc. committed the violations alleged above;

II.

A. Permanently enjoining Defendants Black and Radler from further violations of Sections 10(b), 13(b)(5) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78n(a)] and Rules 10b-5, 13b2-1, 14a-3 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-3 and 240.14a-9] thereunder, and, as control persons, Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder;

B. Permanently enjoining Defendant Black from further violations of Exchange Act Rule 13a-14 [17 C.F.R. §§ 240.13a-14]; and

C. Permanently enjoining Defendant Hollinger, Inc. from further violations of Sections 10(b), 13(a), 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a) and 78m(b)(5)] and Rules 10b-5, 13a-1, 13a-16 and13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13a-1, 240.13a-16 and 240.13b2-1] thereunder and, as a control person, Sections 13(a) and

13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), 78n(a)] and Rules 12b-20, 13a-1, 13a-13, 14a-3 and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.14a-3 and 240.14a-9] thereunder.

III.

Ordering each of the Defendants Black, Radler and Hollinger, Inc. to disgorge any ill-gotten gains and/or unjust enrichment realized by each of them, including the salaries defendants Black and Radler received from Ravelston during the period from at least 1999 through the end of their employment with Hollinger International, plus prejudgment interest thereon;

IV.

Ordering each of the Defendants Black, Radler and Hollinger, Inc. to each pay an appropriate civil monetary penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

V.

Barring Defendants Black and Radler from serving as an officer or director of any issuer required to file reports with the Commission under Sections 12(b), 12(g), or 15(d) of the Exchange Act [15 U.S.C. §§ 78*l*(b), 78*l*(g), and 78o(d)], pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)];

VI.

Imposing a voting trust upon the shares of Hollinger International held or controlled, directly or indirectly, by Defendants Black and Hollinger, Inc.;

VII.

Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

VIII.

Granting such other and additional relief as this Court deems just and proper.

Plaintiff demands a trial by jury.

Respectfully submitted,

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Dated: March 10, 2005

TAB B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	)	
v.	)	No. 04 C 7377
CONRAD M. BLACK, Defendant.	)	

OPINION AND ORDER

I. BACKGROUND

This is a civil enforcement action brought by the Securities and Exchange Commission ("SEC") alleging violations of the Securities Exchange Act of 1934 (the "Exchange Act") and Rules issued thereunder. From 1999 through 2003, defendants Conrad Black and David Radler allegedly engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc. ("International") to themselves and others, both directly and through defendant Hollinger, Inc. ("Inc."). Radler and Inc. have each settled with the SEC and have entered into separate consent judgments. Discovery as to the claims against Black was stayed while a related criminal proceeding was pending against Black before a different judge of this court.

Following a jury trial in the criminal proceeding, Black was found guilty on three mail fraud charges in violation of 18 U.S.C. § 1341 and one obstruction of justice charge in violation of 18 U.S.C. § 1512(c). On nine other counts, including wire fraud, tax violations, and a RICO charge, Black was acquitted by the jury. A money laundering charge against Black was dismissed by the government before reaching the jury. Black's conviction and sentence have been affirmed by the Seventh Circuit. See United States v. Black, 530 F.3d 596 (7th Cir. 2008) ("Criminal Appeal").[1] In a proceeding in the Delaware

[1]On August 13, 2008, Black's and his codefendants' petition for rehearing and for rehearing en banc was denied. On August 21, 2008, the Seventh Circuit's mandate issued. Briefing on the pending collateral estoppel motion was completed prior to the Seventh Circuit's affirmance. While the SEC brought the affirmance to this court's attention, neither party has moved to supplement the briefs based on the Seventh Circuit affirmance. To the extent the parties rely on rulings of the trial court in the criminal proceeding that are directly or indirectly addressed in the Seventh Circuit's opinion, the Seventh Circuit's opinion is currently the final word on such subjects and has been considered. The time for seeking certiorari from the Supreme Court has not yet run. Even if Black seeks certiorari and the Supreme Court grants it, the collateral estoppel effect of the criminal judgment is not affected by a pending appeal. See Ross ex rel. Ross v. Board of Educ. of Twp. High Sch. Dist. 211, 486 F.3d 279, 284 (7th Cir. 2007); Prymer v. Ogden, 29 F.3d 1208, 1213 n.2 (7th Cir. 1994) (dictum noting that "it is clear that the [Seventh Circuit] has adhered to the general rule in American jurisprudence that a final judgment of a court of first instance can be given collateral estoppel effect even while an appeal is pending"); Lara-Unzueta v. Monica, 2004 WL 856570 *5 (N.D. Ill. April 20, 2004). Collateral estoppel is only affected if and when the Supreme Court--or a court in a collateral proceeding (see, e.g., 28 U.S.C. § 2255)--modifies the judgment that has been entered.

Chancery Court, International successfully obtained injunctive, declaratory, and monetary relief against Black based on conduct that overlaps with allegations contained in the SEC's Complaint in this case. See Hollinger Int'l, Inc. v. Black, 844 A.2d 1022 (Del. Ch. 2004) ("Delaware Ruling"), aff'd, 872 A.2d 559 (Del. 2005) ("Delaware Appeal"). The Delaware proceeding concerned Black's attempted sale to third parties of his controlling interest in Inc., breaches of a "Restructuring Proposal," bylaw amendments attempted by Black, and a shareholder rights plan implemented by International. Based on the claimed collateral estoppel effect of the three mail fraud convictions and the Delaware judgment, supplemented by some additional factual support, the SEC moves for summary judgment as to liability and certain injunctive relief.

The SEC seeks a finding of liability as to all counts against Black, but limits its present motion to the particular transactions that underlie the criminal convictions and a press release that was addressed in the Delaware proceeding. The transactions that are the subject of the pending motion are the sale of assets to a third party, Forum Communications Company ("Forum"), see 1st Am. Compl. ¶¶ 108-15; the sale of assets to another third party, PMG Acquisitions Corporation ("Paxton"), see id. ¶¶ 116-23; and $5,500,000 in non-competition payments to

Black and related persons[2] by American Publishing Company ("APC"), a subsidiary of International, see id. ¶¶ 133-37. As to the Forum and Paxton transactions, it is alleged that unallocated proceeds from those transactions were placed in a reserve and $600,000 of that amount was later used to make supplemental non-competition payments (the "Supplemental Payments") to Black and related persons.[3] See id. ¶¶ 127-32. The mail fraud convictions that are the basis for summary judgment based on collateral estoppel do not involve transactions in which money was funneled to Black or his co-schemers through Inc.[4]

Central to the SEC's allegations is the contention that Black made misrepresentations regarding the purported non-competition payments. Although the purchasing parties did not request non-competition agreements, Black and the others allegedly included the agreements and/or payments in the transactions as a means of diverting funds to Black and the others instead of the funds being paid directly to International. During most of the pertinent time period,

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[2]Black himself allegedly received $2,612,500.

[3]Black himself allegedly received $285,000 of this amount.

[4]There are allegations that certain proceeds from the Forum and Paxton transactions were paid to Inc. as non-competition payments, see 1st Amend. Compl. ¶¶ 111, 119; Information ¶¶ 17-18, but the mailing in criminal Count Seven does not concern that aspect of those transactions.

Black was International's CEO[5] and controlled approximately 70% of its voting shares, but directly or indirectly owned stock representing less than 20% of International's equity. Through Ravelston Corporation Limited, Black indirectly owned more than 50% of Inc. Including non-competition payments in the sale of International's assets allowed Black to receive a higher portion of the proceeds of the sales than if the proceeds had instead been paid directly to International as part of the sales price. The non-competition payments from APC did not involve a sale of APC. There allegedly was no legitimate basis for those payments.

It is also alleged that, when non-competition payments were discovered by a Special Committee of International's Board, Black and International entered into a November 2003 Restructuring Proposal under which Black agreed to resign as CEO, repay a specified amount of the non-competition payments, and devote his principal time and energy to cooperatively participating in a Strategic Process to sell International's assets. It is further alleged that Black joined in a November 17, 2003 press release disclosing this agreement to the investing public, but, at the time, he had no intention of devoting such time and energy to the Strategic Process and was

[5]It is undisputed that Black was International's CEO until November 19, 2003.

instead in the process of attempting to negotiate a transaction that would benefit himself and undermine the Strategic Process.

This conduct is alleged to prove violations of securities law based on false representations or omissions made in corporate filings and other public documents. The SEC's counts against Black allege violations of the following: (I) § 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5; (II) § 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rules 14a-3 and 14a-9, 17 C.F.R. §§ 240.14a-3, 240.14a-9; (III) § 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13 as a control person under § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a); (IV) §§ 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), as a control person under § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a); (V) Exchange Act Rule 13b2-1, 17 C.F.R. § 240.13b2-1;[6] (VI) § 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5); and (VIII) Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14.

There is no dispute as to the contents of the verdict in the criminal proceeding and rulings in the criminal and Delaware proceedings, nor is there a dispute as to the pleadings in those

[6] In its summary judgment briefs, the SEC refers to Count VI as containing allegations of Rule 13b2-1 violations.

proceedings. The parties' disagreements concern what facts were necessary to the judgments entered in those proceedings and what facts may be accorded a collateral estoppel effect. It must be determined what facts, if any, pertinent to the SEC's claims are conclusively established by the prior judgments and whether those facts are sufficient to establish every element of any of the SEC's claimed violations. Alternatively, partial summary judgment could be entered that certain facts are conclusively established even if they are not all the facts necessary to establish every element of a particular claim.

II. COLLATERAL ESTOPPEL

The law of the forum entering a judgment determines the collateral estoppel (issue preclusion) effect of that judgment. See 28 U.S.C. § 1738; Stephan v. Rocky Mountain Chocolate Factory, Inc., 136 F.3d 1134, 1136 (7th Cir. 1998); Lara-Unzueta v. Monica, 2004 WL 856570 *5 (N.D. Ill. April 20, 2004). Thus federal preclusion law determines the effect of the federal criminal proceeding and Delaware preclusion law determines the effect of the Delaware proceeding. A federal criminal conviction may be used offensively to preclude issues in a civil proceeding in which the criminal defendant is a party. Instituto Nacional De Comercializacion Agricola (Indeca) v. Continental Ill. Nat'l Bank & Trust Co., 858 F.2d 1264, 1271 (7th Cir. 1988); In re

Edgewater Med. Ctr., 332 B.R. 166, 173 (Bankr. N.D. Ill. 2005). Collateral estoppel applies based on the federal criminal proceeding if (1) the issue sought to be precluded is identical to one decided in the prior action; (2) that issue was actually litigated in the prior action; (3) the determination of the issue was essential to the final judgment in the prior action; and (4) the party against whom estoppel is invoked had a full and fair opportunity to litigate the issue in the prior action. Universal Guar. Life Ins. Co. v. Coughlin, 481 F.3d 458, 463 (7th Cir. 2007); Havoco of America, Ltd. v. Freeman, Atkins & Coleman, Ltd., 58 F.3d 303, 307 (7th Cir. 1995); Edgewater, 332 B.R. at 173; International Star Registry of Ill., Ltd. v. Bowman-Haight Ventures, Inc., 2003 WL 21640473 *4 (N.D. Ill. July 10, 2003). The basic collateral estoppel requirements under Delaware law are similar: "(1) The issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action." Betts v. Townsends, Inc., 765 A.2d 531, 535 (Del. 2000) (quoting State v. Machin, 642 A.2d 1235, 1239 (Del. Super. 1993)); Jackson v. Pikulik, 2007 WL 5006531 *2 (Del. Com. Pleas Dec. 18, 2007).

Like the federal standard, the facts precluded must have been essential to the judgment. Jackson, 2007 WL 5006531 at *1 (quoting Tyndall v. Tyndall, 238 A.2d 343, 346 (Del. 1968)).

As to both the federal and Delaware judgments, the burden is on the SEC to show that each applicable requirement is satisfied. Havoco, 58 F.3d at 307; Jackson, 2007 WL 5006531 at *1. "This includes 'establishing which issues were actually determined in [the SEC's] favor in the prior action.' Appley v. West, 832 F.2d 1021, 1025 (7th Cir. 1987) (quoting Gilldorn Savings Association v. Commerce Savings Association, 804 F.2d 390, 393 (7th Cir. 1986)). 'If a court does not make specific findings, the party must introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action. Necessary inferences from the judgment, pleadings and evidence will be given preclusive effect. If there is doubt, however, collateral estoppel will not be applied. If the decision could have been rationally grounded upon an issue other than that which the [SEC] seeks to foreclose from consideration, collateral estoppel does not preclude relitigation of the asserted issue.' PaineWebber, Inc. v. Ras, 767 F. Supp. 930, 932 (N.D. Ill. 1991)." Petit v. City of Chicago, 2001 WL 629306 *3 (N.D. Ill. May 25, 2001), aff'd, 352 F.3d 1111 (7th Cir. 2003). See also Gilldorn, 804 F.2d at 395. Additionally,

> [w]hen a party seeks summary judgment based on the doctrine of collateral estoppel, the nonmoving party may not defeat the motion simply by establishing that it has evidence that conflicts with the factual conclusions of the trier of fact in the previous case. Even if the nonmoving party produces evidence that contradicts a prior judgment, collateral estoppel bars the party from relitigating facts decided in the previous case. Prochotsky v. Baker & McKenzie, 966 F.2d 333, 334 (7th Cir. 1992); Boim v. Quranic Literary Inst., 340 F. Supp. 2d 885, 900 (N.D. Ill. 2004). The moving party bears the burden to show that collateral estoppel applies in the first instance. The nonmoving party may oppose the motion by arguing that the moving party has not met all elements of collateral estoppel. But if collateral estoppel does apply, it forecloses litigation of issues that the prior court actually and necessarily decided. Havoco v. Freeman, Atkins & Coleman, Ltd., 58 F.3d 303, 307-08 (1995).

In re Reyes, 2008 WL 2020501 *2 (Bankr. C.D. Ill. May 9, 2008).

As to the facts established by the criminal proceeding, Black raises the general contention that the facts set forth in the trial court's denial of postjudgment motions--and concomitantly the Seventh Circuit's affirmance--cannot be relied upon because they are based on the factual standard applicable to such review in that the evidence is reviewed in the light most favorable to the prosecution and a conviction must be upheld if there is sufficient evidence to support it even if the evidence would also support other conclusions. See United States v. Spells, 537 F.3d 743, 747 (7th Cir. 2008). See, e.g., Criminal Appeal, 530 F.3d at 599. It is correct, as Black contends, that collateral estoppel cannot be based on facts set forth in the court rulings unless those facts were essential to the judgment that was entered. See Petit, supra. There is no merit, however, to Black's further contention that construing facts in favor of the prosecution in the criminal proceeding is inconsistent with the summary judgment standard of resolving all genuine material facts in favor of the nonmovant and therefore cannot be a basis for applying collateral estoppel in the present case. See Reyes, supra. If fact x was a necessary element for Black's conviction on a particular count, fact x had to have been found by the jury--by beyond a reasonable doubt in a criminal case--in order to convict on that count. When the trial court and Seventh Circuit rejected Black's sufficiency of the evidence arguments and related contentions, they held that the jury properly found fact x. Since Black's convictions were upheld, all facts necessary to his convictions have been conclusively determined. The standard of review only comes into play if the jury could have found Black guilty of a particular charge based on either fact x or fact y. In that situation, if the court in the criminal proceeding held the evidence could support a jury finding as to both fact x and fact y, for collateral estoppel purposes, it cannot be concluded that fact x has been established because the jury may have instead found only fact y.[7] In that situation, if either fact x or fact y would satisfy the pertinent element of one of the SEC's present claims, collateral estoppel would still conclusively establish that element of the SEC's claim. However, if fact x were a necessary element of one of the SEC's present claims, that element of the claim could not be conclusively established based on collateral estoppel. Another possible scenario is that the jury is instructed that <u>either</u> fact x <u>or</u> fact y would satisfy an element of a particular charge and the reviewing court determines that fact y is not supported by the evidence or otherwise legally insufficient, but upholds that particular element solely based on fact x. In that situation, fact x is conclusively established for collateral estoppel purposes.

III. CRIMINAL PROCEEDING

With the above standards in mind, it must be determined which facts were necessarily established by Black's mail fraud convictions and what facts are sufficient to establish the SEC's claims in this civil lawsuit.

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[7]The result could also be the same if the court held that fact x was sufficiently supported while leaving open the question of whether fact y was sufficiently supported.

A. Established Facts

Black was found guilty on Counts One, Six, and Seven of the Superseding Information. All three of those counts were based on the same alleged scheme which is alleged in ¶¶ 1 to 33 of Count One of the Information.[8] The following general scheme is alleged in the Information.

> 2. Beginning no later than in or about January 1999 and continuing thereafter until at least in or about May 2001, at Chicago, in the Northern District of Illinois, Eastern Division and elsewhere,
>
> CONRAD M. BLACK,
> JOHN A. BOULTBEE,
> PETER Y. ATKINSON and
> MARK S. KIPNIS,
>
> defendants herein, along with others known and unknown to the grand jury, devised, intended to devise, and participated in a scheme to defraud International and International's public shareholders of money, property and their intangible right of honest services, and to obtain money and property from these victims by means of materially false and fraudulent pretenses, representations, promises and omissions, in connection with the U.S. Community Newspaper Asset Sales. This scheme is further described below.
>
> 3. It was part of the scheme that, in connection with the U.S. Community asset sales, Ravelston and its agents, including BLACK, BOULTBEE, ATKINSON and Radler, repeatedly abused

[8]The alleged scheme included other transactions besides the Forum, Paxton, and APC transactions. The Information refers to all the transactions as the "U.S. Community Newspaper Asset Sales." The additional transactions are referred to as the "CNHI I," "Horizon," and "CNHI II" transactions. The mailings that are the bases for Counts One and Six related to the APC transaction and the mailing that is the basis of Count Seven related to the Forum and Paxton transactions.

> their authority and fiduciary obligations as managers of International in order to fraudulently benefit themselves at the expense of International and its public shareholders. On multiple occasions, Ravelston's agents fraudulently inserted themselves and Inc. as recipients of non-competition fees that should have, and otherwise would have, been paid exclusively to International. Ravelston and its agents failed to disclose their self-dealing to International's Audit Committee, thereby enabling Ravelston and its agents to conceal the scheme, continue as International's managers, and quietly siphon away International assets. Ravelston's agents also abused their positions as International's managers by fraudulently causing International to mischaracterize bonus compensation payments to them as non-competition fees, in order to receive a tax benefit in Canada. KIPNIS aided and abetted this scheme by implementing the directives of Ravelston's agents and by failing to disclose this misconduct to International's Audit Committee. As a result of this scheme, defendants and their co-schemers fraudulently diverted over $32 million from International, and fraudulently deprived International of its right to receive their honest services.

Information Count 1 ¶¶ 2-3.

As to the Supplemental Payments, it is alleged that, after the Forum and Paxton transactions closed, it was realized that anticipated individual non-compete agreements had not been made part of those transactions nor had any such individual payments been made. It was then determined that $600,000 still being held in reserve from those transactions could be designated as non-competition payments. Such payments were then made to Black and his co-schemers. Id. ¶ 20-21.

Regarding the APC transaction, the following is alleged, which is also consistent with the SEC's allegations.

> 28. It was further part of the scheme that, in February 2001, BLACK, BOULTBEE, ATKINSON, Radler, and KIPNIS fraudulently mischaracterized bonus payments to the four International officers as non-competition payments. The four International officers decided that they would pay themselves, purportedly on behalf of International, a bonus of $5.5 million. The four International officers further decided to label these payments as non-competition payments, rather than bonus compensation, in order to take advantage of the potential tax benefits that genuine non-competition payments received under Canadian tax laws.
>
> 29. It was further part of the scheme that KIPNIS helped implement this decision by preparing non-competition agreements between American Publishing Company (an International subsidiary) and each of the four International officers, and then signing the agreements on behalf of American Publishing Company. In the agreements, which were backdated to December 31, 2000, BLACK, BOULTBEE, ATKINSON and Radler each promised not to compete with American Publishing Company for three years after he left International's employ. These agreements were a contrivance created for the purpose of facilitating favorable tax treatment from the Canadian tax authorities. American Publishing Company was the subsidiary through which International had owned its United States community newspapers outside the Chicago area. By the time these agreements were signed, however, International had sold all of these newspapers but one--a small weekly newspaper in Mammoth Lake, California. International was in the process of attempting to sell that newspaper and had no intent of re-entering the community newspaper business in the United States, and defendants knew that there was no legitimate justification for those non-competition agreements. BLACK, BOULTBEE, ATKINSON and Radler had signed a $5.5 million agreement not to

> compete in the newspaper business with a company that was, for all intents and purposes, no longer in the newspaper business.

Id. ¶¶ 28-29.

The mailing alleged in Count I is an envelope sent to Atkinson on February 8, 2001. It contained APC non-competition agreements to be signed by officers involved in the scheme and checks representing a portion of the non-competition payments. Id. ¶ 34. The mailing alleged in Count Six is an envelope sent to Kipnis on March 1, 2001. It contained copies of the APC non-competition agreements executed by the scheming officers. Information Count 6 ¶ 2. The mailing alleged in Count Seven is an envelope sent to Kipnis on April 9, 2001. It contained $600,000 in Supplemental Payments that were payable to Black and his co-schemers. Information Count 7 ¶ 7. See also Information Count 1 ¶ 21.

Black's criminal jury was instructed that three elements of mail fraud had to be proven beyond a reasonable doubt: (1) "that the defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by means of materially false pretenses, representations or promises, as described in the Information;" (2) "with the intent to defraud;" and (3) the mails were used in furtherance of the scheme to defraud. Jury Instr. 15166-67. See also United States v. Black, 2007 WL 3254452 *4, 7 (N.D. Ill. Nov. 5, 2007) ("Criminal Postjudgment Ruling"). As to the first element, the jury was further instructed that this could be based on one of two theories, either (1) Black obtained money or property by means of materially false pretenses, representations, or promises or (2) Black deprived International and its public shareholders of their intangible right to the honest services of International's officers, directors, and/or controlling shareholders.[9] Jury Instr. 15167-68. See also 28 U.S.C. § 1346; Criminal Appeal, 530 F.3d at 600; Criminal Postjudgment Ruling, 2007 WL 3254452 at *4, 7. As to the dishonest services theory, the jury was additionally instructed that the government must prove that Black "misused his position for private gain for himself and/or a co-schemer." Jury Instr. at 15168. See also Criminal Appeal, 530 F.3d at 600; Criminal Postjudgment Ruling, 2007 WL 3254452 at *4, 7.

Regarding the second mail fraud element, the jury was instructed: "The phrase 'intent to defraud" means that the acts charged were done knowingly, with the intent to deceive or cheat Hollinger International and its public shareholders, in order to cause a gain of money or property to the defendants or others;

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[9]The first theory will be referred to as the "conventional" theory and the second as the "dishonest services" theory.

and the potential loss of money or property to another; or, to deprive the corporation and its shareholders of their right to the honest services of their corporate officers." Jury Instr. at 15172.

As to Counts One, Six, and Seven, the trial court held that the evidence was sufficient to support Black's convictions on both the conventional and dishonest services theory. Criminal Postjudgment Ruling, 2007 WL 3254452 at *6, *7-8. On appeal, the Seventh Circuit did not find it necessary to expressly discuss every issue raised on appeal. See Criminal Appeal, 530 F.3d at 600, 606. The principal issue addressed regarding Black's mail fraud convictions was whether the dishonest services theory "private gain" instruction allowed the jury to convict Black based on a nonexistent crime. It was held that the evidence at trial compellingly supported that Black had obtained money or other property of International which satisfied either the conventional theory or the private gain aspect of the dishonest services theory. Id. at 600. The private gain instruction, however, did not state that the gain must come out of the pocket of International. Black argued that this permitted the jury to convict him based on finding that his gain was the Canadian tax benefit of having the payments characterized as non-competition payments instead of being additional management fees which he contended was the actual reason for receiving the non-competition payments. He contended a conviction on that basis would be improper because the gain must come from the party--in this case International--being deprived of honest services. See id. This contention was rejected on various grounds, including that there is no requirement that the gain come from the party being deprived of honest services and that International could still be deprived of money because--even assuming the payment of management fees was legitimate--International may have paid lower management fees if Black had been open about the tax benefits of calling such payments non-competition fees. Id. at 601-02. More pertinent to the collateral estoppel issues presently before the court, it was held that the jury could not have convicted based on the private gain being the Canadian tax benefit because that theory was not presented to the jury at trial. Id. at 602. Black's mail fraud convictions, therefore, necessarily required finding that money or property was deceptively obtained from International, whether the jury based its finding of guilt on the conventional theory, the dishonest services theory, or both.

The Count One and Count Six mailings related to the APC transaction. Therefore, the convictions on these counts necessarily required that the jury find that, as part of this transaction, Black deceptively obtained money or property of International. On the evidence and theories (including defense theories) presented to the jury, this necessarily meant that the jury found that one or more of the APC non-competition payments made to Black and his co-schemers was neither a legitimate non-competition fee nor a legitimate management fee. While a conviction of Black could have been based on the jury finding that the non-competition agreement and payment to only one of the co-schemers was illegitimate, the parties do not point to evidence that would have allowed the jury to distinguish between the separate agreements and payments. The trial court and Seventh Circuit viewed the evidence as proving all the APC non-competition agreements and payments were illegitimate. See Criminal Appeal, 530 F.3d at 599; Criminal Postjudgment Ruling, 2007 WL 3254452 at *4-6. That is a fact that will be taken as having been conclusively established by the criminal proceeding.[10] Collateral estoppel precludes Black disputing this fact in the present proceeding.

Even taking the above fact as established, Black contends his scienter for securities fraud purposes is not established because the criminal convictions were not for securities fraud. Evidence of the securities filings and representations that

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[10]Even if it may only be assumed that the jury found one agreement and one payment to be illegitimate, that would be sufficient--along with proof of other elements--to support liability based on the APC transaction. On summary judgment, the SEC is not attempting to establish the precise amount of the monetary loss that might be subject to disgorgement or other monetary relief.

underlie the present securities fraud allegations was presented at the criminal trial as support for the intent to defraud element of the criminal mail fraud charges. The government used evidence that the transactions were misrepresented in the securities filings to bolster its contention that Black and his co-schemers had not forthrightly disclosed the non-competition payments to International's Board nor been legitimately receiving the payments as mislabeled management fees. See Criminal Appeal, 530 F.3d at 599; Criminal Postjudgment Ruling, 2007 WL 3254452 at *5. There was other evidence supporting that Black had an intent to defraud. See id. It was not necessary to the mail fraud convictions that the jury find that the securities filings that underlie the securities fraud allegations contained misrepresentations or that any particular person was responsible for any misrepresentations contained in such filings. It was essential to the jury's verdict that it find that Black knowingly engaged in a scheme to defraud International, which necessarily includes that Black knew the non-competition agreements and payments were not legitimate and had not been approved by International's Board. That aspect of knowledge and intent is conclusively established. Collateral estoppel precludes Black disputing such facts in the present proceeding. In order to fully succeed on its summary judgment motion, the SEC must also present sufficient, undisputed evidence as to the contents of any securities filings or other representations that are the basis of its securities fraud claims as well as evidence adequately supporting Black's responsibility for the statements.

Turning to Count Seven of the Superseding Information, the mailing underlying that count concerned the Supplemental Payments out of the reserves of the Forum and Paxton transactions. As with the APC transaction, the jury was instructed as to both the conventional theory and dishonest services theory. Under either theory, however, it necessarily had to find that money or property taken from the reserves was deceptively obtained from International; the Supplemental Payments made to Black and his co-schemers were not legitimate non-competition fees or management fees nor approved by the Board; and Black knew this and intended it. Evidence supported such findings by the jury. See Criminal Postjudgment Ruling, 2007 WL 3254452 at *7-8, 11-12.

Independent of the facts determined by collateral estoppel based on the criminal proceeding, the following facts are undisputed and taken as true for purposes of ruling on the SEC's summary judgment motion. On the SEC's motion, the entire record is considered with all reasonable inferences drawn in favor of Black and all factual disputes resolved in favor of Black. Scott v. Harris, 127 S. Ct. 1769, 1774, 1776 (2007); Fischer v. Avanade, Inc., 519 F.3d 393, 401 (7th Cir. 2008);

Scaife v. Cook County, 446 F.3d 735, 738-39 (7th Cir. 2006). The burden of establishing a lack of any genuine issue of material fact rests on the SEC. Hicks v. Midwest Transit, Inc., 500 F.3d 647, 651 (7th Cir. 2007); Creditor's Comm. of Jumer's Castle Lodge, Inc. v. Jumer, 472 F.3d 943, 946 (7th Cir. 2007); Outlaw v. Newkirk, 259 F.3d 833, 837 (7th Cir. 2001). Black, however, must make a showing sufficient to establish any essential element for which he will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Hicks, 500 F.3d at 651; Jumer, 472 F.3d at 946.

International is a Delaware corporation and its shares are registered under the Exchange Act. Until November 19, 2003, Black was the CEO of International. Until January 17, 2004, he was International's Chairman of the Board and a member of the Board's Executive Committee. Through Ravelston, Black has a controlling interest in Inc. which has a controlling interest in International.[11]

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[11]It is disingenuous for Black (through his attorneys) to simply deny facts in the SEC's Local Rule 56.1(a)(3) Statement [129] as unsupported by the cited material even though such facts are admitted in Black's Answer to the First Amended Complaint and/or facts that can readily be conclusively established by public documents. Compare Black's Loc. R. 56.1(b)(3)(b) Stmt. [138] ¶ 5 with Black's Answer to 1st Am. Compl. [70] ¶ 16. Also, responding that certain statements are only admitted to the extent they are consistent with a cited document does not satisfy Local Rule 56.1(b)(3) which requires that the responding party specifically identify the controverted facts. See N.D. Ill. Loc. R. 56.1(b)(3)(C); Ammons v. Aramark Uniform Serv., Inc.,

International's 2001 Form 10-K, filed on April 1, 2002, disclosed the following:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $0.6 million. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15 million. Such amounts were paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

Essentially the same disclosure also appears in International's 2002 Form 10-K, filed on March 31, 2003. Black signed both of the Forms 10-K as International's Chairman, CEO, and a Director and also certified the 2002 Form 10-K in accordance with the

368 F.3d 809, 817-18 (7th Cir. 2004); Howard v. United Parcel Serv., 2006 WL 642575 *7 (N.D. Ill. March 8, 2006); Austin v. Cole Taylor Bank, 2000 WL 1047216 *2 (N.D. Ill. July 27, 2000). Cf. Beard v. Banks, 548 U.S. 521, 527 (2006) (W.D. Pa. Loc. R. 56(E)). Like lengthy briefs arguing points that have such little merit that they need not be specifically discussed in rulings, see, e.g., Criminal Appeal, 530 F.3d at 606; Delaware Appeal, 872 A.2d at 567, Black's disingenuous factual contentions can be counterproductive as the court attempts to discern the wheat among the excess of chaff. Cf. Fleming v. County of Kane, 855 F.2d 496, 497 (7th Cir. 1988) (per curiam) (quoting United States v. Keplinger, 776 F.2d 678, 683 (7th Cir. 1985)); In re DeMert & Dougherty, Inc., 271 B.R. 821, 829 n.1 (Bankr. N.D. Ill. 2001).

Sarbanes-Oxley Act of 2002. He reviewed each form before signing it.

The SEC also points to a statement Black made in response to a question at a May 2002 International shareholder meeting regarding whether he would be taking any non-compete payments in the future. See SEC Sum. Jmt. Exh. 17 at 17-18. In answering that question, he referred to purchasers requesting assurances there would not be competition through other publications. "In those papers, they wanted some assurance that we wouldn't come back with shoppers, which is always a threat to those small newspapers . . . ." It is unclear whether the reference to "those papers" is a reference to a sale of Canadian newspapers (including the CanWest transaction) that he references, or a reference to the "American Community" sales that he also mentions. The American Community sales included Forum, Paxton, and other transactions. Even if "those papers" means ones included in the American Community sales, he could have meant other transactions involving non-competition payments that, on the present motion, have not been shown to be improper. The statement at the shareholder meeting will not be considered further.

The criminal judgment against Black included that he be jointly and severally liable with co-defendants to forfeit $6,100,000 representing the APC payments and Supplemental

Payments. The imposition of a forfeiture order was determined by the trial judge in ruling on disputed motions, but the potential forfeiture amount related to each transaction was not in dispute. See United States v. Black, 526 F. Supp. 2d 870, 881 (N.D. Ill. 2007).[12] It is unclear whether the SEC contends this ruling is a basis for conclusively establishing the amount of the payments based on collateral estoppel. Compare Appley, 832 F.2d at 1026 (amount of restitution imposed was not a basis for collateral estoppel because the amounts were not actually litigated). In any event, undisputed evidence establishes that the payments from the Forum/Paxton reserves totaled $600,000 and that Black received $285,000 of that amount.[13] Undisputed evidence also

[12]This ruling was appended to and made part of Black's criminal judgment. See Pl. Sum. Jmt. Exh. 21 at 6.

[13]Copies of the checks for the payments are provided as Exhibit 8 to the SEC's summary judgment motion. In ¶ 17 of its Loc. R. 56.1(a)(3) Statement, the SEC asserts that these are accurate copies of the checks. Black does not respond to this assertion; he only responds to the other sentences of this paragraph as being descriptions of the First Amended Complaint and not being affirmative statements of fact. As has previously been indicated, Black's responses are often disingenuous attempts to avoid focusing on undisputed facts. The SEC, however, could have made determining the appropriate facts for summary judgment an easier task if it had directly asserted certain facts which likely cannot be contested--the contents of documents, ownership interests in the corporations, corporate positions of the schemers, and the amount of payments to the schemers--and provided documents establishing those facts. Instead, the SEC devotes much of its Loc. R. 56.1(a)(3) statement to describing the allegations of its First Amended Complaint--unnecessary for the statement of facts since the pleadings are otherwise before the court--and seeks to establish many of these facts with

establishes that the purported APC non-competition payments totaled $5,500,000 of which Black received $2,612,500.[14]

On January 31, 2002, Black completed International's 2002 Questionnaire for Directors and Executive Officers ("Proxy Questionnaire" or "2002 Proxy Questionnaire"), which covers calendar year 2001. It is stated on the Proxy Questionnaire that it is being used to obtain information to prepare International's Proxy Statement for the May 2002 annual stockholders meeting and International's 2001 Form 10-K. Black reviewed the Proxy Questionnaire before signing it. The non-competition payments from APC and the Forum/Paxton reserves are not disclosed in the Proxy Questionnaire.[15] Black contends the Forum/Paxton payments are disclosed on the Proxy Questionnaire, pointing to the following disclosure: "I also received . . . three (3)

statements in opinions or purported jury findings that were not always essential to the prior judgments. In any event, within ¶ 17, the SEC does assert the checks accurately represent the payments and Black has not denied that fact nor disputed the authenticity of the checks. Also, in his Answer, Black admits that he and Radler each received $285,000. Answer to 1st Am. Compl. ¶ 129.

[14]As with the Forum/Paxton payments, the SEC asserts checks provided as Exh. 10 to its motion show the amounts of the payments and Black does not dispute this assertion nor the authenticity of the checks. See Black Loc. R. 56.1(b)(3) Stmt. ¶ 19.

[15]The SEC also points to a failure to disclose these payments on the Questionnaire covering fiscal year 2000. However, none of the payments at issue were made in that year. It is only contended that certain checks were backdated to 2000.

noncompete payments in connection with the Community Group sale, and Osprey I and Osprey II transaction. Please check the Company's audit committee meeting minutes and the Company's corporate files related to these transactions for further details." Black contends the "Community Group sale" refers to the Supplementary Payments related to the Forum and Paxton transactions. The criminal proceeding, however, conclusively establishes that the payments had not been disclosed to the Audit Committee, so that reference would not have provided more detail. It is also conclusively established that the payments were not actually for agreeing not to compete and there is no evidence that Black ever signed a non-competition agreement regarding the Forum and Paxton transactions. Even if, for purposes of the SEC's summary judgment motion, this statement can be deemed a reference to Black receiving a payment from the Forum/Paxton reserves, labeling it as a "noncompete payment" does not accurately describe it and searching Audit Committee minutes and corporate files would not have produced details of the payment.

International's proxy statement for its May 2002 annual stockholders meeting ("2002 Proxy"), which was signed on March 28, 2002 and filed on April 2, 2002, contains essentially the same disclosure as that contained in the Forms 10-K. It again discloses that, in 2000 and 2001, a total of $15,600,000 was paid to Black, Radler, Atkinson, and Boultbee under non-competition agreements with purchasers of newspaper properties. There is no representation that the independent directors approved the transactions. The 2002 Proxy was completed by others, but reviewed and signed by Black. The 2002 Proxy includes a solicitation, signed by Black, to appear at the meeting to vote for directors or to sign a proxy to vote for the nominated directors.

The statements in the Forms 10-K and 2002 Proxy are inaccurate regarding the $5,500,000 of APC payments and $600,000 of Supplemental Payments to Black and his co-schemers because: (a) the payments from APC were not in connection with the sale of a newspaper;[16] (b) none of the payments was necessary to satisfy a closing condition of any newspaper sale; (c) none of the payments was actually for agreeing not to compete; (d) the 2001 payments totaled $6,100,000, not $600,000; and (e) the independent directors did not approve the payments.

As was previously discussed, the mail fraud convictions conclusively establish that Black knew (a), (b),(c), and (e). In order to find Black guilty of mail fraud, the jury was not required to find a specific amount was involved in each

[16]It need not be decided whether, well after a sale has closed, distributing proceeds sitting in unallocated reserves can be accurately described as "in connection with the sales" of the newspapers that were involved in the Forum and Paxton transactions.

transaction. The convictions, however, necessitated that the jury find that Black knowingly participated in the scheme. Part of that knowledge would be knowing the structure of the payments. Since separate evidence conclusively establishes the amount involved, on summary judgment, the only reasonable inference is that Black knew the amount of the payments. Therefore, on summary judgment, it is also established that Black knew (d).

Black contends that the jury's findings are limited to the time period of the scheme for which he was convicted which he contends concluded with the Supplemental Payments being made in April 2001, whereas the false filings occurred between January 2002 and March 2003. As the SEC points out, it was also alleged that the scheme included continuing to conceal the nature of the transactions. Information Count 1, ¶ 33. The Information alleged that the scheme continued "until at least in or about May 2001." Information ¶ 2. As previously discussed, it was not essential to the jury's verdict that it find later misrepresentations regarding the transactions. The SEC also contends that ratification by the International Board or Audit Committee would be a complete defense, that Black raised this defense,[17] and the jury necessarily rejected it in finding Black guilty on three mail fraud counts. Ratification, however,

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[17]The SEC implies the defense was based on post-April 2001 conduct.

concerns the duty of loyalty which goes to the dishonest services theory. See Jury Instr. 15169, 15170-71. The jury instructions did not necessarily require that the jury acquit Black under the conventional theory if there was a subsequent ratification. But even if ratification is a complete defense on both theories and therefore the jury necessarily rejected it, the jury could have rejected ratification based on there being no later approval, without also finding a continuing attempt to conceal.

But even if it must be assumed that the mail fraud scheme found by the jury ended in April 2001, it is not a reasonable inference that, in less than one year, Black would have forgotten the facts for which he had criminal knowledge nor have foregone his intent to continue to fraudulently deceive International regarding the payments. The only reasonable inference is that, at the time additional false statements were made, Black continued to know, or at least recklessly disregarded, that the payments were not proper, non-competition payments requested by purchasers of newspapers, that the payments had not been properly approved by International, and that the APC payments involved distributing millions of dollars in 2001.

Black points to evidence that accountants and lawyers performed the initial drafts of the Forms 10-K and 2002 Proxy without any input from him. It is undisputed, however, that Black reviewed the documents before signing them. He also provided the misleading 2002 Proxy Questionnaire. The only reasonable inference is that Black was aware of or recklessly disregarded the false statements contained in the documents.

Having determined the facts assumed to be true for purposes of summary judgment, it must be considered whether those facts support all the elements of any of the SEC's securities claims.

B. Count I

Count I alleges violations of § 10(b) and Rule 10b-5. The elements of those claims are that Black: "(1) made a false statement or omission (2) of material fact (3) with scienter and (4) in connection with the purchase or sale of securities." McConville v. SEC, 465 F.3d 780, 786 (7th Cir. 2006); SEC v. Black, 2005 WL 1498893 *3 (N.D. Ill. June 17, 2005) ("Dismissal Ruling").[18] A misstatement or omission is material if there is a substantial likelihood that disclosure of the accurate or omitted fact would be viewed by a reasonable investor as significantly altering the total mix of information available. Basic, Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); In re Guidant Corp. Sec. Litig., 536 F. Supp. 2d 913, 927 (S.D. Ind. 2008). Scienter is "a mental state embracing intent to deceive, manipulate, or

[18]This is the ruling on Black's and his then codefendants' motions to dismiss the SEC's First Amended Complaint.

defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); Tellabs, Inc. v. Makor Issues & Rights, Ltd., 127 S. Ct. 2499, 2507 (2007). See also Higginbotham v. Baxter Int'l, Inc., 495 F.3d 753, 756 (7th Cir. 2007). This may be demonstrated by knowledge of the statement's or omission's falsity, "reckless disregard of the truth," or "deliberate ignorance." Makor Issues & Rights, Ltd. v. Tellabs Inc., 513 F.3d 702, 704 (7th Cir. 2008); Pugh v. Tribune Co., 521 F.3d 686, 693 (7th Cir. 2008); Higginbotham, 495 F.3d at 756; SEC v. Jakubowski, 150 F.3d 675, 681-82 (7th Cir. 1998); SEC v. Kelly, 545 F. Supp. 2d 808, 811 (N.D. Ill. 2008).

As is discussed above, it is conclusively established that the Forms 10-K, 2002 Proxy, and 2002 Proxy Questionnaire contained false statements or omissions. The undisputed facts are both that Black reviewed and signed these statements and was responsible for concealing and mischaracterizing the true nature of the pertinent payments, which makes him responsible for the false statements or omissions in the documents. See McConville, 465 F.3d at 786-87; SEC v. Enterprises Solutions, Inc., 142 F. Supp. 2d 561, 575 (S.D.N.Y. 2001). As is discussed above, it is also conclusively established that Black knew of or at least recklessly disregarded the false statements or omissions, which satisfies the scienter requirement. The undisputed facts also satisfy materiality. A reasonable factfinder could only conclude that it is substantially likely that a reasonable investor would view $6,100,000 in unauthorized payments to officers and directors as significantly altering the total mix of information available. Cf. SEC v. Pace, 173 F. Supp. 2d 30, 33 (D.D.C. 2001); SEC v. Kalvex Inc., 425 F. Supp. 310, 315 (S.D.N.Y. 1975). See also Dismissal Ruling, 2007 WL 1498893 at *6. Black does not contend that the "in connection" element is not satisfied. It is satisfied. See SEC v. Rana Research, Inc., 8 F.3d 1358, 1362 (9th Cir. 1993); SEC v. C. Jones & Co., 312 F. Supp. 2d 1375, 1381 (D. Colo. 2004).

The SEC is entitled to summary judgment as to liability on Count I limited to statements in the 2001 Form 10-K, 2002 Form 10-K, 2002 Proxy, and 2002 Proxy Questionnaire related to the APC payments and Supplemental Payments. Although no additional relief can be obtained thereby, the SEC also moves for summary judgment on the remaining counts so those counts will also be considered.

C. Count II

Count II alleges violations of § 14(a) and Rules 14a-3 and 14a-9. Section 14(a) prohibits soliciting or permitting the use of one's name to solicit a proxy with respect to any registered security in violation of SEC rules and regulations. 15 U.S.C. § 78n(a). Rule 14a-3 requires that each solicited person receive a proxy statement containing the information specified in Schedule 14A, including, for officers seeking election, related party transactions as described in Regulation S-K. See 17 C.F.R. § 240.14a-3(a); 17 C.F.R. § 240.14A-101, Item 7(b); 17 C.F.R. § 229.404(a); Western Dist. Council of Lumber Prod. & Indus. Workers v. Louisiana Pac. Corp., 892 F.2d 1412, 1417 n.2 (9th Cir. 1989). For solicitations subject to the regulation, Rule 14a-9 prohibits using proxy statements containing materially false or misleading statements. 17 C.F.R. § 240.14a-9(a). The government bases its § 14(a) claim on the 2002 Proxy being used when Black stood for election as a Director at the 2002 annual meeting.

One element of the SEC's claimed § 14(a) violation is that the proxy contained false or misleading statements of material fact or omitted to state material facts necessary to make the statements not misleading or false. Tracinda Corp. v. DaimlerChrysler AG, 502 F.3d 212, 228 (3d Cir. 2007). Information is material "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Tracinda, 502 F.3d at 228. This is the same materiality standard that applies under § 10(b). See Basic, 485 U.S. at 231-32 (applying TSC's § 14(a) materiality standard to § 10(b)); In re NAHC, Inc. Sec. Litig., 306 F.3d 1314, 1331 (3d Cir. 2002); Levie v. Sears Roebuck & Co., 2006 WL 756063 *5

(N.D. Ill. March 22, 2006). As with Count I, materiality is satisfied. Cf. Kalvex, 425 F. Supp. at 315.

A second element is that the proxy was an essential link in accomplishing the proposed corporate action, Tracinda, 502 F.3d at 228, which, in this case, is the election of directors. Black concedes that this element is satisfied. See Weisberg v. Coastal States Gas Corp., 609 F.2d 650, 654 (2d Cir. 1979); Bender v. Jordan, 439 F. Supp. 2d 139, 169-70 (D.D.C. 2006), appeal dismissed, 2007 WL 117831 (D.C. Cir. Jan. 11, 2007).

Black also contends that scienter is an element of a § 14(a) claim. The Supreme Court has left this question open and the Seventh Circuit has not yet resolved it.[19] It appears that the majority of more recent cases hold that scienter is not an element of a § 14(a) claim. For present purposes, it is unnecessary to determine if scienter is a necessary element. Even if it is, scienter is satisfied for the § 14(a) claim just as it is satisfied for the 2002 Proxy aspect of the § 10(b) claim.

[19]Black contends that Dasho v. Susquehanna Corp., 461 F.2d 11, 29 & n.45 (7th Cir. 1972), holds that scienter is an element of a § 14(a) claim. As is being done in the present case, however, Dasho, 461 F.2d at 29, only holds that "[t]o the extent that intent is relevant, the evidence is adequate."

The SEC is entitled to summary judgment as to liability on Count II limited to statements in the 2002 Proxy related to the APC payments and Supplemental Payments.

D. Count III

Count III alleges control person liability for violations of § 13(a) and Rules 12b-20, 13a-1, and 13a-13 based on International's Forms 10-K being materially inaccurate regarding the APC payments and Supplemental Payments. Section 13(a) requires the filing of accurate Forms 10-K, including accurate reporting of the payments at issue. See 15 U.S.C. § 78m(a)(2); 17 C.F.R. §§ 229.10(a)(2); 17 C.F.R. 229.404(a) (2003); SEC v. Hilsenrath, 2008 WL 2225709 *6-7 (N.D. Cal. May 29, 2008). Section 13(a) does not itself have a scienter requirement. Hilsenrath, 2008 WL 2225709 at *7. The undisputed evidence establishes that the APC payments and Supplemental Payments were misleadingly reported on the Forms 10-K. That constitutes a violation of § 13(a).

Black's liability for the § 13(a) violation, however, is based on control person liability. In addition to establishing International's violation of § 13(a), it must be established that Black exercised general control over the operations of International and that he possessed the power or ability to control the reporting of the pertinent payments in the Forms 10-K, whether or not that power was actually exercised.

Dismissal Ruling, 2005 WL 1498893 at *7 (quoting Harrison v. Dean Witter Reynolds, Inc., 79 F.3d 609, 614 (7th Cir. 1996)). Black does not contend that the SEC fails to establish these elements. As to control person liability, Black instead argues it "is foreclosed . . . if Black can establish he acted in good faith and did not directly or indirectly induce the alleged violation." Black's Memo. [137] 16. He asserts this type of issue should be determined at trial by the trier of fact. This aspect of control person liability, however, is an affirmative defense on which Black bears the burden. Harrison, 79 F.3d at 614; 766347 Ontario Ltd. v. Zurich Capital Mkt., Inc., 274 F. Supp. 2d 926, 932 (N.D. Ill. 2003). In response to summary judgment, he must present sufficient evidence to support the applicability of this defense, which he does not. In any event, as previously discussed, the only reasonable inference from the facts established by collateral estoppel is that Black acted with scienter not in good faith.

The SEC is entitled to summary judgment as to liability on Count III limited to statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments.

E. Count IV

Count IV alleges violations of sections 13(b)(2)(A) and 13(b)(2)(B) which require that International "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of [its] assets," 15 U.S.C. § 78m(b)(2)(A), and "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that . . . (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles . . . and (II) to maintain accountability for assets; [and] (iii) access to assets is permitted only in accordance with management's general or specific authorization," id. § 78m(b)(2)(B)(ii)-(iii).

The SEC does not point to any particularized evidence of International's recordkeeping practices and no evidence of its internal controls. It contends that the fact that the Forms 10-K contained misleading statements necessarily means that subsection 2(A) is violated and the fact that Black and his co-schemers misreported the two types of payments necessarily means the internal controls were deficient. The misstatements contained in the Forms 10-K establish a violation of § 13(b)(2)(A)'s recordkeeping requirement. See Ponce v. SEC, 345 F.3d 722, 736 (9th Cir. 2003); SEC v. Patel, 2008 WL 781912 *16 (D.N.H. March 24, 2008); SEC v. World-Wide Coin Investments, Ltd., 567 F. Supp. 724, 748-49 (N.D. Ga. 1983). As to subsection (b)(2)(B), however, determining that there are deficient internal controls is a fact-intensive inquiry. See World-Wide Coin, 567

F. Supp. at 750-51; Patel, 2008 WL 781912 at *17; Marsden v. Select Med. Corp., 2006 WL 891445 *15 (E.D. Pa. April 6, 2006), vacated in part on other grounds, 2007 WL 518556 (E.D. Pa. Feb. 12, 2007). Since the SEC does not provide such factual support, it is not entitled to summary judgment based on a § 13(b)(2)(B) violation.

The SEC has sufficiently established a violation of § 13(b)(2)(A). As to Count IV, the parties raise the same control person contentions and arguments as for Count III. For the reasons previously discussed regarding Count III, Black's control person liability for the § 13(b)(2)(A) violation is sufficiently established.

The SEC is entitled to summary judgment as to liability on Count IV limited to statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments and limited to a violation of § 13(b)(2)(A) of the Exchange Act. As to the § 13(b)(2)(B) claim, the SEC is entitled to summary judgment that it is conclusively established that the 2001 and 2002 Forms 10-K contain inaccuracies related to the APC payments and Supplemental Payments.

F. Counts V and VI

Counts V and VI allege that Black falsified books and records of International. Count V is based on Rule 13b2-1 which prohibits directly or indirectly falsifying or causing to be falsified books and records subject to § 13(b)(2)(A). Count VI is based on § 13(b)(5) which prohibits knowingly falsifying books and records subject to § 13(b)(2)(A). As was discussed, regarding Count IV, violations of § 13(b)(2)(A) are established. Causation is satisfied in that it is conclusively established by collateral estoppel that Black knowingly provided inaccurate information in his 2002 Proxy Questionnaire and knowingly failed to disclose to the Audit Committee accurate information about the pertinent payments.

Count VI also alleges that Black violated § 13(b)(5) by evading internal controls. Since the SEC does not present evidence regarding internal controls, this claim is not established. Summary judgment as to liability will not be granted as to this aspect of Count VI. As with the § 13(b)(2)(B) claim discussed above, summary judgment is established as to specified facts.

The SEC is entitled to summary judgment as to liability on Counts V and VI limited to statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments and limited to violations of § 13(b)(2)(A)'s recordkeeping requirement. As to the aspect of Count VI based on circumventing the internal control requirements of § 13(b)(2)(B), the SEC is entitled to summary judgment that it is conclusively established that the 2001 and 2002 Forms 10-K contain inaccuracies related to the APC payments and Supplemental Payments and that Black caused those inaccuracies to be on the Forms.

G. Count VIII

In Count VIII, the SEC alleges that Black violated Rule 13a-14(b) which, in accordance with Sarbanes-Oxley, required that Black, as International's CEO, certify as to the 2002 Form 10-K that: "Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report." 17 C.F.R. § 240.13a-14(b)(2) (2003). The parties agree that Black signed such a certification for the 2002 Form 10-K.[20] As previously discussed, it is established that this certification was knowingly false in that Black knew the APC payments and Supplemental Payments were misleadingly reported or omitted.

Black contends a violation of the certification requirement of Rule 13a-14(b) does not support a separate cause of action. He contends such conduct is only actionable if it violates some other actionable provision of the securities laws. Two district court cases have so held, see In re Intelligroup Sec. Litig., 468 F. Supp. 2d 670 706-07 (D.N.J. 2006) (no private

[20]The certification requirement was not in effect at the time the 2001 Form 10-K was filed.

right of action for violation of certification requirement); In re Silicon Storage Tech., Inc., Sec. Litig., 2007 WL 760535 *17 (N.D. Cal. March 9, 2007) (no independent claim for a false certification), and the SEC so indicated at the time it first proposed Rule 13a-14, see SEC Release No. 8124, 2002 WL 3170215 *9 (Aug. 28, 2002) ("An officer providing a false certification potentially could be subject to Commission action for violating Section 13(a) or 15(d) of the Exchange Act and to both Commission and private actions for violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5."); 67 Fed. Reg. 57,276, 57,280 (Sept. 9, 2002) (same). The SEC contends cases have held that the SEC may base enforcement actions directly on violations of Rule 13a-14. The two cases cited by the SEC, however, hold that sufficient facts are alleged to state the Rule has been violated by a false certification, but neither addresses whether a false certification can stand as an independent claim. See SEC v. Brady, 2006 WL 1310320 *5 (N.D. Tex. May 12, 2006);[21] SEC v. Sandifur, 2006 WL 538210 *8 (W.D. Wash. March 2, 2006).[22] Many

[21]The entire discussion in Brady directly addressing the certification claim is the following. "SEC asserts that Brady and Beecher are directly liable under . . . SEC Rule 13a-14, 17 C.F.R. § 240.13a-14 (2008)." Brady, 2006 WL 1310320 at *2. "As to the books-and-records claims, SEC has adequately pleaded . . . that Beecher committed a primary violation of Rule 13a-14." Id. at *5.

[22]The entire discussion in Sandifur, 2006 WL 538210 at *8, is: "The tenth claim alleges that Defendant Ness signed a

cases have held that a violation of the certification requirement may be considered in determining whether scienter is adequately alleged or proven, though cases differ as to the weight of such allegations or evidence. See In re Intelligroup Sec. Litig., 527 F. Supp. 2d 262, 356-57 (D.N.J. 2007); In re Proquest Sec. Litig., 527 F. Supp. 2d 728, 742-43 (E.D. Mich. 2007); In re BearingPoint, Inc. Sec. Litig., 525 F. Supp. 2d 759, 773 (E.D. Va. 2007).

Consistent with the SEC Release and the two cases that have addressed the issue, it is held that a false Sarbanes-Oxley certification does not state an independent violation of the securities law. Therefore, summary judgment will not be granted as to Count VIII. Instead, Count VIII will be dismissed for failing to state a claim.

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false Sarbanes-Oxley certification that was included in Metropolitan's 2002 10-K. (Compl.¶ 94.) In addition to this specific allegation, the claim also relies on and incorporates the complaint's other preceding allegations. As in the first, second and sixth claims, the Court finds that the allegations adding up to the tenth claim provide the who (Defendant Ness), what (false certification), when (filed December 31, 2002), where (in the 2002 10-K), and how (by signing it) necessary to allow Defendant Ness to prepare his defense. Therefore, the tenth claim is pled with sufficient particularity and Defendant Ness's motion as to this claim is DENIED."

IV. DELAWARE PROCEEDING

Still to be considered is whether the collateral estoppel effect of the Delaware proceeding supports entering summary judgment in favor of the SEC on Count I to the extent it is based on Black joining in a November 17, 2003 press release regarding the Restructuring Proposal. The SEC contends that Black falsely represented in the press release that he had a present intent to comply with the Restructuring Proposal including by devoting his time and attention to the Strategic Process for selling International's assets and by refraining from engaging in transactions for his own benefit that would undermine the Strategic Process. In the Delaware proceeding, the Chancery Court entered a final judgment for monetary and injunctive relief based on, inter alia, fiduciary violations and breaching the Restructuring Proposal.[23] Similar to an argument made regarding

[23]It is unnecessary to separately address the holdings of the Supreme Court of Delaware. Without a discussion as to specific findings and holdings, the Supreme Court of Delaware affirmed all the essential findings and holdings of the Chancery Court, stating: "To the extent the Court of Chancery made findings of fact, those findings are amply supported by the evidentiary record and are the result of a logical and orderly deductive process. To the extent the Court of Chancery made determinations of law that were based upon those findings, and that were essential to resolving the claims and counterclaims of the parties, we find those conclusions to be free from legal error. The rationale for the rulings of the Court of Chancery are set forth in its extensive Opinion of February 26, 2004 and its bench ruling, and no useful purpose is served by further discussing those rulings in a separate opinion. We therefore uphold the judgment(s) on the basis of the Court of Chancery's

the collateral estoppel effect of the federal convictions, Black contends that a representation in the press release being intentionally false was not an essential element of any claim in the Delaware proceeding so there cannot be a sufficient basis for establishing a § 10(b) violation. The question, however, is whether essential findings made in the Delaware proceeding are only consistent with statements in the press release being knowingly false at the time they were made. It does not matter whether having a false representation in the press release was itself an essential element of any claim in the Delaware proceeding.

Essential to the Chancery Court's finding of a breach of contract, were findings that Black breached promises in the Restructuring Proposal that he would devote his principal time and energy to the Strategic Process and that he would not enter into transactions that would interfere with the Strategic Process. Delaware Ruling, 844 A.2d at 1063. He breached these promises by attempting to sell to the Barclay Brothers his interest in Inc., which would also be a controlling interest in International. The Barclay Brothers had initially contacted

well-reasoned Opinion and bench ruling. Our affirmance of those judgments, however, should not be viewed as approval or disapproval of statements that are dictum, i.e., rulings that were not essential to a resolution of the claims before the Court of Chancery and to the award of the judgment(s) affirmed by this Court." Delaware Appeal, 872 A.2d at 567.

Black in an attempt to purchase The Daily Telegraph, one of International's premier newspaper properties. While this would be a collateral estoppel basis for conclusively establishing that these breaches occurred, the breach of contract claim did not require any finding of intent, including whether Black intended to breach the agreement when he first entered into it. Instead, the SEC must primarily rely on findings regarding the breaches of fiduciary duty.

The Chancery Court summarized the breaches of fiduciary duty as follows:

> Black concealed from the International board the Barclays' intense interest in acquiring [the Telegraph]. Letters sent to Black by the Barclays seeking to purchase the Telegraph were never given to the International board. Rather, Black took it upon himself to first reject that opportunity and later to divert that opportunity to Inc. The fact that Black mentioned to Lazard [International's financial advisor under the Strategic Process] that the Barclays were a possible purchaser with an interest in the Telegraph did not fulfill his obligation to be candid to his fellow directors. Rather, as previously detailed, Black used his knowledge that the Strategic Process would take several months and involve a market canvass to induce the Barclays to deal through him outside of the Strategic Process as a "means" to their "end" of controlling the Telegraph. Black compounded this improper behavior by giving false assurances that he was honoring his obligations to International and not shopping Inc. Adding to his misconduct, Black used confidential information about International to deal for himself and Inc. without disclosing that to the International board.

> Thus, Black violated his fiduciary duty of loyalty by, among other acts, (1) purposely denying the International board the right to consider fairly and responsibly a strategic opportunity within the scope of its Strategic Process and diverting that opportunity to himself; (2) misleading his fellow directors about his conduct and failing to disclose his dealings with the Barclays, under circumstances in which full disclosure was obviously expected; (3) improperly using confidential information belonging to International to advance his own personal interests and not those of International, without authorization from his fellow directors; and (4) urging the Barclays to pressure Lazard with improper inducements to get it to betray its client, International, in order to secure the board's assent to the Barclays Transaction. In sum, Black intentionally subverted the International Strategic Process he had pledged to support through a course of conduct involving misleading and deceptive conduct toward his fellow directors, all designed with the goal of presenting them with a "fait accompli." Most critically, the Restructuring Proposal did exist and constricted Black's, and therefore Inc.'s, range of action. It is difficult to conceive of a meaningful definition of the duty of loyalty that tolerates conduct of this kind.

Delaware Ruling, 844 A.2d at 1061-62.

The Chancery Court found that Black had rebuffed initial overtures from Barclay regarding purchasing the Telegraph, including as late as November 3, 2003. Id. at 1035-36, 1039. It was also found that International was not informed of this opportunity. Id. at 1036. In late October 2003, a Special Committee of International's Board initially concluded that there had been $15,600,000 in improper non-competition payments and

Black was aware of this. Id. at 1036, 1038. In a letter dated November 6, 2003, Black and the others were informed in writing and given until November 10 to respond and provide evidence the payments had been approved. Id. at 1038. In his November 10 response, Black proposed selling off assets, which led to the negotiation process that resulted in the Restructuring Proposal. See id. at 1038-39. As found by the Chancery Court, actual negotiations began on November 13 and an agreement was reached on November 15. Id. at 1040-41. The Restructuring Proposal was first made public in the November 17, 2003 press release which Black participated in crafting, reviewed, and specifically approved. Id. at 1043, 1076. Between the November 10 letter and beginning formal negotiations on November 13, the Chancery Court found that, on November 11, Black "reached out to the Barclays" by informing David Barclay that Black had a "thought worthy of discussion." Id. at 1039-40. As to the discussions with the Barclays, it was further found:

> Knowing that International's time frame for the Strategic Process was not an expedited one and knowing that the International board was relying upon the contractual commitments he had made in ¶¶ 6 and 7 of the Restructuring Proposal, Black used this breathing room to pursue transactions in violation of the Restructuring Proposal. Most notably, on November 17, 2003, Black began to turn the Barclays away from their interest in a direct purchase of The Daily Telegraph and towards a purchase of Inc.

Id. at 1044-45.

Essential to the Chancery Court's findings of fiduciary violations were its findings that Black purposefully misled International's Board by hiding the Barclay discussions from members of the Board. The discussions with the Barclays and the deception occurred both before and after the November 15 agreement to the Restructuring Proposal and the November 17 date of the press release. The Chancery Court does not specifically find when the press release was finally approved.[24] It would have been sometime between reaching agreement on the Restructuring Proposal on November 15 and the release being issued on November 17. While it could be inferred that approval would have occurred closer to the 17th than the 15th, Black can only be estopped from contending the approval occurred any earlier than November 15.

The Chancery Court found that Black had undisclosed discussions with the Barclays through November 3. It was not until November 11 that Black became interested in what the Barclays might have to offer. On November 17, Black first tried to interest the Barclays in purchasing Inc. instead of the Telegraph. Before and after the November 15 date on which it is presently assumed Black agreed to the press release, Black was

[24]Neither party points to the evidence that was before the Chancery Court on this issue.

intentionally hiding the Barclays discussions from the Board. It is established that Black was deceptively engaging in violations of his fiduciary duties. It is also established that Black engaged in such a violation and also breached the Restructuring Proposal on the same day that the press release was issued. Treating these facts as established,[25] could a reasonable finder of fact only conclude that, two days before soliciting the Barclays' interest, Black already had no intention of upholding the promises at issue? In other words, could a factfinder reasonably find that Black had a sincere change of intent for the couple days that the Restructuring Proposal was being negotiated?

[25]The Restatement provides that, absent changed circumstances, collateral estoppel may be directly applied to situations that are close in time, for example, a finding that a person was incompetent on one day may conclusively establish that he or she was incompetent a week later. See Restatement (Second) Judgments § 27 cmt. c, illus. 7-8 (1982). In a criminal case, however, the Supreme Court of Delaware has held that a person being found not guilty by reason of insanity does not conclusively establish that he was insane at the time he allegedly committed a different crime a few hours earlier, because a finding as to the earlier crime and time period was not essential to the judgment in the other case. See Taylor v. State, 402 A.2d 373, 375-76 (Del. 1979) ("Taylor I"). But see United States ex rel. Taylor v. Redman, 500 F. Supp. 453, 455-58 (D. Del. 1980) (granting habeas corpus relief to the defendant in Taylor I based on collateral estoppel as incorporated in the Double Jeopardy provision of the federal Constitution). Following the Delaware Supreme Court precedent, collateral estoppel may not be directly applied to conclusively establish that Black had a particular intent on November 15. As discussed in the text, however, the only reasonable inference from the established facts is that he had the pertinent scienter on November 15.

The Chancery Court found that Black acted with the knowledge that the Strategic Process gave him "breathing room." See id. The only finding that would be consistent with essential facts established by the Chancery Court's finding is that Black intended to continue his improper conduct with the Barclays even while agreeing otherwise in the Restructuring Proposal and agreeing to publicly declare otherwise in the press release. Based on the established facts, the only reasonable inference is that Black had the necessary § 10(b) scienter at the time he agreed to issue the pertinent statements in the press release.

Black makes passing reference to the materiality of the press release not being sufficiently shown, but does not provide any argument in support of this assertion. In any event, it can only be found that his representations in the press release regarding cooperating with the Strategic Process would be viewed by a reasonable investor as significantly altering the total mix of information available.

Black's other contention regarding the collateral estoppel effect of the Delaware proceeding is that the offensive use of nonmutual collateral estoppel should be applied in a strictly limited manner. Delaware precedents support that whether to permit the offensive use of collateral estoppel is a discretionary determination. Krigstein v. Krigstein, 2000 WL

145823 *1 (Del. Super. Feb. 3, 2000); Boone v. Oy Partek Ab, 724 A.2d 1150, 1154 (Del. Super. 1997), aff'd by unpublished order, 707 A.2d 765 (Del. 1998). Factors to consider include fairness; intervening changes in the law; whether judicial economy is promoted; whether the defendant had incentive to vigorously defend the prior lawsuit; whether there are other inconsistent judgments; and whether the defendant would have procedural opportunities in the latter suit that were not available in the prior suit. Krigstein, 2000 WL 145823 at *1; Boone, 724 A.2d at 1154; Chrysler Corp. v. New Castle County, 464 A.2d 75, 82 (Del. Super. 1983) (citing Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979)).

Black had strong incentive to litigate the Delaware proceeding which not only concerned his ability to control International and sell Inc., but also involved a large amount of money. The monetary judgment entered totaled nearly $30,000,000 plus interest. While the hearing on the matter was initially for preliminary relief, there is no contention that Black had an inadequate opportunity for discovery or to present his case before the court entered a final judgment, in part based on summary judgment. Neither party points to other inconsistent judgments or pertinent changes in the law. Black does not point to any procedural opportunity in the present case that he did not have in the Delaware proceeding. It is fair to permit the offensive use of collateral estoppel.

The SEC is entitled to summary judgment as to liability on Count I based on Black's representations in the November 17, 2003 press release that he had a present intent to comply with the Restructuring Proposal including by devoting his time and attention to the Strategic Process for selling International's assets and by refraining from engaging in transactions for his own benefit that would undermine the Strategic Process.

V. INJUNCTIVE RELIEF

The SEC seeks the entry of an injunction consistent with the findings of liability. It seeks a permanent injunction and an officer and director bar.

Section 21(d)(1) of the Exchange Act authorizes the SEC to seek a permanent injunction prohibiting a person from committing future violations of the securities laws. 15 U.S.C. § 78u(d)(1).

> [A]ctions for statutory injunctions need not meet the requirements for an injunction imposed by traditional equity jurisdiction. "[O]nce a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations." SEC v. Holschuh, 694 F.2d 130, 144 (7th Cir. 1982). The court must consider the following factors in determining the likelihood of future violations: (1) the gravity of harm caused by the offense;

> (2) the extent of the defendant's participation and degree of scienter; (3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transactions; (4) the defendant's recognition of his own culpability; and (5) the sincerity of his assurances against future violations. Id.

SEC v. Randy, 38 F. Supp. 2d 657, 672 (N.D. Ill. 1999).

Section 21(d)(2) permits a court to prohibit a person from serving as an officer or director of a public company if violations of § 10(b) show the person is unfit for such service. 15 U.S.C. § 78u(d)(2). "In determining whether to order the bar, a court may consider: '(1) the 'egregiousness' of the underlying securities law violation; (2) the defendant's 'repeat offender' status; (3) the defendant's 'role' or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur.'" SEC v. First Pac. Bancorp, 142 F.3d 1186, 1194 (9th Cir. 1998) (quoting SEC v. Patel, 61 F.3d 137, 141 (2d Cir. 1995)). Accord SEC v. Koenig, 532 F. Supp. 2d 987, 994 (N.D. Ill. 2007).

Black contends that neither form of relief should be granted because it has not been established that he knowingly engaged in any securities law violation. As is discussed above, there are sufficient facts to establish a number of knowing misrepresentations that violated § 10(b). Black also contends that the requested relief is unnecessary because he is 63 years old and, absent his conviction being overturned by the Supreme Court, will be in prison until he is 70. He contends this means he is not likely to commit any future violations or again serve as an officer or director.

Substantial and knowing securities laws violations have been shown, including misrepresentations in two Forms 10-K, a proxy statement, a proxy questionnaire, and a press release. These violations involved substantial amounts of money. This is not Black's first violation. It is undisputed that, in 1982, he consented to entry of a permanent injunction in a different SEC enforcement action. Black points to nothing supporting that he has acknowledged his culpability nor anything indicating a sincere desire to act properly in the future. Black's current imprisonment is not sufficient reason to deny an injunction. See SEC v. Blackwell, 477 F. Supp. 2d 891, 911-12 (S.D. Ohio 2007); SEC v. Patterson, 2006 WL 770626 *3 (N.D. Okla. March 23, 2006).

The two forms of injunctive relief will be granted. Other than the order for injunctive relief, which is a judgment, no judgment will be entered at this time. See generally Fed. R. Civ. P. 54(b). The government shall submit a proposed order for injunctive relief that is consistent with the actual violations upon which summary judgment has been held appropriate. Prior to submitting the proposed order, the government shall provide Black with sufficient opportunity to suggest modifications.

Black's pending motions for entry of a proposed discovery schedule will be denied without prejudice. Prior to the next status hearing, the parties shall confer regarding what discovery may be necessary to resolve the remaining issues in this case. The parties shall submit a joint proposed discovery plan.

IT IS THEREFORE ORDERED that defendant's motions for entry of proposed discovery plan [120, 124] are denied without prejudice. Plaintiff's motion for summary judgment [127] is granted in part and denied in part. Count VIII of the First Amended Complaint is dismissed. By October 20, 2008 the parties shall submit a joint proposed discovery schedule and plaintiff shall submit a proposed order for injunctive relief. A status hearing will be held on October 22, 2008 at 11:00 a.m.

As to the following issues, plaintiff is entitled to summary judgment as to liability:

(1) Count I based on (a) statements in the 2001 Form 10-K, 2002 Form 10-K, 2002 Proxy, and 2002 Proxy Questionnaire related to the APC payments and Supplemental Payments and (b) Black's representations in the November 17, 2003 press

release that he had a present intent to comply with the Restructuring Proposal including by devoting his time and attention to the Strategic Process for selling International's assets and by refraining from engaging in transactions for his own benefit that would undermine the Strategic Process;

(2) Count II based on statements in the 2002 Proxy related to the APC payments and Supplemental Payments;

(3) Count III based on statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments;

(4) Count IV based on statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments and limited to a violation of § 13(b)(2)(A) of the Exchange Act; and

(5) Counts V and VI based on statements in the 2001 and 2002 Forms 10-K related to the APC payments and Supplemental Payments and limited to violations of the recordkeeping requirement of § 13(b)(2)(A) of the Exchange Act.

Additionally, (6) as to the Count IV § 13(b)(2)(B) claim, plaintiff is entitled to summary judgment that it is conclusively established that the 2001 and 2002 Forms 10-K contain inaccuracies related to the APC payments and Supplemental

Payments; and (7) as to the aspect of Count VI based on circumventing the internal control requirements of § 13(b)(2)(B) of the Exchange Act, the SEC is entitled to summary judgment that it is conclusively established that the 2001 and 2002 Forms 10-K contain inaccuracies related to the APC payments and Supplemental Payments and that Black caused those inaccuracies to be in the Forms.

ENTER:

William T. Hart

UNITED STATES DISTRICT JUDGE

DATED: SEPTEMBER 24, 2008

TAB C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	)	
v.	)	No. 04 C 7377
CONRAD M. BLACK, Defendant.	)	

OPINION AND ORDER

This is a civil enforcement action brought by the Securities and Exchange Commission ("SEC") alleging violations of the Securities Exchange Act of 1934 ("Exchange Act") and Rules issued thereunder. From 1999 through 2003, defendants Conrad Black and David Radler allegedly engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc. ("International")[1] to themselves and others, both directly and through defendant Hollinger, Inc. ("Inc."). Radler and Inc. have each settled with the SEC and have entered into separate consent judgments. Discovery as to the claims against Black was stayed while a related criminal proceeding was pending against Black before a different judge of this court.

[1]International is now known as the Sun-Times Media Group.

Following a jury trial in the criminal proceeding, Black was found guilty on three mail fraud charges in violation of 18 U.S.C. § 1341 and one obstruction of justice charge in violation of 18 U.S.C. § 1512(c). Black's conviction and sentence were affirmed by the Seventh Circuit and a petition for certiorari is pending. See United States v. Black, 530 F.3d 596 (7th Cir. 2008), cert. filed, 77 U.S.L.W. 3432 (Jan. 9, 2009). In a proceeding in the Delaware Chancery Court, International successfully obtained injunctive, declaratory, and monetary relief against Black based on conduct that overlaps with allegations contained in the SEC's Complaint in this case. See Hollinger Int'l, Inc. v. Black, 844 A.2d 1022 (Del. Ch. 2004), aff'd, 872 A.2d 559 (Del. 2005).

In the present case, primarily relying on the collateral estoppel effect of the judgments in the criminal and Delaware proceedings, summary judgment was granted against Black, but limited to particular counts and based on particular statements. See SEC v. Black, 2008 WL 4394891 *22 (N.D. Ill. Sept. 24, 2008) ("Estoppel Ruling"). As to those liability determinations,[2] the parties now seek a determination as to the amount of disgorgement

[2]The SEC represents that it still intends to pursue additional aspects of its claims that were not resolved in the Estoppel Ruling, including claims related to criminal counts on which Black was acquitted.

and related civil penalties.[3] They primarily rely on facts contained in a recent stipulation of the parties and the factual determinations contained in the Estoppel Ruling, as well as some additional documents. The parties have agreed that the court can decide this issue based on the stipulation and documentary submissions.

All the violations that were determined to have occurred involved Non-Competition Payments to Black by American Publishing Company ("APC") and "Supplemental Payments" to Black related to the "Forum" and "Paxton" transactions. See Estoppel Ruling, 2008 WL 4394891 at *1. The violations are based on statements contained in the following documents: Black's 2002 Proxy Questionnaire dated January 31, 2002, see id. at *10; International's 2001 Form 10-K filed April 1, 2002, see id. at *9; International's 2002 Proxy Statement filed April 2, 2002, see id. at *10; International's 2003 Form 10-K filed March 31, 2003, see id. at *9; and a press release dated November 17, 2003, see id. at *17. Black committed violations of the following Exchange Act provisions: § 10(b) and Rule 10b-5, see id. at *13;

[3]A judgment for injunctive relief based on the Estoppel Ruling has already been entered. See Docket Entry [170]. Black is enjoined from committing further violations of specified securities laws and from acting as an officer or director of an issuer of securities registered under the Exchange Act.

§ 14(a), see id. at *14; § 13(a), see id.; and §§ 13(b)(2)(A)-(B), see id. at *15, 16.

The SEC does not seek disgorgement of the Non-Competition and Supplemental Payments since those were previously repaid pursuant to rulings in other cases. Instead, the SEC presently seeks disgorgement of compensation Black received directly or indirectly from International from 2001 through 2003. As to most of the compensation, International paid management fees to Ravelston and other corporations controlled by Black and Black received compensation directly from those corporations (or through subsidiaries of those corporations) representing management fees paid by International. Based on the parties' stipulation, the SEC contends the compensation directly or indirectly paid to Black from International totals $10,817,191.60.[4] The SEC's theory is that, had Black not covered up the Non-Competition and Supplemental Payments in late 2000, by early 2001, International's Board of Directors would have terminated Black's positions and relationship with International and discontinued any further direct or indirect compensation as it promptly did following a November 2003 determination that

[4]The payments were in Canadian funds and the parties have stipulated to the appropriate conversion rates for United States funds. Except where noted, the dollar amounts stated in today's ruling are all in United States dollars.

Black had improperly received the Non-Competition and Supplemental Payments. Black disputes what portion of the $10,817,191.60 should be considered compensation from International or causally linked to the found violations, particularly whether any 2001 payments can be causally linked to statements made in 2002 and 2003. Black also contends that, even if some compensation is causally linked to his securities violations, he should not be required to return all the compensation since International benefitted from the services he provided for the compensation.

Disgorgement is an equitable remedy designed to deprive a wrongdoer of unjust enrichment and also to deter others. SEC v. Alanar, Inc., 2008 WL 1994854 *4 (S.D. Ind. May 6, 2008) (quoting SEC v. First City Fin. Corp., 890 F.2d 1215, 1230 (D.C. Cir. 1989)); SEC. v. Michel, 521 F. Supp. 2d 795, 830 (N.D. Ill. 2007); SEC v. Jakubowski, 1997 WL 598108 *2 (N.D. Ill. Sept. 19, 1997) (quoting SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1474 (2d Cir. 1996)). The district court has broad discretion in determining whether to award disgorgement and in setting the amount. Alanar, 2008 WL 1994854 at *4; Michel, 521 F. Supp. 2d at 830; SEC v. Collins, 2003 WL 21196236 *5 (N.D. Ill. May 21, 2003). Disgorgement of salaries and other forms of compensation may be an appropriate remedy. See SEC v. Koenig, 557 F.3d 736, 744-45 (7th Cir. 2009); SEC v. Church Extension of Church of Church, Inc., 429 F. Supp. 2d 1045, 1050 (S.D. Ind. 2005); SEC v. Conaway, 2009 WL 902063 *20 (E.D. Mich. March 31, 2009).

As to the proofs required:

> . . . The SEC is required to show that the amount of disgorgement is a "reasonable approximation" of the profits the defendant reaped from the wrongful conduct. See First City Financial Corp., 890 F.2d at 1231; SEC v. Randy, 38 F. Supp. 2d 657, 673-74 (N.D. Ill. 1999). The burden then shifts to the defendant to show that this approximation is inaccurate. First City Financial Corp., 890 F.2d at 1232; Randy, 38 F. Supp. 2d at 674. Any ambiguity in the calculation should be resolved against the defrauding party. SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996); SEC v. Patel, 61 F.3d 137, 140 (2d Cir. 1995); SEC v. Great Lakes Equities Co., 775 F. Supp. 211, 214 n.21 (E.D. Mich. 1991)[, aff'd, 12 F.3d 214 (6th Cir. 1993)]. However, disgorgement is not a punitive remedy. Rowe v. Maremont, 850 F.2d 1226, 1241 (7th Cir. 1988).
>
> Courts do not require the SEC to trace every dollar of a defendant's ill-gotten gains. SEC v. First Pacific Bancorp., 142 F.3d 1186, 1192 n.6. (9th Cir. 1998). Where the defendants have commingled the money, the SEC is not required to identify the misappropriated money. Great Lakes Equities Co., 775 F. Supp. at 214 n.21. "Since calculating disgorgement may at times be a near-impossible task, the risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." Id., citing First City Fin. Corp., 890 F.2d at 1232.

Alanar, 2008 WL 1994854 at *4. In making its showing of a reasonable approximation, the SEC must sufficiently show that amount is causally related to the violation shown. Michel,

F. Supp. 2d at 830-31 (quoting First City, 890 F.2d at 1231) ("amount of disgorgement 'need only be a reasonable approximation of profits causally connected to the violation'"); Church Extension, 429 F. Supp. 2d at 1050 (quoting SEC v. Drexel Burnham Lambert Inc., 837 F. Supp. 587, 612 (S.D.N.Y. 1993), aff'd sub nom., SEC v. Posner, 16 F.3d 520 (2d Cir. 1994)) (same); SEC v. Homa, 2004 WL 1474580 *1 (N.D. Ill. June 28, 2004) (same); Collins, 2003 WL 21196236 at *5 (quoting SEC v. Patel, 61 F.3d at 139) (same).

The SEC includes compensation paid in 2001 because the Forum and Paxton transactions were entered into in Fall 2000 and Black failed to make proper disclosures at the December 2000 International Board meeting approving those transactions, as well as during 2001. The misrepresentations that support the violations found in the Estoppel Ruling, however, occurred in 2002 and 2003. The SEC's disgorgement theory is that Black would have been promptly discharged if he had made proper disclosures. The earliest improper disclosure that supports the violations found is the 2002 Proxy Questionnaire dated January 31, 2002. Had a proper disclosure been made on the 2002 Proxy Questionnaire, the earliest International would have terminated its relationship with Black would have been early 2002.[5] There

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[5]The SEC makes no contention regarding the possible effect of International being aware of the contents of this

is no contention by the SEC that, had International discharged Black following a proper disclosure, it would have demanded return of compensation (other than the Non-Competition and Supplemental Payments themselves which are not presently at issue) from a time period prior to the discharge. Any disgorgement ordered based on the violations that have been found will not include 2001 compensation.

Following the November 2003 finding that Black had improperly arranged for the Non-Competition and Supplemental Payments, International forced Black out and terminated its relationship with him within two months. It is a reasonable inference therefrom that International would have promptly terminated its relationships with Black had he, as required by the securities laws he violated, made a full and accurate disclosure of the transactions in the 2002 Proxy Questionnaire. Therefore, the burden shifts to Black to show that would not have occurred. Black presents no evidence to the contrary. Therefore, the issue is whether the SEC has adequately shown how much compensation International paid for Black's benefit in 2002 and 2003.

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document during its drafting stage, which could have occurred prior to January 31. On the other side, Black makes no attempt to identify any early 2002 compensation that he could have earned prior to any possible termination that would have resulted from a proper disclosure on this form.

It has been stipulated that certain management fees paid by International to Ravelston--$1,588,566.50 in 2002 and $1,245,318.00 in 2003 for a total of $2,833,884.50--were payments to Black as compensation. Stip. ¶¶ 9, 15. Also, directly from International newspaper the Daily Telegraph, Black received payments for being the Chairman of Telegraph Group: $462,460 in 2002 and $523,345 in 2003 for a total of $985,805.[6] Id. ¶¶ 14, 15. Thus, there are $3,819,689.50 in payments by International in 2002 and 2003 that the parties agree was compensation paid to Black (the "Stipulated Payments").

Black disputes whether other 2002 and 2003 payments to him from Ravelston derived from management fees International paid to Ravelston. Ravelston paid "dividends" to Black-controlled CBCC, which CBCC paid to Black. Those totaled $1,845,074.60 in 2003. Id. ¶ 10. Argent Corporation, a Ravelston subsidiary, paid Black a total of $1,351.40 in 2002 and 2003. Id. ¶ 11. In 2002, Ravelston paid CBCC $92,321.50 for "executive and staff compensation." Id. ¶ 12. In 2002 and 2003, there were "repayments" between Ravelston and Black that netted Black $297,545.00. Id. ¶ 13.

Except for the $3,819,689.50 of Stipulated Payments, the SEC does not point to any management fees that International paid

[6]The payment from Hollinger Digital need not be further considered since it occurred in 2001. See Stip. ¶ 14,

to Ravelston or any other Black-controlled entity during 2002 and 2003.[7] The SEC concedes that management fees represented a little more than half of Ravelston's total receipts for the 1997 to 2005 time period: $273,148,000 (Cdn) out of $510,180,000 (Cdn.). The SEC notes that most of the other receipts were non-revenue receipts such as loan repayments and share redemptions. But even assuming the source of virtually all the net distributions of Ravelston was management fees from International, when International paid the management fees is a necessary component of the SEC's disgorgement contentions. International terminating further management fees in early 2002 would not have stopped Ravelston from distributing to Black in

[7]In its opening brief, at 7, the SEC cites to ¶ 8 of the stipulation as setting forth more than $9,000,000 in payments to Black "from International through Ravelston." That paragraph of the stipulation and the chart referenced therein, however, refer only to payments received by Black. While the stipulation and/or chart refer to the payments coming from Ravelston, CBCC, and Argent, there is no stipulation (except ¶ 9) that any of the funds for those payments came to those entities from International. The SEC fails to recognize that, under its disgorgement theory of Black's relationship with International being terminated in early 2002, the key timing issue is when International made payments for Black's services (before or after the assumed early 2002 termination), not when Black received distribution of payments from one of the entities he controlled. It is stipulated that "International's Form 10-K for the year ended December 31, 2003, states that, according to information supplied by Ravelston to International, Mr. Black's interest in the management fees paid to Ravelston by International for . . . 2002 was . . . $6,485,439." Stip. ¶ 25. The SEC, however, disavows relying on this information from the Form 10-K as conclusively establishing 2002 payments potentially subject to disgorgement. See Opening Brief at 9 n.5; Reply at 7.

Ravelston from distributing to Black in 2002 and 2003 management fees that Ravelston had received prior to 2002, but not yet distributed. It would also not prevent Ravelston from having used pre-2002 management fees to provide loans to others and have those loans repaid in 2002 or later and then distributed to Black. Since, other than the Stipulated Payments, the SEC provides no reliable evidence that 2002 and 2003 Ravelston distributions to Black were derived from post-2001 management fees of International, the proven International compensation of Black that is potentially subject to disgorgement is limited to the $3,819,689.50 of 2002 and 2003 Stipulated Payments, which includes management fees paid through Ravelston and direct payments from the Daily Telegraph .

The last disgorgement issue to consider is Black's contention that he should not be required to disgorge the entire $3,819,689.50 because International benefitted from services he provided for those payments. To the extent Black sufficiently shows that he provided real and valuable services for those payments and sufficiently shows the value of the services he provided, it may be appropriate to reduce disgorgement of his compensation by that amount. See Church Extension, 429 F. Supp. 2d at 1050. Black, however, mostly relies on services he performed prior to 2002 and strong company performance that preceded 2002. During 2002 and 2003, International had net losses of, respectively, $230,629,000 and $74,308,000. Rather gallingly, Black points to the 2004 sale of the Telegraph Group to the Barclays for $1.3 billion. Black, however, attempted to usurp that sale for his own benefit. The sale was accomplished despite Black's 2003 conduct, not because of him. See Estoppel Ruling, 2008 WL 4394891 at *17-19. No offset will be made for work Black performed for the Telegraph Group or any other International entity.

Based on the foregoing, disgorgement of $3,819,689.50 will be ordered. The SEC has made no attempt to show that it would be appropriate to enter a partial judgment at this time. See generally Fed. R. Civ. P. 54(b). No judgment will be entered at this time. Black does not dispute that prejudgment interest should be included in the judgment at the time it is entered. At the time for entry of judgment, the SEC will be required to provide a new prejudgment interest calculation.[8]

Pursuant to 15 U.S.C. §§ 77t(d) and 78u(d)(3)(A), the SEC requests imposition of the maximum third-tier civil penalty. The maximum that can be imposed for a third-tier penalty committed by a natural person after February 2, 2001, but before February 15,

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[8]Based on the methodology and calculations provided by the SEC through November 30, 2008, prejudgment interest through that date would be $887,697.62 on the 2002 payments of $2,051,026.50 and $648,612.60 on the 2003 payments of $1,768,663.00 for a total of $1,536,310.22 of prejudgment interest through November 30, 2008.

2005, is the higher of $120,000 or the gross amount of pecuniary gain to the defendant. See 17 C.F.R. §§ 201.1002, 201.1003; 17 C.F.R. Pt. 201, Subpt. E, Tbl. II. Prejudgment interest is included in determining the amount of pecuniary gain that sets the maximum limit. Koenig, 557 F.3d at 744-45. The amount of disgorgement plus prejudgment interest (through November 30, 2008) is $5,355,999.72. Black's pecuniary gain from these violations also includes the $2,897,500.00 of Non-Competition and Supplemental Payments that Black received.[9] The SEC also seeks to include $120,000.00 based on the misrepresentation in the press release related to the Restructuring Proposal for International. That misrepresentation related to Black's attempt to usurp the sale of the Telegraph Group to the Barclays. Black was not able to consummate that deal for himself, so he made no direct pecuniary gain. However, including Black's compensation from the Daily Telegraph in the disgorgement amount is, in large part, based on the misrepresentation in the Restructuring Proposal. Therefore, more than $120,000.00 has already been included in the potential amount for a third-tier penalty related to the misrepresentations in the press release. No additional amount will be added. As to the violations found in the Estoppel Ruling, Black faces a maximum penalty of $8,253,499.72, plus an

[9]This amount is not included in the disgorgement because Black previously repaid these amounts.

amount equal to the additional prejudgment interest that will accrue from December 1, 2008 through the entry of judgment.

Third-tier penalties may be applied if the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii); Alanar, 2008 WL 199854 at *6; Church Extension, 429 F. Supp. 2d at 1050. Such findings are supported by the Estoppel Ruling. The imposition of a penalty is a discretionary determination to be made in light of the particular facts and circumstances of the case. 15 U.S.C. §§ 77t(d)(2), 78u(d)(3)(B); SEC v. Daly, 572 F. Supp. 2d 129, 134 (D.D.C. 2008); SEC v. Opulentica, LLC, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007). Factors that may be considered include the egregiousness of the violations, defendant's intent, whether the violations were recurring, whether defendant has admitted wrongdoing, the losses or risks of losses caused by the conduct, any cooperation defendant provided to enforcement authorities, and the imposition of other remedies or penalties. Alanar, 2008 WL 199854 at *7; Church Extension, 429 F. Supp. 2d at 1050-51.

The SEC indicates that it still intends to seek to prove additional securities violations that could not be resolved on summary judgment based on the collateral estoppel effect of the other rulings, including allegations related to the CanWest and CHNI II transactions, which involved non-competition payments much larger than those ruled upon in the Estoppel Ruling. As previously noted, no basis has been presented for entering a Rule 54(b) partial judgment at the present time. Any civil penalty imposed should be made in light of all the pertinent facts and circumstances, including other violations that have occurred and other remedies and penalties to be imposed. A determination as to an appropriate penalty can more properly be made after all the claims against Black have been resolved. At the present time, the court declines to determine an appropriate penalty to be imposed in relation to the violations presently at issue. Cf. SEC v. Liberty Capital Group, Inc., 75 F. Supp. 2d 1160, 1164 (W.D. Wash. Feb. 18, 1999). Such a determination will be made after all the claims against Black that have been raised in the present case have been resolved.

Prior to the next status hearing, the parties shall submit a joint written status report setting forth all remaining claims the SEC is still pursuing and proposing a discovery plan regarding any remaining discovery the parties expect to engage in.

IT IS THEREFORE ORDERED that plaintiff's motion for partial findings [171] is granted in part and denied in part. It is found that defendant Black will be required to disgorge $3,819,689.50, plus prejudgment interest, related to the violations found in the "Estoppel Ruling." A status hearing will be held on June 4, 2009. By June 2, 2009, the parties shall submit a joint status report.

ENTER:

William T. Hart

UNITED STATES DISTRICT JUDGE

DATED: APIL 30, 2009

TAB D

JH

FILED

JUL 1 2 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	)	No. 04 CV 7377
v.	)	Judge William T. Hart
CONRAD M. BLACK, F. DAVID RADLER and HOLLINGER, INC., Defendants.	)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 12, 2005, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Defendant Conrad M. Black's Answer and Affirmative Defenses to the First Amended Complaint,** a copy of which is attached and hereby served upon you.

Respectfully submitted,

One of the Attorneys for Defendant
Conrad M. Black

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

JUL 1 2 2005

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	No. 04 CV 7377
v.	)	Judge William T. Hart
CONRAD M. BLACK, F. DAVID RADLER and HOLLINGER, INC.,	)	
Defendants.	)	

ANSWER AND AFFIRMATIVE DEFENSES OF CONRAD M. BLACK TO THE FIRST AMENDED COMPLAINT

Defendant Conrad M. Black ("Mr. Black"), by his undersigned counsel, for his answer to the First Amended Complaint filed by the United States Securities and Exchange Commission ("Plaintiff"), sets forth the allegations contained in the First Amended Complaint below, denies each and every allegation in the First Amended Complaint except as expressly admitted herein, and alleges on knowledge with respect to himself and his own acts and on information and belief as to all other matters, that he answers each allegation of the First Amended Complaint as follows:

NATURE OF THE ACTION

1. During the period from at least 1999 to at least 2003, Defendants Conrad M. Black ("Black") and F. David Radler ("Radler") engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc. ("Hollinger International"), a public company that owns and operates newspaper publishing businesses in the United States and abroad, and to conceal their self-dealing from Hollinger International's public shareholders.

ANSWER: Mr. Black denies the allegations of paragraph 1.

2. Black, Hollinger International's former Chairman and Chief Executive Officer ("CEO"), and Radler, its former Deputy Chairman, President and Chief Operating Officer ("COO"), conducted their scheme through a series of related party transactions involving, among other things, purported "non-competition payments" by which Black and Radler diverted to themselves, to Defendant Hollinger, Inc., a Canadian public holding company controlled by Black, and to other corporate insiders approximately $85 million of the proceeds from Hollinger International's sale of newspaper publications to third parties.

ANSWER: Mr. Black denies the allegations of paragraph 2.

3. Black and Radler also orchestrated the sale of Hollinger International's newspaper publications at below-market prices to another privately-held company owned and controlled by Black and Radler, including a $1.00 transaction.

ANSWER: Mr. Black denies the allegations of paragraph 3.

4. In addition, in February 2003, Black authorized the investment of $2.5 million of Hollinger International's funds in a venture capital fund with which Black and two other directors of Hollinger International were affiliated.

ANSWER: Mr. Black denies the allegations of paragraph 4.

5. Moreover, in November 2003, Black approved a press release issued by Hollinger International in which he misled the investing public about his intention to devote his time to an effort to sell Hollinger International assets for the benefit of all of Hollinger International shareholders (the "Strategic Process") and not to undermine that process by engaging in transactions for the benefit of himself and Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 5.

6. To perpetrate their scheme, Black and Radler misrepresented and omitted to state material facts regarding the related party transactions to Hollinger International's Audit

Committee and Board of Directors. Black and Radler also misrepresented and omitted to state material facts regarding these related party transactions in Hollinger International's filings with the Commission and during Hollinger International shareholder meetings.

ANSWER: Mr. Black denies the allegations of paragraph 6.

7. Black and Radler, directly and indirectly, have engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Sections 10(b), 13(b)(5) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(b)(5), and 78n(a)] and Rules 10b-5, 13b2-1, 14a-3 and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.14a-3 and 240.14a-9] thereunder, and, as control persons of Hollinger International, Sections 13(a) and 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 12b-20, 13a-l, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-l, and 240.13a-13] thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 7 purport to state legal conclusions to which no response is required. To the extent paragraph 7 contains factual allegations, they are denied.

8. Black, directly and indirectly, has also engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Exchange Act Rule 13a-14 [17 C.F.R. §§ 240.13a-14].

ANSWER: Mr. Black avers that the allegations of paragraph 8 purport to state legal conclusions to which no response is required. To the extent paragraph 8 contains factual allegations, they are denied.

9. Hollinger, Inc., directly and indirectly, has engaged and, unless enjoined, will continue to engage in acts, practices, and courses of business that violate Sections 10(b), 13(a), 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a) and 78m(b)(5)] and Rules 10b-5, 13a-l, 13a-16 and 13b2-1 [17 C.F.R. §§ 240.10b-5, 240.13a-1, 240.13a-16 and 240.13b2-1] thereunder and, as a control person of Hollinger International, Sections 13(a) and 13(b)(2)(A),

13(b)(2)(B) and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B), 78n(a)] and Rules 12b-20, 13a-1, 13a-13, 14a-3 and 14a-9 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.14a-3 and 240.14a-9] thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 9 purport to state legal conclusions to which no response is required. To the extent paragraph 9 contains factual allegations, they are denied.

10. The Commission brings this action to enjoin such acts, practices and courses of business pursuant to Sections 20(a), 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78t(a), 78u(d), and 78u(e)].

ANSWER: Mr. Black denies the allegations of paragraph 10, except admits that Plaintiff purports to bring certain claims and avers that Plaintiff is not entitled to the relief requested.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78aa] and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

ANSWER: Mr. Black avers that the allegations of paragraph 11 purport to state legal conclusions to which no response is required. To the extent paragraph 11 contains factual allegations, they are denied.

12. The acts, practices and courses of business constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere.

ANSWER: Mr. Black avers that the allegations of paragraph 12 purport to state legal conclusions to which no response is required. To the extent paragraph 12 contains factual allegations, they are denied.

13. Black, Radler and Hollinger, Inc. (collectively "Defendants"), directly and indirectly, made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein.

ANSWER: Mr. Black avers that the allegations of paragraph 13 purport to state legal conclusions to which no response is required. To the extent paragraph 13 contains factual allegations, they are denied.

14. Defendants will, unless enjoined, continue to engage in the acts, practices and courses of business set forth in this complaint, and acts, practices and courses of business of similar purport and object.

ANSWER: Mr. Black denies the allegations of paragraph 14.

DEFENDANTS

CONRAD M. BLACK

15. Black, age 60, is a British citizen who has residences in London, England, Palm Beach, Florida and Toronto, Canada. From approximately 1978 until November 19, 2003, Black was the CEO of Hollinger International. From approximately October 1995 until January 17, 2004, Black was the Chairman of the Board of Directors of Hollinger International ("Board") and was a member of the Board's Executive Committee (the "Executive Committee").

ANSWER: Mr. Black denies the allegations of paragraph 15, except admits that (i) Mr. Black is a British citizen with residences in Palm Beach, Florida, and Toronto, Canada; (ii) Mr. Black served as CEO of Hollinger International Inc. ("International") until November 19, 2003; and (iii) Mr. Black served as Chairman of the Board of Directors of International and was a member of the Board's Executive Committee until January 17, 2004.

16. During the period from at least 1998 through November 2, 2004, Black was the Chairman of the Board of Directors and CEO of Hollinger, Inc. Black, through his personal holding company The Conrad Black Capital Corporation, owns 65.1% of The Ravelston Corporation Limited ("Ravelston"), a private Canadian corporation. Ravelston, directly and indirectly, owns approximately 78% of Hollinger, Inc.'s stock. Black is the Chairman and CEO of Ravelston.

ANSWER: Mr. Black denies the allegations of paragraph 16, except admits, upon information and belief, the allegations of the second and third sentences of this paragraph, and that until November 2, 2004, he served as Chairman of the Board of Directors and CEO of Hollinger Inc. ("Inc.").

17. Black is also a member of the Strategic Advisory Board of Trireme Partners LP, a venture capital fund. In 2003, Hollinger International made a $2.5 million investment in Trireme Associates LLC, the general partner of Trireme Partners, LP.

ANSWER: Mr. Black denies the allegations of paragraph 17, except admits, upon information and belief, the allegations of the second sentence of this paragraph.

18. From at least 1999 through 2003, Black signed Hollinger International's annual reports on Forms 10-K as Chairman, CEO and a Director of Hollinger International. From approximately August 2002 to August 2003, Black also certified Hollinger International's annual and quarterly reports filed with the Commission pursuant to the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act").

ANSWER: Mr. Black admits the allegations of paragraph 18.

19. In 1982, in SEC v. Norcen Energy Resources, Ltd. and Conrad M. Black, Exchange Act Release No. 9719, 1982 SEC LEXIS 1253 (July 20, 1982), Black consented to the entry of a Final Judgment of Permanent Injunction enjoining him from further violations of Sections 10(b), 13(d) and 14(e) of the Exchange Act and Rules 10b-5, 12b-20, 13d-1 and 13d-2 thereunder in connection with the common stock of M.A. Hanna Company or any security of any other issuer.

ANSWER: Mr. Black denies the allegations of paragraph 19, except admits that a Final Judgment of Permanent Injunction was entered in the referenced matter and refers to such Injunction for a complete statement of its contents.

F. DAVID RADLER

20. Radler, age 61, is a Canadian citizen and resides in Vancouver, Canada. During the period 1999 through November 2003, Radler resided in Chicago, Illinois and worked out of the Chicago Sun-Times building in Chicago, Illinois. From at least 1998 until his resignation on November 17, 2003, Radler was Deputy Chairman, President, COO and a Director of Hollinger International. Radler was also a member of Hollinger International's Executive Committee.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, except admits, upon information and belief, that (i) Mr. Radler resides in Vancouver, Canada; (ii) for some time, Mr. Radler resided in Chicago, Illinois and worked out of the Chicago Sun-Times building in Chicago, Illinois; and (iii) until November 17, 2003, Mr. Radler served as Deputy Chairman, COO, Director of International's Board of Directors, and a member of the Board's Executive Committee.

21. Radler is also the Deputy Chairman and COO of Hollinger, Inc. Radler owns approximately 14.2% of Ravelston stock through F.D. Radler Limited. He is also the President of Ravelston.

ANSWER: Mr. Black denies the allegations of paragraph 21, except admits, upon information and belief, the allegations of the second sentence of this paragraph.

22. From at least 1999 through 2003, Radler signed Hollinger International's annual reports on Forms 10-K as Deputy Chairman, President, COO and Director of Hollinger International.

ANSWER: Mr. Black admits the allegations of paragraph 22.

HOLLINGER, INC.

23. Hollinger, Inc. is a publicly-held Canadian company with its principal place of business located in Ontario, Canada. Hollinger, Inc. is a foreign private issuer registered with the Commission pursuant to Section 12(g) of the Exchange Act. Hollinger, Inc.'s shares are traded on the Toronto Stock Exchange under the symbol HLG.

ANSWER: Mr. Black admits the allegations of paragraph 23.

24. Hollinger, Inc. failed to file its 2003 Form 20-F with the Commission. Hollinger, Inc.'s 2003 Form 20-F was due on June 30, 2004.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24.

25. Hollinger, Inc. is a mutual fund company whose primary holding is its shares of Hollinger International stock. During the relevant period, Hollinger, Inc. had no operations.

ANSWER: Mr. Black denies the allegations of paragraph 25, except admits that Inc. operates as a mutual fund company and its primary holding is its shares of International stock.

26. During the period from at least 1998 through the present, Hollinger, Inc. has been the controlling shareholder of Hollinger International through its direct and indirect ownership of all of the shares of Hollinger International's Class B Common Stock, which has a 10-to-1 voting preference over shares of Hollinger International's Class A Common Stock.

ANSWER: Mr. Black admits the allegations of paragraph 26.

27. Other shareholders hold the majority of the Class A shares and together own the majority of the equity in Hollinger International. As of the date of the filing of this action, Hollinger, Inc. owns approximately 18.2% of the combined equity but holds approximately 68% of the combined voting power in Hollinger International.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27.

OTHER RELATED ENTITIES AND INDIVIDUALS

28. **Hollinger International** is a Delaware corporation, with its principal place of business in Chicago, Illinois. Hollinger International is a public company that owns and operates newspaper publishing businesses in the United States and abroad. Hollinger International's shares are registered with the Commission under Section 12(b) of the Exchange Act, and its Class A common stock shares are traded on the New York Stock Exchange under the symbol HLR. Hollinger International's Class B Common Shares are directly and indirectly owned by Hollinger. Inc.

ANSWER: Mr. Black denies the allegations of paragraph 28, except admits the allegations of the second, third, and fourth sentences of this paragraph, and that International is a Delaware corporation with an office located in Chicago, Illinois.

29. From approximately 1998 through June 2004, Hollinger International owned, through its wholly-owned subsidiaries, the Chicago Sun-Times, The Daily Telegraph in London, England. The Jerusalem Post in Israel and several other publications. On July 30, 2004, Hollinger International sold The Daily Telegraph for approximately $1.3 billion to Press Acquisitions Limited ("Press Acquisitions"), a company owned by David Barclay and Frederick Barclay (the "Barclays"), two brothers who own several media and retail assets in England and Europe.

ANSWER: Mr. Black admits, upon information and belief, the allegations of paragraph 29.

30. **Ravelston** is a privately-held Canadian corporation. Ravelston beneficially owns approximately 78% of Hollinger, Inc.'s stock. Ravelston is the controlling shareholder of Hollinger, Inc. Ravelston is owned and controlled by Black and Radler, who, through the Conrad Black Capital Corporation and F.D. Radler, Limited, indirectly own 65.1% and 14.2% of Ravelston, respectively. Black is the Chairman and CEO of Ravelston. Radler is the President of Ravelston.

ANSWER: Mr. Black denies the allegations of paragraph 30, except admits the allegations of the first, second, and third sentences of this paragraph.

31. **Horizon Publications, Inc.** ("Horizon") is a private Delaware corporation. Since its formation in 1999, Black and Radler, directly or indirectly, have owned approximately 75% of Horizon. Horizon has several wholly-owned subsidiaries which are directly or indirectly controlled by Black and Radler. Black is the Chairman and CEO of Horizon. Radler is the President and COO of Horizon.

ANSWER: Mr. Black denies the allegations of paragraph 31, except admits, upon information and belief, the allegations of the first sentence of this paragraph, and that Mr. Radler is the President of Horizon.

32. **Trireme Associates LLC** is the general partner of **Trireme Partners LP**, a venture capital fund. Trireme Associates LLC receives approximately 20% of the profits of Trireme Partners LP, after initial invested capital repayments are made. Trireme Associates LLC controls Trireme Partners LP. Trireme Partners LP is managed by **Trireme Management LLC** which has its principal office in New York.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. **Peter Y. Atkinson** ("Atkinson"), age 57, is a Canadian citizen who resides in Canada. From 1996 until April 27, 2004, Atkinson served as an Executive Vice President and Director of Hollinger International. During the period 1996 through 2001, Atkinson was the Vice President and General Counsel of Hollinger, Inc. In 2002 or 2003, Atkinson became the Executive Vice President of Hollinger, Inc. and remained in that position until January 2004, when he resigned. Atkinson directly or indirectly owns approximately 0.98% of Ravelston.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, except admits, upon information and belief, the allegations of the fifth sentence of this paragraph, and that (i) Mr. Atkinson resides in Canada; (ii) for some time, Mr. Atkinson served as Executive Vice President and General Counsel of International; and (iii) for some time, Mr. Atkinson served as Vice President, Executive Vice President, and General Counsel of Inc.

34. **John A. Boultbee** ("Boultbee"), age 61, is a Canadian citizen who resides in Canada. From 1990 until 1995, Boultbee served as a Director of Hollinger International. From 1995 through 2002, Boultbee served as Hollinger International's Chief Financial Officer ("CFO"). and in 1998, Boultbee became Executive Vice President of Hollinger International. During the period 1999 through 2002, Boultbee signed many of Hollinger International's quarterly reports on Forms 10-Q as Executive Vice President and CFO of Hollinger International.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, except admits, upon information and belief, the allegations of the second and fourth sentences of this paragraph, and that (i) Mr. Boultbee resides in Canada; and (ii) for some time, Mr. Boultbee served as International's Chief Financial Officer and Executive Vice President.

35. From 1998 through the present, Boultbee has been a member of Hollinger, Inc.'s Board of Directors and has held various positions as an officer, including Vice President of Finance and Treasury, Executive Vice President and CFO. Boultbee is also an Executive Vice President of Ravelston. Boultbee directly or indirectly owns 0.98% of Ravelston.

ANSWER: Mr. Black denies the allegations of paragraph 35, except admits, upon information and belief, that Mr. Boultbee indirectly owns 0.98% of Ravelston.

36. **Mark S. Kipnis** ("Kipnis"), age 56, resides in Northbrook, Illinois. From January 1998 until November 2003, Kipnis served as the Secretary and Vice President, Law of Hollinger International. Kipnis also served as general counsel for Hollinger International's Chicago owned and operated papers.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, except admits, upon information and belief, the allegations of third sentence of this paragraph, and that, for some time, Mr. Kipnis served as Secretary and Vice President of International.

37. Kipnis signed Hollinger International's proxy statements and the Notices of Annual Meeting of Stockholders which were filed with the Commission. Kipnis also signed Hollinger International's filings on Forms 8-K as Vice President, Corporate Counsel and Secretary of Hollinger International.

ANSWER: Mr. Black admits, upon information and belief, the allegations of paragraph 37.

38. **Richard N. Perle** ("Perle"), age 63, resides in Chevy Chase, Maryland. Perle has been a Director of Hollinger International since 1994. From 1994 until 1998, Perle served on the Audit and Compensation Committees of Hollinger International's Board. From 1994 until November 2003, Perle served on the Executive Committee of Hollinger International, which was comprised of Perle, Black and Radler. From 1996 through November 2003, Perle was the Co-Chairman of Hollinger Digital, a subsidiary of Hollinger International.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38, except admits, upon information and belief, the allegations of the second sentence of this paragraph, and that (i) Mr. Perle resides in Maryland; (ii) for some time, Mr. Perle served on International's Audit, Compensation, and Executive Committees; and (iii) from 1996 through November 2003, Mr. Perle served as Chairman and CEO of Hollinger Digital.

39. Perle is a member of Trireme Management LLC, the company that manages Trireme Partners LP. Perle is entitled to receive approximately 4% of the 20% share of the profits that Trireme Associates LLC receives from Trireme Partners LP. Perle solicited Dr. Henry A. Kissinger ("Kissinger"), an outside director on Hollinger International's Board, to become a member of the Strategic Advisory Board of Trireme Partners LP, along with Black.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, except admits, upon information and belief, the allegations of the first and third sentences of this paragraph.

40. Black, through The Conrad Black Capital Corporation, owns approximately 65.1% of Ravelston. Black is also the Chairman and CEO of Ravelston. Black controls Ravelston.

ANSWER: Mr. Black denies the allegations of paragraph 40, except admits the allegations of the first sentence of this paragraph.

41. Ravelston owns approximately 78% of Hollinger, Inc.'s common stock and controls Hollinger, Inc. Black, through Ravelston, controls Hollinger, Inc. Until November 2, 2004, Black also controlled Hollinger, Inc. as its Chairman and CEO.

ANSWER: Mr. Black denies the allegations of paragraph 41.

42. From at least 1998 to the present, Hollinger, Inc. has been the controlling shareholder of Hollinger International through its direct and indirect ownership of all of Hollinger International's Class B Common Stock, which has a 10-to-1 voting preference over shares of Hollinger International's Class A Common Stock. During the period 1998 through the present, Hollinger, Inc. also held several million shares of Hollinger International's Class A Common Stock.

ANSWER: Mr. Black admits the allegations of paragraph 42.

43. By virtue of its ownership of Hollinger International's stock, Hollinger, Inc. is in a position to direct management policy, strategic decisions and financial decisions of Hollinger

International and to control substantially all actions requiring the approval of Hollinger International shareholders.

ANSWER: Mr. Black denies the allegations of paragraph 43.

44. Black, through his ownership and control of Ravelston, controls Hollinger, Inc., and through his ownership and control of Hollinger, Inc., controlled Hollinger International through at least 2003.

ANSWER: Mr. Black denies the allegations of paragraph 44.

45. From at least 1998 through at least 2003, Black held himself out to the world as being able to control Ravelston, Hollinger, Inc. and Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 45.

46. From approximately 1999 through 2001, Black and Radler fraudulently diverted at least $85 million from Hollinger International to themselves, Hollinger, Inc., Ravelston and other corporate insiders in the form of purported "non-competition" payments.

ANSWER: Mr. Black denies the allegations of paragraph 46.

47. The purported non-competition payments were made in connection with Hollinger International's sales of its U.S. and Canadian newspaper properties in a series of transactions known as the American Trucker; Community Newspaper Holdings, Inc. ("CNHI I"); Horizon; Forum Communications Company ("Forum"); PMG Acquisition Corporation ("Paxton"); Newspaper Holdings, Inc. ("CNHI II"); and CanWest Global Communications Corporation ("CanWest") transactions.

ANSWER: Mr. Black denies the allegations of paragraph 47, except admits that Plaintiff purports to name a series of transactions wherein certain payments were made in connection with the sale of certain newspapers.

48. As a result of these purported non-competition payments, portions of the sale proceeds which should have gone to Hollinger International were diverted to Black, Radler, Hollinger. Inc. and their associates.

ANSWER: Mr. Black denies the allegations of paragraph 48.

49. In 1999 and 2000, Hollinger, Inc. received purported non-competition payments totaling $16.55 million in connection with Hollinger International's sale of U.S. newspaper properties. During this period, Hollinger, Inc. was a Canadian mutual fund company with no operations. The purchasers of these newspaper properties did not request that Hollinger, Inc. execute non-competition agreements.

ANSWER: Mr. Black denies the allegations of paragraph 49, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of this paragraph, and admits that Inc. was operating as a mutual fund in Canada in 1999 and 2000.

50. Of the $16.55 million in total purported non-competition payments made to Hollinger, Inc., $15.2 million was received in 1999. This $15.2 million constituted approximately 15.6% and 27% of the reported total income and net income, respectively, on Hollinger, Inc.'s unconsolidated statement of income and expenses for the 1999 fiscal year. Hollinger, Inc. used this money to repay debt it owed to Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 50, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph.

51. In 2000 and 2001, Black and Radler each received purported non-competition payments totaling approximately $19 million in connection with the sales of Hollinger International's U.S. and Canadian newspaper properties. Atkinson and Boultbee each received purported non-competition payments totaling approximately $1.9 million. Ravelston received a purported non-competition payment of approximately $26.3 million.

ANSWER: Mr. Black denies the allegations of paragraph 51.

52. None of the purchasers of Hollinger International's U.S. newspaper properties requested that any individual officer of Hollinger International sign a non-competition agreement. Black, Radler, Atkinson and Boultbee did not execute non-competition agreements in connection with certain of the U.S. newspaper sale transactions. On one occasion, Black and Radler engineered purported non-competition payments to themselves for their agreements not to compete with a wholly-owned subsidiary of Hollinger International in the absence of any purchase or sale of newspapers.

ANSWER: Mr. Black denies the allegations of paragraph 52, except admits that Mr. Black did not personally execute a non-competition agreement in connection with certain of the U.S. newspaper sale transactions, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

53. The $15.2 million in purported non-competition payments made to Hollinger, Inc. in 1999 constituted approximately 3.7% of Hollinger International's reported earnings before

income taxes, minority interest and extraordinary items ("pretax income") and 6.2% of its reported net earnings for the 1999 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Approximately $63.4 million in purported non-competition payments were made to Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee in 2000. These payments constituted approximately 11.6% of Hollinger International's reported pretax income and 54.2% of its reported net earnings for the 2000 fiscal year.

ANSWER: Mr. Black denies the allegations of paragraph 54, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph.

55. Black, Radler, Boultbee and Atkinson received a total of at least $6,100,000 in purported non-competition payments in 2001. In 2001, Hollinger International reported a pretax loss of ($361,620,000) and net loss of ($337,506,000).

ANSWER: Mr. Black denies the allegations of paragraph 55, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph.

56. The approximately $84.7 million in total purported non-competition payments constituted approximately 14.1% of Hollinger International's total pretax income and 340.1% of its net earnings for the three-year period from 1999 through 2001.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.

57. Pursuant to Hollinger International policy and practice, related party transactions were to be reviewed and approved by the Audit Committee of Hollinger International's Board of Directors ("Audit Committee").

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57.

58. To perpetrate their scheme, Black and Radler made misstatements and omissions of material fact, as described in greater detail below, regarding the purported non-competition payments to Hollinger International's Audit Committee and to Hollinger International's Board.

ANSWER: Mr. Black denies the allegations of paragraph 58.

59. Black and Radler also signed Hollinger International's filings with the Commission which contained misstatements and omissions of material fact regarding the purported non-competition payments.

ANSWER: Mr. Black denies the allegations of paragraph 59.

60. Hollinger, Inc. made misstatements and omissions of material fact regarding the purported non-competition payments in its responses to Hollinger International's proxy questionnaires and in Hollinger, Inc.'s filings with the Commission.

ANSWER: Mr. Black denies the allegations of paragraph 60.

61. On or about May 11, 1998, Hollinger International and a Hollinger International subsidiary entered into an asset purchase agreement to sell certain assets, including the American

Trucker publication, to Intertec Publishing Corporation ("Intertec") for approximately $75 million (the "American Trucker transaction").

ANSWER: Mr. Black denies the allegations of paragraph 61, except admits that on or about May 11, 1998, Southam Business Communications U.S.A. Inc. and Intertec Publishing Corporation ("Intertec") entered into an Asset Purchase Agreement in connection with the sale of certain publications for the purchase price stated therein, and refers to the Intertec transaction documents for a complete statement of their contents.

62. Hollinger International and the subsidiary executed a non-competition agreement as part of the American Trucker transaction. The asset purchase agreement provided that $2 million would be paid to Hollinger International as consideration for the non-competition agreement at closing.

ANSWER: Mr. Black denies the allegations of paragraph 62, except admits the allegations of the second sentence of paragraph 62, and that on or about May 11, 1998, Intertec, Southam Inc., and International entered into a Non-Competition Agreement.

63. Radler signed the asset purchase agreement and the non-competition agreement on behalf of the subsidiary and Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 63.

64. Hollinger, Inc. was not a party to and did not sign the asset purchase agreement or the non-competition agreement.

ANSWER: Mr. Black denies the allegations of paragraph 64, except to the extent that they accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto.

65. The transaction closed in May 1998, and $2 million was paid to Hollinger International as consideration for the non-competition agreement.

ANSWER: Mr. Black admits the allegations of paragraph 65.

66. On or about May 1, 1998, the Hollinger International Executive Committee, consisting of Black, Radler and Perle, approved the proposed sale to Intertec for approximately $75 million and Hollinger International's execution of a non-competition agreement in exchange for consideration of approximately $2 million.

ANSWER: Mr. Black denies the allegations of paragraph 66, except to the extent they accurately represent the actual terms and conditions of the May 1, 1998 Unanimous Written Consent of the Executive Committee of the Board of Directors of International.

67. In or about February 1999, Radler caused $2 million to be paid by Hollinger International to Hollinger, Inc. as a purported non-competition payment in connection with the American Trucker transaction.

ANSWER: Mr. Black denies the allegations of paragraph 67, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

68. Hollinger, Inc. used this payment to repay debt it owed to Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 68.

69. Hollinger, Inc. failed to disclose the $2 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69.

70. Black and Radler failed to disclose the $2 million purported non-competition payment to Hollinger, Inc. to Hollinger International's independent directors or to its Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 70, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

71. The $2 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71.

72. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading

because they failed to disclose the $2 million purported non-competition payment to Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 72.

73. On or about February 1, 1999, Hollinger International entered into an asset exchange agreement to sell certain of its assets to Community Newspaper Holdings, Inc. and its subsidiary, Newspaper Holdings, Inc. (collectively, "CNHI"), for approximately $450 million, $50 million of which was allocated as consideration for a non-competition agreement (the "CNHI I transaction").

ANSWER: Mr. Black denies the allegations of paragraph 73, except admits that (i) on February 1, 1999, International and CNHI entered into an Asset Exchange Agreement in connection with the sale of certain newspaper assets for the purchase price stated therein; and (ii) under the terms of the Asset Exchange Agreement, $50 million of the purchase price was allocated to a non-competition agreement, and refers to the CNHI transaction documents for a complete statement of their contents.

74. Hollinger, Inc. was not a party to the asset exchange agreement. However, Hollinger, Inc. was identified in the asset exchange agreement as a party to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 74, except to the extent that they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

75. CNHI did not request a non-competition agreement from Hollinger, Inc.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75.

76. However, in or about January 1999, Radler caused Hollinger, Inc. to be added as a party to the non-competition agreement. Radler signed the non-competition agreement on behalf of Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 76, except admits the allegations of the second sentence of this paragraph, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

77. Neither the asset exchange agreement nor the non-competition agreement specified how, if at all, the $50,000,000 in consideration was to be allocated between the seller, Hollinger International, and Hollinger, Inc. Radler caused Hollinger, Inc. to be paid $12 million of the $50 million as consideration for the non-competition agreement.

ANSWER: Mr. Black denies the allegations of paragraph 77, except to the extent that the allegations of the first sentence of this paragraph accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

78. In February 1999, Hollinger, Inc. received a purported non-competition payment of $12 million in connection with the CNHI I transaction.

ANSWER: Mr. Black denies the allegations of paragraph 78.

79. Hollinger, Inc. used this payment to repay debt it owed to Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 79.

80. Hollinger, Inc. failed to disclose the $12 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80.

81. Radler presented the CNHI I transaction and Hollinger International's non-competition agreement to Hollinger International's Board for approval on November 30, 1998. Black was present at this Board meeting. The Hollinger, Inc. non-competition agreement and the $12 million purported non-competition payment to Hollinger, Inc. were not disclosed to or approved by Hollinger International's independent directors or its Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 81, except admits that International's Board of Directors held a meeting on or about November 30, 1998, at which Mr. Black was in attendance, and the CNHI I transaction was discussed. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

82. Later, during a February 26, 1999 Board meeting, Black told the Hollinger International Board that the CNHI transaction was successfully concluded. Radler was also present at this meeting. Neither Black nor Radler disclosed to Hollinger International's Board

that Hollinger. Inc. had signed a non-competition agreement and had received $12 million as a purported non-competition payment in connection with the CNHI transaction.

ANSWER: Mr. Black denies the allegations of paragraph 82, except admits that International's Board of Directors held a meeting on or about February 26, 1999, at which Mr. Black was in attendance, and the CNHI I transaction was discussed. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

83. The $12 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83.

84. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $12 million purported non-competition payment to Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 84.

85. On or about March 31, 1999, Hollinger International entered into an agreement to sell certain of its newspaper publications to Horizon, a company owned and controlled by Black and Radler, for a purchase price of approximately $46 million, $5 million of which was allocated to a non-competition agreement (the "Horizon transaction").

ANSWER: Mr. Black denies the allegations of paragraph 85, except admits that (i) on or about March 31, 1999, International entered into an Asset Exchange Agreement with Horizon concerning the exchange of certain newspaper assets for the purchase price stated therein; and (ii) under the terms of the Asset Exchange Agreement, $5 million was allocated to a non-competition agreement, and refers to the Horizon transaction documents for a complete statement of their contents.

86. Hollinger, Inc. was not a party to the asset exchange agreement. However, Hollinger, Inc. was identified in the asset exchange agreement as a party to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 86, except to the extent that they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

87. Radler caused Hollinger, Inc. to be inserted as a party to the non-competition agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87.

88. Neither the asset exchange agreement nor the non-competition agreement specified how, if at all, the $5,000,000 in consideration was to be allocated between the seller, Hollinger International, and Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 88, except to the extent that they accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto.

89. Radler caused Hollinger, Inc. to receive $1.2 million of the $5 million as consideration for the non-competition agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89.

90. In or around August 1999, Hollinger Inc. received from Horizon $1.2 million of the total non-competition agreement allocation related to the Horizon transaction.

ANSWER: Mr. Black denies the allegations of paragraph 90, except admits, upon information and belief, that in or around August 1999, Inc. received a payment of approximately $1.2 million from Horizon.

91. Hollinger, Inc. failed to disclose the $1.2 million purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 1999 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91.

92. Radler presented the Horizon transaction to Hollinger International's Board for approval on November 30, 1998. Black was present at this Board meeting. The Hollinger, Inc. non-competition agreement and $1.2 million purported non-competition payment to Hollinger, Inc. were not disclosed to or approved by Hollinger International's independent directors or its Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 92, except admits that International's Board of Directors held a meeting on or about November 30, 1998, at which Mr. Black was in attendance, and the sale of certain newspaper properties to Horizon was discussed. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

93. The $1.2 million purported non-competition payment to Hollinger, Inc. was not disclosed in any of Hollinger International's filings with the Commission until it was disclosed in a November 17, 2003 press release filed with a Form 8-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93.

94. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $1.2 million purported non-competition payment to Hollinger, Inc.

ANSWER: Mr. Black denies the allegations of paragraph 94.

95. On or about September 28, 2000, Hollinger International entered into an asset purchase agreement to sell to Newspaper Holdings, Inc. certain newspapers for a purchase price of approximately $90 million, $3 million of which was allocated as consideration for a non-competition agreement (the "CNHI II transaction").

ANSWER: Mr. Black denies the allegations of paragraph 95, except admits that (i) on or about September 28, 2000, International and Newspaper Holdings, Inc. entered into an Asset Purchase Agreement in connection with the sale of certain newspaper assets for the purchase price stated therein; and (ii) under the terms of the Asset Purchase

Agreement. S3 million of the purchase price was allocated to a non-competition agreement. and refers to the CNHI II transaction documents for a complete statement of their contents.

96. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger. Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 96, except to the extent that they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

97. CNHI did not request a non-competition agreement from Hollinger, Inc. However. Radler caused Hollinger, Inc. to be included as a party to a non-competition agreement in the asset purchase agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 97.

98. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or S750.000. of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or $2.25 million.

ANSWER: Mr. Black denies the allegations of paragraph 98, except admits that the Asset Purchase Agreement allotted Inc. 25% and International 75% of the amount allocated to the non-competition agreement. Mr. Black lacks knowledge or information

sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

99. On September 15, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to CNHI and execution of a non-competition agreement by Hollinger International and Hollinger, Inc. for an aggregate purchase price of approximately $90 million after assignment by CNHI to Horizon of the right to acquire two California newspapers, the Bishop and Blackfoot properties.

ANSWER: Mr. Black denies the allegations of paragraph 99, except to the extent that they accurately represent the actual terms and conditions of the referenced September 15, 2000 Unanimous Written Consent of the Executive Committee of International's Board of Directors.

100. CNHI did not request that any individuals be added as parties to the non-competition agreement. However, at or around the time of closing, Radler caused Black, Radler, Atkinson and Boultbee to be included as parties to the non-competition agreement. No dollar amounts were mentioned in the revised non-competition agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 100.

101. Black and Radler caused $9.5 million in purported non-competition payments to be made to Black, Radler, Atkinson and Boultbee.

ANSWER: Mr. Black denies the allegations of paragraph 101, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

102. The $9.5 million in purported non-competition payments to Black, Radler, Atkinson and Boultbee were not made at the request of CNHI and were not required under the asset purchase agreement or non-competition agreement. The additional $9.5 million in purported non-competition payments did not increase the total purchase price paid by CNHI.

ANSWER: Mr. Black denies the allegations of paragraph 102, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph.

103. The $9.5 million was initially to be paid as follows: $4.5 million to Black, $4.5 million to Radler, $250,000 to Atkinson and $250,000 to Boultbee. Black and Radler subsequently reduced the purported non-competition payments to themselves to $4.3 million each and increased the payments to Boultbee and Atkinson to $450,000 each. Radler authorized a bonus to Kipnis in the amount of $100,000.

ANSWER: Mr. Black denies the allegations of paragraph 103, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first and third sentences of this paragraph. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

104. Checks were issued to the individuals in these amounts on or about November 21, 2000.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 104.

105. Hollinger, Inc. received a $750,000 purported non-competition payment in connection with the CNHI II transaction when the transaction closed.

ANSWER: Mr. Black denies the allegations of paragraph 105.

106. Black and Radler failed to disclose the $4.3 million purported non-competition payments to themselves in their responses to Hollinger International's proxy questionnaires for the 2000 fiscal year.

ANSWER: Mr. Black denies the allegations of paragraph 106, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

107. Hollinger, Inc. failed to disclose the $750,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 107.

108. On or about September 30, 2000, Hollinger International entered into an asset purchase agreement to sell certain of its assets to Forum Communications Company ("Forum") for approximately $14 million, of which $400,000 was allocated as consideration for a non-competition agreement (the "Forum transaction").

ANSWER: Mr. Black denies the allegations of paragraph 108, except admits that (i) on or around September 30, 2000, International entered into an Asset Purchase Agreement with Forum Communications ("Forum") in connection with the sale of certain newspaper assets for the purchase price stated therein: and (ii) under the terms of the Asset Purchase Agreement, $400.000 of the purchase price was allocated to a non-competition agreement, and refers to the Forum transaction documents for a complete statement of their contents.

109. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger. Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 109, except to the extent they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

110. Forum did not request that Hollinger, Inc. be included as a party to the non-competition agreement. However. Radler caused Hollinger, Inc. to be included as a party to the non-competition agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the paragraph 110.

111. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or \$100.000. of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or \$300,000.

ANSWER: Mr. Black denies the allegations of paragraph 111, except admits that the Asset Purchase Agreement allotted Inc. 25% and International 75% of the amount allocated to the non-competition agreement, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

112. On September 19, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to Forum and the execution of a non-compete agreement by Hollinger International and "certain executive officers of [Hollinger] International" for an aggregate purchase price of approximately $14 million.

ANSWER: Mr. Black denies the allegations of paragraph 112, except to the extent that they accurately represent the actual terms and conditions of the referenced September 19, 2000 Unanimous Written Consent of the Executive Committee of International's Board of Directors.

113. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with or non-competition payments to any individual executive officers of Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 113, except to the extent they accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto.

114. In or about October 2000, Hollinger, Inc. received a non-competition payment of $100,000 in connection with the Forum transaction.

ANSWER: Mr. Black denies the allegations of paragraph 114, except admits, upon information and belief, that in or about October 2000, Inc. received a payment of approximately $100,000 in connection with the Forum transaction.

115. Hollinger, Inc. failed to disclose the $100,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 115.

116. On or about October 2, 2000, Hollinger International entered into an asset purchase agreement to sell certain of its assets to PMG Acquisition Corporation ("Paxton") for approximately $59 million, $2 million of which was allocated as consideration for a non-competition agreement (the "Paxton transaction").

ANSWER: Mr. Black denies the allegations of paragraph 116, except admits that (i) on or about October 2, 2000, International and PMG Acquisition Corp. ("Paxton") entered into an Asset Purchase Agreement in connection with the sale of certain newspaper assets for the purchase price stated therein; and (ii) under the terms of the Asset Purchase Agreement, $2 million of the purchase price was allocated to a non-competition agreement, and refers to the Paxton transaction documents for a complete statement of their contents.

117. Hollinger, Inc. was not a party to the asset purchase agreement. However, Hollinger, Inc. was identified in the asset purchase agreement as a party to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 117, except to the extent they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

118. Paxton did not request that Hollinger, Inc. be included as a party to the non-competition agreement. However, Radler caused Hollinger, Inc. to be included as a party to the non-competition agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the paragraph 118.

119. At Radler's direction, the asset purchase agreement allotted Hollinger, Inc. 25%, or $500,000, of the amount allocated to the non-competition agreement, and Hollinger International was allotted the remaining 75%, or $1.5 million.

ANSWER: Mr. Black denies the allegations of paragraph 119, except admits that the Asset Purchase Agreement allotted Inc. 25% and International 75% of the amount allocated to the non-competition agreement, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

120. On September 18, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to Paxton and the execution of a non-compete agreement by Hollinger International and "certain executive officers of Hollinger International."

ANSWER: Mr. Black denies the allegations of paragraph 120, except to the extent that they accurately represent the actual terms and conditions of the referenced September 18, 2000 Unanimous Written Consent of the Executive Committee of International's Board of Directors.

121. Neither the asset purchase agreement nor the non-competition agreement provided for non-competition agreements with or non-competition payments to any individual executive officers of Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 121, except to the extent that they accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto.

122. In or about October 2000, Hollinger, Inc. received a non-competition payment of $500,000 in connection with the Paxton transaction.

ANSWER: Mr. Black denies the allegations of paragraph 122, except admits, upon information and belief, that in or about October 2000, Inc. received a payment of approximately $500,000 in connection with the Paxton transaction.

123. Hollinger, Inc. failed to disclose the $500,000 purported non-competition payment in its response to Hollinger International's proxy questionnaire for the 2000 fiscal year.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 123.

124. Black presented the Executive Committee's authorization and approval of the sale of certain assets to CNHI (CNHI II), Forum and Paxton to Hollinger International's Board for confirmation and ratification on December 4, 2000. Radler was present at this Board meeting.

ANSWER: Mr. Black denies the allegations of paragraph 124, except to the extent that they accurately represent the actual events that occurred at the referenced December 4, 2000 meeting. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

125. Neither Black nor Radler disclosed to the Board that Hollinger, Inc. had executed a non-competition agreement in connection with the CNHI II, Forum and Paxton transactions, that individuals had executed a non-competition agreement in connection with the CNHI II transaction, or that Hollinger, Inc. or any executive officers of Hollinger International had or would receive purported non-competition payments in connection with the transactions.

ANSWER: Mr. Black denies the allegations of paragraph 125, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

126. Although the Board minutes purport to incorporate by reference the September 15, 18, and 19, 2000 Executive Committee consents, the Board was not given a copy of the resolutions. The purported non-competition payments to Hollinger, Inc., Black, Radler, Atkinson and Boultbee were not reviewed or approved by the Audit Committee or Board.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 126.

127. In early 2001, Hollinger International and/or its subsidiaries maintained unallocated accounting reserves from certain of its transactions, including reserves from the Forum and Paxton transactions.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 127.

128. In 2001, Black and Radler caused additional purported non-competition payments to be made from the reserves of the Forum and Paxton transactions to themselves in the amount of $285,000 each, and to Atkinson and Boultbee in the amount of $15,000 each. None of these payments were made at the request of Forum or Paxton.

ANSWER: Mr. Black denies the allegations of paragraph 128, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of this paragraph. Mr. Black lacks knowledge or information

sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

129. Black and Radler received these payments on or about April 9, 2001, several months after these transactions closed.

ANSWER: Mr. Black denies the allegations of paragraph 129, except admits, upon information and belief, that on or about April 9, 2001, Mr. Black and Mr. Radler each received a payment of approximately $285,000.

130. Neither Black, Radler, Atkinson nor Boultbee executed a non-competition agreement in connection with their receipt of these payments.

ANSWER: Mr. Black admits the allegations of paragraph 130, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

131. Black and Radler did not present the purported non-competition payments to themselves, Atkinson and Boultbee to Hollinger International's Board or to its Audit Committee for review or approval.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 131.

132. The purported non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the CNHI II, Forum and Paxton transactions were not disclosed in

any of Hollinger International's public filings with the Commission until April 1, 2002, when Hollinger International filed its 2001 Form 10-K. However, as discussed below, the disclosure in Hollinger International's 2001 Form 10-K regarding these payments contained misstatements and omissions of material fact.

ANSWER: Mr. Black denies the allegations of paragraph 132, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph.

133. In or around February 2001, Black and Radler caused themselves, Atkinson and Boultbee to receive approximately $5.5 million in additional purported non-competition payments pursuant to purported non-competition agreements with American Publishing Company (the "American Publishing transaction"). American Publishing Company was a wholly-owned subsidiary of Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 133, except admits the allegations of the second sentence, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

134. There was no reason for the individuals to execute the non-competition agreements or to receive payment of any consideration for their agreements not to compete with American Publishing Company. These payments were not made in connection with any sale or transfer of newspapers by Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 134.

135. In February 2001, Black, Radler, Atkinson and Boultbee executed these purported non-competition agreements, which were backdated to December 31, 2000.

ANSWER: Mr. Black denies the allegations of paragraph 135, except admits, upon information and belief, that Mr. Black, Mr. Radler, Mr. Atkinson, and Mr. Boultbee executed non-competition agreements dated December 31, 2000.

136. Radler caused Hollinger International to issue checks for $2,612,500 each to himself and Black and $137,500 each to Atkinson and Boultbee in connection with the purported "non-competition" agreements with American Publishing Company in February 2001. The checks for these purported "non-competition" payments were backdated to December 31, 2000.

ANSWER: Mr. Black denies the allegations of paragraph 136, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

137. Black and Radler did not present the American Publishing Company purported non-competition payments to themselves, Atkinson and Boultbee to Hollinger International's Board or to its Audit Committee for review or approval.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 137, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

138. The purported non-competition payments made to Hollinger, Inc. in connection with the CNHI II, Forum and Paxton transactions were not disclosed in any of Hollinger International's filings with the Commission until they were disclosed in a November 17, 2003 press release filed with a Form 8-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 138.

139. Black, Radler and Hollinger, Inc. knew or were reckless in not knowing that Hollinger International's filings with the Commission were materially false and misleading because they failed to disclose the $1,350,000 in purported non-competition payments made to Hollinger, Inc. in connection with the CNHI II, Forum and Paxton transactions.

ANSWER: Mr. Black denies the allegations of paragraph 139.

140. The purported non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the CNHI II transaction were not disclosed in Hollinger International's proxy statement for the 2000 fiscal year or in its 2000 Form 10-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 140.

141. Black and Radler knew or were reckless in not knowing that Hollinger International's filings with the Commission prior to April 1, 2002, including its 2000 Form 10-K filed April 2, 2001 and 2001 proxy statement filed March 27, 2001, were materially false and misleading because they failed to disclose the $8.6 million in total purported non-competition payments to themselves and $900,000 in total purported non-competition payments to Atkinson and Boultbee.

ANSWER: Mr. Black denies the allegations of paragraph 141.

142. The non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the above-mentioned transactions were first disclosed in Hollinger International's 2001 Form 10-K, which states:

In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $0.6 million. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15 million. Such amounts were paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 142, except admits that Plaintiff purports to quote from International's 2001 Form 10-K.

143. Hollinger International's 2002 Form 10-K contained disclosures concerning the non-competition payments that were nearly identical to the disclosure contained in its 2001 Form 10-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 143.

144. Hollinger International's 2002 Form 10-K states:

During 2000, we sold most of our remaining U.S. community newspaper properties, for total proceeds of approximately $215 million. In connection with those sales, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $0.6 million. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15 million. Our independent directors approved the terms of these payments;

and

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, the Company, Lord Black and three senior executives entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of $600,000. These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of $15,000,000. Such amounts were paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 144, except admits that Plaintiff purports to quote from International's 2002 Form 10-K.

145. The disclosures in Hollinger International's 2001 and 2002 Forms 10-K contained misstatements and omissions of material fact because, among other things:

(a) The purported non-competition payments made in connection with the American Publishing Company transaction were not in connection with the sale of newspaper properties;

(b) Black, Radler, Atkinson, and Boultbee did not enter into non-competition agreements with purchasers in connection with the American Publishing Company, Forum or Paxton transactions;

(c) Black, Radler, Atkinson and Boultbee did not enter into any non-competition agreements "to satisfy a closing condition" of any purchaser of Hollinger International's U.S. newspapers because none of the purchasers requested that any of the individuals enter into non-competition agreements;

(d) Approximately $9.5 million was paid in 2000 and another approximately $6 million was paid in 2001 as consideration for the purported non-competition agreements; and

(e) The payments were not approved by Hollinger International's independent directors.

ANSWER: Mr. Black denies the allegations of paragraph 145.

146. Black and Radler signed Hollinger International's 2001 and 2002 Forms 10-K.

ANSWER: Mr. Black admits the allegations of paragraph 146.

147. Black also certified Hollinger International's 2002 Form 10- K pursuant to Section 302 of the Sarbanes-Oxley Act as the CEO of Hollinger International.

ANSWER: Mr. Black admits the allegations of paragraph 147.

148. Hollinger International also disclosed the payments in its proxy statement filed on or about April 2, 2002, which states:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger Inc., the Company, Lord Black and Messrs. Radler, Atkinson and Boultbee entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 and 2000 of $15,600,000, consisting of $7,197,500 paid to Lord Black, $7,197,500 paid to Mr. Radler, $602,500 paid to Mr. Atkinson and $602,500 paid to Mr. Boultbee.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 148, except admits that Plaintiff purports to quote from a proxy statement filed on or about April 2, 2002.

149. Hollinger International's 2002 proxy statement contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(c), above. In addition, this disclosure identified Hollinger, Inc. as a party to a non-competition agreement(s), but failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to believe that no non-competition payments were made to Hollinger, Inc., when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

ANSWER: Mr. Black denies the allegations of paragraph 149.

150. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 and 2002 Forms 10-K and 2002 proxy statement filed on or about April 2, 2002, were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

ANSWER: Mr. Black denies the allegations of paragraph 150.

151. The misstatements and omissions in Hollinger International's 2001 and 2002 Forms 10-K and 2002 proxy statement were not disclosed in any of Hollinger International's filings with the Commission until they were disclosed in a November 17, 2003 press release filed with a Form 8-K.

ANSWER: Mr. Black denies the allegations of paragraph 151.

152. During a Hollinger International shareholder meeting held in May 2002, at which Radler was present, Black responded to a shareholder's question regarding the purported non-competition agreements as follows:

> You're right that there were some non-competes in the American Community sales, but that wasn't as dissimilar as it seems from the Canadian situation. In those papers, they wanted some assurance that we wouldn't come back with shoppers, which is always a threat to those small newspapers and indeed, there's been some incidence in the history of that business of people doing just that . . .

ANSWER: Mr. Black denies the allegations of paragraph 152, except to the extent they accurately represent the actual events that occurred at the referenced May 2002 annual shareholder meeting, and except to the extent that the excerpted quotation accurately represents Mr. Black's actual response during the May 2002 annual shareholder meeting.

153. Black's statement contained misstatements and omissions of material fact because, among other things, Black, Radler, Atkinson and Boultbee did not enter into non-competition agreements or receive the purported non-competition payments at the request of the purchasers and did not execute non-competition agreements in connection with the Forum and Paxton transactions. In addition, there was no sale of newspapers associated with the purported non-competition agreements and payments in the American Publishing Company transaction.

ANSWER: Mr. Black denies the allegations of paragraph 153.

154. Black and Radler knew or were reckless in not knowing that Black's statements to Hollinger International's shareholders were materially false and misleading.

ANSWER: Mr. Black denies the allegations of paragraph 154.

155. On or about April 23, 2002, Hollinger, Inc. disclosed the non-competition payments made to Black, Radler, Atkinson and Boultbee in connection with the U.S. newspaper sales in its proxy statement filed on Form 6-K.

ANSWER: Mr. Black lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 155.

156. Hollinger, Inc.'s 2002 proxy statement reads:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger [Inc.], Hollinger International, Lord Black and Messrs. Radler, Atkinson and Boultbee entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 and 2000 of U.S. $15,600,000, consisting of U.S. $7,197,500 paid to Lord Black, U.S. $7,197,500 paid to Mr. Radler, U.S. $602,500 paid to Mr. Atkinson and U.S. $602,500 paid to Mr. Boultbee.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 156, except admits that Plaintiff purports to quote from Inc.'s 2002 proxy statement.

157. This disclosure contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(e), above. In addition, this disclosure identified Hollinger, Inc. as a party to a non-competition agreement(s), but failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to conclude that no non-competition payments were made to Hollinger, Inc. when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

ANSWER: Mr. Black denies the allegations of paragraph 157.

158. Hollinger, Inc.'s 2001 Form 40-F filed with the Commission on or about May 22, 2002 contains the following disclosure regarding the non-competition payments:

> In connection with the sales of United States newspaper properties in 2000, to satisfy a closing condition, Hollinger International, Lord Black and three senior executives entered into non-competition agreements with the purchasers pursuant to which each agreed not to compete directly or indirectly in the United States with the United States businesses sold to the purchasers for a fixed period, subject to certain limited exceptions, for aggregate consideration paid in 2001 of US $600,000 ($917,000). These amounts were in addition to the aggregate consideration paid in respect of these non-competition agreements in 2000 of US $15.0 million ($22.5 million). All such amounts were paid to Lord Black and the three senior executives. The independent directors of Hollinger International have approved the terms of these payments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 158, except admits that Plaintiff purports to quote from Inc.'s 2001 Form 40-F.

159. Similar disclosures were made in Hollinger, Inc.'s 2002 Form 20-F and amended 2002 Form 20-F filed on or about June 27, 2003, and September 17, 2003, respectively. The disclosures in Hollinger, Inc.'s 2001 Form 40-F and 2002 Form 20-F and amended 2002 Form 20-F contained misstatements and omissions of material fact for the reasons stated in paragraph 145(a)-(e), above. In addition, these disclosures failed to disclose that any purported non-competition payments were made to Hollinger, Inc., leading the reader to conclude that no non-competition payments were made to Hollinger, Inc. when, in fact, it received over $16 million in purported non-competition payments in connection with the sale of Hollinger International U.S. newspaper assets.

ANSWER: Mr. Black denies the allegations of paragraph 159, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph.

160. Hollinger, Inc. knew or was reckless in not knowing that its 2002 proxy statement and its 2001 Form 40-F and 2002 Forms 20-F were materially false and misleading.

ANSWER: Mr. Black denies the allegations of paragraph 160.

161. On July 30, 2000, Hollinger International and its subsidiaries executed a transaction agreement to sell several of its Canadian newspapers to CanWest for a purchase price of approximately Cdn. $3.8 billion (approximately U.S. $2.6 billion), of which Cdn. $80 million (approximately U.S. $51.6 million) was allocated as consideration for non-competition agreements (the "CanWest transaction"). An amending agreement was executed at the time of closing on or about November 15, 2000.

ANSWER: Mr. Black denies the allegations of paragraph 161, except admits that (i) on or about July 30, 2000, International, Southam Inc., Hollinger Canadian Newspapers, LP, and HCN Publications Co. entered into a Transaction Agreement with CanWest in connection with the sale of certain newspaper properties for the purchase price stated therein; (ii) under the terms of the Transaction Agreement, $80 million was allocated to non-competition agreements; and (iii) on or about November 15, 2000, the parties entered into an Amending Agreement to the Transaction Agreement, and refers to the CanWest transaction documents for a complete statement of their contents.

162. Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee were not parties to the transaction agreement. However, Hollinger, Inc., Ravelston, Black, Radler, Atkinson and Boultbee were identified in the transaction agreement as parties to the non-competition agreement along with Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 162, except to the extent they accurately represent the actual terms and conditions of the referenced agreement and any amendments or modifications thereto.

163. Neither the asset purchase agreement nor the non-competition agreement specified that the Cdn. $80 million was to be paid to anyone other than the seller, Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 163, except to the extent they accurately represent the actual terms and conditions of the referenced agreements and any amendments or modifications thereto.

164. At no time did CanWest negotiate or specify an amount as to the value of the non-competition agreements, nor did CanWest specify that Ravelston or any of the individuals would receive any consideration allocated to the non-competition agreements.

ANSWER: Mr. Black denies the allegations of paragraph 164.

165. Black personally negotiated the CanWest transaction on behalf of Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 165, except admits that he participated in negotiations with principals at CanWest.

166. Black and Radler determined the amounts that were allocated to the various individuals and entities.

ANSWER: Mr. Black denies the allegations of paragraph 166.

167. CanWest did not request a non-competition agreement from Atkinson or Boultbee. Rather, Atkinson asked Black if he and Boultbee could be given "non-competition" payments to serve as bonuses for their work on the CanWest transaction. Black agreed to add Atkinson and Boultbee to the non-competition agreement so that they could be given "non-competition" payments to serve as bonuses for their work on the CanWest transaction.

ANSWER: Mr. Black denies the allegations of paragraph 167.

168. On or about July 25, 2000, the Hollinger International Board received a summary of the proposed CanWest transaction. The summary stated that "The purchase price was increased as a result of a reduction of Management Services Fees to be charged by Ravelston with respect to ongoing management of the Newspaper Assets. Prior to closing, Ravelston and the Audit Committee will negotiate an appropriate sharing of such Purchase Price increase."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 168, except admits that Plaintiff purports to quote from a summary of the proposed Can West transaction.

169. The summary also included a reference to the non-competition agreements and stated that Ravelston, Hollinger, Inc., Black and Radler were required to execute non-competition agreements and that "consistent with prior transactions," the Audit Committee would negotiate what portion of the purchase price should be allocated to the non-competition agreements prior to closing. The Audit Committee had not previously negotiated what portion of a purchase price would be allocated to a non-competition agreement, and it did not do so in the CanWest transaction.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 169, except admits that in the first sentence of this paragraph Plaintiff purports to quote from and paraphrase a summary of the proposed Can West transaction.

170. On July 26, 2000, Black confirmed that the Board had received the summary and made a general presentation about the CanWest transaction to the Hollinger International Board. The minutes reflect that Black stated that certain monetary allocations would be made to Ravelston and those parties required to sign non-competition agreements and that related party issues would be resolved prior to closing by the Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 170, except to the extent they accurately represent the actual events that occurred at the referenced July 26, 2000 meeting.

171. The transaction agreement was signed on July 30, 2000. The CanWest transaction did not close and fund until November 2000.

ANSWER: Mr. Black denies the allegations of paragraph 171, except admits that (i) the initial transaction agreement was signed on or about July 30, 2000; and (ii) the CanWest transaction closed and funded in or about November 2000.

172. On or about September 1, 2000, Kipnis sent the Hollinger International Audit Committee a memorandum concerning the non-competition agreements in preparation for the September 11, 2000 Audit Committee meeting.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 172.

173. The memorandum stated that "Conrad M. Black, F. David Radler, Hollinger International, Ravelston, Peter Atkinson, and Jack Boultbee have each been requested to execute non-competition agreements . . . The total portion of the purchase price allocated to the non-competition agreements is Cdn. $50 million, approximately 1.4% of the Cdn. $3.5 billion purchase price (allocated Cdn. $19 million each to Messrs. Black and Radler, Cdn. $4 million each to Hollinger and Ravelston, and Cdn. $2 million each to Messrs. Atkinson and Boultbee)."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 173, except admits that Plaintiff purports to quote from a September 1, 2000 memorandum.

174. The memorandum also stated that Ravelston had a long-term management agreement in place with Hollinger International, that the CanWest purchase price was based upon earnings before income taxes, depreciation and amortization ("EBITDA"), and that during the negotiations, Ravelston had agreed to reduce its ongoing management fee by approximately $11 million and the CanWest purchase price was accordingly adjusted upward by approximately Cdn. $110 million. The memorandum proposed that Ravelston receive a purchase price allocation of Cdn. $30 million, approximately 0.9% of the purchase price, "in consideration for Ravelston reducing its management fee and consenting to CanWest having an early termination of its management arrangements."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 174, except admits that Plaintiff purports to quote from and paraphrase a September 1, 2000 memorandum.

175. The CanWest payments were discussed at the September 11, 2000 Audit Committee meeting. Radler was present at and participated in this meeting.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 175.

176. According to the minutes of the September 11, 2000 Audit Committee meeting, Kipnis told the Audit Committee that "the execution of a non-competition agreement by Messrs. Black and Radler, individually, was a requirement of CanWest and that CanWest originally insisted that Messrs. Black and Radler each receive Cdn. $26 million . . . Black and Radler negotiated Cdn. $12 million be reallocated to cover bonuses for senior management, which reallocation would save the Company additional bonus costs."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 176, except admits that Plaintiff purports to quote from the minutes of the September 11, 2000 Audit Committee meeting.

177. Kipnis further informed the Committee that Ravelston "would be willing to reduce its service fees . . . which would have the effect of increasing the Canadian Group's EBITDA figure (thereby increasing the purchase price the Company would receive for the CanWest Transaction by 10 times the amount forgiven)" and would be willing to waive the six month's notice it was entitled to under the Services Agreement and that in consideration for these concessions, Ravelston was requesting an early termination fee equal to approximately 0.9% (Cdn. $30 million) of the purchase price.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 177, except admits that Plaintiff purports to quote from and paraphrase the minutes of the September 11, 2000 Audit Committee meeting.

178. Based on the September 11, 2000 memorandum and meeting, the Audit Committee approved the fairness of the non-compete allocations and "early termination fee."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 178.

179. The Cdn. $50 million non-competition payment and Cdn. $30 million "early termination" fee were subsequently presented to the Board by Audit Committee Chairman James R. Thompson ("Thompson"). Radler was present at this meeting. Based upon the Audit Committee's recommendation, the Board approved the fairness of these allocations.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 179.

180. The September 11, 2000 Audit Committee and Board approval of the non-competition payments were based on misstatements and omissions of material fact, because, among other things:

(a) CanWest did not demand non-competition agreements from Atkinson or Boultbee and the payments to Atkinson and Boultbee were bonuses;

(a) CanWest did not specify an amount as to the value of the non-competition agreements;

(b) The amounts allocated to the various individuals and entities were not determined by CanWest but by Black and Radler;

(c) CanWest did not demand that Ravelston or the individuals receive any money or any specific amounts of money as a non-competition payment; and

(d) the explanation provided for the "early termination fee" to Ravelston was baseless.

ANSWER: Mr. Black denies the allegations of paragraph 180.

181. The CanWest transaction closed on or about November 15, 2000. Black and Radler each received approximately Cdn. \$18.4 million (U.S. \$11.9 million), Ravelston received approximately Cdn. \$40.9 million (U.S. \$26.3 million) and Atkinson and Boultbee each received approximately Cdn. \$2.0 million (U.S. \$1.3 million) in non-competition payments. These amounts included an additional (aggregate) Cdn. \$1.7 million (U.S. \$1.1 million) in interest payments calculated from the initial July 30, 2000 transaction agreement.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 181, except admits, upon information and belief, the allegations of the first sentence of this paragraph, and that Ravelston, Mr. Black, Mr. Radler, Mr. Atkinson, and Mr. Boultbee received approximately the amounts attributed to them in the second sentence of this paragraph, plus interest.

182. Black began the December 4, 2000 Hollinger International Board meeting with a brief summary of the concluded CanWest transaction. He also presented to the Board a resolution approving and adopting the minutes of the September 11, 2000 Board meeting as accurately reflecting the meeting. Radler was also present at this meeting.

ANSWER: Mr. Black denies the allegations of paragraph 182, except to the extent that they accurately represent the actual events that occurred at the referenced December 4, 2000 meeting. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

183. Black and Radler did not disclose that there were any errors in the information provided to the Audit Committee or Board in September 2000. The Board approved the September 11, 2000 Board minutes at the December 4, 2000 Board meeting.

ANSWER: Mr. Black denies the allegations of paragraph 183, except admits the allegations of the second sentence of this paragraph, and lacks knowledge or information

sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

184. Hollinger International did not disclose the CanWest non-competition payments in its 2000 Form 10-K filed on or about April 2, 2001 or in its 2001 Proxy statement filed on or about March 27, 2001.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 184.

185. In a memorandum dated May 1, 2001, Hollinger International's Board was informed that "in a number of inadvertent respects" the September 11, 2000 materials "did not reflect the documentation for the CanWest Transaction" because it "could be deemed to imply that Non-Competition Consideration received by certain individuals was in lieu of compensation and that the Non-Competition Consideration received by Ravelston was an 'early break fee' in respect of its management services agreement with the Corporation and its principal Canadian subsidiary."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 185, except admits that Plaintiff purports to quote from and paraphrase a May 1, 2001 memorandum.

186. The memorandum stated that the Transaction Agreement "established an amount of Cdn. $80 million as consideration for the receipt by CanWest of non-competition agreements. No allocation of the Non-Competition Consideration among the recipients was made by CanWest." The memorandum further stated that "[t]he Non-competition Consideration was allocated by the recipients among Ravelston and the other Obligors on what they determined to be a fair and appropriate basis in the circumstances" and that Ravelston received Cdn. $38 million, Black and Radler received Cdn. $19 million and Atkinson and Boultbee received Cdn. $2 million.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 186, except admits that Plaintiff purports to quote from and paraphrase a May 1, 2001 memorandum.

187. According to the memorandum, "[T]he Non-Competition Consideration paid by CanWest to the individual Obligors does not, and because it was paid by CanWest cannot, have the character of compensation to the recipients thereof contrary to a comment which so suggests in the September 11th Audit Committee meeting."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 187, except admits that Plaintiff purports to quote from a May 1, 2001 memorandum.

188. The memorandum also stated that the "Non-Competition Consideration paid by CanWest to Ravelston does not represent any compromise of rights or entitlements of Ravelston pursuant to its existing Management Services Agreements with the Corporation and its subsidiaries contrary to the discussion thereof in the minutes of the September 11th meetings" and that the minutes and memorandum "incorrectly characterized the Non-Competition Consideration received by Ravelston as an early break fee.'" The memorandum advised that "[n]o amendment or termination of these Management Services Agreements was made or contemplated as a consequence of the CanWest transaction. The management fee . . . for the year 2000 was established early in 2000 as Cdn. $18.5 million and this amount was paid without reduction."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 188, except admits that Plaintiff purports to quote from a May 1, 2001 memorandum.

189. The memorandum finally requested that the Audit Committee conclude that the non-competition consideration was fair under the circumstances because, among other things,

"the delivery of the non-competition agreements by the Obligor was a critical condition of the completion of the Corporation's sale to CanWest" and "the Non-Competition Consideration was established in the Transaction Agreement and reflected the value attributed by CanWest to the Obligors' non-competition agreements."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 189, except admits that Plaintiff purports to quote from and paraphrase a May 1, 2001 memorandum.

190. Black and Radler received and reviewed the May 1, 2001 memorandum.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 190.

191. The May 1, 2001 memorandum corrected some of the misstatements and omissions in the September 11, 2000 representations, but it, too, contained misstatements and omissions of material fact because, among other things:

(a) CanWest did not request non-compete agreements from Boultbee and Atkinson and the payments to Atkinson and Boultbee did have the character of compensation;

(b) the non-competition consideration did not reflect the value attributed by CanWest to the non-competition agreements because CanWest did not specify an amount as to the value of the non-compete agreements, or that any payment would be made to Ravelston or any individuals for their agreement to not compete;

(c) the memorandum failed to disclose that the individuals and Ravelston received Cdn. $1.7 million in interest on the non-competition payments; and

(d) it falsely characterized the misrepresentations on September 11, 2000 as "inadvertent."

ANSWER: Mr. Black denies the allegations of paragraph 191.

192. Based upon the information in the May 1, 2001 memorandum, the Audit Committee and Board both ratified the fairness of the payments on May 14, 2001 and May 17, 2001, respectively.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 192.

193. Radler attended the May 14, 2001 Audit Committee meeting. Black and Radler both attended the Board meeting. Black and Radler did not correct any of the misrepresentations or omissions of material fact in the May 1, 2001 memorandum.

ANSWER: Mr. Black denies the allegations of paragraph 193, except admits that International's Board of Directors held a meeting on or about May 17, 2001, at which Mr. Black was in attendance, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

194. Hollinger International first disclosed the non-competition payments made in connection with the CanWest transaction in its Form 10-Q for the quarter ended March 31, 2001, which provided:

> Also, as required by CanWest as a condition to the transaction, Ravelston, Hollinger Inc. and Messrs. Black, Radler, Boultbee and Atkinson, entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to CanWest for a five year period, subject to certain limited exceptions, for aggregate consideration received by Ravelston and the executives of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above, consisting of Cdn. $38 million paid to Ravelston, Cdn. $19 million paid to Mr. Black, Cdn. $19 million paid to Mr. Radler, Cdn. $2 million paid to Mr. Boultbee and Cdn. $2 million paid to Mr. Atkinson.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 194, except admits that Plaintiff purports to quote from International's Form 10-Q for the quarter ended March 31, 2001.

195. Hollinger International's 2001 Form 10-K contained similar disclosures regarding the CanWest non-competition agreements:

> Also, as required by CanWest as a condition to the transaction, the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian business sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above of which Cdn. $38 million ($25.2 million) was paid to Ravelston and Cdn. $42 million ($27.8 million) was paid to Lord Black and the three senior executives. The Company's independent directors have approved the terms of these payments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 195, except admits that Plaintiff purports to quote from International's 2001 Form 10-K.

196. Hollinger International's 2002 Form 10-K filed on or about March 31, 2003 also contained similar disclosures concerning the CanWest transaction:

> Further, CanWest required as a condition to the transaction that the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives entered into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian business sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80 million ($53 million) paid by CanWest in addition to the purchase price referred to above of which Cdn. $38 million ($25.2 million) was paid to Ravelston and Cdn. $42 million ($27.8 million) was paid to Lord Black and the three senior executives. The Company's independent directors approved the terms of these payments.

> and
>
> Further, CanWest required as a condition to the transaction, that the Company, Ravelston, Hollinger Inc., Lord Black and three senior executives enter into non-competition agreements with CanWest pursuant to which each agreed not to compete directly or indirectly in Canada with the Canadian businesses sold to CanWest for a five-year period, subject to certain limited exceptions, for aggregate consideration of Cdn. $80,000,000 ($53,000,000) paid by CanWest in addition to the purchase price referred to above. Of that consideration, Cdn. $38,000,000 ($25,200,000) was paid to Ravelston and Cdn. $42,000,000 ($27,800,000) was paid to Lord Black and the three senior executives. The Company's independent directors approved the terms of these payments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 196, except admits that Plaintiff purports to quote from International's 2002 Form 10-K.

197. Hollinger International's Form 10-Q for the quarter ended March 31, 2001 and its 2001 and 2002 Forms 10-K contained misstatements and omissions of material fact because, among other things:

(a) The Cdn. $80 million non-competition payment was not made "in addition" to the purchase price; rather, it was allocated from the purchase price and thus reduced the amount of the total purchase price received by Hollinger International;

(b) CanWest never required that Boultbee or Atkinson enter into non-competition agreements. Rather, Black included them at Atkinson's request in order to pay them tax-free bonuses;

(c) The disclosures lead the reader to conclude that CanWest required the payment of these amounts to Ravelston and the individuals. However, CanWest did not determine the amount of the non-competition payment, the amount to be paid to Ravelston and the individuals, or that any amount would be paid to Ravelston or any individuals;

(d) The disclosures also failed to include that additional interest totaling Cdn. $1.7 million was received by the individuals and Ravelston;

(e) The specific amounts of money received by the individuals in Canadian dollars were incorrect; and

(f) The disclosures failed to state that the Board's "approval" was based upon misstatements and omissions of material fact.

ANSWER: Mr. Black denies the allegations of paragraph 197.

198. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 and 2002 Forms 10-K and Form 10-Q for the quarter ended March 31, 2001 were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

ANSWER: Mr. Black denies the allegations of paragraph 198.

199. During an annual Hollinger International shareholder meeting held in May 2002, at which Radler was present, Black made the following statements about the CanWest non-competition payments:

> Mr. Asper demanded that there be a non-compete arrangement and effectively the independent directors of this company determined that since he wished - that it was something that he was paying valuable consideration for and some of that should come to us and not to this company. And that was not a matter negotiated directly by us.
>
> . . . we leave the determination of these matters in the hands of disinterested people, who do, as I said in my remarks, conduct whatever analysis they think is appropriate. It's not for us to tell them what to do . . .
>
> [CanWest] attached significant commercial value to a non-compete agreement with us. Not with [Hollinger] . . . And, I accept that there's a conundrum as to the division between the company's interest and our own in a thing like that, so we effectively handed it to the independent directors to determine, stayed above the 10 times multiple, shrunk our own incomes, undoubtedly saved all of the shareholders a tremendous inconvenience by doing these deals that have enable this company to sail relatively painlessly through a difficult time . . .
>
> And in all of the circumstances, the independent directors felt this was the fair thing to do and I must say, I agree . . .
>
> You're dealing with a best efforts attempt to accommodate to industry practice and do what's equitable as determined by independent directors who are as a group quite a distinguished group.

ANSWER: Mr. Black denies the allegations of paragraph 199, except to the extent that they accurately represent the actual statements made by Mr. Black at International's shareholder meeting in May 2002, and lacks knowledge or information sufficient to form a belief as to the conduct or knowledge of any other individual.

200. During that meeting, Black also told Hollinger International's shareholders that the non-competition payments in the CanWest transaction did not reduce the amount of money paid to Hollinger International, stating:

> [t]he answer is that it was in our opinion not[,] technically speaking[,] a reduction of the compensation paid to this company. The consideration was not reduced there by the acquirer in the principle case that you're referring to, the CanWest deal. . . . Now the issue of it and the extent to which it was an allocation of ultimate purchase price was factored into the overall negotiations, starting from the premise of a 10 times multiple.

ANSWER: Mr. Black denies the allegations of paragraph 200, except to the extent that they accurately represent the actual statements made by Mr. Black at International's shareholder meeting in May 2002.

201. Contrary to Black's statements to Hollinger International's shareholders:

(a) the non-competition payments were not negotiated by the Audit Committee; rather, Black and Radler determined the amounts of the payments and to whom they would be made;

(b) all, not "some," of the non-competition consideration was paid to Black, Radler, Ravelston and the other individuals; none of it was retained by Hollinger International;

(c) CanWest did not specify the amounts of the non-competition payments or that Ravelston or the individuals should receive non-competition payments;

(d) The "approval" of the payments by Hollinger International's Audit Committee and Board was based on misstatements and omissions of material fact; and

(e) the non-competition payments reduced the sale proceeds to Hollinger International by approximately U.S. $53 million.

ANSWER: Mr. Black denies the allegations of paragraph 201.

202. Black and Radler knew or were reckless in not knowing that Black's statements to Hollinger International's shareholders were materially false and misleading.

ANSWER: Mr. Black denies the allegations of paragraph 202.

203. As part of their scheme to defraud, Black and Radler also diverted newspaper assets from Hollinger International to their privately-held corporation, Horizon.

ANSWER: Mr. Black denies the allegations of paragraph 203.

204. Among other things, Horizon engaged in a transaction with Hollinger International in which it received a newspaper for $1 after Black and Radler misled the Hollinger International Audit Committee and Board about the paper's worth and the existence of other buyers. In addition, in at least one instance, Black and Radler caused Horizon to obtain newspapers without any review by the Hollinger International Board or Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 204, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

205. Black and Radler also made misstatements and omissions of material fact regarding these transactions in Hollinger International's filings with the Commission.

ANSWER: Mr. Black denies the allegations of paragraph 205.

206. In September 2000, Hollinger International sold newspaper properties located in Bishop Lakes, California ("Bishop") and Blackfoot, Idaho ("Blackfoot") to Horizon through a pre-arranged assignment from CNHI (the "Bishop/Blackfoot Assignment").

ANSWER: Mr. Black denies the allegations of paragraph 206, except admits that, in September 2000, contemporaneous with CNHI entering into an Asset Purchase Agreement with International, CNHI entered into an Assignment and Assumption Agreement with Horizon in connection with certain newspaper properties located in Blackfoot, Idaho, and Bishop, California.

207. By obtaining these newspapers through an assignment from CNHI, Black and Radler circumvented the review of this related party transaction by Hollinger International's Audit Committee and Board.

ANSWER: Mr. Black denies the allegations of paragraph 207.

208. In May 2000, Morgan Stanley, who was assisting Hollinger International in selling its newspapers, advised Hollinger International that the Bishop and Mammoth Lakes ("Mammoth") newspapers should be considered one unit for purposes of selling the papers. The papers were in close proximity and Bishop's printing facility was used to print the Mammoth paper.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 208.

209. On or about July 27, 2000, Hollinger International received an offer to purchase Mammoth and Bishop for $3 million, plus another possible $1 million contingent on the profits of the papers.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 209.

210. On August 2, 2000, a representative of Hollinger International told the potential purchaser that its offer could not be accepted because "[a] company affiliated with Hollinger decided to purchase Bishop . . ." The representative also stated that this affiliated company decided not to buy Mammoth Lakes because of other commitments.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 210, except admits that Plaintiff purports to quote from and paraphrase an August 2, 2000 memorandum.

211. In September 2000, Bishop (but not Mammoth) was sold to Horizon through CNHI in the CNHI II transaction. However, CNHI had not sought to purchase the Bishop and Blackfoot papers as part of the CNHI II transaction.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 211, except admits that certain newspaper properties in Bishop, California were sold to Horizon in or around September 2000.

212. At Radler's direction, CNHI was solicited to accept the Bishop and Blackfoot newspapers as part of the CNHI II transaction whereby pursuant to an assignment clause, CNHI would assign those papers to Horizon. CNHI agreed to do the assignment so long as it had no obligation to pay for and keep the properties.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 212.

213. Provisions were added to the CNHI II asset purchase agreement wherein Bishop and Blackfoot were included among the properties to be purchased by CNHI but CNHI could prior to the closing. assign its rights and obligations with respect to Bishop and Blackfoot. While the total purchase price in the contract was listed as $95.2 million, including Bishop and Blackfoot, CNHI was to pay, after the assignment, only $90 million, leaving the remaining $5.2 million to be paid by the assignee.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 213.

214. On September 15, 2000, Hollinger International's Executive Committee, consisting of Black, Radler and Perle, approved the disposition of assets to CNHI for an aggregate purchase price of approximately $90 million after assignment by CNHI to Horizon of the right to acquire the Bishop and Blackfoot properties.

ANSWER: Mr. Black denies the allegations of paragraph 214, except to the extent that they accurately represent the actual language of the referenced September 15, 2000 Unanimous Written Consent of the Executive Committee of International's Board of Directors.

215. CNHI and Hollinger International closed the deal at the end of September 2000. CNHI assigned Bishop and Blackfoot to Horizon. However, Horizon paid only $4.1 million to Hollinger International, and not the $5.2 outlined in the CNHI purchase agreement.

ANSWER: Mr. Black denies the allegations of paragraph 215, except admits that International and CNHI entered into an Asset Purchase Agreement in or around September 2000. and admits the allegations of the second sentence of this paragraph.

216. Prior to the transaction, there was no disclosure to the Audit Committee or Board that Bishop and Blackfoot would be sold to Horizon.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 216.

217. Several months later, on December 4, 2000, Black presented the September 15, 2000 Executive Committee approval of the CNHI II transaction to the Board for ratification. Radler was present at the Board meeting.

ANSWER: Mr. Black denies the allegations of paragraph 217, except to the extent that they accurately represent the actual events that occurred at the referenced December 4, 2000 meeting. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

218. Black and Radler failed to disclose to the Board and Audit Committee that the Bishop and Blackfoot properties had been assigned to Horizon as part of the CNHI II transaction. They also failed to disclose that another purchaser had offered $3 million for the Mammoth and Bishop properties.

ANSWER: Mr. Black denies the allegations of paragraph 218, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

219. Although the Board minutes purport to incorporate by reference the September 15, 2000 Executive Committee consents, the Board was not given a copy of the consents. Thus, the Bishop and Blackfoot assignment to Horizon was never presented to the Audit Committee or Board.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 219.

220. Black disclosed in his response to Hollinger International's 2001 proxy questionnaire that he "indirectly through Conrad Black Capital Corporation, a stockholder of a privately held company, Horizon Publications, Inc., which through its subsidiaries: (i) acquired the right from Newspaper Holdings, Inc. (*an unaffiliated party*) to purchase newspaper assets from the company . . ."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 220, except admits that Plaintiff purports to quote from his response to International's 2001 proxy questionnaire.

221. Radler disclosed in his response to Hollinger International's 2001 proxy questionnaire that he "indirectly through F.D. Radler Ltd., a stockholder of a privately held company. Horizon Publications, Inc., which through its subsidiaries (i) acquired the right from Newspaper Holdings, Inc. *an unaffiliated party*, to purchase newspaper assets from the company . . ."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 221, except admits that Plaintiff purports to quote from Mr. Radler's response to International's 2001 proxy questionnaire.

222. Black's and Radler's responses failed to disclose that they decided to purchase Bishop and Blackfoot for Horizon prior to the CNHI II transaction and that Radler had arranged for CNHI to act as a mere conduit to convey the properties to Horizon as part of the CNHI II transaction. They also failed to disclose that they paid less than the value assigned to the properties in the CNHI II asset purchase agreements and that the assignment was never presented to the Audit Committee or Board for review and approval.

ANSWER: Mr. Black denies the allegations of paragraph 222, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

223. Hollinger International disclosed the Bishop/Blackfoot assignment in its 2001 proxy statement, which stated:

> Effective November 1, 2000, Horizon acquired two properties in California and Idaho in a transaction valued at approximately $4.1 million. The Company had previously contracted to sell such properties to Newspaper Holdings, Inc. as part of a larger transaction, but conveyed title to those two properties directly to Horizon pursuant to an assignment to Horizon from Newspaper Holdings, Inc.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 223, except admits that Plaintiff purports to quote from International's 2001 proxy statement.

224. The proxy statement described Horizon as "a company formed by a former Vice President of American Publishing and having certain members of the Board of Directors and senior management of the Company as shareholders."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 224, except admits that Plaintiff purports to quote from International's 2001 proxy statement.

225. This proxy statement was incorporated by reference into Hollinger International's 2000 Form 10-K.

ANSWER: Mr. Black admits the allegations of paragraph 225.

226. The disclosure regarding the Bishop and Blackfoot transaction contained misstatements and omissions of material fact because, among other things, it: (a) stated that Hollinger International had previously contracted to sell the properties to CNHI, when in fact Radler arranged for CNHI to act as a mere conduit to convey the properties to Horizon; (b) failed to disclose that the assignment was never presented to the Audit Committee or Board for review and approval; (c) failed to disclose that Bishop and Blackfoot were valued at $5.2 million in the CNHI II asset purchase agreement: and (d) failed to specifically state that Horizon was owned and controlled by Radler and Black.

ANSWER: Mr. Black denies the allegations of paragraph 226.

227. Black and Radler knew or were reckless in not knowing that Hollinger International's 2001 proxy statement and 2000 Form 10-K were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

ANSWER: Mr. Black denies the allegations of paragraph 227.

228. On August 1, 2001, Black and Radler, through Horizon, purchased Mammoth for $1.00 and no working capital adjustment, and secured the more valuable pairing of Bishop and Mammoth.

ANSWER: Mr. Black denies the allegations of paragraph 228.

229. Hollinger International had purchased Mammoth in 1999 for $1.75 million.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 229.

230. In May 2000, Morgan Stanley advised Hollinger International that following its acquisition of Mammoth in 1999, Mammoth generated revenue of $400,000 and EBITDA of nearly $27,000 through the end of the year. Morgan Stanley also stated that although this represented an EBITDA margin of only 6%, margins were expected to grow to 20% in 2000 with revenues of over $1.7 MM.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 230.

231. As discussed above, on July 27, 2000, Hollinger International had received a previous offer for Mammoth and Bishop for $3 million, plus another possible $1 million contingent on the operating profits of the papers.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 231.

232. Black and Radler knew that there was an offer for Mammoth for over $1 million. On August 1, 2000, a few days after the offer, Radler, in a memorandum to Black and others, stated there was a possible $2 million sale for "Monmouth"[sic].

ANSWER: Mr. Black denies the allegations of paragraph 232, except to the extent that the allegations of the second sentence of this paragraph accurately represent the actual language of the referenced August 1, 2000 memorandum. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

233. In the August 2, 2000 letter rejecting its offer to purchase both Bishop and Mammoth, the potential purchaser was told by a representative of Hollinger International that "Mammoth has great potential, but is too far from our office to allow for much managerial involvement, and therefore we are going to sell it as a stand-alone property. This property is

budgeted to generate revenues of $1.766MM in 2000 with an operating margin of approximately $325,000. There are a lot of efficiencies to be realized at this property which have not been realized as yet."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 233, except admits that Plaintiff purports to quote from and characterize an August 2, 2000 memorandum.

234. In November of 2000, the same potential purchaser sent another letter offering to purchase only Mammoth for $1.25 million.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 234.

235. The Mammoth transaction was not reviewed by the Audit Committee or Board prior to the closing date in August of 2001. The Mammoth transaction was presented to the Audit Committee for ratification on September 10, 2001, after the transaction had closed.

ANSWER: Mr. Black lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 235.

236. Radler attended the September 10, 2001 Audit Committee meeting, and directly or through one of his assistants, reported that Mammoth was sold for $1 and that Mammoth lost $70,000 the year before the sale and $6,000 the month before the sale. The Audit Committee was also told that there were no other buyers found. The Audit Committee then ratified the sale of Mammoth to Horizon for $1.00.

ANSWER: Mr. Black lacks information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 236.

237. At a Board meeting held that same day, Thompson reviewed the "disposition of the Mammoth Times," and referred the Board to the resolutions that stated that Mammoth was being sold for $1.00 and that it lost $70,000 the year before the sale and $6,000 the month before the sale. The Board confirmed and approved the Audit Committee's ratification of the Mammoth transaction.

ANSWER: Mr. Black denies the allegations of paragraph 237, except to the extent that they accurately represent the actual events that occurred at the referenced September 10, 2001 meeting of International's Board of Directors, and admits the allegations of the second sentence of this paragraph.

238. Black and Radler were present at the September 10, 2001 Board meeting. Black and Radler did not inform the Audit Committee or Board of the full prospects for the paper or that there had been another buyer willing to pay $1.25 million for the paper.

ANSWER: Mr. Black denies the allegations of paragraph 238, except admits that a meeting of International's Board of Directors was held on or about September 10, 2001, at which Mr. Black was in attendance, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

239. On or about May 1, 2000 (effective March 31, 2000), Horizon purchased from Hollinger International The Skagit Valley Argus ("Argus") and The Journal of the Island of San Juan ("San Juan Journal") newspaper publications for $1.00 "plus or minus a working capital adjustment."

ANSWER: Mr. Black denies the allegations of paragraph 239, except admits that on or about May 1, 2000, effective as of March 31, 2000, Southam Inc. and Horizon entered into a Stock Purchase Agreement in connection with the sale of the Skagit Valley Argus and The Journal of the San Juan Islands for the purchase price stated therein, and refers to the transaction documents for a complete statement of their contents.

240. On or about February 1, 2000, one of Radler's assistants sent Hollinger International's Audit Committee a memorandum recommending the disposition of the Argus, San Juan Journal and another paper to Horizon.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 240.

241. The February 1, 2000 memorandum stated that the San Juan Journal had lost $63,000 the previous year and was unlikely to meet its budget for the year 2000. The memorandum further stated that the Argus had lost a considerable amount of money for each of the last few years and should be closed or sold. The memorandum stated that a loss of approximately $215,000 could be expected for the three papers together in 2000, and that even that would be a big achievement. It further stated that it was in the best interests of Hollinger International to accept the offer from Horizon to acquire these papers for the "value of the working capital" and that the proposed transaction would save the cost of severance and undesired publicity of closing newspapers.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 241, except admits that Plaintiff purports to quote from and paraphrase a February 1, 2000 memorandum.

242. However, seven months earlier, in July 1999, Radler received a memorandum from the same assistant discussing these papers in a more favorable light. That memorandum stated that the San Juan Journal was "coming along nicely," that the "EBITDA has improved from a loss of $40,000 last year to a profit of $27,000 this year," and that there was no need to "discuss major changes to this operation at this time." The memorandum also stated that the Argus' losses had increased from the prior year but attributed some of this result to poor

management and discussed possibly acquiring a neighboring publication to solve the newspaper's problems. The memorandum stated that "if we are to make a go of the Skagit Valley Argus, the combination of our activity together with the [neighboring publication] will give us a revenue base of approximately $1.5 million."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 242, except admits that Plaintiff purports to quote from and paraphrase a July 1999 memorandum.

243. The Argus and San Juan Journal transactions were presented to the Audit Committee and Board on February 22, 2000. Radler attended the Audit Committee meeting on February 22, 2000. Radler's assistant recommended "the proposed disposition of three (3) losing papers to Horizon Publications Inc. for the value of their working capital" to the Audit Committee. The Audit Committee approved the transfer of these papers to Horizon.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 243, except admits the allegations of the fourth sentence of this paragraph.

244. Black and Radler were present at a Board meeting later that same day at which Thompson presented the Audit Committee's approval of the sale of these newspapers to Horizon to the Board. The Board and Audit Committee were not told of the full prospects for the newspapers.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 244, except admits that International's Board of Directors held a meeting on or about February 22, 2000, at which Mr. Black was in attendance, and the sale of the Skagit Valley Argus and The Journal of the Island of San Juan were discussed.

245. In late April 2000, another potential purchaser made an offer to buy the assets of the San Juan Journal at a purchase price equal to one times revenue. The San Juan Journal's revenue was approximately Cdn. $1.1 million in 1999. This offer was made after the transaction with Horizon was first presented to the Audit Committee but before the Argus and San Juan Journal sale to Horizon closed.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 245.

246. The transaction closed on or about May 1, 2000. A negative working capital adjustment resulted in Hollinger International owing Horizon approximately $162,000 to take the papers from Hollinger International.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 246.

247. In or about October 2000, Horizon sold the Argus to Skagit Valley Publishing. On information and belief, the Argus was sold for approximately $450,000.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 247.

248. The Argus and San Juan Journal dispositions were again presented to the Audit Committee for ratification in February 2001, several months after the transaction had closed. Radler was present at the February 2001 Audit Committee meeting. During the meeting, one of Kipnis's assistants presented for approval the "small dispositions" of the "Saagit [sic] Valley Argus . . . and the Journal of the San Juan Islands," for a purchase price of "$1 plus or minus working capital adjustments." The Audit Committee was told that "each [was] a cash flow drain and [that] we believe that fair market value was obtained."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 248.

249. The Audit Committee was not told that a negative working capital adjustment resulted in Hollinger International owing Horizon approximately $162,000 to take the papers from Hollinger International; that an alternate buyer had offered to buy the San Juan Journal for a significant sum prior to the closing of the transaction; or that Horizon sold the Argus for approximately $450,000 in October 2000.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 249.

250. The Audit Committee "approved and ratified" the sale of the Argus and San Juan Journal to Horizon.

ANSWER: Mr. Black admits the allegations of paragraph 250.

251. The Argus and San Juan Journal transactions were not disclosed in Hollinger International's 2000 Form 10-K.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 251.

252. Hollinger International's 2001 proxy statement stated only that Hollinger International had "sold the stock of Westbourne Investments, Inc. to Horizon," and failed to disclose material facts regarding the transactions because it failed to describe the transaction with any specificity and for the reasons stated below.

ANSWER: Mr. Black denies the allegations of paragraph 252.

253. The Mammoth, Skagit Valley Argus and San Juan Journal transactions were disclosed in Hollinger International's proxy statement filed on or about April 2, 2002, which stated:

> The Company consummated two transactions with Horizon Publications Inc., a company formed by a former Vice President of American Publishing Company and controlled by certain members of the Board of Directors and senior management of the Company as shareholders, which were unanimously approved by the Audit Committee and the independent Directors of the Company as market value transactions. American Publishing Company transferred assets in Saagit [sic] Valley and San Juan Islands, Washington and Mammoth Lakes, California in exchange for net working capital.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 253, except admits that Plaintiff purports to quote from International's proxy statement filed on or about April 2, 2002.

254. The disclosure contained misstatements and omissions of material fact regarding the transactions because, among other things:

(a) The Mammoth sale was for $1, not net working capital;

(b) it failed to disclose that Hollinger International's Board and Audit Committee were falsely told that the newspapers were of little value in the market, when, in fact, they were economically viable;

(c) it failed to disclose that third parties had offered significant sums for these properties and that the Board and Audit Committee were not made aware of these offers to purchase the papers; and

(d) it failed to disclose that the "net working capital" adjustment in the sale of the Skagit Valley Argus and San Juan Journal resulted in Hollinger International owing Horizon approximately $162,000 to take the newspapers; and

(e) it failed to specifically state that Horizon was owned and controlled by Radler and Black.

ANSWER: Mr. Black denies the allegations of paragraph 254.

255. This proxy statement was incorporated by reference into Hollinger International's 2001 Form 10-K.

ANSWER: Mr. Black admits the allegations of paragraph 255.

256. Black and Radler knew or were reckless in not knowing that Hollinger International's 2002 proxy statement and 2001 Form 10-K were materially false and misleading because they contained the misstatements and omissions of material fact discussed above.

ANSWER: Mr. Black denies the allegations of paragraph 256.

257. From approximately October 2002 through December 2002, Black and Perle, a Hollinger International director and member of Hollinger International's Executive Committee, negotiated an investment by Hollinger International in Trireme Associates LLC, the general partner of a venture capital fund known as Trireme Partners LP (the "Trireme investment"). On December 25, 2002, Perle executed a subscription agreement purportedly committing Hollinger International to invest $25 million in Trireme Associates LLC.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 257, except admits that Mr. Perle participated in negotiations regarding potential investments by International in Trireme.

258. The investment was scaled back to $2.5 million. On February 12, 2003, Black authorized Atkinson to sign a commitment on behalf of Hollinger International to invest $2.5 million in Trireme Associates LLC with the possibility of further investment up to $25 million.

ANSWER: Mr. Black denies the allegations of paragraph 258, except to the extent that the allegations of the second sentence of this paragraph accurately represent the actual language of the referenced authorization and commitment.

259. Prior to the investment, Black was informed by Atkinson that the Trireme investment would require the approval of the independent directors of Hollinger International.

ANSWER: Mr. Black admits the allegations of paragraph 259.

260. Black ignored this advice and authorized the Trireme investment without seeking or obtaining approval from Hollinger International's Board or Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 260.

261. Hollinger International transferred $2.5 million to Trireme Associates LLC on or about March 28, 2003.

ANSWER: Mr. Black admits the allegations of paragraph 261.

262. At the time of the Trireme investment, Trireme Associates LLC, as general partner of Trireme Partners LP, was to receive 20% of the profits of Trireme Partners LP ("the Distribution") after repayment of invested capital. The Distribution was to be made to holders of Trireme Associates LLC Class B units. As a result of the Trireme investment, Hollinger International held 25% of the Class B units. The remaining 80% of the profits of Trireme Partners LP was to be distributed to Trireme Associates LLC and the limited partners of Trireme Partners LP based upon their invested capital.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 262.

263. At the time of the Trireme investment, Perle, who was a Hollinger International director, Executive Committee member and Co-Chairman of Hollinger International's subsidiary, Hollinger Digital, was also an equity holder in Trireme Associates LLC holding an approximate 4% interest in the Distribution to Trireme Associates LLC.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 263.

264. Trireme Management LLC, the designated manager of Trireme Partners LP, was to receive a management fee from Trireme Partners LP. Perle was a member of management of Trireme Management LLC.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 264.

265. At the time of the Trireme investment, Black and another Hollinger International director, Kissinger, were members of the Strategic Advisory Board of Trireme Partners LP.

ANSWER: Mr. Black denies the allegations of paragraph 265.

266. The Trireme investment was a related party transaction that required approval from the outside directors on Hollinger International's Board or its Audit Committee.

ANSWER: Mr. Black denies the allegations of paragraph 266.

267. In March 2003, Hollinger International filed its 2003 proxy statement for its annual shareholder meeting on May 22, 2003. The proxy statement did not contain any disclosure concerning the Trireme investment.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 267.

268. Similarly, Hollinger International's 2002 Form 10-K, which was filed on or about March 31, 2003, after the investment was made, did not contain any disclosure concerning the Trireme investment.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 268.

269. Hollinger International first disclosed the Trireme investment in its Form 10-Q for the quarter ended March 31, 2003, which stated: "[d]uring the quarter, the Company made a venture capital investment of $2.5 million in a fund in which a director of the Company has a minority interest."

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 269, except admits that Plaintiff purports to quote from International's Form 10-Q for the quarter ended March 31, 2003.

270. In its Form 10-Q for the quarter ended June 30, 2003, Hollinger International again discussed the Trireme investment, stating:

> During the first quarter of 2003, the Company made an investment of $2.5 million in a limited liability company in which a director of the Company is a principal and has a minority interest. The funds invested are to be used for a subsequent investment in a venture capital limited partnership.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 270, except admits that Plaintiff purports to quote from International's Form 10-Q for the quarter ended June 30, 2003.

271. Both of these disclosures misstated and omitted to state material facts because, among other things, they did not identify the investment by name, did not identify the director

who had an interest in the fund, did not disclose Black's or Kissinger's involvement in Trireme, and did not disclose that the investment was not reviewed or approved by Hollinger International's Audit Committee or the independent members of Hollinger International's Board.

ANSWER: Mr. Black denies the allegations of paragraph 271.

272. Black certified Hollinger International's Forms 10-Q for the quarters ended March 31, 2003 and June 30, 2003 pursuant to the Section 302 of the Sarbanes-Oxley Act of 2002. He also certified Hollinger International's 2002 Form 10-K.

ANSWER: Mr. Black admits the allegations of paragraph 272.

273. Black knew or was reckless in not knowing that Hollinger International's 2002 Form 10-K and Forms 10-Q for the quarters ended March 31, 2003 and June 30, 2003 were materially false and misleading for the reasons stated above.

ANSWER: Mr. Black denies the allegations of paragraph 273.

274. On or about June 17, 2003, after other Hollinger International shareholders raised allegations of unauthorized transfers of corporate assets, Hollinger International's Board established a Special Committee of independent directors (the "Special Committee") to investigate possible misconduct, initiate and prosecute litigation based on its investigation, recover misappropriated assets, and protect the interest of all Hollinger International shareholders.

ANSWER: Mr. Black denies the allegations of paragraph 274, except admits that International's Board of Directors established a Special Committee on or about June 17, 2003, and authorized it to perform certain duties.

275. On November 6, 2003, the Special Committee sent letters to Black, Radler, Atkinson and Boultbee requesting information concerning each non-competition payment made in connection with the American Trucker, CNHI I, Horizon, CNHI II, Forum, Paxton and American Publishing Company transactions and informing them that the Special Committee was not aware of any form of proper authorization for the transfer of these funds out of Hollinger International.

ANSWER: Mr. Black denies the allegations of paragraph 275, except to the extent that they accurately represent the actual language of the referenced November 6, 2003 letter to him. Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the conduct or knowledge of any other individual.

276. In a letter dated November 10, 2003, Black, through his counsel, provided his version of how the non-competition payments were made. Black also proposed that Hollinger International's Board should engage in a strategic process to evaluate proposals for a range of financial alternatives, including the sale of some or all of Hollinger International's assets, and should announce the process to the public.

ANSWER: Mr. Black denies the allegations of paragraph 276, except to the extent that they accurately represent the actual language of the referenced November 10, 2003 letter.

277. Hollinger International's Board decided to engage in a strategic process in order to evaluate Hollinger International's alternatives to sell some or all of its assets ("the Strategic Process"). Black and Hollinger International made a formal contract to address Black's obligations with respect to the non-competition payments and the Strategic Process.

ANSWER: Mr. Black denies the allegations of paragraph 277, except lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of this paragraph, and admits that he signed a "Restructuring Proposal" on or about November 15, 2003, and refers to that document for a complete statement of its contents.

278. In a Restructuring Proposal executed on November 15, 2003, Black admitted that the $16.55 million in non-competition payments paid to Hollinger, Inc. and the $7.2 million that Black and Radler received "was not properly authorized on behalf of the Company." Black agreed to repay Hollinger International the full amount that he received, and to seek repayment from Hollinger, Inc. of the amounts it received.

ANSWER: Mr. Black denies the allegations of paragraph 278, except admits that he signed a "Restructuring Proposal" on or about November 15, 2003, and refers to that document for a complete statement of its contents.

279. Black also agreed that he would resign as CEO of Hollinger International but would stay on as Chairman and "devote his principal time and energy to pursuing the Strategic Process with the advice and consent of the Executive Committee and Board;" and that "during the pendency of the Strategic Process, in his capacity as the majority stockholder of [Hollinger, Inc.], [he] will not support a transaction involving ownership interests in [Hollinger, Inc.] if such transaction would negatively affect [Hollinger International's] ability to consummate a transaction resulting from the Strategic Process unless the [Hollinger, Inc.] transaction [was] necessary to enable [Hollinger, Inc.] to avoid a material default or insolvency. In any such event, [he] shall give the Company as much advance notice as reasonably possible of any such proposed [Hollinger, Inc.] transaction."

ANSWER: Mr. Black denies the allegations of paragraph 279, except admits that he signed a "Restructuring Proposal" on or about November 15, 2003, and that Plaintiff purports to quote from such document, and refers to that document for a complete statement of its contents.

280. On November 17, 2003, Hollinger International issued a press release ("the November 17, 2003 Press Release"). Among other things, the press release announced the Special Committee's then-current findings concerning its investigation.

ANSWER: Mr. Black admits the allegations of paragraph 280.

281. The press release stated that a total of $32.15 million in payments styled as "non-competition payments" were made to Hollinger, Inc., Black, Radler, Atkinson and Boultbee in connection with the sale of Hollinger International's U.S. newspaper properties that were not authorized or approved by either the Audit Committee or the full Board of Directors of Hollinger International. The press release also stated that Hollinger International's prior public disclosure regarding these matters was incomplete or inaccurate in some respects.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 281, except admits that Plaintiff purports to quote from and paraphrase a November 17, 2003 press release.

282. The press release stated that the $16.55 million in payments to Hollinger, Inc. were not previously disclosed in the notes to Hollinger International's financial statements or in its filings with the Commission. The press release further stated that although the $15.6 million in payments to the four individuals were disclosed in Hollinger International's Form 10-K filed in March 2002, this prior disclosure stated that the payments in question had been authorized by the independent directors of the Board, which did not occur, and that the payments were made "to satisfy a closing condition," which was not accurate. In addition, $5.5 million of such payments were reported to have occurred in 2000 rather than in 2001, when such payments were actually made.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 282, except admits that Plaintiff purports to quote from and paraphrase a November 17, 2003 press release.

283. The press release further announced that Black and Radler had agreed in writing to repay Hollinger International the full amount of unauthorized payments received by them, with interest, and that Black had agreed to seek repayment in full from Hollinger, Inc. of the amounts received by it, with interest, no later than June 1, 2004.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 283, except admits that Plaintiff purports to paraphrase a November 17, 2003 press release.

284. The November 17, 2003 press release also announced the Strategic Process. The press release announced that Hollinger International's Board had retained Lazard LLC to review and evaluate its strategic alternatives, including a possible sale of Hollinger International, a sale of one or more of its major properties, or other possible transactions.

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 284, except admits that Plaintiff purports to paraphrase a November 17, 2003 press release.

285. The November 17, 2003 Press Release further stated that:

(a) Lord Conrad M. Black of Crossharbour . . . has advised the board that, in light of the Strategic Process, he will retire as [CEO] . . . and that he will devote his time and attention primarily to pursuing the Strategic Process.

(b) Lord Black said: "Now is the appropriate time to explore strategic opportunities to maximize value for all shareholders of Hollinger International. We are delighted that Bruce Wasserstein and his team at Lazard will be working with us to ensure the market is well aware of the substantial value of [Hollinger International's] assets. Reflecting my full support of this process, I will be devoting my attention in coming months to achieving a successful outcome for all Hollinger shareholders . . ."

(c) Lord Black has also agreed that during the pendency of the Strategic Process, in his capacity as the majority stockholder of [Hollinger, Inc.], he will not support a transaction involving ownership interests in [Hollinger, Inc.] if such transaction would negatively affect [Hollinger International's] ability to consummate a transaction resulting from the Strategic Process unless any such transaction involving [Hollinger, Inc.] meets certain limited conditions, and after reasonable prior notice to Hollinger [International].

ANSWER: Mr. Black lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 285, except admits that Plaintiff purports to quote from and paraphrase a November 17, 2003 press release.

286. Black assisted in the drafting of and approved the November 17, 2003 Press Release prior to its publication. Black understood that the press release would constitute a public disclosure of his intentions with respect to the Strategic Process as of November 17, 2003.

ANSWER: Mr. Black denies the allegations of paragraph 286, except admits the allegations of the first sentence of this paragraph.

287. When Black approved the November 17, 2003 Press Release, he was not and had no intention of devoting his time and attention primarily to pursuing the Strategic Process.

ANSWER: Mr. Black denies the allegations of paragraph 287.

288. The Barclays had for years been interested in purchasing Hollinger International's London Daily Telegraph, but Black had repeatedly rebuffed their offers.

ANSWER: Mr. Black admits the allegations of paragraph 288.

289. In or about September 1, 2003, David Barclay, in a letter to Black, renewed his interest in purchasing the Telegraph and, in connection with that, offered to discuss helping Hollinger, Inc. with its financing and becoming an investor in Hollinger, Inc. and suggested a meeting between Black and himself or his son, Aidan Barclay. Black responded that although he was willing to meet with the Barclays, the Telegraph was not for sale.

ANSWER: Mr. Black denies the allegations of paragraph 289, except to the extent that (i) the allegations of the first sentence of this paragraph accurately represent the actual language of the referenced September 1, 2003 letter; and (ii) the allegations of the second sentence of this paragraph accurately represent the actual language of the referenced response by Mr. Black.

290. On or about October 31, 2003, David Barclay again wrote to Black reaffirming his interest in the Telegraph and proposing to meet. On November 3, 2003, Black wrote back to David Barclay that the Telegraph was not for sale. However, on November 11, 2003, the day after he responded to the Special Committee's letter, Black wrote to David Barclay that Black had a "thought worthy of discussion."

ANSWER: Mr. Black denies the allegations of paragraph 290, except to the extent that the allegations accurately represent the actual language of the referenced letters of October 31. 2003, November 2, 2003, and November 11, 2003.

291. Shortly thereafter, during the week before the press release was issued, Black met with Aidan Barclay to discuss effectuating a transaction at the Hollinger, Inc. level which would allow the Barclays to control Hollinger International's Daily Telegraph newspaper. Black did not inform Hollinger International's Board of his dealings with the Barclays.

ANSWER: Mr. Black denies the allegations of paragraph 291.

292. As of November 15. 2003, the date that Black executed the Restructuring Proposal with Hollinger International, Black worked ceaselessly to effectuate a transaction to sell his interest in Hollinger, Inc. for his own benefit rather than for the benefit of all of Hollinger International's shareholders. As of November 15, 2003, Black was secretly negotiating to sell his interest in Hollinger. Inc. to the Barclays, among others.

ANSWER: Mr. Black denies the allegations of paragraph 292.

293. On January 17, 2004, Black unveiled a transaction with the Barclays which, if consummated, would have prevented Hollinger International from realizing the benefits of the Strategic Process by ending the process before the bidding had even begun. Black revealed that he and the Ravelston intended to enter an agreement with Press Holdings under which Press Holdings would purchase Ravelston's controlling interest in Hollinger, Inc. and make a tender offer to purchase all of the shares of Hollinger, Inc. (the "Barclay Transaction")

ANSWER: Black denies the allegations of paragraph 293.

294. On or about January 19, 2004, Hollinger International filed suit (the "Delaware Action") against Black, Hollinger, Inc. and Press Holdings to, among other things, obtain a preliminary injunction to prevent the Barclay Transaction and to prevent Black and Hollinger, Inc. from circumventing the Strategic Process.

ANSWER: Mr. Black denies the allegations of paragraph 294, except admits that on or about January 19, 2004, International filed suit against Black, Inc., and Press Holdings, and refers to the complaint filed in that matter for a complete statement of its contents.

295. On February 26, 2004, following a three-day trial and based upon a voluminous evidentiary record, Vice Chancellor Strine issued a comprehensive 130-page decision finding in favor of Hollinger International and against Hollinger, Inc. and Black on all of the claims that were the subject of the evidentiary proceeding. Hollinger International, Inc. v. Conrad M. Black, 844 A.2d 1022 (Del Ch. 2004).

ANSWER: Mr. Black denies the allegations of paragraph 295, except admits that the Delaware Chancery Court issued a decision on or about February 26, 2004, and refers to that decision for a complete statement of its contents.

296. Among other things, Vice Chancellor Strine found that from November 15, 2003 through at least January 18, 2004, Black, by and through Hollinger, Inc., "persistently and seriously" violated his fiduciary duties and the Restructuring Proposal to the detriment of International and its non-controlling, majority shareholders. Vice Chancellor Strine further found that ". . . on November 17, 2003, Black began to turn the Barclays away from their interest in a direct purchase of The Daily Telegraph and towards a purchase of [Hollinger,] Inc."

ANSWER: Mr. Black denies the allegations of paragraph 296, except admits Plaintiff purports to quote from and paraphrase the Delaware Chancery Court's decision of February 26, 2004.

297. Vice Chancellor Strine further found that "[s]tated bluntly, Black steered the Barclays toward doing an end-run around the Strategic Process . . ." Vice Chancellor Strine concluded that ". . . Black was supposed to be devoting his principal time and energy to direct the [Hollinger] International Strategic Process in order to maximize the value of the Telegraph and other assets owned by [Hollinger] International for all [Hollinger] International stockholders. Instead, he devoted his principal energy to crafting methods by which he could sell [Hollinger] Inc. to the Barclays and assure them that they would be able to stymie any sale of the Telegraph by International's board."

ANSWER: Mr. Black denies the allegations of paragraph 297, except admits Plaintiff purports to quote from and paraphrase the Delaware Chancery Court's decision of February 26, 2004.

COUNT I

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder (Defendants Black, Radler and Hollinger, Inc.)

298. Paragraphs 1 through 297 are realleged and incorporated by reference herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

299. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc., in connection with the purchase and sale of Hollinger International's securities, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange: employed devices, schemes and artifices to defraud: made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and course of business which operated or would operate as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of such securities.

ANSWER: Mr. Black avers that the allegations of paragraph 299 purport to state legal conclusions to which no response is required. To the extent paragraph 299 contains factual allegations, they are denied.

300. Defendants knew or were reckless in not knowing of the facts and circumstances described in paragraphs 298 and 299 above.

ANSWER: Mr. Black avers that the allegations of paragraph 300 purport to state legal conclusions to which no response is required. To the extent paragraph 300 contains factual allegations, they are denied.

301. The knowledge of Black and Radler is imputed to Hollinger, Inc.

ANSWER: Mr. Black avers that the allegations of paragraph 301 purport to state legal conclusions to which no response is required. To the extent paragraph 301 contains factual allegations, they are denied.

302. By reason of the activities described in paragraphs 298 through 301 above, Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

ANSWER: Mr. Black avers that the allegations of paragraph 302 purport to state legal conclusions to which no response is required. To the extent paragraph 302 contains factual allegations, they are denied.

COUNT II

Violations of Section 14(a) of the Exchange Act (15 U.S.C. § 78o(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§ 240.14a-3 and 240.14a-9] Thereunder (Defendants Black and Radler)

303. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

304. From at least 1999 through at least 2003, Defendants Black and Radler, by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange or otherwise: solicited or permitted the use of their names to solicit proxies, consents, authorizations or notices of meetings in respect of Hollinger International's securities which contained statements which were false and misleading with respect to material facts or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading and which failed to furnish information required under Exchange Act Rule 14a-3.

ANSWER: Mr. Black avers that the allegations of paragraph 304 purport to state legal conclusions to which no response is required. To the extent paragraph 304 contains factual allegations, they are denied.

305. By reason of the activities described in paragraphs 303 and 304 above, Black and Radler violated Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 305 purport to state legal conclusions to which no response is required. To the extent paragraph 305 contains factual allegations, they are denied.

COUNT III

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78t(a)] and Rules 12b-20, 13a-l, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-l, and 240.13a-13] Thereunder by Black, Radler and Hollinger, Inc. as control persons under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)] (Defendants Black, Radler and Hollinger Inc.)

306. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

307. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to file or caused a failure to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger International's annual and periodic reports on Forms 10-Q and 10-K and annual proxy statements, and also failed to include in those reports such further material information, as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

ANSWER: Mr. Black avers that the allegations of paragraph 307 purport to state legal conclusions to which no response is required. To the extent paragraph 307 contains factual allegations, they are denied.

308. By reason of the activities described in paragraphs 306 and 307 above, Hollinger International violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-l, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-l, and 240.13a-13] promulgated thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 308 purport to state legal conclusions to which no response is required. To the extent paragraph 308 contains factual allegations, they are denied.

309. By reason of the activities described in paragraphs 306 through 308 above, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Black, Radler and Hollinger, Inc. are liable for Hollinger International's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-l, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-l, and 240.13a-13] promulgated thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 309 purport to state legal conclusions to which no response is required. To the extent paragraph 309 contains factual allegations, they are denied.

COUNT IV

Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(A)] by Black, Radler and Hollinger, Inc. as Control Persons under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)] (Defendants Black, Radler and Hollinger, Inc.)

310. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

311. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to make and keep books, records, records and accounts, which in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of Hollinger International.

ANSWER: Mr. Black avers that the allegations of paragraph 311 purport to state legal conclusions to which no response is required. To the extent paragraph 311 contains factual allegations, they are denied.

312. From at least 1999 through at least 2003, Hollinger International, under the control of Black, Radler and Hollinger, Inc., directly and indirectly, failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements.

ANSWER: Mr. Black avers that the allegations of paragraph 312 purport to state legal conclusions to which no response is required. To the extent paragraph 312 contains factual allegations, they are denied.

313. By reason of the activities described in paragraphs 310 through 312 above, Hollinger International violated Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(A)] promulgated thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 313 purport to state legal conclusions to which no response is required. To the extent paragraph 313 contains factual allegations, they are denied.

314. By reason of the activities described in paragraphs 310 through 313 above, and pursuant to Section 20(a) of the Exchange Act, Black, Radler, and Hollinger, Inc. are liable for Hollinger International's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

ANSWER: Mr. Black avers that the allegations of paragraph 314 purport to state legal conclusions to which no response is required. To the extent paragraph 314 contains factual allegations, they are denied.

COUNT V

Violations of Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1] (Defendants Black, Radler and Hollinger, Inc.)

315. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

316. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc., directly and indirectly, falsified or caused to be falsified books, records, and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

ANSWER: Mr. Black avers that the allegations of paragraph 316 purport to state legal conclusions to which no response is required. To the extent paragraph 316 contains factual allegations, they are denied.

317. By reason of the activities described is paragraphs 315 and 316 above, Black, Radler and Hollinger, Inc. violated Rule 13b2-1 [17 C.F.R. § 240.13b2-1] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

ANSWER: Mr. Black avers that the allegations of paragraph 317 purport to state legal conclusions to which no response is required. To the extent paragraph 317 contains factual allegations, they are denied.

COUNT VI

Violations of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] (Defendants Black, Radler and Hollinger, Inc.)

318. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

319. From at least 1999 through at least 2003, Defendants Black, Radler and Hollinger, Inc. knowingly circumvented or knowingly failed to implement a system of internal accounting controls and knowingly falsified books, records, and accounts described in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

ANSWER: Mr. Black avers that the allegations of paragraph 319 purport to state legal conclusions to which no response is required. To the extent paragraph 319 contains factual allegations, they are denied.

320. By reason of the activities described in paragraphs 318 and 319 above, Black, Radler and Hollinger, Inc. violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

ANSWER: Mr. Black avers that the allegations of paragraph 320 purport to state legal conclusions to which no response is required. To the extent paragraph 320 contains factual allegations, they are denied.

COUNT VII

Violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-16 [17 C.F.R. § 240.13a-1 and 17 C.F.R. § 240.13a-16] Thereunder (Defendant Hollinger, Inc.)

321. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

322. Hollinger, Inc. failed to file or caused a failure to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger, Inc.'s 2001 Form 40-F, 2002 Forms 20-F and 2002 proxy statement on Form 6-K, and also failed to include in

those reports such further material information, as was necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

ANSWER: Mr. Black avers that the allegations of paragraph 322 purport to state legal conclusions to which no response is required. To the extent paragraph 322 contains factual allegations, they are denied.

323. Hollinger, Inc. failed to file with the Commission, in accordance with such rules and regulations that the Commission has prescribed as necessary and appropriate in the public interest and for the protection of investors, Hollinger, Inc.'s 2003 Form 20-F.

ANSWER: Mr. Black avers that the allegations of paragraph 323 purport to state legal conclusions to which no response is required. To the extent paragraph 323 contains factual allegations, they are denied.

324. By reason of the activities described in paragraphs 321 through 323 above, Hollinger Inc., violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-16 [17 C.F.R. §§ 240.13a-1 and 240.13a-16] promulgated thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 324 purport to state legal conclusions to which no response is required. To the extent paragraph 324 contains factual allegations, they are denied.

COUNT VIII

Violations of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14]
(Defendant Black)

325. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

326. From at least March 31, 2003 until at least August 2003, Black certified Hollinger International reports filed on Forms 10-Q and Form 10-K pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 and Rule 13a-14 promulgated thereunder, stating that: he had reviewed each report; based upon his knowledge, the reports did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and based upon his knowledge, the financial statements and information contained in each report fairly present in all material respects the financial condition, results of operations and cash flows of the issuer.

ANSWER: Mr. Black denies the allegations paragraph 326, except admits that he certified International reports filed on Forms 10-Q and Form 10-K pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 and Rule 13a-14, and refers to those documents for a complete statement of their contents.

327. Black knew or was reckless in not knowing that the reports he certified contained untrue statements of material fact and omitted to state material facts necessary to make the statements made therein, in light of the circumstances under which the statements were made, not misleading.

ANSWER: Mr. Black avers that the allegations of paragraph 327 purport to state legal conclusions to which no response is required. To the extent paragraph 327 contains factual allegations, they are denied.

328. By reason of the activities described in paragraphs 325 through 327 above, Black violated Rule 13a-14 [17 C.F.R. § 240.13b2-1] promulgated under Section 302 of the Sarbanes-Oxley Act of 2002.

ANSWER: Mr. Black avers that the allegations of paragraph 328 purport to state legal conclusions to which no response is required. To the extent paragraph 328 contains factual allegations, they are denied.

COUNT IX

Violations of Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§ 240.14a-3 and 240.14a-9] Thereunder by Hollinger, Inc. as" a Control Person under Section 20(a) of the Exchange Act [15 U.S.C. § 20(a)} (Defendant Hollinger, Inc.)

329. Paragraphs 1 through 297 are realleged and incorporated by reference as if set forth in full herein.

ANSWER: Mr. Black incorporates by reference his answers to paragraphs 1 through 297 of the First Amended Complaint.

330. From at least 1999 through at least 2003, Hollinger International, under the control of Hollinger, Inc., by the use of the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange or otherwise: solicited or permitted the use of its name to solicit proxies, consents, authorizations or notices of meetings in respect of Hollinger International's securities which contained statements which were false and misleading with respect to material facts or omitted to state material facts necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which became false or misleading and which failed to furnish information required under Exchange Act Rule 14a-3.

ANSWER: Mr. Black avers that the allegations of paragraph 330 purport to state legal conclusions to which no response is required. To the extent paragraph 330 contains factual allegations, they are denied.

331. By reason of the activities described in paragraphs 329 and 330 above, Hollinger International violated Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 331 purport to state legal conclusions to which no response is required. To the extent paragraph 331 contains factual allegations, they are denied.

332. By reason of the activities described in paragraphs 329 through 331 above, and pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Hollinger, Inc. is liable for Hollinger International's violations of Section 14(a) of the Exchange Act [15 U.S.C. §78n(a)] and Rules 14a-3 and 14a-9 [§§240.14a-3 and 240.14a-9] thereunder.

ANSWER: Mr. Black avers that the allegations of paragraph 332 purport to state legal conclusions to which no response is required. To the extent paragraph 332 contains factual allegations, they are denied.

PRAYER FOR RELIEF

333. Mr. Black acknowledges that the allegations contained in the section of the First Amended Complaint titled "Relief Requested" purport to request judgment awarding Plaintiff certain relief, but denies Plaintiff's entitlement to any such judgment, award or relief and otherwise denies the allegations contained in the section of the First Amended Complaint titled "Relief Requested," including subheadings I through VIII therein.

334. Mr. Black denies each and every heading in the First Amended Complaint.

335. Mr. Black states that any and all averments in this Answer that refer to the contents of a document shall in no way constitute or be construed as an admission by Mr. Black of, and Mr. Black hereby denies knowledge or information sufficient to form a belief with respect to, (a) the existence of the document, (b) the truth or accuracy of its contents, (c) whether any quotation or summary of a statement contained in the document and attributed to an individual depict any actual statement made by such individual verbatim, or (d) the admissibility of the document or its contents as evidence in this or any other proceeding.

AFFIRMATIVE DEFENSES

336. As for Mr. Black's defenses to the allegations contained in the First Amended Complaint, Mr. Black avers that:

FIRST DEFENSE

337. Plaintiff's claims are barred in whole or in part for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

338. Plaintiff's claims against Mr. Black are barred in whole or in part by the applicable statutes of limitations and/or repose.

THIRD DEFENSE

339. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

FOURTH DEFENSE

340. Plaintiff's claims are barred in whole or in part by the doctrine of payment.

FIFTH DEFENSE

341. Plaintiff's claims are barred in whole or in part by the doctrine of accord and satisfaction.

SIXTH DEFENSE

342. Plaintiff's claims are barred in whole or in part by the doctrines of *res judicata* and collateral estoppel.

SEVENTH DEFENSE

343. Plaintiff's claims are barred in whole or in part by the doctrines of setoff and release.

EIGHTH DEFENSE

344. Plaintiff's claims are barred in whole or in part by the provisions of Article IX of International's Restated Certificate of Incorporation and 8 Del. C. § 102(b)(7).

NINTH DEFENSE

345. Plaintiff's claims are barred in whole or in part because Mr. Black relied in good faith upon the corporate records of International and its affiliates and upon such information, opinions, reports or statements by corporate officers or employees, or committees of the board of directors, or by other persons as to matters Mr. Black reasonably believed were within such other person's professional or expert competence and who was selected with reasonable care by or on behalf of the corporation.

346. Mr. Black reserves the right to assert other affirmative defenses to the extent that discovery proceeds.

WHEREFORE, Mr. Black prays for judgment denying Plaintiff's request for relief, dismissing Plaintiff's lawsuit in its entirety with prejudice, assessing costs and attorneys' fees against Plaintiff, and awarding Mr. Black such other and further relief as this Court may deem just and proper.

Dated: July 12, 2005

Respectfully submitted,

Alex J. Bourelly wB

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CERTIFICATE OF SERVICE

I, William B. Berndt, an attorney, hereby state that I caused a copy of the attached **Answer and Affirmative Defenses of Conrad M. Black to the First Amended Complaint** to be served by messenger on the following individuals this 12th day of July, 2005:

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W. B. W

William B. Berndt

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 AND ARRANGEMENT OF HOLLINGER INC. 4322525 CANADA INC. AND SUGRA LIMITED

Court File No.: 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF RANDALL D. LEHNER
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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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
WITH RESPECT TO **HOLLINGER INC., 4322525 CANADA INC.** AND **SUGRA LIMITED**

Court File No.: 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at **Toronto**

REPLY MOTION RECORD OF THE APPLICANTS
(re: settlement approval motion)

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