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

RESPONDING MOTION RECORD OF CONRAD BLACK AND CONRAD BLACK CAPITAL CORPORATION
(settlement approval motion)

VOLUME I OF II

January 6, 2012

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AFFIDAVIT OF LISA C. MUNRO
(sworn December 22, 2011)

I, Lisa C. Munro, barrister and solicitor, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner at Lerners LLP, counsel for Conrad Black and Conrad Black Capital Corporation (CBCC) in these proceedings. I have been acting for these parties, along with my partner Earl A. Cherniak, Q.C., since 2006. As such, I have knowledge of the matters to which I hereinafter depose. I make this Affidavit in response to the Applicants' motion for approval of two Settlement Agreements: between the Applicants and KPMG LLP; and between the Applicants and Torys LLP ("the Settlement Approval Motion"). In this Affidavit I do not disclose any solicitor-client communications.

These proceedings

2. The Applicants have been granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, pursuant to an order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) dated August 1, 2007, a true copy of which is attached hereto and marked as Exhibit "**1**" to this my Affidavit. Pursuant to that order, Ernst and Young Inc. was appointed as the monitor (the "Monitor") of the Applicants' property and business. Among the assets which have been identified by the Applicants are claims and causes of action against a variety of individuals and entities, including Mr. Black, CBCC, Torys

and KPMG. The Applicants' claims against Torys and KPMG which they now propose to settle arise out of professional services and advice rendered by them to the Applicants at a time when Mr. Black was an officer and director of Applicant Hollinger Inc. and related corporations.

3. Mr. Black has also made a significant claim in the amount of at least U.S. $57,188,997.00 and Cdn. $25,555,308.95 against Hollinger Inc. through the claims bar process which has been imposed in these *CCAA* proceedings. Attached hereto and marked as Exhibit "**2**" to this my Affidavit is a true copy of Mr. Black's Proof of Claim dated July 11, 2008, which Hollinger Inc. has neither admitted nor denied to date, despite the passage of over three years. This may make him the single largest creditor of Hollinger Inc.

"Ongoing Proceedings" underlying the claims over against Torys and KPMG

Overview

4. Mr. Black has been named a defendant in the following proceedings in both the United States and Canada (the "Ongoing Proceedings") which have not been resolved, in which allegations of misconduct are made against him arising out of his role as a former director and officer of the Applicants and their related corporations and damages of over $1 billion are claimed:

(a) three Ontario actions brought by the Applicants:

(i) *Hollinger Inc. and Domgroup Ltd. v. The Ravelston Corporation Limited, Ravelston Management Inc., Conrad M. Black, F. David Radler, Jack A. Boultbee and Peter Y. Atkinson*, commenced March 29, 2005, and bearing Ontario Superior Court of Justice (Commercial List) Court File No. 05-CL-5822, for damages against Mr. Black in the amount of over $550,000,000. Attached hereto and marked as Exhibit "**3**" to this my Affidavit is the Amended Statement of Claim dated July 26, 2007;

(ii) *Hollinger Inc., Domgroup Ltd., 4322525 Canada Inc., 10 Toronto Street Inc. and Sugra Limited v. The Ravelston Corporation Limited, Ravelston Management Inc., 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509647 N.B. Inc., Moffat Management Inc., Black-Amiel Management Inc., Argus Corporation Limited, Conrad Black Capital Corporation, Hollinger Aviation Ontario Limited, 2753421 Canada Limited, Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee, 1406684 Ontario Limited and Peter Y. Atkinson*, commenced January 27, 2006, and bearing Ontario Superior Court of Justice (Commercial List) Court File No. 06-CL-6261, for damages against Mr. Black in the amount of almost $700 million. Attached hereto and marked as Exhibit "**4**" to this my Affidavit is a true copy of the Amended Amended Statement of Claim dated May 27, 2009; and

(iii) *Hollinger Inc. v. Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson*, commenced April 20, 2007, and bearing Ontario Superior Justice (Commercial List) Court File No. 07-CL-6954. Attached hereto and marked as Exhibit "**5**" to this my Affidavit is a true copy of the Statement of Claim.

Therefore, Mr. Black is both a defendant in three actions brought against him by the Applicants and remains a significant stakeholder in the Applicants, both as shareholder and claimant. Mr. Black has not yet delivered a statement of defence in these Ontario actions and there has been no production or discovery.

(b) two United States actions brought by third parties:

(i) *Hollinger International Inc. v. Hollinger Inc., The Ravelston Corporation Limited, Ravelston Management Inc., Conrad M. Black, F. David Radler, John A Boultbee, Daniel W. Colson, Barbara Amiel-Black, and Richard Perle*, commenced January 28, 2004, and proceeding as Case No. 04-C-0698 in the United States

District Court for the Northern District of Illinois, Eastern Division, for damages of "hundreds of millions of dollars" and a disgorgement order against Mr. Black (the "International Action"). The settlement of this action, including court approvals in Delaware and Ontario, is in the process of being completed; however, at the time of the swearing of this Affidavit the court approvals are pending. Attached hereto and marked as Exhibit "**6**" to this my Affidavit is a true copy of the Third Amended Complaint dated October 8, 2008; and

(ii) *United States Securities and Exchange Commission v. Conrad M. Black, F. David Radler, and Hollinger Inc.*, commenced November 15, 2004, proceeding as Civil Action No. 04C 7377 in the United States District Court for the Northern District of Illinois, Eastern Division, for unspecified damages and injunctive relief (the "SEC Action"). Attached hereto and marked as Exhibit "**7**" to this my Affidavit is a true copy of the First Amended Complaint dated March 10, 2005.

Detailed allegations

SEC Action

5. In the SEC Action (Exhibit "**7**" to my Affidavit), it is alleged that Mr. Black acted in violation of the *Securities and Exchange Act of 1934* in that:

(a) generally, that during the period from at least 1999 to at least 2003, Mr. Black and his co-defendants "engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International Inc.... and to conceal their self-dealing from Hollinger International's shareholders" [paragraph 1];

(b) that the defendants, including Mr. Black, "conducted their scheme through a series of related party transactions involving, among other things, purported 'non-competition payments' by which [Mr. Black] diverted to [himself], to Defendant Hollinger Inc...and to other corporate insiders approximately $85 million of the proceeds from Hollinger International's sale of newspaper publications to third parties" [paragraph 2] in the following transactions which are alleged to have been "fraudulent" in the period 1999 to 2001:

- American Trucker;
- Community Newspaper Holdings Inc. (two transactions);
- Horizon;
- PMG Acquisition Corporation;
- Forum Communications;
- CanWest Global Communications Corporation [paragraphs 46 and 47]; and
- American Publishing Company [paragraph 133]

(c) Mr. Black..."orchestrated the sale of Hollinger International's newspaper publications at below-market prices to another privately-held company owned and controlled by [Mr. Black]", Horizon [paragraphs 3 and 203]:

- Bishop/Blackfoot Assignment [paragraph 206];
- *The Mammoth Times* [paragraph 228];
- *The Skagit Valley Argus* and the *Journal of the Island of San Juan* [paragraph 239];

(d) in February, 2003, Mr. Black "authorized the investment of $2.5 million of Hollinger International's funds in a venture capital fund [called Trireme] with which Black and two other directors of Hollinger International were affiliated" [paragraphs 4 and 257];

(e) in November, 2003, Mr. Black "approved a press release... 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 [the] shareholders (the "Strategic Process") and not to undermine that process by engaging in transactions for the benefit of himself and Hollinger Inc." [paragraphs 5 and 274-297]; and

(f) to perpetrate that "scheme, [Mr. Black] misrepresented and omitted to state material facts regarding the related party transactions to [the] Audit Committee and Board of Directors" and in "filings with the Commission and during Hollinger International shareholder meetings" in the period 2000 to 2002 [paragraphs 6, 138, and 201].

Partial summary judgment has been granted in favour of the SEC and against Mr. Black in respect of certain of the allegations in the SEC action based, in part, on the criminal fraud convictions obtained against him relating to the Forum, PMG, and American Publishing Company non-competition payments referred to in (b) above. Attached hereto and marked as Exhibits "**8**" and "**9**" to this my Affidavit are true copies of the opinions and orders of Judge Hart in that action. I am advised by Jennifer Owens of Baker Botts LLP, one of the counsel for Mr. Black in the SEC action, and believe that Mr. Black asked Judge Hart to reconsider his opinions and orders in light of the fact that two of Mr. Black's fraud convictions (upon which those opinions and orders were in part based) were overturned on appeal. Ms. Owens advises me and I believe that the court's briefing remains outstanding.

The International Action

6. In the International Action (Exhibit "**6**" to my Affidavit), Mr. Black has been sued for damages for "hundreds of millions of dollars" as a result of allegedly engaging in conspiracy, acting in breach of fiduciary duties, and making fraudulent misrepresentations [paragraph 1] and, in particular:

(a) by transferring to all defendants "more than $90 million in 'non-compete' fees";

(b) by billing International $90,000 to refurbish a Rolls Royce owned by a related corporation;

(c) by billing International for Mr. Black's household staff;

(d) by using International funds to make charitable donations in Mr. Black's name;

(e) by charging International $9 million to acquire historic papers of President Franklin D. Roosevelt, which were stored at Mr. Black's residence at a time when Mr. Black was writing a biography of this president;

(f) by causing International to sell to Mr. Black its Manhattan apartment for $5.65 less than its fair market value [paragraph 13];

(g) by using the corporate jet for personal rather than business purposes [paragraph 14];

(h) by diverting International income into the pockets of Mr. Black and others in the period 1997 to 2003 [paragraph 16];

(i) by charging International grossly inflated management fees [paragraph 17];

(j) by "drain[ing] profits out of [International] [by] real or imagined 'non-compete' agreements with companies purchasing newspapers from the Company and to divert massive payments taken from [the] sale proceeds to themselves as purported consideration for agreements not to compete" [paragraph 26] in the period 2000 to 2001:

- CanWest;
- Osprey (two transaction);
- Community Newspaper Holdings Inc. (two transactions);
- American Publishing Corporation ;
- PMG/Forum [paragraph 28]

(k) by receiving monies as part of an "incentive" compensation plan adopted for subsidiary Hollinger Digital LLC [paragraph 30]

Litigation by the Applicants

7. The 2006 comprehensive action brought by the Applicants (the statement of claim for which is Exhibit "4" to my Affidavit), seeks damages of approximately $700,000,000 for "breach of contract, breach of fiduciary duty, negligence, unjust enrichment, unlawful interference with the [Applicants'] economic interests" and other causes of action in respect of allegations that those holding positions of power at International used that corporation "as a vehicle for the implementation of 'Black's Plan'", which it is alleged was to "squeeze out" Hollinger Inc.'s public shareholders and strip the company of its assets to the benefit of Mr. Black and others [paragraphs 1 and 32] without making proper disclosure to the shareholders audit committee, or regulators, specifically:

(a) the sale of Hollinger Inc.'s operating assets to International at less than fair market value, which left Hollinger Inc. without any operating income to service its debt:

- The Telegraph plc in 1995 [paragraphs 38 to 41]; and
- the Canadian newspaper assets in 1997 [paragraph 59];

(b) in February 1996, caused International to complete a public offering which generated funds for International and diluted Hollinger Inc's ownership interest in International, without affecting the control by Mr. Black and others [paragraph 44];

(c) in 1997, rather than using the proceeds of sale of the newspaper assets to pay down debt, the defendants instead are alleged to have declared a special dividend on certain classes of shares which are alleged to have been predominantly held by the defendants [paragraph 64];

(d) in 1997, the defendants mutualized Hollinger Inc., which prevented it from continuing to earn the management fees that were necessary to enable it to service its debt and they are also alleged to have diverted Hollinger Inc.'s management fees to another corporation controlled by the defendants in the period 1998 to 2004 [paragraphs 70, 75, and 89];

(e) between 1997 and 2004, the defendants, including Mr. Black, are alleged to have implemented a share retraction/redemption program in which Hollinger Inc. paid more than fair market value for shares, impairing Hollinger Inc's solvency. The defendants are alleged to have received a significant portion of those funds [paragraphs 102 to 105];

(f) the defendants, including Black, are alleged to have caused Hollinger Inc. and its related corporations to bestow personal benefits upon themselves for little or no consideration [paragraph 108], including:

- personal loans at no interest or at favourable interest rates from time to time since 1998 [paragraph 109];
- excessive compensation [paragraph 111];
- transferred liabilities to employees to Hollinger Inc.'s subsidiary 10 Toronto Street in 2004 [paragraph 112];
- after depriving Hollinger Inc. of its management income, arranged for the corporation to which these benefits were transferred, The Ravelston Corporation, to lend Hollinger Inc. money to pay its obligations and to continue to pay dividends [paragraph 124];
- Hollinger Inc. is alleged to have incurred significant banking fees and other costs because it was insolvent and under pressure from its bankers to re-pay its loans [paragraph 130];
- the defendants, including Mr. Black, are alleged to have addressed Hollinger Inc.'s "liquidity crisis" by borrowing more funds at unfavourable rates and on unfavourable terms and, specifically, by entering into a secured borrowing transaction whereby it issued senior secured notes (the "Wachovia Notes") [paragraph 132];
- the defendants are alleged to have been in breach of the Support Agreement, which was a term of the indentures and required that Hollinger Inc. receive support payments from Ravelston, which payments were not made [paragraph 137 and 138];
    - the defendants are also alleged to have used some of the funds to loan funds to Ravelston at a lower interest rate [paragraph 142];
    - instead of causing Ravelston to honour its obligations under the Support Agreement, in 2004, the defendants are alleged to have caused Hollinger Inc. subsidiary Domgroup Ltd. to

loan the money to Ravelston, to be paid to Hollinger Inc. [paragraph 145];

- the defendants are alleged to have wrongfully diverted to Hollinger Inc. some of the non-competition payments [paragraph 148];
- they are alleged to have failed to cause Ravelston to honour its agreement to pay for Hollinger Inc.'s costs associated with its failed going private transaction in 2005 [paragraph 159]; and
- the defendants' conduct is alleged to have caused Hollinger Inc. to incur excessive costs and expenses and impair its relationships with the regulators and expose it to litigation [paragraphs 161, 165, 169, 173, 175, and 177].

8. The two other actions commenced by the Applicants in 2005 and 2007 (the statements of claim for which are found at Exhibits "**3**" and "**5**" to my Affidavit) largely duplicate the allegations contained in the 2006 action, although the 2007 action seeks a declaration that Mr. Black and others are not entitled to be indemnified by Hollinger Inc. under a corporate indemnity or at law.

The Ontario contribution and indemnity claims against Torys and KPMG

9. Mr. Black and CBCC have denied all liability in the Ongoing Proceedings and Mr. Black claims that Torys and KPMG provided him with professional advice, upon which he relied, in relation to the matters about which allegations are made against him. As a result, Mr. Black and CBCC have brought the following contribution and indemnity claims against Torys and KPMG (and others) in the event that there are findings of liability made against them in either the Applicants' Ontario actions or the U.S. actions brought by Hollinger International Inc. and the SEC:

(a) *Conrad M. Black, Barbara Amiel-Black, Moffat Management Inc. and Black-Amiel Management v. Argus Corporation Limited, the Ravelston Corporation Limited, Ravelston Management Inc., Hollinger Inc., Hollinger International Inc., F. David Radler, Torys LLP and KPMG LLP*, commenced by Notice of Action issued January 27, 2006, and bearing

Ontario Superior Court of Justice (Commercial List) File No. 06-CL-6259; and

(b) *Moffat Management Inc., Black-Amiel Management Inc., Conrad M. Black, Conrad Black Capital Corporation, 1269940 Ontario Limited, and 2753421 Canada Limited v. Sun-Times Media Group, Inc., F. David Radler, F.D. Radler Ltd., North American Newspapers Ltd., Torys LLP, and KPMG LLP*, commenced May 29, 2008, and bearing Ontario Superior Court of Justice (Commercial List) File No. CV-08-00007549-00CL.

Attached hereto and marked as Exhibits "**10**" and "**11**" are true copies of these contribution and indemnity claims.

10. In these contribution and indemnity claims, the allegations against Torys and KPMG are generally that they:

(a) were principal outside counsel and financial advisors for Hollinger International Inc. and Hollinger Inc. and related corporations and provided advice to those corporations;

(b) were aware and accepted at all material times that Mr. Black (as well as other officers and directors of these corporations) relied upon them to render advice in a competent and professional manner with respect to their duties as officers and directors of the corporations;

(c) failed to properly advise the corporations;

(d) were negligent; and

(e) acted in a conflict of interest.

11. The Law Society of Upper Canada has commenced disciplinary proceedings against two Torys lawyers on the basis that they are alleged to have acted in a conflict of interest because they acted for Hollinger Inc. and related corporations and Mr. Black. I attach hereto and mark as Exhibit "**12**" to this my Affidavit a true copy of two

documents which I downloaded from the Law Society of Upper Canada website in December, 2011, which detail the allegations made against these two lawyers.

12. The specific allegations against Torys that are relevant to the claims against Mr. Black in the Ongoing Proceedings include that:

(a) Torys had knowledge of and involvement in the drafting and structuring of the management and non-competition agreements and other transactions underlying the Ongoing Proceedings and Torys lawyers were present at International and Hollinger Inc. audit committee meetings and board meetings where it has been alleged that information was not brought to the attention of the audit committee or members of the board in respect of transactions in issue that are alleged should have been brought to the members' attention, causing them harm; and

(b) Torys had direct knowledge and involvement in the transactions underlying the Ongoing Proceedings and provided advice throughout on, among other things, the structure of the underlying transactions and matters of disclosure. In the event there is a finding of liability against Mr. Black and others then the legal advice rendered by Torys was negligent. Torys' duties to International, Hollinger Inc., and Black and Amiel Black as officers and directors, would have been breached and it is liable for damages arising from such breach.

13. The specific allegations against KPMG that are relevant to the claims against Mr. Black in the Ongoing Proceedings include that:

(a) KPMG provided wide ranging accounting, auditing, tax, financial, and consulting advice and services to International and Hollinger Inc. for the period during which many of the events alleged in the Ongoing Proceedings took place, including advising with respect to various of the matters now raised in the Ongoing Proceedings; and

(b) KPMG was present at International audit committee meetings and board meetings where it has been alleged by International and Hollinger Inc. that information was not brought to the attention of the audit committee or members of the board in respect of transactions in issue.

14. To date; neither Torys nor KPMG has delivered a statement of defence and there has been no production or discovery.

The Settlement Agreements

15. The proposed bar orders which the Applicants, Torys, and KPMG seek as terms of the Settlement Agreements (referred to as "Third Party Releases") are extremely broad. They cover Mr. Black's contribution and indemnity claims in respect of the Ontario actions brought by the Applicants against him (and threatened against Torys and KPMG), but they also prohibit his contribution and indemnity claims arising out of the litigation brought against him in the United States by third parties, namely, the SEC and Hollinger International Inc.

16. Paragraph 4 of the Torys Settlement Agreement states as follows:

> *Full and Final Releases of Torys by Third Parties:* It is the intent of the Parties that this Agreement and the terms of the Release Order will eliminate any basis for (i) any other party against whom any of the Hollinger Releasors has brought or in the future brings any Claims relating in any way to the subject matter of the Settled Claims; and (ii) any past or present shareholder, officer, director, creditor or subsidiary ... of the Hollinger Releasors (together the "Third Party Releasors"), from being able to claim contribution, indemnification, reimbursement or other forms of claims over from the Torys Releasees for such party's liability to the Hollinger Releasors or from bringing claims against the Torys Releasees relating in any way to the Settled Claims (the "Third Party Releases").

The "Settled Claims" are defined in paragraph 2 to refer to claims arising out of Torys LLP's legal representation of the "Hollinger Releasors". Paragraph 6(c) explicitly provides that these Third Party Releases are to be effective as against Mr. Black to prohibit him from advancing his contribution and indemnity claims.

17. Similar language is contained in paragraphs 5 and 8 of the KPMG Settlement Agreement.

18. Attached hereto and marked as Exhibits "**13**" and "**14**" to this my Affidavit are, respectively, true copies of the Torys Settlement Agreement and the KPMG Settlement Agreement. The Settlement Agreements in the form filed with the court, redact the "Settlement Amount" to be paid by each of Torys and KPMG (paragraph 1 of each of the Settlement Agreements) and, in the case of the Torys Settlement Agreement, additional unidentified information which is said to be "confidential information that belongs exclusively to Torys LLP" [paragraphs 1(c) and 7(b)] as a result of the Sealing Order obtained by the Applicants. Attached hereto and marked as Exhibits "**15**", "**16**", and "**17**", to this my Affidavit are, respectively, true copies of the Sealing and Confidentiality Agreement Approval Order (the "Sealing Order") of the Honourable Justice Campbell dated February 25, 2011, together with a handwritten addendum dated March 7, 2011, and the endorsement dated February 22, 2011.

19. The Sealing Order also approved the form of a Confidentiality Agreement, which provided that the Applicants would be authorized to disclose to interested parties the Settlement Amount in each of the Settlement Agreements for the sole purpose of enabling them to respond to the Settlement Approval Motion, subject to certain limitations and restrictions. Those terms, specifically certain provisions relating to the consequences in the event of a breach, were not satisfactory to some of the interested parties, including Mr. Black and CBCC, who opposed the Sealing Order.

20. Mr. Black and CBCC brought a motion for leave to appeal the Sealing Order. The Ontario Court of Appeal granted leave to appeal the Sealing Order on May 11, 2011. The appeal was heard on August 24, 2011, and dismissed by Reasons for Decision dated September 8, 2011. On October 24, 2011, Mr. Black and CBCC brought at application for leave to appeal the Sealing Order to the Supreme Court of Canada. That court has not yet rendered a decision on whether it will grant leave to appeal.

21. Mr. Black has not signed the Confidentiality Agreement and, therefore, neither he nor his counsel knows the Settlement Amounts to be paid by Torys LLP and KPMG LLP or the other Torys LLP "confidential information", all of which has been redacted from the Settlement Agreements.

1st Report of the Litigation Trustee

22. The Honourable John D. Ground, Q.C., has been appointed Litigation Trustee pursuant to a Multi-Party Settlement Agreement ("MPSA") among the Applicants, bondholder Davidson Kempner Capital Management LLC ("DK"), and Sun-Times Media Group, Inc. (formerly Hollinger International Inc. and now in liquidation) and pursuant to a court order dated May 21, 2008. Attached hereto and marked as Exhibit "**18**" to this my Affidavit, respectively, is a true copy of the Order dated May 21, 2008, together with the MPSA, which is a schedule to the Order.

23. A true copy of the 1st Report of the Litigation Trustee dated March 31, 2011, is attached hereto as Exhibit "**19**" to this my Affidavit. The Report identifies certain "litigation assets" as consisting "largely of claims against the former officers, directors, advisors, and banking syndicate of Hollinger Inc.". These so-called "litigation assets" are subject to the supervision, control, and administration of the Litigation Trustee. The obligations and authority of the Litigation Trustee as set out in the MPSA include the following:

> 35. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost-effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders and shall provide periodic reports to the Advisory Committee (as defined herein) and such other reports as may be requested by any member of the Advisory Committee, acting reasonably.
>
> 36. An Advisory Committee shall be established to provide advice and direction to the Litigation Trustee (the "Advisory Committee") comprised of one nominee of DK, one representative of the Applicants... and the Litigation Trustee. The Litigation Trustee shall act in accordance with any majority decision of the Advisory Committee. For greater certainty, in the event of any disagreement as between the representative of DK and the representative of the Applicants, the Litigation Trustee shall have a deciding vote.
>
> ...
>
> 38. The Litigation Trustee will supervise and administer the Litigation Assets on a day-to-day basis, including giving direction to counsel. The Litigation Trustee will seek such direction from the Advisory Committee as he deems necessary and appropriate, but, in particular, the Litigation

> Trustee will seek direction from the Advisory Committee with respect to litigation strategy, financing (if any) for the Litigation Assets, whether to accept or make any settlement offer and the use of proceeds of any settlement.

24. The 1st Report of the Litigation Trustee describes, under the heading, "Settlement Opportunities", that Hollinger advised defendants with which it engaged in settlement discussions that, "the *CCAA* process provides a settlement opportunity in that Hollinger would agree to seek court orders granting third party releases from the non-settling defendants in favour of the settling defendants." The benefits to Torys and KPMG as "settling defendants" are identified as limiting their financial exposure in respect of their dealings with Hollinger and the avoidance of costly and protracted litigation with a number of parties over years. There are also benefits to the Applicants which are identified. The Report identifies no benefits to those non-settling defendants with claims over against Torys and KPMG, like Mr. Black:

> 17. As part of the ongoing negotiations between the parties, Hollinger approached all the defendants and potential defendants to set up meetings to discuss the settlement opportunities available within the CCAA process. Hollinger advised those parties who agreed to meet for such discussions in person or through counsel that it would be seeking both financial contributions for the benefit of the Litigation Trustee's initiatives and for the Estates of the Applicants, as well as, where appropriate, cooperation agreements in exchange for full and final releases.
>
> 18. Hollinger further advised the defendants and potential defendants that the CCAA process offered a settlement opportunity in that Hollinger would agree to seek court orders granting third party releases from the non-settling defendants in favour of settling defendants should they choose to participate in a settlement as part of the CCAA process. Hollinger likewise advised the defendants and potential defendants of the impact of third party releases on non-settling defendants.
>
> 19. The benefits to the Applicants in seeking third party releases for settling defendants are twofold: (i) such releases will put a finite end to protracted and costly litigation with the settling defendants, such that their cases will not have to be retried if and when non-settling defendants bring them back into the outstanding actions by way of cross-claims or third party claims; and (ii) outstanding litigation efforts against non-settling defendants will be streamlined, and therefore more cost effective for the Estates, resulting in a more efficient use of the resources of the Court.

> 20. The primary benefits of third party releases to the settling defendants are (i) limiting the financial exposure in respect of their dealings with Hollinger and (ii) the avoidance of costly and protracted litigation with a number of parties over years. The beneficiaries of such releases generally place a higher value on the expectation of finally resolving their Hollinger-related liabilities, including not only the Applicants' claims but also all the potential claims for contribution and indemnity that may be advanced by non-settling defendants.

25. According to the 1st Litigation Trustee's Report, the only persons affected by the proposed bar order/Third Party Releases are Mr. Black and Barbara Amiel-Black (and their related corporations), David Radler, Daniel Colson, and Jack Boultbee, since they are the only persons who have actions commenced against Torys and KPMG arising out of any Hollinger-related matter and any other claims are now barred by limitations periods.

26. In paragraph 22 of the Report, the Litigation Trustee states that, it is "Hollinger's intention to make the settlements by KPMG and Torys an economically neutral event for the non-settling defendants", which includes Mr. Black. Those portions of the Report which apparently purport to explain how this is to be achieved are as follows:

> 21. While settling defendants will be insulated from future liability in respect of Hollinger, they will not be exempted from giving evidence or serving as witnesses in outstanding actions against non-settling defendants, so the Court will have the full benefit of their evidence and information in deciding the remaining actions.
>
> ...
>
> 24. Hollinger is prepared to waive its right to joint and several liability in respect of the liability between either Torys, KPMG or other settling defendant on the one hand and a non-settling defendant on the other hand. Hollinger proposes that settlement approval orders provide that if any non-settling defendant would otherwise be able to establish a right of contribution and indemnity from Torys, KPMG or other settling defendant, then the damages owing to Hollinger jointly and severally by any such non-settling defendant will be reduced by the degree in which Torys and/or KPMG or other settling defendants are found to be at fault or negligent.
>
> 25. Therefore while each non-settling defendant will not have a claim for contribution and indemnity against KPMG, Torys or other settling defendant for the amount which any of them might be found to be at fault or negligent, there will be no economic detriment because any such

> amount will not be sought from the non-settling defendant if that defendant could have otherwise asserted such a claim.
>
> 26. Nothing in the settlement approval orders will prevent any non-settling defendant from requiring the Court to determine the degree in which any of KPMG, Torys or other settling defendant is at fault or negligent with respect to any damages suffered by Hollinger. To the extent the Court finds KPMG, Torys or other settling defendant responsible for a proportionate share of those damages and the non-settling defendant had a right of contribution and indemnity against either of them, then Hollinger will have no claim against any person in respect of that proportionate share. In such circumstances, the settlements will be the total recovery available to Hollinger in respect of the settling defendant's proportionate share of any damages suffered by Hollinger.

27. Following receipt of this Report, Mr. Cherniak sent a letter dated April 7, 2011, to counsel for Applicants making further inquiries about the specific terms that the Applicants would be seeking in the court order to effect the intention to make the settlements an "economically neutral" event for Mr. Black and whether Torys LLP and KPMG agree with those terms. The letter states as follows:

> We have now had an opportunity to review the Report of the Litigation Trustee dated March 31, 2011.
>
> Paragraph 21 of that Report advises us for the first time that it is Hollinger Inc.'s position that the third party releases/bar orders being sought as part of the proposed Settlement Agreements with Torys LLP and KPMG LLP will not exempt those settling defendants from giving evidence or serving as witnesses in outstanding actions against the non-settling defendants (of whom Mr. Black is, of course, one). In paragraph 24, the Report indicates that apparently Hollinger Inc. is prepared to waive its right to joint and several liability in respect of the liability between either Torys LLP, KPMG LLP (or other settling defendant) on the one had and a non-settling defendant on the other hand. The result would be that to the extent that if a non-settling defendant would otherwise be able to establish a right of contribution and indemnity from Torys LLP, KPMG LLP (or other settling defendant), then the damages owing to Hollinger Inc. by the non-settling defendant will thereby be reduced proportionately.
>
> Please advise of the specific terms which Hollinger Inc. will be proposing to have incorporated into the proposed order approving the Settlement Agreements and whether Torys LLP and KPMG LLP agree to those terms.

Attached hereto and marked as Exhibit "**20**" to this my Affidavit is a true copy of Mr. Cherniak's letter to counsel for the Applicants. I believe that I forwarded a copy of this letter to counsel for Torys and KPMG, although I have been unable to locate a copy in my file.

28. We have never received a response from the Applicants or from either Torys or KPMG. Nor have the Applicants revised the proposed order they have advised they are seeking on the Settlement Approval Motion to include such terms.

29. However, I am advised by Irwin Nathanson, counsel for co-defendant David Radler, and believe that he sent an email to counsel for Hollinger Inc., Torys LLP, and KPMG LLP, which raised similar questions, as a result of which he obtained the positions of the Applicants, Torys, and KPMG.

30. Counsel for the Applicants, Megan Keenberg, advised that their position on, "economic neutrality does not affect Torys, KPMG or any other settling defendant." Ms. Keenberg also asserted that, "Torys and KPMG are cognizant of Hollinger's position and their positions on this issue are immaterial".

31. Further, Ms. Keenberg advised that no amendments to the statement of claim would be made to reflect the position that the Applicants would only be seeking to establish each non-settling defendant's proportionate share of liability, but that the draft order which Hollinger Inc. seeks on the Settlement Approval Motion would be amended. Ms. Keenberg also advised that non-settling defendants were free to bring motions in future for production and oral discovery from Torys and KPMG as non-parties, pursuant to Rules 30.10 and 31.10 of the *Rules of Civil Procedure*. Attached hereto and marked as Exhibit "**21**" to this my Affidavit is a true copy of the email exchange between Mr. Nathanson and Ms. Keenberg from April 4, to 7, 2011, which Mr. Nathanson forwarded on to me on April 7, 2011.

32. In addition, I am advised by Mr. Nathanson and believe that he received a response from Norm Emblem, counsel for KPMG, on April 7, 2011. KPMG's position is, apparently, that any party wishing to obtain discovery from KPMG after approval of the settlement is free to bring a motion under Rule 30.10 for production and/or oral discovery from KPMG as a non-party. Mr. Emblem's letter is silent on whether KPMG will oppose or consent to such a motion. Attached hereto and marked as Exhibit "**22**" to

this my Affidavit is a true copy of the letter which Mr. Nathanson advised me he received from Mr. Emblem, together with a copy of that letter.

33. I am advised by Mr. Nathanson and believe that Torys has apparently taken the same position. Attached hereto and marked as Exhibit "**23**" to this my Affidavit is a true copy of an email exchange between Ronald Foerster, counsel for Torys, and Mr. Nathanson, which Mr. Nathanson forwarded to me on April 7, 2011.

34. It appears that the Applicants and Torys and KPMG are not prepared to agree now to terms which would allow Mr. Black access to the evidence sufficient to enable him to defend the Ongoing Proceedings and to advance the contribution and indemnity claims and thereby provide some protection of his substantive rights. In this case, that evidence would be used to establish Torys' and KPMG's proportionate share of liability. Based upon the scope of the allegations in the Ongoing Proceedings, the number of transactions, and the fact that the relevant period of time spans a decade, it is clear that the documentary production required will be voluminous and expansive and that the evidence of numerous professionals at Torys and KPMG will be required. Torys and KPMG have suggested only that after the Settlement Agreements are approved and Torys and KPMG are no longer parties to the actions, Mr. Black will have the same right as any other litigant to seek an order requiring a non-party to provide evidence. They have not advised whether such a motion would be opposed, but it can be inferred that they will not consent.

35. It is clear from the issues raised in the pleadings in the actions brought against Mr. Black and CBCC in both the United States and Canada that, while there is some overlap in the relevant issues, each action also raises issues which are not relevant to any of the other actions. Therefore, it appears that any documents which have already been produced by Torys and/or KPMG in the U.S. proceedings may not be relevant to all allegations made by Mr. Black and about which he claims contribution and indemnity. Further, as set out below, I believe that there are limitations on the extent to which the documents produced in the United States proceedings may be used in the Ontario litigation.

36. I am advised by Ms. Owens and believe that Torys and KPMG have produced documents in the following U.S. proceedings, however, she does not know the scope of those productions and, in any event, there are restrictions on the use of some of the documents produced in other proceedings. Specifically, I am advised by Ms. Owens and believe that:

(a) in the SEC Action, the SEC issued a subpoena to each of KPMG and Torys. The subpoena to KPMG requested the production of documents for the period January 1, 1999, to January 1, 2004, and the subpoena to Torys requested documents for the period January 1, 1998, to the date of the subpoena, which was March 17, 2005. Both of these are for a narrower period of time than that which is relevant to the Ongoing Proceedings underlying the contribution and indemnity claims, however, Ms. Owens has advised me and I believe that she does not know whether KPMG and/or Torys objected to any of the document requests and, therefore, that she does not know whether KPMG or Torys produced documents in response to all or only a portion of the SEC requests;

(b) in the International Action, Ms. Owens advises me and I believe that the defendants in that action sought documents from KPMG in the United States and Canada. KPMG (U.S.) agreed to produce documents for the period 1999 to 2002 and requested a protective order so that those documents could not be used in any other proceeding. KPMG (U.S.) ultimately produced documents in the International Action; however, Ms. Owens advises me and I believe that she has been unable to locate an agreement regarding a protective order for KPMG (U.S.)'s documents. Further, Ms. Owens advises me and I believe that as of March 2005, KPMG (U.S.) declined to produce documents on behalf of KPMG (Canada) in response to the subpoena issued in the International Action. She has also advised me and I believe that she understands that KPMG Canada did not produce documents in the International Action. Ms. Owens has also advised me and I believe that Hollinger Inc. also issued a subpoena to Torys for production of documents, to which Torys objected on the basis that it was overly broad and sought documents far beyond those which were relevant to the issues in that action. Therefore, it appears that whatever documents Torys produced are apparently related only to the specific issues raised in the International Action; and

(c) in the criminal proceedings brought against Mr. Black, Ms. Owens advises me and I believe that all documents produced by the U.S. Attorney's Office for the Northern District of Illinois in that matter are subject to a protective order. All documents produced pursuant to that protective order – including any provided by KPMG or Torys – remain the property of the United States and may only be used by Mr. Black in connection with defense of the criminal matter and for no other purpose and in connection with no other proceeding. The matters raised in the criminal case are much narrower than those in the Ongoing Proceedings.

37. The 1st Report of the Litigation Trustee fails to address the prejudice to Mr. Black's substantive rights which he will suffer in losing his claims over against Torys and KPMG, without receiving anything in return, if the Settlement Agreements are approved. It also completely ignores the fact that Mr. Black may be the single largest creditor of the Applicants and so would be the one most negatively affected by a compromise of the claims against Torys and KPMG at less than they are worth.

38. If Mr. Black is successful in his position, the result of the settlements with KPMG and Torys is extremely prejudicial to him in that the Applicants have further depleted their assets, both in compromising their claims against Torys and KPMG and then further depleting any recovery to creditors, including Mr. Black, by spending those funds to litigate unsuccessfully.

Settlement agreement with former Hollinger Inc. directors

39. The Applicants have recently given notice that they have reached a settlement agreement dated May 18, 2011, with respect to claims they intended to advance (but which were subject to a standstill agreement in order to toll any limitation periods) against Maureen Sabia, Frederik Eaton, Allan Gottlieb, and Henry Ketchum III. These

defendants are former directors of Applicant Hollinger Inc. and are referred to as the "Outside Directors". The motion to approve the settlement agreement with the Outside Directors is to be heard along with this Settlement Approval Motion relating to the Torys and KPMG Settlement Agreements.

40. A true copy of the settlement agreement with the Outside Directors (also redacted to delete reference to the amount to be paid by the Outside Directors to settle these claims) is attached hereto and marked as Exhibit "**24**" to this my Affidavit.

41. Paragraphs 2 to 4 include a bar order (referred to as Third Party Releases). Although paragraph 6(d) states explicitly that it is intended that the bar order be effective as against Mr. Black in particular, he has advanced no contribution and indemnity claims against the Outside Directors.

42. The terms of settlement also require the Outside Directors to cooperate with the Applicants in their claims against Mr. Black and CBCC and include an entitlement that they be reimbursed their expenses for doing so:

> 9. *Cooperation With Future Claims*: The Settling Directors shall provide cooperation to Hollinger and the Litigation Trustee in their pursuit of claims against other persons including [Mr. Black] that have not yet settled their claims with Hollinger and the Litigation Trustee, or in defending Claims against any of the Hollinger Releasors, providing information within their knowledge that is relevant to such claims. Hollinger and the Litigation Trustee agree to make measured and reasonable requests for such cooperation from the [Outside Directors], which requests will be respectful of the time commitments that fulfilling such requests will impose upon the [Outside Directors]. Hollinger agrees to reimburse the [Outside Directors] for such reasonable third party expenses incurred in order to respond to cooperation requests, including reimbursement of reasonable legal fees and applicable taxes, up to a maximum of $50,000...

2nd Report of the Litigation Trustee

43. The Applicants have now delivered the 2nd Report of the Litigation Trustee dated November 7, 2011, which contains the following relevant statements:

> 12. The Settlement Agreement entered into between Hollinger and the Outside Directors provides that the settlement is conditional upon the

> issuance of a satisfactory bar order giving effect to the third party releases.
>
> ...
>
> 17. An additional benefit flowing from this settlement is that Hollinger will soon have substantial funds coming into the Litigation Trustee's accounts, which will be used in part to fund the Litigation Trustee's initiatives in respect of the non-settling defendants against whom Hollinger has more substantial claims, and, to the extent not required for those initiatives, be available for the Estates of the Applicants for distribution, all in accordance with and subject to the provisions of the MPSA.
>
> 18. In consultation with the Litigation Advisory Committee [appointed pursuant to the MPSA], and in accordance with the MPSA, I am currently considering what portion of these proceeds should be used to fund future settlement negotiations, mediations and litigation. The balance will be made available to the Estates of the Applicants for distribution.

44. As stated above, Mr. Black and CBCC are both defendants "against whom Hollinger has more substantial claims" and significant stakeholders in the "Estates of the Applicants". Attached hereto and marked as Exhibit "**25**" to this my Affidavit is a true copy of the 2nd Report of the Litigation Trustee.

Applicants' financial disclosure

45. The 1st Report of the Litigation Trustee (Exhibit "**19**") describes the benefits of the settlements in the 1st Report of the Litigation Trustee as follows:

> 45. An additional benefit flowing from these settlements is that Hollinger will soon have substantial funds coming into the Litigation Trustee's accounts, which will be used in part to fund the Litigation Trustee's initiatives against the non-settling defendants and, to the extent not required for those initiatives, be available for the Estates of the Applicants, all in accordance with and subject to the provisions of the MPSA.
>
> 46. In consultation with the Advisory Committee, and in accordance with the MPSA, I am currently considering what portion of these proceeds should be used to fund future settlement negotiations, mediations and litigation. The balance will be made available to the Estates of the Applicants.

46. To date, there has never been a distribution.

47. The most recent reports of the Monitor of the Applicants contain financial information relating to the Applicants are the Seventeenth Report of the Monitor dated April 8, 2011 and the Eighteenth Report of the Monitor dated June 21, 2011, true copies of which are attached as Exhibit "**26**" (Main report and Appendices A and G only) and "**27**" to this my Affidavit.

48. The information contained in these two reports highlights the enormous expenses that the Applicants are incurring in pursuing these claims. The monthly corporate and litigation fees actual and projected appear to exceed $100,000 per month. (See the Applicants' Statement of Receipts and Disbursements August 1, 2007 to February 28, 2011 of Exhibit "**26**".)

49. As noted in the Eighteenth Report, in the period just from November 3, 2010, to June 3, 2011, legal fees amounted to over $925,000, and that was $345,000 more than had been projected. This point is illustrated by the waterfall chart that is appended as Appendix G to the Seventeenth Report. Meanwhile there have been no distributions to stakeholders at all since the *CCAA* proceedings commenced and there really is no reasonable prospect of any meaningful distributions until Mr. Black's claims are resolved given that his recovery would dwarf the claims of all the remaining unsecured creditors of the Applicants.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 22nd day of December, 2011.	
Commissioner for Taking Affidavits JASON SQUIRE	Lisa C. Munro

EXHIBIT "I"

Court File No. 07-CL-7120

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.	)	WEDNESDAY, THE 1ST
	)	
JUSTICE MORAWETZ	)	DAY OF AUGUST, 2007

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **HOLLINGER INC., 4322525 CANADA INC. AND SUGRA LIMITED** (the **"Applicants"**)

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **"CCAA"**) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of G. Wesley Voorheis sworn July 31, 2007 and the Exhibits thereto, on hearing the submissions of counsel for the Applicants and on reading the consent of Ernst & Young Inc. to act as the Monitor, and upon being advised that counsel for Sun-Times Media Group, Inc. (**"STMG"**) and Davidson Kempner Partners have received very short notice of the commencement of this proceeding,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their businesses (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Advisors**") currently retained or employed by them, with liberty to retain such further Advisors as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, compensation, salaries, employee and pension benefits, vacation pay, retention or similar bonuses or payments, and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies, arrangements and agreements;

(b) the fees and disbursements of any Advisors retained or engaged by the Applicants in respect of these proceedings or otherwise, at their standard rates and charges; and

(c) the fees and disbursements of the Inspector appointed pursuant to an Order dated October 14, 2004 and amended October 26, 2004 under the *Canada Business Corporations Act* (Canada) in Action No. 04-CL-5441 in the Ontario Superior Court of Justice, Commercial List (the "**Inspector Action**"), the Inspector's counsel and any other service providers previously retained by the Inspector, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada, any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

9. **THIS COURT ORDERS** that the Applicants shall have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding $2,000,000 in any one transaction or $5,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deems appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counterparties, or failing such agreement, to deal with the consequences thereof in the Plan; and

(d) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a) and (b), above),

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including August 30, 2007, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, trustee, collateral agent, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions

relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

12. **THIS COURT ORDERS** that during the Stay Period no exercise of rights by any Person, whether by way of enforcement or otherwise, and no proceeding, enforcement step or action of any kind shall be taken by any Person that could have the effect of or result in:

(a) a sale, transfer or disposal of the shares of Class B common stock of STMG owned by any of the Applicants, to a party that is not a subsidiary or affiliate of Hollinger Inc.; or

(b) the shares of Class B common stock of STMG being automatically converted into shares of Class A common stock of STMG,

including, without limitation, a transfer to or registration of the shares of Class B common stock of STMG in the name of such Person or its nominee(s).

(ii) be is intended or (i)

13. **THIS COURT ORDERS** that nothing herein shall be deemed to be in breach of any law, regulation, rule, or order, or deemed to cause, create or enable economic or voting dilution, whether actual or potential, of the shares of Class B common stock of STMG or the (iii) be shares of Class A common stock of STMG (the "**STMG Shares**"), or a dilution or reduction, whether actual or potential, of the voting rights attached to any of the STMG Shares, which are held directly or indirectly by Hollinger or an Applicant or a dilution or reduction, whether actual or potential of the voting rights attached to any of the STMG Shares or the diminution of any legal rights, whether actual or potential, currently attached to the STMG Shares, or a default or change of control under any agreements, indentures or other instruments. (iv) be

NO INTERFERENCE WITH RIGHTS

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

18. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

19. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000.00, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 31 and 33 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR

21. **THIS COURT ORDERS** that Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business, with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Advisors shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;

(c) advise the Applicants in their preparation of the Applicants' cash flow statements;

(d) advise the Applicants in their development of the Plan and any amendments to the Plan;

(e) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(f) have full and complete access to the books, records, management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. **THIS COURT ORDERS** that nothing contained herein shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession of such Property.

25. **THIS COURT ORDERS** that the Monitor shall not be required or compelled to provide any information obtained by it in performing its role as Inspector pursuant to the Orders of the Honourable Justice Campbell in the Inspector Action as a result of its appointment herein as Monitor including, without limitation, by way of testimony in any proceeding in any court in Canada or the United States of America brought by or against any person or entity related to or affiliated in any way with the business of the Applicants.

26. **THIS COURT ORDERS** that the Monitor shall protect the confidentiality of such information not forming part of the public record in the Inspector Action, shall be subject to the direction of the Court supervising the Inspector Action with respect to any ongoing role as Inspector of the Applicant and that in the event of any uncertainty or conflict concerning the ongoing role of the Inspector, the Inspector shall apply to the Court supervising the Inspector Action, and to the Court supervising this proceeding where necessary, for advice and directions.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the Applicants are hereby authorized to pay to (i) the Monitor and its counsel, and (ii) Canadian and U.S. counsel to the Applicants, retainers in the amounts of CDN$150,000.00 and $300,000.00, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor and the Applicants' counsel and financial advisor shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,900,000.00, to be allocated among the beneficiaries of such charge as they may determine amongst themselves, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and all such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

> First – Administration Charge (to the maximum amount of $1,900,000.00); and
>
> Second – Directors' Charge (to the maximum amount of $500,000.00).

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge and the Administration Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

35. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

36. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

SERVICE AND NOTICE

37. **THIS COURT ORDERS** that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a notice of the issuance of this Order to its known creditors, other than employees and creditors to which the Applicants owe less than $1,000.00, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of

its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

38. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

39. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at: www.ey.com/ca/restructuring.

GENERAL

40. **THIS COURT ORDERS** that the Applicants or the Monitor may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

41. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

EFFECT, RECOGNITION, ASSISTANCE

42. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, the states and other subdivisions of the United States of America, including, without

limitation, the U.S. Bankruptcy Court, and other nations and states to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order and any other Order in this proceeding. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Hollinger Inc. and/or the Monitor in any foreign proceeding and to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order and any other Order in this proceeding, including without limitation recognizing the Applicants' CCAA proceeding as a foreign main proceeding under applicable law.

43. **THIS COURT ORDER** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and this proceeding and for assistance in carrying out the terms of this Order and any other Order granted by this Court and to recognize or give effect to or otherwise further the Restructuring.

44. **THIS COURT ORDERS** that, for the purposes of seeking the aid and recognition of any court or any judicial, regulatory or administrative body outside of Canada and in particular in the U.S. Bankruptcy Court in respect of proceedings commenced under Chapter 15 of the *U.S. Bankruptcy Code* and any ancillary relief in respect thereto, Hollinger Inc. shall be appointed as and is hereby authorized and directed to act as the foreign representative of the Applicants and to seek such aid in recognition.

DIRECTIONS, FURTHER RELIEF AND VARIATION

45. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.

EFFECTIVE TIME

46. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

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

AUG 0 1 2007

PER/PAR:

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)

Proceeding Commenced at Toronto

INITIAL ORDER
DATED AUGUST 1, 2007

ThorntonGroutFinnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West, P.O. Box 329
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton – 24266B 1B
D.J. Miller – 34393P 1D
Kyla E.M. Mahar – 44182G

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for the Applicants

EXHIBIT "2"

PROOF OF CLAIM

FOR CREDITORS OF HOLLINGER INC., 4322525 CANADA INC. and SUGRA LIMITED (EACH AN "APPLICANT" AND COLLECTIVELY, THE "APPLICANTS")

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Superior Court of Justice (Commercial List) dated May 21, 2008, as may be amended from time to time (the "Claims Order"). A separate Proof of Claim should be submitted for each Applicant against which you assert a Claim.

1. **COMPANY AGAINST WHICH YOU ASSERT A CLAIM:**

Check only one company for each Proof of Claim. If you have Claims against more than one company you must file a separate Proof of Claim for each.

Hollinger Inc.	X
4322525 Canada Inc.	
Sugra Limited	

(the "Applicant").

2. **PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor (include trade name, if different):

Conrad Black

(the "Creditor"). The full legal name should be the name of the Creditor of the Applicant, notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following August 1, 2007.

(b) Full Mailing Address of the Creditor:

Conrad Black c/o Heenan Blaikie LLP
P.O. Box 185, Suite 2600, 200 Bay Street
Royal Bank Plaza, South Tower, Toronto, Ontario M5J 2J4

The mailing address should be the mailing address of the Creditor and not any assignee.

(c) Other Contact Information of the Creditor:

Telephone Number:	416.643.6886 / 416.643.6912 / 416.601.2371
Email Address:	sfreedman@heenan.ca / nsaxe@heenan.ca / gglezos@lerners.ca
Facsimile Number:	1.866.307.9550 / 1.866.299.0290 / 416.867.2406
Attention (Contact Person):	Stanley W.L. Freedman / Neil C. Saxe / George Glezos

(d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

Yes: ☐ No: ☒

3. **Particulars of Assignee(s) (if applicable)**

If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.

(a) Full Legal Name of Assignee:

(b) Full Mailing Address of the Assignee:

____

____

____

Other Contact Information of the Assignee:

Telephone Number: ____________________

Email Address: ____________________

Facsimile Number: ____________________

Attention (Contact Person): ____________________

4. **PROOF OF CLAIM**

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

(a) That I:

[X] am a Creditor of one or more of the Applicants; **OR**

[ ] am ____________________________
(state position or title)

of ____________________________
(name of Creditor)

(b) That I have knowledge of all the circumstances connected with the Claim described and set out below;

(c) The Applicant was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant. Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below) in respect of a Claim arising on or prior to August 1, 2007:

____________ $ U.S $57,188,997.00
~~CDN $20,555,308.95~~
(Original Currency) CDN at least $5,000,000.00
Plus all unknown amounts
as set out in Schedule "A"

(d) The Applicant was and still is indebted to the Creditor as follows in respect of a Restructuring Claim arising on or after August 1, 2007:

____________$____________________________

For the purposes of the Claims Order only (and without prejudice to the terms of any plan of arrangement or compromise), Claims will be converted to Canadian dollars at the Bank of Canada noon spot rate as at the Valuation Date. (exchange rate conversions on such date were: CAD$1.00 = USD$ .99 and CAD$1.00 = .64 Euro).

5. **NATURE OF CLAIM**

(CHECK AND COMPLETE APPROPRIATE CATEGORY)

[X] Unsecured Claim of _______ $ U.S. $57,188,997.00; CDN $20,555,308.95, CDN at least $5,000,000.00 plus all unknown amounts
(*Original Currency and amount*)

[ ] Secured Claim of _________$____________________________
(*Original Currency and amount*)

In respect of this debt, I hold security over the assets of the Applicant valued at _________ $______________________, the
(*Original Currency and amount*)
particulars of which security and value are attached to this Proof of Claim form.

(Give full particulars of the security, including the date on which the security was given the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)

6. **PARTICULARS OF CLAIM**

Other than as already set out herein, the particulars of the undersigned's total Claim against the Applicant are attached on a separate sheet.

Provide all particulars of the Claim and supporting documentation that you feel will assist in the determination of your Claim. ***At a minimum, you are required to provide the invoice date, invoice number, the amount of each outstanding invoice and the related purchase order number.*** *Further particulars may include the following if applicable: a description of the transaction(s) or agreement(s) giving rise to the Claim; contractual rate of interest (if applicable); name of any guarantor which has guaranteed the Claim; details of all credits, discounts etc claimed; description of the security if any, granted by the affected Applicant to the Creditor, the estimated value of such security and the basis for such valuation; and the particulars of any Restructuring Claim.*

7. **FILING OF CLAIM**

This Proof of Claim form must be received by the Monitor by no later than **5:00 pm (Eastern Standard Time) on July 11, 2008**, by either prepaid registered mail, personal delivery, courier, facsimile transmission at the following address:

Ernst & Young Inc., the Court-appointed Monitor of the Applicants

By Mail:
P.O. Box 251
Ernst & Young Tower
222 Bay Street, 21st Floor
Toronto, ON M5K 1J7

By Courier:

222 Bay Street, 21st Floor
Ernst & Young Tower
Toronto, ON M5K 1J7

Attention: Christopher Mediratta
Fax: (416) 943-3300

Failure to file your Proof of Claim and any required documentation as directed by 5:00 pm on July 11, 2008 (Eastern Standard Time) will result in your Claim being barred and you will be prohibited from making or enforcing a Claim against the Applicants and you shall not be entitled to further notice or distribution, if any, and shall not be entitled to participate as a Creditor, in these proceedings.

DATED this 11 day of July, 2008.

Name of creditor: Conrad Black by his solicitors HEENAN BLAIKIE LLP

Witness Neil Saxe

Per:
Name: STANLEY FREEDMAN
Title: PARTNER
(*please print*)

SCHEDULE "A"

HOLLINGER INC.

1. Amended Statement of Claim – Ontario Superior Court of Justice Court File No. 06-CL-6259 (Tab 1)

(i)	Claim for Contribution and Indemnity in U.S. District Court Northern District of Illinois – Case No. 04C 0698 (Tab 2)		
	Itemized claims	US $57,188,997	
	Additional general claims	Unknown	
(ii)	Claim for Contribution and Indemnity in U.S. District Court Northern District of Illinois Civil Action – Case No. 04C-0834 (Tab 3)		
	All general damages claims therein	Unknown	
(iii)	Claim for Contribution and Indemnity in Ontario Superior Court File No. 04-CV-028649 (Tab 4)		
	All damages claims therein	Unknown	
(iv)	Claim for Contribution and Indemnity in Court of Queen's Bench – Saskatoon Court File No. Q.B. 1492 of 2004 (Tab 5)		
	All damages claims therein	Unknown	
(v)	Claim for Contribution and Indemnity in U.S. District Court for Northern District of Illinois Civil Action No. 04C 7377 (Tab 6)		
	All claims advanced therein	Unknown	
	All Claims for prejudgment interest, post judgment interest, costs in numbers (i) to (v)	Unknown	
	All Claims for prejudgment interest, post judgment interest, costs awarded in Court File No. 06-CL-6259 (Tab 1)	Unknown	
	All costs awarded in Court File No. 06-CL-6259 (Tab 1)	Unknown	
		US $57,188,997 and Unknown	US $57,188,997 and Unknown

2. Statement of Claim in Ontario Superior Court File No. 06-CV-315048 PD1 (Tab 7)

Damages for breach of contract including CDN $20,363,308.95 plus CDN $192,000 (CDN $20,555,308.95) or restitution of such amount	CDN $20,555,308.95 and Unknown	
Interest at the rate of 12.65% calculated from July 16, 2004 or prejudgment interest under the *Courts of Justice Act*	Unknown	
Post judgment interest under the *Courts of Justice Act*	Unknown	
All costs awarded	Unknown	
	$20,555,308.95 plus unknown	$20,555,308.95 plus unknown

3. Potential Claim for Contribution and Indemnity in Alberta Court of Queen's Bench, Action No. 0503 18023 (Claim not yet served) (Tab 8)

Damages of at least CDN $5,000,000	At least CDN $5,000,000	
Any restitution etc., claim	Unknown	
All prejudgment, post judgment interest and costs	Unknown	
	At least CDN $5,000,000	At least CDN $5,000,000

U.S.	$57,188,997.00
CDN	$20,555,308.95
CDN at least	$5,000,000.00
Plus all Unknown Amounts	Unknown

EXHIBIT "3"

AMENDED THIS / MODIFIÉE CE July 26, 2005 PURSUANT TO / CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF / L'ORDONNANCE DU
DATED/FAIT LE
LOCAL REGISTRAR / GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

Court File No. 05-CL-5822

ONTARIO

SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST

BETWEEN:

HOLLINGER INC. and DOMGROUP LTD.

Plaintiffs

\- and -

THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., MOFFATT MANAGEMENT INC., BLACK-AMIEL MANAGEMENT INC., CONRAD M. BLACK, F. DAVID RADLER, JACK A. BOULTBEE and PETER Y. ATKINSON

Defendants

<u>AMENDED</u> STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and $500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date: March 29, ~~2005~~ -04 Issued by "Joe Doria"
Local registrar

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

TO: THE RAVELSTON CORPORATION LIMITED
10 Toronto Street
Toronto, ON M5C 2B7

AND TO: RAVELSTON MANAGEMENT INC.
10 Toronto Street
Toronto, ON M5C 2B7

AND TO: MOFFATT MANAGEMENT INC.
c/o Conrad M. Black
10 Toronto Street
Toronto, ON M5C 2B7

AND TO: BLACK-AMIEL MANAGEMENT INC.
c/o Conrad M. Black
10 Toronto Street
Toronto, ON M5C 2B7

AND
TO: CONRAD M. BLACK
10 Toronto Street
Toronto, ON M5C 2B7

AND
TO: F. DAVID RADLER
10 Toronto Street
Toronto, ON M5C 2B7

AND
TO: JACK A. BOULTBEE
10 Toronto Street
Toronto, ON M5C 2B7

AND
TO: PETER Y. ATKINSON

CLAIM

1. The plaintiffs claim the following relief:

(a) Hollinger Inc. claims as against all defendants on a joint and several basis damages in the amount of $500,000,000.00;

(b) Hollinger Inc. claims as against all personal defendants on a joint and several basis the sum of $50,000,000.00, on account of unreasonable financing-related costs and expenses which they inflicted upon Hollinger Inc.;

(c) Hollinger Inc. claims as against Ravelston Management Inc. and The Ravelston Corporation Limited the amount of $57,393,000.00, being the amount owing to Hollinger Inc. under the Support Agreement as at September 30, 2004 (hereinafter the "Accrued Support Agreement Debt");

(d) Hollinger Inc. further claims payment of the additional amounts which have or which will become due and payable to it under the Support Agreement from and after September 30, 2004. For the period September 30, 2004 through December 31, 2004 that amount was $11,131,000.00. From and after January 1, 2005 that amount is $3,200,000.00 U.S. per quarter;

(e) Hollinger Inc. claims prejudgment interest on the Accrued Support Agreement Debt from September 30, 2004 to the date of judgment and on all other amounts owing under the Support Agreement from the date upon which they become due and payable to the date of judgment;

(f) Domgroup Ltd. claims as against The Ravelston Corporation Limited the sum of $14,373,000.00 being the amount owing to it as at September 30, 2004 under the Domgroup Circular Loans more particularly described below;

(g) Domgroup Ltd. also claims as against The Ravelston Corporation Limited interest on the Domgroup Circular Loans at the CIBC prime rate plus 4%, from September 30, 2004 to the date of payment.;

(h) Hollinger Inc. seeks a declaration to the effect that, by virtue of the facts and circumstances set out herein, no monies are owing by them to the personal defendants, whether under certain indemnity agreements or otherwise, and that those indemnity agreements are void and unenforceable;

(i) Both plaintiffs claim pre-judgment and post-judgment interest on all sums awarded to them, in accordance with the Courts of Justice Act; and

(j) Both plaintiffs seek their costs of this action payable on a substantial indemnity basis.

A. The Parties and Their Relationship

2. The plaintiff Hollinger Inc. ("Hollinger") is a publicly held company incorporated in the province of Ontario under the *Canada Business Corporations Act*, with its principal office in Toronto, Ontario. The plaintiff Domgroup Ltd. is a wholly

owned subsidiary of Hollinger, incorporated under the *Canada Business Corporations Act*, which in turn owns several real estate assets.

3. Both plaintiffs are Ontario-resident corporations and their claims herein are governed by Ontario law, and by the provisions of the *Canada Business Corporations Act*.

4. Hollinger is a holding company and conducts no direct business operations of its own. Hollinger's key business asset is its ownership interest in and business relationship with Hollinger International Inc. ("International").

5. International was the operating company, the profits of which were to be enjoyed by Hollinger as a shareholder of International. International and Hollinger are both reporting issuers under the *Securities Act* (Ontario), and as such are subject to Ontario securities law.

6. During the time which is material to this action, namely 1998 to the present, International owned and operated newspapers in North America, Great Britain and Israel. At one time International's portfolio of newspaper properties had a worldwide combined circulation of approximately two million readers per day.

7. During the material time Hollinger owned a 30.3 percent equity interest in International. The majority of Hollinger's shares of International are Class B Common Shares which entitle the holder (Hollinger) to ten votes for every one share held. Hollinger's super voting status in International is referred to herein as the "Control Position". By reason of the Control Position, during the material time Hollinger

controlled 73 percent of International's vote on all business matters, notwithstanding that it owned only 30.3 percent of International's equity.

8. Conrad Black, David Radler, Jack Boultbee and Peter Atkinson (collectively, the "Individual Defendants") were all directors and officers of Hollinger at the material times, and as such owed it fiduciary duties, including the duty not to exploit Hollinger's Control Position for their own personal use and benefit.

9. The Individual Defendants also owed to Hollinger a duty of care to ensure that its key business asset – namely its relationship with its operating subsidiary, International, – was preserved and not impaired.

10. Conrad Black, David Radler, Jack Boultbee and Peter Atkinson also control The Ravelston Corporation Limited ("Ravelston"), which is a privately held corporation located in Toronto. Black and Radler together exercise effective control of Ravelston, in that they are the ultimate beneficial owners of 80 percent of Ravelston's shares.

11. Ravelston Management Inc. ("RMI") is a wholly owned subsidiary of Ravelston.

12. Ravelston and its subsidiaries beneficially own 78 percent of Hollinger's retractable common shares. Ravelston at all material times controlled Hollinger by virtue of that ownership, and was in turn owned and controlled by the Individual Defendants.

B. Overview of the Claim

13. The Individual Defendants have acted in bad faith and in a manner calculated to benefit themselves to the detriment of the plaintiff Hollinger. They have exercised their control of both Hollinger and International in a manner that is contrary to the individual commercial interests of those companies and contrary to the governance standards applicable to them as reporting issuers in the Province of Ontario.

14. In respect of International, the defendants have diverted funds from it, to themselves, and thereby caused International to repudiate its business relationship with Hollinger. By their wrongful conduct they significantly damaged Hollinger's relationship with its operating subsidiary, International, and have acted so as to prejudice Hollinger's interests and rights in International as a shareholder.

15. The Individual Defendants also caused their personal corporate vehicles Ravelston and RMI to avoid fulfilment of their direct obligations to Hollinger.

16. The Individual Defendants diverted to themselves opportunities and assets that were or should have been available for the benefit of Hollinger.

17. The Individual Defendants have breached their fiduciary duties and duties of care as directors and officers of Hollinger. As described below, they have caused Hollinger to enter into transactions which were not aligned with Hollinger's best interests.

18. Finally, the Individual Defendants created a regime at Hollinger and International that was contrary to the applicable corporate governance standards for

Ontario registrants. In so doing they triggered litigation, a court appointed Inspection of Hollinger, securities enforcement proceedings against Hollinger and a criminal investigation of Hollinger, all of which are potentially crippling in their impact and which to date have cost Hollinger many millions of dollars to defend.

C. The Diversion of Management Fees

19. International and its operating subsidiaries received management services from Hollinger. Those services were rendered by Conrad Black, David Radler, Peter Atkinson and Jack Boultbee. Those defendants were compensated handsomely as senior executives of Hollinger and International for so doing.

20. Prior to 1998, International and its subsidiaries paid Hollinger management fees in consideration for the management services rendered by Hollinger through those defendants.

21. On or about January 1, 1998 the Individual Defendants, utilizing the Control Position in International, and by virtue of their control over the plaintiff corporation Hollinger, improperly caused the management fees which had previously been paid to Hollinger to be diverted thereafter to their wholly owned private company, the defendant Ravelston.

22. From and after the year 1998, management fees which otherwise would have been paid by International and its subsidiaries to Hollinger were instead paid to Ravelston, and from Ravelston were paid into the pockets of the Individual Defendants.

23. The defendants caused the management fees to bypass Hollinger altogether, notwithstanding that there had been no material changes to the nature and delivery of the management services. The Individual Defendants improperly stripped Hollinger of the right to receive significant fees from International and its subsidiaries.

24. At the time that event occurred, Hollinger was dominated by the Individual Defendants and was not in a position to challenge or question their diversion of this corporate asset. Hollinger was in this vulnerable position because the Individual Defendants had ensured that there was effectively no oversight of their conduct and no independent review or analysis of the transactions they effected from the perspective of Hollinger's best interests.

25. The quantum of management fees which were improperly diverted away from Hollinger to Ravelston is, at least, as follows:

Fiscal Year	Fees Paid in US Dollars	Fees Paid in CAD Dollars	CAD Equivalent of U.S. Funds (at average annual conversion rate)	Total in CAD Dollars
1998	$31,954,000.00		$47,407,913.00	$47,407,913.00
1999	$38,239,000.00		$56,817,800.00	$56,817,800.00
2000	$24,000,000.00	$18,500,000.00	$35,646,240.00	$54,146,240.00
2001	$25,800,000.00	$7,600,000.00	$39,965,232.00	$47,565,232.00
2002	To be determined at trial	To be determined at trial		($45 million estimated)

Total Diverted in Canadian Dollars $250,937,185.00

26. In addition to the sums mentioned above which were diverted to Ravelston, the defendants also caused management fees to be diverted to two Ravelston affiliates: Moffatt Management Inc. ("Moffatt" being Conrad Black's middle name) and Black-Amiel Management Inc. ("Black-Amiel" being Black's wife). Both of those defendants are shell corporations registered in the Caribbean, without any employees or business activities. Those shell corporations rendered no services to International, and yet received payments which should have been available to Hollinger but for the wrongful conduct of the defendants. Those additional improper payments are as follows:

	Fees Paid in US Dollars	CAD Dollar Equivalent, using average annual conversion rate	Payee
1999	$2,300,000.00	$3,417,478.00	Moffatt Managment
2000	$1,560,000.00	$2,317,005.60	Moffatt Management
2001	$770,000.00	$1,192,760.80	Moffatt Management
2001	$230,000.00	$356,279.20	Black Amiel-Management
2002	To be determined at trial		
Total Diverted in Canadian Dollars		$7,283,523.60	

27. To summarize, during the time period 1998 through to and including 2004, a total of at least $281,507,628.60 Canadian was improperly diverted from Hollinger to Ravelston, Moffatt Management Inc. and Black-Amiel Management Inc., and should be disgorged by them to Hollinger.

D. The Diversion of Non-Competition Payments

28. Commencing in the year 1998, International began to sell off its United States-based community newspapers. In connection with these transactions, the Individual Defendants diverted from International tens of millions of dollars to themselves and entities which they controlled, including Hollinger, by inserting themselves and those entities as recipients of "non-competition" payments. These amount would otherwise have been paid to International as part of the purchase price for the assets which it sold.

29. The defendants were able to wrongfully divert the non-competition payments to themselves and to their controlled corporation, Ravelston, because they dominated International through their officerships and through the use of Hollinger's Control Position. They improperly used the Control Position to alter the underlying purchase and sale transactions. The independent directors of International did not know of or authorize the non-competition payments to be made to the defendants.

30. During the period January 1999 through April 2001, Black, Radler, Boultbee and Atkinson diverted non-competition payments directly to themselves from six newspaper sale transactions by International and its subsidiaries. They wrongfully appropriated the following amounts:

	Funds Paid in CAD Dollars	Funds Paid in US Dollars	Converted to CAD Dollars using the average annual conversion rate	Total in CAD Dollars
Black	$23,000,972.00	$7,197,500.00	$10,743,204.00	$33,744,176.00
Radler	$23,000,972.00	$7,197,500.00	$10,743,204.00	$33,744,176.00
Boultbee	$2,421,155.00			
Atkinson	$2,421,155.00			
Total Diverted in Canadian Dollars				$72,330,662.00

31. In addition to the amounts they diverted to themselves personally, the Individual Defendants also used their corporate offices at International and Hollinger's Control Position to cause the sum of $38,818,135 CAD to be improperly paid by International to Ravelston upon the closing of the sale of certain of International's assets to CanWest in the form of a non-competition payment.

32. The defendants also caused Hollinger to receive some $16,550,000.00 U.S. in non-competition payments.

33. Far from being a "benefit" to Hollinger, this event (in addition to certain other self dealing transactions referred to herein) ultimately caused International to sever its relationship with Hollinger and to commence legal proceedings against

Hollinger for recovery of the $16,550,000.00 U.S. This event also caused and contributed to the destruction of Hollinger's relationship with its operating subsidiary, and the defendants knew or ought to have known that that was the likely outcome.

34. Hollinger ought never to have been exposed to those circumstances in the first place, and was so exposed solely as a result of the defendants' wrongdoing.

35. The defendants are accordingly liable to Hollinger in damages.

E. Failures of Corporate Governance Leading to the Court Appointed Inspection and the Destruction of the Relationship with International

36. In or about the latter months of 2002, certain institutional shareholders of International began to question some of the self-dealing transactions to which International had been made a party by the defendants. In or about June 2003 the Board of International established a Special Committee to investigate the allegations of self-dealing. By November of 2003 the Securities and Exchange Commission ("SEC") had commenced an investigation into International and its Board. By this time as well the International Special Committee had rendered a preliminary report dealing with, amongst other things, the management fee payments, the non-competition payments and the non-arms length newspaper asset sales, all of which had at least the appearance of unfair self-dealing and had seemingly not been authorized.

37. Following those events, and as a result of the Individual Defendants' conduct, the United States Justice Department announced a criminal investigation of Black, Radler, International and Hollinger, exposing Hollinger to unwarranted risk.

38. On or about November 21, 2003 the then Independent Members of Hollinger's Board of Directors (who also constituted Hollinger's Audit Committee) addressed the serious governance concerns referred to in the International Special Committee's preliminary report with the Hollinger Board and requested that, given the need to review those allegations, the Individual Defendants should step down from their roles as officers and directors of Hollinger. Hollinger's Audit Committee also requested that a thorough internal review be conducted by Hollinger of the matters alleged in the International Special Committee preliminary report. Both of these requests were very clearly in Hollinger's best interests.

39. Notwithstanding that their conduct had seriously imperilled Hollinger, the Individual Defendants refused to step down from the Hollinger Board and refused to authorize the internal review which had been requested by the Audit Committee. The Audit Committee's resolutions to this effect were out-voted by the Individual Defendants. As a result, the Hollinger Audit Committee resigned *en masse* and its external auditor followed suit and resigned shortly thereafter.

40. At the same time, as International was beginning to learn more about the Individual Defendants' conduct in relation to the non-competition payments, the non-arms length newspaper sales and the management fees, it severed relations with Hollinger, initiated proceedings against Hollinger and determined that no further dividends would be paid to Hollinger. This created immense financial pressure on Hollinger, as it depended upon those dividends and payments by RMI under the Support Agreement referred to in paragraphs 57 through 62 hereof to satisfy its own financial obligations.

41. In the United States, Class Actions had been brought by International's shareholders against International and others, including Hollinger, International was continuing to probe the conduct of the Individual Defendants, and the SEC was conducting enforcement proceedings against both Hollinger and International. Injunctions were issued restraining Hollinger from exercising its vote under the Control Position, and Orders were also in place preventing the payment of any funds by International to Hollinger. Ultimately Hollinger itself became exposed to enforcement proceedings in Canada by the Ontario Securities Commission, principally as a result of the Individual Defendants' alleged failure to ensure that Hollinger complied with its public disclosure obligations concerning the related party transactions described in this Statement of Claim.

42. All of the foregoing was a direct result of the misconduct of the Individual Defendants.

43. As a result of the Individual Defendants' misconduct, Hollinger was in a state of chaos. It had no Audit Committee or auditor; it was unable to finalize its financial statements; it had been cut off from its traditional income source; its use of the Control Position had been frozen and its relationship with its operating subsidiary had been destroyed.

44. As a direct result, proceedings were brought in Ontario for the appointment of an inspector under the *Canada Business Corporations Act*. Hollinger, under the control of the Individual Defendants, had improperly resisted the internal

review requested by its Audit Committee and as a result, an Inspection Order was made, at great cost to Hollinger.

45. Ernst & Young Inc. was appointed as Inspector of Hollinger. The Individual Defendants apart from Conrad Black (who resigned moments before the Court hearing seeking his removal), were removed by order of this Court as directors of Hollinger. While the independent directors of Hollinger have cooperated fully with the Inspector, the co-operation of the Individual Defendants has not been forthcoming. As a result, the Inspection has been a time consuming and extremely costly process and, as of the date hereof, is incomplete.

46. But for the failures of corporate governance which were the sole responsibility of the Individual Defendants and but for their resistance to making full, true and plain public financial disclosure, none of these events would have occurred and none of the litigation-related costs which Hollinger has incurred over the last two years of legal proceedings would have been necessary. To date those costs are well in excess of $30 million dollars, and are the direct consequence of the defendants' oppressive and wrongful conduct. The defendants are at law obliged to make Hollinger whole for all of the direct and indirect costs of all of the proceedings throughout North America to which they have exposed it. For greater certainty, this head of damages includes excessive management and Board costs, legal fees, disbursements, litigation support costs, the costs of the Ontario Inspectorship, and any sums which Hollinger has been ordered to pay by the Courts to any other party in proceedings.

<u>47.</u> In addition to the foregoing, the defendant Ravelston is also obliged to reimburse Hollinger for all of the costs which it incurred in relation to a proposed Going Private Transaction which would have seen, had it proceeded, Ravelston become the sole remaining shareholder of Hollinger (the "Going Private Transaction"). Hollinger incurred significant professional fees and other expenses in relation to the Going Private Transaction, all of which potentially benefited Ravelston and the Individual Directors.

<u>48.</u> The Going Private Transaction was effectively terminated by Order of the Ontario Securities Commission. Ravelston is at law obliged to reimburse Hollinger for all of the expenses which it incurred in relation to the Going Private Transaction, since those expenses were incurred for Ravelston's direct benefit.

<u>49.</u> Ravelston entered into a Reimbursement Agreement with Hollinger to reimburse it for the Going Private Transaction expenses, and granted Hollinger security for its performance of that obligation. In addition to its rights at law, Hollinger also pleads and relies upon the Reimbursement Agreement and General Security Agreement it entered into with Ravelston on or about March 7, 2005 as founding its claim for reimbursement of the Going Private Transaction expenses.

<u>50.</u> With respect to the SEC and OSC proceedings which have been brought against Hollinger as a result of the defendants' conduct, the defendants should be found solely responsible for any fines or penalties that are ultimately levied against Hollinger by the enforcement agencies, as well as those agencies' costs.

F. The Individual Defendants have Helped Themselves to Reimbursement from Hollinger

51. As set out above, during the past several years there has been litigation in a variety of different jurisdictions against both Hollinger and the defendants herein. Against the backdrop of threatened litigation, the Individual Defendants procured indemnities from Hollinger to cover their legal fees.

52. Notwithstanding that the Individual Defendants' misconduct is at the heart of the present civil and regulatory proceedings, the Individual Defendants nonetheless caused Hollinger to enter into indemnity agreements with them on account of all of their legal fees, in circumstances where the indemnity may not be applicable.

53. The Individual Defendants were not in fact entitled to be indemnified by Hollinger in the existing circumstances, but used their control of Hollinger to approve indemnity payments. The payments made under those indemnities were oppressive and unfair to Hollinger. All such monies must be repaid to Hollinger.

G. The Individual Defendants Cause a Financial Crisis at Hollinger

54. By the year 2003 there were well-publicized failures of corporate governance at Hollinger, as well as numerous legal and enforcement proceedings against it, all of which put Hollinger in a very precarious financial position.

55. Hollinger, which would have been flush with cash and financially healthy but for the conduct of the defendants, found itself in desperate financial circumstances. Having siphoned off hundreds of millions of dollars from the coffers of Hollinger and its

operating subsidiary, the Individual Defendants dealt with Hollinger's ensuing liquidity problem by causing Hollinger to borrow at unfavourable rates and on unfavourable terms in the junk bond market. The Individual Defendants caused Hollinger to enter into a secured borrowing transaction whereby it issued Senior Secured Notes in the aggregate amount of $120 million U.S. at 11.875 percent interest per annum ("the Junk Bonds"). The terms of the Junk Bonds and the security therefor are so onerous to Hollinger that they severely hamper its business operations.

56. Hollinger ought never to have required financing of this nature. But for the diversion of its funds by the Individual Defendants and their insistence on the Junk Bond financing, Hollinger would have not incurred the interest costs associated therewith, which amount to approximately $15 million per annum. The Individual Defendants are accordingly liable to compensate Hollinger in damages in an amount equal to the Junk Bond financing costs, including the associated brokers' fees, financing and legal costs, in an amount of at least $50,000,000.00.

57. In addition, the Individual Defendants – so as to avoid diluting their own ownership positions – consistently utilized debt financing to capitalize Hollinger when equity financing would have been preferable. In so doing, they obtained debt financing at above-market rates and upon onerous terms, to the detriment of Hollinger rather than dilute their control of Hollinger.

58. The market perceived higher risk associated with Conrad Black's ventures and therefore extracted rates and terms that were above-market and onerous. This "Conrad Factor" together with the Individual Directors' self-interested approach to

capitalizing Hollinger with debt only led to Hollinger incurring excessive financing-related costs that would have been avoided had the Individual Defendants demonstrated good corporate stewardship.

H. Default by Ravelston and RMI in Their Agreements with Hollinger

59. The Junk Bonds are governed by an Indenture dated March 10, 2003 amongst Hollinger, RMI and the Wachovia Trust Company, National Association ("the Indenture").

60. Pursuant to the Indenture, Hollinger must receive certain minimum cash amounts on a quarterly basis, failing which an event of default arises. The minimum amounts which Hollinger must receive include payments from RMI pursuant to a Support Agreement, which Hollinger and RMI also entered into on or about March 10, 2003 ("the Support Agreement").

61. RMI's obligation to make payments to Hollinger under the Support Agreement is guaranteed by Ravelston.

62. Notwithstanding that Ravelston took over $280 million by way of management fees from Hollinger (as set out in Section "C" of this Claim), and $38 million by way of non-competition payments as set out in Section "D", RMI did not see fit to make the required payments and is in default of its obligations under the Support Agreement to the tune of over $75,000,000.00. Neither Ravelston nor RMI called upon their shareholders and directing minds (the Individual Defendants) to satisfy their

personal financial obligations to Ravelston such that the required Support Payments to Hollinger could be funded and made.

63. As at September 30, 2004, RMI owed Hollinger a total of $57,393,000.00 in unpaid Support Payments. As set out above, Ravelston is legally responsible for that payment under its guarantee.

64. Ravelston has signified its intent not to make any future support payments to Hollinger. Such payments continue to be required under the Support Agreement, in minimum quarterly amounts of approximately $3.2 million U.S. Hollinger seeks an order requiring all such amounts to be paid for the balance of the time period covered by the Indenture and Support Agreement.

65. The Individual Defendants could and should have caused RMI to honour its Support Agreement obligations. They could and should have funded RMI from their own financial resources in order to do so. Instead, they set up a "Circular Loan" scheme whereby Domgroup Ltd. – Hollinger's subsidiary – lent money to Ravelston which in turn contributed those funds to RMI (hereinafter "the Domgroup Circular Loans"). By this means, RMI was able to make some Support Payments, but still neglected or refused to pay the full amount owing, leaving the $57,393,000.00 shortfall claimed in paragraph 66 hereof.

66. The Individual Defendants caused Domgroup to make Circular Loans totalling $14,374,000.00 to Ravelston as at September 30, 2004. The Domgroup Circular Loans are payable on demand and are secured by a General Security Agreement over the assets of Ravelston.

67. Ravelston has neglected or refused to repay that amount to Domgroup. Ravelston is accordingly indebted to Domgroup in the amount of $14,374,000.00, which amount must be repaid together with interest on the sum at the CIBC prime rate plus 4% in accordance with the terms of the Domgroup Circular Loans, from September 30, 2004 to the date of payment.

I. Other Consequential Losses

68. By virtue of the circumstances which have been imposed upon it by the Individual Defendants, Hollinger has had to incur personnel and administrative costs far in excess of what it otherwise would have expended. For instance, the Inspectorship referred to above has put extraordinary demands on Hollinger's resources. Simply put, Hollinger was left in "crisis mode" to be administered by the new independent directors with little assistance from the Individual Defendants.

69. From and after approximately the summer of 2004, Hollinger has suffered increased operating costs because of the many crises which have been visited upon it by reason of the Individual Defendants' misconduct.

70. Hollinger accordingly claims damages in an amount sufficient to cover the increased operational costs, which amount will be particularized prior to trial.

J. Conclusion

71. As particularized above, the conduct of the defendants has been oppressive and unfairly prejudicial to Hollinger within the meaning of Section 248 of the *Canada Business Corporations Act*. The defendants also have breached their statutory

and common law duties of fidelity and care to Hollinger. Further, they have wrongfully interfered in the commercial relations between Hollinger and International, to the financial detriment of Hollinger. They are answerable for all of the resulting damages.

The plaintiffs propose that this action be tried at Toronto by a jury.

July 25, 2007

DAVIES WARD PHILLIPS & VINEBERG LLP
1 First Canadian Place
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Toronto, ON M5X 1B1

George Pollack (LSUC # 32540P)
Matthew P. Gottlieb (LSUC #32268B)

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Solicitors for the Plaintiffs Hollinger Inc. and Domgroup Ltd.

HOLLINGER INC. and DOMGROUP LTD
Plaintiffs

and

THE RAVELSTON CORPORATION LIMITED et al.
Defendants

Court File No.: 05-CL-5822

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

DAVIES WARD PHILLIPS & VINEBERG LLP
1 First Canadian Place
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Toronto, ON M5X 1B1

George Pollack (LSUC #32540P)
Matthew P. Gottlieb (LSUC #32268B)

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Solicitors for the Plaintiffs Hollinger Inc. and Domgroup Ltd.

EXHIBIT "4"

AMENDED THIS Aug. 10, 2006 PURSUANT TO
MODIFIÉE CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE
LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.: 06-CL-6261

AMENDED THIS May 22, 2009 PURSUANT TO
MODIFIÉE CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE
"C. Irwin"
LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

BETWEEN:

AMENDED THIS May 27, 2009 PURSUANT TO
MODIFIÉE CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE
LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

HOLLINGER INC., DOMGROUP LTD, 4322525 CANADA INC.,
10 TORONTO STREET INC. and SUGRA LIMITED

Plaintiffs

- and –

CONRAD M. BLACK, BARBARA AMIEL-BLACK, F. DAVID RADLER,
JOHN A. BOULTBEE, PETER Y. ATKINSON, THE RAVELSTON CORPORATION LIMITED,
RAVELSTON MANAGEMENT INC., 509643 N.B. INC., 509644 N.B. INC., 509645 N.B. INC.,
509646 N.B. INC., 509647 N.B. INC., MOFFATT MANAGEMENT INC., BLACK-AMIEL
MANAGEMENT INC., ARGUS CORPORATION LIMITED, CONRAD BLACK CAPITAL
CORPORATION, HOLLINGER AVIATION INC., MOWITZA HOLDINGS INC., 364817
ONTARIO LIMITED, F. D. RADLER LTD., 1269940 ONTARIO LIMITED, 2753421 CANADA
LIMITED and 1406684 ONTARIO LIMITED

Defendants

AMENDED AMENDED
STATEMENT OF CLAIM

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil

Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFFS' CLAIM, and $500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400 for costs and have the costs assessed by the court.

Date: ~~May ____ 2009~~ January 27, 2006

Issued by: [signature]
Address: 330 University Avenue
7th Floor
Toronto, ON M5G 1R

TO: **Conrad M. Black, Black-Amiel Management Inc.,**
Conrad Black Capital Corporation, 1269940 Ontario Limited, 2753421 Canada Limited ~~**and Moffatt Management Inc.**~~

Lerners LLP
Attention Lisa Munro lmunro@lerners.ca
Earl Cherniak echerniak@lerners.ca

AND TO: **Barbara Amiel-Black**

Minden Gross LLP
Attention Raymond Slattery rslattery@mindengross.com
Catherine Francis CFrancis@mindengross.com

AND TO:	F. David Radler and F.D. Radler Ltd.
	Sack Goldblatt Mitchell LLP Attention Sean Dewart sdewart@sgmlaw.com
AND TO:	Peter Y. Atkinson and 140668 Ontario Inc.
	Lax O'Sullivan Scott LLP Attention Clifford Lax clax@counsel-toronto.com
AND TO:	Mowitza Holdings Inc., 364817 Ontario Inc., Hollinger Aviation Inc., ~~and~~ John A. Boultbee and Moffatt Management Inc.
	~~Lerners LLP~~ ~~Attention Lisa Munro lmunro@lerners.ca~~ ~~Don Jack djack@lerners.ca~~
	Oscar C. Wong & Associates Attention Oscar C. Wong ocwlaw@rogers.com
AND TO:	The Ravelston Corporation Limited, Ravelston Management Inc., Argus Corporation Inc., 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc. and 509647 N.B. Inc.
	Fraser Milner Casgrain LLP Attention Alex L. MacFarlane alex.macfarlane@fmc-law.com

Claim

1. The Plaintiffs, Hollinger Inc., Domgroup Ltd., 4322525 Canada Inc., 10 Toronto Street Inc., and Sugra Limited, claim from the Individual Defendants, Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee, Peter Y. Atkinson, and from the Corporate Defendants, The Ravelston Corporation Limited, Ravelston Management Inc., 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., Moffatt Management Inc., Black-Amiel Management Inc., Argus Corporation Limited, Conrad Black Capital Corporation, Hollinger Aviation Inc., Mowitza Holdings Inc., 364817 Ontario Limited, F. D. Radler Ltd., 1269940 Ontario Limited, 2753421 Canada Limited and 1406684 Ontario Limited, jointly and severally, for the following relief:

(a) $500,000,000.00 in damages for breach of contract, breach of fiduciary duty, negligence, conspiracy, unjust enrichment and unlawful interference with the Plaintiffs' economic interests, including but not limited to the costs and expenses incurred by the Plaintiffs as a result of the Defendants' conduct;

(b) damages in an amount in Canadian dollars equivalent to US$138,136,000.00 in respect of the assignment of the Management Services Agreements (as defined herein) and the diversion of their associated fees outside of the Plaintiffs;

(c) damages in an amount in Canadian dollars equivalent to US$64,000,000.00 or such other amount that is confirmed prior to trial as the outstanding balance under the Support Agreement and the Ravelston Guarantee (as defined herein);

(d) damages in an amount in Canadian dollars equivalent to US$3,055,000.00 per financial quarter, accruing from the fourth quarter of 2004 until such time as the

Senior Notes (as defined herein) are repaid in full under the terms of the Support Agreement and the Ravelston Guarantee;

(e) damages for the costs, fees and expenses incurred by the Plaintiffs in connection with the Inspection (as defined herein) to be particularized prior to trial;

(f) the additional interest costs, costs, fees and expenses incurred by the Plaintiffs in connection with financing, including the Senior Note financing, required as a result of the Defendants' conduct, to be particularized prior to trial;

(g) reimbursement of $14,700,000.00 in respect of the Domgroup Loans (as defined herein) plus accrued and accruing interest;

(h) reimbursement of $6,900,000.00 in respect of the transaction costs associated with the Going Private Transaction (as defined herein) as provided under the GPT Reimbursement Agreement (as defined herein);

(i) contribution and indemnity with respect to any judgment, fine, penalty, levy, sanction, award or order obtained against any of the Plaintiffs, including without limitation, in the following proceedings (collectively, the "Ravelston Proceedings"):

(i) *Hollinger International Inc. v. Hollinger Inc., The Ravelston Corporation Limited, Ravelston Management Inc, Conrad M. Black, F. David Radler, John A. Boultbee, Daniel W. Colson, Barbara Amiel-Black and Richard Perle, commenced January 28,2004 proceeding as Case No. 04-C 0698 in the United States District Court for the Northern District of Illinois, Eastern Division;*

(ii) *Teachers' Retirement System of Louisiana v. Conrad M. Black, Hollinger International Inc., Hollinger Inc. The Ravelston Corporation Limited, Ravelston Management Inc., Argus Corporation Limited et al. commenced February 2, 2004 in Civil Action No. 04-C-0834 (as consolidated) in the United States District Court for the Northern District of Illinois, Eastern Division;*

(iii) *Steven Drover et al. v. Argus Corporation Limited, Conrad M. Black, Barbara Amiel-Black, Hollinger International Inc., Hollinger Inc., Ravelston Corporation Limited et al commenced on September 7, 2004 proceeding in the Ontario Superior Court of Justice, Court File No.: 04-CV-028649;*

(iv) *Trudy Betthel et al. v. Lord Conrad M. Black, Lady Barbara Amiel-Black, Argus Corporation Limited et al. commenced on September 7, 2004 proceeding in the Court of Queen's Bench Judicial Centre of Saskatoon, Court File No.: QB 1492 of 2004;*

(v) *Trudy Betthel et al. v. Lord Conrad M. Black, Lady Barbara Amiel-Black, Argus Corporation Limited et al. commenced on September 7, 2004 proceeding in the Quebec Superior Court, District of Hull;*

(vi) *In the Matter of the Securities Act R.S.O. 1990, c.S.5, as amended, and in the Matter of Hollinger Inc. et al. commenced by Notice of Hearing dated March 18, 2005; and*

(vii) *United States Securities and Exchange Commission v. Conrad M. Black, F. David Radler and Hollinger Inc. proceeding as C.A. No. 2004C-7377;*

(j) a declaration that all monies obtained directly or indirectly by any or all of the Individual Defendants in breach of their duties to the Plaintiffs, including their fiduciary duties, and all the monies obtained directly or indirectly by any or all of the Defendants in furtherance of a conspiracy, as a consequence of waiver of tort are held in constructive trust by such Defendant for the benefit of the Hollinger Group;

(k) an Order requiring the Individual Defendants to disgorge all benefits obtained by them as a result of their affiliation with the Hollinger Group, the Corporate Defendants and/or International as a consequence of their improper conduct without reference to any harm suffered by the Plaintiffs on the basis of waiver of tort;

(l) an Order for an accounting and tracing of all amounts ordered to be paid by or disgorged from any of the Defendants;

(m) a declaration that by virtue of the facts and circumstances set out herein, no monies are owing by the Plaintiffs to any of the Individual Defendants, whether under indemnity agreements or otherwise and that any such indemnity agreements are void and unenforceable;

(n) an Order under section 241 of the *Canada Business Corporations Act* R.S.C. 1985, c. C-44, as amended (the "CBCA") declaring that the conduct of the Individual Defendants has been oppressive and has unfairly disregarded the interests of the Plaintiffs and their non-Defendant shareholders and an Order retracting the Hollinger shares held, directly or indirectly, by the Individual Defendants;

(o) an Order compensating the Plaintiffs for the Individual Defendants' oppressive conduct;

(p) $5,000,000.00 in aggravated or punitive damages, or such greater amount as the Court may award;

(q) interest on the funds owed under the Support Agreement at a rate of LIBOR plus 3% from September 30, 2004 to the date of payment;

(r) unpaid and accrued interest on the Domgroup Loans at the CIBC prime rate plus 4% from September 1, 2004 to the date of payment;

(s) pre-judgment and post-judgment interest on a compound basis on all other sums awarded in accordance with the relevant agreements, equity, the common law or the *Courts of Justice Act*, R.S.O. 1990 c.42, as amended;

(t) costs of this action on a substantial indemnity basis, as well as any applicable taxes; and

(u) such further and other relief as this Honourable Court may deem just.

The Parties and Their Relationships

The Hollinger Group

2. At all material times, the Plaintiff, Hollinger Inc. ("Hollinger"), was a publicly held corporation incorporated under the CBCA, with its principal offices at 10 Toronto Street, Toronto, Ontario. Hollinger was a reporting issuer under the *Securities Act (Ontario)*, R.S.O. 1990, c.S.5 (the "Securities Act"). Hollinger no longer conducts direct business operations of its own. Hollinger is currently in CCAA proceedings as a result of the Defendants' conduct as described herein.

3. Hollinger's parent, the Ravelston Corporation Limited ("Ravelston") owns directly or indirectly, all the non-publicly held voting shares in Hollinger.

4. Hollinger's primary asset is a direct and indirect ownership interest in Hollinger International Inc. ("International"), now known as the Sun-Times Media Group. Through its operating subsidiaries, International has owned and published newspapers around the world and, at one point, its portfolio of newspaper properties had a worldwide combined circulation of approximately two million readers per day. Hollinger holds, directly and indirectly, a 21.1% equity interest in International. At all material times, the majority of Hollinger's shares of International were Class B common shares which entitled Hollinger to ten votes per share held (the "Super Voting Shares"). Hollinger was the sole holder of the Super Voting Shares. Through its direct and indirect holdings, Hollinger controlled approximately 66.8% of International's votes on matters requiring shareholder approval.

5. The Plaintiff, Domgroup Ltd. ("Domgroup") is a wholly-owned subsidiary corporation of Hollinger, incorporated under the CBCA.

6. The Plaintiff, 10 Toronto Street Inc. ("10 Toronto") is a wholly-owned subsidiary corporation of Domgroup, and indirectly, a wholly-owned subsidiary corporation of Hollinger, incorporated under the *Business Corporations Act (Ontario)*, R.S.O. 1990, c.B.16 (the "OBCA"). At all material times, 10 Toronto owned and operated the premises located at 10 Toronto Street, Toronto, Ontario.

7. The Plaintiff, Sugra Limited ("Sugra") is a wholly-owned subsidiary corporation of Domgroup, and indirectly, a wholly-owned subsidiary corporation of Hollinger,

incorporated under the OBCA. From time to time, Sugra managed, owned or leased aircraft for the benefit of the members of the Hollinger Group and the Defendants.

8. The Plaintiff, 4322525 Canada Inc. ("432"), formerly 504468 N. B. Inc., is a wholly-owned subsidiary corporation of Sugra, and indirectly a wholly-owned subsidiary of Hollinger, incorporated under the CBCA.

9. Collectively, Hollinger, Domgroup, 10 Toronto, Sugra and 432 will be referred to herein as the "Hollinger Group".

The Individual Defendants

10. The Defendant, Conrad M. Black ("Black"), is a citizen of the United Kingdom. Black was a Canadian citizen until he renounced his citizenship in 1999. Black currently resides in the United States, where he is serving a 6 ½ year sentence in respect of criminal convictions for fraud and obstruction of justice. Since 1992 he has been married to Barbara Amiel-Black. At all material times, Black served as the Chief Executive Officer ("CEO"), as well as the Chairman of the Board of Directors of Hollinger until his resignation shortly before the scheduled hearing seeking his removal from such positions at Hollinger before Justice Campbell in November 2004. At all material times, Black also served as the CEO and Chairman of the Board of Directors at International. Concurrently, he held the positions of CEO and Chairman of Ravelston. He was also simultaneously a director of Ravelston's subsidiaries, Ravelston Management Inc. ("RMI") and Argus Corporation Limited ("Argus") as well as a director and President of Argus' subsidiary, 509643 N.B. Inc. ("643"). <u>Together with Radler, Atkinson and Boultbee, Black controlled and operated Moffatt Management Inc. Together with Amiel-Black and Boultbee, Black controlled and operated Black-Amiel Management Inc.</u>

Together with Amiel-Black, Black controlled and operated 1269940 Ontario Limited and 2753421 Canada Limited, which companies held his shares in Conrad Black Capital Corporation ("CBCC"). Throughout, Black remained a director and Chairman of CBCC which company holds his shares in Ravelston.

11. The Defendant, F. David Radler ("Radler"), is a Canadian citizen and, having served his sentence in respect of a criminal conviction for fraud, he is residing in Vancouver, British Columbia. At all material times, Radler served as President and Chief Operating Officer ("COO") of Hollinger until his removal as a director and officer by Order of Justice Campbell on November 18, 2004. Concurrently, he held the positions of President and COO of International, while simultaneously serving as President and a director of Ravelston, RMI and Argus, and as Vice President and a director of Argus' subsidiary, 643. Together with Black, Atkinson and Boultbee, Radler controlled and operated Moffatt Management Inc. Together with Boultbee and Atkinson, Radler controlled and operated Hollinger Aviation Inc. Throughout, Radler remained a director of F. D. Radler Ltd. ("FDR") which company holds his shares in Ravelston.

12. The Defendant, John A. "Jack" Boultbee ("Boultbee"), is a Canadian citizen currently residing in the United States where he is serving a two year sentence in respect of a criminal conviction for fraud. He is a Chartered Accountant. At all material times, Boultbee served as an officer, including Chief Financial Officer ("CFO") and a director of Hollinger until his removal as a director and officer by Order of Justice Campbell on November 18, 2004. Concurrently, he was an officer, including CFO, and a director of International while simultaneously serving as a director and officer, including CFO, of Ravelston, RMI, and Argus. He was also a director and President of 643, 509644 N.B. Inc.

("644"), 509645 N.B. Inc. ("645"), 509646 N.B. Inc. ("646") and 509647 N.B. Inc. ("647", collectively, the "NB Companies"). He also served as a director of CBCC, which holds Black's and Amiel-Black's shares in Ravelston. Together with Black, Radler and Atkinson, Boultbee controlled and operated Moffatt Management Inc. Together with Black and Amiel-Black, Boultbee controlled and operated Black-Amiel Management Inc. Together with Radler and Atkinson, Boultbee controlled and operated Hollinger Aviation Inc. Throughout, Boultbee controlled and operated Mowitza Holdings Inc. and 364817 Ontario Limited, which companies hold his shares in Ravelston.

13. The Defendant, Peter Y. Atkinson ("Atkinson"), is a Canadian citizen currently residing in the United States where he is serving a two year sentence in respect of a criminal conviction for fraud. He is a lawyer. At all material times, Atkinson served as Vice President and General Counsel and director of Hollinger. Concurrently, he held the position of Executive Vice President of International while simultaneously serving a director and officer of Ravelston, RMI, Argus and the NB Companies. Together with Black, Radler and Boultbee, Atkinson controlled and operated Moffatt Management Inc. Together with Radler and Boultbee, Atkinson controlled and operated Hollinger Aviation Inc. Atkinson also controlled and operated 1406684 Ontario Limited and directly held shares of Ravelston.

14. The Defendant, Barbara Amiel-Black ("Amiel-Black"), is a Canadian citizen residing in Toronto, Ontario and in Florida, United States. Since 1992 she has been married to Black. At all material times, Amiel-Black served as a director and Vice President (Editorial) of Hollinger until her removal as a director and officer by Order of Justice Campbell on November 18, 2004. Concurrently, she served as a director and Vice

President (Editorial) of International, while simultaneously serving as a director of RMI, and a director and President of CBCC, which company holds her shares in Ravelston. Together with Black and Boultbee, Amiel-Black controlled and operated Black-Amiel Management Inc. Together with Black, Amiel-Black controlled and operated 1269940 Ontario Limited and 2753421 Canada Limited, which companies hold her shares in CBCC, which in turn holds her shares in Ravelston.

15. Collectively, Black, Radler, Boultbee, Atkinson and Amiel-Black are referred to herein as the "Individual Defendants".

The Corporate Defendants

16. The Defendant, the Ravelston Corporation Limited ("Ravelston") is a privately held corporation, incorporated under the CBCA, which was operated out of the premises owned by 10 Toronto at 10 Toronto Street in Toronto, Ontario. Each of the Individual Defendants held shares in Ravelston either directly or indirectly through their corporations as described above. Collectively, the Individual Defendants were the ultimate beneficial owners of the majority of Ravelston's shares. At all material times, Black, Radler, Atkinson and Boultbee served as directors and/or officers and exercised effective control of Ravelston. Ravelston was, at all material times, owned and controlled by the Individual Defendants. Ravelston's primary asset is its direct and indirect shareholdings in Hollinger, which in turn controlled International. Through the unlawful conduct of the Individual Defendants, Ravelston's shareholding in Hollinger increased from 36.8% in 1997 to 78.2% by the time of their removal or resignations as directors and officers of Hollinger in 2004.

17. The Defendant, Ravelston Management Inc. ("RMI") is a wholly-owned subsidiary corporation of Ravelston, incorporated under the OBCA. At all material times, each of the Individual Defendants served as directors and /or officers and exercised control over RMI.

18. The Defendant, Argus Corporation Limited ("Argus") is a public subsidiary of Ravelston, incorporated under the CBCA and is a reporting issuer under the Securities Act. All of Argus' common shares and Class C preference shares are owned by Ravelston, but its Class A and Class B preference shares are publicly held. At all material times, Black, Radler, Boultbee and Atkinson served as directors and/or officers and exercised control of Argus.

19. The Defendants, 509643 N.B. Inc.("643"), 509644 N.B. Inc. ("644"), 509645 N.B. Inc. ("645"), 509646 N.B. Inc. ("646") and 509647 N.B. Inc. ("647", collectively, the "NB Companies"), are corporations incorporated under the *Business Corporations Act (New Brunswick)* S.N.B. 1981, c. B-9.1, as amended, and are either directly or indirectly wholly-owned subsidiary corporations of Ravelston. At all material times, Black, Radler, Boultbee and Atkinson served as directors and/ or officers and exercised control of some or all of the NB Companies. The NB Companies directly and indirectly hold shares of Hollinger for the benefit of Ravelston.

20. The Defendants, 1269940 Ontario Limited ("940") and 2753421 Canada Limited ("421"), are corporations incorporated under the OBCA and the CBCA, respectively. 940 and 421 are owned and controlled by Black and Amiel-Black and hold their shares in CBCC.

21. The Defendant, Conrad Black Capital Corporation ("CBCC"), is a corporation incorporated under the OBCA. CBCC is controlled and operated by Black and Amiel-Black and holds their shares in Ravelston.

22. The Defendant, F. D. Radler Ltd. ("FDR"), is a corporation controlled and operated by Radler and holds Radler's shares in Ravelston.

23. The Defendants, Mowitza Holdings Inc. ("Mowitza") and 364817 Ontario Limited ("817"), are corporations incorporated under the CBCA and the OBCA, respectively. Mowitza and 817 are controlled and operated by Boultbee and hold Boultbee's shares in Ravelston.

24. The Defendant, 1406684 Ontario Limited ("684"), is a corporation incorporated under the OBCA and owned and controlled by Atkinson.

25. The Defendant, Hollinger Aviation Inc. ("Aviation"), is a corporation incorporated under the OBCA. Aviation is controlled and operated by Radler, Boultbee and Atkinson.

26. The Defendants, Moffatt Management Inc. ("Moffatt Management") and Black-Amiel Management Inc. ("Black-Amiel Management"), are corporations incorporated under the laws of Barbados. Moffatt Management is controlled and operated by Black, Radler, Boultbee and Atkinson. Black-Amiel Management is owned and controlled by Black, Boultbee and Amiel-Black.

27. Collectively, Ravelston, RMI, Argus, the NB Companies, Moffatt Management, Black-Amiel Management, CBCC, 940, 421, FDR, Mowitza, 817, 684 and Aviation are referred

to herein as the "Corporate Defendants" and together with the Individual Defendants as the "Defendants".

28. At all material times, the Individual Defendants controlled the Hollinger Group through their positions as directors and officers of Hollinger and through Ravelston's direct and indirect shareholdings in Hollinger.

29. As directors and officers of Hollinger and its subsidiaries, each of the Individual Defendants owed fiduciary duties to act in the best interests of each of the corporate members in the Hollinger Group, with undivided loyalty. Specifically, each of the Individual Defendants owed the Hollinger Group a duty not to receive any undisclosed collateral benefits arising from their office and each was required to refrain from obtaining direct and indirect personal benefits or benefits for related parties or others at the expense of the Hollinger Group. Further, each of the Individual Defendants was required to disclose all material facts to the members of the Hollinger board of directors (the "Hollinger Board") regarding all matters relevant to the Hollinger Group's business, including any transactions or proposed transactions involving the Hollinger Group.

30. At set out herein, each of the Individual Defendants breached their duties to act in the best interests of the Hollinger Group and in fact received personal benefits at the Hollinger Group's expense, and failed to disclose same to the Hollinger Board.

31. Moreover, the Individual Defendants owned and controlled the Corporate Defendants and caused same to engage in wrongful conduct which benefited the Corporate Defendants at the expense of the Hollinger Group. In circumstances where the Corporate Defendants were the beneficiaries of the harm inflicted on the Hollinger

Group, such benefits were transferred, directly and indirectly, to the Individual Defendants through their various shareholdings in the Corporate Defendants as described above, such that the Individual Defendants personally benefited from the wrongful conduct of the Corporate Defendants vis-à-vis the Hollinger Group.

32. The Individual Defendants also held positions of power at International as officers and directors, which enabled them to use International as a vehicle for the implementation of Black's Plan as defined below.

The Implementation of Black's Plan

33. This action arises out of the decade-long abuse suffered by the Hollinger Group at the hands of the Individual Defendants, both directly and through the Corporate Defendants, which abuse consisted of an intricately planned and interconnected series of transactions (the "Impugned Transactions" as more particularly set out below). The Impugned Transactions formed part of an overall plan designed by Black and implemented by Black and the other Individual Defendants to achieve "maximum self-enrichment" ("Black's Plan" or the "Plan"). The Plan involved stripping Hollinger of its income-producing assets, depriving the Hollinger Group of crucial income streams, and burdening the Hollinger Group with outrageous debt and no means by which to service it, all in an effort to take drive out the minority public shareholders so that Black and the other Individual Defendants could take control of Hollinger, acquire greater control over and access to the profitable assets of Hollinger's subsidiary, International, all the while enriching themselves and their corporations at Hollinger's expense.

34. Black articulated his Plan in a series of written memoranda, which he called his "Musings".. As co-directors, co-shareholders and co-beneficiaries of the fruits of Black's

Plan, the other Individual Defendants formed part of Black's inner circle and were each privy to his Musings or to the substance of his Plan by virtue of Black's circulation of same and/or by virtue of their close personal association with him.

35. Black, individually or in concert with the other Individual Defendants, conceived of the Plan, and then the other Individual Defendants implemented the Plan by either actively facilitating the requisite transactions through their respective positions of power within the Hollinger Group and within the Corporate Defendants, or by silently acquiescing to same, all the while failing to disclose the true nature and purpose of the Impugned Transactions to the Hollinger Board.

36. Together and individually, the Individual Defendants conspired to harm the Hollinger Group, unlawfully interfered with the Hollinger Group's economic relations, caused the Corporate Defendants to breach contractual obligations to the Hollinger Group, breached their fiduciary and statutory duties to the Hollinger Group, and acted negligently and in a manner oppressive to the Hollinger Group by implementing Black's Plan and causing the Hollinger Group to engage in the Impugned Transactions, which are set out below.

Sale of Hollinger's Operating Assets

The Telegraph Sale

37. In 1986, Hollinger acquired a controlling interest in The Telegraph plc ("Telegraph"), a UK newspaper company, which owned and published the Daily Telegraph, the Sunday Telegraph and Spectator Magazine, as well as direct and indirect minority interests in Southam Inc. ("Southam") and John Fairfax Holdings Limited ("Fairfax"). The Telegraph was considered to be Hollinger's most prestigious and profitable asset, a Crown jewel.

38. As early as 1994, Black conceived of, and wrote a Musing about, the sale of Telegraph to International (then American Publishing Corporation or "APC") (the "Telegraph Sale") as a necessary step in his Plan to squeeze out the Hollinger public shareholders. Black communicated this leg of the Plan to the other Individual Defendants verbally and /or by circulation of the Musing.

39. When Black proposed the Telegraph Sale to the Hollinger Board, he mislead the Board about the current and future value to Hollinger of the Telegraph assets, and about the impact such sale would have on Hollinger and its value. In direct violation of his fiduciary duty to Hollinger, Black concealed the true purpose behind the transaction as being the first of many steps in an intricate plan to strip Hollinger of all its assets and squeeze out the public shareholders. Black expressly assured the Board that "Hollinger will not become a mere holding company or conduit to the American assets".

40. None of the other Individual Defendants contradicted or clarified Black's representations to the Hollinger Board, even though they all knew about Black's Plan to strip Hollinger of its operating assets and turn it into a holding company. Notwithstanding their respective duties to act in the best interests of Hollinger and to avoid acting in their personal interest to the detriment of Hollinger, the other Individual Defendants elected to facilitate or acquiesce to Black's Plan in order to personally benefit from Black's long-term goal of achieving "maximum self-enrichment" at the expense of Hollinger.

41. On October 13, 1995, the Telegraph Sale closed. The consideration received by Hollinger for the Telegraph Sale was significantly below fair market value. Each of the Individual

Defendants was aware of this fact, and nonetheless authorized the Telegraph Sale for their personal benefit.

42. The Individual Defendants breached their statutory and fiduciary duties to Hollinger by failing to implement a fair, open and transparent sale process that would ensure that the Hollinger Group received maximum value for the sale of the Telegraph--one of their most prized and profitable assets—and by failing to disclose the collateral benefits that would accrue to them as a result of the sale.

43. As a result of their misleading the Hollinger Board, the sale was executed without proper disclosure to, or approval by, the shareholders, in breach of statutory and regulatory requirements.

44. Following the Telegraph Sale, on February 7, 1996, the Individual Defendants, through their positions of power at International, caused International to complete a public offering which generated funds for International and inappropriately diluted Hollinger's ownership interest in International, without impacting the control which the Defendants exercised over Hollinger through their beneficial ownership of the Super Voting Shares, which in turn controlled International.

The Canadian Assets Sale

45. Following the Telegraph Sale, in April 1996, Black referred to the sale of Hollinger's remaining operating assets, the Canadian newspapers (the "Canadian Asset Sale") in a Musing that he circulated to and/or discussed with the other Individual Defendants.

46. In the April Musing, Black described the Canadian Asset Sale as one of the steps in the Plan "whose accomplishment was necessary to maximize Ravelston value" and stated

that once the Canadian Asset Sale was complete, the "crowning moment of maximum self-enrichment, the Holy Grail towards which we have been toiling for many years, may be at hand."

47. On August 6, 1996, Black mused that "with the privatization of the Telegraph...we should aim to finish the rest of the long-considered program more or less in one comprehensive push in the Autumn." He went on to state in the August Musing that "the sale of Hollinger Inc. newspapers to Hollinger International...[and] Hollinger Inc.'s clear out of its own common and preferred shares" should proceed. The August Musing, or its substance, was circulated among or communicated to each of the Individual Defendants.

48. Almost immediately thereafter, Black, Radler, Boultbee and Atkinson began to review a possible transaction involving the sale of the Canadian Assets from Hollinger to International and met amongst themselves and with representatives of International to the negotiate the potential sale.

49. Black , Radler, Boultbee and Atkinson negotiated an arrangement with International whereby the Canadian assets would be sold to International at a sale price which Black acknowledged as being less that the fair market value of the Canadian Assets in an effort to benefit International and Ravelston.

50. Black and Radler and/or Boultbee and/or Atkinson purported to negotiate the Canadian Asset Sale with International without the knowledge, approval or authorization of the Hollinger Board. Once a negotiated agreement was reached, Black

sought to push the proposed transaction through an accelerated approval process at the Hollinger Board.

51. At a Board meeting, hastily convened on one day's notice, on Christmas Eve, 1996, the Hollinger Board met to consider the proposed sale of the Canadian Assets to International. In response to concerns raised by independent members of the Board, Black presented a summary fairness opinion, which had been prepared at Black's request by Dirks, Van Essen & Associates ("DVE") the previous day. DVE had had previous dealings with Black and with International and therefore their opinion was not independent. The DVE opinion was one and a half pages long and referenced all cash consideration (which differed from the consideration actually contemplated and subsequently received). No further supporting documentation was provided to the Board.

52. Black and the other Individual Defendants knew or ought to have known that the DVE opinion was neither independent nor accurate. Nonetheless, Black urged the Board to rely on the DVE opinion to approve the transaction to advance his own personal agenda to enrich himself and the other Individual Defendants at Hollinger's expense. None of the other Individual Defendants said or did anything to clarify or contradict Black's misrepresentations to the Board.

53. An independent director on the Board raised concerns regarding (i) the fairness of the consideration received by Hollinger for the Canadian Assets; (ii) the desirability of Hollinger selling its remaining operating assets and becoming a holding company; (iii) whether the systematic transferring of all its assets to International was part of a plan to have Hollinger be acquired by either International or Ravelston; and (iv) whether the

Canadian Asset Sale was a sale of all or substantially all of Hollinger's assets, requiring shareholder approval.

54. In response, Black asserted that the Canadian Asset Sale was "an outstanding deal" and denied any prospect of Hollinger being taken over by either International or Ravelston. Further, he denied that any prior Hollinger transactions were linked in any way to the Canadian Asset Sale. When Black made these representations he knew them to be false. He had specifically represented to International that the Canadian Assets were being sold below fair market value.

55. Further, Black repeatedly advised the Board that the cash proceeds from the Canadian Asset Sale would be used to pay down Hollinger's existing debt. At no time did Black or any other Individual Defendant advise the Board that the proceeds of sale would be used for any other purpose.

56. None of the other Individual Defendants said or did anything to clarify or contradict Black's misrepresentations to the Board.

57. On January 7, 1997, the Hollinger Board approved the Canadian Asset Sale.

58. Based on Black's and the other Individual Defendants' misrepresentations, the Board neither sought nor received the requisite majority shareholder approval for the sale of all or substantially all its assets prior to the closing, in violation of securities laws and regulations.

59. The Canadian Asset Sale closed on April 18, 1997. The purchase price paid by International was significantly less than the actual value of the Canadian assets.

60. The other Individual Defendants, by virtue of their access to Black's Musings, knew that Black's representations were false and that he was misleading the Board about the true purpose behind the Canadian Asset Sale, which was to advance his Plan to squeeze out Hollinger's public shareholders for the benefit of Ravelston. Nonetheless, the other Individual Defendants either expressly confirmed or, through their silence, passively reinforced Black's misrepresentations to the Board in furtherance of the Plan.

61. In implementing the Telegraph Sale and the Canadian Asset Sale, the Individual Defendants breached their statutory and fiduciary duties to Hollinger. As directors and officers of Hollinger they had a duty to ensure that the above-mentioned transactions were in the best interests of the company. Instead, they acted in their own interests and mislead the Board to push these transactions through the approval process without ensuring that the transactions were in the best interests of Hollinger and without disclosing material facts to the Board about the true nature and purpose of the transactions.

62. After the Telegraph Sale and the Canadian Asset Sale, Hollinger had virtually no operating income to service its debt and was almost completely dependent on dividends and management fees from International for revenue.

The Special Dividend

63. In 1997, following the asset sales, Hollinger had approximately $288,400,000.00 of outstanding debt and no income producing assets. Black had repeatedly assured the Board that the proceeds from the Canadian Asset Sale would be used to retire its outstanding debt and for no other purpose.

64. On April 22, 1997, four days after the close of the Canadian Asset Sale, at the instigation of Black and the other Individual Defendants, the Hollinger Board declared a dividend on certain classes of shares, which classes of shares were predominantly held by the Defendants, at $2.50 per share (the "Special Dividend"). The Special Dividend totalled $153,614,000.00 and was to be paid out of the proceeds of the Canadian Asset Sale.

65. At or about the same time the Special Dividend was declared, Hollinger paid down some of its outstanding debt; however, by the end of 1997, Hollinger still had approximately $100,000,000.00 in outstanding debt, but no income-producing assets.

66. The Defendants and other related parties received approximately $78,500,000.00 of the Special Dividend.

67. The declaration of the Special Dividend negatively impacted Hollinger's solvency and liquidity. The Special Dividend was not in the best interests of Hollinger and was made for the benefit of the Defendants, to the knowledge of the Individual Defendants.

The Conversion of Hollinger into a Mutual Fund Corporation

68. In June 1997, Black authored a "Mutual Fund Musing" wherein he discussed changing the share capital of Hollinger.

69. The criteria for mutual fund corporation status include the requirement that the corporation's business be restricted to earning passive income from investing in property, and that at least 95% of its issued shares be retractable at the option of the shareholder, based on fair market value.

70. Black was aware of these criteria, and knew, in 1997, that the mutualisation of Hollinger would preclude it from providing management services and earning management fee

income. The detriment to Hollinger's income stream as a result of mutualisation was never discussed with the Board.

71. At the instigation of the Individual Defendants, on July 28, 1997, the Hollinger Board considered, and on July 30, 1997, approved, a stock dividend of thirty new retractable shares for each common share outstanding. Ultimately, the common shares were consolidated on a 1 to 31 basis and designated as retractable shares.

72. The retraction price was to be determined from time to time by the Retraction Price Committee, which was comprised of Boultbee and Atkinson. The common shares were retractable by the holder by payment of cash or delivery of an equivalent value in International Class A Common shares.

73. The Individual Defendants knew, by virtue of their access to the matters disclosed in Black's Musings, that the mutualisation of Hollinger was yet another step in his master Plan to strip Hollinger of all its assets, squeeze out its public shareholders, and use it as a conduit to siphon funds from the American assets directly to and for the benefit of Ravelston and all those who held shares in Ravelston.

74. Nonetheless, each of the Individual Defendants facilitated or, by their silence, allowed the mutualisation to occur, in breach of their statutory and fiduciary duties to Hollinger.

Diversion of Management Fees from Hollinger to Ravelston

75. Following the mutualisation of Hollinger, the company was entirely dependent on two sources of income, both of which were controlled by the Individual Defendants, by virtue of their positions at International. The two sources of income were dividends from International and the payment of management fees by International for

management services rendered by the Hollinger Group. It was recognised by the Defendants that Hollinger required an income flow to service its debt.

76. In 1997, the Hollinger Group received approximately US$24,000,000.00 (net) in management fees from International under the terms of various management service agreements among Hollinger, 10 Toronto, Domgroup, Sugra and International (the "Management Agreements"). The Management Agreements provided that management fees would be negotiated on an annual basis. In 1997, the management fees of US$24,000,000.00 that Hollinger received were publicly disclosed and approved by the relevant Boards.

77. As stated above, in order to maintain its status as a mutual fund corporation, Hollinger was precluded from directly receiving management fees in exchange for management services due to the restriction that the company only engage in passive business. However, none of the other subsidiary entities in the Hollinger Group were subject to the same passive business requirement; and any of them could have taken over Hollinger's Management Agreements and associated fees, thereby ensuring the income flow to Hollinger by way of dividends.

78. Hollinger's then external counsel specifically advised Black and some or all of the other Individual Defendants to assign Hollinger's Management Agreements to its wholly-owned subsidiary, 10 Toronto, so that 10 Toronto would receive management fees in exchange for the provision of management services to International. Under this arrangement, with 10 Toronto paying dividends to Hollinger, Hollinger's income stream would be secure and Hollinger would be able to service its debt obligations. In fact, in

September, 1997, the Management Agreements were initially assigned to 10 Toronto on this basis.

79. Instead of acting on this advice, however, Black, and the other Individual Defendants continued to implement the Plan, as articulated in his Musings, to enrich themselves at Hollinger's expense by arranging for the diversion of the management fees paid by International away from the Hollinger Group and directly to Ravelston and other related entities.

80. Without a legitimate business reason, Black, Radler, Atkinson and Boultbee proposed that Ravelston take over the Management Agreements in respect of International from the Hollinger Group in order to divert the associated management fees to themselves.

81. Boultbee and Black presented the Hollinger Board with a draft management services agreements, pursuant to which Ravelston would contract directly with International for the provision of management services in exchange for management fees, bypassing Hollinger (the "International Management Agreement"), and Ravelston would continue to provide Hollinger with management services under a separate management services agreement (the "Ravelston Management Agreement").

82. At the same time, Black, Radler, Boultbee and Atkinson caused Ravelston to enter into an Undertaking and Direction with International and Domgroup, whereby Ravelston agreed to pay Domgroup, or Hollinger as directed by Domgroup, a portion of the management fees it would collect under the ~~Ravelston Management Agreement from~~ International Management Agreement.

83. The draft Ravelston Management Agreement that was circulated to and approved by the Board contained an oversight provision whereby annual approval of the amount paid by Ravelston to Domgroup or Hollinger pursuant to the Direction and Undertaking (initially set at $10,700,000.00 net, annually) would be required by the Hollinger Compensation Committee (comprised of independent directors), failing which the Ravelston Management Agreement would be terminated. This oversight mechanism served to protect the interests of Hollinger by mandating ongoing assessment of the entire management fee arrangement by independent directors,

84. After the draft Ravelston Management Agreement had been approved by the Board, Black, Radler, Atkinson and Boultbee caused the oversight mechanism to be deleted from the final version of the Ravelston Management Agreement, without informing the Board of the change. The Board never approved the final version of the Ravelston Management Agreement.

85. The management fee diversion scheme was discussed in a summary manner at Hollinger Board meetings where, contrary to the advice of their external counsel, Boultbee disingenuously informed the Board that the management fee diversion to Ravelston was necessary due to the passive business requirement of Hollinger as a mutual fund corporation. At no time during their consideration of the management fee diversion did the Board contemplate the detrimental impact such diversion would have on the viability of Hollinger or the other entities within the Hollinger Group or whether and how the management fee income could be maintained within the Hollinger Group other than at Hollinger.

86. The Ravelston Management Agreement and the associated Direction and Undertaking, purportedly came into effect as of January 1, 1998. The Ravelston Management Agreement was executed on behalf of Hollinger by Boultbee and another director and officer of Hollinger who was also a Ravelston shareholder, contrary to the authorizing board resolution, which required execution on behalf of Hollinger by at least one non-Ravelston-related director.

87. Due to the wrongful removal of the critical oversight mechanism in the Ravelston Management Agreement, Hollinger had no basis for assessing or challenging the adequacy of the amounts paid to it by Ravelston under the Direction and Undertaking. Without this safeguard in place, Ravelston was able to, and in fact did, increase the gross fees in subsequent years while Hollinger's revenue remained fixed at $10,700,000.00 for two more years.

88. After the third year, Ravelston unilaterally terminated its agreement to make payments to Hollinger or Domgroup, and ceased paying even the annual net fees of $10,700,000.00.

89. From 1998 to and including 2004, a total of approximately US$138,136,000.00 (the "Diverted Management Fees") were improperly diverted from the Hollinger Group to Ravelston, RMI, Moffatt Management, and Black-Amiel Management by the Individual Defendants, acting in concert, for their own personal benefit, and in breach of their duties to the Hollinger Group.

90. The chart below summarizes the approximate total of the Diverted Management Fees that went to Ravelston (and Ravelston-related companies) between 1998 and 2004 from International:

Fiscal Year	Fees Payable to Hollinger Group ($US)	Fees Paid to Hollinger Group ($CND)	Fees Misappropriated by Ravelston and related entities ($US)
1998	$24,000,000.00	$10,700,000.00	$13,000,000.00
1999	$24,000,000.00	$10,700,000.00	$13,000,000.00
2000	$24,000,000.00	$10,700,000.00	$13,000,000.00
2001	$24,000,000.00	$ 0.00	$24,000,000.00
2002	$24,000,000.00	$ 4,400,000.00	$19,600,000.00
2003	$24,000,000.00	$ 1,700,000.00	$22,300,000.00
2004	$24,000,000.00	$ 0.00	$24,000,000.00
Total Misappropriated Management Fees by Ravelston			**$128,900,000.00**

91. Additionally, in January 2003, Black, Radler and Atkinson caused Hollinger through its wholly-owned subsidiary, Gironte S.A., which indirectly operates *La Republica* newspaper in San Jose, Costa ~~Rice~~ Rica, to disburse payments and management fees to them without any justification for such payments or fees. These fees were properly payable to the Hollinger Group.

92. Also, 10 Toronto was entitled to receive $400,000.00 per year for management services under the terms of a management services agreement with American Publishing Company (US) ("APC-US"), which owned and operated the *Jerusalem Post*. The services provided by 10 Toronto did not materially change from 1997 onward.

93. In 1997, the Individual Defendants, acting pursuant to their Plan, caused ~~the~~ 10 Toronto's annual management fees of $400,000.00 to be diverted to Ravelston and RMI.

Ravelston and RMI provided no services to the *Jerusalem Post* or to APC-US. The management fees that were wrongfully diverted to Ravelston and RMI were properly payable to 10 Toronto in respect of services rendered. From 1997 to 2004, management fees totalling US$32,000,000.00 were improperly diverted to Ravelston and RMI away from 10 Toronto and the Hollinger Group for no reason.

94. The Individual Defendants also caused management fees paid by International to be diverted to Moffatt Management and Black-Amiel Management. As stated above, Moffatt Management and Black-Amiel Management are privately held corporations owned and controlled by Black, Radler, Boultbee and Atkinson, and by Black, Amiel-Black and Boultbee, respectively. They are both shell corporations registered in the Barbados. Neither Moffatt Management nor Black-Amiel Management has employees, and neither carries on business activities. Accordingly, they could not and did not render management services to International. The management fees received by Moffatt Management and Black-Amiel Management were properly payable to the Hollinger Group.

95. The chart below summarizes the approximate total of the Diverted Management Fees that went to Moffatt Management and Black-Amiel Management between 1998 and 2004:

Fiscal Year	Payee	Fees Paid in US$
1999	Moffatt Management	$2,300,000.00
2000	Moffatt Management	$1,560,000.00
2001	Moffatt Management	$770,000.00
2002	Black-Amiel Management	$230,000.00
2003	(to be determined)	$1,176,000.00
2004	(to be determined)	(to be determined)
Total Misappropriated Management Fees by Moffatt Management and Black-Amiel Management		**$6,036,000.00**

96. In the aggregate, approximately US$138,136,000.00 in management fee income was taken away from the Hollinger Group and diverted to Ravelston, RMI, Moffatt Management, Black-Amiel Management and, indirectly, to the Individual Defendants for no legitimate business purpose.

97. Instead of acting in Hollinger's interests and ensuring that the vital management fee income stream remained within the Hollinger Group, the Individual Defendants acted in their own personal interest, to the detriment of Hollinger, by diverting the management fee income to themselves. Moreover, Black, Radler, Boultbee and Atkinson mislead the Board about the underlying rationale and necessity of the management fee diversion; failed to advise the Board of Hollinger's rights and remedies under the management fee arrangement; and mislead the Board about the safeguards in place to secure Hollinger's income flow and then surreptitiously removed such safeguards without the knowledge or approval of the Board.

98. While Radler, Atkinson and Boultbee were active facilitators of this phase of Black's Plan, Amiel-Black was also aware of the Plan and the role the diversion of the management fees played therein. She benefited personally from the diversion of

management fees not only to Black-Amiel Management, but also to the other Ravelston related entities, and she benefited indirectly from any personal benefit Black received, by virtue of her entitlement to their marital property.

99. None of the Individual Defendants disclosed their interests in, or the true nature and purpose of, the management fee diversion to the Board nor did they object to such diversion in their ~~capacity~~ capacities as members of the Hollinger Board.

Retractions and Redemptions

100. Part of Black's Plan, as referenced in his various Musings, was to increase Ravelston's ownership of Hollinger by eliminating, reducing or buying out the minority public shareholders at no cost to himself, or any of the Defendants. Black described ~~as~~ Hollinger's public shareholders as "a nuisance, a complication" and informed the Individual Defendants that they "should be disposed of."

101. Black, assisted by the other Individual Defendants, "disposed" of the minority shareholders by improperly causing Hollinger to conduct a series of issuer bids, which created no value for Hollinger, but were conducted at Hollinger's significant expense. These issuer bids permitted the common shareholders of Hollinger to convert their holdings into non-voting preference shares of Hollinger, which shares contained redemption and retraction provisions.

102. Between 1997 and 2004, Black, Atkinson and Boultbee, assisted by the other Individual Defendants either by active facilitation or by silent acquiescence, caused Hollinger to implement a retraction/ redemption program for both its common and preference shares, at Hollinger's considerable expense. Through these retractions, Hollinger retracted more than 15.3 million of its common shares in exchange for approximately

$6,000,000.00 in cash and approximately $233,000,000.00 worth of shares of International.

103. The retraction/ redemption price paid by Hollinger was, in the aggregate, more than $10,800,000.00 in excess of the market value of the common shares retracted, and greater than $27,000,000.00 in excess of the preference shares redeemed.

104. By virtue of the overpayments made by Hollinger in respect of the retractions and redemptions, Hollinger's liquidity and solvency was impaired.

105. The Defendants received a significant portion of the amounts paid by Hollinger for these transactions.

106. The total number of Hollinger common shares outstanding declined from 69,900,000 prior to a 1997 issuer bid, to 34,900,000 by March 4, 2005. As a result, Ravelston more than doubled its percentage ownership of Hollinger's common shares, with no cash outlay by Ravelston. As at January 1, 1997, Ravelston owned, directly and indirectly, 36.8% of Hollinger's common shares. By December 31, 2001, Ravelston controlled more than 78% of Hollinger's common shares.

107. In his Springtime Contemplations Musing, Black described Hollinger's 1997 Issuer Bid, which "effectively almost doubled [Ravelston's] interest Hollinger International at no immediate cost" as "Jack [Boultbee's] finest hour". Since 2001, Ravelston's ownership interest in Hollinger has remained at approximately 78%.

Direct Personal Benefits

108. Throughout the decade-long abuse suffered by the Hollinger Group at the hands of the Defendants, the Defendants caused the Hollinger Group to bestow personal benefits upon themselves for little or no consideration, including but not limited to the following:

Personal Loans

109. From time to time since 1998, the Individual Defendants have caused Hollinger to loan money to them and to their corporations on an interest-free basis or at a rate of interest that is considerably lower than Hollinger's borrowing rate. These low-rate personal loans include loans made by Hollinger to Radler and CBCC in 1999 for $1,000,000.00 at and interest rate of prime plus 0.5% and other loans by Hollinger to Black and Radler amounting to approximately $5,700,000.00 at an interest rate of 5%.

110. The Individual Defendants caused Hollinger to make these loans to them for their personal benefit and not for the benefit of Hollinger.

Compensation

111. Further, the Individual Defendants improperly caused the Hollinger Group to pay compensation, salaries, directors' fees, legal fees and bonuses to the Individual Defendants in their capacities as directors and officers of the Hollinger Group, despite the fact that they persistently preferred and pursued their own interests and the interests of the Corporate Defendants and International to the detriment of the Hollinger Group in stark contradiction to their duties to act in the best interests of the Hollinger Group.

Employee Transfer

112. In 2004, certain employees of Ravelston (the "Transferred Employees") were transferred to 10 Toronto (the "Employee Transfer").

113. The Individual Defendants caused 10 Toronto to covenant with the Transferred Employees that all their benefits and entitlements, including termination and severance, medical benefits and their pension entitlements, would be unaffected.

114. The Transferred Employees are all members of a defined benefit pension plan (the "Pension Plan") of which Ravelston is the administrator. At the time of the Employee Transfer, the Pension Plan had both a funding and solvency deficit due to Ravelston's failure to ~~make or~~ ensure that contributions and special payments were made.

115. Since the Employee Transfer, 10 Toronto has been making contributions on behalf of the Transferred Employees. Due to the solvency and funding deficits caused by Ravelston, the payment obligations are higher than they otherwise would have been. 10 Toronto was not provided with any consideration from Ravelston or otherwise reimbursed for assuming these payment obligations.

116. There was no legitimate reason for the Employee Transfer. The effect of the Employee Transfer has been to transfer the burden of the payment obligations from Ravelston to the Hollinger Group for no consideration.

Non-Payment Office and Administrative Expenses

117. The Hollinger Group owned the property and the premises located at 1827 West Fifth Avenue, Vancouver, British Columbia (the "Vancouver Premises"). From 1995 to 2005, Radler used the Vancouver Premises including the fixtures, furniture and equipment located there for his own personal and business purposes.

118. Radler did not pay or reimburse the Hollinger Group for the use of the Vancouver Premises, nor did he make any payment in respect of the Vancouver Premises, including in respect of rent or utilities.

119. Also, 10 Toronto provided office administration services to Argus. In 1996 and 1997, Argus paid 10 Toronto $1,150,000.00 and $1,120,000.00 for general office and administrative expenses, respectively. Thereafter, despite the fact that Argus continued to receive identical services from 10 Toronto, Argus failed or refused to pay any further amounts to 10 Toronto.

120. 10 Toronto is entitled to be compensated by Argus for its services rendered to Argus in an amount of approximately $1,100,000.00 on an annual basis from 1998 to 2004. The total amount owed by Argus to 10 Toronto is $6,600,000.00.

121. Also, 10 Toronto paid the salary, benefits and bonus of an employee of Argus from May 1, 2004 to June 2, 2005. Argus has failed to repay or reimburse 10 Toronto for these amounts.

122. Furthermore, 10 Toronto owned the premises at 10 Toronto Street which housed the corporate head offices of many of the Corporate Defendants; however, none of the Corporate Defendants ever paid 10 Toronto for the use of its premises, or for the on-site administration services provided by 10 Toronto. Full details of the amounts owing will be provided at trial.

123. Additionally, Radler, Boultbee and Atkinson caused Sugra to pay certain landing fees, costs and salaries as well as maintenance and administrative service fees on behalf of Aviation. Sugra subsequently charged Aviation $602,000.00 for reimbursement of

Sugra's costs incurred. Aviation, Radler, Boultbee and Atkinson have failed or refused to pay such charges; in the result, Sugra was forced to write off the entire $602,000.00 receivable from Aviation for no consideration.

The Ravelston Advances

124. After depriving Hollinger of its management fee income, the Individual Defendants knew that Hollinger required a replacement cash flow in order to meet its debt obligations and continue paying out its dividends.

125. In February 2001, Ravelston began advancing funds to Hollinger (the "Ravelston Advances"). The Ravelston Advances were effected by the Individual Defendants without informing, consulting or obtaining the approval of the Hollinger Board, and without documenting the Advances or their terms anywhere other than Hollinger's and Ravelston's general ledgers.

126. In 2001 the Ravelston Advances amounted to approximately $23,500,000.00. A similar amount was advanced in 2002.

127. The Individual Defendants caused Hollinger to use most or all of the Ravelston Advances to continue to pay cash dividends to the holders of Hollinger's common shares in 2001 and 2002. Ravelston held approximately 77% of Hollinger's common shares. Accordingly, the vast majority of the Ravelston Advances were monies that Ravelston advanced to Hollinger to facilitate dividends that were then largely paid out to Ravelston.

128. Boultbee purported to document some of the Ravelston Advances by way of a promissory note, dated January 1, 2002 (the "Promissory Note"). The Hollinger Board

never considered or approved the Promissory Note. The Individual Defendants carried out the Ravelston Advances surreptitiously, and provided no information about them to the Hollinger Board until September 2002. The disclosure they provided at that time was incomplete and inadequate. Due to their active concealment of the Ravelston Advances, the Individual Defendants caused Hollinger to fail to disclose same in its 2001 audited financial statements and in its quarterly financial reports until the third quarter of 2002.

129. The Ravelston Advances were not *bona fide* amounts owed by Hollinger.

Debt Restructuring and Financial Issues

130. By 2002 the Defendants had succeeded in implementing several key steps in Black's Plan to squeeze out the minority public shareholders of Hollinger and achieve "maximum self-enrichment". Hollinger had been stripped of its income-producing assets, and the proceeds of the sale of those assets was paid out by way of Special Dividend to the Defendants and others, thereby negatively impacting Hollinger's ability to service its debt obligations. Moreover, Hollinger's liquidity and solvency was further impaired by the diversion of its management fee income and by the overpayments in respect of the various retractions and redemptions. Due to the misconduct of the Defendants, the Hollinger Group was in desperate financial circumstances and under pressure from its bankers to repay their loans. This liquidity crisis caused the repeated need for bank waivers and resulted in Hollinger paying its bankers substantial fees and incurring other significant costs.

131. In 1998 Hollinger had entered into new credit facilities with a lending syndicate of its bankers (the "Syndicate"). The facilities were amended on numerous occasions between 1998 and 2002. In late 2002, Hollinger owed approximately $92,000,000 to the

Syndicate. The Individual Defendants, and in particular Black, were instrumental in establishing and then managing Hollinger's facilities with the Syndicate. By late 2002, the Syndicate demanded repayment of Hollinger's facilities by the end of 2003.

The Senior Notes

132. In further breach of their duties to the Hollinger Group, the Individual Defendants addressed Hollinger's liquidity crisis by causing Hollinger to borrow more funds at unfavourable rates and on unfavourable terms. Specifically, the Individual Defendants caused Hollinger to enter into a secured borrowing transaction whereby it issued senior secured notes due in 2011 in an aggregate amount of $US120,000,000.00 at an interest rate of 11.875% per annum (the "Wachovia Notes").

133. The Wachovia Notes are governed by an Indenture dated March 10, 2003 among Hollinger, RMI, 504468 N.B. Inc. (now 432) and the Wachovia Trust Company National Association, and by a supplemental indenture dated September 30, 2004 (collectively, the "Wachovia Indenture"). The security granted by Hollinger (the "Note Security") included most of Hollinger's direct and indirect shareholdings in International.

134. Hollinger entered into a further transaction whereby it issued a second senior secured noted due in 2011, in an aggregate amount of US$15,000,000.00 at an interest rate of 11.875% per annum (the "HSBC Notes" and collectively with the Wachovia Notes, the "Senior Notes").

135. The HSBC Notes are governed by an Indenture dated September 30, 2004 among Hollinger, RMI, 504468 N.B. Inc. (now 432) and HSBC Bank USA National Association (the "HSBC Indenture" and with the Wachovia Indenture, the "Indentures"). The HSBC Notes are also secured by the Note Security.

136. The Wachovia Notes resulted in a cost to the Hollinger Group of $14,421,000.00. The HSBC Notes resulted in a cost to the Hollinger Group of $6,516,000.00. But for the wrongful conduct of the Individual Defendants in creating the liquidity crisis at the Hollinger Group, Hollinger would not have issued such high-interest notes.

Breach of the Support Agreement

137. Under the Indentures, Hollinger was required to receive certain minimum cash amounts either by dividend or as support payments from RMI and Ravelston on a quarterly basis, failing which an Event of Default occurred. These cash amounts included payments from RMI under a support agreement entered into by Hollinger and RMI on March 10, 2003 (the "Support Agreement"). Since RMI had no material assets, RMI's obligation to make payments to Hollinger under the Support Agreement was unconditionally guaranteed by Ravelston (the "Ravelston Guarantee").

138. RMI failed to make all the required payments under the Support Agreement and is in default of its obligations thereunder. Further, Ravelston failed to honour the Ravelston Guarantee to ensure RMI paid the requisite amounts to Hollinger.

139. As of the fourth quarter of 2004, RMI and Ravelston owed Hollinger a total amount of US$63,576,844.00 in unpaid support payments under the Support Agreement and the Ravelston Guarantee. In addition to the payments outstanding as of 2004,RMI and Ravelston are required to make support payments in minimum quarterly amounts of approximately US$3,055,000.00.

140. RMI's and Ravelston's failure to make the support payments resulted in an Event of Default under the Indentures which resulted in increased costs to Hollinger, including an

increased rate of interest on the Senior Notes and penalty fees. The interest rate on the Senior Notes increased by a full percentage point to 12.875%.

141. In breach of their duties to Hollinger, the Individual Defendants preferred their own interests over Hollinger's and caused Ravelston and RMI to breach their respective obligations to Hollinger under the Support Agreement and the Ravelston Guarantee.

Use of the Proceeds of the Senior Notes

142. The Individual Defendants improperly caused Hollinger to use the proceeds of the Wachovia Notes, in part, to retire $46,000,000.00 plus accrued interest of $2,600,000.00 owed by Hollinger to Ravelston under certain notes (the "Ravelston Notes"). The rate of interest on the Ravelston Notes was between 6.85% and 7.03% in contrast to the 11.875% rate of interest on the Wachovia Notes, which subsequently increased to 12.875% after RMI and Ravelston triggered an Event of Default under the Indentures as described above.

143. Further, the Individual Defendants caused Hollinger to loan Ravelston $16,400,000.00 (the "Ravelston Loan") out of the proceeds of the Wachovia financing. The rate of interest under the Ravelston Loan ranged from 4.11% to 4.32% in contrast, again, to the much higher 11.875% to 12.875% rate of interest owing on the Wachovia Notes.

144. Hollinger used the expensive Wachovia proceeds to repay the much cheaper Ravelston Notes and to loan funds to Ravelston at a much lower interest rate, at the direction of the Individual Defendants for their personal benefit and to the detriment of Hollinger.

The Domgroup Loans

145. Instead of causing RMI and Ravelston to honour their obligations under the Support Agreement and the Ravelston Guarantee, the Individual Defendants caused Domgroup

to lend money to Ravelston, which, in turn, contributed those funds to RMI to be paid to Hollinger (the "Domgroup Loans") ostensibly in satisfaction of RMI's obligations under the Support Agreement. The Individual Defendants caused these monies to move in a circle within the Hollinger Group and between the Hollinger Group and the Corporate Defendants in an effort to defeat RMI's obligations under the Support Agreement. The Individual Defendants did this despite their actual knowledge of Hollinger's real need for these support payments in order to service the Senior Notes.

146. As of September 30, 2004, the Individual Defendants had caused Domgroup to make circular loans to Ravelston through promissory notes totally approximately $14,700,000.00. The Domgroup Loans are payable on demand and are secured by a general security agreement over certain of the property, assets and undertakings of Ravelston. Notwithstanding demands for payment, Ravelston has failed to repay the Domgroup Loans plus accrued interest at the CIBC prime rate plus 4% in accordance with the terms of the Domgroup Loans.

147. Again, by preferring their own interests as Ravelston shareholders over the interests of the Hollinger Group, the Individual Defendants wrongfully caused Ravelston to fail to fulfill its obligations to Domgroup.

Unlawful Receipt of Non-Competition Payments

148. From 1998 to 2001, International and certain of its subsidiaries entered into several transactions with third party purchasers for the sale by International of many of its American community newspaper properties (the "Community Newspaper Transactions"). In connection with the Community Newspaper Transactions, Black, Radler, Atkinson and Boultbee diverted tens of millions of dollars to themselves and the

entities they controlled, including Hollinger, by inserting themselves and those entities as recipients of non-competition payments under the various purchase agreements. These amounts otherwise would have been paid to International as part of the purchase price for the assets which it sold.

149. Notwithstanding that Hollinger became a mutual fund corporation in 1998 and ceased carrying on active business, from 1999 to 2000, Black, Radler, Atkinson and Boultbee caused non-competition payments totalling approximately US$16,550,000.00 to be wrongfully diverted to Hollinger despite the fact that Hollinger was legally precluded from competing with any of the purchasers of International's assets. The diversion of these fees to Hollinger has caused Hollinger immeasurable damages. The chart below summarizes the improper payments received by Hollinger:

Date	Transaction	Amount US$
May 1998	American Trucker	$2,000,000.00
February 1999	Community Newspaper Holdings I	$12,000,000.00
March 1999	Horizon Publications	$1,200,000.00
October 2000	Paxton Media Group	$500,000.00
October 2000	Forum Communications	$100,000.00
November 2000	Community Newspaper Holdings II	$750,000.00
TOTAL		**US$16,550,000.00**

150. With respect to the six transactions listed above, Radler admitted in his plea agreement with the U.S. Department of Justice that there was "no legitimate business purpose" for Hollinger to have received such payments. Atkinson went further to admit that the receipt of the non-competition payments "may be fraud".

151. In addition to the US$16,550,000.00 in non-competition payments diverted to Hollinger, an additional aggregate amount of US$47,300,000.00 in non-competition payments was received by Black, Radler, Atkinson and Boultbee.

152. Further, an additional aggregate of US$26,400,000.00 in non-competition payments was paid to Ravelston.

153. At no time did the Hollinger Board approve of Hollinger entering into any non-competition agreements or receiving any non-competition payments. Each of the six payments was made without the approval or authorization of the Board or any committee thereof. As a result of the rest of the Board's ignorance of the non-competition payments, none of the payments received by Hollinger or by the Individual Defendants were publicly disclosed in Hollinger's financial statements until late 2003.

154. On November 15, 2003, Black entered into a restructuring proposal with International whereby Black admitted that the non-competition payments received by Hollinger and by himself, Radler, Boultbee and Atkinson "were not properly authorized on behalf of International" and agreed to repay all the above noted amounts, with interest.

155. Black, Radler, Boultbee and Atkinson improperly diverted the non-competition payments to Hollinger in breach of their duties to Hollinger, including their fiduciary duties, and in a manner that was oppressive to Hollinger and its shareholders.

156. As a direct result of Hollinger's receipt of the non-competition payments and its failure to disclose same in its financial statements, Hollinger is now subject to numerous lawsuits and regulatory proceedings in Canada and in the U.S., included those referenced above and below.

The Going Private Transaction

157. In March, 2005, in an effort to extract themselves from the civil and regulatory proceedings that had been commenced against them, the Individual Defendants attempted to acquire all of the public shares of Hollinger in a going private transaction (the "GPT"). If completed, the GPT would have marked the final step in Black's Plan to squeeze out the minority shareholders. However, the Individual Defendants were unable to convince the ~~OSC~~ Ontario Securities C omission (the "OSC") to lift the Cease Trade Order (as defined below) in order to enable the GPT to go through. The OSC refused to do so on the basis that it would be prejudicial to the public interest. As a result, the GPT was blocked.

158. By agreement entered into in March 2005, between Hollinger and Ravelston, Ravelston agreed to reimburse Hollinger for any and all costs and expenses incurred by Hollinger in connection with the GPT (the "GPT Reimbursement Agreement"). Ravelston's obligations under the GPT Reimbursement Agreement were secured by a general security agreement dated March 28,2005.

159. Hollinger incurred fees and expenses including professional fees in connection with the GPT in an amount of approximately $6,900,000.00. In accordance with the terms of the GPT Reimbursement Agreement, Hollinger has demanded reimbursement for those fees and expenses form Ravelston. Notwithstanding these demands, Ravelston has failed or refused to make the required payments to Hollinger.

Damages Flowing from Defendants' Conduct

160. The Defendants' unlawful conduct has resulted in the Hollinger Group incurring significant legal and other expenses, costs and damages in respect of the proceedings commenced against and /or involving the Hollinger Group.

Fees Regarding Press Holdings Transaction

161. In late 2003, the Individual Defendants pursued a transaction with Press Holdings International Limited ("PHIL") pursuant to which Hollinger would be acquired by a subsidiary of PHIL, notwithstanding that such proposed transaction was in direct contravention of Black's agreement with International. The proposed transaction was halted by the Delaware court. As a result of the misconduct of the Individual Defendants, substantial costs and expenses were incurred by the Hollinger Group and its relationship with its regulators and the public markets was further undermined.

Appointment of Inspector

162. In mid-2004, proceedings were commenced in Ontario against Hollinger by one of its shareholders for the appointment of an inspector under the CBCA. On October 13, 2004, Kroll Lindquist Avey Inc. ("Kroll") was appointed as inspector over the Hollinger Group. By Order, Ernst & Young Inc. has replaced Kroll as inspector (the "Inspector").

163. The Inspector was granted extremely broad authority to conduct a detailed and thorough investigation (the "Inspection") into the affairs of the Hollinger Group.

164. Following the appointment of the Inspector, the Individual Defendants refused to cooperate with the Inspector and encumbered or impeded the Inspector's efforts. Moreover, contrary to court orders and their duties to the Hollinger Group, Black,

Radler and Boultbee have intentionally removed, destroyed or manipulated documents of the Hollinger Group in an attempt to impede the Inspector.

165. The Inspection was extremely time-consuming, harmful and distracting to the Hollinger Group, eroded the public's confidence in the Hollinger Group and was extraordinarily expensive for Hollinger. The Inspector's fees and expenses, and those of its legal counsel and other external advisors totalled approximately $20,000,000.00 as of January 2006. These costs do not include certain of the legal fees incurred directly by the Hollinger Group in dealing with the Inspection. But for the misconduct of the Individual Defendants, the Hollinger Group would not have incurred these costs.

Removal Motions

166. In late 2002, certain shareholders of International began to question some of the self-dealing transactions to which International had been made a party by the Individual Defendants.

167. In June 2003, the Board of International established a special committee (the "Special Committee") to investigate the shareholder concerns about self-dealing transactions. In the fall of 2003, the Special Committee released a preliminary report addressing, *inter alia*, the management fee payments, certain non-competition payments and certain related party asset sales.

168. In November 2003, the independent members of the Hollinger Board, including the Audit Committee, addressed the serious governance concerns raised in the Special Committee's preliminary report with the Hollinger Board. Given the need to review the Special Committee's allegations, the Audit Committee requested that the Individual Defendants step down from their roles as directors and officers of Hollinger and that

Hollinger undertake a thorough internal review of the matters alleged in the Special Committee's preliminary report.

169. Notwithstanding that their conduct had seriously imperilled Hollinger, the Individual Defendants refused to step down from the Hollinger Board and refused to authorize the internal review requested by the Audit Committee. Further, the Individual Defendants refused to recuse themselves from Board votes on resolutions to remove them as directors and officers. The Individual Defendants out-voted the Audit Committee and, as a result, Hollinger's independent directors resigned in protest. On learning of these refusals by the Individual Defendants, the Hollinger Group's external auditor also resigned.

170. Atkinson ~~ceased being~~ resigned as a director of Hollinger in or about January 2004.

171. By Order of Justice Campbell, dated November 18, 2004, Amiel-Black, Radler and Boultbee were removed as officers and directors of Hollinger. Black resigned as Chairman and CEO of Hollinger immediately before the scheduled hearing seeking his removal.

172. But for the Individual Defendants' refusals to step down when reasonably requested to do so by the Audit Committee, the costs associated with the removal motions would not have been incurred.

Accounting Fees

173. On December 23, 2003, the Hollinger Group's external auditor resigned in protest as a result of the Individual Defendants' conduct without assisting a replacement auditor

with the transition. Consequently, the Hollinger Group was required to retain a new auditor without the benefit of an efficient transition, at significant cost and expense.

174. But for the Individual Defendants' misconduct, the auditor would not have resigned, or at least, would not have resigned without notice and transition assistance. The Individual Defendants are responsible for the additional transition costs with respect to the new auditor.

Civil Proceedings

175. As a result of the actions of the Defendants, the Hollinger Group has become embroiled in a multitude of civil proceedings in the United States and Canada, including class actions that have been commenced against International, Hollinger and others. Further, International initiated a lawsuit against Hollinger and severed its relationship with the company. The Hollinger Group has incurred and will continue to incur, costs and expenses in respect of these proceedings.

Costs of Disentanglement

176. As stated above, as a result of the Defendants' misconduct, International severed its ties with the Hollinger Group, with whom it shared space, administrative and accounting services, at considerable expense and cost to the Hollinger Group.

Regulatory Proceedings

177. As a result of the Individual Defendant's failure to ensure that Hollinger complied with its public disclosure requirements concerning related party transactions, both the Ontario Securities Commission (the "OSC")-and the United States Securities and Exchange Commission (the "SEC") initiated enforcement proceedings against the Hollinger Group.

178. On May 18, 2004 the OSC issued a temporary cease trade order against Hollinger's management and insiders precluding the sale of Hollinger's shares (the "Cease Trade Order"). In addition, Hollinger is required to file bi-weekly Status Updates as required by OSC policy. The Cease Trade Order was issued, in part, due to Hollinger's inability to file its financial statements as a result of the resignations of the Audit Committee and Hollinger's external auditor.

179. The Hollinger Group has incurred and will continue to incur significant costs and expenses as a result of the regulatory proceedings, has suffered damage to its goodwill, and may be subject to fines or penalties arising from these proceedings. But for the improper conduct of the Defendants, these proceedings would not have been commenced and the Hollinger Group would not be required to incur such costs, fines and /or penalties.

Costs of the Going Private Transaction

~~180. In March, 2005, in an effort to extract themselves from the civil and regulatory proceedings that had been commenced against them, the Individual Defendants attempted to acquire all of the public shares of Hollinger in a going private transaction (the "GPT"). If completed, the GPT would have marked the final step in Black's Plan to squeeze out the minority shareholders. However, the Individual Defendants were unable to convince the OSC to lift the Cease Trade Order in order to enable the GPT to go through. The OSC refused to do so on the basis that it would be prejudicial to the public interest. As a result, the GPT was blocked.~~

~~181. By agreement entered into in March 2005, between Hollinger and Ravelston, Ravelston agreed to reimburse Hollinger for any and all costs and expenses incurred by Hollinger in~~

~~connection with the GPT (the "GPT Reimbursement Agreement"). Ravelston's obligations under the GPT Reimbursement Agreement were secured by a general security agreement dated March 28,2005.~~

182. As stated above, Hollinger incurred fees and expenses including professional fees in connection with the GPT in an amount of approximately $6,900,000.00. In accordance with the terms of the GPT Reimbursement Agreement, Hollinger has demanded reimbursement for those fees and expenses form Ravelston. Notwithstanding these demands, Ravelston has failed or refused to make the required payments to Hollinger.

Directors' and Officers' Insurance Premiums

183. In 2003, due primarily to the increased risk associated with the Hollinger Group which arose as a result of the Defendants' wrongful conduct, Hollinger's directors' and officers' insurance costs increased 1193% over 2002. This amounted to an increase in premiums of approximately $1,200,000.00.

184. In 2004, Hollinger was unable to obtain directors' and officers' insurance. Consequently, Hollinger was forced to establish trusts for the benefit of its directors and officers in the amount of $8,500,000.00.

The Defendants' Liability

Conspiracy

185. The Individual Defendants were all privy to Black's Musings and the Plan laid out therein to deprive Hollinger of its income, squeeze out the minority public shareholders and turn the company into a direct conduit from which the Defendants could have direct access to and control over the profitable assets of Hollinger's subsidiary, International so that the Individual Defendants could achieve "maximum self-enrichment" at the

considerable expense of Hollinger. The Plan set out in detail how this objective was to be attained through a series of improper transactions outlined herein as the Impugned Transactions.

186. Black himself authored the Musings and circulated them to the members of his inner circle, including his long-time associates Radler, Boultbee and Atkinson, and his wife and business associate, Amiel-Black. The Individual Defendants agreed between themselves to act in accordance with Black's Plan, and to facilitate its implementation through their voting power on the Hollinger Board.

187. Further, by virtue of their positions of power with the Corporate Defendants, the Individual Defendants were their directing minds and caused the Corporate Defendants to engage in acts or transactions in furtherance of the Plan, thereby including the Corporate Defendants in the conspiracy.

188. The predominant purpose of the Individual Defendants' agreement to act in concert to effect Black's Plan was to injure the Hollinger Group for their own personal benefit and enrichment. Key elements of the Plan included squeezing out the minority shareholders at Hollinger's expense; depriving the Hollinger Group of all its income except for dividends; and saddling the Hollinger Group with enormous debt obligations undertaken for the Individual Defendants' benefit.

189. Black, Radler, Atkinson and Boultbee actively participated in the following ~~impugned~~ Impugned ~~transactions~~ Transactions, which list is not exhaustive:

(a) the implementation of the Asset Sales which stripped Hollinger of its operating assets at less than fair value;

(b) the wrongful insertion of themselves and Hollinger into third party purchase and sale agreements of International and the wrongful receipt of non-competition payments by themselves personally and by Hollinger, without authorization;

(c) setting the inflated retraction and redemption prices for Hollinger's shares, with the result that, in the aggregate, Hollinger overpaid $37,800,000.00 in excess of the market value of the common shares retracted and the preference shares redeemed;

(d) causing Hollinger to enter into the expensive Senior Note financing so that Hollinger could retire its much less expensive Ravelston debt, and causing the already high interest rate on the Senior Notes to increase as a result of their failure or refusal to ensure that Ravelston and RMI abided by the terms of the Support Agreement and the Ravelston Guarantee;

(e) causing Ravelston to refuse or fail to repay monies owing to Domgroup in respect of the Domgroup Loans;

(f) causing Ravelston to refuse or fail to reimburse Hollinger for the Going Private transaction costs as agreed under the GPT Reimbursement Agreement

190. All the Individual Defendants participated in the following Impugned Transactions, which list is not exhaustive:

(a) the declaration of the Special Dividend following the Asset Sales which imperilled Hollinger's liquidity and solvency and personally ~~benefitted~~ benefited each of them as direct and indirect shareholders entitled to receipt of the Special Dividend; and

(b) the diversion of management fees away from Hollinger and to Ravelston, in which they each held shares, and to Moffatt Management and Black-Amiel Management, shell corporations which they owned and controlled;

191. The Individual Defendants, in some or all instances, used the Corporate Defendants to carry out their conduct in furtherance of the conspiracy. As a result, the Corporate Defendants were co-conspirators.

192. As a result of the Defendants' conspiracy, the Hollinger Group suffered hundreds of millions of dollars in damages as more particularly set out below.

Breach of Fiduciary Duties

193. In their capacities as directors and officers of Hollinger, the Individual Defendants owed fiduciary duties to the Hollinger Group to act in the best interests of the Hollinger Group at all times with respect to all matters. The Hollinger Group put its confidence and trust in the Individual Defendants to respect and abide by their fiduciary responsibilities. Instead of acting in the best interests of the Hollinger Group, the Individual Defendants acted *against* the interests of the Hollinger Group in an effort to deprive the Hollinger Group of its income-producing assets and service agreements, and to saddle the Hollinger Group with onerous debt obligations, in order to drive out its minority shareholders and to derive personal benefit for themselves. In particular, among other breaches, the Individual Defendants acted against the interests of the Hollinger Group and in breach of their fiduciary duties by:

(a) ~~Failure~~ failing to ensure that appropriate corporate governance structures were in place within the Hollinger Group to ensure that all transactions and matters, and in particular, related party transactions, were considered in an impartial manner and in the best interests of the Hollinger Group;

(b) failing to ensure that all statutory and regulatory requirements were met with respect to the Hollinger Group's business;

(c) concealing facts from and misleading the Hollinger Board, by misrepresentation or by omission, with respect to the true purpose and nature of the business dealings and transactions undertaken by or with the Hollinger Group, and failing to disclose to the personal benefits they derived directly and indirectly from the Impugned Transactions, including but not limited to :

(i) the Telegraph Sale;

(ii) the Canadian Asset Sale;

(iii) the use of the proceeds from the Canadian Asset Sale;

(iv) the price set for the retraction and redemption of Hollinger's shares;

(v) the Diversion of Management Fees and the removal of the oversight mechanism; and

(vi) the receipt of the non-competition payments;

(d) failing to disclose the collateral benefits derived from their office;

(e) taking steps to ensure that the Diverted Management Fees were paid to Ravelston, Moffatt Management and Black-Amiel Management and did not remain within the Hollinger Group;

(f) orchestrating and allowing Hollinger to sell its interest in the Telegraph at below market value;

(g) orchestrating and allowing Hollinger to sell its Canadian Assets at below market value;

(h) orchestrating and allowing Hollinger to declare the Special Dividend, instead of using the proceeds of the Asset Sales to retire or service the $100,000,000.00 in debt still outstanding at the time of its declaration;

(i) orchestrating and allowing Hollinger to implement the retraction and redemption programs;

(j) orchestrating and allowing Hollinger to set retraction and redemption prices above the market value of Hollinger's shares;

(k) diverting non-competition payments from purchasers of International's assets to themselves and to Hollinger for no legitimate reason;

(l) causing Hollinger to obtain financing through the Senior Notes;

(m) causing Hollinger to enter into and then to pay off the Ravelston Loan with the proceeds of the expensive Senior Note financing;

(n) causing Ravelston and RMI to breach their obligations under the Support Agreement and the Ravelston Guarantee, resulting not only in unpaid debts to the Hollinger Group, but also triggering an Event of Default under the Indentures resulting in the increase of the already high rate of interest on the Senior Notes;

(o) causing Ravelston to breach its obligations under the Domgroup Loans;

(p) obtaining no- or low-interest personal loans from the Hollinger Group without adequate consideration;

(q) effecting the Employee Transfer without compensating the Hollinger Group;

(r) Causing the Corporate Defendants to fail or refuse to pay the Hollinger Group for office expenses and administrative services rendered; and

(s) Causing Ravelston to breach its obligations under the GPT Reimbursement Agreement.

194. In acting against the interests of the Hollinger Group, in breach of their fiduciary duties, the Individual Defendants caused the Hollinger Group to suffer irreparable harm and immense damages, as set out herein.

Breach of Statutory Duties and Negligence

195. As described herein, the Individual Defendants utterly failed in carrying out their duties to Hollinger in accordance with the standards of prudent officers and directors. Indeed, the conduct of the Individual Defendants amounts to breaches of fiduciary duties, as described above, and accordingly fell far below the appropriate standard of care. Their negligent performance of their duties as officers and directors has caused the Hollinger Group significant harm, as described herein.

Breach of Contract

196. Some or all of the Corporate Defendants have breached their contractual obligations to the Hollinger Group by:

(a) failing or refusing to pay the Hollinger Group under the terms of the Support Agreement and the Ravelston Guarantee;

(b) failing or refusing to pay the Hollinger Group under the terms of the Domgroup Loans;

(c) failing or refusing to reimburse the Hollinger Group for the costs and expense s associated with the GPT in accordance with the terms of the GPT Reimbursement Agreement;

(d) failing or refusing to pay the Hollinger Group for administrative services rendered to Argus;

(e) failing or refusing to pay the Hollinger Group for fees paid and services rendered on behalf of Aviation.

197. Some or all of the Individual Defendants, by virtue of their positions of power within the Corporate Defendants, caused the breaching Corporate Defendants to breach their contractual obligations to the Hollinger Group.

Interference with Economic Relations

198. The Individual Defendants, acting in concert pursuant to Black's Plan, deliberately and persistently interfered with the Hollinger Group's economic relations, both directly and through their positions of power with the Corporate Defendants by:

(a) conspiring to deprive the Hollinger Group of its income-producing assets and service agreements as set out above;

(b) declaring a Special Dividend, the bulk of which was paid to the Defendants, at a time when Hollinger was facing a liquidity and solvency crisis;

(c) saddling the Hollinger Group with expensive debt obligations, and then deliberately triggering an Event of Default under the financing Indentures, resulting in an increased interest rate owing by the Hollinger Group; and

(d) Causing the Corporate Defendants to breach their contractual obligations to the Hollinger Group as set out above.

Oppression

199. Hollinger seeks an Order under section 241 of the CBCA retracting the common shares held, directly and indirectly by the Individual Defendants, or, in the alternative, an Order compensating Hollinger for the Individual Defendants' oppressive conduct.

Unjust Enrichment

200. As a result of the various Impugned Transactions and other improper dealings with the Hollinger Group as described herein the Defendants have been unjustly enriched by the benefits that accrued to them individually and collectively, directly and indirectly, at the Hollinger Group's expense. In particular, the Defendants have been unjustly enriched by:

(a) the Sale of Hollinger's interest in the Telegraph at below fair market value;

(b) the Sale of Hollinger's Canadian Assets at below fair market value;

(c) the diversion of management fee income from the Hollinger Group to Ravelston, Moffatt Management and Black-Amiel Management;

(d) the retraction and redemption of Hollinger's shares at inflated prices;

(e) the Ravelston Loan;

(f) the breach of the Support Agreement and of the Ravelston Guarantee;

(g) the Domgroup Loans and the breach thereof;

(h) low or no interest personal loans advanced to the Individual Defendants by the Hollinger Group;

(i) the non-payment of office and administrative expenses; and

(j) the breach of the GPT Reimbursement Agreement.

201. To the extent that any Corporate Defendant has been unjustly enriched, the shareholders of such enriched Corporate Defendant ~~has~~ have been likewise enriched.

202. To the extent that Black has been enriched by any of the foregoing, Amiel-Black has also been enriched by virtue of her share in the Black/ Amiel marital property, and *vice versa*.

203. The Hollinger Group has suffered corresponding deprivations for each and every unjust enrichment enjoyed by the Defendants insofar as the Hollinger Group has been deprived of revenues, payments, business opportunities and profits to which it was entitled.

204. There is no juristic reason for the Hollinger Group to have suffered such deprivation. On the contrary, the Defendants enriched themselves at the Hollinger Group's expense through unlawful conduct, including breaches of equitable and legal duties, and breaches of various commercial agreements, as described herein.

205. The Hollinger Group is entitled to a disgorgement of the profits the Defendants have earned as a result of their unjust enrichment. Particulars of these amounts will be provided in advance of trial.

Monies Held in Constructive Trust

206. Having knowingly participated in the conspiracy against the Hollinger Group, which by its very design was dishonest and in breach of the Individual Defendants' fiduciary duties to the Hollinger Group, the Individual Defendants became constructive trustees

for the Hollinger Group in respect of all the monies received by them as a result of their participation in the conspiracy or in breach of their fiduciary duties.

207. The Hollinger Group will provide particulars of the monies that are subject to a constructive trust prior to trial.

Damages

General Damages

208. The Defendants have caused the Hollinger Group to suffer significant harm and immense damages that are still accruing. The harm that the Hollinger Group has suffered and continues to suffer is described herein and includes:

(a) damages resulting from the Defendants' breaches of the various commercial agreements entered into with the Hollinger Group, including but not limited to the breach of the Support Agreement, the Ravelston Guarantee, the Domgroup Loans and the GPT Reimbursement Agreement;

(b) lost revenue from the Diverted Management Fees and other payments particularized above;

(c) interest, expenses and costs with respect to loans;

(d) fines and penalties;

(e) irreparable damage to the Hollinger Group's goodwill; and

(f) all the costs and expenses referred to herein.

Disgorgement

209. In addition to payment for all amounts in respect of damages suffered by the Plaintiffs, the Defendants should be required to disgorge all benefits obtained by them as a result

of their affiliation with either the Hollinger Group, International and /or the Corporate Defendants.

Hollinger Group claim for Indemnity and Contribution

210. As referred to herein, as a result of the Defendants' conduct, the Hollinger Group has been made subject to a number of proceedings. The Hollinger Group claims contribution and indemnity from the Defendants with respect to any judgment, fine, penalty, levy, sanction, award or order obtained against the Hollinger Group.

~~211. Further, the Hollinger Group states that the Individual Defendants procured indemnities from the Hollinger Group against the backdrop of threatened litigation and~~

No Indemnity for Individual Defendants

212. As referred to herein, many proceedings have been commenced against the Hollinger Group and the Individual Defendants as a result of the Defendants' wrongdoing.

213. Against the backdrop of threatened litigation, the Individual Defendants, in breach of the duties owed to the Hollinger Group, procured indemnities from the Hollinger Group to cover, *inter alia*, their legal expenses.

214. Black, Boultbee and Atkinson were convicted of fraud, and in Black's case, obstruction of justice, in connection with some of the above described conduct in relation to International. Radler pleaded guilty and admitted to fraud in respect of the same.

215. The Individual Defendants were not in fact, entitled to be indemnified by the Hollinger Group in the existing circumstances, but used their control of the Hollinger Group to approve the indemnity agreements and certain payments. The indemnity agreements and associated payments were improper, oppressive and unfair to the Hollinger Group

and its non-Defendant shareholders. Any monies paid to the Individual Defendants under the indemnity agreements must be repaid to the Hollinger Group.

Punitive Damages

216. As described above, Defendants have perpetrated a decade-long abuse of the Hollinger Group, in flagrant breach of their fiduciary and other duties. The Defendants have deliberately and systematically flouted their legal obligations to the Hollinger Group and have done so for the purpose of personally profiting at the Hollinger Group's expense.

217. The Defendants have been so effective in their systematic abuse of the Hollinger Group that Hollinger, a once thriving and highly lucrative business operation, has now been forced into CCAA proceedings.

218. The conduct of the Defendants, and particularly the Individual Defendants, has been egregious, high-handed, reprehensible and warrants the condemnation of this Court. In the circumstances, the Defendants' conduct warrants a very substantial award of punitive damages.

219. The Plaintiffs propose that this action be tried at Toronto.

January 27, 2006 ~~May 27, 2009~~

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Solicitors for the Plaintiffs

HOLLINGER INC. et al
Plaintiffs

and

BLACK et al
Defendants

Court File No.: 06-CL-6261

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AMENDED STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

EXHIBIT "S"

Court File No. 07-CL-6954

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

HOLLINGER INC.

Plaintiff

- and -

CONRAD M. BLACK, BARBARA AMIEL-BLACK, F. DAVID RADLER, JOHN A. BOULTBEE and PETER Y. ATKINSON

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and $500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date April 20, 2007

Issued by ______________________
Local registrar

Address of court office
~~393~~ 30 University Avenue,
~~10th~~ Floor 7th
Toronto, On M5G ~~1E6~~ 1R7

TO: CONRAD M. BLACK
26 Park Lane Circle
Toronto, ON M3B 1Z7

AND TO: BARBARA AMIEL-BLACK
26 Park Lane Circle
Toronto, ON M3B 1Z7

AND TO: F. DAVID RADLER
2146 South West Marine Drive
Vancouver, BC V6P 6B5

AND TO: JOHN A. BOULTBEE
986 Perez Drive
Victoria, BC V8Y 3G2

AND TO: PETER Y. ATKINSON
35 Brentwood Road
Oakville, ON L6J 4B7

CLAIM

1. The Plaintiff (also referred to as "Hollinger") claims from the Defendants, jointly and severally, the following relief:

(a) a declaration that no monies are owing by the Plaintiff to any Defendants under those certain Indemnity Agreements entered into between the Plaintiff and any such Defendant on July 23, 2003 (an "**Indemnity Agreement**" or collectively the "**Indemnity Agreements**") or otherwise and that any such Indemnity Agreements are void and unenforceable;

(b) an order that any payments made to any Defendant pursuant to such Indemnity Agreements be repaid by any such Defendant to the Plaintiff with interest;

(c) a declaration that the Defendants are not entitled to be indemnified by the Plaintiff under the provisions of section 124 of the *Canada Business Corporations Act* (the "**CBCA**") or in virtue of General By-Law A26 of Hollinger (the "**By-Law**");

(d) the costs of this action on a substantial indemnity basis, as well as any applicable taxes; and

(e) such further relief as this Court may deem just.

The Parties and Their Relationship

(i) The Plaintiff

2. Hollinger is a publicly held mutual fund corporation incorporated under the CBCA with its principal offices at 10 Toronto Street, Toronto, Ontario. Hollinger no longer conducts direct business operations of its own. Its primary asset is a direct and indirect ownership interest in Sun-Times Media Group Inc. ("**STMG**"). STMG and Hollinger are both reporting issuers under the *Securities Act* (Ontario).

3. Through its operating subsidiaries, STMG has owned and published newspapers around the world and, at one time, its portfolio of newspaper properties had a worldwide combined circulation of approximately two million readers per day.

4. Hollinger holds (directly and indirectly) a 17.4% equity interest in STMG. The majority of Hollinger's shares of STMG are Class B common shares which entitle Hollinger to ten votes for every one share held. Hollinger is the sole holder (directly and indirectly) of Class B common shares of STMG. Through its direct and indirect shareholdings, Hollinger holds approximately 66.8% of STMG's vote on all matters requiring shareholder approval.

5. On May 22, 2002, the By-Law came into effect. The By-Law provides, in pertinent part, as follows:

> "The Corporation **[Hollinger]** shall indemnify a director or officer, a former director or officer or a person who acts or acted at the Corporation's request as a director or officer, or in a similar capacity of another entity and the heirs and legal representatives of such a person to the extent permitted by the [CBCA]"

(ii) The Defendants

6. The Defendant, Conrad M. Black ("Black"), was Chief Executive Officer ("**CEO**") and Chairman of the board of directors of both Hollinger and STMG. Black was also the CEO and Chairman of The Ravelston Corporation Limited ("**Ravelston**") and Conrad Black Capital Corporation ("**CBCC**").

7. The Defendant, F. David Radler ("**Radler**"), was the President and Chief Operating Officer of both Hollinger and STMG. Radler was also the President and a director of Ravelston.

8. The Defendant, John A. "Jack" Boultbee ("**Boultbee**"), was an officer, including the Chief Financial Officer, and director of Hollinger and an officer, including the Chief Financial Officer and director of STMG. Boultbee was also a director and officer, including the Chief Financial Officer of Ravelston and a director of CBCC.

9. The Defendant, Peter Y. Atkinson ("**Atkinson**"), was Vice President and General Counsel and director of Hollinger and Executive Vice President of STMG. Atkinson was also a director and officer of Ravelston.

10. Barbara Amiel-Black ("**Amiel-Black**") was a director and Vice-President (Editorial) of Hollinger, director and Vice-President (Editorial) of STMG and a director and the President of CBCC.

11. Ravelston owns directly and indirectly approximately 78% of the common shares of Hollinger. The Defendants control Ravelston.

12. As directors and officers of Hollinger, the Defendants owed fiduciary duties of undivided loyalty to Hollinger and owed a duty to act in Hollinger's best interest. These duties, among other things, required the Defendants to refrain from acting to benefit themselves, parties related to them, or anyone else at Hollinger's expense and to disclose all material facts to the members of Hollinger's board of directors regarding all matters relevant to the company's business, including any transactions or proposed transactions involving the Hollinger. Also, the Defendants owed Hollinger a duty not to receive any undisclosed collateral benefits arising from their office.

13. The Defendants repeatedly and intentionally breached these duties for their own benefit to Hollinger's detriment. Moreover, the Defendants owned and controlled certain corporations (the "**Corporate Parties**") and directly and indirectly obtained the benefit of the Corporate Parties' wrongful conduct that caused harm and damage to Hollinger. In circumstances where the Corporate Parties were the beneficiaries of the harm inflicted on Hollinger, such benefits were then transferred, directly and indirectly, to the Defendants by the Corporate Parties.

The Claim

14. This action arises out of the Indemnity Agreements which were procured by the Defendants at a time and under circumstances when they knew or ought to have known that as a result of their wrongful conduct and the breach of the obligations they owed to Hollinger, significant claims would be made against them and against Hollinger by STMG and others for the recovery of damages in connection with certain transactions engineered and implemented by the Defendants for their

personal benefit, in breach of their fiduciary obligations as directors of both STMG and Hollinger.

15. The Defendants' wrongful conduct included, amongst other things, the diversion to themselves personally and to Hollinger of non-competition payments totalling US $88 million in connection with the sale of assets belonging to STMG (US $16.55 million of which was directed to Hollinger), and the payment of allegedly excessive management fees by STMG to the Defendants through Ravelston.

16. The Defendants' conduct triggered a series of events and investigations that ultimately embroiled the Defendants (and Hollinger) in extensive civil litigation and regulatory proceedings both in Canada and the United States.

17. In particular, in May of 2003 Tweedy Browne Company LLC (**"Tweedy Brown"**), a significant minority shareholder of STMG raised concerns both with the United States Securities and Exchange Commission and in a demand letter addressed to STMG's board of directors regarding the propriety of certain management fees paid by STMG and of the non-compete payments made to the Defendants (and to Hollinger).

18. The concerns raised by Tweedy Browne prompted STMG's board of directors to strike a Special Committee to investigate various related-party transactions, including the non-compete payments.

19. Against the backdrop of threatened litigation, which has now materialized, the Defendants, in breach of the duties owed to Hollinger, procured the Indemnity Agreements to cover, amongst other things, their legal fees and to potentially provide contribution and indemnity with respect to claims asserted in the proceedings referred to above.

20. The timing of the Indemnity Agreements was anything but a coincidence. To the contrary, it reflected Defendants' heightened concern that their improper conduct – which they failed to disclose when Hollinger's board of directors met on

July 23, 2003 to consider and approve the Indemnity Agreements - would result in litigation against them.

21. In particular, Defendants deliberately failed to disclose to Plaintiff's board of directors the true nature and extent of their misconduct, the gravity of the crisis that Hollinger faced as a result of that misconduct and the fact that the investigations referred to above would have serious and, indeed, disastrous repercussions for Hollinger.

22. The egregiousness of Defendants' misconduct was such that Black, Radler, Boultbee and Atkinson were indicted in 2005 by a federal grand jury in Chicago for having fraudulently diverted significant amounts of money from STMG through a series of self-dealing transactions between 1999 and 2001.

23. Radler acknowledged the illegality of his conduct by pleading guilty on September 20, 2005 to a single count of mail fraud. In the plea agreement entered into with the United States Attorney for the Northern District of Illinois, Radler admitted that, amongst other things, he and the other Defendants had repeatedly abused their authority and fiduciary obligations as managers of STMG in order to fraudulently benefit themselves at the expense of STMG and its public shareholders *inter alia*, by inserting themselves and Hollinger as recipients of non-competition fees that should have, and otherwise would have, been paid to STMG.

24. Atkinson, for his part, has admitted that the non-competition payments he received were not in fact non-compete payments, but instead were what he described as a "bonus".

25. Black admitted his own misconduct when he entered into an agreement with STMG on November 15, 2003 wherein he a) acknowledged that the non-compete payments made to him had not been properly authorized by STMG and b) undertook to repay to STMG the amounts that he had received. Black subsequently breached this agreement when he refused to reimburse the amounts he had received.

26. Had the Defendants made full disclosure of the true nature of their wrongful conduct, and of the seriousness of the predicament that Hollinger faced by reason of such conduct, the Plaintiff's board of directors would never have agreed to enter into the Indemnity Agreements.

27. As a direct result of their misconduct, the Defendants (and the Plaintiff) have become entangled in a number of civil lawsuits and regulatory proceedings in Canada and the United States. Specifically, as a result of their improper conduct, STMG sued the Defendants before the United States District Court, Northern District of Illinois, and class action proceedings have been commenced against the Defendants in both Canada and the United States. Further, both the Securities and Exchange Commission and the Ontario Securities Commission have commenced proceedings against the Defendants (and Hollinger).

28. Given their wrongful conduct and their failure to disclose same at the time that the Indemnity Agreements were being considered by Hollinger's board of directors, the Defendants are not entitled to be indemnified by the Plaintiff. The Defendants nonetheless used their control of Hollinger to approve the Indemnity Agreements and certain payments thereunder.

29. The Indemnity Agreements and the payments made pursuant thereto were improper and unfair to Hollinger. Moreover, the Indemnity Agreements were obtained by the Defendants in breach of their duties owed to Hollinger. The Indemnity Agreements are, therefore, null and void and any monies paid to the Defendants under the Indemnity Agreements must be repaid with interest.

30. In addition, the conduct of the Defendants in procuring indemnities in the existing circumstances was oppressive and unfairly prejudicial to Hollinger and its shareholders under section 241 of the CBCA and Plaintiff seeks an Order declaring such conduct to have been oppressive and declaring the Indemnity Agreements to be null and void in consequence.

31. Moreover, the Defendants failed to act honestly and in Hollinger's best interests. Because of their wrongful conduct, Defendants are not entitled to be

indemnified in virtue of the Indemnity Agreements, the By-Laws or under the provisions of section 124 of the CBCA.

32. The Plaintiff proposes that this action be tried at Toronto.

Date: April 20, 2007

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Solicitors for the Plaintiff

HOLLINGER INC. Plaintiff	and	CONRAD M. BLACK et al Defendants	Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Solicitors for the Plaintiff

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

EXHIBIT "6"

SUN-TIMES MEDIA GROUP, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04C-0698
	)	
THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., CONRAD M. BLACK, JOHN A. BOULTBEE, DANIEL W. COLSON, and BARBARA AMIEL BLACK	)	Hon. Blanche M. Manning Magistrate Judge Maria Valdez **JURY TRIAL DEMANDED**
	)	
Defendants.	)	

THIRD AMENDED COMPLAINT

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October 8, 2008

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

SUN-TIMES MEDIA GROUP, INC. Plaintiff, v. THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., CONRAD M. BLACK, JOHN A. BOULTBEE, DANIEL W. COLSON, and BARBARA AMIEL BLACK Defendants.	)	Case No. 04C-0698 Hon. Blanche M. Manning Magistrate Judge Maria Valdez **JURY TRIAL DEMANDED**

THIRD AMENDED COMPLAINT

Plaintiff Sun-Times Media Group, Inc. ("STMG" or the "Company"),[1] through the Special Committee (the "Special Committee") of the STMG board of directors,[2] hereby complains and alleges against Defendants The Ravelston Corporation Limited and Ravelston Management Inc. (collectively, "Ravelston"), Conrad M. Black, John A. Boultbee, Daniel W. Colson, and Barbara Amiel Black as follows:

NATURE OF THE ACTION

1. This is an action to recover hundreds of millions of dollars in damages suffered by Plaintiff STMG through Defendants' series of unlawful and improper actions. Defendants' unlawful acts as more fully described herein include making unauthorized transfers of STMG's cash to themselves; causing STMG to enter into transactions with its controlling shareholders or

[1] Effective July 17, 2006, Hollinger International Inc. changed its name to Sun-Times Media Group, Inc. STMG and the Company are used to refer to STMG and, if the context requires, STMG's wholly-owned subsidiaries.

[2] The Special Committee was formed on June 17, 2003, and was authorized, among other things, to bring suit on STMG's behalf in resolutions of the STMG board dated June 17, 2003, and January 20, 2004.

their associates on terms that were not fair to STMG and its public, non-controlling majority shareholders; violating fiduciary duties of loyalty and care; obtaining corporate assets and funds through fraudulent misrepresentations; usurping corporate assets and opportunities through a variety of related-party transactions; and waste of corporate assets.

INTRODUCTION AND SUMMARY

2. STMG is a Delaware corporation that owns and operates newspaper publishing businesses. It owns the *Chicago Sun-Times*, as well as community newspapers in the Chicago area such as the *SouthtownStar*, the Joliet *Herald News*, the Elgin *Courier News*, and the Aurora *Beacon News*.

3. STMG's shares are registered with the U.S. Securities and Exchange Commission, and until May 2008 its Class A common shares were traded on the New York Stock Exchange. Its Class A common shares are currently traded over the counter.

4. Until June 2008, Hollinger Inc. ("HLG") controlled a super-majority of voting rights in STMG. Until then, STMG had two classes of common stock: Class B common shares that were owned entirely by HLG and Class A common shares that were held by the Company's public investors. The Class B common shares had the right to cast ten votes in any matter submitted for a shareholder vote, compared to one vote per share for the Class A common shares. The dual-voting structure was created by Black at the time of STMG's initial public offering, thereby granting him control of STMG separate from the size of his ownership position. As a result, throughout the relevant period, HLG held approximately 71% of STMG's voting rights, while at most times owning less than 50% of STMG's equity and by 2002 owning only approximately 30% of it.[3]

[3] HLG compromised its voting rights in 2008 as part of a settlement of this litigation.

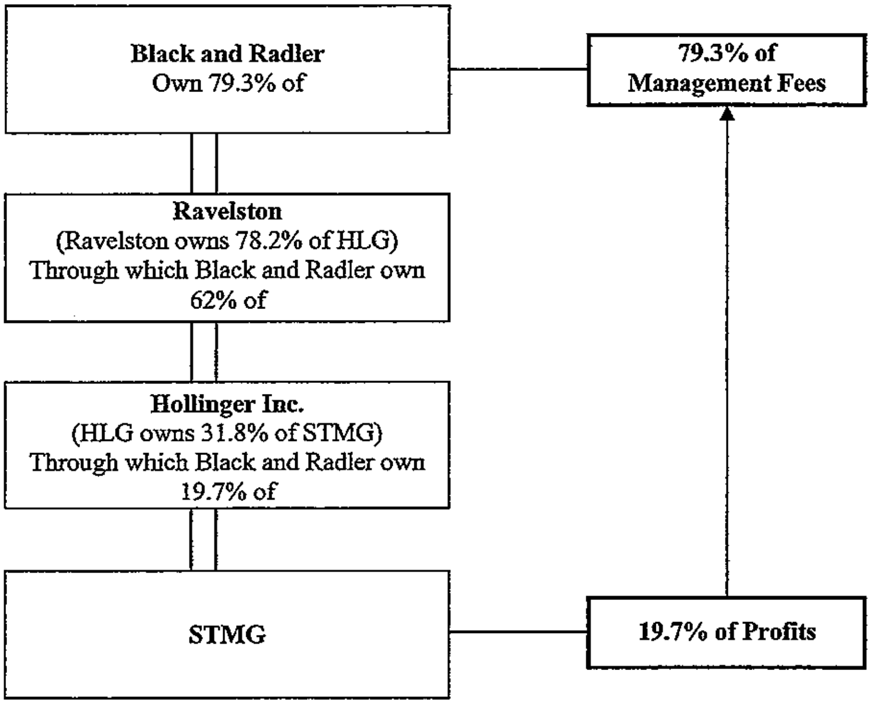
5. HLG is a Canadian corporation whose shares were publicly traded on the Toronto Stock Exchange until 2008. At all times during the relevant period it has been an investment vehicle without actual operating activities or, to STMG's knowledge, any employees of its own. It is a mutual fund corporation in Canada, and during the relevant period operated essentially as the vehicle for Black's control of STMG.

6. At all times relevant to the Complaint, HLG was controlled by Defendant Ravelston, a private holding company largely owned by Defendant Black. Ravelston owns 78% of HLG. Therefore during most of the events described in this Complaint, Ravelston indirectly owned between 23.7% and 37.5% of STMG, yet in effect had total control of it.

7. Defendant Ravelston is a private holding company with a handful of shareholders. Defendant Black owns (through Conrad Black Capital Corporation) 65.1%, and F. David Radler owns (through F.D. Radler Ltd.) 14.2%, of Ravelston. Therefore, during most times relevant to this proceeding Black and Radler collectively had an indirect equity STMG stake ranging from approximately 18% to 30%. Little was known publicly about Ravelston during the relevant period. But Ravelston was the principal vehicle through which Black and Radler conducted their activities at STMG. Figure 1 below is a chart depicting Black's and Radler's ownership interest in STMG:

Figure 1

Black and Radler's Effective Economic Ownership in STMG
As of December 31, 2002



8. From its initial public offering in the mid-1990s until November 15, 2003, STMG was managed, controlled, and dominated by Defendant Black, who served as the Company's Chairman and Chief Executive Officer, and Radler, who served as the Company's Deputy Chairman, President, and Chief Operating Officer.

9. As a result of the disproportionately weighted voting interest of the Class B common shares owned by HLG, which he controlled through Defendant Ravelston, Defendant Black had the power to add or remove all members of the STMG board at will, irrespective of the wishes of STMG's majority equity shareholders. STMG's bylaws allowed HLG (*i.e.*, Black) to remove any and all members of the board without a meeting or any prior notice or show of cause. This gave HLG and Black immediate and total control of the STMG board. And Black

wielded this power routinely — dominating every board meeting and even remaining in the room when related-party transactions were discussed.

10. Investors purchased stock in STMG knowing of the disproportionate voting rights of the Class B shares and of the ultimate control wielded by Defendant Black and Ravelston through HLG. At the same time, investors also purchased stock in STMG knowing that the use of such power had to comply with all applicable laws, including fiduciary duties under Delaware law. Even though the public majority equity shareholders at STMG were effectively frozen out of all participation in governance decisions, the governance system that Black set up did not confer a license on the Defendants, HLG, and Radler to simply take STMG's revenues for themselves, or to cause the Company to engage in transactions beneficial to themselves that were unfair to STMG and its non-controlling shareholders. Indeed, investors purchasing STMG shares had good reason to expect that the Defendants, HLG, and Radler would adhere to the highest standards of fiduciary behavior imposed by Delaware law on controlling shareholders.

11. Delaware corporate law imposes fiduciary duties of loyalty and care on Defendants Black and Ravelston as controlling shareholders. In general, controlling shareholders are held to the most stringent limits if they seek to engage in transactions with the company under their control. Any such transactions must be "entirely fair" to non-controlling shareholders. As officers and directors, Black, Colson, Boultbee, and Amiel Black also owed fiduciary duties to STMG and to its majority, non-controlling public shareholders. These fundamental fiduciary duties made it unlawful for the Defendants to usurp corporate opportunities for their own personal benefit, to engage in self-dealing transactions that were not entirely fair to the non-controlling shareholders, or to mislead or deceive the corporation's board of directors into approving or ratifying transactions with related parties on the basis of false,

misleading, or incomplete information. But the Defendants violated all these duties repeatedly throughout the relevant period.

12. Though they served as stewards of the investments of their shareholders — subject to strict limits on their personal financial dealings with the Company — Defendants Black, Colson, Boultbee, and Amiel Black evidently did not see it that way. Black in particular repeatedly referred to STMG as "their" company, and appeared to confuse the power to make corporate decisions subject to fiduciary standards and limits as the power to act with impunity in his own personal interest. The Delaware Chancery Court has characterized Black as "a formidable controlling stockholder," and found that "[a]t all times he has held himself out to the world as able to control Ravelston, [HLG], and [STMG] . . . . To the extent he could, Black led the financial world to believe that the collective 'Hollinger' family was firmly under his personal control." *See Hollinger Int'l, Inc. v. Black,* 844 A.2d 1022, 1032–33 (Del. Ch. 2004).

13. During a prolonged period, the Defendants, HLG, and Radler drained STMG of cash for their own personal benefit and in disregard for the rights of all STMG shareholders. HLG's, Radler's, and the Defendants' systematic disregard for shareholder interests manifested itself on both large matters like transferring to themselves and their co-conspirators more than $90 million in "non-compete" fees, and on small matters such as Black billing STMG $90,000 to refurbish a 1958 Silver Wraith Rolls Royce limousine owned by Ravelston, apparently so that Black and Amiel Black could travel London in classic style without paying for the ride. Similarly, Black billed STMG for the cost of numerous personal household staff — including chefs, senior butlers, butlers, under butlers, chauffeurs, housemen, footmen, and security personnel. Charitable donations were made in Black's and Amiel Black's name, but paid for by STMG. The Company was charged nearly $9 million ($8 million for one single collection and

almost $1 million for other pieces) to acquire historic papers of former President Franklin D. Roosevelt that were worth less than one-third that amount, most of which were stored in Black's and Amiel Black's personal residences, at a time when Black was coincidentally writing a 1300-page biography of FDR (while also being paid to be the Company's full-time CEO, not an author). Black also caused the Company to sell him its Manhattan apartment for approximately $5.65 million less than its fair market value. That is, in December 2000, he caused the Company to sell him the apartment at the Company's 1994 $3 million purchase price, even though he knew that the apartment, like all choice real estate in New York City from 1994 to the end of 2000, had appreciated considerably.

14. Although STMG was a modest-sized company, it maintained two corporate jets to transport Black, Amiel Black, and Radler to and from their personal residences at a cost to the Company of $4.7–$6.5 million per year. As evidenced by the following August 2002 e-mail message to Peter Atkinson, a Ravelston shareholder and an officer of both STMG and HLG, Black understood that these luxuries benefited him and Ravelston's shareholders to the detriment of STMG's public shareholders:

> There has not been an occasion for many months when I got on our plane without wondering whether it was really affordable. But I'm not prepared to reenact the French Revolutionary renunciation of the rights of nobility. We have to find a balance between an unfair taxation on the company and a reasonable treatment of the founders-builder-managers. We are proprietors after all, beleaguered though we may be.

The jets were used indiscriminately for personal rather than business purposes, such as to fly Black and Amiel Black to Bora Bora and to shuttle among their international collection of houses. Up until 2000 the amount of management fees STMG publicly disclosed it was paying to Ravelston (which far exceeded the amount of management fees the STMG audit committee approved for payment to Ravelston) included the cost of the private jets. Beginning in 2000, Ravelston imposed the cost directly on the Company. This allowed STMG to disclose a management fee that was much lower than what the Company was required to pay for Ravelston's services — STMG paid Ravelston $26 million in 2003 to provide management services, and also had to pay more than $6 million that year for the planes to ferry the Ravelston employees among their residences and to and from work.

15. More than mere abuse of perquisites was involved, however. Black's attitude toward shareholder property was displayed in an August 3, 2002 e-mail to Atkinson and Boultbee, where he noted: "We have said for a long time that STMG served no purpose as a listed company other than relatively cheap use of other people's capital . . . ."

16. The scale of income diverted by the Defendants, HLG, and Radler into their own pockets during the period 1997–2003 was largely if not wholly without precedent as a proportion of the operating income of a public corporation. From 1997–2003, STMG reported net income (the money left in the Company and available to other equity shareholders) of $144.1 million, after paying Black, Radler, Colson, Boultbee, Amiel Black, Atkinson, Ravelston, and HLG fees or compensation of one type or another aggregating approximately $401.7 million. Thus, as shown on Figure 2, Black used his control powers to cause the Company to pay himself and his top associates more than 95% of the Company's total adjusted net income (after adding back the payments received by Black *et al.*, and adjusting for taxes). By contrast, during the same period the top five officers of the New York Times Company and the Washington Post Company, both of which also have two-tier voting structures, received approximately 4.3% of total adjusted net income in the case of the *Times*, and 1.7% in the case of the *Post*.

Figure 2

Summary of Payments/Compensation to Controlling Shareholders	
Ravelston/RMI Management Fees	$217,529,000
Non-compete/Unauthorized payments	$90,191,931
Salaries & Bonuses	$12,081,225
STMG Stock Options (valued at grant)	$39,049,000
Directors/Article Fees/Other Payments	$3,147,177
Moffat Management "Broker" Fee	$900,000
Personal/Home Staff	$1,402,650
Aircraft Charges	$23,707,109
Corporate Apartments	$4,346,152
Automobiles	$389,096
Roosevelt Papers	$8,911,825
TOTAL PAYMENTS	**$401,655,165**
REPORTED NET INCOME	**$144,135,000**
ADJUSTED NET INCOME	**$421,997,000**
% OF ADJUSTED NET INCOME	**95.2%**

This grossly excessive 95.2% figure does not even take into account many of the other ways the Defendants, HLG, and Radler diverted funds from STMG, such as other management and termination fees that Ravelston usurped from STMG, and below-market loans STMG made to HLG.

17. This Complaint addresses, among other things, three particularly egregious methods by which Defendants improperly took cash or other assets belonging to STMG. One method was to force STMG to retain HLG or Defendant Ravelston, an entity owned primarily by Defendant Black, to provide management services at prices so grossly inflated that they were many times the cost STMG would have incurred in providing those services for itself. This

highly unusual "outsourcing" of senior management through HLG or Ravelston, rather than the Company directly retaining its own management, left the Company utterly dependent on HLG and Ravelston, which annually demanded and extracted management fees vastly in excess of the cost of the services provided to STMG.

18. Defendant Black was an experienced executive, and as a group the top five Ravelston personnel would certainly have commanded reasonable compensation on the open market. But Black did not simply serve as CEO, and seek approval from the STMG board for direct compensation at a reasonable market level. If he had done so, the STMG compensation committee, composed entirely of independent directors, would presumably have reviewed, *inter alia*, market levels of compensation at comparable companies for executives with similar skills and experience, and the committee would then normally have negotiated a compensation program for each individual executive as is done at every other publicly traded company.

19. Instead of following normal and accepted methods for determining executive compensation, Defendant Black used his power as controlling shareholder to cause the Company to retain its most senior executives on a package plan from Defendant Ravelston, a company he owned, rather than hiring these executives directly on an individual basis. Under this approach, Ravelston proposed a single fee to cover compensation for the entire group of senior executives who were officers of STMG but employees of Ravelston. The cost of the executive group as a whole was then bundled together with the costs of a group of 20–30 back office personnel (who devoted varying levels of time to serving STMG along with other Ravelston business interests), as well as various direct and indirect costs for occupancy, taxes, and other items. In essence, the fee charged to STMG was for a business within a business, orchestrated entirely by the controlling shareholders.

20. Delaware law requires *both* a fair process *and* a fair price for a corporation's transactions with its controlling shareholders. But the Defendants' management fee transactions with the Company entailed *neither* a fair process *nor* anything close to a fair price.

21. The process was entirely dictated by Radler and Defendants Black and Boultbee for their own benefit. They alone would determine what they wished to pay themselves and their Ravelston colleagues and what other Ravelston or personal financial needs should be paid through the STMG management fee. For them, the calculation appears to have been how much money Black and Ravelston needed or wanted, not what was fair and reasonable to STMG. For example, beginning in 1998 they arranged to have Ravelston transfer large portions of STMG's annual management fee to HLG and its wholly-owned subsidiary Domgroup Ltd. ("Domgroup"). In this and other ways, Black, Radler, and Boultbee secretly arranged for Ravelston to use the management fee to "support" HLG.

22. But the management fee should not have been more than what it would have cost STMG to retain the necessary management services directly. The process Black caused STMG to use eliminated both transparency and accountability to the STMG board for compensation decisions among the Defendants. The audit committee of STMG's board approved the management fee each year based on what appears to have been the most cursory "negotiations" imaginable with the Defendants and Radler. In these discussions, the Defendants and Radler failed to disclose all relevant information to the audit committee and the board, and there is no evidence that the audit committee possessed data sufficient to understand Ravelston's total costs or the level of implicit compensation that was being paid to each individual officer and to their affiliates. The audit committee did not retain its own experts or financial advisors to provide

independent data and analysis regarding the management fee, and thus it did not put itself in a position where it could negotiate with Black and Radler in a meaningful way.

23. The end result of this unfair process that the Defendants imposed was an unfair price. For example, in 2003 STMG paid a $26 million management fee to Ravelston, of which an estimated $3.2 million covered all costs of Ravelston other than compensation of its top five personnel serving as officers of STMG. In addition, STMG paid the same five officers another $9.8 million in compensation directly. Thus, STMG in effect paid its top five officers total compensation of $33 million in 2003, although the board was not aware of precisely how this compensation was allocated among the Defendants, HLG, and Radler.

24. By contrast, compensation in 2003 for the top five officers of twelve U.S. based publicly traded publishing companies (the New York Times Company, the Washington Post Company, Gannett Co., E.W. Scripps, Knight-Ridder, Dow Jones & Co., the Tribune Co., McClatchy Co., Belo Corp., Lee Enterprises, Media General, and Journal Communications) at the 25th percentile level, equivalent in revenues to the size of STMG, was only $6.9 million. Thus, in 2003, STMG paid $33 million for executive services that would reasonably have been expected to cost only approximately 20% as much had STMG been paying market levels of compensation.

25. The record of the period 1996–2003 demonstrates a similar picture of compensation levels at STMG that were many, many times the compensation levels for proven executives working for major publishing companies. From 1996–2003, STMG paid $261 million in compensation to its top executives (plus another $74 million in personal "non-compete" payments), while the peer companies of a similar size paid their top five officers between $41–62 million during the same period. Thus, the management fee system resulted in

payouts to the Defendants, HLG, and Radler that were 4 to 6 *times* greater than what competing companies were paying for similar services. Despite these compensation levels, STMG's comparative performance during the period among similar companies was at or near the bottom in most categories, such as return on assets or equity.

26. Another method the Defendants used to drain profits out of STMG was to execute real or imagined "non-compete" agreements with companies purchasing newspapers from the Company, and to divert massive payments taken from STMG's sale proceeds to themselves as purported consideration for agreements not to compete. These "non-compete" agreements generally were not requested by buyers, but rather were offered by the Defendants and Radler as a pretext for siphoning proceeds out of the transactions. On some occasions these agreements were never signed or were signed with wholly-owned affiliates in sham transactions. As Black admitted in writing (though subsequently recanting his admission), and as the Delaware Court of Chancery found, more than $30 million in such payments to Defendants Black and Boultbee, and to HLG, Radler, and Atkinson, were never authorized by the STMG board, but were simply transferred at the direction of one or more of the recipients. *See Hollinger Int'l v. Black*, 844 A.2d at 1067–69.

27. Indeed, Black, Boultbee, and Ravelston, along with Radler and Atkinson, have all been convicted of fraud in connections with these payments. HLG avoided a fraud conviction only by agreeing to cooperate with the United States Attorney's Office and admitting that the government had evidence to establish HLG's criminal liability for the fraud. Approximately $60 million in additional personal non-compete payments were made with board approval, but these board actions were based on Black's and Radler's inaccurate, misleading, and incomplete disclosure of the facts to the board. And all payments for personal non-compete agreements

were made on terms that were unfair to STMG shareholders, whether authorized by the STMG board or not.

28. The $50 million in non-compete styled payments that the Defendants paid themselves from the Company, as described more fully in this Complaint, are summarized in the following chart:

	Black	**Boultbee**	**Ravelston**	**TOTAL**
CANWEST (Nov. 2000)	$11,896,736	$1,321,859	$26,437,193	$39,655,788
OSPREY I (July 2001)	$2,021,088	$212,746		$2,233,834
OSPREY II (Nov. 2001)	$316,612	$33,328		$349,940
CNHI II (Nov. 2000)	$4,300,000	$450,000		$4,850,000
APC "non-competes" (Feb. 2001)	$2,612,500	$137,500		$2,750,000
PMG/Forum (April 2001)	$285,000	$15,000		$300,000
TOTAL	**$21,431,936**	**$2,170,433**	**$26,437,193**	**$50,039,562**

These amounts are in addition to the more than $40 million in non-compete styled payments that the Defendants paid HLG and fellow STMG officers and Ravelston shareholders Radler and Atkinson from the Company:

	Radler	Atkinson	HLG	TOTAL
CANWEST (Nov. 2000)	$11,896,736	$1,321,859		$13,218,595
OSPREY I (July 2001)	$2,021,088	$212,746		$2,233,834
OSPREY II (Nov. 2001)	$316,612	$33,328		$349,940
INTERTEC (Jan. 1999)			$2,000,000	$2,000,000
CNHI I (Jan. 1999)			$12,000,000	$12,000,000
HORIZON (Aug. 1999)			$1,200,000	$1,200,000
FORUM (Sept. 2000)			$100,000	$100,000
PMG/PAXTON (Oct. 2000)			$500,000	$500,000
CNHI II (Nov. 2000)	$4,300,000	$450,000	$750,000	$5,500,000
APC "non-competes" (Feb. 2001)	$2,612,500	$137,500		$2,750,000
PMG/Forum (April 2001)	$285,000	$15,000		$300,000
TOTAL	**$21,431,936**	**$2,170,433**	**$16,550,000**	**$40,152,369**

29. While Defendant Colson did not participate directly in the above non-compete payments (though he benefited indirectly through his ownership in non-compete recipients Ravelston and HLG), he made sure that he was nevertheless enriched with STMG funds. For example, in response to Colson's complaints about being excluded from certain non-compete payments, Black arranged for Colson to receive a $1 million "bonus" without authorization from the Company's independent directors.

30. A third method the individual Defendants used to divert STMG funds to themselves in violation of their fiduciary duty of loyalty was an "incentive" compensation plan adopted for the Company's investment subsidiary Hollinger Digital LLC ("Digital"). The Hollinger Digital Management Incentive Plan provided that up to 22% of the Company's profits on Digital's individual profitable investments would be awarded to Digital executives, without

offsetting those profits by the losses from Digital's unprofitable investments. Compounding the unfairness was that the Plan guaranteed a bonus payment based on a defined "Liquidity Event," regardless of whether the Company actually realized proceeds from that Liquidity Event, and even if the Company's investment thereafter lost money. Black, Colson, and Radler inserted into the Digital Incentive Plan a "Senior Executive Group" allocation, whereby they would have the unfettered discretion to award themselves 7 percentage points of the 22% they were taking in the Digital Incentive Plan.

31. The Defendants and Radler obtained STMG audit committee approval of the Digital Incentive Plan based on inaccurate representations to the committee that the Plan was typical of those "that competitive investment banking firms offer." Aside from the obvious fact that STMG is a publishing company and not an investment banking firm, the Defendants and Radler knew when they presented the Plan to the audit committee and when they took the payments that the "upside only" Digital Incentive Plan was virtually unheard of in the venture capital/private equity business. Indeed, the Company's attorneys and auditors both advised the Defendants that the industry norm was for investment funds to pay bonuses only in accordance with the fund's *net* profits, after offsetting profits and losses, fees, and certain expenses on all investments in a particular period.

32. Digital's investments have lost more than $74 million since 1997. This disastrous result for STMG shareholders did not justify the payment of any "incentive" bonuses, yet due to the "gains only" plan put in place by Defendants Black and Colson, along with Radler, $15.5 million was paid out in "incentive" bonuses on these tremendous losses. As a controlling shareholder, Black directed $5.3 million of this amount to be paid to the "Senior Executive Group," *i.e.*, himself, Radler, and Colson, even though he knew at the time that such payments

were unfair to STMG shareholders, were not justified by market practice, and did not reflect any skill, effort, or accomplishment on behalf of STMG by the Senior Executive Group. The payments the individual Defendants awarded themselves and Radler and Atkinson under the Digital Incentive Plan are summarized in the following chart:

Date	Investment	Black	Radler	Boultbee	Atkinson	Colson	Total
8/10/00	Trip.com	$335,183					$335,183
8/11/00	Trip.com	$520,744	$200,000		$50,000	$150,000	$920,744
11/29/00	Trip.com	$200,000	$93,520				$293,520
12/21/00	Trip.com	$500,000	$237,085				$737,085
12/21/00	iii	$639,718				$1,644,988	$2,284,706
1/16/01	Canada.com	$250,000	$150,000	$50,000	$100,000	$50,000	$600,000
	Total	**$2,445,645**	**$680,605**	**$50,000**	**$150,000**	**$1,844,988**	**$5,171,238**

This suit seeks recovery of the entire $4.34 million in purported incentive payments to Defendants Black, Boultbee, and Colson as their actions in causing such payments to be made represent no more than skimming cash out of STMG without business purpose and in violation of their fiduciary duties.

33. In addition to the above three self-dealing methods, the Defendants improperly extracted value from STMG in several other transactions. In December 2000, for example, Defendant Black caused the Company to sell him an apartment STMG owned in New York City at a price substantially below its market value. Specifically, Black acquired the Company's New York City apartment, which was worth approximately $8.5 million, for a price of $3 million. But Black did not even pay this inadequate purchase price because he paid $850,000 of it by giving the Company his own New York City apartment, which he overvalued. Thus, Black actually only surrendered $2.85 million in value for the STMG apartment that was worth approximately $8.5 million. And in March 2001 Black caused the Company to spend $8 million to purchase a collection of FDR memorabilia known as the Tully Collection. Black breached his

duty of care when he spent the Company's money to buy the collection without obtaining an independent appraisal over it, thereby causing STMG to pay more than double what the collection was worth. Black caused the Company to purchase the Tully Collection because Black was writing an FDR biography, and wanted to be known as an FDR expert, but did not want to spend his own money—even though he had just received more than $16 million as "non-compete" payments in the CanWest and CNHI II transactions a few months earlier.

JURISDICTION AND VENUE

34. The Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332(a). The parties are of diverse citizenship and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

35. Venue is appropriate in this district under 28 U.S.C. § 1391(a).

PARTIES

36. Plaintiff is a Delaware corporation with its principal office located in Chicago, Illinois.

37. Defendant The Ravelston Corporation Limited is an Ontario corporation with its principal office located in Toronto, Canada. The Ravelston Corporation Limited is privately-held, with 98.5% of its equity owned by former officers and directors of STMG and HLG and 1.5% of its equity owned by the estate of a former HLG director.

38. Defendant Ravelston Management Inc. is a Canadian corporation with its principal office located in Toronto, Canada. It is a wholly-owned subsidiary of The Ravelston Corporation Limited.

39. Defendant Conrad M. Black, also known as Lord Black of Crossharbour, is a British citizen incarcerated in FCI Coleman. Until 2004, Black was the Chairman of the board of

directors and the Chief Executive Officer of HLG. Until November 19, 2003, he was also the Chief Executive Officer of the Company. Until January 17, 2004, when he was discharged by the board, he was the Chairman of the Company's board of directors, and he left the board altogether in June 2005. As the Delaware Chancery court found, "Black was the creator of this group of companies, has personally dominated their affairs, and put in place boards to his liking." *See Hollinger Int'l v. Black,* 844 A.2d at 1030. He was "a formidable controlling stockholder," who "has held himself out to the world as able to control Ravelston, [HLG], and [STMG]." *Id.* at 1032. "Black believed himself to be the initial arbiter of what should be done with [STMG] and its assets, to the exclusion of the rest of the company's directors." *Id.* at 1033. The court noted that Black "felt free to and did act for [HLG] — as in function both its principal and agent — in a manner that was obviously inconsistent with the duties Black owed [STMG]." *Id.* at 1062. Black breached his fiduciary duties to the Company, as set forth in this Complaint, in his capacity as an officer, director, and controlling shareholder of the Company. Black worked directly on Company business with Radler and other Company executives, who were physically officed at the Company's principal place of business in Chicago, Illinois. Among the Company business Black regularly conducted are the activities constituting Black's breaches of fiduciary duties to the Company as set forth in this Complaint.

40. Defendant John A. Boultbee is a Canadian citizen incarcerated in FCI Lompoc. During the relevant period, he owned (through Mowitza Holdings Inc.) 0.98% of Ravelston. From 1987 until 2004, Boultbee sat on HLG's board of directors and held various positions as an officer of HLG at different times during this period, including Vice President of Finance and Treasury, Executive Vice President, and Chief Financial Officer. Boultbee was the President and a director of Domgroup at all relevant times. Boultbee was a member of STMG's board of

directors from 1988 to 1995. Although he was never an employee of STMG, he served as the Company's Chief Financial Officer from 1995 until 1999, when he became the Company's Executive Vice President. He remained in this capacity until he was removed from his position as an officer on November 17, 2003. Boultbee breached his fiduciary duties to the Company, as set forth in this Complaint, in his capacity as an officer of the Company. He worked directly on company business with Radler and other Company executives who were physically officed at the Company's principal place of business in Chicago, Illinois. Among the Company business that Boultbee regularly conducted are the activities constituting Boultbee's breaches of fiduciary duties to the Company, as set forth in this Complaint.

41. Defendant Daniel W. Colson is a Canadian citizen living in London, England. He owns 2.9% of Ravelston. Colson was a member of STMG's board from 1995 until 2005, and was the CEO and Deputy Chairman of the *Daily Telegraph* from 1995 until he resigned in March 2004. Colson also served as Chairman and as a director of Hollinger Telegraph New Media Ltd. and as Vice Chairman and a director of Digital until his March 2004 resignation. Until December 2003, Colson also sat on HLG's board of directors. Colson breached his fiduciary duties to the Company, as set forth in this Complaint, in his capacity as an officer and director of the Company. He worked directly on Company business with Radler and other Company executives who were physically officed at the Company's principal place of business in Chicago, Illinois. Among the Company business that Colson regularly conducted are the activities constituting Colson's breaches of fiduciary duties to the Company, as set forth in this Complaint.

42. Defendant Barbara Amiel Black is a citizen of Canada and the U.K. living in Palm Beach, Florida, and Toronto, Canada. Defendant Amiel Black held the title Vice President, Editorial, of STMG from September 1995 until 2004, and was a director of STMG from

February 1996 until June 2005. She has also been a director of HLG and is a shareholder of Black-Amiel Management Inc., an offshore Barbadian entity to which STMG has paid unfair and unwarranted management fees. Amiel Black breached her fiduciary duties as a director of STMG by taking these unjustified management fees from the Company, and by taking directly from STMG cash compensation of approximately $1.4 million, in addition to equity-based compensation, for an executive position to which she devoted no meaningful time or effort.

GENERAL ALLEGATIONS

Management Structure

43. In addition to controlling STMG through super-voting stock ownership, HLG effectively exercised daily management control over the Company through overlapping officers and directors. Until November 2003, Defendant Black was the Chairman of the board and Chief Executive Officer of both STMG and HLG, and Radler was the Deputy Chair and the President and Chief Operating Officer of both companies. Defendants Boultbee and Colson, along with Atkinson, were also senior officers and, in some cases, directors at both companies. Black, Radler, Atkinson, Boultbee (collectively, the "STMG Executives"), and Colson were also shareholders of Defendant Ravelston.

44. All of these STMG senior officers and directors that HLG installed therefore had direct and material conflicts of interest and divided and conflicting loyalties and financial incentives in any transaction between or among STMG, HLG, and Ravelston. As the Delaware Chancery Court stated "[p]ut simply, [STMG's] top executives not only worked for Black in his capacity as CEO of [STMG] and understood the practical voting control he exercised over that company, they were also subordinate to and drew benefits from Black in their roles at [HLG] and Ravelston." *Hollinger Int'l v. Black,* 844 A.2d at 1034.

45. The existence of these pervasive conflicts, combined with Black's absolute power to dominate and control the Company's board, obligated them to negotiate all related-party transactions with the Company's independent directors and to refrain from any transaction that was not entirely fair to shareholders of the Company. The board had two independent director committees: the audit committee and the compensation committee. Governor James R. Thompson chaired the audit committee, which until 1998 also included Richard Perle. In 1998 Perle resigned from the audit committee and Richard R. Burt and Marie-Josée Kravis joined it. Governor Thompson and Burt also sat on the compensation committee, as did Perle until on or about March 1, 1998.

46. As the Company's direct and indirect controlling shareholders, Defendants Black and Ravelston owed fiduciary duties of loyalty and care to the Company and its public majority noncontrolling shareholders. As the Company's senior officers and directors, Black, Radler, Boultbee, Atkinson, Colson, and Amiel Black also owed those same fiduciary duties to the Company and its shareholders. All of the Defendants bear the burden under Delaware law of proving that their transactions with STMG are "entirely fair" to all of the Company's shareholders. The entire-fairness determination requires a showing of both fair dealing and fair price, subjecting the Defendants' self-dealing transactions to exacting and rigorous scrutiny.

47. The Defendants' fiduciary duties also included an obligation to be candid with STMG, its independent directors, and its public non-controlling shareholders. *See Hollinger Int'l v. Black,* 844 A.2d at 1062 n.84. This duty of candor included: (i) the duty not to "use superior information or knowledge to mislead others in the performance of their fiduciary obligations"; (ii) the duty "to avoid misleading [the corporation] by misstatements and omissions"; and (iii) the duty "to disclose the material facts known to the director or senior

executive." *Id* (citations omitted). Any "'misleading and deceptive' behavior towards directors is a 'fraud upon the board.'" *Id.* at 1069 n.104 (citation omitted).

The Defendants Created a Corporate Culture of Controlling Shareholder Entitlement

48. Throughout their tenure as STMG executive officers and directors, Radler and Defendants Black, Boultbee, Colson, and Amiel Black freely plundered the Company's coffers to subsidize their own lifestyles and to support the Defendants' independent pursuits. For example, Black caused the Company to pay substantial expenses associated with the staffing and operation of his New York and London homes, complete with personal residence staff and cars, and two private airplanes for his and his associates' business and personal uses. Black believed his "proprietor" status in STMG entitled him to these extravagances.

49. The Defendants' attitude of entitlement permeated their dealings with the Company. In a September 6, 2002 memorandum, in which Defendant Black announced that "[w]e have pretty well won the great battle over the non-competition agreements and a decent interval has passed," Black reminded his fellow Ravelston shareholders that the interests of the controlling shareholders must always come first:

> These companies have always been run in the Argus tradition of proprietary businesses where the controlling shareholders take reasonable steps to ensure their comfortable enjoyment of the position they, (we, in fact), have created for themselves. Care must be taken not to allow this to degenerate into decadence, as it did in the old Argus. But nor should we allow the agitations of shareholders, amplified by certain of our colleagues discountenanced at the performance of their stock options, to force us into a hair shirt, the corporate equivalent of sackcloth and ashes.

50. The sense of entitlement that Defendant Black nurtured and reinforced carried with it a coarse contempt for the public non-controlling majority shareholders to which the Defendants were duty-bound. One of numerous examples is Defendant Black's August 3, 2002 e-mail to Atkinson and Defendant Boultbee:

> We have said for a long time that [STMG] served no purpose as a listed company other than relatively cheap use of other peoples' capital, and privatization noises have been audible for a long time. We now have an unsatisfactory situation where a number of the shareholders think we are deliberately suppressing the stock price, some others think we are running a gravy train for our own benefit with the help of supposedly docile directors and a gerrymandered share structure, and we think they are a bunch of self-righteous hypocrites and ingrates, who give us no credit for what has been a skilful job of building and pruning a company in difficult circumstances just ahead of seismic financial events.

51. That contempt extended further to the Defendants' perception of the Company's independent directors, who had the unenviable task of protecting its public shareholders from the Defendants' repeated and systematic schemes to divert corporate assets and opportunities to themselves. The job of the independent directors was made more difficult by the Defendants' repeated failures to seek prior authorization for self-dealing transactions and to then seek after-the-fact "ratification" based on rationalizations such as inadvertent error or oversight. On numerous occasions, one or more of the Defendants or Radler made misrepresentations and misleading statements to the audit committee and board and failed to provide directors with material and complete information regarding related-party payments and transactions. The ability of the independent directors to question or vote against Black's and Radler's proposals was particularly difficult because the Defendants usually did not leave the room for discussions of related-party transactions, and there was little, if any, dissent while they were present.

52. The Defendants have for many years concealed their wrongdoing by numerous deceptive acts described herein, including: (i) failing to seek authorization from the STMG independent directors for various related-party payments and transactions; (ii) falsely characterizing other related-party payments in statements to STMG's board and public majority non-controlling shareholders; (iii) manipulating the Company's financial data and books and records; and (iv) making a variety of materially false and misleading statements to the STMG

independent directors and public majority non-controlling shareholders and failing to disclose material information they had a duty to disclose in SEC filings, shareholder meetings, written board packages, and oral board presentations.

The Sham Non-Compete Payments in Connection with The Company's Sales of Its U.S. Community Newspapers

53. The Company owned more than 300 community newspapers throughout the United States until 1998, when it began selling them ostensibly to raise capital and focus on its "core" metropolitan daily newspaper assets. The Company divested virtually all of its U.S. community newspaper assets from 1998 through the end of 2000.

54. In each of STMG's U.S. community newspaper sales described below, the Company signed an agreement not to compete with the newspapers it was selling. This was relatively standard practice in the industry for assets of this type. Newspaper purchasers buy not just the trade name of the newspaper, but also its subscriber and advertising bases. They usually demand the seller's agreement not to return to the same area in a short time period and start a rival newspaper.

55. The U.S. community newspaper transactions described below allocated a portion of the sale proceeds to the seller's non-competition agreements. Such an allocation is commonly made for tax reasons.

56. Non-competition agreements usually are broadly worded to bind not only the selling corporation, but also the seller's corporate affiliates and officers. The buyer typically does not pay additional consideration for a separate agreement that the seller's affiliates and officers will not personally compete with the buyer.

57. This was especially true during the relevant period for HLG, where there was no need for any purchaser of the Company's U.S. community newspapers to pay for HLG's

agreement not to compete. HLG did not present a competitive threat to any of these newspapers, and it did not employ staff who could manage newspaper properties in the U.S. other than staff already working for the Company, which was subject to such non-competition agreements. Neither HLG nor its subsidiaries owns, or has in the last ten years seriously considered buying, any community newspapers in the United States. Indeed, not one of the U.S. community newspaper transactions described herein involved any purchaser unaffiliated with the Company explicitly asking for HLG to sign a non-competition agreement or offering to pay additional consideration for HLG's agreement not to compete.

58. There was no legitimate reason for the Company to agree to share the sales proceeds from the divestitures of the U.S. community newspaper properties with HLG. The properties being sold belonged to the Company, and all sales proceeds rightfully belonged to all shareholders of the Company equally. Nevertheless, HLG received at least $16.55 million purportedly in connection with its putative agreements not to compete in these U.S. markets. In addition to being economically baseless, some of these payments are not even supported by valid documentation, including written, duly authorized, and executed non-competition agreements.

59. Nor was there any legitimate reason for the Company to agree to share any of the sales proceeds from the divestitures of the U.S. community newspaper properties with the STMG Executives. Nevertheless, the STMG Executives received $15.6 million purportedly in connection with their putative agreements not to compete. In addition to being economically baseless, many of these payments were not even supported by valid and genuine non-competition agreements.

60. During their presentations to the Company's independent directors explaining the U.S. community newspaper divestitures, Defendant Black and Radler did not disclose that they

were causing the Company to pay these "non-compete fees" to HLG, themselves, and the other STMG Executives. The Company's independent directors therefore never reviewed these payments to determine whether they made economic sense, were in the best interest of the Company, or should be negotiated in any way. And no independent financial advisor or other expert was asked in connection with any of these transactions to render an opinion on the value of HLG's or the STMG Executives' non-competition agreements, since the directors of the Company did not know that most of such payments were being made.

61. One motivation for the Defendants' forceful pursuit of "non-compete" payments was simple greed. For the Defendants, this seemingly esoteric type of "agreement" that they could argue was customary practice (perhaps for companies, but not for officers of selling companies) gave a plausible sounding rationale to take more than $90 million out of the Company. This truly extraordinary windfall was breathtaking in magnitude and an utterly unjustified gift.

62. Another motivation for taking the non-compete payments was the opportunity to claim tax free status under Canadian law. During the relevant period, Canadian tax experts generally considered *bona fide* non-competition payments as having favorable Canadian tax treatment. The Defendants, in fact, believed that such payments were not subject to taxation in Canada. Thus they repeatedly sought — after-the-fact and contrary to the transaction documents and economic realities — to characterize their self-dealing diversions of cash as "non-compete payments."

The U.S. Community Newspaper Divestitures
Involving Unauthorized "Non-compete" Styled Payments

63. On or about May 11, 1998, the Company sold certain publications to Intertec Publishing Corporation ("Intertec") for approximately $75 million. Both the asset purchase

agreement and STMG's executive committee resolution authorizing the transaction provided that $2 million of the purchase price was being paid to the Company as consideration for its assent to a non-competition agreement. Neither document suggests that HLG would also be agreeing not to compete, and no such HLG non-competition agreement exists. Nevertheless, on February 1, 1999, the Company paid the entire $2 million non-competition agreement allocation to HLG, purportedly as compensation for HLG's assent to a non-competition agreement relating to the Intertec transaction. During January 1999, Radler, on HLG's behalf, orchestrated this payment and its fictitious justification from his STMG office in Chicago. The Defendants never obtained the STMG independent directors' approval to make this $2 million payment to HLG, nor did they disclose this payment to the Company's public majority non-controlling shareholders.

64. On or about February 1, 1999, the Company sold certain of its newspaper assets to Community Newspaper Holdings, Inc. ("CNHI") for approximately $472 million. $50 million of the purchase price was allocated to non-compete agreements. CNHI did not request that HLG sign an agreement not to compete, but HLG, through Defendants Black and Boultbee, along with Radler, requested CNHI's consent that HLG be permitted to sign one. The December 1998 term sheet that STMG and CNHI signed and the first several drafts of the asset purchase agreement did not provide that HLG would covenant not to compete. Three business days before the closing, however, HLG, through Radler, caused itself to be added to the asset purchase agreement as a non-competition covenanter, and at the closing Radler signed HLG's non-competition agreement on HLG's behalf. Having created this fictitious justification for an HLG non-competition payment, Radler, on HLG's behalf, then caused STMG to instruct CNHI to wire $12 million of the $50 million non-competition allocation to HLG. Radler committed these acts from his STMG office in Chicago. The Defendants never obtained the STMG

independent directors' approval to make this $12 million payment to HLG, nor did they disclose this payment to the Company's public majority non-controlling shareholders.

65. On or about November 30, 1998, Radler, with Defendants Black, Colson, and Boultbee in attendance, presented the terms of the CNHI transaction to the Company's board of directors for approval. He presented the board with, among other things, an offer from CNHI for the acquisition of 45 of the Company's Community Newspaper Group operations and the execution by STMG of a three-year non-compete agreement in exchange for approximately $472 million. He did not disclose, however, that $12 million of the Company's transaction proceeds would be transferred to HLG despite the lack of any meaningful connection between HLG and the assets that were the subject of this transaction. On or about February 26, 1999, Black, in the presence of Colson and Boultbee, disclosed to the STMG board that "[t]he sale of American Publishing's assets to Community Newspaper Holdings Inc. concluded successfully." But neither Black, nor Boultbee, nor Colson, nor any other HLG officer or director disclosed to the STMG board or public majority non-controlling shareholders the $12 million transfer of STMG funds to HLG in connection with that "successful" closing.

66. Defendants Black and Boultbee also failed to inform the STMG board that from February 1, 1999, through February 22, 1999, HLG "round-tripped" the $14 million in unauthorized HLG non-competition payments from the Intertec and CNHI transactions back to the Company, purportedly to help "pay" off an overdue HLG loan from STMG. Specifically, HLG combined the $14 million with a $5.5 million STMG dividend payment that HLG had received in mid-January 1999 to make a $20,127,508.41 million paydown on HLG's September 1997 $42.5 million (Cdn.$58.9 million) loan from STMG, which was supposed to have been repaid on December 1, 1997. Also in February 1999, HLG caused the Company to redeem

196,823 shares of STMG Series D Preferred Stock for $19,362,000 (Cdn.$28.8 million). The combination of that stock redemption and the $20,127,508.41 cash payment "extinguished" the $42.5 million (Cdn.$58 million) debt. Although the Company's 2000 Annual Report on Form 10-K reported that "in February 1999, 196,823 shares of Series D Preferred Stock were redeemed for cash of US$19,362,000," the Defendants never disclosed to the public majority non-controlling shareholders or the board the simultaneous debt repayment using STMG's round-tripped funds — in other words, *that they had caused STMG to repay itself a loan due from its parent company.*

67. By transaction agreement dated as of March 31, 1999, STMG sold certain newspapers and specialty publications to the Black and Radler-controlled Horizon Publications, Inc. ("Horizon") for approximately $43.7 million, of which $5 million was allocated to a non-compete agreement. Black and Radler caused the Company to include HLG along with STMG as a non-compete covenantor in the asset purchase agreement. At the transaction closing in Chicago, Illinois, Radler signed HLG's non-competition agreement. Also at the closing, Horizon signed a demand promissory note for $1.2 million in favor of HLG, purportedly as compensation for HLG's assent to the non-competition agreement, thereby usurping STMG's right to those proceeds. On or about August 9, 1999, Black and Radler completed the conversion by having Horizon pay the entire $1.2 million to HLG.

68. On or about November 30, 1998, Radler, with Defendants Black, Colson, and Boultbee in attendance, presented the terms of the Horizon transaction to the Company's board of directors for approval. Radler did not disclose, however, that $1.2 million of the transaction proceeds would be transferred to HLG. The Defendants never obtained the STMG independent

directors' approval of this $1.2 million payment to HLG, nor did they disclose it to the Company's public majority non-controlling shareholders.

69. On or about September 30, 2000, STMG sold certain newspapers to Forum Communications Co. ("Forum") for $14 million, $400,000 of which was allocated to non-competition agreements. Forum did not request that HLG sign a non-competition agreement. Instead, Black and Radler caused STMG to include HLG along with STMG as a non-compete covenantor in the asset purchase agreement. The Company's corporate counsel in Chicago, Illinois, Mark Kipnis, signed a non-competition agreement in the Forum transaction on behalf of both the Company and HLG. Kipnis, however, had no authority to bind HLG, and on information and belief, Forum did not ask for proof of Kipnis' authority to sign on HLG's behalf. Radler caused the Company to pay $100,000 of the Forum transaction proceeds to HLG, purportedly as compensation for HLG's assent to the non-competition agreement. Radler committed these acts from his STMG office in Chicago, Illinois. The Defendants never obtained the STMG independent directors' approval of this $100,000 payment to HLG, nor did they disclose it to the Company's public majority non-controlling shareholders.

70. On or about October 2, 2000, STMG sold certain newspapers to PMG Acquisition Corp. ("PMG") for approximately $59 million, $2 million of which was allocated to non-competition agreements. Although PMG assumed that the STMG non-compete agreement would bind all STMG affiliates, Black and Radler caused the Company to include HLG explicitly as a non-compete covenantor in the asset purchase agreement. Kipnis then signed the non-competition agreement on behalf of both the Company and HLG. As with Forum, Kipnis had no authority to sign on HLG's behalf. Radler caused the Company to pay $500,000 of the transaction proceeds to HLG, purportedly as compensation for its non-competition agreement.

Radler committed these acts from his STMG office in Chicago, Illinois. The Defendants never obtained the STMG independent directors' approval of this payment to HLG, nor did they disclose it to the Company's public majority non-controlling shareholders.

71. On or about November 1, 2000, the Company sold additional newspapers to CNHI for approximately $90 million. Black and Radler caused the Company to include HLG along with STMG as a non-compete covenantor. The asset purchase agreement, dated September 28, 2000, allocated $3 million of the purchase price to STMG's and HLG's non-competition agreements — $2.25 million to STMG and $750,000 to HLG. Kipnis again signed a non-competition agreement on HLG's behalf, even though he had no authority to bind HLG. CNHI did not ask for proof of Kipnis' authority to sign on HLG's behalf, and did not seek or attach any commercial significance to HLG's non-competition agreement. Pursuant to wiring instructions prepared before the November 1, 2000 closing, Black and Radler caused CNHI to wire $750,000 of the transaction proceeds to HLG. The Defendants never obtained the STMG independent directors' approval of this $750,000 payment to HLG, nor did they disclose it to the Company's public majority non-controlling shareholders. Radler committed these acts from his offices in Chicago, Illinois.

72. Radler also caused the CNHI November 2000 closing documents to be altered at closing to create a sham basis for making non-competition payments to Defendants Black and Boultbee, and to Radler and Atkinson. The September 28, 2000 CNHI asset purchase agreement did not require any non-competition agreement from these individuals, and Exhibit D to that asset purchase agreement was a form non-competition agreement that would require only STMG's and HLG's signatures. At the eleventh-hour instruction of Radler, however, Kipnis created a new non-competition agreement at closing that added the STMG Executives as

non-compete covenantors. At Radler's further instruction, Kipnis arranged for an additional $9.5 million of the Company's transaction proceeds to be paid to those individuals, $4.3 million each to Black and Radler, and $450,000 each to Atkinson and Boultbee, purportedly as compensation for their assent to the reconfigured non-competition agreement. Those payments were not disclosed to, or approved by, the Company's independent directors. Radler awarded Kipnis a "bonus" of $100,000 concurrently with Kipnis' processing of the $9.5 million in unauthorized and undisclosed payments to the STMG Executives.

73. In or about February 2001, Defendants Black and Boultbee, along with Radler, caused the Company to pay themselves and Atkinson an additional $5.5 million in "non-compete" styled payments. By checks issued in February 2001, but back-dated to December 31, 2000, the Company paid Black and Radler $2,612,500 each, and Atkinson and Boultbee $137,500 each. The STMG Executives caused the Company's employees to fabricate a documentary record to make these checks appear to be compensation for non-competition agreements. That is, in February 2001, Black and Boultbee signed non-competition agreements back-dated to December 31, 2000, supposedly in support of the payments. The agreements were shams, however, and had nothing to do with any U.S. community newspaper sales transaction. Rather, the STMG Executives agreed in these sham non-competition agreements not to compete with the Company's wholly-owned subsidiary, American Publishing Company — a company that, at the time these sham agreements were signed, did not employ Black or Boultbee and had already divested substantially all of its assets. These sham payments were never approved, reviewed, or negotiated by the Company's independent directors.

74. On or about April 9, 2001, Black and Boultbee caused the Company to pay themselves and Radler and Atkinson an additional $600,000 in "non-compete" styled payments:

$285,000 each to Black and Radler, and $15,000 each to Atkinson and Boultbee. The STMG Executives falsely characterized these April 2001 payments as non-compete fees to be charged against post-closing financial reserves from the October 2000 PMG transaction and the September 2000 Forum transaction. Neither Black nor Boultbee signed non-competition agreements on either the PMG or Forum transactions, and neither PMG nor Forum requested that they sign such an agreement.

75. In or about January 2001, Defendants Black and Boultbee responded to and signed questionnaires regarding their year-2000 compensation for use in preparing disclosures for the Company's year-2000 Annual Report on Form 10-K and the Company's Proxy Statement for its May 2001 Annual Meeting. In those questionnaires, they failed to disclose the millions they took out of the proceeds from the second CNHI transaction.

76. Beginning in or about March 2002, Radler and Defendants Black and Boultbee signed STMG filings with the Securities and Exchange Commission that falsely characterized the payments they took, as described above, in November 2000, February 2001, and April 2001. The false representation was as follows:

> During 2000, the Company sold most of its remaining U.S. community newspaper properties, for total proceeds of approximately $215 million. 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 for 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.

This representation — repeated in numerous STMG filings that Black and Boultbee signed — was false and misleading because, among other things: (i) neither Black nor Boultbee signed any agreements individually to satisfy a closing condition on any U.S. community newspaper sale; (ii) the $15.6 million in payments were not made as genuine consideration for the STMG Executives agreeing not to compete at the buyers' request with the businesses sold; (iii) only $9.5 million of the payments, not $15 million, were made in 2000; (iv) the independent directors never "approved the terms of these payments"; and (v) the Defendants failed to disclose the additional non-competition styled payments to HLG out of the proceeds of the Company's U.S. community newspaper sales.

77. During the Company's May 23, 2002 annual shareholders meeting in New York, Defendant Black misleadingly stated that the $15.6 million in payments were legitimate non-compete payments arising out of purchaser demands:

> You're right that there were some non-compete 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, selling the paper and coming back with a shopper, taking advantage of the commercial relationships. But as — I think you would agree that the amounts involved were comparatively modest. I am focusing on the matter that would have chiefly concerned you, which was the CanWest deal.

The November 15, 2003 Agreement to Repay the Unauthorized U.S. Community Newspaper Non-compete Styled Payments

78. In or about October 2003, the STMG Special Committee obtained evidence of the above-described $16.55 million in unauthorized payments to HLG and the above-described $15.6 million in the unauthorized and mischaracterized payments to the STMG Executives. By letter dated November 6, 2003, the Special Committee provided each of the STMG Executives an opportunity to explain the circumstances of the above payments and to provide any evidence that these payments were authorized. Previous opportunities had also been provided through interviews and document requests. The STMG Executives responded in writing the following

week. After considering the STMG Executives' responses, and all the evidence before it, the STMG Special Committee determined that the payments were unauthorized and must be disgorged with interest.

79. On or about November 15, 2003, Defendant Black signed the following acknowledgment as part of a written agreement with the Company (the "November Agreement"):

> . . . the term "Payments" shall mean the aggregate US$16,550,000 paid to Hollinger Inc. ("HLG"), the aggregate US$7,197,500 paid to each of Messrs. Black and Radler, and the aggregate US$602,500 paid to each of Messrs. Atkinson and Boultbee from 1999 to 2001. The payments were not properly authorized on behalf of the Company.

80. As part of the November Agreement, Black and HLG agreed to repay the unauthorized payments. They repudiated that agreement, but were ordered to honor it by the Delaware Chancery Court, and on July 16, 2004, Black and HLG did so. Radler and Atkinson agreed to make restitution under a payment schedule, and they have honored their restitution commitment. Defendant Boultbee has not agreed to make restitution of the $602,500 he personally received in payments misrepresented to be U.S. community non-compete payments.

**Criminal Convictions for Unauthorized U.S.
Community Newspaper Non-compete Payments**

81. In August 2005, a federal grand jury in this district returned indictments against Radler, Kipnis, and Ravelston. Superseding indictments added charges against Black, Boultbee, and Atkinson for, among other things, mail and wire fraud charges based on the non-competition payments complained of herein.

82. On September 20, 2005, Radler pleaded guilty to mail fraud and admitted that he and The Ravelston Corporation Limited, along with other co-defendants, "devised, intended to devise, and participated in a scheme to defraud [STMG] and [STMG's] public shareholders . . .

and to obtain money and property from these victims by means of materially false and fraudulent pretenses, representations, promises and omissions." Radler also admitted that "as a result of this scheme, defendants and their co-schemers fraudulently diverted over $32 million from [STMG] . . . ."

83. On or about May 15, 2006, HLG signed a cooperation agreement with the United States Attorney's Office for this district. HLG acknowledged in that agreement that evidence exists establishing that HLG "is criminally liable because one or more of [HLG's] former officers, directors or employees violated federal criminal law with the intent, in part, to benefit [HLG] in connection with the . . . fraudulent diversion of approximately $16.55 million from [STMG] to [HLG]." HLG also acknowledged "that one or more of its officers, directors or employees acted illegally in connection with [HLG's] receipt of approximately $16.55 million in non-compete payments and that it is responsible for such repayment of such money."

84. On March 5, 2007, Defendant The Ravelston Corporation Limited pleaded guilty to mail fraud and admitted that "Ravelston, through its agents, breached its fiduciary duty to [STMG] to refrain from acting to benefit itself or anyone else at [STMG's] expense, and participated in a scheme to defraud [STMG] . . . by causing money to be diverted from [STMG] to [HLG] . . . ."

85. In July 2007, a jury in this district convicted Atkinson, Kipnis, and Defendants Black and Boultbee of multiple mail fraud counts based on "non-competition" payments made in connection with the Company's U.S. community newspaper divestitures. Black was also convicted on one count of obstruction of justice. In June 2008, the Seventh Circuit affirmed their convictions. *See U.S. v. Black*, 530 F.3d 596 (7th Cir. 2008).

The Sale to CanWest Global Communications Corp. and Related Unfair Non-Compete Payments

86. While the Defendants were using the non-compete-agreement ruse to criminally defraud STMG of proceeds of U.S. newspaper asset sales, they were also using non-compete agreements to unfairly extract proceeds of Canadian newspaper asset sales. The Company also owned more than 200 newspapers in Canada until 2000, when it began selling them. By the end of 2001, the Company had divested itself of substantially all of its Canadian newspaper assets. Defendants Ravelston, Black, and Boultbee caused the Company to make so-called non-compete payments in connection with these divestitures that further breached Defendants' duties of loyalty to the Company and its public shareholders.

87. On or about November 16, 2000, the Company sold the majority of its Canadian newspaper assets to CanWest Global Communications Corp. ("CanWest") for US$2.1 billion (Cdn.$3.2 billion). The STMG-CanWest transaction agreement allocated US$51.8 million (Cdn.$80 million) of the purchase price to the non-competition agreements. The Defendants and Radler, and not any independent STMG representative, negotiated this allocation with CanWest. The transaction agreement did not provide that any of this amount was to be paid to any person or entity other than the Company, and no representative of CanWest ever requested or demanded that any of this amount be paid to anyone other than the Company.

88. Although the Company was the seller of the assets and a signatory of a non-competition agreement, the Defendants did not allow the Company to retain any of the non-competition allocation from the CanWest proceeds.

89. Instead, the Defendants caused the Company to pay the entire US$51.8 million (Cdn.$80 million) plus interest (totaling approximately US$52.9 million (Cdn.$81.7 million)) to Defendant Ravelston and the STMG Executives. Ravelston received US$26.44 million

(Cdn.$40.86 million), Black and Radler each received US$11.9 million (Cdn.$18.387 million), and Atkinson and Boultbee each received US$1.32 million (Cdn.$2.043 million). These figures include an interest component as described below.

90. In obtaining approval for these payments from the Company's independent directors, Black and Radler made several significant misrepresentations and omitted certain material information. In part because of the Defendants' misrepresentations and omissions and bad faith manipulation of the process, the audit committee and independent directors did not have the necessary information, analysis, or advice by which to fully and fairly review or negotiate the payments and corporate opportunities that the Defendants took on the CanWest transaction. Thus, neither the process for approving these payments, nor the payments themselves, were fair to the Company's public non-controlling shareholders.

91. Defendant Black first reviewed the proposed CanWest transaction with the STMG board at a special meeting held on July 26, 2000. Black explained the various terms of the proposed transaction, including the purchase price and the various deductions to the purchase price, including the deduction of $39 million (representing 10 times the annual fee of US$3.9 million) payable under Defendant Ravelston's Management Services Agreement with CanWest. Black did not inform the board, among other things, that: (i) originally CanWest proposed that the post-closing management services agreement would be with STMG, but Black unilaterally decided that the CanWest post-closing management services agreement, and its attendant financial benefits, would be executed in the name of, and accrue solely to the benefit of, Ravelston, not STMG; (ii) CanWest rejected as unreasonable and excessive the post-closing annual management services fee to Ravelston that Black originally proposed, and only agreed to pay approximately 32% of that proposal; and (iii) the proposed management fee that CanWest

rejected as unreasonable and excessive was approximately the amount that Ravelston had been charging the Company to manage those assets during the year in which the CanWest transaction closed. Also during the July 26, 2000 board meeting, Black highlighted that certain monetary allocations would be made to Ravelston and those parties required to sign non-competition agreements. The board minutes noted that related-party issues would be resolved by the audit committee prior to closing.

92. During a meeting of the STMG audit committee on or about September 11, 2000, Radler and Defendant Ravelston made the following misrepresentations, among others, to the committee members: (i) "CanWest originally insisted that Messrs. Black and Radler each receive Cdn.$26 million [US$16.8 million] in order to justify their exclusion from Canadian newspapers," but "Black and Radler negotiated Cdn.$12 million [US$7.8 million] be reallocated to cover bonuses for senior management, which reallocation would save the Company additional bonus costs"; (ii) Ravelston should receive Cdn.$30 million (US$19.4 million) of the non-competition allocation both as a "termination fee" under its management services agreement with the Company and because Ravelston was reducing its year-2000 management services fee from the Company, which resulted in a higher EBITDA figure for the assets sold, thus "increasing the purchase price the Company would receive for the CanWest Transaction by 10 times the amount forgiven"; and (iii) Ravelston was waiving its six-month termination notice to which it was entitled under its management services agreement with the Company. On information and belief, Radler made these misrepresentations from his STMG office in Chicago. In addition, on or about September 1, 2000, he caused Kipnis to send the audit committee, from STMG's corporate offices in Chicago, a memo that contained similar representations.

93. In fact, (i) CanWest did not insist that any portion of the non-competition allocation go to any individual; (ii) only three days before closing, no portion of the purchase price had been allocated to the non-competition agreements, but the Defendants then negotiated the allocation exclusively for their own benefit; (iii) the non-competition allocation was originally pegged at Cdn.$57 million (US$ 36.9 million), but the Defendants negotiated the allocation upward to Cdn.$80 million (US$ 51.8 million) exclusively for their own benefit; (iv) Ravelston did not reduce its year-2000 management services fee to STMG; (v) no termination notice was required because Ravelston's management services arrangements with STMG remained in place after the CanWest transaction closed; and (vi) the Defendants had simultaneously negotiated for themselves a lucrative income flow from CanWest in the form of a Cdn.$6.0 million (US$3.9 million) in perpetuity annual management fee (reducing STMG's transaction proceeds by ten times that amount) and extraordinary termination fee compensation, whereby if CanWest were to terminate the management services agreement, CanWest would have to pay Ravelston US$29.1 million (Cdn.$45 million), whereas if Ravelston were to terminate, CanWest would *still* have to pay Ravelston US$14.6 million (Cdn.$22.5 million).

94. Also on or about September 11, 2000, Defendant Boultbee and Radler and Atkinson listened while audit committee chairman James Thompson conveyed to the full STMG board the information that Radler had provided to him earlier that day regarding the "non-compete" and other payments to be made to the STMG Executives and Defendant Ravelston on the CanWest transaction. None of the Defendants or Radler or Atkinson corrected the false and misleading information presented to the board.

95. In addition to the false characterizations, the STMG Executives failed to provide material information to the board, including the following: (i) that in addition to the $51.8

million (Cdn.$80 million) in payments, each of Defendants Ravelston, Black, and Boultbee, and Radler and Atkinson, would also be receiving an additional $1.1 million (Cdn.$1.7 million) as a percentage of the August 2000-November 2000 interest allocation the CanWest transaction Agreement provided the Company would receive; (ii) although STMG's subsidiary Hollinger Canadian Newspapers Limited Partnership ("HCNLP"), which was owned 87% by the Company and 13% by public limited partners, was selling one-third of the assets in the CanWest transaction, HCNLP's public limited partners were not being assessed for any portion of the non-compete payments to the Defendants; (iii) Ravelston, which had entered into a management services agreement with CanWest purportedly to assist CanWest in managing the sold assets after the transaction, had negotiated for the Cdn.$6.0 million (US$3.9 million) in perpetuity annual CanWest management services fee to be paid to Ravelston and not STMG; and (iv) Ravelston had also negotiated for itself extraordinary termination compensation from CanWest, described above.

96. In or about May 2001, the Defendants sought the audit committee's and board's "ratification" of the November 2000 CanWest related-party payments based on what they asserted to be a more accurate factual record than they had provided to the audit committee and board in September 2000 when the payments were approved. The Defendants, however, still failed to correct all the false information and material omissions in the September 2000 audit committee and board presentations. Moreover, the Defendants characterized their fall 2000 misrepresentations as "inadvertent" when, in fact, those misrepresentations were intentional and part of the Defendants' orchestrated plan to window-dress the payments as economically valid, essential transaction terms.

97. The Defendants, through a May 1, 2001 memorandum to the audit committee and board that was sent by Kipnis from STMG's corporate offices in Chicago, conceded, among other things, that (i) CanWest did not specify the amount of the $51.8 million (Cdn.$80 million) that should be paid to any individual or entity; and (ii) Defendant Ravelston was not entitled to any "break fee" or "termination fee" because it did not reduce its year-2000 STMG compensation, nor was its management services contract with STMG terminated. The Defendants also disclosed to the audit committee for the first time the termination provisions of the Ravelston-CanWest management services agreement, but mischaracterized those provisions as requiring Ravelston to pay $14.6 million (Cdn.$22.5 million) to CanWest in the event that Ravelston terminated the agreement when, in fact, *CanWest* was obligated to pay $14.6 million (Cdn.$22.5 million) *to Ravelston* even if Ravelston were to terminate the agreement.

98. In addition to the material omissions described above, Defendants Ravelston, Black, and Boultbee also failed to disclose to the audit committee and board in May 2001, among other things, that (i) they had misappropriated $15.6 million of the Company's funds from November 2000 to April 2001 as described above, and (ii) from February 1999 to November 2000, they had arranged for the Company to pay HLG at least $16.55 million in unauthorized and bogus "non-compete" styled payments as described above..

99. The audit committee recommended ratification of the CanWest "non-compete" payments on May 14, 2001, following a 20-minute telephonic meeting. The board accepted the audit committee's recommendation after a similarly brief May 17, 2001 meeting. In large part because of the Defendants' misrepresentations and omissions and bad faith manipulation of the process, the audit committee and independent directors did not have the necessary information, analysis, or advice by which to fully and fairly review or negotiate the proposed "ratification" of

payments and corporate opportunities that the Defendants took for themselves on the CanWest transaction.

100. In or about May 2001, Radler and the Defendants caused the Company to make the following belated disclosure of the CanWest non-compete payments in its quarterly report to the SEC on Form 10-Q:

> 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.

That filing also disclosed Defendant Ravelston's Cdn.$6.0 million (US$3.9 million) annual fee from CanWest and the Cdn.$22.5/$45.0 million (US$14.6/$29.1 million) termination fee provisions.

101. Among the misstatements in and omissions from this May 2001 SEC filing are the following: (i) it leaves the false impression that the $51.8 million (Cdn.$80 million) was paid *in addition to* the purchase price, when in fact it effectively *reduced* the purchase price; and (ii) it leaves the false impression that negotiations with CanWest determined the amounts paid to the individuals and Ravelston, when in fact the allocation of the payments was determined solely by the Defendants. Additionally, CanWest did not demand non-competition agreements from Atkinson or Defendant Boultbee.

102. During the Company's May 23, 2002 annual shareholders meeting in New York, in response to a question from a shareholder regarding the non-competes, Defendant Black stated:

> . . . 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.* (Emphasis added.)
>
> . . . [CanWest] attached significant commercial value to a non-compete agreement with us. Not with [STMG] . . . And, I accept that there's a conundrum as to the division between [STMG'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[d] this company to sail relatively painlessly through a difficult time . . .
>
> And in all 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.
>
> . . .
>
> . . . 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.

103. These representations were false in a number of ways. Most glaring is Defendant Black's statement that the payments were negotiated by the audit committee, rather than by the Defendants. Additionally, Black represents that the payments were made directly by CanWest, when, in fact, the Company made the payments out of the transaction proceeds, with CanWest having no input as to the specific amounts paid to the STMG Executives and Defendant Ravelston. Finally, Black falsely represented that payments of this type conformed to "industry practice." It is not typical for a buyer of newspapers from a public company to make non-compete payments directly to the selling company's executive officers.

104. Defendant Black also misleadingly suggested at the May 2002 shareholders meeting that the non-competition payments did not reduce STMG's sales proceeds:

> The 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 principal case that you're referring to, the CanWest deal.

105. In fact, Defendants Black, Boultbee, and Ravelston caused the Cdn.$80 million (US$51.8 million) to be removed from the agreed-upon transaction proceeds into the non-competition agreement allocation, and then ultimately into the bank accounts of Ravelston and its shareholders, the STMG Executives and Defendant Colson.

106. The CanWest non-competition payments and the terms of the related CanWest-Ravelston management services agreement were unfair to the Company's public majority shareholders, and Defendants Black, Boultbee, and Ravelston breached their duties of loyalty and good faith in taking those payments and opportunities from the Company.

107. Unsatisfied with his shareholder portion of Ravelston's CanWest non-competition payment, Defendant Colson requested of Defendant Black in or about late 2000 that he too be paid. To appease Colson, Black arranged for a $1,073,719 payment to Colson in or about September 2001 — not from Ravelston, Colson's employer — but from STMG.

108. As a Ravelston shareholder who was already getting compensation through, among other things, the Ravelston management fees, Defendant Colson's "bonus" required approval by the Company's independent directors before it could be made. Nevertheless, neither Colson nor Defendant Black ever obtained independent director approval for this more than $1 million "bonus" to Colson. The payment was unfair to the Company's public majority shareholders, constituted corporate waste, and Black and Colson breached their duties of loyalty and good faith in causing the Company to make it.

The Sales to Osprey Media Group and the Unfair Non-Competition Payments

109. Defendants Black and Boultbee also caused the Company to pay themselves and Radler and Atkinson a portion of the proceeds of two separate 2001 sales of additional Canadian newspaper properties by STMG and entities it controlled to Osprey Media Group, Inc. ("Osprey").

110. On or about July 31, 2001, STMG and HCNLP sold certain Canadian newspapers to Osprey for approximately $144 million (Cdn.$220,495,667). Osprey's June 4, 2001 term sheet provided for no greater than $4.47 million (Cdn.$6.84 million) of the purchase price to apply as consideration for non-competition agreements "to be determined and allocated by the recipients." Osprey's term sheet provided for non-competition agreements from the selling companies, "and certain affiliates or associates specified by the Purchaser (and acceptable to the Vendor)." In a June 18, 2001 e-mail, Atkinson instructed STMG's outside counsel to "add the names of Conrad [Black], David [Radler], Jack [Boultbee] and me re the non-competes."

111. The Osprey I transaction agreement allocated $4.47 million (Cdn.$6.84 million) of the purchase price to the non-competition agreements, but did not provide that any of this amount was to be paid to the STMG Executives, and no representative of Osprey ever expressed a desire for any of this amount to be paid to anyone other than the Company.

112. Nevertheless, the Company, although it was a seller of the assets and a signatory of a non-competition agreement, was not allowed to retain any of the non-competition payment allocation.

113. Instead, the Defendants caused the Company to pay the entire $4.47 million (Cdn.$6.84 million) to the STMG Executives. Black and Radler each received $2,021,000 (Cdn.$3,094,286). Atkinson and Boultbee each received $213,000 (Cdn.$325,714).

114. Defendants Black and Boultbee did not seek or obtain approval from the Company's audit committee or independent directors before causing the Company to transfer these funds to their personal bank accounts.

115. Moreover, although the assets sold to Osprey were mostly owned by HCNLP, the Defendants made a calculated decision not to present the non-competition payment issue to the HCNLP board because, as Atkinson stated, "I doubt our partnership independents will be very comfortable with this concept." In or about June 2001, Defendant Black asked Atkinson to confirm Black's "hope . . . the [HCN]LP 'independents' . . . don't have to comment." Atkinson responded that the independents would not have to comment because HCNLP would get "100% of what it is entitled to." In other words, the Defendants consciously determined not to charge HCNLP's public limited partners for any of the non-competition payments because they wanted to avoid objective scrutiny of, and safeguard their ability to keep for themselves, the entire $4.47 million (Cdn.$6.84 million) non-competition allocation.

116. In or about September 2001, Defendants Black and Boultbee, along with Radler, caused the Osprey I non-competition payments to be presented to the STMG audit committee for after-the-fact "ratification." Upon information and belief, this presentation to the audit committee was made by Radler from his STMG office in Chicago, Illinois. The rationale provided to the audit committee was that Osprey insisted on the same non-competition agreements that CanWest had obtained and wanted to avoid competition from Black's and Radler's "private interests in other newspaper operations." The latter was a reference to Horizon.

117. Defendants Black and Boultbee failed to disclose to the audit committee and board, among other things, (i) that HCNLP public limited partners were not paying, and were not

even being asked to pay, any portion of the non-competition allocation; (ii) that the STMG Executives' names had been inserted in the non-competition provisions at their insistence; and (iii) the payments HLG and the STMG Executives had received in the U.S. community newspaper styled "non-compete" payments as described above.

118. The audit committee "ratified" these non-compete payments after a twenty-minute meeting during which it also considered and approved two other transactions. In large part because of the Defendants' misrepresentations and omissions and bad faith manipulation of the process, the audit committee did not have the necessary information, analysis, or advice by which to fully and fairly review or negotiate the Osprey I non-compete payments. The ostensible after-the-fact ratification was not effective and should be set aside because the audit committee was not given full and complete disclosure of the underlying facts to enable them to make a reasonable evaluation of the fairness of these payments to STMG and its shareholders.

119. On or about November 30, 2001, HCNLP sold two additional newspapers to Osprey for approximately $22.5 million (Cdn.$35 million). Non-competition agreements on this "Osprey II" transaction were executed by the Company, HLG, Ravelston, the STMG Executives, and HCNLP.

120. The transaction agreement between STMG, HCNLP, and Osprey allocated $700,000 (Cdn.$1.1 million) of the purchase price to the non-competition agreements. The agreement did not state that any of this amount was to be paid to anyone other than the Company or HCNLP, and no representative of Osprey ever expressed a desire for any of this amount to be paid to anyone other than the Company or HCNLP.

121. As usual, the Defendants did not allow the Company to retain any of the non-competition allocation.

122. Instead, Defendants Black and Boultbee caused the Company to pay the entire $700,000 (Cdn.$1.1 million) to the STMG Executives. Black and Radler each received $317,000 (Cdn.$497,619). Atkinson and Boultbee each received $33,000 (Cdn.$52,381). This represented an unjustifiable and unfair reduction of the proceeds received by the Company for the sale of its own assets.

123. As with the Osprey I payments, the Defendants did not seek audit committee or independent director approval before causing STMG to make the payments. Similarly, the Defendants avoided presenting the non-compete payment allocations to the HCNLP audit committee by directing STMG to bear the entire burden of the payments from its 87% share of the partnership distribution relating to the Osprey I transaction.

124. On or about February 25, 2002, the Defendants and Radler presented the Osprey II payments for another after-the-fact "ratification" by the audit committee. As with the earlier Osprey I ratification, the Defendants and Radler obtained the audit committee's ratification while withholding, among other information, the facts described in paragraph 117 above. The audit committee summarily approved the payments based on a similar rationale as provided in the Osprey I context.

125. In large part because of the Defendants' misrepresentations and omissions and bad faith manipulations of the process, the audit committee did not have the necessary information, analysis, or advice by which to fairly and fully review, analyze, or negotiate the Osprey II non-compete payments.

126. The Osprey I and Osprey II non-competition payments were unfair to STMG's public majority shareholders, and Defendants Black and Boultbee breached their fiduciary duties of loyalty in taking those payments from the Company.

Payments for HLG's and Ravelston's Management Services

127. Since the mid-1990's, the Company has been paying HLG or Defendant Ravelston to make Defendants Black, Boultbee, and Colson, and other personnel, available to perform certain management and administrative functions for the Company. In other words, Black, Boultbee, and Colson have exercised their controlling position over the Company to cause it to "purchase" their management services from Ravelston — a separate, private company that they control, and in which STMG's public majority non-controlling shareholders have no economic interest. This "outsourcing" of senior management and administrative functions — as opposed to hiring and compensating such professionals directly — is virtually unprecedented in U.S. public companies. Since 1996, the Company has paid a total of more than $226 million in such management fees. HLG's and Ravelston's fees were far in excess of the fair market value of the services the Company was receiving, and grossly in excess of the cost to HLG or Ravelston of providing such services. Indeed, it was the self-interested actions of Defendants Black, Boultbee, and Colson that prevented the Company from retaining its own management staff and senior officers directly as employees, and from requiring each such officer and employee to provide services exclusively to the Company and to agree not to compete with the Company and with purchasers of the Company's assets.

128. The management fees were so excessive that Defendant Ravelston each year had millions left over from the fees — after paying generous salaries and bonuses to Defendants Black and Boultbee and other Company executives — to support other companies that Black controlled. From 1998 to 2000, for example, Ravelston paid HLG's wholly-owned subsidiary

Domgroup, or its wholly-owned subsidiaries, at least Cdn.$10.7 million annually from the management fees Ravelston extracted from STMG.

129. The management fees the Defendants extracted from STMG were unfair and simply another vehicle for diverting funds from the Company to the Defendants. By extracting these excessive fees on an annual basis, the Defendants repeatedly breached their fiduciary duties to the Company and its public non-controlling shareholders.

History of Defendants' Management Services Agreements

130. In or about the early 1990's, before STMG existed, HLG had a management services agreement with Ravelston. Under this arrangement, Ravelston's fee was determined annually by HLG's compensation committee, which examined Ravelston's costs in providing the services, *i.e.*, the salaries of the management personnel, and paid only those costs.

131. Although Defendant Black and his co-conspirators only obtained from HLG a "pass-through" of their management services "costs" during the early years in which HLG paid a management fee to Ravelston, the Defendants have used Ravelston in all subsequent years to extract from the Company payments far in excess of their "costs" of providing management services to the Company. With full knowledge from Ravelston's prior experience in providing STMG management services, the Defendants habitually collected from the Company windfall fees they knew were not negotiated at arm's length or in a manner that was fair to the Company's shareholders. Indeed, the fees were so high that they attracted the scrutiny of U.K. taxing authorities. Defendants Boultbee and Colson knew that the U.K. taxing authorities over the years had disallowed significant portions of the deduction attributable to the management fees that Ravelston charged to STMG subsidiary the Telegraph Group, and that this required STMG to re-allocate to its U.S. operations a significant portion of the fee that otherwise would be attributable to that subsidiary. Boultbee also knew that STMG had to reserve large amounts

because of the likelihood that various taxing authorities would disallow STMG's annual deductions for its excessive management fees.

132. From in or about 1994 through in or about 1997, HLG provided management services to the Company. In or about 1998, the Defendants caused Ravelston to take over the management services agreement. This allowed Ravelston to: (i) keep a greater portion of the fee away from HLG's Canadian public shareholders; and yet (ii) support HLG's interest and dividend payment obligations with funds obtained through the management fee paid by the Company. HLG only agreed to transfer STMG's management services fees — which the Defendants viewed as a lucrative income source — to Ravelston on the condition that Ravelston funnel a portion of the fees back to HLG. But since HLG was becoming a mutual fund company unable to "earn" management fees directly, the Defendants and HLG agreed that Ravelston would funnel the fee income back to HLG by paying management fees to HLG's subsidiaries instead. The HLG subsidiaries could then dividend the management fee income they "earned" from Ravelston up to HLG.

133. In or about 1998, the Company entered into various management contracts entitled "Services Agreements" with Defendant The Ravelston Corporation Limited, including one through the Company's Southam Inc. subsidiary to manage the Company's Canadian operations and one to manage the Company's U.S. operations. These agreements were drafted by the Defendants and their own lawyers, not by any independent STMG law firm. The agreements were bare-boned, requiring generally that Ravelston provide "advisory, consultative, procurement or administrative services" with respect to strategic advice, financial planning, and any other services "necessary or desirable to conduct and operate the businesses of the Company [and Southam] in an efficient and cost effective manner." Numerous standard and material terms

and provisions were absent from the contract, including a price, an expiration provision, and a non-competition agreement. On or about July 5, 2002, Defendant The Ravelston Corporation Limited transferred and assigned the STMG management services agreements to Defendant Ravelston Management Inc.

134. Also in or about 1998, in an agreement dated January 1, 1998, and entitled "Direction and Undertaking," Defendant Ravelston secretly committed to paying HLG's wholly-owned subsidiary Domgroup — or an affiliate designated by Domgroup — at least Cdn.$10.7 million annually from the excessive management fees Ravelston extracted from STMG. Specifically, the undertaking provided that Domgroup would "provide and cause its affiliates to provide the necessary co-operation, co-ordination, support and collaboration required by Ravelston to enable Ravelston to fulfill its obligations to [STMG and its subsidiaries] pursuant to the [Management] Services Agreements." In exchange for Domgroup's "cooperation" and "support" — which was a fiction, because Domgroup provided no services that benefited Ravelston and, on information and belief, had no officers, directors, or employees that Ravelston did not already directly employ — Ravelston would cause to be paid to "Domgroup or as directed by Domgroup to one or more of [HLG] or its other wholly-owned subsidiaries" at least Cdn.$10.7 million per year of the management fees Ravelston extracted from STMG plus the annual management fees that Ravelston received from HLG. Thus, HLG or Domgroup would receive annually and use for its own benefit (a) at least Cdn.$10.7 million; and (b) a return of all the management services fees Ravelston "charged" HLG.

135. Defendant Ravelston continued to provide management services to HLG and Domgroup, but at STMG's expense. That is, the same senior executives providing management services to the Company were also simultaneously providing management services to HLG and

Domgroup, in both cases through Ravelston. Defendants Black, Boultbee, and Colson, however, never caused HLG or Domgroup to reimburse the Company for the costs that the Company's public majority non-controlling shareholders were bearing of the management services that Ravelston provided to HLG and Domgroup.

The Unfairness of the Excessive Management fees

136. STMG's management services agreements did not establish specific fee amounts to be paid to HLG or Defendant Ravelston. According to the agreements, the fee was to be negotiated every year between Ravelston and the independent members of STMG's board. The Company's board delegated this responsibility to the STMG audit committee.

137. Each year, Radler, with assistance from Defendants Black and Boultbee, determined and proposed a management fee to the STMG audit committee that they knew to be far in excess of Defendant Ravelston's costs of providing services to the Company. Radler, Black, and Boultbee used no "scientific" approach for calculating the fee, but simply came up with a proposed fee. On information and belief, the starting point for determining what management fee Ravelston would seek from the Company was not the cost of providing services or the value of such services, but rather the amounts "needed" by Ravelston to support its activities and its shareholders, including servicing the bank loans, and other debt and dividend obligations of Ravelston, HLG, and Domgroup. The management fee "proposed" to the Company was set at a number high enough to pay at a minimum the entire carrying cost of the HLG and Ravelston debt, as well as to satisfy in full the appetites of the Defendants for current compensation.

138. Radler compared any proposed fee amount suggested by Defendants Black or Boultbee against two "rules of thumb": (i) the sum of his rough estimate of Defendant Ravelston's salaries, bonuses, benefits, pensions, and "overhead," plus 20% for Ravelston's

"profits"; and (ii) two-and-a-half times Ravelston's salaries and bonuses. As long as the fee proposed by Black or Boultbee was approximately the same as or greater than the figure derived from Radler's "back-of-the-envelope" calculations, Radler would propose it to STMG's audit committee.

139. Radler submitted the annual management fee proposal to Thompson, as Chairman of the audit committee, falsely telling Thompson that the figure was the amount Ravelston "needed" and not disclosing that Ravelston would be paying a large portion of it to HLG, Domgroup, or their affiliates. After a cursory discussion, Thompson would agree to the proposal. The Defendants never provided the STMG audit committee with any information to support their management fee "proposal," such as a financial basis, breakdown, or intended use of the proposed fee. The STMG audit committee and board annually accepted Radler's proposals with little or no variation.

140. Indeed, as the Defendants knew, the only information that the audit committee generally considered in approving each year's management fee "proposal" was: (i) the previous year's unreasonable fee; (ii) a generalized sense of the Company's size in comparison to the previous year; and (iii) a generalized sense of the work Defendant Ravelston would perform in comparison with the previous year. The Defendants knew that the audit committee did not evaluate Ravelston's fee proposal by reference to any performance-based criteria, such as percentages of revenues, net income, or EBITDA, and did not engage in any meaningful negotiation, review, investigation, analysis, or valuation of the amounts Ravelston demanded.

141. In a December 20, 2002 e-mail to Kipnis, Atkinson expressed a concern as to whether the members of the STMG audit committee would become "Sarbanes hawks" — an apparent reference to the enhanced duties imposed on corporate directors under the

Sarbanes-Oxley Act — and begin to more scrupulously analyze and negotiate the annual management fee proposal.

142. Later, in a January 23, 2003 e-mail, Atkinson recounted to Defendants Black and Boultbee that "[t]he annual review and approval of the management fee is a regular and routine matter." He warned, however, that Defendant Ravelston should first obtain Governor Thompson's consent to Ravelston's 2003 management fee proposal before raising other related-party issues with him:

> [T]he Governor will feel that a number of related party transactions are in the offing and the prudent course may be to retain outside counsel and a financial advisor now. He may decide to do that anyway but I think we have a better chance of gaining approval for the management fee on a fairly expeditous [sic] basis if we treat it as a one-off matter.

143. The Defendants and Radler breached their duty of candor in extracting approval of each year's grossly excessive management fees. Among other things, they failed to disclose to the independent directors: (i) the exorbitant amounts that HLG and Ravelston took above and beyond the "costs" of managing STMG's assets; (ii) the Cdn.$10.7 million that Ravelston annually transferred to HLG, Domgroup, or their subsidiaries under the 1998 Direction and Undertaking; (iii) the $32.15 million in unauthorized payments the Defendants took from 1999 to 2000; and (iv) the numerous other ways in which the Defendants unfairly or fraudulently took company assets, money, and opportunities.

144. Proof of the gross unfairness of the management services fees Defendants diverted from STMG is Defendant Ravelston's ability to divert annually from 1998 through 2000 Cdn.$10.7 million of the fees to Domgroup and its subsidiaries. The Direction and Undertaking described above required Defendant Ravelston to take enough in fees from STMG to be able to divert annually to HLG, Domgroup, or their wholly-owned subsidiaries approximately Cdn.$10.7 million of the excessive management fees that Ravelston obtained from STMG plus

round-trip back to Ravelston any "management fees" HLG "paid" to Ravelston — *i.e.*, provide management services to HLG and its subsidiaries at STMG's expense.

145. Defendant Boultbee was instrumental in diverting the sham management fees to HLG and Domgroup. In a January 22, 1998 memo from Boultbee to the HLG compensation committee, Boultbee notified them of the Cdn.$3.38 million proposed "management fee" HLG would pay to Ravelston that purportedly represented the "costs" allocated to HLG. But he assured the committee that "[a]s you can see the proposal would leave [HLG] with a profit" because Ravelston would pay Cdn.$13.9 million to Domgroup. Boultbee sent similar memos, dated December 7, 1998 (for the 1999 fee) and April 3, 2000 (for the 2000 fee), to the HLG compensation committee.

146. In April 2007, a court-appointed receiver of Ravelston issued a report summarizing, among other things, the "management fees" that management-services-provider Ravelston had paid between January 1997 and April 2005, when Ravelston sought insolvency protection. The report discloses that Ravelston made more than Cdn.$40 million in "management fee" payments to Domgroup and its subsidiaries: (a) Cdn.$7.875 million directly to Domgroup; (b) Cdn.$9.63 million to 3358763 Canada Ltd., a Domgroup subsidiary until its dissolution in or about April 1999; and (c) Cdn.$22.648 million to Sugra (Bermuda) Limited, a Domgroup subsidiary until its transfer to an STMG subsidiary in or about June 2002. The report also disclosed that Ravelston also provided more than Cdn.$87 million in "advances and loans" to HLG and its wholly-owned subsidiaries. On information and belief, Ravelston's income sources other than STMG's management fees were not significant, and thus those "advances and loans" came in whole or in large part from the management fees STMG paid to Ravelston. This

provides further evidence that the fees were a means for Ravelston to extract funds from STMG, in breach of its fiduciary duties.

147. The Defendants and HLG hid from STMG's shareholders and the general public their arrangement to divert STMG's management fees from Ravelston to HLG and Domgroup. HLG's 1998, 1999, and 2000 management proxy circulars failed to disclose any management fee income at all — to HLG or any of its wholly-owned subsidiaries. Rather, those documents state that HLG was *paying* management fees *to* Defendant Ravelston. The publicly-disclosed "management fee" from HLG to Ravelston was a sham designed, in part, to conceal that Ravelston's fees were so excessive that it was able to divert fees to HLG and Domgroup.

148. The management fees obtained from STMG were an important income source for Ravelston, and it relied upon the payment of management fees to secure financing for Ravelston and HLG. The HLG and Ravelston credit facilities installed in 1998 and 1999 required Ravelston to guarantee HLG's payments obligations, secured in part by the management fees Ravelston charged STMG. The credit facilities also required that STMG pay minimum annual amounts of management fees to HLG and Ravelston. None of the Defendants or Radler told STMG's audit committee about HLG's dependence on the Ravelston management fees, or about the Defendants' contractual obligation to charge STMG minimum fees. The STMG board did not discover these facts until after the Special Committee was formed.

149. Managers of the Company's operating subsidiaries complained frequently about the excessive fees because the fees were charged against their operating profits. The finance director of the Telegraph Group, for example, often complained to Defendant Colson about the amounts charged to that group for management fees and perquisites because she wanted the Telegraph Group to be a profitable one. But the Defendants cared less about whether the

Company's operating subsidiaries (or the Company itself) were profitable than whether they were extracting their "proprietor's" entitlement.

150. Indeed, the Defendants focused their management fee discussions on HLG's financial needs, rather than STMG's interests. In a May 1, 2003 e-mail to Atkinson and Defendant Black, Defendant Boultbee stated, "I think we should co[n]centrate on taking steps to keep the management fees as high as possible." Boultbee's stated concern in the e-mail was not the interests of the Company's public noncontrolling majority shareholders, to whom he owed fiduciary duties, but liquidity and investment concerns at HLG and Defendant Ravelston.

151. All told, from 1996 through 2003, the Company paid HLG and Ravelston more than $226 million in management fees. During this same period, the Company paid the STMG Executives and Defendant Colson approximately $101 million in direct and indirect cash and equity-based compensation. On information and belief, the amounts paid to the Defendants, HLG, Radler, and Atkinson from 1996 through 2003 exceeded a fair market-based level of compensation for the individuals' services by over $200 million.

Payments to Defendant Amiel Black

152. From 1999 through 2003, Defendant Amiel Black received approximately $1,141,558 in "salary" and "bonus" from the Company, purportedly for serving as Vice President of the Company. During this time, she performed little if any work for the Company. There was no legitimate basis for the Company to pay Amiel Black these amounts. Had she not been the wife of Defendant Black, these amounts never would have been paid.

153. Defendant Amiel Black was otherwise more than adequately compensated for any legitimate services she actually did perform for the Company. Specifically, during this period, Amiel Black received more than $132,000 for serving as a member of the STMG board of directors and attending its meetings, and more than $94,000 for columns she wrote that were

published in STMG newspapers. Amiel Black also received more than $1,000,000 in dividends from Black-Amiel Management, a Barbadian corporation that received a portion of the grossly excessive Ravelston management fee. Amiel Black was also granted more than 370,000 stock options, later worth millions of dollars. She also has had the Company pay the services of a full-time secretary, and has shared in the many lucrative perquisites received by her husband Defendant Black, such as the house staff, drivers, and a private jet plane. The Company has also paid or pledged to pay more than $340,000 to charities on Amiel Black's behalf.

154. By causing the Company to pay, and by taking, these unfair, excessive, and wasteful "salary" and "bonus" amounts, Defendants Black and Amiel Black violated their fiduciary duties to the Company.

Payments Under the Hollinger Digital Management Incentive Plan

155. In 2000 and 2001 the Company paid Radler and Defendants Black, Boultbee, and Colson more than $5 million in "incentive payments," ostensibly for managing the investments of STMG subsidiary Digital. The Hollinger Digital Management Incentive Plan awarded Digital managers, the STMG Executives, and Colson 22% — 7 percentage points of which was separately reserved for the "Senior Executive Group," made up of Defendant Ravelston shareholders Black, Radler, and Colson — of the "profits" on individual Digital investments, without taking into account losses from unprofitable Digital investments. And when calculating the "profits" on which they would take their 22% share, plan participants used a defined "Liquidity Event" that allowed payments regardless of whether the Company actually realized proceeds from that Liquidity Event, and even if the Company's investment ultimately lost money, *i.e.*, earned no profits at all. In sum, although Digital's approximately $203 million in investments resulted in more than $74 million in losses, the Company has paid $15.5 million in "profit" distribution to Digital's executives, with more than $5 million of those funds going to

Black, Radler, Boultbee, and Colson. The Defendants knew that the Hollinger Digital Management Incentive Plan was far more generous than those provided in typical investment funds, but they obtained approval for the Plan based on their knowingly false representations to the STMG audit committee that it was comparable to customary compensation formulas in the venture capital/private equity business. In reality, these "incentive payments" were simply another way for Black, Radler, Boultbee, and Colson to take funds from the Company. By taking these unfair and unwarranted "incentive payments," Defendants breached their fiduciary duties to the Company and its public majority non-controlling shareholders.

156. Digital was formed in 1996 to manage the Company's investments in new media and Internet companies. Because it simulated a venture capital fund, the Defendants decided it should reward employees by having them share in the success of Digital's investments, notwithstanding the fact that, with respect to Black, Radler, Boultbee, and Colson, they were already receiving grossly inflated management fees through Ravelston to oversee *all* aspects of the Company's business. In or about late 1997, Black, Radler, and Colson, among other Ravelston shareholders, and Perle began discussing the components of a Digital "incentive plan." Those discussions resulted in the Hollinger Digital Management Incentive Plan that Defendants circulated in January 2000 and presented to the STMG audit committee and board on February 22, 2000.

157. In preparation for the February 22, 2000 STMG audit committee meeting, Black, Radler, Boultbee, and Colson caused STMG Corporate Counsel Mark Kipnis to send the committee a memo dated February 14, 2000, from STMG's corporate offices in Chicago, Illinois, that explained, among other things, that the Hollinger Digital Management Incentive Plan was intended to "retain management by offering the type of incentive that competitive

investment banking firms offer." Radler presented the Plan to the audit committee on February 22, 2000, consistent with Kipnis' February 14 memo. The audit committee was neither provided with, nor did it request, any financial analysis, legal advice, or examples of comparable arrangements at independent venture capital/private equity firms.

158. Relying on the representations made in the February 14, 2000 memo to the audit committee and Radler's February 22, 2000 presentation, Governor Thompson told the board on February 22, 2000, in the presence of Defendants Black and Colson, that the audit committee had approved the Hollinger Digital Incentive Management Plan "as consistent with those types of bonuses found in the marketplace." As the Defendants knew, however, the Plan was not an industry norm, but was unusual and excessive because it paid bonuses based on liquidity events on individual investments, without regard to the investment portfolio's overall performance.

159. For example, in an October 2, 1997 memo to STMG board member and Digital CEO Perle, Defendant Black commented on an early draft of the plan's definition of "net gains" from which the Digital executives would obtain their bonuses:

> I think 'net gains' should be either for a period or for the overall performance and not on an individual investment basis. In any case the overall performance should be taken into account.

160. Similarly, in a November 30, 1999 memo to Defendant Black, Atkinson stated that "pooling of gains and losses . . . fosters a team approach and a great aversion to any one or two members creating losses which all members then have to shoulder," and "should create a highly motivated group who will exercise great diligence so as to avoid their gains being diluted by losses." The Plan that Black and his fellow Ravelston shareholders recommended for approval in 2000, however, did not take overall performance into account and did not foster a "team approach" by pooling investment gains and losses in determining the timing and amount of cash distributions.

161. Defendant Colson also knew that the Hollinger Digital Management Incentive Plan was not consistent with industry practice. He told Defendant Black in a memo dated December 23, 1999, that he "under[stood] from CSFB and various other people who are actively involved in the internet sector that a 20% 'allocation' is high in comparison with similar plans used by other companies." Colson suggested instead that Digital "not be required to allocate the full 20% in the case of each investment." Colson noted that even though the draft "makes no reference to pooling 'winners and losers', [he] strongly endorse[d] this idea as it will potentially reduce the temptation to make higher risk investments on a one-off basis." Colson permitted the STMG board to approve the plan without either suggestion being adopted, however.

162. Not only did Defendants Black and Colson not insist on an overall performance component to the Digital compensation structure, they raised the bonus pool from 20% of "net gains," as was contemplated before 2000, to 22% of "net gains." (Again, however, their notion of "net gains" was a very narrow one that did not include any offset for investment losses.) In an e-mail to Black dated February 14, 2000, Atkinson wrote: "With respect to the Digital incentive plan, David [Radler] said that [audit committee chairman] Governor Thompson would have no difficulty increasing the plan from 20% to 22% and perhaps higher. That is aggressive particularly when the current plan does not provide for the pooling of gains and losses."

163. Moreover, as of February 2000, Defendants Black and Colson knew that the "incentive" plan they were proposing would generate payments on two investments that Digital had already made. For example, on February 14, 2000 — the same date as Kipnis' memo to the audit committee describing the Digital Incentive Plan as "the type of incentive that competitive investment banking firms offer" — Atkinson wrote a memo describing the plan as "very generous," because it does "not require pooling of gains and losses and which, in the result, will

see substantial bonuses paid for Trip.com and iii [Interactive Investors International] without any deduction for investments which will not achieve success." In fact, during 2000, Black, Radler, and Colson awarded themselves approximately $2.2 million, $530,000, and $1.8 million, respectively, on Digital's Trip.com and Interactive Investors International investments.

164. Atkinson's February 14 memo further noted, in contrast to what the audit committee was told in a memo that same day, that "pooling of gains and losses" was a "more recognizable and conventional [compensation] structure." Similarly, in a February 29, 2000 memo, Atkinson told Defendant Black that a plan "call[ing] for the pooling of gains and losses before any bonus can be declared" is "much better."

165. Shortly after Kipnis told the STMG audit committee in his February 14, 2000 memo that the Hollinger Digital Management Incentive Plan was "the type of incentive that competitive investment banking firms offer," but before any payments were made, the Company's outside law firm told Kipnis that the plan was atypical. In a March 31, 2000 e-mail, the lawyer told Kipnis that it was unusual when an employee "enjoys his share of profits on the good [investments] and is not penalized for losses on the investments that go sour" and in this regard the Hollinger Digital Management Incentive Plan was different from those customary in "this business."

166. In or about December 2000 or January 2001— nearly a year after Radler presented the Hollinger Digital Management Incentive Plan to the audit committee for approval, and after the bulk of the money had been paid to Defendant Black — the Defendants sought KPMG's advice regarding the structure of the compensation arrangements. KPMG responded in a January 26, 2001 letter to Defendant Boultbee as follows:

> While Digital's plan provides for management's participation in the results of each individual investment with no provision for offset of

> losses on other investments, all of the funds we are aware of base management's participation on the results of the total fund which is valued on a periodic basis, usually annually.
>
> * * *
>
> It is normal practice for a fund to establish a threshold rate of return requirement for the overall fund before management participation in the upside . . . Normally there is a provision to carry forward losses in the calculation of any rate of return. However, if the return were based on each investment, with no provision for offset of losses on other investments, then the threshold rate of return would be much higher compared to the 15% preferred return provided for in the Digital plan. We have been unable to find any funds who [sic] calculate their return on an investment by investment basis.

167. In a January 29, 2001 memo to Defendant Black, Defendant Boultbee told Black of KPMG's letter and his view that the Company "could modify the plan leaving significant benefits while corresponding more closely to the norm." Neither Black nor Boultbee told the STMG audit committee about KPMG's opinion, and none of the Defendants recommended any changes to the Hollinger Digital Management Incentive Plan in response to KPMG's advice.

168. The Defendants also did not tell the STMG audit committee or board how the Hollinger Digital Management Incentive Plan's "Liquidity Event" provision allowed for millions of dollars in bonuses to be paid on STMG's investment in Interactive Investors International months before the Company realized any proceeds on the investment and in an amount that ultimately equated to 38% of the Company's actual gain on the investment. In August 2000, the Defendants calculated a $25 million "gain" on STMG's investment in Interactive Investors based on its market trading price at that time (although the Plan only permitted the Defendants to do so if STMG could sell its stock at this price "without adversely affecting the market for the securities or the price at which such securities can be sold," which was unlikely given that the Company owned 29% of Interactive Investor's common stock), and awarded bonuses equal to 22% of that amount. The $25 million "gain," was only theoretical, however, because STMG had

not at that point sold any of the Interactive Investors stock. In fact, Interactive Investors' stock price was falling throughout the latter half of 2000. When STMG liquidated the investment in August 2001, it realized an actual cash gain of only $15 million, not the $25 million theoretical "gain" on which the Defendants had paid themselves bonuses in August 2000. Thus, under the excessive Hollinger Digital Management Incentive Plan, not only did the Defendants get the benefit of sharing in profitable STMG investments without offset for STMG's far more numerous unprofitable investments, they took a disproportionate share of even the rare profitable investments by locking in a percentage of the Company's "paper" profits at the stock price's peak, and then shifting the risk of any subsequent market price downturn to STMG.

169. Not surprisingly, Defendants' "up-side only" and rigged compensation plan yielded unfair and inequitable results. Digital had a few investments that generated profits. Specifically, the Company invested approximately $42.5 million in five companies that by the end of 2003 had generated returns of approximately $105 million, or gains of approximately $62.5 million. But as of that same date, Digital had also made approximately forty other investments that had resulted in $130 million in losses. All told, the Company put approximately $203 million into Digital investments and by 2006, when it had finally liquidated its last Hollinger Digital investments, had realized proceeds on those investments of less than $129 million — meaning Digital's investments lost the Company more than $74 million. Against this dismal performance record, the Company paid out $15.5 million under the Hollinger Digital Management Incentive Plan, with the Senior Executive Group, Black, Radler, and Colson, taking more than $5 million.

Black's December 2000 Purchase of STMG's Manhattan Apartment

170. In December 2000, on the heels of Defendant Black and his co-conspirators taking millions of dollars from STMG in, among other things, CanWest and U.S. Community

newspaper non-compete payments and Hollinger Digital incentive payments, Black breached his fiduciary duty to the Company in yet another transaction. He caused STMG in December 2000 to sell him its apartment on Park Avenue in New York City for millions less than its fair market value in a transaction that was unfair as to process and price.

171. By late 2000, STMG and Defendant Black each owned an apartment in the same building at 635 Park Avenue, New York, New York. STMG had purchased the second-floor apartment in 1994 for $3 million, a price at or below market value. Black had purchased a ground floor apartment in January 1998 for $499,000, its market value. The Blacks lived in STMG's larger second-floor apartment rather than their own.

172. A December 20, 1994 option agreement between Defendant Black and an STMG subsidiary gave Black the right to purchase STMG's second-floor apartment for its "fair market value . . . payable in cash." In December 2000, Black took advantage of this option but used as his option price STMG's 1994 purchase price of $3 million, rather than the apartment's December 2000 "fair market value." On information and belief, the "fair market value" of the apartment in December 2000 was approximately $8.5 million.

173. Defendant Black also did not comply with the option agreement's requirement that he pay the purchase price in cash (although as described above in December 2000 he was flush with tens of millions in STMG's cash). He paid only $2.15 million in cash and gave STMG his ground floor apartment, claiming it should be valued at $850,000, or 70% more than the $499,000 he had paid for it just two years earlier. On information and belief, Black's ground floor apartment was worth at most $700,000 as of December 2000. Thus, Black paid only $2.85 million for the STMG apartment that had a fair market value of approximately $8.5 million.

174. Black never presented this transaction to the audit committee for approval. To avoid having to pay the fair market value for the apartment, Defendant Black agreed with his co-conspirator Boultbee that the parties to the option agreement did not intend to require Black to pay "fair market value" but only STMG's cost in acquiring the apartment. Rather than attempting to correct or renegotiate the document with the STMG audit committee, whose approval was needed for this transaction with STMG's controlling shareholder, the Defendants simply decreed that STMG's 1994 cost *was* the apartment's December 2000 fair market value. The transaction was completed on those terms after Boultbee falsely claimed to have met with "real estate specialists" in New York who would attest that STMG's apartment had not appreciated at all in six years but that Black's apartment had appreciated 70% in two years.

175. Defendant Black's exercise of his option to purchase the apartment was disclosed as follows in STMG's 2001 and 2002 proxy statements:

> In order to facilitate the rendering of management and advisory services by Messrs. Black and Radler, and to enhance the business interests of the Company within the financial community, the newspaper industry and otherwise, a subsidiary of the Company purchased apartments in New York and Chicago in 1994 for the use of Messrs. Black and Radler, respectively, on a rent-free basis while they are in the United States . . . *The Company has granted options to Messrs. Black and Radler, respectively, to acquire at any time the Company's interest in the New York and Chicago apartments, respectively, at their then fair market values . . . Effective December 29, 2000, Mr. Black exercised his option to purchase.* (Emphasis added.)

These disclosures falsely and misleadingly suggest that Black paid "fair market value" for the apartment. But as explained above, and as Black and his co-conspirators well knew, he did not.

The March 2001 Purchase of FDR Memorabilia

176. In March 2001, Defendant Black caused STMG to spend $8 million to purchase a collection of FDR memorabilia known as the Tully Collection. In causing STMG to make that purchase, Black violated his fiduciary duty of care and good faith by failing to take the most

basic steps to ensure that the Company would not incur a loss from this purchase. Most significantly, Black did not obtain an independent appraisal of the property. The result was that Black caused the Company to substantially overpay. On information and belief, the entity that sold STMG the collection paid only approximately $3.5 million for the Tully Collection less than a year before Black caused STMG to pay $8 million for it. And in mid-2004, the collection fetched only $2.4 million at a Christie's auction. But the Company was not able to complete even that sale, when the National Archives claimed that the Tully Collection belongs to the U.S. government. STMG is still attempting to resolve this issue, and has had to expend significant resources to do so.

177. The reason Black consciously disregarded his fiduciary duties in causing this $8 million expenditure of corporate funds is that he simply craved the Tully Collection. In or about 2001, Black was cultivating his own reputation as an expert on FDR. In furtherance of this personal pursuit, he had caused previous STMG purchases of FDR artifacts, some of which he maintained in his residences. In fact, during 2001, Black was writing a 1300-page biography of FDR, which he published in late 2003. Thus, although the Tully Collection would have some minor benefit to STMG as corporate artwork, Black recklessly caused STMG to grossly overpay for that collection, because it fit neatly within his personal interests and ambitions.

178. Black never obtained an appraisal of the Tully Collection before he caused STMG to purchase it. It was only a year after he caused STMG to purchase the Tully collection that Black finally sought some written assurance as to its worth, but only from the person who sold it to him and therefore could not independently value it. Moreover, he only obtained that inadequate valuation to deflect board criticism.

179. For example, in or around August 2002, Atkinson expressed concern about STMG's acquisition of the Tully Collection. Recognizing the risk of loss to which he had recklessly exposed the Company, Black told Atkinson in an August 8, 2002 e-mail: "I will be happy to guaranty personally against any downside from our purchase price."

180. The time has long since passed for Black to compensate the Company for the loss caused by the self-centered Tully Collection purchase he recklessly had the Company make.

Defendant Ravelston's *Respondeat Superior* Liability for the Actions of Radler and Atkinson and Defendants Black, Boultbee, and Colson

181. In addition to being officers and directors of STMG and HLG, Black, Radler, Boultbee, Atkinson, and Colson were at all relevant times employees of Ravelston for purposes of Ravelston's performance of management services for STMG under the management services agreements between those companies.

182. Radler and Atkinson and Defendants Black, Boultbee, and Colson thus committed their breaches of fiduciary duties owed to STMG in their capacities as employees and agents of Defendant Ravelston, as well as in their individual capacities as officers and directors of the Company.

183. As the employer of Radler and Atkinson and Defendants Black, Boultbee, and Colson, Ravelston is liable under the doctrine of *respondeat superior* for those improper and/or tortious acts of Black, Radler, Boultbee, Atkinson, and Colson committed within the scope of their employment with Ravelston during the time periods in which Ravelston provided management services to the Company.

The Civil Conspiracy Designed to Improperly Enrich the Defendants at the Company's Expense

184. The Defendants' breaches of their fiduciary duties set forth above were undertaken pursuant to an agreement by and among Radler and Atkinson and the Defendants and their co-conspirators to improperly enrich themselves at the Company's expense.

185. In particular, Radler and Atkinson and the Defendants and others schemed and agreed to unlawfully cause the Company to pay unwarranted, unfair, and unauthorized "non-compete" payments to various of the co-conspirators, as set forth in paragraphs 53 through 126 above; agreed to unlawfully cause the Company to pay to HLG and Defendant Ravelston the excessive management fees, as set forth in paragraphs 127 through 151 above; agreed to cause the Company to surreptitiously pay unauthorized bonuses to Colson, as set forth in paragraphs 107 and 108 above; agreed to cause the Company to pay excessive and wasteful compensation to Amiel Black, as set forth in paragraphs 152 through 154 above; agreed to cause the Company to pay Black, Radler, and Colson unwarranted and unfair "incentive bonuses" under the Digital Incentive Plan, as set forth in paragraphs 155 through 169 above; and agreed to cause the Company to sell its Manhattan apartment to Black on unfair terms, as set forth in paragraphs 170 through 175 above.

186. Pursuant to and in furtherance of this common and improper scheme, Radler, Atkinson, and the Defendants committed numerous tortious or otherwise unlawful overt acts, including without limitation the following overt acts that, upon information and belief, occurred within this judicial district:

- Radler's instructions to STMG personnel in January 1999 to arrange for $14 million of STMG's funds to be sent to HLG;
- Radler's annual consultations with Black and Boultbee regarding Ravelston's excessive fees, as set forth in paragraphs 137 through 138 above;

- Radler's meetings with STMG audit committee chairman James Thompson in February of each year to discuss HLG's or Ravelston's proposed management services fees;

- Black and Radler arranging for false and misleading audit committee and board packages to be sent by STMG's corporate counsel in Chicago;

- Radler's meeting with the STMG audit committee in September 2000 to discuss the CanWest "non-competes" and Ravelston "break-up" fee;

- Radler's misrepresentations to the STMG audit committee on or about September 11, 2000 regarding certain non-compete payments received by the Defendants, as set forth in paragraph 92 above; and

- Radler's execution of STMG filings with the Securities and Exchange Commission that falsely characterized certain non-compete payments received by the Defendants, as set forth in paragraphs 76 and 100 above.

COUNT I

Breach of Fiduciary Duty for the $9.5 Million Paid to the STMG Executives in November 2000 (Against Defendants Ravelston, Black, and Boultbee)

187. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

188. On or about November 1, 2000, the Company paid $9.5 million to Defendants Black and Boultbee and to Radler and Atkinson, purportedly in connection with the Company's sale of certain newspaper assets to CNHI.

189. This payment was never considered, approved, or negotiated by the Company's independent board members. In addition, the payment was economically unjustified and unfair to the Company's shareholders. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

190. By causing the Company to pay the $9.5 million in "non-compete" styled payments out of the money received from CNHI in November 2000, all of the Defendants

violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $9.5 million, plus interest from November 1, 2000.

191. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee and of Radler and Atkinson in causing the Company to pay this $9.5 million in "non-compete" payments out of the money received from CNHI.

192. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses the payment of this $9.5 million in "non-compete" payments.

COUNT II

Conversion of the $450,000 Paid to Boultbee in November 2000
(Against Defendant Boultbee)

193. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

194. In November 2000, Defendant Boultbee took $450,000 in a purported "non-compete" payment from the Company.

195. This money belongs to the Company, which has an absolute and unconditional right to the immediate possession of it. This payment was not authorized by the Company, and was wrongfully taken.

196. The Company is entitled to have this money returned, and in November 2003, the Company demanded that this money be returned.

197. Defendant Boultbee has not repaid this money.

COUNT III

Breach of Fiduciary Duty for the $5.5 Million Paid to the STMG Executives in February 2001 (Against Defendants Ravelston, Black, and Boultbee)

198. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

199. In February 2001, the Company paid $5.5 million to Defendants Black and Boultbee and to Radler and Atkinson, purportedly in connection with the Company's sale of its U.S. community newspapers.

200. This payment was never considered, approved, or negotiated by the Company's independent board members. In addition, the payment was economically unjustified and unfair to the Company's shareholders. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

201. By causing the Company to pay the STMG Executives $5.5 million, all of the Defendants violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $5.5 million, plus interest from February 2001.

202. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee and of Radler and Atkinson in causing the Company to pay this $5.5 million to Black and the other STMG Executives.

203. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this $5.5 million payment.

COUNT IV

Conversion of the $137,500 Paid to Boultbee in February 2001
(Against Defendant Boultbee)

204. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

205. In February 2001, Defendant Boultbee took $137,500 in a sham "non-compete" payment from the Company.

206. This money belongs to the Company, which has an absolute and unconditional right to the immediate possession of it. This payment was not authorized by the Company, and was wrongfully taken.

207. The Company is entitled to have this money returned, and in November 2003, the Company demanded that this money be returned.

208. Defendant Boultbee has not repaid this money.

COUNT V

Breach of Fiduciary Duty for the $600,000 Paid to the STMG Executives in April 2001
(Against Defendants Ravelston, Black, and Boultbee)

209. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

210. In or about April 2001, the Company paid $600,000 to Defendants Black and Boultbee and to Radler and Atkinson, purportedly in connection with the Company's sale of its U.S. community newspapers.

211. This payment was never considered, approved, or negotiated by the Company's independent board members. In addition, the payment was economically unjustified and unfair to the Company's shareholders.

212. By causing the Company to pay $600,000 in "non-compete" styled payments, all of the Defendants violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $600,000, plus interest from April 2001.

213. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee and of Radler and Atkinson in causing the Company to pay this $600,000 in "non-compete" payments.

214. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this $600,000 in "non-compete" payments.

COUNT VI

Conversion of the $15,000 Paid to Boultbee in April 2001
(Against Defendant Boultbee)

215. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

216. In April 2001, Defendant Boultbee took $15,000 from the Company.

217. This money belongs to the Company, which has an absolute and unconditional right to the immediate possession of it. This payment was not authorized by the Company, and was wrongfully taken.

218. The Company is entitled to have this money returned, and in November 2003, the Company demanded that this money be returned.

219. Defendant Boultbee has not repaid this money.

COUNT VII

Fraud for "Non-Compete" Payments Made to Black and Boultbee in Connection with the U.S. Community Newspaper Sales (Against Defendants Black, Boultbee, and Ravelston)

220. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

221. On or about November 1, 2000, Defendants Black and Boultbee, working with Radler and Kipnis, caused the Company to pay Black and Boultbee $4.75 million of the Company's CNHI transaction proceeds as purported non-competition consideration. Black, Boultbee, and Radler caused the CNHI closing documents to be altered at closing to create a sham basis for making the non-competition payments to them. The September 28, 2000 CNHI asset purchase agreement did not require any non-competition agreement from these individuals, and Exhibit D to that asset purchase agreement was a form non-competition agreement that would require only STMG's and HLG's signatures. At the eleventh-hour instruction of Radler, however, Kipnis created a new non-competition agreement at closing that added the STMG Executives as non-compete covenantors and arranged for $4.75 million of the Company's transaction proceeds to be paid to Defendants Black and Boultbee, purportedly as compensation for their assent to the reconfigured non-competition agreement.

222. In or about February 2001, Defendants Black and Boultbee, along with Radler, caused the Company to pay Black and Boultbee an additional $2.75 million in "non-compete" styled payments by checks issued in February 2001, but back-dated to December 31, 2000. The STMG Executives caused the Company's employees to fabricate a documentary record to make these checks appear to be compensation for non-competition agreements. That is, in February 2001, Black and Boultbee signed non-competition agreements back-dated to December 31, 2000,

supposedly in support of the payments. The agreements were shams, however, and had nothing to do with any U.S. community newspaper sales transaction.

223. On or about April 9, 2001, Black and Boultbee caused the Company to pay themselves an additional $300,000 in "non-compete" styled payments. The STMG Executives falsely characterized these April 2001 payments as non-compete fees to be charged against post-closing financial reserves from the October 2000 PMG transaction and the September 2000 Forum transaction. Neither Black nor Boultbee signed non-competition agreements on either the PMG or Forum transactions, and neither PMG nor Forum requested that they sign such an agreement.

224. Defendants Black and Boultbee had a fiduciary duty to tell the STMG board that they were causing the Company to pay these "non-compete fees" to themselves, but fraudulently failed to do so.

225. By fraudulently failing to disclose the non-compete payments to themselves, Defendants Black and Boultbee caused damage to the Company in an amount to be proven at trial.

226. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee in committing this fraud on the Company in connection with the fraudulent non-compete payments made to Black and Boultbee.

COUNT VIII

Breach of Fiduciary Duty for the "Non-compete" and Other Related-Party Payments Made to Ravelston and the STMG Executives in Connection with the Sale to CanWest (Against Defendants Ravelston, Black, and Boultbee)

227. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

228. In or about November 2000, STMG paid $52.9 million to Defendants Ravelston, Black, and Boultbee and Radler and Atkinson, purportedly in connection with the Company's sale of certain Canadian newspaper assets to CanWest.

229. Also in or about November 2000, Defendant Ravelston executed a management services agreement with CanWest that provided for an annual in perpetuity $3.9 million management services fee to Ravelston, thereby reducing the consideration to the Company, and lucrative termination fees. These payments to Ravelston resulted in a reduction of the consideration received by the Company for the sale of its own properties.

230. These payments and usurped opportunities were unfair to the Company's shareholders and were obtained through misrepresentations and material omissions. The Defendants cannot sustain their burden of proving the "entire fairness" of these payments.

231. By causing the Company to pay Defendants Ravelston, Black, and Boultbee and Radler and Atkinson $52.9 million, and by usurping the opportunities in the CanWest-Ravelston management services agreement, all of the Defendants violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of: (i) $52.9 million, plus interest from November 2000; and (ii) the reduction in purchase price resulting from the consideration paid in the CanWest-Ravelston management services agreement, plus interest.

232. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee and of Radler and Atkinson in causing the Company to pay this $52.9 million and in usurping the opportunities in the CanWest-Ravelston management services agreement.

233. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this payment of $52.9 million and the usurping of the opportunities in the CanWest-Ravelston management services agreement.

COUNT IX

Conversion of the $1.1 Million Paid to Ravelston, Black, Radler, and Boultbee in "Interest" in Connection with the Sale to CanWest (Against Defendants Ravelston, Black, and Boultbee)

234. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

235. The Company paid approximately $1.1 million to Defendants Ravelston, Black, and Boultbee and to Radler and Atkinson, purportedly as "interest" on non-competition payments made to them in connection with the Company's sale of assets to CanWest.

236. This money belongs to the Company, which has an absolute and unconditional right to the immediate possession of it. This "interest" payment was not authorized by the Company, and was wrongfully taken.

237. The Company is entitled to have this money returned.

238. Defendants have not repaid this money.

COUNT X

Breach of Fiduciary Duty for the "Non-compete" Payments Made to the STMG Executives in Connection with the Sales to Osprey (Against Defendants Ravelston, Black, and Boultbee)

239. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

240. In 2001, the Company paid more than $5 million to Defendants Black and Boultbee and Radler and Atkinson, purportedly in connection with the Company's sale of certain Canadian newspaper assets to Osprey.

241. These payments were unfair to the Company's shareholders, were obtained without board pre-approval, and were "ratified" based on incomplete and false information. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

242. By causing the Company to pay Black, Radler, Boultbee, and Atkinson approximately $5.2 million, all of the Defendants violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of approximately $5.2 million, plus interest from 2001.

243. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee and of Radler and Atkinson in causing the Company to make this payment of approximately $5.2 million.

244. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this payment of approximately $5.2 million.

COUNT XI

Breach of Fiduciary Duty for the More Than $200 Million Paid to HLG and Ravelston in Connection with the Management Services Agreements (Against Defendants Ravelston, Black, Boultbee, and Colson)

245. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

246. From 1996 to 2003, the Company paid approximately $226 million directly to HLG and Ravelston under the management services agreements.

247. These payments to the Company's controlling shareholders were grossly excessive and unfair to the Company's other shareholders. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

248. By causing the Company to pay Ravelston a sum that far exceeds a fair price for the services Ravelston provided to the Company, all of the Defendants violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in an amount to be proven at trial.

249. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black, Boultbee, and Colson and of Radler and Atkinson in extracting excessive management fees from the Company under the management services agreements.

250. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses the payment by the Company of excessive management fees to HLG and Ravelston.

COUNT XII

Breach of Fiduciary Duty for the Approximately $5 Million Paid to Black, Radler, Colson, and Boultbee Under the Hollinger Digital Management Incentive Plan (Against Defendants Ravelston, Black, Boultbee, and Colson)

251. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

252. In 2000 and 2001, the Company paid Defendants Black, Boultbee, and Colson and Radler approximately $5,021,238 under the Hollinger Digital Management Incentive Plan.

253. These payments made at the behest of Defendant Black, the Company's controlling shareholder, were grossly excessive and unfair to the Company's other shareholders. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

254. By causing the Company to pay them these unfair and excessive incentive payments, Defendants Black, Boultbee, and Colson violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $5,021,238, plus interest.

255. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black, Boultbee, and Colson and Radler and Atkinson in causing the Company to make this $5,021,238 in unfair, excessive incentive payments.

256. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this $5,021,238 in unfair, excessive incentive payments to Black, Radler, Boultbee, and Colson.

COUNT XIII

Breach of Fiduciary Duty for the Approximately $1 Million Unauthorized "Bonus" Paid to Colson (Against Defendants Ravelston, Black, and Colson)

257. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

258. In or around September 2001, Defendant Colson took from the Company a "bonus" of $1,073,719.

259. This "bonus" was not authorized by the STMG independent directors.

260. This "bonus" payment to Defendant Colson constituted corporate waste.

261. By causing the Company to pay, and by taking, this unfair, excessive, and wasteful "bonus" payment, Defendants Black and Colson violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $1,073,719, plus interest from September 2001.

262. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Colson in causing the Company to pay and taking from the Company this unfair, excessive bonus payment of $1,073,719.

263. Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this "bonus" payment to Defendant Colson.

COUNT XIV

Conversion of the Approximately $1 Million Unauthorized "Bonus" Paid to Colson (Against Defendant Colson)

264. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

265. In or around September 2001, Defendant Colson took from the Company a "bonus" of $1,073,719.

266. This money belongs to the Company, which has an absolute and unconditional right to the immediate possession of it. This "bonus" was not authorized by the Company, and was wrongfully taken.

267. At the time he took the payment, Defendant Colson knew that the "bonus" was unauthorized and unlawful.

268. The Company is entitled to have this money returned.

269. Defendant Colson has not repaid this money.

COUNT XV

Breach of Fiduciary Duty for the Approximately $1.14 Million Paid to Amiel Black in Excessive Compensation (Against Defendants Ravelston, Black, and Amiel Black)

270. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

271. From 1999 through 2003, Defendant Black caused the Company to pay Defendant Amiel Black approximately $1,141,558 in "salary" and "bonus" purportedly for serving as a Vice President of the Company.

272. Particularly in light of Amiel Black's substantial additional compensation from the Company, and the little if any work she performed as an STMG "Vice President," these "salary" and "bonus" payments made at the behest of Defendant Black, the Company's controlling shareholder, were grossly excessive and unfair to the Company's public majority non-controlling shareholders. The Defendants cannot sustain their burden of proving the entire fairness of these payments.

273. The "salary" and "bonus" payments to Defendant Amiel Black also constituted corporate waste.

274. By causing the Company to pay, and by taking, these unfair, excessive, and wasteful "salary" and "bonus" amounts, Defendants Black and Amiel Black violated their fiduciary duties and/or aided and abetted each other's breaches of their fiduciary duties and caused damage to the Company in the amount of $1,141,558, plus interest.

275. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendant Black in causing the Company to pay this $1,141,558 in unfair, excessive salary and bonus payments to Defendant Amiel Black.

276. Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses these payments to Defendant Amiel Black.

COUNT XVI

Breach of Fiduciary Duty for Black's December 2000 Purchase of STMG's Manhattan Apartment (Against Defendants Ravelston, Black, and Boultbee)

277. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

278. The December 2000 sale to Defendant Black of STMG's Manhattan apartment was a related-party transaction in which Black, as an STMG officer and indirect controlling shareholder, was interested.

279. When Defendant Black purchased the apartment from STMG, he paid the Company approximately $5.65 million below its fair market value.

280. Defendant Black cannot sustain his burden of proving the entire fairness of this transaction. The transaction was not disclosed to, negotiated by, or approved by the Company's audit committee independent board members. In addition, the price and terms of the apartment sale were economically unjustified and unfair to the Company's shareholders.

281. By causing the Company to sell him the Manhattan apartment on unfair terms, Defendant Black violated his fiduciary duties to the Company and its shareholders and caused damage to the Company.

282. Defendant Boultbee aided and abetted Defendant Black's breach of fiduciary duties to the Company and its shareholders and caused damage to the Company in an amount to be proven at trial.

283. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendants Black and Boultbee in causing the Company to sell this apartment to himself on terms unfair to the Company and its shareholders.

284. The Defendants' conspiracy alleged in paragraphs 184 through 186 above encompasses this unfair sale of the apartment to Defendant Black.

COUNT XVII

Breach of Fiduciary Duty for the March 2001 Purchase of FDR Memorabilia (Against Defendants Ravelston and Black)

285. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

286. Defendant Black breached his fiduciary duties of care and good faith to STMG in causing the Company to acquire the Tully Collection at a price far in excess of its market value.

287. Defendant Black breached his fiduciary duties to STMG by failing to obtain an independent appraisal and otherwise inform himself of reasonably available material facts before causing the Company to purchase the Tully Collection.

288. The purchase of the Tully Collection damaged the Company's shareholders in the amount of at least $5.6 million plus interest from March 2001.

289. Defendant Ravelston is also liable, under the doctrine of *respondeat superior*, for the actions of Defendant Black in causing the Company to purchase the Tully Collection.

COUNT XVIII

Breach of Fiduciary Duty for Causing the Company to Make Misleading and Inadequate Disclosures to Shareholders (Against Defendants Ravelston, Black, and Boultbee)

290. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

291. As described herein, Defendants Ravelston, Black, and Boultbee deliberately misinformed and deliberately caused the Company to misinform its stockholders about the transactions set forth in this Second Amended Complaint.

292. By causing the Company to misinform its stockholders, Defendants Ravelston, Black, and Boultbee violated their fiduciary duties of loyalty and good faith to provide shareholders with accurate and complete information about the Company.

293. Those breaches of fiduciary duty caused damage to the Company.

COUNT XIX

Unjust Enrichment
(Against All Defendants)

294. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

295. The Defendants did not own the assets that the Company was divesting and did not deserve any of the proceeds from their sale.

296. Denominating payments as "non-compete fees" does not render them legitimate. The Defendants do not deserve any compensation for their putative agreements not to compete.

297. It would be inequitable for the Defendants to retain the non-compete payments they received from the Company.

298. The Defendants did not earn the excessive management fees they received from the Company.

299. It would be inequitable for the Defendants to retain the excessive management fees they received from the Company.

300. The Defendants did not earn the excessive "incentive" fees and "bonuses" they obtained from the Company.

301. It would be inequitable for the Defendants to retain the excessive "incentive" fees and "bonuses" they obtained from the Company.

302. Defendant Amiel Black did not earn the excessive "salary" and "bonus" she obtained from the Company.

303. It would be inequitable for Defendant Amiel Black to retain the excessive "salary" and "bonus" she obtained from the Company.

COUNT XX

Illinois Civil Conspiracy
(Against All Defendants)

304. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraph 1 through 186 as though fully set forth herein.

305. The Defendants and Radler, and each of them, agreed to and did engage in a common scheme designed to improperly enrich themselves at the Company's expense, specifically by causing the Company to pay various Defendants unwarranted, unfair, and unauthorized "non-compete" payments, by causing the Company to pay directly to HLG and Ravelston excessive management fees, by causing the Company to pay excessive "incentive" fees, by causing the Company to pay excessive "salary" and "bonus," and by causing the Company to divert newspaper assets at unfair prices and terms.

306. Pursuant to and in furtherance of this common scheme, the Defendants and Radler breached their fiduciary duties and conspired with others to breach their fiduciary duties owed to the Company and committed numerous tortious or unlawful overt acts in this judicial district.

307. These tortious or unlawful overt acts caused injury to the Company, including, without limitation, the damages caused as a result of the Company's payment of the above described fees and diversions.

308. As a result of their participation in the conspiracy, each of the Defendants is jointly and severally liable for all such injury and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment awarding it:

(a) compensatory damages and disgorgement in an amount to be proven at trial, awarded jointly and severally, plus prejudgment interest;

(b) punitive damages for Defendants' fraud and conversion in an amount to be proven at trial;

(c) an order disgorging to STMG the benefits of the CanWest-Ravelston management services agreement, plus prejudgment interest;

(d) an order disgorging to STMG Defendant Black's, Defendant Boultbee's, Defendant Colson's, and Defendant Amiel Black's compensation as STMG officers and directors during the period of their fiduciary duty breaches, plus prejudgment interest;

(e) an order disgorging to STMG Defendant Ravelston's management services fees during the period of Ravelston's fiduciary duty breaches, including amounts that were given to HLG, Domgroup, and their affiliates, plus prejudgment interest;

and

(f) such further relief as may be appropriate.

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

SUN-TIMES MEDIA GROUP, INC., Plaintiff, v. THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., CONRAD M. BLACK, JOHN A. BOULTBEE, DANIEL W. COLSON, and BARBARA AMIEL BLACK, Defendants.	)	Case No. 04C-0698 Hon. Blanche M. Manning Magistrate Judge Maria Valdez

NOTICE OF FILING

To: (See Attached Service List)

PLEASE TAKE NOTICE that on October 8, 2008, we filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, the attached Plaintiff Sun-Times Media Group, Inc.'s Third Amended Complaint, a copy of which is being filed and served upon you together with this notice.

Respectfully Submitted,

/s/ Mark V. Chester

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Sun-Times Media Group, Inc

SERVICE LIST

Sun-Times Media Group, Inc. v. The Ravelston Corporation Limited, et al
Case No. 04 C 0698

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing Plaintiff Sun-Times Media Group, Inc.'s Third Amended Complaint to be served by CM/ECF electronic service to each party via his/her or its local counsel, as indicated on the attached service list, pursuant to Federal Rule of Civil Procedure 5(b)(2)(D) and Local Rules 5.9 and 83.15 on October 8, 2008.

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SERVICE LIST

Sun-Times Media Group, Inc. v. The Ravelston Corporation Limited, et al
Case No. 04 C 0698

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

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

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.

Ct

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

EXHIBIT "8"

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,

[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 either fact x or 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;

[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]

[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

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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)

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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,

[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

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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

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

EXHIBIT "9"

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

[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

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[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

AMENDED THIS Nov 8 2006 PURSUANT TO
MODIFIÉE CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED/FAIT LE
Tara Stead
LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

EXHIBIT "10"

Court File No. 06-CL-6259

ONTARIO

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

BETWEEN:

CONRAD M. BLACK, BARBARA AMIEL-BLACK, MOFFAT MANAGEMENT INC. and BLACK-AMIEL MANAGEMENT

Plaintiffs

ARGUS CORPORATION LIMITED, THE RAVELSTON CORPORATION LIMITED, RAVELSTON MANAGEMENT INC., HOLLINGER INC., HOLLINGER INTERNATIONAL INC., F. DAVID RADLER, TORYS LLP and KPMG LLP

Defendants

<u>AMENDED</u> STATEMENT OF CLAIM

Notice of action issued on January 27, 2006

1. The Plaintiffs claim the following relief:

a) The Plaintiffs Conrad M. Black ("Black") and Barbara Amiel-Black ("Amiel-Black") claim contribution and indemnity from the Defendants The Ravelston Corporation Limited ("RCL"), Ravelston Management Inc. ("RMI"), Argus Corporation Limited ("Argus"), Hollinger Inc., F. David Radler ("Radler"), KPMG LLP ("KPMG") and Torys LLP ("Torys") with respect to claims made in the following proceeding:

i) *Hollinger International Inc. v. Hollinger Inc., The Ravelston Corporation Limited, Ravelston Management Inc., Conrad M. Black, F. David Radler, John A. Boultbee, Daniel W. Colson, Barbara Amiel-Black and Richard Perle* commenced January 28, 2004 proceeding as Case No. 04-C-0698 in the United States District Court Northern District of Illinois, Eastern Division (the "International Action").

b) The Plaintiffs Black and Amiel-Black claim contribution and indemnity from the Defendants RCL, RMI, Argus, Hollinger Inc., Hollinger International Inc.

("International"), Radler, KPMG and Torys with respect to claims made in the following proceeding:

i) *In re Hollinger International Inc. Securities Litigation (i.e. Teachers' Retirement System of Louisiana v. Conrad M. Black, Hollinger International Inc., Hollinger Inc., The Ravelston Corporation Limited, Ravelston Management Inc., Argus Corporation Limited, Barbara Amiel-Black et al.)* commenced February 2, 2004 in Civil Action No. 04-C-0834 (as consolidated) in United States District Court for the Northern District of Illinois, Eastern Division (including all actions consolidated therein) (the "Illinois Class Action").

c) The Plaintiffs Black, Amiel-Black, Moffat Management Inc. and Black-Amiel Management Inc. claim contribution and indemnity from the Defendants RCL, RMI, Argus, Hollinger Inc., International, Radler, KPMG and Torys with respect to claims made in the following proceedings:

i) *Steven Drover et al. v. Argus Corporation Limited, Conrad M. Black, Barbara Amiel-Black, Moffat Management Inc, Black-Amiel Management Inc., The Ravelston Corporation Limited, Ravelston Management Inc. et al.* commenced on September 7, 2004 proceeding in the Ontario Superior Court of Justice Court File No. 04-CV-028649 (the "Ontario Class Action"); and

ii) *Trudy Betthel et al. v. Lord Conrad M. Black, Lady Barbara Amiel-Black, Moffat Management Inc, Black-Amiel Management Inc., Argus Corporation Limited, The Ravelston Corporation Limited, Ravelston Management Inc. et al.* commenced on September 7, 2004 proceeding in the Court of Queens Bench Judicial Centre of Saskatoon Court File No. QB 1492 of 2004 (the "Saskatchewan Class Action").

d) The Plaintiffs Black, Moffat Management Inc. and Black-Amiel Management Inc. claim contribution and indemnity from the Defendants RCL, RMI, Argus, Radler, KPMG and Torys with respect to claims made in the following proceeding:

i) *Hollinger Inc. and Domgroup Ltd. v. The Ravelston Corporation Limited, Ravelston Management Inc., Moffat Management Inc., Black-Amiel Management Inc., Conrad M. Black, F. David Radler, Jack A. Boultbee and Peter Y. Atkinson* commenced March 29, 2005 in the Ontario Superior Court of Justice Court File No. 05-CL-5822 (the "Hollinger Inc. Action").

d.1) The Plaintiff Black claims contribution and indemnity from the Defendants Hollinger Inc., International, Radler, Torys, and KPMG with respect to claims made in the following proceeding:

i) *United States Securities and Exchange Commission v. Conrad M. Black, F. David Radler, and Hollinger Inc.* commenced November 15, 2004, proceeding as Civil Action File No. 04C 7377 in the United States District Court for the Northern District of Illinois Eastern Division ("the SEC Action").

e) The Plaintiffs Black and Amiel-Black claim damages in an amount to be determined from the Defendant Torys in the event they are found liable for any amounts in the proceedings listed above;

f) Prejudgment and post judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

g) Their costs of this action on a substantial indemnity scale, together with Goods and Services Tax thereon; and

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

OVERVIEW:

2. The actions identified in paragraph 1 above (collectively the "Ongoing Proceedings") assert various claims against the Plaintiffs. The Plaintiffs herein expressly deny the allegations raised in the Ongoing Proceedings against them and any liability in those proceedings.

3. However, to the extent that the Plaintiffs herein are found liable in the Ongoing Proceedings, they seek contribution and indemnity as against the Defendants as stated in paragraph 1 above.

4. They further seek damages from the Defendant Torys in respect of any liability they may incur in the Ongoing Proceedings.

THE PLAINTIFFS:

5. Black was an officer and director of RCL, RMI, Argus, International and Hollinger Inc. at all material times. He has been named as a defendant in each of the Ongoing Proceedings.

6. Amiel-Black was an officer and director of Hollinger Inc. and International at the material time. She has also been named as a defendant in several of the Ongoing Proceedings.

7. Moffat Management and Black-Amiel Management are companies incorporated pursuant to the laws of Barbados. They provided services to International. They have been named as defendants in several of the Ongoing Proceedings by virtue of having received fees in respect of such services.

8. The Plaintiffs are subject to claims for joint and several liability in the Ongoing Proceedings in which the Defendants herein are or may be also named as defendants.

THE DEFENDANTS:

The Ravelston Corporation Limited, Ravelston Management Inc. and Argus Corporation Limited

9. RCL is a corporation amalgamated pursuant to the laws of Ontario.

10. RMI is a corporation incorporated under the laws of Ontario and a subsidiary of RCL.

11. During the time material to the Ongoing Proceedings, RCL and RMI provided management and advisory services to Hollinger Inc. and International.

12. RCL has an indirect interest in Hollinger Inc. by virtue of its ownership and control over Argus, which in turn owns a majority of the outstanding common shares of Hollinger Inc. Argus is a corporation incorporated under the laws of Canada with its head office located at Toronto, Ontario.

13. RCL, RMI and Argus are named as defendants in several of the Ongoing Proceedings. The plaintiffs in those proceedings claim damages against RCL, RMI and Argus. The actions or omissions of RCL, RMI and Argus alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to these defendants.

Hollinger Inc.

14. Hollinger Inc. is an open-ended investment corporation (i.e. a mutual fund company for purposes of the Canada *Income Tax Act*). Its head office is located in Toronto, Ontario. At the material time, its principal asset was its voting and equity interest in its subsidiary International.

15. Hollinger Inc. is a defendant in several of the Ongoing Proceedings. The plaintiffs in those proceedings claim damages against Hollinger Inc. The actions or omissions of Hollinger Inc. alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to Hollinger Inc.

Hollinger International Inc.

16. International is a corporation incorporated under the laws of the State of Delaware. It is a reporting issuer in Ontario and maintains offices in Toronto, Ontario. Through subsidiary corporations, International has at various times owned and published newspapers in Canada and elsewhere throughout the world.

17. International is a defendant in several of the Ongoing Proceedings. The plaintiffs in those proceedings claim damages against International. The actions or omissions of International alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to International.

F. David Radler

18. Radler was at all materials times an officer and director of each of International, Hollinger Inc., RCL, RMI, and Argus. He has been named as a defendant in the Ongoing Proceedings. The plaintiffs in those proceedings claim damages against him. The actions or omissions of Radler alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to Radler.

Torys LLP

19. Torys is a limited liability partnership with offices in Toronto, Ontario and New York, New York. At all material times, Torys was International's principal outside counsel. At the same time, Torys also provided legal services and advice to Hollinger Inc, RCL and RMI, as well as to the officers and directors of those companies.

20. Torys is a defendant in several of the Ongoing Proceedings wherein damages are claimed against it by the plaintiffs in those proceedings. The actions or omissions of Torys alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to Torys.

KPMG LLP

21. KPMG is a limited liability partnership and an accounting firm. At all material times KPMG provided accounting, auditing, tax, financial and consulting advice and services to International and Hollinger Inc. in Toronto and Chicago.

22. It has been named as a defendant in several of the Ongoing Proceedings and is subject to damages claims in those proceedings. The actions or omissions of KPMG alleged by the plaintiffs in those proceedings to give rise to liability are set out in the pleadings therein and are thereby known to KPMG.

THE ONGOING PROCEEDINGS

23. On or about June 2003, a special committee was formed by International's Board of Directors (the "Special Committee") to investigate matters raised in a complaint by one of International's institutional shareholders.

24. Thereafter, the Special Committee issued a report of its findings and commenced the International Action against Hollinger Inc., RCL, RMI, Black, Amiel-Black, Radler and others.

25. The International Action (based on the report of the Special Committee referred to above) claims at least US $541.9 million in damages and alleges, among other things, that the defendants to that action took cash or other assets belonging to International from the period 1997 to 2003 by way of, among other things, alleged improper and inflated management fees charged by Hollinger Inc., RCL and RMI to International in connection with the management of International and allegedly improper non-compete agreements with purchasers of newspapers from International which included payments to Hollinger Inc. and RCL. The specific allegations raised in the International Action are well known to each of the Defendants to the within action.

26. The damages claimed in the International Action are sought against the defendants to that action on a joint and several basis.

27. Following the commencement of the International Action, the Illinois Class Action, the Ontario Class Action and the Saskatchewan Class Action were commenced on behalf of shareholders of Hollinger Inc. and International (collectively the "Class Actions").

28. The Class Actions arise out of the same factual background as the International Action. Damages are sought against the defendants to these actions on a joint and several basis. The Defendants to the within action are all co-defendants along with Black and Amiel-Black in certain of the Class Actions.

<u>28.1 Thereafter, the SEC Action was commenced against Black, Radler, and Hollinger Inc., alleging violations of the United States *Securities Exchange Act of 1934*, based upon the same factual background as the International Action and seeking, *inter alia*, a civil monetary penalty.</u>

29. In addition, Hollinger Inc. commenced the Hollinger Inc. Action against RCL, RMI, Moffat Management, Black-Amiel Management, Black, Radler and others which also seeks damages in respect of, among other things, the same management fees and the same non-competition payments as are the subject of the International Action. Similarly, Hollinger Inc. seeks damages against the defendants on a joint and several basis.

CLAIMS FOR CONTRIBUTION AND INDEMNITY

30. The Plaintiffs have denied any liability in respect of all of the claims raised in the Ongoing Proceedings.

31. However, in the event that they are found liable for any of the claims asserted against them in the Ongoing Proceedings, they seek contribution and indemnity from the Defendants herein.

As against RCL, RMI and Argus

32. The Plaintiffs are entitled both at law and in equity to contribution from RCL, RMI and Argus, to the extent of those defendants' own liability, in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Ongoing Proceedings. It is alleged by the plaintiffs in the Ongoing Proceedings that by their conduct or omissions RCL, RMI and Argus are liable for the damages claimed in those proceedings. The allegations against RCL, RMI and Argus in those Ongoing Proceedings are known by these defendants.

33. RCL, RMI and Argus would be unjustly enriched to the Plaintiffs' detriment should any judgment against RCL, RMI and Argus in the Ongoing Proceedings be enforced as against the Plaintiffs and not against RCL, RMI and Argus.

34. Contribution and indemnity is further sought as against RCL and RMI on the following basis:

a) RCL and RMI were the recipients of management fees in respect of which damages are being claimed in the Ongoing Proceedings; and

b) RCL was the recipient of non-compete payments in respect of which damages are being claimed in the Ongoing Proceedings.

35. RCL and RMI would be unjustly enriched to the Plaintiffs' detriment should judgment be awarded or enforced against the Plaintiffs in respect of amounts that were paid to or received by RCL and RMI.

36. Black and Amiel-Black further claim indemnification from RCL, RMI and Argus as the case may be for any and all liability, costs, charges and expenses incurred by Black and Amiel-

Black in connection with the Ongoing Proceedings by reason of their having been an officer and director of RCL, RMI and Argus, as the case may be.

As against Hollinger Inc.

37. The Plaintiffs are entitled both at law and in equity to contribution from Hollinger Inc. to the extent of Hollinger Inc.'s own liability in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Ongoing Proceedings. It is alleged by the plaintiffs in the Ongoing Proceedings that by its conduct or omissions Hollinger Inc. is liable for the damages claimed in those proceedings. The allegations against Hollinger Inc. in those Ongoing Proceedings are known by Hollinger Inc.

38. Hollinger Inc. would be unjustly enriched to the Plaintiffs' detriment should any judgment against Hollinger Inc. in the Ongoing Proceedings be enforced as against the Plaintiffs and not against Hollinger Inc.

39. Contribution and indemnity is also sought as against Hollinger Inc. on the following basis:

a) Hollinger Inc. was the recipient of non-compete payments in respect of which damages are being claimed in the Ongoing Proceedings; and

b) Hollinger Inc. benefited from funds alleged to have been improperly paid by International or its subsidiaries for which damages are claimed in the Ongoing Proceedings.

40. Hollinger Inc. would be unjustly enriched to the Plaintiffs' detriment should judgment be awarded or enforced against the Plaintiffs in respect of amounts that were paid to or directly or indirectly received by Hollinger Inc.

41. Black and Amiel-Black further claim they are entitled to indemnification from Hollinger Inc. for any and all liability, costs, charges and expenses incurred by them in connection with the Ongoing Proceedings by reason of their having been an officer and director of Hollinger Inc.

As against International

42. Contribution is sought as against International on the basis that International would be unjustly enriched to the Plaintiffs' detriment should a judgment against International in the Class Actions be enforced against the Plaintiffs and not against International for its proportionate share. It is alleged by the plaintiffs in the Class Actions that International is liable for the damages claimed in those proceedings. The allegations against International in those proceedings are known by International.

43. The Plaintiffs are entitled both at law and in equity to contribution from International to the extent of International's own liability, or those for whom International is directly or indirectly liable, in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Class Actions.

As against Radler

44. The Plaintiffs are entitled both at law and in equity to contribution from Radler to the extent of Radler's own liability in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Ongoing Proceedings. It is alleged by the plaintiffs in the Ongoing Proceedings that by his conduct or omissions Radler is liable for the damages claimed in those proceedings. The allegations against Radler in those Ongoing Proceedings are known by Radler.

45. Radler would be unjustly enriched to the Plaintiffs' detriment should a judgment against him in the Ongoing Proceedings be enforced against the Plaintiffs and not against Radler for his proportionate share.

46. Contribution and indemnity is also sought as against Radler on the following basis:

a) Radler was a recipient of non-compete payments in respect of which damages are being claimed in the Ongoing Proceedings;

b) Radler received and benefited from monies allegedly improperly paid or diverted from International and/or Hollinger Inc. or their subsidiaries for which damages are claimed in the Ongoing Proceedings; and

c) Radler actively participated in all elements of the transactions which are in issue in the Ongoing Proceedings.

47. Radler would be unjustly enriched to the Plaintiffs' detriment should judgment be awarded or enforced against the Plaintiffs in respect of amounts that were paid to or received by Radler.

As against Torys

48. Torys was International and Hollinger Inc.'s principal outside counsel at the time material to the Ongoing Proceedings. Torys provided legal advice to both companies and owed duties of care and fiduciary duties to International and Hollinger Inc.

49. Torys was also RCL and RMI's principal outside counsel during the material time. It likewise provided legal service and advice to RCL and RMI on matters relating to their business dealings with International and Hollinger Inc. Torys owed similar duties of care and fiduciary duties to RCL and RMI.

50. In carrying out its responsibilities Torys was responsible for advising International, Hollinger Inc., RCL and RMI regarding the structure and execution of certain of the transactions at issue in the Ongoing Proceedings (including, but not limited to, management and non-compete agreements impugned in the Ongoing Proceedings as well as others known to Torys) and the disclosure requirements of such transactions.

51. Furthermore, Torys was aware and accepted at all material times that the officers and directors of International, Hollinger Inc., RCL and RMI, including Black and Amiel-Black, relied on Torys to render advice in a competent and professional manner on their duties and responsibilities as officers and directors of these companies in respect of those transactions, including on matters of disclosure. Torys possessed a special degree of skill not possessed by International, Hollinger Inc., RCL and RMI or its officers and directors, including Black and Amiel-Black. It was reasonable for each of these entities and persons to have relied upon Torys.

52. The report prepared by the Special Committee of International asserts that, contrary to its duties owed to International, Torys failed to properly advise and bring information in its possession to the attention of International's audit committee and board members in respect of

the transactions underlying the Ongoing Proceedings. It further alleges Torys had a conflict of interests in serving as counsel for International, Hollinger Inc., RCL and RMI adversely impacting International. The full allegations made against Torys in the report of the Special Committee of International are known to Torys.

53. Torys had knowledge of and involvement in the drafting and structuring of the management and non-competition agreements and other transactions underlying the Ongoing Proceedings and was present at many of the International audit committee meetings and board meetings where it has been alleged by International that information was not brought to the attention of the audit committee or members of the board in respect of the transactions in issue that are alleged should have been brought to the members' attention causing International harm.

54. Allegations of inadequate shareholder disclosure also underlie the Class Actions for which Torys provided advice to International and Hollinger Inc., as well as their respective officers and directors, including Black and Amiel-Black.

55. Torys had direct knowledge and involvement in the transactions underlying the Ongoing Proceedings and provided advice throughout on, among other things, the structure of the transactions and matters of disclosure. In the event that there is a finding of liability against the Plaintiffs in the Ongoing Proceedings, then the legal advice rendered by Torys was negligent, and constitutes a departure from the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession. Torys' duties to International, Hollinger Inc. and Black and Amiel-Black as officers and directors thereof, would have been breached and it is liable for damages arising from such breach.

56. Moreover, Torys would be unjustly enriched to the Plaintiffs' detriment should a judgment against Torys in the Ongoing Proceedings referred to in paragraph 1 above be enforced against the Plaintiffs and not as against Torys for its proportionate share. It is alleged by the plaintiffs in the Ongoing Proceedings that by its conduct or omissions Torys is liable for the damages claimed in those proceedings. The allegations against Torys in those Ongoing Proceedings are known by Torys.

57. The Plaintiffs are entitled both at law and in equity to contribution from Torys to the extent of Torys' own liability for the matters raised in the Ongoing Proceedings in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Ongoing Proceedings.

As against KPMG

58. The Plaintiffs are entitled both at law and in equity to contribution from KPMG to the extent of KPMG's own liability in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Ongoing Proceedings.

59. It is alleged by the plaintiffs in various of the Ongoing Proceedings that by its conduct or omissions KPMG is liable for the damages claimed in those proceedings. The allegations against KPMG in those Ongoing Proceedings are known by KPMG and include, among other things, that International's financial statements were materially wrong and misleading and that KPMG's unqualified audit opinions during the material period were inaccurate and misleading and a departure from generally accepted auditing standards ("GAAS").

60. KPMG would be unjustly enriched to the Plaintiffs' detriment should a judgment against KPMG in the Ongoing Proceedings be enforced against the Plaintiffs and not against KPMG for its proportionate share of responsibility.

61. KPMG should be responsible for its share of any damages to plaintiffs in the Class Actions or to International or Hollinger Inc. should it be determined in the Ongoing Proceedings that the statements audited or otherwise reviewed by KPMG were inaccurate or misleading or that the audits conducted by KPMG were not performed in accordance with GAAS, as alleged in those proceedings, so as to give rise to losses or damages to International, Hollinger Inc. or the plaintiffs in the Class Actions.

62. KPMG provided wide ranging accounting, auditing, tax, financial and consulting advice and services to International and Hollinger Inc. for the period during which many of the events alleged in the Ongoing Proceedings took place, including advising with respect to various of the matters now raised in the Ongoing Proceedings. KPMG owed a duty to perform those services in a competent, professional and accurate manner.

63. KPMG further was present at many of the International audit committee meetings and board meetings where it has been alleged by International that information was not brought to the attention of the audit committee or members of the board in respect of the transactions in issue that are alleged should have been brought to the members' attention causing International harm.

64. The report prepared by the Special Committee of International asserts that KPMG failed to properly advise and bring information to the attention of International's audit committee and board members in respect of various of the transactions underlying the Ongoing Proceedings, including with respect to the management fees paid by International and non-competition payments. Among other things, the report asserts that KPMG, as well as Torys, failed to advise International's audit committee that the management fees might allegedly violate fiduciary duties or be excessive or unwarranted, nor was any concern expressed by KPMG as to the proposed non-compete agreements. It further alleges KPMG had a conflict of interests given its role in providing services to each of International, Hollinger Inc. and RCL. The full allegations made against KPMG in the report of the Special Committee of International are known to KPMG. In the event of any finding of liability in the Ongoing Proceedings for management fees, non-competition payments or other payments, KPMG should contribute towards any damages awarded to International or the other plaintiffs in the Ongoing Proceedings.

65. The Plaintiffs rely on Rule 17.02 (g), (h) and (o) of the Ontario *Rules of Civil Procedure* to the extent that service is required outside of the Province of Ontario for any of the Defendants herein.

66. The Plaintiffs propose that this action be tried at Toronto, Ontario.

~~February 27, 2006~~
November 8, 2006

LERNERS LLP
Barristers & Solicitors
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Solicitors for the plaintiffs

Barbara Amiel Black, Conrad M. Black et al
Plaintiffs

and

Argus Corporation Limited et al.
Defendants

Court File No. 06-CL-6259

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

AMENDED STATEMENT OF CLAIM
(Notice of action issued January 27, 2006)

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Solicitors for the plaintiffs

EXHIBIT "H"

Court File No. ~~08-CV~~ CV-08-00007549-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:

MOFFAT MANAGEMENT INC., BLACK-AMIEL MANAGEMENT INC., CONRAD M. BLACK, CONRAD BLACK CAPITAL CORPORATION, 1269940 ONTARIO LIMITED, and 2753421 CANADA LIMITED

Plaintiffs

\- and -

SUN-TIMES MEDIA GROUP, INC., F. DAVID RADLER, F.D. RADLER LTD., NORTH AMERICAN NEWSPAPERS LTD., TORYS LLP, and KPMG LLP

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

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

Date: May 29, 2008

Issued by ______________________
Local registrar

Address of court office: 330 University Avenue
Toronto, Ontario M5G ~~1E6~~ 1R7
JSN

TO: F. DAVID RADLER, F.D. RADLER LTD., and NORTH AMERICAN NEWSPAPERS LTD.
2146 South West Marine Drive
Vancouver, B.C. V6P 6B5

AND TO: TORYS LLP
79 Wellington Street West,
Toronto, ON M5K 1N2

AND TO: KPMG LLP
199 Bay St., 36th Floor
Toronto, ON M5L 1B2

AND TO: SUN-TIMES MEDIA GROUP, INC.
401 North Wabash Avenue, Suite 740
Chicago, Illinois 60611
U.S.A.

CLAIM

1. The Plaintiffs, Moffat Management Inc. ("Moffat"), Black-Amiel Management Inc. ("Black-Amiel"), Conrad M. Black ("Black"), Conrad Black Capital Corporation ("CBCC"), and 1269440 Ontario Limited and 2753421 Canada Limited (together, "the numbered companies"), claim contribution and indemnity from the Defendants with respect to claims made in the following proceeding:

> *Hollinger Inc., Domgroup Ltd., 4322525 Canada Inc., 10 Toronto Street Inc. and Sugra Limited v. The Ravelston Corporation Limited, Ravelston Management Inc., 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., Moffatt Management Inc., Black-Amiel Management Inc., Argus Corporation Limited, Conrad Black Capital Corporation, Hollinger Aviation Inc., Mowitza Holdings, Inc., 364817 Ontario Limited, F.D. Radler Ltd., 1269940 Ontario Limited, 2753421 Canada Limited, Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee, 1406684 Ontario Limited and Peter Y. Atkinson*, commenced in the Ontario Superior Court of Justice (Commercial List), bearing Court File No. 06-CL-6261 ("the 2006 Action");

2. The Plaintiff Black claims contribution and indemnity from the Defendants with respect to claims made in the following proceeding:

> *Hollinger Inc. v. Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson*, commenced in the Ontario Superior Court of Justice (Commercial List), bearing Court File No. 07-CL-6954 ("the 2007 Action");

3. The Plaintiff Black claims damages in an amount to be determined from the Defendant Torys LLP ("Torys") in the event he is found liable for any amounts in the proceedings listed above;

4. The Plaintiffs claim prejudgment and post judgment interest in accordance with the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

5. The Plaintiffs claim their costs of this action on the substantial indemnity scale, together with Goods and Services Tax thereon; and

6. The Plaintiffs claim such further and other relief as this Honourable Court may deem just.

OVERVIEW

7. The actions brought by Hollinger Inc. and related corporations and identified in paragraphs 1 and 2 above (together, "the Hollinger Inc. Actions") assert various claims against the Plaintiffs. The claims in the Hollinger Inc. Actions overlap. The Plaintiffs expressly deny the allegations raised against them in the Hollinger Inc. Actions and any liability in those proceedings.

8. However, to the extent that the Plaintiffs are found liable in the Hollinger Inc. Actions, they seek damages and contribution and indemnity as against the Defendants as stated in paragraphs 1, 2, and 3 above.

THE PLAINTIFFS

9. Black was an officer and director of The Ravelston Corporation Limited ("RCL"), Ravelston Management Inc. ("RMI"), Argus Corporation Limited ("Argus"), Sun-Times Media Group, Inc., formerly Hollinger International Inc. ("STMG"), and Hollinger Inc. at all material times. He has been named as a defendant in each of the Hollinger Inc. Actions.

10. Moffat and Black-Amiel are companies incorporated pursuant to the laws of Barbados. They provided services to STMG. They have been named as defendants in the 2006 Action by virtue of, *inter alia*, having received management fees in respect of such services.

11. The Plaintiffs are subject to claims for joint and several liability in the Hollinger Inc. Actions, in which the Defendants herein are or also may be named as defendants.

THE DEFENDANTS

12. F. David Radler ("Radler") was at all materials times an officer and director of each of STMG, Hollinger Inc., RCL, RMI, Argus, and the N.B. companies. He has been named as a defendant in the Hollinger Inc. Actions. The actions or omissions of Radler alleged to give rise to liability are set out in the pleadings in the Hollinger Inc. Actions and are thereby known to Radler.

13. F.D. Radler Ltd. ("FDRL") and North American Newspapers Ltd. ("NANL") are companies owned by Radler. FDRL is named as a defendant in the 2006 Action. The actions or omissions of FDLR alleged to give rise to liability are set out in the pleadings in the 2006 Action and are known to FDLR and NANL.

14. STMG is a corporation incorporated under the laws of the State of Delaware. It is a reporting issuer in Ontario. Through subsidiary corporations, STMG has at various times owned and published newspapers in Canada and elsewhere throughout the world.

15. Torys is a limited liability partnership with offices in Toronto, Ontario and New York, New York. At all material times, Torys was STMG's principal outside counsel. At the same time, Torys also provided legal services and advice to Hollinger Inc., RCL, and RMI, as well as to the officers and directors of those companies, including Black.

16. KPMG is a limited liability partnership and an accounting firm. At all material times, KPMG provided accounting, auditing, tax, financial and consulting advice and services to STMG and to Hollinger Inc. in Toronto and Chicago.

THE HOLLINGER INC. ACTIONS

The 2006 Action

17. In the 2006 Action, Hollinger Inc. and certain related corporations (referred to in the Statement of Claim in the 2006 Action as "the Hollinger Group") seek a variety of relief, including more than $500 million in damages as against Black, as a former officer and director of the Hollinger Group. They allege that he breached his fiduciary duties and other obligations by preferring his own interests to those of the corporations and that his conduct was oppressive under section 241 of the *Canada Business Corporations Act*, thereby causing harm and damage to the Hollinger Group. In particular, it is alleged that Black and his co-defendants (including Radler, FDRL, Moffat, Black-Amiel, the numbered companies, and CBCC):

(a) conspired to sell certain of Hollinger Inc.'s operating assets at less than fair market value;

(b) caused management fees that had previously been paid to the Hollinger Group to be paid to RCL, Moffat, and Black-Amiel instead, thereby depriving the Hollinger Group of its cash flow;

(c) restructured Hollinger Inc.'s equity to eliminate, reduce, or buy out Hollinger Inc.'s minority shareholders for no value to Hollinger Inc.;

(d) caused the Hollinger Group to suffer a liquidity crisis that required it to borrow funds on unfavourable terms;

(e) caused the Hollinger Group to make improvident loans to them for their own personal benefit;

(f) engaged in a variety of improper transactions, which it is alleged provided them with a direct financial benefit, including the diversion of certain non-competition payments from STMG to Hollinger Inc.; and

(g) caused the Hollinger Group to become subject to a variety of regulatory and civil proceedings, thereby forcing them to incur significant costs, including Ontario Securities Commission and United States Securities and Exchange Commission proceedings and litigation brought by STMG against Hollinger Inc. and others.

18. The Hollinger Group also seeks a declaration that no monies are owing to Black, whether under indemnity agreements or otherwise, and that any such indemnity agreements are void and unenforceable.

The 2007 Action

19. There is significant overlap between the issues raised in the 2006 Action and the 2007 Action.

20. In the 2007 Action, Hollinger Inc. seeks a declaration as against all defendants therein, including Black and Radler, jointly and severally, that no monies are owing by it to Black under any indemnity agreement, that any payments already made are to be repaid, that any such indemnity agreement is void and unenforceable, and that Black is not entitled to be indemnified by Hollinger Inc. under the provisions of section 124 of the *Canada Business Corporations Act* or the corporate by-laws, on the basis that it is alleged that the indemnity agreements were procured at a time when Black knew or ought to have known that, as a result of certain conduct which Hollinger Inc. alleges to have been wrongful, significant claims would be made against Hollinger Inc. by STMG and others for the recovery of damages. Those claims are referred to in paragraph 17(g) above.

CLAIMS FOR CONTRIBUTION AND INDEMNITY

21. The Plaintiffs deny any liability in respect of all of the claims raised in the Hollinger Inc. Actions.

22. However, in the event that they are found liable for any of the claims asserted against them in the Hollinger Inc. Actions, they seek contribution and indemnity from the Defendants herein.

As against STMG

23. At all material times, Radler was the directing and controlling mind of STMG and STMG is vicariously liable for his actions, as further described in paragraph 38 below. Contribution is sought against STMG on the basis that it would be unjustly enriched to the Plaintiffs' detriment should a judgment against them be enforced against them in respect of conduct for which STMG is liable. The Plaintiffs are entitled at law and equity to contribution from STMG to the extent of STMG's own liability or those for whom STMG is directly or indirectly liable, in the event that the Plaintiffs are found liable in the Hollinger Inc. Actions.

24. Black further claims indemnification from STMG for any and all liability, costs, charges, and expenses incurred by him in connection with the Hollinger Inc. Actions

pursuant to an indemnity agreement and by reason of him having been an officer and director of STMG at all relevant times.

As against Radler, FDLR, and NANL

25. The Plaintiffs are entitled, both at law and in equity, to contribution from Radler, FDLR, and NANL to the extent of their own liability in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Hollinger Inc. Actions. It is alleged in the Hollinger Inc. Actions that, by his conduct or omissions, Radler is liable for the damages claimed in those proceedings. FDLR and NANL benefited financially from Radler's conduct or omissions and, therefore, in the event Radler is liable in the Hollinger Inc. Actions, so are FDLR, and NANL. The allegations against Radler in the Hollinger Inc. Actions are known by Radler, FDLR, and NANL.

26. Radler, FDLR, and NANL would be unjustly enriched to the Plaintiffs' detriment should a judgment against them in the Hollinger Inc. Actions be enforced against the Plaintiffs and not against them.

27. Contribution and indemnity is also sought as against Radler, FDLR, and NANL on the following bases:

(a) Radler was a recipient of non-compete payments in respect of which damages are being claimed in the 2006 Action and transferred all or a portion of these payments to FDLR or NANL or both;

(b) Radler received and benefited from monies allegedly improperly paid or diverted from STMG and/or Hollinger Inc. or their subsidiaries for which damages are claimed in the 2006 Action and he transferred all or a portion of these monies to FDLR or NANL or both; and

(c) Radler actively participated in all elements of the transactions which are in issue in the Hollinger Inc. Actions.

28. Radler, FDLR, and NANL would be unjustly enriched to the Plaintiffs' detriment should judgment be awarded or enforced against the Plaintiffs in respect of amounts that were paid to or received by Radler, FDLR, and NANL.

As against Torys

29. Torys was STMG's and Hollinger Inc.'s principal outside counsel at the time material to the Hollinger Inc. Actions. Torys provided legal advice to both companies and owed duties of care and fiduciary duties to STMG and Hollinger Inc.

30. Torys was also RCL and RMI's principal outside counsel during the material time. It likewise provided legal services and advice to RCL and RMI on matters relating to their business dealings with STMG and Hollinger Inc. Torys owed similar duties of care and fiduciary duties to RCL and RMI.

31. In carrying out its responsibilities Torys was responsible for advising STMG, Hollinger Inc., RCL and RMI regarding the structure and execution of certain of the transactions at issue in the Hollinger Inc. Actions (including, but not limited to, management and non-compete agreements impugned in the Hollinger Inc. Actions as well as others known to Torys) and the disclosure requirements of such transactions.

32. Furthermore, Torys was aware and accepted at all material times that the officers and directors of STMG, Hollinger Inc., RCL and RMI, including Black, relied on Torys to render advice in a competent and professional manner on their duties and responsibilities as officers and directors of these companies in respect of those transactions, including on matters of disclosure. Torys possessed a special degree of skill not possessed by STMG, Hollinger Inc., RCL and RMI or its officers and directors, including Black. It was reasonable for each of these entities and persons to have relied upon Torys.

33. Torys failed to properly advise and bring information in its possession to the attention of Hollinger Inc.'s audit committee and board members in respect of the transactions underlying the Hollinger Inc. Actions. Further, Torys had a conflict of interest in serving as counsel for STMG, Hollinger Inc., RCL and RMI.

34. Torys had knowledge of and involvement in the drafting and structuring of the management and non-competition agreements and other transactions underlying the Hollinger Inc. Actions, including those that are the subject of the regulatory and civil proceedings to which Hollinger Inc. has been named a defendant, which are referred to in paragraph 17(g) above.

35. Torys had direct knowledge and involvement in the transactions underlying the Hollinger Inc. Actions and provided advice throughout on, among other things, the structure of the transactions and matters of disclosure. In the event that there is a finding of liability against the Plaintiffs in the Hollinger Inc. Actions, then the legal advice rendered by Torys was negligent, and constitutes a departure from the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the legal profession. Torys' duties to Hollinger Inc. and Black as an officer and director thereof, would have been breached and it is liable for damages arising from such breach.

36. The Plaintiffs are entitled, both at law and in equity, to contribution and indemnity from Torys to the extent of Torys' own liability for the matters raised in the Hollinger Inc. Actions in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Hollinger Inc. Actions.

As against KPMG

37. The Plaintiffs are entitled both at law and in equity to contribution and indemnity from KPMG to the extent of KPMG's own liability in the event that the Plaintiffs are found jointly liable for any of the claims asserted in the Hollinger Inc. Actions.

38. KPMG should be responsible for its share of any damages to the plaintiffs in the Hollinger Inc. Actions should it be determined that the statements audited or otherwise reviewed by KPMG were inaccurate or misleading or that the audits conducted by KPMG were not performed in accordance with generally accepted auditing standards ("GAAS") so as to give rise to losses or damages to Hollinger Inc. or the other plaintiffs in the Hollinger Inc. Actions.

39. KPMG provided wide ranging accounting, auditing, tax, financial and consulting advice and services to Hollinger Inc. and STMG for the period during which many of the events alleged in the Hollinger Inc. Actions took place, including advising with respect to various of the matters now raised in the Hollinger Inc. Actions. KPMG owed a duty to perform those services in a competent, professional, and accurate manner.

40. Further KPMG was present at many of the audit committee meetings and board meetings where it has been alleged in the various regulatory and civil proceedings to which Hollinger Inc. has been named a defendant that information was not brought to the attention of the audit committee or members of the board in respect of the transactions in issue that are alleged should have been brought to the members' attention, causing Hollinger Inc. harm. It is further alleged that KPMG failed to properly advise and bring information to the attention of the audit committee and board members in respect of various of the transactions underlying the Hollinger Inc. Actions, including with respect to the management fees and non-competition payments. It is further alleged that KPMG had a conflict of interest given its role in providing services to each of STMG, Hollinger Inc., and RCL.

41. In the event of any finding of liability in the Hollinger Inc. Actions for management fees, non-competition payments or other payments, KPMG should contribute towards any damages awarded to the plaintiffs in the Hollinger Inc. Actions.

42. The Plaintiffs rely on Rule 17.02 (g), (h) and (o) of the Ontario Rules of Civil Procedure to the extent that service is required outside of the Province of Ontario for any of the Defendants herein.

43. The Plaintiffs propose that this action be tried at Toronto, Ontario.

May 29, 2008

LERNERS LLP
Barristers & Solicitors
130 Adelaide Street West
Suite 2400, Box 95
Toronto, ON M5H 3P5

Earl A. Cherniak, Q.C. (LSUC #09113C)
George S. Glezos (LSUC# 31382P)
Lisa C. Munro (LSUC# 36006R)
Tel: 416.867.3076
Fax: 416.867.9192

Solicitors for the Plaintiffs

MOFFAT MANAGEMENT INC. et al.
Plaintiffs

and

F. DAVID RADLER, et al
Defendants

Court File No:
CV-08-00007549-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

LERNERS LLP
Barristers & Solicitors
130 Adelaide Street West
Suite 2400, Box 95
Toronto, ON M5H 3P5

Earl A. Cherniak, Q.C. (LSUC #09113C)
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Tel: 416.867.3076
Fax: 416.867.9192

Solicitors for the Plaintiffs

1140508.1

EXHIBIT "12"

April 2010 Upcoming Hearings
(*Updated on April 27, 2010*)

DARREN ELLIOT SUKONICK

From: City of Toronto, Ontario
First hearing: April 26 and 29, 2010
LSUC Counsel: Paul Stern
Lawyer's Counsel: Ian Smith

Particulars of alleged professional misconduct from the Notice of Application dated April 30, 2009:

1. In connection with the matters detailed below, you acted in a conflict of interest within the meaning of Rule 2.04 of the Rules of Professional Conduct, as amended from time to time, in that you failed to make adequate disclosure of your conflict of interest and to obtain the informed consent of your clients, as required by the Rule.

a. **<u>The sale to Canwest Global Communications:</u>**

i. Between May 1, 2000 and September 30, 2001, you rendered legal services in connection with the sale by Hollinger International Inc. and its subsidiaries, and Hollinger Canadian Newspapers Limited Partnership, and its subsidiaries, of newspaper assets to Canwest Global Communications, which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, Hollinger Canadian Newspapers Limited Partnership and its subsidiaries, Hollinger Inc. and its subsidiaries, and the following recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   i) who was to receive compensation for their non-competition covenant;
   ii) how much was to be received;
   iii) what was the true purpose of the non-competition payments;
   iv) which vendor would bear the burden of the payments;
   v) what was required to be publicly disclosed in connection with the payments; and
   vi) what was the appropriate tax treatment for the payments.

b. **<u>The sale to Osprey Media Holdings Inc.:</u>**

i. In the period between Feb. 1, 2001 and March 31, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and Hollinger

Canadian Newspapers Limited General Partnership ("HCNLP") and their subsidiaries, of newspaper assets to Osprey Media Holdings Inc. which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, HCNLP and its subsidiaries, Hollinger Inc. and its subsidiaries, and the recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   - i) who was to receive compensation for their non-competition covenant;
   - ii) how much was to be received;
   - iii) what was the true purpose of the non-competition payments;
   - iv) which vendor would bear the burden of the payments;
   - v) what was required to be publicly disclosed in connection with the payments; and
   - vi) what was the appropriate tax treatment for the payments.

c. **<u>The Sale of NP Holdings Company</u>:**

i. In the period of October 1, 2001 to February 28, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and/or its subsidiaries of NP Holdings Company to The Ravelston Corporation Limited and/or its subsidiaries, a transaction in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and/or its subsidiaries, Hollinger Inc. and its subsidiaries, and The Ravelston Corporation Limited and its subsidiaries, and the following The Ravelston Corporation Limited shareholders Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   - i) The valuation of NP Holdings Company;
   - ii) The liability of your client NP Holdings to Canwest, and the similar liability of your client Hollinger International Inc. to Canwest;
   - iii) The infusion of $22.5 million from your client Hollinger Canadian Publishing Holdings Co. ("HCPH") to your client NP Holdings; and
   - iv) The creation and terms of a promissory note from your client HCPH promising to pay your client NP Holdings $22.5 million.

d. **<u>The loan to 504468 N.B. Inc. ("504"):</u>**

i. In the period between May 1, 2000 and March 31, 2003, you rendered legal services in connection with a loan from Hollinger International Inc. and/or its subsidiaries, to 504, an indirectly wholly owned subsidiary of Hollinger Inc., in the amount of US$36.8 million where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with 504 and with Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:

i) Your knowledge and advice as to whether there was an alternative to making the loan;

ii) The security, or lack thereof, to be provided to your lender client by your borrower client; and

iii) The reduction of the interest rate in favour of your borrower client in a manner detrimental to your lender client.

e. **The Offsetting Debt Transaction - the 504 debt to HII and the HCPH (NP Holdings) debt to RMI:**

i. In the period between March 1, 2003, and September 30, 2003, you rendered legal services in connection with the reduction of the loan debt owed by 504 to Hollinger International Inc., from US$20.4 million to US$4.7 million, by means of offsetting the promissory note previously entered into by HCPH to NP Holdings, now through corporate reorganizations owing to Ravelston Management Inc., where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with 504, Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries including Ravelston Management Inc., and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:

i) Whether or not the HCPH to NP Holdings promissory note could be utilized to offset the debt where it was initially intended to be a contingent asset only;

ii) Whether your client Hollinger International Inc. continued to have an independent obligation to Canwest where it had now paid the same obligation to Ravelston Management Inc. unconditionally;

iii) Whether or not proper approval was obtained for this related party transaction; and

iv) Who remained liable to Canwest upon demand for payment by Canwest on the $22.5 million obligation.

f. **Conrad Black's renunciation of his Canadian citizenship:**

i. In the period January 1, 2001, to December 31, 2003, you rendered legal services in connection with Mr. Conrad Black's renunciation of his Canadian citizenship, where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries,, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Mr. Conrad Black.

iii. Your conflict of interest involved the following issues:

i) Whether renunciation of Canadian citizenship by your client Mr. Black would be detrimental to the interests of your other clients Hollinger International Inc. and its subsidiaries, and Hollinger Inc. and its subsidiaries, particularly due to:

   a. The effect of s. 19 of the *Income Tax Act* (whereby advertisers would not be allowed to deduct advertising expense in media controlled by a non-Canadian); and

   b. The potential breach of the National Post partnership agreement with Canwest.

ii) What was required to be publicly disclosed respecting the potential consequences of Mr. Black's actions.

DOROTHY ELIZABETH DeMERCHANT

From: City of Toronto, Ontario
Hearing reconvened: November 14, 15, 25, and 28 to 30, and December 2, 2011
LSUC Counsel: Paul Stern
Lawyer's Counsel: Philip Campbell

Particulars of alleged professional misconduct from the Law Society's Notice of Application filed May 4, 2009:

1. In connection with the matters detailed below, you acted in a conflict of interest within the meaning of Rule 2.04 of the Rules of Professional Conduct, as amended from time to time, in that you failed to make adequate disclosure of your conflict of interest and to obtain the informed consent of your clients, as required by the Rule.

a. <u>The sale to Canwest Global Communications:</u>

i. Between May 1, 2000 and September 30, 2001, you rendered legal services in connection with the sale by Hollinger International Inc. and its subsidiaries, and Hollinger Canadian Newspapers Limited Partnership, and its subsidiaries, of newspaper assets to Canwest Global Communications, which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, Hollinger Canadian Newspapers Limited Partnership and its subsidiaries, Hollinger Inc. and its subsidiaries, and the following recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   i) who was to receive compensation for their non-competition covenant;
   ii) how much was to be received;
   iii) what was the true purpose of the non-competition payments;
   iv) which vendor would bear the burden of the payments;
   v) what was required to be publicly disclosed in connection with the payments; and
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b. <u>The sale to Osprey Media Holdings Inc.:</u>

i. In the period between Feb. 1, 2001 and March 31, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and Hollinger Canadian Newspapers Limited General Partnership ("HCNLP") and their subsidiaries, of newspaper assets to Osprey Media Holdings Inc. which included the provision of non-competition covenants and payments in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries, HCNLP and its subsidiaries, Hollinger Inc. and its subsidiaries, and the recipients of the non-competition payments, The Ravelston Corporation Limited, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:

i) who was to receive compensation for their non-competition covenant;
ii) how much was to be received;
iii) what was the true purpose of the non-competition payments;
iv) which vendor would bear the burden of the payments;
v) what was required to be publicly disclosed in connection with the payments; and
vi) what was the appropriate tax treatment for the payments.

c. <u>The Sale of NP Holdings Company</u>:

i. In the period of October 1, 2001 to February 28, 2002, you rendered legal services in connection with the sale by Hollinger International Inc. and/or its subsidiaries of NP Holdings Company to The Ravelston Corporation Limited and/or its subsidiaries, a transaction in respect of which the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and/or its subsidiaries, Hollinger Inc. and its subsidiaries, and The Ravelston Corporation Limited and its subsidiaries, and the following The Ravelston Corporation Limited shareholders Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   i) The valuation of NP Holdings Company;
   ii) The liability of your client NP Holdings to Canwest, and the similar liability of your client Hollinger International Inc. to Canwest;
   iii) The infusion of $22.5 million from your client Hollinger Canadian Publishing Holdings Co. ("HCPH") to your client NP Holdings; and
   iv) The creation and terms of a promissory note from your client HCPH promising to pay your client NP Holdings $22.5 million.

d. <u>The loan to 504468 N.B. Inc. ("504")</u>:

i. In the period between May 1, 2000 and March 31, 2003, you rendered legal services in connection with a loan from Hollinger International Inc. and/or its subsidiaries, to 504, an indirectly wholly owned subsidiary of Hollinger Inc., in the amount of US$36.8 million where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with 504 and with Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:
   i) Your knowledge and advice as to whether there was an alternative to making the loan;
   ii) The security, or lack thereof, to be provided to your lender client by your borrower client; and
   iii) The reduction of the interest rate in favour of your borrower client in a manner detrimental to your lender client.

e. **<u>The Offsetting Debt Transaction - the 504 debt to HII and the HCPH (NP Holdings) debt to RMI:</u>**

i. In the period between March 1, 2003, and September 30, 2003, you rendered legal services in connection with the reduction of the loan debt owed by 504 to Hollinger International Inc., from US$20.4 million to US$4.7 million, by means of offsetting the promissory note previously entered into by HCPH to NP Holdings, now through corporate reorganizations owing to Ravelston Management Inc., where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with 504, Hollinger International Inc. and its subsidiaries, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries including Ravelston Management Inc., and Messrs. Conrad Black, Peter Atkinson, and John Boultbee.

iii. Your conflict of interest involved the following issues:

i) Whether or not the HCPH to NP Holdings promissory note could be utilized to offset the debt where it was initially intended to be a contingent asset only;

ii) Whether your client Hollinger International Inc. continued to have an independent obligation to Canwest where it had now paid the same obligation to Ravelston Management Inc. unconditionally;

iii) Whether or not proper approval was obtained for this related party transaction; and

iv) Who remained liable to Canwest upon demand for payment by Canwest on the $22.5 million obligation.

f. **<u>Conrad Black's renunciation of his Canadian citizenship:</u>**

i. In the period January 1, 2001, to December 31, 2003, you rendered legal services in connection with Mr. Conrad Black's renunciation of his Canadian citizenship, where the interests of two or more of your clients were not aligned.

ii. You had a solicitor-client relationship at the material times with Hollinger International Inc. and its subsidiaries,, Hollinger Inc. and its subsidiaries, The Ravelston Corporation Limited and its subsidiaries, and Mr. Conrad Black.

iii. Your conflict of interest involved the following issues:

i) Whether renunciation of Canadian citizenship by your client Mr. Black would be detrimental to the interests of your other clients Hollinger International Inc. and its subsidiaries, and Hollinger Inc. and its subsidiaries, particularly due to:

a. The effect of s. 19 of the *Income Tax Act* (whereby advertisers would not be allowed to deduct advertising expense in media controlled by a non-Canadian); and

b. The potential breach of the National Post partnership agreement with Canwest.

ii) What was required to be publicly disclosed respecting the potential consequences of Mr. Black's actions.

EXHIBIT "13"

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") made as of the 26th day of March, 2010 between Torys LLP, an Ontario limited liability partnership, Torys LLP, a New York limited liability partnership (collectively, along with any predecessor partnerships "Torys") and Hollinger Inc. ("Hollinger") a corporation incorporated under the *Canada Business Corporations Act*, R.S. 1985 c.C-44 (together, the "Parties"); and

WHEREAS, in or about December 2005, Hollinger advised Torys of an intention to commence legal proceedings against Torys, in respect of Torys having given advice and conducted legal work for Hollinger and related persons and entities (the "Intended Action"); and

WHEREAS, pursuant to an agreement to mediate dated as of December 8, 2005 and subsequently extended by agreements dated November 30, 2006, November 22, 2007 and December 12, 2008 (collectively the "Mediation Agreement") the Parties agreed, *inter alia*, to mediate the Intended Action; and

WHEREAS, pursuant to an order of the Ontario Superior Court of Justice, Commercial List, (the "Court") dated August 1, 2007 (the "Initial CCAA Order") Hollinger, 432525 Canada Inc. and Sugra Limited (together the "CCAA Applicants"), were authorized to commence a proceeding pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("CCAA") wherein the CCAA Applicants may file a plan of compromise and arrangement (a "Plan"); and

WHEREAS, pursuant to an order of the Court dated May 21, 2008 the CCAA Applicants obtained approval of a multi-party settlement and a cost reduction/asset enhancement program (the "MPS Order") wherein John D. Ground (retired Justice) was appointed as an officer of the Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the CCAA Applicants, including the Intended Action; and

WHEREAS, pursuant to the MPS Order, the Litigation Trustee was empowered to initiate, prosecute and continue the prosecution of any and all proceedings then pending or thereafter instituted with respect to the CCAA Applicants including, *inter alia*, the power to settle or compromise any such proceeding, including the Intended Action; and

WHEREAS, the Parties engaged in a mediation process before George W. Adams (retired Justice) on March 23 and 24, 2010 (the "Mediation"); and

WHEREAS Torys denies that it has liability to Hollinger or has engaged in any wrongdoing; and

WHEREAS Torys has agreed to enter into this Agreement to resolve any potential liability to Hollinger and to reduce further expense, inconvenience and the distraction of burdensome and protracted litigation,

NOW THEREFORE IN CONSIDERATION OF THE COVENANTS SET OUT BELOW AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, AND SUBJECT TO THE PROVISIONS SET OUT HEREIN RESPECTING COURT APPROVAL OF THIS SETTLEMENT AND ITS MATERIAL TERMS, the Parties agree as follows:

1. *Payment by Torys of the Settlement Amount*: Torys shall pay, or cause to be paid by its agents, the sum of [redacted] (the "Settlement Amount") to Hollinger for the benefit of the Litigation Trustee. The Settlement Amount shall be paid as follows:

(a) [redacted]

(b)

(c)

2. *Full and Final Release of Torys by the Hollinger Releasors*: Upon payment in full of the Settlement Amount, Hollinger, its past, present and future subsidiaries and divisions (including, without limiting the foregoing, 432525 Canada Inc., Sugra Limited, DomGroup Ltd. and 10 Toronto Street Ltd., but not including the Sun Times Media Group, Inc. and its subsidiaries (collectively referred to as "STMG"), all partnerships in which Hollinger or a wholly-owned subsidiary of Hollinger is the general partner and any corporation owned by such partnership, for

themselves, their employees, servants, agents, heirs, administrators, successors, assigns and on behalf of any party or parties who claim a right or interest through them (collectively, the "Hollinger Releasors") do hereby fully, finally and forever, release, remise, acquit and forever discharge, without qualification or limitation, Torys and its past, present and future partners, employees, directors, officers, affiliates, agents, advisors, insurers and reinsurers, and their predecessors, successors and assigns (collectively the "Torys Releasees"), separately and jointly, of and from any and all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether known or unknown, in law or in equity, of whatever kind or character, suspected, fixed or contingent (collectively "Claims") that have been, that could be, or that could have been asserted by the Hollinger Releasors from the beginning of time through the date hereof (including without limitation any claim for contribution, indemnification, reimbursement or any other forms of claims over related to the subject matter of the Settled Claims that could be asserted on or after the date hereof by the Hollinger Releasors based on events occurring prior to and through the date hereof) against the Torys Releasees concerning (i) Torys' representation of the Hollinger Releasors or (ii) any allegations of injury to the Hollinger Releasors caused by Torys including, without limiting the generality of the foregoing all claims raised or which could have been raised in the Intended Action (collectively the "Settled Claims").

3. *Unknown Claims*: Without limiting the generality of paragraph 2 above, the Hollinger Releasors declare that the intent of the full and final release set out therein is to conclude all issues arising from the Settled Claims and it is understood and agreed that the release is intended to cover, and does cover, not only all known injuries, losses and damages, but all injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof. In addition, Torys agrees that it has not filed, and will not file, any claims against the estates of any of the Hollinger Releasors.

4. *Full and Final Releases of Torys by Third Parties*: It is the intent of the Parties that this Agreement and the terms of the Release Order will eliminate any basis for (i) any other party against whom any of the Hollinger Releasors has brought or in the future brings any Claims relating in any way to the subject matter of the Settled Claims; and (ii) any past or present shareholder, officer, director, creditor or subsidiary (other than STMG) of the Hollinger

Releasors (together the "Third Party Releasors"), from being able to claim contribution, indemnification, reimbursement or other forms of claims over from the Torys Releasees for such party's liability to the Hollinger Releasors or from bringing claims against the Torys Releasees relating in any way to the subject matter of the Settled Claims (the "Third Party Releases").

5. *Excepted Claims*: The Third Party Releases set out in paragraph 4 of this Agreement do not apply to an Excepted Claim (and only an Excepted Claim as defined herein) by a Third Party Releasor against Torys for damages. An "Excepted Claim" means a claim that is based on a final judgment that a Third Party Releasor suffered damages, or if civil law applies to an Excepted Claim, prejudice, as a direct result and solely as a result of such Third Party Releasor's reliance on an express fraudulent misrepresentation made by Torys or its agents to such Third Party Releasor when Torys had actual knowledge that the misrepresentation was false. For greater certainty an "Excepted Claim" does not include a claim by a Third Party Releasor against Torys for contribution and indemnity for such party's liability to the Hollinger Releasors.

6. *Release Order*: The Parties agree and acknowledge that the Third Party Releases are a material and integral term of this Agreement and that this Agreement is contingent upon the issuance of a Release Order that will give legal effect to the Third Party Releases as against the Third Party Releasors.

(a) As soon as practicable after execution of this Agreement, Hollinger shall apply to the Court for approval of this Settlement ("Settlement Approval") and, subject to the consent of Torys acting reasonably, shall seek a Release Order as part of the Settlement Approval.

(b) If a release order is not sought as part of the Settlement Approval or if the Court in its discretion declines to grant a Release Order in favour of Torys pursuant to a Settlement Approval, then Hollinger agrees to submit a Plan to its creditors, the terms of which shall include provisions to give effect to the Release Order and, as part of any Court approval of such plan ("Plan Approval"), shall seek a Release Order.

(c) Any application to the Court for either Settlement Approval or Plan Approval pursuant to which a Release Order is sought, shall be brought on notice to all those against whom the Third Party Releases are intended to be effective, including but not limited to the following Third Party Releasors: Conrad M. Black, Barbara Amiel-Black, Peter Y. Atkinson, John A. Boultbee, F. David Radler, Charles G. Cowan, Daniel W. Colson, Peter G. White, Maureen J. Sabia, Douglas G. Bassett, Allan E. Gotlieb, Henry Ketcham III, Fredrik S. Eaton, Ralph M. Barford, R. Donald Fullerton, KPMG LLP, the Canadian Imperial Bank of Commerce, the Toronto Dominion Bank, and the Bank of Nova Scotia.

(d) The timing of any application to the Court for either Settlement Approval or Plan Approval pursuant to which a Release Order is sought shall be within the discretion of Hollinger and the Litigation Trustee acting reasonably with a view to giving the Third Party Releasors a reasonable opportunity to participate in the CCAA settlement process. If thought necessary or appropriate by Torys or the Litigation Trustee and Hollinger, all acting reasonably, Hollinger and the Litigation Trustee shall seek prior Court approval of any service and notice protocol in respect of obtaining any Release Order;

(e) If an application for a Release Order has not been brought by December 31, 2010 (the "Application Deadline") then Torys may, within fifteen (15) days after the expiry of the Application Deadline, at its sole discretion, either (i) terminate this Agreement or (ii) select and notify Hollinger and the Litigation Trustee of an amended Application Deadline (the "Amended Application Deadline"). If Torys elects to select an Amended Application Deadline, that Amended Application Deadline shall replace the Application Deadline for all purposes of this Agreement.

(f) If the Court declines to grant a Release Order pursuant to a Plan Approval then Torys may, at its sole discretion, terminate this Agreement within fifteen (15) days following the Court's decision becoming Final.

(g) If Torys elects to terminate this Agreement pursuant to subparagraphs 6 (e) or (f), the Agreement shall, subject to the continuing obligations of the parties in respect of confidentiality, as set out in paragraph 7 of this Agreement, become null and void.

7. *Confidentiality and Publicity*: Except to the extent necessary to obtain a Release Order pursuant to Settlement Approval or Plan Approval, the terms of this Agreement including the Settlement Amount and the materials filed or disclosed in the Mediation (the "Mediation Materials") shall remain confidential and shall not be disclosed by either Party other than in communications with outside auditors, insurers, taxing authorities, regulatory or governmental agencies, in Torys' case to partners and former partners of Torys, in Hollinger's case to creditors that have signed binding and applicable confidentiality agreements, or as otherwise may be required by law.

For greater certainty, the Parties agree that:

(a) for the purposes of enabling the Litigation Trustee to carry out his mandate by allowing the Third Party Releasors the opportunity to participate in the CCAA settlement process, Hollinger may disclose to such Third Party Releasors, on a confidential basis, (i) the fact of this Agreement (but not of the Settlement Amount), (ii) the identities of the Parties and (iii) the fact that Third Party Releases are being sought as a condition of this Agreement; and

(b) [redacted]

Subject to the foregoing, Hollinger further agrees that it shall not publicize or comment upon any allegations against Torys related to the Settled Claims and shall not express any views as to the actions of Torys related to the Settled Claims. Any press release issued by either party announcing this Agreement will be written in accordance with this paragraph and will be subject to the consent of the other party, such consent not to be unreasonably withheld. This provision respecting confidentiality shall survive any termination of this Agreement.

8. *No Admission of Liability*: This Agreement does not in any manner constitute Torys' admission of liability, wrongdoing or any other matter and any and all liability and wrongdoing on the part of Torys is specifically denied.

9. *Remedies Upon Breach of this Agreement*: The Parties agree that a breach by either Party of any of its obligations hereunder would cause irreparable harm to the other non-breaching party for which money damages would not be an adequate remedy. Accordingly, the Parties agree that the non-breaching party shall be entitle to specific performance and injunctive and other equitable relief in the event the other party breaches any of its obligations hereunder.

10. *Governing Law*: This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

11. *Counterparts and Delivery*: This Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by fax transmission or by transmission in PDF or similarly electronic document format.

12. *Admissibility*: This Agreement may be filed and used in any action or proceeding as may be necessary to consummate, enforce or seek relief with respect to the Agreement. The Parties, and any predecessors or successors in interest may file and use this Agreement in any action to support a defence of res judicata, collateral estoppel, issue estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion, issue preclusion, or similar defence or counterclaim. However, Hollinger agrees to redact all indications of amounts payable hereunder from any public filings and agrees to seek a sealing order in respect of the redacted information.

13. *Successors and Assigns*: Unless otherwise stated to the contrary elsewhere in this Agreement, this Agreement shall be binding upon, apply to, and inure to the benefit of the Parties, the Hollinger Releasors, the Torys Releasees and their respective successors and assigns.

14. *No Waiver*: Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such party, notwithstanding such failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement to be performed by such other party.

15. *Further Assurances*: The Parties shall take such further and other steps and execute such further and other documents as may reasonably be required to give effect to the terms of this Agreement.

16. *Notice*: Any notices required to be given under this Agreement shall be in writing and shall be made by fax transmission or email transmission to the fax numbers and e-mail addresses set out below:

Justice J. Ground
Litigation Trustee of Hollinger Inc. and Hollinger Inc.
c/o Thornton Grout Finnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington Street West
Toronto-Dominion Centre
Toronto, Ontario M5K 1K7

Attention: Robert I. Thornton, Michael Barrack or Megan Keenberg
Fax: (416) 304-1313
Email: mbarrack@tgf.ca or Mkeenberg@tgf.ca

Torys LLP
Suite 3000, 79 Wellington St. W.
Box 270, TD Centre
Toronto, Ontario, M5K 1N2 Canada

Attention: Les M. Viner
Fax: (416) 865-7380
E-mail: lviner@torys.com

With a copy to: Borden Ladner Gervais LLP
Scotia Plaza, 40 King St. W.
Toronto, Ontario, M5H 3Y4

Attention: Ronald Foerster
Fax: 416-361-7055
Email: rfoerster@blgcanada.com

17. *Amendments*: This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by both Torys and Hollinger.

18. *Authority to Enter into the Agreement*: The undersigned parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC.

William E. Aziz

Per: William E. Aziz
Chief Restructuring Officer

S. Depaepe

Witness:
Seana Depaepe

John D. Ground
Litigation Trustee

Torys LLP (Ontario)

Per: Les M. Viner
Managing Partner

Torys LLP (New York)

Per: Les M. Viner
Managing Partner

17. *Amendments*: This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by both Torys and Hollinger.

18. *Authority to Enter into the Agreement*: The undersigned parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC.

Per: William E. Aziz
Chief Restructuring Officer

Witness:

John D. Ground
Litigation Trustee

Torys LLP (Ontario)

Per: Les M. Viner
Managing Partner

Torys LLP (New York)

Per: Les M. Viner
Managing Partner

EXHIBIT "14"

October 1, 2010

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (this "**Agreement**") is made as of the 1st of October, 2010, between KPMG LLP Canada, a limited liability partnership in Ontario, and Hollinger Inc., a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44 (together, the "**Parties**") and is subject to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") approving this Agreement substantially in the form of Order attached as Schedule "A" to this Agreement ("**Settlement Approval Order**");

WHEREAS, in or about November 2005, Hollinger Inc. advised KPMG LLP Canada of an intention to commence legal proceedings against KPMG LLP Canada in respect of KPMG LLP Canada having performed, *inter alia*, audit, tax and consulting services on behalf of Hollinger Inc. and related persons and entities (the "**Intended Action**"); and

WHEREAS, pursuant to an agreement to mediate dated as of November 25, 2005 (the "**Mediation Agreement**") a copy of which is attached to this Agreement as Schedule "B", the Parties agreed, *inter alia*, to mediate the Intended Action, the Mediation Agreement having expressly stated that the Intended Action was in respect of KPMG LLP Canada having given advice and conducted audit, tax and transaction advisory services work for Hollinger Inc. and related persons and that the Intended Action included any and all actions, suits, claims, causes of action, or demands, whether in Canada or elsewhere, whether known or unknown, which may be brought on behalf of Hollinger Inc., arising out of KPMG LLP Canada's aforementioned client relationship with Hollinger Inc., which claims include, without limiting the generality of the foregoing, breach of contract, breach of fiduciary duty and negligence; and

WHEREAS, pursuant to an Order of the Court dated August 1, 2007, (the "**Initial CCAA Order**") Hollinger, 4322525 Canada Inc. and Sugra Limited (together, the "**CCAA Applicants**"), were authorized to commence a proceeding pursuant to the *Companies'*

Creditors Arrangement Act, R.S.C. 1985 c. C-36 as amended (the "**CCAA**") wherein the CCAA Applicants may file a plan of compromise and arrangement (a "**Plan**"); and

WHEREAS, pursuant to an Order of the Court dated May 21, 2008, the CCAA Applicants obtained approval of a multi-party settlement and a cost reduction / asset enhancement program (the "**MPS Order**"), a copy of which is attached to this Agreement as Schedule "C", wherein the Honourable John D. Ground Q.C. (retired Justice) was appointed as an officer of the Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the CCAA Applicants, including the Intended Action; and

WHEREAS, pursuant to the MPS Order, the Litigation Trustee was empowered to initiate, prosecute and continue the prosecution of any and all proceedings then pending or thereafter instituted with respect to the CCAA Applicants, including, *inter alia*, the power to settle or compromise any such proceeding, including the Intended Action; and

WHEREAS, the Parties engaged in a mediation process before the Honourable George W. Adams Q.C. on March 29 and March 30, 2010 (the "**Mediation**") with respect to the claims set out in the Mediation Agreement and Hollinger Inc.'s Mediation Brief and any and all other claims that Hollinger Inc. advanced on its own behalf and/or on behalf of any of its subsidiaries, affiliated and related entities, including, without limiting the generality of the foregoing, Sun Times Media Group Inc., its subsidiaries, predecessors and successors (collectively referred to as "**STMG**") that Hollinger ever had or may have against KPMG LLP Canada ("**Intended Claims**"); and

WHEREAS, KPMG LLP Canada denies that it has any liability to Hollinger Inc. and/or any of its subsidiaries, including, without limiting the generality of the foregoing, STMG, or has engaged in any wrongdoing;

NOW THEREFORE IN CONSIDERATION OF THE COVENANTS SET OUT BELOW AND THE REPRESENTATIONS IN THE RECITALS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, AND SUBJECT TO THE PROVISIONS SET OUT HEREIN RESPECTING COURT APPROVAL OF THIS SETTLEMENT AND ITS MATERIAL TERMS, the Parties agree as follows:

1. ***Payment by KPMG LLP Canada of the Settlement Amount***: KPMG LLP Canada shall pay or cause to be paid by its agents, the sum o[redacted] (the "**Settlement Amount**") to Hollinger Inc. for the benefit of the Litigation Trustee (*a*) within thirty (30) business days following the issuance of the Settlement Approval Order, or (*b*) in the event of any appeal of the Settlement Approval Order, within thirty (30) business days following the determination of any appeals or the expiration of any appeal periods in relation to the Settlement Approval Order at which time the Settlement Approval Order shall, for the purposes hereof, be considered "**Final**", or (*c*) in the event the Court, in its discretion, declines to issue the Settlement Approval Order, within thirty (30) business days of the issuance of an order approving a Plan which order (the "**Plan Approval Order**") must contain protections substantially similar to, and not less than, those in favour of the KPMG Releasees (as defined below) in the Settlement Approval Order, or (*d*) in the event of any appeal of the Plan Approval Order, within thirty (30) business days following the determination of any appeals or the expiration of all appeal periods in relation to the Plan Approval Order at which time the Plan Approval Order shall, for the purposes hereof, be considered Final.

2. ***Withdrawal of KPMG LLP Canada's claims against the CCAA Applicants***: Contemporaneously upon payment of the Settlement Amount, the KPMG Releasees, as defined below, shall and do hereby withdraw and waive any and all claims they have filed against the estates

of any of the CCAA Applicants, and the KPMG Releasees further agree that they shall not file any further claims against the estates of any of the CCAA Applicants or any of their subsidiaries.

3. ***Hollinger Release***: Upon payment of the Settlement Amount, Hollinger Inc., its existing subsidiaries and divisions including, without limiting the generality of the foregoing, 4322525 Canada Inc., Sugra Limited, Domgroup Ltd., and 10 Toronto Street Ltd. (but not including STMG and its affiliated and related entities), all partnerships in which Hollinger Inc. or a subsidiary of Hollinger Inc. is the general partner and any corporation owned by such partnership, and in respect of each of the foregoing, their respective current officers, directors, employees, servants, agents, heirs, administrators, successors, assigns and on behalf of any person (as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended to the date hereof, "**Person**") who claims a right or interest through them, (collectively, "**Hollinger**") does hereby fully, finally and forever release, remise, acquit and forever discharge, without qualification or limitation, KPMG LLP Canada, KPMG LLP (U.S.), all other member firms of KPMG International and their related or affiliated entities and their respective past, present and future partners, officers, directors, employees, servants, agents, assigns, insurers and counsel (collectively, the "**KPMG Releasees**"), separately and jointly, of and from any and all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether known or unknown, in law or equity, of whatever kind or character, suspected, fixed or contingent (collectively "**Claims**") that have been, that could be, or that could have been asserted by Hollinger through to the date hereof (including without limitation any claim for contribution, indemnification, reimbursement or any other forms of claims over related to the subject matter of the Settled Claims (defined below) that could be asserted on or after the date hereof by Hollinger based on events occurring prior to and through the date

hereof) against the KPMG Releasees concerning (i) any and all professional services provided by KPMG LLP Canada including, but not limited to, audit, tax and consultation work on behalf of Hollinger, (ii) allegations of injury to Hollinger caused by KPMG LLP Canada, (iii) with respect to the Intended Claims (as set out in the Mediation Agreement and Hollinger Inc.'s Mediation Brief) and (iv) any and all other claims that Hollinger ever had or may have against the KPMG Releasees, including, but not limited to, any claims that may not have been set out in the Mediation Agreement or Hollinger Inc.'s Mediation Brief (collectively, the "**Settled Claims**").

4. *Unknown Claims*: Without limiting the generality of paragraph 3 above, Hollinger declares that the intent of the full and final release set out therein is to conclude all issues arising from the Settled Claims and it is understood and agreed that the Hollinger Release is intended to cover, and does cover, not only all known injuries, losses and damages, but all injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof.

5. ***Third Party Release and Bar Order in Favour of the KPMG Releasees***: It is the intent of the Parties that this Agreement and the terms of the Settlement Approval Order and / or the Plan Approval Order, as the case may be, will eliminate any basis for any direct or indirect claim by all former and present shareholders, former officers and directors, and all creditors, parents, subsidiaries, affiliates, and related parties of Hollinger, and including, without limitation, STMG and its past and present shareholders, and any other Person against the KPMG Releasees in any way relating to the subject matter of the Settled Claims or to Hollinger, in accordance with paragraphs 6 and 8 of the Settlement Approval Order (the "**Release and Bar Provisions**").

6. ***Excepted Claims***: The Release and Bar Provisions set out in paragraph 5 of this Agreement do not apply to an Excepted Claim (and only an Excepted Claim as defined herein) by a potential plaintiff against the KPMG Releasees for damages. An "**Excepted Claim**" means a claim that is based on a Final judgment that the plaintiff suffered damages, or if civil law applies to an Excepted Claim, prejudice, as a direct result of the plaintiff's reliance on express fraudulent misrepresentations made by any or all the KPMG Releasees or their agents when any or all the KPMG Releasees had actual knowledge that the misrepresentations were false.

7. ***Additional Assurances:*** The Parties agree and acknowledge that the Release and Bar Provisions of the Settlement Approval Order are material and integral terms of this Agreement and that this Agreement is contingent upon the issuance of the Settlement Approval Order or the Plan Approval Order as the case may be.

8. ***Application for Court Approval:***

Within the six month period referred to below, Hollinger Inc. will apply to the Court for the Settlement Approval Order.

Hollinger Inc. will use its best efforts to secure the Release and Bar Provisions in any Plan Approval Order in the event an order approving a Plan is sought in respect of any of the CCAA Applicants. Any Plan proposed by any or all of the CCAA Applicants shall include provisions to give effect to the Release and Bar Provisions.

Any application to the Court for either the Settlement Approval Order or the Plan Approval Order shall be brought on notice to all those on the Service List in the CCAA Applicants' CCAA proceeding, and on notice to all the parties against whom the Release and Bar Provisions are intended to be effective, including but not limited to: Conrad M. Black, Barbara Amiel-Black, Peter Y. Atkinson, John A. Boultbee, F. David Radler, Charles G. Cowan, Daniel W. Colson, Peter G. White, Maureen J. Sabia, Douglas G. Bassett, Allan E. Gotlieb, Henry Ketcham III, Fredrik S. Eaton, Ralph M. Barford, R. Donald Fullerton, Torys LLP, the Canadian Imperial Bank of Commerce, the Toronto Dominion Bank, the Bank of Nova Scotia, and STMG, its predecessors and successors. .

The timing of the application to the Court for either the Settlement Approval Order or the Plan Approval Order is sought shall be within the discretion of Hollinger Inc. and the Litigation Trustee acting reasonably with a view to giving all interested parties a reasonable opportunity to participate in the CCAA settlement process, but in any event shall be made within six (6) months of the execution date of this Agreement or such longer period of time as the Parties may agree to. If thought necessary or appropriate by KPMG LLP Canada, the Litigation Trustee and Hollinger Inc., all acting reasonably, Hollinger Inc. and the Litigation Trustee shall seek prior Court approval of any service and notice protocol in respect of obtaining the Settlement Approval Order.

If the Court declines to grant the Settlement Approval Order and the Plan Approval Order, then KPMG may, in its sole discretion, terminate this Agreement within ten (10) days following the Court's decision becoming Final. If KPMG elects to terminate this Agreement pursuant to this paragraph, the Agreement shall, subject to the continuing obligations of the Parties in respect of confidentiality, as set out in paragraph 8 of this Agreement, become null and void.

9. ***Confidentiality and Publicity***: Except to the extent necessary to obtain a the Settlement Approval Order or the Plan Approval Order, as the case may be, the terms of this Agreement including the Settlement Amount and the materials filed or disclosed in the Mediation (the "**Mediation Materials**") shall remain confidential and shall not be disclosed by either Party other than in communications with outside auditors, insurers, taxing authorities, regulatory or governmental agencies, in KPMG LLP Canada's

case to partners and former partners of KPMG LLP Canada, in Hollinger Inc.'s case to creditors that have signed binding and applicable confidentiality agreements, or as otherwise may be required by law.

For greater certainty, the Parties agree that, for the purposes of enabling the Litigation Trustee to carry out his mandate by allowing interested parties the opportunity to participate in the CCAA settlement process, Hollinger Inc. may disclose to such parties, on a confidential basis, (i) the fact of this Agreement (but not of the Settlement Amount), (ii) the identities of the Parties and (iii) the fact that the Release and Bar Provisions are being sought as a condition of this Agreement.

Subject to the foregoing, Hollinger Inc. further agrees that it shall not publicize or comment upon any allegations against KPMG LLP Canada related to the Settled Claims and shall not express any views as to the actions of KPMG LLP Canada related to the Settled Claims. Any press release issued by any Party hereto announcing this Agreement will be written in accordance with this paragraph and will be subject to the consent of the other Party, such consent not to be unreasonably withheld.

In the event KPMG LLP Canada in its sole discretion determines that it is necessary and/or appropriate to comment in a public forum with respect to any issue relating in any manner to the claims advanced against KPMG LLP Canada by the Litigation Trustee on behalf of Hollinger Inc., arising out of any press initiated by any Person relating to Hollinger Inc. or any of its subsidiaries, including STMG, KPMG LLP Canada will be at liberty to do so after consulting with the Litigation Trustee.

The provisions of this paragraph 9 respecting confidentiality shall survive any termination of this Agreement.

10. ***No Admission of Liability***. This Agreement does not in any manner constitute KPMG LLP Canada's admission of liability, wrongdoing or any

other matter and any and all liability and wrongdoing on the part of KPMG LLP Canada or any KPMG Releasee is specifically denied.

11. ***Remedies Upon Breach of this Agreement***: The Parties hereto agree that a breach by either Party of any of its obligations hereunder would cause irreparable harm to the other non-breaching Party for which money damages would not be an adequate remedy. Accordingly, the Parties agree that the non-breaching Party shall be entitled to specific performance and injunctive and other equitable relief in the event the other Party breaches any of its obligations hereunder.

12. ***Governing Law***: This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

13. ***Counterparts and Delivery***: This Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by fax transmission or by transmission in PDF or similarly electronic document format. However, Hollinger Inc. agrees to redact all indicators of amounts payable hereunder from any public filings and agrees to seek a sealing order in respect of the redacted information.

14. ***Admissibility***: This Agreement may be filed and used in any action or proceeding as may be necessary to consummate, enforce or seek relief with respect to the Agreement. The Parties, and any predecessors or successors in interest may file and use this Agreement in any action to support a defence of *res judicata*, collateral estoppel, issue estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim preclusion, issue preclusion, or similar defence or counterclaim.

15. ***Successors and Assigns:*** Unless otherwise stated to the contrary elsewhere in this Agreement, this Agreement shall be binding upon, apply to, and inure to the benefit of the CCAA Applicants, the KPMG Releasees and their respective successors and assigns.

16. ***No Assignments:*** Hollinger Inc. has not assigned or otherwise transferred any of or part of the Intended Claims to any of its parents, subsidiaries, affiliated and related entities or any person or entity including, without limiting the generality of the foregoing, STMG.

17. ***No Waiver:*** Any failure by any Party hereto to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement to be performed by such other Party.

18. ***Further Assurances:*** The Parties shall take such further and other steps and execute such further and other documents as may reasonably be required to give effect to the terms of this Agreement.

19. ***Notice:*** Any notices required to be given under this Agreement shall be in writing and shall be made by fax transmission or e-mail transmission to the fax numbers and e-mail addresses set out below:

The Honourable John D. Ground, Litigation Trustee of Hollinger Inc., and Hollinger Inc. c/o Thornton Grout Finnigan LLP Attention: Robert I. Thornton, Michael Barrack and Megan Keenberg E-mail: rthornton@tgf.ca mbarrack@tgf.ca and mkeenberg@tgf.ca Fax: (416) 304-1313	KPMG LLP Canada c/o Fraser Milner Casgrain LLP Attention: John Lorn McDougall or Norm Emblem E-mail: john.lorn.mcdougall@fmc-law.com and norm.emblem@fmc-law.com Fax: (416) 863-4592

20. ***Amendments***: This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by both KPMG LLP Canada and Hollinger Inc.

21. ***Authority to Enter into the Agreement***: The undersigned Parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC. FOR ITSELF AND ON BEHALF OF ALL OTHER CCAA APPLICANTS AND THEIR SUBSIDIARIES OTHER THAN SUN TIMES MEDIA GROUP, INC., AND ITS SUBSIDIARIES

Per: William E. Aziz
Name: **William E. Aziz**
Title: **Chief Restructuring Officer**

The Honourable John D. Ground
Litigation Trustee

Witness to the signature of The Honourable John D. Ground

KPMG LLP CANADA

Per:
Name: PETER SAHAGIAN
Title: GENERAL COUNSEL
I am an authorized signatory

499677

20. ***Amendments***: This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by both KPMG LLP Canada and Hollinger Inc.

21. ***Authority to Enter into the Agreement***: The undersigned Parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC. FOR ITSELF AND ON BEHALF OF ALL OTHER CCAA APPLICANTS AND THEIR SUBSIDIARIES OTHER THAN SUN TIMES MEDIA GROUP, INC., AND ITS SUBSIDIARIES

Per: William E. Aziz
Name: **William E. Aziz**
Title: **Chief Restructuring Officer**

The Honourable John D. Ground
Litigation Trustee

Witness to the signature of The Honourable John D. Ground

KPMG LLP CANADA

Per: ______________________
Name:
Title:
I am an authorized signatory

20. ***Amendments:*** This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by both KPMG LLP Canada and Hollinger Inc.

21. ***Authority to Enter into the Agreement.*** The undersigned Parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC. FOR ITSELF AND ON BEHALF OF ALL OTHER CCAA APPLICANTS AND THEIR SUBSIDIARIES OTHER THAN SUN TIMES MEDIA GROUP, INC., AND ITS SUBSIDIARIES

Per: ______________________________
Name: **William E. Aziz**
Title: **Chief Restructuring Officer**

____
The Honourable John D. Ground
Litigation Trustee

____
Witness to the signature of The Honourable John D. Ground

KPMG LLP CANADA

Per: ______________________________
Name: [illegible] Sahagian
Title: General Counsel
I am an authorized signatory

SCHEDULE "A"

Settlement Approval Order

Schedule "A"

September 3, 2010 Draft

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	**__________, the _______ th**
	)	
MR. JUSTICE CAMPBELL	)	**DAY OF __________, 2010**

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

ORDER
(KPMG Settlement Approval)

THIS MOTION brought by the Applicants for an Order approving the release and settlement agreement between Hollinger Inc. and KPMG LLP Canada dated September ►, 2010 (the "**KPMG Release and Settlement Agreement**") and for Orders releasing and barring claims against the released parties (the "**KPMG Releasees**" as more particularly defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicants dated ►, 2010, and on hearing the submissions of counsel for the Applicants, KPMG LLP Canada and ►,

1. **THIS COURT ORDERS AND DECLARES** that the Service Protocol Order, dated September ►, 2010, respecting the service protocol for this motion has been complied with.

Approval of the KPMG Release and Settlement Agreement

2. **THIS COURT ORDERS** that the KPMG Release and Settlement Agreement is hereby approved in its entirety and that the parties thereto (the "**Parties**") are hereby bound by this Order and by the KPMG Release and Settlement Agreement and are authorized and directed to comply with their obligations thereunder, including, without limitation, to make the payment provided for therein.

3. **THIS COURT DECLARES** that the compromises, arrangements, exculpations, releases, discharges and injunctions contemplated in the KPMG Release and Settlement Agreement and, in particular, those granted by and for the benefit of the KPMG Releasees, are integral components of the settlement between Hollinger Inc. and KPMG LLP Canada and the KPMG Release and Settlement Agreement and are necessary for, and vital to, the success of the settlement between Hollinger Inc. and KPMG LLP Canada and that, effective on the release of this Settlement Approval Order, all such compromises, arrangements, exculpations, releases, discharges and injunctions as set out in the KPMG Release and Settlement Agreement and this Settlement Approval Order are hereby sanctioned, approved and given full force and effect in accordance with and subject to their respective terms and conditions as approved by this Settlement Approval Order.

Release by KPMG Releasees

4. **THIS COURT ORDERS AND DECLARES** that any and all claims filed by the KPMG Releasees in these proceedings be and are hereby extinguished and that the KPMG Releasees are hereby forever barred from asserting or advancing any claim in this proceeding, directly or indirectly against the Applicants or any of their subsidiaries and all such claims are hereby waived.

Release by Hollinger

5. **THIS COURT ORDERS AND DECLARES** that each of the Applicants and their past, present and future subsidiaries and divisions including, without limitation, (a) 4322525 Canada Inc., Sugra Limited, Domgroup Ltd. and 10 Toronto Street Ltd. (but not including the Sun Times Media Group, Inc. and its subsidiaries (collectively, "**STMG**"), (b) all partnerships in which any of the Applicants or any subsidiary thereof is the general partner and any corporation owned by such partnership, and (c) in respect of each of the foregoing, their respective current officers, directors, employees, servants, agents, assigns, successors, heirs, administrators, insurers and any person (as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended to the date hereof, "**Person**") who claims a right or interest through any of them ((a) to (c) collectively, "**Hollinger**") does hereby irrevocably and unconditionally fully and finally release, remise, acquit and forever discharge, without qualification or limitation, KPMG LLP Canada, KPMG LLP (U.S.), all other member firms of KPMG International and their related or affiliated entities and their respective past, present and future partners, officers, directors, employees, servants, agents, assigns, insurers and counsel (collectively, the "**KPMG Releasees**") separately and jointly, of and from all

rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether known or unknown, in law or equity, of whatever kind or character, suspected, fixed or contingent, that have been, that could be, or that could have been asserted by Hollinger through to and including the date of the KPMG Release and Settlement Agreement (including, without limitation, any claim for contribution, indemnification, reimbursement or any other form of claim over related to the subject matter of the Settled KPMG Claims (as defined below) that could be asserted on or after the date of the KPMG Release and Settlement Agreement by Hollinger based on events occurring prior to and through the date thereof) against the KPMG Releasees concerning (i) any and all professional services provided by the KPMG Releasees including but not limited to audit, tax and consultation work on behalf of Hollinger; (ii) allegations of injury to Hollinger caused by the KPMG Releasees; (iii) any Integrated Claims, as defined in the KPMG Release and Settlement Agreement; and (iv) any and all other claims that Hollinger ever had or may have against the KPMG Releasees ((i) to (iv) collectively, the **"Settled KPMG Claims"**).

Third Party Releasors

6. **THIS COURT ORDERS AND DECLARES** that all former and present shareholders, former officers and directors, and all creditors, parents, subsidiaries, affiliates, and related parties of Hollinger, and including, without limitation, STMG and its past and present shareholders, and any other Person (collectively, the **"Third Party Releasors"**) hereby release, remise, acquit and forever discharge, without qualification or limitation, the KPMG Releasees, separately and jointly, of and from any and all direct and indirect claims

(contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement, under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) including, without limitation, for contribution, indemnification, reimbursement or other form of claim over against the KPMG Releasees for any liability to or in favour of any party against whom Hollinger has brought or in the future brings any claims against the KPMG Releasees relating in all cases in any way to the subject matter of the KPMG Settled Claims or to Hollinger.

Restriction

7. **THIS COURT ORDERS AND DECLARES** that notwithstanding the foregoing, the releases provided for in paragraphs 3, 4, 5 and 6 do not apply to a claim based on a final judgment that a plaintiff suffered damages, or if civil law applies to such claim, prejudice, as a direct result of such plaintiff's reliance on express fraudulent misrepresentations made by KPMG or its agents, when KPMG had actual knowledge that the misrepresentations were false.

Bar Orders

8. **THIS COURT ORDERS** that, without limiting the effect or validity of any provision of this Settlement Approval Order, all Third Party Releasors are permanently and forever barred, estopped, stayed and enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever

(including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the KPMG Releasees or any of them in relation to or otherwise in connection with the subject matter of the KPMG Settled Claims or Hollinger. Without limiting the foregoing and for greater certainty, the provisions of this paragraph apply to the claims against the KPMG Releasees or any of them that have been brought in the following proceedings:

(a) Ontario Superior Court of Justice (Commercial List) Court File No. CV-08-00007549-00CL, entitled *Moffat Management Inc. et al. v. Sun-Times Media Group, Inc. et al.*; and

(b) Ontario Superior Court of Justice (Commercial List) Court File No. 06-CL-6259, entitled *Conrad M. Black et al. v. Argus Corporation Limited et al.*

9. **THIS COURT ORDERS AND DECLARES** that each and every Third Party Releasor is hereby permanently and forever barred, stopped, stayed and enjoined, as of the date of this Order, from: (i) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, or order against the KPMG Releasees or their property in respect of any claims relating in any way to the KPMG Settled Claims; or (ii) taking any action to interfere with the implementation and consummation of the KPMG Release and Settlement Agreement.

Recognition and Enforcement

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents

in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

____

The Honourable Mr. Justice C. Campbell

Schedule "A"

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

Proceeding commenced at Toronto

ORDER
(KPMG Settlement Approval)

ThorntonGroutFinnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West, P.O. Box 329
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton (LSUC #24266B)
D.J. Miller (LSUC #34393P)

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for the Applicants

SCHEDULE "B"

Mediation Agreement

IN THE MATTER OF A MEDIATION TO BE CONDUCTED, PURSUANT TO SECTION 11, OF THE *Limitations Act, 2002*, S.O. 2002, c.24, Sch. B.

BETWEEN:

HOLLINGER INC.

INTENDED PLAINTIFF

-and-

KPMG LLP

INTENDED DEFENDANT

AGREEMENT TO MEDIATE

1. PARTIES and INTENDED ACTION

(a) The parties, Hollinger Inc. (the "Intended Plaintiff") and KPMG LLP Canada ("KPMG" or the "Intended Defendant") agree to enter into an agreement (the "Agreement") pursuant to section 11 of the *Limitations Act 2002*, S.O. 2002 c. 24, Sch.B, (the *"Limitations Act"*);

(b) The terms of this Agreement arise out of acknowledgement by KMPG of an intention expressed by Hollinger Inc. to commence legal proceedings (the "Intended Action") against KPMG, in respect of KPMG having given advice and conducted audit, tax and transaction advisory services work for Hollinger Inc. and related persons;

(c) Hollinger Inc. has advised KPMG that, the Intended Action includes any and all actions, suits, claims, causes of action, or demands, whether in Canada or elsewhere, whether known or unknown, which may be brought on behalf of Hollinger Inc., arising out of KPMG's aforementioned client relationship with Hollinger Inc., which claims include, without limiting the generality of the foregoing, breach of contract, breach of fiduciary duty and negligence.

2. LIMITATIONS

(a) The parties herein wish to arrive at a mutually acceptable resolution of the Intended Action in a co-operative manner, and accordingly, wish to conduct a mediation pursuant to section 11 of the *Limitations Act*. The parties agree that the execution of this Agreement evidences a bona fide intention to mediate the issues arising out of the Intended Action;

(b) The parties agree that this Agreement will toll any limitation periods applicable to the Intended Action immediately upon the execution of this Agreement by all parties hereto, pursuant to section 11 of the *Limitations Act*;

(c) The parties agree to forthwith appoint a mutually acceptable Mediator to commence the mediation referred to herein;

(d) The parties agree that following the appointment of a Mediator, if a change of Mediator is agreed or becomes necessary for any reason, the appointment of a subsequent Mediator will not bring this Agreement to an end;

(e) The parties agree to conduct the mediation contemplated by this Agreement in good faith, in a forthright and expeditious manner, and to make a serious attempt to settle the Intended Action.

3. **MEDIATION**

(a) It is understood that in order for mediation to work, open and good faith communications are essential. Accordingly, all written and oral communications, negotiations, and statements made in the course of the mediation will be treated as privileged settlement discussions and absolutely confidential and without prejudice. Therefore:

(i) the parties agree that all communications and documents shared, which are not otherwise discoverable, shall be without prejudice and shall be kept confidential as against the outside world, and shall not be used for any purpose other than the mediation under this Agreement;

(ii) the Mediator, as a condition to his/her appointment, must agree to preserve the confidentiality of the mediation and all information disclosed in connection with the mediation;

(iii) the Mediator shall not be compellable as a witness in any civil proceeding, and the Mediator's notes and records are inadmissible before the court in any civil proceeding;

(iv) this Agreement to Mediate shall be kept confidential save for any reporting obligation Hollinger Inc. or KPMG may have to an insurer, the O.S.C., or other authority. In the event that disclosure of this Mediation Agreement is required, the form and extent of disclosure will be subject to the prior review of the parties.

(b) The mediation will be attended by representatives of the parties empowered to negotiate on their behalf;

(c) The mediation will be private, and will be held on dates to be mutually agreed upon by the parties in conjunction with the Mediator appointed pursuant to the terms of this Agreement;

(d) The mediation shall be conducted pursuant to the laws of Ontario and the laws of Canada;

(e) While both parties intend to continue with mediation until a settlement agreement is reached, it is understood that either or both parties may, for any reason and in their sole discretion, withdraw in writing from mediation at any time, the effect of which will be to recommence the running of any limitation periods applicable to the Intended Action;

(f) The parties agree that, in the event of the failure of the mediation and the inability of the parties to reach any settlement, all rights, causes of action and defences that they may have against each other arising from facts existing up to the present time are preserved and may be fully asserted as if the mediation had never occurred.

4. **MEDIATOR**

(a) The Mediator:

(i) shall be independent from the parties and does not act as legal counsel for either party during the mediation and therefore shall not be required to offer legal advice and shall have no duty to assert or protect the legal rights of any party, to raise any issue not raised or to determine who should participate in the mediation;

(ii) shall be a neutral facilitator who will assist the parties to reach their own settlement; and

(iii) has no duty to ensure the enforceability or validity of any agreement reached.

(b) The Mediator may disclose to any party any information provided by the other party which the Mediator believes to be relevant to the issues being mediated, unless a party has specifically requested the Mediator to keep particular information confidential;

(c) The parties jointly and severally agree to indemnify and save the Mediator harmless from any and all liability, costs, claims, demands, proceedings and causes of action, howsoever arising under this Agreement or as a result of the conduct of the mediation and its consequences, provided that the Mediator has carried out his or her duties honestly;

(d) The Mediator will not be liable to the parties for any act or omission in connection with the duties of the Mediator under this Agreement;

(e) The appointment of the Mediator and any rights arising out this Agreement are personal to the Mediator and may not be assigned without the prior written consent of the parties herein.

5. **MEDIATION BRIEFS**

(a) Each side will file a Mediation Brief with the Mediator appointed pursuant to the terms of this Agreement, and serve at least one copy thereof on the other side. The parties will agree, with due consideration to the scheduled mediation, on a an appropriate timetable for serving their respective materials. The materials to comprise the Brief shall be in accordance with the directions of the Mediator.

6. **ENTIRE AGREEMENT**

(a) This Agreement constitutes the entire agreement among the parties and except as herein stated, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect, except by written instrument signed by all the parties;

(b) This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. Delivery of this Agreement may be made by facsimile transmission. A copy of this Agreement, duly executed in counterparts by the parties hereto and delivered by facsimile transmission shall constitute a valid and binding Agreement.

7. **SUCCESSORS and ASSIGNS**

(a) This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, personal legal representatives, successors and assigns.

IN WITNESS WHEREOF the INTENDED PLAINTIFF has duly executed this Agreement as of the __________ day of November, 2005.

HOLLINGER INC.

Per: RC Benson
Name: Randall C. Benson
Title: Chief Restructuring Officer
I have the authority to bind the corporation

IN WITNESS WHEREOF the INTENDED DEFENDANT has duly executed this Agreement as of the __________ day of November, 2005.

KPMG LLP

Per: ______________________
Name:
Title:
I have the authority to bind the corporation

parties of any kind. This Agreement may not be amended or modified in any respect, except by written instrument signed by all the parties;

(b) This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. Delivery of this Agreement may be made by facsimile transmission. A copy of this Agreement, duly executed in counterparts by the parties hereto and delivered by facsimile transmission shall constitute a valid and binding Agreement.

7. **SUCCESSORS and ASSIGNS**

(a) This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, their respective heirs, personal legal representatives, successors and assigns.

IN WITNESS WHEREOF the INTENDED PLAINTIFF has duly executed this Agreement as of the __________ day of November, 2005.

HOLLINGER INC.

Per: ______________________

Name:

Title:

I have the authority to bind the corporation

IN WITNESS WHEREOF the INTENDED DEFENDANT has duly executed this Agreement as of the 25TH day of November, 2005.

KPMG LLP

Per: ______________________

Name: PETER SAHAGIAN

Title: GENERAL COUNSEL, UK

I have the authority to bind the ~~corporation~~ partnership

SCHEDULE "C"

MPS Order

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE
	)	
MR. JUSTICE CAMPBELL	)	21st DAY OF MAY, 2008

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

ORDER
(Approval of Multi-Party Settlement and Cost Reduction / Asset Enhancement Program)

THESE MOTIONS, made by Hollinger Inc. ("Hollinger"), 4322525 Canada Inc. ("432") and Sugra Limited (the "Applicants"), and by Sun-Times Media Group, Inc. ("STMG") for an Order approving the terms of a settlement with STMG and Davidson Kempner Capital Management LLC and certain of its affiliates (collectively, "DK") and authorizing and approving the Applicants to take steps to restructure certain of their operations and management to reduce costs and enhance asset realizations was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants dated May 14, 2008, the Seventh Report of Ernst & Young Inc. in its capacity as Court-appointed Monitor of the Applicants (the

"Monitor"), STMG's Amended Fresh as Amended Notice of Motion dated May 15, 2008, an unredacted version of the Multi-Party Settlement (as defined herein) filed under seal and such other materials as this Court may direct be filed as part of the record herein, and on hearing from counsel for the Applicants, STMG, DK, the Indenture Trustees (as defined herein), Conrad Black, Conrad Black Capital Corporation, Barbara Amiel Black, Catalyst Fund General Partner I Inc., the Receiver of the Ravelston Corporation Limited and the Monitor and on being advised that the Service List as of May 14, 2008 was served electronically with the Applicants' Amended Notice of Motion dated May 14, 2008 and STMG's Amended Fresh as Amended Notice of Motion dated May 15, 2008 herein and on being advised that all material terms of the settlement are contained and disclosed in the Multi-Party Settlement;

Approval of Multi-Party Settlement

1. **THIS COURT ORDERS** that the agreement among the Applicants, STMG and DK, a redacted version of which is annexed as Schedule "A" hereto (the "Multi-Party Settlement") and all transactions, actions and activities contemplated therein (the "Settlement Steps"), are hereby approved, the execution of the Multi-Party Settlement by the Applicants is hereby approved and ratified and the Applicants and the other parties thereto are hereby authorized and directed to carry out each of the Settlement Steps, including, without limitation, authorizing the issuance of the Additional Shares pursuant to a Consent, if necessary, and no further Order of this Court is necessary to give effect to any aspect of the Multi-Party Settlement. Terms not defined in this Order shall have the meaning described in the Multi-Party Settlement.

2. **THIS COURT ORDERS AND DECLARES** that the Multi-Party Settlement is fair and commercially reasonable.

3. **THIS COURT ORDERS AND DECLARES** that the information contained in Schedule "B" to the Multi-Party Settlement is commercially sensitive and shall be sealed pending further Order of this Court.

4. **THIS COURT ORDERS** that the Multi-Party Settlement shall be binding upon and enforceable against, and enure to the benefit of, the Applicants and any successors thereto including, without limitation, any trustee in bankruptcy, receiver or receiver and manager in respect of any or all of the Applicants and shall also be binding upon and enforceable against, and enure to the benefit of, STMG, DK, Delaware Trust Company, National Association, in its capacity as collateral agent and as trustee under the indenture dated as of March 10, 2003 with respect to the senior secured notes issued by Hollinger ("Delaware Trust"), and HSBC Bank USA, National Association, in its capacity as trustee under the indenture dated as of September 30, 2004 with respect to the senior secured notes issued by Hollinger ("HSBC"), and any other person having notice of this Order. The aforesaid indentures are collectively referred to herein as the "Indentures".

5. **THIS COURT ORDERS AND DIRECTS** Delaware Trust and HSBC (collectively, the "Indenture Trustees"), on the one hand, and the Applicants, STMG and DK, on the other, to co-operate with each other to facilitate the implementation of the Multi-Party Settlement insofar as it relates to the Indenture Trustees and their collateral. In particular, Delaware Trust is hereby directed to relinquish possession and control of the STMG Class B share certificates held by it as collateral (the "Class B Certificates") to or at the direction of the Applicants, and in exchange to simultaneously receive, upon issuance, from the Applicants or such other person at the direction of the Applicants, the certificates representing the Exchanged Shares and the Additional Shares in substitution for the Class B Certificates.

6. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the provisions of this Order and the Multi-Party Settlement are without prejudice to the rights, if any, of the Applicants and any other person in respect of the Class A shares of STMG currently owned by the Applicants or any of them that are not Exchanged Shares or Additional Shares or that may be subject to any escrow agreement in relation to Hollinger's Class II preference shares.

7. **THIS COURT ORDERS AND DECLARES** that nothing contained in this Order or in the Multi-Party Settlement shall:

(a) affect the obligations of the Applicants to reimburse the Indenture Trustees in accordance with the Indentures (such reimbursable amounts being referred to herein collectively as the "Trustees' Fees and Expenses"); or

(b) impair or modify the liens of the Indenture Trustees pursuant to the Indentures and any existing related agreements for payment of the Trustee's Fees and Expenses.

8. **THIS COURT ORDERS AND DIRECTS** the Monitor to report to this Court when all transactions, releases and acknowledgements of claims contemplated by the Multi-Party Settlement to occur on or forthwith after Court Approval have been completed or performed. The Monitor may report upon such other matters in relation to the Multi-Party Settlement at such time or times as the Monitor deems necessary or appropriate.

9. **THIS COURT ORDERS** that, without prejudice to the rights of any party pursuant to the comeback clause of the Initial Order, the Applicants, the Monitor, STMG, DK, the CRO (defined below), the Litigation Trustee or the Indenture Trustees may, at any time upon seven (7) days notice to the Service List, return to this Court to seek directions or other relief regarding the implementation of the Multi-Party Settlement or any other matter arising in relation to the Multi-Party Settlement.

10. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings or any ancillary proceedings;

(b) a bankruptcy of any of the Applicants; and

(c) the provisions of any federal or provincial statute,

none of the Multi-Party Settlement or any of the transactions contemplated thereby will be void or voidable at the instance of creditors or claimants or their representatives, including any trustee in bankruptcy, and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation and they do not constitute conduct giving rise to an oppression remedy or any other cause of action.

11. **THIS COURT ORDERS** that the approval of the Multi-Party Settlement, and in particular paragraph 16 thereof, shall not vary or be deemed to vary the Order of this Court dated February 27, 2007 in *STMG v. Conrad Black et al.* (Court File No. 06-CL-6678) and shall be without prejudice to the rights of the defendants in that action, Conrad M. Black, Barbara Amiel Black, Black-Amiel Management Inc., Conrad Black Capital Corporation, 1269940 Ontario Limited and 2753421 Canada Limited to make any arguments or take any position upon any motion seeking an Order as contemplated in paragraph 16 of the Multi-Party Settlement.

Approval of Cost Reduction and Asset Enhancement Program of the Applicants

(a) Appointment of CRO and Litigation Trustee

12. **THIS COURT ORDERS** that William E. Aziz shall be and is hereby appointed as an officer of this Court to be the Chief Restructuring Officer ("CRO") over and in respect of all property,

assets and undertaking of the Applicants, other than the Litigation Assets, upon the terms described herein and in the Multi-Party Settlement.

13. **THIS COURT ORDERS** that justice John D. Ground (retired) is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the Applicants (collectively, the "Litigation Assets") on the terms described herein and in the Multi-Party Settlement.

14. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby authorized and directed to preserve, protect and realize upon the assets of the Applicants for the benefit of the Applicants and their creditors and other stakeholders as contemplated by the Multi-Party Settlement including, in the case of the CRO, without limitation and if thought necessary or desirable by the Applicants, the preparation and delivery of a plan of arrangement in respect of the Applicants as contemplated by the Multi-Party Settlement.

15. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby empowered, authorized and directed to do all things, carry out all actions and perform all duties described in the Multi-Party Settlement and specifically:

(a) to engage and give instructions to counsel and to engage and give direction to consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis either of them may agree to assist with the exercise of their powers and duties;

(b) to execute, assign, issue and endorse documents of whatever nature in respect of the Applicants for any purpose pursuant to this Order or the Multi-Party Settlement; and

(c) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants or any of their property and undertaking and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding.

16. **THIS COURT ORDERS** that the Litigation Trustee may obtain financing in respect of the Litigation Assets at such times, in such amounts and upon such terms as the Litigation Trustee may consider to be appropriate after seeking direction from the Advisory Committee in accordance with the Multi-Party Settlement.

17. **THIS COURT ORDERS** that nothing herein contained shall require the CRO or the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any property, assets or undertaking of any of the Applicants that might be environmentally contaminated, that might be a pollutant or a contaminant or that might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the CRO or the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Applicants are, and are hereby declared to be, and shall remain, in Possession, occupation and control of all of their property, assets and undertaking, subject to further Order of this Court.

18. **THIS COURT ORDERS** that neither the CRO nor the Litigation Trustee shall, as a result of this Order or anything done pursuant to their duties and powers under this Order, deem the CRO or the Litigation Trustee to be in Possession of any property, assets or undertaking within the meaning of any Environmental Legislation.

19. **THIS COURT ORDERS** that each of the CRO and the Litigation Trustee shall incur no liability or obligation as a result of his appointment or the carrying out of any of the provisions of this Order, save and except for any gross negligence or any wilful misconduct on his part. The Applicants shall indemnify and hold harmless each of the CRO and the Litigation Trustee with respect to any liability or obligation as a result of his appointment or the fulfilling of his duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. No action, application or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise against either the CRO or the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO or Litigation Trustee (as the case may be) at least seven (7) days prior to the return date of any such motion for leave.

20. **THIS COURT ORDERS** that the Applicants' indemnity in favour of the CRO and the Litigation Trustee shall survive any termination, replacement or discharge of the CRO or Litigation Trustee. Upon any termination, replacement or discharge of the CRO or Litigation Trustee, all claims against such officers of the Court for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged.

21. **THIS COURT ORDERS** that, without limiting any other provision of this Order, each of the CRO and the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

22. **THIS COURT ORDERS** that the Monitor, the CRO and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may order.

(b) Monitor

23. **THIS COURT ORDERS** that, in addition to its duties described in the Initial Order and the Claims Process Order of even date herewith, the Monitor is hereby authorized to perform the functions and carry out the responsibilities described herein and in the Multi-Party Settlement. Performance of these functions and responsibilities is subject to the provisions of the Initial Order, particularly paragraphs 21 through 31 thereof.

(c) Directors' Insurance

24. **THIS COURT ORDERS** that the Applicants be and are hereby authorized to purchase run-off insurance for the officers and directors of the Applicants as described in the Monitor's Seventh Report.

(d) Other Actions

25. **THIS COURT RATIFIES AND APPROVES** all actions and activities of the Applicants, including its current officers, directors and management, in authorizing any of the transactions, actions and activities or other matters approved, authorized or directed pursuant to this Order.

Extra-Territorial Assistance

26. **THIS COURT REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any Province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any state, federal or other court or any judicial, regulatory or administrative body of the United States of America to act in aid of and to assist this Court in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
MAY 2 7 2008

PER/PAR: JSN

SCHEDULE "A"

EXECUTION COPY

Multi-Party Settlement Term Sheet

The Applicants seek Court Approval, as described herein, of the following terms of agreement among the Applicants, Sun-Times Media Group, Inc. ("STMG") and Davidson Kempner Capital Management LLC and its affiliates listed in Schedule "A" hereto (collectively, "DK").

A. STMG

1. Upon Court Approval, the Court shall authorize and direct Hollinger, 432, STMG and any other necessary parties to forthwith take the steps necessary to convert Hollinger's and 432's existing Class B shares into an equal number of Class A shares (the "Conversion"), subject to and prior to the steps described in paragraphs 2 and 3 hereof.

2. If STMG's stockholders are required to approve (the "Stockholder Approval") the issuance of the Additional Shares (as defined below), then, upon Court Approval, the Court shall authorize Hollinger, and Hollinger shall approve the issuance of the Additional Shares, pursuant to a stockholder written consent (the "Consent").

3. If Stockholder Approval is required, as soon as possible after the Consent Effective Date (as defined below), Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG. The Consent shall be effective after all actions required by the Securities Exchange Act of 1934, as amended (the "1934 Act"), have been taken and the issuance of the Additional Shares is permitted by the 1934 Act (the "Consent Effective Date"). If no Stockholder Approval is required, Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG as soon as possible after Court Approval.

4. Forthwith after the later of (i) Court Approval and (ii), if Stockholder Approval is required, the Consent Effective Date, STMG will issue to Hollinger (or as it may direct) 1,499,000 additional Class A shares (the "Additional Shares"). The number of Additional Shares represents 10% of the number of Hollinger's and 432's existing Class B shares.

5. All transactions will comply with all applicable laws and regulations and rules of applicable stock exchanges.

6. Upon the later of (i) Court Approval and (ii) immediately after the next annual meeting scheduled for June 17, 2008, the six directors appointed by Hollinger to the Board of STMG (Wes Voorheis ("Voorheis"), William Aziz ("Aziz"), Edward Hannah, Peter Dey ("Dey"), Brent Baird ("Baird") and Albrecht Bellstedt ("Bellstedt")) will submit their resignations from the board of STMG. Upon submitting their resignations, each resigning director will receive: (a) a written confirmation from STMG that any existing STMG indemnity will remain in place and that such resigning director will be covered by the STMG directors and officers insurance policy in effect from time to time on the same

terms as may be applicable to any other current STMG directors; and (b) reimbursement by STMG of all reasonable legal fees incurred by the independent directors (Dey, Baird and Bollstedt) in respect of their tenure as directors of STMG. Upon payment of such fees by STMG, Hollinger will reimburse STMG for all amounts paid in respect of such legal fees, except for US$75,000.

7. Upon Court Approval, Hollinger will pay to STMG the reasonable fees and costs, including legal fees, of STMG incurred in connection with the CCAA proceedings of the Applicants, from August 1, 2007 up to and including the date of Court Approval. However, the total amounts payable to STMG by Hollinger under this paragraph shall be subject to a cap of US$2 million in the aggregate.

8. STMG and Hollinger will cooperate to maximize the recoverable portion of the class action insurance settlement proceeds payable to them and such proceeds shall be allocated so that STMG receives 85% of such proceeds, and Hollinger receives 15% of such proceeds.

9. Hollinger and STMG agree to divide their respective recoveries from the insolvency proceeding of Ravelston equally as between them.

10. The following claims of STMG shall be allowed as unsecured claims against the Applicants (the "STMG Allowed Claims") in the amounts indicated below, subject to confirmation of the calculations of the quantum of such claims by the Monitor:

    (a) a claim in respect of the promissory note executed by 4322525 Canada Inc. ("432") in the amount of US $40,545,974;

    (b) all claims for contribution and indemnity STMG has or may assert against Hollinger in the amount of US$28,663,588; and

    (c) a claim for the aircraft lease settlement in the amount of CDN$1,281,941.

11. Other than the STMG Allowed Claims, all other claims of STMG and its subsidiaries against the Applicants or any of their other subsidiaries, and all claims of the Applicants and their subsidiaries against STMG and its subsidiaries, shall be released upon Court Approval. The Applicants agree, in connection with their release of STMG, that they will not seek contribution, indemnification, reimbursement or any other form of claims over from Torys LLP or any of its predecessor or successor partnerships, F. David Radler or North American Newspapers Ltd. for any consideration paid or payable by any of the Applicants to STMG under this Term Sheet. For greater certainty, nothing contained in this paragraph shall limit or otherwise compromise in any manner, the Applicants' right to pursue or continue to pursue those named parties for any claims whatsoever, save and except only in respect of consideration paid or payable by the Applicants to STMG under this Term Sheet.

12. The total recoveries of STMG under the STMG Allowed Claims shall be capped at a maximum of US$15 million (the "STMG Cap"). After receipt of the STMG Cap, the

balance of the STMG Allowed Claims will be assigned to the Applicants for the benefit of the Applicants' other general unsecured creditors.

13. Upon STMG receiving distributions in the aggregate amount of US$7.5 million in respect of the STMG Allowed Claims (after giving effect to any valid and effective subordination regarding distributions under the 432 promissory note referred to in paragraph 10(a) above, if any), fifty percent (50%) of all distributions thereafter payable to STMG in respect of the STMG Allowed Claims shall be assigned to the Applicants.

14. Prior to any agreement in respect of the terms contained herein, STMG will ensure that nothing herein or in any plan of arrangement (the "Plan") of the Applicants, if any, giving effect to the terms hereof or in the implementation of any such Plan will:

(a) cause the Rights (as defined in the STMG rights plan) to become exercisable;

(b) cause any Person (as defined in the STMG rights plan) to become an Acquiring Person (as defined in the STMG rights plan); or

(c) trigger the application of the STMG rights plan.

15. STMG will continue with its independent examination of all strategic alternatives available to STMG.

16. Subject to the terms of any existing court orders or agreements pursuant to which the Applicants may be restricted, the Applicants will support the making of an order providing STMG with equal rights in respect of the Applicants' Mareva injunction against Conrad Black and Barbara Amiel Black. STMG shall be permitted to reserve its right as to whether to seek such an order.

B. DK

17. (a) Forthwith after Court Approval, the Class A shares of STMG resulting from the Conversion (the "Exchanged Shares"), plus the Additional Shares, being 10% of the number of Hollinger's and 432's existing Class B shares, when issued shall be voted by the indenture trustees for the benefit of and at the direction of noteholders in the manner contemplated by the indentures up to that number of shares that is equal to or less than 19.999% of the aggregate number of STMG Class A shares then outstanding rounded down to the nearest whole share. The indenture trustees, for the benefit of the noteholders, may thereupon exercise all voting or other rights associated with the Exchanged Shares and the Additional Shares when issued subject to the limitation referred to in the immediately preceding sentence and subject to the rights and at the direction of the noteholders in the manner contemplated by the indentures (provided that any shares of the Applicants shall not be voted other than in favour of the election of the directors described in Schedule "C" hereto and other resolutions proposed by STMG at the next annual meeting of shareholders scheduled to occur on or about June 17, 2008 and thereafter without restriction) and may dispose of or otherwise realize upon such shares in any commercially reasonable manner and subject to the applicable law and as directed by the noteholders in a manner contemplated by the indentures (provided that

any such disposition or realization shall not be considered part of any Plan for the purposes of paragraph 14 hereof). The Applicants shall provide proxies and do such acts and things as will facilitate such rights.

(b) The Conversion and the issuance of the Additional Shares shall be subject to a registration rights agreement, to be negotiated among DK, the Applicants and STMG, all acting reasonably (the "Registration Rights Agreement") forthwith after Court Approval. In all events, such Registration Rights Agreement shall include a provision with respect to payment of fees connected with any such registration, and shall include a provision permitting STMG to postpone the filing of a registration statement or its efforts to cause such registration statement to become effective if at the time the right to delay is exercised by STMG it shall determine in good faith that such offering would interfere with any acquisition, financing or other transaction that STMG is actively pursuing and is material to STMG or would involve initial or continuing disclosure obligations that would not be in the best interests of STMG.

(c) Upon being paid in full, all principal, interest and costs and other amounts, payable under the indentures), the indenture trustees will remit any remaining shares and any surplus proceeds to Hollinger and 432.

18. (a) Subject only to a reasonable reserve for (i) administrative costs (including any applicable legal fees, advisor fees and any other costs secured by the Administration Charge and also including a reserve to pay the reasonable costs, fees and expenses in respect of DK's post-Court Approval role as described herein) and (ii) disputed claims, such reserves to be determined by the CRO (as defined in the STMG Term Sheet) and the Monitor, both acting reasonably (and subject to their right to seek directions from the Court), and in consultation with DK and STMG, and subject to the segregated funds described below, all other cash and realizable proceeds of the Applicants (including the 15% share of the insurance settlement proceeds referred to herein) and the non-applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) shall be distributed as efficiently as reasonably possible to the creditors who have proved claims in accordance with the claims process for each of the Applicants. Distributions will be determined and made on a non-consolidated basis giving effect to inter-company claims but including only 50% of a claim by 432 against Hollinger in the amount of approximately CDN$342.5 million and subject to the following payments in the priority specified below:

(i) firstly, to pay a transaction fee to DK in consideration of its agreement to the terms hereof of CDN$1.5 million;

(ii) secondly, to pay the reasonable fees and disbursements, including reasonable legal fees and disbursements, of the indenture trustees up to and including Court Approval; and

(iii) thirdly, to pay the reasonable legal fees and disbursements of DK up to and including Court Approval;

provided that the total amount available to fund items (i) through (iii) hereof shall not exceed CDN$4,500,000. The priority payments described herein will not affect the timing or amount of the payment to STMG described in paragraph 7 herein.

(b) The Applicants will acknowledge claims owing by 432 and also by Hollinger to the indenture trustees in the full amount of the principal, interest and costs owing under the two debentures dated March 10, 2003 and September 30, 2004, the amount of which is estimated to be US$103,235,062 as of December 31, 2007. These claims will continue to accrue interest (unless and until the Applicants become bankrupt) in accordance with the debentures at the contractual rate until paid in full. The claims will be reduced only by distributions received by the indenture trustees from the estates of the Applicants and by amounts actually received from or in respect of the Exchanged Shares and the Additional Shares.

(c) The Monitor and the CRO, with periodic reports as requested (acting reasonably) and at least monthly to DK and STMG, will work to resolve and determine all disputed claims as efficiently as reasonably possible. The Monitor and the CRO will seek the input of DK and STMG before allowing any claims against the Applicants (other than the claims of STMG and the indenture trustees acknowledged herein). The Monitor and the CRO, in consultation with DK and STMG, will provide estimates of the net recovery to creditors based on the "waterfall" analysis of the Monitor and the information now known regarding the claims of all creditors (including the claims of STMG allowed under the STMG Term Sheet), such estimate to be updated after the claims bar dates for the Applicants and for the non-applicant subsidiaries as described herein.

(d) STMG will acknowledge that its claim against 432 in respect of the 432 loan is subordinated to and in favour of the claims of the indenture trustee for and in respect of only the senior bonds against 432.

19. DK agrees to:

(a) withdraw its motion seeking the bankruptcies of the Applicants; and

(b) support Court approval in the Applicants' CCAA proceeding ("Court Approval") consisting of: (i) approval of this agreement and (ii) approval of the other relief sought by the Applicants in their Notice of Motion dated April 10, 2008 to the extent not inconsistent with the terms described herein.

C. General Conditions

20. A standard CCAA claims process shall be implemented immediately for all claims against the Applicants, except claims against the Applicants by their subsidiaries (other than STMG and its subsidiaries).

21. A subsequent claims process shall be implemented in respect of the non-Applicant subsidiaries of the Applicants to ensure that all creditors of those subsidiaries are identified prior to the asset consolidation herein contemplated.

22. The Applicants, in consultation with the Monitor, shall prepare a plan to accumulate at Hollinger, on a tax-effective basis, all assets of the non-Applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) after payment of all claims of creditors of such subsidiaries.

23. The Applicants agree to work with the Monitor, in consultation with DK and STMG (and subject to the right of all parties to seek directions from the Court), to realize upon any assets of the Applicants and the non-applicant subsidiaries (other than the cash, the Exchanged Shares, the Additional Shares and the Litigation Assets described herein) with a view to distributing net proceeds thereof as efficiently as reasonably possible and to provide the necessary proxies. In particular, the Applicants will consider making such distributions pursuant to periodic Court orders in the CCAA proceedings as opposed to incurring the costs associated with formalizing and approving a Plan.

24. The form and content of any Plan, if necessary or advisable to implement the terms hereof, as it relates to STMG shall be satisfactory to STMG, acting reasonably and, as it relates to DK and the indenture trustees, shall be satisfactory to DK, acting reasonably.

25. All steps and transactions described herein that are to occur upon Court Approval are intended to take place simultaneously, and the parties shall co-operate with each other to coordinate the timing of the effectiveness of such steps and transactions.

26. The information contained in Schedules "B" and "C" hereof is confidential and commercially sensitive. The parties agree to seek an order sealing Schedule "B", pending further order of the Court, and Schedule "C", until such time as the information contained therein is disclosed by STMG, and agree that Schedules "B" and "C" will be redacted from any publicly disclosed materials.

D. Corporate Governance

27. Aziz, or an entity controlled by him, shall be appointed forthwith by the Court Approval order as the chief restructuring officer (the "CRO") of the Applicants and an officer of the Court in consideration of a monthly salary of $65,000, payable in advance, plus GST as applicable and reimbursement of reasonable expenses. Such engagement shall be on a month-to-month basis and may be terminated by Aziz upon 30 days' prior written notice.

28. The CRO shall be responsible, among other things, for developing and implementing the asset consolidation and repatriation plan and assisting the Monitor with the claims process.

29. The board of directors of Hollinger shall be reduced as soon as possible to a maximum of three persons.

30. Upon Court Approval, Hollinger and Voorheis will agree to suspend payment of all monthly work fees payable under Hollinger's consulting agreement with Voorheis or any entity controlled by him and Voorheis shall resign as an officer and director of the Applicants or any subsidiary.

31. In accordance with the engagement letter between Hollinger and BMO Nesbitt Burns Inc. ("BMO"), dated June 15, 2007, payment of all monthly work fees payable to BMO ceased in February 2008.

E. **Litigation Assets**

32. As part of the Court Approval order, justice John D. Ground shall be appointed as an officer of the Court to perform the role of litigation trustee (the "Litigation Trustee") of all claims and causes of action in favour of the Applicants (the "Litigation Assets") on such terms as may be agreed between the Applicants and justice Ground and subject to approval by the Court.

33. The Litigation Trustee will supervise, control and administer all aspects of the Litigation Assets of the Applicants, in consultation with the Applicants and subject to monitoring by the Monitor and supervision by the Court.

34. The Litigation Trustee may, if he considers it necessary or advisable, retain the services of Voorheis or an entity controlled by him on an hourly basis to provide assistance or advice in respect of the Litigation Assets.

35. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost-effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders and shall provide periodic reports to the Advisory Committee (as defined herein) and such other reports as may be requested by any member of the Advisory Committee, acting reasonably.

36. An advisory committee shall be established to provide advice and direction to the Litigation Trustee (the "Advisory Committee") comprised of one nominee of DK, one representative of the Applicants (other than Wes Voorheis) and the Litigation Trustee. The Litigation Trustee shall act in accordance with any majority decision of the Advisory Committee. For greater certainty, in the event of any disagreement as between the representative of DK and the representative of the Applicants, the Litigation Trustee shall have a deciding vote.

37. The nominee of DK to the Advisory Committee shall not receive any remuneration for so acting other than as specified below. The representative of the Applicants shall be a senior Canadian litigation counsel and shall be paid at his or her usual hourly rate by the Applicants. At the option of DK, its nominee may receive compensation on an equivalent basis to that of the representative of the Applicants. All members of the Advisory Committee shall be indemnified in respect of any claims made against them in such capacity excepting only claims arising from their wilful misconduct or gross negligence.

38. The Litigation Trustee will supervise and administer the Litigation Assets on a day-to-day basis, including giving direction to counsel. The Litigation Trustee will seek such direction from the Advisory Committee as he deems necessary or appropriate, but, in particular, the Litigation Trustee will seek direction from the Advisory Committee with respect to litigation strategy, financing (if any) for the Litigation Assets, whether to accept or make any settlement offer and the use of proceeds of any settlement.

39. The amount described in Schedule "B" hereto shall be segregated from the general cash assets of the Applicants and used exclusively for the purpose of funding the administration of the Litigation Assets. Payment of any amount payable to Mr. Wes Voorheis shall be made as contemplated in Schedule "B".

40. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders.

41. Representatives of DK and Hollinger will hold all information received by them as members of the Advisory Committee in strict confidence pursuant to a form of confidentiality agreement acceptable to Hollinger, the Litigation Trustee and such representatives, all acting reasonably.

42. DK or Hollinger may apply to Court at any time to seek such changes to the provisions of the order appointing the Litigation Trustee as either of them may deem necessary or appropriate.

Subject to Court Approval being obtained to the terms hereof, pursuant to an Order in form and content satisfactory to the parties, for consideration received, each of the undersigned agrees to the above as evidenced by their respective signatures as of this 14th day of May, 2008. This agreement may be signed in counterparts and delivered by electronic transmission.

HOLLINGER INC., SUGRA LIMITED and

4322525 CANADA INC.

Per: [signature]
(I have authority to bind each of the corporations)

SUN TIMES MEDIA GROUP, INC.

Per:

Per:
(I/We have authority to bind the corporation)

DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC on its own behalf and on behalf of the affiliates listed in Schedule "A" hereto (collectively, "DK")

Per: ______________________

Per: ______________________

(I/We have authority to bind the entities collectively referred to as "DK")

SUN TIMES MEDIA GROUP, INC.

Per: ____________________

Per: ____________________
(I/We have authority to bind the corporation)

DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC on its own behalf and on behalf of the affiliates listed in Schedule "A" hereto (collectively, "DK")

Per: ____________________

Per: ____________________

(I/We have authority to bind the entities collectively referred to as "DK")

Schedule "A"

MH Davidson Co.

Davidson Kempner International Limited

Davidson Kempner Institutional Partners

Davidson Kempner Partners

Schedule "B"

REDACTED AND SEALED

PURSUANT TO COURT ORDER

DATED MAY 21, 2008

Schedule "C"

The directors to be proposed for election at the annual general meeting of shareholders of STMG to be held on June 17, 2008 are the following, which, for greater clarity, are all of the current directors of STMG. The six directors referred to in paragraph 6 of the Multi-Party Settlement Term Sheet will, notwithstanding any such election, resign in accordance with paragraph 6 of the Multi-Party Settlement Term Sheet.

The Hon. Raymond G.H. Seitz
William Aziz
Brent D. Baird
Albrecht W. A. Bellstedt Q.C.
Herbert A. Denton
Peter Dey
Cyrus F. Freidheim, Jr.
Edward Hannah
Gordon A. Paris
Graham W. Savage
G. Wesley Voorheis

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

Proceeding commenced at Toronto

ORDER

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EXHIBIT "15"

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, the 25th DAY
	)	
MR. JUSTICE CAMPBELL	)	OF FEBRUARY, 2011

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

ORDER
(Sealing and Confidentiality Agreement Approval Order)

THIS MOTION made by the Applicants for an Order sealing confidential references in the settlement agreement among Hollinger Inc. ("**Hollinger**"), the Litigation Trustee of the Applicants, Torys LLP (Ontario) and Torys LLP (New York) (collectively, "**Torys**") dated March 26, 2010 (the "**Torys Settlement Agreement**") and in the settlement agreement among the Applicants and their existing subsidiaries (but not including the Chicago Newspapers Liquidation Corp. formerly known as Sun Times Media Group, Inc. and its subsidiaries), the Litigation Trustee and KPMG LLP Canada ("**KPMG**") dated October 1, 2010 (the "**KPMG Settlement Agreement**" and together with the Torys Settlement Agreement, the "**Settlement Agreements**") both attached as Exhibits to the Affidavit of William E. Aziz sworn on November 24, 2010 (the "**CRO Affidavit**"), and for an Order approving the form of confidentiality agreement attached hereto as Schedule "A" (the "**Confidentiality Agreement**") to be entered into between Hollinger, Torys and KPMG (the "**Settling Parties**") and such Responding Parties who agree to be bound by the terms of the Confidentiality Agreement (the "**Contractually Bound Responding Parties**") which will govern the disclosure of the redacted portions of the Settlement Agreements, was heard on February 18, 2011 at 330 University Avenue, Toronto, Ontario, with judgment reserved to this date.

ON READING the Motion Record of the Applicants dated November 26, 2010, the Supplemental Motion Record of the Applicants dated January 17, 2011, the Responding Motion Records of the Responding Parties, dated February 1, 2011, the *facta* of the parties, filed, and on hearing the submissions of counsel for the Applicants, Torys, KPMG and such other counsel as were present, and on being advised that the Service List as of November 26, 2010, including all Persons who filed Notices of Appearance in accordance with the Service and Notice Procedure Order dated November 12, 2010, were served electronically with the Applicants' motion materials:

SERVICE AND NOTICE

1. **THIS COURT ORDERS** that the motion was properly returnable on February 18, 2011 and that notice of this motion has been given and the service of materials filed in connection with this motion has been conducted in accordance with the Service and Notice Procedure Order dated November 12, 2010 and further that service upon any interested party other than those parties served is hereby dispensed with.

SEALING ORDER

2. **THIS COURT ORDERS** that the settlement amounts set out in the Torys Settlement Agreement and in the KPMG Settlement Agreement (the "**Individual Settlement Amounts**") be and are hereby sealed from the public record until the Settlements are approved and all appeals are resolved in favour of Hollinger, Torys and KPMG, in which case the Individual Settlement Amounts shall be deemed to have entered the public domain such that their disclosure shall not constitute a breach of the Confidentiality Agreement, or if the Settlements are not approved, until further order of this Court.

3. **THIS COURT ORDERS** that paragraphs 1(c) and 7(b) of the Torys Settlement Agreement be and are hereby sealed from the public record until further order of this Court.

4. **THIS COURTS ORDERS** that the redacted version of the CRO Affidavit shall be placed on the public record and served on the parties to the motion pursuant to which the Applicants seek court approval of the Settlement Agreements, and the unredacted version of the CRO Affidavit shall be filed with the Court under seal from the public record in accordance with paragraphs 2 and 3 of this Order.

APPROVAL OF CONFIDENTIALITY AGREEMENT

5. **THIS COURT ORDERS AND DECLARES** that the redacted portions of the Settlement Agreements may be disclosed to the Settling Parties and to the Contractually Bound Responding Parties on the condition that those Parties agree to be bound by the terms of and validly execute the Confidentiality Agreement attached hereto as Schedule "A".

6. **THIS COURT ORDERS AND DECLARES** that the terms of the Confidentiality Agreement are incorporated herein by reference and that each of the signatories to the Confidentiality Agreement are hereby bound by the terms of the Confidentiality Agreement.

7. **THIS COURT ORDERS AND DECLARES** that any breach of the Confidentiality Agreement shall constitute a breach of this Order.

VARIANCE AND AMENDMENT

8. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.

RECOGNITION AND ENFORCEMENT

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

The Honourable Mr. Justice C. Campbell

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

MAR 2 8 2011
NB

Schedule "A"

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the "**Agreement**") is entered into as of March 2011, between Hollinger Inc. ("**Hollinger**"), the Honourable John D. Ground Q.C., as Litigation Trustee of Hollinger (the "**Litigation Trustee**"), KPMG LLP ("**KPMG**"), Torys LLP (Ontario) and Torys LLP (New York) (collectively "**Torys**") and such of the various parties who have filed Notices of Appearance in accordance with the Service and Notice Procedure Order issued by the Ontario Superior Court of Justice (Commercial List) ("**Ontario Court**") dated November 12, 2010 who agree to be bound by the terms of this Agreement (collectively "**Responding Parties**", individually "**Responding Party**") and who intend to respond to Hollinger's pending motions (the "**Settlement Approval Motions**") before the Ontario Court for approval of the Release and Settlement Agreement entered into between KPMG, Hollinger and the Litigation Trustee dated October 1, 2010 ("**KPMG Settlement Agreement**") and the Release and Settlement Agreement entered into between Torys, Hollinger and the Litigation Trustee dated March 26, 2010 ("**Torys Settlement Agreement**") which Hollinger and the Litigation Trustee support and is subject to an Order of the Ontario Court approving this Agreement substantially in the form of the Order attached as **Schedule "A"** to this Agreement ("**Confidentiality Agreement Approval Order**");

WHEREAS the Settlement Amount as defined in the KPMG Settlement Agreement ("**KPMG Settlement Amount**") and the Settlement Amount as defined in the Torys Settlement Agreement ("**Torys Settlement Amount**") (collectively, the "**Settlement Amounts**") have been redacted from the copies of the KPMG Settlement Agreement and the Torys Settlement Agreement attached as **Exhibits "2B"** and **"2A"**, respectively, to the Affidavit of William E. Aziz, Hollinger's Chief Restructuring Officer, sworn November 24, 2010 filed by Hollinger in support of the Settlement Approval Motions;

WHEREAS certain of the Responding Parties have advised counsel for Hollinger that they require disclosure of the Settlement Amounts in order to respond to the Settlement Approval Motions;

WHEREAS the Responding Parties expressly represent that they will maintain the confidentiality of the Settlement Amounts and agree that other than as permitted by paragraph 1 below, they will not make any use whatsoever of the Settlement Amounts;

WHEREAS in consideration of the Responding Parties' agreement to maintain the confidentiality of the Settlement Amounts, Hollinger, the Litigation Trustee, KPMG and Torys have agreed to the disclosure to the Responding Parties of the KPMG Settlement Amount and the Torys Settlement Amount for the sole purpose of enabling the Responding Parties to respond to the Settlement Approval Motions and for no other or collateral purpose, subject to the terms and conditions of this Agreement and the Confidentiality Agreement Approval Order;

NOW THEREFORE in consideration of the premises and covenants contained herein, the parties hereto hereby agree as follows:

1. The Litigation Trustee and Hollinger shall be authorized to disclose the KPMG Settlement Amount and the Torys Settlement Amount to the Responding Parties for the sole purpose of enabling the Responding Parties to respond to the Settlement Approval Motions subject to the following limitations and restrictions:

(a) The Responding Parties acknowledge that they have a duty to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount and agree to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount, sharing such information only with their respective counsel on a confidential basis and with no one else;

(b) the Responding Parties shall be entitled to use the terms KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions;

(c) the Responding Parties shall be expressly prohibited from referring to or otherwise suggesting the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions or from making any other use whatsoever of the KPMG Settlement Amount and the Torys Settlement Amount or the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount until such time as the Settlement Approval Motions are approved by orders of the Ontario Court and such orders have become final, not subject to any outstanding appeals;

(d) the Responding Parties each expressly acknowledge and agree that a breach of this Agreement by a Responding Party or Responding Parties shall also constitute a breach of the Confidentiality Agreement Approval Order and that such breach may result in:

(i) the Responding Party, or the Responding Parties, being held in contempt of court and subject to sanction by the Ontario Court;

(ii) subject to obtaining an order of the Ontario Court so providing, the deemed withdrawal, release and forfeiture of any claim that a Responding Party may have filed with Ernst & Young Inc. the Court-appointed monitor of Hollinger (the **"Monitor"**) against or in respect of the applicants in Ontario Court file 07-CL-7120 (the **"Applicants"**), and including the release and forfeiture of any other claims, counterclaims or third party claims that might have been filed against or in respect of the Applicants, such claims having been barred by the Claims Bar Order, dated May 21, 2008;

(iii) subject to obtaining an order of the Ontario Court so providing, the deemed dismissal with prejudice of any actions, cross-claims, counterclaims, third party claims or any other such claims that Responding Party has asserted against KPMG and/or Torys, as set out in any of the pleadings included in the Omnibus Pleadings Brief filed by Hollinger with the Ontario Court and of any other direct or indirect claim asserted against KPMG and/or Torys by that Responding Party in any way relating to the subject matter of the **"Settled Claims"** as defined in the KPMG Settlement Agreement and the Torys Settlement Agreement with costs payable to KPMG and Torys on a substantial indemnity basis; and

(iv) such further and other relief as the Ontario Court may consider just.

2. The Litigation Trustee and Hollinger shall be authorized to disclose the KPMG Settlement Amount to Torys and the Torys Settlement Amount to KPMG for the sole purpose of enabling Torys and KPMG to participate in the Settlement Approval Motions subject to the following limitations and restrictions:

(a) Torys and KPMG acknowledge that they have a duty to and agree to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount, sharing such information only with their respective counsel and insurers on a confidential basis and with no one else;

(b) Torys and KPMG shall be entitled to use the terms KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions; and

(c) Torys and KPMG shall be expressly prohibited from referring to or otherwise suggesting the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions or from making any other use whatsoever of the KPMG Settlement Amount and the Torys Settlement Amount or the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount until such time as the Settlement Approval Motions are approved by orders of the Ontario Court and such orders have become final, not subject to any outstanding appeals.

3. The Litigation Trustee and Hollinger shall be authorized to disclose the entirety of sub-paragraphs 1(a), (b) and (c) and paragraph 7(b) of the Torys Settlement Agreement (the **"Torys Redacted Provisions"**) to the Responding Parties and KPMG subject to the following limitations and restrictions:

(a) The Responding Parties and KPMG acknowledge that they have a duty to maintain the confidentiality of the Torys Redacted Provisions and agree to maintain the confidentiality of the Torys Redacted Provisions, sharing such information only with their respective counsel on a confidential basis;

(b) The Responding Parties and KPMG shall be expressly prohibited from referring to the contents of the Torys Redacted Provisions in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions.

4. The Litigation Trustee, Hollinger, Torys, KPMG and the Responding Parties hereby acknowledge and agree that any party receiving confidential information under the terms of this Agreement may make unrestricted use of the confidential information once it enters the public domain otherwise than through a breach of this Agreement, and that such use of the confidential information will not constitute a breach of this Agreement. The Litigation Trustee, Hollinger, Torys and KPMG may make unrestricted use of the confidential information once it enters the public domain, otherwise than through a breach of this Agreement, and such use of the confidential information will not constitute a breach of this Agreement.

5. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement and such document is signed by all parties to this Agreement.

6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. This Agreement shall enure to the benefit of and be binding upon each of the parties to this Agreement and their respective successors and permitted assigns.

7. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, including any counterpart executed by a party and transmitted to the other parties by e-mail or facsimile transmission, is an original, and all of which when taken together constitute one and the same Agreement.

8. This Agreement shall be effective and binding on the parties hereto on the date the last party executes and delivers the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HOLLINGER INC. for itself and on behalf of all other CCAA Applicants and their subsidiaries other than Sun Times Media Group, Inc., and its subsidiaries

By: ______________________________
William E. Aziz
Chief Restructuring Officer

____
The Honourable John D. Ground
Litigation Trustee

KPMG LLP

By: ______________________________
Signature

____
Print Name

____
Title

TORYS LLP, a Ontario limited liability partnership

By: ______________________________
Signature

____
Print Name

____
Title

TORYS LLP, a New York limited liability partnership

By: ______________________________
Signature

____
Print Name

____
Title

RESPONDING PARTY

____

By: ______________________________
Signature

____
Print Name

____
Title

(an authorized signing officer)

RESPONDING PARTY

____

By: ______________________________
Signature

____
Print Name

____
Title

(an authorized signing officer)

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

ORDER
(Sealing and Confidentiality Agreement Approval Order)

Thornton Grout Finnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

Michael E. Barrack (LSUC# 21941w)
Tel: 416-304-1109
Megan Keenberg (LSUC# 53735G)
Tel: 416-304-1127
Fax: 416-304-1313

Lawyers for the Applicants

Court File Number: 07-CL-7120 P. 515

Superior Court of Justice
Commercial List

EXHIBIT "16"

FILE/DIRECTION/ORDER

Re HOLLINGER INC.
Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: ____________

Counsel	Telephone No.:	Facsimile No.:

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: ____________
☐ Time Table approved (as follows):

An Order was granted in this matter dated Feb. 18/11

The terms of the Order use the word "sealing" in respect of the terms of settlements respecting Torys & KPMG.

Perhaps the term "Protective Order" may be considered more appropriate in the circumstances since the Order will be treated for the moment as if it were simply a Protective Order.

Mar. 7/11
Date

[signature]
Judge's Signature

☐ Additional Pages ________

Transcription of Endorsement of Campbell J., dated March 7, 2011-03-07

Court File Number 07-CL-7120

An Order was granted in this matter dated February 18, 2011.

The terms of the Order use the word "sealing" in respect of the terms of settlements respecting Torys and KPMG.

Perhaps the term "Protective Order" may be considered more appropriate in the circumstances since the Order will be treated, for the moment, as if it were simply a Protective Order.

per: Campbell J. March 7, 2011

EXHIBIT "17"

CITATION: Hollinger Inc. (Re), 2011 ONSC 1205
Court File No. 07-CL-7120
Date: 20110222

SUPERIOR COURT OF JUSTICE
ONTARIO
Commercial List

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

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

HOLLINGER INC., KPMG LLP CANADA and TORYS LLP (Applicants)

HEARD: February 18, 2011

BEFORE: C. Campbell J.

COUNSEL: *Michael Barrack, Megan Keenberg* for Hollinger Inc.
Matthew B. Lerner for the Monitor, Ernst & Young Inc.
Peter White, David Moore for Catalyst Fund General Partner I Inc.
J.L. McDougall, Q.C., Norm Emblem for KPMG LLP
Ronald Foerster for Torys LLP
G. Benchetrit for the Indenture Trustees
Kenneth Kraft, Lisa C. Munro for Conrad Black and Conrad Black Capital Corporation
Kathryn Podrebarac for Ralph Barford
R.M. Slattery for Mrs. Black
Luisa Ritacca for R. Donald Fullerton and Canadian Imperial Bank of Commerce
Paul Guy, Faren Bogach for Daniel W. Colson
Harry R. Burkman for Argus Corporation

ENDORSEMENT

[1] The motion of the Applicant seeks a time-limited Sealing Order[1] of the terms of two settlements which by their terms and the context of the CCAA process, will require Court approval that if granted will allow for the expiry of the Order.

[2] The terms of the Order are either agreed to or unopposed by most of the parties to whom notice has been given of this motion. It is noted that the Indenture Trustee, which has first

1 Often the term "protective" rather than "sealing" is used to describe an order that is intended to be time limited.

priority security in excess of $150 million, supports the Order sought on this motion as well as settlement approval.

[3] The Order sought is a compromise achieved by protracted and difficult negotiations and agreement among the Applicants, and various parties will be directly affected in ongoing litigation or settlements by the third party releases that are contemplated when the settlement motion comes before the Court.

[4] The Order sought is opposed by Conrad Black, Barbara Amiel-Black, Black Corporation, and two former directors and one corporation closely associated with Conrad Black, each of whom was represented by separate counsel.

[5] The opposing parties each take the position that the Applicants have not provided evidence to the Court that it is in the public interest that a sealing order be granted within the guidelines set out by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R 522. Those principles may be systemically stated as follows:

> 53. Applying the rights and interests engaged in this case to the analytical framework of *Dagenais2* and subsequent cases discussed above, the test for whether a confidentiality order ought to be granted in a case such as this one should be framed as follows:
>
> A confidentiality order under Rule 151 should only be granted when:
>
> a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
>
> b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.
>
> 54. As in *Mentuck3*, I would add that three important elements are subsumed under the first branch of this test. First, the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question.
>
> 55. In addition, the phrase "important commercial interest" is in need of some clarification. In order to qualify as an "important commercial interest", the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality. For example, a private company could not argue simply that the existence of a particular contract should not be made public because to do so would cause the company to lose business, thus harming its commercial interests. However, if, as in this case, exposure of

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2 *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (S.C.C.), [1994] 3 S.C.R. 835
3 *R. v. Mentuck*, 2001 SCC 76 (CanLII), [2001] 3 S.C.R. 442, 2001 SCC 76

information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information. Simply put, if there is no general principle at stake, there can be no "important commercial interest" for the purposes of this test. Or, in the words of Binnie J. in *F.N. (Re)*, 2000 SCC 35 (CanLII), [2000] 1 S.C.R. 880, 2000 SCC 35, at para. 10, the open court rule only yields "where the public interest in confidentiality outweighs the public interest in openness" (emphasis added.)

[6] I fully accept the general statement of the principles. The question now is appropriately applying those in this case and balancing the competing interests. At the outset of submissions I inquired of counsel for the Applicants whether there would be any objection to the inclusion in the draft Order, if granted, of a "comeback" clause such that if any party who would be directly affected by the settlement motion was of the view that the Order sought operated in a manner that would prevent that party making full submissions on the settlement itself, they could request further relief.

[7] No counsel who supported or did not oppose the original draft Order objected to the inclusion of the suggested term.

[8] I am satisfied that the time-limited provisions and other conditions to meet the *Sierra* test in the context of this case. There is in my view a commercially important issue at stake with no reasonable measures available to alleviate the harm from lack of confidentiality at this stage.

[9] Claims against former directors, officers and advisors represent the major asset of the Applicant Hollinger. Those parties will be granted access to the full terms of the proposed settlement subject only to certain terms of confidentiality which they have now agreed to apart from those opposing.

[10] I am satisfied that, in the context of a litigation privilege which arises from a protracted mediated settlement that is consistent with the public interest, the full terms not be placed on the public record at least until the settlement motion itself comes before the Court or other good reason is shown for removing the sealing.

[11] The proposition advanced on behalf of the Blacks and those supporting their position is that the above stated principles from the Supreme Court of Canada decision in *Sierra* represent direction to judges not to be departed from except in the most extraordinary of circumstances, which do not exist here .They urged that it is appropriate and in the public interest that the full terms be known now.

[12] Counsel were unable to advise me of a single decision where, in the context of a litigation settlement in which the affected parties would have access to the full terms and in the context of a CCAA restructuring, the public interest of immediate disclosure of the settlement terms would trump all other considerations.

[13] I accept that the onus to establish confidentiality for the present purposes rests on the Applicants. I am satisfied that in the context of this case the onus has been met.

[14] Litigation settlement privilege in my view of applies in this case at least until the Court either accepts or rejects the settlement that those parties directly affected will be able and entitled to review with the conditions proposed.

[15] Dealing with litigation privilege, Swinton J speaking for her colleagues in the Divisional Court decision in *Inter-Leasing Inc. v. Ontario (Minister of Finance)*, [2009] O. J. No. 4714 at paragraphs 10 and 21:

> 10. Communications, whether oral or written, made in furtherance of the settlement of a litigious dispute are subject to privilege. According to Bryant, Lederman and Fuerst, *The Law of Evidence in Canada* (at para. 14.322), three conditions must be present for settlement privilege to apply:
>
> 1. A litigious dispute must be in existence or within contemplation.
> 2. The communication must be made with the express or implied intention it would not be disclosed in a legal proceeding in the event negotiations failed.
> 3. The purpose of the communication must be to attempt to effect a settlement.
>
> ...
>
> 21. Moreover, the applicant has not satisfied the necessity test. To satisfy this test, the applicant must demonstrate a compelling or overriding interest of justice that outweighs the public interest in protecting settlement discussions from disclosure. While the applicant argues that disclosure of this information will not affect the issue of its tax liability, settlement privilege exists not only to protect a party against disclosure of information that may affect its position on liability. It extends, as well, to protect other statements against interest made in the course of settlement negotiations that a party may wish to remain confidential.

[16] The draft Order as revised is approved.

[17] The issue of costs raised by the Applicants can be addressed in written submissions to be exchanged by counsel before being sent to me.

C. Campbell J.

C. CAMPBELL J.

Released: February 22, 2011

EXHIBIT "18"

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE
	)	
MR. JUSTICE CAMPBELL	)	21st DAY OF MAY, 2008

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

ORDER
(Approval of Multi-Party Settlement and Cost Reduction / Asset Enhancement Program)

THESE MOTIONS, made by Hollinger Inc. ("Hollinger"), 4322525 Canada Inc. ("432") and Sugra Limited (the "Applicants"), and by Sun-Times Media Group, Inc. ("STMG") for an Order approving the terms of a settlement with STMG and Davidson Kempner Capital Management LLC and certain of its affiliates (collectively, "DK") and authorizing and approving the Applicants to take steps to restructure certain of their operations and management to reduce costs and enhance asset realizations was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants dated May 14, 2008, the Seventh Report of Ernst & Young Inc. in its capacity as Court-appointed Monitor of the Applicants (the

"Monitor"), STMG's Amended Fresh as Amended Notice of Motion dated May 15, 2008, an unredacted version of the Multi-Party Settlement (as defined herein) filed under seal and such other materials as this Court may direct be filed as part of the record herein, and on hearing from counsel for the Applicants, STMG, DK, the Indenture Trustees (as defined herein), Conrad Black, Conrad Black Capital Corporation, Barbara Amiel Black, Catalyst Fund General Partner I Inc., the Receiver of the Ravelston Corporation Limited and the Monitor and on being advised that the Service List as of May 14, 2008 was served electronically with the Applicants' Amended Notice of Motion dated May 14, 2008 and STMG's Amended Fresh as Amended Notice of Motion dated May 15, 2008 herein and on being advised that all material terms of the settlement are contained and disclosed in the Multi-Party Settlement;

Approval of Multi-Party Settlement

1. **THIS COURT ORDERS** that the agreement among the Applicants, STMG and DK, a redacted version of which is annexed as Schedule "A" hereto (the "Multi-Party Settlement") and all transactions, actions and activities contemplated therein (the "Settlement Steps"), are hereby approved, the execution of the Multi-Party Settlement by the Applicants is hereby approved and ratified and the Applicants and the other parties thereto are hereby authorized and directed to carry out each of the Settlement Steps, including, without limitation, authorizing the issuance of the Additional Shares pursuant to a Consent, if necessary, and no further Order of this Court is necessary to give effect to any aspect of the Multi-Party Settlement. Terms not defined in this Order shall have the meaning described in the Multi-Party Settlement.

2. **THIS COURT ORDERS AND DECLARES** that the Multi-Party Settlement is fair and commercially reasonable.

3. **THIS COURT ORDERS AND DECLARES** that the information contained in Schedule "B" to the Multi-Party Settlement is commercially sensitive and shall be sealed pending further Order of this Court.

4. **THIS COURT ORDERS** that the Multi-Party Settlement shall be binding upon and enforceable against, and enure to the benefit of, the Applicants and any successors thereto including, without limitation, any trustee in bankruptcy, receiver or receiver and manager in respect of any or all of the Applicants and shall also be binding upon and enforceable against, and enure to the benefit of, STMG, DK, Delaware Trust Company, National Association, in its capacity as collateral agent and as trustee under the indenture dated as of March 10, 2003 with respect to the senior secured notes issued by Hollinger ("Delaware Trust"), and HSBC Bank USA, National Association, in its capacity as trustee under the indenture dated as of September 30, 2004 with respect to the senior secured notes issued by Hollinger ("HSBC"), and any other person having notice of this Order. The aforesaid indentures are collectively referred to herein as the "Indentures".

5. **THIS COURT ORDERS AND DIRECTS** Delaware Trust and HSBC (collectively, the "Indenture Trustees"), on the one hand, and the Applicants, STMG and DK, on the other, to co-operate with each other to facilitate the implementation of the Multi-Party Settlement insofar as it relates to the Indenture Trustees and their collateral. In particular, Delaware Trust is hereby directed to relinquish possession and control of the STMG Class B share certificates held by it as collateral (the "Class B Certificates") to or at the direction of the Applicants, and in exchange to simultaneously receive, upon issuance, from the Applicants or such other person at the direction of the Applicants, the certificates representing the Exchanged Shares and the Additional Shares in substitution for the Class B Certificates.

6. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the provisions of this Order and the Multi-Party Settlement are without prejudice to the rights, if any, of the Applicants and any other person in respect of the Class A shares of STMG currently owned by the Applicants or any of them that are not Exchanged Shares or Additional Shares or that may be subject to any escrow agreement in relation to Hollinger's Class II preference shares.

7. **THIS COURT ORDERS AND DECLARES** that nothing contained in this Order or in the Multi-Party Settlement shall:

(a) affect the obligations of the Applicants to reimburse the Indenture Trustees in accordance with the Indentures (such reimbursable amounts being referred to herein collectively as the "Trustees' Fees and Expenses"); or

(b) impair or modify the liens of the Indenture Trustees pursuant to the Indentures and any existing related agreements for payment of the Trustee's Fees and Expenses.

8. **THIS COURT ORDERS AND DIRECTS** the Monitor to report to this Court when all transactions, releases and acknowledgements of claims contemplated by the Multi-Party Settlement to occur on or forthwith after Court Approval have been completed or performed. The Monitor may report upon such other matters in relation to the Multi-Party Settlement at such time or times as the Monitor deems necessary or appropriate.

9. **THIS COURT ORDERS** that, without prejudice to the rights of any party pursuant to the comeback clause of the Initial Order, the Applicants, the Monitor, STMG, DK, the CRO (defined below), the Litigation Trustee or the Indenture Trustees may, at any time upon seven (7) days notice to the Service List, return to this Court to seek directions or other relief regarding the implementation of the Multi-Party Settlement or any other matter arising in relation to the Multi-Party Settlement.

10. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings or any ancillary proceedings;

(b) a bankruptcy of any of the Applicants; and

(c) the provisions of any federal or provincial statute,

none of the Multi-Party Settlement or any of the transactions contemplated thereby will be void or voidable at the instance of creditors or claimants or their representatives, including any trustee in bankruptcy, and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation and they do not constitute conduct giving rise to an oppression remedy or any other cause of action.

11. **THIS COURT ORDERS** that the approval of the Multi-Party Settlement, and in particular paragraph 16 thereof, shall not vary or be deemed to vary the Order of this Court dated February 27, 2007 in *STMG v. Conrad Black et al.* (Court File No. 06-CL-6678) and shall be without prejudice to the rights of the defendants in that action, Conrad M. Black, Barbara Amiel Black, Black-Amiel Management Inc., Conrad Black Capital Corporation, 1269940 Ontario Limited and 2753421 Canada Limited to make any arguments or take any position upon any motion seeking an Order as contemplated in paragraph 16 of the Multi-Party Settlement.

Approval of Cost Reduction and Asset Enhancement Program of the Applicants

(a) Appointment of CRO and Litigation Trustee

12. **THIS COURT ORDERS** that William E. Aziz shall be and is hereby appointed as an officer of this Court to be the Chief Restructuring Officer ("CRO") over and in respect of all property,

assets and undertaking of the Applicants, other than the Litigation Assets, upon the terms described herein and in the Multi-Party Settlement.

13. **THIS COURT ORDERS** that justice John D. Ground (retired) is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the Applicants (collectively, the "Litigation Assets") on the terms described herein and in the Multi-Party Settlement.

14. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby authorized and directed to preserve, protect and realize upon the assets of the Applicants for the benefit of the Applicants and their creditors and other stakeholders as contemplated by the Multi-Party Settlement including, in the case of the CRO, without limitation and if thought necessary or desirable by the Applicants, the preparation and delivery of a plan of arrangement in respect of the Applicants as contemplated by the Multi-Party Settlement.

15. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby empowered, authorized and directed to do all things, carry out all actions and perform all duties described in the Multi-Party Settlement and specifically:

(a) to engage and give instructions to counsel and to engage and give direction to consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis either of them may agree to assist with the exercise of their powers and duties;

(b) to execute, assign, issue and endorse documents of whatever nature in respect of the Applicants for any purpose pursuant to this Order or the Multi-Party Settlement; and

(c) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants or any of their property and undertaking and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding.

16. **THIS COURT ORDERS** that the Litigation Trustee may obtain financing in respect of the Litigation Assets at such times, in such amounts and upon such terms as the Litigation Trustee may consider to be appropriate after seeking direction from the Advisory Committee in accordance with the Multi-Party Settlement.

17. **THIS COURT ORDERS** that nothing herein contained shall require the CRO or the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any property, assets or undertaking of any of the Applicants that might be environmentally contaminated, that might be a pollutant or a contaminant or that might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the CRO or the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Applicants are, and are hereby declared to be, and shall remain, in Possession, occupation and control of all of their property, assets and undertaking, subject to further Order of this Court.

18. **THIS COURT ORDERS** that neither the CRO nor the Litigation Trustee shall, as a result of this Order or anything done pursuant to their duties and powers under this Order, deem the CRO or the Litigation Trustee to be in Possession of any property, assets or undertaking within the meaning of any Environmental Legislation.

19. **THIS COURT ORDERS** that each of the CRO and the Litigation Trustee shall incur no liability or obligation as a result of his appointment or the carrying out of any of the provisions of this Order, save and except for any gross negligence or any wilful misconduct on his part. The Applicants shall indemnify and hold harmless each of the CRO and the Litigation Trustee with respect to any liability or obligation as a result of his appointment or the fulfilling of his duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. No action, application or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise against either the CRO or the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO or Litigation Trustee (as the case may be) at least seven (7) days prior to the return date of any such motion for leave.

20. **THIS COURT ORDERS** that the Applicants' indemnity in favour of the CRO and the Litigation Trustee shall survive any termination, replacement or discharge of the CRO or Litigation Trustee. Upon any termination, replacement or discharge of the CRO or Litigation Trustee, all claims against such officers of the Court for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged.

21. **THIS COURT ORDERS** that, without limiting any other provision of this Order, each of the CRO and the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

22. **THIS COURT ORDERS** that the Monitor, the CRO and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may order.

(b) Monitor

23. **THIS COURT ORDERS** that, in addition to its duties described in the Initial Order and the Claims Process Order of even date herewith, the Monitor is hereby authorized to perform the functions and carry out the responsibilities described herein and in the Multi-Party Settlement. Performance of these functions and responsibilities is subject to the provisions of the Initial Order, particularly paragraphs 21 through 31 thereof.

(c) Directors' Insurance

24. **THIS COURT ORDERS** that the Applicants be and are hereby authorized to purchase run-off insurance for the officers and directors of the Applicants as described in the Monitor's Seventh Report.

(d) Other Actions

25. **THIS COURT RATIFIES AND APPROVES** all actions and activities of the Applicants, including its current officers, directors and management, in authorizing any of the transactions, actions and activities or other matters approved, authorized or directed pursuant to this Order.

Extra-Territorial Assistance

26. **THIS COURT REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any Province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any state, federal or other court or any judicial, regulatory or administrative body of the United States of America to act in aid of and to assist this Court in carrying out the terms of this Order.

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

MAY 27 2008

PER/PAR: JSN

SCHEDULE "A"

EXECUTION COPY

Multi-Party Settlement Term Sheet

The Applicants seek Court Approval, as described herein, of the following terms of agreement among the Applicants, Sun-Times Media Group, Inc. ("STMG") and Davidson Kempner Capital Management LLC and its affiliates listed in Schedule "A" hereto (collectively, "DK").

A. STMG

1. Upon Court Approval, the Court shall authorize and direct Hollinger, 432, STMG and any other necessary parties to forthwith take the steps necessary to convert Hollinger's and 432's existing Class B shares into an equal number of Class A shares (the "Conversion"), subject to and prior to the steps described in paragraphs 2 and 3 hereof.

2. If STMG's stockholders are required to approve (the "Stockholder Approval") the issuance of the Additional Shares (as defined below), then, upon Court Approval, the Court shall authorize Hollinger, and Hollinger shall approve the issuance of the Additional Shares, pursuant to a stockholder written consent (the "Consent").

3. If Stockholder Approval is required, as soon as possible after the Consent Effective Date (as defined below), Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG. The Consent shall be effective after all actions required by the Securities Exchange Act of 1934, as amended (the "1934 Act"), have been taken and the issuance of the Additional Shares is permitted by the 1934 Act (the "Consent Effective Date"). If no Stockholder Approval is required, Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG as soon as possible after Court Approval.

4. Forthwith after the later of (i) Court Approval and (ii), if Stockholder Approval is required, the Consent Effective Date, STMG will issue to Hollinger (or as it may direct) 1,499,000 additional Class A shares (the "Additional Shares"). The number of Additional Shares represents 10% of the number of Hollinger's and 432's existing Class B shares.

5. All transactions will comply with all applicable laws and regulations and rules of applicable stock exchanges.

6. Upon the later of (i) Court Approval and (ii) immediately after the next annual meeting scheduled for June 17, 2008, the six directors appointed by Hollinger to the Board of STMG (Wes Voorheis ("Voorheis"), William Aziz ("Aziz"), Edward Hannah, Peter Dey ("Dey"), Brent Baird ("Baird") and Albrecht Bellstedt ("Bellstedt")) will submit their resignations from the board of STMG. Upon submitting their resignations, each resigning director will receive: (a) a written confirmation from STMG that any existing STMG indemnity will remain in place and that such resigning director will be covered by the STMG directors and officers insurance policy in effect from time to time on the same

terms as may be applicable to any other current STMG directors; and (b) reimbursement by STMG of all reasonable legal fees incurred by the independent directors (Dey, Baird and Belistedt) in respect of their tenure as directors of STMG. Upon payment of such fees by STMG, Hollinger will reimburse STMG for all amounts paid in respect of such legal fees, except for US$75,000.

7. Upon Court Approval, Hollinger will pay to STMG the reasonable fees and costs, including legal fees, of STMG incurred in connection with the CCAA proceedings of the Applicants, from August 1, 2007 up to and including the date of Court Approval. However, the total amounts payable to STMG by Hollinger under this paragraph shall be subject to a cap of US$2 million in the aggregate.

8. STMG and Hollinger will cooperate to maximize the recoverable portion of the class action insurance settlement proceeds payable to them and such proceeds shall be allocated so that STMG receives 85% of such proceeds, and Hollinger receives 15% of such proceeds.

9. Hollinger and STMG agree to divide their respective recoveries from the insolvency proceeding of Ravelston equally as between them.

10. The following claims of STMG shall be allowed as unsecured claims against the Applicants (the "STMG Allowed Claims") in the amounts indicated below, subject to confirmation of the calculations of the quantum of such claims by the Monitor:

   (a) a claim in respect of the promissory note executed by 4322525 Canada Inc. ("432") in the amount of US $40,545,974;

   (b) all claims for contribution and indemnity STMG has or may assert against Hollinger in the amount of US$28,663,588; and

   (c) a claim for the aircraft lease settlement in the amount of CDN$1,281,941.

11. Other than the STMG Allowed Claims, all other claims of STMG and its subsidiaries against the Applicants or any of their other subsidiaries, and all claims of the Applicants and their subsidiaries against STMG and its subsidiaries, shall be released upon Court Approval. The Applicants agree, in connection with their release of STMG, that they will not seek contribution, indemnification, reimbursement or any other form of claims over from Torys LLP or any of its predecessor or successor partnerships, F. David Radler or North American Newspapers Ltd. for any consideration paid or payable by any of the Applicants to STMG under this Term Sheet. For greater certainty, nothing contained in this paragraph shall limit or otherwise compromise in any manner, the Applicants' right to pursue or continue to pursue those named parties for any claims whatsoever, save and except only in respect of consideration paid or payable by the Applicants to STMG under this Term Sheet.

12. The total recoveries of STMG under the STMG Allowed Claims shall be capped at a maximum of US$15 million (the "STMG Cap"). After receipt of the STMG Cap, the

balance of the STMG Allowed Claims will be assigned to the Applicants for the benefit of the Applicants' other general unsecured creditors.

13. Upon STMG receiving distributions in the aggregate amount of US$7.5 million in respect of the STMG Allowed Claims (after giving effect to any valid and effective subordination regarding distributions under the 432 promissory note referred to in paragraph 10(a) above, if any), fifty percent (50%) of all distributions thereafter payable to STMG in respect of the STMG Allowed Claims shall be assigned to the Applicants.

14. Prior to any agreement in respect of the terms contained herein, STMG will ensure that nothing herein or in any plan of arrangement (the "Plan") of the Applicants, if any, giving effect to the terms hereof or in the implementation of any such Plan will:

(a) cause the Rights (as defined in the STMG rights plan) to become exercisable;

(b) cause any Person (as defined in the STMG rights plan) to become an Acquiring Person (as defined in the STMG rights plan); or

(c) trigger the application of the STMG rights plan.

15. STMG will continue with its independent examination of all strategic alternatives available to STMG.

16. Subject to the terms of any existing court orders or agreements pursuant to which the Applicants may be restricted, the Applicants will support the making of an order providing STMG with equal rights in respect of the Applicants' Mareva injunction against Conrad Black and Barbara Amiel Black. STMG shall be permitted to reserve its right as to whether to seek such an order.

B. DK

17. (a) Forthwith after Court Approval, the Class A shares of STMG resulting from the Conversion (the "Exchanged Shares"), plus the Additional Shares, being 10% of the number of Hollinger's and 432's existing Class B shares, when issued shall be voted by the indenture trustees for the benefit of and at the direction of noteholders in the manner contemplated by the indentures up to that number of shares that is equal to or less than 19.999% of the aggregate number of STMG Class A shares then outstanding rounded down to the nearest whole share. The indenture trustees, for the benefit of the noteholders, may thereupon exercise all voting or other rights associated with the Exchanged Shares and the Additional Shares when issued subject to the limitation referred to in the immediately preceding sentence and subject to the rights and at the direction of the noteholders in the manner contemplated by the indentures (provided that any shares of the Applicants shall not be voted other than in favour of the election of the directors described in Schedule "C" hereto and other resolutions proposed by STMG at the next annual meeting of shareholders scheduled to occur on or about June 17, 2008 and thereafter without restriction) and may dispose of or otherwise realize upon such shares in any commercially reasonable manner and subject to the applicable law and as directed by the noteholders in a manner contemplated by the indentures (provided that

any such disposition or realization shall not be considered part of any Plan for the purposes of paragraph 14 hereof). The Applicants shall provide proxies and do such acts and things as will facilitate such rights.

(b) The Conversion and the issuance of the Additional Shares shall be subject to a registration rights agreement, to be negotiated among DK, the Applicants and STMG, all acting reasonably (the "Registration Rights Agreement") forthwith after Court Approval. In all events, such Registration Rights Agreement shall include a provision with respect to payment of fees connected with any such registration, and shall include a provision permitting STMG to postpone the filing of a registration statement or its efforts to cause such registration statement to become effective if at the time the right to delay is exercised by STMG it shall determine in good faith that such offering would interfere with any acquisition, financing or other transaction that STMG is actively pursuing and is material to STMG or would involve initial or continuing disclosure obligations that would not be in the best interests of STMG.

(c) Upon being paid in full, all principal, interest and costs and other amounts, payable under the indentures), the indenture trustees will remit any remaining shares and any surplus proceeds to Hollinger and 432.

18. (a) Subject only to a reasonable reserve for (i) administrative costs (including any applicable legal fees, advisor fees and any other costs secured by the Administration Charge and also including a reserve to pay the reasonable costs, fees and expenses in respect of DK's post-Court Approval role as described herein) and (ii) disputed claims, such reserves to be determined by the CRO (as defined in the STMG Term Sheet) and the Monitor, both acting reasonably (and subject to their right to seek directions from the Court), and in consultation with DK and STMG, and subject to the segregated funds described below, all other cash and realizable proceeds of the Applicants (including the 15% share of the insurance settlement proceeds referred to herein) and the non-applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) shall be distributed as efficiently as reasonably possible to the creditors who have proved claims in accordance with the claims process for each of the Applicants. Distributions will be determined and made on a non-consolidated basis giving effect to inter-company claims but including only 50% of a claim by 432 against Hollinger in the amount of approximately CDN$342.5 million and subject to the following payments in the priority specified below:

(i) firstly, to pay a transaction fee to DK in consideration of its agreement to the terms hereof of CDN$1.5 million;

(ii) secondly, to pay the reasonable fees and disbursements, including reasonable legal fees and disbursements, of the indenture trustees up to and including Court Approval; and

(iii) thirdly, to pay the reasonable legal fees and disbursements of DK up to and including Court Approval;

provided that the total amount available to fund items (i) through (iii) hereof shall not exceed CDN$4,500,000. The priority payments described herein will not affect the timing or amount of the payment to STMG described in paragraph 7 herein.

(b) The Applicants will acknowledge claims owing by 432 and also by Hollinger to the indenture trustees in the full amount of the principal, interest and costs owing under the two debentures dated March 10, 2003 and September 30, 2004, the amount of which is estimated to be US$103,235,062 as of December 31, 2007. These claims will continue to accrue interest (unless and until the Applicants become bankrupt) in accordance with the debentures at the contractual rate until paid in full. The claims will be reduced only by distributions received by the indenture trustees from the estates of the Applicants and by amounts actually received from or in respect of the Exchanged Shares and the Additional Shares.

(c) The Monitor and the CRO, with periodic reports as requested (acting reasonably) and at least monthly to DK and STMG, will work to resolve and determine all disputed claims as efficiently as reasonably possible. The Monitor and the CRO will seek the input of DK and STMG before allowing any claims against the Applicants (other than the claims of STMG and the indenture trustees acknowledged herein). The Monitor and the CRO, in consultation with DK and STMG, will provide estimates of the net recovery to creditors based on the "waterfall" analysis of the Monitor and the information now known regarding the claims of all creditors (including the claims of STMG allowed under the STMG Term Sheet), such estimate to be updated after the claims bar dates for the Applicants and for the non-applicant subsidiaries as described herein.

(d) STMG will acknowledge that its claim against 432 in respect of the 432 loan is subordinated to and in favour of the claims of the indenture trustee for and in respect of only the senior bonds against 432.

19. DK agrees to:

(a) withdraw its motion seeking the bankruptcies of the Applicants; and

(b) support Court approval in the Applicants' CCAA proceeding ("Court Approval") consisting of: (i) approval of this agreement and (ii) approval of the other relief sought by the Applicants in their Notice of Motion dated April 10, 2008 to the extent not inconsistent with the terms described herein.

C. General Conditions

20. A standard CCAA claims process shall be implemented immediately for all claims against the Applicants, except claims against the Applicants by their subsidiaries (other than STMG and its subsidiaries).

21. A subsequent claims process shall be implemented in respect of the non-Applicant subsidiaries of the Applicants to ensure that all creditors of those subsidiaries are identified prior to the asset consolidation herein contemplated.

22. The Applicants, in consultation with the Monitor, shall prepare a plan to accumulate at Hollinger, on a tax-effective basis, all assets of the non-Applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) after payment of all claims of creditors of such subsidiaries.

23. The Applicants agree to work with the Monitor, in consultation with DK and STMG (and subject to the right of all parties to seek directions from the Court), to realize upon any assets of the Applicants and the non-applicant subsidiaries (other than the cash, the Exchanged Shares, the Additional Shares and the Litigation Assets described herein) with a view to distributing net proceeds thereof as efficiently as reasonably possible and to provide the necessary proxies. In particular, the Applicants will consider making such distributions pursuant to periodic Court orders in the CCAA proceedings as opposed to incurring the costs associated with formalizing and approving a Plan.

24. The form and content of any Plan, if necessary or advisable to implement the terms hereof, as it relates to STMG shall be satisfactory to STMG, acting reasonably and, as it relates to DK and the indenture trustees, shall be satisfactory to DK, acting reasonably.

25. All steps and transactions described herein that are to occur upon Court Approval are intended to take place simultaneously, and the parties shall co-operate with each other to coordinate the timing of the effectiveness of such steps and transactions.

26. The information contained in Schedules "B" and "C" hereof is confidential and commercially sensitive. The parties agree to seek an order sealing Schedule "B", pending further order of the Court, and Schedule "C", until such time as the information contained therein is disclosed by STMG, and agree that Schedules "B" and "C" will be redacted from any publicly disclosed materials.

D. Corporate Governance

27. Aziz, or an entity controlled by him, shall be appointed forthwith by the Court Approval order as the chief restructuring officer (the "CRO") of the Applicants and an officer of the Court in consideration of a monthly salary of $65,000, payable in advance, plus GST as applicable and reimbursement of reasonable expenses. Such engagement shall be on a month-to-month basis and may be terminated by Aziz upon 30 days' prior written notice.

28. The CRO shall be responsible, among other things, for developing and implementing the asset consolidation and repatriation plan and assisting the Monitor with the claims process.

29. The board of directors of Hollinger shall be reduced as soon as possible to a maximum of three persons.

30. Upon Court Approval, Hollinger and Voorheis will agree to suspend payment of all monthly work fees payable under Hollinger's consulting agreement with Voorheis or any entity controlled by him and Voorheis shall resign as an officer and director of the Applicants or any subsidiary.

31. In accordance with the engagement letter between Hollinger and BMO Nesbitt Burns Inc. ("BMO"), dated June 15, 2007, payment of all monthly work fees payable to BMO ceased in February 2008.

E. Litigation Assets

32. As part of the Court Approval order, justice John D. Ground shall be appointed as an officer of the Court to perform the role of litigation trustee (the "Litigation Trustee") of all claims and causes of action in favour of the Applicants (the "Litigation Assets") on such terms as may be agreed between the Applicants and justice Ground and subject to approval by the Court.

33. The Litigation Trustee will supervise, control and administer all aspects of the Litigation Assets of the Applicants, in consultation with the Applicants and subject to monitoring by the Monitor and supervision by the Court.

34. The Litigation Trustee may, if he considers it necessary or advisable, retain the services of Voorheis or an entity controlled by him on an hourly basis to provide assistance or advice in respect of the Litigation Assets.

35. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost-effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders and shall provide periodic reports to the Advisory Committee (as defined herein) and such other reports as may be requested by any member of the Advisory Committee, acting reasonably.

36. An advisory committee shall be established to provide advice and direction to the Litigation Trustee (the "Advisory Committee") comprised of one nominee of DK, one representative of the Applicants (other than Wes Voorheis) and the Litigation Trustee. The Litigation Trustee shall act in accordance with any majority decision of the Advisory Committee. For greater certainty, in the event of any disagreement as between the representative of DK and the representative of the Applicants, the Litigation Trustee shall have a deciding vote.

37. The nominee of DK to the Advisory Committee shall not receive any remuneration for so acting other than as specified below. The representative of the Applicants shall be a senior Canadian litigation counsel and shall be paid at his or her usual hourly rate by the Applicants. At the option of DK, its nominee may receive compensation on an equivalent basis to that of the representative of the Applicants. All members of the Advisory Committee shall be indemnified in respect of any claims made against them in such capacity excepting only claims arising from their wilful misconduct or gross negligence.

38. The Litigation Trustee will supervise and administer the Litigation Assets on a day-to-day basis, including giving direction to counsel. The Litigation Trustee will seek such direction from the Advisory Committee as he deems necessary or appropriate, but, in particular, the Litigation Trustee will seek direction from the Advisory Committee with respect to litigation strategy, financing (if any) for the Litigation Assets, whether to accept or make any settlement offer and the use of proceeds of any settlement.

39. The amount described in Schedule "B" hereto shall be segregated from the general cash assets of the Applicants and used exclusively for the purpose of funding the administration of the Litigation Assets. Payment of any amount payable to Mr. Wes Voorheis shall be made as contemplated in Schedule "B".

40. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders.

41. Representatives of DK and Hollinger will hold all information received by them as members of the Advisory Committee in strict confidence pursuant to a form of confidentiality agreement acceptable to Hollinger, the Litigation Trustee and such representatives, all acting reasonably.

42. DK or Hollinger may apply to Court at any time to seek such changes to the provisions of the order appointing the Litigation Trustee as either of them may deem necessary or appropriate.

Subject to Court Approval being obtained to the terms hereof, pursuant to an Order in form and content satisfactory to the parties, for consideration received, each of the undersigned agrees to the above as evidenced by their respective signatures as of this 14th day of May, 2008. This agreement may be signed in counterparts and delivered by electronic transmission.

HOLLINGER INC., SUGRA LIMITED and

4322525 CANADA INC.

Per: ______________________

(I have authority to bind each of the corporations)

SUN TIMES MEDIA GROUP, INC.

Per: ________________________

Per: ________________________
(I/We have authority to bind the corporation)

DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC on its own behalf and on behalf of the affiliates listed in Schedule "A" hereto (collectively, "DK")

Per: ________________________

Per: ________________________

(I/We have authority to bind the entities collectively referred to as "DK")

SUN TIMES MEDIA GROUP, INC.

Per: ____________________

Per: ____________________
(I/We have authority to bind the corporation)

DAVIDSON KEMPNER CAPITAL MANAGEMENT LLC on its own behalf and on behalf of the affiliates listed in Schedule "A" hereto (collectively, "DK")

Per: ____________________

Per: ____________________

(I/We have authority to bind the entities collectively referred to as "DK")

Schedule "A"

MH Davidson Co.

Davidson Kempner International Limited

Davidson Kempner Institutional Partners

Davidson Kempner Partners

Schedule "B"

REDACTED AND SEALED

PURSUANT TO COURT ORDER

DATED MAY 21, 2008

Schedule "C"

The directors to be proposed for election at the annual general meeting of shareholders of STMG to be held on June 17, 2008 are the following, which, for greater clarity, are all of the current directors of STMG. The six directors referred to in paragraph 6 of the Multi-Party Settlement Term Sheet will, notwithstanding any such election, resign in accordance with paragraph 6 of the Multi-Party Settlement Term Sheet.

The Hon. Raymond G.H. Seitz
William Aziz
Brent D. Baird
Albrecht W. A. Bellstedt Q.C.
Herbert A. Denton
Peter Dey
Cyrus F. Freidheim, Jr.
Edward Hannah
Gordon A. Paris
Graham W. Savage
G. Wesley Voorheis

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

Proceeding commenced at Toronto

ORDER

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EXHIBIT "19"

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

REPORT OF JOHN D. GROUND, Q.C. (retired justice) IN HIS CAPACITY AS LITIGATION TRUSTEE OF THE APPLICANTS

DATED MARCH 31, 2011

LITIGATION TRUSTEE'S MANDATE

1. Pursuant to the Order of Justice Colin Campbell of the Ontario Superior Court of Justice dated May 21, 2008, I was appointed Litigation Trustee of the Litigation Assets of the Applicants. Paragraph 13 of Justice Campbell's order reads:

> 13. **THIS COURT ORDERS** that Justice John D. Ground (retired) is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the Applicants (collectively, the "**Litigation Assets**") on the terms described herein and in the Multi-Party Settlement.

2. The Multi-Party Settlement referred to in such Order is a Multi-Party Settlement Agreement dated as of May 14, 2008 (the "**MPSA**") among the Applicants, Sun-Times Media Group Inc. ("**STMG**") and Davidson Kempner Capital Management LLC and certain of its affiliates (collectively, "**DK**").

3. Paragraph 14 of the order provides in part:

> 14. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby authorized and directed to preserve, protect and realize upon the assets of the Applicants for the benefit of the Applicants and their creditors and other stakeholders as contemplated by the Multi-Party Settlement ...

4. This report is made pursuant to para. 22 of the order, which provides as follows:

> 22. **THIS COURT ORDERS** that the Monitor, the CRO and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may order.

5. With respect to the role of the Litigation Trustee, the MPSA provides in part as follows:

> 33. The Litigation Trustee will supervise, control and administer all aspects of the Litigation Assets of the Applicants, in consultation with the Applicants and subject to monitoring by the Monitor and supervision by the Court.
>
> 35. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost-effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders and shall provide

periodic reports to the Advisory Committee (as defined herein) and such other reports as may be requested by any member of the Advisory Committee, acting reasonably.

36. An advisory committee shall be established to provide advice and direction to the Litigation Trustee (the 'Advisory Committee') comprised of one nominee of DK, one representative of the Applicants (other than Wes Voorheis) and the Litigation Trustee. The Litigation Trustee shall act in accordance with any majority decision of the Advisory Committee. For greater certainty, in the event of any disagreement as between the representative of DK and the representative of the Applicants, the Litigation Trustee shall have a deciding vote.

38. The Litigation Trustee will supervise and administer the Litigation Assets on a day-to-day basis, including giving direction to counsel. The Litigation Trustee will seek such direction from the Advisory Committee as he deems necessary or appropriate, but, in particular, the Litigation Trustee will seek direction from the Advisory Committee with respect to litigation strategy, financing (if any) for the Litigation Assets, whether to accept or make any settlement offer and the use of proceeds of any settlement.

6. Pursuant to para. 36 of the MPSA, Mr. William Brock of Montreal, Quebec, was appointed as the Representative of the Applicants and Mr. Arnold Cader of Toronto was appointed Nominee of DK. I have held monthly meetings or telephone conference calls with the Advisory Committee since their appointment and the minutes of such meetings have been provided to Mr. William Aziz, the CRO of the Applicants, and to Ernst & Young Inc. in its capacity as the Monitor of the Applicants. In addition, I and other members of the Advisory Committee have attended regular team meetings with all counsel engaged by the Applicants in respect of the Litigation Assets to receive status reports on the progress of the litigation and discuss future strategy.

7. As part of this process, with the assistance of Thornton Grout Finnigan, Paliare Roland and Fasken Martineau, I, together with Mr. Aziz, Mr. Cader and Mr. Brock have assessed the potential claims of Hollinger Inc. against the persons listed below. The result of these

investigations are subject to both litigation and solicitor and client privilege. As a result of these investigations the litigation assets set out below were identified.

THE LITIGATION ASSETS

8. The litigation assets of the Applicants consist largely of claims against the former officers, directors, advisors and banking syndicate of Hollinger Inc. ("**Hollinger**").

9. The following actions have been commenced by the Applicants:

(i) Action No. 06-CL-6261 in the Ontario Superior Court of Justice (Commercial List) between: Hollinger Inc., Domgroup Ltd., 4322525 Canada Inc., 10 Toronto Street Inc. and Sugra Limited, plaintiffs, and Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee, Peter Y. Atkinson, The Ravelston Corporation Limited, Ravelston Management Inc., 509643 N.B. Inc., 509644 N.B. Inc., 590645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., Moffatt Management Inc., Black-Amiel Management Inc., Argus Corporation Limited, Conrad Black Capital Corporation, Hollinger Aviation Inc., Mowitza Holdings Inc., 364817 Ontario Limited, F. D. Radler Ltd., 1269940 Ontario Limited, 2753421 Canada Limited and 1406684 Ontario Limited, defendants (the "**Black Action**");

(ii) Action No. 07-CL-6954 in the Ontario Superior Court of Justice (Commercial List) between: Hollinger Inc., plaintiff, and Conrad M. Black, Barbara Amiel-Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson, defendants. (This action originally formed part of the Black Action and was separated to seek a declaration that Hollinger was not liable to make any payment to the defendants under the Indemnity Agreements dated July 23, 2003);

(iii) Action No. 07-CL-7043 in the Ontario Superior Court of Justice (Commercial List) between: Hollinger Inc., plaintiff, and Canadian Imperial Bank of Commerce, the Toronto Dominion Bank and The Bank of Nova Scotia (the "**Banks Action**");

(iv) Action No. 07-CV-327315 PD2 between: Hollinger Inc., plaintiff, and Ralph M. Barford, defendant (the "**Barford Action**").

10. The other former directors of Hollinger against whom the Applicants may be pursuing claims are: Daniel William Colson ("**Colson**"), Charles Gibbs Cowan ("**Cowan**"), Peter Gerald White ("**White**"), Douglas Graeme Bassett ("**Bassett**"), Fredrik Stefan Eaton ("**Eaton**"), Donald F. Fullerton ("**Fullerton**"), Allan Ezra Gotlieb ("**Gotlieb**"), Henry H. Ketcham III ("**Ketcham**") and Maureen Sabia ("**Sabia**"). All of the above-mentioned former directors are parties to tolling agreements with Hollinger, preserving Hollinger's causes of action irrespective of limitation periods, and pleadings have not yet been issued.

11. Hollinger also entered into tolling agreements with its advisors, Torys LLP ("**Torys**") and KPMG LLP ("**KPMG**").

STATUS OF THE ACTIONS

12. With respect to the Black Action, a Statement of Defence was delivered by John A. Boultbee. No other defences have yet been delivered. Meetings have been held with counsel to F. David Radler ("**Radler**"), Conrad M. Black ("**Black**"), Barbara Amiel-Black ("**Amiel-Black**") and Peter Atkinson ("**Atkinson**"), with a view to exploring settlement opportunities. Such meetings have been unproductive.

13. In the Barford Action, pleadings are closed and the action is at the production stage. Extensive meetings have taken place with counsel to Barford with a view to exploring options for settlement, which were ultimately unsuccessful. Counsel for Barford has indicated that motions will be brought by Barford for security for costs, partial summary judgment and other procedural matters. Motion materials have not yet been served on Hollinger.

14. In the case of the Banks Action, productions are continuing between counsel, although the Banks have not yet filed defences. CIBC has provided to counsel for the Applicants access to the Bank's credit file and related documents.

15. Preliminary discussions have been held with counsel for Colson, Cowan and White respectively with a view to exploring whether there would be any basis for a settlement with them.

16. Sabia, Gotlieb, Ketcham, Bassett and Eaton are jointly represented and collectively referred to herein as the "**Outside Directors**". Extensive discussions have taken place with counsel to the Outside Directors with a view to the possibility of negotiating a settlement.

SETTLEMENT OPPORTUNITIES

17. As part of the ongoing negotiations between the parties, Hollinger approached all the defendants and potential defendants to set up meetings to discuss the settlement opportunities available within the CCAA process. Hollinger advised those parties who

agreed to meet for such discussions in person or through counsel[1] that it would be seeking both financial contributions for the benefit of the Litigation Trustee's initiatives and for the Estates of the Applicants, as well as, where appropriate, cooperation agreements in exchange for full and final releases.

18. Hollinger further advised the defendants and potential defendants that the CCAA process offered a settlement opportunity in that Hollinger would agree to seek court orders granting third party releases from the non-settling defendants in favour of settling defendants should they choose to participate in a settlement as part of the CCAA process. Hollinger likewise advised the defendants and potential defendants of the impact of third party releases on non-settling defendants.

19. The benefits to the Applicants in seeking third party releases for settling defendants are twofold: (i) such releases will put a finite end to protracted and costly litigation with the settling defendants, such that their cases will not have to be retried if and when non-settling defendants bring them back into the outstanding actions by way of cross-claims or third party claims; and (ii) outstanding litigation efforts against non-settling defendants will be streamlined, and therefore more cost effective for the Estates, resulting in a more efficient use of the resources of the Court.

20. The primary benefits of third party releases to the settling defendants are (i) limiting the financial exposure in respect of their dealings with Hollinger and (ii) the avoidance of costly and protracted litigation with a number of parties over years. The beneficiaries of

[1] Black, Amiel-Black, Atkinson, Boultbee, Radler, Colson, Cowan, Sabia, Eaton, Ketcham, Gotlieb, Bassett, Barford, Fullerton, CIBC, TD and BNS.

such releases generally place a higher value on the expectation of finally resolving their Hollinger-related liabilities, including not only the Applicants' claims but also all the potential claims for contribution and indemnity that may be advanced by non-settling defendants.

21. While settling defendants will be insulated from future liability in respect of Hollinger, they will not be exempted from giving evidence or serving as witnesses in outstanding actions against non-settling defendants, so the Court will have the full benefit of their evidence and information in deciding the remaining actions.

22. It is Hollinger's intention to make the settlements by KPMG and Torys an economically neutral event for the non-settling defendants.

23. As a lawyer and former judge, I am aware that the Court is under an obligation where damages have been caused or contributed to by the fault or neglect of two or more persons to determine the degree in which each of such persons is at fault or negligent. Where two or more persons are found at fault, they are jointly responsible to the person suffering the loss or damage, but as between themselves, in the absence of any contract, express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

24. Hollinger is prepared to waive its right to joint and several liability in respect of the liability between either Torys, KPMG or other settling defendant on the one hand and a non-settling defendant on the other hand. Hollinger proposes that settlement approval orders provide that if any non-settling defendant would otherwise be able to establish a right of contribution and indemnity from Torys, KPMG or other settling defendant, then

the damages owing to Hollinger jointly and severally by any such non-settling defendant will be reduced by the degree in which Torys and/ or KPMG or other settling defendants are found to be at fault or negligent.

25. Therefore while each non-settling defendant will not have a claim for contribution and indemnity against KPMG, Torys or other settling defendant for the amount which any of them might be found to be at fault or negligent, there will be no economic detriment because any such amount will not be sought from the non-settling defendant if that defendant could have otherwise asserted such a claim.

26. Nothing in the settlement approval orders will prevent any non-settling defendant from requiring the Court to determine the degree in which any of KPMG, Torys or other settling defendant is at fault or negligent with respect to any damages suffered by Hollinger. To the extent the Court finds KPMG, Torys or other settling defendant responsible for a proportionate share of those damages and the non-settling defendant had a right of contribution and indemnity against either of them, then Hollinger will have no claim against any person in respect of that proportionate share. In such circumstances, the settlements will be the total recovery available to Hollinger in respect of the settling defendant's proportionate share of any damages suffered by Hollinger.

CLAIMS ADVANCED AGAINST TORYS AND KPMG BY OTHERS

27. Claims for contribution and indemnity against Torys and KPMG were filed by Black, Amiel-Black (as well as certain private companies owned and controlled by Black and

Amiel-Black[2]), Radler (as well as a private company owned and controlled by him[3]), Colson and Boultbee.

28. No other claims for contribution and indemnity have been asserted against Torys or KPMG by any other stakeholders.

29. I am advised that counsel for each of Torys and KPMG have confirmed that there have been no actions commenced against Torys or KPMG by any person arising out of any Hollinger-related matter other than for contribution and indemnity in respect of any amount which may be found owing to Hollinger. The limitation period in respect of such causes of action has lapsed.

CONTINGENT SETTLEMENTS WITH TORYS AND KPMG

30. As a result of the investigation of potential claims of Hollinger against others, potential claims against each of KPMG and Torys were identified.

31. In or about December 2005, Hollinger advised Torys of an intention to commence a legal proceeding against Torys in respect of Torys having given advice and conducted legal work for Hollinger and related persons and entities (the "**Intended Torys Action**").

32. Hollinger and Torys subsequently entered into a mediation agreement in which it was agreed, among other things, to mediate the Intended Torys Action and toll any applicable limitation periods.

---

[2] Moffatt Management Inc., Black-Amiel Management Inc., Conrad Black Capital Corporation, 1269940 Ontario Limited and 2753421 Canada Limited.

[3] North American Newspapers Ltd.

33. Similarly, in or about November 2005, Hollinger advised KPMG of an intention to commence a legal proceeding against KPMG in respect of advice given, audit, tax and transaction advisory services work performed for Hollinger (the "**Intended KPMG Action**").

34. Hollinger and KPMG subsequently entered into a mediation agreement in which it was agreed, among other things, to mediate the Intended KPMG Action and toll any applicable limitation periods.

35. Each of Hollinger, KPMG and Torys agreed to engage the services of the Honourable George Adams, Q.C. (retired justice) ("**Adams**") to conduct a separate mediation in respect of each of Torys and KPMG. During the month of March 2010, extensive mediations were conducted with Torys and KPMG with the assistance of Adams who acted as mediator. Adams is a highly regarded professional mediator and former justice of the Ontario Superior Court of Justice. Adams has substantial experience as a mediator and facilitator in a wide range of types of conflicts. While on the bench, Adams handled major cases in all areas of the superior court of Justice including the Commercial List and Divisional Court and many of his decisions are widely reported.

36. Each of the mediation agreements with KPMG and Torys contains the following provision:

> "It is understood that in order for mediation to work, open and good faith communications are essential. Accordingly, all written and oral communications, negotiations, and statements made in the course of the mediation will be treated as

privileged settlement discussions and absolutely confidential and without prejudice."

37. As part of the mediation process, all claims by Hollinger against Torys and KPMG were set out and fully canvassed as were all possible defences. I personally attended the mediations with Mr. Aziz and representatives of Thornton Grout Finnigan and Paliare Roland. During the course of the mediations, I was in telephone contact with each of Mr. Cader and Mr. Brock. Each mediation lasted two days and involved intense negotiations.

38. With the assistance of Adams, those mediations were completed and settlements in principle were reached. In each case the settlement was considered to be a reasonable settlement of the claims by Adams, Mr. Cader, Mr. Brock, Mr. Aziz and myself, as well as counsel from Thornton Grout Finnigan and/or Paliare Roland. Each of these persons has extensive experience as a judge, lawyer or business person.

39. In these negotiations each of KPMG and Torys were represented by experienced lawyers from within each firm and senior and experienced outside counsel. These were both arms'-length negotiations which were conducted in good faith.

40. Both settlement agreements are conditional upon the issuance of satisfactory bar orders giving effect to the third party releases (the "**Release Orders**").

41. In order to obtain the necessary Release Orders, Hollinger has applied to the Court under the CCAA for an order approving the terms, including the third-party releases, of each of the settlement agreements. The application to the Court for approval of the settlements,

including the third party releases, was brought on notice to the CCAA service list as well as all the non-settling defendants.

42. I believe, consistent with the advice of the mediator, that Hollinger's offer of the third party releases to Torys and KPMG resulted in higher settlement offers from each of those parties than otherwise might have been the case.

43. In my experience as a former judge and lawyer, and as a specialist in alternate dispute resolutions, I have had occasion to participate in or preside over numerous pre-trial conferences, mediations, arbitrations, trials and other dispute resolution processes. Based on my experience and being cognizant of the mandate of the Litigation Trustee and my duties as an officer of the Court, I affirm that in my view the settlements with Torys and KPMG are well within the zone of reasonableness and appropriate in the circumstances.

44. In coming to this conclusion, I have considered the potential future expense and likely duration of litigation against each of KPMG and Torys. In addition, these settlements are the first to be entered into by Hollinger and provide real benefits. The first settlements break the inertia that accompanies multi-party litigation where no defendant wants to be the first to settle.

45. An additional benefit flowing from these settlements is that Hollinger will soon have substantial funds coming into the Litigation Trustee's accounts, which will be used in part to fund the Litigation Trustee's initiatives against the non-settling defendants and, to the extent not required for those initiatives, be available for the Estates of the Applicants, all in accordance with and subject to the provisions of the MPSA.

46. In consultation with the Advisory Committee, and in accordance with the MPSA, I am currently considering what portion of these proceeds should be used to fund future settlement negotiations, mediations and litigation. The balance will be made available to the Estates of the Applicants.

47. I would be pleased to provide any additional information or further detail that may be required by the Court.

Dated at Toronto, Ontario this 31st of March, 2011.

Honourable John D. Ground, Q.C.
Litigation Trustee

EXHIBIT "20"

Lerners LLP
Barristers & Solicitors
130 Adelaide Street West, Suite 2400
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LERNERS

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echerniak@lerners.ca

April 7, 2011

FILE NUMBER 51366*00006

VIA E-MAIL

Michael E. Barrack / Megan Keenberg
Thornton Grout Finnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West,
P.O. Box 329, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Dear Mr. Barrack and Ms. Keenberg:

Re: Conrad M. Black et al. ats Hollinger Inc. et al., Court File No. 06-CL-6261

We have now had an opportunity to review the Report of the Litigation Trustee dated March 31, 2011.

Paragraph 21 of that Report advises us for the first time that it is Hollinger Inc.'s position that the third party releases/bar orders being sought as part of the proposed Settlement Agreements with Torys LLP and KPMG LLP will not exempt those settling defendants from giving evidence or serving as witnesses in outstanding actions against the non-settling defendants (of whom Mr. Black is, of course, one). In paragraph 24, the Report indicates that apparently Hollinger Inc is prepared to waive its right to joint and several liability in respect of the liability between either Torys LLP, KPMG LLP (or other settling defendant) on the one had and a non-settling defendant on the other hand. The result would be that to the extent that if a non-settling defendant would otherwise be able to establish a right of contribution and indemnity from Torys LLP, KPMG LLP (or other settling defendant), then the damages owing to Hollinger Inc. by the non-settling defendant will thereby be reduced proportionately.

Please advise of the specific terms which Hollinger Inc. will be proposing to have incorporated into the proposed order approving the Settlement Agreements and whether Torys LLP and KPMG LLP agree to those terms.

Yours very truly,

Earl A. Cherniak

LCM/mjc

cc: Kenneth D. Kraft

EXHIBIT "21"

Lisa C Munro

From:	Megan Keenberg <MKeenberg@tgf.ca>
Sent:	April-07-11 10:55 AM
To:	Irwin Nathanson; Geoffrey Gomery; Robert Thornton; Michael Barrack
Subject:	RE: Hollinger

Mr. Nathanson,

As stated in my email below, Hollinger's position will be incorporated into the draft orders submitted to the Court on our Settlement Approval Motions. Should the settlements be approved and the Approval Order be granted, then that Order of the Court will be binding on Hollinger Inc., which should be sufficient. It would be a permanent restriction on Hollinger Inc., which, as a public document and a formal order of the Ontario Court, can be relied upon by any party in any subsequent or continuing litigation. It will also be binding on all the non-settling defendants.

Regards,

Megan Keenberg

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Megan Keenberg | mkeenberg@tgf.ca | Direct Line: 416-304-1127 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

---

From: Lynda Chew [mailto:LChew@nst.bc.ca] **On Behalf Of** Irwin Nathanson
Sent: April 6, 2011 5:41 PM
To: Megan Keenberg; Geoffrey Gomery; Robert Thornton; Michael Barrack
Cc: Ronald Foerster; Emblem, Norm; J. L. McDougall
Subject: RE: Hollinger

Ms. Keenberg,

Thank you for your reply to my memo dated April 4, 2011.

I do not understand the reasoning behind Item 3 of your email. The Settlement Approval Orders, if granted, are part of the CCAA proceeding. The position Hollinger will advance in the litigation, as set out in Item 1 of your email, is the position to be advanced in the actual litigation against the non-settling defendants. Surely, your position must be formally advanced in the litigation in question and manifested in your pleading.

I invite you to reconsider your position in this regard.

I look forward to receiving advice from counsel from Torys and KPMG with respect to Item 4 in my email dated April 4, 2011.

Irwin G. Nathanson, Q.C.
Nathanson, Schachter & Thompson LLP,

Barristers & Solicitors,
#750 - 900 Howe Street,
Vancouver, B.C. V6Z 2M4
Tel: 604-662-8840
Fax: 604-684-1598
website: www.nst.bc.ca

From: Megan Keenberg [mailto:MKeenberg@tgf.ca]
Sent: April-06-11 11:01 AM
To: Irwin Nathanson; Geoffrey Gomery; Robert Thornton; Michael Barrack
Cc: Ronald Foerster; Emblem, Norm; J. L. McDougall
Subject: RE: Hollinger

Mr. Nathanson,
We will respond to your questions below with reference to your numbering:

1. We confirm that Hollinger is seeking approval of the Settlements on the basis that non-settling defendants who have a viable claim for contribution and indemnity against Torys and KPMG (or any other settling defendant) will not bear any portion of the liability attributable to such settling defendants.
2. The Settlement Approval Motions are brought by the Applicants. Hollinger's position on the issue of economic neutrality does not affect Torys, KPMG or any other settling defendant. Torys and KPMG are cognizant of Hollinger's position and their positions on this issue are immaterial.
3. The Applicants will not amend the pleadings to reflect Hollinger's position but it will be set out in detail in the draft Settlement Approval Orders, which will revised and circulated to the Service List in advance of the Settlement Approval Motions.
4. The Applicants will produce relevant, non-privileged documents in their possession per the Rules of Civil Procedure (Ontario). The Applicants will not speak on behalf of Torys and KPMG. We have copied counsel to each of Torys and KPMG on this reply email so that you may be in touch with them directly.

Regards,
Megan Keenberg

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Megan Keenberg | mkeenberg@tgf.ca | **Direct Line: 416-304-1127** | **Thornton Grout Finnigan LLP** | **Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7** | 416-304-1616 | Fax: 416-304-1313 | **www.tgf.ca**

From: Lynda Chew [mailto:LChew@nst.bc.ca] **On Behalf Of** Irwin Nathanson
Sent: April 4, 2011 12:24 PM
To: Michael Barrack; Megan Keenberg
Cc: Geoffrey Gomery
Subject: Hollinger

I have now reviewed the report of the Litigation Trustee. I would be grateful if you would respond to the following questions:

1. Having regard to paras. 22 - 29 of that report, is your motion now one which seeks approval of the Torys and KPMG settlements on the basis that the non-settling defendants will not bear any portion of the liability attributable to these settling parties?

2. Is this also the position of Torys and KPMG?

3. Will the plaintiffs amend the Statements of Claim in all of the actions to reflect the waiver of claims against the remaining defendants to the extent to the loss or damage caused by Torys or KPMG?

4. Will the plaintiffs, Torys and KPMG consent to full production of all relevant documentation and providing discovery of the relevant individuals to the non-settling defendants?

I look forward to your early response so that I may obtain instructions in respect of the approval motions.

Irwin G. Nathanson, Q.C.
Nathanson, Schachter & Thompson LLP,
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#750 - 900 Howe Street,
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website: www.nst.bc.ca

EXHIBIT "22"

Lisa C Munro

From:	Emblem, Norm <Norm.Emblem@fmc-law.com>
Sent:	April-07-11 12:00 PM
To:	Irwin Nathanson
Cc:	McDougall, John Lorn; mcdjl@aol.com; Geoffrey Gomery; RThornton@tgf.ca; mbarrack@tgf.ca; mkeenberg@tgf.ca; Franciosi, Jean; Bodley, Marietta; Ronald Foerster
Subject:	HOLLINGER
Attachments:	N.J. Emblem to Irwin Nathanson April 7, 2011.pdf

Dear Mr. Nathanson

Please see my letter to you of today's date in response to your e-mail of April 6, 2011.

Regards,

Norm Emblem

Norm Emblem, Partner
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T 416 863 4487 | **F** 416 863 4592
E norm.emblem@fmc-law.com
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— LAW —

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MAIN 416 863 4511
FAX 416 863 4592

Norman J. Emblem
Norm.Emblem@fmc-law.com
DIRECT 416 863 4487

April 7, 2011

VIA E-MAIL

Irwin G. Nathanson, Q.C.
Nathanson, Schacter & Thompson LLP
Barristers and Solicitors
#750 - 900 Howe Street
Vancouver, B.C. V6Z 2M4

Dear Mr. Nathanson,

RE: Hollinger

Thank you for your e-mail message of April 6th.

As we understand it, pleadings have not been closed in any actions Hollinger Inc. commenced against your client(s).

In the fullness of time, once pleadings have been closed in such actions, the issues as reflected in the pleadings will be defined. The parties will then be obliged to exchange affidavits of documents pursuant to Rule 30.03 of the *Rules of Civil Procedure* ("*Rules*") and thereafter engage in oral examinations for discovery pursuant to Rule 31.03 of the *Rules*. Rules 30.10 and 31.10 of the *Rules* (set out below) are then available to the parties to resort to if and when advised with respect to seeking production and/or discovery from non-parties such as KPMG LLP ("KPMG").

KPMG has preserved all documents (as the word "document" is defined in Rule 30.01(a) of the *Rules*). In the event a motion is brought by any party in the actions your clients are involved in pursuant to Rule 30.10 and/or Rule 31.10 of the *Rules*, KPMG will respond as it considers appropriate having regard to (i) the issues in the pleadings and (ii) the facts and evidence set forth in any motion materials before the Court.

Your clients can rest assured that KPMG will continue to preserve all documents.

We would be pleased to speak with you further at your convenience.

Yours very truly,

Norman J. Emblem

NJE/jef

c.c. J.L. McDougall, Q.C.

PRODUCTION FROM NON-PARTIES WITH LEAVE

Order for Inspection

30.10 (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document. R.R.O. 1990, Reg. 194, r. 30.10 (1).

Notice of Motion

(2) A motion for an order under subrule (1) shall be made on notice,

(a) to every other party; and

(b) to the person not a party, served personally or by an alternative to personal service under rule 16.03. R.R.O. 1990, Reg. 194, r. 30.10 (2).

Court may Inspect Document

(3) Where privilege is claimed for a document referred to in subrule (1), or where the court is uncertain of the relevance of or necessity for discovery of the document, the court may inspect the document to determine the issue. R.R.O. 1990, Reg. 194, r. 30.10 (3).

Preparation of Certified Copy

(4) The court may give directions respecting the preparation of a certified copy of a document referred to in subrule (1) and the certified copy may be used for all purposes in place of the original. R.R.O. 1990, Reg. 194, r. 30.10 (4).

Cost of Producing Document

(5) The moving party is responsible for the reasonable cost incurred or to be incurred by the person not a party to produce a document referred to in subrule (1), unless the court orders otherwise. O. Reg. 260/05, s. 5.

DISCOVERY OF NON-PARTIES WITH LEAVE

General

31.10 (1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation. R.R.O. 1990, Reg. 194, r. 31.10 (1).

Test for Granting Leave

(2) An order under subrule (1) shall not be made unless the court is satisfied that,

(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;

(b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and

(c) the examination will not,

(i) unduly delay the commencement of the trial of the action,

(ii) entail unreasonable expense for other parties, or

(iii) result in unfairness to the person the moving party seeks to examine. R.R.O. 1990, Reg. 194, r. 31.10 (2).

Costs Consequences for Examining Party

(3) A party who examines a person orally under this rule shall serve every party who attended or was represented on the examination with the transcript free of charge, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 31.10 (3).

(4) The examining party is not entitled to recover the costs of the examination from another party unless the court expressly orders otherwise. R.R.O. 1990, Reg. 194, r. 31.10 (4).

Limitation on Use at Trial

(5) The evidence of a person examined under this rule may not be read into evidence at trial under subrule 31.11 (1). R.R.O. 1990, Reg. 194, r. 31.10 (5).

Lisa C Munro

From:	Foerster, Ronald <RFOERSTER@blg.com>
Sent:	April-07-11 11:48 AM
To:	Irwin Nathanson
Cc:	Emblem, Norm; J. L. McDougall; Megan Keenberg; Geoffrey Gomery; Robert Thornton; Michael Barrack
Subject:	RE: Hollinger

Dear Mr. Nathanson,

Thank you for your email dated April 6, 2011.

Our position on the point you have raised is that it is premature to deal with the production of documents to or the discovery of representatives by the non-settling defendants. We understand that the claims by Hollinger Inc. against the non-settling defendants are either not yet commenced or in the preliminary stages. In some cases, no claims have yet been issued and in those where they have, defences have not been served, production and discovery have not taken place among the parties to such litigation and, as a result, the issues and scope of relevant production have not yet been determined.

At the appropriate stage of such litigation, the non-settling defendants may bring motions for production and discovery of non-parties (including Torys) pursuant to Rules 30.10 and 31.10 of the *Rules of Civil Procedure* (Ontario). Torys will respond to those motions in the context of each specific claim. This procedure is consistent with the approach taken in Ontario with respect to production by and discovery of settling defendants in the class action context. See for example: *Gariepy v. Shell Oil Co.* [2002] O.J. No. 4022; and *Millard v. North George Capital Management Ltd. (2000)* 47 C.P.C. (4th) 365.

Yours truly,

Ron Foerster

Borden Ladner Gervais

Ronald Foerster
T 416.367.6192| F 416.361.7055| M 416.951.6192| rfoerster@blg.com
Scotia Plaza, 40 King Street West, Toronto, ON, Canada M5H 3Y4

Borden Ladner Gervais LLP |
Calgary | Montréal | Ottawa | Toronto | Vancouver | Waterloo Region
blg.com

From: Lynda Chew [mailto:LChew@nst.bc.ca] **On Behalf Of** Irwin Nathanson
Sent: April 6, 2011 5:41 PM
To: Megan Keenberg; Geoffrey Gomery; Robert Thornton; Michael Barrack

Cc: Foerster, Ronald; Emblem, Norm; J. L. McDougall
Subject: RE: Hollinger

Ms. Keenberg,

Thank you for your reply to my memo dated April 4, 2011.

I do not understand the reasoning behind Item 3 of your email. The Settlement Approval Orders, if granted, are part of the CCAA proceeding. The position Hollinger will advance in the litigation, as set out in Item 1 of your email, is the position to be advanced in the actual litigation against the non-settling defendants. Surely, your position must be formally advanced in the litigation in question and manifested in your pleading.

I invite you to reconsider your position in this regard.

I look forward to receiving advice from counsel from Torys and KPMG with respect to Item 4 in my email dated April 4, 2011.

Irwin G. Nathanson, Q.C.
Nathanson, Schachter & Thompson LLP,
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#750 - 900 Howe Street,
Vancouver, B.C. V6Z 2M4
Tel: 604-662-8840
Fax: 604-684-1598
website: www.nst.bc.ca

From: Megan Keenberg [mailto:MKeenberg@tgf.ca]
Sent: April-06-11 11:01 AM
To: Irwin Nathanson; Geoffrey Gomery; Robert Thornton; Michael Barrack
Cc: Ronald Foerster; Emblem, Norm; J. L. McDougall
Subject: RE: Hollinger

Mr. Nathanson,
We will respond to your questions below with reference to your numbering:

1. We confirm that Hollinger is seeking approval of the Settlements on the basis that non-settling defendants who have a viable claim for contribution and indemnity against Torys and KPMG (or any other settling defendant) will not bear any portion of the liability attributable to such settling defendants.
2. The Settlement Approval Motions are brought by the Applicants. Hollinger's position on the issue of economic neutrality does not affect Torys, KPMG or any other settling defendant. Torys and KPMG are cognizant of Hollinger's position and their positions on this issue are immaterial.

3. The Applicants will not amend the pleadings to reflect Hollinger's position but it will be set out in detail in the draft Settlement Approval Orders, which will revised and circulated to the Service List in advance of the Settlement Approval Motions.
4. The Applicants will produce relevant, non-privileged documents in their possession per the Rules of Civil Procedure (Ontario). The Applicants will not speak on behalf of Torys and KPMG. We have copied counsel to each of Torys and KPMG on this reply email so that you may be in touch with them directly.

Regards,
Megan Keenberg

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Megan Keenberg | mkeenberg@tgf.ca | **Direct Line: 416-304-1127** | **Thornton Grout Finnigan LLP** | **Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7** | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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From: Lynda Chew [mailto:LChew@nst.bc.ca] **On Behalf Of** Irwin Nathanson
Sent: April 4, 2011 12:24 PM
To: Michael Barrack; Megan Keenberg
Cc: Geoffrey Gomery
Subject: Hollinger

I have now reviewed the report of the Litigation Trustee. I would be grateful if you would respond to the following questions:

1. Having regard to paras. 22 - 29 of that report, is your motion now one which seeks approval of the Torys and KPMG settlements on the basis that the non-settling defendants will not bear any portion of the liability attributable to these settling parties?

2. Is this also the position of Torys and KPMG?

3. Will the plaintiffs amend the Statements of Claim in all of the actions to reflect the waiver of claims against the remaining defendants to the extent to the loss or damage caused by Torys or KPMG?

4. Will the plaintiffs, Torys and KPMG consent to full production of all relevant documentation and providing discovery of the relevant individuals to the non-settling defendants?

I look forward to your early response so that I may obtain instructions in respect of the approval motions.

Irwin G. Nathanson, Q.C.
Nathanson, Schachter & Thompson LLP,
Barristers & Solicitors,
#750 - 900 Howe Street,
Vancouver, B.C. V6Z 2M4
Tel: 604-662-8840
Fax: 604-684-1598

website: www.nst.bc.ca

REDACTED

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (the "**Agreement**") made as of the 18th day of May, 2011 between Maureen Sabia, Allan E. Gotlieb, Henry Ketcham III and Fredrik S. Eaton (collectively, the "**Settling Directors**") and Hollinger Inc. ("**Hollinger**") a corporation incorporated under the *Canada Business Corporations Act*, R.S.C 1985 c. C-44 (individually, a "**Party**", and collectively, the "**Parties**"); and

WHEREAS, Hollinger and the Settling Directors agreed to toll limitation periods pursuant to a standstill agreement dated November 16, 2006 (the "**Standstill Agreement**"); and

WHEREAS, on or about December 20, 2010, Hollinger advised the Settling Directors of an intention to commence legal proceedings against the Settling Directors in respect of their conduct while serving as directors of Hollinger (the "**Intended Action**"); and

WHEREAS, the Intended Action included any and all Claims (as defined in paragraph 2 below) which Hollinger intended to pursue against the Settling Directors in relation to Hollinger, either on its own behalf and/or on behalf of any other person; and

WHEREAS, in response, the Settling Directors denied that they engaged in any wrongdoing or have any liability to Hollinger or its subsidiaries, affiliated or related entities, and continue to so deny; and

WHEREAS, on or about March 17, 2011, the Parties agreed to mediate the Intended Action; and

WHEREAS, the Parties engaged in a mediation of all Claims made in the Intended Action before George W. Adams Q.C. (retired Justice) on May 18 and 19, 2011 (the "**Mediation**"); and

WHEREAS, pursuant to an order of the Ontario Superior Court of Justice, Commercial List, (the "**Court**") dated August 1, 2007 (the "**Initial CCAA Order**") Hollinger, 4322525 Canada Inc. and Sugra Limited (together the "**CCAA Applicants**"), were authorized to commence a proceeding pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended ("**CCAA**") wherein the CCAA Applicants may file a plan of compromise and arrangement (a "**Plan**"); and

WHEREAS, pursuant to an order of the Court dated May 21, 2008 the CCAA Applicants obtained approval of a multi-party settlement and a cost reduction/asset enhancement program (the "**MPS Order**") wherein John D. Ground Q.C. (retired Justice) was appointed as an officer of the Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the CCAA Applicants, including the Intended Action; and

WHEREAS, pursuant to the MPS Order, the Litigation Trustee was empowered to initiate, prosecute and continue the prosecution of any and all proceedings then pending or thereafter instituted with respect to the CCAA Applicants including, *inter alia*, the power to settle or compromise any such proceeding, including the Intended Action; and

WHEREAS, while they deny all allegations of wrongdoing and liability, the Settling Directors have agreed to enter into this Agreement to fully and finally resolve any Claims made or which could be made against one or more of them in relation to Hollinger, and to reduce further expense, inconvenience and the distraction of burdensome and protracted litigation,

NOW THEREFORE IN CONSIDERATION OF THE COVENANTS SET OUT BELOW AND THE REPRESENTATIONS MADE IN THE RECITALS ABOVE AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, AND SUBJECT TO THE PROVISIONS SET OUT HEREIN RESPECTING COURT APPROVAL OF THIS SETTLEMENT AND ITS MATERIAL TERMS, the Parties agree as follows:

1. Payment by the Settling Directors of the Settlement Amount:

The Settling Directors shall pay, or cause to be paid by its agents, the sum of [redacted] (the "**Settlement Amount**") to Hollinger for the benefit of the Litigation Trustee, such obligation being a joint and several obligation as among all of the Settling Directors. The Settlement Amount is inclusive of any and all Claims, including Claims for interest, taxes and costs.

The Settlement Amount shall be paid in full to Hollinger for the benefit of the Litigation Trustee within 10 days of the issuance of the Release Order provided for in paragraph 6 below and the final determination of any appeals or expiration of all appeal periods in relation thereto (at which time the Release Order is, for the purposes hereof, "**Final**") PROVIDED THAT if the Release Order becomes Final prior to May 18, 2012, the Settlement Amount shall be paid on the date that is six months after the Release Order becomes Final.

2. *Full and Final Release of the Settling Directors by the Hollinger Releasors*: Upon payment in full of the Settlement Amount (the "**Payment Date**"), Hollinger, its past, present and future subsidiaries and divisions including, without limiting the foregoing, 432525 Canada Inc., Sugra Limited, DomGroup Ltd. and 10 Toronto Street Ltd., but not the corporation formerly known as the Sun-Times Media Group, Inc. and its subsidiaries (collectively referred to herein as "STMG"), all partnerships in which Hollinger or a subsidiary of Hollinger is the general partner and any corporation majority owned by such partnership, for themselves, and in respect of each of the foregoing, their respective officers, directors, employees, servants, agents, heirs, administrators, successors, assigns and on behalf of any person who claims a right or interest through them (collectively, the "**Hollinger Releasors**") do hereby fully, finally and forever, release, remise, acquit and forever discharge, without qualification or limitation, the Settling Directors and each of their heirs, executors, administrators and assigns (collectively the "**Settling Director Releasees**"), separately and jointly, of and from any and all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether direct or indirect,

known or unknown, in law or in equity, of whatever kind or character, suspected, fixed or contingent (collectively "**Claims**") that have been, that could be, or that could have been asserted by the Hollinger Releasors from the beginning of time through the date hereof (including without limitation any claim for contribution, indemnification, reimbursement or any other forms of claims over that could be asserted on or after the date hereof by the Hollinger Releasors based on events occurring prior to and through the date hereof) against the Settling Director Releasees in respect of (i) the Settling Directors having served as directors of Hollinger, (ii) all Claims of injury allegedly caused to the Hollinger Releasors by the Settling Directors including, without limitation, all Claims raised or which could have been raised in the Intended Action, either on Hollinger's own behalf and/or on behalf of any other person, and/or (iii) any and all other Claims that the Hollinger Releasors ever had or may have against the Settling Director Releasees including, but not limited to, any Claims not set out in the Intended Action (collectively the "**Settled Claims**").

3. *Unknown Claims*: Without limiting the generality of paragraph 2 above, the Hollinger Releasors declare that the intent of the full and final release set out therein is to conclude all issues arising from the Settled Claims and it is understood and agreed that the release provided by the Hollinger Releasors is intended to cover, and does cover, not only all known injuries, losses and damages, but all injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof. In addition, each of the Settling Directors agrees that he or she has not filed, and will not file, any claims against the estates of any of the Hollinger Releasors.

4. *Full and Final Releases of the Settling Directors by Third Parties*: It is the intent of the Parties that this Agreement and the terms of the Release Order provided for in paragraph 6 below will extinguish any basis for any direct or indirect claim by all former and present shareholders, officers and directors of Hollinger, and all creditors, parents, subsidiaries, affiliates and related parties of Hollinger (including without limitation, STMG and its past and present shareholders), and any other person (together, the "**Third Party Releasors**"), against the Settling Director Releasees in any way related to the subject matter of the Settled Claims or to Hollinger, including but not limited to Claims for contribution, indemnification, reimbursement or other forms of claims over in relation to a Third Party Releasor's liability to the Hollinger Releasors (the "**Third Party Releases**").

5. *Excepted Claims*: The Third Party Releases set out in paragraph 4 of this Agreement do not apply to an Excepted Claim (and only an Excepted Claim as defined herein) by a Third Party Releasor against the Settling Directors for damages. An "**Excepted Claim**" means a claim that is based on a final judgment that a Third Party Releasor suffered damages, or if civil law applies to an Excepted Claim, prejudice, as a direct result and solely as a result of such Third Party Releasor's reliance on an express fraudulent misrepresentation made by a Settling Director to such Third Party Releasor when that Settling Director had actual knowledge that the misrepresentation was false. For greater certainty an "Excepted Claim" does not include a claim by a Third Party Releasor against a Settling Director for contribution and indemnity for a Third Party Releasor's liability to the Hollinger Releasors.

6. *Release Order*: The Parties agree and acknowledge that the Third Party Releases are a material and integral term of this Agreement and that this Agreement is contingent upon the issuance of a order by the Court substantially in the form attached hereto as **Schedule "A"** that will give legal effect to the Third Party Releases as against the Third Party Releasors effective as at the date of this Agreement (the **"Release Order"**) and the following shall also be applicable thereto.

(a) In the event that the Settlement Amount is not paid in full in accordance with this Agreement, the Release Order shall be of no force and effect.

(b) As soon as practicable after execution of this Agreement, Hollinger shall apply to the Court for approval of this Agreement (**"Settlement Approval"**) and shall seek the Release Order as part of the Settlement Approval.

(c) If the Court for any reason declines to grant the Release Order in favour of the Settling Directors on Settlement Approval, then Hollinger agrees to submit a Plan to its creditors, the terms of which shall include provisions to give effect to the Release Order and, as part of any Court approval of such plan (**"Plan Approval"**), shall seek an order that shall include the provisions of the Release Order.

(d) Any application to the Court for either Settlement Approval or Plan Approval shall be brought on notice to all those against whom the Third Party Releases are intended to be effective, including but not limited to the following Third Party Releasors: Conrad M. Black, Barbara Amiel-Black, Peter Y. Atkinson, John A. Boultbee, F. David Radler, Charles G. Cowan, Daniel W. Colson, Peter G. White, Douglas G. Bassett, Ralph M. Barford, the Estate of R. Donald Fullerton, Torys LLP, KPMG LLP, the Canadian Imperial Bank of Commerce, The Toronto Dominion Bank, the Bank of Nova Scotia and STMG, its predecessors and successors.

(e) The timing of the application to the Court for Settlement Approval (or Plan Approval, if necessary) pursuant to which the Release Order is sought shall be that Hollinger will seek such approval at the same time as the settlement approvals (or plan approvals, if necessary) being sought by Hollinger in respect of its settlements with Torys LLP and with KPMG LLP Canada, the timing of all of which shall be done with a view to giving the Third Party Releasors a reasonable opportunity to participate in the CCAA settlement approval process. If thought necessary or appropriate by the Settling Directors or the Litigation Trustee and Hollinger, all acting reasonably, Hollinger and the Litigation Trustee shall seek prior Court approval of any service and notice protocol in respect of obtaining the Release Order for the Settling Directors.

(f) In addition to supporting Settlement Approval, the Settling Directors shall support the request by Hollinger for approval of the Court in respect of Hollinger's settlements with Torys LLP and with KPMG LLP Canada, whether by way of a settlement approval or a plan approval for such settlements.

(g) If an application for the Release Order has not been brought by December 31, 2011 (the "**Application Deadline**") then the Settling Directors may, within fifteen (15) days after the expiry of the Application Deadline, at their sole discretion acting jointly, either (i) terminate this Agreement or (ii) select and notify Hollinger and the Litigation Trustee of an amended Application Deadline (the "**Amended Application Deadline**"). If the Settling Directors jointly elect to select an Amended Application Deadline, that Amended Application Deadline shall replace the Application Deadline for all purposes of this Agreement.

(h) If the Court declines to grant the Release Order, and the Court further declines to grant an order approving a Plan, which order contains the provisions of the Release Order, then the Settling Directors may, at their sole discretion acting jointly, terminate this Agreement within fifteen (15) days following the Court's decision becoming Final.

(i) If the Settling Directors elect to terminate this Agreement pursuant to subparagraphs 6 (g) or (h), the Agreement shall, subject to the continuing obligations of the Parties in respect of confidentiality, as set out in paragraph 7 of this Agreement, become null and void.

7. *Confidentiality and Publicity*: The Parties agree that all information, including documents, submissions and oral statements, filed, disclosed or made in the Mediation are and remain privileged and confidential and shall not be disclosed to any person or used for any purpose. The Parties further agree that, except to the extent necessary to obtain the Release Order and subject to the procedure and conditions set out in this paragraph, the terms of this Agreement, including the Settlement Amount, shall remain confidential and shall not be disclosed by any Party other than as necessary in communications with outside auditors, insurers, taxing authorities, regulatory or governmental agencies, and, in Hollinger's case, to creditors that have signed binding and applicable confidentiality agreements, or as otherwise may be required by law.

For greater certainty, the Parties agree that for the purposes of enabling the Litigation Trustee to carry out his mandate by allowing the Third Party Releasors the opportunity to participate in the Settlement Approval or Plan Approval, the following steps shall be taken:

(a) Hollinger may place on the public record and provide to Third Party Releasors a redacted version of the Agreement which redacts the Settlement Amount in paragraph 1 above;

(b) Hollinger shall seek an order from the Court (a "**Confidentiality Order**") in the form of the order granted by the Honourable Justice Campbell on February 25, 2011 in respect of Hollinger's settlement agreements with Torys and KPMG and attached hereto as **Schedule "B"** (the "**February 25 Order**").

(c) Subsequent to obtaining the Confidentiality Order, Hollinger may disclose an unredacted version of the Agreement to any Third Party Releasor who executes a confidentiality agreement approved by the Court pursuant to the Confidentiality Order; and

(d) To the extent that the provisions of this paragraph 7 may conflict with the Final order in respect of the currently pending appeal of the February 25 Order, Hollinger and the Settling Directors agree to abide by the terms of such Final order.

Subject to the foregoing, except as may be necessary for Settlement Approval or Plan Approval, Hollinger further agrees that it shall not publicize or comment upon any allegations made by the Hollinger Releasors or any other person against the Settling Directors in relation to the Hollinger Releasors and shall not express any views as to the actions of the Settling Directors in relation to the Hollinger Releasors. Any press release issued by either Party announcing this Agreement will be written in accordance with this paragraph and will be subject to the consent of the other Party or Parties, such consent not to be unreasonably withheld.

This provision respecting confidentiality shall survive any termination of this Agreement.

8. *No Admission of Liability*: This Agreement does not in any manner constitute, on the part of the Settling Directors, an admission of liability, wrongdoing or any other matter and any and all liability and wrongdoing on the part of the Settling Directors is specifically denied.

9. *Cooperation With Future Claims*: The Settling Directors shall provide cooperation to Hollinger and the Litigation Trustee in their pursuit of claims against other persons, including without limitation those persons identified in paragraph 6(c) hereof that have not yet settled their claims with Hollinger and the Litigation Trustee, or in defending Claims against any of the Hollinger Releasors, providing information within their knowledge that is relevant to such claims. Hollinger and the Litigation Trustee agree to make measured and reasonable requests for such cooperation from the Settling Directors, which requests will be respectful of the time commitments that fulfilling such requests will impose upon the Settling Directors. Hollinger agrees to reimburse the Settling Directors for reasonable third party expenses incurred in order to respond to cooperation requests, including reimbursement of reasonable legal fees and applicable taxes, up to a maximum of $50,000 (the "**Reimbursement Cap**") PROVIDED HOWEVER that the Settling Directors, or any of them, as applicable, shall give prior written notice to Hollinger and the Litigation Trustee before:

(a) incurring any third party expenses known or reasonably expected to be in excess of $2,500 for any single expenditure; and

(b) obtaining any independent legal advice for which reimbursement will be sought under this Agreement, which notice will include why independent legal advice is being sought.

If the Reimbursement Cap is met and further cooperation requests are made of the Settling Directors that would require the Settling Directors to incur further third party expenses, the Parties will consult with each other and make reasonable efforts to resolve the issue in a timely fashion. For the avoidance of doubt, Hollinger and the Litigation Trustee shall not reimburse the Settling Directors in respect of their own time spent fulfilling cooperation requests in accordance with this Agreement.

10. *Remedies Upon Breach of this Agreement*: The Parties agree that a breach by any Party of any of its, his or her obligations hereunder would cause irreparable harm to the non-breaching Party for which money damages would not be an adequate remedy. Accordingly, the Parties agree that the non-breaching Party shall be entitled to specific performance and injunctive and other equitable relief in the event the other Party breaches any of its obligations hereunder.

11. *Governing Law*: This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

12. *Counterparts and Delivery*: This Agreement may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by fax transmission or by transmission in PDF or similarly electronic document format.

13. *Admissibility*: Subsequent to the Release Order becoming Final, this Agreement may be filed and used in any action or proceeding as may be necessary to consummate, enforce or seek relief with respect to the Agreement. In particular, the Parties, and any predecessors, successors in interest, assigns or heirs, executors or administrators may file and use this Agreement in any action to support a defence of *res judicata*, collateral estoppel, issue estoppel, release, good faith settlement, judgment bar, reduction or any other theory of claim preclusion, issue preclusion or similar defence or counterclaim.

14. *Successors and Assigns*: Unless otherwise stated to the contrary elsewhere in this Agreement, this Agreement shall be binding upon, apply to and inure to the benefit of the Hollinger Releasors, the Settling Director Releasees and their respective heirs, executors, administrators, successors and assigns.

15. *No Waiver*: Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Agreement to be performed by such other Party.

16. *Further Assurances*: The Parties shall take such further and other steps and execute such further and other documents as may reasonably be required to give effect to the terms of this Agreement.

17. *Notice*: Any notices required to be given under this Agreement shall be in writing and shall be made by fax transmission or email transmission to the fax numbers and e-mail addresses set out below:

The Honourable John D. Ground, Q.C (retired Justice), Litigation Trustee of Hollinger Inc.
William E. Aziz, Chief Restructuring Officer of Hollinger Inc.
c/o Thornton Grout Finnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington Street West
Toronto-Dominion Centre
Toronto, Ontario M5K 1K7

Attention: Robert I. Thornton, Michael Barrack and Megan Keenberg
Fax: (416) 304-1313
Email: rthornton@tgf.ca, mbarrack@tgf.ca and mkeenberg@tgf.ca

Maureen Sabia
Allan E. Gotlieb
Henry Ketcham III
Fredrik S. Eaton
c/o Davies, Ward, Phillips & Vineberg LLP
44th Floor, 1 First Canadian Place
Toronto, Ontario M5X 1B1

Attention: Sandra Forbes and William Ainley
Fax: 416-863-0871
Email: sforbes@dwpv.com and wainley@dwpv.com

18. *Amendments*: This Agreement supersedes and replaces any and all prior negotiations, understandings, promises, representations, inducements and discussions, whether written or oral. This Agreement may not be changed or modified except in writing signed by all of the Settling Directors and Hollinger.

19. *No Assignments:* Hollinger has not assigned or otherwise transferred any of or part of the Settled Claims to any of its parents, subsidiaries, affiliated or related entities or any person or entity including, without limiting the generality of the foregoing, STMG.

20. *Termination of Standstill Agreement:* Promptly upon the Release Order becoming Final, and the payment in full of the Settlement Amount, Hollinger shall terminate the Standstill Agreement as against the Settling Directors only.

21. *Authority to Enter into the Agreement*: The undersigned parties represent that they have the full authority necessary to execute this Agreement.

HOLLINGER INC.

Per: William E. Aziz

Chief Restructuring Officer

Witness:

The Honourable John D. Ground Q.C.
(retired Justice)
Litigation Trustee of Hollinger Inc.

Witness:

Maureen Sabia

Witness:

Allan E. Gotlieb

Witness:

Henry Ketcham III

Witness:

Fredrik S. Eaton

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HOLLINGER INC.

Per: William E. Aziz

Chief Restructuring Officer

Witness:

The Honourable John D. Ground Q.C
(retired Justice)
Litigation Trustee of Hollinger Inc.

Witness:

Maureen Sabia

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Per: William E. Aziz

Chief Restructuring Officer

Witness:

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(retired Justice)
Litigation Trustee of Hollinger Inc.

Witness:

Maureen Sabia

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HOLLINGER INC.

Per: William E. Aziz

Chief Restructuring Officer

Witness:

The Honourable John D. Ground Q.C
(retired Justice)
Litigation Trustee of Hollinger Inc.

Witness:

Maureen Sabia

Witness:

Allan E. Gotlieb

Witness:

Henry Ketcham III

Witness:

Fredrik S. Eaton

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HOLLINGER INC.

Per: William E. Aziz

Chief Restructuring Officer

Witness:

The Honourable John D. Ground Q.C
(retired Justice)
Litigation Trustee of Hollinger Inc.

Witness:

Maureen Sabia

Witness:

Allan E. Gotlieb

Witness:

Henry Ketcham III

Witness:

Fredrik S. Eaton

SCHEDULE "A"

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	►DAY, THE
	)	
MR. JUSTICE CAMPBELL	)	► DAY OF ►, 2011

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

ORDER
(Outside Directors' Settlement Approval)

THIS MOTION brought by the Applicants for an Order approving the release and settlement agreement between Hollinger Inc. and Maureen Sabia, Allan Gotlieb, Fredrik Eaton and Henry Ketcham III (the "**Outside Directors**") dated May 18, 2011 (the "**Outside Directors' Release and Settlement Agreement**") and for Orders releasing and barring claims against the released parties (the "**Outside Director Releasees**" as more particularly defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicants dated ►, the First Report of the Litigation Trustee, dated March 31, 2011 and the Second Report of the Litigation Trustee dated ►, and on hearing the submissions of counsel for the Applicants, the Outside Directors and ►,

1. **THIS COURT ORDERS AND DECLARES** that the Order of this Court provided on ► respecting the service protocol for this motion has been complied with.

Approval of the Outside Directors' Release and Settlement Agreement

2. **THIS COURT ORDERS** that the Outside Directors' Release and Settlement Agreement is hereby approved in its entirety and that the parties thereto (the "**Parties**") are hereby bound by this Order and by the Outside Directors' Release and Settlement Agreement and are authorized and directed to comply with their obligations thereunder, including, without limitation, to make the payment provided for therein.

3. **THIS COURT DECLARES** that the compromises, arrangements, exculpations, releases, discharges and injunctions contemplated in the Outside Directors' Release and Settlement Agreement and, in particular, those granted by and for the benefit of the Outside Directors Releasees, are integral components of the settlement between Hollinger Inc. and the Outside Directors, and of the Outside Directors' Release and Settlement Agreement and are necessary for, and vital to, the success of the settlement between Hollinger Inc. and the Outside Directors and that all such compromises, arrangements, exculpations, releases, discharges and injunctions as set out in the Outside Directors' Release and Settlement Agreement and this Settlement Approval Order are hereby sanctioned, approved and given full force and effect in accordance with and subject to their respective terms and conditions as approved by this Settlement Approval Order.

Release by Hollinger

4. **THIS COURT ORDERS AND DECLARES** that, upon payment in full of the Settlement Amount, as defined in the Outside Directors' Release and Settlement Agreement, in accordance with the terms and conditions of that agreement, each of the Applicants and their past, present and future subsidiaries and divisions including, without limitation, 4322525 Canada Inc., Sugra Limited, Domgroup Ltd. and 10 Toronto Street Ltd. (but not including the corporation formally known as the Sun-Times Media Group, Inc. and its subsidiaries (collectively, "**STMG**"); all partnerships in which any of the Applicants or any subsidiary thereof is the general partner and any corporation majority owned by such partnership; for themselves and, in respect of each of the foregoing, their respective officers, directors, employees, servants, agents, assigns, successors, heirs, administrators, insurers and any person (as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended to the date hereof, "**Person**") who claims a right or interest through any of them (collectively, "**Hollinger Releasors**") do hereby irrevocably and unconditionally fully, finally and forever release, remise, acquit and discharge, without qualification or limitation, the Outside Directors and each of their heirs, executors, administrators and assigns (collectively, the "**Outside Directors Releasees**") separately and jointly, of and from any and all rights, interests, obligations, debts, dues, sums of money, accounts, reckonings, damages, claims, actions, allegations, causes of action, counterclaims or demands whatsoever, whether direct or indirect, known or unknown, in law or equity, of whatever kind or character, suspected, fixed or contingent (collectively, "**Claims**"), that have been, that could be, or that could have been asserted by the Hollinger Releasors from the beginning of time through to and including May 18,

2011 (including, without limitation, any claim for contribution, indemnification, reimbursement or any other forms of claims over that could be asserted on or after May 18, 2011 by the Hollinger Releasors based on events occurring prior to and through May 18, 2011) against the Outside Directors Releasees in respect of (i) the Outside Directors having served as directors of Hollinger Inc.; (ii) all Claims of injury allegedly caused to the Hollinger Releasors by the Outside Directors including, without limitation, all Claims raised or which could have been raised in the Intended Action (as defined in the Outside Directors Release and Settlement Agreement), either on Hollinger's own behalf and/or on behalf of any other Person, and/or (iii) any and all other Claims that the Hollinger Releasors ever had or may have against the Outside Directors Releasees including, but not limited to, any Claims not set out in the Intended Action ((i) to (iii) collectively, the **"Settled Outside Director Claims"**).

Third Party Releasors

5. **THIS COURT ORDERS AND DECLARES** that, effective May 18, 2011, but subject to the provision at the end of this paragraph, all former and present shareholders, former officers and directors, and all creditors, parents, subsidiaries, affiliates, and related parties of Hollinger, and including, without limitation, STMG and its past and present shareholders, and any other Person (collectively, the **"Third Party Releasors"**) hereby release, remise, acquit and forever discharge, without qualification or limitation, the Outside Directors Releasees, separately and jointly, of and from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement, under statute, civil law, common law, or in equity, or

otherwise in any jurisdiction) in any way related to the subject matter of the Settled Outside Directors Claims or to Hollinger including, without limitation, Claims for contribution, indemnification, reimbursement or other forms of claim over in relation to a Third Party Releasor's liability to the Hollinger Releasors PROVIDED THAT, in the event the Settlement Amount, as described in the Outside Directors' Release and Settlement Agreement, is not paid in full in accordance with the terms and conditions described in that agreement, this Settlement Approval Order shall be of no force or effect.

6. THIS COURT ORDERS AND DECLARES that Hollinger's recovery from any Person against whom Hollinger pursues a claim for damages (a "**Non-Settling Defendant**") and with whom the Outside Directors Releasees are judicially determined to be jointly and severally liable to Hollinger for damages, will be limited to the Non-Settling Defendant's proportionate share of liability, as determined by this Court, PROVIDED THAT the Non-Settling Defendant establishes a viable claim for contribution and indemnity from the Outside Directors Releasees in respect of Hollinger's claim.

Restriction

7. **THIS COURT ORDERS AND DECLARES** that the releases provided for in paragraph 5 do not apply to a claim based on a final judgment that a Third Party Releasor suffered damages, or if civil law applies to such claim, prejudice, as a direct result and solely as a result of such Third Party Releasor's reliance on an express fraudulent misrepresentation made by an Outside Director, when that Outside Director had actual knowledge that the misrepresentation was false.

Bar Orders

8. **THIS COURT ORDERS** that, without limiting the effect or validity of any provision of this Settlement Approval Order, all Third Party Releasors are permanently and forever barred, estopped, stayed and enjoined from commencing, conducting or continuing in any manner, directly or indirectly, any action, suits or demands, including without limitation, by way of contribution or indemnity or other relief, in common law or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Outside Directors Releasees or any of them in relation to or otherwise in connection with the subject matter of the Settled Outside Directors Claims or Hollinger.

9. **THIS COURT ORDERS AND DECLARES** that each and every Third Party Releasor is hereby permanently and forever barred, estopped, stayed and enjoined from: (i) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Outside Directors Releasees or their property in respect of any claims relating in any way to the Settled Outside Directors Claims; or (ii) taking any action to interfere with the implementation and consummation of the Outside Directors' Release and Settlement Agreement.

Recognition and Enforcement

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to

give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

Proceedings commenced at **Toronto**

ORDER

(Outside Directors Settlement Approval

Thornton Grout Finnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

Michael E. Barrack (LSUC#21941W)
Megan Keenberg (LSUC# 53735G)
Tel: 416-304-1616
Fax: 416-304-1313

Solicitors for the Applicants and Non-Applicants

SCHEDULE "B"

Court File No. 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, the 25th DAY
	)	
MR. JUSTICE CAMPBELL	)	OF FEBRUARY, 2011

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

ORDER
(Sealing and Confidentiality Agreement Approval Order)

THIS MOTION made by the Applicants for an Order sealing confidential references in the settlement agreement among Hollinger Inc. ("**Hollinger**"), the Litigation Trustee of the Applicants, Torys LLP (Ontario) and Torys LLP (New York) (collectively, "**Torys**") dated March 26, 2010 (the "**Torys Settlement Agreement**") and in the settlement agreement among the Applicants and their existing subsidiaries (but not including the Chicago Newspapers Liquidation Corp. formerly known as Sun Times Media Group, Inc. and its subsidiaries), the Litigation Trustee and KPMG LLP Canada ("**KPMG**") dated October 1, 2010 (the "**KPMG Settlement Agreement**" and together with the Torys Settlement Agreement, the "**Settlement Agreements**") both attached as Exhibits to the Affidavit of William E. Aziz sworn on November 24, 2010 (the "**CRO Affidavit**"), and for an Order approving the form of confidentiality agreement attached hereto as Schedule "A" (the "**Confidentiality Agreement**") to be entered into between Hollinger, Torys and KPMG (the "**Settling Parties**") and such Responding Parties who agree to be bound by the terms of the Confidentiality Agreement (the "**Contractually Bound Responding Parties**") which will govern the disclosure of the redacted portions of the Settlement Agreements, was heard on February 18, 2011 at 330 University Avenue, Toronto, Ontario, with judgment reserved to this date.

ON READING the Motion Record of the Applicants dated November 26, 2010, the Supplemental Motion Record of the Applicants dated January 17, 2011, the Responding Motion Records of the Responding Parties, dated February 1, 2011, the *facta* of the parties, filed, and on hearing the submissions of counsel for the Applicants, Torys, KPMG and such other counsel as were present, and on being advised that the Service List as of November 26, 2010, including all Persons who filed Notices of Appearance in accordance with the Service and Notice Procedure Order dated November 12, 2010, were served electronically with the Applicants' motion materials:

SERVICE AND NOTICE

1. **THIS COURT ORDERS** that the motion was properly returnable on February 18, 2011 and that notice of this motion has been given and the service of materials filed in connection with this motion has been conducted in accordance with the Service and Notice Procedure Order dated November 12, 2010 and further that service upon any interested party other than those parties served is hereby dispensed with.

SEALING ORDER

2. **THIS COURT ORDERS** that the settlement amounts set out in the Torys Settlement Agreement and in the KPMG Settlement Agreement (the "**Individual Settlement Amounts**") be and are hereby sealed from the public record until the Settlements are approved and all appeals are resolved in favour of Hollinger, Torys and KPMG, in which case the Individual Settlement Amounts shall be deemed to have entered the public domain such that their disclosure shall not constitute a breach of the Confidentiality Agreement, or if the Settlements are not approved, until further order of this Court.

3. **THIS COURT ORDERS** that paragraphs 1(c) and 7(b) of the Torys Settlement Agreement be and are hereby sealed from the public record until further order of this Court.

4. **THIS COURTS ORDERS** that the redacted version of the CRO Affidavit shall be placed on the public record and served on the parties to the motion pursuant to which the Applicants seek court approval of the Settlement Agreements, and the unredacted version of the CRO Affidavit shall be filed with the Court under seal from the public record in accordance with paragraphs 2 and 3 of this Order.

APPROVAL OF CONFIDENTIALITY AGREEMENT

5. **THIS COURT ORDERS AND DECLARES** that the redacted portions of the Settlement Agreements may be disclosed to the Settling Parties and to the Contractually Bound Responding Parties on the condition that those Parties agree to be bound by the terms of and validly execute the Confidentiality Agreement attached hereto as Schedule "A".

6. **THIS COURT ORDERS AND DECLARES** that the terms of the Confidentiality Agreement are incorporated herein by reference and that each of the signatories to the Confidentiality Agreement are hereby bound by the terms of the Confidentiality Agreement.

7. **THIS COURT ORDERS AND DECLARES** that any breach of the Confidentiality Agreement shall constitute a breach of this Order.

VARIANCE AND AMENDMENT

8. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order.

RECOGNITION AND ENFORCEMENT

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

The Honourable Mr. Justice C. Campbell

ENTERED AT / INSCRIT À TORONTO
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Schedule "A"

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (the "**Agreement**") is entered into as of March 2011, between Hollinger Inc. ("**Hollinger**"), the Honourable John D. Ground Q.C., as Litigation Trustee of Hollinger (the "**Litigation Trustee**"), KPMG LLP ("**KPMG**"), Torys LLP (Ontario) and Torys LLP (New York) (collectively "**Torys**") and such of the various parties who have filed Notices of Appearance in accordance with the Service and Notice Procedure Order issued by the Ontario Superior Court of Justice (Commercial List) ("**Ontario Court**") dated November 12, 2010 who agree to be bound by the terms of this Agreement (collectively "**Responding Parties**", individually "**Responding Party**") and who intend to respond to Hollinger's pending motions (the "**Settlement Approval Motions**") before the Ontario Court for approval of the Release and Settlement Agreement entered into between KPMG, Hollinger and the Litigation Trustee dated October 1, 2010 ("**KPMG Settlement Agreement**") and the Release and Settlement Agreement entered into between Torys, Hollinger and the Litigation Trustee dated March 26, 2010 ("**Torys Settlement Agreement**") which Hollinger and the Litigation Trustee support and is subject to an Order of the Ontario Court approving this Agreement substantially in the form of the Order attached as **Schedule "A"** to this Agreement ("**Confidentiality Agreement Approval Order**");

WHEREAS the Settlement Amount as defined in the KPMG Settlement Agreement ("**KPMG Settlement Amount**") and the Settlement Amount as defined in the Torys Settlement Agreement ("**Torys Settlement Amount**") (collectively, the "**Settlement Amounts**") have been redacted from the copies of the KPMG Settlement Agreement and the Torys Settlement Agreement attached as **Exhibits "2B"** and **"2A"**, respectively, to the Affidavit of William E. Aziz, Hollinger's Chief Restructuring Officer, sworn November 24, 2010 filed by Hollinger in support of the Settlement Approval Motions;

WHEREAS certain of the Responding Parties have advised counsel for Hollinger that they require disclosure of the Settlement Amounts in order to respond to the Settlement Approval Motions;

WHEREAS the Responding Parties expressly represent that they will maintain the confidentiality of the Settlement Amounts and agree that other than as permitted by paragraph 1 below, they will not make any use whatsoever of the Settlement Amounts;

WHEREAS in consideration of the Responding Parties' agreement to maintain the confidentiality of the Settlement Amounts, Hollinger, the Litigation Trustee, KPMG and Torys have agreed to the disclosure to the Responding Parties of the KPMG Settlement Amount and the Torys Settlement Amount for the sole purpose of enabling the Responding Parties to respond to the Settlement Approval Motions and for no other or collateral purpose, subject to the terms and conditions of this Agreement and the Confidentiality Agreement Approval Order;

NOW THEREFORE in consideration of the premises and covenants contained herein, the parties hereto hereby agree as follows:

1. The Litigation Trustee and Hollinger shall be authorized to disclose the KPMG Settlement Amount and the Torys Settlement Amount to the Responding Parties for the sole purpose of enabling the Responding Parties to respond to the Settlement Approval Motions subject to the following limitations and restrictions:

(a) The Responding Parties acknowledge that they have a duty to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount and agree to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount, sharing such information only with their respective counsel on a confidential basis and with no one else;

(b) the Responding Parties shall be entitled to use the terms KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions;

(c) the Responding Parties shall be expressly prohibited from referring to or otherwise suggesting the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions or from making any other use whatsoever of the KPMG Settlement Amount and the Torys Settlement Amount or the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount until such time as the Settlement Approval Motions are approved by orders of the Ontario Court and such orders have become final, not subject to any outstanding appeals;

(d) the Responding Parties each expressly acknowledge and agree that a breach of this Agreement by a Responding Party or Responding Parties shall also constitute a breach of the Confidentiality Agreement Approval Order and that such breach may result in:

(i) the Responding Party, or the Responding Parties, being held in contempt of court and subject to sanction by the Ontario Court;

(ii) subject to obtaining an order of the Ontario Court so providing, the deemed withdrawal, release and forfeiture of any claim that a Responding Party may have filed with Ernst & Young Inc. the Court-appointed monitor of Hollinger (the "**Monitor**") against or in respect of the applicants in Ontario Court file 07-CL-7120 (the "**Applicants**"), and including the release and forfeiture of any other claims, counterclaims or third party claims that might have been filed against or in respect of the Applicants, such claims having been barred by the Claims Bar Order, dated May 21, 2008;

(iii) subject to obtaining an order of the Ontario Court so providing, the deemed dismissal with prejudice of any actions, cross-claims, counterclaims, third party claims or any other such claims that Responding Party has asserted against KPMG and/or Torys, as set out in any of the pleadings included in the Omnibus Pleadings Brief filed by Hollinger with the Ontario Court and of any other direct or indirect claim asserted against KPMG and/or Torys by that Responding Party in any way relating to the subject matter of the "**Settled Claims**" as defined in the KPMG Settlement Agreement and the Torys Settlement Agreement with costs payable to KPMG and Torys on a substantial indemnity basis; and

(iv) such further and other relief as the Ontario Court may consider just.

2. The Litigation Trustee and Hollinger shall be authorized to disclose the KPMG Settlement Amount to Torys and the Torys Settlement Amount to KPMG for the sole purpose of enabling Torys and KPMG to participate in the Settlement Approval Motions subject to the following limitations and restrictions:

(a) Torys and KPMG acknowledge that they have a duty to and agree to maintain the confidentiality of the KPMG Settlement Amount and the Torys Settlement Amount, sharing such information only with their respective counsel and insurers on a confidential basis and with no one else;

(b) Torys and KPMG shall be entitled to use the terms KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions; and

(c) Torys and KPMG shall be expressly prohibited from referring to or otherwise suggesting the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions or from making any other use whatsoever of the KPMG Settlement Amount and the Torys Settlement Amount or the actual amount of money comprising the KPMG Settlement Amount and the Torys Settlement Amount until such time as the Settlement Approval Motions are approved by orders of the Ontario Court and such orders have become final, not subject to any outstanding appeals.

3. The Litigation Trustee and Hollinger shall be authorized to disclose the entirety of sub-paragraphs 1(a), (b) and (c) and paragraph 7(b) of the Torys Settlement Agreement (the **"Torys Redacted Provisions"**) to the Responding Parties and KPMG subject to the following limitations and restrictions:

(a) The Responding Parties and KPMG acknowledge that they have a duty to maintain the confidentiality of the Torys Redacted Provisions and agree to maintain the confidentiality of the Torys Redacted Provisions, sharing such information only with their respective counsel on a confidential basis;

(b) The Responding Parties and KPMG shall be expressly prohibited from referring to the contents of the Torys Redacted Provisions in any written or oral submissions with the Ontario Court relating to the pending Settlement Approval Motions.

4. The Litigation Trustee, Hollinger, Torys, KPMG and the Responding Parties hereby acknowledge and agree that any party receiving confidential information under the terms of this Agreement may make unrestricted use of the confidential information once it enters the public domain otherwise than through a breach of this Agreement, and that such use of the confidential information will not constitute a breach of this Agreement. The Litigation Trustee, Hollinger, Torys and KPMG may make unrestricted use of the confidential information once it enters the public domain, otherwise than through a breach of this Agreement, and such use of the confidential information will not constitute a breach of this Agreement.

5. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing in a document that specifically refers to this Agreement and such document is signed by all parties to this Agreement.

6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. This Agreement shall enure to the benefit of and be binding upon each of the parties to this Agreement and their respective successors and permitted assigns.

7. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, including any counterpart executed by a party and transmitted to the other parties by e-mail or facsimile transmission, is an original, and all of which when taken together constitute one and the same Agreement.

8. This Agreement shall be effective and binding on the parties hereto on the date the last party executes and delivers the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HOLLINGER INC. for itself and on behalf of all other CCAA Applicants and their subsidiaries other than Sun Times Media Group, Inc., and its subsidiaries

By: ______________________________
William E. Aziz
Chief Restructuring Officer

____
The Honourable John D. Ground
Litigation Trustee

KPMG LLP

By: ______________________________
Signature

____
Print Name

____
Title

TORYS LLP, **a Ontario limited liability partnership**

By: ______________________________
Signature

____
Print Name

____
Title

TORYS LLP, a New York limited liability partnership

By: ______________________
Signature

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Print Name

____
Title

RESPONDING PARTY

____

By: ______________________
Signature

____
Print Name

____
Title

(an authorized signing officer)

RESPONDING PARTY

____

By: ______________________
Signature

____
Print Name

____
Title

(an authorized signing officer)

EXHIBIT "25"

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

2nd REPORT OF JOHN D. GROUND, Q.C. (retired justice) IN HIS CAPACITY AS LITIGATION TRUSTEE OF THE APPLICANTS

DATED NOVEMBER 7, 2011

1. I provide this 2nd Report of the Litigation Trustee as a supplement to the Report of the Litigation Trustee dated March 31, 2011.

2. As a result of the investigation of potential claims of Hollinger against others, potential claims against Maureen Sabia ("**Sabia**"), Allan Gotlieb ("**Gotlieb**"), Henry Ketcham III ("**Ketcham**"), Fredrik Eaton ("**Eaton**") and Douglas Bassett ("**Bassett**") were identified.

3. On November 16, 2006, Hollinger had entered into a standstill agreement with Sabia, Gotlieb, Ketcham, Eaton and Bassett in which it was agreed to toll any applicable limitation periods.

4. Upon further investigation, Hollinger reconsidered its claims against Bassett in view of his very brief tenure on the Board of Hollinger, and agreed not to pursue any claims against him. Hollinger advised Sabia, Gotlieb, Ketcham and Eaton (the "**Outside Directors**") of its intention to pursue claims against them in their capacities as directors of Hollinger.

5. Hollinger and the Outside Directors agreed to engage the services of the Honourable George Adams, Q.C. (retired justice) ("**Adams**") to conduct a mediation in respect of Hollinger's claims against the Outside Directors.

6. On March 10, 2011, Hollinger and the Outside Directors entered into a mediation agreement (the "**Mediation Agreement**"). The Mediation Agreement provides that "all statements made and documents produced in the mediation session and not otherwise discoverable shall not be subject to disclosure through discovery or any other process; shall be confidential; and shall not be admissible into evidence for any purpose including

impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the mediation" and "more particularly, the notes, records, statements made and recollections of the mediator in conducting the mediation session shall be confidential and protected from disclosure for all purposes".

7. During the month of May 2011, an extensive mediation was conducted with the Outside Directors with the assistance of Adams who acted as mediator. Adams is a highly regarded professional mediator and former justice of the Ontario Superior Court of Justice. Adams has substantial experience as a mediator and facilitator in a wide range of conflicts. While on the bench, Adams handled major cases in all areas of the Superior Court of Justice including the Commercial List and Divisional Court and many of his decisions are widely reported.

8. As part of the mediation process, all claims by Hollinger against the Outside Directors were set out and fully canvassed as were all possible defences. I personally attended the mediations with Mr. William Aziz, the Chief Restructuring Officer of the Applicants ("**Aziz**") and representatives of Thornton Grout Finnigan LLP ("**TGF**"), counsel to the Applicants. The mediation lasted two days and involved intense negotiations.

9. During the course of the mediations, I was in telephone contact with Mr. Arnold Cader, the representative of the Noteholders on the Litigation Advisory Committee ("**Cader**"). The Litigation Advisory Committee was established as part of the Multi-Party Settlement Agreement ("**MPSA**") approved by this Honourable Court by order dated May 21, 2008.

10. With the assistance of Adams, the mediation was completed and a settlement in principle was reached. The settlement was considered to be a reasonable settlement of Hollinger's

claims by Adams, Cader, Aziz and myself, as well as counsel from TGF. Each of these persons has extensive experience in litigation matters.

11. In these negotiations the Outside Directors were represented by experienced lawyers. This was an arms'-length negotiation which was conducted in good faith.

12. The Settlement Agreement entered into between Hollinger and the Outside Directors provides that the settlement is conditional upon the issuance of a satisfactory bar order giving effect to the third party releases (the **"Release Order"**).

13. In order to obtain the necessary Release Order, Hollinger is applying to the Court under the CCAA for an order approving the terms, including the third-party releases, of the Settlement Agreement. The application to the Court for approval of the settlement will be brought on notice to the Service List, as defined in the Service and Notice Procedure Order of November 12, 2010, which includes all the non-settling defendants.

14. I believe, consistent with the advice of the mediator, that Hollinger's offer of the third party releases to the Outside Directors resulted in a higher settlement offer from those parties than otherwise might have been the case.

15. In my experience as a former judge and lawyer, and as a specialist in alternative dispute resolution, I have had occasion to participate in or preside over numerous pre-trial conferences, mediations, arbitrations, trials and other dispute resolution processes. Based on my experience and being cognizant of the mandate of the Litigation Trustee and my duties as an officer of the Court, I affirm that in my view the settlement with the Outside Directors is well within the zone of reasonableness and appropriate in the circumstances.

16. In coming to this conclusion, I have considered the potential future expense and potential duration of litigation against the Outside Directors.

17. An additional benefit flowing from this settlement is that Hollinger will soon have substantial funds coming into the Litigation Trustee's accounts, which will be used in part to fund the Litigation Trustee's initiatives in respect of non-settling defendants against whom Hollinger has more substantial claims, and, to the extent not required for those initiatives, be available for the Estates of the Applicants for distribution, all in accordance with and subject to the provisions of the MPSA.

18. In consultation with the Litigation Advisory Committee, and in accordance with the MPSA, I am currently considering what portion of these proceeds should be used to fund future settlement negotiations, mediations and litigation. The balance will be made available to the Estates of the Applicants for distribution.

19. I would be pleased to provide any additional information or further detail that may be required by the Court.

Dated at Toronto, Ontario this 7th day of November, 2011.

Honourable John D. Ground, Q.C. (retired Justice)
Litigation Trustee of the Applicants

EXHIBIT "26"

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 LIMTED

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

SEVENTEENTH REPORT OF THE MONITOR
APRIL 8, 2011

1. On August 1, 2007, Hollinger Inc. ("Hollinger") and certain of its subsidiaries (collectively the "Applicants") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*") pursuant to the Order of this Honourable Court dated August 1, 2007 (the "Initial Order"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as the monitor of the Applicants (the "Monitor") in these *CCAA* proceedings.

PURPOSE

2. The purpose of this Seventeenth Report of the Monitor (the "Seventeenth Report") is to report to this Honourable Court on:

   a) the Applicants' cash receipts and disbursements since the date of filing, August 1, 2007;

   b) the Applicants' Claims Process;

   c) the Non-Applicants' Claims Process;

   d) the status of the Litigation Assets; and

e) the estimated assets and liabilities of the Applicants and Non-Applicants (in a format similar to the 'waterfall' chart contained in the Seventh Report of the Monitor, dated May 18, 2008).

TERMS OF REFERENCE

3. In preparing this Report, the Monitor has relied upon unaudited financial information and records of the Applicants and certain of their Non-Applicant subsidiaries and discussions with management of the Applicants and the Non-Applicants. The Monitor has not performed an audit or other procedures to evaluate the reliability or completeness of the information. Accordingly, the Monitor expresses no opinion, or any other form of assurance, on the historical or prospective financial information, management representations or other data included in this Report. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events; actual results achieved will vary from this information and the variations may be material.

4. Capitalized terms not defined in this Report are as defined in the Initial Order or previous reports of the Monitor. All references to dollars are in Canadian currency unless otherwise noted.

INTRODUCTION

5. Since prior to filing, the Applicants have not conducted any active business. They are exclusively engaged in winding up their affairs and realizing on their assets (including the claims that are subject to the Settlements and other litigation assets (together, the "Litigation Assets")) with a view to distributing the net proceeds to stakeholders in accordance with their legal entitlements, all under the supervision of this Honourable Court and in accordance with the Multi-Party Settlement Agreement ("MPSA") as described herein.

6. The Applicants' principal activities involve:

   a) the legal wind-up of the Applicants' affiliates, 10 Toronto Street Inc. ("10 Toronto") and Domgroup Ltd. ("Domgroup") (including its wholly-owned subsidiaries), to permit the recovery of the amounts owed by these affiliates to the Applicants;

   b) the determination of claims against the Applicants and the Non-Applicants pursuant to the Applicants' Claims Process and Non-Applicants' Claims Process;

   c) investigation, pursuit and realization of the Applicants' Litigation Assets;

   d) the participation in an Interpleader Action and claims process initiated by Hollinger and STMG in the Delaware Superior Court to determine entitlement to insurance proceeds;

   e) attendance to regulatory, legal and administrative matters, including compliance with securities laws, tax reporting obligations and matters relating to the preservation of the records of Hollinger pursuant to Court orders made in the proceedings which involved the appointment of the Inspector; and

   f) when appropriate, the distribution of the Applicants' assets to stakeholders, subject to this Honourable Court's approval, possibly, but not necessarily, by way of a plan of arrangement.

7. As discussed in the Third and Seventh Reports, the Applicants' principal assets consist of three major components:

   a) cash held by the Applicants and Non-Applicants arising from asset liquidations;

   b) STMG shares held by Hollinger and 432252 Canada Inc. ("432"); and

   c) the Litigation Assets.

8. Since the inception of these *CCAA* proceedings, among other activities described herein, the Applicants have continued to pursue recoveries through litigation and related initiatives, including mediation, against numerous parties, including their former officers and directors, former legal counsel, Torys LLP ("Torys"), former auditors, KPMG LLP ("KPMG"), and former lenders.

9. After participating in confidential mediations facilitated by the Honourable George W. Adams, Q.C. (retired judge), Hollinger reached settlement agreements with Torys (the "Torys Settlement") and KPMG (the "KPMG Settlement"), which are both (collectively the "Settlements") subject to Court approval.

10. The Applicants are currently in the process of seeking Court approval of the Settlements, as will be described in further detail below.

11. Certain stakeholders have recently requested that the Monitor provide a consolidated statement of receipts and disbursements from August 1, 2007 to present, a summary of the claims that have been filed to date in the claims processes and an updated summary of assets and liabilities. The Applicants' consolidated statement of receipts and disbursements (the "Applicants' Statement of Receipts and Disbursements"), included as Appendix A to this Report, reflects the particular circumstances of the Applicants' lack of ongoing commercial activity, but the considerable effort that has gone into the realization of their assets summarized in paragraph 7 above, since the commencement of these CCAA proceedings.

FINANCIAL INFORMATION

Background

12. Throughout these *CCAA* proceedings, the Monitor has regularly delivered communications and court reports that are available on its website (www.ey.com/ca/hollinger) containing the Applicants' statements of receipts and disbursements, cash projections and periodic updates on any material activities and initiatives undertaken, including those of the Non-Applicant subsidiaries.

13. In light of the importance of the Settlements to the Applicants and their stakeholders and the nature of the questions recently posed to the Monitor by various stakeholders, the Monitor is of the view that a comprehensive financial update and discussion of the history of these proceedings and recent developments would be of assistance to this Honourable Court and interested parties at this time.

Cash Balances

14. As at February 28, 2011, the cash balances held by each of the Applicants (excluding the $0.6 million held in trust by Aird & Berlis LLP for an officers' indemnity trust in support of Hollinger's indemnities in respect of one current and one former officer) and the principal Non-Applicants, (excluding the Domgroup Post Retirement Benefits Trust of $1.3 million) were as follows:

	(Millions)
Applicants	$ 1.7
Domgroup	$ 17.7
10 Toronto	$ 1.6

Applicants' Receipts and Disbursements since Filing

15. For presentation purposes, the Monitor has divided these proceedings into the following three main time periods:

a) from August 1, 2007 until the Multi-Party Settlement Agreement (the "MPSA") was approved by an order of this Honourable Court (i.e. May 21, 2008);

b) from May 22, 2008 until STMG (now Chicago Newspaper Liquidation Corporation or "CNLC") filed for protection under Chapter 11 of the *U.S. Bankruptcy Code* (i.e. March 31, 2009); and

c) from April 1, 2009 to present, during which time the Applicants have been principally engaged in the pursuit of the Litigation Assets.

16. The Applicants' Statement of Receipts and Disbursements provides information on the Applicants' cash receipts and disbursements during each of these periods.

Summary of Significant Events during each Time Period

I. August 1, 2007 to May 21, 2008

(a) Activities during the Period

17. On August 1, 2007, the Applicants sought and obtained an initial stay of proceedings under the *CCAA* for 30 days in order to provide them with an opportunity to facilitate a restructuring. Concurrently, the Applicants initiated companion proceedings in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code.*

18. The Applicants believed that these *CCAA* proceedings were necessary as a result of the threat by the noteholders to accelerate payment of the full amount of the indebtedness owing pursuant to the Applicants' Senior First Lien Notes in the amount of US$78 million and Senior Second Lien Notes in the amount of US$15 million.

19. The *CCAA* proceedings followed litigation commenced by Catalyst Fund General Partner I Inc. in 2004 claiming various relief, including that flowing from oppression claims, against Hollinger, its related companies, their senior officers and directors and their related entities. That litigation, under the supervision of this Honourable Court, involved various contested stages, including the appointment of Ernst & Young Inc. as Inspector pursuant to the *Canada Business Corporations Act*. The role of the Inspector was substantially completed shortly after the delivery of its Tenth Report dated November 14, 2005. Each step of that inspection, and of the litigation, was supervised under orders of this Honourable Court on notice to all interested parties. The activities and accounts of the Inspector and its counsel were approved by this Honourable Court from time to time on notice to all interested parties. The limited role of the Inspector following the delivery of its Eleventh Report was set out in the Order of this Honourable Court dated December 15, 2006, a copy of which is attached as Appendix B.

20. Subsequent to December 15, 2006, the activities of the Inspector have been limited to dealing with documents of the Applicants under the custody and control of the Inspector pursuant to paragraph 9 of the Order of this Honourable Court dated December 15, 2006.

Since August 1, 2007, the date of the Initial Order, the Inspector has incurred fees and disbursements of approximately $118,000, including taxes.

21. On August 1, 2007, Ernst & Young Inc. was appointed Monitor in these proceedings.

22. After filing, certain key creditors took an active role in these proceedings:

a) STMG, an operating subsidiary and significant creditor of several of the Applicants which was at the date of filing a publicly traded company on the New York Stock Exchange ("NYSE");

b) Davidson Kempner Capital Management LLC ("DK"), the most significant noteholder with in excess of 40% of the Senior First Lien Notes and in excess of 70% of the Senior Second Lien Notes;

c) HSBC Bank USA, National Association, as trustee under the Indenture dated September 30, 2004, and Wells Fargo Delaware Trust Company, National Association (as successor by merger to Delaware Trust Company, National Association, formerly known as Wachovia Trust Company, National Association ("Wells Fargo")), as trustee under the Indenture dated March 10, 2003 (collectively, the "Indenture Trustees"), as representatives of the holders of the Senior First and Second Lien Notes; and

d) Catalyst Fund General Partner I Inc., a significant preferred shareholder of Hollinger and, later, a self-declared "super-priority" creditor.

23. Several of the former officers and directors of Hollinger were involved in the *CCAA* proceedings as members of the Service List.

24. Among the Applicants' principal assets was their controlling interest in STMG through their ownership of approximately 1.2% of the outstanding Class A shares and 100% of the Class B common shares of STMG. The Class B shares had 10 votes per share and the Class A shares have one vote per share. As a result, the Applicants held an economic interest in STMG of approximately 19.7% but controlled approximately 70.1% of STMG's shareholder votes. The shares were the sole pledged security for the amounts owed to the noteholders.

25. The share price of STMG's Class A shares as of August 1, 2007 was approximately US$4.45 per share[1]. The Applicants held 782,923 Class A shares with an indicative trading value on August 1, 2007 of approximately US$3.5 million. In addition, the Applicants held 14,990,000 Class B shares. The Class B Shares were not publicly traded. As set out in the affidavit of G. Wesley Voorheis, sworn August 1, 2007, which was relied upon in the initial application record, the Applicants believed that, based on the July 30, 2007 closing price of the Class A shares of STMG on the NYSE of US$4.34 per share and without attributing any additional value (i.e. control premium) to the Class B shares, the indicative trading value of Hollinger's direct and indirect holdings in STMG was approximately US$68.4 million.

26. On July 31, 2007, the Applicants exercised their voting rights and removed three directors from the board of directors of STMG and expanded the size of the board to eleven members by appointing six new directors. The Applicants issued a press release dated August 1, 2007, attached hereto as Appendix C, describing the changes to STMG's board of directors.

27. During the period following the commencement of these proceedings, there were significant disagreements among the major creditors, shareholders and the Applicants concerning many aspects of the Applicants' activities, management and restructuring efforts.

28. The noteholders' security in the STMG shares, including the proposed methodology to be used to monetize the multiple voting Class B Shares, was a focal point of discussions between the Applicants, DK, the Indenture Trustees and STMG. These shares were also the subject of an adequate protection motion in the Chapter 15 proceedings in Delaware.

29. The Applicants, STMG, the Indenture Trustees and DK obtained an order of this Honourable Court dated August 31, 2007 approving an agreement that established a framework for negotiations amongst the parties regarding the STMG shares (the "Standstill Agreement").

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[1] Bloomberg – share price on the NYSE

30. Pursuant to the Standstill Agreement, the Applicants instructed their litigation counsel to cease work (subject to necessary preservation steps) on all litigation matters.

31. Given the number of parties involved and the relative value of the shares to the Applicants' estates, considerable time, effort and resources were expended in negotiating a resolution to the issues surrounding the STMG shares, the governance of STMG and the governance of the Applicants themselves.

32. During these negotiations, which continued from August 1, 2007 to late May, 2008, this Honourable Court ordered serial short–term extensions to the stay of proceedings.

33. In accordance with the Standstill Agreement and various information requests and in order to ensure that all stakeholders had current financial information to facilitate the negotiations, the Monitor prepared frequent reports and communications based on information provided by the Applicants. These communications included updates on the status of the negotiations between the parties, updated statements of receipts and disbursements and an analysis of the legal fees incurred and paid since the date of filing. In total, the Monitor issued twenty communications to the Service List, in addition to formal court reports filed periodically.

34. As discussed in the Monitor's Fifth and Sixth Reports, the Honourable Justice Morawetz provided invaluable assistance to the negotiating parties for several months. Ultimately this process led to a framework being reached in early November 2007 to settle the issues and move forward with a scheme of governance, asset realization and distribution. The negotiating parties engaged in further discussions to convert this framework into a formal settlement agreement to be presented to this Honourable Court for approval.

35. As reported in the Monitor's Thirteenth Communication, the negotiating parties believed they had reached a framework for settling their issues subject to resolving certain details and ancillary issues upon which they reported to this Honourable Court on November 6, 2007. However, the three-way negotiations between the Applicants, STMG and DK ended on December 18, 2007 without a settlement agreement being finalized.

36. The Applicants continued to explore the potential for a two-way agreement with either STMG or DK to bring before the Court as a consensual way forward.

37. On February 28, 2008, the Applicants filed a notice of motion seeking an order:

a) authorizing and directing the Applicants to prepare and file a Plan of Arrangement;

b) authorizing the Applicants to take certain steps to restructure certain of their operations and management, including the appointment of a Litigation Guardian (as it was then referred to) to preserve, protect and realize upon the Litigation Assets; and

c) establishing a claims process for the filing, review and determination of all claims against the Applicants, and the appointment of a Claims Officer.

38. On that same date, DK filed a notice of motion seeking, among other things, a termination of the *CCAA* proceedings and an order declaring the Applicants bankrupt.

39. On February 29, 2008, this Honourable Court extended the stay of proceedings to April 25, 2008 and directed that all of the motions be scheduled for a hearing on April 22 and 23, 2008, if necessary. Concurrently, the parties continued discussions to reach a resolution.

40. On March 25, 2008, the Applicants announced that they had entered into a settlement agreement with STMG (the "STMG Settlement"). The STMG Settlement required approval by both the Ontario Superior Court of Justice and the United States Bankruptcy Court for the District of Delaware in order to become effective.

41. On April 10, 2008, the Applicants filed a notice of motion seeking an order:

a) approving the terms of the STMG Settlement and authorizing and directing the implementation of the STMG Settlement, all as described in a term sheet dated March 25, 2008;

b) authorizing the Applicants to take certain steps to restructure certain of their operations and management to further reduce costs and to continue to enhance asset realizations; and

c) establishing a claims process as described in a draft claims order filed by the Applicants.

42. After the STMG Settlement was reached, the parties continued to negotiate towards a resolution that included DK and the Indenture Trustees.

43. On May 14, 2008, the Applicants notified the Monitor that they had reached a settlement.

44. The Applicants' motion to approve the MPSA was approved by an Order of this Honourable Court of May 21, 2008, binding upon the parties to the MPSA and the Indenture Trustees, which is attached as Appendix D. Among other things, the MPSA resolved:

a) the conversion of the multiple voting Class B STMG shares into Class A shares at a conversion rate of 1.1 Class A share for every Class B share;

b) the quantum of the claims by STMG against the Applicants;

c) the quantum of the claims by the Indenture Trustees against the Applicants;

d) the composition of the STMG board of directors;

e) certain priority payments to be made to DK, STMG and the Indenture Trustees; and

f) a mechanism to pursue to the Litigation Assets, including the appointment of the Litigation Trustee and the Advisory Committee.

(b) <u>Receipts and Disbursements during the Period</u>

45. As set out in the Applicants' Statement of Receipts and Disbursements, of the total receipts of $10.7 million during the period from August 1, 2007 to May 21, 2008, approximately $5.4 million related to the sale of the Cayman Islands Free Press and associated dividend and approximately $4.8 million related to the repayment of inter-company amounts due from 10 Toronto to the Applicants.

46. Of the total disbursements of $11.7 million, $4.0 million was spent in relation to the *CCAA* and Chapter 15 insolvency proceedings including the mediation, negotiation, and documentation of the MPSA as described above.

47. An additional $3.7 million was spent relating to other legal matters, including pursuit of the Litigation Assets.

48. The Applicants were already involved in a number of legal initiatives prior to August 1, 2007 and became involved in additional matters subsequent to filing[2]. During the period from August 1, 2007 to May 21, 2008 the legal initiatives included:

a) the *CCAA* and Chapter 15 proceedings, including preparing for mediations and the Chapter 15 adequate protection motions;

b) the changes to the STMG board;

c) advice to the Applicants' board of directors;

d) matters related to on-going criminal proceedings in Illinois;

e) matters related to claims by the Securities and Exchange Commission of the United States;

f) pursuit of the Litigation Assets; and

g) Ontario Securities Commission ("OSC") proceedings and compliance with provincial securities law.

49. The Applicants' disbursements, other than the professional fees described above, included \$0.7 million of ongoing fees for the board of directors of Hollinger, \$0.4 million relating to payroll and \$0.2 million of building expenses. The Applicants spent \$2.2 million relating to the fees and expenses of their CEO, CFO and other professional advisors. The Monitor is advised that a portion of the legal fees and professional advisor costs were incurred by the Applicants in meeting their public company reporting requirements, including issuing financial statements, preparing filing materials for securities regulators and paying the monthly fees of their share transfer agent.

[2] For a detailed description of the outstanding litigation against, and claims filed by, the Applicants, see notes 12 and 14 of the Hollinger Inc. Notes to Interim Consolidated Financial Statements as of December 31, 2007 that are available on Sedar.

II. May 22, 2008 to March 31, 2009

a) Activities during the Period

50. The MPSA provides for several steps to be completed in order to allow the Applicants and the Non-Applicants to wind up their affairs in order to maximize realizations in the Applicants' estates.

51. Once the Hollinger board of directors resigned, BlueTree Advisors Inc., an entity controlled by William Aziz, CA, was appointed as the chief restructuring officer (the "CRO") of the Applicants and an officer of the Court in consideration of a monthly fee of $65,000, plus GST as applicable and reimbursement of reasonable expenses.

52. As provided in the MPSA, all monthly work fees payable under Hollinger's consulting agreement with G. Wesley Voorheis, the former CEO of the Applicants, or any entity controlled by him, were suspended. Mr. Voorheis resigned as an officer and director of the Applicants effective as of May 21, 2008. The provisions of the MPSA deferred a fee payable pursuant to this consulting agreement, to be paid depending on the returns to be potentially realized on the Litigation Assets as a result of actions commenced or threatened by the Litigation Trustee.

53. On May 21, 2008, this Honourable Court made the Claims Order, as a result of a motion by the Applicants, authorizing the Monitor to conduct a claims process for the Applicants (the "Applicants' Claims Process"). The Claims Order established July 11, 2008 as the Claims Bar Date for claims arising prior to August 1, 2007, or arising after that date if as a result of the restructuring, repudiation or termination of any contract, lease or employment agreement.

54. From August 1, 2007 to May 21, 2008, the share price of the STMG Class A common shares decreased from US$4.45 to US$0.43[3] per share. In May 2008, STMG's Class A common shares were de-listed from the NYSE and were subsequently moved to the Over-the-Counter Bulletin Board ("OTCBB") on June 17, 2008. As a result of this decrease in realizable value for the Applicants' estates and the quantum of claims that were filed in the Applicants' Claims Process, it became apparent that, subject to possible

[3] Bloomberg – share price on the NYSE and the OTCBB

realizations from the Litigation Assets, Hollinger's shareholders were unlikely to realize any substantial recovery on their investment. Shortly thereafter, the Applicants engaged in discussions with the OSC concerning possible relief from the burden of their public company reporting requirements.

55. As approved by an Order of this Honourable Court of July 21, 2008, Hollinger consented to the OSC issuing an order on August 5, 2008 that ceased all trading in and all acquisitions of Hollinger's securities, whether direct or indirect, except in defined circumstances. Cease trade orders were also issued by other provincial regulators. As a result of the cease trade orders, the Applicants were no longer required to produce going-concern public entity financial statements and were permitted to cease obtaining audit opinions on their financial statements.

56. By order of this Honourable Court of August 27, 2008 (the "Non-Applicants' Claims Order"), the Monitor was authorized to conduct a claims process for the Non-Applicants (the "Non-Applicants' Claims Process"). The Non-Applicants' Claims Order established September 30, 2008 as the Claims Bar Date. The costs associated with the Non-Applicants' Claims Process, including any settlements of claims, are not included in the Applicants' Statement of Receipts and Disbursements appended to this report.

57. The MPSA provided for the appointment of a Litigation Trustee in order to supervise, control and administer all aspects of the Litigation Assets. The Honourable John D. Ground, Q.C. (retired judge) was appointed as an officer of the Court to perform the role of Litigation Trustee.

58. The funding for the Litigation Trustee as contemplated by the MPSA was established during this period. The Litigation Trustee engaged counsel to re-engage in the pursuit of the Litigation Assets, which had been put on hold under the Standstill Agreement.

59. On January 2, 2009, STMG voluntarily de-registered its Class A common stock from the OTCBB. After de-registration, STMG's Class A common stock was quoted on the Pink Sheets.

60. On March 31, 2009 STMG announced that it and certain affiliates had filed voluntary petitions under Chapter 11 of the *U.S. Bankruptcy Code* in the U.S. Bankruptcy Court for the District of Delaware.

61. At the time of its bankruptcy filing, STMG remained financially and legally burdened by liabilities, including a US$510 million claim by the United States Internal Revenue Service. The Monitor understands that STMG was also adversely affected by the downturn in circulation and print advertising revenue. The reasons for STMG's filing are more fully described in the declaration of James McDonough, the Senior Vice President, Chief Administrative Officer, General Counsel and Secretary of STMG dated March 31, 2009, a copy of which is attached hereto as Appendix E. As a result of STMG's bankruptcy proceedings, the trading price of the Applicants' Class A common stock in STMG declined to nil. Set out below is a table showing the trading prices of STMG's Class A shares on the NYSE from January 2007:

Date	US$ per share[4]
January 3, 2007	$4.92
August 1, 2007	$4.45
December 31, 2007	$2.20
May 21, 2008	$0.43
December 31, 2008	$0.05
April 1, 2009	$0.02

62. After the STMG bankruptcy filing, the Applicants focused their efforts on realizing upon their Litigation Assets and amounts due from the Non-Applicants.

(b) Receipts and Disbursements during the Period

63. As set out in the Applicants' Statement of Receipts and Disbursements, of the total receipts of $13.7 million during this period, $11.6 million related to the repayment of

[4] Bloomberg – share price on the NYSE, the OTCBB and Pink Sheets.

inter-company amounts due from both Domgroup and 10 Toronto to the Applicants. A further $2.0 million was related to the receipt of funds from the Receiver of Ravelston Corporation Limited ("RCL") which was authorized to distribute the remaining proceeds from a settlement between RCL and CanWest Global Communications Corp. to STMG and the Applicants. The MPSA allocated these funds equally between the Applicants and STMG.

64. Of the total disbursements of $8.3 million, $1.6 million was spent in relation to the *CCAA* and Chapter 15 insolvency proceedings. An additional $1.1 million was spent relating to other legal matters, including pursuit of the Litigation Assets

65. The disbursements during this period also included a payment of $1.0 million to BMO on account of advisory fees (which was approved by Order of this Honourable Court on November 26, 2008), a $2.2 million (US$2.0 million) distribution to STMG pursuant to the MPSA, $1 million for the purchase of run-off insurance coverage, and $0.7 million relating to the fees and expenses of its CRO in accordance with the terms of the MPSA. As part of the Applicants' cash conservation efforts, the Applicants moved to smaller, less expensive offices during this period.

III. April 1, 2009 to present

a) Activities during the Period

66. After the commencement of STMG's Chapter 11 proceedings, the Applicants continued their work on implementing the MPSA, including winding up the affairs of the Non-Applicants, continuing to evaluate the claims filed in the Applicants' and Non-Applicants' Claims Processes and pursuing the Litigation Assets.

67. Subsequent to the execution of the MPSA, the Applicants and the Monitor have provided regular updates pursuant to the MPSA regarding the progress of the Applicants' Claims Process and the asset recovery efforts, including the pursuit of the Litigation Assets. Despite the provisions of the MPSA permitting it to do so, STMG has not actively participated in the *CCAA* proceedings since filing for Chapter 11 protection.

68. In December 2009, $2.3 million of the priority distributions required pursuant to the MPSA were made by the Applicants to DK and the Indenture Trustees.

69. As a result of a motion by the Applicants on May 27, 2010, this Honourable Court authorized the payment of the remaining $2.2 million of the priority distributions due pursuant to the MPSA. The Applicants made these distributions in June 2010.

70. As previously reported, in order to determine which, if any, third parties are beneficiaries entitled to share in US$24.5 million of insurance settlement proceeds from the fourth excess layer of directors' and officers' insurance previously held by the Applicants, an Interpleader action was commenced in the Delaware Superior Court. On January 12, 2010, the Delaware Superior Court issued an order calling for individuals and entities with an interest in the Interpleader action to submit claims by February 26, 2010. The Monitor understands that the Applicants and STMG made a joint filing and have made several submissions to that court. The Applicants and STMG (who have a sharing agreement governed by the MPSA in respect of these funds) were among several parties (including Conrad Black, Barbara Amiel-Black, Peter White, John Boultbee and other individuals who were formerly either officers or directors of the Applicants) that have filed claims to these funds, which claims are currently in the process of adjudication by the Delaware Superior Court.

71. During this period, the Monitor (in consultation with the Applicants and the Non-Applicants) has continued to review, accept, revise or disallow claims filed in both claims processes. Several court attendances have been required to address certain claims.

72. On May 27, 2010, Domgroup obtained approval from both its board of directors and this Honourable Court to advance a $4.2 million Debtor-in-Possession ("DIP") loan to Hollinger. Domgroup is charging interest to Hollinger at the Canadian Imperial Bank of Commerce's Prime Rate + 3% per annum on any draws that are made on the $4.2 million DIP loan. The DIP loan is repayable by offsetting amounts owing from Domgroup to Hollinger. In December 2010, the terms of the DIP loan were amended to include Sugra and 432 as borrowers and the total amount of the DIP loan was increased to $5.2 million. As of February 28, 2011, $4.2 million has been drawn on the DIP loan. By order of this

Honourable Court, the Initial Order was amended to allow for a $5.2 million DIP loan charge to rank behind both the Administrative Charge and the Directors' Charge.

73. During the period, the Applicants continued to pursue recovery of the Litigation Assets. They sought negotiated settlements with both Torys and KPMG and, to facilitate this, agreed to participate in separate mediations with each party.

74. Hollinger entered into mediation agreements with each of Torys and KPMG that included provisions to toll the relevant limitation periods pursuant to section 11 of the *Limitations Act, 2002*, S.O. c. 24, Sch. B.

75. Hollinger and Torys engaged in a mediation process before the Honourable George W. Adams, Q.C. (retired justice) on March 23 and 24, 2010.

76. Hollinger and KPMG engaged in a mediation process before Mr. Adams on March 29 and 30, 2010.

77. In the months preceding the aforementioned mediations, the Litigation Trustee and the Applicants incurred significant legal fees associated with preparing their mediation briefs and reply materials, producing document briefs and reviewing Torys' and KPMG's mediation and document briefs.

78. On July 15, 2010, the Applicants issued a press release announcing that they had entered into a settlement agreement, subject to Court approval, with Torys to resolve all claims against Torys that were advanced by the Litigation Trustee on behalf of Hollinger and also including all intended claims by the Applicants and Non-Applicants.

79. On October 6, 2010, the Applicants issued a press release announcing that they had entered into a settlement agreement, subject to Court approval, with KPMG to resolve all claims against KPMG that were advanced by the Litigation Trustee on behalf of Hollinger and also included all intended claims by the Applicants and the Non-Applicants. In seeking court approval for the Torys Settlement and the KPMG Settlement, the Applicants sought approval for a comprehensive notice procedure to advise all potential and known interested parties and stakeholders of the pending Settlements.

80. In addition to monetary consideration, the terms of the Settlements require KPMG and Torys to withdraw or forever remise any claims or possible claims against the Applicants and Non-Applicants. The terms of the Settlements include releases from Hollinger Inc., its subsidiaries and third parties in favour of KPMG and Torys. The Settlements are conditional upon the Applicants obtaining orders from this Honourable Court approving the Settlements, including such third party releases.

81. Pursuant to the November 12, 2010 Service and Notice Procedure Order of this Honourable Court (the "Service and Notice Procedure Order"), all known creditors, defendants, shareholders, stakeholders and other potential interested parties were notified of the requirement to file a Notice of Appearance before the Notice of Appearance Bar Date.

82. Twenty-eight parties filed Notices of Appearance pursuant to the Service and Notice Procedure Order (the "Responding Parties").

83. On November 26, 2010, the Applicants brought a motion to, among other things, approve the Settlements (the "Settlement Approval Motion"). The Applicants sought an order sealing certain references in the Settlements as being confidential. The references in the Settlements refer to the amounts proffered by each of Torys and KPMG to settle Hollinger's claims (the "Settlement Amounts") as well as certain confidential information pertaining to Torys.

84. The Applicants initially sought an order sealing the Report of the Honourable John D. Ground, Q.C. (retired judge) in his capacity as Litigation Trustee (the "Litigation Trustee's Report"). Prior to the hearing of the sealing motion, Hollinger withdrew its request for a sealing order in respect of the Litigation Trustee's Report.

85. A number of stakeholders have raised objections to the relief sought by the Applicants with respect to the Settlements. In response to objections raised by Conrad Black, Barbara Amiel-Black, David Radler, Daniel Colson, Peter White, Ralph Barford, Catalyst Fund General Partner I Inc. and Argus Corporation Limited, the Applicants agreed to bifurcate the requests for sealing orders from the rest of the relief sought on the

Settlement Approval Motion and to bring a separate motion seeking the sealing orders (the "Sealing Motion") in advance of the Settlement Approval Motion.

86. On February 25, 2011, this Honourable Court issued a protective order, attached hereto as Appendix F, sealing, on terms, the confidential references in the Settlements and approving a form of confidentiality agreement which would govern the disclosure of such confidential references, including the Settlement Amounts, by Hollinger to signatories of the confidentiality agreement.

87. Mr. Black has served a Notice of Motion seeking leave from the Court of Appeal for Ontario to appeal the aforementioned protective order. No other Responding Parties sought leave to appeal the protective order within the applicable appeal period.

88. Mr. Black has also served a Notice of Motion in the Court of Appeal for Ontario seeking to stay the Settlement Approval Motion pending his motion for leave to appeal the protective order. This motion for a stay is currently returnable on April 14, 2011.

89. At a scheduling conference held on March 28, 2011, it was agreed that the Applicants would file all material upon which they intend to rely in support of the Settlement Approval Motion by April 1, 2011. Such materials have now been served and filed by the Applicants. Any other party supporting the Applicants' motion is to file its material by April 12, 2011, after which a timetable for delivery of responding materials and cross-examinations will be agreed by the parties or determined by this Honourable Court.

(b) <u>Receipts and Disbursements during the Period</u>

90. As set out in the Applicants' Statement of Receipts and Disbursements, of the receipts of \$6.6 million during the period, \$2.3 million related to the repayment of inter-company amounts due from 10 Toronto and \$4.2 million was related to drawing on the Court-approved DIP loan facility between Domgroup and the Applicants.

91. Of the total disbursements of \$10.8 million during the period, \$4.5 million related to priority distributions to creditors pursuant to the MPSA. A further \$0.8 million was spent in relation to the *CCAA* and Chapter 15 insolvency proceedings.

92. The legal disbursements of $2.9 million during the period primarily related to legal fees associated with the Interpleader action, the Settlement approval process and the fees and disbursements incurred by the Litigation Trustee in the pursuit of the Litigation Assets.

APPLICANTS' CLAIMS PROCESS

93. In the Applicants' Claims Process, forty-eight claims (including inter-company claims) were received either on or before the Claims Bar Date. Three additional claims were received after the Claims Bar Date and accepted for filing. The breakdown of claims filed against the Applicants is shown below:

Applicant	Number of Claims Received
Hollinger	34
Sugra	7
4322525	10
Total	51

94. The Monitor, in consultation with the CRO, has issued seventeen Notices of Revision or Disallowance with respect to the claims. To date, there are three outstanding Notices of Dispute filed by Ravelston as well as one Notice of Dispute that was filed by the Canada Revenue Agency. In addition, six claims have been consensually withdrawn by the creditors who filed them after negotiation with the CRO, in consultation with the Monitor.

95. The Applicants and the Monitor are continuing to address the claims. Pursuant to the Applicants' Claims Order the Monitor is not to determine claims advanced by Non Arms-Length Claimants. Any such claims require a determination by this Honourable Court.

96. As previously reported, Catalyst has asserted that its claim of $1,988,388 is a super-priority claim. The claim was originally filed with the Monitor by Catalyst in the Applicants' Claims Process as an unsecured claim against Hollinger. On December 6, 2010 Catalyst, the Applicants and the Monitor agreed to a timetable for this Honourable Court to hear the merits of this Non Arms-Length claim as contemplated in the Claims

Procedure Order. In late February, 2011, the Applicants and Catalyst began discussions to prepare an agreed statement of facts for the purpose of having this Honourable Court adjudicate the claim asserted by Catalyst and its alleged super-priority status.

97. Some significant claims asserted by several Non Arms-Length Claimants are inextricably connected to the ongoing litigation involving the Applicants. They cannot be dealt with in isolation from claims of the Litigation Trustee. In many cases, the legal issues in question in the actions commenced (or threatened) by the Litigation Trustee are issues that are likely be central to the adjudication of the claims in the Applicants' Claims Process. In particular, the allegations made (or threatened) by the Litigation Trustee may, if proven, adversely affect, limit or eliminate the claims of those Non Arms-Length Claimants to be determined by this Honourable Court, including any claims for contribution and indemnity.

98. Paragraph 18 of the MPSA provides conditions that must be met for any distribution to creditors of the Applicants, including reserves for any disputed claims. Given the projected quanta of the claims asserted by the Non Arms-Length Claimants, it is unlikely that any distribution can be made by the Applicants until these claims have been finally determined.

99. The Applicants have delivered updates as to the progress of the Applicants' Claims Process as provided by the MPSA.

NON-APPLICANTS' CLAIMS PROCESS

100. In the Non-Applicants' Claims Process, thirty-six claims (excluding inter-company claims) were received by the Claims Bar Date. Four additional claims were received after the Claims Bar Date, including a claim filed by Representative Counsel and accepted for filing as discussed in more detail below.

101. The breakdown of claims filed against the Non-Applicants is shown below:

Non-Applicant	Number of Claims Received
Domgroup	32
10 Toronto Street	8
Willett Foods	0
Holcay Holdings	0
Total	40

102. The Monitor has issued eleven Notices of Revision or Disallowance with respect to the above-referenced claims. There remain six unresolved Notices of Dispute, of which three claims are currently before the Claims Officer. Seven claims have been consensually withdrawn by the creditors who filed them after negotiation with the CRO, in consultation with the Monitor.

103. As the Non-Applicants are not applicants under the Initial Order, they have, in consultation with the Monitor, continued to settle third party claims in full pursuant to the Non-Applicants' Claims Order and the MPSA.

104. The Non-Applicants are in the process of winding-up the affairs of their inactive subsidiaries, including the winding up of pension plans of Willett Foods under the supervision of the Financial Services Commission of Ontario.

105. Eighteen claims were filed under the Non-Applicant Claims Order against Domgroup by former employees of Dominion Stores relating to their post-retirement health and dental benefit plans, long-term disability entitlements, pension top-up obligations and life insurance.

106. By Order of this Honourable Court of November 26, 2008, following a motion brought by the Non-Applicants, Koskie Minsky LLP was appointed Representative Counsel for

these claimants. On February 27, 2009, Representative Counsel filed a new claim against Domgroup on behalf of all claimants and withdrew 17 of the 18 original claims.

107. As previously reported, Representative Counsel and Domgroup had previously provided proposed timelines to the Monitor for final resolution of these issues. These timelines have since lapsed. The Monitor has observed good faith efforts by both parties to resolve the actuarial differences between their respective positions and to achieve a settlement mechanism. Domgroup and Representative Counsel continue to negotiate an agreement which they hope to bring before this Honourable Court for approval in the near future. A settlement will permit Domgroup to finalize the wind-up of its affairs and, after satisfying third party liabilities, to return any surplus funds to the Applicants as repayment of inter-company balances as contemplated in the Non-Applicants' Claims Order and the MPSA. If a resolution cannot be achieved, it will be necessary to have the claim adjudicated.

108. Crystalline Investments Limited ("Crystalline") and Burnac Leaseholds Limited ("Burnac") filed claims against Domgroup totalling approximately $2.7 million relating to former real estate property leases held by Domgroup. In consultation with the CRO, the Monitor issued Notices of Disallowance reducing the claims to nil. Both Burnac and Crystalline filed Notices of Dispute. Given the size of these two claims, the Non-Applicants, in consultation with both the Monitor and key stakeholders, sought to refer these claims to this Honourable Court for determination pursuant to the provisions of the Non-Applicants' Claims Process. In December 2010, this Honourable Court declined to hear the matter and directed that it be adjudicated by the Claims Officer. A hearing before the Claims Officer is in progress.

109. The Non-Applicants and the Monitor have provided updates as to the progress of the Non-Applicants' Claims Process as provided by the MPSA.

STATUS OF THE LITIGATION ASSETS

110. Pursuant to the MPSA, the Litigation Trustee is responsible for administering the Litigation Assets[5] efficiently in a cost-effective manner with a view to maximizing the

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[5] The aggregate amount of damages claimed in all of these actions or threatened actions exceeds $1.5 billion. The Monitor notes that the aggregate value of these assets is uncertain at present but may be material.

net return, after costs, from the Litigation Assets to the Applicants, their creditors and other stakeholders.

111. An Advisory Committee comprised of (i) Mr. Arnold Cader (i.e. the nominee of DK), (ii) Mr. William Brock (i.e. the nominee of the Applicants) and (iii) the Litigation Trustee was established to provide advice and direction to the Litigation Trustee, also pursuant to the MPSA.

112. The initial funding and reserve funding (as described in the MPSA) was provided by the Applicants for pursuit of the Litigation Assets. The funding was completed in accordance with the MPSA. The funds have been segregated from the general cash assets of the Applicants and are used exclusively for the purpose of funding the administration of the Litigation Assets.

113. The Litigation Trustee has been pursuing the claims within its mandate. The Monitor is advised that the Litigation Trustee, in consultation with the Advisory Committee, devoted considerable resources to prepare litigation positions against:

a) certain former directors including: Conrad Black, Barbara Amiel-Black, David Radler, John Boultbee, Peter White, Daniel Colson, Charles Cowan and Peter Atkinson;

b) the companies owned or controlled by some or all of certain former directors including: RCL, Ravelston Management Inc., 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 509646 N.B. Inc., 509647 N.B. Inc., Moffatt Management Inc., Black-Amiel Management Inc., Argus Corporation Limited, Conrad Black Capital Corporation, Hollinger Aviation Inc. Mowitza Holdings Inc., 364817 Ontario Limited, F. D. Radler Ltd., 1269940 Ontario Limited, 2753421 Canada Limited and 1406684 Ontario Limited;

c) certain former non-management directors, including: Maureen Sabia, Ralph Barford, Fredrik Eaton, R. Donald Fullerton, Henry Ketcham II, Allan Gotlieb and Douglas Bassett;

d) certain banks, namely: the Canadian Imperial Bank of Commerce, the Toronto Dominion Bank and the Bank of Nova Scotia;

e) Torys; and

f) KPMG.

114. The Applicants, the Litigation Trustee and the Advisory Committee have kept the Monitor and its counsel apprised of their progress and activities. Either the Monitor or its counsel has attended as an observer at the monthly status meetings chaired by the Litigation Trustee.

115. The Litigation Trustee has worked with his counsel to determine how to cost-effectively pursue the Litigation Assets. In order to preserve the cash available to the Litigation Trustee, several fee arrangements have been entered into by the Litigation Trustee, the CRO and legal counsel. These arrangements include fee deferrals pursuant to which certain legal fees have been deferred but are contemplated to be paid at a multiple of two and a half times the deferred amount contingent upon the positive outcome of these claims and the receipt of funds by the Litigation Trustee.

116. Pursuant to the terms of the MPSA, the Litigation Trustee must seek direction from the Advisory Committee concerning the use of proceeds of any settlement.

117. Consequently, the funds that may be made available to any of the Applicants as a beneficiary of the efforts of the Litigation Trustee are in part dependent on the cash requirements of the Litigation Trustee and other payments to be made pursuant to the MPSA, as described above.

UPDATED ESTIMATE OF ASSETS AND LIABILITIES

118. The Applicants and Non-Applicants have prepared an updated estimate of their assets and liabilities, with the assistance of the Monitor. The analysis provides an illustrative summary of the Applicants' and the Non-Applicants' significant assets, inter-company receivables and payables and third party obligations as of February 28, 2011 (the

"Waterfall Summary"). The Waterfall Summary also reflects the Applicants' and Non-Applicants' contingent assets and contingent liabilities.

119. The Waterfall Summary is attached as Appendix G to this Seventeenth Report.

120. The Applicants expect that the resolution or determination of contingent assets and contingent liabilities will have a material impact on the recoveries to stakeholders.

121. Pursuant to the MPSA, the claims of the Indenture Trustees under the two debentures dated March 10, 2003 and September 30, 2003 continue to accrue interest at the contractual rate until they are paid in full. Amounts included in the Waterfall Summary reflect these claims being valued with both accrued interest and foreign exchange rate adjusted to February 28, 2011. The notes to the Waterfall Summary provide a summary listing of the claims filed against each of the Applicants and the Non-Applicants, including information as to whether the creditor is also a Non Arms-Length creditor or a defendant. The Waterfall Summary does not include any claimant whose claim has been determined to be nil or that has been withdrawn.

122. The inter-company balances of the Non-Applicants with respect to the Applicants were initially disclosed in the Monitor's Third Report and updated in the Monitor's Seventh Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

ERNST & YOUNG INC.

In its capacity as Court-appointed
Monitor of Hollinger Inc. and certain of its affiliates

Per:

Brian M. Denega
Senior Vice President

Christopher Mediratta
Vice President

APPENDIX A

Appendix A

Hollinger Inc., 4322525 Canada Inc., Sugra Limited
The Applicants' Statement of Receipts and Disbursements
August 1, 2007 to February 28, 2011

C$ 000s	August 1, 2007 to May 21, 2008	May 22, 2008 to March 31, 2009	April 1, 2009 to February 28, 2011	Total - August 1, 2007 to February 28, 2011	Notes
Opening Cash Balance	1,495	472	5,841	1,495	1
Receipts					
Interest Income	60	22	117	199	
Sale of Assets	5,798	-	-	5,798	2
Other	-	2,005	141	2,146	3
Inter-company Accounts Receivable (Payable) - 10 Toronto	4,818	2,985	2,300	10,103	4
Inter-company Accounts Receivable (Payable) - Domgroup	28	8,658	(109)	8,577	5
DIP Borrowings	-	-	4,200	4,200	6
Total receipts	10,704	13,670	6,649	31,023	
Disbursements					
Payroll & Benefits	(390)	(146)	(15)	(551)	7
Directors Fees and D&O Insurance	(674)	(1,070)	-	(1,744)	8
General Corporate and Litigation Legal Fees					
Adair Morse LLP	(42)	(12)	(37)	(91)	
Davies Ward Phillips & Vineberg LLP	(1,718)	(574)	(156)	(2,448)	
Elmer Stahl Kelovorn & Solberg LLP	(683)	(35)	(46)	(764)	
Fasken Martineau DuMoulin LLP	(663)	(3)	-	(666)	
Morris Nichols Arsht & Tunnell LLP	(133)	(8)	(56)	(197)	
Paliare Roland LLP	(159)	(19)	(183)	(361)	
Thornton Grout Finnigan LLP	-	-	(430)	(430)	
Voorheis & Co LLP	(115)	-	-	(115)	
Weil, Gotshall & Manges LLP	(70)	-	-	(70)	
Other	(109)	(10)	(92)	(211)	
Foreign Exchange	(18)	(1)	8	(11)	21
Fees Incurred by the Litigation Trustee	-	(481)	(1,973)	(2,454)	
Total General Corporate and Litigation Legal Fees	(3,710)	(1,143)	(2,965)	(7,818)	9
Chapter 15 Legal Fees (US)					
Morris Nichols Arsht & Tunnell LLP	(39)	(22)	(3)	(64)	
Weil, Gotshall & Manges LLP	(863)	49	-	(814)	11
Foreign Exchange	(10)	(8)	(1)	(19)	21
Total Chapter 15 Legal Fees (US)	(912)	19	(4)	(897)	10
CCAA Legal Fees (Canada)					
Davies Ward Phillips & Vineberg LLP	-	(36)	-	(36)	
Thornton Grout Finnigan, LLP	(1,821)	(1,050)	(421)	(3,292)	
Other	-	(63)	(10)	(73)	
Total CCAA Legal Fees (Canada)	(1,821)	(1,149)	(431)	(3,401)	12
CCAA Monitor Fees					
Ernst and Young Inc.	(925)	(367)	(296)	(1,588)	
Lenczner Slaght Royce Smith Griffin LLP	(359)	(106)	(101)	(566)	
Blank Rome LLP	(7)	(2)	-	(9)	
Willkie Farr & Gallagher LLP	(23)	(3)	-	(26)	
Total CCAA Monitor Fees	(1,314)	(478)	(397)	(2,189)	13
Sub-Total Chapter 15 Legal, CCAA Legal and CCAA Monitor Fees	(4,047)	(1,608)	(832)	(6,487)	
Ernst and Young Inc. (Inspector)	(114)	(4)	-	(118)	14
Nash Consulting	(81)	(95)	(172)	(348)	15
Contractor Fees					
BlueTree Advisors Inc. (CRO)	-	(692)	(1,611)	(2,303)	
VC & Co Incorporated (CEO)	(752)	(79)	-	(831)	
Total Contractor Fees	(752)	(771)	(1,611)	(3,134)	16
Finance, Tax Administration and Financial Advisor Fees					
BMO Nesbitt Burns Inc.	(565)	(1,000)	-	(1,565)	17
BlueTree Advisors Inc. (CFO)	(422)	-	-	(422)	18
Domgroup Ltd.	-	(14)	(95)	(109)	
Zeifman and Company	(93)	(4)	-	(97)	
10 Toronto Street Inc.	-	(41)	(254)	(295)	
Other Professionals	(203)	(60)	(65)	(328)	
Total Finance, Tax Administration and Financial Advisor Fees	(1,283)	(1,119)	(414)	(2,816)	18
Operating Costs Related to Premises	(207)	(207)	(284)	(698)	19
Taxes	-	24	94	118	20
Foreign Exchange	(152)	27	(41)	(166)	21
Other	(317)	(14)	(86)	(417)	22
Total Disbursements Before Payments to Creditors	(11,727)	(6,126)	(6,326)	(24,179)	
Distributions to Creditors	-	(2,175)	(4,500)	(6,675)	23
Change in cash	(1,023)	5,369	(4,177)	169	
Closing Cash Balance	472	5,841	1,664	1,664	

The ending cash balances of the principal Non-Applicants (with material amounts of cash), excluding the Domgroup Post Retirement Benefits Trust, were as follows:

10 Toronto Street Inc.	7,394	4,344	1,594	1,594
Domgroup Ltd.	31,296	24,039	17,716	17,716
Consolidated Ending Cash Balance	39,161	34,224	20,974	20,974

The accompanying notes form an integral part of this statement
Unaudited - Prepared from information provided by the Applicants and Non-Applicants
Refer to Terms of Reference

Appendix A

Hollinger Inc., 4322525 Canada Inc., Sugra Limited
Notes to the Applicants' Statement of Receipts and Disbursements
August 1, 2007 to February 28, 2011

Background

Since prior to filing, the Applicants have not conducted any active business. They are exclusively engaged in winding up their affairs and realizing on their assets (including the claims that are subject to the Settlements and other Litigation Assets) with a view to distributing the net proceeds to stakeholders in accordance with their legal entitlements, all under the supervision of this Honourable Court and in accordance with the MPSA. A copy of this Honourable Court's Order approving the MPSA dated May 21, 2008 is attached as Appendix D to this Seventeenth Report.

The Applicants' current principal activities involve:

- the legal wind-up of its affiliates, 10 Toronto and Domgroup (including its wholly-owned subsidiaries), to permit the recovery of the amounts owed by these affiliates to the Applicants;
- the determination of claims against the Applicants pursuant to the Applicants' Claims Order;
- investigation, pursuit and realization of the Applicants' Litigation Assets;
- the participation in an Interpleader Action and claims process initiated by Hollinger and STMG in the Delaware Superior Court to determine entitlement to insurance proceeds;
- matters relating to the preservation of the records of Hollinger pursuant to Court orders made in the proceedings which involved the appointment of the Inspector; and
- when appropriate, the distribution of the Applicants' assets to stakeholders, subject to this Honourable Court's approval, possibly, but not necessarily, by way of a plan of arrangement.

Throughout these proceedings, the Monitor has regularly delivered communications and court reports that are available on its website (www.ey.com/ca/hollinger) containing the Applicants' statements of receipts and disbursements, cash projections and periodic updates on any material activities and initiatives undertaken, including those of the Non-Applicant subsidiaries.

For presentation purposes, the Monitor has divided these proceedings into the following three main time periods:

- from August 1, 2007 until the MPSA was approved by an order of this Honourable Court (i.e. May 21, 2008);
- from May 22, 2008 until STMG filed for protection under Chapter 11 of the U.S. Bankruptcy Code (i.e. March 31, 2009); and
- from April 1, 2009 to present, during which time the Applicants have been principally engaged in the pursuit of the Litigation Assets.

A full description of the activities during each of the three periods is contained in the Seventeenth Report of the Monitor.

Cash Balances

1. Cash Balances are shown in the Applicants' Statement of Receipts and Disbursements thousands of Canadian dollars and exclude approximately $0.6 million held in trust by Aird & Berlis LLP for the officers' indemnity trust. The Opening Cash Balance includes approximately $0.6 million held in a bank account in the name of Holcay Holdings, a wholly-owned subsidiary of Hollinger Inc.

Receipts

2. Sale of Assets consists primarily of the payment in full of the promissory note of US $4.2 million, issued by Cayman Islands Free Press in favour of Holcay Holdings Ltd. As a condition of sale of Holcay's investment in Cayman Islands Free Press, and a US $1.0 million dividend payment from Cayman Islands Free Press.

3. Other Receipts consist primarily of a payment received from the Ravelston Corporation Limited, ("RCL") relating to Hollinger's portion of the remaining proceeds from the settlement by RCL with CanWest Global Communications Corp. Pursuant to this

Honourable Court's Order, dated March 26, 2009, STMG is required to share all proceeds from this settlement equally with Hollinger. In addition, Other Receipts include the return of unclaimed dividends that were held by Computershare Investment Trust from dividends that were declared and issued by Hollinger well before the commencement of these proceedings.

4. Inter-company Accounts Receivable (Payable) to 10 Toronto consist of the net inter-company receipts from 10 Toronto on account of its indebtedness to the Applicants.

5. Inter-company Accounts Receivable (Payable) to Domgroup primarily consist of the net inter-company receipts from Domgroup on account of its net indebtedness to the Applicants, offset by the payment of interest on account of draws made on the debtor-in-possession ("DIP") facility between Domgroup and Hollinger, pursuant to an Order of this Honourable Court dated May 27, 2010 and amended on December 15, 2010. As previously reported, during the week ended October 5, 2007, Holcay Holdings repaid in full its $1.7 million inter-company amounts owing to Domgroup.

6. DIP Borrowings represent borrowings on the DIP facility between Domgroup and Hollinger in accordance with the Order dated May 27, 2010 and amended on December 15, 2010.

Disbursements

All amounts include GST and HST, as applicable. Due to the tax status of the Applicants, they are not eligible for any reimbursement of these taxes.

7. Payroll & Benefits represent a reimbursement to 10 Toronto by Hollinger for 50% of the total employee related costs of 10 Toronto, including payroll, benefits and severance costs.

8. Directors Fees and D&O Insurance represent the payments to former members of the board of directors of Hollinger for services performed and the purchase of a run-off insurance policy.

9. General Corporate and Litigation Legal Fees represent fees paid to date on account of general corporate and litigation services. The Applicants were involved in a number of

legal initiatives both prior to August 1, 2007 and subsequent to filing. The legal initiatives included but were not limited to:

- the CCAA and Chapter 15 proceedings, including preparing for mediations and the Chapter 15 adequate protection motions;
- the changes to the STMG board;
- advice to the Applicants' board of directors;
- matters related to on-going criminal proceedings in Illinois;
- matters related to claims by the Securities and Exchange Commission of the United States;
- pursuit of the Litigation Assets, including the mediations and the Settlement approval process for the Torys Settlement and KPMG Settlement and the fees and disbursements incurred by the Litigation Trustee; and
- Ontario Securities Commission ("OSC") proceedings and compliance with provincial securities law.

10. Chapter 15 Legal Fees reflect the legal fees associated with the Chapter 15 filing and certain other US legal issues.

11. Legal fees for Weil, Gotshall & Manges LLP are presented net of a retainer refund of $123,000 which was provided in March 2009.

12. *CCAA* Legal Fees reflect the legal fees of the Applicants' counsel.

13. *CCAA* Monitor Fees reflect the fees and disbursements of the Monitor and of both its Canadian and U.S. counsel.

14. Ernst & Young Inc. (Inspector) consist of the fees and costs of Ernst and Young Inc. in its capacity as Court-Appointed Inspector relating to dealing with documents of the Applicants under the custody and control of the Inspector pursuant to paragraph 9 of this Honourable Court's Order dated December 15, 2006, a copy of which is attached as Appendix B to this Seventeenth Report.

15. Nash Consulting disbursements relate to the fees and costs of a firm engaged by the Applicants to catalogue and administer their records pursuant to Court orders made in the proceedings which involved the appointment of the Inspector.

16. Contractor Fees represent fees paid to external contractors for services rendered to the Applicants, including the former CEO and the current CRO. In accordance with the terms of the MPSA that were approved by an Order of this Honourable Court dated May 21, 2008, BlueTree Advisors Inc., an entity controlled by William Aziz, CA, was appointed as the CRO of the Applicants and an officer of the Court in consideration of a monthly fee of $65,000, plus GST as applicable and reimbursement of reasonable expenses. All monthly work fees payable under Hollinger's consulting agreement with VC & Co Incorporated, an entity controlled by G. Wesley Voorheis, the former CEO of the Applicants, were suspended pursuant to the MPSA. Mr. Voorheis resigned as an officer and director of the Applicants effective as of May 21, 2008. The provisions of the MPSA deferred a fee payable pursuant to this consulting agreement, to be paid depending on the returns to be potentially realized on the Litigation Assets as a result of actions undertaken or threatened by the Litigation Trustee.

No additional fees have been paid by the Non-Applicants to the former CEO and CRO since August 1, 2007. The fees paid by the Applicants to the former CEO and the CRO have not yet been allocated by Hollinger to the Non-Applicants.

17. The Applicants' financial advisor, BMO Nesbitt Burns Inc. ("BMO"), provided financial advice and analysis to the Applicants. BMO's fees were protected under the Administration Charge in the Initial Order, as amended. BMO's engagement agreement provided for success fees payable in respect of various events and transactions, past and future. The Applicants and BMO, in consultation with counsel for STMG and DK, agreed to resolve the outstanding amount owed to BMO with a payment of $1 million as a full and final settlement of all transaction fees owing under the BMO engagement letter. The payment to BMO was approved by an Order of this Honourable Court dated November 26, 2008

18. Finance, Tax Administration and Financial Advisor Fees represent payments to various professionals including Hollinger's auditors, financial advisor, and transfer agent.

Financial, Tax, Administration and Financial Advisor Fees also include a reimbursement to 10 Toronto for the Applicant's portion of advisor fees incurred and paid by 10 Toronto. For the period from August 1, 2007 to May 21, 2008 inclusive, BlueTree Advisors Inc., an entity controlled by William Aziz, CA, acted as CFO of the Applicants. The fees paid by the Applicants to the former CFO have not yet been allocated by Hollinger to the Non-Applicants.

19. Operating Costs related to premises represent the Applicants' portion of costs for leases payments and operating costs shared with the Non-Applicants.

20. Taxes include the receipt of certain tax refunds.

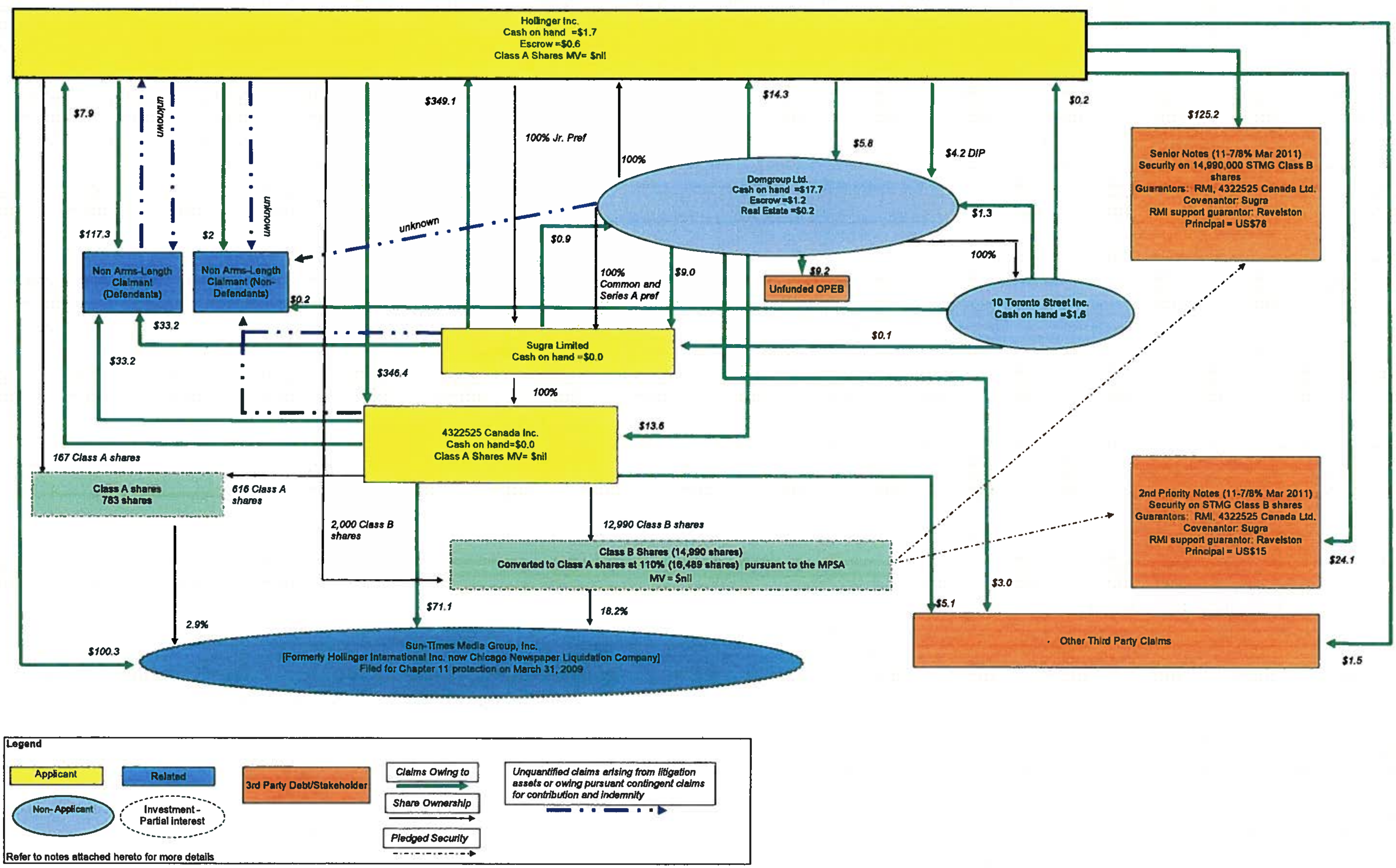
21. Foreign Exchange represents the effect of translating the Applicants' US dollar cash balances into Canadian dollars.

22. Other disbursements include sundry expenses including computer support, TSX fees and other disbursements.

23. Distributions to creditors represent the various priority distributions as contemplated in the MPSA and approved by an Order from this Honourable Court dated May 21, 2008.

APPENDIX G

As at February 28, 2011 (except as indicated in the accompanying notes)
CDN $ millions
Shares 000's



The accompanying notes are an integral part of this summary
Unaudited - Prepared based on information provided by the Applicants and the Non-Applicants.

Notes to the Waterfall Summary

Overview

1. The "waterfall" analysis has been prepared based on unaudited information provided by the Applicants and the Non-Applicants with the assistance of the Monitor. and includes information relating to:

   - the Applicants, consisting of:
     - Hollinger;
     - Sugra; and
     - 432 Canada; as well as
   - certain non-Applicant subsidiaries (the "Non-Applicants") comprised of:
     - Domgroup; and
     - 10 Toronto

2. The Waterfall Summary is based on the unaudited and unconsolidated financial information of the Applicants and the Non-Applicants, as well as certain supporting financial schedules, as at February 28, 2011. The Monitor has not performed an audit or other verification of such information.

3. All dollars amounts are expressed in Canadian dollars, except where otherwise noted, and are approximate.

4. The Waterfall Summary provides a summary of both the Applicants' and the Non-Applicants' significant assets and inter-company amounts receivable and payable between the Applicants and the Non-Applicants as of February 28, 2011.

5. Please refer to the Monitor's Third Report for illustrative information pertaining to additional upstream inter-company amounts between related parties and the Applicants and Non-Applicants.

6. The Waterfall Summary reflects certain claims by Non Arms-Length creditors that are also defendants to actions commenced or threatened by the Litigation Trustee. However,

certain of these claims include provisions for contribution and indemnity claims which are not quantifiable as this time.

7. The Waterfall Summary presents the inter-company accounts receivable and inter-company accounts payable on a gross basis, before any management valuation allowance, except as explicitly stated.

8. For financial statement disclosure purposes, management historically made assessments of the collectability of the inter-company and third party accounts receivable and, in certain circumstances, applied a valuation allowance. These valuation allowances as of June 30, 2007 are shown in the schedules included in Appendix B of the Monitor's Third Report.

9. These Notes to the Waterfall Summary indicate potential priority claims that have been asserted by certain creditors.

10. Except with respect to claims by the Noteholders, neither the Applicants nor the Monitor have finally determined the ranking or validity of all claims or the validity and enforceability of any security, subordinations, trust or escrow agreements. Any references suggesting security or priority are those of the Applicants and have not been reviewed or verified.

11. The claim amounts shown herein reflect the current status as of February 28, 2011.

12. The Applicants advise that they and the Non-Applicants remain subject to audit and assessment/re-assessment by the relevant tax authorities for certain periods. The Monitor is advised that both the Applicants and the Non-Applicants are in the process of implementing a tax minimization strategy.

13. The Applicants believe that the resolution or determination of all of these contingent assets and liabilities will have a material impact on the recoveries to stakeholders.

14. The Monitor notes that certain assets and liabilities reflected in the Waterfall Summary are denominated in U.S. dollars (although translated to and reflected in Canadian dollars) and therefore are subject to foreign exchange volatility over time.

15. Pursuant to paragraph 18 (b) of the MPSA, the claims of the Indenture Trustees under the two debentures dated March 10, 2003 and September 30, 2003 continue to accrue interest

in accordance with the debentures at the contractual rate until they are paid in full. Consequently, the amounts included in the waterfall and the claims analysis reflect these claims valued as of February 28, 2011.

16. The following notes provide a summary of pertinent information and considerations for each of the Applicants and Non-Applicants and are to be read in conjunction with the Waterfall Summary.

<u>10 Toronto</u>

17. 10 Toronto is a wholly-owned subsidiary of Domgroup. 10 Toronto currently utilizes the services of two former employees of 10 Toronto on a contract basis.

18. At the outset of the *CCAA* proceedings 10 Toronto had several employees, all of whom have since been relieved of their duties as the need for their services diminished. The Non-Applicants advise that severance amounts were fully paid to these employees and they have released all claims against 10 Toronto.

19. The assets of 10 Toronto include $1.6 million of cash on hand as at February 28, 2011. The Company has completed the sale of its remaining artwork through auctions and the proceeds are included in the cash balance.

20. 10 Toronto has inter-company accounts payable due to the Applicants and Non-Applicants of:

- $0.3 million due to the Applicants, of which approximately $0.2 million is due to Hollinger (with the balance of $0.1 million due to Sugra). 10 Toronto had previously agreed to pay down its inter-company balance in order to fund the Applicants' on-going cash requirements (on an as-needed basis) during the *CCAA* proceedings, subject to approval from its board of directors and the Court. Since the date of filing 10 Toronto has funded $10.1 million thereby reducing the outstanding balance outstanding to the Applicants as at June 30, 2007, including interest, to $0.3 million; and
- $1.3 million is due to Domgroup.

21. Ravelston Corporation Limited ("RCL") filed a proof of claim against 10 Toronto in respect of an inter-company advance of $0.5 million. Based on information provided by

the Non-Applicants, the Monitor issued a Notice of Disallowance stating that amounts claimed by RCL in its Proof of Claim should be fully set off by the amounts owed to 10 Toronto in respect of management services performed and invoiced and which remain unpaid. RCL filed a Notice of Dispute. The Applicants and the Monitor are in discussions with counsel to RCL to discuss resolving the claim without the need for adjudication.

22. Domgroup and STMG are the only two secured creditors of RCL. Pursuant to the MPSA, any recoveries from RCL would be shared equally between STMG and Domgroup. The CRO of Domgroup agreed to waive its portion, representing 50% of the total claim, in exchange for which RCL reduced the amount of its Notice of Dispute with 10 Toronto from approximately \$0.5 million to \$0.2 million. Pursuant to the Non-Applicants' Claims Order, as a non-arm's length creditor, this claim will be referred to this Honourable Court for adjudication, if necessary.

<u>Domgroup</u>

23. The assets of Domgroup include:

- Cash of \$17.7 million at February 28, 2011;
- Funds held in escrow in the amount of \$1.2 million. The funds are held in escrow as security for funding certain defaults, should they occur, with respect to the unfunded group health and life insurance benefits plans for specified retirees of the former Dominion Stores. As approved by Order of this Honourable Court dated November 26, 2008, Koskie Minsky LLP was appointed Representative Counsel for these trust beneficiaries;
- Representative Counsel filed a claim in the amount of \$9.2 million. The Non-Applicants believe that a final settlement should be closer to \$6.3 million. The Monitor has observed good faith efforts by both parties to resolve the actuarial differences and to decide on a settlement mechanism. Over the course of the next few weeks Domgroup and Representative Counsel will continue to negotiate an agreement to be brought before this Honourable Court for approval. A settlement will permit Domgroup to continue to wind up its affairs and return any surplus

funds to the Applicants, after satisfying third party liabilities, as repayment of intercompany balances contemplated in the Non-Applicants' Claims Order and in accordance with the MPSA. If a resolution cannot be achieved, it may be necessary to have the matter addressed by this Honourable Court;

- Interest in real estate consisting of the following owned properties:
  - 528 Smythe Street, in Fredericton, New Brunswick. This property was sold on March 2, 2011 for $150,000; and
  - A small remnant strip of land, Plan 335 Sheet 21 PT LOT C11, King St W., in Oshawa, Ontario with little to no commercial value;
- Inter-company accounts receivable from the Applicants and Non-Applicants totalling $11.9 million, including:
  - $1.3 million due from 10 Toronto;
  - $0.9 million due from Sugra. The Monitor notes that Domgroup owes Sugra $9.0 million;
  - $5.8 million due from Hollinger. The amount due from Hollinger previously included accrued interest. Upon investigation of the books and records, management could not support the accrued interest obligation and in June 2008 the interest amount of $3.4 million was written off. The receivable is denominated in U.S. dollars and is revalued using the month-end noon rate from the Bank of Canada. The Monitor notes that Domgroup owes Hollinger $14.3 million;
  - As previously reported and as approved by an Order of this Honourable Court dated May 27, 2010 and subsequently amended on December 15, 2010, Domgroup entered into an agreement to provide a $5.2 million DIP loan facility to the Applicants, with interest to be charged to Hollinger at the Canadian Imperial Bank of Commerce's Prime Rate plus 3% per annum on any draws made on the loan and interest paid monthly. During the period from May 1, 2010 to February 28, 2011, Hollinger drew $4.2 million on the DIP facility.

- The Waterfall Summary does not reflect inter–company amounts owing to Domgroup's inactive Non-Applicants, including Safeguard Drugs, Quintana Sales, 021173 NB (formerly Willet Foods) and Highway Markets. The Non-Applicants have advised that these subsidiaries had minimal third party assets and liabilities and have been wound up.

24. Domgroup's inter-company liabilities due to the Applicants and Non-Applicants include:

- $14.3 million due to Hollinger relating to accumulated intercompany advances and repayments. As stated in the Monitor's Third Report issued September 7, 2007, Domgroup had inter-company liabilities due to Hollinger as of June 30, 2007 of $23.6 million. Domgroup subsequently agreed to pay down its inter-company balance owed to Hollinger, subject to approval from its board of directors and pursuant to Court approval. Since then, Domgroup has repaid $10.4 million, thereby reducing the outstanding balance, including interest, to $14.3 million. The remaining balance due is non-interest bearing. Domgroup also has a receivable of $5.8 million due from Hollinger;
- $9.0 million due to Sugra, consisting of principal of $4.0 million plus interest, pursuant to a promissory note. The promissory note indicates that it is secured by a General Security Agreement ("GSA"). Sugra has not been able to locate a signed GSA. The Applicants advise that no security has been registered at this time. Domgroup also has a non-interest bearing receivable of $0.9 million due from Sugra; and
- $13.6 million due to 432 Canada, including principal of $6.0 million plus interest evidenced in the form of a promissory note. The promissory note indicates that it is secured by a GSA. 432 Canada has not been able to locate a signed GSA. The Applicants advise that no security has been registered at this time.

25. RCL and Ravelston Management Inc., by its Receiver and Manager and Interim Receiver, RSM Richter Inc. (together hereinafter defined as "the Ravelston Group"), a Non Arms-Length creditor, asserted a contingent claim to preserve any claim for set-off, reimbursement, contribution, indemnity, costs and other relief against Domgroup on account of claims sought by Domgroup in an action commenced by Domgroup and

others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 05-CL-5822. Based on information provided by the Non-Applicants, the Monitor issued a Notice of Disallowance for this claim. This notice was not disputed and the allowed time for dispute under the Non-Applicants' Claims Order has lapsed.

26. In addition, The Ravelston Group, Argus Corporation Limited, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 506646 N.B. Inc. and 509647 N.B. Inc., asserted a contingent claim to preserve any set-off, reimbursement, contribution, indemnity, costs and other relief against Domgroup on account of claims sought by Domgroup and others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 06-CL-6261. Based on information provided by Management, the Monitor issued a Notice of Disallowance for this claim. The Ravelston Group has filed a Notice of Dispute. The Applicants and the Monitor are in discussions with counsel to the Ravelston Group with a view to resolving the claim without the need to proceed to Court for adjudication.

27. Crystalline Investments Limited ("Crystalline") and Burnac Leaseholds Limited ("Burnac") filed claims against Domgroup totalling approximately $2.7 million relating to former real estate property leases held by Domgroup. In consultation with the CRO, the Monitor issued Notices of Disallowance reducing the claims to nil. Both Burnac and Crystalline filed Notices of Dispute. Given the size of these two claims, the Non-Applicants, in consultation with both the Monitor and its key stakeholders, sought to refer these claims to this Honourable Court for determination pursuant to the provisions of the Non-Applicants' Claims Process. In December 2010, this Honourable Court declined to hear the matter and directed that it be adjudicated by the Claims Officer. The hearing before the Claims Officer is in progress.

<u>Sugra</u>

28. Sugra is a wholly-owned subsidiary of Hollinger. Sugra's primary function was to manage the operations of the Hollinger group's private aircraft and related personnel until this function was transferred to Hollinger Aviation in February 2002.

29. Sugra is a covenantor under the senior and second lien notes.

30. Sugra's assets include inter-company accounts receivable from the Applicants and Non-Applicants totalling $9.1 million, including:

- $0.1 million due from 10 Toronto; and
- $9.0 million due from Domgroup, consisting of principal of $4.0 million plus interest, pursuant to a promissory note. The promissory note indicates that it is secured by a GSA. Sugra has not been able to locate a signed GSA. The Applicants advise that no security has been registered at this time. Sugra also has a non-interest bearing payable of $0.9 million due to Domgroup.

31. Sugra's liabilities consist primarily of $349.1 million due to Hollinger. The Monitor has not undertaken any review of the historical transactions that give rise to this inter-company payable.

32. The Ravelston Group, Argus Corporation Limited, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 506646 N.B. Inc. and 509647 N.B. Inc., asserted a contingent claim to preserve any set-off, reimbursement, contribution, indemnity, costs and other relief against Sugra on account of claims sought by Sugra and others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 06-CL-6261. Based on information provided by the Applicants, the Monitor issued a Notice of Disallowance for this claim. The Ravelston Group has filed a Notice of Dispute. The Applicants and the Monitor are in discussions with counsel to the Ravelston Group with a view to resolving the claim without the need to proceed to Court for adjudication.

33. A Non Arms-Length creditor who is also a defendant to actions commenced or threatened by the Litigation Trustee has filed a $33.2 million claim against Sugra in the Applicants' Claims Process.

<u>432 Canada</u>

34. 432 Canada is a wholly-owned subsidiary of Sugra. 432 Canada is a guarantor under the senior and second lien notes and has granted security over certain of its assets, including its shares of STMG.

35. 432 Canada's assets include:

- 14,904,944 Class A shares of STMG, which combined with the 2,366,979 shares held by Hollinger, comprise a total of 17.3 million Class A Shares and approximately 21.1% of the Class A shares of STMG. At the date of the *CCAA* filing, 432 Canada owned 12.99 million Class B shares of STMG, which combined with the 2.0 million shares held by Hollinger, comprised 100 percent of STMG's Class B shares. The STMG Class B shares possessed ten to one multiple voting rights, compared to the STMG Class A shares, which provided the Applicants with voting control of STMG. These shares were not publicly traded. Pursuant to paragraph 4 of the MPSA, STMG agreed to convert the Class B shares into Class A shares at a conversion rate of 1 to 1.1.;

- 615,944 of the Class A shares of STMG held in support of share exchange requests made by holders of the 1.7 million of Hollinger's Series II preference shares. These Class A shares were held pursuant to an escrow agreement with Computershare Trust Company of Canada ("Computershare"). The Applicants obtained an Order to terminate the Escrow Agreement and relieve Computershare of its obligation to hold the Class A shares of STMG. The STMG shares were returned to Hollinger. As a result of STMG's bankruptcy proceedings, the market value of the Applicants' Class A common shares in STMG declined to $nil.

- Inter-company accounts receivable from the Applicants and Non-Applicants totalling $359.8 million including:

  - $346.4 million due from Hollinger. The Monitor has not undertaken any review of the historical transactions that gave rise to this inter-company account receivable. 432 Canada also has $7.9 million in accounts payable to Hollinger. Pursuant to the MPSA, 50% of the net inter-company balance between Hollinger and 432 Canada will be recognized for the purposes of calculating a distribution; and

  - $13.6 million due from Domgroup, consisting of $6.0 million plus interest evidenced in the form of a demand promissory note. The promissory note indicates that it is secured by a GSA. 432 Canada has not been able to locate a signed GSA. The Applicants advise that no security has been registered at this time.

36. 432 Canada's liabilities include:

- $71.1 million due to STMG consisting of principal of US$20.4 million plus interest at 16.5 percent per annum, compounded quarterly, pursuant to a demand promissory note (the "432 Note"). The 432 Note is subject to a subordination agreement with respect to the principal and interest owing pursuant to the notes issued under the indentures. The 432 Note amount was confirmed in the MPSA. Interest continues to accrue;

- Claims by the Canada Revenue Agency and the Ministry of Revenue in the combined amount of $5.1 million, primarily related to the imposition of gross negligence penalties for the year ended December 31, 2004. Based on information provided by the Applicants, the Monitor issued Notices of Revision reducing the claims to $0.2 million. These creditors have filed Notices of Dispute. The claim, if not resolved, will be referred to the Claims Officer for adjudication;

- A non-arm's length creditor who is also a defendant to actions commenced or threatened by the Litigation Trustee has filed a $33.2 million claim against 432 Canada in the Applicants' Claims Process; and

- The Ravelston Group, Argus Corporation Limited, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 506646 N.B. Inc. and 509647 N.B. Inc., asserted a contingent claim to preserve any set-off, reimbursement, contribution, indemnity, costs and other relief against 432 Canada on account of claims sought by 432 Canada and others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 06-CL-6261. Based on information provided by the Applicants, the Monitor issued a Notice of Disallowance for this claim. The Ravelston Group has filed a Notice of Dispute. The Applicants and the Monitor are in discussions with counsel to the Ravelston Group with a view to resolving the claim without the need to proceed to Court for adjudication.

Hollinger

37. Hollinger and the other Applicants do not conduct any direct business operations of their own. One asset is their direct and indirect ownership interest in STMG referred to above.

38. Hollinger's other principal assets are:

- The Litigation Assets, including claims asserted or threatened against a number of parties in five principal proceedings, including in the threatened proceedings which are subject of the Settlements. The aggregate amount of damages claimed in all of these actions or threatened actions exceeds $1.5 billion. The Monitor notes that the aggregate value of these assets is uncertain at present but may be material. The Applicants have expressed their view to the Monitor that these assets have significant value. The Monitor has not conducted any assessment of the Litigation Assets;
- a direct or indirect interest in certain active and inactive Non-Applicants, including 10 Toronto and Domgroup;
- Cash of $1.7 million at February 28, 2011;
- Cash held in escrow in the amount of $0.6 million. The escrowed funds are in support of Hollinger's indemnities in respect of one current and one former officer. The Monitor has not evaluated and expresses no view on the enforceability of the escrow arrangement;
- Hollinger's share of the U.S. $24.5 million of insurance settlement proceeds from the fourth excess layer of directors' and officers' insurance previously held by the Applicants. An interpleader action was commenced in the Delaware Superior Court. Pursuant to the MPSA, STMG and Hollinger agreed to share any proceeds 85 percent and 15 percent, respectively;
- Hollinger has significant tax losses and is in the process of evaluating whether such losses can be monetized for the benefit of Hollinger's stakeholders;
- Intercompany accounts receivable from the Applicants and Non-Applicants totalling $371.3 million, including:

- $0.2 million due from 10 Toronto. 10 Toronto previously agreed to pay down its inter-company balance in order to fund the Applicants' ongoing cash requirements (on an as-needed basis) during the CCAA proceedings (subject to approval from its board of directors and the Court). To date, since the initiation of the CCAA proceedings, 10 Toronto has repaid $9.4 million to Hollinger;
- $349.1 million due from Sugra. The Monitor has not undertaken any review of the historical transactions that gave rise to this inter-company account receivable;
- $14.3 million due from Domgroup, relating to accumulated inter-company advances and repayments. There is no interest applied to this amount; and
- $7.9 million due from 432 Canada.

39. In addition to the indebtedness owing pursuant to the Applicants' Senior First Lien Notes in the amount of US $78 million and Senior Second Lien Notes in the amount of US $15 million, Hollinger's inter-company accounts payable due to the Applicants and Non-Applicants liabilities include:

- $346.4 million due to 432 Canada. The Monitor has not undertaken any review of the historical transactions that gave rise to this inter-company account payable. Hollinger also has receivables of $7.9 million due from 432 Canada. Pursuant to the MPSA, 50 percent of the net inter-company balance between Hollinger and 432 Canada will be recognized for the purposes of calculating a distribution;
- $5.8 million due to Domgroup. The amount due to Domgroup previously included accrued interest. Upon investigation of the books and records, management could not support the accrued interest obligation and in June 2008 the interest in the amount of $3.4 million was written off; and
- As previously reported and approved by an Order of this Honourable Court dated May 27, 2010 and subsequently amended on December 15, 2010, Domgroup provided a $5.2 million DIP loan facility to the Applicants, with interest to be charged to Hollinger at the Canadian Imperial Bank of Commerce's Prime Rate

plus 3 percent per annum on any draws made on the loan. During the period from May 1, 2010 to February 28, 2011, Hollinger drew $4.2 million on the DIP facility.

40. Hollinger executed a Limited Recourse Guarantee and a Security Agreement in favour of STMG on March 10, 2003 with respect to 432 Canada's obligations under the 432 Note. The Applicants advise that STMG's rights under the 432 Note and Security Agreement executed by Hollinger are limited to any recovery obtained under a guarantee executed by RCL in favour of Hollinger that was assigned and pledged by Hollinger to STMG. STMG filed claims totalling $100.3 million against Hollinger, including a $71.1 million claim under the guarantee. The Applicants believe that pursuant to the MPSA, STMG should not have claimed this $71.1 million against Hollinger.

41. The Ravelston Group, a Non Arms-Length creditor, asserted a contingent claim to preserve any set-off, reimbursement, contribution, indemnity, costs and other relief against Domgroup on account of claims sought by Domgroup in an action commenced by Domgroup and others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 05-CL-5822. Based on information provided by the Non-Applicants, the Monitor issued a Notice of Disallowance for this claim. This notice was not disputed and the allowed time for dispute under the Non-Applicants Claim Order has lapsed.

42. In addition, The Ravelston Group, Argus Corporation Limited, 509643 N.B. Inc., 509644 N.B. Inc., 509645 N.B. Inc., 506646 N.B. Inc. and 509647 N.B. Inc., asserted a contingent claim to preserve any set-off, reimbursement, contribution, indemnity, costs and other relief against Hollinger on account of claims sought by Hollinger and others against the Ravelston Group in the Ontario Superior Court of Justice as Court File No. 06-CL-6261. Based on information provided by the Applicants, the Monitor issued a Notice of Disallowance for this claim. The Ravelston Group has filed a Notice of Dispute. The Applicants and the Monitor are in discussions with counsel to the Ravelston Group with a view to resolving the claim without the need to proceed to Court for adjudication.

43. Non Arms-Length creditors who are also defendants to actions commenced or threatened by the Litigation Trustee, have filed quantifiable claims of $117.3 million against Hollinger in the Applicants' Claims Process which include:

- a claim of $83.0 million plus an unknown contingent claim for contribution and indemnity;
- a claim of $0.9 million plus an unknown contingent claim for contribution and indemnity;
- a claim of $0.2 million plus an unknown contingent claim for contribution and indemnity;
- a claim of approximately $5,000 plus an unknown contingent claim for contribution and indemnity; and
- a claim of $33.2 million, including an estimated amount for contribution and indemnity.

44. As previously reported, Catalyst, a Non Arms-Length creditor, has recently asserted that its claim against Hollinger of approximately $2.0 million is a super-priority claim. In the Applicants' Claims Process, the claim was originally filed with the Monitor by Catalyst as an unsecured claim against Hollinger. This matter will be adjudicated by this Honourable Court.

Lisa C Munro

From: Matthew Lerner <mlerner@litigate.com>
Sent: June-21-11 6:11 PM
To: Maria Magni; Andrea McKinnon; Andrew Hatnay; Bell, Derek; Benchetrit, George; Bruzzese-Szczygiel, Pamela; Chaiton, Harvey; Christopher Mediratta; Corne, Lisa; Craig Wolfe; David Moore; Denega, Brian; Diana Soos; Dietrich, Jane; Frederick Myers; Geoffrey Gomery; Horwitz, Sandra; Irwin Nathanson; J. L. McDougall; Joseph Pasquariello; Kathryn Podrebarac; Kenneth Jones; Kenneth Kraft; Kevin Smith; Kyla Mahar; Leanne Williams; MacFarlane, Alex; Mark Zigler; Melaney Wagner; Lisa C Munro; Norman Emblem; Peter Griffin; Peter-Paul Du Vernet; Raymond Slattery ; Retter, David; Rick Orzy; Riley, James; Robert Thornton; Sean Dewart; Staley, Robert; Stanley Freedman; Superina, Johanna; Thomas Korsman ; Zych, Kevin; Brad.T.Newman@ca.ey.com
Cc: Stephanie Gaudreau
Subject: RE: Hollinger Inc.
Attachments: Final 18th Report of the Monitor.pdf

To the Service List:

Further to the Applicants' and Non-Applicants' email below, please find attached the 18th Report of the Monitor regarding the motion returnable June 24, 2011 which is hereby served upon you.

Matthew Lerner
Lenczner Slaght
2600-130 Adelaide Street West
Toronto, Ontario M5H 3P5
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mlerner@litigate.com www.litigate.com

From: Maria Magni [mailto:MMagni@tgf.ca]
Sent: Tuesday, June 21, 2011 11:08 AM
To: Andrea McKinnon; Andrew Hatnay; Bell, Derek; Benchetrit, George; Bruzzese-Szczygiel, Pamela; Chaiton, Harvey; Christopher Mediratta; Corne, Lisa; Craig Wolfe; David Moore; Denega, Brian; Diana Soos; Dietrich, Jane; Frederick Myers; Geoffrey Gomery; Horwitz, Sandra; Irwin Nathanson; J. L. McDougall; Joseph Pasquariello; Kathryn Podrebarac; Kenneth Jones; Kenneth Kraft; Kevin Smith; Kyla Mahar; Leanne Williams; MacFarlane, Alex; Mark Zigler; Matthew Lerner; Melaney Wagner; Munro, Lisa; Norman Emblem; Peter Griffin; Peter-Paul Du Vernet; Raymond Slattery ; Retter, David; Rick Orzy; Riley, James; Robert Thornton; Sean Dewart; Staley, Robert; Stanley Freedman; Superina, Johanna; Thomas Korsman ; Zych, Kevin
Subject: Hollinger Inc.

Enclosed herewith please find the Applicants' and Non-Applicants' Motion Record returnable June 24, 2011, which we serve upon you pursuant to the *Rules of Civil Procedure*.

TGF Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Maria Magni | Legal Assistant to Leanne M. Williams and Danny M. Nunes | mmagni@tgf.ca | Direct Line: 416-304-1012 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

EIGHTEENTH REPORT OF THE MONITOR
June 21, 2011

1. On August 1, 2007, Hollinger Inc. ("Hollinger") and certain of its subsidiaries (collectively, the "Applicants") filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*") pursuant to the Order of this Honourable Court dated August 1, 2007 (the "Initial Order"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as the monitor of the Applicants (the "Monitor") in these *CCAA* proceedings.

PURPOSE

2. The purpose of this Eighteenth Report of the Monitor (the "Eighteenth Report") is to advise this Honourable Court with respect to the following:

   (a) the Applicants' actual cash receipts and disbursements;

   (b) the Applicants' updated cash flow projections;

   (c) the Applicants' request for an extension of the Stay Period;

   (d) the status of the discussions with Representative Counsel regarding the settlement of certain of Domgroup's liabilities;

   (e) the status of the settlement approval process; and

(f) the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

3. In preparing this Report, the Monitor has relied upon unaudited financial information and records of the Applicants and certain of their Non–Applicant subsidiaries and discussions with management of the Applicants and Non-Applicants. The Monitor has not performed an audit or other procedures to evaluate the reliability or completeness of the information. Accordingly, the Monitor expresses no opinion, or any other form of assurance, on the historical or prospective financial statements, management representations or other data included in this Report. An examination of the financial projection as outlined in the Canadian Institute of Chartered Accountants ("CICA") Handbook has not been performed. Future oriented financial information relied upon in this Report is based on management's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

4. Capitalized terms not defined in this Report are as defined in the Initial Order or previous reports of the Monitor. All references to dollars are in Canadian currency unless otherwise noted.

THE APPLICANTS' ACTUAL CASH RECEIPTS AND DISBURSEMENTS

5. A summary of the Applicants' actual receipts and disbursements for the period from November 13, 2010 to June 3, 2011, compared to their projections filed with this Honourable Court in the appendices to the Sixteenth Report is attached as Appendix "A" hereto.

6. As previously reported and approved by an Order of this Honourable Court dated May 27, 2010 and amended on December 15, 2010, Domgroup entered into a $5.2 million debtor-in-possession ("DIP") loan facility with Hollinger, with interest charged to and paid by the Applicants at the Canadian Imperial Bank of Commerce's Prime Rate plus 3% per annum on any draws made on the loan.

7. During the period from November 13, 2010 to June 3, 2011, Hollinger drew $2 million on the DIP facility. As of June 3, 2011 total drawings were $5.2 million.

8. As at June 3, 2011, the cash balances of each of the Applicants, excluding the $0.5 million held in trust by Aird & Berlis for the officers' indemnity trust and the principal Non-Applicants (with material amounts of cash), excluding the Domgroup Post Retirement Benefits Trust of $1.3 million, were as follows:

	(Cdn. Millions)
Applicants	$1.6
Domgroup	$16.5
10 Toronto	$1.7

9. As previously reported, the Applicants indicated that Domgroup had committed to repay (on an "as needed" basis) a portion of the $16.7 million of intercompany amounts owed to Hollinger as of March 31, 2008. There have been no intercompany payments from Domgroup to Hollinger during the period from November 13, 2010 to June 3, 2011.

10. As of June 3, 2011, Domgroup owed Hollinger approximately $14.3 million and Hollinger owed Domgroup $5.8 million. Pursuant to the terms of the DIP facility, any outstanding borrowings can be repaid by offsetting amounts owing from Domgroup to Hollinger. The net account receivable is $3.3 million after reflecting the potential offset for the $5.2 million of outstanding DIP borrowings.

THE APPLICANTS' UPDATED CASH FLOW PROJECTIONS

11. Attached as Appendix "B" is an updated cash flow projection for the period from June 4, 2011 to January 27, 2012 (the "Projection Period") prepared based on information provided by the Applicants.

12. The Applicants are projecting total net receipts of approximately $2.3 million, consisting primarily of a draw on the Domgroup DIP loan less interest, assuming this Honourable Court approves the requested increase to the DIP loan. The Applicants are projecting total cash disbursements of approximately $2.2 million, resulting in a net increase in cash of approximately $0.1 million over the Projection Period.

13. As described above, Domgroup advanced a $5.2 million DIP loan to the Applicants. The Monitor understands that, subject to approval from both its board of directors and this Honourable Court, Domgroup is prepared to modify the current DIP loan to increase the borrowing limit to $7.7 million. The interest rate will remain unchanged. The DIP loan will be repayable by offsetting amounts owing from Domgroup to the Applicants.

14. Based on the information contained in the affidavit filed by the Chief Restructuring Officer of the Applicants and Non-Applicants, dated June 21, 2011 (the "CRO Affidavit"), including his confirmation that there is sufficient cash to pay all third party creditors in full, there appears to be no prejudice to the stakeholders of Domgroup in the event that it makes the proposed $7.7 million DIP loan available to the Applicants.

APPLICANTS' REQUEST FOR AN EXTENSION OF THE STAY PERIOD

15. The Applicants are seeking an extension of the Stay Period to January 13, 2012 in order to permit them to continue to implement the Claims Order, the Non-Applicant Claims Order, the MPSA, to seek approval of the Torys and KPMG Settlements and to pursue the Litigation, all in order to bring forward a plan or plans of arrangement (if desirable) for consideration by all of the Applicants' stakeholders.

16. The Monitor is of the view that in seeking the extension of the Stay Period for the purposes noted above the Applicants are acting in good faith and with due diligence.

STATUS OF DISCUSSIONS WITH REPRESENTATIVE COUNSEL

17. As described in the Seventeenth Report of the Monitor, Domgroup's known liabilities include aggregate funding obligations of approximately $9.2 million for three groups:

    (a) retired employees who are entitled to post-retirement dental and health benefit plans and life insurance (collectively referred to as the "OPEB Beneficiaries");

    (b) retirees with long-term disability entitlements; and

    (c) pension top-up payments for specified retirees and/or their surviving spouses of the former Dominion Stores (the "Domgroup Pension Beneficiaries").

18. As approved by Order of this Honourable Court, dated November 26, 2008, Koskie Minsky LLP was appointed Representative Counsel for these claimants. On February 27, 2009, Representative Counsel filed a claim against Domgroup on behalf of the Domgroup Retiree Beneficiaries in the Non-Applicants' Claims Process relating to their post-retirement dental and health benefit plans, long term disability entitlements, pension top-up obligations and life insurance, and withdrew 17 of the 18 claims that had been filed by individuals.

19. The Monitor has attended numerous meetings between Domgroup and Representative Counsel (along with their respective actuaries). The issues to be resolved have been narrowed between Domgroup and Representative Counsel's various constituent groups.

20. In the fall of 2010, it became apparent that a final resolution of the claim would likely involve a cash payment to each of the Domgroup Pension Beneficiaries and the Domgroup OPEB Beneficiaries (collectively, the "Domgroup Retiree Beneficiaries"). The Non-Applicants and Representative Counsel agreed to seek an advance income tax ruling from the Canada Revenue Agency ("CRA") with regard to the tax treatment of the distributions. On April 21, 2011 CRA issued a favourable advance income tax ruling. Based on the CRA ruling, a deadline of October 21, 2011 has been given to issue payments to the employees of the Non-Applicants. Domgroup, along with Representative Counsel, expects to attend before this Honourable Court prior to this date to seek approval for distributions to the Non-Applicant employees.

21. The Monitor acknowledges the disappointment expressed by the CRO and is also concerned that if the terms of the settlement are not finalized and the approval of this Honourable Court sought very soon, then it may be necessary or appropriate to seek an alternative basis or a formal proceeding to resolve the Domgroup Retiree Beneficiaries' claims.

STATUS OF THE SETTLEMENT APPROVAL MOTION

22. Since delivery of the Seventeenth report of the Monitor, on May 11, 2011 Mr. Black obtained leave to appeal the protective order granted by this Honourable Court on

February 25, 2011 from the Court of Appeal for Ontario. Mr Black thereafter served a Notice of Appeal with respect to the protective order on May 12, 2011 (the "Appeal of the Protective Order").

23. The Appeal of the Protective Order is scheduled to be heard by the Court of Appeal for Ontario on August 24 and 25, 2011.

MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

24. The Applicants are continuing to pursue the realization of their assets, in particular the Litigation Assets, for the benefit of their stakeholders.

25. The Non-Applicants continue to seek the most effective way to wind up the Non-Applicants and to return surplus assets to the Applicants.

26. The CRO of the Non-Applicants is satisfied that modifying the DIP agreement as described above will not prejudice arms-length creditors of the Non-Applicants.

27. In the context of the foregoing, the Monitor recommends that this Honourable Court approve the Applicants' and Non-Applicants' request for orders:

    (a) extending the Stay Period to January 13, 2012; and

    (b) modifying the DIP agreement to increase the loan to $7.7 million.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF JUNE, 2011:

ERNST & YOUNG INC.

In its capacity as Court-appointed
Monitor of Hollinger Inc. and certain of its affiliates

Per:

Brian M. Denega
Senior Vice President

APPENDIX A

Hollinger Inc., 4322525 Canada Inc. and Sugra Limited (collectively the "Applicants")
Consolidated Weekly Cash Flow Variance Analysis compared to the November 12, 2010 Cash Flow Projection

C$ 000s	Projected Results from November 13, 2010 to June 3, 2011	Actual Results from November 13, 2010 to June 3, 2011	Variance	Notes
Opening Cash, ex. Funds in Trust	2,011	2,011		
Receipts				
Proceeds on sales of property	-	-	-	
Interest income	1	7	6	
Other	-	1	1	
Intercompany Accounts Receivable - 10 Toronto	-	-	-	
Intercompany Accounts Receivable - Domgroup	(142)	(144)	(2)	
DIP Borrowings	2,000	2,000	-	
Total receipts	1,859	1,864	5	
Disbursements				
General Corporate and Litigation fees	(581)	(926)	(345)	1
Chapter 15 Legal Fees (US)	(6)	-	6	
CCAA Legal Fees (Canada)	(420)	(193)	227	2, 3
CCAA Monitor Fees	(490)	(394)	96	
Contractor Fees	(514)	(523)	(9)	
Finance, Tax Administration and Financial Advisor Fees	(194)	(105)	89	4
Interest on Senior Secured Notes	-	-	-	
Operating Costs related to Premises	(92)	(87)	5	
Taxes	-	-	-	
Foreign Exchange	-	(4)	(4)	
Other	(84)	(84)	-	
Distributions to Creditors	-	-	-	
Total Disbursements	(2,381)	(2,316)	65	
Net Cash Inflow / Outflow	(522)	(452)	70	
Closing Cash Balance	1,489	1,559	70	

The Cash balance above is shown in thousands of Canadian dollars and excludes approximately $0.5 million held in trust by Aird & Berlis for the officers' indemnity trust.

1) Actual disbursements for General Corporate and Litigation Fees are higher than projected. The costs of the Delaware interpleader action have been greater than expected. The requirement to coordinate the arguments of the Delaware claims and rebuttals with those of the litigation trustee has increased costs. Further, the litigation trustee's costs have increased as mediation briefs and settlement agreements on a number of fronts have resulted in more work being required of counsel.

2) Legal fees associated with the Monitor were previously recorded in CCAA Legal fees. These fees have been reclassified in the Projected Results and Actual Results to CCAA Monitor Fees to better reflect the nature of these costs.

3) After giving effect to the reclassification discussed in point 2 above, the actual disbursements for CCAA Legal Fees are lower than projected. The difference is due to an over projection and a reduction in current legal fee billings.

4) Actual disbursements for Finance, Tax Administration and Financial Advisor Fees represent lower than projected payments to various professionals whose time is being managed. In addition, Computershare costs have been eliminated and the agreement discontinued.

APPENDIX B

Hollinger Inc., 4322525 Canada Inc. and Sugra Limited,
(collectively the "Applicants")
Weekly Cash Flow Projection
For the Period from June 4, 2011 to January 27, 2011

Projection for the Week Ending		2011	2011	2011	2011	2011	2011	2011	2011	2011
		1	2	3	4	5	6	7	8	9
C$ 000s	Notes	Friday 10-Jun	Friday 17-Jun	Friday 24-Jun	Friday 01-Jul	Friday 08-Jul	Friday 15-Jul	Friday 22-Jul	Friday 29-Jul	Friday 05-Aug
Opening Cash Balance	1	1,559	1,395	1,395	1,343	2,150	2,147	2,136	2,082	2,041
Receipts										
Interest Income	2	-	-	-	-	-	2	-	-	-
Other		-	-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - 10 Toronto		-	-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - Domgroup	3	-	-	-	(26)	-	-	-	-	(32)
DIP Borrowings	4	-	-	-	1,000	-	-	-	-	-
Total receipts		[illegible]	[illegible]	[illegible]	974	[illegible]	2	[illegible]	[illegible]	(32)
Disbursements										
General Corporate and Litigation Legal Fees	5	(140)	-	(6)	(63)	(8)	(8)	(8)	(13)	(63)
Chapter 15 Legal Fees (US)	6	-	-	-	-	-	-	-	-	-
CCAA Legal Fees (Canada)	7	-	-	(28)	-	-	-	-	(28)	-
CCAA Monitor and Claims Officer Fees	8	-	-	(18)	-	-	-	(45)	-	-
Contractor Fees	9	-	-	-	(73)	-	-	-	-	(73)
Finance, Tax Administration and Financial Advisor Fees	10	(18)	-	-	(18)	-	-	-	-	(18)
Interest on Senior Secured Notes	11	-	-	-	-	-	-	-	-	-
Operating Costs related to premises	12	(6)	-	-	(12)	6	(5)	-	-	(12)
Taxes	13	-	-	-	-	-	-	-	-	-
Foreign Exchange	15	-	-	-	(1)	-	-	-	-	(1)
Other	14	-	-	-	-	-	-	-	-	-
Total Disbursements		(164)	-	(53)	(167)	(2)	(13)	(53)	(41)	(167)
Net Cash Inflow / Outflow		(164)	-	(53)	807	(2)	(11)	(53)	(41)	(199)
Closing Cash Balance		1,395	1,395	1,343	2,150	2,147	2,136	2,082	2,041	1,842

See accompanying notes and assumptions which should be read in conjunction herewith

Hollinger Inc., 4322525 Canada Inc. and Sugra Limited,
(collectively the "Applicants")
Weekly Cash Flow Projection
For the Period from June 4, 2011 to January 27, 2011

Projection for the Week Ending		2011	2011	2011	2011	2011	2011	2011	2011	2011
		10	11	12	13	14	15	16	17	18
		Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday
C$ 000s	Notes	12-Aug	19-Aug	26-Aug	02-Sep	09-Sep	16-Sep	23-Sep	30-Sep	07-Oct
Opening Cash Balance	1	1,842	1,839	1,781	1,739	2,040	2,038	2,024	1,956	1,921
Receipts										
Interest income	2	-	-	-	-	-	-	-	2	-
Other		-	-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - 10 Toronto		-	-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - Domgroup	3	-	-	-	(32)	-	-	-	-	(33)
DIP Borrowings	4	-	-	-	500	-	-	-	-	-
Total receipts		[illegible]	[illegible]	[illegible]	468	[illegible]	[illegible]	[illegible]	2	(33)
Disbursements										
General Corporate and Litigation Legal Fees	5	(8)	(8)	(13)	(63)	(8)	(8)	(13)	(8)	(63)
Chapter 15 Legal Fees (US)	6	-	-	-	-	-	-	-	-	-
CCAA Legal Fees (Canada)	7	-	-	(28)	-	-	-	-	(28)	-
CCAA Monitor and Claims Officer Fees	8	-	(45)	-	-	-	-	(55)	-	-
Contractor Fees	9	-	-	-	(73)	-	-	-	-	(73)
Finance, Tax Administration and Financial Advisor Fees	10	-	-	-	(18)	-	-	-	-	(18)
Interest on Senior Secured Notes	11	-	-	-	-	-	-	-	-	-
Operating Costs related to premises	12	6	(5)	-	(12)	6	(5)	-	-	(12)
Taxes	13	-	-	-	-	-	-	-	-	-
Foreign Exchange	15	-	-	-	(1)	-	-	-	-	(1)
Other	14	-	-	-	-	-	-	-	-	-
Total Disbursements		(2)	(58)	(41)	(167)	(2)	(13)	(68)	(36)	(167)
Net Cash Inflow / Outflow		(2)	(58)	(41)	301	(2)	(13)	(68)	(34)	(201)
Closing Cash Balance		1,839	1,781	1,739	2,040	2,038	2,024	1,956	1,921	1,721

See accompanying notes and assumptions which should be read in conjunction herewith

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Hollinger Inc., 4322525 Canada Inc. and Sugra Limited,
(collectively the "Applicants")
Weekly Cash Flow Projection
For the Period from June 4, 2011 to January 27, 2011

Projection for the Week Ending		2011	2011	2011	2011	2012	2012	2012	2012
		27	28	29	30	31	32	33	34
		Friday	Friday	Friday	Friday	Friday	Friday	Friday	Friday
C$ 000s	**Notes**	**09-Dec**	**16-Dec**	**23-Dec**	**30-Dec**	**06-Jan**	**13-Jan**	**20-Jan**	**27-Jan**
Opening Cash Balance	1	1,601	1,599	1,585	1,532	1,491	1,786	1,784	1,715
Receipts									
Interest Income	2	-	-	-	-	-	-	-	-
Other		-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - 10 Toronto		-	-	-	-	-	-	-	-
Intercompany Accounts Receivable - Domgroup	3	-	-	-	-	(37)	-	-	-
DIP Borrowings	4	-	-	-	-	500	-	-	-
Total receipts		[redacted]							
Disbursements									
General Corporate and Litigation Legal Fees	5	(8)	(8)	(8)	(13)	(63)	(8)	(8)	(13)
Chapter 15 Legal Fees (US)	6	-	-	-	-	-	-	-	-
CCAA Legal Fees (Canada)	7	-	-	-	(28)	-	-	-	-
CCAA Monitor and Claims Officer Fees	8	-	-	(45)	-	-	-	(55)	-
Contractor Fees	9	-	-	-	-	(73)	-	-	-
Finance, Tax Administration and Financial Advisor Fees	10	-	-	-	-	(18)	-	-	-
Interest on Senior Secured Notes	11	-	-	-	-	-	-	-	-
Operating Costs related to premises	12	6	(5)	-	-	(12)	6	(5)	-
Taxes	13	-	-	-	-	-	-	-	-
Foreign Exchange	15	-	-	-	-	(1)	-	-	-
Other	14	-	-	-	-	-	-	-	-
Total Disbursements		(2)	(13)	(53)	(41)	(167)	(2)	(68)	(13)
Net Cash Inflow / Outflow		(2)	(13)	(53)	(41)	296	(2)	(68)	(13)
Closing Cash Balance		1,599	1,585	1,532	1,491	1,786	1,784	1,715	1,702

See accompanying notes and assumptions which should be read in conjunction herewith

Hollinger Inc., 4322525 Canada Inc. and Sugra Limited, (collectively the "Applicants")
Cash Flow Projection for the period from June 04, 2011 to January 27, 2012
Notes and Assumptions

These cash flow projections include projections for Hollinger Inc, 4322525 Canada Inc. and Sugra Limited, (collectively the "Applicants").

These projections are based on information from the Applicants which has not been audited, reviewed or otherwise verified. This is not a projection or forecast under section 4250 of the CICA Handbook. The actual timing and amount of the cash flows may fluctuate from the estimates shown herein and these fluctuations may be material.

1) The Cash balance is shown in thousands of Canadian dollars and excludes the amounts held in trust by Aird & Berlis for the officers' indemnity trust.
2) Interest income is estimated based on projected cash balances and actual recent rates of return. No provision has been made for interest, fees or other charges in connection with any borrowings that may be required.
3) Intercompany amounts due from Non-Applicants.
4) DIP Borrowing consists of intercompany borrowings from Domgroup Limited ("Domgroup") a wholly owned subsidiaries of Hollinger Inc. Subject to court approval and approval of its board of directors, Domgroup is prepared to make DIP advances to the Applicants of up to an additional $2.5 million during the period for total DIP advances up to $7.7 million.
5) Legal fees represent estimated fees on account of general corporate and litigation services.
6) Chapter 15 Legal Fees reflect the estimated legal fees associated with a Chapter 15 filing and certain other US legal issues. These fees are expected to be negligible over the projection period.
7) CCAA Legal Fees reflect the estimated legal fees of the Company's counsel but excludes the costs of the Claims Officer which is included in note 8.
8) CCAA Monitor & Claims Officer Fees reflect each of the estimated fees of the Monitor, its counsel and the fees of the Claim Officer associated with the CCAA process.
9) Contractor Fees represent fees paid to the Chief Restructuring Officer.
10) Finance, Tax Administration and Financial Advisor Fees represent payments to various professionals.
11) Interest on Senior Secured Notes of approximately US $6.0 million is payable twice a year in March and September. The projection assumes that these payments will not be made in accordance with the Multi-Party Settlement and the May 21, 2008 Court Order.
12) Operating Costs re premises represent Hollinger's portion of shared costs with Non-Applicants for leases and operating costs associated with the Wellington street storage location and the First Canadian Place offices.
13) The projection does not include any receipts or disbursements as a result of tax reassessments or penalties for late filings.
14) Other includes sundry expenses.
15) Foreign Exchange represents the effect of translating the Applicants US Dollar cash balances into Canadian Dollars and is not expected to be material over the projected period.

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)

Proceeding commenced at Toronto

AFFIDAVIT OF LISA C. MUNRO
(sworn December 22, 2011)

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Lawyers for Conrad Black and Conrad Black Capital Corporation

1930690.1

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

AFFIDAVIT OF CONRAD MOFFAT BLACK
(sworn December 28, 2011)

I, Conrad Moffat Black, businessman, of the Cities of Toronto, Ontario, Canada and Miami, Florida, United States of America, MAKE OATH AND SAY:

1. I am the former Chief Executive Officer and a former director of Applicant Hollinger Inc. and certain related corporations. I also control Conrad Black Capital Corporation ("CBCC"), which is a shareholder of Hollinger Inc. through another corporation. CBCC and I are defendants in Ontario litigation brought by the Applicants. I also have an interest in these *CCAA* proceedings, since I have brought a sizable claim against the Applicants pursuant to the claims bar process. As such, I have knowledge of the matters to which I hereinafter depose. I make this Affidavit to oppose the Applicants' motion for approval of two Settlement Agreements: between the Applicants and KPMG LLP; and between the Applicants and Torys LLP ("the Settlement Approval Motion").

My concerns about the Settlement Agreements

2. The primary basis for my opposition to the Settlement Agreements is that the proposed "Third Party Releases" would prevent CBCC and me from pursuing our contribution and indemnity claims against KPMG and Torys. Those claims are based upon the fact that Torys and KPMG were my professional advisors in respect of the very matters which are the subject of the litigation brought against us in Canada and the

United States. If the Settlement Agreements are approved, these claims against Torys and KPMG will be summarily dismissed without a court ever considering their merits. Moreover, the damages awards sought against me are, cumulatively, staggering – almost $1 billion. I still may be found liable in litigation brought against me without any recourse against those who advised me and upon whom I relied. The proposed settlement terms offer me nothing of value in exchange for my loss of these rights.

3. I am also concerned, as a significant shareholder and claimant, about the possibility that the quantum of the settlement undervalues the Applicants' claims against Torys and KPMG. As I have not signed the Confidentiality Agreement, I do not know the amounts of the settlement payments being made by Torys and KPMG.

Prejudice to me caused by the Settlement Agreements

4. I have reviewed the Affidavit of one of my counsel, Lisa C. Munro, sworn December 22, 2011 (without the exhibits attached), and understand that the Applicants have asserted the intention to make the settlements an "economically neutral" event for me because, assuming I am found liable to the Applicants in the litigation they have brought against me and I am able to establish that my contribution and indemnity claims against Torys and KPMG are meritorious, then the damages owing by me to the Applicants will be reduced "proportionately".

5. However, this proposal fails to take into account the fact that I am also seeking contribution and indemnity from Torys and KPMG in respect of the United States actions brought against me by the SEC and Hollinger International Inc. for hundreds of millions of dollars. Neither of these U.S. plaintiffs has advised me that it will be seeking only my "proportionate" share of liability and I am concerned about whether an Ontario court order approving these Settlement Agreements in these proceedings would or could bind the United States courts or those parties.

6. Further, and equally importantly, I have significant concerns about how I will be able to prove my claims against Torys and KPMG or show that any damages award made against me should be reduced proportionately so that I am not responsible to pay that portion of the liability attributed to Torys and/or KPMG if I am unable to obtain either

oral evidence or documents from them. In order for me to show that Torys and KPMG provided me with professional advice upon which I relied in complying with my obligations as an officer and director of the Applicants and related corporations, it will be necessary for Torys and KPMG to produce an extensive amount of documentation over a decade (1995 to 2005), including my communications with numerous professional advisors at each of these two firms.

7. Ms. Munro's Affidavit at paragraphs 5 to 8 summarizes the allegations made against me in the two outstanding U.S. actions and the three outstanding Ontario actions. These five proceedings form the basis of my contribution and indemnity claims against Torys and KPMG. While Torys and KPMG were professional advisors to the Applicants, Hollinger International Inc., and their related corporations, I also relied upon them to ensure that I was meeting my fiduciary and other legal obligations as an officer and director of these entities and to ensure that full and complete disclosure was made to the shareholders, the members of the boards of directors and audit committees, and the regulators. In fact, during the entire period of time which is relevant to the allegations made against me in all these actions, I relied entirely upon Torys and KPMG for all matters relating to appropriate conduct and best practices for public corporations in respect of all the transactions in issue. On areas of uncertainty or ambiguity I (and my colleagues, former officers and directors Jack Boultbee and Peter Atkinson, and others) consulted with Torys and KPMG and always acted upon their recommendations. The quantum of their billings over the years (in the millions of dollars) confirms their extensive involvement in our business and in all matters which are relevant to the current litigation. In particular, all matters of the treatment of related-party transactions and the timeliness and extent of disclosure were methodically checked with Torys and KPMG.

8. I expect that documents in the files of Torys and KPMG will show that I and my colleagues were in frequent communication with several representatives of these firms for the purpose of obtaining advice on the various transactions which are the subject of the allegations in the litigation against me. I consulted directly with Torys lawyers Beth DeMerchant and Darren Sukonick and with KPMG accountants Marilyn Stitt and Pat Ryan, all of whose evidence will be critical, along with the evidence of those who

worked under their direction. I believe that my colleagues also consulted with others. Given the scope and number of the transactions at issue, I expect the relevant documents in the files of Torys and KPMG to be extensive, voluminous, technical, and will demonstrate my reliance upon their advice. I also expect that the evidence of numerous individuals at both Torys and KPMG will be necessary.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Conrad Black

CONRAD MOFFAT BLACK
Subscribed and Sworn to before me this
26th day of December, 2011.

A Commissioner of Oaths DAVID NATHANSON
David C. Nathanson
My Commission Expires: unlimited
Commission Number: Ontario, Canada

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)

Proceeding commenced at Toronto

AFFIDAVIT OF CONRAD MOFFAT BLACK
(sworn December 26, 2011)

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