Court File No.CV-2000641059-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.O. 1990, C. B.16, AS AMENDED

AND IN IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C., 1985, C. C-44, AS AMENDED

AND IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARTNER LIMITED

Applicants

FACTUM OF THE LIQUIDATOR
(Motion Returnable August 6, 2020)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 218-1841
Email: george@chaitons.com

Lawyers for Ernst & Young Inc., in its capacity as Liquidator of the estate and effects of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited

TO: SERVICE LIST

Court File No.CV-2000641059-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
R.S.O. 1990, C. B.16, AS AMENDED

AND IN IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C., 1985, C. C-44, AS AMENDED

AND IN THE MATTER OF A WINDING UP OF
PACE SECURITIES CORP., PACE FINANCIAL LIMITED,
PACE INSURANCE BROKERS LIMITED AND
PACE GENERAL PARTNER LIMITED

Applicants

FACTUM OF THE LIQUIDATOR
(Motion Returnable August 6, 2020)

1. This is a motion by Ernst & Young Inc. ("**EYI**" or the "**Liquidator**") in its capacity as Liquidator of the estate and effects of the Applicants, Pace Securities Corp. ("**PSC**"), Pace Financial Limited ("**PFL**"), Pace Insurance Brokers Limited and Pace General Partner Limited (collectively the "**Companies**") appointed pursuant to the Order of the Honourable Mr. Justice Hainey dated May 14, 2020 (the "**Appointment Order**"), seeking an order appointing Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") as representative counsel ("**Representative Counsel**") for the Investor Claimants (as defined in **Schedule "A"** hereto).

2. The Investor Claimants comprise over 700 individuals, many of which are of retirement age, likely have limited ability to mitigate their investment losses, and would have difficulty assessing or enforcing their legal position and options without the benefit of legal advice and representation.

3. EYI supports the appointment of Paliare Roland as Representative Counsel on the terms of the Proposed Representative Counsel Order (as defined below) for the following reasons:

a) EYI is satisfied with the qualifications and relevant experience of Paliare Roland to act on this mandate;

b) the Investor Claimants are a vulnerable and disparate group of individuals, including seniors, that would benefit from Representative Counsel assisting them in navigating the Liquidation Proceedings (as defined below) and advancing their claims;

c) Representative Counsel would act as a single point of contact to receive and distribute pertinent information and coordinate communication with the Investor Claimants;

d) the potential multiplicity of actions threatened to be commenced in relation to the Preference Shares (as defined below) would not provide comprehensive representation for all Investor Claimants;

e) the appointment of Representative Counsel will allow for all of the claims that could be asserted by the Investor Claimants to be addressed in an efficient, timely and consistent manner under the exclusive jurisdiction of this Court;

f) the appointment of Representative Counsel would assist in ensuring that all Investor Claimants are able to participate meaningfully and effectively in any process to resolve or adjudicate these claims;

g) the appointment of Representative Counsel will benefit not only the Investor Claimants by improving their access to justice, but also other stakeholders by reducing the administrative burden associated with these proceedings; and

h) given the vulnerability of the Investor Claimants, the social benefit to be derived from their representation by experienced counsel and the facilitation of the resolution of their claims in an efficient, timely and consistent manner, it is fair and just to appoint Representative Counsel.

I - THE FACTS

A. Background[1]

4. PSC and PFL are each corporations incorporated under the *Business Corporations Act* (Ontario). Joe Thomson was the CEO and was a director of PSC and PFL.

5. PSC is an investment dealer regulated by The Investment Industry Regulatory Organization of Canada ("**IIROC**") and an investment fund manager regulated by the Ontario Securities Commission ("**OSC**").

6. PSC did not hold its customers' cash and securities itself. Rather, pursuant to the IIROC rules, PSC was an introducing broker whose clients' accounts were held with its carrying broker, Laurentian Bank Securities Limited ("**LBS**").

7. PFL carried on business as an investment vehicle for accredited investors to earn fixed dividends from an investment in a basket of high-yield bonds. PFL raised capital by selling preference shares. PFL used those proceeds to purchase high-yield bonds on "margin" through its accounts at PSC. The interest and any trading profits earned on the bonds net of management costs from PSC and other expenses were to be used to fund regular dividend payments to the preference shareholders.

8. Almost all of PFL's investors are retail investors, and many of its investors also have accounts with PSC. PSC provided brokerage, investment and business management services to PFL.

9. Like PFL, First Hamilton Holdings Inc. ("**FHH**")[2] sold preference shares, accompanied by warrants for one series of shares, to investors and used the proceeds from those shares to invest in a basket of high-yield bonds, the interest and gains on which were intended to be used to pay management fees to PSC and dividends to holders of the preference shares, as well as to fund other

[1] Second Report of EYI dated July 31, 2020 ("**Second Report**"), at paras. 7 to 14.
[2] Joe Thomson was the CEO and is a director of FHH.

business ventures. As at the date of the Appointment Order, FHH was indebted to LBS in the approximate amount of $2.8 million on account of margin provided by LBS to FHH.

B. Liquidation And Regulatory Proceedings[3]

10. On May 14, 2020, EYI was appointed as Liquidator of the estate and effects of the Companies. Pursuant to the Appointment Order, all of the Companies' employees were terminated.

11. IIROC convened an expedited hearing and, on May 21, 2020, a Hearing Panel of IIROC issued an order, among other things, suspending PSC's membership in IIROC and ordering that PSC immediately cease dealing with the public.

12. Also on May 21, 2020, MNP Ltd. ("**MNP**") was appointed, pursuant to an order of this Court, as liquidator of the estate and effects of, among other entities, FHH (the "**FHH Liquidator**")[4].

13. On June 5, 2020 the OSC suspended PSC's investment fund manager registration.

C. PFL and FHH Preference Shares And Warrants[5]

14. According to PFL's offering memorandum dated June 27, 2017 (subsequently revised July 20, 2017), PFL's business plan was to offer preference shares for sale to customers who were looking for fixed income securities. The proceeds from the subscription of preference shares would be used to purchase eligible debt instruments and to pay for the costs of the offering. Income provided by these debt instruments would pay for general corporate overhead and operating expenses.

15. PFL's preference shares were known as the Series A Cumulative Redeemable Retractable Non-voting Term Preference Shares. These preference shares offered base dividends at 5% per annum and were also both redeemable and retractable under certain conditions, with a fixed redemption date of December 31, 2022. Between July 2017 and February 2018, approximately

---

[3] Second Report, at paras. 15 to 20.
[4] This proceeding and the FHH liquidation proceeding are referred to herein collectively as the "**Liquidation Proceedings**". The Liquidator and the FHH Liquidator are referred to herein collectively as the "**Liquidators**".
[5] Second Report, at paras. 21 to 29.

1.63 million of PFL’s preference shares were sold at a price of $10 per share. In May 2018, all outstanding shares were split, which resulted in a total of approximately 3.3 million outstanding shares at a total investment value of approximately $16.3 million.

16. Of these 3.3 million outstanding preference shares, as of the end of May 2020,

a) approximately 600,000 preference shares were held in trust by LBS in registered retirement accounts of PSC’s clients, at an initial investment value of approximately $3.0 million;

b) approximately 2.5 million preference shares were held in trust by LBS in non-registered accounts of PSC’s clients or held as physical certificates by the shareholders, all at a total initial investment value of approximately $12.5 million; and

c) the remaining shares were redeemed or retracted by PFL for various reasons.

17. According to FHH’s offering memoranda dated April 30, 2018 and May 1, 2018, FHH offered two series of preference shares for sale to customers who were looking for fixed income securities. The proceeds from the subscription of two series of preference shares, along with borrowed funds, would be used to purchase eligible debt instruments.

18. In May 2018, FHH began concurrently offering Series B 5% Cumulative Redeemable Retractable Non-voting Preference Share as well as units comprised of Series A 7% Cumulative Non-voting Preference Shares and Class A share purchase warrants. Between April 2018 and June 2019, approximately 3.3 million of FHH’s preference shares and units were sold at a price of $10 each, for a total investment value of approximately $32.5 million.

19. Of these 3.3 million outstanding shares/units, as of the end of May 2020,

a) approximately 1.4 million shares/units were held in trust by LBS in registered retirement accounts of PSC’s clients, at an initial investment value of approximately $14.0 million;

b) approximately 1.8 million shares/units were held in trust by LBS in non-registered accounts of PSC's clients as physical certificates by the shareholders, all at a total initial investment value of approximately $17.5 million; and

c) the remaining shares/units were redeemed or retracted by FHH for various reasons.

20. In November 2019, the preference shares of both PFL and FHH were re-valued as follows as at August 31, 2019:

a) PFL shares were reduced from their original cost base of $5/share to $4.22/share;

b) FHH Series A shares were reduced from their original cost base of $9.50/share (excluding the $0.50 allocated to the cost of the accompanying warrants) to $8.17/share; and

c) FHH Series B shares were reduced from their original cost base of $10/share to $7.49/share.

21. In April 2020, due to the impact of the COVID-19 pandemic on the global economy, PSC re-valued the market price of the preference shares of both PFL and FHH again. PFL preference shares were valued at $1.62/share for a total value of approximately $5.0 million for all outstanding shares. Both series of FHH preference shares were valued at $1.44/share for a total value of $4.5 million for all outstanding shares. These valuations represented approximately a 68% decrease of total initial investment value for PFL preference shareholders and an 86% decrease of total initial investment value for FHH preference shareholders.

22. Absent a recovery from third party sources, it appears unlikely that there will be any significant distributions available from the Liquidation Proceedings for the holders of PFL or FHH preference shares or warrants (collectively referred to herein as the "**Preference Shares**").

D. Investor Claimants

23. The Liquidator's understanding is that many of the Investor Claimants are of retirement age, likely have limited ability to mitigate their investment losses, and would have difficulty assessing or enforcing their legal position and options without the benefit of legal advice and

representation. This is supported by the significant number of preference shares that were held in registered retirement accounts as described in paragraphs 16 and 19 above.[6]

24. The FHH Liquidator has been contacted by more than 20 individuals who have indicated (among other things) that they had purchased Preference Shares and that:

a) they are elderly retirees, most of whom are in their late sixties and seventies;

b) the monies that they invested were retirement funds from their RRSPs and RRIFs, and in many cases, the income stream and capital withdrawals were critical to their being able to meet and fund their daily living expenses;

c) they were advised by PSC investment advisers that the FHH preference shares offered them an above average yield of greater than 7%, compared to GIC's or based on FHH investments in low risk, corporate bonds;

d) they were not aware that FHH would be purchasing securities on margin;

e) they did not recall completing any "Know Your Client" documentation nor any other questionnaires in which they set out their low risk tolerances, based on their advanced ages and financial situations, nor did they recall reviewing any of FHH's prospectuses or investment memorandums that advised of the real risk levels of investing in the Preference Shares; and

f) had they been made aware of the risks associated with the Preference Shares or the underlying securities, they never would have made the investment.[7]

E. Investor Claims[8]

25. EYI has been made aware of claims and/or potential claims by holders of Preference Shares against various parties including the Companies, FHH, Pace Savings & Credit Union Ltd. ("**PACE**

[6] Second Report, at paras. 30.
[7] First Report of the FHH Liquidator dated July 31, 2020, at para. 50.
[8] Second Report, at paras. 31 to 33.

Credit Union"), and their respective directors and officers (collectively, the "**Potential Defendants**").

26. EYI understands that the majority of the Investor Claimants are members of PACE Credit Union, the parent company of PSC.

27. EYI understands that various law firms have been contacted by one or more Investor Claimants with a view to potentially commencing litigation against one or more of the Potential Defendants.

F. Proposed Representative Counsel[9]

28. Following discussions with the FHH Liquidator starting in early July 2020, EYI began a dialogue with Paliare Roland regarding its retainer on behalf of certain Investor Claimants.

29. Since that date, the Liquidators have engaged in a constructive dialogue with Paliare Roland which has also included PACE Credit Union. Paliare Roland has confirmed to the Liquidators that it has been in contact with over 27 Investor Claimants.

30. The Liquidators and Paliare Roland have now agreed upon the terms for the appointment of Paliare Roland as Representative Counsel, subject to the approval of this Court, on the basis of the draft order being submitted jointly and attached to the Liquidators' Notices of Motion (the "**Proposed Representative Counsel Order**").

31. The Proposed Representative Counsel Order provides for the appointment of Paliare Roland as Representative Counsel for the Investor Claimants on the following terms:

a) Representative Counsel, acting in consultation with the Liquidators, would be authorized to form a committee of investors to advise it (the "**Representative Committee**");

[9] Second Report, at paras. 34 to 41.

b) Representative Counsel would be authorized to take such steps and to perform such acts as are necessary or desirable for the purpose of representing the Investor Claimants, including, without limitation:

i. developing a process in consultation with the Liquidators, for the investigation, identification, advancement and resolution of valid and provable Investor Claims;

ii. addressing the Investor Claims, as part of these proceedings or in such related or consequential proceedings as may be approved by this Court, including, without limitation, by negotiation, compromise, arrangement, settlement, or litigation;

iii. reporting and responding to inquiries from the members of the Representative Committee and individual Investor Claimants; and

iv. performing such other actions as approved by this Court;

c) Investor Claimants would have the ability to opt out from being represented by Representative Counsel;

d) the fees and expenses of Representative Counsel would be paid out of the funds recovered for the Investor Claimants pursuant to or by virtue of this appointment, in accordance with terms to be agreed with the members of the Representative Committee and approved by this Court in the ordinary course, or, in the absence of an agreement, as directed by further order of this Court, having regard to the resources invested, risk assumed and results achieved by Representative Counsel, together with such other considerations as this court determines to be relevant;

e) until Representative Counsel has completed its mandate or until this Court otherwise directs, no proceeding or enforcement process in respect of Tolled Claims (as defined in the Proposed Representative Counsel Order) shall be commenced or continued in any Court or tribunal against or in respect of the Companies, or any of their related entities, including PACE Credit Union, except with leave of this Court, and any and all Proceedings currently under way against or in respect of such parties would be stayed and suspended pending further order of this Court; and

f) to the extent that any Limitation Period (as defined in the Proposed Representative Counsel Order) expires on or after the date of the Proposed Representative Counsel Order, such Limitation Period would be tolled such that it ceases to continue running.

32. The Proposed Representative Counsel Order also includes a provision for an exclusivity period that would offer PACE Credit Union the opportunity to present a settlement and/or settlement package in respect of direct and indirect Investor Claims (including claims over and third party claims) against the Credit Union and/or its officers and directors in respect of the PFL and FHH preference shares and warrants, for consideration by Representative Counsel and the Liquidators. Paliare Roland has agreed to this provision, and accordingly, the Liquidator is agreeable to inclusion of this provision in the Proposed Representative Counsel Order.

33. EYI has reviewed the qualifications of Paliare Roland to act as Representative Counsel.

II - ISSUES

34. The issue on this Motion is whether it is appropriate for this Court to appoint Paliare Roland as Representative Counsel to represent the Investor Claimants on the terms of the Proposed Representative Counsel Order.

III - LAW AND ARGUMENT

A. This Court Has Jurisdiction to Appoint Representative Counsel

i. Jurisdiction under the CBCA and the OBCA

35. The Court has jurisdiction to appoint representative counsel pursuant to section 217 of the *Canadian Business* Corporations *Act*, R.S.C. 1985, c. C-44 *(the "**CBCA**")* and sections 207(2) and 209 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B. 16, (the "***OBCA***").[10]

36. Section 217 of the *CBCA* provides the Court with broad powers to "make any order it thinks fit" in connection with the dissolution or the liquidation of a corporation, if the Court is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations.[11] Section 217 enumerates several types of orders a court may make, but such orders do not limit the generality of the court's power to make any order it thinks fit.[12]

37. Section 207(2) of the *OBCA* provides that upon an application for a winding-up order, the court may "make such order under this section or section 248 as it thinks fit".[13] Section 209 further provides that the court may "make the order applied for […] or may make any interim or other order as is considered just".[14]

38. The open-textured language of these provisions parallels the language of section 11 of the *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36) (the "***CCAA***") – a well-established provision pursuant to which Canadian courts have repeatedly exercised the jurisdiction to appoint representative counsel.[15]

---

[10] *Canada Business Corporations* Act, R.S.C., 1985, c. C-44, s. 217 [CBCA]; *Business Corporations Act*, R.S.O. 1990, c. B.16, ss. 207(2), 209 [OBCA].
[11] CBCA, s. 217.
[12] *Growthworks Commercialization Fund Ltd. v. Growthworks WV Management Ltd.*, 2019 ONCA 371 at para. 7.
[13] OBCA, s. 207(2). Pursuant to this section, the court may order a remedy under s. 248 even if there are no facts justifying a determination on the ground of oppression: *Falus v. Martap Developments 87 Ltd.*, 2012 ONSC 2301 [Commercial List] at para. 40; *Clarfield v. Manley*, [1993] O.J. No. 878 [S.C.J. Commercial List] at para. 41.
[14] OBCA, s. 209.
[15] *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, 2020 ONSC 61* at paras. 19-20 ("***Tobacco***"); *Urbancorp Inc., (Re)*, 2016 ONSC 5426 [Commercial List] at para. 10 ("***Urbancorp***"); *U.S. Steel Canada Inc., (Re)*, 2014 ONSC 6145 at para. 35; *Nortel Networks Corp., (Re)*, [2009] O.J. No. 2166 [S.C.J., Commercial List] at para. 12 ("***Nortel***").

39. Similar to section 217 of the *CBCA* and sections 207(2) and 209 of the *OBCA*, section 11 of the *CCAA* provides the court with broad powers to make "any order that it considers appropriate in the circumstances".[16]

40. Orders appointing representative counsel are common in complex *CCAA* proceedings where, among other things, there is a vulnerable claimant group with limited means to participate in the proceedings.[17]

41. There is no reason why such orders should not be equally available in liquidation proceedings where similar concerns regarding efficiency and access to justice are at play.[18]

42. Finally, the power to appoint representative counsel is analogous to other powers of appointment by which the Courts exercise their jurisdiction over liquidation and insolvency proceedings.

43. These include the Courts' power under subsections 217(b) and (c) of the *CBCA* to appoint a liquidator, inspector or referee, and the broad power pursuant to section 101 of the *Courts of Justice Act* to appoint a receiver where it appears just or convenient to do so, on "such terms as are considered just".[19]

44. The power to appoint representative counsel is consistent with the efficient administration of liquidation proceedings, and "can make the proceeding more efficient and cost effective for all parties by providing a clear mechanism for communicating with the stakeholders".[20]

ii. Jurisdiction under Rule 10.01 of the Rules of Civil Procedure

45. The Court also has jurisdiction to appoint representative counsel pursuant to Rule 10.01(1)(f) of the *Rules of Civil Procedure*.[21] Courts have relied on Rule 10.01(1)(f) to appoint

---

[16] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11 [CCAA].
[17] *Canwest Publishing Inc.*, 2010 ONSC 1328 at para. 21 ("***Canwest***"); *Tobacco* at para. 26.
[18] *Karasik v. Yahoo! Inc.*, 2020 ONSC 1440 at paras. 17-19 [Justice Perell applying *Canwest* factors to appoint representative counsel in a proposed class action] ("***Karasik***"); *Urbancorp*, *supra*, at para. 11 [Justice Newbould applying *Canwest* factors to appoint representative counsel in *CCAA* and *BIA* NOI proceedings].
[19] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101.
[20] *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65 at para. 6.
[21] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 10.01(1)(f).

representative counsel in insolvency and restructuring proceedings,[22] proposed class proceedings[23] and bankruptcy proceedings.[24]

46. Rule 10.01(1)(f) of the *Rules of Civil Procedure* permits a judge to appoint one or more persons to represent any person or class of persons who are […] unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served", where it is "necessary or desirable" to do so.[25]

47. The Courts have applied this rule liberally, and it is available even when the members of the group to be represented *can be* ascertained, found and served.[26]

48. The test under 10.01(1)(f) is whether the balance of convenience favours the granting of a representation order instead of individual service upon each member of the group and individual participation in the proceedings.[27]

49. The balance of convenience in these proceedings favours the appointment of Representative Counsel over the individual participation of the Investor Claimants, many of whom likely do not have the commercial and legal sophistication to represent themselves in these proceedings, or the financial resources to independently retain counsel.

B. It is Appropriate to Appoint Representative Counsel for the Investor Claimants

50. In determining whether it is appropriate to appoint representative counsel, Courts have regard to the factors set out in *Canwest Publishing Inc*.:

a) the vulnerability and resources of the group sought to be represented;

---

[22] *Tobacco* at para. 19; *Urbancorp*, *supra,* at para. 10; *U.S. Steel Canada Inc*., *supra,* at para. 35; *Nortel*, *supra,* at para. 10.
[23] *Karasik* , *supra*, at paras. 11, 17-19.
[24] *Urbancorp*, *supra,* at para. 10.
[25] Rule 10.01(1)(f).
[26] *Police Retirees of Ontario Inc. v. Ontario Municipal Employees' Retirement Board*, [1997] O.J. No. 3086 [General Division] at paras. 16-18 [representation order for police retirees granted despite OMERS' ability to create a list of all retirees potentially affected by the action] ("***Police Retirees***"); *Slate Falls Nation v. Canada (Attorney General)*, 2004 CanLII 30894 [S.C.J.] at paras. 89-90 [representation order granted for members of remote First Nation community despite members being found and ascertained].
[27] *Police Retirees*, *supra*, at para. 18.

b) any benefit to the companies under CCAA protection;

c) any social benefit to be derived from representation of the group;

d) the facilitation of the administration of the proceedings and efficiency;

e) the avoidance of a multiplicity of legal retainers;

f) the balance of convenience and whether it is fair and just including to the creditors of the Estate;

g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and

h) the position of other stakeholders and the court-appointed officer (collectively, the "**Canwest Factors**").[28]

51. Each of the Canwest Factors support the Liquidators' motions to have Paliare Roland appointed as Representative Counsel in this case.

52. EYI supports the appointment of Paliare Roland as Representative Counsel on the terms of the Proposed Representative Counsel Order for the following reasons:

a) EYI is satisfied with the qualifications and relevant experience of Paliare Roland to act on this mandate;

b) the Investor Claimants are a vulnerable and disparate group of individuals, including seniors, that would benefit from Representative Counsel assisting them in navigating the Liquidation Proceedings and advancing their claims;

c) Representative Counsel would act as a single point of contact to receive and distribute pertinent information and coordinate communication with the Investor Claimants;

---

[28] *Canwest*, *supra*, at para. 21; *Tobacco*, *supra*, at para. 26.

d) the potential multiplicity of actions threatened to be commenced in relation to the PFL or FHH preference shares or warrants would not provide comprehensive representation for all Investor Claimants;

e) the appointment of Representative Counsel will allow for all of the claims that could be asserted by the Investor Claimants to be addressed in an efficient, timely and consistent manner under the exclusive jurisdiction of this Court;

f) the appointment of Representative Counsel would assist in ensuring that all Investor Claimants are able to participate meaningfully and effectively in any process to resolve or adjudicate these claims;

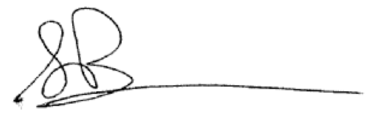
g) the appointment of Representative Counsel will benefit not only the Investor Claimants by improving their access to justice, but also other stakeholders by reducing the administrative burden associated with these proceedings; and

h) given the vulnerability of the Investor Claimants, the social benefit to be derived from their representation by experienced counsel and the facilitation of the resolution of their claims in an efficient, timely and consistent manner, it is fair and just to appoint Representative Counsel.

IV - RELIEF SOUGHT

53. For the reasons set out above, the Liquidator respectfully requests that this Court grant an order for the relief sought in its Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of August, 2020.



____

George Benchetrit, CHAITONS LLP

Lawyers for Ernst & Young Inc., in its capacity as Liquidator of the estate and effects of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited

SCHEDULE "A"

DEFINITION OF INVESTOR CLAIMANTS

"**Investor Claimants**" means all individuals (including their respective successors, heirs, assigns, litigation guardians and designated representatives under applicable provincial family law legislation) who assert or may be entitled to assert a claim or cause of action as against one or more of the Applicants and any related persons or organizations (collectively "**Defendants**") in respect of:

(i) the purchase of PACE Financial Limited's Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares; and,

(ii) the purchase of equivalent investments in FHH as well as FHH warrants (collectively, with (i) the "**Preference Shares**").

in Canada, or anywhere else in the world, including without limitation claims for contribution or indemnity, personal injury or tort damage, restitutionary recovery, non-pecuniary damages, pure economic loss, or claims for recovery grounded in Ontario Securities legislation.

The Investor Claimants shall exclude all Defendants, insiders or securities brokers involved in the sale of the Preference Shares.

SCHEDULE "B"

LIST OF AUTHORITIES

1. *Growthworks Commercialization Fund Ltd. v. Growthworks WV Management Ltd.*, 2019 ONCA 371
2. *Falus v. Martap Developments 87 Ltd.*, 2012 ONSC 2301 [S.C.J. Commercial List]
3. *Clarfield v. Manley*, [1993] O.J. No. 878 [S.C.J. Commercial List]
4. *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, 2020 ONSC 61*, 2020 ONSC 61 [S.C.J. Commercial List]
5. *Urbancorp Inc., (Re)*, 2016 ONSC 5426 [Commercial List]
6. *U.S. Steel Canada Inc., (Re)*, 2014 ONSC 6145 [S.C.J. Commercial List]
7. *Nortel Networks Corp., (Re)*, [2009] O.J. No. 2166 [S.C.J. Commercial List]
8. *Canwest Publishing Inc.*, 2010 ONSC 1328 [S.C.J. Commercial List]
9. *Karasik v. Yahoo! Inc.*, 2020 ONSC 1440
10. *Quadriga Fintech Solutions Corp. (Re)*, 2019 NSSC 65
11. *Police Retirees of Ontario Inc. v. Ontario Municipal Employees' Retirement Board*, [1997] O.J. No. 3086 (General Division)
12. *Slate Falls Nation v. Canada (Attorney General)*, [2004] O.J. No. 3860 [S.C.J.]

SCHEDULE "C"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Canada Business Corporations Act, R.S.C., 1985, c. C-44, s. 217

Powers of court

217 In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing the liquidator's remuneration and replacing a liquidator;

(c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;

(d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claims made against the corporation;

(f) an order, at any stage of the proceedings, restraining the directors and officers from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation, except as permitted by the court;

(g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder

(i) to the corporation, or

(ii) for an obligation of the corporation;

(h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the corporation;

(j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;

(l) subject to section 223, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) on the application of any director, officer, security holder, creditor or the liquidator,

(i) an order staying the liquidation on such terms and conditions as the court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the corporation all its remaining property; and

(o) after the liquidator has rendered a final account to the court, an order dissolving the corporation.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 207(2), 209

Winding up by court

207 (1) A corporation may be wound up by order of the court,

(a) where the court is satisfied that in respect of the corporation or any of its affiliates,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) where the court is satisfied that,

(i) a unanimous shareholder agreement entitled a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred,

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation. R.S.O. 1990, c. B.16, s. 207 (1).

Court order

(2) Upon an application under this section, the court may make such order under this section or section 248 as it thinks fit. R.S.O. 1990, c. B.16, s. 207 (2).

…

Power of court

209 The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1990, c. B.16, s. 209.

Rule 10.01(1)(f) of the *Rules of Civil Procedure*

RULE 10 REPRESENTATION ORDER

REPRESENTATION OF AN INTERESTED PERSON WHO CANNOT BE ASCERTAINED

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the Variation of Trusts Act;

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

IN THE MATTER OF A WINDING UP OF PACE SECURITIES CORP., PACE FINANCIAL LIMITED, PACE INSURANCE BROKERS LIMITED AND PACE GENERAL PARTNER LIMITED

Applicants

Court File No. CV-20-00641059-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIALLIST)
Proceedings commenced at Toronto

FACTUM

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
LSUC Registration No. 34163H
Tel: (416) 218-1141
Fax: (416) 218-1841
Email: george@chaitons.com

Lawyers for Ernst & Young Inc., in its capacity as Liquidator of the estate and effects of Pace Securities Corp., Pace Financial Limited, Pace Insurance Brokers Limited and Pace General Partner Limited