Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

RESPONDING MOTION RECORD OF KPMG LLP
(Re: Plan Sanction Motion)

June 4, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Andrea Laing LSO #43103Q
Email: andrea.laing@blakes.com
Tel: 416-863-4159

Linc A. Rogers LSO #43562N
Email: linc.rogers@blakes.com
Tel: 416-863-4168

Ryan Morris LSO #50831C
Email: ryan.morris@blakes.com
Tel: 416-863-2176

Caitlin McIntyre LSO #72306R
Email: caitlin.mcintyre@blakes.com
Tel: 416-863-4174
Fax: 416-863-2653

Lawyers for KPMG LLP

TO: THE SERVICE LIST

Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

RESPONDING MOTION RECORD OF KPMG LLP
(Re: Plan Sanction Motion)

INDEX

Tab	Description	Page No.
1	Affidavit of Nancy Thompson sworn June 4, 2021	5
A	KPMG Engagement Letter dated March 22, 2019	9
B	KPMG Terms & Conditions for Assurance Engagements	30
C	Correspondence between McCarthy Tétrault LLP ("**McCarthys**") and Strosberg Sasso Sutts LLP	34
D	Correspondence between McCarthys and Morganti & Co.	50
E	Correspondence between Blake, Cassels & Graydon LLP ("**Blakes**") and Kalloghian Myers LLP ("**Kalloghian Myers**")	60
F	Letters from Blakes to McCarthys and counsel to the Ad Hoc Committee of Shareholders	92
G	Email from Monitor to Blakes regarding adjudication of KPMG claim	108
H	Emails between Blakes and Kalloghian Myers regarding cross-examination of Serge Kalloghian	110
2	Transcript of Greg Guyatt cross-examination taken March 17, 2021 (redacted)	115
3	Transcript of Greg Guyatt continued cross-examination taken April 13, 2021	173
4	Order and Endorsement of Justice Hainey dated April 16, 2021 (reservation of rights)	201

Tab 1

Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF NANCY THOMPSON

I, Nancy Thompson, of the City of Brampton, in the Regional Municipality of Peel, MAKE OATH AND SAY:

1. I am a law clerk at Blake, Cassels & Graydon LLP ("**Blakes**"), counsel to KPMG LLP ("**KPMG**") in this matter. As such, I have personal knowledge of the matters contained in this Affidavit.

2. Attached to my affidavit as Exhibit "**A**" is a true copy of the engagement letter for KPMG's audit of CannTrust Holdings Inc. ("**CannTrust**"), dated March 22, 2019.

3. Attached to my affidavit as Exhibit "**B**" is a true copy of the KPMG Terms and Conditions for Assurance Engagements governing KPMG's audit of CannTrust.

4. Attached to my affidavit as Exhibit "**C**" are true copies of correspondence between McCarthy Tétrault LLP ("**McCarthys**"), counsel to CannTrust, and Strosberg Sasso Sutts LLP, counsel to the representative plaintiffs in a proposed Canadian securities class action proceeding

commenced against CannTrust, discussing the viability of potential derivative actions by CannTrust against KPMG and others, exchanged in August and September 2019.

5. Attached to my affidavit as Exhibit "**D**" are true copies of correspondence between McCarthys and Morganti & Co., counsel to the representative plaintiff in a proposed Canadian securities class action proceeding commenced against CannTrust, discussing the viability of potential derivative actions by CannTrust against KPMG and others, exchanged in September and October 2019.

6. Attached to my affidavit as Exhibit "**E**" are true copies of correspondence and enclosures between Blakes and Kalloghian Myers LLP ("**Kalloghian Myers**"), counsel to the Ad Hoc Committee of Shareholders in this matter, discussing the tolling of potential claims by CannTrust against KPMG, exchanged in April and May 2021.

7. Attached to my affidavit as Exhibit "**F**" is a true copy of letters sent by Blakes to McCarthys and counsel to the Ad Hoc Committee of Shareholders in this matter, discussing the CCAA Plan, in April and May 2021.

8. Attached to my affidavit as Exhibit "**G**" is a true copy of correspondence from the Monitor declining to adjudicate KPMG's claim in these proceedings, dated May 4, 2021.

9. Attached to my affidavit as Exhibit "**H**" is a true copy of email correspondence between Blakes and Kalloghian Myers regarding the cross-examination of Serge Kalloghian, dated June 4, 2021.

10. This affidavit is sworn in support of KPMG's response to the Applicants' motion for sanction of the CCAA Plan, and for no other purpose.

SWORN BEFORE ME over video conference on June 4, 2021, administered in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely, under the *Commissioners for Taking Affidavits Act*; the affiant was located at the City of Brampton, in the Regional Municipality of Peel and the commissioner was located at the City of Toronto, in the Province of Ontario.	
Commissioner for Taking Affidavits (or as may be) Justin Manoryk LSO #75133S	**NANCY THOMPSON**

This is **Exhibit "A"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

KPMG

KPMG LLP
100 New Park Place, Suite 1400
Vaughan, ON L4K 0J3
Tel 905-265 5900
Fax 905-265 6390
www.kpmg.ca

Private and Confidential

Mr. Greg Guyatt
Chief Financial Officer
CannTrust Holdings Inc.
3280 Langstaff Road, Building 1, Unit 1
Vaughan, ON L4K 5B6

And

Mr. Mark Dawber
Audit Committee Chair
CannTrust Holdings Inc.
3280 Langstaff Road, Building 1, Unit 1
Vaughan, ON L4K 5B6

March 22, 2019

Dear Sirs:

The purpose of this letter is to outline the terms of our engagement to audit the consolidated annual financial statements ("financial statements" or "annual financial statements") of CannTrust Holdings Inc. ("the Entity"), commencing for the period ending December 31, 2018 ("Audit").

In addition, the purpose of this letter is to outline the terms of our engagement to perform a review of the 2019 unaudited condensed consolidated interim financial statements ("financial statements" or "interim financial statements").

This letter supersedes our previous letter to the Entity dated January 15, 2019. The terms of the engagement outlined in this letter will continue in effect from period to period, unless amended or terminated in writing.

The attached Terms and Conditions and any exhibits, attachments and appendices hereto and subsequent amendments form an integral part of the terms of this engagement and are incorporated herein by reference (collectively the "Engagement Letter").

Financial Reporting Framework for the Financial Statements

The annual financial statements will be prepared and presented in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (hereinafter referred to as the "financial reporting framework").

The interim financial statements will be prepared and presented in accordance with International Accounting Standard No. 34 (hereinafter included in the "financial reporting framework").

The financial statements will include an adequate description of the financial reporting framework.

Management's and the Audit Committee's Responsibilities

Management responsibilities, as well as the Audit Committee responsibilities, are described in Appendix – Management's and the Audit Committee's Responsibilities.

An Audit or an interim review does not relieve management, the Audit Committee, or those charged with governance of their responsibilities.

Auditor's Responsibilities

Our responsibilities are described in Appendix – Auditor's Responsibilities.

If management does not fulfill the responsibilities above, we cannot complete our engagement.

Auditor's Deliverables

The expected form and content of our reports is provided in Appendix – Expected Form of Report.

Subject to the remainder of this paragraph, we will issue a written audit report upon completion of our Audit and a review conclusion upon the completion of each interim review. However, there may be circumstances in which our report may differ from the expected form and content. Circumstances may arise in which it is necessary for us to modify our audit opinion or review conclusion, add emphasis-of-matter or other-matter paragraphs or withdraw from the engagement.

If, for any reason, we are unable to complete the engagement or are unable to form or have not formed an opinion or review conclusion, we may decline to express an opinion or review conclusion or decline to issue a report as a result of the engagement.

If, during the performance of our Audit or interim review procedures, such circumstances arise, we will communicate with the audit committee.

While our report(s) may be sent to the Entity electronically for your convenience, only the hard copies are to be relied upon as our work product.

In addition, if we become aware of information that relates to the financial statements after we have issued our audit report or after we have provided our interim review conclusion, but which was not known to us at the date of our audit report or at the date we have provided our interim review conclusion, and which is of such a nature and from such a source that we would have investigated that information had it come to our attention during the course of our Audit or interim review, we will, as soon as practicable: (1) communicate such an occurrence to the audit committee; and (2) undertake an investigation to determine whether the information is reliable and whether the facts existed at the date of our audit report or facts existed at the date we have provided our interim review conclusion. Further, management agrees that in conducting that investigation, we will have the full cooperation of the Entity's personnel. If the subsequently discovered information is found to be of such a nature that (a) our audit report or interim review conclusion would have been affected if the information had been known as of the date of our audit report or as of the date we provided our interim review conclusion and (b) we believe that the audit report or the interim review conclusion are currently being relied upon or are likely to be relied upon by someone who would attach importance to the information, appropriate steps will be taken by KPMG, and appropriate steps will also be taken by the Entity, to prevent further reliance on our audit report or our interim review conclusion. Such steps include, but may not be limited to, appropriate disclosures by the Entity to the users of the financial statements and audit report thereon of the newly discovered facts and the impact to the financial statements.

Additional Responsibilities regarding "Other Information"

"Other information" is defined in professional standards to be the financial or non-financial information (other than the financial statements and the auditors' report thereon) included in the "annual report". An "annual report" is defined in professional standards to comprise a document or combination of documents. Professional standards also indicate that:

- an annual report is prepared typically on an annual basis in accordance with law, regulation or custom (i.e., is reoccurring)
- an annual report contains or accompanies the financial statements and the auditors' report thereon
- an annual report's purpose is to provide owners (or similar stakeholders) with information on the Entity's:
  - operations; and/or
  - financial results and financial position as set out in the financial statements.

Based on discussions with management, the following are expected to meet the definition of an "annual report" under professional standards:

- Management's Discussion and Analysis
- The Annual Report on Form 40-F

Management agrees, when possible, to provide us with the final versions of the document(s) comprising the "annual report" prior to the date of our auditors' report on the financial statements. If that timing is not possible, management agrees to provide us with the final versions of the document(s) comprising the "annual report" prior to the entity's issuance so that we can complete our responsibilities required under professional standards.

CannTrust Holdings Inc.
March 22, 2019

Management is responsible for the "other information". Our responsibility is to read the "other information" and, in doing so, consider whether such information, or the manner of its presentation, is materially inconsistent with:

- the financial statements; or
- our knowledge obtained in the audit.

Our responsibility is also to remain alert for indications that the "other information" appears to be materially misstated.

In addition, if an "annual report" referred to above is, or if the financial statements that we reported on are, translated from English to French (and vice versa), or if our name is used in connection with any of those translated documents, we are required to perform certain procedures under professional standards to satisfy ourselves that those translated documents include the same information, and in all material respects carries the same meaning. If we cannot perform these procedures prior to the issuance of those translated documents, the Entity acknowledges their responsibility to notify the users of such translated documents that we do not consent to the use of our report or our name in connection with those translated documents.

Additional Responsibilities when Requesting Auditor's Consent

We have been requested to consent to the use of our audit report in connection with the following continuous disclosure documents filed with securities regulatory authorities:

i) the Entity's financial statements and the audit report thereon

ii) the Entity's Management's Discussion and Analysis (MD&A) filed in connection with the material in paragraph (i)

iii) the Entity's Annual Report on Form 40-F

We will consider consenting in writing, once we have performed the procedures required under professional standards.

Furthermore, when we are requested to consent to the use of the audit report on the Entity's financial statements, professional standards require that we read the information contained in the Annual Information Form (AIF), if any, and consider whether such information is materially inconsistent with the related financial statements.

Management is responsible for providing us with adequate notice of the preparation of any continuous disclosure documents and any AIFs and providing us with copies, prior to their issuance, of the above-listed designated public documents. Furthermore, management has the responsibility for identifying subsequent events and providing appropriate disclosure in, or adjustment of, the financial statements as a result of such events as required by the financial reporting framework and for providing updated written representations to the date of our consent.

Offering Documents

If the Entity wishes to include or incorporate by reference the financial statements and our audit report thereon in an offering document, we will consider consenting to the use of our report and the terms thereof at that time. Prior to issuing any consent letter, comfort letter or attending an underwriter's due diligence meeting, if any, we will be required to perform procedures as required by professional standards. Management agrees to provide us with adequate notice of the preparation of such documents. This engagement letter authorizes KPMG to perform services as required by professional standards related to any offering documents of the Entity during the term of this letter that include or incorporate by reference financial statements. Appendix – Services Related to Offering Documents to this letter provides further terms and conditions for any professional services related to offering documents that we may perform under this engagement letter. If there are offering document services to be delivered outside the scope of those described in this letter (e.g. an examination of future-oriented financial information), we will require a separate engagement letter for those services.

KPMG

CannTrust Holdings Inc.
March 22, 2019

Fees

Appendix – Fees for Professional Services to this letter lists our fees for professional services to be performed under this Engagement Letter.

****

We are available to provide a wide range of services beyond those outlined above. Additional services are subject to separate terms and arrangements.

We are proud to provide you with the services outlined above and we appreciate your confidence in our work. We shall be pleased to discuss this letter with you at any time. If the arrangements and terms are acceptable, please sign the duplicate of this letter in the space provided and return it to us.

Yours very truly,

KPMG LLP

Will Stephen, responsible for the engagement and its performance, and for the report that is issued on behalf of KPMG LLP, and who, where required, has the appropriate authority from a professional, legal or regulatory body

The terms of the engagement set out are as agreed:

Mr. Greg Guyatt
Chief Financial Officer ______

Date (dd/mm/yy) 27 - MAR - 19

Mr. Mark Dawber
Audit Committee Chair ______

Date (dd/mm/yy) 27-03-19

Appendix – Management's and the Audit Committee's Responsibilities

Management's Responsibilities

The management of the Entity ("management") is responsible for the preparation and fair presentation in accordance with relevant financial reporting framework of the annual financial statements, including disclosures, schedules, and all representations contained therein.

Management is also responsible the preparation and presentation of the interim financial statements in accordance with the relevant financial reporting framework.

Management also is responsible for identifying and ensuring that the Entity complies with laws and regulations applicable to its activities, and for informing us of any known material violations of such laws and regulations and ensuring that all transactions have been recorded and are reflected in the financial statements.

Management is also responsible for preventing and detecting fraud, including the design and implementation of programs and controls to prevent and detect fraud, for adopting sound accounting policies, and for establishing and maintaining effective internal control over financial reporting and procedures for financial reporting to maintain the reliability of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements.

Management is also responsible for internal control over financial reporting as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for informing us of all deficiencies in the design or operation of such controls of which it has knowledge.

Management agrees that all financial records, documentation, and information we request in connection with our engagement will be made available to us, that all material information will be disclosed to us, that all information of which management is aware that is relevant to the preparation of the financial statements such as financial records, documentation and other matters, including the names of all related parties and information regarding all relationships and transactions with related parties and including complete minutes of meetings, or summaries of actions of recent meetings for which minutes have not yet been prepared, of shareholders, board of directors, and committees of the board of directors that may affect the financial statements, will be made available to us, that we will be provided with additional information that we may request from management for the purpose of our engagement, that we will have the full cooperation of the Entity's personnel, and that we will be provided unrestricted access to such relevant information and to such persons within the Entity from whom we determine it necessary to obtain evidence.

We will make specific inquiries of management about the representations embodied in the financial statements, and obtain a representation letter from management about these matters and other representations that we determine are necessary. Management acknowledges and understands that, as required by professional standards, we may disclaim an audit opinion or, if applicable, an interim review conclusion, when management does not provide certain written representations required. The responses to our inquiries, the written representations, and the results of audit tests, among other things, comprise the evidence we will rely upon in forming an opinion on the annual financial statements.

Management is responsible for adjusting the financial statements to correct material misstatements relating to accounts or disclosures and for affirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Audit Committee's Responsibilities

The audit committee is directly responsible for the appointment of KPMG as independent auditor, determining our compensation, and oversight of our Audit work, including resolution of disagreements between management and us regarding financial reporting. The audit committee is responsible for preapproval of all audit and non-audit services provided by us.

The audit committee is also responsible for conducting their own review of the interim financial statements. For this purpose, they should not rely solely on our interim review report/conclusion in conducting their review of such financial statements.

CannTrust Holdings Inc.
March 22, 2019

Appendix – Auditor's Responsibilities

We have the responsibility to conduct and will conduct the:

- audit of the annual financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), with the objective of expressing an opinion on whether the Entity's annual financial statements, prepared by management with the oversight of those charged with governance, are, in all material respects, in accordance with the financial reporting framework referred to above.
- review of the interim financial statements in accordance with relevant PCAOB interim review standards with the objective of providing a basis for reporting whether we are aware of any material modification that needs to be made for the interim financial statements to be in accordance with the applicable financial reporting framework referred to above.

Audit Services

We will perform an audit of the Entity's annual financial statements.

The annual financial statements, any applicable schedules, and our audit reports thereon are subject to review by the relevant securities regulators and to the application by them of their interpretation of the relevant rules and regulations.

Our Audit:

– will include identifying and assessing risks of material misstatement, whether due to fraud or error, based on an understanding of the Entity and its environment, including the Entity's internal controls

– will include obtaining sufficient appropriate audit evidence about whether material misstatements exist, through designing and implementing appropriate responses to the assessed risks

– will include performing tests of the accounting records and such other procedures, as we consider necessary in the circumstances, to provide a reasonable basis for our opinion

– will include assessing the accounting policies used and significant estimates made by management, and evaluating the overall financial statement presentation

– will include obtaining an understanding of internal control over financial reporting sufficient to plan the Audit and to determine the nature, timing and extent of audit procedures to be performed, evaluating the design and implementation and testing the operating effectiveness of internal control, as considered necessary, based on the assessed risk, and performing such other procedures as we consider necessary in the circumstances

– will be planned and performed to obtain reasonable assurance about whether the annual financial statements are free of material misstatement, whether caused by error or fraud. Accordingly, there is some risk that a material misstatement of the financial statements would remain undetected. Although not absolute assurance, reasonable assurance is a high level of assurance. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that fraud (including fraud that may be an illegal act) and other illegal acts may exist and not be detected by an Audit performed in accordance with the standards of the PCAOB. Also, an audit is not designed to detect errors or fraud that are immaterial to the annual financial statements.

– will not be designed to provide assurance on internal control over financial reporting or to identify internal control deficiencies.

Interim Review Services

Our review procedures will be substantially less in scope than an Audit performed in accordance with the standards of the PCAOB, the objective of which is the expression of opinion regarding the financial statements. Accordingly, we will not express an opinion on the Entity's interim financial information. Our review report will contain a statement to that effect.

Our reviews will consist principally of performing analytical procedures applied to financial data and making inquiries of the Entity's personnel responsible for financial and accounting matters. Our reviews will include obtaining sufficient knowledge of the Entity's business and its internal control as it relates to the preparation of both annual and interim financial information to (a) identify the types of potential material misstatements in the interim financial information and consider the likelihood of their occurrence, and (b) select the inquiries and analytical procedures that will provide us with a basis for communicating whether we are aware of any material modifications that should be made to the interim financial information for it to be in accordance with the relevant financial reporting framework.

A review does not contemplate tests of internal controls or accounting records, tests of responses to inquiries by obtaining corroborating audit evidence, and certain other procedures ordinarily performed during an Audit. Thus, a review does not provide assurance that we will become aware of all significant matters that would be disclosed in an Audit. Further, a review is not designed to provide assurance on internal control or to identify material weaknesses or significant deficiencies and cannot be relied on to detect errors, fraud, or illegal acts.

Upon completion of each review, we will issue a written report addressed to the audit committee that will state whether we are aware of any material modifications that should be made to the interim financial statements for them to be in accordance with the relevant financial reporting framework. Our report will be solely for the information of the Entity and is not to be used or referred to in quarterly reports to shareholders or other third parties (including the securities regulators) regarding quarterly financial results.

If during the performance of our interim review services we become aware of matters that cause us to believe the interim financial statements filed, or to be filed, with the securities regulators, are probably materially misstated as a result of a departure from the relevant financial reporting framework, we will discuss such matters with management and, if appropriate, communicate such matters to the audit committee.

CannTrust Holdings Inc.
March 22, 2019

Our Responsibility to Communicate with the Audit Committee, Management and the Board of Directors

We are responsible to communicate matters required by professional standards, to the extent that such matters come to our attention, to the appropriate level of management, those charged with governance and/or the board of directors.

The form (oral or in writing) and the timing will depend on the importance of the matter and the requirements under professional standards.

Audit Committee and Board of Directors

We understand that we report directly to the audit committee. We will also communicate the following matters prior to the issuance of our audit report:

- An overview of our overall Audit strategy, timing of the Audit and the significant risks identified during our risk assessment procedures.
- Management's initial selection of, or changes in, significant accounting policies or the application of such policies in the current period; and the effect on financial statements or disclosures of significant accounting policies in controversial areas or areas for which there is a lack of authoritative guidance or consensus, or diversity in practice.
- All critical accounting policies and practices to be used, including the reasons certain policies and practices are considered critical; and how current and anticipated future events might affect the determination of whether certain policies and practices are considered critical.
- A description of the process management used to develop critical accounting estimates, management's significant assumptions used in critical accounting estimates that have a high degree of subjectivity, and any significant changes management made to the process used to develop critical accounting estimates or management's significant assumptions, including a description of management's reasons for the changes and the effects of the changes on the financial statements.
- Significant transactions that are outside of the normal course of business for the Entity or that otherwise appear to be unusual due to their timing, size, or nature; and the policies and practices used to account for significant unusual transactions, and our understanding of the business rationale for significant unusual transactions.
- Our evaluation of the quality of the Entity's financial reporting.
- All material weaknesses[1] and significant deficiencies[2] in internal control over financial reporting, in writing, identified during the engagement. Any conclusion that the oversight of the Entity's external financial reporting and internal control over financial reporting by the audit committee is ineffective is reported, in writing, to the board of directors.

---

[1] A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Entity's annual will not be prevented or detected on a timely basis.

[2] A significant deficiency is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the Entity's financial reporting.

- Corrected misstatements arising from the Audit and the implications that such corrected misstatements might have on the Entity's financial reporting process. In this context, corrected misstatements are proposed corrections of the financial statements that were recorded by management and, in our judgment, may not have been detected except through the auditing procedures performed.
- Uncorrected misstatements aggregated by us that were determined by management to be immaterial, both individually and in aggregate.
- All relationships between KPMG LLP (KPMG) and its related entities and the Entity and its related entities or persons in financial reporting oversight roles at the Entity that may reasonably be thought to bear on independence.
- Other matters required to be communicated by the standards of the PCAOB or that are deemed by us to be significant to the oversight of the Entity's financial reporting process.

We will also read minutes, if any, of audit committee meetings for consistency with our understanding of the communications made to the audit committee and determine that the audit committee has received copies of all material written communications between ourselves and management.

To the extent that they come to our attention, we will inform the appropriate level of management about any illegal acts, unless they are clearly inconsequential, material misstatements in the financial statements and any instances of fraud. Further, to the extent they come to our attention, we also will communicate directly to the audit committee illegal acts unless they are clearly inconsequential, material errors in the financial statements and any instances of fraud that involve senior management or that, in our judgment, cause a material misstatement of the financial statements. In the case of illegal acts which, in our judgment, would have a material effect on the financial statements of the Entity, we are also required to follow the procedures set forth in the Private Securities Litigation Reform Act of 1995, which under certain circumstances requires us to communicate our conclusions to the SEC.

Management

We will report, in writing, to management the following matters prior to the issuance of our audit reports:

- All material weaknesses in internal control over financial reporting identified during the Audit.
- All significant deficiencies in internal control over financial reporting identified during the Audit.

KPMG

CannTrust Holdings Inc.
March 22, 2019

Appendix – Expected Form of Report (annual consolidated financial statements)

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors
CannTrust Holdings Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of CannTrust Holdings Inc. (the Company) as of December 31, 2018, the related consolidated statements of net income (loss), comprehensive income (loss), shareholders' equity, and cash flows for the year ended December 31, 2018, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the financial performance and its cash flows for the year ended December 31, 2018, in conformity with International Financial Reporting Standards as issued by the International Accounting Standards Board.

We also have audited the adjustments to the 2017 consolidated financial statements to retrospectively apply the change in accounting policy to capitalize the direct and indirect costs incurred before harvest attributable to biological asset transformation, as described in Note 5. In our opinion, such adjustments are appropriate and have been properly applied. We were not engaged to audit, review, or apply any procedures to the 2017 consolidated financial statements of the Company other than with respect to the adjustments and, accordingly, we do not express an opinion or any other form of assurance on the 2017 consolidated financial statements taken as a whole.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

CannTrust Holdings Inc.
March 22, 2019

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

We have served as the Company's auditor since 2018.

DRAFT

Toronto, Canada
March 27, 2019

KPMG

CannTrust Holdings Inc.
March 22, 2019

Appendix – Expected Form of Report (interim reviews – Q1, Q2 and Q32019)

To the Shareholders and Board of Directors
CannTrust Holdings Inc.:

Results of Review of Condensed Consolidated Interim Financial Information

We have reviewed the condensed consolidated balance sheet of CannTrust Holdings Inc. (the Company) as of March 31, 2019/June 30, 2019, the related condensed consolidated statements of net income and comprehensive income for the three-month [and six-month] period(s) ended March 31, 2019/June 30, 2019, the related condensed consolidated statements of changes in shareholders' equity and cash flows for the three-month [and six- or nine- month] period(s) ended March 31, 2019/June 30, 2019, and the related notes (collectively, the consolidated interim financial information). Based on our review, we are not aware of any material modifications that should be made to the condensed consolidated interim financial information for it to be in conformity with International Accounting Standard No. 34, Interim Financial Reporting.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheet of the Company as of December 31, 2018, and the related consolidated statements of net income and comprehensive income, changes in shareholders' equity, and cash flows for the year then ended (not presented herein); and in our report dated March 27, 2019, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2018, is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

Comparative Information

We draw attention to the fact that we have not audited or reviewed, and express no opinion, review conclusion or any form of assurance on, the accompanying condensed (consolidated / non-consolidated / separate / combined):

–statement**(s)** of profit or loss and other comprehensive income for the three-month **[and six-month (nine-month)]** period**(s)** ended ____ **(Date of comparative quarter-end in prior year)** statement of changes in equity for the **[three/six/nine]**-month period ended [date]____

Basis for Review Results

This condensed consolidated interim financial information is the responsibility of the Company's management. We are a public accounting firm registered with the Public Company Accountability Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB and in accordance with the ethical requirements that are relevant to our review of these condensed consolidated interim financial statements in Canada.

CannTrust Holdings Inc.
March 22, 2019

We conducted our review in accordance with the standards of the PCAOB. A review of condensed consolidated interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the PCAOB, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Use of the report

This report is for the use of the Audit Committee and the Board of Directors of CannTrust Holdings Inc. to assist them in discharging their obligation regarding these condensed consolidated interim financial statements, and should not be used for any other purpose.

DRAFT

Toronto, Canada
March 22, 2019

KPMG

CannTrust Holdings Inc.
March 22, 2019

Appendix – Services Related to Offering Documents

For purposes of this engagement letter, an offering document includes a prospectus, short form prospectus, offering memorandum, information circular or business acquisition report in Canada and/or the United States that KPMG will be associated with as a result of the performance of audit and interim review services on the Entity's annual and interim financial statements described in the engagement letter.

The primary purpose of our engagement will be to carry out the applicable procedures under professional standards to allow us to consent to the use of our auditor's report in the offering document. Certain of these procedures include:

a) determining the appropriate date of consent

b) determining whether the financial statements and the auditor's report have been accurately reproduced in the offering document

c) considering whether any of the other information in the offering document appears to be materially inconsistent with the audited financial statements or knowledge obtained by us in the course of performing the audits or in performing the procedures required by professional standards regarding offering documents

d) updating our subsequent event procedures

   i) These include procedures designed to determine whether management has appropriately identified and dealt with subsequent events indicating the existence of a material misstatement in the financial statement upon which we have reported.

   ii) Management is responsible for identifying events occurring between the date of the latest audited or unaudited financial statements filed with securities regulatory authorities and the date of the offering document

e) reading the offering document and all information specifically incorporated by reference therein

f) to the extent that the offering document includes or incorporates by reference pro forma financial statements, making enquiries concerning the pro forma adjustments and the compliance of the pro forma statements with applicable form regulatory requirements. We will also perform certain mechanical procedures on the compilation of the pro forma financial statements.

g) determining that the offering document has been approved by appropriate officials of the Entity

h) obtaining representations from management

Upon completion of the above-noted procedures and certain other procedures required by our professional standards and resolving any identified matters, we will issue the form of consent required by our professional standards. We will provide the form of consent to be issued at the time of creation of the offering document.

CannTrust Holdings Inc.
March 22, 2019

It is not our objective, nor are we able to, perform an engagement to audit or review the offering document as a whole. We are also unable to provide assurance on other information in the offering document as we have not been engaged to audit or review the other information. The procedures we perform under our professional standards in order to consent do not constitute an engagement to audit or review the offering document as a whole. Further, we will make no representations regarding questions of legal interpretation. Accordingly, management and those charged with governance cannot rely on our consent to mitigate their responsibilities regarding the preparation of the offering document.

If the underwriters, agents or Initial Purchasers or other equivalent relevant body under the circumstances, (hereinafter the "underwriters") of the offering ask us to provide them with a comfort letter, you agree that we should perform the procedures necessary to furnish this letter, provided that such procedures are discussed with and approved by your chief financial officer or their designate.

If we are asked to attend a meeting (the "due diligence meeting") at which the underwriters and their legal counsel will ask us certain questions in connection with our audits and interim reviews, you agree that we should attend. We understand that the underwriters are experienced in these matters and will be carrying out other procedures they deem appropriate to obtain whatever information they believe is necessary to complete their investigation of the financial affairs of the Entity. Our audits of the Entity's financial statements were not carried out for the purpose of such investigation and our auditor's report on these financial statements and the answers we may give at the due diligence meeting may not be appropriate for that purpose. Accordingly, we make no representations regarding the sufficiency of our audit procedures for the underwriters' purposes.

In accordance with professional standards, our audits were carried out solely for the purpose of providing us with sufficient appropriate audit evidence to support our opinion on the financial statements referred to above. There is no assurance that our responses will address all the questions the underwriters and the underwriters' legal counsel may have. You should be aware that there could be sensitive matters that the underwriters and their legal counsel ask us to address during the due diligence meeting that could affect the outcome of the proposed offering of securities. Unless otherwise instructed by you, we will attempt to answer all questions asked at the due diligence meeting. If there are matters that you instruct us not to discuss at the due diligence meeting, you agree that we will advise the underwriters of this restriction.

You acknowledge that we have no responsibility to you if our answers to the questions asked at the due diligence meeting result in termination of, or change in, the proposed transaction or in misuse of any confidential information discussed at the meeting. You also acknowledge that you have requested us to cooperate in every way with the underwriters and their legal counsel by answering any questions they may have, except for the matters described in the preceding paragraph.

Our professional standards require us to obtain certain written representations from underwriters/agents before issuing a comfort letter or agreeing to participate in a due diligence meeting with a party that does not have a due diligence defence under the relevant securities acts (for example, in a private placement). Should an underwriter/agent in such circumstances fail to provide us with satisfactory representations, our professional standards would preclude us from issuing a comfort letter to those underwriters/agents or attending a due diligence meeting for the benefit of those underwriters/agents. For example, if a US private placement is completed under Rule 144A we would require a representation letter from US underwriters before issuing a comfort letter addressed to US underwriters or agreeing to participate in a due diligence meeting for the benefit of US underwriters.

We will advise the underwriters and their legal counsel that information acquired by them in our comfort letter or as a result of our responses to their questions at the due diligence meeting is confidential and is to be used only in connection with the securities offering referred to above.

KPMG

CannTrust Holdings Inc.
March 22, 2019

Appendix – Fees for Professional Services

The Entity and KPMG agree to a fee based on actual hours incurred at mutually agreed-upon rates. The estimated fees are as follows:

	Fee or Fee Range for Period End Date
Annual financial statements (including PCAOB non-integrated audit standards)	$290,000
Interim financial statements (per quarter, including PCAOB standards)	$40,000

Fees for offering document services provided under this engagement letter will be proposed and agreed at the time such services are to be performed.

The information technology infrastructure costs and administrative support charge as described in the terms and conditions ("Fee Arrangements") shall be 7% of total fees.

This is **Exhibit "B"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

____

Commissioner for Taking Affidavits (or as may be)

TERMS AND CONDITIONS FOR ASSURANCE ENGAGEMENTS (SEC REGISTRANT AUDIT CLIENTS)

These Terms and Conditions are an integral part of the accompanying engagement letter or proposal from KPMG that identifies the engagement to which they relate (and collectively form the "Engagement Letter"). The Engagement Letter supersedes all written or oral representations on this matter. The term "Entity" used herein has the meaning set out in the accompanying engagement letter or proposal. The term "Management" used herein means the management of Entity.

1. DOCUMENTS AND LICENSES.

a. All working papers, files and other internal materials created or produced by KPMG in relation to this engagement and all copyright and intellectual property rights therein are the property of KPMG.
b. Only in connection with the services herein, Entity hereby grants to KPMG a limited, revocable, non-exclusive, non-transferable, paid up and royalty-free license, without right of sublicense, to use all logos, trademarks and service marks of Entity solely for presentations or reports to Entity or for internal KPMG presentations and intranet sites. Further, Entity agrees that KPMG may list Entity as a customer in KPMG's internal and external marketing materials, including KPMG websites and social media, indicating the general services rendered (e.g., "Client is an Audit, Advisory, and/or Tax client of KPMG LLP").

2. ENTITY'S RESPONSIBILITIES.

a. Entity agrees that all management responsibilities will be performed and all management decisions will be made by Entity, and not by KPMG.
b. Entity's provision of documents and information to KPMG on a timely basis is an important factor in our ability to issue any reports under this Engagement Letter. KPMG is not responsible for any consequences arising from Entity's failure to deliver documents and information as required.
c. To the extent that KPMG personnel are on Entity's premises, Entity will take all reasonable precautions for their safety.
d. Entity understands and acknowledges that KPMG's independence may be impaired if any KPMG partner, employee or contractor accepts any offer of employment from Entity.
e. Except as required by applicable law or regulation, Entity shall keep confidential the terms of this Engagement Letter, and such confidential information shall not be distributed, published or made available to any other person without KPMG's express written permission.
f. Management agrees to promptly provide us with a copy of any comment letter or request for information issued by any securities or other regulatory authority in respect of information on which KPMG reported, including without limitation any continuous disclosure filings.

3. FEE AND OTHER ARRANGEMENTS.

a. KPMG's estimated fee is based in part on the quality of Entity's records, the agreed-upon level of preparation and assistance from Entity's personnel, and adherence by Entity to the agreed-upon timetable. KPMG's estimated fee also assumes that Entity's financial statements and/or other financial information, as applicable, are prepared in accordance with the relevant financial reporting framework or the relevant criteria, as applicable, and that there are no significant changes to the relevant financial reporting framework or the relevant criteria, as applicable; no significant new or changed accounting policies; no significant changes to internal control; and no other significant issues.
b. Additional time may be incurred for such matters as significant issues, significant unusual and/or complex transactions, informing management about new professional standards, and any related accounting advice. Where these matters arise and require research, consultation and work beyond that included in the estimated fee, Entity and KPMG agree to revise the estimated fee. Our professional fees are also subject to an additional charge to cover information technology infrastructure costs and administrative support of our client service personnel. Disbursements for items such as travel, accommodation and meals will be charged based on KPMG's actual disbursements.
c. KPMG's invoices are due and payable upon receipt. Amounts overdue are subject to interest. In order to avoid the possible implication that unpaid fees might be viewed as creating a threat to KPMG's independence, it is important that KPMG's bills be paid promptly when rendered. If a situation arises in which it may appear that KPMG's independence is threatened because of significant unpaid bills, KPMG may be prohibited from signing any applicable report and/or consent.
d. Fees for any other services will be billed separately from the services described in this Engagement Letter and may be subject to written terms and conditions supplemental to those in the Engagement Letter.
e. Canadian Public Accountability Board ("CPAB") participation fees, when applicable, are charged to Entity based on the annual fees levied by CPAB.

4. USE OF MEMBER FIRMS AND THIRD PARTY SERVICE PROVIDERS; STORAGE AND USE OF INFORMATION.

a. KPMG is a member firm of the KPMG International Cooperative ("KPMG International"). Entity acknowledges that in connection with the provision of services hereunder, KPMG may use the services of KPMG International member firms, as well as other third party service providers or subcontractors, and KPMG shall be entitled to share with them all documentation and information related to the engagement, including Entity's confidential information and personal information ("information"). KPMG may also: (i) directly, or using such aforementioned KPMG International member firms, third party service providers or subcontractors, perform data analytics in respect of the information; and (ii) retain and disclose to KPMG International member firms the information to share best practices or for knowledge sharing purposes. In all such cases, such information may be used, retained, processed, or stored outside of Canada by such KPMG International member firms, other third party service providers or subcontractors, and may be subject to disclosure in accordance with the laws applicable in the jurisdiction in which the information is used, retained, processed or stored, which laws may not provide the same level of protection for such information as will Canadian laws. KPMG represents that such KPMG International member firms, other third party service providers or subcontractors have agreed or shall agree to conditions of confidentiality with respect to Entity's confidential information, and that KPMG is responsible to ensure their compliance with those conditions. Any services performed by KPMG International member firms or other third party service providers or subcontractors shall be performed in accordance with the terms of this Engagement Letter, but KPMG remains solely responsible to Entity for the delivery of the services hereunder. Entity agrees that any claims that may arise out of the engagement will be brought solely against KPMG, the contracting party, and not against any other KPMG International member firms or other third party service providers or subcontractors referred to above.
b. Certain information (including information relating to time, billing and conflicts) collected by KPMG during the course of the engagement may be used, retained, processed and stored outside of Canada by KPMG, KPMG International member firms or third party service providers or subcontractors providing support services to KPMG for administrative, technological and clerical/organizational purposes, including in respect of client engagement acceptance procedures and maintaining engagement profiles; and to comply with applicable law, regulation or professional standards (including for quality performance reviews). Such information may be subject to disclosure in accordance with the laws applicable in the jurisdiction in which the information is used, retained, processed or stored, which laws may not provide the same level of protection for such information as will Canadian laws. KPMG may also share information with its legal advisers and insurers for the purposes of obtaining advice.
c. Entity acknowledges that KPMG aggregates anonymous information from sources including the Entity for various purposes, including to monitor quality of service, and Entity consents to such use. KPMG may also use Entity's information to offer services that may be of interest to Entity.

5. PERSONAL INFORMATION CONSENTS AND NOTICES.

KPMG may be required to collect, use and disclose personal information about individuals during the course of the engagement. Any collection, use or disclosure of personal information is subject to KPMG's Privacy Policy available at www.kpmg.ca. Entity represents and warrants that (i) it will obtain any consents required to allow KPMG to collect, use and disclose personal information in the course of the engagement, and (ii) it has provided notice to those individuals whose personal information may be collected, used and disclosed by KPMG hereunder of the potential processing of such personal information outside of Canada (as described in Section 4 above). KPMG's Privacy Officer noted in KPMG's privacy policy is able to answer any individual's questions about the collection of personal information required for KPMG to deliver services hereunder.

6. THIRD PARTY DEMANDS FOR DOCUMENTATION AND INFORMATION / LEGAL AND REGULATORY PROCESSES.

a. Entity on its own behalf hereby acknowledges and agrees to cause its subsidiaries and affiliates to acknowledge that KPMG or a foreign component auditor which has been engaged in connection with an assurance engagement ("component auditor") may from time to time receive demands from a third party (each, a "third party demand"), including without limitation (i) from CPAB, the Public Company Accounting Oversight Board or from professional, securities or other regulatory, taxation, judicial or governmental authorities (both in Canada and abroad), to provide them with information and copies of documents in KPMG's or the component auditor's files including (without limitation) working papers and other work-product relating to the affairs of Entity, its subsidiaries and affiliates, and (ii) summons for production of documents or information related to the services provided hereunder; which information and documents may contain confidential information of Entity, its subsidiaries or affiliates. Except where prohibited by law, KPMG or its component auditor, as applicable, will advise Entity or its affiliate or subsidiary of the third party demand. Entity acknowledges, and agrees to cause its subsidiaries and affiliates to acknowledge, that KPMG or its component auditor, as applicable, will produce documents and provide information in response to the third party demand, without further authority from Entity, its subsidiaries or affiliates.
b. KPMG will use reasonable efforts to withhold from production any documentation or information over which Entity asserts privilege. Entity must identify any such documentation or information at the time of its provision to KPMG by marking it as "privileged". Notwithstanding the foregoing, where disclosure of such privileged documents is required by law, KPMG will disclose such privileged documents. If and only if the authority requires such access to such privileged documents pursuant to the laws of a jurisdiction in which express consent of Entity is required for such disclosure, then Entity hereby provides its consent.
c. Entity agrees to reimburse KPMG for its professional time and any disbursements, including reasonable legal fees and taxes, in responding to third party demands.
d. Entity waives and releases KPMG from any and all claims that it may have against KPMG as a result of any disclosure or production by KPMG of documents or information as contemplated herein.
e. Entity agrees to notify KPMG promptly of any request received by Entity from any third party with respect to the services hereunder, KPMG's confidential information, KPMG's advice or report or any related document.

7. CONNECTING TO THE ENTITY'S IT NETWORK; EMAIL AND ONLINE FILE SHARING AND STORAGE TOOLS.

a. Entity authorizes KPMG personnel to connect their computers to Entity's IT Network and the Internet via the Network while at the Entity's premises for the purpose of conducting normal business activities.
b. Entity recognizes and accepts the risks associated with communicating electronically, and using online file sharing, storage, collaboration and other similar online tools to transmit information to or sharing information with KPMG, including (but without limitation) the lack of security, unreliability of delivery and possible loss of confidentiality and privilege. Entity assumes all responsibility or liability in respect of the risk associated with the use of the foregoing, and agrees that KPMG is not responsible for any issues that might arise (including loss of data) as a result of Entity using the foregoing to transmit information to or otherwise share information with KPMG and, in the case of online tools other than email, KPMG's access to and use of the same in connection with obtaining Entity information and documents.

8. LIMITATION ON WARRANTIES.

THIS IS A SERVICES ENGAGEMENT. KPMG WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH WITH QUALIFIED PERSONNEL IN A COMPETENT AND WORKMANLIKE MANNER IN ACCORDANCE WITH APPLICABLE INDUSTRY STANDARDS. SUBJECT TO SECTION 13, KPMG DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. CONSENT TO THE USE OF THE KPMG NAME OR KPMG REPORT.

Except as otherwise specifically agreed in this Engagement Letter, KPMG does not consent to:
i. the use of our name or our report in connection with information, other than what we have reported on as part of this Engagement Letter or our report thereon, that contains, incorporates by reference, or otherwise accompanies our report or our name;
ii. the use of our report in another language, or the use of our report in connection with information that we reported on that has been translated into another language, or the use of our name in connection with information that we reported on that has been translated into another language;
iii. the use of our report in connection with an offering document or other securities filing, including continuous disclosure filings; or
iv. the use of our name or our report in connection with the interim financial statements (or other interim financial information) or any statement by the Entity regarding the services that we provided on the interim financial statements or other interim financial information.
Any communication, report, statement or conclusion on the interim financial statements may not be included in, or otherwise referred to in any public document or public oral statements except when the interim review conclusion contains a modified conclusion, in which case our interim review report will accompany the interim financial statements.
If the Entity wishes to obtain KPMG's consent regarding the matters above or other matters not otherwise specifically covered by this Engagement Letter, we will be required to perform procedures as required by applicable professional standards, and such procedures would be a separate engagement and subject to separate engagement terms.

10. ALTERNATIVE DISPUTE RESOLUTION.

Any dispute or claim between the parties arising under or relating to this Engagement Letter or the services provided hereunder (the "Dispute") shall be submitted to non-binding mediation. If mediation is not successful within 90 days after the issuance by a party of a request for mediation, then the Dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada in force at that time. The Seat of Arbitration shall be the province where KPMG's principal office performing this engagement is located. The language of the arbitration shall be English. The Arbitral Tribunal shall be made up of a single Arbitrator. The arbitration award shall be final, conclusive and binding upon the parties, and not subject to appeal.

11. POTENTIAL CONFLICTS OF INTEREST.

a. KPMG is or may be engaged by entities and individuals who have potentially conflicting legal and business interests to Entity. Entity agrees that, without further notice or disclosure to Entity, KPMG may: (i) accept or continue such engagements on matters unrelated to KPMG's engagement for Entity; and (ii) provide advice or services to any other person or entity making a competing bid or proposal to that of Entity whether or not KPMG is providing advice or services to Entity in respect of Entity's competing bid or proposal.
b. In accordance with professional standards, KPMG will not use any confidential information regarding Entity in connection with its engagements with other clients, and will establish confidentiality and other safeguards to manage conflicts, which may include, in KPMG's sole discretion, the use of separate engagement teams and data access controls.
c. In no event shall KPMG be liable to Entity, or shall Entity be entitled to a return of fees or disbursements, or any other compensation whatsoever as a result of KPMG accepting or continuing a conflicting engagement in accordance with the terms of this Engagement Letter.
d. Entity agrees that KPMG may, in its sole discretion, disclose the fact and nature of its engagement for Entity to (i) KPMG International member firms to inform conflict searches, and (ii) to the extent reasonably required in order to obtain the consent of another entity or individual in order to permit KPMG to act for such entity or individual, or for Entity, in connection with the engagement or any future engagement.
e. In the event that circumstances arise that place KPMG into a conflict of interest as between Entity and a pre-existing client, which in KPMG's sole opinion cannot be adequately addressed through the use of confidentiality and other safeguards, KPMG shall be entitled to immediately terminate the engagement with Entity, without liability.

f. Other KPMG International member firms are or may be engaged by entities and individuals who have potentially conflicting legal and business interests to Entity. Entity agrees that (i) it will not assert that other KPMG International member firms are precluded from being engaged by those other entities or individuals, and (ii) those engagements of other KPMG International member firms do not conflict with KPMG's engagement for Entity.

12. LOBBYING.

Unless expressly stated in this Engagement Letter, KPMG will not undertake any lobbying activity, as that term is defined in all applicable federal, provincial and municipal lobbyist registration statutes and regulations, in connection with the engagement. In the event that KPMG and Entity agree that KPMG will undertake lobbying activity in connection with the engagement, such agreement shall be set out in an amendment to this Engagement Letter.

13. SEVERABILITY.

The provisions of these Terms and Conditions and the accompanying proposal or engagement letter shall only apply to the extent that they are not prohibited by a mandatory provision of applicable law, regulation or professional standards. If any of the provisions of these Terms and Conditions or the accompanying proposal or engagement letter are determined to be invalid, void or unenforceable, the remaining provisions of these Terms and Conditions or the accompanying proposal or engagement letter, as the case may be, shall not be affected, impaired or invalidated, and each such provision shall remain valid and in effect and be enforceable and binding on the parties to the fullest extent permitted by law.

14. GOVERNING LAW.

This Engagement Letter shall be subject to and governed by the laws of the province where KPMG's principal office performing this engagement is located (without regard to such province's rules on conflicts of law).

15. LLP STATUS.

KPMG is a registered limited liability partnership ("LLP") established under the laws of the Province of Ontario and, where applicable, has been registered extra-provincially under provincial LLP legislation.

16. INDEPENDENT LEGAL ADVICE.

Entity agrees that it been advised to retain independent legal advice at its own expense prior to signing this Engagement Letter (including without limitation with respect to Entity's rights in connection with potential future conflicts) and agrees that any failure on its part to retain such independent legal counsel shall not affect (and it shall not assert that the same affects) the validity of the provisions of this Engagement Letter.

17. SURVIVAL.

All sections hereof other than Section 7(a) shall survive the expiration or termination of the engagement.

This is **Exhibit "C"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

Strosberg Sasso Sutts LLP
LAWYERS

David R. Wingfield
Partner
T 416.432.1443 F 866.316.5308
E dwingfield@strosbergco.com

20 August 2019

Our file: 19.282.000

Mark Dawber
7300 Keele Street
Vaughan, ON L4K 1Z9

John T Kaden
250 East 53rd Street
New York, New York
10022 USA
Or
c/o Rick Moscone
Fogler, Rubinoff LLP
3000 – 77 King Street West
Toronto, ON M5K 1G8

Mark Litwin
106 Avenue Road
Toronto, ON M5R 2H3

Robert Marcovitch
7300 Keele Street
Vaughan, ON L4K 1Z9
Or
c/o Rick Moscone
Fogler, Rubinoff LLP
3000 – 77 King Street West
Toronto, ON M5K 1G8

Shawna Page
416 Lytton Boulevard
Toronto, ON M5N 1S4

Mitchel J Sanders
40 Sheppard Avenue West
Suite 700
Toronto, ON M2N 6K9

Dear Board of Directors:

Hrusa v CannTrust Holdings Inc, Court File No. CV-19-00623567-00CP

Introduction

We are the solicitors to Patrick Hrusa and the putative Class Members in Superior Court of Justice Court File No CV-19-00623567-00CP. This is an action brought against CannTrust Holdings Inc ("CannTrust"), Peter Aceto, Mark Dawber, Brady Green, Greg Guyatt, Andrea Kirk, Mark Litwin, Robert Marcovitch, John Kaden, and Eric Paul for damages caused to shareholders of CannTrust Holdings Inc arising, *inter alia*, from its failure to disclose that it was unlawfully cultivating cannabis.

Mr Hrusa is a "complainant" within the meaning of s 245 of the *Business Corporations Act* R.S.O. 1990 c. B. 16, as amended ("OBCA"). We are writing to put you on notice that Mr Hrusa intends to apply to the Superior Court of Justice for leave pursuant to s 246 of the OBCA to bring the following actions in the name and on behalf of CannTrust or any of its subsidiaries unless you have advised us upon the expiry of fourteen days from today's date that CannTrust has authorised the commencement of such actions, in which case Mr Hrusa will apply to intervene in these actions.

The Actions

(i) Failure by certain present and former officers and directors to act with due care contrary to s 134 of the OBCA

It appears from publicly available information that the following persons are or were officers or directors of CannTrust:

(a) Peter Aceto, Chief Executive Officer from 1 October 2018 until his termination on 25 July 2019;

(b) Mark Dawber, director since August 2017;

(c) Brady Green, Director of Cultivation from May 2018 until June 2019 and Vice President, Cultivation since June 2019;

(d) Greg Guyatt, Chief Financial Officer since 19 February 2019;

(e) Andrea Kirk, Vice President, Quality since March 2019;

(f) Mark Litwin, Vice Chairman of the Board of Directors since 1 October 2018 and director since 2015;

(g) Robert Marcovitch, director since August 2017, and interim Chief Executive Officer since 25 July 2019;

(h) John Kaden, director since 31 October 2018;

(i) Shawna Page, director since 22 February 2018;

(j) Eric Paul, Chairman of the Board of Directors from 1 October 2018 and director from 2015 until his resignation on 25 July 2019, and Chief Executive Office prior to 1 October 2018;

(k) Ilana Platt, Vice President, Innovation and Regulatory Affairs since 2015;

(l) Michael Ravensdale, Senior Vice President, Quality and Production from October 2016 until November 11, 2018; and

(m) Mitchell Sanders, director since 2015.

It appears from publicly available information that in exercising their powers and discharging their duties to CannTrust the above-named officers and directors failed to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The particulars of these failures are known to these officers and directors and will in due course be the subject of discovery. Nevertheless, based on publicly available information, and so as not to limit the extent of the failures that may be subject to a claim, these officers and directors individually and cumulatively breached their duties to the corporation under s 134 of the OBCA by failing to ensure that CannTrust carried on its business of producing and selling cannabis and associated products in conformity with the *Cannabis Act*, S.C. 2018 C. 16, as amended and the Regulations thereto, and failed by failing to ensure that prompt and timely disclosure was provided to the Minister under the *Cannabis Act* of these failures. This breach of duty has caused and continues to cause loss or damage to CannTrust for which these officers and directors, individually and cumulatively are, or may be, liable.

(ii) Insider Trading contrary to s 134 of the Securities Act

The above-named officers and directors and any private companies they directly or indirectly own or control which hold or held shares in CannTrust are insiders, affiliates or associates of CannTrust, which is an issuer under the *Securities Act*, R.S.O 1990, c. S.5, as amended ("Securities Act").

Pursuant to s 134(4) of the Securities Act, every person or company who is an insider, affiliate or associate of an issuer that,

> (a) sells or purchases the securities of the issuer with knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed; or
>
> (b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the issuer that has not been generally disclosed,

is accountable to the issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication.

It appears from publicly available information that Mark Litwin, Eric Paul and Mitchell Sanders sold securities of CannTrust directly and through companies they directly or indirectly owned or controlled at the relevant times with knowledge of a material fact or material change with respect to CannTrust that had not been generally disclosed and communicated.

The material fact or material change of which Messrs Litwin, Paul and Sanders (and any other insiders) were aware will be the subject of discovery in due course. But not so as to restrict its generality, the material fact or change was that CannTrust had carried on its business of producing and selling cannabis and associated products when it was not properly licensed to do so under the *Cannabis Act*, S.C. 2018 C. 16 as amended and the Regulations.

Pursuant to s 134 (4) of the Securities Act, Messrs Litwin, Paul and Sanders (and any other insiders who sold shares with knowledge of a material fact or change that had not been disclosed) are liable to account to CannTrust for any benefit or advantage they have received or may receive as a result of the following transactions:

- On 15 October 2018, York Capital Funding Inc sold 97,900 shares for gross proceeds of $1,424,317.73. Mr Litwin is a beneficial owner of, and controls, York Capital Funding Inc;

- On 16 November 2018, Cannamed Financial Corp sold 110,000 shares for gross proceeds of $964,854. Messrs Paul and Litwin are beneficial owners of, and control, Cannamed Financial Corp;

- Between 20 November 2018 and 12 December 2018, Cannamed Financial Corp sold 620,000 shares for gross proceeds of $5,059,618;

- As part of a public offering in May 2019:

  (a) Mar-Risa Holdings Inc sold 788,560 shares for gross proceeds of US$4,337,080. Mr Litwin is a beneficial owner of, and controls, Mar-Risa Holdings Inc;

  (b) York Capital Funding Inc sold 689,200 shares for gross proceeds of US$3,790,600;

  (c) the Paul Family Trust sold 3,011,364 shares for gross proceeds of US$16,562,502. Mr Paul is the sole trustee of The Paul Family Trust; and

  (d) Cajun Capital Corporation sold 250,000 shares for gross proceeds of US$1,375,000. Mr Sanders is a beneficial owner of, and controls, Cajun Capital Corporation.

(iii) Auditor Liability

At all material times CannTrust's auditors were and are KPMG LLP ("KPMG").

At all material times, KPMG undertook to provide audit and related services to CannTrust in circumstances where it was reasonable for CannTrust to rely on KPMG to take reasonable care when providing these services. It was reasonably foreseeability that CannTrust would be injured were those services to be performed negligently or if KPMG made material misrepresentations to CannTrust when performing those services.

On 27 March 2019 KPMG gave its opinion to CannTrust that the financial statements presented fairly, in all material respects, CannTrust's financial position 31 December 2018 in conformity with the International Financial Reporting Standards and the Public Company Accounting Oversight Board of the United States.

Strosberg Sasso Sutts LLP
LAWYERS

The financial statements prepared by KPMG did not present fairly, in all material respects, the financial position of CannTrust or its financial performance and cash flows as of 31 December 2018. KPMG has admitted that these statements did not present fairly the financial position of CannTrust because on 9 August 2019 KPMG withdrew Annual Financial Statements for fiscal year 2018 and stated that its interim financial statements for the first quarter of fiscal year 2019 "should no longer be relied upon."

It appears from publicly available information that these financial statements were prepared negligently, and that KPMG made material misrepresentations to CannTrust in those statements about CannTrust's financial position. The details of KPMG's negligence and material misrepresentations will be the subject of discovery in due course.

In negligently conducting its audit, KPMG exposed CannTrust to reasonably foreseeable risks, including that CannTrust's operations were not properly licensed by the Minister under the *Cannabis Act*, S.C. 2018 C. 16, as amended and the Regulations to permit CannTrust to cultivate, produce and sell the cannabis and associated products. Accordingly, it appears that KPMG breached its duty of care to CannTrust causing it loss and damage.

Conclusion

We request that you advise us by the end of business within fourteen days of the date hereof that you have commenced or intend to commence an action in the name and on behalf of CannTrust or any of its subsidiaries against the above-named officers and directors for the breaches of sections 134 of the OBCA and 134 of the Securities Act described in this letter (or such additional breaches of which you are aware) and against KPMG for its negligence and negligent misrepresentations.

If you have commenced or do intend to commence such an action, we request that you consent to an order permitting Mr Hrusa to intervene in this action personally and on behalf of the Class Members.

Should you not advise us within fourteen days of the date hereof that you have commenced such an action we shall apply to the Commercial List pursuant to s 247 of the Act for orders:

(a) authorising Mr Hrusa to commence the above actions and to control the conduct of them;

(b) giving directions for the conduct of the action and permitting these actions to be commenced in parallel and combined with the class action in the above-noted court file number that Mr Hrusa has commenced; and

(c) directing that any amount adjudged payable by or on behalf of a defendant in any such action shall be paid, in whole or in part, directly to former and present security holders of CannTrust instead of to CannTrust or any subsidiary, or as otherwise directed by the court; and

Strosberg Sasso Sutts LLP
LAWYERS

(d) an order requiring CannTrust and any subsidiary to pay reasonable legal fees and any other costs reasonably incurred by Mr Hrusa in connection with the action unless those fees are otherwise recoverable from the aforesaid class action.

Yours truly,

David R Wingfield
DRW/jb
#1691930

cc: CannTrust Holdings Inc
R Paul Steep, McCarthy Tétrault LLP
Jonathan Foreman & Sarah Bowden, Harrison Pensa LLP

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

R. Paul Steep
Direct Line: (416) 601-7998
Email: psteep@mccarthy.ca

Assistant: Allan, Sandy
Direct Line: (416) 601-8200 x542449
Email: sallan@mccarthy.ca

September 3, 2019

Via Email – dwingfield@strosbergco.com

Mr. David R. Wingfield
Strosberg Sasso Sutts LLP
1561 Ouellette Avenue
Windsor ON N8X 1K5

Dear Mr. Wingfield:

Re: Hrusa v. CannTrust Holdings Inc. Court File No. CV-19-00623567-00CP

We write in response to your letter dated August 20, 2019 on behalf of Patrick Hrusa. As you know, on July 11, 2019, Mr. Hrusa sued CannTrust Holdings Inc. (CannTrust or the Company) and other defendants[1] in a putative class action. Your letter indicates that he now requests that the Company commence litigation, failing which he will seek to apply to the Superior Court of Justice for leave to act on behalf of CannTrust pursuant to s. 246 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (*OBCA*), in a derivative claim against the 13 parties identified in your letter (the Proposed Derivative Defendants).

As you know, Mr. Hrusa must demonstrate the following to obtain leave pursuant to s. 246 of the OBCA:

1. The directors of CannTrust will not bring or diligently prosecute the proposed claims;
2. Mr. Hrusa is acting in good faith; and
3. It is in the interests of CannTrust to bring and prosecute the proposed claims.

A special committee (the Special Committee) of independent directors on the board (Board) of CannTrust has considered Mr. Hrusa's request and has determined that it is not in the interests of the Company to commence the proposed actions at this time.

I. BACKGROUND

Mr. Hrusa should be aware of the following facts from the Company's recent public disclosure:

1. CannTrust received a compliance report from Health Canada that its greenhouse facility in Pelham, Ontario is non-compliant with certain regulations.
2. CannTrust had been growing plants in five previously unlicensed rooms in Pelham from October 2018 to March 2019. These rooms were constructed in accordance with

[1] In addition to Canntrust, Mr. Hrusa has also sued Mark Dawber, Mark Litwin, Robert Markovitch, John Kaden, Brady Green, Greg Guyatt, Andrea Kirk, Peter Aceto and Eric Paul.

regulations and Good Production Practices, and, subsequently, Health Canada issued licenses for each of the rooms in April 2019.

3. All product sold from the previously unlicensed rooms passed quality control testing at Health Canada certified labs as well as CannTrust's own quality control processes and safety reviews.
4. CannTrust accepted Health Canada's non-compliance finding and is taking corrective actions to ensure compliance.
5. Health Canada has placed a hold on certain CannTrust inventory, including approximately 5,200kg of dried cannabis that had been harvested in the previously unlicensed rooms in Pelham.
6. CannTrust has instituted a voluntary hold on approximately 7,500kg of dried cannabis equivalent at its Vaughan manufacturing facility that had been produced in the previously unlicensed rooms.
7. CannTrust estimates the value of the impacted inventory and biological assets is approximately $51 million as at June 30, 2019.
8. CannTrust implemented a precautionary voluntary hold on the sale and shipment of all cannabis products while it awaits a response from Health Canada concerning its non-compliance with applicable regulations.
9. On July 11, 2019, CannTrust announced that the Board had established a Special Committee, comprised of independent directors, to investigate the issues described above in their entirety. The Special Committee was appointed with a broad mandate to, among other things, investigate the Company's non-compliance with Health Canada regulations and ancillary matters, to make recommendations to the Board regarding any actions to be taken by CannTrust as a result of the investigation, and to assess any impact on the Company's bio assets, inventory, sales and revenue.
10. On July 25, 2019 the Company announced that, as a result of certain interim findings from the Special Committee's ongoing investigation, the Board had terminated with cause CannTrust CEO Peter Aceto and demanded the resignation of the Company's Chair, Eric Paul. At the same time, the Board appointed Robert Marcovitch to the role of interim CEO and he resigned from the Special Committee.
11. On July 31, 2019 the Company announced that it has retained Greenhill & Co. Canada Ltd. as the Special Committee's financial advisor, to assist in a review of strategic alternatives.
12. CannTrust's operations at its Pelham and Vaughan facilities remain fully licensed.
13. CannTrust is attempting to mitigate product shortages for its customers and patients.
14. CannTrust is cooperating with Health Canada, as well as a securities regulator and law enforcement.
15. The impacts of these matters on CannTrust's financial results are unknown and will remain unknown until Health Canada completes its review process and communicates its findings, and any sanctions, to CannTrust.
16. For this reason, CannTrust was unable to meet the deadline of August 14, 2019 to file an interim report of its financial results for the three and six month periods ended June 30, 2019, its interim management's discussion and analysis for the corresponding period and its management certifications of such interim filings.
17. CannTrust's management remains of the view that there is significant uncertainty with respect to the potential impact of potential Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition. The uncertainty with respect to the nature, timing and potential financial impact of pending Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue

recognition relates to the fact that Health Canada has broad discretion to exercise a range of regulatory powers.

18. In addition to impacting the Company's financial disclosure in the Q2 filings, the effects of the pending Health Canada decisions may also require restatement of certain of the Company's historical financial statements and related management's discussion and analysis for the periods ended December 31, 2018 and March 31, 2019.
19. KPMG, CannTrust's independent auditor, has withdrawn its reports on the Company's consolidated financial statements as at and for the year ended December 31, 2018 and its interim report on the unaudited condensed interim consolidated financial statements as at and for the three month period ended March 31, 2019, and therefore, the KPMG reports should no longer be relied upon. KPMG remains CannTrust's independent auditor.
20. On August 15, 2019, CannTrust announced that its application for a management cease trade order ("MCTO") under National Policy 12-203 – Management Cease Trade Order had been approved by the Ontario Securities Commission, and that the MCTO does not affect the ability of investors who are not insiders to trade in the securities of the Company.
21. CannTrust is not subject to any insolvency proceedings.

II. THE SPECIAL COMMITTEE

The Special Committee considering Mr. Hrusa's request is comprised of three independent directors of the Board:

1. Mark Dawber, FCPA: Mr. Dawber is a FCPA with significant public accounting experience having been an Audit Partner at Moore Stephens Hyde Houghton from 1971 until 1998 and BDO Canada LLP from 1999 to 2000. He has extensive public company experience having served on public company boards for many years as an independent director, chair of audit committees and as a member of governance and compensation committees. He has conducted numerous assignments for the Institute of Chartered Accountants of Ontario's Professional Conduct Committee.

2. Shawna Page: Ms. Page brings years of experience in both the capital markets, as well as the consumer retail markets. Ms. Page spent 10 years working at Merrill Lynch Canada, followed by 10 years at TD Securities where she was Managing Director and Chief of Staff. In 2007, Ms. Page launched a unique mass-channel brand of gender-specific and condition-specific products into the highly regulated nutraceutical industry across Canada, and later in various international markets, which she successfully exited in November 2016.

3. John Kaden, Esq.: Mr. Kaden is the Co-Founder, Managing Partner and Chief Investment Officer of Navy Capital Green Management LLC., a global investment firm based in New York City specializing in public and private investments in the emerging legal cannabis industry. Prior to this. Mr. Kaden was the co-Manager and Chief Investment Officer for Northwoods Capital Management LLC, a global hedge fund focused on the technology, media and telecom sector. Before joining Northwoods, Mr. Kaden was the Founder and Managing Partner of Cynthion Partners, a global macro hedge fund, from 2006 through to the end of 2013. Mr. Kaden graduated Magna Cum Laude with an A.B. from Harvard University and a J.D. from Yale Law School.

III. THE PROPOSED CLAIMS ARE NOT IN THE COMPANY'S BEST INTERESTS

The Special Committee has independently considered Mr. Hrusa's allegations along with the relevant compliance issues at CannTrust, including any role played by the Proposed Derivative Defendants.

At its highest, Mr. Hrusa's allegations against the Board, certain employees and KPMG amount to uninformed speculation that is contradicted by the Special Committee's findings from its investigation. Specifically, the Special Committee is not aware of any evidence that the remaining members of the Board and certain officers were aware of, played any role in, or acting reasonably could have prevented, the relevant compliance issues. Similarly, the Special Committee is not aware of any evidence that KPMG negligently conducted its audit of CannTrust's financial statements. Your letter with Mr. Hrusa's bald allegations provides no such evidence. As you know, a complainant under s. 246 of the *OBCA* cannot allege generic wrongdoing and seek to rely on the discovery process to substantiate bringing a derivative claim.

The Board and CannTrust have already taken decisive action against Messrs. Aceto and Paul, not all of which is publicly disclosed.

The Special Committee and the Board have determined that based on the current circumstances of CannTrust, it is not presently in the Company's best interests to commence and prosecute litigation against the Potential Derivative Defendants because of, among other things:

1. The potential merits of the proposed litigation against some of the Proposed Derivative Defendants;
2. The potential pecuniary and non-pecuniary costs and benefits of the proposed litigation at this time;
3. Many of the Proposed Derivative Defendants' ability to pay any damages award;
4. The disciplinary steps already undertaken by the Company;
5. CannTrust's business operations as well as its financial resources;
6. CannTrust's priorities which include, *inter alia*, remediation and engagement with Health Canada;
7. Senior management's focus and their inevitable distraction from CannTrust's priorities;
8. The Company's ability to retain and attract quality directors, officers and senior management;
9. The high likelihood that any current director or officer sued in the proposed litigation would forthwith resign from CannTrust, and the difficulty of attracting new independent directors at this time;
10. CannTrust's ability to retain a new auditor or other professionals;
11. CannTrust's defence strategy in putative class actions commenced in Ontario, British Columbia, Alberta, Quebec, and in the United States at the federal and state levels;
12. CannTrust's defence strategy in any potential criminal prosecution; and
13. CannTrust's defence strategy in any potential administrative proceeding.

IV. MR. HRUSA IS NOT ACTING IN GOOD FAITH

The Board has also considered whether Mr. Hrusa would be an appropriate person to direct the proposed derivative claims and has concluded he is not.

First, Mr. Hrusa's interests have been adverse to CannTrust since he commenced the putative class proceeding *against the Company* and other defendants. In that proceeding, Mr. Hrusa has sought various relief, including damages and declarations, *against the Company*. Given his pre-existing dispute with the Company, Mr. Hrusa is therefore not an appropriate candidate to act *on behalf of the Company*.

Second, Mr. Hrusa is proposing to take irreconcilable positions. In the putative class proceeding, he is seeking "a declaration that CannTrust is vicariously liable for the acts and/or omissions of the individual defendants and its other officers, directors, employees, agents and representatives". Thus while seeking to sue the Proposed Derivative Defendants in the proposed derivative proceedings, he is simultaneously arguing that the Company is vicariously liable for their conduct in the putative class proceeding. Stated differently, by commencing and prosecuting the proposed derivative claims, Mr. Hrusa would necessarily marshal evidence that would undermine the Company's position in the putative class proceeding he has initiated and which will benefit him.

Third, Mr. Hrusa's primary goal in bringing the derivative claims appears to be to fortify his personal position in the putative class proceeding where he must meet the requirement of being an appropriate representative of the (putative) class. If his primary responsibility is to the class which has a claim against the Company, it is the Board's view that he could not also act in the Company's best interests. We assume you will disclose the demand Mr. Hrusa has made of the Company to the Court as it may bear on his fitness as a representative plaintiff of the (putative) class that he also purports to be an appropriate person to advance claims for the Company.

Fourth, Mr. Hrusa's negligible interest in the Company[2] means that he has no countervailing incentive to minimize litigation costs in the proposed derivative claims.

Fifth, Mr. Hrusa appears to have no support from any other shareholders in seeking to commence the proposed derivative claims.

Given the foregoing, the Company and the Board do not believe that Mr. Hrusa's demands for the proposed derivative claims are made in good faith.

The Company will seek substantial indemnity costs from Mr. Hrusa personally for any failed attempt to seek leave pursuant to s. 246 of the *OBCA*.

Yours truly,

R. Paul Steep

RPS/cmt
ecc: Shane C. D'Souza

---

[2] Mr. Hrusa has not revealed his equity interest in CannTrust.

Strosberg Sasso Sutts LLP
LAWYERS

David R. Wingfield
Partner
T 416.432.1443 F 866.316.5308
E dwingfield@strosbergco.com

6 September 2019 Our file: 19.282.000

Via e-mail to: *psteep@mccarthy.ca*

R Paul Steep
McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Mr Steep:

Hrusa v CannTrust Holdings Inc, Court File No. CV-19-00623567-00CP

Thank you for your letter of 3 September 2019 in which you confirm that CannTrust will not commence an action advancing the proposed claims, or any similar claims, described in my letter of 20 August 2019. Your letter was sent, it appears, on behalf of each of CannTrust, the Board of Directors, and the Special Committee.

The Independent Directors and the Board of Directors are in a Conflict

All three members of the special committee are defendants in several putative class actions filed in Ontario. Given this fact, the members of the Special Committee have a conflict and cannot give impartial and independent instructions to your firm or anyone about CannTrust's commencing litigation making allegations that might affect them personally. Furthermore, all the officers and directors who held office during the period relevant to the proposed claims are conflicted from directing the corporation to commence litigation seeking damages for wrongs that may have been caused by their acts or omissions.

It appears self-evident, then, that the first test under s 246(2) of the OBCA is met here.

The Proposed Claims are in the Best Interests of CannTrust

The reasons you have given in your letter about why the proposed claims are not in CannTrust's best interests do not support that proposition at all. On the face of it, CannTrust's officers and directors and its auditor have breached statutory and common law duties owed to CannTrust as described in my letter. You have not disclosed any evidence that affirmatively demonstrates either that these persons did not breach any common law or statutory duties owed to CannTrust or that any such breaches did not cause CannTrust any loss or damages.

Has the Board of Directors given notice to the relevant insurance companies of the proposed claims against the officers and directors? Has CannTrust given notice to KPMG of the proposed claims? If so, then facially CannTrust cannot assert that the proposed claims lack sufficient merit to pursue. These claims will thus need to be advanced in a timely manner by counsel who are instructed to prosecute these claims vigorously. If notice has not been given, then can CannTrust affirmatively demonstrate that the corporation will not be prejudiced by not giving timely notice?

You state that CannTrust's Board of Directors have already taken decisive action against Messrs Aceto and Paul, not all of which is publicly disclosed. What action has CannTrust taken? Have these actions resulted in any monetary recovery for the corporation? If so, does that recovery satisfy all claims that CannTrust has against Messrs Aceto and Paul?

This brings me to the question of insider trading, which your letter does not address. Has CannTrust taken steps to ensure that all insiders as described in my letter have accounted to the corporation for any benefit or advantage they have or might receive in contravention of s 134(4) of the Securities Act? If so, what steps has CannTrust taken to ensure that they do so account and that any assets they own or control derived from such benefits or advantages have been secured? CannTrust is advantageously positioned both practically and as a matter of law to advance insider trading claims for the benefit of the company and its stakeholders. It is imperative that the insider trading claims be vigorously pursued without delay.

As you are aware, pursuant to s 247 of the OBCA the court has a capacious jurisdiction to make orders directing the conduct of a derivative action. Should CannTrust's ongoing business objectives as described in your letter necessitate orders relating to the conduct of the derivative action (which at this stage is only a speculative concern), the court is able to make these orders.

Your letter thus serves only to demonstrate why it is not in CannTrust's best interests that the proposed claims be advanced and controlled by its Board of Directors or Special Committee, and by using the same law firm that is acting for CannTrust to defend these actions, but why instead it is in CannTrust's best interests that this litigation be conducted in objective fashion by a shareholder as a derivative action.

Accordingly, in the presence of the information disclosed in my first letter and this one, and in the absence of CannTrust's having provided affirmative evidence that there are no reasonable prospects of its succeeding with any of the proposed claims, the third test of s 246(2) is met here.

Mr Hrusa is Acting in Good Faith

As you know, for the purposes of a derivative action, the OBCA requires that a complainant be a current or former security holder. Mr Hrusa is presently a shareholder of CannTrust. He currently holds over 4,000 shares and formerly held over 25,000 shares.

Strosberg Sasso Sutts LLP
LAWYERS

In this case, the corporation's economic interests in pursuing its officers and directors and former officers and directors and its auditors for damages are aligned with the economic interests of the shareholders who have suffered substantial losses as a result of the acts and omissions of these officers and directors and auditors. These economic interests extend to ensuring that the litigation costs are minimised. Mr Hrusa is acting in good faith in seeking to ensure that those responsible for these losses are held to account civilly and pay damages to CannTrust that can be used to pay the damages owed by the corporation to its shareholders.

Accordingly, the second test of s 246(2) is met here.

Yours truly,

David R Wingfield
DRW/jb
#1694568

cc: Jonathan Foreman & Sarah Bowden, Harrison Pensa LLP

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

R. Paul Steep
Direct Line: (416) 601-7998
Email: psteep@mccarthy.ca

Assistant: Allan, Sandy
Direct Line: (416) 601-8200 x542449
Email: sallan@mccarthy.ca

September 11, 2019

Via Email – dwingfield@strosbergco.com

Mr. David R. Wingfield
Strosberg Sasso Sutts LLP
1561 Ouellette Avenue
Windsor ON N8X 1K5

Dear Mr. Wingfield:

Re: Hrusa v. CannTrust Holdings Inc. Court File No. CV-19-00623567-00CP

We write in response to your letter dated September 6, 2019.[1] Your letter mischaracterizes CannTrust's position. We address only your misstatements concerning the Special Committee.

The Special Committee is not in a conflict. Mr. Hrusa cannot manufacture a conflict simply by pleading against the entire Board. He has not particularized, in his pleading or your two letters, why any member of the Special Committee is implicated in any of the allegations.

Mr. Hrusa fundamentally misunderstands his burden in seeking judicial leave to commence the proposed derivative proceedings. *He* must demonstrate good faith and that there is merit to his allegations. He has provided no evidence of either. Corporate law imposes no duty on the Special Committee to "disclose any evidence" to Mr. Hrusa.

Yours truly,

R. Paul Steep

ecc: Shane C. D'Souza

---

[1] Unless stated otherwise, all capitalized terms herein have the same meaning as ascribed to them in our letter dated September 3, 2019.

This is **Exhibit "D"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

MORGANTI & CO.
PROFESSIONAL CORPORATION

21 St. Clair Avenue East, Suite 1102, Toronto, Ontario M4T 1L9
Telephone: (647) 344-1900
info@morgantilegal.com | www.morgantico.com

September 18, 2019

Board of Directors
CannTrust Holdings Inc.
7300 Keele Street
Vaughan, ON L4K 1Z9

Re: Shareholder Demand for Investigation and Demand Litigation

Dear Board of Directors:

We represent Jeffrey Webb, a shareholder of CannTrust Holdings, Inc. ("TRST" or the "Company"), who has directed us to contact you after learning about the partial license suspension among other related matters.[1] He previously retained us to represent him in a class action and now intends to discontinue that claim in favour of the Company bringing claims against the wrongdoers.[2] We have also been directed by several other investors to make this demand that the Company either bring a claim against said wrongdoers or not oppose Webb's motion seeking leave to bring a claim on behalf of the Company against the wrongdoers.

Pursuant to s. 246 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA"), we are writing to the Company's Board of Directors ("Board") to provide you with notice that is it our client's intention to seek leave to bring an action in the name and on behalf of the Company against Peter Aceto ("Aceto"), Eric Paul ("Paul"), their co-conspirators within TRST, and KPMG LLP ("KPMG") under section 246(1) of the *OBCA*.

Although our client appreciates that the Board has established a Special Committee, which is now comprised of Shawna Page, Mark Dowber, and John Kaden, and who are counseled by McCarthy Tetrault LLP ("McCarthy's"), to "investigate [the] matter in its entirety",[3] our client is deeply concerned that the full scope of prudent "remediation efforts" are being stymied and that further damage to the Company will occur and the wrongdoers will never be held accountable for the damage caused to the Company. As such, please consider the following reasons not to oppose Webb's intention to seek leave to bring the action.

---

[1] *See*, TRST's News Release, CannTrust Discloses Notice of License Suspension (September 17, 2019).
[2] *See*, *Webb v CannTrust Holdings, Inc, et al*, CV-19-1554 (August 7, 2019), which we received notice from McCarthy Tétrault LLP that it was formalizing its retainer to represent the Company in the civil class actions.
[3] *See*, TRST's News Release, CannTrust Voluntary Hold on Product Sales and Formation of Independent Special Committee of the Board of Directors (July 11, 2019).

The Company has acknowledged that Aceto and Paul have engaged in improper conduct resulting in the license suspension,[4] lost revenues, lost business opportunities to competition, impairment to goodwill, and lost jobs. It is also indisputable that since October 2018, Messrs. Aceto and Paul had received compensation worth millions and sold, indirectly, millions worth of common shares earlier this year, which has exposed the Company to primary market shareholder litigation in Canada and the United States.

KPMG has also acknowledged that its report for TRST's consolidated financial statements for the year ended December 31, 2018 (dated March 27, 2019), and its interim report for the unaudited condensed interim consolidated financial statements for the period ended March 31, 2018 (dated May 13, 2019) failed to identified Messrs. Aceto and Paul's improper conduct and cannot, therefore, be relied upon by the Company. KPMG's admission implicitly confirms that TRST and its Audit and Governance Committees did not have effective internal controls.

We would like to bring to your attention the strong appearance of a conflict of interest with McCarthy's role as counsel to the Special Committee and the Company, which appears to have resulted in remediation efforts being stymied, i.e., asset freezes and litigation.

First, McCarthy's is counsel to KPMG in another matter that is very similar to the type of litigation that appears to be now evolving against TRST, Board members, and KPMG (the NAP litigation).[5] McCarthy's simply cannot recommend that the Company take any remediation efforts against KPMG as they represent KPMG in the NAP litigation . Second, McCarthy's role is further complicated by the Ontario Securities Commission's investigation which could easily intermingle the members of the Special Committee, as well as KPMG.[6] Finally, McCarthy's role as counsel to the Company in the pending shareholder class actions results in McCarthy's inability to recommend remediation efforts against any further member of the Company being a *fait accompli*.

Notwithstanding TRST's own findings of wrongdoing, to date, only two senior executives with corporate oversight have been fired, and the Board has failed to issue a report of evaluation of the situation,[7] failed to publish the Aceto [Employment] Agreement, failed to take action against the subordinate employees who colluded with Messrs. Aceto and Paul,[8] or obtain new auditors that would not miss such blatant errors in TRST's internal controls.

For the reasons stated herein, McCarthy's is not in a position to recommend any remediation efforts against KPMG or former or current key personnel at TRST. As such, we ask the Board not to oppose Webb's intention to seek leave to bring the action. For the time being, we would be pleased to discuss these matters with the Board in the interim.

---

[4] *See*, TRST's News Release, CannTrust Discloses Notice of License Suspension (September 17, 2019).

[5] *Johnson and Vaeth v. North American Palladium Ltd., et al.*, CV-16-545118-00CP.

[6] *Compare, OSC v In re matter of Sino-forest Corporation, et al, and Ernst & Young LLP (audits of Sino-Forest and Zungui Haixi).*

[7] *See*, TRST's News Release, CannTrust Announces the Withdrawal of Auditors' Report (August 9, 2019) (KPMG's decision was prompted by <u>the Company's… sharing with KPMG of newly uncovered information from the Special Committee's investigation</u>, including information that led to senior leadership changes announced on July 25, 2019").

[8] Indeed, it is inconceivable that Messrs. Aceto and Paul could produce and harvest 12,700kg of dried cannabis from the Pelham and Vaughan facilities without other senior level executives' substantial participation.

Very truly yours,

Morganti & Co., P.C.

Andrew Morganti

Andrew Morganti
amorganti@morgantilegal.com

cc: Shane D'Souza, sdourza@mccarthy.ca

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Shane C. D'Souza
Partner
Direct Line: (416) 601-8196
Direct Fax: (416) 868-0673
Email: sdsouza@mccarthy.ca

October 2, 2019

Via Email (amorganti@morgantilegal.com)

Mr. Andrew Morganti
Morganti & Co.
21 St. Clair Avenue East
Suite 1102, Toronto, ON, M4T 1L9
Toronto ON M5E 1A5

Dear : Mr. Morganti

Re: Webb v. CannTrust Holdings Inc. Court File No. CV-19-1554

We write in response to your letter dated September 18, 2019 on behalf of Jeffrey Webb.

On August 7, 2019, Mr. Webb sued CannTrust Holdings Inc. (<u>CannTrust</u> or the <u>Company</u>) and other defendants in a putative class action. Although your letter indicates that Mr. Webb's intention to discontinue that claim in favour of a derivative action against Peter Aceto, Eric Paul, their purported and unidentified co-conspirators within CannTrust, and KPMG LLP (the <u>Proposed Derivative Defendants</u>), he has yet to do so.

As you know, Mr. Webb must demonstrate the following to obtain leave pursuant to s. 246 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (<u>*OBCA*</u>):

1. The directors of CannTrust will not bring or diligently prosecute the proposed claims;
2. Mr. Webb is acting in good faith; and
3. It is in the interests of CannTrust to bring and prosecute the proposed claims.

A special committee (the <u>Special Committee</u>) of independent directors on the board (<u>Board</u>) of CannTrust has considered Mr. Webb's letter and determined that it is not in the interests of the Company to commence the proposed actions at this time.

I. BACKGROUND

Many of the assertions in your letter are inaccurate. The Company has been diligent in pursuing and rectifying any issues of non-compliance. Mr. Webb should be aware of the following facts from the Company's recent public disclosure.

1. CannTrust received a compliance report from Health Canada that its greenhouse facility in Pelham, Ontario is non-compliant with certain regulations.

2. CannTrust had been growing plants in five previously unlicensed rooms in Pelham from October 2018 to March 2019. These rooms were constructed in accordance with regulations and Good Production Practices, and, subsequently, Health Canada issued licenses for each of the rooms in April 2019.

3. All product sold from the previously unlicensed rooms passed quality control testing at Health Canada certified labs as well as CannTrust's own quality control processes and safety reviews.

4. CannTrust accepted Health Canada's non-compliance finding and is taking corrective actions to ensure compliance.

5. Health Canada has placed a hold on certain CannTrust inventory, including approximately 5,200kg of dried cannabis that had been harvested in the previously unlicensed rooms in Pelham.

6. CannTrust has instituted a voluntary hold on approximately 7,500kg of dried cannabis equivalent at its Vaughan manufacturing facility that had been produced in the previously unlicensed rooms.

7. CannTrust estimates the value of the impacted inventory and biological assets is approximately $51 million as at June 30, 2019.

8. CannTrust implemented a precautionary voluntary hold on the sale and shipment of all cannabis products while it awaits a response from Health Canada concerning its non-compliance with applicable regulation.

9. On July 11, 2019, CannTrust announced that the Board had established a Special Committee, comprised of independent directors, to investigate the issues described above in their entirety. The Special Committee was appointed with a broad mandate to, among other things, investigate the Company's non-compliance with Health Canada regulations and ancillary matters, to make recommendations to the Board regarding any actions to be taken by CannTrust as a result of the investigation, and to assess any impact on the Company's bio assets, inventory, sales and revenue.

10. On July 25, 2019 the Company announced that, as a result of certain interim findings from the Special Committee's ongoing investigation, the Board had terminated with cause CannTrust CEO Peter Aceto and demanded the resignation of the Company's Chair, Eric Paul. At the same time, the Board appointed Robert Marcovitch to the role of interim CEO and he resigned from the Special Committee.

11. On July 31, 2019 the Company announced that it has retained Greenhill & Co. Canada Ltd. as the Special Committee's financial advisor, to assist in a review of strategic alternatives

12. CannTrust is attempting to mitigate product shortages for its customers and patients.

13. CannTrust is cooperating with Health Canada, as well as a securities regulator and law enforcement.

14. The impacts of these matters on CannTrust's financial results are unknown and will remain unknown until Health Canada completes its review process and communicates its findings, and any sanctions, to CannTrust.

15. For this reason, CannTrust was unable to meet the deadline of August 14, 2019

to file an interim report of its financial results for the three and six month periods ended June 30, 2019, its interim management's discussion and analysis for the corresponding period and its management certifications of such interim filings.

16. CannTrust's management remains of the view that there is significant uncertainty with respect to the potential impact of potential Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition. The uncertainty with respect to the nature, timing and potential financial impact of pending Health Canada decisions on the valuation of the Company's inventory and biological assets and revenue recognition relates to the fact that Health Canada has broad discretion to exercise a range of regulatory powers.

17. In addition to impacting the Company's financial disclosure in the Q2 filings, the effects of the pending Health Canada decisions may also require restatement of certain of the Company's historical financial statements and related management's discussion and analysis for the periods ended December 31, 2018 and March 31, 2019.

18. Following the Company's caution against relying on its financial statements KPMG, CannTrust's independent auditor, withdrew its reports on the Company's consolidated financial statements as at and for the year ended December 31, 2018 and its interim report on the unaudited condensed interim consolidated financial statements as at and for the three month period ended March 31, 2019, and therefore, the KPMG reports should no longer be relied upon. KPMG remains CannTrust's independent auditor.

19. On August 15, 2019, CannTrust announced that its application for a management cease trade order ("MCTO") under National Policy 12-203 – Management Cease Trade Order had been approved by the Ontario Securities Commission, and that the MCTO does not affect the ability of investors who are not insiders to trade in the securities of the Company.

20. On September 17, 2019, CannTrust announced that it received a Notice of License Suspension under section 64(1) of the *Cannabis Act*. The Notice stated that Health Canada suspended CannTrust's authority to produce cannabis, other than cultivating and harvesting, and to sell cannabis. While the suspension remains in effect, CannTrust will be permitted to cultivate and harvest existing lots or batches previously propagated, as well as conducting ancillary activities to those lots, including drying, trimming and milling. The Notice states that Health Canada will reinstate CannTrust's licences if the reasons for the suspension no longer exist or if CannTrust demonstrates the suspension was unfounded. The Notice also states that Health Canada considers that the implementation of a number of measures could potentially address the public health and safety risks that contributed to Health Canada's decision to issue the Notice. The Company is reviewing its options and remains committed to being in full regulatory compliance.

21. CannTrust is not subject to any insolvency proceedings.

II. THE SPECIAL COMMITTEE

The Special Committee considering Mr. Webb's letter is comprised of three independent directors of the Board:

1. Mark Dawber, FCPA: Mr. Dawber is a FCPA with significant public accounting experience having been an Audit Partner at Moore Stephens Hyde Houghton from 1971 until 1998 and BDO Canada LLP from 1999 to 2000. He has extensive public company experience having served on public company boards for many years as an independent director, chair of audit committees and as a member of governance and compensation committees. He has conducted numerous assignments for the Institute of Chartered Accountants of Ontario's Professional Conduct Committee.

2. Shawna Page: Ms. Page brings years of experience in both the capital markets, as well as the consumer retail markets. Ms. Page spent 10 years working at Merrill Lynch Canada, followed by 10 years at TD Securities where she was Managing Director and Chief of Staff. In 2007, Ms. Page launched a unique mass-channel brand of gender-specific and condition-specific products into the highly regulated nutraceutical industry across Canada, and later in various international markets, which she successfully exited in November 2016.

3. John Kaden, Esq.: Mr. Kaden is the Co-Founder, Managing Partner and Chief Investment Officer of Navy Capital Green Management LLC., a global investment firm based in New York City specializing in public and private investments in the emerging legal cannabis industry. Prior to this. Mr. Kaden was the co-Manager and Chief Investment Officer for Northwoods Capital Management LLC, a global hedge fund focused on the technology, media and telecom sector. Before joining Northwoods, Mr. Kaden was the Founder and Managing Partner of Cynthion Partners, a global macro hedge fund, from 2006 through to the end of 2013. Mr. Kaden graduated Magna Cum Laude with an A.B. from Harvard University and a J.D. from Yale Law School.

The Special Committee members are not defendants in the putative class action commenced by Mr. Webb.

III. THE PROPOSED CLAIMS ARE NOT IN CANNTRUST'S BEST INTERESTS

You have provided no evidence (and could not, in light of the facts) to support the assertion in your letter that "the full scope of prudent "remediation efforts" are being stymied and that further damage to the Company will occur and the wrongdoers will never be held accountable for the damage caused to the Company." In any event, the Special Committee has independently considered Mr. Webb's letter along with relevant compliance issues at CannTrust, including any role played by the Proposed Derivative Defendants.

The Board and CannTrust have already taken action against Messrs. Aceto and Paul, not all of which is publicly disclosed.[1]

With respect to the purported "co-conspirators" within CannTrust, your letter does not offer their identities, much less particulars of their alleged wrongdoing. The Special Committee has caused

[1] Contrary to your assertion, the Company has not acknowledged that Messrs. Acceto and Paul "engaged in improper conduct resulting in the license suspension."

a thorough investigation of the alleged non-compliance to be conducted and has taken action against individuals where appropriate, not all of which is publicly disclosed.

Your letter misstates the content of the Company's press release on August 9, 2019. There is no statement from KPMG therein acknowledging that it had failed to identify Messrs. Aceto's and Paul's improper conduct, or confirming that the Company and its Audit and Governance Committees did or did not have effective internal controls. Your letter provides no evidence nor is the Special Committee aware of any evidence of improper conduct by KPMG. A complainant under s. 246 of the *OBCA* cannot allege generic wrongdoing to substantiate bringing a derivative claim.

The Special Committee and the Board have determined that, based on the current circumstances, it is not in CannTrust's interests to commence litigation against the Potential Derivative Defendants because of, among other things:

1. The potential merits of the proposed litigation against some of the Proposed Derivative Defendants;

2. The potential pecuniary and non-pecuniary costs and benefits of the proposed litigation at this time;

3. The disciplinary steps already undertaken by the Company;

4. CannTrust's business operations as well as its financial resources;

5. CannTrust's priorities which include, *inter alia*, remediation and engagement with Health Canada;

6. Senior management's focus and their inevitable distraction from CannTrust's priorities;

7. The Company's ability to retain and attract quality directors, officers and senior management;

8. CannTrust's ongoing relationships with its auditor and other professionals and advisors;

9. CannTrust's ability to retain a new auditor or other professionals;

10. CannTrust's defence strategy in putative class actions commenced in Ontario, British Columbia, Alberta, Quebec, and in the United States at the federal and state levels;

11. CannTrust's defence strategy in any potential criminal prosecution;

12. CannTrust's defence strategy in any potential administrative proceeding.

IV. MR. WEBB IS NOT ACTING IN GOOD FAITH

The Board has also considered whether Mr. Webb would be an appropriate person to direct the proposed derivative claim and has concluded that he is not.

First, Mr. Webb launched a class action against CannTrust nearly two months ago. Although

Mr. Webb now proposes to discontinue this class action, he has not yet done so. Mr. Webb is in a conflict of interest because *inter* alia as proposed representative plaintiff in a putative class proceeding, Mr. Webb has sought various relief against the Company. Given this pre-existing dispute with the Company, Mr. Webb is not an appropriate candidate to act on behalf of the company even if he discontinues the action.

Second, Mr. Webb holds a negligible interest in CannTrust[2] and that therefore his interests are not aligned with the Company's best interests. A claimant with a token interest in a corporation cannot be reasonably entrusted with diligently advancing its interests.

Third, your letter does not identify the "several other investors" that "directed" you to make this demand. It is self-evident that a person who acts anonymously cannot meet the test of acting in good faith. The directors cannot accede to the request of an unidentified investor who may have an undisclosed interest or conflict.

Given the foregoing, the Company and the Board do not believe that Mr. Webb's demands for the proposed derivative claims meet the test of good faith.

V. MCCARTHY TETRAULT LLP IS NOT IN A CONFLICT

McCarthy Tétrault LLP (McCarthys) is not conflicted from providing advice to the Special Committee on any matters of relevance. In any event, the Special Committee is not aware of any evidence that KPMG negligently conducted its audit of CannTrust's financial statements. Similarly, we are unaware of whether the Ontario Securities Commission is investigating the Special Committee or KPMG. Your assertion is pure speculation. Even in that event, there is no conflict.

Contrary to your letter, our circumstances are not "very similar" to the case you cite, *Johnson v. North American Palladium Ltd.* There, the Court held that your firm was in a conflict of interest for seeking to represent two groups of plaintiffs with divergent interests against the same defendant on similar underlying allegations. Here, McCarthys represents similarly-situated clients who have been sued by different plaintiffs.

McCarthys' retainer in the class actions was irrelevant to the Special Committee's consideration of the allegations raised in your letter. Mr. Webb's allegation that McCarthys is in a conflict amounts to an improper attempt to use s. 246 to displace CannTrust's counsel of choice.

The Company will seek substantial indemnity costs from Mr. Webb personally for any failed attempt to seek leave pursuant to s. 246 of the *OBCA*.

Yours truly,

Shane C. D'Souza

[2] The Notice of Action alleges that Mr. Webb purchased 1,600 common shares of CannTrust for a total cost of $11,915.25.

This is **Exhibit "E"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

KALLOGHLIAN MYERS LLP

Serge Kalloghlian
T (647) 812 5615
E serge@kalloghlianmyers.com

April 22, 2021

Delivered by Email

Andrea Laing/Ryan Morris
Blakes Cassels & Graydon LLP
199 Bay Street, Suite 2400
Toronto, ON, M5L 1A9

Dear Ms. Laing and Mr. Morris,

Re: *Re CannTrust Holdings Inc.*, CV-20-00638930-00CL

As you know, the proposed amended draft Plan of Compromise, Arrangement and Reorganization ("**CCAA Plan**") contemplates the assignment to the Securities Claimant Trust[1] of the Assigned Claims, including the claims of CannTrust Holdings and CannTrust Opco ("**CannTrust**") against KPMG LLP.

The CCAA Representatives request that KPMG LLP execute a tolling and standstill agreement in the form attached in respect of the Assigned Claims against it. If we are unable to reach an agreement by start of business on Monday, April 26 we will demand that CannTrust commence proceedings in respect of those claims through independent counsel.

We look forward to hearing from you.

Sincerely,
Kalloghlian Myers LLP

Per: Serge Kalloghlian

c. CCAA Representative Counsel
R. Paul Steep, Shane D'Souza

[1] Capitalized terms are as defined in the CCAA Plan unless otherwise stated.

Blakes

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Andrea Laing
Partner
Dir: 416-863-4159
andrea.laing@blakes.com

April 23, 2021

VIA E-MAIL

WITH PREJUDICE

Reference: 27064/509

Serge Kalloghlian
Kalloghlian Myers LLP
Suite 200, 250 University Ave
Toronto, ON M5H 3E5

Dear Serge:

***Re: CannTrust Holdings Inc.,* CV-20-00638930-00CL**

We have your letter dated April 22, 2021 seeking a tolling agreement among CannTrust Holdings Inc., CannTrust Inc., CTI Holdings (Osoyoos) Inc., Elmcliffe Investments Inc. (together, "CannTrust"), the CCAA Representatives and KPMG LLP.

As we set out in our letter to you dated April 14, 2021, with a proper form of bar order in CannTrust's CCAA Plan, there should not be any claims against KPMG that may be properly assigned to the Securities Claimant Trust. Any claims that could be pursued against KPMG would ultimately be to recover the very alleged shareholder losses that are finally disposed of by the CCAA Plan. The claims identified in the draft tolling agreement enclosed with your letter all fall into that category.

KPMG is not aware of any "independent" claim that would not be barred by the CCAA Plan. If CannTrust genuinely has such a claim, KPMG is entitled to know what it is before entering into an agreement to toll it. If an "independent" claim did exist (which is not admitted but denied) KPMG would also need to consider what tolling arrangements would need to be made in respect of those against whom KPMG may have claims over amongst Settlement and Non-Settlement Parties.

In order to move this process forward constructively, please advise us of the specific nature of the "independent" claims that CannTrust and the Securities Claimants propose to be tolled. What specifically is the wrongful conduct alleged; how did this conduct cause harm to CannTrust and what damages ensued? Please provide particulars of any relevant communications, dates and events. With this information KPMG can then consider the appropriateness of tolling such claims, the appropriate extent of any tolling and what claims over may need to be addressed.

The issues raised by your tolling request illustrate precisely why the changes to the CCAA Plan that were raised in our letter of April 14 are necessary to avoid potential uncertainty and unfairness to Non-Settlement Parties. You and CannTrust represented to us on the eve of last week's hearing, through the

Monitor, that you would meaningfully engage with KPMG to address these concerns. A week has passed and we have yet to hear from you. Please let us know when we can expect your detailed response. As ever, we would be pleased to discuss these matters in a phone call.

Yours truly,

Andrea R. Laing

c: Ryan Morris, *Blakes*
Linc Rogers, *Blakes*
R. Paul Steep/Shane D'Souza, *McCarthy Tétrault LLP*
Stephen Graff/Jonathan Yantzi, *Aird & Berlis LLP*

KALLOGHLIAN MYERS LLP

Serge Kalloghlian
T (647) 812 5615
E serge@kalloghlianmyers.com

May 3, 2021

Delivered by Email

Andrea Laing
Blakes Cassels & Graydon LLP
199 Bay Street, Suite 2400
Toronto, ON, M5L 1A9

Dear Andrea,

Re: *Re CannTrust Holdings Inc.*, CV-20-00638930-00CL

I am writing further to our correspondence regarding a tolling and standstill agreement for claims that CannTrust Holdings Inc. and its subsidiaries ("CannTrust") may have against KPMG LLP ("KPMG").

Enclosed is a draft statement of claim ("Proposed Action") that the CCAA Representatives intend to demand that CannTrust issue and service on KPMG pursuant to the terms of the RSA. CannTrust has not reviewed or commented on this draft.

Paragraphs 18 to 20 of the Amended and Restated Initial Order of Justice Hainey dated April 9, 2021 ("Initial Order") (a) prohibit CannTrust from commencing the Proposed Action during the Stay Period; and (b) extends the time for the purpose of any limitation period applicable to the Proposed Claim by a period equal to the Stay Period. These paragraphs are reproduced below.

> NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY
>
> 18. THIS COURT ORDERS that from the Initial Filing Date until and including July 5, 2020, 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

KALLOGHLIAN MYERS LLP

> against or in respect of the Applicants or the Monitor, or affecting the Business or the Property (including, for greater certainty, any process or steps or other rights and remedies under or relating to any class action proceeding against any of the Applicants or in respect of 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.
>
> 19. **THIS COURT ORDERS** that during the Stay Period, none of the Pending Litigation (as defined in the Guyatt Affidavit) or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"), except with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.
>
> 20. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicants or any of the Other Defendants that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

The Proposed Action is a proceeding "against or in respect of the Applicants . . . or affecting the Business or the Property" pursuant to paragraph 18 above. The Proposed Action is also captured by paragraph 19 as it a Proceeding in relation to the Pending Litigation against someone named as a defendant in the Pending Litigation.

Accordingly, pursuant to paragraph 20 of the Initial Order, the running of time for the purpose of claims described in the Proposed Action has been suspended for the duration of the Stay Period.

If KPMG disagrees that paragraphs 18 through 20 of the Initial Order both (i) prohibit CannTrust from commencing the Proposed Action and (ii) suspend any applicable limitation periods relevant to that action, then please advise me by Tuesday, May 4, 2021 of KPMG's

KALLOGHLIAN MYERS LLP

position on both issues. If I do not receive a response, or if KPMG disagrees that paragraphs 18 to 20 have the effect described in this letter and refuses to enter into a tolling agreement, then the CCAA Representatives will demand that CannTrust promptly issue a claim substantially in the form of the Proposed Action through independent counsel.

We look forward to hearing from you no later than end of day Tuesday, May 4.

Sincerely,
Kalloghlian Myers LLP

Per: Serge Kalloghlian

c. CCAA Representative Counsel
R. Paul Steep, Shane D'Souza
Stephen Graff, Jonathan Yantzi
Ryan Morris, Linc Rogers

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Plaintiffs

- 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: May 5, 2021

Issued by

Local registrar

Address of court office

Superior Court of Justice
393 University Avenue, 10th Flr.
Toronto, Ontario M5G 1E6

TO: **KPMG LLP**
100 New Park Place, Suite 1400
Vaughan, Ontario, L4K 0J3

I. DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "***ACMPR***" means *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230;

(b) "**AIF**" means Annual Information Form;

(c) "**Cannamed**" means Cannamed Financial Corp.

(d) "**Canntrust**" means the plaintiffs CannTrust Holdings Inc., CannTrust Inc., CTI Holdings (Osoyoos) Inc. and Elmcliffe Investments Inc.

(e) "***Cannabis Act***" means the *Cannabis Act*, SC 2018, c 16;

(f) "***Cannabis Regulations***" means the *Cannabis Regulations*, SOR/2018-144;

(g) "***CCAA***" means the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended

(h) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

(i) "**CSA**" means the Canadian Securities Administrators;

(j) "**DC&P**" means disclosure controls and procedures;

(k) "**IFRS**" means International Financial Reporting Standards;

(l) "**ICFR**" means internal controls over financial reporting;

(m) "**KPMG**" means KPMG LLP;

(n) "**May 1 Prospectus**" means **CannTrust's** Prospectus Supplement dated May 1, 2019 and filed on SEDAR May 3, 2019;

(o) "**MD&A**" means Management's Discussion and Analysis;

(p) "**NYSE**" means the New York Stock Exchange;

(q) "***OBCA***" means the *Ontario Business Corporations Act,*, RSO 1990, C B 16;

(r) "**Offering**" means the distribution of CannTrust Holdings Inc. Shares pursuant to the **May 1 Prospectus**;

(s) "***OSA***" means the *Securities Act*, RSO 1990, c S.5, as amended

(t) "**Plaintiffs**" means Canntrust Holdings Inc., Canntrust Inc., CTI Holdings (Osoyoos) Inc. and Elmcliffe Investments Inc.

(u) "**SEC**" means the United States Securities and Exchange Commission;

(v) "**SEDAR**" means the system for electronic document analysis and retrieval of the **CSA**;

(w) "**TSX**" means the Toronto Stock Exchange;

2. Unless otherwise stated, all dollar amounts stated herein are in Canadian dollars.

II. CLAIM

3. The Plaintiffs claim:

(a) a declaration that KPMG is liable to CannTrust in damages for negligent misrepresentation, negligent performance of a service, breach of contract, and/or other breaches of duty in connection with audit, review and other professional services provided to CannTrust;

(b) a declaration that any provisions, expressed or implied, written or oral purporting to limit KPMG's liability to CannTrust are void, voidable, or in the alternative unenforceable as against CannTrust and that KPMG is not entitled to any release, limitation of liability, contribution or indemnity from CannTrust;

(c) damages in the amount of $900 million or such other amount as is proven at trial;

(d) costs of this action,

(e) pre-judgment and post-judgment interest pursuant to the *CJA*; and

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

IV. THE PARTIES

A. Plaintiff

4. CannTrust Holdings Inc. is a corporation formed under the *OBCA*, with its registered and head office located in Vaughan, Ontario. It is a licensed producer of medical and recreational cannabis in Canada. At the material times, CannTrust Holding Inc's shares were listed for trading on the TSX, NYSE, and other secondary markets.

5. CannTrust Inc. is a corporation formed under the *OBCA*. It is a wholly-owned subsidiary of Canntrust Holdings Inc.

6. Elmcliffe Investments Inc. is an OBCA corporation that owns the real estate, buildings and related equipment for CannTrust's Niagara Facility (defined below). It is a wholly-owned subsidiary of CannTrust Holdings Inc.

7. CTI Holdings (Osoyoos) Inc. is a British Columbia corporation that holds certain cultivation lands. It is a wholly-owned subsidiary of CannTrust Holdings Inc.

B. Defendant

8. KPMG is an accounting firm that provides assurance and audit services. KPMG was appointed as CannTrust's auditor on December 21, 2018. It purportedly audited CannTrust's financial statements for the year ended December 31, 2018 ("**2018 Financial Statements**") and consented to the inclusion in the May 1 Prospectus of its Audit Report on those financial statements. It also performed a purported review of CannTrust's 2019 first quarter financial statements ("**Q1 Financial Statements**").

VI. FACTUAL BACKGROUND

A. Overview

9. Prior to June 2019, CannTrust operated a growing business that was rapidly expanding into new markets and product segments. CannTrust was named *Licensed Producer of the Year* at the 2018 Canadian Cannabis Awards.

10. However, following regulatory audits of CannTrust's facilities in June and July 2019, Health Canada determined that CannTrust was growing and storing cannabis contrary to applicable laws. CannTrust immediately placed a voluntarily hold on the sale and shipment of all cannabis

products while a special committee of CannTrust's board of directors commenced an investigation relating to CannTrust's noncompliance with applicable laws.

11. Health Canada suspended CannTrust's licences, shutting down its sales and distribution activities. CannTrust was prohibited from growing and cultivating any new product until its licences were reinstated. CannTrust had to destroy inventory and biological assets that were not authorized by its licences. In addition, large customers such as the Ontario Cannabis Retail Corporation, and Alberta Gaming, Liquor and Cannabis Commission returned significant volumes of CannTrust products.

12. In short, CannTrust's business was effectively destroyed once it became known that it had been growing and storing cannabis illegally.

13. The discovery of CannTrust's illegal activities revealed that the financial statements and MD&A that CannTrust had filed with regulators, and on which its shareholders relied in overseeing management, were materially misstated. The company announced that the financial statements and MD&A for the year ended December 31, 2018 and Q1 2019 required restatement, and that, as of Q2 2019, the impacted inventory and biological assets were approximately $51 million.

14. The news that CannTrust had been conducting its business illegally and that its financial statements and MD&A were materially misstated devastated the price of CannTrust's shares, which were publicly traded on the TSX and NYSE, wiping out over $900 million in shareholder value. The news triggered an avalanche of litigation in Canada and the United States alleging misrepresentations in CannTrust's financial statements and claiming over $500 million in damages.

15. Initially, CannTrust tried to survive as a going concern. It reduced its employee headcount, fired the culpable actors, and fully co-operated with Health Canada. It designed and implemented a comprehensive remediation plan to address the compliance issues and applied to Health Canada for the reinstatement of its cannabis licences. But this was not enough.

16. On March 31, 2020, CannTrust entered insolvency proceedings under the *CCAA*. The value of this award-winning company had been decimated because KPMG breached its duties to it. This action seeks to recover the losses and damages incurred by CannTrust as a result of the KPMG's breaches.

B. Cannabis Legislation and Regulations

17. As a licensed producer of cannabis, CannTrust was governed by the *Cannabis Act* and *Cannabis Regulations* which came into force on October 17, 2018, legalizing the sale of cannabis for adult recreational use, and replacing the former *ACMPR* and *Controlled Drugs and Substances Act* as the governing legislation on the production, sale and distribution of medical cannabis.

18. The *Cannabis Act* prescribes the regulatory framework and licensing scheme for production, importation, exportation, testing, packaging, labelling, sending, delivery, transportation, sale, possession and disposal of cannabis for non-medicinal use. It also regulates access to cannabis for medical purposes.

19. The *Cannabis Regulations* provide more detailed rules and standards that apply to the production, distribution, sale, importation and exportation of cannabis by federal licence holders. They also establish different classes of licences that are required depending on the nature of the activity being undertaken, including licences for cultivation, processing, sale, testing, and research.

20. The regulations require that a company apply for, and obtain, licences for each specific activity and location in which it intends to perform regulated activities.

21. It was essential to CannTrust's business that it comply with these rules and regulations. Serious breaches of regulations, such as growing and selling cannabis without a licence, could result in a licence suspension and a complete shutdown of its business. Such breaches would also have other serious other financial repercussions, including returns and recalls of previously sold products, massive drops in share price, and shareholder lawsuits for disclosure violations.

B. Noncompliant Activity at the Niagara Facility

22. Starting in October 2018, CannTrust was in breach of applicable laws and regulations in respect of its facility in Pelham, Ontario ("**Niagara Facility**"). Among other things, cannabis was being grown and stored in rooms for which CannTrust did not have licences. This cannabis was then sold into the market as if it had been lawfully grown and stored.

23. Because it was conducting its business illegally CannTrust was exposing itself to the risk of regulatory sanction that would materially affect its financial results and performance. This risk was not disclosed.

24. By reporting its financial results as if it were conducting its business lawfully, CannTrust reported materially misleading financial results to its shareholders, and the public, including inflated revenue, sales, income, inventory and biological assets.

C. The Offering

25. On May 6, 2019 CannTrust announced the closing of its underwritten public offering of 36,363,636 Shares at a price of US$ 5.50 per share.

26. The Offering took place pursuant to the May 1 Prospectus. Pursuant to the Offering, on May 6, 2019:

(a) CannTrust Holdings Inc. sold 30,909,091 Shares for total gross proceeds of approximately US$ 170 million (before expenses); and

(b) Cannamed sold 5,204,545 Shares for total gross proceeds of approximately US$ 28.6 million (before expenses).

27. On May 14, 2019, CannTrust announced that the Underwriters had exercised in full their option to purchase 4,636,363 and 818,182 additional shares, respectively from the Company and Cannamed, for total gross proceeds of approximately US$ 25.5 million (to CannTrust) and US$ 4.5 million (to Cannamed) before expenses.

28. KPMG consented in writing to the inclusion in the May 1 Prospectus of its audit report on CannTrust's 2018 Financial Statements, as alleged below.

29. The May 1 Prospectus was filed with the securities commission in all Canadian provinces except Quebec, and with the SEC.

D. CannTrust's Insolvency

30. Following an inspection of the Niagara Facility by Health Canada in June and July 2018, Health Canada determined, among other things, that CannTrust was growing and storing cannabis contrary to applicable laws. Following these findings

(a) CannTrust voluntarily placed a hold on the sale and shipment of all cannabis products;

(b) Health Canada suspended CannTrust's licences such that it was not permitted to sell or distribute any cannabis;

(c) large customers of CannTrust returned products;

(d) CannTrust determined it needed to destroy a significant portions of its inventory and biological assets;

(e) CannTrust implemented cash conservation measures, including several rounds of layoffs;

(f) Canntrust announced that its financial results would need restatements and ceased to file additional disclosures;

(g) securities class actions were commenced in Canada and the US seeking over $500 million in damages;

(h) the Royal Canadian Mounted Police and the Joint Serious Offences Team of the Ontario Securities Commission initiated a criminal investigation; and

(i) the market capitalization of CannTrust Holdings Inc. declined by almost 90% and its shares were delisted from the TSX and NYSE.

31. On March 30, 2020, under tremendous financial strain as a result of the KPMG's breaches, CannTrust instituted insolvency proceedings under the CCAA.

VIII. KPMG'S AUDIT ENGAGEMENTS

A. Engagement Letter

32. KPMG was appointed CannTrust's auditor in December 2018.

33. KPMG provided audit and other services to CannTrust pursuant to an engagement letter dated March 22, 2019. The letter stated that KPMG was hired to conduct an audit of CannTrust's annual financial statements for the year end December 31, 2018 ("**2018 Financial Statement**") and to perform a review of the 2019 first quarter financial statements ("**Q1 Financial Statements**").

34. The engagement letter stated that: (i) KMPG had the responsibility to conduct and would conduct the audit of the 2018 Financial Statements in accordance with the standards of the Public

Company Accounting Oversight Board (United States) ("**PCAOB**") and the review of the interim financial statements in accordance with the relevant PCAOB interim review standards; and (ii) KPMG warrants that it will perform services in good faith with qualified personnel in a competent and workmanlike manner in accordance with applicable industry standards.

35. As a reporting issuer in Ontario and other provinces, CannTrust was subject to the continuous disclosure obligations prescribed by NI 51-102 to prepare and file with the Ontario Securities Commission ("**OSC**") and on SEDAR audited financial statements and MD&As on an annual basis; and interim financial statements and MD&As on a quarterly basis.

36. The engagement letter further stated that KPMG had been requested to consent to the use of its audit report in connection with the following disclosure documents filed with the OSC and other securities regulators:

(a) annual financial statements and audit report for year ended December 31, 2018;

(b) the MD&A filed in connection with the annual financial statement; and

(c) the Annual Report on Form 40-F.

37. The letter stated that KPMG would consider consenting in writing once it had performed the procedures required under professional standards.

38. The engagement letter also authorized KPMG to perform services relating to use of its audit report in connection with an offering document.

B. Audit of Year End 2018 Financial Statements and MD&A

39. KMPG issued an audit report in connection with its audit of CannTrust's 2018 Financial Statements ("**Audit Report**"). In connection with that audit, CannTrust paid to KPMG approximately $100,000 in fees.

40. The purpose of the audit and Audit Report was to provide assurance that the financial statements accurately reflected CannTrust's position in order to:

(a) protect CannTrust from the consequences of undetected errors or wrongdoing;

(b) allow CannTrust to comply with the securities regulations and other obligations required to maintain its listings as a publicly traded company; and

(c) be relied on by shareholders of CannTrust in their task of overseeing management and to decide whether to retain or replace existing management.

41. The Audit Report stated that:

(a) KPMG had audited the 2018 Financial Statements in accordance with PCAOB standards, which required that it plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud;

(b) the audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements;

(c) the audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements;

(d) KPMG believed that the audit provided a reasonable basis for its opinion; and

(e) the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the financial performance and its cash flows for the year then ended, in conformity with IFRS.

42. These statements were materially untrue and misleading. The financial statements did not present CannTrust's financial position and performance fairly in accordance with IFRS, and KPMG had no reasonable basis to opine that they did, because, contrary to its representations, KPMG:

(a) did not conduct the audit in accordance with PCAOB standards,

(b) did not plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud; and/or

(c) did not perform appropriate procedures to assess the risk of material misstatement due to error or fraud, and/or did not perform procedures that respond to such risks.

43. In addition, the Audit Report was false and misleading because it contained an unqualified or insufficiently qualified opinion on the financial statements.

44. KPMG failed to conduct the audit with the skill and care of a reasonable auditor and was negligent in conducting the audit.

45. The applicable standard of care required KPMG to (among other things)

(a) examine CannTrust's cannabis licenses and determine the number of rooms in the Niagara Facility that were licensed to grow and store cannabis;

(b) conduct a walkthrough of the Niagara Facility to compare the number rooms that were licensed to grow and store cannabis to the number of rooms that were actually growing and storing cannabis.

46. The above noted procedures were conducted by CannTrust's previous auditors RSM LLP, and are standard procedures employed by other auditors in audits of cannabis companies.

47. KPMG did not conduct such an examination, walkthrough, and comparison. In the alternative, it did so negligently.

48. Following the events described herein, KPMG began to institute such examinations, walkthroughs, and comparisons for audits of other of its clients that operate in the cannabis industry.

49. In addition, KPMG failed to review appropriate documentation, conduct appropriate tests, or undertake required analytical procedures in its audit. Among other things, in breach of PCAOB and other applicable standards, KPMG

(a) did not have appropriate policies and procedures in place, or failed to follow its own policies and procedures, in respect of a number of PCAOB standards;

(b) staffed the audit with employees lacking the requisite competence for the engagement in contravention of PCAOB standards;

(c) failed to conduct a proper audit plan and risk assessment and did not address all risks of error and fraud present at CannTrust;

(d) relied excessively and inappropriately on representations by management, did not possess the technical knowledge required to apply necessary auditing procedures, and did not exercise the professional scepticism required in the circumstances;

(e) did not conduct an appropriate evaluation of internal control to provide a basis for its other audit procedures;

(f) failed to adjust its audit procedures to identify and respond to the serious control risks present at CannTrust;

(g) failed to conduct standard analytical procedures that would raise red flags, such as reconcile actual production or inventory to the amounts allowed by the available licences;

(h) did not review minutes of weekly production meetings, which documented that Peter Aceto instructed staff to "continue as planned" with the planting of cannabis in an unlicensed 50,000 square foot room; and

(i) performed insufficient procedures by engagement quality review partners to determine that the audit was conducted in accordance with PCAOB standards.

C. Review of the Q1 2019 Financial Statements.

50. KMPG issued a review report in connection with its review of CannTrust's Q1 2019 Financial Statements ("**Q1 Report**").

51. The purpose of the review and Q1 Report was to provide comfort that the financial statements accurately reflected CannTrust's position in order to:

(a) protect CannTrust from the consequences of undetected errors or wrongdoing;

(b) allow CannTrust to comply with the securities regulations and other obligations required to maintain its listings as a publicly traded company; and

(c) be relied on by the shareholders of CannTrust in their task of overseeing management and to decide whether to retain or replace existing management.

52. KPMG failed to conduct the review with the skill and care of a reasonable auditor and was negligent in conducting the review.

53. The Q1 Report stated that:

(a) KPMG had conducted its review in accordance with PCAOB standards;

(b) the review consisted of applying analytical procedure and making inquiries of persons responsible for financial and accounting matters;

(c) KPMG was not aware of any material modifications that should be made to the condensed consolidated interim financial information for it to conform with IAS No 34.

54. These statements were materially untrue and misleading because the financial statements did require material modifications to conform with IAS and KPMG had no reasonable basis to opine that they did not, because, contrary to its representations, it did not conduct the review in accordance with PCAOB standards.

D. Consent to Inclusion of Audit Report in Offering Documents

55. KPMG consented to the inclusion of the Audit Report in the May 1 Prospectus and US Registration Statement in the manner required by securities regulations.

56. The purpose of KPMG’s consent to inclusion of the Audit Report in those documents was

(a) for delivery to the securities regulators to be relied upon in determining whether to allow CannTrust to make its US $230 million primary market share offering;

(b) to be relied upon by CannTrust’s shareholders in determining whether to proceed with the primary market offering; and

(c) to be relied upon by prospective investors in determining whether to acquire shares in the offering.

57. KPMG failed to discharge its obligations with the skill and care of a reasonable auditor and was negligent in consenting to inclusion of the Audit Report in the offering documents.

E. KPMG’s Breaches of its Duties and Obligations

58. KPMG knew that the purpose of the audit and review engagement, and its related reports were for the purposes identified above, and KMPG undertook to conduct the audit and review engagements and related reports for these purposes. KPMG knew that CannTrust, its shareholders, and securities regulators would rely on these services and reports for those purposes, which they did, to their detriment.

59. KPMG also knew that the purpose of consenting to the inclusion of the Audit Report in CannTrust’s offering documents was so securities regulators, CannTrust and its shareholders could rely on it in determining whether to proceed with the share offering, which they did, to their detriment. KPMG undertook to provide its consent for that purpose.

Breach of Contract

60. KPMG performed the audit, review, and other professional services, and issued the related reports, pursuant to its engagement letter, which was a contract between KPMG and CannTrust. It was an express or implied term of that contract that KPMG would (i) conduct its professional

services in accordance with PCAOB and other applicable standards and with the skill and care of a reasonably prudent auditor or professional, and to comply with all rules, standards and guidelines applicable to such audits or services; and (ii) would use diligence and care to ensure the reports it issued to CannTrust, shareholders, and securities regulators were free from misstatement.

61. KPMG breached the terms of this contract by

(a) Failing to conduct the audit and other services with reasonable care and/or in accordance with the applicable standards, rules and guidelines; and

(b) Issuing reports that contained the false and misleading statements identified above.

<u>Negligent Performance of a Service</u>

62. KPMG owed a duty of care to CannTrust at common law to (i) conduct its professional services in accordance with PCAOB and other applicable standards and with the skill and care of a reasonably prudent auditor or accounting professional, and to comply with all rules, standards and guidelines applicable to such audits or services; and (ii) use diligence and care to ensure the reports it issued to CannTrust, shareholders, and securities regulators were free from misstatement.

63. KPMG breached these duties by

(a) failing to conduct the audit and other services with reasonable care and/or in accordance with the applicable standards, rules and guidelines; and

(b) issuing reports that contained the false and misleading statements identified above.

<u>Negligent Misrepresentation</u>

64. KPMG owed a duty of care to CannTrust to ensure that all statements it made in its audit reports or other reports were true and not misleading.

65. KPMG breached these duties by issuing the reports containing the false or misleading statements for the purposes particularized above.

Reliance and Damages

66. CannTrust relied, to its detriment, on KPMG to

(a) comply with its contractual and common law duties for the purpose of overseeing the conduct of management and controlling directors and to protect CannTrust from undetected errors or wrongdoing; and

(b) comply with its duties for the purpose of undertaking the US $230 million primary market offering.

67. Had KPMG complied with its duties,

(a) it would have uncovered and disclosed the reasonably discoverable noncompliance and financial misreporting, and CannTrust would have immediately taken steps to correct the noncompliant conduct and financial reporting; and

(b) CannTrust would not have conducted its US $230 million share issuance in May 2019, thereby worsening its financial condition by incurring liabilities which it was rendered unable to satisfy.

68. As a direct result of KPMG's breaches, CannTrust suffered damages.

XIII. DAMAGES AND REMEDIES

69. CannTrust suffered damages as a direct result of KPMG's negligent misrepresentations, negligent performance, and breach of contractual obligations. Among other things, CannTrust and its shareholders were denied the opportunity to rectify the noncompliant activity and financial misreporting which ultimately led to the company's insolvency, loss and damage. Had KPMG complied with its contractual and common law obligations, CannTrust would not have suffered the loss and damage particularized herein.

70. CannTrust is entitled to recovery of all damages incurred as a result of the KPMG's breaches, including the decline in the company's value, increase in liabilities, losses of opportunities, and all costs, payments and expenses relating to the company's insolvency and civil, regulatory, or criminal liability.

71. KPMG's conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, motivated by economic considerations, and amounted to an abuse of the capital markets. Such conduct renders KPMG liable to pay punitive damages.

XIV. VICARIOUS LIABILITY

72. KPMG is vicariously liable for the acts and omissions of each of its officers, directors, partners, agents and employees as set out herein.

73. The acts or omissions alleged herein to have been done by KPMG were authorized, ordered and done by officers, directors, partners, agents and employees of KPMG while engaged in the management, direction, control and transaction of the business and affairs of KPMG. Such acts and omissions are, therefore, not only the acts and omissions of those persons, but are also the acts and omissions of KPMG.

XVI. LEGISLATION

74. The Plaintiffs plead and rely upon the *Courts of Justice Act*, RSO 1990, c C43, the *OBCA*, the *OSA*, and the *Cannabis Act*, all as amended.

XVII. SERVICE OUTSIDE ONTARIO AND PLACE OF TRIAL

75. The Plaintiffs plead and rely on Rules 17.02(a), (g), (n), and (p) of the *Rules of Civil Procedure* to serve this statement of claim outside Ontario without leave.

76. The plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

[] 2021

[Independent Counsel to CannTrust]

CannTrust Holdings Inc., *et al*	and	KPMG LLP, *et al*
Plaintiffs		Defendant

Court File No.: .

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

[Independent Counsel to CannTrust]

Lawyers for the Plaintiffs

Manoryk, Justin

From: Laing, Andrea
Sent: Tuesday, May 4, 2021 11:27 AM
To: Serge Kalloghlian; Arvaj, Natalina
Cc: PSTEEP@MCCARTHY.CA; sdsouza@mccarthy.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; mhenein@hhllp.ca; shutchison@hhllp.ca; dwingfield@strosbergco.com; alexander.lascaris@gmail.com; JJohnson@labaton.com; Morris, Ryan; Rogers, Linc
Subject: RE: CannTrust Holdings Inc., Court File No. CV-20-00638930-00CL

Hi Serge,
While reserving all rights to argue that the Claims, as defined, are not valid for, among other reasons that they are (or should be) barred in accordance with the Plan Terms and any order implementing them, are not assignable, were already statute barred prior to the beginning of the Stay Period, are estopped, cannot be pursued by the Securities Litigation Trust or are not within the jurisdiction of the court, we agree that limitation periods are not running during the Stay Period.

As mentioned in my prior email, KPMG does not presently agree to any tolling after the Stay Period.

Hope this clarifies.

Andrea Laing
Partner
Dir: 416 863 4159
Cell: 647 294 5820
andrea.laing@blakes.com

From: Serge Kalloghlian <serge@kalloghlianmyers.com>
Sent: Tuesday, May 4, 2021 11:14 AM
To: Laing, Andrea <andrea.laing@blakes.com>; Arvaj, Natalina <natalina.arvaj@blakes.com>
Cc: PSTEEP@MCCARTHY.CA; sdsouza@mccarthy.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; mhenein@hhllp.ca; shutchison@hhllp.ca; dwingfield@strosbergco.com; alexander.lascaris@gmail.com; JJohnson@labaton.com; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Subject: RE: CannTrust Holdings Inc., Court File No. CV-20-00638930-00CL

Thank you Andrea. Your email generally captures our agreement but for certainty I ask that you please confirm that KPMG LLP agrees to the following:

1. "**Claims**" means
   a. The claims of the plaintiffs (collectively, "**CannTrust**") described in the draft statement of claim provided to you yesterday ("**Proposed Action**"); and
   b. Other claims that CannTrust may have against KPMG LLP that are reasonably related to the facts pleaded in the Proposed Action or that arise out of KPMG's role as auditor for CannTrust.
2. The running of limitation periods applicable to the Claims is (and has been) interrupted, suspended, and tolled for the duration of the Stay Period (as defined in Amended and Restated Initial Order dated April 9, 2020)
3. KPMG LLP will not assert or rely on the passage of time during the Stay Period as a legal, equitable, or other claim or defence in connection with the Claims.

Many thanks. I would appreciate your confirmation before the end of the day. I am available at your convenience to speak if necessary.

Regards

Serge Kalloghlian
T: (647) 812-5615

KALLOGHLIAN MYERS LLP

Kalloghlian Myers LLP | kalloghlianmyers.com
2201-250 Yonge Street, Toronto, ON M5B 2L7

From: Laing, Andrea <andrea.laing@blakes.com>
Sent: Monday, May 3, 2021 5:22 PM
To: Serge Kalloghlian <serge@kalloghlianmyers.com>; Arvaj, Natalina <natalina.arvaj@blakes.com>
Cc: PSTEEP@MCCARTHY.CA; sdsouza@mccarthy.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; mhenein@hhllp.ca; shutchison@hhllp.ca; dwingfield@strosbergco.com; alexander.lascaris@gmail.com; JJohnson@labaton.com; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Subject: RE: CannTrust Holdings Inc., Court File No. CV-20-00638930-00CL

Hi Serge,
Further to our call, I am getting back to you on this to confirm that KPMG will not take the position that limitation periods in respect of claims set out in the draft pleading you provided are running during the "Stay Period" as defined in the Initial Order and as set out in your letter of today's date. We will need to have another conversation if you want to toll after the end of the Stay Period and, of course, we have other issues with those claims.

I hope this gives you what you require for present purposes.

All the Best,

Andrea Laing
Partner
Dir: 416 863 4159
Cell: 647 294 5820
andrea.laing@blakes.com

From: Serge Kalloghlian <serge@kalloghlianmyers.com>
Sent: Monday, May 3, 2021 11:13 AM
To: Arvaj, Natalina <natalina.arvaj@blakes.com>; Laing, Andrea <andrea.laing@blakes.com>
Cc: PSTEEP@MCCARTHY.CA; sdsouza@mccarthy.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; mhenein@hhllp.ca; shutchison@hhllp.ca; dwingfield@strosbergco.com; alexander.lascaris@gmail.com; JJohnson@labaton.com; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Subject: RE: CannTrust Holdings Inc., Court File No. CV-20-00638930-00CL

Please see attached letter and enclosure addressed to Andrea Laing.

Regards

Serge Kalloghlian
T: (647) 812-5615

KALLOGHLIAN MYERS LLP

Kalloghlian Myers LLP | kalloghlianmyers.com
2201-250 Yonge Street, Toronto, ON M5B 2L7

Please consider the environment before printing this email

From: Arvaj, Natalina <natalina.arvaj@blakes.com>
Sent: Friday, April 23, 2021 11:55 AM
To: Serge Kalloghlian <serge@kalloghlianmyers.com>
Cc: PSTEEP@MCCARTHY.CA; sdsouza@mccarthy.ca; sgraff@airdberlis.com; jyantzi@airdberlis.com; mhenein@hhllp.ca; shutchison@hhllp.ca; dwingfield@strosbergco.com; alexander.lascaris@gmail.com; JJohnson@labaton.com; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>; Laing, Andrea <andrea.laing@blakes.com>
Subject: CannTrust Holdings Inc., Court File No. CV-20-00638930-00CL

Dear Mr. Kalloghlian,

Please see attached letter dated April 23, 2021.

Natalie

Natalina Arvaj
Assistant to Andrea Laing, Rahat Godil and Eric Leinveer
natalina.arvaj@blakes.com
Dir: (416) 863-3264

Blakes

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com | LinkedIn

This is **Exhibit "F"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Andrea Laing
Partner
Dir: 416-863-4159
andrea.laing@blakes.com

April 14, 2021

VIA EMAIL

Reference: 27064/509

Serge Kalloghlian
Kalloghlian Myers LLP
Suite 200, 250 University Ave
Toronto, ON M5H 3E5

Marie Henein/Scott Hutchison
Henein Hutchison, LLP
235 King Street East, First Floor
Toronto, ON M5A 1J9

A. Dimitri Lascaris
A. Dimitri Lascaris Law
Professional Corporation
6101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

David R. Wingfield
Strosberg Sasso Sutts LLP
Barristers and Solicitors
1561 Ouellette Avenue
Windsor, ON N8X 1K5

Steven Weisz
Weisz Fell Kour LLP
5600-100 King St. W.
Toronto, ON M5X 1C9

R. Paul Steep/Shane D'Souza
McCarthy Tetrault LLP
Suite 5300 Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Counsel:

Re: *Re CannTrust Holdings Inc.,* CV-20-00638930-00CL

We refer to the proposed amended draft Plan of Compromise, Arrangement and Reorganization of CannTrust Holdings Inc., CannTrust Inc. and Elmcliffe Investments Inc., which we received on the evening of April 9, 2021 (the "Plan"). The capitalized terms in this letter not otherwise defined have the meanings given to them in the Plan.

KPMG appreciates that the Plan addresses certain of the concerns that it has raised in its factum delivered March 17, 2021. These efforts provide the requisite window to resolves KPMG's outstanding concerns. These outstanding concerns center on the fact that the Plan continues to treat Non-Settlement Parties unfairly, among other things, by denying conventional protections that are typically afforded in the context of partial settlements. The Plan also purports to distort rights and obligations as between non-debtor entities with no apparent justification or connection to the objectives of the CCAA.

Notably, Section 7.3(3) of the Plan continues to enable the Securities Claimants to seek damages from Non-Settlement Parties that are properly attributable to Settlement Parties. For example, the recoverability of damages against CannTrust under its current circumstances is still stated to be a relevant consideration in an allocation of liability between Settlement and Non-Settlement Parties. This unfairness is compounded by the most recent changes to the plan which introduce the concept of “Channelled Claims”. These new provisions permit the Securities Claimants to continue litigation against Settlement Parties for the purposes of recovering against anticipated insurance proceeds--proceeds which have not been factored into the analysis supporting the original justifications for the Plan. Why should Non-Settlement Parties continue to be exposed to joint and several liability while, at the same time: i) they are prohibited from pursuing claims over which might be satisfied out of insurance proceeds and ii) the Securities Claimants are afforded exclusive access to the recovery pool represented by the insurance? For this and other reasons, KPMG maintains its opposition to the Plan.

KPMG will withdraw its opposition to the Plan if certain changes are made. Attached as Schedule “A” is a redline showing the required revisions. I also attach a clean version of the revised Plan terms in Word format.

The revisions to Article 7.3(2) meet the requirement that the partial settlement of a multi-party action confines a plaintiffs’ recovery against non-settling defendants to the non-settling defendants’ proportionate share of liability and are consistent with the precedents set out at paragraphs 47 to 48 and 53 to 54 of KPMG’s factum.

CannTrust has attempted to justify the language of 7.3(3) of the Plan in its reply factum but a closer look at the authorities it cites simply confirm that the language is unprecedented. In fact, the two Ontario cases CannTrust cites support KPMG’s entitlement to conventional bar order language, which was endorsed by the court in both instances.

In *Endean v. St. Joseph’s General Hospital*, 2019 ONCA 181*,* Justice Zarnett used the language of “recoverability” to explain the inappropriateness of apportioning liability to insolvent parties who were *not* defendants in the underlying litigation. As between the defendants to the action, Justice Zarnett did not take issue with the standard proportionate liability language in the *Pierringe*r order, attached as a schedule to the decision, and expressly stated that the defendants in the action had the “right to recover from the other for the latter’s *proportionate share of any fault*” (para. 50) [emphasis added].

The passage from *Hollinger Inc., Re*, 2012 ONSC 5107 cited at paragraph 25 of CannTrust’s reply factum is the Court’s articulation of the applicant’s position. It is not a decision of the Court as to the appropriateness of the standard proportionate liability language contained in the bar order at issue, which was not a contested issue before the Court. To the contrary, the Court endorsed the settling parties’ agreement “to limit their recovery from a Non-Settling Defendant to his/her or its several liability only, provided that such Non-Settling Defendant’s liability is demonstrably shared with a Settling Party against whom the Non-Settling Defendant successfully proves a claim for contribution and indemnity (para. 33). The Court described *Pierringer* agreements in general as “leaving the remaining defendants responsible *only for the loss that they may be found to have actually caused, with no joint liability*” with the “remaining Non-Settling Defendants … responsible only for their *proportionate share of any loss* (para. 54) [emphasis added]. In outlining the governing law on this issue, the Court made no mention of recoverability as an applicable consideration even though the CCAA applicants were themselves settling parties in the action.

Arrangement relatif à 9323-7055 Quebec inc. (Aquadis International Inc.), 2018 QCCS 2945, does not apply due to the specific Quebec product liability laws at issue in that case. The provisions of article 1531 of the *Civil Code of Québec* place full responsibility for a defective product on each party in the chain of distribution and sale, as well as the manufacturer (solidary liability), meaning no "several" liability can be stipulated in a release in the manner typical in common law provinces.

It is KPMG's position that, if liability is appropriately severed, there *are no claims against it* which may be assigned to the Securities Claimant Trust. That being said, and for the avoidance of any doubt, KPMG requires certain procedural protections in connection with the assignment to or pursuit of claims by the Securities Claimant Trust which are reflected in the changes shown in Schedule "A".

At this juncture we do not have any insight into the process the US plaintiffs propose to follow in the US courts or if and how they intend to pursue the claims of US shareholders in Canada. To the extent that US law is relevant, KPMG reserves its right to insist that bar order terms that are equally protective of KPMG and in keeping with US precedents be implemented. We ask that you confirm at this time that any claims governed by US law, as opposed to Canadian law, will be subject to bar order terms substantially similar to those attached as Schedule "B".

In view of the hearing scheduled for April 16, 2021, please confirm no later than noon on April 15, 2021 that the proposed changes to the Plan in Schedule "A" will be made. KPMG believes that its remaining concerns have broad precedential value for both the CCAA and class action bar and trust that you are amenable to resolving them. We would be pleased to discuss the proposed changes with the recipients of this letter individually or collectively. This letter is sent with prejudice and KPMG may provide a copy of this letter to the Court for its consideration at Friday's hearing.

Yours truly,

Andrea Laing

Encl.

c: Ryan Morris
Linc Rogers

SCHEDULE "A"

7.3 Injunctions

(1) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all Persons will be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of cross-claim, third party claim or claim over for contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their property with respect to any and all Released Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims. For greater certainty, the Actions against the Non-Settlement Parties are not barred, estopped stayed or enjoined and may continue after the Effective Date subject to any restrictions imposed by sections 7.3 (2) and 7.3(3) hereof or the CCAA Sanction Order.

(2) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, any ~~judgment or other award obtained by a Securities Claimant or the Securities Claimant Trust in respect of any~~ Securities-Related Claim asserted against a Non-Settlement Party or any other Person that is not a Released Party shall be ~~reduced by the amount, if any, that the court or other tribunal adjudicating the Securities-Related Claim determines would have been recovered by such~~restricted to a several claim such that any recovery from the Non-Settlement Party or other Person ~~pursuant to a~~shall be limited to the Non-Settlement Party's or other Person's proportionate share or degree of liability, as established at a trial or other disposition in respect of the asserted Securities-Related ~~Indemnity~~ Claim ~~held by it against a Released Party in respect of such Securities-Related Claim but for the release of such Securities-Related Indemnity Claim pursuant to the CCAA Plan of the CCAA Sanction Order, determined as of the moment before the Effective Time and, for greater certainty, taking into account (i) the Cash Contribution to be made by CannTrust Holdings to the Securities Claimant Trust and (ii) all other Securities-Related Indemnity Claims of other Non-Settlement Parties or other Persons participating in any recovery on a *pro rata* basis~~or in a subsequent proceeding for the purposes of allocating liability between or amongst Settlement Parties and Non-Settlement Parties, subject to the exhaustion of any rights of appeal. To the extent that a Securities-Related Claim against a Non-Settlement Party or any other Person that is not a Released Party is not restricted to a several

claim, the portion of the Securities-Related Claim that seeks to make a Non-Settlement Party or other Person responsible for liability or damages other than that Non-Settlement Party's or other Person's proportionate share or degree of liability is permanently barred, prohibited and enjoined.

(3) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all crossclaims, third party claims, claims for contribution, indemnity or other relief, or other claims over relating to the Released Claims or Channelled Claims, which were or could have been brought by a Settlement Party (including with respect to an Assigned Claim) against a Non-Settlement Party in the Actions or otherwise will be permanently and forever barred, estopped, stayed and enjoined.

(4) From and after the Effective Time, to the extent provided in the CCAA Sanction Order, all Persons will be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Channelled Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Channelled Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Channelled Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim or Channelled Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against any of the Released Parties with respect to any and all Channelled Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Channelled Claims, provided that nothing in this Section 7.3(4) will prevent a Person with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovery from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties. For greater certainty, the Actions against the Non-Settlement Parties are not barred, estopped stayed or enjoined and may continue after the Effective Date subject to any restrictions imposed by sections 7.3(2) and 7.3(3) hereof or the CCAA Sanction Order.

*****

8.2 **CCAA Sanction Order**

The CannTrust Plan Companies will apply for a CCAA Sanction Order that will, among other things:

*****

(j) order that, from and after the Effective Time, all Persons are permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of cross-claim, third party claim or claim over for contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim;~~ (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties or their property with respect to any and all Released Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

(k) order that, from and after the Effective Time, any ~~judgment or other award obtained by a Securities Claimant or the Securities Claimant Trust in respect of any~~ Securities-Related Claim asserted against a Non-Settlement Party or any other Person that is not a Released Party shall be ~~reduced by the amount, if any, that the court or other tribunal adjudicating the Securities-Related Claim determines would have been recovered by such~~restricted to a several claim such that any recovery from the Non-Settlement Party or other Person ~~pursuant to a~~shall be limited to the Non-Settlement Party's or other Person's proportionate share or degree of liability, as established at a trial or other disposition in respect of the asserted Securities-Related ~~Indemnity~~ Claim ~~held by it against a Released Party in respect of such Securities-Related Claim but for the release of such Securities-Related Indemnity Claim pursuant to the CCAA Plan of the CCAA Sanction Order, determined as of the moment before the Effective Time and, for greater certainty, taking into account (i) the Cash Contribution to be made by CannTrust Holdings to the Securities Claimant Trust and (ii) all other Securities-Related Indemnity Claims of other Non-Settlement Parties or other Persons participating in any recovery on a *pro rata* basis.~~or in a subsequent proceeding for the purposes of allocating liability between or amongst Settlement Parties and Non-Settlement Parties, subject to the exhaustion of any rights of appeal. To the extent that a Securities-Related Claim against a Non-Settlement Party or any other Person that is not a Released Party is not restricted to a several claim, the portion of the Securities-Related Claim that seeks to make a Non-Settlement Party or other Person responsible for liability or damages other than that Non-Settlement Party's or other Person's proportionate share or degree of liability is permanently barred, prohibited and enjoined.

(l) order that, from and after the Effective Time, ~~to the extent provided in the CCAA Sanction Order,~~ all crossclaims, third party claims or claims for contribution, indemnity or other relief or other claims over relating to the Released Claims or Channelled Claims, which were or could have been brought by a Settlement Party (including with respect to an Assigned Claim) against a Non-Settlement Party in the Actions or otherwise are permanently and forever barred, estopped, stayed and enjoined.

(m) order that a Co-Defendant ~~may~~, ~~no~~on motion to the applicable court ~~in an Action to which a Settlement Party is a defendant~~, and on at least thirty (30~~(~~) days' notice to counsel for the Settlement Party, and not to be brought unless and until the Action against the Co-Defendant has been certified and all appeals or times to appeal have been exhausted if such Action is a class proceeding, seek orders for the following, determined as if the Settlement Party remained a party to the Action:

(i) documentary discovery and an affidavit of documents from the Settlement Party in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg. 1994;

(ii) oral discovery of the Settlement Party or a representative of the Settlement Party, as applicable, the transcript of which may be read in at trial;

(iii) leave to serve a request to admit on the Settlement Party in respect of factual matters; and

(iv) the attendance of the Settlement Party, or the production of a representative of the Settlement Party, as applicable, to testify at trial, with such witness to be subject to cross-examination by counsel for the Co-Defendant;

(n) order the each Person having a Channelled Claim will be limited to recovering from the Securities Claimant Trust in respect of such Channelled Claim in accordance with the CCAA Plan and Definitive Documents and, if applicable, from any person who is not a Released Party, and such Person with a Channelled Claim will have no right to and shall not make any claim against or seek any recovery from ~~ant~~any Released Party in respect of such Channelled Claim, provided that ~~noting~~nothing in this Section 8.2(n) will prevent a Person ~~wit~~with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovering from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties. Channelled Claims shall be subject to the prohibitions in sections 8.2 (j) and (l) on the pursuit of cross-claims third party claims or claims over against Non-Settlement Parties.

(o) order that, from and after the Effective Time, all Persons are permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand, or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Channelled Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Channelled Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Channelled Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties~~, unless such claim of such other Person is itself a Released Claim or Channelled Claim~~; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against any of the Released Parties with respect to any and all Channelled Claims; and (v) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Channelled Claims, provided that nothing in this Section 8.2(o) will prevent a Person with an Insured Securities Claim or Insured Securities-Related Claim from making a claim against a Settlement Party to establish liability (but without recovery from it or its property) solely to the extent necessary to enable the Securities Claimant Trust to enforce Assigned Claims against Insurers who are not Settlement Parties.

*****

(t) order that, as of the Effective Time, (i) all of the rights and obligations of CannTrust Holdings and each Settlement Party to and in respect of the Assigned Claims shall be assigned to and assumed by the Securities Claimant Trust~~ and such assignment is valid and binding upon the applicable Non-Settlement Parties in respect of such~~, (ii) the parties to the Assigned Claims ~~notwithstanding any restriction or prohibition contained in~~are prohibited from exercising any rights or remedies under any insurance policy, underwriting agreement, audit engagement letter or other agreement relating to the assignment thereof (an "**Assigned Claims Related Agreement**")~~, including any provision requiring the consent of any party to an assignment, (ii) the counterparties to the Assigned Claims Related Agreements are prohibited from exercising any rights or remedies under the Assigned Claims Related Agreements and shall be forever barred, estopped, stayed and enjoined from taking such action,~~ by reason of:

(A~~) any restriction, condition or prohibition contained in any such Assigned Claim Related Agreement relating to the assignment thereof;~~

~~(B) any event that occurred on or prior to the Effective Time and is not continuing that would have entitled such counterparty to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any member of the CannTrust Group);~~

~~(C~~) the insolvency of any member of the CannTrust Group or the fact that any member of the CannTrust Group sought or obtained relief under the CCAA~~;~~

~~(D) any compromises or arrangements effected pursuant to the CCAA Plan or any action taken or transaction effected pursuant to the CCAA Plan (including the compromise or release of any Affected Claim or Released Claim arising under such Assigned Claim Related Agreement)~~;

(~~E~~B) any change in the control of the CannTrust Group arising from the implementation of the CCAA Plan;

and (iii) such counterparties are hereby deemed to waive any defaults relating thereto.

New Provisions:

The following provisions are to be added to the Order and (with appropriate references in the Plan terms):

[x] declare that, subject to section 8.2(t), nothing in this Order is intended or deemed to have nor shall it be interpreted as having:

(a) assigned a right or obligation under contract or otherwise to the Securities Claimant Trust that is not otherwise assignable;

(b) absolved or relieved the Securities Claimant Trust or its Trustees of any conflict of interest or any actual or potential breach of fiduciary, ethical or professional obligations or any duty of care under statute or regulation, contract or common law;

(c) determined that any Claim that might be brought by the Securities Claimant Trust is or is not a crossclaim, third party claim, claim for contribution, indemnity or other relief, or another claim over relating to a Released Claim or Channelled Claim within the meaning of section 8.2(l) of this Order or is or is not assignable pursuant to section 8.2(t) or on any other basis; or

(d) except as is expressly provided for in this Order, sanctioned any proceeding or representation or form of proceeding or representation that may interfere with a Non-Settlement Party's rights to confidentiality, the protection of the deemed undertaking rule, or any other substantive or procedural protection.

[Y] declare that any Non-Settlement Party or other party against whom the Securities Claimant Trust commences a Claim may apply to a court or other adjudicative body with jurisdiction over the matter for a determination as to whether:

(a) a right or obligation purportedly assigned to the Securities Claimant Trust was assigned or is or was assignable pursuant to section 8.2(l) of this Order or on any other basis; or

(b) an Assigned Claim or purported Assigned Claim, or the procedure or proposed procedure for pursuing an Assigned Claim or purported Assigned Claim, including the role of the Securities Claimant Trust or the Trustees in prosecuting the Assigned Claim or purported Assigned Claim, constitutes a conflict of interest or an infringement of the Non-Settlement Party's substantive or procedural rights, in which case it shall be open to the Non-Settlement Party to argue that a neutral court officer shall be appointed to pursue the claim or impose such other remedy or solution as the court or adjudicative body determines to be appropriate.

[Z] declare that this Order is without prejudice to the right of any Non-Settlement Party or any other party against whom the Securities Claimant Trust commences a Claim to defend a purported Assigned Claim on the basis that the claim or any underlying right or remedy on which it is premised, was not assigned or was not assignable to the Securities Claimant Trust, on any other basis articulated in section [X] of this Order or on any other basis.

SCHEDULE "B"—US BAR ORDER LANGUAGE

IT IS HEREBY ORDERED THAT:

1. All claims that have or could have been brought by the Plaintiffs against the Settling Defendants are permanently BARRED, PROHIBITED, and ENJOINED.

2. CannTrust Holdings Inc., KPMG LLP, Peter Aceto, Greg Guyatt, Ian Abramowitz, Brad Rogers, Eric Paul, Mark E. Dawber, Mitchell J. Sanders, John T. Kaden, Mark I. Litwin, Shawna Page, and Robert F. Marcovitch, Merrill Lynch, Pierce, Fennder & Smith Inc., Citigroup Global Markets Inc., Credit Suisse Securities LLC, Jefferies LLC, RBC Dominion Securities Inc., Canaccord Genuity LLC, Cannamed Financial Corp., Cajun Capital Corp., **[Insert any additional Settlement Parties]** and any other persons or entities later named as defendants in the action, are hereby permanently BARRED, ENJOINED, and RESTRAINED from commencing, prosecuting, or asserting any claim for indemnity or contribution, however styled, against any of the Settling Defendants and any of their affiliated persons and entities, with respect to, relating to, or arising from, the claims, liabilities, or injuries alleged, or the claims, liabilities, or injuries relating to CannTrust Holdings Inc. securities, that have or could have been alleged by the Plaintiffs in their June 26, 2020 Consolidated Class Action Complaint.

3. All claims that have or could have been brought by the Settling Defendants against the Non-Settling Defendants are permanently BARRED, PROHIBITED, and ENJOINED.

4. Any judgment against the Non-Settling Defendants shall be reduced by the greater of (1) an amount that corresponds to the percentage of responsibility of the Settling Defendants, or (2) the total amount paid to the Plaintiffs by the Settling Defendants.

5. Notwithstanding the foregoing, this Order does not bar, extinguish, or otherwise affect or apply to any direct claim of KPMG against any of the Released Parties for reimbursement of the reasonable costs of its defense of these actions in the event it is judicially determined that KPMG is not liable to Plaintiffs.

IT IS SO ORDERED.

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trademark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

Andrea Laing
Partner
Dir: 416-863-4159
andrea.laing@blakes.com

May 25, 2021

Reference: 27064/509

VIA EMAIL

WITH PREJUDICE

Serge Kalloghlian
Kalloghlian Myers LLP
Suite 200, 250 University Ave
Toronto, ON M5H 3E5

Marie Henein/Scott Hutchison
Henein Hutchison, LLP
235 King Street East, First Floor
Toronto, ON M5A 1J9

A. Dimitri Lascaris
A. Dimitri Lascaris Law
Professional Corporation
6101-360 Rue Saint-Jacques
Montreal, QC H2Y 1P5

David R. Wingfield
Strosberg Sasso Sutts LLP
Barristers and Solicitors
1561 Ouellette Avenue
Windsor, ON N8X 1K5

Steven Weisz
Weisz Fell Kour LLP
5600-100 King St. W.
Toronto, ON M5X 1C9

R. Paul Steep/Shane D'Souza
McCarthy Tetrault LLP
Suite 5300 Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Dear Counsel:

Re: *Re CannTrust Holdings Inc.,* CV-20-00638930-00CL

We write further to our letter to this group dated April 14, 2021. KPMG LLP's concerns (the "KPMG Concerns") with the proposed amended draft Plan of Compromise, Arrangement and Reorganization of CannTrust Holdings Inc., CannTrust Inc. and Elmcliffe Investments Inc., which we received on the evening of April 9, 2021 and which was accepted for filing on April 16, 2021 (the "Plan") remain outstanding and you have taken no steps to meaningfully address them. The capitalized terms in this letter not otherwise defined have the meanings given to them in the Plan.

The KPMG Concerns were formally raised in KPMG's factum delivered on March 17, 2021 in response to CannTrust's motion for a meeting order. They were also raised in discussions with counsel to CannTrust prior to the delivery of the factum. Accordingly, you have now been aware of them for more than two months yet the Plan remains manifestly unfair and unsanctionable. The further amendment to the Plan, which KPMG received on the evening of May 21, 2021, was again prepared without consultation with KPMG despite the issues it has repeatedly raised. The KPMG Concerns are summarized below.

1. The bar order terms at Section 7.3(3) of the Plan and any order implementing the Plan must be amended so that Non-Settling Defendants retain proportionate, several liability only, unrelated to CannTrust's financial position. The Securities Claimants cannot retain the right to seek damages from Non-Settlement Parties that are properly attributable to Settlement Parties.

2. The following procedural protections for Non-Settling Defendants must be added to the Plan and any order implementing it:

   a. express recognition that any determination as to the assignability of any claims to the Securities Claimant Trust are deferred until such claims are actually commenced so that assignability can be determined in light of the actual claims being advanced and not merely hypothetical claims;

   b. express recognition that the application and enforceability of underlying agreements that may be relevant to purportedly assigned or assignable claims (including CannTrust's engagement letter with KPMG) are deferred to be determined once issues have crystalized in actual litigation;

   c. express recognition that any determination as to whether an assigned claim is barred by the terms of the Plan shall be deferred for determination once such claim has actually been commenced; and

   d. express recognition that whether the Trustee of the Securities Claimant Trust will be a neutral, court-appointed officer rather than the Securities Claimants' counsel shall be deferred for determination in the context of specific claims, once commenced and in light of any relevant determinations under (a)(b) or (c) above.

3. US bar order terms, to the extent claims are to be pursued in Canada under US law.

KPMG agreed not to raise these issues at the April 16, 2021 meeting order hearing on the basis of this group's assurances, through the Monitor, that it would meaningfully engage with KPMG to resolve these issues. Despite KPMG's efforts, we appear to be at an impasse because CannTrust indicates that KPMG must deal exclusively with the Securities Claimants and the Securities Claimants have indicated that they are unwilling to compromise on any issue.

As an accommodation, KPMG is prepared to resolve the issues set out at point 2 above by simply reserving rights and deferring determinations until the issues have developed to the point where they can be fully considered by the court on a proper record. This is fair to all interested stakeholders and to the Court, which should not be asked to make complex and appealable determinations without actual pleadings or a proper record. If the Securities Claimants and CannTrust are not prepared to do this, KPMG will have no choice but to oppose the sanctioning of the Plan.

Issues relating to whether and to what extent the Securities Litigation Trust may pursue claims by CannTrust against KPMG are clearly ancillary to the economic bargain that was reached between the Securities Claimants and CannTrust and should not delay the implementation of the Plan. Any assertion to the contrary is inconsistent with the terms of the RSA and the Plan. As the Securities Claimants are aware, CannTrust's Special Committee specifically considered and rejected the possibility of pursuing an action against KPMG almost two years ago. Counsel to CannTrust and its Special Committee conveyed this to Mr. Wingfield in the attached correspondence. Notably, Mr. Wingfield and Strosberg Sasso Sutts LLP took no further steps to pursue a derivative action after having been informed of CannTrust's conclusion.

KPMG remains ready and willing to engage with the addressees of this letter to attempt to resolve the KPMG Concerns in advance of the creditor vote scheduled for May 28, 2021. Please contact us if a resolution is of interest.

Failing that, the KPMG Concerns will need to be addressed at the sanction hearing scheduled for June 11, 2021. These issues have broad precedential value for both the CCAA and class action bars. If the KPMG Concerns are not resolved prior to the creditor vote, we expect that significantly more than a day will be required for the initial sanction hearing. We will contact Justice Hainey's office this week to convene a scheduling conference to obtain directions regarding additional hearing time and a schedule for cross-examinations and the exchange of materials in advance of the hearing.

Yours truly,

Andrea Laing

c: Steve Graff/Jonthan Yantzi, Aird & Berlis LLP
Ryan Morris
Linc Rogers

This is **Exhibit "G"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits (or as may be)

Manoryk, Justin

From: canntrust <canntrust.monitor@ca.ey.com>
Sent: Tuesday, May 4, 2021 2:46 PM
To: Thompson, Nancy
Subject: Excluded Equity Claim filed by KPMG LLP

External Email | Courrier électronique externe

The Monitor writes with respect to the proof of claim filed by KPMG LLP dated 6/17/2020 against CannTrust Holdings Inc. and certain of its Directors (the "**Proof of Claim**"). Capitalized terms used but not otherwise defined herein have the meanings given to them in the Claims Procedure Order dated May 8, 2020.

The Claims called for pursuant to the Claims Procedure Order expressly excluded any Excluded Equity Claim, which was defined as "any Equity Claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers, including for greater certainty: (i) any claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers in the Pending Litigation; and (ii) any claim of a Director or Officer or any other Person for contribution or indemnity from CannTrust Holdings Inc. in respect of the Pending Litigation or an Equity Claim."

The claim asserted in the Proof of Claim constitutes an Excluded Equity Claim under the Claims Procedure Order and, accordingly, will not be adjudicated by the Monitor and the Applicants. The Applicants recently obtained an order from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") authorizing them to file the plan of compromise, arrangement and reorganization of CannTrust Holdings Inc., CannTrust Inc. and Elmcliffe Investments Inc. dated April 16, 2021 (the "**CCAA Plan**") with the Court and call meetings of their creditors (the "**Meetings**") to consider and vote on the CCAA Plan. The claims asserted in the Proof of Claim will be subject to the treatment applicable to such claims in the CCAA Plan upon implementation.

A copy of the CCAA Plan and other materials related to the Meetings may be obtained from the Monitor's website at http://www.ey.com/ca/canntrust.

Ernst & Young Inc. Court Appointed Monitor of
CannTrust Holdings Inc., CannTrust Inc.,
CTI Holdings (Osoyoos) Inc. and Elmcliffe Investments Inc.

Ernst & Young Inc.
Ernst & Young Tower, 100 Adelaide Street West, PO Box 1, Toronto, ON M5H 0B3 Canada
Phone: +1 855 224 0800 | +1 416 943 2091 | Fax: +1 416 943 3300 | canntrust.monitor@ca.ey.com
Website: www.ey.com/ca/canntrust

This is **Exhibit "H"** referred to in
the Affidavit of Nancy Thompson

Sworn remotely before me this 4th day of June 2021
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

____
Commissioner for Taking Affidavits (or as may be)

Manoryk, Justin

From: Laing, Andrea
Sent: Friday, June 4, 2021 12:31 PM
To: Serge Kalloghlian
Cc: David R. Wingfield (dwingfield@strosbergco.com); Morris, Ryan; Rogers, Linc; McIntyre, Caitlin; Manoryk, Justin; Szirmak, Daniel
Subject: RE: Scheduling Cross-Examinations

Thanks Serge,
As you surely know, you can't make affirmative statements in an affidavit and then avoid having the statement challenged in cross by asserting privilege or confidentiality. Any privilege or confidentiality has been waived. We can take this up on Monday but be aware that we'll be seeking an adverse inference.

Andrea Laing
Partner
Dir: 416 863 4159
Cell: 647 294 5820
andrea.laing@blakes.com

From: Serge Kalloghlian <serge@kalloghlianmyers.com>
Sent: Friday, June 4, 2021 12:19 PM
To: Laing, Andrea <andrea.laing@blakes.com>
Cc: David R. Wingfield (dwingfield@strosbergco.com) <dwingfield@strosbergco.com>; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Manoryk, Justin <justin.manoryk@blakes.com>; Szirmak, Daniel <daniel.szirmak@blakes.com>
Subject: RE: Scheduling Cross-Examinations

Andrea,
All discussions that took place during the negotiation of the RSA are covered by the confidentiality provisions in the Mediation Order and settlement and common interest privilege. The communications and documents you refer to below (if any) fall in that category and will not be produced. No documents responsive to your request were exchanged with CannTrust that are by themselves not subject to the Mediation Order or applicable privilege, and CannTrust provided no such documents that were created before the Mediation Order.

Serge Kalloghlian
T: (647) 812-5615

KALLOGHLIAN MYERS LLP — Kalloghlian Myers LLP | kalloghlianmyers.com
2201-250 Yonge Street, Toronto, ON M5B 2L7

Please consider the environment before printing this email

From: Laing, Andrea <andrea.laing@blakes.com>
Sent: Friday, June 4, 2021 10:20 AM
To: Serge Kalloghlian <serge@kalloghlianmyers.com>

Cc: David R. Wingfield (dwingfield@strosbergco.com) <dwingfield@strosbergco.com>; Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Manoryk, Justin <justin.manoryk@blakes.com>; Szirmak, Daniel <daniel.szirmak@blakes.com>
Subject: Re: Scheduling Cross-Examinations

Thanks Serge. We tentatively booked 10 but I think we can move the timing up—will confirm shortly.

Please confirm your position on the documents.

Andrea Laing
Partner
Dir: 416 863 4159
Cell: 647 294 5820

Andrea.laing@blakes.com

On Jun 4, 2021, at 10:12 AM, Serge Kalloghlian <serge@kalloghlianmyers.com> wrote:

External Email | Courrier électronique externe

Hello Andrea
We are available Monday morning. I'd prefer to start at 9 if possible.

Serge Kalloghlian
T: (647) 812-5615

<image001.jpg> Kalloghlian Myers LLP | kalloghlianmyers.com
2201-250 Yonge Street, Toronto, ON M5B 2L7

Please consider the environment before printing this email

From: Laing, Andrea <andrea.laing@blakes.com>
Sent: Thursday, June 3, 2021 7:47 PM
To: David R. Wingfield (dwingfield@strosbergco.com) <dwingfield@strosbergco.com>; Serge Kalloghlian <serge@kalloghlianmyers.com>
Cc: Morris, Ryan <ryan.morris@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Manoryk, Justin <justin.manoryk@blakes.com>; Szirmak, Daniel <daniel.szirmak@blakes.com>
Subject: Scheduling Cross-Examinations

Hi David and Serge,
We'd like to arrange for Serge's cross examination on Monday. Could you please suggest some times when he can be available? We note that Serge asserts in his affidavit that "the CCAA Representatives' Compromise with the Original Settlement Parties was driven by [among other things] the significant potential value of . . . CannTrust's potential claim against KPMG." As you've put it in issue, we would like to explore this assertion. Given tight timelines, we'd appreciate it if you could provide us, in advance, with

all communications, including any documents exchanged, with CannTrust or its advisers, during the course of the negotiations of the RSA that relate to "CannTrust's potential claim against KPMG".

All the Best,

Andrea Laing
Partner
Dir: 416 863 4159
Cell: 647 294 5820
andrea.laing@blakes.com

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
blakes.com | LinkedIn

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

AFFIDAVIT OF NANCY THOMPSON
SWORN JUNE 4, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Andrea Laing LSO #43103Q
Email: andrea.laing@blakes.com
Tel: 416-863-4159

Linc A. Rogers LSO #43562N
Email: linc.rogers@blakes.com
Tel: 416-863-4168

Ryan Morris LSO #50831C
Email: ryan.morris@blakes.com
Tel: 416-863-2176

Caitlin McIntyre LSO #72306R
Email: caitlin.mcintyre@blakes.com
Tel: 416-863-4174
Fax: 416-863-2653

Lawyers for KPMG LLP

Tab 2

Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., ELMCLIFFE INVESTMENTS INC. and ELMCLIFFE INVESTMENTS [NO. 2] INC.

Applicants

CROSS-EXAMINATION OF GREG GUYATT
held via Arbitration Place Virtual
on Wednesday, March 17, 2021 at 12:05 p.m.

CONDENSED TRANSCRIPT WITH INDEX

100 Queen Street, Suite 940
Ottawa, Ontario K1P 1J9
(613) 564-2727

333 Bay Street, Suite 900
Toronto, Ontario M5H 2R2
(416) 861-8720

APPEARANCES:

Paul Steep for CannTrust Holdings Inc.
Trevor Courtis
Shane D-Souza

Peter Howard for Mark Litwin and
Eliot Kolers Stan Abramowitz
Jocelyn Kemp
Ashley Taylor
Brian Pukier

John Fabello for the Underwriters
Gillian Dingle

Carlo Di Carlo for Eric Paul

Alistair Crawley for Peter Aceto
Jonathan Preece

ALSO PRESENT:
Ryan Morris
Philip Underwood
Michael Robb
Serge Kalloghlian
Glenn Vanzura
Joe DeSimone
Jonathan Yantzi

INDEX

	PAGE
AFFIRMED: GREG GUYATT	5
CROSS-EXAMINATION BY MR. HOWARD	5
CROSS-EXAMINATION BY MR. FABELLO	106
CROSS-EXAMINATION BY MR. DI CARLO	134

LIST OF UNDERTAKINGS, REFUSALS,
& UNDER ADVISEMENTS

Undertakings (U/T) found at pages:
76, 79, 85, 86, 121

Refusals (REF) found at pages:
82, 89, 99

Under Advisements (U/A) found at pages:
71-72

LIST OF EXHIBITS

NO.	DESCRIPTION	PAGE
1	Written employment agreement made as of the 13th day of January 2019	15
2	Written agreement dated March 16, 2020	16
3	2019 management information circular	33
4	July 25 press release	39
5	October 24 press release	42

Page 5

Arbitration Place Virtual

--- Upon commencing on Wednesday, March 17, 2021 at 12:05 p.m.

AFFIRMED: GREG GUYATT

CROSS-EXAMINATION BY MR. HOWARD:

1 Q. Mr. Guyatt, part of doing this over the internet is that it's important we don't talk over each other, and so I will try and ask quick questions and if you wait until the end of the question, that would be appreciated. But if you don't understand a question, please don't try and answer it. Ask me to explain it to you. Is that fair?

A. Understood. That works for me.

2 Q. All right. If at any time you need a break or want to speak to your counsel, you have to ask and then, of course, we'll have the break and you can speak to your counsel, but you're under cross-examination, so Mr. Steep will observe the rules while you're under cross-examination. Okay?

A. Understood.

MR. STEEP: You've got the most rules obsessed lawyer on the other side of you, Mr. Howard, in the city, so you're lucky.

Page 6

MR. HOWARD: He's already breached the rules.

BY MR. HOWARD:

3 Q. Mr. Guyatt, we're here today. You have sworn nine affidavits, by my count, in the CCAA proceedings?

A. That sounds right.

4 Q. And I know that lawyers prepare and draft them, but am I correct that you've read each one carefully and understood it before you signed them?

A. Yes.

5 Q. And with respect to the March 5 and March 13 affidavits that you have sworn, of this year, have you reviewed them prior to coming here today?

A. Yes, I did.

6 Q. And before we start, is there anything that you want to change or is incorrect that you know of in those affidavits?

A. No.

7 Q. Well, then if we could go to your March 5 affidavit, and in particular, I would ask you to turn up, at page 6, paragraph 9.

Page 7

I'm going to start with paragraph 9.

MS. KEMP: Do you want me to bring that up?

MR. HOWARD: I think if we're in affidavits, we have both have paper copies here, so we can work from those.

MR. STEEP: Perfect.

BY MR. HOWARD:

8 Q. It's page 19 of the record, paragraph 9 that I want to start with. Tell me when you have it in front of you, Mr. Guyatt. I can't see you nod.

A. No, I've got it in front of me. Thanks.

9 Q. All right. You can see in the last part of the paragraph, what you say is that the CannTrust plan companies believe will be highly competitive. Do you see that?

A. Yes.

10 Q. And then in paragraph 10, you say that the CannTrust group believes. Do you see that?

A. Yes.

11 Q. And then in paragraph 11, you say that the CannTrust plan companies believe. Right?

Page 8

A. Yes.

12 Q. And in paragraph 12, you say that because of those beliefs, therefore, it's appropriate to grant the meeting order. Right?

A. Yes.

13 Q. And I want to explore with you a little bit about -- first of all, you use CannTrust group and CannTrust plan companies separately, but when I ask you questions, I'm going to be asking you about, I'll call it CannTrust or CT, and that will mean the companies in the group. Is that okay?

A. That's fine.

14 Q. So, when you're talking about the belief or state of mind of the CannTrust companies in this affidavit, I want to focus on the outset on whose state of mind we're talking about.

And you are the CEO of the companies and have been for over a year?

A. Yes.

15 Q. And that's the most senior position in the companies, in management?

A. In management, yes.

Page 9

16 Q. All right. And up until recently, there was a five member board of directors. Correct?
A. Correct.
17 Q. And the members of the board are Mr. Marcovitch, Ms. Page, Mr. Dawber, Mr. Sanders, and until recently, Mr. Mark Litwin. Right?
A. Correct.
18 Q. And am I correct, sir, you were present on January 18, the RSA came before the board?
A. I don't recall that specific day or that meeting, but yes, I was present at the meeting. I can't recall if that's the date.
19 Q. All right, leaving aside whether it's the 18th or -- I'm not going to hold you to remember the specific date. Sometime in January, when what I call the RSA or the restructuring support agreement came before the board, you were present?
A. Correct.
20 Q. And you were making a recommendation to the board with respect to the

Page 10

RSA?
A. From management's perspective, yes.
21 Q. And Mr. Litwin, at that meeting, disclosed a conflict and abstained and did not vote on that. Correct?
A. Correct.
22 Q. And he also expressed some concerns to the board about the RSA and the position of other board members. Correct?
A. Yes, he did.
23 Q. And the other members of the board proceeded and actually voted on the RSA on that day and approved it. Correct?
A. Correct.
24 Q. Approved a resolution to sign it? I apologize.
A. Correct, yes.
25 Q. So, when we're talking about the belief that you're talking about in those paragraphs I took you to, it must be you and those members of the board. Correct?
A. The board is supportive of the company's views on what we believe, yes.
26 Q. But I'm talking about the

Page 11

company is a fictitious person, we're talking about the individuals and the states of mind, the people that have that opinion or belief are yourself and the board members who voted, and those are the people that caused the company to make the decision. Correct?
A. Sorry, to make the decision to enter into the RSA?
27 Q. Yes.
A. Yes.
28 Q. And am I correct, sir, at least with Mr. Litwin present, there was never any board meeting to approve the CCAA plan. Correct?
A. I don't believe so. I'm not actually a board member, so it's possible they have had other meetings without me being present.
29 Q. But when we're talking about the CCAA plan, in this context I'll be talking about the one that was included in your March 13 affidavit, the second one, the state of mind of the company, again, comes from you and those board members. Correct?
A. Yes.
30 Q. And sir, if I use the term straw man, do you understand that term?

Page 12

A. Generally. I suppose it depends on what context you're going to refer to it in.
31 Q. And if I use the term false dichotomy, do you understand that term?
A. Again, it depends what context you're going to use it in, so I can't say whether I understand it or not without knowing the question.
32 Q. I'll give you a little context. If you present a decision as if it were only a choice of two options when there are in fact other options, that would be presenting an false dichotomy. Correct?
A. I don't know. If that's what you tell me the definition is, we'll go with that.
33 Q. All right. That wouldn't sound strange to you?
A. No.
34 Q. All right. And am I correct, sir, in not only do you specifically -- Mr. Guyatt, you joined the company as CFO, chief financial officer?
A. Yes.

Page 13

35 Q. And before you joined, in January of 2019, you entered into a written employment contract. Correct?
A. Correct.
36 Q. And you didn't actually start working until sometime in early February, but you have a written employment agreement and I don't know that you need it in front of you, but you can have it if you want.
Am I correct, sir, that you bargained for and got promises from the company as to certain things in order to join the company as an employee?
A. As one would normally do when they join a company, yes.
37 Q. Absolutely. I didn't mean to suggest, if I did, that it was abnormal.
Am I correct, sir, that one of the things that you bargained for under the section Benefits, 5.4, was that the company would maintain DNO insurance. Correct?
A. Correct.
38 Q. You can look at it if you want. And another thing that you bargained for and you got in writing was that the company would

Page 14

provide you an indemnity. That's section 10. Correct?
A. I don't know if I like the characterization that it's something I bargained for. I would say these are all standard provisions in any employment agreement. The company would have offered to me and it was not --
39 Q. Did you say --
A. -- part of a bargaining process.
40 Q. Sorry, I interrupted you. If you're not finished, go ahead.
A. No, that's --
41 Q. If it hadn't been there, you would have considered it a standard term, it's something that you would have raised and asked for. Right?
A. Nobody would join a public company without having appropriate indemnities in place.
42 Q. Let me talk to Mr. Steep for a moment.
Paul, do we need to mark these separately? It's not in the record somewhere.
MR. STEEP: No.

Page 15

MR. HOWARD: I've referred to it. I guess I would like to mark it as or note it as Exhibit 1 so we can put it in so the transcript makes sense.
MR. STEEP: Yes, that's fine. What you mean is you're not going to actually stamp it; we're just going to put a compendium together at the end of this with what we've referred to as the exhibits?
MR. HOWARD: Right.
BY MR. HOWARD:
43 Q. And Mr. Guyatt, what I'm talking about first is this written employment agreement made as of the 13th day of January 2019. That's Exhibit 1.
EXHIBIT NO. 1: Written employment agreement made as of the 13th day of January 2019.
BY MR. HOWARD:
44 Q. And am I correct, sir, you got a battlefield promotion in early 2020?
A. I don't know if I would call it a battlefield promotion per se, but yes, I was appointed to CEO in February of 2020.

Page 16

45 Q. All right. And am I correct, sir, that you entered into a written employment agreement with respect to your employment as CEO?
A. Yes.
46 Q. And just as Exhibit 1 had, it had an express term as to the company coveting to maintain DNO insurance?
A. I believe so.
47 Q. And it had an express term about an indemnity from the company to you?
A. Yes.
48 Q. And am I correct -- it's 11.1. And am I correct, sir, it was true in spades that if you wouldn't have gone without an indemnity on the 19th, you wouldn't have taken this position without the indemnity in early 2020?
A. Correct.
49 Q. Could we mark as Exhibit 2 the March 16, 2020 written agreement?
MR. STEEP: That's fine.
EXHIBIT NO. 2: Written agreement dated March 16, 2020.
BY MR. HOWARD:

Page 17

50 Q. Mr. Guyatt, did you become a shareholder of the entities?
A. I have been a shareholder of CannTrust Holdings for a long time. I'm not sure exactly how long. Sometime in 2018, late 2018, early 2019. My shareholdings would be part of the public record on SEDI.
51 Q. And you remain a shareholder?
A. Yes.
52 Q. And, if I may say so, a relatively small number of shares?
A. Yes.
53 Q. And am I correct you will retain those shares in the entity that emerges if the CCAA plan is approved?
A. Along with the rest of the shareholders, yes.
54 Q. We're going to come to that, sir, yes. Thank you.
And am I correct, sir, that the company put in place and had approved by court order in April of 2021 a key employee retention program?
A. Yes.

Page 18

55 Q. And your affidavit, as of April 6, provided the support for that?
A. I don't recall exactly which affidavit, but it would have been in one of my early affidavits, yes.
56 Q. And again, sir, you are one of the people -- key employees?
A. Yes, I am.
57 Q. And the second milestone is a successful restructuring?
A. For certain employees, yes.
58 Q. And is that for you as well?
A. That would include myself.
59 Q. I'm not going to ask you the exact number because you filed it under seal, but you will receive a payment if the plan is approved and there's a successful restructuring. Correct?
A. Yes.
60 Q. Sir, am I correct that, when you joined as CFO in February of 2019, you worked out of the head office?

Page 19

A. I did.
61 Q. And the head office is in Vaughan? Was it at the time in Vaughan?
A. At that time, it was on Langstaff Road in Vaughan, yes.
62 Q. And the company had and has two facilities, one also in Vaughan?
A. Yes.
63 Q. And it's a few minutes away from the head office or was?
A. So, I should clarify. There were two offices in Vaughan at one point. It's now been -- one of those leases was disclaimed and now it's down to one facility, which is the production facility and head office in a combined building.
64 Q. But at the time, the head office lease was a couple miles away, a few miles?
A. When I joined, it was at Langstaff when I joined as well.
65 Q. So five, ten minutes away?
A. No, the same building.
66 Q. Sorry, I didn't quite hear you.

Page 20

A. When I joined the company, it was at the same building that it's in today. For a period of time, we moved into a new office, which was about ten minutes away. That office has subsequently been closed and we're now all back in the old office again.
67 Q. So when you joined, it was at the Vaughan facility --
A. Correct.
68 Q. -- so you would walk into that facility?
A. Yes.
69 Q. Can you tell me, sir, in very rough terms in terms of the breakdown of employees, head office, the Vaughan facility and the Niagara Falls facility?
A. We call it Fenwick, but it's in the Niagara region, yes.
70 Q. Okay. And I'm not going to hold you responsible for an absolute number, but the rough breakdown of employees at Fenwick, Vaughan facility, and head office?
A. As of today?
71 Q. Yes, as of today.
A. So as of today, we have

Page 21

about 330 employees. Approximately 100 of those, rough numbers, are in Fenwick, with the remainder being in Langstaff split between head office staff and manufacturing staff.

But I will say that most people are currently working from home, unless they're in the production area.

72 Q. And the head office versus Vaughan facility production staff, what's that breakdown roughly?

A. I would say 60 percent of them roughly are production people. I don't know the exact number off the top of my head.

73 Q. That's fair. So, when you joined in February of 2019, one of the things you did of course was to get familiar with the operations?

A. Yes.

74 Q. And you knew eventually that you would have to certify financial statements?

A. Yes.

75 Q. And you certified the Q1 financial statements?

A. Yes, I did.

Page 22

76 Q. So, you have to know the business to prepare and certify the Q1 financial statements. Right?

A. Correct.

77 Q. And you also were very quickly immersed in the financing then contemplated of the $200 million?

A. Yes.

78 Q. And one of the things you did was you would eventually have to sign that prospectus supplement and you did so. Correct?

A. Yes.

79 Q. And you wouldn't do that without getting familiar and knowing the operations. Correct?

A. Correct.

80 Q. And some of the things you have to do to do that, you were the CFO, you dealt with the auditors. Correct?

A. Yes.

81 Q. And you also, as the CFO, would deal with the underwriters?

A. Yes.

82 Q. And that would include when the underwriters do their due diligence, they

Page 23

give you the list of their questions and you prepare answers and then there are due diligence meetings. You were involved in all --

A. Correct.

83 Q. -- of that?

A. Yes, I was.

84 Q. And you agree with me that, in terms of the standard indemnity or the indemnity requirement, one of the things that a public company does in order to get directors is promise the directors DNO insurance?

A. That's my understanding. That that's normal practice. Yes.

85 Q. And one of the things they do is also provide indemnities to the directors?

A. Yes.

86 Q. And in terms of the financing, you were involved in the promises that the company made to the auditors and the underwriters with respect to the financing?

A. So, what promises would that be?

87 Q. The contracts whereby they promised them, amongst other things,

Page 24

indemnities?

MR. STEEP: Can you be specific, Mr. Howard, if you're going to ask him if he signed any documents?

MR. HOWARD: Yes. I'll come to that, because he did, and I'll --

MR. STEEP: Yes, I'm sure he did, and we'll obviously agree to that, but I would prefer it be more precise than promises.

MR. HOWARD: That's fair enough. Then I will leave most of that to my friends Mr. Fabello and Ms. Dingle with respect to the underwriters.

BY MR. HOWARD:

88 Q. But with respect to the prospectus, sir, you became aware that one of the things that was going to happen is that they were going to be selling shareholders?

A. Yes.

89 Q. And you reviewed and commented on drafts of the prospectus supplements?

A. Yes.

90 Q. And you became aware that there were going to be two selling shareholders?

A. I don't recall if it was

Page 25

two. I think there was one of the shareholders being an entity and then perhaps one or two individuals. I don't recall exactly.

91 Q. Well, I think I want to help you with that, sir, because maybe we could put on the screen pages 79 and 80 of the prospectus supplement.

Can you still hear me?

A. Yes. Are you able to make it a little bit bigger so I can see it on my screen here? Okay, I see it.

92 Q. So, you would have been aware, if you don't remember at the time, one of the selling shales was Cajun Capital corporation?

A. When you asked the question, I wasn't sure if you were talking about the number of individuals behind the entities or the entities themselves, so yes, I'm with you.

93 Q. Fair enough. And you knew at the time that Cajun was a company owned by Mr. Sanders, who was a director of the company?

A. Yes.

94 Q. Did you know that Mr. Sanders had been a director since 2015?

A. I'm not aware of the

Page 26

exact date he joined the board.

95 Q. Were you aware of his connection with the Litwin family?

A. I'm not sure what you mean by the question exactly.

96 Q. Well, were you aware that he had been their long time counsel?

A. I've become aware of that since then. I'm not sure if I knew that at the time or not.

97 Q. Fair enough. Fair enough answer.

And you knew at the time that another selling shareholder was Cannamed Financial Corp. and that was owned by some shareholders set out here?

A. Which? Oh, I see. In point number 2?

98 Q. Yes.

A. Yes.

99 Q. And that the shareholders included the Paul family trust and then three other entities: York Capital, Mar-risa, and Forum.

And I'm going to ask you, with

Page 27

respect to the last three, you knew those were Litwin related entities, correct, or affiliated entities?

A. My understanding of Cannamed was it was owned by the Litwins and the Pauls together.

100 Q. So, by process of elimination, some of those last three would be the Ls?

A. Yes.

101 Q. And am I correct, sir, I just want to -- maybe while we're in the document, Jocelyn, if you can go to page 142?

MS. KEMP: 142 of the PDF?

MR. HOWARD: I could be wrong. It's not important enough. The document is what it is.

Could you go back to 179, then? I forgot one question.

BY MR. HOWARD:

102 Q. Mr. Guyatt, you knew at the time that Cajun was selling 250,000 shares and getting the proceeds, net proceeds, for those shares?

A. Yes.

Page 28

103 Q. And that that would leave Cajun with a position of some 686,000 shares?

A. Yes.

104 Q. And to your knowledge, that's Cajun's position today, it owns 686,000 shares?

A. I don't know. I -- yeah.

105 Q. Can we go, then, to Exhibit B to your March 13 affidavit. I don't think you need to put this up on the screen, Jocelyn, if you have it in hard copy in front of you.

A. I think I do.

MR. STEEP: Sorry, which paragraph are you going to?

MR. HOWARD: I'm going to the definitions, unfortunately.

BY MR. HOWARD:

106 Q. And the first definition would be at page 80.

A. Sorry, I don't have a copy of that.

MR. STEEP: I'm going to put a copy in front of you, so don't worry. 80 of the record, Peter?

Page 29

MR. HOWARD: Yes, seven of the document.
MR. STEEP: Yes.
BY MR. HOWARD:
107 Q. You see, sir, I want to take you to the definition of original settlement parties?
A. Okay, I'm there.
108 Q. You are an OSP. Correct?
A. Yes.
109 Q. And Cajun is an OSP?
A. Yes.
110 Q. And am I correct, sir, that Cajun isn't making any dollar contribution to the plan?
A. I don't believe so.
111 Q. And Cajun doesn't have any DNO insurance to assign. Correct?
A. Not that I'm aware of.
112 Q. So Cajun, as a selling shareholder, is getting the benefit of being an original settlement party. Correct?
MR. STEEP: It is an original settlement party. We can argue about the benefit later.

Page 30

BY MR. HOWARD:
113 Q. Well, let's talk about that. Because can I ask you to go to the next page, page 81 of the record. And the released CannTrust parties means the original settlement parties and some others. Correct?
A. I don't know. I can't see where it specifically says that, but I believe that's correct.
114 Q. Sorry, it says:
"Released CannTrust parties means the original settlement parties." (As read)
And then it goes on. Right?
A. Yes.
115 Q. Okay. And then if you flip the page, you talk about what claims are getting a release and, if you read through all those definitions, Cajun's getting a full and an unconditional release of any and all claims that anyone could make against the selling shareholders. Correct?
A. Yes.
116 Q. And that release includes

Page 31

the claims that anyone, such as the underwriters or Mr. Litwin, could make for contribution and indemnity. Right?
A. I believe that's accurate.
117 Q. Okay. And sir, I want to stay in this document. If I can go to the first page of the definitions, Actions. Do you see the definition of actions?
A. Yes.
118 Q. It means the actions in other litigation set out in Schedule A. And then you go to Schedule A, which is at page 118 of the record?
A. I see it.
119 Q. And am I correct, sir, that you are a Defendant in all but the Zola claim on that schedule?
A. I don't have them all committed to memory, but I know I'm named in most of them, yes.
120 Q. And am I correct, sir, and Mr. Steep can let me put it to you and he will tell me if I'm wrong, that the current members of the board are also Defendants in, if not all of

Page 32

them, a number of them?
A. That's correct, that's correct.
121 Q. And there is an individual named Ms. Platt, who is an original settlement party. She is your chief regulatory officer?
A. She is.
122 Q. So, she's not a member of the board, but she's an officer?
A. She is.
123 Q. And up until last week, Stan Abramowitz was the secretary, so he was an officer of the company as well. Correct?
A. That's correct.
124 Q. So sir, in terms of the original settlement parties, there's another person, a Mr. Kaden. Do you know him?
A. Yes, I do.
125 Q. And he was a board member at the time you joined the company or around that time?
A. He was.
126 Q. And he continued to be a board member through the financing and up until

Page 33

the fall of 2019, when he resigned?
A. That's correct.
127 Q. Am I correct, sir, that when the bad news, let's call it the bad news for this purpose, the unlicensed rooms, when that bad news hit as at June 2019, Mr. Kaden was on the board?
A. That's correct.
128 Q. And he held some 504,000 shares?
A. I don't know the exact number of shares that he held or whether it was through his investment fund.
129 Q. Mr. Steep, can we take it as read and mark as Exhibit 3 the 2019 management information circular, which of course sets out the members of the board and their share shareholdings?
MR. STEEP: Yes, that's fine.
MR. HOWARD: All right, so that's Exhibit 3.
EXHIBIT NO. 3: 2019 management information circular.
BY MR. HOWARD:

Page 34

130 Q. It also sets out the shareholdings of all of the other members of the board.
And so, the members of the board, including former members of the board, held approximately one and a quarter million shares? You can take my word for that on that.
MR. STEEP: Whatever is in the management information circular with respect to arithmetic, we'll accept as accurate.
MR. HOWARD: Well, you shouldn't accept my arithmetic because it's almost, by definition, bound to be wrong, but --
MR. STEEP: Right. I know you're referring to shareholdings of directors and officers, and we'll accept what's laid out in the management information circular.
BY MR. HOWARD:
131 Q. Okay so, am I correct, Mr. Guyatt, that Sanders, Dawber, Marcovitch, and Page are current directors and they get to keep their shareholdings?
A. Yes. Sorry, when you say they --
132 Q. I apologize. It was a

Page 35

bad question.
If the plan is successful, they continue as shareholders in the emerging entity?
A. Well, like every other shareholder, yes. There's nothing special about their shareholdings.
133 Q. Okay. I'm not going to argue with you.
And Mr. Kaden, if he has 500,000 shares, he gets to keep those, too. Right?
A. If he still owns them, which I don't know what his shareholder status is today.
134 Q. Well, there's been an MCTO since -- he couldn't have traded them since the summer of 2019, could he?
A. No.
135 Q. Okay. And those five individuals that I named are also original settlement parties and they're getting the benefit of unconditional releases and to keep their shares?
MR. STEEP: If the plan is

Page 36

approved.
BY MR. HOWARD:
136 Q. If the plan is approved?
A. Yes.
MR. STEEP: Peter, when you move to the left or the right, we lose the audio here. I don't know if it's the same for the others.
MR. HOWARD: Okay. I will grab documents and come back before I speak, then.
MR. STEEP: Okay. Thank you.
BY MR. HOWARD:
137 Q. Mr. Guyatt, I want you now to focus on when the bad news hit. And what happened, in general terms, was the board formed a special committee first. Correct?
A. Yes.
138 Q. And that special committee retained bloodhounds and counsel and they did an investigation into the facts?
A. They retained counsel, yes, and did an investigation. I don't know if I would refer to them as bloodhounds or not, but yes.
139 Q. And that was the McCarthy

Page 37

firm that was part of that review?

A. Correct.

140 Q. I'll put it in general terms first and then we can come to specifics. The result of that was basically a pass/fail. If you failed, you were asked to resign or terminate. Right?

MR. STEEP: Now, I would ask you to be a little bit more specific. I will agree that, after the investigation was complete, there were some changes to management and the board, one of which, as I recall, was a voluntary resignation, one of which may have been a dismissal with cause.

MR. HOWARD: Yes. I don't think you want to caution that by saying when it was complete or caveat by saying when it was complete, so let's go to the specificity because my memory and your memory can be wrong.

BY MR. HOWARD:

141 Q. There's a July 25, 2019 press release and, Mr. Guyatt, as with most press releases, you're the contact for all the material changes. Are you the contact for the press releases?

Page 38

A. I'm not sure what you mean by the contact.

142 Q. It doesn't matter.

Did you have involvement in preparing the press releases that went out with respect to the review that was underway?

A. The review by the special committee?

143 Q. It's probably easiest that Mr. Kolers is chatting with me and telling me it's easiest if we put the press release on the screen.

Jocelyn, can we put the July 25 press release on the screen?

MS. KEMP: Is that better?

MR. HOWARD: Yes, better for me.

BY MR. HOWARD:

144 Q. Can you see that, Mr. Guyatt?

A. Yes, I can.

MR. STEEP: Can you just scroll up?

BY MR. HOWARD:

145 Q. Take a moment and read

Page 39

it.

A. Can you keep scrolling? Okay.

146 Q. So, Mr. Guyatt, with the aid of this, you know that by the end of July, resignation of Mr. Paul had been requested and he resigned and Mr. Aceto had been terminated. Correct?

A. Yes.

147 Q. And the investigation at that stage wasn't complete, but was ongoing?

MR. STEEP: Well, it was certainly complete with respect to those executives, Mr. Howard. There may have been other aspects of the investigation that continued.

MR. HOWARD: They may have a different position on that, but I don't carry their water.

I wonder if we could mark that as Exhibit 4?

MR. STEEP: Yes.

EXHIBIT NO. 4: July 25 press release.

MR. HOWARD: And then, Jocelyn, can you put up the press release of

Page 40

October 24?

BY MR. HOWARD:

148 Q. Mr. Guyatt, if you can read this, you saw this at the time and were involved in it?

A. So, when you say I was involved in it, you mean involved with the press release or --

149 Q. Yes, you were involved in the preparation, you knew it was happening, you were the CFO?

A. I was the CFO; however, at this time, you know, there were a lot of people involved in writing press releases, of which I would have just been one party. So, I actually don't recall with this one what the extent of my review was at the time it was published, but I would have been aware of it at some point before it went out.

150 Q. Okay. And forget the remediation plan for a moment. I want to go to Conclusion of Special Committee's Investigation. Do you see that?

A. Yes.

151 Q. So, what the company was

Page 41

telling the public was that the investigation was, as set out here, a comprehensive independent review of the company's e-mail and other documents, as well as interviews with current and former employees, certain members of senior management and all members of the current board of directors. Right?
A. Yes.
152 Q. And then the special committee shared its findings with the board and Health Canada, and the mandate, that aspect of it was now complete. Right?
A. Yes.
153 Q. And if you go to -- I'm going to come back to this, but if you go to the last part of this, and specifically when they're quoting Mr. Dawber, I think, as head of the special committee, he says:
"Importantly, the special committee's investigation found no evidence that any of the remaining members of the board were aware of or engaged in any non-compliance

Page 42

issues." (As read)
Do you see that?
A. Yes, I do.
154 Q. Can we mark that, Mr. Steep, as -- is that 5?
MR. STEEP: That's fine.
EXHIBIT NO. 5: October 24 press release.
BY MR. HOWARD:
155 Q. And this is what I meant when I said it was a pass/fail. If the review made it clear that you had been involved in some of the events, you were either asked for your resignation or terminated. Correct?
A. I think that's fair; however, I would not have been involved in sort of making any of those decisions or necessarily privy to the outcome of the special committee's investigation, although your assessment seems fair to me.
156 Q. And what happened was you were one of the individuals interviewed. Correct?
A. I was, yes.
157 Q. And with respect to you, you passed. They didn't ask for your resignation

Page 43

and didn't terminate you. Right?
A. Correct.
158 Q. And you know that all the members of the board, including Mark Litwin, were interviewed?
A. I don't know who was interviewed.
159 Q. Well, the press release says all members of the board. From the company's point of view, can we agree that Mr. Litwin and Mr. Abramowitz were interviewed and there was no request for their resignation?
MR. STEEP: I don't think Mr. Abramowitz was a member of the board.
MR. HOWARD: He was an officer. Sorry, Paul.
MR. STEEP: Right, he was the secretary. You can take it that they were interviewed unless I advise you otherwise, Mr. Howard.
BY MR. HOWARD:
160 Q. And we can proceed on the base that there was never a request for their resignations at that point or up until this last week?

Page 44

A. I don't know if any requests for resignations were made on any of the other board members.
161 Q. You weren't part of it and you didn't become aware of it?
A. No.
162 Q. All right. Did you ever hear the expression in July sometime that "the market needs a scalp"?
A. I've never heard that expression pertaining to CannTrust.
163 Q. Okay. All right. Fair enough.
Now, sir, as a result of this, I don't want to call them locusts, the class action bar swung into action and a number of pieces of litigation were initiated. Correct?
A. Yes, yes.
164 Q. And in those actions, statements of claim or complaints were issued, as far as you know?
A. Statements of claim from the various firms?
165 Q. Yes.
A. Yes.

Page 45

166 Q. And I'm going to take you in a broad swathe of time. That happened in or around late summer or fall of 2019, and to date no statements of defence have been filed or required, as far as you know?
A. As far as I know.
167 Q. And as part of the process that you were involved in in that time frame, did they ask you and did you provide sworn statements or submit to examination by the Plaintiffs?
A. When you say "they," did the Plaintiffs request that?
168 Q. Yes.
A. No, I did not provide any sworn statements of anything else of that nature.
169 Q. And did they provide you with any more information about -- and I'll limit it to Mr. Litwin and Mr. Abramowitz or the Litwins?
MR. STEEP: I've got to just be a little bit careful because you know we went through a mediation process and I'm not privy to that to any great extent, but there were exchanges within that process --

Page 46

MR. HOWARD: I'm going to a --
MR. STEEP: Just let me finish.
MR. HOWARD: Let me withdraw --
MR. STEEP: If you're on the record, we have not given anything in the nature of a defence or an affidavit on the record. I believe the only step we took was to consent to a leave in British Columbia because it was going to come up and we wanted to avoid at that point any expense on the proceeding, at least for that step.
BY MR. HOWARD:
170 Q. That's fair enough. And I want to omit from this question mediation briefs and things like that. But if you were provided with affidavit evidence or documents or sworn testimony with respect to Mr. Litwin or Mr. Abramowitz, I would like to know that.
MR. STEEP: As far as I know, there's nothing in the record of that nature as far as an exchange of evidence that would affect Mr. Litwin or anyone else for that matter.
BY MR. HOWARD:
171 Q. And in terms of -- okay.

Page 47

I think where I probably have to leave it there, Mr. Steep.
But let me ask you: In the course of that, can you confirm that no affidavits or sworn testimony was provided in the mediation with respect to Mr. Litwin or Mr. Abramowitz? And that's --
MR. STEEP: Well, I don't think any sworn material was given in the mediation. Certainly material was given in the mediation.
MR. HOWARD: Yes, I get that.
BY MR. HOWARD:
172 Q. Mr. Guyatt, in rough terms, you had to file MCTO's bi-weekly from and after the late summer of 2019?
A. We had to file an update every two weeks on the MCTO, yes.
173 Q. And again, in general terms, you start telling the world what you're doing to fix the problem and what your cash on hand is and what the cash burn is. Correct?
A. That's correct.
174 Q. And, sir, in your affidavit number 1 in the CCAA, the March 31

Page 48

affidavit, I don't think you need to turn it up, at paragraphs 107 to 109, you make reference to the broad sector decline in the Canadian cannabis public market. Right?
A. Do you want me to turn to that to read it?
175 Q. No.
A. Okay. Yeah, that's accurate.
176 Q. That wasn't the fault of anyone at CannTrust, whether they're OSP or NSD?
A. Sorry, what's OSP and NSD?
MR. STEEP: Original settlement.
THE WITNESS: Sorry, got you. No. That was general market conditions.
BY MR. HOWARD:
177 Q. So, some of the diminution of value in the shares relates to -- is attributable to the decline in the Canadian cannabis market and the other things you say in your first affidavit. Right?
A. I think so. That's my personal opinion.

Page 49

178 Q. Am I correct, sir, that one of the things that you have agreed to in the plan is for a class period that goes from June 1 of 2018 to September 17 of 2019?
A. If that's what's in the documents, I'll take your word for it. I don't have the dates committed to memory.
179 Q. Accept for the moment, you'll find out if I'm wrong, so somebody who bought in April at $10 is getting treated the same as somebody who bought at the end of the August at $248. Is that fair?
MR. STEEP: Well, they're included in the plan. There's a separate allocation program.
MR. HOWARD: Okay.
MR. STEEP: So, I don't know what their ultimate treatment will be. But if you mean they're included, yes.
MR. HOWARD: Okay.
BY MR. HOWARD:
180 Q. And, sir, let me ask you first: Is this your first experience with CCAA?
A. Yes, it is.
181 Q. Well, you have my condolences.

Page 50

A. Thank you.
182 Q. You've learned, though, to be swearing in your affidavits that it's a fundamental principle that people in like positions should be treated equally or equitably?
A. Sorry, you cut out there for a second.
183 Q. Sure. You've learned, then, it's a fundamental principle, that people in like positions should be treated equally or equitably. That's your understanding?
A. That's my understanding, but I'm not an expert on CCAA laws.
184 Q. Okay. And am I correct, sir, that one of the things you told the world in your first affidavit was that you were going to try and fix the problems, but there was a burn rate of $5 million to $7 million a week?
A. I'm not sure if it was per week, but yes --
185 Q. Whatever the paragraph says, that's what you said at the time. You were telling them there was a burn rate?
A. Yes.

Page 51

186 Q. And one of the things you said in paragraph 18 was you wanted the filing to put all creditors and contingent creditors on equal footing. Right?
A. Yes.
187 Q. And one of the things you said at paragraph 15 was that you had spent a lot of time prepping for and defending the litigation?
A. The company had. Not necessarily me personally, but the company, yes.
188 Q. And one of the reasons for filing is the burn rate wouldn't last till the end of the litigation. Right?
A. That's one of the reasons, yes.
189 Q. And am I correct, sir, that since that time, you've spent roughly $100 million to fix the problems and in the CCAA process?
A. I don't know if I would characterize $100 million as being spent to fix problems, per se.
190 Q. Okay. You had to do the remediation, that's one of the things you were doing, to fix the enterprise, fix the business?

Page 52

A. Yes.
191 Q. And so, that $100 million or $110 million either went for good to fix the business or evil to the legal professionals and others. That's facetious.
It went to the cost of the CCAA process. Right?
A. Yes, and to cover fixed overhead within the company throughout this process.
192 Q. Now, sir, you mentioned earlier the disclaimer. You learned that under the CCAA there's a process for disclaiming contracts?
A. Yes, I did.
193 Q. And you actually did disclaim a lease?
A. Yes, we did.
194 Q. And you didn't, and haven't to date, disclaimed any of the indemnity contracts. Correct?
A. I'm not sure the correct terminology to be used around indemnity contracts, but certainly the disclaimer process was not used for that, no.

Page 53

195 Q. Fair enough. And am I correct, sir, that the company, and indeed you, have caused the company to perform under the indemnity contracts with Mr. Litwin and Mr. Abramowitz?
A. I'm not sure what you mean by that characterization.
196 Q. Sure. Could I ask you to look at -- have you had a chance to look at -- maybe I was off getting paper -- the affidavits of Jocelyn Kemp, one and two?
A. I don't know who Jocelyn Kemp is.
MR. STEEP: The affidavits in the responding record, which include the indemnity agreements.
MR. HOWARD: Yes. And in particular, I would ask you to look at -- it includes not only the indemnity agreements, Mr. Steep, it includes the by-laws and --
MR. STEEP: Right.
BY MR. HOWARD:
197 Q. And in particular, sir, you were aware that and you expected that Mr. Mark Litwin and Mr. Abramowitz had written indemnity

Page 54

contracts with the company?
A. That's my understanding, yes.
198 Q. Sure. And if I could ask you to look at the one that was filed this morning, you'll see --
MR. STEEP: That has not been -- it probably has been printed, but hasn't arrived in front of me, so you're going to have to put that up on the screen.
MR. HOWARD: Sure. Jocelyn, can you put page 8 of that up on the screen?
BY MR. HOWARD:
199 Q. And Mr. Guyatt, if you haven't seen this before, you can take whatever time you want. And we've been going for an hour, so if you want to take a break now to read this affidavit, that might be a time.
Is that appropriate, Mr. Steep?
MR. STEEP: That's fine. I think he's probably familiar with this material, if you want to keep going.
MR. HOWARD: Okay. Let's keep going.

Page 55

MR. STEEP: I was thinking we would take a break around 1:30.
THE WITNESS: I'm fine for now.
MR. HOWARD: Okay.
BY MR. HOWARD:
200 Q. The one I'm starting with is September 29, 2019.
A. Okay.
201 Q. Can you see the subject line there?
A. Yes, Mark Litwin and Stan Abramowitz, et cetera, yes.
202 Q. Legal expenses subject to indemnity agreements?
A. Yes.
203 Q. And this came from Mr. Pukier of Stikeman Elliott and he was sending you the Stikeman Elliott account for work that Stikeman Elliott had been doing on their behalf in relation to claims made against them in their capacity as director, in Mark's case, and officer, in Stan's case, of CannTrust.
"Please pay this account directly pursuant to the

Page 56

indemnity agreements that they each have?"
(As read)
You have got this e-mail. Right?
A. Yes.
204 Q. And don't tell me what the advice was. You had both internal and external counsel to consult as to whether to make the payment?
MR. STEEP: He had legal counsel available for all kinds of things. I don't think we need to go into that.
MR. HOWARD: Okay. Fair enough.
BY MR. HOWARD:
205 Q. And am I correct, sir, that from that month onward on a monthly base, you caused CannTrust to make the payments that were asked for under the indemnity agreement?
A. Yes, I did.
206 Q. And in fact, on a couple of occasions, you asked for clarification to be sure that they were properly inside the indemnity agreements. Right?

Page 57

A. Correct.
207 Q. Could we go to Exhibit A -- while I'm here, I might as well do this -- on page 4?
MR. STEEP: Which affidavit are you in now?
MR. HOWARD: The same one, the second one.
MR. STEEP: I have to look on the screen.
THE WITNESS: So which one am I reading here? The note from Stan?
BY MR. HOWARD:
208 Q. Yes.
A. Okay.
209 Q. We can read your note, too, but it's just you being polite?
A. Yeah.
MR. STEEP: Just for the record, Peter, would you mind identifying the date of the e-mail that you're referring to?
BY MR. HOWARD:
210 Q. July 12, 2019, you got this e-mail from Mr. Abramowitz?
A. Sorry, what's the

Page 58

question? I missed that.
MR. STEEP: He just wanted you to confirm that you received that July 12, 9:51 a.m. e-mail.
THE WITNESS: I don't specifically remember this e-mail, but my name is on it, so I assume the answer is yes.
BY MR. HOWARD:
211 Q. And you're responding up the page?
A. Yes.
212 Q. So, we can proceed on the basis that you got it, read it, and responded, unless Mr. Steep tells us otherwise. Okay?
Is that okay, Mr. Steep?
MR. STEEP: Yes, that's fine. I just want them identified.
BY MR. HOWARD:
213 Q. By our reckoning, Mr. Steep and Mr. Guyatt, that all the monthly bills to date have been paid up until March 13?
A. I don't know if there's anything outstanding, but I submit any payments that have come through on a timely basis, yes.
214 Q. All right. And give

Page 59

Mr. Steep a chance to think about this. Mr. Guyatt, do you forward these and seek reimbursement from the insurer?
MR. STEEP: Just hang on. I'm not going to let him answer a question like that. I don't think it's relevant --
MR. HOWARD: It is absolutely -- sorry, I interrupted you. Go ahead.
MR. STEEP: I was just going to say the source of the funding for paying the Stikeman's account I don't think is an issue here, whether it's from the insurers or not.
MR. HOWARD: Mr. Steep, once you've taken a position, I can talk with the tongues of angels and never move you, so I won't spend a lot of time. But it's incomprehensible to us that you're seeking a unilateral variation of a contract by court order, and it's even more incomprehensible that you're seeking that if it's paid by someone else, but we will leave that.
MR. STEEP: I'm sure we're going to argue about that at some point.
MR. HOWARD: I wasn't saying that it would change your position, but I did want you to have the opportunity.

Page 60

BY MR. HOWARD:
215 Q. I'm going to turn to another area now, and that is -- let me finish up this area.
On March 13, you addressed in the plan in your last affidavit the subject of defence costs indemnity claims. Right?
A. Can I see a copy of that one, Paul?
MR. STEEP: Why don't we go to it specifically? I think it will be in the one I've already handed you, Greg. So, which paragraph are you referring to? Are you going to the plan document or to the affidavit?
MR. HOWARD: Exhibit B, the plan document, which I have put somewhere I can't find at the moment, but I will momentarily.
MR. STEEP: Are you referring to 2.3, Unaffected Claims?
MR. HOWARD: Yes. For some reason, I was going to the definition first, Mr. Steep, which I think is page 77 of the record/page 4.
MR. STEEP: Yes, there is a definition there.

Page 61

BY MR. HOWARD:
216 Q. So, a change in the plan that you put forward on March 5 --
MR. STEEP: I'm just going to hand my copy to the witness.
MR. HOWARD: Fine.
BY MR. HOWARD:
217 Q. And we can tell because of the helpful blue underlining is there's a definition of defence costs indemnity claim. Do you see that, Mr. Guyatt?
A. Yes, I see it.
218 Q. And then the definition of unaffected claim helpfully says it's a claim identified in section 2.3, and 2.3 has added --
MR. STEEP: Go to 2.3. It's just a few pages over.
BY MR. HOWARD:
219 Q. Yes, it's page 89 at the top.
A. Okay. 2.3, okay.
220 Q. And you see that's the language that you're proposing in the plan with respect to defence costs indemnity claims. Right?
A. You're referring to

Page 62

2.3(i)? Yes.
221 Q. And I'm not going to ask you for your legal opinion as to whether that means there are unaffected claims. Mr. Steep will address that somewhere else.
But in your understanding, that would include the indemnity, written indemnities, of Mr. Mark Litwin and Mr. Stan Abramowitz?
A. I believe so.
222 Q. I was going to ask a question that I know Mr. Steep would have objected to, so there's no point.
Let's now go to another area of the plan, stay in the plan document, and that is the definition of settlement related agreements, which is page 84.
MR. STEEP: To be clear, you're staying in the March 13 plan document in the second record?
MR. HOWARD: Yes. All the questions that I'm going to ask about the plan, Mr. Steep, are going to be about the one you're now putting forward, not the first one.
THE WITNESS: Yes, I have the

Page 63

section in front of me. Settlement related agreements, I think you said?
BY MR. HOWARD:
223 Q. Yes.
A. Okay.
224 Q. So, you understood that one of the things that is covered by this is, we've got to do the latter here, it goes to trust declaration, which has a definition under that. Do you see that?
A. Mm-hmm.
MR. STEEP: Say yes or no, Greg.
THE WITNESS: Yes.
BY MR. HOWARD:
225 Q. And that takes us to securities claimant's trust, which is at page 88. Not 88, I apologize, it's page 83, the page before.
A. Yes.
226 Q. It means the trust to be established. Do you see that?
A. Yes.
227 Q. And you might get some help from Mr. Steep on this. Am I correct, sir,

Page 64

that the actual trust has not been established yet?
MR. STEEP: That's correct.
BY MR. HOWARD:
228 Q. And has the company seen or made any requirements as to what must be in that document?
A. In the trust document?
229 Q. Yes, the securities Claimant trust.
A. I have not personally, no.
230 Q. So you, sir, haven't seen any draft documents and you haven't been part of the any discussions as to what's going to be in there to protect the company and the company's stakeholders?
A. Not that I recall, no.
231 Q. And am I correct, sir, that it's your understanding that if the plan is approved, that one of the things that will happen is the litigation against the non-settling Defendants will go forward?
A. I believe the litigation against non-settling Defendants will be assigned,

Page 65

so whether that goes forward or not, I don't know.
232 Q. But it's your expectation from what you understand is that it will be assigned to the Plaintiffs and they will have at least the ability to proceed against the non-settling Defendants?
A. Yes.
233 Q. And have you turned your mind, sir, as to what happens if the non-settling Defendants are completely successful and get large cost orders?
A. Sorry, you cut out there. My apologies, can you repeat the question?
234 Q. Have you turned your mind to what happens if the litigation continues -- and as you've said you know now litigation like this is very expensive -- what happens, and have you thought about what happens, to the non-settling Defendants if they're completely successful and they get large orders for payment of costs to them?
A. My understanding is that the current plan contemplates that scenario.
235 Q. Sorry, the --
MR. STEEP: I won't be able to

Page 66

put my finger on it, but I will if you want. I believe there is an ability for a successful Defendant who has incurred costs to recover.
MR. HOWARD: Yes.
BY MR. HOWARD:
236 Q. And am I correct, sir, that in the course of -- we can argue about the law later, Mr. Steep.
In the course of your first affidavit or, sorry, the March 5 affidavit, you make reference to your current intention to grant a DIP in secured funding on the company's assets?
A. Yes.
237 Q. And that's something you're in the process of doing?
A. Correct.
238 Q. And you haven't provided any details of the security that is likely to be granted. Right?
A. No, we have not.
239 Q. And what is as sure as the night follows the day, to paraphrase Polonius, is that the DIP lenders and the secure lenders will seek wrap-around security. Right?
A. When you say wrap-around

Page 67

security, what do you mean by that?
240 Q. Over all the assets of the company?
A. That's most likely, although nothing has been agreed at this point with any of the discussions we're having.
241 Q. So, there's a real possibility that the company won't be in a position to pay the costs a few years from now, given its -- it won't be in the position it is now to secure the costs? Let's put it that way.
A. When you say secure the costs?
242 Q. Yes.
A. Sorry, which costs?
243 Q. The defence costs incurred in a successful defence.
A. I mean --
244 Q. Or even in an unsuccessful defence to which you're still entitled to indemnity?
MR. STEEP: He's just finished saying there's no transaction in sight at this stage. It's still being --
MR. HOWARD: I don't think he

Page 68

said that, Mr. Steep, and that's not what his affidavit says. His affidavit says in paragraphs 89 and 90 that you're in current discussions on the DIP lending.
MR. STEEP: Right. We are in current discussions or the company is. You're asking him to conclude that the company won't be in a position to honour whatever commitments it's made in the plan. There's no concrete proposal in front of the company to that effect.
BY MR. HOWARD:
245 Q. Let me ask it another way, then.
Have you taken steps to ensure that the company will be in a position better than it is at present to fund the commitments it's going make in the plan to unaffected claims?
A. Yes. We have taken as many steps as we can to make sure that the company has liquidity to run the business, which would include costs that you're referring to.
246 Q. So, would you undertake to put those costs in a prior and secured position to any security that you're going to grant now?
MR. STEEP: Well, he can't

Page 69

undertake obviously. That's something that would have to go to the board if that's a proposal you're making.

MR. HOWARD: It's not a proposal. I think at a bare minimum if you're even going to countenance this type of highway robbery, it's something you should have been in, but I'll save that argument for another day.

MR. STEEP: All right. But if you want to make a proposal to us, we would be happy to consider it and put it in front of the board.

MR. HOWARD: I'm going to resist responding to that, Mr. Steep.

BY MR. HOWARD:

247 Q. But what you're telling us now is that you, the company, aren't going to pay the defence costs as they are incurred going forward. Is that what you're saying?

A. Correct.

MR. STEEP: If the plan is approved -- just a second. If the plan is approved following the issuance in the sanction order.

BY MR. HOWARD:

Page 70

248 Q. So, you're going to continue to pay them up until the sanction order?

A. I believe so, yes, unless I'm instructed otherwise.

249 Q. Okay. And, sir, I'm coming back now. There's a company and its ability, but you're going to put $50 million into a litigation trust if the plan is approved. Right?

A. Sorry, you cut out again. I heard we're going to put $50 million into a litigation trust. Yes.

250 Q. Yes. Part of the plan is you're going to put $50 million into a litigation trust?

A. Yes, that's part of the plan.

251 Q. And have you sought and received any information as to the terms of that trust with respect to the plans for distribution? Let me start with that.

A. I have not personally, no.

252 Q. Has the company, Mr. Steep?

Page 71

MR. STEEP: Well, the company is privy to the allocation scheme, which I believe is appended to the plan as an exhibit, if that's what you're asking.

MR. HOWARD: That's not what I'm asking.

BY MR. HOWARD:

253 Q. Has the company required that money stay in the trust until successful Defendants are paid?

U/A MR. STEEP: Well, unfortunately I can't give you a yes or no to that today. I'm going to have to take that under advisement, Mr. Howard.

MR. HOWARD: Okay.

BY MR. HOWARD:

254 Q. And has the company been made aware of how much, and when, is going to go to Plaintiff's counsel?

A. No. At least I haven't personally.

255 Q. And, Mr. Steep, has the company made that request and got that information?

MR. STEEP: It may well have.

Page 72

I just don't know sitting here today.

MR. HOWARD: Can you take it under advisement and let me know?

U/A MR. STEEP: Yes, I'll take it under advisement. I'm assuming they get paid at some point.

MR. HOWARD: Okay.

BY MR. HOWARD:

256 Q. And what terms, if any, has the company insisted be in the settlement trust to protect the non-settling Defendants?

U/A MR. STEEP: I'm going to have to take the same position, under advisement. I'm not in a position to address that today.

MR. HOWARD: Mr. Steep, I'm going to another area, so is this now a good time?

MR. STEEP: Yes, it is for us if it is for you.

MR. HOWARD: Okay. Ten minutes?

THE WITNESS: Works for me.

MR. STEEP: Can we say 20 to 2:00 so I can get downstairs and grab a coffee?

MR. HOWARD: That's fine for me.

Page 73

--- Recess taken at 1:26 p.m.
--- Upon resuming at 1:42 p.m.
BY MR. HOWARD:
257 Q. Mr. Guyatt, I wonder if Mr. Steep can put before you the Litwin responding record, we referred to it briefly this morning, of March 11.
MR. STEEP: Yes. Which tab are you at?
BY MR. HOWARD:
258 Q. I'm going to start with the document starting at page 40, which is Exhibit I, I believe.
And Mr. Guyatt, if I could ask you to turn to page 52 of the document, you'll see what appears to be your signature?
A. I might be looking at the wrong document. I don't see my signature on here.
259 Q. You're looking at the wrong document, then, so let's get the coordinates.
MR. STEEP: We're in Exhibit I.
MR. HOWARD: It should be an indemnification and contribution agreement.

Page 74

MR. STEEP: Cannamed?
MR. HOWARD: Cannamed, yes.
MR. STEEP: Yes, that's what we're looking at. Which page did you say had his signature?
MR. HOWARD: 52 in my copy of.
THE WITNESS: Sorry, I had heard 54. My apologies.
MR. STEEP: It's on 52.
THE WITNESS: Yes, that's my signature.
BY MR. HOWARD:
260 Q. So, this is a document you reviewed at the time, May 2019, and you signed on behalf of CannTrust. Right?
A. Yes.
261 Q. And you understood that this was related to the financing for the selling shareholders?
A. Correct.
262 Q. And can I ask you to go to clause 1.2(b) ?
A. Okay, I'm there.
263 Q. If you want to take a moment and read it, but this is indemnification by

Page 75

the company. The company is CannTrust. Right?
A. Yes.
264 Q. So, what the company agreed to do was indemnify, defend, and hold harmless the selling shareholders and each of their respective officers, directors, managers, shareholders, members, employees, representatives and agents, all the foregoing persons collectively, the company indemnitees. Do you see that?
A. Yes.
265 Q. And you knew at the time that the shareholders of Cannamed, from the selling shareholder thing we looked at earlier, included some Litwin entities, Forum, Mar-risa, and York. Right?
A. Yes.
266 Q. And you knew at the time, because Mr. Abramowitz signed on behalf of Cannamed, that was he was an officer of Cannamed? And you can check that out by page 54. That's Mr. Abramowitz's signature.
A. Yes.
267 Q. And am I correct you knew or -- let me ask you this a different way.

Page 76

You understood at the time that Mark Litwin was a director of Cannamed?
A. I'm not sure I would have known who were specific directors or officers of those entities, but I knew he was involved with Cannamed, yes.
268 Q. And have you asked, either then or has CannTrust asked at the time or up to date, who the officers and directors and shareholders, et cetera, are of Cannamed?
A. I have not personally. I can't speak to whether anyone else has asked that question.
269 Q. Mr. Steep, I want you to confirm that Cannamed knows that Mark Litwin was an officer and director of Cannamed?
U/T MR. STEEP: I'll make that enquiry. I don't know what they knew.
BY MR. HOWARD:
270 Q. Just while we're here, sir, you can see that the selling shareholders and their officers, directors, et cetera, are entitled to be indemnified for what is set out in little (i) as incurred. Do you see that?
A. Under (b)(i), you're

Page 77

talking about, on page 43?
271 Q. Yes.
A. I don't see the specific as incurred, but I'll --
272 Q. Second line, first two words:
"Against any and all loss, liability, claim, damage, claim and expense whatsoever as incurred." (As read)
A. I see it. Yes.
273 Q. And if I misspoke before and said CannTrust, I was asking Mr. Steep, I think he got it, that they knew Mr. Litwin was an officer and director of Cannamed. I may have said CannTrust.
MR. STEEP: I understood what your question was.
BY MR. HOWARD:
274 Q. Mr. Guyatt, can I ask you to turn to the next page, page 44, and look at 1.3(e)?
A. Yes, do you want me to read that whole paragraph?

Page 78

275 Q. No, I do not, because it would be a cure for insomnia. I want you to read starting partway down at the sentence right at the end it says:
"No indemnifying party shall without the prior written consent --" (As read)
And read from there for a moment.
A. Yes, I'm there. Okay.
276 Q. Were you aware of this, sir, when you swore your affidavits, the two affidavits in March?
A. Was I aware of this document?
277 Q. Were you aware of this clause in this document?
A. I don't recall this specific clause, but obviously at the time when I signed this agreement, I would have been aware of it, yes.
278 Q. No, I'm talking about when you signed your affidavits and put forward the plan. Let me start off again for you.

Page 79

At any time did CannTrust seek the written consent of any of the directors, officers, and shareholders related to the Litwins of Cannamed to the plan?
A. I didn't personally. I can't speak to whether board members or anybody else sought anything from them.
279 Q. Mr. Steep, can you confirm that no one at the company has sought or received the prior written consent of those people to the plan?
U/T MR. STEEP: I'll ask.
BY MR. HOWARD:
280 Q. Keep reading down, sir, because there's a carve out and it says:
"If you don't have the written consent, you can go ahead and settle or compromise so long as -- "
In 1(i):
" -- includes an unconditional release of each indemnified party from the liability

Page 80

arising..." (As read)
Et cetera. Do you see that?
A. Yes, I see it.
281 Q. And you agree with me that the plan as put forward does not include an unconditional release as required by this clause?
A. It does not.
282 Q. And when, if it did, did CannTrust tell the indemnitees that it intended to breached its indemnity obligation with respect to requiring their consent or getting them a release?
A. I'm not sure exactly how to answer that question because my understanding is the indemnity of Cannamed has always been a question mark from the company's perspective based on our legal advice.
283 Q. My question isn't talking about the Cannamed portion of this indemnity, my question is: You gave -- let's go back for a moment.
Go back to page 43.
A. Okay.
284 Q. It says:
"Each company indemnity -- "

Page 81

And we saw that that included the officers, directors, and shareholders is referred to as an indemnified party.
So, my question to you is: Leave aside Cannamed as an entity. When, if ever, did the company tell the officers and directors and shareholders of Cannamed related to the Litwins that it didn't intend to comply with the obligations to them under this agreement?
A. So, I'm not aware of what communications happened between various parties, whether it be through the board or anybody else, to that effect. I don't know.
285 Q. You didn't have any such communications?
A. Not directly with the Litwins or any of the people involved with the company, no.
286 Q. Maybe this is for Mr. Steep, but you understand the difference between Cannamed and then if you're relying on, for example, the knowledge of Eric Paul as an officer of Cannamed, Eric Paul as on officer of CannTrust had the same knowledge. Correct?
A. Could you repeat the

Page 82

question? I'm not sure what you're asking exactly.
287 Q. Sure. Under this document, CannTrust undertook an obligation to, amongst others, the directors and officers and shareholders of Cannamed. Are you with me so far?
A. Yes.
288 Q. And to the extent you want to argue that Eric Paul had guilty knowledge and he was an officer of Cannamed, he was also an officer of CannTrust, and so CannTrust had the same knowledge. Correct?
MR. STEEP: He's not going to make that leap.
MR. HOWARD: It's not a leap. Okay, Mr. Steep. We'll discuss --
MR. STEEP: It is a legal leap to say that his knowledge was the knowledge of CannTrust at any particular time --
MR. HOWARD: Even a counsel with forensic ability is going to have difficulty fitting attribution of knowledge to one entity and not the other in the context of an obligation owed to a third party, but I'll --
REF MR. STEEP: Well, we're not

Page 83

answering that question.
MR. HOWARD: Okay.
BY MR. HOWARD:
289 Q. And I think I got the answer to this. Am I correct, sir, that the plan that you have put forward does not include an unconditional release for Mark Litwin, Stan Abramowitz or any of the Litwin shareholders of Cannamed?
A. Correct.
290 Q. But it does include an unconditional release for the other selling shareholder under this indemnity, Cajun and Mitch Sanders, the owner, the shareholder, and director of Cajun. Right?
A. Yes.
291 Q. With no monetary contribution and no assigned claim from the selling shareholder?
A. Not that I'm aware of.
292 Q. And you agree with me that you're aware that you're not even giving or purporting to give the Litwins or the shareholders of Cannamed a vote on whether that breach should be blessed, the breach of their contract and their

Page 84

indemnities. Correct?
MR. STEEP: They're not a voting -- part of a voting class under the plan.
MR. HOWARD: All right.
BY MR. HOWARD:
293 Q. And I'll leave most of this for my friend, Mr. Fabello or Ms. Dingle and Torys, but you were also the signatory to the underwriting agreement that is included in this record and it starts at page 56 and goes through to the end?
A. I believe so. I don't know if -- I don't see my signature in here. I'm sure it's in here somewhere.
294 Q. If you look at page 93, it appears that you were the signatory for CannTrust?
A. Yes.
295 Q. Okay. So again, this is a document you would have been familiar with and read at the time before you signed?
A. Yes.
296 Q. Can we go to page 86?
A. Okay.
297 Q. And specifically that's

Page 85

7(d)?
A. (d), you said, as in David?
298 Q. Yes.
A. Okay.
299 Q. Just confirm for me that there's the similar language to requiring prior written consent and/or obtaining an unconditional release, and that's not part of the plan?
A. Yes.
300 Q. And, sir, have you obtained the consent of the DNO insurers to this plan?
A. I'm not sure what conversations have gone on with the DNO insurers through this process.
301 Q. And Mr. Steep, can you advise us whether the consent of the insurers has been obtained?
U/T MR. STEEP: I'll have to advise you. We don't act on insurance.
MR. HOWARD: In particular, Mr. Steep, can you advise us as to whether the consent of the insurers to foregoing contribution and indemnity rights against co-insureds has been

Page 86

obtained.
U/T MR. STEEP: We'll ask.
BY MR. HOWARD:
302 Q. Mr. Guyatt, I'm going to stick with something that might be more in your area, and that is financial statements and accounting and auditing. You're aware that when there's litigation about audited financials, auditors normally third party the company's CEO and some directors?
A. Sorry, I don't know what you mean by that.
303 Q. I apologize. I said CEO, I meant CFO. That if the auditors get sued because of the allegations they didn't do their job, what they normally do is turn to the company's CFO and say, you lied to us or you didn't do your job, and they third party and seek contribution and indemnity from he or she and also some directors. That's what happens?
MR. STEEP: That's an argument, Mr. Howard. They do, they don't.
MR. HOWARD: All right.
BY MR. HOWARD:
304 Q. So, what would happen in

Page 87

this case, in your understanding, is that if the auditors, they're free to continue to add Mark Litwin, but he couldn't then turn to the CFO, you, and claim contribution and indemnity from you. That's the effect of the plan you designed. Right?
A. I'm not -- sorry, I'm not sure exactly what you're saying.
305 Q. Okay. If you're not sure, I don't want you to try and answer a question that you're not sure of.
And you referred to it in some of your affidavits and we've talked about it briefly, the company has DNO insurance. Right?
A. Yes.
306 Q. And to date, the company hasn't been able to get -- I'll put it a different way.
The insurers are not OSPs under the plan. Right?
A. Correct.
307 Q. And you understand that a major reason for that is that some insurers, like the Litwins, are non-settling Defendants. Right?
MR. STEEP: Well, our

Page 88

understanding of the insurance situation, certainly my understanding here, is all driven by what occurred in mediation settlements, Mr. Howard, so I'm not in a position to go on the record.
MR. HOWARD: I'm not asking you that, Mr. Steep. I've been through where you put your belief. I'm asking for the company's, this witness's belief. If you have one, you can tell me you have a belief, I put to you, sir, that a major reason the insurers aren't in is because some of the insured are NSDs. You accept that? That's part of your belief?
MR. STEEP: I don't accept that, but I don't want to quarrel with you needlessly. I expect that the insurers would require releases under the policies as a condition of them joining in to the settlement. That's an expectation, it's not based on any direct knowledge or discussions with the insurers.
MR. HOWARD: Let me see if I can push this even a step further.
BY MR. HOWARD:
308 Q. Mr. Guyatt, would you agree that if you got or put in a plan

Page 89

unconditional releases for all the insured, it's nor likely that the insurers would step forward and agree to the plan. Right?
A. I don't want to --
REF MR. STEEP: I don't want him answering that.
MR. HOWARD: I know you don't want him answering it. I wouldn't want him answering it, either, because the answer is obvious.
MR. STEEP: But that's my point, it's a point of argument, Mr. Howard. The company's belief is neither here nor there.
MR. HOWARD: So, you're agreeing to strike the major part of your affidavit as the company's belief?
MR. STEEP: We can argue about that in court.
MR. HOWARD: All right. Okay.
BY MR. HOWARD:
309 Q. I want to turn to another change from your March 5 to March 13 affidavit, and that was you put in, in your March 13 affidavit, a portion of a liquidity analysis from the monitor. Correct?

Page 90

A. Yes.
310 Q. And did you have a hand in preparing or have input into that liquidity analysis?
A. No, I did not.
311 Q. And in terms of the monitor's H-report, do you have that in front of you? Can you have that?
MR. STEEP: Yeah, I have the monitor's H-report here if you want to direct us to a section.
MR. HOWARD: Sure.
BY MR. HOWARD:
312 Q. The section I want to start with is 76 to 86.
MR. STEEP: The alternatives to the CCAA plan?
MR. HOWARD: Yes.
THE WITNESS: Okay, I have it in front of me.
BY MR. HOWARD:
313 Q. Did you review this and draft the monitor's report before it went out, Mr. Guyatt?
A. No, I didn't.

Page 91

314 Q. And did you have anything to do with or input into what the monitor was comparing in terms of liquidation analysis versus something else?
A. No, I did not.
315 Q. All right. So, am I correct, sir, if you go to page 85?
A. Page 85 or paragraph 85?
316 Q. Paragraph 85. You've caught on.
A. Okay, I'm there.
317 Q. It says basically, to cut to the case, the monitor believes the CCAA plan will produce a more favourable result for the affected creditors, and that's a defined term in the plan, than they would receive in connection with a going concern sale or forced liquidation. Do you see that?
A. Yes.
318 Q. So, what the monitor did, and I want to know whether CannTrust instructed it to do this, is exclude any consideration of persons to whom the company had made contractual indemnity promises in its comparison?
MR. STEEP: Well, first of

Page 92

all, let me correct the question. The company gave no instructions to the monitor. The monitor's report was prepared by the monitor and a question like that you should put to the monitor.
MR. HOWARD: We're not going to have the opportunity to do that, Mr. Steep, so I'm asking you.
BY MR. HOWARD:
319 Q. Were you aware, Mr. Guyatt, that that's the exercise that the monitor was going to undertake?
MR. STEEP: What do you mean by exercise? The monitor has described --
MR. HOWARD: The treatment of the affected creditors, Mr. Steep. It's obvious.
MR. STEEP: Well, the monitor has described what it did. We can't go beyond what the monitor has reported itself.
BY MR. HOWARD:
320 Q. Will you agree with me, then, that if it considered affected creditors in the comparison and it gave no consideration to what the impact on the people that the company had made contractual indemnity promises to?
MR. STEEP: I can't go that

Page 93

far. They may well have. I don't know the extent of their review.
MR. HOWARD: There's nothing in here either than what they say.
MR. STEEP: Again, you're making an argument --
MR. HOWARD: I'm not making an argument, I'm dealing with the language in the H-report just received 2:00 a.m. one morning. Anyway.
MR. STEEP: When we received it. So, I can't go any further than what the report says. I don't know --
MR. HOWARD: Mr. Steep, I will move on.
BY MR. HOWARD:
321 Q. You agree with me, Mr. Guyatt, that the monitor's report makes no consideration of what percentage of the employees would likely get jobs at the greenhouses or keep their jobs at the greenhouses in a sale either as a going concern or a forced liquidation?
A. Well --
MR. STEEP: Again, just --
THE WITNESS: -- I have not

Page 94

reviewed this report.
MR. STEEP: -- hang on.
MR. HOWARD: Sorry, you --
--- (Simultaneous dialogue)
--- (Reporter clarification)
MR. STEEP: The report says what it says --
MR. HOWARD: No. The witness said something, Paul.
MR. STEEP: No. When you interrupted me, the witness said something.
The report refers to things that the monitor did or didn't do. We can argue about it after that. It's not a question for this witness. His first answer was he didn't prepare this report or have input into this report.
BY MR. HOWARD:
322 Q. Mr. Guyatt, have you read it?
A. What date did you say this particular report came out?
MR. STEEP: It's Monday night, I believe.
MR. HOWARD: Tuesday morning at 2:00 a.m.

Page 95

MR. STEEP: All right, so we'll take it from Tuesday, which is the 16th.
THE WITNESS: So I can't say I've studied it in detail, no.
BY MR. HOWARD:
323 Q. And Mr. Steep and I can fight about whether it does or doesn't, but you will agree with me that one of the things it should have done was considered the stakeholders, the employees, who would get jobs in a going concern sale or a liquidation?
MR. STEEP: That's another argument. It's not for the witness.
MR. HOWARD: Well, I don't think it is, but he's the CEO of the company.
BY MR. HOWARD:
324 Q. Let me --
MR. STEEP: Well, he's being supervised by the monitor, not the other way around.
MR. HOWARD: I apologize, I interrupted you. What did you say?
MR. STEEP: I said the company is being supervised by the monitor, not the other way around.

Page 96

MR. HOWARD: I probably shouldn't say what I was about to say. Let me turn to another area.
BY MR. HOWARD:
325 Q. Am I correct, sir, that both in this report and your affidavit, what you do is hypothesize this plan or liquidation as the two alternatives?
A. Yes.
326 Q. And have you read the RSA? Are you familiar with the RSA?
A. I'm generally familiar with it. I can't say I've committed the whole thing to memory, but I did read it, yes.
327 Q. And do you have that around, Mr. Steep?
MR. STEEP: I beg your pardon?
MR. HOWARD: Do you have that around, the RSA?
MR. STEEP: I don't have it around, so you'll have to put it up on the screen if we're going to look at it.
MR. HOWARD: Okay.
BY MR. HOWARD:
328 Q. Let me ask you,

Page 97

Mr. Guyatt, and Mr. Steep is going to object to most of it, I'm sure, given what he said before.
Would you agree with me that there are other scenarios or options, other than this plan or liquidation?
MR. STEEP: It depends very much what you mean by options. Options that we could get --
MR. HOWARD: Yes.
MR. STEEP: Hang on, hang on. Options that we could get the major stakeholder with claims to agree to or that exist in a theoretical world?
MR. HOWARD: No. Mr. Steep, if you're going to object, object as opposed to --
MR. STEEP: Well, I am objecting to the question --
MR. HOWARD: Let me ask another question.
BY MR. HOWARD:
329 Q. You understand that the RSA gives sole discretion as to what's in the plan to CannTrust?
A. Is that a question?
330 Q. Yes.

Page 98

A. Yes.
331 Q. And that under the RSA, CannTrust is provided -- is to get a bar order that provides for releases of CannTrust to the fullest extent permitted by applicable law. Right?
A. Yes.
332 Q. And that if the support agreement is terminated under section 5, the parties are to be put as much as they can in the position they were in as of January 18? You might look at section 5.
MR. STEEP: I think that's correct.
BY MR. HOWARD:
333 Q. So, one option for the company is to put forward a plan that it knows or it believes it can get approved that complies with law, and if they don't like it, they can terminate and have the ability to vote on the plan. That's one option. Right?
MR. STEEP: Well, these are all arguments, Mr. Howard.
MR. HOWARD: No, sir, they're not.

Page 99

BY MR. HOWARD:
334 Q. If you haven't thought of this, Mr. Guyatt, you should have?
REF MR. STEEP: Don't shout at the witness, Mr. Howard. We're not answering those questions. The effect of the agreement is something that we can argue about in court. You're just taking the agreement and saying you could do this under agreement, and if you want to argue that, that's fine.
MR. HOWARD: No. I'm asking whether this witness has -- had been put forward a dichotomy between this plan and liquidation, will agree that that's a false dichotomy.
BY MR. HOWARD:
335 Q. Will you agree with that, sir, or not?
MR. STEEP: We're not going to agree to questions like that.
MR. HOWARD: Mr. Steep, you're trying to do this on short notice and these are important areas because the company has other options, and the CEO, I'm entitled to ask him about his knowledge of those.
REF MR. STEEP: I think you've got

Page 100

my position and I don't want to keep repeating it. I'm not going to let him answer questions like that.
MR. HOWARD: If I have a number of different options that are available to the company, other than those two, and put them to him, you're not going to let him answer them. Is that right?
MR. STEEP: That's correct. And I expect I'll see them in your factum and we can argue about those in court.
MR. HOWARD: These are important enough that we may have to address them with Justice Hainey and come back next week. But let me move on because I have your position and, again, I've never convinced you otherwise.
I'm just trying to weed through for a moment, Paul, the questions you're going to object to.
MR. STEEP: That's fine.
MR. HOWARD: But I should tell Mr. Fabello I'm drawing near the end, so you should probably get ready if you're next.
BY MR. HOWARD:
336 Q. Mr. Guyatt, let me try

Page 101

this one, then: In your affidavit, you talk about the binary choices we've talked about, plan or liquidation.
Why do you assume that if the stay isn't extended, we're in liquidation?
A. Beyond -- the stay beyond the current date that it's going to, which I think is May something?
337 Q. Yes.
MR. STEEP: I think it's April 30.
THE WITNESS: Sorry, April 30.
BY MR. HOWARD:
338 Q. Yes.
A. So, why do I think we're automatically in liquidation on May 1 if it's not extended?
339 Q. Yes.
A. Well, I'm not sure if that's like a virtual certainty, but I think if we're not extended by the time we get to the end of April, then I'm not sure that this process is concluded.
340 Q. If the stay isn't extended, i.e., the CCAA process is concluded, the

Page 102

company will have lots of cash on hand to meet its liabilities as they come due. Right?
A. My understanding is that the sanction ordinary isn't until May 14 or thereabouts --
341 Q. I'm asking you a different question, and I apologize I interrupted you.
I'm asking you why liquidation as an option is the necessary event following this plan not being put forward and the stay expiring?
A. Well, at that point in time, it is certainly one of the options, is liquidation of the company. I don't know that that's virtual certainty.
342 Q. Sure. Don't you agree with me that another option is to use the cash on hand to run the business and fight the litigation as you were doing before? Because you haven't admitted to anything in the litigation.
A. Sorry, I'm not sure what you're asking me. We have some cash on hand to run the business today. Are you suggesting I don't use it to run the business, I use it to pay legal fees?

Page 103

343 Q. No, sir. I'm suggesting to you, sir, that there's $60 million, you say, that you'll have at the end of the April in the bank, $60 million or $70 million. Right?
A. Of which $50 million is set aside for the settlement.
344 Q. And what if it's not set aside anymore and you can use it to run the business? You don't need to file liquidations the next day, do you?
A. Well, if we still had $50 million, then yeah, I would love to use that to run the business, but I'm operating under the assumption that that money is gone.
345 Q. But if the stay is over and there's no plan, that money isn't gone, so operating on the assumption it's there, you (audio distortion.)
--- (Reporter clarification)
MR. HOWARD: Sorry, I apologize. Let me start again and I'll leave this mostly to Mr. Fabello.
BY MR. HOWARD:
346 Q. But you provided a CannTrust business overview with forecasts into

Page 104

the next few years and you personally, Mr. Guyatt, you believe that it's a solvent and bankable company. Right?
A. Going forward, yes, post settlement.
MR. STEEP: Yes, assuming the plan is implemented.
BY MR. HOWARD:
347 Q. Fine. But I'm asking you to make a different assumption, and I'm entitled to do that in a cross-examination, that you don't have a settlement of the litigation, but you can pursue the defence of the litigation for the next three to five years and you have funds to run the business and proceed to deal with that contingent liability. Right? Because you fixed the business.
A. I don't know --
348 Q. That's not what you have on April 1. Right?
A. I don't know what the costs are involved in fighting that sort of litigation over a three-year time period and whether that puts the company in any position or not. That's not my area of expertise.

Page 105

349 Q. And you know, sir, that you have insurance for some of the Defendants for that litigation. Right?
A. We have an insurance policy at this point in time, yes.
MR. STEEP: But you know the company's had a denial of coverage, so over some of the Defendants, I assume you mean some of the directors, not for the company.
BY MR. HOWARD:
350 Q. Yes, but the directors are getting funded and there's money to fight the litigation. Right? That's an option that's available if the plan isn't put forward and the stay is extended. Right?
MR. STEEP: Subject to the qualification that the company is in a position where there's a denial of coverage.
MR. HOWARD: You cut out a bit, Paul. Was that subject to?
MR. STEEP: Subject to the fact that the company has been denied coverage, so whatever option it has right now, there's a denial of coverage.
BY MR. HOWARD:

Page 106

351 Q. All right. And just mopping up a couple of things, can I ask you to go to the plan again? That's Exhibit B, I believe, to your March 13 affidavit.
MR. STEEP: You've got it there in front of you.
THE WITNESS: Which page?
BY MR. HOWARD:
352 Q. Back to the definition of Original Settlement Parties.
A. Yes.
353 Q. Am I correct, sir, that all of the director original settlement parties have had their legal fees for the period covered up to date?
A. Yes.
354 Q. And you have, too?
A. I have.
355 Q. I think, Mr. Steep, subject to Mr. Kolers telling me I missed something, that's what I had for you today and subject to your objection areas that we talked about.
MR. STEEP: Thank you.
CROSS-EXAMINATION BY MR. FABELLO:

Page 107

356 Q. Mr. Guyatt, good afternoon.
A. Good afternoon.
357 Q. I'm John Fabello of Torys. We were introduced earlier, but I'm pleased to meet you. Torys is on, as you know, I think, for the underwriters, Merrill Lynch, Citigroup, Credit Suisse, RBC DS, Geoffreys and Cannaccord.
I expect that my questions today will take less time than Mr. Howard's, but it's certain my questions will involve a lot less hair than Mr. Howard's questions did.
MR. STEEP: Fewer metaphors, I'm hoping, too?
MR. FABELLO: Pardon me?
MR. STEEP: Fewer metaphors, I'm hoping, too.
Mr. Steep, I don't think I'll use any, and you can test me on that after I am finish my questions.
BY MR. FABELLO:
358 Q. Mr. Guyatt, I just want to start with some preliminary points about the underwriter's involvement and your knowledge of it.
You were with the company, with CannTrust, as of May 2019. Correct?
A. I joined in February of 2019.

Page 108

359 Q. Great, so the answer is yes, you've been there for a few months?
A. Sorry, I was there during May. Yes, I was.
360 Q. And you were aware generally that the U.S. and Canadian subsidiaries of the underwriters each underwrote the May 2019 offering of the sale of CannTrust common shares?
A. Yes.
361 Q. And you are aware that the underwriters are Defendants along with CannTrust in various proposed class actions in the U.S. and Canada alleging misrepresentations in the prospectus for that May 2019 offering. Correct?
A. Correct.
362 Q. Okay. And those class action lawsuits are defined, I believe, in your affidavit as "the actions" in paragraph 5 of your March 5 affidavit?
A. Yes.

Page 109

363 Q. Okay. I may refer to those class actions as "the actions" going forward just to be consistent with your evidence. And by all means, if you want to call up your affidavit to confirm that, please do. It's your March 5 affidavit at paragraph --

MR. STEEP: I've got it here.

THE WITNESS: I've got it here as well. Which page of the affidavit are you on?

BY MR. FABELLO:

364 Q. Page 2 of the affidavit, page 15 of your record, and it's paragraph 5 where you define the actions?

A. I'm there. Correct.

365 Q. Confirmed, right?

A. Confirmed.

366 Q. I should have said at the outset, same ground rules for my questions as Mr. Howard's. If you need a break at any time, if you want to refer to any of the documents, then absolutely just let me know and we'll turn them up.

A. Okay. Thank you.

367 Q. While you're at the affidavit, if I could ask you to turn to page 6,

Page 110

at paragraph 9 of your affidavit at page 6.

A. Yes.

368 Q. You say -- I'm going to pick and choose a little bit, but not unfairly. You say the CCAA plan will compromise and release certain liabilities of the CannTrust plan companies, including all of the CannTrust plan companies' liabilities, in connection with the actions.

And those liabilities include the indemnity-related claims of the underwriters, but for the defence costs issue that we'll get to in a minute. Correct?

A. Yes.

369 Q. And again, just generally right now at a high level, you are aware that the underwriters have asserted claims against CannTrust for indemnity and other rights pursuant to the underwriting agreement between CannTrust and the underwriters regarding the May 19 offering. Correct?

A. Yes.

370 Q. So, we're agreed that at least in these regards, the underwriters are affected by the proposed plan. Correct?

Page 111

A. Yes, correct.

371 Q. All right. I would like to move on and drill down with a little bit more specificity into questions with respect to the claims by the underwriters are pursuant to that underwriting agreement.

If I could ask you to turn up the underwriting agreement. Mr. Steep, if you have a copy there, it's either in our original record at tab 1A or in the compendium we circulated today at tab 1.

MR. STEEP: We have it in your original record.

MR. FABELLO: Perfect.

BY MR. FABELLO:

372 Q. So, that's tab 1A, Mr. Guyatt.

A. Okay.

373 Q. We're not going to get too detailed into this, but let me start by asking: You were, at the time this agreement was executed, aware of this because, spoiler alert, you actually signed it on behalf of the company?

A. Yes.

374 Q. Okay. And let's take a

Page 112

quick look at the signature page, which you will find at page 41 of the record. Let me know when you're there. Thanks.

A. I'm there.

375 Q. All right. At the top of this page, the document says:

"If the foregoing is in accordance with your understanding of our agreement, please sign and return..." (As read)

Et cetera. And as we confirmed, you signed this. And when you signed it, we are agreed that you were conveying to the other parties to this agreement that CannTrust is being bound by its terms?

A. Yes.

376 Q. Okay. I may be able to spare us both from going to the document, so I'm going to give a bit of a speech here to give you some context. If you would like to go to the documents, we certainly will.

But what I'm drawing your attention to is to the underwriter's proofs of claim and the other document in our record which

Page 113

shows or evidences that CannTrust paid the underwriters on or about March 19, 2020, so pre-filing, $112,570 towards the indemnity claims that they had made at that date.
Pausing there, are you generally aware of that payment?
A. Sorry, what date was it made?
377 Q. March 19, 2020.
A. I don't recall that payment specifically.
378 Q. Okay. Do you recall in general that prior to filing, at least some of the underwriters' accounts were paid?
A. Accounts being sort of which accounts?
379 Q. Let me back up. Again, I don't want to keep repeating myself, but to be fair to you, we can go to all of these documents if it helps and I'm prepared to.
So, the documents in our record include letters to the company on behalf of the underwriters sent by Torys and Shearman & Sterling providing notice to the company of claims under the indemnities with respect to the actions,

Page 114

the class action lawsuits.
Pausing there, are you generally aware of those notice letters?
A. Yes. I recall the letters, but I don't recall the specific contents.
380 Q. Okay. And thereafter we started, we on behalf of the underwriters, started flowing through copies of the legal accounts at Shearman & Sterling and Torys to the company for payment?
A. Yes.
381 Q. And after doing so, we received on behalf of the underwriters $112,570?
A. Okay.
382 Q. Do you have any reason to take issue with that?
A. No. I don't recall the specific payment, but I do recall when invoices of that nature would have come in, I would have sought appropriate advice before paying it and would have done so based on that advice.
383 Q. Fair enough. I want you to be on solid footing on this and not take my word for it.
MR. STEEP: I'm prepared to

Page 115

agree that, pre-filing, the legal accounts of the underwriters approximating $112,000 were discharged by the company.
MR. FABELLO: Thanks for that, Mr. Steep.
BY MR. FABELLO:
384 Q. And you've noted, Mr. Guyatt, that you wouldn't have paid these accounts without first seeking proper advice and input and you likely did that with respect to these accounts?
A. Correct. Yes, I did.
385 Q. And we're agreed that the company's payment of those accounts, at least at that time, was an acknowledgement of the validity of the underwriters' indemnity claim under the underwriting agreement at that time?
A. I can't comment as to whether it represents that or not. I can confirm that we paid it and I would have sought advice to do so. Whether that sort of validates an indemnity claim or not, I can't comment on that.
386 Q. I think it's fair, and I'm asking you to confirm this, that if you had received any advice to the effect that for some

Page 116

reason the indemnity claim and accounts were not valid or appropriate, then you wouldn't have paid them. Fair?
A. Fair enough, yes.
387 Q. Okay. So, at least in that respect, the claims at that time were valid, valid enough to be paid?
A. Yes.
388 Q. If we can switch gears a bit and go to the amended plan that was filed as part of your March 13 record. I'm going, Mr. Steep, from the copy at tab 1B, as in Bob, of your record.
A. This one?
MR. STEEP: I can't see it from this far away. That's their record. You want to go to the amended plan. Correct, John?
MR. FABELLO: Yes, please.
MR. STEEP: So, it will be in this one. He's looking at the -- I think it's March 11.
THE WITNESS: This one has square bracket March 19, but I assume this is the one you're referring to?
BY MR. FABELLO:

Page 117

389 Q. Yes, that's the one.
A. Okay.
MR. STEEP: It's in the March 11 record.
BY MR. FABELLO:
390 Q. The date on that record, just to make sure we're comparing apples to apples, that I have is supplementary record of CannTrust and the cover says March 13?
MR. STEEP: No, go to the cover.
THE WITNESS: On the cover it's March 13, yes.
MR. STEEP: My mistake, I thought it was the 11th.
MR. FABELLO: Perfect. I thought I missed something for a minute there.
BY MR. FABELLO:
391 Q. All right. Mr. Guyatt, could you turn in tab 1B, so in that amended plan, to page 4 of the plan. I think it's page 77 of your record. I want to draw your attention to, I think, the same provisions Mr. Howard took you to which is the definition of defence costs indemnity claim?

Page 118

A. Yes.
392 Q. I think you read that before, but I don't think it's controversial that the claims by the underwriters for payment by the company of defence costs with respect to the actions fit this definition, to the best of your knowledge?
A. To the best of my knowledge.
393 Q. While we're in this document, could you please turn to page 16 of the amended plan? I guess it's pages 15 and 16. Thank you.
Are you there?
A. Paragraph 2.3?
394 Q. Exactly. Again, this was one of your bust-offs with Mr. Howard. At 2.3, it defines unaffected claims and it includes in that definition at 2.3(i) defence costs indemnity claims, et cetera.
And I think this is a fair reading of 2.3(i), but I wanted to run it by you. So, the idea here is that to qualify it as an unaffected claim as an defence costs indemnity claim, two conditions need to be met.

Page 119

First, the person making the claim has to successfully defend. Right? That's one condition.
A. Yes.
395 Q. Okay. And then the second condition is defence costs indemnity claims otherwise valid and enforceable against CannTrust. Correct?
A. Yes.
396 Q. Now, with respect to the second condition, you're not aware of any facts or evidence that would cause the indemnity claim of the underwriters to be invalid or unenforceable, correct, as of today?
A. Based on my knowledge, no, and my level of understanding of the situation, no.
397 Q. Okay. And CannTrust generally is not aware of any reason why that claim would be invalid or unenforceable, Mr. Steep?
MR. STEEP: We're not aware of any issue at this time.
MR. FABELLO: Thank you.
BY MR. FABELLO:

Page 120

398 Q. And before we leave this clause, Mr. Guyatt, I can take you back to the underwriting agreement, but I'll give you my question first because we might be able to short-circuit it or Mr. Steep can deal with tis.
But regarding the first condition, that there be a successful defence before indemnity costs be paid, are we agreed that that condition is not in the underwriting agreement?
A. I don't recall specifically if that's there. It's a lengthy agreement. But if you're telling me it's not there, I will take your word for that.
399 Q. Maybe I'll go to Mr. Steep for that. I don't see it, Mr. Steep.
MR. STEEP: I'm going to take your word for it, Mr. Fabello, and confess that I have not read the underwriting agreement word for word.
MR. FABELLO: All right. Well, that's your loss. It's mighty fine reading.
Can we take it that that's not in the underwriting agreement and may I ask for your position if it's different prior to Friday?

Page 121

U/T MR. STEEP: Yes. If we have any contrary information, I'll advise you.

MR. FABELLO: Okay. Thank you.

BY MR. FABELLO:

400 Q. Let's go back to the underwriting agreement, please. In case you closed it, Mr. Guyatt, it's back to the record of the underwriters, tab 1A.

MR. STEEP: Sorry, which document are we going to now?

MR. FABELLO: The underwriting agreement.

MR. STEEP: I've got it.

THE WITNESS: Sorry, under 1A?

MR. STEEP: You were in the plan document. Sorry, you're right. It's here. That's the underwriting agreement. It's in this.

THE WITNESS: Okay, I have it in front of me.

BY MR. FABELLO:

401 Q. Thank you. So, the indemnity and related provisions are at section 7, which is, and please turn up on page -- it starts on page 32 of the record, so the upper right-hand

Page 122

corner.

A. Okay. Section 7, I'm there.

402 Q. Thank you. So, you'll see at 7(a) on page 32 of the record it says:

"The company will agree to indemnify and hold harmless each underwriter -- "

(As read)

Et cetera.

A. Yes.

403 Q. And if you can turn the page, at the top of page 33, it talks about the kinds of costs, loss, damage, and expense that are indemnified.

And then if you can turn to page 34 -- and please feel free if, after I ask my questions, you want to go back and read these provisions in more detail, please do.

But what I want to draw your attention to is subsection(d), as in Donald, on page 34. In particular, let's work with each other on this, if you could go down about three-quarters of the way in the middle of that

Page 123

paragraph, there's a sentence that starts "No indemnifying party shall." Do you see that?

A. I'm there.

404 Q. Now, before we read that or I'll read that, you recall that Mr. Howard asked you about a clause in the DNO indemnity which required the company to ask for the directors and officers for consent to settle a claim to which they were both a party and required the company to provide a release, so just remember that, if you will. And this clause, I think, does the same thing, but let's read it:

"No indemnifying party -- "

So indemnifying party here would be CannTrust:

" -- shall, without the prior written consent of the indemnified parties -- "

That would be the underwriters:

" -- settle or compromise or consent, et cetera, in any litigation, et cetera, or claim."

Page 124

I'm jumping down to the next line:

" -- in respect of which indemnification or contribution could be sought under section 7 -- "

Go to the next line:

" -- unless such a settlement compromise includes an unconditional release of the indemnified party."

(As read)

So, my question here is the same one that Mr. Howard asked you but in respect of the underwriters.

You're not aware of the company providing any advance notice to the underwriters that the company was not going to ask the underwriters for their consent to the settlement that's now before the court. Correct?

A. Correct, at least not that I'm aware of.

Page 125

405 Q. All right. I mentioned earlier proofs of claim that my clients submitted. I would just like to have you turn those up and pause on them for a minute. They're at tab 1D, as in Donald, and E of the underwriter directory, same document the underwriting agreement is in.
A. I'm there.
406 Q. Thank you. Behind tab 1D is a proof to claim that was submitted by the U.S. subsidiaries of the underwriters. You can see that from the names of the underwriters under heading A. Okay? Do you see that?
A. Yes, I do.
407 Q. Can you turn to tab 1E, please. And this is the same proof of claim, although same content but submitted by the Canadian subsidiaries of the underwriters. Okay? Do you see that?
A. Yes, I do.
408 Q. Thank you. So, I would ask you to turn to the very next tab, so tabs 1F and G of our record are responses or at least communications from the monitor, from Ernst & Young, responding to those proofs of claim.
The response, as I read it at

Page 126

tab 1F, is to the U.S. subsidiaries proofs of claim. Do you see that?
A. Yes.
409 Q. And at the penultimate paragraph, the second last paragraph of that e-mail, it says:
"The claim as described in the proof of claim is an excluded equity claim under the claims procedure. Pursuant to paragraph 35 of the claims procedure, any person holding an excluded claim is currently unaffected by the claims procedure order." (As read)
Do you see that?
A. Yes.
410 Q. Okay. If you could please turn to tab 1G, this response from E&Y is with respect to the Canadian subsidiaries of the underwriters. Do you see that?
A. Yes.

Page 127

411 Q. And I'll scratch both reading that final paragraph. That it's the same response essentially as the prior draft. Are we agreed on that?
A. Yes.
412 Q. Okay. And to the best of your knowledge, these e-mails from E&Y are the only responses that -- written responses that were sent by the company or on behalf of the company to the claims submitted by the underwriters. Correct?
A. To the best of my knowledge, yes.
413 Q. And the company itself has not communicated or considered these claims further -- pardon me, and communicated anything further with respect to these claims to the underwriters. Correct?
A. Not that I'm aware of.
414 Q. Okay. I'm moving on to the second of my two topics today, which is a set of questions related to the company's finances.
Mr. Howard has covered some of that, but suffice it to say that the current and projected finances of the CannTrust is an issue

Page 128

that's canvassed and addressed in the company's materials and viewed in the plan. Correct?
A. Yes.
415 Q. Okay. I would like to turn up the projected financials that the company had prepared in August of 2020. They are not in the record because of an agreement that I have, we have, with your counsel, so we don't have them before you, but with some help from Ms. Dingle, I'll put a couple pages on the screen and we can look at them.
So, Gillian, if you're there and can pull up -- great.
MS. DINGLE: Do you see it, John?
MR. FABELLO: Yes. Thanks very much.
THE WITNESS: I can see it as well.
MS. DINGLE: Yes, more importantly. Thanks, Mr. Guyatt.
MR. STEEP: Can we get it just a little bit bigger for my screen, which is --
THE WITNESS: I was going to say the same thing.

Page 129

MR. STEEP: -- tiny.
MS. DINGLE: Is that a bit better?
THE WITNESS: That's better, yes.
MR. STEEP: That's a bit better. Thank you.
BY MR. FABELLO:
416 Q. Okay. I would like to focus on the cash -- ending cash projections.
But before I do that and while we're on, I think we're on page 6 of the presentation, I can't quite see the bottom on my screen, page 6. Yes, there we are. That's perfect.
And first of all, Mr. Guyatt, you're familiar with these forecasts. You were involved, I think, in presenting them. Correct?
A. I'll say I'm familiar with them; however, these are, you know, from some time ago at this point.
417 Q. I understand. I'm going to try it into present in a moment, if you'll just permit me a bit of background.
MR. STEEP: Mr. Fabello, not

Page 130

to interrupt your train of thought, but I just want to be clear that if you're putting specific things in the record, given that we've agreed to keep this confidential for the time being, I'll need the same treatment for the references in the record, if you understand what I mean.
MR. FABELLO: I do understand and we will do everything, Paul, to honour our agreement.
MR. STEEP: Yes, okay. That's fine. I just wanted to remind you that, when the transcript comes up and if it's filed, if will have to be treated the same way as the document.
MR. FABELLO: We are in complete agreement.
BY MR. FABELLO:
418 Q. So, Mr. Guyatt, I just wanted to pause here because footnote one says that these estimates assume no debt financing raised in the forecast period. And that's accurate to the best of your knowledge?
A. Based on our assumptions at the time, yes.
419 Q. Right. And your assumption at the time included, in fact, no

Page 131

equity financing or other financing. Correct?
A. At that time, yes.
420 Q. If we could please, Gill, go to page 8 of the presentation. Great.
And here, Mr. Guyatt, we have projected ending cash balances [redacted]
Right? Do you see that?
A. Yes.
421 Q. In 2021, [redacted] Correct?
A. Yes.
422 Q. In 2022 [redacted] Right?
A. Yes.
423 Q. 2023, [redacted] Right?
A. Yes.
424 Q. And 2024, [redacted] Right?
A. Yes.
425 Q. And at the time, at the time, so in August of 2020, these forecasts were valid and as accurate as they could be. Correct?
A. Yes, at that time.

Page 132

426 Q. And I think as it turned out, at least so far, your forecasting was pretty accurate.
[redacted] the monitor's reports that I have and that we have in our record -- and again, I'm happy to turn these up but I'm just trying to save a bit of time -- so that at least as of January 10 of 2021, I'm picking that date because that's the closest date of cash, actual cash, that I've seen in the record, as of January 10, it shows a cash balance of about $78,000.
Is that --
A. Million, yes.
427 Q. Pardon me?
A. Million, yes.
428 Q. Oh, million, yes of course. So, essentially your forecast was accurate there. Correct?
A. Yes, although how we got there is a little bit different than how this forecast contemplated, but the cash balance is close, yes.
429 Q. Fair enough. Okay.

Page 133

[redacted] you are forecasting about $61 million, does that accord with your knowledge?

A. Prior to consideration of any contribution to the settlement trust, yes.

431 Q. Yes. Sorry, I should have made that clear.

A. Yes.

432 Q. Correct, yes. So again, in 2021, it looks like your forecasting is going to be more or less accurate to the best of the company's knowledge today?

A. In terms of cash, yes; however, how we get there of course has changed a bit since then. But in terms of cash balance, correct.

433 Q. I understand that. And to be clear, I'm not trying to suggest any other comparables or metrics. I'm only focusing on cash.

Page 134

A. Okay.

434 Q. So, we're agreed that the forecast that you prepared in August, at least to date, have turned out to be fairly accurate. Correct?

A. From a cash perspective, correct.

435 Q. Okay. Subject to any questions that Ms. Dingle may have, those are my questions.

MS. DINGLE: No, I have no questions. Thanks.

MR. FABELLO: Mr. Guyatt, Mr. Steep, thank you.

MR. STEEP: Thank you, Mr. Fabello.

THE WITNESS: Thank you.

CROSS-EXAMINATION MR. DI CARLO:

436 Q. Good afternoon, Mr. Guyatt. My name is Carlo Di Carlo. I'm counsel for Eric Paul in this matter. I just have a handful of questions. I'll be even less time with you than Mr. Fabello was. Okay?

A. Okay. Thank you. Good afternoon.

Page 135

437 Q. Good afternoon. Mr. Guyatt, you'll remember that Mr. Howard asked you about the relationship between the Litwins and Mitch Sanders?

A. Yes.

438 Q. And I believe you said that you either knew or you came to know that Mr. Sanders was the Litwin family's long-term lawyer. Correct?

A. I came to know that, yes.

439 Q. And are you also aware that he was also the long-term lawyer of Eric Paul?

A. I did not know that, no.

440 Q. Okay. Mr. Howard asked you questions about Cannamed. You'll remember that?

A. Yes.

441 Q. And you'll recall he took you to the supplement to the prospectus. Correct?

A. Yes.

442 Q. And so you would have known that the Paul family trust was a shareholder of Cannamed. Correct?

A. Correct.

Page 136

443 Q. And you would have known that Mr. Paul was involved in Cannamed more generally?

A. Yes.

444 Q. Mr. Howard asked you about the indemnity that the company entered into with Cannamed. Do you recall that?

A. Yes.

445 Q. And you recall that he took you to a provision that stated essentially, I'm paraphrasing, that the company could not settle an action that the indemnification applied to without obtaining the consent of any of the indemnified?

A. Yes.

446 Q. And that included shareholders of Cannamed. Correct?

A. Yes.

447 Q. And you'll agree that you or the company never sought the consent of the Paul family trust or Mr. Paul before settling with the Plaintiffs?

A. Not that I'm aware of.

448 Q. Thank you. That concludes my questions.

Page 137

MR. STEEP: Just to be clear, when you say settling, you mean before we put the plan forward?

MR. DI CARLO: That's correct. Perhaps in light of that --

MR. STEEP: We anticipate settling, but there's a few steps between now and then. That's all.

MR. DI CARLO: That's fair, Mr. Steep. In light of your clarification, perhaps just one more question, then.

MR. STEEP: Sure.

BY MR. DI CARLO:

449 Q. And Mr. Guyatt, you'll also agree that you or the company did not seek either the Paul family trust or Mr. Paul's consent to the plan before filing it. Correct?

A. Correct.

450 Q. Thank you. Now that does conclude my questioning.

A. Thank you.

MR. STEEP: Anyone else up to bat or are we getting near the end?

MR. CRAWLEY: Nothing from me, Paul.

Page 138

MR. STEEP: Okay. Thank you, Alistair. I take it we're at the end, then, so thanks, everybody.

--- Whereupon the proceedings adjourned at 3:00 p.m.

A
a.m 58:4 93:9 94:25
ability 65:5 66:2 70:7 82:21 98:20 139:10
able 25:9 65:25 87:17 112:18 120:4
abnormal 13:17
Abramowitz 2:4 32:13 43:11,14 45:19 46:19 47:6 53:5,25 55:13 57:24 62:9 75:19 83:8
Abramowitz's 75:22
absolute 20:20
absolutely 13:16 59:8 109:21
abstained 10:5
accept 34:10,12,16 49:8 88:12,14
accord 133:7
account 55:19,24 59:11
accounting 86:7
accounts 113:14,15 113:16 114:8 115:1,8,11,14 116:1
accurate 31:5 34:10 48:9 130:21 131:24 132:3,20 133:16 134:4
accurately 139:10
Aceto 2:9 39:7
acknowledgement 115:15
act 1:5 85:21
action 44:16,16 108:22 114:1 136:12
actions 31:8,9,11 44:19 108:17,23 109:2,2,13 110:9 113:25 118:6
actual 64:1 132:11
add 87:2
added 61:15
address 62:5 72:14 100:13
addressed 60:5 128:1
adjourned 138:4
admitted 102:20
advance 124:20
advice 56:8 80:16 114:20,21 115:9 115:20,25
advise 43:19 85:18 85:21,23 121:2
advisement 71:14 72:3,5,13
Advisements 3:10 3:18
affect 46:22
affidavit 6:24 8:17 11:20 18:1,4 28:9 46:8,17 47:25 48:1,23 50:17 54:18 57:5 60:6 60:14 66:10,10 68:2,2 89:16,22 89:24 96:6 101:1 106:4 108:23,24 109:4,6,9,11,25 110:1
affidavits 6:6,15,21 7:5 18:5 47:4 50:4 53:10,14 78:13,14 78:24 87:13
affiliated 27:2
AFFIRMED 3:3 5:4
afternoon 107:2,3 134:19,25 135:1
agents 75:8
ago 129:21
agree 23:7 24:8 37:10 43:10 80:4 83:21 88:25 89:3 92:20 93:17 95:8 97:3,12 99:14,16 99:19 102:16 115:1 122:6 136:19 137:15
agreed 49:2 67:5 75:4 110:23 112:14 115:13 120:8 127:4 130:3 134:2
agreeing 89:15
agreement 4:3,6 9:21 13:7 14:6 15:14,17 16:3,20 16:23 56:20 73:25 78:21 81:9 84:9 98:9 99:6,8,9 110:19 111:6,8,21 112:10,15 115:17 120:3,10,13,19,24 121:7,13,18 125:6 128:7 130:9,15
agreements 53:16 53:19 55:15 56:1 56:25 62:17 63:2
ahead 14:12 59:8 79:18
aid 39:5
aided 139:13
alert 111:22
Alistair 2:9 138:2
allegations 86:15
alleging 108:18
allocation 49:15 71:2
alternatives 90:16 96:8
amended 1:5 116:10,17 117:20 118:12
analysis 89:24 90:4 91:3
and/or 85:8
angels 59:15
answer 5:12 26:12 58:7 59:5 80:13 83:5 87:10 89:9 94:15 100:2,7 108:6
answering 83:1 89:6,8,9 99:5
answers 23:2
anticipate 137:6
anybody 79:6 81:12
anymore 103:8
Anyway 93:10
apologies 65:13 74:8
apologize 10:17 34:25 63:18 86:13 95:21 102:7 103:21
APPEARANCES 2:1
appears 73:16 84:16
appended 71:3
apples 117:7,8
applicable 98:5
Applicants 1:8
applied 136:12
appointed 15:25
appreciated 5:10
appropriate 8:5 14:19 54:19 114:20 116:2
approve 11:13
approved 10:14,16 17:16,22 18:20 36:1,3 64:21 69:22,23 70:8 98:18
approximately 21:1 34:6
approximating 115:2
April 17:23 18:2 49:10 101:11,12 101:22 103:3 104:20
Arbitration 1:11,23 5:1
area 21:7 60:3,4 62:14 72:16 86:6 96:3 104:25
areas 99:22 106:22
argue 29:24 35:9 59:22 66:7 82:9 89:17 94:13 99:7 99:10 100:11
argument 69:8 86:22 89:12 93:6 93:8 95:13
arguments 98:23
arising 80:1
arithmetic 34:10,12
ARRANGEMENT 1:5,6
arrived 54:9
Ashley 2:5
aside 9:17 81:5 103:6,8
asked 14:16 25:15 37:6 42:13 56:20 56:23 76:7,8,12 123:6 124:17 135:2,15 136:5
asking 8:11 68:7 71:4,6 77:14 82:1 88:6,8 92:7 99:11 102:6,9,22 104:9 111:21 115:24
aspect 41:11
aspects 39:15
asserted 110:17
assessment 42:19
assets 66:12 67:2
assign 29:18
assigned 64:25 65:4 83:18
assume 58:7 101:4 105:8 116:23 130:19

assuming 72:5 104:6
assumption 103:14 103:17 104:10 130:25
assumptions 130:22
attention 112:24 117:22 122:22
attributable 48:21
attribution 82:22
audio 36:6 103:17
audited 86:8
auditing 86:7
auditors 22:19 23:20 86:9,14 87:2
August 49:11 128:6 131:23 133:2 134:3
automatically 101:16
available 56:12 100:5 105:14
avoid 46:11
aware 24:16,23 25:13,25 26:2,6,8 29:19 40:18 41:24 44:5 53:24 71:18 78:12,15,17,21 81:10 83:20,22 86:7 92:9 108:10 108:15 110:16 111:22 113:6 114:3 119:11,19 119:22 124:19,25 127:19 135:11 136:23

B

b 28:9 60:15 76:25 106:3
back 20:6 27:18 36:10 41:15 70:6 80:19,21 100:14 106:9 113:17 120:2 121:6,8 122:19
background 129:24
bad 33:4,4,5 35:1 36:14
balance 132:12,23 133:20
balances 131:6
bank 103:4
bankable 104:2
bar 44:16 98:3
bare 69:5
bargained 13:11,19 13:24 14:5
bargaining 14:9
base 43:23 56:18
based 80:15 88:19 114:21 119:15 130:22
basically 37:5 91:12
basis 58:13,24
bat 137:23
battlefield 15:22,24
Bay 1:24
beg 96:17
behalf 55:20 74:15 75:19 111:23 113:22 114:7,13 127:9
belief 8:16 10:20 11:3 88:8,9,10,13 89:13,16
beliefs 8:4
believe 7:17,25 10:24 11:14 16:9 29:16 30:8 31:4 46:9 62:10 64:24 66:2 70:3 71:2 73:13 84:12 94:23 104:2 106:3 108:22 135:6
believes 7:21 91:13 98:18
benefit 29:21,24 35:22
Benefits 13:20
best 118:6,8 127:6 127:12 130:21 133:16 139:9
better 38:15,16 68:15 129:3,4,7
beyond 92:17 101:6 101:6
bi-weekly 47:15
bigger 25:10 128:23
bills 58:21
binary 101:2
bit 8:8 25:10 37:9 45:22 105:20 110:4 111:3 112:20 116:10 128:23 129:2,6,24 132:8,22 133:20
blessed 83:25
bloodhounds 36:19 36:23
blue 61:9
board 9:2,6,12,22 9:25 10:9,10,13 10:22,23 11:4,13 11:15,22 26:1 31:25 32:10,20,25 33:7,17 34:3,5,5 36:15 37:12 41:6 41:10,23 43:4,9 43:14 44:3 69:2 69:12 79:6 81:12
Bob 116:12
bottom 129:13
bought 49:10,11
bound 34:13 112:16
bracket 116:23
breach 83:24,25
breached 6:3 80:10
break 5:17,19 54:17 55:2 109:19
breakdown 20:14 20:21 21:10
Brian 2:6
briefly 73:6 87:14
briefs 46:15
bring 7:3
British 46:10
broad 45:2 48:3
building 19:16,23 20:2
burn 47:22 50:18 50:24 51:12
business 22:2 51:25 52:4 68:20 102:18 102:23,24 103:9 103:13,25 104:15 104:17
bust-offs 118:17
by-laws 53:20

C

c 1:5
C-36 1:5
Cajun 25:14,20 27:22 28:2 29:11 29:14,17,20 83:13 83:15
Cajun's 28:5 30:20
call 8:11 9:20 15:24 20:17 33:4 44:15 109:4
Canada 41:11 108:18
Canadian 48:3,21 108:11 125:17 126:23
cannabis 48:3,22
Cannaccord 107:9
Cannamed 26:14 27:5 74:1,2 75:13 75:20,20 76:2,6 76:10,15,16 77:16 79:4 80:14,18 81:5,7,21,23 82:6 82:10 83:9,24 135:16,24 136:2,7 136:17
CannTrust 1:6,6 2:2 7:17,21,25 8:9 8:9,12,16 17:4 30:5,11 44:11 48:11 55:23 56:19 74:15 75:1 76:8 77:14,17 79:1 80:9 81:24 82:4 82:11,11,19 84:17 91:21 97:23 98:3 98:4 103:25 108:3 108:13,17 110:6,7 110:18,19 112:15 113:1 117:9 119:7 119:18 123:16 127:25
canvassed 128:1
capacity 55:22
Capital 25:14 26:23
careful 45:22
carefully 6:11
Carlo 2:8,8 3:6 134:18,20,20 137:4,9,13
carry 39:17
carve 79:15
case 55:22,23 87:1 91:13 121:7
cash 47:21,22 102:1 102:17,22 129:10 129:10 131:6 132:5,11,11,12,23 133:18,20,25 134:6
caught 91:10
cause 37:14 119:12
caused 11:5 53:3 56:19
caution 37:16
caveat 37:17
CCAA 6:7 11:13,18 17:16 47:25 49:23 50:14 51:18 52:7

52:13 90:17 91:13 101:25 110:5
CEO 8:20 15:25 16:4 86:9,13 95:15 99:23
certain 13:12 18:11 41:5 107:12 110:6
certainly 39:13 47:10 52:24 88:2 102:13 112:22
certainty 101:20 102:15
certified 21:23
certify 21:20 22:2 139:9
cetera 55:13 76:10 76:22 80:2 112:12 118:20 122:11 123:24 124:1
CFO 12:23 18:24 22:18,21 40:11,12 86:14,17 87:3
chance 53:9 59:1
change 6:20 59:24 61:2 89:22 131:7 131:11,14,17,20
changed 133:19
changes 37:11,24
characterization 14:4 53:7
characterize 51:21
chatting 38:10
check 75:21
chief 12:23 32:6
choice 12:12
choices 101:2
choose 110:4
circular 4:8 33:16 33:24 34:9,17
circulated 111:11
Citigroup 107:8
city 6:1
claim 31:17 44:20 44:22 61:10,14,14 77:8,9 83:18 87:4 112:25 115:16,22 116:1 117:25 118:24,25 119:2 119:12,20 123:9 124:1 125:2,9,15 125:24 126:2,7,8 126:9,15
Claimant 64:10
claimant's 63:17
claims 30:18,21 31:1 55:21 60:7 60:19 61:24 62:4 68:17 97:12 110:11,17 111:5 113:3,24 116:6 118:4,18,20 119:6 126:10,13,17 127:10,15,17
clarification 56:23 94:5 103:19 137:10
clarify 19:11
class 44:15 49:3 84:3 108:17,21 109:2 114:1
clause 74:22 78:18 78:20 80:6 120:2 123:6,11
clear 42:12 62:18 130:2 133:12,23 137:1
clients 125:2
close 132:24
closed 20:5 121:8
closest 132:10
co-insureds 85:25
coffee 72:23
collectively 75:9
Columbia 46:10
combined 19:16
come 17:19 24:5 36:10 37:4 41:15 46:11 58:24 100:14 102:2 114:19
comes 11:21 130:12
coming 6:17 70:6
commencing 5:2
comment 115:18,22
commented 24:21
COMMERCIAL 1:3
commitments 68:8 68:16
committed 31:20 49:7 96:13
committee 36:16,19 38:8 41:10,18
committee's 40:22 41:20 42:18
common 108:13
communicated 127:15,16
communications 81:11,15 125:23
companies 7:17,25 8:9,12,17,21,24 110:7
companies' 1:5 110:8
company 11:1,5,21 12:23 13:11,12,15 13:20,25 14:7,19 16:7,11 17:22 19:6 20:2 23:10 23:20 25:20,21 32:14,21 40:25 51:9,10 52:9 53:2 53:3 54:1 64:5,16 67:3,8 68:6,7,10 68:15,19 69:17 70:6,24 71:1,8,17 71:23 72:10 75:1 75:1,3,9 79:9 80:24 81:6,18 87:14,16 91:23 92:1,23 95:15,23 98:17 99:22 100:6 102:1,14 104:3,24 105:9,17,22 108:2 111:23 113:22,24 114:9 115:3 118:5 122:6 123:7,10 124:20,21 127:9,9 127:14 128:5 136:6,11,20 137:15
company's 10:24 41:3 43:9 64:16 66:12 80:15 86:9 86:17 88:8 89:13 89:16 105:7 115:14 127:22 128:1 133:17
comparables 133:24
compare 132:4 133:1
comparing 91:3 117:7
comparison 91:24 92:22
compendium 15:7 111:10
competitive 7:18
complaints 44:20
complete 37:10,17 37:18 39:11,13 41:12 130:15
completely 65:10 65:19
complies 98:18
comply 81:8
comprehensive 41:2
compromise 1:6 79:19 110:5 123:23 124:11
computer 139:12
concern 91:17 93:22 95:11
concerns 10:9
conclude 68:7 137:20
concluded 101:23 101:25
concludes 136:25
Conclusion 40:22
concrete 68:9
CONDENSED 1:14
condition 88:17 119:3,6,11 120:7 120:9
conditions 48:17 118:25
condolences 50:1
confess 120:18
confidential 130:4
confirm 47:4 58:3 76:15 79:9 85:6 109:5 115:19,24
confirmed 109:15 109:16 112:13
conflict 10:5
connection 26:3 91:16 110:8
consent 46:9 78:7 79:2,10,17 80:11 85:8,12,18,24 123:8,18,24 124:22 136:13,20 137:16
consider 69:11 132:4
consideration 91:22 92:22 93:19 133:9
considered 14:15 92:21 95:9 127:15
consistent 109:3
consult 56:9
contact 37:23,24 38:2
contemplated 22:7 132:23
contemplates 65:23
content 125:16
contents 114:5
context 11:18 12:2

12:7,11 82:23 112:21
contingent 51:3 104:15
continue 35:3 70:2 87:2
continued 32:24 39:15
continues 65:15
contract 13:3 59:18 83:25
contracts 23:24 52:14,21,23 53:4 54:1
contractual 91:23 92:24
contrary 121:2
contribution 29:14 31:2 73:25 83:18 85:24 86:19 87:4 124:6 133:10
controversial 118:3
conversations 85:15
conveying 112:14
convinced 100:16
coordinates 73:21
copies 7:5 114:8
copy 28:11,22,24 60:8 61:5 74:6 111:9 116:12
corner 122:1
Corp 26:15
corporation 25:14
correct 6:10 9:3,4,9 9:10,23 10:6,7,10 10:14,15,18,22 11:6,11,13,22 12:14,22 13:3,4 13:10,18,21,22 14:2 15:21 16:2 16:13,14,18 17:14 17:21 18:21,23 20:9 22:4,11,15 22:16,19 23:4 27:2,11 29:9,13 29:18,22 30:6,9 30:23 31:16,22 32:2,3,14,15 33:2 33:3,8 34:19 36:16 37:2 39:8 42:14,22 43:2 44:17 47:22,23 49:1 50:15 51:16 52:21,22 53:2 56:17 57:1 63:25 64:3,19 66:6,16 69:20 74:20 75:24 81:24 82:12 83:5 83:10 84:1 87:21 89:25 91:7 92:1 96:5 98:14 100:9 106:12 108:3,19 108:20 109:14 110:13,21,25 111:1 115:12 116:17 119:8,14 124:23,24 127:11 127:18 128:2 129:18 131:1,11 131:24 132:20 133:14,21 134:5,7 135:9,20,24,25 136:17 137:4,17 137:18
cost 52:6 65:11
costs 60:7 61:10,24 65:20 66:3 67:9 67:11,13,15,16 68:21,23 69:18 104:22 110:12 117:24 118:5,19 118:24 119:6 120:8 122:15
counsel 5:18,20 26:7 36:19,21 56:9,12 71:19 82:20 128:8 134:21
count 6:7
countenance 69:6
couple 19:18 56:22 106:2 128:10
course 5:18 21:16 33:16 47:4 66:7,9 132:19 133:19
court 1:1,2 17:22 59:18 89:18 99:7 100:11 124:23
Courtis 2:2
cover 52:8 117:9,11 117:12
coverage 105:7,18 105:22,24
covered 63:7 106:14 127:23
coveting 16:8
Crawley 2:9 137:24
Credit 107:8
creditors 1:5 51:3,3 91:15 92:15,21
cross-examination 1:11 3:4,5,6 5:5 5:20,22 104:11 106:25 134:18
CSR 139:17
CT 8:12
CTI 1:6
cure 78:2
current 31:24 34:21 41:4,6 65:23 66:11 68:3 68:6 101:7 127:24
currently 21:6 126:16
cut 50:7 65:12 70:10 91:12 105:19
CV-20-00638930-... 1:1

D

d 85:2
D-Souza 2:3
damage 77:9
122:15
date 9:16,19 26:1 45:3 52:20 57:20 58:21 76:9 87:16 94:20 101:7 106:15 113:4,7 117:6 132:10,10 134:4
dated 4:6 16:23
dates 49:7
David 85:3
Dawber 9:6 34:20 41:17
day 4:4 9:14 10:14 15:14,18 66:22 69:8 103:10
deal 22:22 104:15 120:5
dealing 93:8
dealt 22:19
debt 130:19
decision 11:6,8 12:11
decisions 42:17
declaration 63:9
decline 48:3,21
defence 45:4 46:8 60:7 61:10,24 67:16,17,20 69:18 104:13 110:12 117:24 118:5,19 118:24 119:6 120:7
defend 75:4 119:2
Defendant 31:17 66:3
Defendants 31:25 64:23,25 65:6,10 65:19 71:10 72:11 87:24 105:2,8 108:16
defending 51:8
define 109:13
defined 91:15 108:22
defines 118:18
definition 12:16 28:19 29:6 31:9 34:13 60:21,25 61:10,13 62:16 63:9 106:9 117:24 118:6,19
definitions 28:17 30:20 31:8
denial 105:7,18,23
denied 105:22
depends 12:2,6 97:6
described 92:13,17 126:7
DESCRIPTION 4:2
designed 87:5
DeSimone 2:14
detail 95:4 122:20
detailed 111:20
details 66:18
Di 2:8 3:6 134:18 134:20 137:4,9,13
dialogue 94:4
dichotomy 12:5,14 99:13,14
difference 81:20
different 39:17 75:25 87:17 100:5 102:7 104:10 120:25 132:22
difficulty 82:21
diligence 22:25 23:2
diminution 48:20
Dingle 2:7 24:12 84:7 128:9,14,20 129:2 134:9,11
DIP 66:12,23 68:4
direct 88:19 90:10
directly 55:25 81:16
director 25:21,24 55:22 76:2,16

77:16 83:14 106:13
directors 9:3 23:10 23:11,16 34:15,21 41:7 75:6 76:4,9 76:22 79:2 81:2,6 82:5 86:10,20 105:9,11 123:8
directory 125:5
discharged 115:3
disclaim 52:17
disclaimed 19:14 52:20
disclaimer 52:12,24
disclaiming 52:13
disclosed 10:5
discretion 97:22
discuss 82:16
discussions 64:15 67:6 68:4,6 88:20
dismissal 37:14
distortion 103:18
distribution 70:20
DNO 13:21 16:8 23:11 29:18 85:12 85:15 87:14 123:6
document 27:12,16 29:2 31:7 60:14 60:16 62:15,19 64:7,8 73:12,15 73:18,20 74:13 78:16,18 82:4 84:20 112:6,19,25 118:11 121:11,17 125:6 130:13
documents 24:4 36:10 41:4 46:17 49:6 64:14 109:20 112:22 113:19,21
doing 5:6 47:21 51:25 55:20 66:15 102:19 114:12
dollar 29:14
Donald 122:22 125:5
downstairs 72:23
draft 6:10 64:14 90:23 127:3
drafts 24:21
draw 117:22 122:21
drawing 100:22 112:23
drill 111:3
driven 88:2
DS 107:8
due 22:25 23:2 102:2

E

E 125:5
e-mail 41:3 56:4 57:21,24 58:4,6 126:6
e-mails 127:7
E&Y 126:22 127:7
earlier 52:12 75:14 107:5 125:2
early 13:6 15:22 16:17 17:6 18:5
easiest 38:9,11
effect 68:10 81:13 87:5 99:6 115:25
either 42:13 52:3 76:8 89:9 93:4,21 111:9 135:7 137:16
elimination 27:8
Eliot 2:4
Elliott 55:18,19,20
ELMCLIFFE 1:7,7
emerges 17:15
emerging 35:3
employee 13:13 17:23
employees 18:7,11 20:15,21 21:1 41:5 75:7 93:19 95:10
employment 4:3
13:3,7 14:6 15:13 15:17 16:3,4
enforceable 119:7
engaged 41:24
enquiry 76:18
ensure 68:14
enter 11:8
entered 13:2 16:2 136:6
enterprise 51:25
entities 17:2 25:17 25:18 26:23 27:2 27:3 75:15 76:5
entitled 67:21 76:22 99:23 104:10
entity 17:15 25:2 35:4 81:5 82:22
equal 51:4
equally 50:6,11
equitably 50:6,12
equity 126:9 131:1
Eric 2:8 81:22,23 82:9 134:21 135:12
Ernst 125:23
essentially 127:3 132:19 136:10
established 63:22 64:1
estimates 130:19
et 55:13 76:10,22 80:2 112:12 118:20 122:11 123:24,25
event 102:10
events 42:13
eventually 21:19 22:10
everybody 138:3
evidence 41:21 46:17,22 109:3 119:12
evidences 113:1
evil 52:4
exact 18:18 21:13 26:1 33:11
exactly 17:5 18:3 25:3 26:5 80:12 82:2 87:8 118:16
examination 45:10
example 81:22
exchange 46:22
exchanges 45:24
exclude 91:22
excluded 126:9,15
executed 111:22
executives 39:14
exercise 92:10,13
exhibit 15:3,15,16 16:6,20,22 28:9 33:15,21,22 39:20 39:22 42:7 57:2 60:15 71:3 73:12 73:22 106:3
exhibits 4:1 15:9
exist 97:12
expect 88:16 100:10 107:10
expectation 65:2 88:19
expected 53:24
expense 46:12 77:9 122:15
expenses 55:14
expensive 65:17
experience 49:23
expert 50:14
expertise 104:25
expiring 102:11
explain 5:12
explore 8:7
express 16:7,10
expressed 10:8
expression 44:8,11
extended 101:5,17 101:21,25 105:15
extent 40:16 45:24 82:8 93:1 98:5
external 56:9

F

Fabello 2:7 3:5 24:12 84:7 100:22 103:22 106:25 107:4,16,22 109:10 111:14,15 115:4,6 116:18,25 117:5,16,18 119:24,25 120:18 120:21 121:3,5,12 121:21 128:16 129:8,25 130:7,14 130:16 134:13,16 134:23
facetious 52:5
facilities 19:7
facility 19:14,15 20:8,11,15,16,22 21:9
fact 12:13 56:22 105:22 130:25
facts 36:20 119:11
factum 100:10
failed 37:6
fair 5:13 21:14 24:10 25:19 26:11 26:11 42:15,19 44:12 46:14 49:12 53:1 56:14 113:19 114:22 115:23 116:3,4 118:21 132:25 137:9
fairly 134:4
fall 33:1 45:3
Falls 20:16
false 12:5,14 99:14
familiar 21:16 22:14 54:22 84:20 96:11,12 129:17 129:19
family 26:3,22 135:23 136:21 137:16
family's 135:8
far 44:21 45:5,6

46:20,22 82:6 93:1 116:16 132:2
fault 48:10
favourable 91:14
February 13:6 15:25 18:24 21:15 108:4
feel 122:18
fees 102:25 106:14
Fenwick 20:17,21 21:2
Fewer 107:14,17
fictitious 11:1
fight 95:7 102:18 105:12
fighting 104:22
file 1:1 47:15,17 103:9
filed 18:18 45:4 54:5 116:10 130:12
filing 51:2,12 113:13 137:17
final 127:2
finances 127:22,25
financial 12:24 21:20,24 22:2 26:14 86:6
financials 86:8 128:5
financing 22:6 23:19,21 32:25 74:18 130:19 131:1,1
find 49:9 60:17 112:2
findings 41:10
fine 8:14 15:5 16:21 33:19 42:6 54:21 55:3 58:16 61:6 72:24 99:10 100:20 104:9 120:22 130:11
finger 66:1
finish 46:3 60:3 107:21
finished 14:12 67:22
firm 37:1
firms 44:23
first 8:8 15:13 28:19 31:7 36:16 37:4 48:23 49:23 49:23 50:17 60:21 62:24 66:9 77:5 91:25 94:15 115:9 119:1 120:4,6 129:16
fit 118:6
fitting 82:22
five 9:2 19:21 35:20 104:14
fix 47:21 50:18 51:18,21,25,25 52:3
fixed 52:8 104:16
flip 30:18
flowing 114:8
focus 8:17 36:14 129:10
focusing 133:24
following 69:23 102:10
follows 66:22
footing 51:4 114:23
footnote 130:18
forced 91:17 93:22
forecast 130:20 132:19,23 133:2,6 134:3
forecasting 132:2 133:7,15
forecasts 103:25 129:17 131:23
foregoing 75:8 85:24 112:7 139:12
forensic 82:21
forget 40:20
forgot 27:19
formed 36:15
former 34:5 41:5
Forum 26:24 75:15
forward 59:2 61:3 62:24 64:23 65:1 69:19 78:24 80:5 83:6 89:2 98:17 99:12 102:11 104:4 105:14 109:2 137:3
found 3:12,15,18 41:21
frame 45:9
free 87:2 122:18
Friday 120:25
friend 84:7
friends 24:12
front 7:11,13 13:8 28:11,24 54:9 63:1 68:10 69:11 90:7,20 106:6 121:20
full 30:20
fullest 98:5
fund 33:13 68:16
fundamental 50:5 50:10
funded 105:12
funding 59:10 66:12
funds 104:14
further 88:22 93:12 127:16,17

G

G 125:22
gears 116:9
general 36:15 37:3 47:19 48:17 113:13
generally 12:1 96:12 108:11 110:15 113:6 114:3 119:19 136:3
Geoffreys 107:8
getting 22:14 27:23 29:21 30:19,20 35:22 49:10 53:10 80:11 105:12 137:23
Gill 131:3
Gillian 2:7 128:12
give 12:10 23:1 58:25 71:12 83:23 112:20,20 120:3
given 46:7 47:9,10 67:10 97:2 130:3
gives 97:22
giving 83:22
Glenn 2:14
go 6:23 12:16 14:12 27:13,18 28:8 30:3 31:7,13 37:18 40:21 41:14 41:15 56:13 57:2 59:8 60:10 61:16 62:14 64:23 69:2 71:18 74:21 79:18 80:19,21 84:23 88:4 91:7 92:17 92:25 93:12 106:2 112:21 113:19 116:10,17 117:10 120:15 121:6 122:19,24 124:9 131:4
goes 30:15 49:3 63:8 65:1 84:10
going 7:1 8:11 9:18 12:2,7 15:6,7 17:19 18:17 20:19 24:3,17,18,24 26:25 28:15,16,23 35:8 41:15 45:1 46:1,10 50:17 54:9,16,23,25 59:5,9,22 60:2,13 60:21 61:4 62:2 62:11,22,23 64:15 68:17,24 69:6,13 69:17,18 70:1,7 70:11,14 71:13,18 72:12,16 73:11 82:13,21 86:4 91:17 92:5,11 93:22 95:10 96:22 97:1,15 99:18 100:2,7,19 101:7 104:4 109:2 110:3 111:19 112:19,20 116:11 120:17 121:11 124:21 128:24 129:22 133:15
good 52:3 72:16 107:1,3 134:19,24 135:1
grab 36:10 72:23
grant 8:5 66:11 68:24
granted 66:19
great 45:24 108:6 128:13 131:4
greenhouses 93:20 93:21
Greg 1:11 3:3 5:4 60:12 63:13
ground 109:18
group 7:21 8:9,13
guess 15:2 118:12
guilty 82:9
Guyatt 1:11 3:3 5:4 5:6 6:5 7:12 12:23 15:12 17:1 27:21 34:20 36:13 37:22 38:20 39:4 40:3 47:14 54:14 58:20 59:2 61:11 73:4 73:14 77:21 86:4 88:24 90:24 92:10 93:18 94:18 97:1 99:3 100:25 104:1 107:1,23 111:17 115:8 117:19

120:2 121:8 128:21 129:16 130:17 131:5 134:13,20 135:2 137:14

H

H-report 90:7,10 93:9
Hainey 100:14
hair 107:13
hand 47:22 61:5 90:2 102:1,18,22
handed 60:12
handful 134:22
hang 59:4 94:2 97:10,10
happen 24:17 64:21 86:25
happened 36:15 42:21 45:2 81:11
happening 40:10
happens 65:9,15,17 65:18 86:20
happy 69:11 132:7
hard 28:11
harmless 75:5 122:8
head 18:25 19:2,10 19:15,17 20:15,22 21:3,8,13 41:17
heading 125:12
Health 41:11
hear 19:25 25:8 44:8
heard 44:10 70:11 74:8
held 1:11 33:9,12 34:5
help 25:5 63:25 128:9
helpful 61:9
helpfully 61:14
helps 113:20
high 110:16
highly 7:18
highway 69:6
hit 33:6 36:14
hold 9:18 20:20 75:4 122:7
holding 126:14
Holdings 1:6,6 2:2 17:4
home 21:6
honour 68:8 130:8
hoping 107:15,18
hour 54:16
Howard 2:4 3:4 5:5 6:1,2,4 7:4,8 15:1 15:10,11,20 16:25 24:3,5,10,14 27:15,20 28:16,18 29:1,4 30:1 33:20 33:25 34:11,18 36:2,9,12 37:15 37:20 38:16,18,24 39:14,16,24 40:2 42:9 43:15,20,21 46:1,4,13,24 47:12,13 48:18 49:16,20,21 53:17 53:22 54:11,13,24 55:5,6 56:14,16 57:7,13,22 58:8 58:18 59:7,13,23 60:1,15,20 61:1,6 61:7,18 62:21 63:3,15 64:4 66:4 66:5 67:25 68:11 69:4,13,15,25 71:5,7,14,15,16 72:2,7,8,15,19,24 73:3,10,24 74:2,6 74:12 76:19 77:20 79:13 82:15,20 83:2,3 84:4,5 85:22 86:3,22,23 86:24 88:4,6,21 88:23 89:7,12,14 89:19,20 90:12,13 90:18,21 92:5,8 92:14,19 93:3,7 93:14,16 94:3,8 94:17,24 95:5,14 95:16,21 96:1,4 96:18,23,24 97:9 97:14,18,20 98:15 98:23,24 99:1,5 99:11,15,20 100:4 100:12,21,24 101:13 103:20,23 104:8 105:10,19 105:25 106:8 117:23 118:17 123:5 124:17 127:23 135:2,15 136:5
Howard's 107:11 107:13 109:19
hypothesize 96:7

I

i.e 101:25
idea 118:23
identified 58:17 61:15
identifying 57:20
immersed 22:6
impact 92:23
implemented 104:7
important 5:7 27:16 99:22 100:13
importantly 41:19 128:21
include 18:15 22:24 53:15 62:7 68:21 80:5 83:6,11 110:10 113:22
included 11:19 26:22 49:14,19 75:15 81:1 84:9 130:25 136:16
includes 30:25 53:19,20 79:22 118:18 124:12
including 34:5 43:4 110:7
incomprehensible 59:16,19
incorrect 6:21
incurred 66:3 67:17 69:18 76:24 77:4,10
indemnification 73:25 74:25 124:5 136:12
indemnified 76:23 79:24 81:3 122:16 123:19 124:14 136:14
indemnify 75:4 122:7
indemnifying 78:5 123:2,13,15
indemnitees 75:9 80:9
indemnities 14:20 23:15 24:1 62:8 84:1 113:25
indemnity 14:1 16:11,16,17 23:8 23:9 31:3 52:20 52:23 53:4,15,19 53:25 55:15 56:1 56:20,24 60:7 61:10,24 62:7 67:21 80:10,14,18 80:25 83:13 85:25 86:19 87:4 91:24 92:24 110:18 113:3 115:16,22 116:1 117:24 118:19,24 119:6 119:12 120:8 121:23 123:6 136:6
indemnity-related 110:11
independent 41:2
INDEX 1:14 3:1
individual 32:5
individuals 11:2 25:3,17 35:21 42:22
information 4:8 33:16,23 34:9,17 45:18 70:19 71:24 121:2
initiated 44:17
input 90:3 91:2 94:16 115:9
inside 56:24
insisted 72:10
insomnia 78:2
instructed 70:4 91:21
instructions 92:2
insurance 13:21 16:8 23:11 29:18 85:21 87:14 88:1 105:2,4
insured 88:12 89:1
insurer 59:3
insurers 59:12 85:12,15,18,24 87:19,23 88:11,16 88:20 89:2
intend 81:8
intended 80:9
intention 66:11
internal 56:8
internet 5:7
interrupt 130:1
interrupted 14:11 59:8 94:11 95:22 102:7
interviewed 42:22 43:5,7,11,19
interviews 41:4
introduced 107:5
invalid 119:13,20
investigation 36:20 36:22 37:10 39:10 39:15 40:22 41:1

41:20 42:19
investment 33:13
INVESTMENTS 1:7,7
invoices 114:18
involve 107:12
involved 23:3,19 40:5,7,7,9,14 42:12,16 45:8 76:5 81:17 104:22 129:18 136:2
involvement 38:4 107:25
issuance 69:23
issue 59:11 110:12 114:16 119:23 127:25
issued 44:20
issues 42:1

J

Janda 139:17
January 4:4 9:11 9:20 13:2 15:14 15:19 98:11 132:9 132:12
job 86:16,18
jobs 93:20,21 95:10
Jocelyn 2:5 27:13 28:11 38:13 39:25 53:11,12 54:11
Joe 2:14
John 2:7 107:4 116:17 128:15
join 13:12,15 14:18
joined 12:23 13:1 18:24 19:19,20 20:1,7 21:15 26:1 32:21 108:4
joining 88:18
Jonathan 2:10,15
July 4:10 37:21 38:14 39:5,22 44:8 57:23 58:3
jumping 124:2
June 33:6 49:3
Justice 1:2 100:14

K

K1P 1:24
Kaden 32:18 33:6 35:10
Kalloghlian 2:13
keep 34:21 35:11 35:23 39:2 54:23 54:24 79:14 93:20 100:1 113:18 130:4
Kemp 2:5 7:2 27:14 38:15 53:11,13
key 17:23 18:7
kinds 56:12 122:15
knew 21:19 25:20 26:9,13 27:1,21 40:10 75:12,18,24 76:5,18 77:15 135:7
know 6:9,21 12:15 13:8 14:3 15:23 21:12 22:1 25:23 28:7 30:7 31:20 32:18 33:11 34:14 35:14 36:7,22 39:5 40:13 43:3,6 44:1,21 45:5,6,22 46:19,20 49:17 51:20 53:12 58:22 62:12 65:1,16 72:1,3 76:18 81:13 84:13 86:11 89:7 91:21 93:1 93:13 102:14 104:18,21 105:1,6 107:6 109:21 112:2 129:20 135:7,10,14
knowing 12:8 22:14
knowledge 28:4 81:22,24 82:9,12 82:18,18,22 88:20 99:24 107:25 118:7,9 119:15 127:7,13 130:21 133:8,17
known 76:4 135:23 136:1
knows 76:15 98:17
Kolers 2:4 38:10 106:20

L

laid 34:16
Langstaff 19:5,20 21:3
language 61:23 85:7 93:8
large 65:10,20
late 17:5 45:3 47:16
law 66:8 98:5,19
laws 50:14
lawsuits 108:22 114:1
lawyer 5:25 135:9 135:12
lawyers 6:9
leap 82:14,15,17
learned 50:3,9 52:12
lease 19:18 52:17
leases 19:13
leave 24:11 28:1 46:10 47:1 59:20 81:5 84:6 103:21 120:1
leaving 9:17
left 36:6
legal 52:4 55:14 56:11 62:3 80:16 82:17 102:25 106:14 114:8 115:1
lenders 66:23,23
lending 68:4
lengthy 120:12
let's 30:2 33:4 37:18 54:24 62:14 67:11 73:20 80:19 111:25 121:6 122:23 123:12
letters 113:22 114:3 114:5
level 110:16 119:16
liabilities 102:2 110:6,8,10
liability 77:8 79:25 104:16
lied 86:17
light 137:5,10
limit 45:18
line 55:11 77:5 124:3,9
liquidation 91:3,17 93:22 95:11 96:7 97:5 99:13 101:3 101:5,16 102:9,14
liquidations 103:9
liquidity 68:20 89:24 90:3
list 1:3 3:9 4:1 23:1
litigation 31:12 44:17 51:8,13 64:22,24 65:15,16 70:8,12,14 86:8 102:18,20 104:12 104:13,23 105:3 105:13 123:25
little 8:8 12:10 25:10 37:9 45:22 76:23 110:4 111:3 128:23 132:22
Litwin 2:4 9:7 10:4 11:12 26:3 27:2 31:2 43:4,10 45:19 46:18,23 47:6 53:4,25 55:12 62:8 73:5 75:15 76:2,15 77:15 83:7,8 87:3 135:8
Litwins 27:5 45:20 79:3 81:8,17 83:23 87:24 135:3
locusts 44:15
long 17:4,5 26:7 79:19
long-term 135:8,12
look 13:23 53:9,9 53:18 54:5 57:9 77:22 84:15 96:22 98:12 112:1 128:11
looked 75:14
looking 73:17,19 74:4 116:20
looks 133:15
lose 36:6
loss 77:8 120:22 122:15
lot 40:13 51:7 59:16 107:12
lots 102:1
love 103:12
Ls 27:9
lucky 6:1
Lynch 107:7

M

M5H 1:24
maintain 13:21 16:8
major 87:23 88:11 89:15 97:11
making 9:24 29:14 42:17 69:3 93:6,7 119:1
man 11:25
management 4:8 8:24,25 33:15,23 34:9,17 37:11 41:6
management's 10:2
managers 75:6
mandate 41:11
manufacturing 21:4

Mar-risa 26:23 75:15
March 1:12 4:6 5:2 6:15,15,24 11:20 16:20,23 28:9 47:25 58:21 60:5 61:3 62:19 66:10 73:7 78:14 89:22 89:22,23 106:4 108:24 109:5 113:2,9 116:11,21 116:23 117:4,9,13
Marcovitch 9:6 34:20
mark 2:4 9:7 14:23 15:2 16:19 33:15 39:19 42:4 43:4 53:24 55:12 62:8 76:2,15 80:15 83:7 87:2
Mark's 55:22
market 44:9 48:4 48:17,22
material 37:23 47:9 47:10 54:22
materials 128:2
matter 1:5,5 38:3 46:23 134:21
McCarthy 36:25
MCTO 35:17 47:18
MCTO's 47:15
mean 8:12 13:17 15:6 26:5 38:2 40:7 49:19 53:7 67:1,18 86:12 92:12 97:7 105:8 130:6 137:2
means 30:5,12 31:11 62:4 63:21 109:4
meant 42:10 86:14
mediation 45:23 46:15 47:5,10,11 88:3
meet 102:1 107:6
meeting 8:5 9:14,15 10:5 11:13
meetings 11:16 23:3
member 9:2 11:15 32:9,20,25 43:14
members 9:5 10:10 10:12,22 11:4,22 31:24 33:17 34:2 34:4,5 41:5,6,23 43:4,9 44:3 75:7 79:6
memory 31:20 37:19,19 49:7 96:14
mentioned 52:11 125:1
Merrill 107:7
met 118:25
metaphors 107:14 107:17
metrics 133:24
Michael 2:13
middle 122:25
mighty 120:22
miles 19:18,18
milestone 18:9
million 22:7 34:6 50:19,19 51:18,21 52:2,3 70:7,11,14 103:2,4,4,5,12 131:7,10,13,16,19 132:15,17,18 133:3,7
mind 8:16,18 11:2 11:21 57:20 65:9 65:14
minimum 69:5
minute 110:13 117:17 125:4
minutes 19:9,21 20:4 72:20
misrepresentations 108:18
missed 58:1 106:20 117:17
misspoke 77:13
mistake 117:14
Mitch 83:13 135:4
Mm-hmm 63:11
moment 14:22 38:25 40:21 49:8 60:17 74:25 78:10 80:20 100:18 129:23
momentarily 60:17
Monday 94:22
monetary 83:17
money 71:9 103:14 103:16 105:12
monitor 89:25 91:2 91:13,20 92:2,3,4 92:11,13,16,18 94:13 95:19,24 125:23
monitor's 90:7,10 90:23 92:3 93:18 132:6
month 56:18
monthly 56:18 58:20
months 108:7
mopping 106:2
morning 54:6 73:6 93:9 94:24
Morris 2:12
move 36:6 59:15 93:15 100:15 111:3
moved 20:3
moving 127:20

N

name 58:6 134:20
named 31:20 32:5 35:21
names 125:11
nature 45:16 46:7 46:21 114:19
near 100:22 137:23
necessarily 42:17 51:10
necessary 102:10
need 5:17 13:8 14:23 28:10 48:1 56:13 103:9 109:19 118:25 130:5
needlessly 88:16
needs 44:9
neither 89:13
net 27:23
never 11:12 43:23 44:10 59:15 100:16 136:20
new 20:3
news 33:4,4,6 36:14
Niagara 20:16,18
night 66:22 94:22
nine 6:6
nod 7:12
non-compliance 41:25
non-settling 64:22 64:25 65:6,9,18 72:11 87:24
normal 23:13
normally 13:14 86:9,16
note 15:2 57:12,16
noted 115:7
notice 99:21 113:24 114:3 124:20
NSD 48:11,13
NSDs 88:12
number 17:12 18:18 20:20 21:13 25:17 26:18 32:1 33:12 44:16 47:25 100:5
numbers 21:2

O

object 97:1,15,15 100:19
objected 62:12
objecting 97:17
objection 106:22
obligation 80:10 82:4,23
obligations 81:9
observe 5:21
obsessed 5:25
obtained 85:12,19 86:1
obtaining 85:8 136:13
obvious 89:10 92:15
obviously 24:8 69:1 78:20
occasions 56:23
occurred 88:3
October 4:12 40:1 42:8
offered 14:7
offering 108:13,19 110:21
office 18:25 19:2,10 19:15,18 20:4,5,6 20:15,22 21:3,8
officer 12:24 32:7 32:10,14 43:16 55:22 75:20 76:16 77:16 81:23,23 82:10,11
officers 34:16 75:6 76:4,9,22 79:3 81:2,6 82:5 123:8
offices 19:12
Oh 26:17 132:18
okay 5:22 8:13 20:19 25:11 29:8 30:17 31:6 34:19 35:8,20 36:9,11 39:3 40:20 44:12 46:25 48:8 49:16 49:20 50:15 51:23 54:24 55:5,9 56:14 57:15 58:14

58:15 61:21,21 63:5 70:5 71:15 72:7,19 74:23 78:11 80:22 82:16 83:2 84:19,24 85:5 87:9 89:19 90:19 91:11 96:23 108:21 109:1,23 111:18,25 112:18 113:12 114:6,14 116:5 117:2 119:5 119:18 121:3,19 122:2 125:12,17 126:21 127:6,20 128:4 129:9 130:10 132:25 134:1,8,23,24 135:15 138:1
old 20:6
omit 46:15
once 59:13
ongoing 39:11
Ontario 1:2,24,24
onward 56:18
operating 103:13 103:17
operations 21:17 22:15
opinion 11:3 48:25 62:3
opportunity 59:25 92:6
opposed 97:15
option 98:16,21 102:10,17 105:13 105:23
options 12:12,13 97:4,7,7,11 99:23 100:5 102:13
order 8:5 13:12 17:23 23:10 59:18 69:24 70:2 98:3 126:18
orders 65:11,20
ordinary 102:4
original 29:6,22,23 30:5,13 32:5,17 35:21 48:14 106:10,13 111:9 111:13
OSOYOOS 1:6
OSP 29:9,11 48:11 48:12
OSPs 87:19
Ottawa 1:24
outcome 42:18
outset 8:18 109:18
outstanding 58:23
overhead 52:9
overview 103:25
owed 82:23
owned 25:20 26:15 27:5
owner 83:14
owns 28:5 35:13

P

p.m 1:12 5:3 73:1,2 138:5
page 3:2 4:2 6:25 7:9 9:6 27:13 28:20 30:4,4,18 31:8,13 34:21 54:12 57:4 58:10 60:22 61:19 62:17 63:17,18,18 73:12 73:15 74:4 75:21 77:1,22,22 80:21 84:10,15,23 91:7 91:8 106:7 109:9 109:11,12,25 110:1 112:1,2,6 117:21,21 118:11 121:24,25 122:5 122:14,14,18,23 129:12,14 131:4
pages 3:12,15,18 25:6 61:17 118:12 128:10
paid 58:21 59:20
71:10 72:5 113:1 113:14 115:8,20 116:2,7 120:8
paper 7:5 53:10
paragraph 6:25 7:1 7:10,16,20,24 8:3 28:15 50:22 51:2 51:7 60:13 77:25 91:8,9 108:23 109:6,12 110:1 118:15 123:1 126:5,5,12 127:2
paragraphs 10:21 48:2 68:3
paraphrase 66:22
paraphrasing 136:11
pardon 96:17 107:16 127:16 132:16
part 5:6 7:16 14:9 17:6 37:1 41:16 44:4 45:7 64:14 70:13,16 84:3 85:9 88:13 89:15 116:11
particular 6:24 53:18,23 82:19 85:22 94:21 122:23
parties 29:7 30:5,6 30:12,14 32:17 35:22 81:11 98:10 106:10,13 112:15 123:20
partway 78:3
party 29:22,24 32:6 40:15 78:5 79:24 81:3 82:24 86:9 86:18 123:2,9,14 123:15 124:14
pass/fail 37:5 42:11
passed 42:25
Paul 2:2,8 14:23 26:22 39:6 43:16 60:9 81:22,23 82:9 94:9 100:18 105:20 130:8 134:21 135:13,23 136:2,21,21 137:16,25
Paul's 137:16
Pauls 27:6
pause 125:4 130:18
Pausing 113:5 114:2
pay 55:24 67:9 69:18 70:2 102:24
paying 59:10 114:20
payment 18:19 56:10 65:20 113:6 113:11 114:10,18 115:14 118:4
payments 56:19 58:23
PDF 27:14
penultimate 126:4
people 11:3,5 18:7 21:6,12 40:13 50:5,10 79:10 81:17 92:23
percent 21:11
percentage 93:19
perfect 7:7 111:14 117:16 129:15
perform 53:3
period 20:3 49:3 104:23 106:14 130:20
permit 129:24
permitted 98:5
person 11:1 32:18 119:1 126:14
personal 48:25
personally 51:10 64:11 70:22 71:21 76:11 79:5 104:1
persons 75:8 91:23
perspective 10:3
80:15 134:6
pertaining 44:11
Peter 2:4,9 28:25 36:5 57:20
Philip 2:12
pick 110:4
picking 132:10
pieces 44:17
place 1:11,23 5:1 14:20 17:22
Plaintiff's 71:19
Plaintiffs 45:11,13 65:4 136:22
plan 1:6 7:17,25 8:9 11:13,18 17:16 18:19 29:15 35:2 35:25 36:3 40:21 49:3,14 60:6,14 60:16 61:2,23 62:15,15,19,22 64:20 65:23 68:9 68:17 69:21,22 70:8,13,17 71:3 78:25 79:4,11 80:5 83:5 84:3 85:9,13 87:5,20 88:25 89:3 90:17 91:13,16 96:7 97:5,22 98:17,20 99:13 101:2 102:11 103:16 104:7 105:14 106:3 110:5,6,7 110:25 116:10,17 117:20,21 118:12 121:17 128:2 137:3,17
plans 70:20
Platt 32:5
please 5:11 55:24 109:5 112:10 116:18 118:11 121:7,24 122:18 122:20 125:15 126:22 131:3

pleased 107:6
point 19:12 26:18 40:18 43:10,24 46:11 59:22 62:13 67:5 72:6 89:12 89:12 102:12 105:5 129:21
points 107:24
policies 88:17
policy 105:5
polite 57:17
Polonius 66:22
portion 80:18 89:24
position 8:24 10:10 16:17 28:2,5 39:17 59:14,24 67:9,10 68:8,15 68:23 72:13,14 88:4 98:11 100:1 100:15 104:24 105:17 120:25
positions 50:6,11
possibility 67:8
possible 11:15
post 104:4
practice 23:13
pre-filing 113:3 115:1
precise 24:9
Preece 2:10
prefer 24:9
preliminary 107:24
preparation 40:10
prepare 6:10 22:2 23:2 94:15
prepared 92:3 113:20 114:25 128:6 134:3
preparing 38:5 90:3
prepping 51:8
present 2:11 9:11 9:15,22 11:12,16 12:11 68:16 129:23
presentation 129:13 131:4
presenting 12:13 129:18
press 4:10,12 37:22 37:22,24 38:5,11 38:14 39:23,25 40:7,14 42:8 43:8
pretty 132:2
principle 50:5,10
printed 54:8
prior 6:16 68:23 78:6 79:10 85:7 113:13 120:25 123:18 127:3 133:9
privy 42:17 45:23 71:2
probably 38:9 47:1 54:8,22 96:1 100:23
problem 47:21
problems 50:18 51:18,22
procedure 126:11 126:13,17
proceed 43:22 58:12 65:5 104:15
proceeded 10:13
proceeding 46:12 139:12
proceedings 6:7 138:4
proceeds 27:23,23
process 14:10 27:7 45:8,23,25 51:19 52:7,10,13,24 66:15 85:16 101:22,25
produce 91:14
production 19:15 21:7,9,12
professionals 52:4
program 17:24 49:15
projected 127:25 128:5 131:6 132:5
projections 129:10
promise 23:11
promised 23:25
promises 13:11 23:19,22 24:9 91:24 92:24
promotion 15:22 15:24
proof 125:9,15 126:8
proofs 112:24 125:2,24 126:1
proper 115:9
properly 56:24
proposal 68:9 69:2 69:5,10
proposed 108:17 110:25
proposing 61:23
prospectus 22:11 24:16,21 25:7 108:19 135:20
protect 64:16 72:11
provide 14:1 23:15 45:9,15,17 123:10
provided 18:2 46:16 47:5 66:17 98:3 103:24
provides 98:4
providing 113:24 124:20
provision 136:10
provisions 14:6 117:23 121:23 122:20
public 14:19 17:7 23:10 41:1 48:4
published 40:17
Pukier 2:6 55:18
pull 128:13
purporting 83:23
purpose 33:5
pursuant 55:25
110:18 111:5 126:11
pursue 104:13
push 88:22
put 15:3,7 17:22 25:6 28:10,23 31:23 37:3 38:11 38:13 39:25 51:3 54:10,12 60:16 61:3 66:1 67:11 68:23 69:11 70:7 70:11,14 73:5 78:24 80:5 83:6 87:17 88:8,10,25 89:23 92:4 96:21 98:10,17 99:12 100:6 102:11 105:14 128:10 137:2
puts 104:24
putting 62:24 130:2

Q

Q1 21:23 22:2
qualification 105:17
qualify 118:23
quarrel 88:15
quarter 34:6
Queen 1:24
question 5:10,11 12:9 25:16 26:5 27:19 35:1 46:15 58:1 59:5 62:12 65:13 76:13 77:19 80:13,15,17,19 81:4 82:1 83:1 87:11 92:1,4 94:14 97:17,19,24 102:7 120:4 124:16 137:11
questioning 137:20
questions 5:9 8:10 23:1 62:22 99:6 99:19 100:2,18
107:10,12,13,21 109:18 111:4 122:19 127:22 134:9,10,12,22 135:16 136:25
quick 5:9 112:1
quickly 22:6
quite 19:24 129:13
quoting 41:17

R

R.S.C 1:5
raised 14:16 130:20
rate 50:19,24 51:12
RBC 107:8
read 6:11 30:14,19 33:15 38:25 40:4 42:1 48:6 54:17 56:3 57:16 58:13 74:25 77:11,25 78:2,8,9 80:1 84:21 94:18 96:10 96:14 112:11 118:2 120:19 122:10,19 123:4,5 123:12 124:15 125:25 126:18
reading 57:12 79:14 118:22 120:22 127:2
ready 100:23
real 67:7 139:12
reason 60:21 87:23 88:11 114:15 116:1 119:19
reasons 51:11,15
recall 9:13,15 18:3 24:25 25:3 37:12 40:16 64:18 78:19 113:10,12 114:4,5 114:17,18 120:11 123:5 135:19 136:7,9
receive 18:19 91:16
received 58:3 70:19

79:10 93:9,11 114:13 115:25
Recess 73:1
reckoning 58:19
recommendation 9:25
record 7:10 14:24 17:7 28:25 30:4 31:14 46:7,8,21 53:15 57:20 62:20 73:6 84:10 88:5 109:12 111:10,13 112:2,25 113:22 116:11,13,16 117:4,6,8,22 121:8,25 122:5 125:22 128:7 130:3,6 132:7,12
record/page 60:23
recorded 139:10
recover 66:3
REF 3:15 82:25 89:5 99:4,25
refer 12:2 36:23 109:1,20
reference 48:2 66:11
references 130:5
referred 15:1,9 73:6 81:3 87:12
referring 34:15 57:21 60:13,18 61:25 68:21 116:24
refers 94:12
Refusals 3:9,15
regarding 110:20 120:6
regards 110:24
region 20:18
regulatory 32:6
reimbursement 59:3
related 27:2 62:16 63:1 74:18 79:3 81:7 121:23 127:22
relates 48:20
relation 55:21
relationship 135:3
relatively 17:12
release 4:10,12 30:19,21,25 37:22 38:11,14 39:23,25 40:8 42:8 43:8 79:23 80:6,11 83:7,12 85:9 110:5 123:10 124:13
released 30:4,11
releases 35:23 37:23,25 38:5 40:14 88:17 89:1 98:4
relevant 59:6
relying 81:21
remain 17:8
remainder 21:2
remaining 41:22
remediation 40:21 51:24
remember 9:19 25:13 58:6 123:10 135:2,16
remind 130:11
repeat 65:13 81:25
repeating 100:1 113:18
report 90:23 92:3 93:13,18 94:1,6 94:12,16,16,21 96:6
reported 92:18
Reporter 94:5 103:19
reports 132:6
representatives 75:7
represents 115:19
request 43:12,23 45:13 71:23
requested 39:6
requests 44:2
require 88:17
required 45:4 71:8 80:6 123:7,9
requirement 23:9
requirements 64:6
requiring 80:11 85:7
resign 37:6
resignation 37:13 39:6 42:14,25 43:12
resignations 43:24 44:2
resigned 33:1 39:7
resist 69:14
resolution 10:16
respect 6:14 9:25 16:3 23:21 24:12 24:15 27:1 34:9 38:6 39:13 42:24 46:18 47:6 61:24 70:20 80:10 111:4 113:25 115:10 116:6 118:5 119:10 124:4,17 126:23 127:17
respective 75:6
responded 58:13
responding 53:15 58:9 69:14 73:5 125:24
response 125:25 126:22 127:3
responses 125:22 127:8,8
responsible 20:20
rest 17:17
restructuring 9:21 18:10,20
result 37:5 44:14 91:14
resuming 73:2
retain 17:15
retained 36:19,21
retention 17:23
return 112:11
review 37:1 38:6,7 40:17 41:3 42:11 90:22 93:2
reviewed 6:16 24:20 74:14 94:1
right 5:16 6:8 7:15 8:1,5 9:1,8,17 12:18,21 14:17 15:10 16:1 22:3 30:15 31:3 33:20 34:14 35:12 36:6 37:7 41:7,12 43:1 43:17 44:7,12 48:4,23 51:4,13 52:7 53:21 56:5 56:25 58:25 60:7 61:24 66:19,24 68:5 69:9 70:9 74:15 75:1,16 78:3 83:15 84:4 86:23 87:6,14,20 87:24 89:3,19 91:6 95:1 98:6,21 100:8 102:2 103:4 104:3,16,20 105:3 105:13,15,23 106:1 109:15 110:16 111:2 112:5 117:19 119:2 120:21 121:17 125:1 130:24 131:8,14 131:17,20
right-hand 121:25
rights 85:25 110:18
Road 19:5
Robb 2:13
robbery 69:7
rooms 33:5
rough 20:14,21 21:2 47:14
roughly 21:10,12 51:17
RSA 9:11,20 10:1,9 10:13 11:8 96:11 96:11,19 97:22 98:2
rules 5:21,25 6:3 109:18
run 68:20 102:18 102:23,24 103:8 103:13 104:14 118:22
Ryan 2:12

S

sale 91:17 93:21 95:11 108:13
sanction 69:23 70:2 102:4
Sanders 9:7 25:21 25:24 34:20 83:14 135:4,8
save 69:8 132:8
saw 40:4 81:1
saying 37:16,17 59:23 67:23 69:19 87:8 99:8
says 30:8,10 41:18 43:9 50:23 61:14 68:2,2 78:4 79:15 80:23 91:12 93:13 94:6,7 112:6 117:9 122:5 126:6 130:18
scalp 44:9
scenario 65:23
scenarios 97:4
schedule 31:12,13 31:18
scheme 71:2
scratch 127:1
screen 25:6,11 28:10 38:12,14 54:10,12 57:10 96:21 128:10,23

129:14
scroll 38:23
scrolling 39:2
se 15:24 51:22
seal 18:18
second 11:20 18:9 50:8 57:8 62:20 69:22 77:5 119:6 119:11 126:5 127:21
secretary 32:13 43:18
section 13:20 14:1 61:15 63:1 90:11 90:14 98:9,12 121:23 122:2 124:7
sector 48:3
secure 66:23 67:11 67:12
secured 66:12 68:23
securities 63:17 64:9
security 66:18,24 67:1 68:24
SEDI 17:7
see 7:12,15,18,22 25:10,11 26:17 29:5 30:8 31:8,15 38:19 40:23 42:2 54:6 55:10 60:8 61:11,12,22 63:10 63:22 73:15,18 75:9 76:21,24 77:3,12 80:2,3 84:13 88:21 91:18 100:10 116:15 120:16 122:5 123:2 125:10,12 125:18 126:2,19 126:24 128:14,18 129:13 131:8
seek 59:2 66:24 79:1 86:18 137:15
seeking 59:17,19 115:9
seen 54:15 64:5,13 132:11
selling 24:18,24 25:14 26:14 27:22 29:20 30:22 74:18 75:5,14 76:21 83:12,19
sending 55:18
senior 8:24 41:5
sense 15:4
sent 113:23 127:9
sentence 78:3 123:1
separate 49:14
separately 8:10 14:24
September 49:4 55:8
Serge 2:13
set 26:15 31:12 41:2 76:23 103:6,7 127:21 133:2
sets 33:16 34:1
settle 79:18 123:8 123:23 136:12
settlement 29:6,22 29:24 30:5,13 32:6,17 35:22 48:15 62:16 63:1 72:10 88:18 103:6 104:5,12 106:10 106:13 124:11,23 133:10
settlements 88:3
settling 136:21 137:2,7
seven 29:1
shales 25:14
Shane 2:3
share 33:17
shared 41:10
shareholder 17:2,3 17:9 26:14 29:21 35:6,14 75:14 83:13,14,19 135:23
shareholders 17:18 24:18,24 25:1 26:15,21 30:23 35:3 74:19 75:5,7 75:13 76:10,21 79:3 81:2,7 82:6 83:8,23 136:17
shareholdings 17:6 33:18 34:2,15,22 35:7
shares 17:12,15 27:22,24 28:2,6 33:10,12 34:6 35:11,24 48:20 108:13
Shearman 113:23 114:9
short 99:21
short-circuit 120:5
shorthand 139:11
shout 99:4
shows 113:1 132:12
side 5:25
sight 67:23
sign 10:17 22:10 112:10
signatory 84:8,16
signature 73:16,18 74:5,11 75:22 84:13 112:1
signed 6:12 24:4 74:14 75:19 78:21 78:24 84:21 111:23 112:13,13
similar 85:7
Simultaneous 94:4
sir 9:10 11:11,24 12:22 13:10,18 15:21 16:2,14 17:20,21 18:6,23 20:13 24:16 25:5 27:11 29:5,13 31:6,16,22 32:16 33:3 44:14 47:24 49:1,22 50:16 51:16 52:11 53:2 53:23 56:17 63:25 64:13,19 65:9 66:6 70:5 76:21 78:13 79:14 83:5 85:11 88:10 91:7 96:5 98:24 99:17 103:1,2 105:1 106:12
sitting 72:1
situation 88:1 119:17
skill 139:10
small 17:12
sole 97:22
solid 114:23
solvent 104:2
somebody 49:9,11
sorry 11:7 14:11 19:24 28:14,21 30:10 34:23 43:16 48:12,16 50:7 57:25 59:8 65:12 65:24 66:10 67:15 70:10 74:7 86:11 87:7 94:3 101:12 102:21 103:20 108:8 113:7 121:10,15,17 133:11
sort 42:16 104:22 113:15 115:21
sought 70:18 79:7,9 114:20 115:20 124:7 136:20
sound 12:19
sounds 6:8
source 59:10
spades 16:15
spare 112:19
speak 5:17,19 36:10 76:12 79:6
special 35:6 36:16 36:18 38:7 40:22 41:9,18,19 42:18
specific 9:14,19 24:3 37:9 76:4 77:3 78:20 114:5 114:18 130:2
specifically 12:22 30:8 41:16 58:6 60:11 84:25 113:11 120:12
specificity 37:18 111:4
specifics 37:4
speech 112:20
spend 59:16
spent 51:7,17,21
split 21:3
spoiler 111:22
square 116:23
staff 21:3,4,9
stage 39:11 67:24
stakeholder 97:11
stakeholders 64:17 95:9
stamp 15:7
Stan 2:4 32:13 55:12 57:12 62:8 83:7
Stan's 55:23
standard 14:5,15 23:8
start 6:19 7:1,10 13:6 47:20 70:21 73:11 78:25 90:15 103:21 107:24 111:20
started 114:7,7
starting 55:7 73:12 78:3
starts 84:10 121:24 123:1
state 8:16,18 11:20
stated 136:10
statements 21:21 21:24 22:3 44:20

44:22 45:4,10,16 86:6
states 11:2
status 35:14
stay 31:7 62:15 71:9 101:5,6,24 102:11 103:15 105:15
staying 62:19
Steep 2:2 5:21,24 7:7 14:21,25 15:5 16:21 24:2,7 28:14,23 29:3,23 31:23 33:14,19 34:8,14 35:25 36:5,11 37:8 38:22 39:12,21 42:5,6 43:13,17 45:21 46:2,6,20 47:2,8 48:14 49:13,17 53:14,20 53:21 54:7,20,21 55:1 56:11 57:5,9 57:19 58:2,14,15 58:16,20 59:1,4,9 59:13,21 60:10,18 60:22,24 61:4,16 62:4,12,18,23 63:12,25 64:3 65:25 66:8 67:22 68:1,5,25 69:9,14 69:21 70:25 71:1 71:11,22,25 72:4 72:12,15,17,22 73:5,8,22 74:1,3,9 76:14,17 77:14,18 79:8,12 81:20 82:13,16,17,25 84:2 85:17,20,23 86:2,21 87:25 88:7,14 89:5,11 89:17 90:9,16 91:25 92:6,12,15 92:16,25 93:5,11 93:14,24 94:2,6 94:10,22 95:1,6 95:12,18,23 96:16 96:17,20 97:1,6 97:10,14,16 98:13 98:22 99:4,18,20 99:25 100:9,20 101:10 104:6 105:6,16,21 106:5 106:19,24 107:14 107:17,19 109:7 111:8,12 114:25 115:5 116:12,15 116:19 117:3,10 117:14 119:21,22 120:5,16,16,17 121:1,10,14,16 128:22 129:1,6,25 130:10 134:14,15 137:1,6,10,12,22 138:1
step 46:9,12 88:22 89:2
steps 68:14,19 137:7
Sterling 113:24 114:9
stick 86:5
Stikeman 55:18,19 55:20
Stikeman's 59:11
strange 12:19
straw 11:25
Street 1:24,24
strike 89:15
studied 95:4
subject 55:10,14 60:6 105:16,20,21 106:20,22 134:8
submit 45:10 58:23
submitted 125:2,9 125:16 127:10
subsection(d) 122:22
subsequently 20:5
subsidiaries 108:11 125:10,17 126:1 126:23
successful 18:10,20 35:2 65:10,19 66:2 67:17 71:9 120:7
successfully 119:2
sued 86:14
suffice 127:24
suggest 13:17 133:23
suggesting 102:23 103:1
Suisse 107:8
Suite 1:24,24
summer 35:18 45:3 47:16
SUPERIOR 1:2
supervised 95:19 95:24
supplement 22:11 25:7 135:20
supplementary 117:8
supplements 24:21
support 9:21 18:2 98:8
supportive 10:23
suppose 12:1
sure 17:5 24:7 25:16 26:4,9 38:1 50:9,20 52:22 53:6,8 54:4,11 56:24 59:21 66:21 68:19 76:3 80:12 82:1,3 84:14 85:14 87:8,10,11 90:12 97:2 101:19 101:22 102:16,21 117:7 137:12
swathe 45:2
swearing 50:4
switch 116:9
swore 78:13
sworn 6:6,16 45:9 45:16 46:17 47:5 47:9
swung 44:16

T

tab 73:8 111:10,11 111:16 116:12 117:20 121:9 125:4,8,14,21 126:1,22
tabs 125:21
take 29:6 33:14 34:7 38:25 43:18 45:1 49:6 54:15 54:17 55:2 71:13 72:2,4,13 74:24 95:2 107:11 111:25 114:16,23 120:2,14,17,23 138:2
taken 16:16 59:14 68:14,18 73:1
takes 63:16
talk 5:8 14:21 30:2 30:18 59:14 101:1
talked 87:13 101:2 106:22
talking 8:15,18 10:19,20,25 11:1 11:17,19 15:13 25:16 77:1 78:23 80:17
talks 122:14
Taylor 2:5
tell 7:11 12:16 20:13 31:24 56:7 61:8 80:9 81:6 88:10 100:21
telling 38:10 41:1 47:20 50:24 69:16 106:20 120:13
tells 58:14
ten 19:21 20:4 72:19
term 11:25,25 12:4 12:5 14:15 16:7 16:11 91:15
terminate 37:6 43:1 98:19
terminated 39:7 42:14 98:9
terminology 52:23
terms 20:14,14 23:8 23:18 32:16 36:15 37:4 46:25 47:15 47:20 70:19 72:9 90:6 91:3 112:16 133:18,20
test 107:20
testimony 46:18 47:5
thank 17:20 36:11 50:2 106:24 109:23 118:13 119:24 121:3,22 122:4 125:8,20 129:7 134:14,15 134:17,24 136:24 137:19,21 138:1
thanks 7:14 112:3 115:4 128:16,21 134:12 138:3
theoretical 97:13
thereabouts 102:5
therefrom 139:11
thing 13:24 75:14 96:14 123:12 128:25
things 13:12,19 21:15 22:9,17 23:9,14,25 24:17 46:16 48:22 49:2 50:16 51:1,6,24 56:12 63:7 64:21 94:12 95:8 106:2 130:3
think 7:4 25:1,4 28:10,13 37:16 41:17 42:15 43:13 47:1,9 48:1,24

54:22 56:13 59:1 59:6,11 60:11,22 63:2 67:25 69:5 77:15 83:4 95:15 98:13 99:25 101:7 101:10,15,20 106:19 107:7,19 115:23 116:20 117:21,23 118:2,3 118:21 123:11 129:12,18 132:1
thinking 55:1
third 82:24 86:9,18
thought 65:18 99:2 117:15,17 130:1
three 26:22 27:1,8 104:14
three-quarters 122:25
three-year 104:23
till 51:12
time 5:17 17:4 19:3 19:4,17 20:3 25:13,20 26:7,10 26:13 27:22 32:21 32:22 40:4,13,17 45:2,8 50:23 51:8 51:17 54:16,18 59:16 72:16 74:14 75:12,18 76:1,8 78:20 79:1 82:19 84:21 101:21 102:13 104:23 105:5 107:11 109:19 111:21 115:15,17 116:6 119:23 129:21 130:4,23,25 131:2 131:22,23,25 132:8 134:22 139:12
timely 58:24
tiny 129:1
tis 120:5
today 6:6,17 20:3 20:23,24,25 28:5 35:15 71:13 72:1 72:14 102:23 106:21 107:11 111:11 119:14 127:21 133:17
told 50:16
tongues 59:15
top 21:13 61:20 112:5 122:14
topics 127:21
Toronto 1:24
Torys 84:8 107:5,6 113:23 114:9
traded 35:17
train 130:1
transaction 67:23
transcribed 139:11
transcript 1:14 15:3 130:12
transcription 139:13
treated 49:10 50:6 50:11 130:13
treatment 49:18 92:14 130:5
Trevor 2:2
true 16:14
trust 26:22 63:8,17 63:21 64:1,8,10 70:8,12,15,20 71:9 72:11 133:10 135:23 136:21 137:16
try 5:8,12 50:18 87:10 100:25 129:23
trying 99:21 100:17 132:8 133:23
Tuesday 94:24 95:2
turn 6:25 48:1,5 60:2 73:15 77:22 86:16 87:3 89:21 96:3 109:21,25 111:7 117:20 118:11 121:24 122:13,17 125:3 125:14,21 126:22 128:5 132:7
turned 65:8,14 132:1 134:4
two 12:12 19:7,12 24:24 25:1,2 47:18 53:11 77:5 78:13 96:8 100:6 118:25 127:21
type 69:6

U

U.S 108:11,18 125:9 126:1
U/A 3:18 71:11 72:4,12
U/T 3:12 76:17 79:12 85:20 86:2 121:1
ultimate 49:18
unaffected 60:19 61:14 62:4 68:17 118:18,24 126:16
unconditional 30:21 35:23 79:23 80:6 83:7,12 85:8 89:1 124:12
underlining 61:9
understand 5:11 11:25 12:5,8 65:3 81:20 87:22 97:21 129:22 130:6,7 133:22
understanding 23:12 27:4 50:12 50:13 54:2 62:6 64:20 65:22 80:13 87:1 88:1,2 102:3 112:9 119:16
understood 5:14,23 6:11 63:6 74:17 76:1 77:18
undertake 68:22 69:1 92:11
Undertakings 3:9 3:12
undertook 82:4
underway 38:6
Underwood 2:12
underwriter 122:9 125:5
underwriter's 107:25 112:24
underwriters 2:7 22:22,25 23:21 24:13 31:1 107:7 108:12,16 110:11 110:17,20,24 111:5 113:2,23 114:7,13 115:2 118:4 119:13 121:9 123:22 124:18,21,22 125:10,11,17 126:24 127:10,18
underwriters' 113:14 115:16
underwriting 84:9 110:19 111:6,8 115:17 120:3,9,19 120:24 121:7,12 121:18 125:6
underwrote 108:12
unenforceable 119:13,20
unfairly 110:4
unfortunately 28:17 71:12
unilateral 59:17
unlicensed 33:5
unsuccessful 67:20
update 47:17
upper 121:25
use 8:9 11:24 12:4,7 102:17,24,24 103:8,12 107:20

V

valid 116:2,6,7 119:7 131:24
validates 115:21
validity 115:15
value 48:20
Vanzura 2:14
variation 59:17
various 44:23 81:11 108:17
Vaughan 19:3,3,5,7 19:12 20:8,15,22 21:9
versus 21:9 91:3
Victoria 139:17
view 43:10
viewed 128:2
views 10:24
virtual 1:11 5:1 101:20 102:15
voluntary 37:12
vote 10:6 83:24 98:20
voted 10:13 11:4
voting 84:3,3

W

wait 5:9
walk 20:10
want 5:17 6:20 7:2 7:10 8:7,17 13:9 13:24 25:4 27:12 29:5 31:6 36:13 37:16 40:21 44:15 46:15 48:5 54:16 54:17,23 58:17 59:24 66:1 69:10 74:24 76:14 77:24 78:2 82:9 87:10 88:15 89:4,5,8,8 89:21 90:10,14 91:21 99:9 100:1 107:23 109:4,20 113:18 114:22 116:17 117:22 122:19,21 130:2

wanted 46:11 51:2 58:2 118:22 130:11,18
wasn't 25:16 39:11 48:10 59:23
water 39:18
way 67:11 68:13 75:25 87:18 95:19 95:25 122:25 130:13
we'll 5:19 12:16 24:8 34:10,16 82:16 86:2 95:2 109:21 110:12
we're 6:5 7:4 8:18 10:19 11:1,17 15:7 17:19 20:5 27:12 59:21 67:6 70:11 73:22 74:4 76:20 82:25 92:5 96:22 99:5,18 101:5,15,21 110:23 111:19 115:13 117:7 118:10 119:22 129:12,12 134:2 138:2
we've 15:8 54:16 63:8 87:13 101:2 130:3
Wednesday 1:12 5:2
weed 100:17
week 32:12 43:25 50:19,21 100:14
weeks 47:18
went 38:5 40:19 45:22 52:3,6 90:23
weren't 44:4
whatsoever 77:10
withdraw 46:5
witness 48:16 55:3 57:11 58:5 61:5 62:25 63:14 72:21 74:7,10 90:19 93:25 94:8,11,15 95:3,13 99:5,12 101:12 106:7 109:8 116:22 117:12 121:15,19 128:18,24 129:4 134:17
witness's 88:9
wonder 39:19 73:4
word 34:7 49:6 114:24 120:14,18 120:19,20
words 77:6
work 7:6 55:19 122:23
worked 18:25
working 13:6 21:6
works 5:14 72:21
world 47:20 50:16 97:13
worry 28:24
wouldn't 12:18 16:15,16 22:13 51:12 89:8 115:8 116:2
wrap-around 66:24 66:25
writing 13:25 40:14
written 4:3,6 13:2,7 15:13,16 16:2,20 16:22 53:25 62:7 78:7 79:2,10,17 85:8 123:18 127:8
wrong 27:15 31:24 34:13 37:19 49:9 73:18,20

X

Y

Yantzi 2:15
yeah 28:7 48:8 57:18 90:9 103:12
year 6:16 8:21 131:6 132:5 133:6
years 67:9 104:1,14
York 26:23 75:16
Young 125:24

Z

Zola 31:17

0

1

1 4:3 5:6 15:3,15,16 16:6 47:25 49:3 101:16 104:20 111:11
1(i) 79:21
1.2(b) 74:22
1.3(e) 77:23
1:26 73:1
1:30 55:2
1:42 73:2
10 7:20,20 14:1 49:10 132:9,12
100 1:24 21:1 27:7 51:18,21 52:2
101 27:11
102 27:21
103 28:1
104 28:4
105 28:8
106 3:5 28:19 131:16
107 29:5 48:2
108 29:9
109 29:11 48:2
11 7:24,24 73:7 116:21 117:4
11.1 16:14
110 29:13 52:3
111 29:17
112 29:20
112,000 115:2
112,570 113:3 114:13
113 30:2
114 30:10
115 30:17
116 30:25
117 31:6
118 31:11,13
119 31:16
11th 117:15
12 8:3,3 57:23 58:3
12:05 1:12 5:3
120 31:22
121 3:13 32:4
122 32:9
123 32:12
124 32:16
125 32:20
126 32:24
127 33:3
128 33:9
129 33:14
13 6:15 8:7 11:20 28:9 58:21 60:5 62:19 89:22,23 106:4 116:11 117:9,13
130 34:1
131 34:19
132 34:25
133 35:8 131:19
134 3:6 35:16
135 35:20
136 36:3
137 36:13
138 36:18
139 36:25
13th 4:3 15:14,18
14 8:15 102:4
140 37:3
141 37:21
142 27:13,14 38:3
143 38:9
144 38:19
145 38:25
146 39:4
147 39:10
148 40:3
149 40:9
15 4:4 8:23 51:7 109:12 118:12
150 40:20
151 40:25
152 41:9
153 41:14
154 42:4
155 42:10
156 42:21
157 42:24
158 43:3
159 43:8
16 4:6,6 9:1 16:20 16:23 118:11,12
160 43:22
161 44:4
162 44:7
163 44:12
164 44:19
165 44:24
166 45:1
167 45:7
168 45:14
169 45:17
16th 95:2
17 1:12 5:2 9:5 49:4
170 46:14
171 46:25
172 47:14
173 47:19
174 47:24
175 48:7
176 48:10
177 48:19
178 49:1
179 27:18 49:8
18 9:10,11 51:2 98:11
180 49:22
181 49:25
182 50:3
183 50:9
184 50:15
185 50:22
186 51:1

187 51:6
188 51:11
189 51:16
18th 9:18
19 7:9 9:17 110:20 113:2,9 116:23
190 51:23
191 52:2
192 52:11
193 52:16
194 52:19
195 53:1
196 53:8
197 53:23
198 54:4
1985 1:5
199 54:14
19th 16:16
1A 111:10,16 121:9 121:15
1B 116:12 117:20
1D 125:4,8
1E 125:14
1F 125:21 126:1
1G 126:22
1J9 1:24

2

2 1:7 4:6 5:16 16:20 16:22 26:18 109:11
2.3 60:19 61:15,15 61:16,21 118:15 118:17
2.3(i) 62:1 118:19 118:22
2:00 72:23 93:9 94:25
20 9:24 72:22
200 22:7 55:7
201 55:10
2015 25:24
2018 17:5,6 49:4
2019 4:4,8 13:2 15:14,19 17:6 18:24 21:15 33:1 33:6,15,22 35:18 37:21 45:3 47:16 49:4 55:8 57:23 74:14 108:3,5,12 108:19
202 55:14
2020 4:6 15:22,25 16:17,20,24 113:2 113:9 128:6 131:6 131:7,23 132:5 133:2
2021 1:12,23 5:2 17:23 131:10 132:9 133:1,15
2022 131:13
2023 131:16
2024 131:7,19
203 55:17
204 56:7
205 56:17
206 56:22
207 57:2
208 57:14
209 57:16
21 10:4
210 57:23
211 58:9
212 58:12
213 58:19
214 58:25
215 60:2
216 61:2
217 61:8
218 61:13
219 61:19
22 10:8
220 61:22
221 62:2
222 62:11
223 63:4
224 63:6
225 63:16
226 63:21
227 63:24
228 64:5
229 64:9
23 10:12
230 64:13
231 64:19
232 65:2
233 65:8
234 65:14
235 65:24
236 66:6
237 66:14
238 66:17
239 66:21
24 4:12 10:16 40:1 42:8
240 67:2
241 67:7
242 67:14
243 67:16
244 67:19
245 68:12
246 68:22
247 69:16
248 49:12 70:1
249 70:5
25 4:10 10:19 37:21 38:14 39:22
250 70:13
250,000 27:22
251 70:18
252 70:24
253 71:8
254 71:17
255 71:22
256 72:9
257 73:4
258 73:11
259 73:19
26 10:25
260 74:13
261 74:17
262 74:21
263 74:24
264 75:3
265 75:12
266 75:18
267 75:24
268 76:7
269 76:14
27 11:9
270 76:20
271 77:2
272 77:5
273 77:13
274 77:21
275 78:1
276 78:12
277 78:17
278 78:23
279 79:8
28 11:11
280 79:14
281 80:4
282 80:8
283 80:17
284 80:23
285 81:14
286 81:19
287 82:3
288 82:8
289 83:4
29 11:17 55:8
290 83:11
291 83:17
292 83:21
293 84:6
294 84:15
295 84:19
296 84:23
297 84:25
298 85:4
299 85:6
2R2 1:24

3

3 4:8 6:5 33:15,21 33:22
3:00 138:5
30 11:24 101:11,12
300 85:11
301 85:17
302 86:4
303 86:13
304 86:25
305 87:9
306 87:16
307 87:22
308 88:24
309 89:21
31 12:4 47:25
310 90:2
311 90:6
312 90:14
313 90:22
314 91:1
315 91:6
316 91:9
317 91:12
318 91:20
319 92:9
32 12:10 121:25 122:5
320 92:20
321 93:17
322 94:18
323 95:6
324 95:17
325 96:5
326 96:10
327 96:15
328 96:25
329 97:21
33 4:8 12:18 122:14
330 21:1 97:25
331 98:2
332 98:8
333 1:24 98:16
334 99:2
335 99:16
336 100:25
337 101:9
338 101:14
339 101:18
34 12:21 122:18,23
340 101:24

341 102:6
342 102:16
343 103:1
344 103:7
345 103:15
346 103:24
347 104:9
348 104:19
349 105:1
35 13:1 126:12
350 105:11
351 106:1
352 106:9
353 106:12
354 106:17
355 106:19
356 107:1
357 107:4
358 107:23
359 108:6
36 13:5
360 108:10
361 108:15
362 108:21
363 109:1
364 109:11
365 109:15
366 109:17
367 109:24
368 110:3
369 110:15
37 13:16
370 110:23
371 111:2
372 111:16
373 111:19
374 111:25
375 112:5
376 112:18
377 113:9
378 113:12
379 113:17
38 13:23
380 114:6
381 114:12
382 114:15
383 114:22
384 115:7
385 115:13
386 115:23
387 116:5
388 116:9
389 117:1
39 4:10 14:8
390 117:6
391 117:19
392 118:2
393 118:10
394 118:16
395 119:5
396 119:10
397 119:18
398 120:1
399 120:15

4

4 4:10 6:9 39:20,22 57:4 60:23 117:21
40 14:11 73:12
400 121:6
401 121:22
402 122:4
403 122:13
404 123:4
405 125:1
406 125:8
407 125:14
408 125:20
409 126:4
41 14:14 112:2
410 126:21
411 127:1
412 127:6
413 127:14
414 127:20
415 128:4
416 1:25 129:9
417 129:22
418 130:17
419 130:24
42 4:12 14:21
420 131:3
421 131:10
422 131:13
423 131:16
424 131:19
425 131:22
426 132:1
427 132:16
428 132:18
429 132:25
43 15:12 77:1 80:21
430 133:5
431 133:11
432 133:14
433 133:22
434 134:2
435 134:8
436 134:19
437 135:1
438 135:6
439 135:11
44 15:21 77:22
440 135:15
441 135:19
442 135:22
443 136:1
444 136:5
445 136:9
446 136:16
447 136:19
448 136:24
449 137:14
45 16:1
450 137:19
46 16:6
47 16:10
48 16:13
49 16:19

5

5 3:3,4 4:12 6:14,15 6:24 42:5,7 50:19 61:3 66:10 89:22 98:9,12 108:23,24 109:5,12
5.4 13:20
50 17:1 70:7,11,14 103:5,12
500,000 35:11
504,000 33:9
51 17:8
52 17:11 73:15 74:6 74:9
53 17:14
54 17:19 74:8 75:21
55 18:1
56 18:6 84:10
564-2727 1:25
57 18:9
58 18:13
59 18:17

6

6 6:19,25 18:2 109:25 110:1 129:12,14
60 18:23 21:11 103:2,4 131:10 133:3
61 19:2 133:7
613 1:25
62 19:6
63 19:9
64 19:17
65 19:21
66 19:24
67 20:7
68 20:10
686,000 28:2,5
69 20:13

7

7 6:23 50:19 121:23 122:2 124:8
7(a) 122:5
7(d) 85:1
70 20:19 103:4
71 20:24
71-72 3:19
72 21:8
73 21:14
74 21:19
75 21:23
76 3:13 22:1 90:15
77 22:5 60:22 117:21
78 22:9
78,000 132:13
79 3:13 22:13 25:6 131:7

8

8 7:9 54:12 131:4
80 22:17 25:6 28:20 28:24
81 22:21 30:4
82 3:16 22:24 131:13
83 23:5 63:18
84 23:7 62:17
85 3:13 23:14 91:7 91:8,8,9
86 3:13 23:18 84:23 90:15
861-8720 1:25
87 23:24
88 24:15 63:17,18
89 3:16 24:20 61:19 68:3

9

9 6:25 7:1,10,15 110:1
9:51 58:3
90 24:23 68:3
900 1:24
91 25:4
92 25:12
93 25:19 84:15
94 25:23
940 1:24
95 26:2
96 26:6
97 26:11

98 26:19
99 3:16 26:21

Tab 3

Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., ELMCLIFFE INVESTMENTS INC. and ELMCLIFFE INVESTMENTS [NO. 2] INC.

Applicants

CONTINUED CROSS-EXAMINATION OF GREG GUYATT
on his affidavit sworn April 9, 2021,
held via Arbitration Place Virtual,
on Tuesday, April 13, 2021, at 2:32 p.m.

APPEARANCES:

Paul Steep Shane D'Souza Trevor Courtis	on behalf of the Applicant CannTrust Holdings Inc.
Peter Howard Eliot Kolers Brian Pukier Ashley Taylor	on behalf of Mark Litwin, Fred Litwin and Stanley Abramowitz
Ryan Morris	on behalf of KPMG LLP

ALSO PRESENT:

Jocelyn Kemp	Law clerk

100 Queen Street, Suite 940	333 Bay Street, Suite 900
Ottawa, Ontario K1P 1J9	Toronto, Ontario M5H 2R2
(613) 564-2727	(416) 861-8720

INDEX

	Page
PREVIOUSLY AFFIRMED: GREG GUYATT	143
CONTINUED CROSS-EXAMINATION BY MR. HOWARD	143

LIST OF UNDERTAKINGS, REFUSALS, & UNDER ADVISEMENTS

Undertakings (U/T) found at pages: 147, 148, 149, 151, 152, 156, 158 and 162.

Refusals (REF) found at pages: 146 and 162.

Under Advisements (U/A) found at pages: 157 and 165.

LIST OF EXHIBITS

No.	Description	Page
6	Answers to undertakings, under advisements and refusals	144

Arbitration Place Virtual

--- Upon resuming on Tuesday, April 13, 2021, at 2:32 p.m.

MR. HOWARD: I got frozen for a minute.

PREVIOUSLY AFFIRMED: GREG GUYATT

CONTINUED CROSS-EXAMINATION BY MR. HOWARD:

451 Q. Do you have your affidavit of April 9 before you, Mr. Guyatt?

A. Yes, I do.

MR. KOLERS: Peter, just when you dropped off, the question that Paul was suggesting, was just to treat this as continued cross-examination and not bother re-swearing the witness, but treat him as if he's still under oath.

MR. HOWARD: I thought I had agreed to that. I was frozen before that. Okay.

BY MR. HOWARD:

452 Q. Mr. Guyatt, the first question is, do you want to make any changes to that affidavit or are there any errors that you identified?

A. Nothing that I'm aware of.

453 Q. And yesterday - I was going to say evening, but that would be wrong, it was

night - we received the answers to undertakings and some under advisements and refusals. Do you have that in front of you?

A. Yes, I do.

MR. HOWARD: Can we mark that as the next exhibit? I forget what number we got to, Mr. Steep.

MR. STEEP: We can mark it as an exhibit. I can't help you on the numbering either.

EXHIBIT NO. 6: Answers to undertakings, under advisements and refusals.

BY MR. HOWARD:

454 Q. I'm going to go be asking you some questions about that, Mr. Guyatt. Some of them will maybe be for Mr. Steep as well, or somebody else. In respect of the first question, you say that the Securities Claimant Trust funds are confidential. Can you tell me the basis of the assertion of confidentiality? It's probably for Mr. Steep.

A. Paul, are you going to take that question?

MR. STEEP: Just a second. I'm just reading the context of the answer.

THE WITNESS: Okay.

MR. STEEP: I don't know how to reframe this, other than the way that it's stated, Mr. Howard. There is a confidential agreement governing the terms of the trust insofar as it relates to the question that was asked concerning under what circumstances the 50 million stays in the trust. That's by agreement with the coalition.

MR. HOWARD: And the company. Am I correct, Mr. Steep, that that is not before the Court?

MR. STEEP: No. Everything is before the Court. There is a portion that is not before some of the parties.

MR. HOWARD: So the portion that you're -- can you help me with that? The portion that you've said we can't see because it's confidential, that's before the Court?

MR. STEEP: Yes. Everything is before the Court.

MR. HOWARD: And the portion you say we can't see, is it going to be provided to the parties who are going to be making opt-out decisions?

MR. STEEP: I can't recall off the top of my head the terms, but take it that the answer is no.

MR. HOWARD: And, again, I don't --

MR. STEEP: The only party who I understand is going to see this, at the present time, is the judge presiding over the CCAA.

MR. HOWARD: All right. And apart from the fact that you and the plaintiffs have agreed that we shouldn't see it, is there any other basis for the assertion of confidentiality?

MR. STEEP: No, except that I would liken it to what you would see in a class proceeding, where there is a limit to the number of opt-outs that the parties would accept before the settlement is blown up. That is typically kept confidential.

MR. HOWARD: I understand the opt-out percentage, but that's actually not analogous, but we can argue that somewhere else. With respect, I'm repeating and asking again for all the salient terms of the litigation trust to be produced, including the ones you've claimed are confidential.

REF MR. STEEP: All right. Well, for obvious reasons I can't give that undertaking, because the company is bound by that agreement.

MR. HOWARD: I understand, but it would be one thing -- will the company ask the plaintiffs to agree that it be produced, and if the consent is provided, give us the information?

U/T MR. STEEP: If they consent, we'll provide it to you.

MR. HOWARD: Will you ask for the consent?

U/T MR. STEEP: Sure. Sure.

MR. HOWARD: Okay. That goes to the next question as well is, to advise -- the question was to advise whether -- what plaintiff's counsel is getting, and you say the company has no knowledge of this information. Has the company requested it?

MR. STEEP: You know, I don't know whether a specific request has been made in the many discussions that have been had with the coalition. I can't answer that.

MR. HOWARD: So will the company ask for it, and ask for it to be put before the Court, because given to your analogy to Securities class action settlement approvals, that number is always before the Court, and I would expect that you would want that before the Court and before the people making opt-out decisions. But will you ask for it and produce it?

U/T MR. STEEP: Now that you've stripped away the long preamble about what I would want, I will ask.

BY MR. HOWARD:

455 Q. Over the page on this document into number 3, and you -- the answer talks about in (ii) "negotiated certain provisions in the CCAA Plan." Am I correct that at least two of those conditions were not in the plan prior to the April 9 draft of this plan?

A. I believe that's accurate.

MR. HOWARD: Okay. And, Mr. Steep, the answer to number 4, I think, trammels on a little bit of delicacy. Am I correct that in the -- with respect to the last sentence, that the information imparted was that the company wanted to find a way to protect Mr. Litwin, but was taking the position because of Mr. Paul's knowledge and position?

MR. STEEP: I'm not going to say that, because I've seen an email from Mr. Guyatt which says that the claim that was submitted -- sorry, the expenses of which were submitted pursuant to that was not an indemnified claim.

MR. HOWARD: Well, I understand that, but you're making references to communications between counsel, and if you check with Mr. D'Souza as to what I just said, I would like the answer, then, to complete the last sentence, which was in relation to wanted to assist Mr. Litwin, but were taking the position because of Mr. Paul's involvement.

MR. STEEP: You're saying that there was an on-the-record discussion to that effect?

MR. HOWARD: Well, I'm saying either there was an on-the-record discussion, or that last sentence should be deleted.

MR. STEEP: All right. Well, I'll make that inquiry. I'm not going to agree with you.

MR. HOWARD: All right. Well, having raised --

MR. STEEP: You're giving me a version of events, I understand that --

MR. HOWARD: Yes.

U/T MR. STEEP: -- that differs from what we've said in answer to the undertaking. I'll make an inquiry about that.

MR. HOWARD: Okay. Super. And with respect to question 5, you've answered that, and for some reason focused on Mark Litwin. There was, I take it from this answer, no written consent from either Mr. Abramowitz -- Mr. Stan Abramowitz or Mr. Litwin?

MR. STEEP: Not that I'm aware of.

BY MR. HOWARD:

456 Q. Okay. And over the page, and here in the next two questions we get into some of the issues with respect to insurance. And in your affidavit you make reference to that at paragraph I believe it's -- I'll have it here in a moment. Sorry. 11(c) on page 5. And you make reference in quotes, that something will be "channelled." Do you see that?

A. Yes.

457 Q. Can you just explain to me, because I'm bovinely obtuse, what you mean by "channelled"?

MR. STEEP: I'm not going to attempt to do it, because I would make the same mistake you would make. I will get one of the insolvency lawyers to define that for you. But the basic concept, subject to their correcting me, is that the claim will be released, but any recovery will be channelled to a particular source.

MR. HOWARD: So a couple of things arising from that. Will you produce the relevant insurance policies so we can have them on the record?

U/T MR. STEEP: Yeah. Subject to any objections that the insurers may have. I think they have been produced to some of the parties. They've been asked for before, so I don't know if they're in the record or not, at this stage, but we'll give them to you.

MR. HOWARD: All right. And am I correct that part of this arises because you focused on the fact that the insurance policies weren't assignable?

MR. STEEP: I'm not going to agree with that.

BY MR. HOWARD:

458 Q. Mr. Guyatt, I want to focus on your understanding of the effect of this. Am I right that in terms of what happens is, is that the actions may continue against you, and that any recovery that is made, if the policies apply, will be limited to the insurance proceeds, if applicable?

A. I believe that's accurate. Paul, any, any further sort of --

MR. STEEP: No, that's the basic

concept.

THE WITNESS: Yeah.

U/T MR. STEEP: And as I said, if there's any technical refinement to that, I will have the insolvency lawyers describe it by way of undertaking.

BY MR. HOWARD:

459 Q. Okay. And let me continue a little bit. So, Mr. Guyatt, you understand that you'll stay in as a party, and you'll be subject to discovery, and there could be findings made?

A. Yes.

460 Q. And that's the same for other settling parties?

A. That's my understanding.

461 Q. All right. And if, in broad terms, the finding is negligence, you still have coverage; but if there's finding of knowledge or intentional misrepresentation, you wouldn't have coverage, so there wouldn't be a recovery, but you still would have received a release?

A. Yes.

462 Q. And that's the same, for example, if you reached an accommodation with Eric Paul, that would be the same for him?

A. I believe so. Is my understanding correct on that, Mr. Steep?

MR. STEEP: Yes.

THE WITNESS: Yes.

BY MR. HOWARD:

463 Q. So in the sense of the contributions that the original settling parties were making to the -- you personally weren't making any dollar contribution, right?

A. I am not.

464 Q. And what you were contributing was -- you talked about assignment of insurance proceeds. But if it turns out there's no cover and you had no right to insurance, you're still getting a release?

A. Yes.

465 Q. And that's the same for all the other settling parties?

A. Yes.

466 Q. Okay. So not to draw too fine a point on this, if you, as the CFO at the time, you're still in the litigation, you go through trial, there's a finding that you had knowledge, and so that supports intentional misrepresentation, you're out of it, you've got a release, you have no liability?

A. I'm not sure I could have knowledge of something that happened before I joined the company.

467 Q. I understand. But you certified financials -- it was ongoing from the time February through May when you certified the financials. I don't want to argue with you but --

MR. STEEP: Let's answer your hypothetical, which I think he has answered. In those circumstances, the plan would provide that he still gets a release, and you can make your argument that he was not ever entitled to coverage under the policy because of the particular findings you're putting forward in your hypothesis.

MR. HOWARD: Yeah. Okay. But, Paul, in that hypothetical, you're getting a release for fraud with no contribution.

MR. STEEP: In that hypothetical, if you say there is a finding of fraud, that might be one of the outcomes.

MR. HOWARD: Yeah. Intentional misrepresentation, I don't want to split hairs, is fraud. Okay. All right.

MR. STEEP: Your hypothetical assumes that the plaintiffs would proceed on the fraud allegation.

MR. HOWARD: Well, no. I don't know that they will, because that takes away the insurance policy, but it could be a finding, especially if there are others involved in the litigation still, right?

MR. STEEP: Well, it could be. It could be. It depends on what's pleaded and what goes to trial.

MR. HOWARD: Right. I understand that. But we're all dealing with an action that is apparently going to proceed, if this plan proceeds, and that's an outcome, especially with respect to some of the other people that you've maybe done a deal with, and I'll come to that in a moment. I didn't mean to pick on you, Mr. Guyatt. I know you only got there in February.

THE WITNESS: Thank you.

BY MR. HOWARD:

468 Q. In paragraph 8 of your affidavit.

A. I'm just getting to that.

469 Q. It says:

"The CannTrust Group will update the Court if

settlements are reached
before the hearing of its
motion."

Do you see that?

A. Yes.

470 Q. And just to be clear, that's the motion that's returnable this Friday, I take it?

A. I believe so.

471 Q. All right. Can you provide to us at present -- you do say in your affidavit that you've added one additional settling defendant, Brady Green?

A. Yes.

472 Q. What dollar contribution, if any, is he making?

A. I don't believe he's making any dollar contribution, but I don't know that for sure.

473 Q. All right. And I understand the difference between somebody becoming an ASD, or additional settling defendant. Can you advise us before Friday as to the identity of any such people, and the contribution they're making, and the terms of the agreement?

U/T MR. STEEP: Yes, to the extent

they're known to the company, yes.

MR. HOWARD: All right. And if there is, similarly, an agreement with them to withdraw or not proceed with objections previously made, I would like the terms of those agreements.

MR. STEEP: I'm just hesitating, because I would assume that any settlement would only be achieved on a basis where they were not objecting to the plan, which they've just agreed to, so I think the two will be hand in hand.

MR. HOWARD: All right. Paul, what I'm looking for is, I don't want to be met with -- sorry, if there's an agreement in principle, but it isn't documented, we want the term.

U/A MR. STEEP: All right. I have to take that under advisement, because I'm not quite sure I understand you. I think what you're saying is if someone who has previously objected to the plan in principle has reached a settlement, but doesn't have a final settlement, and, therefore, does not proceed with their objection, you want to be advised of that?

MR. HOWARD: Yeah. And the terms under which that happened.

MR. STEEP: Right. To the extent that I'm able to advise you of those terms, if that situation arises, I'll advise you.

MR. HOWARD: And has it reached an arrangement with the underwriters?

MR. STEEP: Today?

MR. HOWARD: As of today, any arrangement in that regard as to the underwriters not proceeding with their objection?

MR. STEEP: No arrangement with the company, in that regard, has been finalized. There are discussions ongoing.

MR. HOWARD: Okay. And the same question with respect to Eric Paul?

MR. STEEP: Same answer.

MR. HOWARD: Peter Aceto?

MR. STEEP: I have to turn to one of my colleagues for the status of Mr. Aceto. I believe it is the same answer.

MR. D'SOUZA: Same answer.

MR. HOWARD: And Ian Abramowitz?

MR. D'SOUZA: Same answer.

MR. HOWARD: All right. So both -- assuming we get to Friday and there is attained, will you let us know as soon as you can before Friday?

U/T MR. STEEP: Absolutely. And I'm

not crossing the Litwins off my list either.

MR. HOWARD: You shouldn't. We're the most reasonable folks.

BY MR. HOWARD:

474 Q. Another area that I want to touch on, and that is in the last answer, number 11, that Mr. Fabello got an undertaking before he deserted us. It says:

> "The Company does not disagree with this assertion. The Company notes that the CCAA Plan does not contain any such condition either."

It's a cute answer. You agree with me that it did up until April 9th?

MR. STEEP: Yes. It must be a matter of record. Yes, it did.

MR. HOWARD: Yeah. Okay.

BY MR. HOWARD:

475 Q. Let me press on that a little bit. You're aware, Mr. Guyatt -- you remember the last time we did this, you said that you're going to continue reimbursement of defence costs to at least to the Litwins until the plan was approved, unless

you were instructed otherwise? Do you remember using that phrase?

A. I don't remember the exact phrase, but, yes, something similar to that.

476 Q. And has there been a meeting of the -- was this issue as to whether the Litwins should continue to get paid, reimburse their defence costs, addressed at the board level?

A. It was not discussed at the board level, to my knowledge.

477 Q. Okay. So you didn't get any instructions from the board on that subject?

A. No, I did not.

478 Q. All right. I sometimes take instructions from Mr. Steep too. So your instructions came from Mr. Steep? Don't tell me that.

MR. STEEP: You're not getting into the instructions --

MR. HOWARD: That's humour.

MR. STEEP: -- with the lawyers.

MR. HOWARD: That's humour.

BY MR. HOWARD:

479 Q. Mr. Guyatt, you were aware that the company took the positions on Friday that it

wouldn't be reimbursing the Litwins going forward?

A. Correct, although they continue to be indemnified.

480 Q. I get that. And you're taking that position with other people as well?

A. Yes, we are.

481 Q. For example, the underwriters have been making submissions as to their costs. Do you have the quantum of that?

A. I do not.

MR. HOWARD: Mr. Steep, I would like the quantum of all the amounts that have been submitted that the company says are part of the indemnity. Because as I understand it, what you're saying is, they'll get stayed until the plan is approved, but then they are unaffected claims?

MR. STEEP: Yes, that's what we're saying.

MR. HOWARD: All right. And the quantum of all of that. And next that the quantum of the anticipated contingent liabilities of the emerging entity, and the pro forma of the entity that emerges in terms of a balance sheet that's expected in and around June.

MR. STEEP: Let's take those one

at a time.

MR. HOWARD: Sure.

U/T REF MR. STEEP: To the extent that we can quickly advise you of the amounts that have been submitted that are indemnified claims, but which are not being paid during the currency of this CCAA, we'll advise you of that. The balance I'm not prepared to undertake.

MR. HOWARD: All right.

BY MR. HOWARD:

482 Q. And equally, Mr. Guyatt, has this existing, and then contingent liability, been included in financial statements and pro forma analysis?

A. We've not issued any financial statements since, since we've been in CCAA, so not.

483 Q. I don't mean audited financials, Mr. Guyatt. You may have other financials. I'm sure you do have other financial statements. I'm not talking about audited.

A. And, sorry, just to be clear. When you're talking about the contingent liability, are you referring to the amount that's being contributed to the settlement trust?

484 Q. No, I'm talking -- let's say -- I'll try to make the question clearer. Let's say, for example, that two or three people with indemnity claims, like the Litwin and the auditors, and, for example, the underwriters, have indemnity claims, and you're saying they are unaffected. If there are 3 million at present, and likely to be 10 million over the next two years, I would like to know how that's accounted for. And in the current financial statements, that information, does it make the emerging entity solvent/insolvent or questionable solvency?

MR. STEEP: Mr. Howard, could we just break that down into two questions? His first question, Mr. Guyatt, is: Are you accounting for the indemnified claims which are not being paid as a liability in your internal financial statements?

THE WITNESS: They are not at the moment.

BY MR. HOWARD:

485 Q. But they're proceeding as if they are unaffected claims, are they --

A. Our internal financial statements right now are not being used for external financial reporting; they're being used for internal management purposes as to the state of the current operations. Now, typically when it comes to contingent liabilities, that would be something that would be done on a quarterly basis, kind of at the time we would be reporting externally. So for internal purposes, you know, that has not been considered at the moment.

486 Q. I get that. I understand the answer. But we discussed last time, and in your affidavits, you're also seeking financing from third parties, and I'm assuming you're putting together packages for those third parties?

A. Well, we provided them our forecast, if that's what you mean.

487 Q. That might be one thing. And how is that being accounted? Is this liability being accounted for in those forecasts that are provided to lenders?

A. No, it's not. The lenders are aware of the 50 million that's going to be going into trust. They're also aware of, you know, the general unsecured creditor claims. But in terms of other contingent liabilities, there has not been any specific amount for those included in our financial forecast.

488 Q. Okay. And on a confidential basis, can you produce the forecasts that were provided to the lenders? And I'll sharpen that. I will give you the reason why, Mr. Steep. If you're purporting to call these unaffected claims, it has a great impact on -- the solvency of the emerging entity has a great impact on whether they are unaffected as a matter -- as a practical matter or not, or whether the company is financeable.

U/A MR. STEEP: I'm not going to agree, but I'll consider it. I'll take it under advisement. I haven't seen the forecasts.

MR. HOWARD: Okay. So given the time frames, you'll let me know as soon as you can, because this is, this is kind of a key point for us.

MR. STEEP: It sounds to me, again, a point that goes to the fairness hearing, and I don't think it's critical for Friday, but I hear you that you want it, and I'll consider my position between now and Friday.

MR. HOWARD: Okay.

BY MR. HOWARD:

489 Q. Am I correct, Mr. Guyatt, in terms of the changes that were made to the plan that ended up on April 9th, there were, as far as you're

aware, no discussions about those changes with either the Litwins or the auditor's counsel?

A. Not that I'm aware of.

MR. HOWARD: Okay. And Mr. Steep, if you have information to the contrary, you'll let us know?

MR. STEEP: No, I think that's accurate.

MR. HOWARD: Okay. Subject to the refusals and the undertakings, and my friends from Stikemans telling me by chat that I should add something else. If you can give me a couple of minutes.

MR. STEEP: That's fine. You check with your colleagues. That's fine.

MR. HOWARD: Colleagues, chat.

MR. PUKIER: Nothing from me, Peter, but thank you. That's the chat, right?

MR. KOLERS: The same.

MR. HOWARD: Okay.

--- Off-the-record discussion

--- Whereupon the cross-examination concluded at 3:07 p.m.

Tab 4

Court File No. CV-20-00647824-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	MONDAY, THE 16th
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2021

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

RESERVATION OF RIGHTS ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (the "**Meeting Order**") to be issued April 16, 2021, among other things, accepting the filing of the CCAA Plan with the Court and authorizing and directing the CannTrust Plan Companies to call, hold and conduct meetings of their creditors to vote on the CCAA Plan was heard this day by way of judicial video conference via Zoom in Toronto, Ontario as a result of the COVID-19 pandemic.

ON READING the materials filed by the Applicants, the Monitor and certain respondents listed in **Schedule "G"** to the Meeting Order (the "**Motion Materials**") and on hearing the submissions of counsel for the Applicants, the Monitor and any such other counsel that were present as listed on the counsel slip, no other party appearing although duly served as appears from the affidavit of service, filed,

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

RESERVATION OF RIGHTS ORDER

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6
Fax: 416-868-0673

James Gage LSO#: 34676I
Tel: 416-601-7539
Email: jgage@mccarthy.ca

Paul Steep LSO#: 21869L
Tel: 416-601-7998
Email: psteep@mccarthy.ca

Trevor Courtis LSO#: 67715A
Tel: 416-601-7643
Email: tcourtis@mccarthy.ca

Alexander Steele LSO#: 475719P
Tel: 416-601-8370
Email: asteele@mccarthy.ca

Lawyers for the Applicants

Court File No. CV-20-00638930-00CL

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 PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

Endorsement of Hainey J.
(April 16, 2021)

Capitalized terms in this endorsement that are not defined have the meanings ascribed to them in the Meeting Order.

The Applicant brings this motion for a meeting order (the "**Meeting Order**").

The Monitor supports the proposed procedures and timelines detailed in the Meeting Order.

The Meeting Order is without prejudice to any party's right to raise the issues raised in opposition to the Meeting Order at the Sanction Hearing. The Applicants have agreed that the issuance of the Meeting Order is without prejudice to any arguments that any stakeholders may wish to make with respect to the CCAA Plan at the Sanction Hearing, including the argument as to whether the CCAA Plan is sanctionable in its current form and any arguments in respect of information sought by stakeholders in order to support such arguments or to assess the merits of the proposed CCAA Plan or CCAA Sanction Order.

The Court expects that the Applicants and all stakeholders will continue to negotiate in good faith to narrow the issues and pursue a settlement of the claims that are the subject of the ongoing mediation.

On that basis, the Applicants' motion for the Meeting Order is hereby granted, and the Meeting Order has been signed.

A second order reserving the parties' rights to raise any objections made at the Meeting Order stage at the Sanction Hearing is hereby granted, and that order has been signed.

Hainey J.

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

RESPONDING MOTION RECORD OF KPMG LLP
(Re: Plan Sanction Motion)

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON   M5L 1A9

Andrea Laing LSO #43103Q
Email: andrea.laing@blakes.com
Tel: 416-863-4159

Linc A. Rogers LSO #43562N
Email: linc.rogers@blakes.com
Tel: 416-863-4168

Ryan Morris LSO #50831C
Email: ryan.morris@blakes.com
Tel: 416-863-2176

Caitlin McIntyre LSO #72306R
Email: caitlin.mcintyre@blakes.com
Tel: 416-863-4174
Fax: 416-863-2653

Lawyers for KPMG LLP