

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SA CAPITAL GROWTH CORP.

Applicant

and

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondents

and

PETER SBARAGLIA

Moving Party

and

RSM RICHTER INC. AND ONTARIO SECURITIES COMMISSION

Responding Parties

AFFIDAVIT OF PETER SBARAGLIA

(Motion for Disclosure, returnable May 9, 2012)

**I, PETER SBARAGLIA, of the Town of Oakville in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:**

1. I am the Moving Party in this matter and, as such, have knowledge of the matters hereinafter deposed save and except where my knowledge is indicated to be based on information and belief and where so stated, I verily believe same to be true.

2. I am a registered dentist with the Royal College of Dental Surgeons of Ontario. I swear this affidavit in support of my motion to obtain certain materials in the power, possession and/on control of the Receiver, RSM Richter, Inc. ("Receiver"), for use in my defence against allegations made by the Ontario Securities Commission ("OSC").

3. I intend to vigorously and aggressively defend against these allegations to the extent that I can afford to do so. I believe that without disclosure of the documents that I am seeking (as set out below), my ability to defend my case will be greatly compromised. I also believe that the production of the materials that I am seeking on this motion will not only assist my proceeding at the OSC, but I also believe that a successful defence at my OSC proceeding will be to the benefit of the creditors of CO Capital.

CO Capital and Robert Mander

4. I met Robert Mander ("Mander") in the Spring of 2005. He was an existing tenant in an office building that my wife and I bought. Initially, I invested funds with him. After learning more about what I believed was a legitimate business model as well as interactions with some of Mander's investors (all of whom seemed content with Mander's handling of their funds), I subsequently incorporated an investment company, CO Capital Growth Inc. ("CO Capital"), a private issuer in Ontario, in early 2006. The "C" and "O" stand for the names of my two children.

5. The company borrowed funds (mainly from family members and close friends) to invest. CO Capital issued loan agreements and promissory notes. The company also researched value-investment opportunities for Mander to trade. A significant portion of our business consisted of investing with Mander and his various related companies, including E.M.B. Assest Group Inc. ("E.M.B.").

6. I was completely unaware that Mander was running a Ponzi scheme. This can perhaps be best demonstrated by the fact that my mother and daughter were C.O. Capital lenders. My discovery of Mander's Ponzi scheme was made shortly after the application to put Mander into receivership was heard and Mander's death was discovered.

Receiverships

7. On March 17, 2010, an Order was granted by Justice Morawetz appointing the Receiver over Mander and E.M.B. As a result of Mander's death, the Order was continued against Christine Brooks (the executor of Mander's estate). A copy of the Fresh as Amended Receivership Order is attached as **Exhibit "A"**.

8. In the Receiver's first report, he states that he conducted interviews with Mander's employees, investor representatives and certain members of Mander's family. A copy of the Receiver's first report is attached as **Exhibit "B"**.

9. On July 2, 2010 the Receiver delivered his fourth report (and a copy is attached as **Exhibit "C"**). In that report:

- a. The Receiver concludes that Mander was operating a Ponzi scheme;
- b. The Receiver lists six "primary investors" who invested directly with E.M.B. or Mander, including (i) Black Ink Capital Inc.; (ii) Trafalgar; (iii) Pero; and, (iv) J.S. Bradley;
- c. The Receiver sought an Order authorizing it to investigate the business and affairs of CO Capital and myself (in part because the Receiver was of the view that I may have

been involved in the development of a structure which was used to borrow funds from investors); and

- d. The Receiver sought an Order compelling the production of all records in the possession and control of the accountant for CO Capital, Mander, and the other primary investors: Peter Tonin (“Tonin”) of Tonin & Co. LLP.

10. On July 9, 2010, the Receiver delivered a supplement to the fourth report seeking a similar production Order against Peter Welsh, former counsel to CO Capital and others referred to herein (“Welsh”). Attached as **Exhibit “D”** is the Receiver’s supplement to the fourth report.

11. On July 14, 2010, Justice Morawetz granted an Order authorizing the Receiver to investigate the affairs of CO Capital and myself, as well as the production orders concerning Tonin and Welsh. A copy of the July 14, 2010 Order is attached as **Exhibit “E”**.

12. On September 8, 2010, Mehran Shahviri (“Shahviri”), the investigator at the OSC that investigated me and my company’s affairs, swore an Affidavit in support of the OSC’s motion seeking the appointment of a receiver over myself, my wife, CO Capital and a related company. A copy of the Affidavit (without exhibits) is attached as **Exhibit “F”**.

13. On September 9, 2010, the Receiver delivered its seventh report to Court. In the report, the Receiver states that “[t]he OSC was misled during its investigation” and that “[t]he Receiver believes that a receiver should be appointed over the business and assets of the CO Group”. A copy of the Receiver’s seventh report is attached as **Exhibit “G”**.

14. On October 27 and 28, 2010, Shahviri was cross-examined by my counsel at the time, Mr. Milton Davis. In his cross-examination, Shahviri made multiple references to the reports of the

Receiver, the role that those reports played in supporting the allegations against me and his reliance on those reports. The cross-examinations of Shahviri are attached as **Exhibit “H”**.

15. On November 12, 2010, the Receiver delivered its ninth report. Among other things, the report contains a number of “findings” made by the Receiver concerning CO Capital and me. A copy of the Receiver’s ninth report is attached as **Exhibit “I”**.

16. On December 23, 2010, Justice Morawetz granted the OSC’s motion for the appointment of a receiver over myself, my wife, CO Capital and another related company. A copy of the transcript of Justice Morawetz’s oral Reasons for Decision is attached as **Exhibit “J”**.

17. On March 15, 2011, the Receiver delivered its eleventh report. In that report, the Receiver discusses Pero Assets Inc. (“Pero”), a company owned at one point jointly by Mander and me. As the Receiver indicated, Pero’s ownership was transferred to Thomas Obradovich (see below) and his wife Katherine Reid. A copy of the Receiver’s eleventh report is attached as **Exhibit “K”**.

Proceedings at Ontario Securities Commission

18. On February 24, 2011, Staff of the Ontario Securities Commission filed a Statement of Allegations against me, alleging that I violated two provisions of the *Securities Act* (“Act”). First, that I engaged or participated in acts that I knew or ought to have known that perpetrated a fraud on persons, contrary to section 126.1(b) of the Act. Second, that I materially misled Staff of the OSC (“Staff”) in my compelled examination during the OSC investigation into the operation and business of CO Capital, contrary to section 122(1) of the Act. The Statement of Allegations of Staff of the OSC is attached as **Exhibit “L”**.

19. The OSC's Notice of Hearing of February 24, 2011 sets out the penalties that OSC Staff are currently seeking. Included in the ten orders and penalties that OSC Staff is asking the OSC to consider are: that I cease trading in securities permanently; that I be permanently prohibited from acquiring any securities, and multiple other restrictions regarding management of investments or investment companies. The Notice of Hearing is attached as **Exhibit "M"**.

20. I received a voluminous amount of disclosure in this matter. The disclosure was separated into various volumes of briefs and the disclosure contains several reports of the Receiver and materials filed with the Court in the receivership proceeding. A copy of the disclosure indices are attached as **Exhibit "N"**.

21. In the course of my review of the disclosure, I noted that there were various items that were not included that would likely provide exculpatory evidence for my defence at the OSC. At the time, I believed that the OSC was in possession of these materials. These items consisted mostly of interviews with various individuals that the Receiver conducted while handling the receivership. In his reports, the Receiver referred to various interviews with specific individuals who were close to Mander. Given the fact that certain of these individuals' relationships with Mander pre-date my involvement with him, I believe that these interviews would contain information and admissions that would assist in defending my case.

22. Even when I saw no reference to interviews with certain individuals in the Receiver's reports, it was my understanding (as set out below) through information I received from others that those individuals were in fact interviewed by the Receiver.

23. Accordingly, I brought a motion on January 24, 2012 to the OSC requesting that the Commission order OSC Staff to provide any notes, transcripts or recordings of the interviews

that I was seeking. A copy of my Factum in support of the motion is attached hereto as **Exhibit “O”**.

24. In response to my motion, OSC Staff argued that I would be able to bring a third party production motion in Superior Court pursuant to Rule 30.10 of the *Rules of Civil Procedure*. The prosecutor did not take the position that any of the materials I was seeking were irrelevant or would not have been provided to me pursuant to her disclosure obligations if she had been in possession of them.

25. My motion was denied by Commissioner Portner. In denying my motion, the Commissioner held that the OSC did not have jurisdiction to order the disclosure that I was seeking. In so ruling, Commissioner Portner noted the potential significance of these items and held that I was not without remedies and echoed Staff’s argument that I could seek the material in another forum. The Endorsement containing the Commissioner’s written reasons for decision was not provided to me until early March 2012. A copy of the Endorsement is attached hereto as **Exhibit “P”**.

Retention of Counsel for Motion in Superior Court and OSC Hearing

26. When I brought the motion before the OSC, I was self-represented (although I was being assisted by a volunteer “litigation assistant” from the law firm Torys LLP, the lawyer could not assist me with contentious matters and was not involved in my motion). After receiving the Endorsement, I retained the law firm Brauti Thorning Zibarras LLP (“BTZ”) with funds from family and friends (all of whom are creditors of CO Capital) to bring this motion. The original retainer of BTZ also encompassed efforts to resolve matters with the OSC and to seek an adjournment of the upcoming hearing (see below). I want Peter Brauti to conduct the defence of

the allegations made by the OSC against me, and I understand that he is currently involved in the *R. v. Schertzer* criminal matter involving several Toronto police officers.

27. On April 10, 2012, Mr. Toyne e-mailed Mr. Matt Gottlieb, a lawyer at Lax O'Sullivan Scott Lisus, counsel for the Receiver to outline the documents that I would be seeking from the Receiver. The e-mail also requested an index of the materials that the Receiver had in its possession related to the receivership. A copy of Mr. Toyne's e-mail to Mr. Gottlieb is attached as **Exhibit "Q"**.

28. As of the date and time of my swearing of this Affidavit, Mr. Gottlieb has not yet advised whether an index exists.

Requests for Documents from Welsh and Tonin

29. As set out below, I am seeking documents and information provided to the Receiver by Peter Welsh and Peter Tonin.

30. On April 18, 2012, Mr. Toyne also e-mailed counsel for these two individuals Bill Pepall at Lerner and Boyd Balogh at Gowlings, respectively. Copies of these e-mails are attached as **Exhibit "R"**.

31. On April 22, 2012, Mr. Toyne sent follow-up emails to Mr. Peppal and Mr. Balogh. Copies of these emails and the responses are attached as **Exhibit "S"**.

Schedule of Proceedings at OSC

32. There is a pre-hearing conference set for my matter on April 30, 2012 at the OSC and the hearing on the merits of my action at the OSC is currently set to proceed on June 4, 2012. I will be seeking an adjournment of the hearing at the pre-hearing conference.

33. While I have received a short list of witnesses that OSC Staff plans to call at my hearing, only two of the individuals have been identified (one being Shahviri); the remaining witnesses are generically listed as “Investor 1” or “Investor 2”. Based on the OSC’s reliance on the Receiver’s reports and my knowledge of one other case where a Receiver appeared as a witness (the *Xanthoudakis* case involving the Norshield scheme), I believe that the Receiver may be a witness at the hearing. I also believe that the OSC prosecutor will seek to introduce the Receiver’s reports into evidence through Shahviri.

Individuals’ Interviews that I am Seeking

34. In general terms, I am seeking information collected by the Receiver for individuals which fall into at least one of three categories: first, their involvement with Mander pre-dated my involvement; second, they had a professional relationship with Mander, myself, and/or primary investors; third, they were closer to Mander than I.

35. For example, one of the reasons why I believe these interviews will be helpful to my defence is that one of the allegations made against me by the OSC is that I knew or ought to have known that Mr. Mander was perpetrating a fraud on his investors. In considering the categories of individuals listed above, it is my belief that their evidence will assist in demonstrating the implausibility of the allegation that I knew or ought to have known that Mr. Mander was perpetrating a fraud.

Maria Zurini

36. Maria Zurini (“Zurini”) was Mander’s girlfriend and office manager. She also managed Stonebury, one of Mander’s companies. Zurini is referred to in several reports of the Receiver as well as several of the interviews conducted by the OSC. During the OSC’s interview of Heather

Shantora (see below), she stated that Zurini stood in Mander's place and ran his companies when Mander fell ill and was unable to do so. During the OSC's interview with Davide Amato (see below), he stated on page 67 that Zurini runs all of Mander's companies and is directly responsible for handling Stonebury.

37. Based on my interactions with and knowledge of Zurini, as well as the information contained in the Receiver's reports and OSC disclosure, I believe that Zurini has intimate knowledge of the inner-workings of Mander's operations including businesses purposely kept secret from me.

38. I am informed by my wife that Zurini told her that she was exhausted from the multiple interviews with the Receiver. I believe that the information and/or documents provided by Zurini to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, close involvement with Mander and participation in Mander's Ponzi scheme.

Grant Walton

39. Grant Walton ("Walton") was Mander's landlord at his townhouse in Burlington, Ontario. Walton met Mander in 2001 at London Life and the two were in business together at some point thereafter. They started a company named Mander Walton, and each of them spoke to me about that company and their relationship. Walton did business with Mander and acted as his landlord notwithstanding his knowledge that Mander had been evicted from his apartment in Burlington.

40. I believe that Walton was interviewed because the Receiver discusses Mander Walton as a related entity at pages 5 and 8 of the first report, as well as the historical nature of his

investment relationship with Mander and his familiarity with and knowledge of Mander's business practices.

41. I believe that the information and/or documents provided by Walton to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Tasha Fluke

42. Tasha Fluke ("Fluke") was a partner of Mander's at FM Market Capital (one of the related entities mentioned in the Receiver's first report, and I believe FM stands for "Fluke Mander"). Fluke's name is scattered throughout the various reports of the Receiver and in Shahviri's cross-examination. In the appendix to the Receiver's first report, the Receiver indicated that there was an active ongoing lawsuit between Fluke and Mander. I believe that an earlier lawsuit by FM Market Capital against Mander resulted in Mander making payments to Fluke's investors.

43. Given the frequency with which her name is mentioned in the reports, and my personal knowledge as to her investment relationship with Mander, it is my belief that she would have been interviewed by the Receiver. Fluke's business relationship pre-dated my involvement with Mander and her interview would again assist me in rebutting the allegations that I knew or ought to have known of Mander's fraudulent activities. In addition, one of the allegations against me is that I failed to conduct due diligence. Fluke was one of the first individuals (along with Heather Shantora, Deryl Ward, Colleen Auriemma, Grant Walton and Bradley Ivanchuck) who I knew or I had been told that invested with Mander. At no time did she (nor others) indicate to me any dissatisfaction with Mander; in fact, she was quite content with the results of her investment with Mander, and told me so.

44. I believe that the information and/or documents provided by Fluke to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Colleen Auriemma

45. Colleen Auriemma ("Auriemma") was a former client of Fluke, and was in business with Mander at approximately the same time that I incorporated CO Capital. In addition, Auriemma ran Mander's art gallery for him and was also a part owner of the gallery. She was also an active liaison between Mander and Davide Amato (see below). During his OSC interview, Amato indicated that Auriemma was Mander's confidante. Amato also referred to Auriemma multiple times in his affidavit seeking the appointment of the Receiver. After Mander lost the lawsuit to Fluke, Auriemma personally distributed the cheques to the victims of his fraud. Nonetheless, Auriemma subsequently went into business with Mander. This business, Black Ink Capital Growth ("Black Ink"), was a capital growth investment company started by Auriemma with her husband, John Auriemma.

46. I am informed by my wife that Auriemma told her that Auriemma was interviewed by the Receiver, and that she was worried about what might happen to her given her close involvement with Mander. As well, in the Receiver's first report at page 6 he notes that Auriemma had advised the Receiver about one of Mander's businesses.

47. I believe that information and/or documents provided by Auriemma will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Deryl Ward

48. Deryl Ward ("Ward") was a former client of Fluke and an IT consultant for most - if not all - of Mander's companies. He was also a full-time employee of CO Capital during the time that Mander was a partner at CO Capital. When Mander left CO Capital Ward followed him, and unbeknownst to me, assisted him with setting up Mander's new investment companies. Ward was one of the first individuals (along with Heather Shantora, Fluke, Walton, Auriemma and Bradley Ivanchuck) who I knew or had been told that invested with Mander.

49. I am informed by my wife that she had a telephone discussion with Ward wherein he indicated that, due to his close relationship with Mander, he was fearful that the Receiver may pursue him due to that closeness. Of significance, Ward was the only creditor to not oppose the appointment of a Receiver over me.

50. Ward informed me that he, along with other E.M.B. and Stonebury employees were interviewed by the Receiver, and that "everyone is telling the Receiver that Mander alone was responsible." I believe that due to his close relationship with Mander, information provided by Ward to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme. I also believe that this material will assist me in defending against the due diligence allegation.

51. I also believe that Ward is the unnamed "IT consultant" on page 27 of the Receiver's fourth report referred to in connection with the "deleted e-mails". This further demonstrates his involvement in the process and the potential utility that his information could have for my defence.

Julia Dublin and Michael Miller

52. Julia Dublin (“Dublin”) was my lawyer from approximately May 2009 to early 2010. Michael Miller (“Miller”) was co-counsel with Dublin and, in addition, acted as litigation counsel for Mander in defence of his action brought by Fluke (see above). I retained them on the recommendation of Mander (who was already represented by them in the OSC proceedings). Dublin and Miller appeared at my compelled OSC interview in 2009 and spoke at considerable length. I believe that Miller and Dublin concealed information from me regarding Mander’s financial distress, past lawsuits and insufficient assets to cover his obligations. Accordingly, I commenced an action against Miller and Dublin for breach of their obligations. A copy of the Statement of Claim is attached as **Exhibit “T”**.

53. With my consent, both Dublin and Miller were interviewed by the Receiver and the Receiver refers to these interviews in his reports (in particular, the seventh and ninth reports). My former counsel, Mr. Milton Davis, informed me that they were meeting with Mr. Gottlieb, counsel to the Receiver. Attached as **Exhibit “U”** is a copy of the e-mail setting out this fact.

54. The allegations that I misled the OSC rely in large part on the statements made by Dublin and Miller to the OSC. I strongly believe that the information provided by Dublin and Miller to the Receiver is exculpatory, and therefore critical to my defence against these allegations, and I believe it will also assist me in defending against the other allegations made against me by the OSC.

Peter Welsh

55. Peter Welsh is a lawyer who assisted with setting up many of Mander’s companies as well as CO Capital. As indicated above, Welsh was the focus of the supplement to the Receiver’s fourth report and ordered to produce documents to the Receiver that related to his

work with Mander and CO Capital. I relied on representations that Welsh made to me regarding Mander's integrity, as well as CO Capital's security for its lenders. I am also suing Welsh for breach of his obligations.

56. The Receiver's seventh and ninth reports refer to information and documents provided by Welsh. As a result, I believe that he provided the required information and was interviewed by the Receiver.

57. I believe that information and documents provided by Welsh to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Peter Tonin

58. Peter Tonin ("Tonin") was the accountant for most - if not all - of Mander's companies as well as CO Capital. As Mander's accountant, I believe Tonin had information and knowledge about Mander constructing a Ponzi scheme that he concealed from me.

59. Like Welsh, he was ordered to produce documents to the Receiver that related to his work with Mander. The Receiver refers to information and documents provided by Tonin and both the seventh and ninth reports. For example, at page 9 of the seventh report, the Receiver specifically relies on information from Tonin when alleging that I should have known about certain losses. Based on my review of the Receiver's reports, I believe that the information and documents provided by Tonin figured significantly in the Receiver's findings and that he was interviewed by the Receiver.

60. On August 3, 2011, the Receiver provided documents received from Tonin pursuant to the July 14, 2010 Order to Alex Dimson of Norton Rose, counsel to the Applicant, in connection

with a lawsuit against Mr. Tonin brought by the Applicant and Amato (*Davide Amato and S.A. Capital Growth Corp. v. Peter Tonin, Andrew Renner and Tonin & Co. LLP* – Court File Number CV-10-410758). A compact disk was provided to Mr. Dimson containing documents provided by Tonin to the Receiver. A copy of this letter is attached hereto as **Exhibit “V”**.

61. The OSC disclosure also includes various correspondence between Tonin and Amato.

62. I believe that information and documents provided by Tonin to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander’s Ponzi scheme.

Terri Oldfield

63. Terri Oldfield (“Oldfield”) began as Mander’s account manager at HSBC and ultimately became his executive assistant. Many of the bank drafts for Mander’s business were processed by Oldfield. Both I and my wife had an ongoing relationship with Oldfield in the context of our interactions with Mander and I witnessed first-hand the degree to which Oldfield was knowledgeable about Mander’s business. I believe that she would have known the sources of various monies that came to Mander’s business, as well as the destination to which they were headed. I believe that if anyone knew or should have known of Mander’s Ponzi scheme, that person is Oldfield.

64. I was informed by Ward that Oldfield was interviewed by the Receiver.

65. I believe that information and documents provided by Oldfield to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander’s Ponzi scheme.

Heather Shantora

66. Heather Shantora (“Shantora”) met Mander in 2001 at London Life and was in partnership with Mander at Trafalgar Capital Growth Inc. Based on my review of the transcripts of Shahviri’s cross-examination, I believe that Mander and Shantora had a 50/50 split of their business. The OSC disclosure contains a transcript of Shantora’s interview by the OSC. Shantora was one of the first individuals (along with Fluke, Ward, Auriemma, Walton and Bradley Ivanchuck) who I knew or had been told that invested with Mander.

67. In the Receiver’s first report at pages 7 and 15, he notes that Shantora provided information and documents concerning her relationship with Mander to the Receiver. Based on these references, as well as Shantora’s involvement with Mander, I believe that Shantora was interviewed by the Receiver.

68. I believe that information and documents provided by Shantora to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander’s Ponzi scheme. I also believe that this material will assist me in defending against the due diligence allegation.

Davide Amato

69. Davide Amato (“Amato”) is a dentist who was a former lender to CO Capital who ultimately ended up secretly opening up a company with Mander (the Applicant in this proceeding). In Amato’s OSC interview (at pages 35 and 57), he told the OSC that he and Mander went into business together without wanting me to know about it. Amato also indicates that Auriemma was acting as the conduit for Mander. Based on my review of this transcript, I

believe that Amato has a distinct and intimate knowledge of the inner workings of Mander's activities, investments and all of Mander's affiliates.

70. The OSC disclosure contains numerous documents relating to Amato and I believe that he may be one of the witnesses called by the OSC at my upcoming hearing. Attached as **Exhibit "W"** is an e-mail exchange between my lawyers and the OSC prosecutor concerning a recent interview of Amato by the OSC.

71. I believe that Amato was interviewed by the Receiver at least once after swearing his Affidavit in support of the Receiver's appointment, and that he has provided documents to the Receiver concerning his involvement with Mander.

72. I believe that information and documents provided by Amato to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Thomas Obradovich

73. Thomas Obradovich ("Obradovich") is a former lender to CO Capital who subsequently invested directly with Mander. As indicated above, the Receiver refers to Obradovich's involvement in Pero in the eleventh report. He and Mander shared a web-trader account and also had a land development deal at Horseshoe Valley together. In Amato's compelled testimony, he explained that Obradovich invested in warrants with Mander.

74. With respect to the allegations that I knew or ought to have known about Mander's Ponzi scheme, Obradovich is an experienced investor who has sat on the boards of multiple companies, and I believe that any information he has provided to the Receiver will assist with me in defending against this allegation.

75. Obradovich was interviewed by the Receiver, as noted in the Receiver's first report at page 8. In it, the Receiver noted that Obradovich advised that he had invested approximately \$10 million with Mander or E.M.B, including approximately \$8.5 million personally. The OSC allegation that I misled them involves the allegation that I failed to disclose a liability owing to Obradovich. I believe that the interview with Obradovich would reveal that he was directly dealing with Mander, and that I did not mislead the OSC with respect to that liability.

76. The OSC disclosure contains numerous documents relating to Obradovich and I believe that he may be one of the witnesses called by the OSC at my upcoming hearing. Similar to Amato, my lawyers were also advised in the same e-mail from prosecution for the OSC (Exhibit "W") that a recent interview was conducted with Mr. Obradovich.

77. I believe that information or documents provided by Obradovich to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Bradley Ivanchuck

78. Bradley Ivanchuck ("Ivanchuck") was a former client and boyfriend of Fluke. As I now understand it (as I did not have this information when I was asked during my OSC interview), Ivanchuck incorporated J.S. Bradley subsequent to the action that resulted in Mander paying money to Fluke's investors. In the Receiver's first and fourth reports, the Receiver notes that J.S. Bradley was one of the six primary investors with Mander. Ivanchuck was one of the first individuals (along with Fluke, Ward, Auriemma, Walton and Shantora) who I knew or had been told that invested with Mander

79. Based on the references in the Receiver's report, as well as Ivanchuck's involvement with Mander, I believe that Ivanchuck was interviewed by the Receiver.

80. I believe that information and documents provided by Ivanchuck to the Receiver will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme. I also believe that this material will assist me in defending against the due diligence allegation.

Christine Brooks

81. Christine Brooks is the executor of Mander's estate, and was the mother of Mander's child. In the Receiver's first report at page 4, the Receiver refers to interviews conducted with "family members". Further, in the fourth report at page 9, the Receiver refers to interviews with Brooks.

82. Mander personally related to me that he was paying Brooks \$80,000 a year for child support and spousal support. This was, I later learned, after having been evicted from their home due to Mander's insolvency in or around 2002 or 2003. Given this sudden and dramatic improvement in lifestyle, and given that her involvement with Mander pre-dated my involvement, I believe that the information and documents she provided will assist me in defending against the allegations made by the OSC, and in particular the allegations of fraud, whether I ought to have known about and my participation in Mander's Ponzi scheme.

Mehran Shahviri

83. As indicated above, Shahviri was the investigator at the OSC that investigated me and my company's affairs and the person that swore the OSC's Affidavit in support of the motion to

appoint the second receiver. He is also the first individual on the OSC witness list and the OSC intends to spend a full day examining him.

84. Based on the OSC's reliance on the Receiver's reports and the Receiver's involvement with the OSC, I believe that Shahviri was interviewed by the Receiver and provided documents to the Receiver.

85. I believe that information and documents provided by Shahviri to the Receiver will assist me in defending against the allegations made by the OSC, and in particular assist my lawyers in preparing for Shahviri's cross-examination.

Deleted Emails

86. In the Receiver's fourth report, the Receiver refers to "deleted emails" from CO Capital computers and/or servers that were retrieved and that some of those emails are to or from me. I do not know precisely what these emails contain nor do I believe that I have copies of them (although I do have copies of some CO Capital e-mails in my possession). However, the Receiver's report gives the impression that these emails contain relevant information. I believe these emails contain information that will assist me in defending against the allegations made by the OSC.

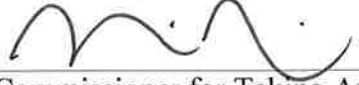
Request for an Index and Opportunity to Obtain Additional Relevant Materials

87. Aside from the information and documents referred to above, I do not know what documents and information are in the power, possession and/or control of the Receiver. However, I believe that the Receiver does have additional material that can assist me in defending against the allegations made by the OSC against me. Had the Receiver provided me

with an index when my counsel requested it, I could have identified the additional material that I wished to receive.

88. If the index indicates that there are other documents which are relevant to the issues at my hearing at the OSC, I may wish to request those documents from the Receiver as well; however, without an index I am entirely in the dark as to what other information might be available. Once I have had an opportunity to review and consider the other material in the Receiver's power, possession and/or control, I want to be able to request any additional relevant material that can assist in my defence against the OSC allegations.

89. I swear this Affidavit in support of my motion and for no improper or other purpose.

SWORN BEFORE ME in the City of)
)
 Toronto in the Province of Ontario)
)
 this 23rd day of April, 2012)
)
)
 Commissioner for Taking Affidavits)



PETER SBARAGLIA

SA CAPITAL GROWTH CORP.

Applicant

and

CHRISTINE BROOKS, ET AL.

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF
PETER SBARAGLIA**
(Sworn April 23, 2012)

BRAUTI THORNING ZIBARRAS LLP
151 Yonge Street, Suite 1800
Toronto, ON M5C 2W7

Kevin D. Toyne
LSUC No. 49447M
ktoyne@btzlaw.ca

Richard Niman
LSUC No. 59898O
rniman@btzlaw.ca

Tel: 416.362.4567
Fax: 416.362.8410

Lawyers for the Moving Party,
PETER SBARAGLIA

This is **Exhibit "A"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

Court File No. 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 31 ST DAY
)	
JUSTICE MORAWETZ)	OF MARCH, 2010

BETWEEN:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondents



**APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure* and section 101 of the *Courts of Justice Act*,
R.S.O. 1990. c. C.43, as amended**

FRESH AS AMENDED RECEIVERSHIP ORDER

THIS MOTION made by RSM Richter Inc. (the "Receiver"), in its capacity as Receiver of all of the assets, undertakings and properties of the estate of Robert Mander and E.M.B. Asset Group Inc. (the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated March 29, 2010 (the "First Report"), the Supplement to the First Report date March 30, 2010 (the "Supplement") and on hearing the submissions of counsel for the Receiver and others,

- 2 -

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the *Courts of Justice Act*, R.S.O., c. 43, as amended, RSM Richter Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors and any corporations or other entities associated with, related to or controlled by the Debtors (the "Related Entities") (the "Property").

3. **THIS COURT ORDERS** that "Related Entities" includes, in particular, but is not limited to the following corporations: Mand Asset Inc.; Dunn Street Gallery Inc.; Trafalgar Capital Growth Inc. and Mander Group Inc. and Stonebury Inc.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of

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independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to take any steps that the Receiver may, in its sole discretion, deem necessary or desirable to prevent any disbursement, withdrawal or transfer of funds by the Debtors or Related Entities or the sale, encumbrance or transfer of personal or real property of the Debtors or Related Entities, including the real property listed in Schedule B hereto (collectively, "Dispositions"), pending further order of this Court;
- (d) to direct any financial institution, wherever located and including those listed on Schedule A hereto to cease to allow any withdrawals or transfers from any account that the Debtors or Related Entities hold with such institution, including those listed on Schedule A hereto, unless otherwise directed by the Receiver in writing or by order of this Court;
- (e) to monitor and investigate the affairs of the Debtors and Related Entities;
- (f) to conduct examinations of any Person (as defined below), if deemed necessary or desirable in the Receiver's discretion;
- (g) to manage, operate, and carry on the business of the Debtors or Related Entities, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors or Related Entities;
- (h) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

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- (i) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or Related Entities or any part or parts thereof;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors or Related Entities and to exercise all remedies of the Debtors or Related Entities in collecting such monies, including, without limitation, to enforce any security held by the Debtors or Related Entities;
- (k) to settle, extend or compromise any indebtedness owing to the Debtors or Related Entities;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors or Related Entities, for any purpose pursuant to this Order;
- (m) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors or Related Entities, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

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- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors or Related Entities;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors or Related Entities, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors or Related Entities;

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- (u) to exercise any shareholder, partnership, joint venture or other rights which the Debtors or Related Entities may have;
- (v) to make or cause to be made an assignment in bankruptcy of any of the Debtors or Related Entities and to act as trustee in bankruptcy thereof; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors or Related Entities, and without interference from any other Person.

5. **THIS COURT ORDERS** that the Receiver shall file with the Court a report outlining its preliminary findings and recommendations with respect to the Debtors and Related Entities within 14 calendar days from March 17, 2010.

6. **THIS COURT ORDERS** that the Receiver may, in its sole discretion, apply to the Court at any time on three (3) days notice, for an Order that the Receiver shall be discharged as Receiver.

7. **THIS COURT ORDERS** that in the event that the Receiver applies for discharge in accordance with paragraph 6 above, such discharge shall be granted on such terms as this Court deems appropriate.

8. **THIS COURT ORDERS** that no party shall undertake any Dispositions except with the prior written consent of the Receiver or leave of this Court.

9. **THIS COURT ORDERS** that any transfer, disposition, encumbrance or other dealing with the real property legally or beneficially owned by the Debtors or Related Entities, including that real property specified in Schedule B, following registration of the Order of this Honourable Court made March 17, 2010 granted in this proceeding on title to such real property shall be invalid.

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10. **THIS COURT ORDERS** that no financial institution, wherever located, with notice of this Order shall permit any transfer or disbursement of any funds whether currently deposited or received in the future in any account held in the name of either of the Debtors or Related Entities without the prior written consent of the Receiver or leave of this Court.

11. **THIS COURT ORDERS** that the Receiver may, in its discretion, provide a key to access the premises at 223 Church St., Oakville, to Colleen Auriemma, and in the event that a key is so provided, Colleen Auriemma shall not provide that key or a copy thereof to any other person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

12. **THIS COURT ORDERS** that (i) the Debtors or Related Entities, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

13. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors or Related Entities, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 13 or in paragraph 14 of this

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Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

14. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

15. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

16. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or Related Entities or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that all rights and remedies against the Debtors or Related Entities, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors or Related Entities to carry on any business which the Debtors or Related Entities are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors or Related Entities from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

18. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors or Related Entities, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or Related Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors or Related Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' or Related Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges

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for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or Related Entities or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

20. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

21. **THIS COURT ORDERS** that all employees of the Debtors or Related Entities shall remain the employees of the Debtors or Related Entities until such time as the Receiver, on the Debtors' or Related Entities' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

22. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management

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

LIMITATION ON THE RECEIVER'S LIABILITY

23. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

24. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements in respect of either Respondent, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for all such fees and disbursements in respect of either Respondent, both before and after the making of this Order in respect of these

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proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and also subject to any security interest perfected in accordance with the *Personal Property Security Act* (Ontario) as of March 17, 2010 or any security interest in real property of the Debtors or Related Entities, including the real property listed in Schedule B, which has been properly registered on title to such real property prior to March 17, 2010.

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

26. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

APPROVAL OF REPORTS AND ACTIVITIES

27. **THIS COURT ORDERS** that the First Report and the Supplement and the activities of the Receiver referred to therein be and are hereby approved.

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors or Related Entities.

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30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

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



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

APR 01 2010

Tor#: 2495419.4

PER / PAR: TV

Schedule A

Banking Institutions

HSBC Bank Canada
102-271 Cornwall Road, Unit A
Oakville, Ontario L6J 7Z5

Account #: 930289 010

HSBC Bank Canada
2500 Appleby Line
Burlington, Ontario L7L 0A2

Account #: 003747 150

EMB Asset Group
Scotia Bank
207 Lakeshore Road East at George
Oakville ON L6J 1N4

Account Number: 30742 00840 18

EMB Asset Group
HSBC Bank Canada
2500 Appleby Line
Burlington, ON L7L 0A2

Account number: 342-013734-001
342-013734-002

Dunn Street Gallery Inc.
HSBC Bank Canada
2500 Appleby Line
Burlington, ON L7L 0A2

Account number: 342-013734-001

Schedule B**Real Property**

Lot 1, Plan 466, Oakville, being all of PIN 24796-0025 (LT), Land Registry Office #20, municipally known as 1225 Lawrence Cres., Oakville, Ontario.

Part Lot E, Block 3, Plan 1, Parts 9 and 27, Reference Plan 20R12967, Parts 2 and 4, Reference Plan 20R12968; Oakville, being all of PIN 24813-0327 (LT), Land Registry Office #20, municipally known as 223 Church St., Oakville, Ontario.

Part Lot E, Block 3, Plan 1, Parts 11 and 29, Reference Plan 20R12967, Parts 1 and 3, Reference Plan 20R12968, being all of PIN 24813-0328 (LT), Land Registry Office #20, municipally known as 225 Church St., Oakville, Ontario.

Parcel 8-1, Section 62M547; Lot 8, Plan 62M547; subject to LT235295; subject to LT220459; Flamborough City of Hamilton, being all of PIN 17524-0005 (LT), Land Registry Office #62, municipally known as 17 Stonebury Place, Freelon, Ontario.

Part Lot 26, Concession 3 WHS Caledon as in RO1108476, save and except Part 5 Plan 43R-16764; Caledon, being all of PIN 14280-0322 (LT), Land Registry Office #43, municipally known as 1650 High Point Road, Caledon, Ontario.

Part Lot 26, Concession 3 WHS Caledon, Part 4, Reference Plan 43R16764; Caledon, being all of PIN 14280-0316 (LT), Land Registry Office #43.

SA CAPITAL GROWTH CORP. and CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT
Applicant MANDER, DECEASED AND E.M.B. ASSET GROUP INC.
Respondents

Court File No: 10-8619-00CL

APPLICATION UNDER Rule 14.05(3)(g) of the Rules of Civil Procedure and section 101 of the Courts of Justice
Act, R.S.O. 1990. c. C.43, as amended

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

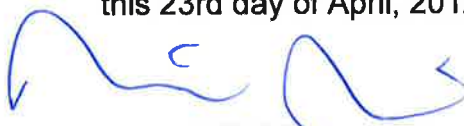
**FRESH AS AMENDED
RECEIVERSHIP ORDER
(RETURNABLE March 31, 2010)**

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Matthew Gottlieb (LSUC #32268B)
Tel: 416.863.5516
Fax: 416.863.0971

Lawyers for the Receiver

This is **Exhibit "B"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:**SA CAPITAL GROWTH CORP.**

Applicant

- and -

ROBERT MANDER AND E.M.B. ASSET GROUP INC.

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE RULES OF CIVIL PROCEDURE AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43**

**FIRST REPORT OF RSM RICHTER INC.,
AS RECEIVER**

March 29, 2010

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010, as amended ("Receivership Order").

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. ("SA Capital") for the appointment of a receiver over the business and assets of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") (jointly, EMB and Mander are defined as the "Respondents") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the business and assets of entities related to, or believed to be related to, the Respondents. As set out below, these entities include Mand Asset Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc. and Mander Group Inc.

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

The Receiver was appointed to preserve, protect and investigate the affairs of the Respondents. The Receivership Order has been amended on two occasions. A copy of the Second Amended Receivership Order (the “Amended Receivership Order”) is attached as Appendix “A”.

While Mr. Justice Morawetz was preparing his endorsement in chambers in respect of the receivership application on March 17, 2010 – and after having advised counsel that a form of receivership order would be granted – the Receiver was advised that Mander had just been found deceased in his home and that he had committed suicide. Mr. Justice Morawetz was immediately advised by the Receiver’s counsel, Matthew Gottlieb of Davies Ward Phillips & Vineberg LLP (“Davies”), of the information provided to the Receiver.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information concerning the Respondents;
- b) Summarize the results of the Receiver’s preliminary investigation in these proceedings; and
- c) Recommend that this Honourable Court issue an order:
 - Amending the Amended Receivership Order so that its terms substantially conform with the model receivership order approved by the Commercial List User’s Committee;
 - Adding Stonebury Inc. (“Stonebury”), a real estate holding company owned by Mander, as one of the companies listed as one of the “Related Entities” in the Receivership Order; and
 - Approving this Report and the Receiver’s activities since the date of its appointment.

1.2 Currency

All currency references are in Canadian dollars unless otherwise specified.

1.3 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Respondents as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various individuals and financial institutions. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could give firsthand information regarding the businesses he conducted. As a result, the Receiver has been required to conduct its investigation by reviewing documents and meeting with individuals with knowledge of Mander and his businesses. Therefore, this Report is preliminary and subject to change based on new findings - changes may be material.

2. BACKGROUND

EMB is an investment company incorporated in February, 2008 which borrowed funds from a number of companies and private individuals ("Investors") for investment purposes. Some Investors also loaned money directly to Mander for investment purposes. In certain instances, Investors, such as SA Capital, the Applicant in these proceedings, invested/loaned money they appear to have received from third parties.

The loan agreements between the Investors and the Respondents provide for significant rates of return, many between 17% and 30%, annually. To date, Investors have advised that they invested collectively well in excess of \$40 million with the Respondents.

Mander is not believed to have had significant net worth prior to commencing his first investment business in 2003. Based on interviews with family members and other individuals, Mander's family is from a humble background.

Through the fall of 2003, Mander worked as an insurance salesperson at Freedom 55. In and around that time, he and Tasha Fluke ("Fluke"), an associate he knew at Freedom 55, incorporated an investment company, FM Market Capital Inc. ("FM Capital"). In July, 2007 Fluke commenced an action against Mander, Mander entities and others related to various investment irregularities and other matters. Fluke's allegations are similar in many respects to the SA Capital application. A copy of Fluke's Statement of Claim, Mander's Statement of Defence and Counterclaim, Fluke's Reply and Defence to Counterclaim and Mander's Reply to the Defence to the Counterclaim is provided in Appendix "B".

EMB was owned by Mander, who was EMB's sole director and officer. Based on information provided to the Receiver, all decision making and investing at EMB was done solely by Mander. Among other things, Mander had exclusive cheque-signing authority over EMB's bank accounts and over his personal accounts. All parties with whom the Receiver has spoken deny knowledge of substantially all transactions undertaken by the Respondents. The Respondents did not provide the Investors with statements summarizing the individual holdings or the performance of their "portfolios".

EMB operated from 225 Church Street, Oakville ("225 Church"). It appears that Mander may have also conducted business from 223 Church Street, Oakville ("223 Church"), home of Dunn Street Gallery Inc. (the "Gallery") and periodically, or in the past, at 239 Church Street, Oakville ("239 Church"). (225 Church and 223 Church are referred to as the "Church Properties"). The Church Properties are owned by EMB. The Respondents do not appear to have an interest in 239 Church.

Additional background information concerning these receivership proceedings is included in an affidavit sworn by Davide Amato on March 15, 2010 ("Amato Affidavit"). The Amato Affidavit is available on the Receiver's website at www.rsmrichter.com.

3. RELATED ENTITIES

In addition to EMB, the Receiver has identified the following companies owned, controlled or associated with Mander¹ (the "Related Entities"). The Related Entities are listed below.

Entity	Mander Ownership
Stonebury	100%
Gallery	90%
Trafalgar Capital Growth Corp. ("Trafalgar")	50%
Mander Group Inc.	Unknown
Mand Asset Inc.	Unknown
Mander-Walton Market Capital	Unknown
FM Capital	50%
1198677 Ontario Limited ("119", a company with Tom Obradovich)	Unknown

A summary of these entities is provided in the following sections.

¹ Paragraph 3 (a.1) of the Amended Receivership Order reads "Related Entities include in particular, but is not limited to, the following corporations: Mand Asset Inc.; Dunn Street Gallery Inc.; Trafalgar Capital Growth Inc. and Mander Group Inc." thus covering the entities noted in that paragraph specifically and, indirectly, other entities related to Mander and EMB.

3.1 Stonebury

In July, 2007 Mander incorporated 2142179 Ontario Inc., which subsequently changed its name to Stonebury. Stonebury's office is located at 225 Church. It had three employees and is owned by Mander. Mander is its sole director and officer. It appears that Stonebury is a company that holds real estate for Mander.

Stonebury's real estate includes Mander's personal residence, a piece of vacant land and a property under development. None of this real estate generates revenue. Stonebury required funding from other sources in order to pay its expenses, such as utilities, taxes, insurance, upkeep and for development purposes. Based on interviews and a review of the Respondent's bank accounts at HSBC Bank Canada ("HSBC") for the period September, 2009 to February, 2010, Stonebury's operations were funded by Mander and EMB.

A summary of properties owned by Stonebury is provided in Section 4.5 below.

3.2 Gallery

The Receiver understands that Mander owns 90% of the Gallery. The balance of the Gallery is apparently owned by Colleen Auriemma ("Auriemma"), a Gallery employee.

The majority of the Gallery's art appears to have been accepted on a consignment basis. The Gallery currently has approximately 211 pieces of consignment artwork, 34 pieces of owned artwork and nine pieces of artwork owned by Mander. In addition to Auriemma, the Gallery had one employee.

Based on discussions and a review of the HSBC bank statements, the Gallery's operations appear to have been funded by the Respondents. Auriemma has advised the Receiver that the Gallery was not profitable.

Shortly after the commencement of these proceedings, Auriemma terminated the Gallery's operations. Artists have contacted the Receiver seeking the return of their artwork. The Receiver is in the process of reviewing the consignment documents. Subject to its review of the consignment documentation, and to the approval of this Court, the Receiver intends to return the consignment art to the artists.

3.3 Trafalgar

Trafalgar is an investment company in which Mander and Heather Shantora ("Shantora") each have a 50% ownership interest. Trafalgar's business was similar to SA Capital, but on a smaller scale.

Shantora estimates that Trafalgar is owed approximately \$800,000, excluding interest, from Mander and/or EMB.

Shantora advises that she resigned as a Director of Trafalgar on March 2, 2010 due to her frustrations with Mander. Despite repeated promises to Shantora, Mander failed to repay monies withdrawn by him from Trafalgar. According to Shantora, Mander invested these monies through EMB and his personal account(s). Shantora expressed repeated concerns to Mander over her lack of control of, and information concerning, the invested funds once transferred from Trafalgar. As with other Investors, Trafalgar was never provided with a summary of the performance of the investments. Shantora filed a complaint against Mander with the Ontario Securities Commission in early, 2010.

3.4 Other Related or Potentially Related Entities

Mander has, had or may have an ownership interest in Mander Group Inc.², Mand Asset Inc., Mander-Walton Market Capital and FM Capital. Based on information reviewed by the Receiver, it appears that these entities are no longer active and do not have material assets.

The Respondents appear to also have had a relationship with Tom Obradovich ("Obradovich"), a Toronto-based businessman who has advised the Receiver that he invested approximately \$10 million with either or both of the Respondents, including approximately \$8.5 million personally. The Receiver has also obtained information which indicates that Mander or EMB may have been co-investors with Obradovich through 119 in real estate in Barrie, Ontario. Obradovich has advised that Mander consented to the transfer of his interest in 119 and the Barrie real estate to Obradovich in November, 2009, when Mander was unable to make an interest payment on the Obradovich loans. The Receiver is reviewing this issue to determine whether the Respondents continue to have an interest in 119 and the Barrie real estate.

4. ASSETS

Immediately following its appointment, the Receiver attended at the Church Properties and advised the Respondents' main bank, HSBC, of its appointment. On March 18, 2010, the Receiver attended at Mander's personal residence at 17 Stonebury Place, Freelton, Ontario ("17 Stonebury"). The Receiver was unable to gain access to 17 Stonebury until the Hamilton Police ("Police") had concluded its investigation at that location.

A summary of the assets located by the Receiver as at the writing of this Report is provided below.

² This entity is believed to be owned 100% by Mander; however, the Receiver has not yet confirmed this.

4.1 Cash

The Respondents maintained several accounts at HSBC. The balance in the EMB and Mander bank accounts on or about the date of the Receivership Order totalled approximately \$9,600 and \$90, respectively. Mander also maintained a personal line of credit ("LOC") at HSBC under which he owed approximately \$25,000. As well, EMB has HSBC MasterCard credit cards under which it owes approximately \$50,000. HSBC has also provided account balances for Stonebury, the Gallery and Trafalgar. The balances in these three bank accounts total approximately \$18,000 and their outstanding HSBC MasterCard credit card balances total approximately \$72,000. The Receiver has requested that HSBC transfer the monies in the EMB, Mander, Stonebury, Gallery and Trafalgar bank accounts to the Receiver's estate account. HSBC has not yet transferred the funds and has advised that it may seek to set off the monies in EMB's account against the balance owing under the LOC.

The Receiver has requested that, to the extent possible, HSBC provide details of the accounts from their inception date, including all bank statements, deposits, cancelled cheques and wire transfer details. HSBC is providing this information as accumulated. As of the writing of this Report, the Receiver has received certain of these documents and is in the early stages of its review.

The Respondents also maintained bank accounts at Bank of Nova Scotia ("Scotiabank"). Scotiabank has advised that the balances in the Respondents' bank accounts on or about the date of the Receivership Order were nominal. Scotiabank is in the process of transferring the funds in the Respondents' accounts to the Receiver's estate accounts. The Receiver has also requested that, to the extent possible, Scotiabank provide details of the accounts from their inception date. Scotiabank is providing this information as accumulated.

The Receiver has sent letters to each of the Schedule 1 Canadian banks where Mander, EMB or any of the Related Entities may have transacted. Bank accounts of certain Related Entities have been identified at Bank of Montreal ("BMO") and Royal Bank of Canada ("RBC"); however, the BMO accounts were closed in 2007 and 2008, and the RBC account has a nominal balance. Any balances have been or are in the process of being transferred to the Receiver's estate accounts. The Receiver has received confirmation from the Canadian Imperial Bank of Commerce and from TD Bank that neither the Respondents' nor the Related Entities maintained bank accounts at their institutions.

4.2 Trading Accounts

The Respondents are known to have or had trading accounts with Interactive Brokers ("Interactive") and Questrade Inc. ("Questrade"). The Receiver is in the process of reviewing account statements it received from Interactive. The Receiver has requested that Questrade provide documentation to it with respect to the Respondent's accounts. As of the writing of this Report the Receiver has not received this documentation. The Receiver continues to follow up with Questrade. The Receiver has also sent letters to other Canadian brokerages where the Respondents' or the Related Entities may have transacted. As of the date of this report no other trading accounts have been identified.

4.3 Other Investments

The Receiver understands that either or both of the Respondents invested in certain private or "small cap" public companies. The Receiver is in the process of attempting to locate share certificates and/or confirming the shareholdings of the Respondents in these companies. These investments do not appear to be significant in the context of the amounts potentially owing to Investors.

4.4 Personal Property

The Receiver located the following items at 17 Stonebury, Mander's home:

- Jewellery, including 12 expensive watches. The Receiver has evidence that Mander purchased several additional expensive watches, but has been unable to locate them. Between May, 2007 and September, 2009, Mander purchased approximately \$440,000 of jewellery from an Oakville jeweller ("Jeweller");
- Two vehicles, including a 2010 Land Rover which is subject to an encumbrance in favour of Bank of Montreal and an unencumbered 2010 Jaguar;
- A children's playground rumoured to cost more than \$80,000;
- Several expensive guitars;
- Artwork;
- Several personal computers; and
- Home furnishings.

In addition, the Receiver was advised of three Fabergé eggs owned by Mander and stored at the Jeweller. Mander had requested that the Jeweller attempt to sell the Fabergé eggs on his behalf.

4.5 Real Property

A summary of the real property owned by the Respondents and Stonebury is provided below.

Address	Estimated Mortgage (\$000s)	Mortgagee	Title	Description
1225 Lawrence Crescent, Oakville ("Lawrence Property")	2,000	HSBC	Mander	5,000 sq ft. vacant house.
1650 Highpoint Sideroad, Caledon	-	-	Stonebury	97 acre lot with 1 storey house.
1506 Highpoint Sideroad, Caledon	-	-	Stonebury	1 1/2 acre lot, under construction.
223 Church Street, Oakville	612	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial.
225 Church Street, Oakville	630	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial.
17 Stonebury Place, Freelon	633	TD Bank	Stonebury	5 acre lot with 4,600 sq. ft. house

In accordance with the terms of the Receivership Order, the Receivership Order or the Amended Receivership Order (as appropriate) has been registered on title for each of the above locations.

The 225 Church and the Lawrence properties were listed for sale with an agent from Re/Max Del Mar Realty Inc. on February 18, 2010 and January 19, 2010, respectively. The listing prices for 225 Church and the Lawrence Property are \$1.68 million and \$3.28 million, respectively.

As at the writing of this Report, the Receiver is working with a prospective buyer for the Lawrence Property. The Receiver intends to promptly seek the Court's approval of the transaction should the Receiver be in a position to complete this transaction.

4.6 Claims Made Against the Real Property

Auriemma claims that pursuant to a document dated December 21, 2009, Mander pledged to Black Ink Capital Growth Ltd. ("Black Ink"), an Investor and a company she owns with her husband, the equity in the Lawrence Property in the event that EMB is unable to fulfill its legal contractual obligations to Black Ink. A copy of the document is attached as Appendix "C". The Receiver believes that this claim does not provide Black Ink with an enforceable secured claim in the equity in the Lawrence Property. The Receiver also believes that this transaction may be attackable under provincial legislation.

The document provided by Mander to Auriemma is consistent with another document provided to the Receiver by Peter Sbaraglia ("Sbaraglia"). Sbaraglia is a principal of CO Capital Growth Corp. ("CO Capital"), another Investor. During an interview with the Receiver and its counsel on March 18, 2010, Sbaraglia provided a Statutory Declaration dated July 15, 2009 indicating that the cash value of the equity in six properties was held in trust for CO Capital in the event that EMB is unable to repay the monies invested by CO Capital. Since the March 18, 2010 meeting, Sbaraglia's

counsel has confirmed that CO Capital does not take the position that it is a secured creditor on the lands referenced in the Statutory Declaration. A copy of the Statutory Declaration is attached as Appendix "D".

5. "THE NEW YORK PROPERTY"

It appears that in the fall of 2009 and early 2010 the Respondents had difficulty meeting their obligations to Investors and that Investors were becoming increasingly concerned. Mander's communications during this period were sporadic. To the extent he was communicating with Investors, Mander advised many Investors (and others) that he had invested a \$40 million inheritance from his father with an individual named Arthur who he said was an old high school friend living in New York, but that Arthur had lost and/or absconded with the money. Mander also advised Investors that to make up for the loss, Arthur had transferred to Mander a building in New York City that was in the process of being sold for Arthur by a man named Victor³. The proceeds of the sale were to be paid to Mander, which were to be more than \$40 million, thus allowing Mander to repay the Respondents' obligations.

The Receiver has recently been advised that Mander's father was living on his pension at his life's end and had negligible net worth at the time of his death. The Receiver has also recently learned that Arthur is an old friend of Mander's sister and that he is an electrician with a small business in California. Family members and others appear to have no recollection or knowledge of Victor. The Receiver has not identified nor been provided with any evidence to suggest that the New York City real estate exists.

³ The Receiver has been advised of variations of this story, including that Victor had obtained a judgement on Arthur's New York City real estate, which he subsequently enforced. When asked for a copy of the judgement by certain Investors, Mander is said to have responded that it is confidential.

The Receiver notes that Mander's explanation that the proceeds generated from the sale of the New York property would be available to repay his obligations does not answer the question of the location of the Investor funds and the assets in which he invested (or was to invest).

6. INVESTORS

The Receiver is presently aware of six primary Investors, including SA Capital, Black Ink, CO Capital, Trafalgar, J.S. Bradley Inc. and Obradovich. The Receiver has been contacted by other parties who invested lesser amounts. The Receiver is not aware of the number of investors that invested with the Respondents, directly and indirectly. The total amount owing to the Investors at this time is unclear; however, the total claims would appear to exceed \$40 million. It is also unclear whether this is in respect of principal, interest or principal and interest. Based on its review of the HSBC bank statements, it appears that several Investors received significant payments in recent months.

Subject to having sufficient funds to perform a detailed review of the Respondents' activities and transactions, the Receiver intends to perform an analysis of the Respondents' banking and other transactions. In due course, and subject to recoveries in these proceedings, the Receiver would conduct a claims process to confirm the Respondents' creditors and the amounts owing to them.

7. DATA REVIEW

The Respondents do not appear to have maintained complete books and records. With few exceptions, the Receiver has been unable to find correspondence or written communications, other than limited e-mail correspondence. To the extent Mander communicated it appears to have been via several e-mail accounts. The Respondents did not provide Investors with statements detailing the performance of their investments or individual holdings. Investors and employees have advised the Receiver that Mander became agitated when asked about the attributes of his investments.

The Receiver has been advised of a bonfire in late 2009 at which documents are said to have been burned. The Receiver is attempting to verify this. Numerous shredders were located at the Church Properties.

The Receiver is in the process of reviewing e-mail accounts, electronic and other records related to the Respondents and Related Entities. CO Capital and Shantora have also provided the Receiver with documents.

The Receiver located several Blackberrys at Mander's residence, each of which has been erased. Some may never have been used. The Receiver has requested that Research in Motion ("RIM") provide it with any communications that may remain on its servers. The Receiver is awaiting RIM's findings.

The Receiver has been advised that the Police have in their possession a hard drive from one of the computers located at 17 Stonebury. The Receiver requested a mirror image of this hard drive, but a response has not yet been provided. The Receiver intends to follow up with the Police in this regard.

The Receiver is performing a review of the Respondent's various computers and of computers of certain parties that dealt extensively with the Respondents.

8. INTERVIEWS

Since its appointment, the Receiver has conducted preliminary interviews of employees, Investor representatives and certain of Mander's family members. The details provided in this Report are based in part on those interviews. It will be necessary for the Receiver to continue to meet with certain of these individuals as the Receiver's investigation continues.

9. ESTATE ISSUES

The Receiver understands that Mander's will appoints Christine Brooks ("Brooks"), the mother of Mander's son⁴, as the executor of his estate. Through counsel, Brooks has advised that she may renounce this position, but has not yet done so.

The Receiver has also been advised that approximately \$8,000 per month was being paid, or to be paid, by Mander to Brooks in respect of child support payments and that Brooks is seeking to have these support payments continued. The estate does not currently have the money to continue to fund this obligation and it is also uncertain if this obligation is appropriately sustained in the context of an insolvency proceeding and the overall claims against the Respondents.

10. OTHER ACTIVITIES

In addition to the activities detailed above, the Receiver's activities have included:

- Attending at the Church Properties periodically to search for information and assets;
- Retrieving and storing at the Receiver's office documentation and computer equipment from 225 Church and 17 Stonebury;
- Imaging computers from 223 Church and copying documentation, including consignment agreements with artists;
- Corresponding with authorities and regulators, certain of which may have been reviewing in recent months the activities of the Respondents;
- Meeting with the Police to advise of the receivership proceedings and to request an inventory of items removed from Mander's residence;
- Contacting charities to which Mander may have donated;
- Contacting various other parties whom the Receiver was advised may have information regarding the Respondents;

⁴ Mander and Brooks were never married.

- Following up with Interactive and Questrade;
- Corresponding with HSBC and various financial institutions;
- Changing locks and alarm codes at the Church Properties and 17 Stonebury and arranging for security at these locations;
- Reviewing insurance documentation;
- Negotiating a transaction for the Lawrence Property;
- Corresponding with the Respondents' accountant, Tonin & Co LLP;
- Meeting with an appraiser regarding jewellery and other assets;
- Corresponding with the Jeweller;
- Returning to Mander's son certain immaterial personal items, including a ring, a pair of cufflinks and various children's toys;
- Dealing with issues related to Mander's estate; and
- Drafting this Report.

11. CONCLUSION AND RECOMMENDATION

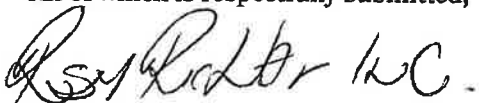
The Receiver believes that the Amended Receivership Order should be amended to conform substantially to the terms of the model receivership order approved by the Commercial List User's Committee. The Receiver believes that it requires additional powers, including the authority to realize upon the assets of the Respondents, including those in the Receiver's possession, and to ultimately distribute any proceeds, net of costs, to the Respondents' creditors, subject to the Court's oversight and approval. The Receiver is not in a position at this time to confirm whether there will be any recoveries to the Respondents' creditors, and if so, the amount of any recoveries.

The Receiver intends to maintain an accounting of the recoveries and costs in these proceedings on an entity basis, noting however, that the Receiver's Charge in the Amended Receivership Order is a court-ordered senior encumbrance over all of the Respondents' businesses and assets without regard to the entity in which realizations are generated.

The Receiver also seeks approval of this Report and its activities from the date it was appointed.

* * *

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", written in a cursive, flowing style.

**RSM RICHTER INC.
IN ITS CAPACITY AS RECEIVER OF
E.M.B. ASSET GROUP INC. AND ROBERT MANDER
AND NOT IN ITS PERSONAL CAPACITY**

This is **Exhibit "C"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

RSM Richter

**Fourth Report to Court of
RSM Richter Inc. as Receiver of the
Estate of Robert Mander, E.M.B. Asset
Group Inc. and Related Entities**

RSM Richter Inc.
Toronto, July 2, 2010

RSM Richter

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE RULES OF CIVIL PROCEDURE
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43,
AS AMENDED**

**FOURTH REPORT OF RSM RICHTER INC.,
AS RECEIVER**

July 2, 2010

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010. A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. ("SA Capital") for the appointment of a receiver over the assets, properties and undertakings of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, properties and undertakings of entities related to EMB or Mander. These entities include but are not limited to Mand Assets Inc. ("Mand Assets"), Dunn Street Gallery Inc. ("Gallery"), Trafalgar Capital Growth Inc. ("Trafalgar"), Stonebury Inc. ("Stonebury") and Mander Group Inc. ("MGI") ("Related Entities") (the Related Entities, EMB and Mander are collectively referred to as the "Debtors").

On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of proceedings was changed to reflect the continuance.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information concerning the Debtors;
- b) Summarize the interim findings of the Receiver's investigation in these proceedings;
- c) Summarize for the Court a settlement offer by the Receiver to Ms. Brooks regarding certain death benefits and the cash value of Mander's life insurance policies;
- d) Summarize other issues in these proceedings for which no relief is presently sought; and
- e) Recommend that this Honourable Court issue an order:
 - Authorizing and directing the Receiver to investigate the affairs of C.O. Capital Growth Corp. ("CO Capital");
 - Authorizing the Receiver to take possession of, and realize upon, a Lexus purchased in the name of Maria Zurini, with Stonebury monies;
 - Requiring Tonin & Co. LLP ("Tonin"), an accounting firm that acted for certain or all of the Debtors, to, within seven days of the granting of such order, deliver to the Receiver all documents in Tonin's possession, power

and/or control in any way related to the business or affairs of any of the Debtors;

- Requiring Interactive Brokers Canada Inc. ("Interactive Brokers") to (i) transfer cash in each of the Debtors' accounts (the "Accounts") to the Receiver, and (ii) sell any securities in the Accounts upon receiving such written direction from the Receiver and thereafter forward the net proceeds to the Receiver; and
- Approving this Report and the Receiver's activities since the date of the Receiver's first report to Court dated March 29, 2010 ("First Report").

1.2 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Debtors as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various individuals and financial institutions. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could have provided first-hand information regarding the businesses he conducted. As a result, the Receiver has been required to conduct its investigation by reviewing documents and meeting with individuals with knowledge of Mander and his businesses.

2. BACKGROUND

EMB was incorporated in February, 2008. It and Mander borrowed funds from a number of companies and individuals and guaranteed high rates of return for a fixed term. Some investors also loaned money directly to Mander. The investors believed that Mander was investing in equities (directly or indirectly through entities he controlled or influenced) in order to generate substantial rates of return on their behalf. Certain investors advanced to Mander and his companies, including EMB, money loaned to them by others.

EMB was owned by Mander, who was EMB's sole director and officer. All decision making and investing at EMB was done solely by Mander. There was little distinction between EMB and Mander – Mander frequently moved monies between his personal accounts and the accounts of EMB and other Mander controlled entities so that he could fund his lifestyle and attempt to generate personal net worth, including the purchase of real estate through corporations he owned, such as Stonebury.

Additional background information concerning these receivership proceedings is provided in the initial application materials, the Receiver's First Report¹, its second report to Court dated May 28, 2010 ("Second Report") and its third report to Court dated June 8, 2010. These documents are available on the Receiver's website at www.rsmrichter.com.

¹ Including its supplement to the First Report, dated March 30, 2010.

3. ASSETS

The First Report details that the Debtor's accounts had nominal balances on the date these proceedings commenced.

As of the date of this Report, the majority of the assets recovered include real estate, artwork, jewellery, furniture, a 2010 Jaguar and sundry other assets. Mander also owned a 2010 Land Rover, which was fully encumbered by Bank of Montreal ("BMO"). The Land Rover was returned to BMO on May 4, 2010.

On June 3, 2010 the Court issued an order approving an auction agreement between Asset Engineering Corporation ("AEC") and the Receiver authorizing AEC to conduct an auction for the sale of the majority of the Debtors' personal property ("Auction Assets") ("AEC Transaction"). The auction is scheduled for July 7, 2010.

3.1 Real Property

A summary of the Debtors' real property is provided in the table below.

Address	Listing Price ² (\$000s)	Estimated Mortgage (\$000s)	Mortgagee	Title	Description and Comments
1225 Lawrence Crescent, Oakville ("Lawrence Property")	2,755 ³	2,000	HSBC Bank Canada	Mander	Sold.
17 Stonebury Place, Freelon ("17 Stonebury")	760 ⁴	634	TD Bank	Stonebury	Sold. Five acre lot with 4,600 sq. ft. house. Transaction is expected to close on July 30, 2010.
1506 Highpoint Sideroad, Caledon ("1506 Caledon")	220 ⁵	-	-	Stonebury	Sold. 1½ acre lot, under construction. Transaction closed on June 18, 2010.
1650 Highpoint Sideroad, Caledon ("1650 Caledon")	1,499	-	-	Stonebury	100 acre lot with 1 storey house. Property was listed for sale with Royal LePage Real Estate Services ("Royal LePage") on April 30, 2010.
223 Church Street, Oakville ("223 Church")	1,395	612	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial or residential. Property was listed for sale with Avison Young Commercial Real Estate (Ontario) Inc. on April 26, 2010.
225 Church Street, Oakville ("225 Church")	1,499	630	Home Trust Company	EMB	2,900 sq. ft. townhouse, commercial or residential. Property was listed for sale by Mander with Re/Max Del Mar Realty Inc. ("Remax") on February 14, 2010. The original listing price was \$1.68 million.

² Listing prices as at June 30, 2010.

³ Represents selling price.

⁴ Represents selling price.

⁵ Represents selling price.

Additional information concerning the above real estate is as follows:

- **Lawrence Property:** The sale of the Lawrence Property closed on April 26, 2010. The transaction generated net proceeds of \$639,000 after repayment of a mortgage on the property, selling costs and closing adjustments.
- **17 Stonebury:** An agreement of purchase and sale for this property was approved by the Court on June 11, 2010. The transaction proceeds are expected to total approximately \$80,000 after repayment of a mortgage on the property owing to Toronto Dominion Bank, commissions and other amounts payable.
- **1506 Caledon:** An agreement of purchase and sale for this property was approved by the Court on June 11, 2010 and the transaction closed on June 18, 2010. The proceeds are expected to total approximately \$180,000 after repayment of a construction lien filed by Hometek Enterprises,⁶ commissions and other amounts payable on closing.

3.2 Artwork

The majority of the artwork located at the Gallery premises was consigned to the Gallery by a number of artists. The Receiver has returned substantially all of the consigned artwork to the artists. In certain instances, the consignment documentation in the Gallery's files was insufficient to evidence a completed consignment arrangement; however, given the overall intention of the documentation, discussions with the Gallery manager and the nominal value of the artwork in question (less than \$1,500 in virtually all cases), the artwork was returned to the artists.

In addition to the consigned art there are approximately 70 pieces of art⁷ that were purchased by the Gallery or Mander ("Owned Art"). The Owned Art is included in the AEC Transaction.

⁶ Subject to confirmation by the Receiver of its validity.

⁷ Artwork includes paintings, glass sculptures and crystal figurines.

3.3 Life Insurance Policies

Mander maintained four insurance policies with London Life Insurance Company ("London Life"), including three on his own life and one on the life of his son (the "Policies"). The details of the Policies are as follows:

Date of Policy	Life Insured	Beneficiary	(\$000s) Death Benefit ⁸
November 17, 2001	Mander	Mander's son	120
October 12, 2002	Mander	Mander's son	70
June 12, 2003	Mander	Mander's son	167
			357
November 27, 2001	Mander's son	Mander	20 ⁹
			377

The Receiver's review of Mander's bank accounts indicates that he routinely transferred money from his business accounts to his personal accounts, including amounts to fund the insurance premiums. A summary of the premium payments funded by Mander is provided in Appendix "B".

Mander had no source of income other than monies received from investors. It is believed that Mander used investor monies for personal purposes starting as early as 2003, at which time he and Tasha Fluke, an associate he met while working at Freedom 55 in 2003, formed FM Market Capital Inc. ("FM Capital"). In July, 2007, Ms. Fluke commenced an action against Mander for reasons similar to those detailed in the affidavit of Davide Amato filed in the application materials in these proceedings. A copy of the materials filed in the FM Capital proceedings is provided in Appendix "C".

⁸ The death benefit proceeds are net of indebtedness (approximately \$24,000) owed by Mander to London Life.

⁹ Current cash value of the policy.

The Receiver has also taken into consideration that Mander had substantially no assets at the time he commenced his investment activities/scheme. During meetings between the Receiver and Ms. Brooks, the mother of Mander's son, Ms. Brooks advised that around July, 2000, she and Mander were evicted from their apartment because they could not pay the rent. Ms. Brooks and Mander's siblings have also advised that Mander's family was not wealthy, contrary to comments attributed to Mander by friends and investors that his father had substantial net worth. Mander's financial success at Freedom 55 is said to have been less than noteworthy.

Because the Receiver's review of the Mander's bank statements indicates that Mander used investor money to fund the insurance premiums, and because Mander had virtually no assets at the commencement of the investment scheme, the Receiver has taken the position that the Policies should be an asset available to the Debtors' creditors. In this regard, the Receiver has been attempting to negotiate a settlement of the Policies with Ms. Brooks. The Receiver's settlement offer weighs the cost of litigating this issue (both to the estate and to Ms. Brooks) and the fact that the beneficiary under the policy is Mander's son. In the absence of a settlement with Ms. Brooks, the Receiver intends to seek full payment of the insurance proceeds to the estate.

In correspondence dated May 27, 2010 among counsel to Ms. Brooks, the Receiver and London Life, London Life agreed to hold the proceeds for three months pending resolution of this issue.

4. INVESTORS

EMB and/or Mander appear/(s) to have had six primary investors (the "Investors"). These are:

- CO Capital;
- SA Capital;
- Black Ink Capital Growth Ltd. ("Black Ink");
- Trafalgar;
- Pero Assets Inc. ("Pero") (and Thomas Obradovich); and
- J.S. Bradley Inc. ("JS Bradley").

The Receiver has also been contacted by other parties who have advised that they invested directly with EMB and/or Mander ("Other Investors"). The number of Other Investors and total amounts invested by the Other Investors remains unknown at this time. Absent a claim process, the Receiver is unable to confirm the total number of creditors and the amounts owing to them. The Receiver believes that a claims process should be deferred until it is determined that there will be funds available for distribution to creditors.

Mander (either directly, or through MGI or EMB) had agreements with the Investors which entitled the Investors to share the profit on the spread between the returns earned by Mander or EMB and the rate of return guaranteed to Investors. For example, if Investors were guaranteed a 25% return but Mander generated 50% (which he did not), Mander and the Investor would share on some basis the 25% profit; commonly the "profit" was to be shared equally.

5. TRACING

Since the commencement of the receivership proceedings the Receiver has obtained financial information and documentation which it has been reviewing, including, *inter alia*, bank statements, support for receipts and disbursements between the Debtors and the Investors, and other financial information provided by the Investors related to the Debtors.

Based on its review for the period September, 2005 to March 17, 2010, the Receiver traced the majority of the receipts and disbursements between EMB, Mander and MGI¹⁰ accounts, on the one hand, and the Investor accounts, on the other. The results of this review are provided in the following table¹¹.

Investor	\$000s		Net Received from Investor/(Net Paid to Investor)
	Received from Investor	Paid to Investor ¹²	
CO Capital	15,440	(18,446) ¹³	(3,006)
SA Capital	15,823	(1,824)	13,999
Pero/Thomas Obradovich ¹⁴	4,627	(1,513)	3,114
Trafalgar	860	(990)	(130)
Black Ink	887	(1,065)	(178)
JS Bradley	1,942	(1,505)	437
Other Investors	3,775	(1,307)	2,468
Total	43,354	(26,650)	16,704

Represents the net
amount retained by
Mander.

¹⁰ Mander appears to have operated MGI from September, 2005 to December, 2007. The operations of MGI were similar to those of Mander's other investment companies.

¹¹ The Receiver only reviewed transactions greater than \$5,000. Transactions between Mander, EMB or MGI and the Investors or Other Investors that were less than \$5,000 are not captured in the table.

¹² Where applicable, receipts from Investors and payments to Investors include amounts received from and amounts paid to their principals, i.e. transactions with CO Capital include transactions with Peter and Mandy Sbaraglia.

¹³ Excludes approximately \$1.9 million paid by Mander to CO Capital for the purchase of shares in 2197204 Ontario Inc o/a Atlas Global Financial Technologies, a company owned by Mandy Sbaraglia.

¹⁴ Includes amounts invested by Mr. Obradovich and companies owned by him. Includes certain amounts invested by Mr. Obradovich directly with EMB.

The table reflects that Mander retained approximately \$16.7 million of the approximately \$43 million that he received. The table also reflects that CO Capital received approximately \$3 million more than it funded, including approximately \$1 million paid by Mander and his companies to its principals, Peter and Mandy Sbaraglia. SA Capital appears to have suffered the most significant losses, totalling approximately \$14 million.

The above table excludes amounts paid to Investors which were not transferred to any of EMB, Mander or MGI, i.e. it excludes amounts that were maintained by the Investors in their accounts. Accordingly, to the extent that costs were funded or items purchased by Mander in an Investor account, these amounts would be over and above the \$16.7 million he retained.

The table below provides a summary on an annual basis of the net amounts received from or paid to Mander and certain of his companies; it reflects net payments of almost \$8.9 million to CO Capital during 2009.

	\$000s					
	2006	2007	2008	2009	2010	Net from/ (to Investor)
CO Capital	687	4,150	1,071	(8,894)	(20)	(3,006)
SA Capital	-	-	8,626	5,373	-	13,999
Pero/Obradovich	-	(550)	3,121	543	-	3,114
Trafalgar	-	99	(102)	(78)	(49)	(130)
Black Ink	49	(146)	226	(307)	-	(178)
JS Bradley	-	1,048	(59)	(536)	(16)	437
Other Investors	25	1,104	(57)	1,381	15	2,468
Total	761	5,705	12,826	(2,518)	(70)	16,704

Represents majority of activity in 2009

Represents largest apparent claims

The table below illustrates that Mander, directly and through his related companies, used the monies from Investors and Other Investors to fund his lifestyle and personal affairs.

	\$000s		
	Receipts	Disbursements	Net (Paid) Received
Net amount received from Investors	43,354	(26,650)	16,704
Real estate	1,078	(8,778)	(7,700)
Investments in illiquid start-up companies	-	(2,496)	(2,496)
Stonebury expenses	-	(717)	(717)
Soka Gakkai International	-	(321)	(321)
Mortgage payments	1,876	(44)	1,832
Gallery operating costs	-	(563)	(563)
Jewellery	-	(470)	(470)
Personal vehicles	164	(504)	(340)
Trading losses – Interactive Brokers accounts	-	(569)	(569)
Other identified transactions	145	(2,894)	(2,749)
Unidentified transactions	2,873	(5,451)	(2,578)
Cash Remaining ¹⁵	49,490	(49,457)	33

Net funds retained by Mander

Mander spent the monies he retained on the following:

- The purchase of real estate in his own name, EMB, Stonebury, a venture in Barrie, Ontario with Thomas Obradovich and for a family member (see Appendix “D” for details of each transaction);
- Investments in illiquid start-up companies (see Appendix “E” for details);
- “Business” expenses, such as those related to the construction and maintenance of the Gallery;
- Stonebury¹⁶ expenses, including a \$78,000 Lexus purchased by Stonebury for Ms. Zurini, a Stonebury employee. Details of the Stonebury expenses are provided in Appendix “F”;
- Donations to Soka Gakkai International (“SGI”), a Buddhist organization to which Mander belonged (see Appendix “G” for details);
- Investments in securities – he incurred significant trading losses (see Section 5.1 below); and

¹⁵ Represents the approximate cash remaining in all of Mander’s combined bank accounts and trading accounts at the commencement of the receivership proceedings.

¹⁶ Stonebury owns the real estate at the following municipal addresses: 17 Stonebury, 1506 Caledon and 1650 Caledon.

- Personal assets for himself, including jewellery, vehicles, artwork and expensive clothing¹⁷ and gifts for those close to him, including a vehicle for a sibling.

5.1 Trading Activity

Questrade Inc.

Mander and certain of the Investors maintained accounts at Questrade Inc. ("Questrade") and Interactive Brokers. The majority of the Questrade accounts were closed or inactive by March, 2008. The total amount invested in Questrade accounts through CO Capital, MGI and Mander was approximately \$1.2 million, of which approximately \$1 million was through CO Capital. The losses in these accounts totalled approximately \$564,000¹⁸, being 47% of the total invested.

Interactive Brokers

Mander and/or Peter Sbaraglia opened investment accounts at Interactive Brokers accounts for CO Capital, Mand Assets and Pero. Mander also maintained accounts at Interactive Brokers for EMB and Trafalgar¹⁹.

A summary of the trading activity in the Interactive Brokers accounts for the period from May 2, 2007 to February 28, 2010 is provided in the table below. The table indicates that the entities in the table incurred losses approximating 44% of their original amount invested and that the balance was withdrawn to fund various items, including Investor loan repayments.

¹⁷ Mander had an account at Marcello Tarantino, a high end men's clothing store located in Yorkville, Toronto, where he would periodically leave substantial deposits and would purchase against the deposits.

¹⁸ Includes foreign exchange gains and losses and fees and commissions paid on transactions.

¹⁹ The EMB account was opened by Mander. The Receiver is unsure who opened the Trafalgar account.

\$000s					
Account	Deposits	Withdrawals	Losses ²⁰	Losses	Account Balance
EMB	1,100	(530)	(569)	(52%)	1
Trafalgar	238	(182)	(56)	(24%)	-
Pero	3,720	(1,767)	(1,899)	(51%)	54
Mand Assets ²¹	910	(535)	(358)	(39%)	17
CO Capital ²²	4,924	(2,917)	(1,944)	(39%)	63
Total	10,892	(5,931)	(4,826)	(44%)	135

With the exception of Mand Assets²³, Mander's position and/or capacity in respect of each of the entities listed in the table above is as follows:

- Trafalgar was 50% owned by Mander. The other 50% was owned by Heather Shantora. According to Shantora, Mander traded extensively the Trafalgar account;
- Pero was originally owned equally by Peter Sbaraglia and Mander; however, it now appears to be owned by Mr. Obradovich. Peter Sbaraglia and Mander were responsible for Pero's investment activity through November, 2008; and
- Mander owned 50% of CO Capital from early 2007 to November, 2008. Mander was also a Director of that entity and its Chief Portfolio Strategist until approximately that date. As detailed in Section 6 below, the activities of CO Capital and EMB/Mander remained highly intertwined even after Mander resigned.

²⁰ Includes unrealized gains and losses, foreign exchange gains and losses and fees and commissions paid on transactions.

²¹ Funded primarily by CO Capital prior to November 30, 2008, during which time Mander was part owner of CO Capital.

²² Information is for the period from May 2, 2007 to November 30, 2008, after which Mander's role at CO Capital is said to have discontinued.

²³ The Receiver is still trying to confirm what, if any, role Mander had with this entity.

5.2 Real Estate Investing Activity

In addition to his trading activities, Mander is said to have looked for opportunities to purchase real estate at distressed prices. However, a review of his real estate purchases reveals that he overpaid in most, if not all, instances. For example:

- Mander purchased 1650 Caledon for \$2 million in June, 2008. Comparable properties have recently sold for approximately half of that amount;
- Mander purchased 17 Stonebury for \$939,000 in June, 2008. The Receiver has been advised that there are currently two properties listed for sale for \$899,000 on Stonebury, each of which has been on the market for approximately one year. The Receiver understands that the two properties are comparable, but superior to 17 Stonebury. 17 Stonebury is subject to a sale by the Receiver for \$760,000, which is less than the price paid by Mander²⁴; and
- Mander purchased the Lawrence Property for \$2.9 million in October, 2009. This property was recently sold by the Receiver for \$2.755 million.

The Receiver has spoken with real estate agents familiar with the properties that Mander purchased and the prices he paid. The agents have advised that Mander overpaid for the majority of the real estate he acquired based on comparable transactions.

²⁴ The two listed properties may be a better comparable then the Receiver's sale as that was Mander's residence at the time of his death.

Mander also used his real estate as a source of liquidity, when necessary. The table below provides a summary of properties mortgaged by Mander (through Stonebury and EMB) well after the dates that he acquired the properties.

(\$000s)					
Property	Purchase Date	Mortgage Date	Mortgagee	Mortgage Amount	Purchase Price
17 Stonebury	June 20, 2008	September 1, 2009	TD Bank	634	939
223 Church	June 20, 2008	October 7, 2009	Home Trust Company	612	1,200
225 Church	October 10, 2008	October 7, 2009	Home Trust Company	630	1,460
				1,876	3,599

Mander closed on the purchase of the Lawrence Property on October 7, 2009, the date the mortgages were taken on 223 Church and 225 Church ("Church Mortgages"). Mander's agent for the Lawrence Property transaction has advised that Mander had to delay closing repeatedly. The Lawrence Property was purchased for \$2.9 million, of which \$2 million was funded with a mortgage from HSBC Bank Canada. The remainder of the purchase price was funded from the proceeds received by Mander from the Church Mortgages. The remaining funds sourced from the Church Mortgages were deposited by Mander in his main EMB bank account, from which various items were funded, including loan repayments.

6. CO CAPITAL GROWTH CORP.

CO Capital was established in 2006 by Peter Sbaraglia and his wife Mandy Sbaraglia. CO Capital obtained funds from investors in return for a guaranteed rate of return. It appears that Mander was involved in the business of CO Capital and played an integral role in that business from its inception. Between January, 2006 and November, 2008, Mander was a director and officer of CO Capital. In early 2007 Mander became a shareholder of CO Capital, an interest he

owned until November, 2008. During the period January, 2006 to November, 2008, it appears that Mander was in charge of CO Capital's investing and, as noted, held the title of Chief Portfolio Strategist.

In late 2006, Peter Sbaraglia, the President of CO Capital at the time (and at a time when Mander is said to have been an officer and director of CO Capital), retained legal counsel to provide advice regarding the business that CO Capital was engaging in, in terms of compliance with the *Securities Act (Ontario)*. Specifically, CO Capital borrowed funds pursuant to loan agreements, which guaranteed high fixed rates of return to its investors. Accordingly, Peter Sbaraglia appears to have been involved in the development of a structure which was used to borrow funds from investors.

In November 2008, Mander apparently resigned from his positions at CO Capital and relinquished his ownership interest for no consideration. Thereafter Mander carried on his investment business through EMB; however, CO Capital and EMB continued to have an intertwined business relationship. Whereas prior to November, 2008 Mander traded some CO Capital investor funds in CO Capital's investment accounts and some CO Capital funds in accounts he controlled exclusively, after November 2008 CO Capital advanced to Mander and EMB the funds it sourced from its investors. Mander discontinued trading the CO Capital accounts after November, 2008.

6.1 Ontario Securities Commission Investigations

In July, 2008, an order was issued under section 11(1) of the *Securities Act* appointing certain staff members of the Ontario Securities Commission ("OSC") to investigate and inquire into businesses carried on by Mander, Peter Sbaraglia, CO Capital and Pero (the "OSC Investigation"). Pursuant to the OSC Investigation, Peter Sbaraglia was examined under oath

on July 9, 2009 ("Sbaraglia Examination") and Mander was examined under oath on July 15, 2009 ("Mander Examination") (jointly, the "Examinations"). Both Peter Sbaraglia and Mander were represented by the same counsel from Aylesworth LLP ("Counsel") at their respective examinations.

During the course of the OSC Investigation, it became clear that a significant concern of the OSC was the lack of assets in CO Capital to support the loans made by the investors to CO Capital. It is important to note that during the Mander Examination, Counsel stated that EMB owed money only to CO Capital and Mander personally. The OSC was not told that EMB in fact owed money to SA Capital, Black Ink, J.S. Bradley and others. Specifically, during the Mander Examination, Counsel advised that²⁵:

"There are only two entities that have any money with EMB, which is not part of this order but is the company that is operated by Mr. Mander, and that is the money that has been lent to EMB by CO Capital and Mr. Mander's personal funds. So there are not other people out there, other entities, other investors, other lenders. There's no one else involved in Mr. Mander's EMB corporations or an associated and related company called Stonebury, which we'll get to and is in the information, but the only two entities that have – that any money that EMB is looking after is his personal money and a loan that was made to him by CO Capital paid to EMB so he is not dealing with the public or other people or other – it's just those two entities themselves in the company".

During the course of the Examinations, information provided explained how the businesses operated by Mander and Peter Sbaraglia were intertwined. Peter Sbaraglia, Mander and Counsel advised the OSC that all of the assets held by Mander, EMB, the Sbaraglias and CO Capital were held as security for loans owing to CO Capital's investors. For example, at the

²⁵ Emphasis in this quote and various other quotes below was added by the Receiver.

commencement of the Sbaraglia Examination, Counsel provided the OSC with an "Introductory Note" that stated, under the heading "Sufficient Assets":

"The CO assets and the personal assets of Peter and Mandy Sbaraglia and Robert Mander are collectively adequate and available to *insure* [sic] that the notes will be honoured as they come due."

A summary of all of the assets of Peter and Mandy Sbaraglia, Mander and their various corporations (including EMB) were attached to the Introductory Note.

Further, when explaining where CO Capital's investor's money was invested during the Sbaraglia Examination, Counsel responded as follows:

"MR. MILLER²⁶: Most of the money is not in brokerage accounts. Most of it is in real estate.

MS. DUBLIN²⁷: That's rights.

THE WITNESS²⁸: And Venture.

MR. SHAHVIRI²⁹: And Venture. Okay. So what sorts of objective third party documents would exist to support?

MS. DUBLIN: Well, what we have accumulated so far – just to clarify, because of this notion that this is your money and perhaps a lack of specifics in terms of how to deal with those sums, some of these assets are in a variety of names.

They're personal assets of the Sbaraglia's. They're in various corporate names with Robert Mander. But the notion is these are held or traded to sustain the obligations to the [CO Capital's] lenders."

²⁶ Michael Miller is a lawyer at Aylesworth LLP.

²⁷ Julia Dublin is a lawyer at Aylesworth LLP.

²⁸ The "Witness" and Mr. Sbaraglia are used interchangeably in the OSC documentation of the Sbaraglia Examination.

²⁹ Mehran Shahviri is an investigator with the OSC.

After discussing certain smaller venture holdings, Counsel (Ms. Dublin) goes on to say:

“And you will see the brokerage accounts and the bank accounts are at tab 8. They’re not significant sums, though. The largest bank account is \$400,000. Because the sums aren’t being held in cash. They’re being transformed mostly into real estate – or were.

And you will see the real estate holdings are at tab 10. And that’s where really the bulk of the value is. It’s in these properties that Robert Mander acquired for the venture. And these are the current ones. Of course, they have been buying and selling on an ongoing basis.³⁰

So when you add up the anticipated value or the estimated market value of these properties and the other assets, you have a figure that is in excess of the \$10-million that’s owed. And a lot of it is real estate.”

With respect to the assets being held by CO Capital to support its loans, the following exchange takes place:

“MR. SHAHVIRI: But if I have understood you correctly, the list of properties at tab 10 constitute the bulk of the assets of C.O.?”

MR. MILLER: Yes, vast majority.

MR. SHAHVIRI: Plus there’s about maybe half a million in cash?

THE WITNESS: In cash. And then some ventures.

MS. DUBLIN: And there’s some real estate as well that’s sort of in the Sbaraglia’s bailiwick too. Some of it is held by them and some of it by Mander.”

Further, regarding CO Capital's investor's money being invested in real estate assets, the following exchange took place during the Sbaraglia Examination:

³⁰ The Receiver has not seen any evidence to support the statement that Mander and/or CO Capital was “trading” real estate. Mander, directly or through Stonebury and EMB did purchase real estate, most of which he subsequently mortgaged.

BY MR. PANCHUK³¹:

"18. Q. ...So you have \$4-million to pay back from January to December '09. And I'm just doing it -- let's call it a hypothetical problem. So it's approximately \$4-million, January 1st, '09, to December 31st, '09. So you have to be liquid for that amount --

A.³² Right.

19. Q. -- at various points though the year. How do you manage that?

A. Well, in the worst case scenario, you can get lines of credit and mortgages. If you own them outright, there's a value to them, and you absolutely can access liquid cash because of the value of the assets."

BY MR. SHAHVIRI:

20. Q. And is that the case with the properties? They're all owned outright?

A. Yes. All on that page there, they're all owned outright, every one of them.

21. Q. When did you make the transition to real estate, or is it staggered?

A. Staggered. Understand that that page there does not belong -- those aren't my properties.

22. Q. They are not your properties?

A. No.

MR. MILLER: You are talking about the list of properties that Robert Mander has done?

THE WITNESS: Yes.

MR. MILLER: **Yes. They're in the name of Mander's company. But Mander will tell you that they're all held supporting these investments.**

MR. HORGAN³³: Those are the properties at tab 10?

MS. DUBLIN: Yes. You see --

MR. MILLER: **That's why these two are interconnected. They're not two strangers here.**

³¹ Don Panchuck is an investigator with the OSC.

³² "A." indicates answers provided by Peter Sbaraglia.

³³ Sean Horgan is counsel for OSC.

MR. PANCHUK: So does C.O. own these properties or have title to these properties?

MR. MILLER: No.

MS. DUBLIN: No. **See, there's this synergy between Robert Mander and C.O.** Again, within the structure of C.O. Capital, this idea of once the money is lent, it's yours. You can do whatever you want with it. And the promissory note is basically an IOU. There's no commitment. So this was the premise.

So the two of them invested the money in various ways, whatever. And as I understand it, whoever was the convenient purchaser was the purchaser on title. But between them, notionally, all of these investments were being made with the borrowed money and were being made in order to create the growth needed to pay back the borrowed money."

BY MR. SHAHVIRI:

23. Q. Let me just see if I can follow. Tell me if I have got this right. I thought I had it, and then I realized, as you were speaking, I didn't. So the money came from your friends and family?

A. Yes.

24. Q. Went to C.O.?

A. Yes.

25. Q. Then it went to Mander?

A. Eventually, yes.

26. Q. And Mander bought these properties?

A. Yes.

27. Q. So is there any contractual agreement in place between you and Mr. Mander that gives you any kind of right to these assets?

A. Did you get the --

MS. DUBLIN: I haven't got it yet. Because we're both pulling together documents for Robert Mander--

THE WITNESS: The answer is yes. Is it in there?

MR. MILLER: I want to clarify. I don't know if there's a written document dated three years ago that says, EMB holds this in trust for C.O. I'm not sure whether there is. They're not sure whether there is.

But as a result of whatever we come out with -- of whatever process we end up coming out with, we're going to be correcting all of that stuff. So we will be getting that.

And you're going to be meeting with Mr. Mander next week, I think, and he's going to tell you the same thing, so I understand.

MS. DUBLIN: That he holds these properties, in his own mind, anyway, in trust for C.O. Capital.

MR. SHAHVIRI: But not to be overly cynical or skeptical, but as of today, we don't know whether Mr. Mander owns these properties. Do we have any assurance that these properties are still within the umbrella of Sbaraglia/Mander?

MS. DUBLIN: Well, we know that Mr. Mander sent us this list yesterday or the day before. And he is working on the backup information for his information. So we're expecting he will have that when he comes in.

MR. MILLER: If your question is if we search title for 223 Church Street, would we see EMB Asset Group Inc. as the owners? Is that your question?

MR. SHAHVIRI: And secondarily, would we see any charges against the property?

MR. MILLER: We understand not, but we're in the process of getting those documents. We will certainly have those documents when we meet with Mr. Mander next week. It was just a matter of time.

MR. PANCHUK: So on C.O.'s balance sheet --

MR. MILLER: It would show money lent to -- I think it's EMB."

BY MR. SHAHVIRI:

28. Q. So C.O. would have liabilities in the \$400,000, and Mander companies, whether they're EMB or whatever, would have the assets; is that right? So we would have to consolidate these two to get the total picture is what you're saying?

A. Yes.

MR. MILLER: Mander's sheet -- financial statement, in theory, would show owing to C.O., just wouldn't have assets without debt.

MR. SHAHVIRI: Again, notionally or backed up some kind of contract?

MR. MILLER: I think its backed up by two people who trust each other. And that's the understanding, and that's the way they've been doing it.

MR. SHAHVIRI: Right. So notionally, basically.

MR. MILLER: I don't know. I don't want to say here that there's something in writing. We --

29. Q. Well, maybe Mr. Sbaraglia can address that. Is it a notional --

A. It's a notional --

MS. DUBLIN: But it can certainly be reduced to writing in order to supply greater assurances for the next three years to those that have lent money.

THE WITNESS: That won't be a problem at all.

MR. MILLER: Keeping in mind they went into this business thinking this was C.O.'s money to do whatever they wanted. They didn't have to report back to anybody else. What they wanted was to do business with Robert Mander **and he's good at finding real estate**. And go find real estate.

BY MR. SHAHVIRI:

30. Q. Sorry. Not to be slow about this, but for the monies that came in from your friends and family that went to C.O., you, in turn effectively lent that money to Mr. Mander?

A. Effectively, yeah.

31. Q. Is there paper that supports that lending?

A. No. There's bank drafts that I have that I sent to him. See, when you meet him, you will understand. Do you know when you see somebody, and you know they're good? Do you know when it just shines out of somebody? When I met him a few years ago --"

Mr. Miller later goes on to say:

"But in this particular case, friends gave him money, loaned him the money and said do whatever you want and pay me back on this date. And he and Robert Mander have the same arrangement. Now, either we're in never-never land, or these are two exceptional guys.

We do know they do have assets. They're not flakes. But they will and are properly papering it, in the process of getting it. Now as we're pulling in this information now for today -- and we'll probably have some more for next week -- we hope to find out what is missing and what has to be corrected."

Later on in the Sbaraglia Examination the following exchange took place:

BY MR. SHAHVIRI:

"38. Q. We might have covered a whole bunch of these already. Bear with me a second. In the terms of the day-to-day running of C.O., is it you and Mr. Mander primarily that head up the investment strategy?

A. Used to be. Mr. Mander is not part of C.O. Capital anymore as of November last year³⁴.

39. Q. Why was that? Why did he resign?

A. I will tell you from my end of it. As we wanted to go –

MR. MILLER: Because he set up EMB, and he said, you're C.O. and I'm EMB. That's the real –

BY MR. SHAHVIRI:

40. Q. Is that it?

A. Basically.

41. Q. There wasn't a falling out or anything like that?

A. Gosh, no. No, not at all.

MR. MILLER: Their offices are right beside each other.

BY MR. SHAHVIRI:

42. Q. To this day?

A. Yes.

43. Q. Does anyone else have any input into the running of C.O.?

A. No. I have people that work for me.

44. Q. I mean third party advisors.

A. No, none.

³⁴ November, 2008.

45. Q. *So you and Mr. Mander really were the brains? You were the directing minds of C.O.?*

A. *Yes."*

6.2 OSC Transcripts

The full OSC transcripts of the Examinations are available from the Receiver upon request by this Honourable Court.

6.3 Deleted Emails

On March 25, 2010, with the consent of Peter Sbaraglia, the Receiver attended at the offices of CO Capital and was provided access to the CO Capital computers and servers. The Receiver took images of the computers and servers located at the premises and on review identified that there was limited email correspondence to and from Peter Sbaraglia.

Concerned that there may be missing emails, the Receiver contacted the IT consultant who had provided services to Mander, the Sbaraglias and other Investors³⁵, and requested that all CO Capital email information maintained on the host email server be backed up and stored.

On or about May 13, 2010, the Receiver's counsel advised CO Capital's counsel that the Receiver had preserved certain email information and requested CO Capital's permission to access the stored information. CO Capital consented. The Receiver identified email correspondence from and to Peter Sbaraglia that was not previously available on the imaged computers, including emails that were sent to Peter Sbaraglia on March 24, 2010, one day prior to the Receiver's attendance at CO Capital.

³⁵ Mander arranged to have the IT consultant and other professionals, such as Tonin and Peter Welsh, a lawyer who has a professional affiliation with Aylesworth LLP, provide services to the Investors in order to assist them to establish and setup their businesses.

6.4 Conclusion Re: CO Capital

Given the testimony of Peter Sbaraglia and Mander at the OSC examinations, potentially deleted correspondence, the relationship between CO Capital and Mander and the significant amounts paid to CO Capital – amounts apparently sufficient to repay all principal loaned by CO Capital to EMB/Mander - the Receiver believes that it is appropriate for it to investigate the business and affairs of CO Capital to determine whether any relief should be sought against CO Capital, including the scope of that relief.

7. OTHER MATTERS

7.1 Tonin & Co. LLP

Tonin was, during all relevant times, the accounting firm used by Mander and some or all of the Debtors. Immediately after the Receivership Order was granted, the Receiver contacted Tonin and provided a copy of the Receivership Order. At that time, the Receiver asked Tonin to provide the Receiver with documents in Tonin's possession that relate to the business and affairs of the Debtors. Shortly thereafter, Tonin provided the Receiver with limited documentation.

As a result of the Receiver's investigation, it appeared that Tonin possessed further documentation with respect to the Debtors. The Receiver's counsel engaged counsel to Tonin in discussions regarding that issue and Tonin's counsel advised the Receiver that Tonin had additional documentation but expressed that Tonin was concerned about providing, without a Court order, all documentation in its possession regarding the Debtors. Specifically, counsel expressed a concern that some of the Debtors were not solely owned by Mander and that, therefore, there may be confidentiality issues. Counsel to Tonin advised that the documents in Tonin's possession could be categorized as follows:

- (a) Documents in Tonin's possession for corporations for which Mander had complete ownership and control;
- (b) Documents in Tonin's possession for corporations for which Mander had joint ownership and control; and
- (c) Documents in Tonin's possession for corporations that Mander may have been associated with.

On June 2, 2010, Tonin purported to provide the Receiver with all documents in its possession with respect to category (a) above. However, it appears to the Receiver that the production is incomplete. Specifically, none of the following types of documents were produced:

- Tax returns;
- Financial statements;
- Engagement letters;
- Financial statement checklists of work performed;
- Tax working papers; and
- Invoices issued to Mander and his companies.

As a result of the failure to provide complete production (as outlined above) and Tonin's raised concerns regarding confidentiality (which the Receiver does not accept as a valid concern), the Receiver seeks an order requiring Tonin to produce all documents in its possession, power and/or control relating to the Debtors.

7.2 Stonebury's Lexus

As noted in Section 5 above, Stonebury purchased a Lexus for Ms. Zurini. The Receiver understands that Ms. Zurini continues to own the vehicle. As with virtually all other assets purchased by the Debtors, including assets purchased by Stonebury, the car was purchased with

Investor monies -- Stonebury's only source of capital. The Receiver is of the view that the car should be returned to Stonebury and realized upon for the benefit of creditors.

On June 30, 2010, the Receiver contacted Ms. Zurini and requested the return of the vehicle. Ms. Zurini advised that she was unwilling to comply with the Receiver's request.

Appendix "H" provides a copy of the purchase agreement for the Lexus, which is in Ms. Zurini's name, and a copy of Stonebury's bank statement, which provides evidence of the payment from Stonebury's bank account.

7.3 Interactive Brokers

As detailed in the Receiver's Second Report, Interactive Brokers was the primary brokerage used by the Debtors, particularly during the period mid-2007 to March, 2010. All of the Debtors' known active trading accounts were with Interactive Brokers. In accordance with the Receivership Order, the Receiver asked Interactive Brokers to transfer all cash amounts held in the Accounts to the Receiver and to sell all securities in the Accounts and provide the resulting funds to the Receiver. A dispute arose between the Receiver and Interactive Brokers and a motion was brought by the Receiver, returnable June 3, 2010, for relief against Interactive Brokers. On June 3, 2010, the Receiver and Interactive Brokers (through their respective counsel) continued discussions and negotiations in an attempt to resolve the dispute. As a result, with the approval of the Court, the motion regarding Interactive Brokers was adjourned.

The Receiver and Interactive Brokers have agreed to the terms of an order and endorsement, subject to the Court's approval. The requested endorsement is as follows:

"All parties with an interest in the Accounts have been served with the Receiver's motion regarding the relief sought in respect of the Accounts, no party with any interest in the Accounts objects to the relief sought, and all parties with an interest in the Accounts consent to allowing the Receiver to make the directions regarding the Accounts to Interactive Brokers referenced in the order."

The agreed upon terms of the order will be set out in the draft order with respect to this motion. As a result of the agreement, the Receiver requests that the order regarding Interactive Brokers and the endorsement be granted.

7.4 Further Items

The Receiver's approach in these proceedings has been to monetize assets in a commercially reasonable manner on a timely basis so that the Receiver has the funding it requires to investigate the Debtors' affairs. In receiverships with limited assets and complex issues, a receiver is required to use discretion to determine which avenues may generate recoveries for creditors. It is not possible, given the limited resources of this estate, to target all possible sources of recovery, in particular, those areas where the costs could exceed or approximate the recoveries.

The Receiver notes in particular that it is not seeking any relief at this time in respect of a house apparently purchased by Mander for a sibling and significant donations by Mander to SGI; however, the Receiver does intend to meet with SGI to attempt to resolve this matter. There are also potential issues between the Receiver and Mr. Obradovich concerning the ownership of Pero and a piece of real estate in Barrie, Ontario which Mr. Obradovich and Mander invested in (the details of which has not been discussed in this Report). These matters are being considered

by the Receiver and the Receiver may take steps in the future in respect of all of these (and other) sources of recovery.

The Receiver is not satisfied that all parties have cooperated with the Receiver to the extent required pursuant to the various Court orders issued in these proceedings. To the extent that this persists, the Receiver will bring it to the Court's attention at a later date.

8. OTHER ACTIVITIES

In addition to the activities detailed above, the Receiver's activities have included:

- Retrieving and storing at the Receiver's office documentation and computer equipment from 225 Church, 223 Church and 17 Stonebury;
- Corresponding with authorities and regulators;
- Meeting with the Police to obtain the items removed from Mander's residence;
- Contacting and interviewing various parties whom the Receiver was advised may have information regarding the Debtors;
- Dealing with the Debtors' utility providers;
- Following up with Interactive Brokers and Questrade;
- Corresponding with HSBC Bank Canada and various financial institutions;
- Changing locks and alarm codes at 1650 Caledon;
- Reviewing insurance documentation;
- Dealing with matters related to the closing of the sale of the Lawrence Property;
- Reviewing and negotiating listing agreements with various real estate brokers;
- Negotiating the sale of 1506 Caledon and 17 Stonebury;
- Dealing with matters related to the closing of the sale of 1506 Caledon;
- Corresponding with real estate brokers on a frequent basis regarding the marketing of the real estate;

- Drafting and finalizing the Notices and Statements of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- Meeting with two liquidators regarding the sale of the Auction Assets;
- Negotiating the auction agreement for the AEC Transaction;
- Corresponding with Service Canada regarding matters related to the Wage Earner Protection Program ("WEPP");
- Corresponding with ADP Canada to obtain information required to deal with matters related to WEPP;
- Administering the WEPP process, including providing the required information to Service Canada and to the former employees of the Debtors;
- Reviewing documentation and corresponding with artists regarding the return of consignment artwork at the Gallery;
- Dealing with the return of the consignment artwork and responding to inquiries from the artists;
- Returning to Mander's son certain immaterial personal items, including children's clothing and toys;
- Responding to calls from the Debtors' creditors;
- Dealing with issues related to Mander's estate; and
- Drafting this Report.

9. CONCLUSION AND RECOMMENDATION

It is evident to the Receiver that Mander was operating a "Ponzi" scheme. Mander did repay some amounts to some Investors – but this is central to any Ponzi scheme. It is a game of confidence that is sure to be broken once the Ponzi-schemer fails to meet an obligation. Ultimately, Mander was unable to repay his Investors because of the magnitude of his personal expenditures, his trading abilities and the illiquidity of his investments (real estate, shares in start-up companies and personal property).


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Based on (i) the business relationship between Mander and Peter Sbaraglia as evidenced by testimony provided by Mander, Peter Sbaraglia and Counsel during the Examinations, (ii) the history of the transactions between CO Capital and Mander, and (iii) various other factors including potentially missing correspondence, the Receiver believes that it is appropriate to investigate the business and affairs of CO Capital and to report back to Court with its findings and recommendations.

The Receiver also requests that this Honourable Court issue an order granting the balance of the relief sought in Section 1.1 (e), including the immediate realization on the Lexus, the delivery to the Receiver of all records in Tonin's possession and control, the cooperation of Interactive Brokers and the approval of the Receiver's activities and this Report.

* * *

All of which is respectfully submitted,



**RSM RICHTER INC.
IN ITS CAPACITY AS RECEIVER OF
E.M.B. ASSET GROUP INC.,
THE ESTATE OF ROBERT MANDER
AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

RSM Richter

This is **Exhibit "D"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

RSM Richter

**Supplement to the Fourth Report to
Court of RSM Richter Inc. as Receiver of
the Estate of Robert Mander, E.M.B.
Asset Group Inc. and Related Entities**

RSM Richter Inc.
Toronto, July 9, 2010

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE RULES OF CIVIL PROCEDURE
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43,
AS AMENDED**

**SUPPLEMENT TO THE FOURTH REPORT OF
RSM RICHTER INC., AS RECEIVER**

July 9, 2010

1. INTRODUCTION

This report ("Supplemental Report") supplements the Receiver's Fourth Report to Court dated July 2, 2010 ("Fourth Report").

1.1 Defined Terms

Unless otherwise defined in this Supplemental Report, defined terms have the meaning provided to them in the Fourth Report.

1.2 Purpose of this Report

The purpose of this Supplemental Report is to recommend that the Court issue an order authorizing Peter R. Welsh, counsel to Robert Mander, and, the Receiver believes, to certain Investors and Related Entities, to provide the Receiver with any and all information regarding his retainers by Mr. Mander and the Related Entities.

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

1.3 The Issue

At the outset of these proceedings, the Receiver and its counsel contacted Mr. Welsh to obtain information concerning Mander and the Related Entities. Welsh provided certain information at that time and has done so periodically since then. Given the status of the proceedings, the Receiver recently contacted Mr. Welsh again in order to obtain further information concerning its investigation.

As previously reported by the Receiver, Robert Mander incorporated several companies through which he purported to carry on investment businesses. Also, the Receiver understands that Mr. Mander generally demanded that those that wished to invest with him, incorporate corporations that would act as the "spokes" in the transactions. In the course of its investigation, the Receiver has been advised that Mr. Welsh is the lawyer that incorporated all (or almost all) of the corporations used by Mr. Mander and the spokes. Indeed, the Receiver has been advised that Mr. Mander demanded that Mr. Welsh be used by all participants in his investment scheme.

Mr. Welsh is a solicitor that was called to the Bar in New Brunswick in 1973 and Ontario in 1977. He maintains his main office in Oakville, Ontario. Mr. Welsh serves as counsel to Aylesworth LLP (in Toronto) and to Feltmate Delibato Heagle, LLP (in Burlington).

The Receiver has asked to meet with Mr. Welsh and requested that he deliver all of the files in his possession or control that, in any way, relate to the business and affairs of Robert Mander and the Related Entities (as defined in the Fresh As Amended Receivership Order date March 31, 2010). Mr. Welsh, through his counsel, advised that he was willing to cooperate but had concerns regarding solicitor and client privilege. As a result, the Receiver agreed that it would seek an Order requiring Mr. Welsh to produce to the Receiver the requested files as well

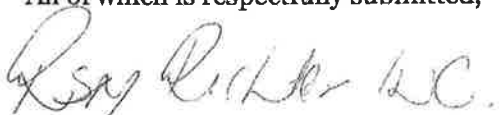
as an order authorizing Mr. Welsh to provide the Receiver with any and all information regarding his retainers by Mr. Mander and the Related Entities.

2. RECOMMENDATION

Based on the foregoing, the Receiver recommends that this Honourable Court issue the Order sought regarding Mr. Welsh.

* * *

All of which is respectfully submitted,

A handwritten signature in dark ink, appearing to read "RSM Richter Inc.", is written over the typed name.

**RSM RICHTER INC.
IN ITS CAPACITY AS RECEIVER OF
E.M.B. ASSET GROUP INC.,
THE ESTATE OF ROBERT MANDER
AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

This is **Exhibit "E"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Court File No. 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

JUSTICE MORAWETZ

)

)

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WEDNESDAY, THE 14TH DAY

OF JULY, 2010



BETWEEN:

SA CAPITAL GROWTH CORP.

Applicant

- and -

CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.

Respondents

APPLICATION UNDER Rule 14.05(3)(g) of the *Rules of Civil Procedure* and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

ORDER

THIS MOTION made by RSM Richter Inc. (the "Receiver"), in its capacity as Receiver of all of the assets, undertakings and properties of the estate of Robert Mander, E.M.B. Asset Group Inc. and Related Entities (as defined in the Fresh as Amended Receivership Order dated March 31st, 2010) (the "Debtors") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Receiver dated July 2, 2010 (the "Fourth Report"), the Supplement to the Fourth Report dated July 9, 2010 (the

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"Supplement") and the Affidavit of Peter Sbaraglia sworn July 12, 2010 and on hearing the submissions of counsel for the Receiver and others.

CO CAPITAL GROWTH CORP.

1. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to investigate the business and affairs of C.O. Capital Growth Corp. ("CO"), Peter Sbaraglia and Mandy Sbaraglia (the "Sbaraglias") and any corporations or entities associated with, related to or controlled by the Sbaraglias or CO (collectively, all of the above, the "CO Group") and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties in this Order;
- (b) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the CO Group and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the CO Group, and without interference from any other Person.

2. **THIS COURT ORDERS** that (i) the CO Group, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel (excluding Davis Moldaver LLP) and shareholders, and all other persons acting on their

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instructions or behalf, and (iii) all other individuals, firms, financial institutions, brokerage firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any assets, undertakings or properties of the CO Group (the "Property") in such Person's possession or control.

3. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the CO Group, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 3 or the next paragraph shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

4. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient and appropriate, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any

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computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

5. **THIS COURT ORDERS** that the CO Group provide 7 days written notice to counsel to the Receiver before any sale or encumbrance of any Property.

INTERACTIVE BROKERS CANADA INC.

6. **THIS COURT ORDERS** that Interactive Brokers Canada Inc. ("Interactive Brokers"): (i) transfer the cash in the accounts of the Debtors or Pero Assets Inc. held by Interactive Brokers, bearing account numbers U432984, U385758, U443599, U482109, U468692, U388022 and U424033 (collectively, the "IB Accounts") to the Receiver within seven business days of the date of this Order, and (ii) sell any securities in the IB Accounts upon receiving such written directions from the Receiver at any time within seven business days of receiving such written direction from the Receiver and thereafter forward the funds realized from the sale of such securities to the Receiver by way of cheque payable to the Receiver.

7. **THIS COURT ORDERS** that Interactive Brokers be and is hereby authorized, *nunc pro tunc*, to disclose to the Receiver the names and identities of any and all parties with an interest in the IB Accounts as recorded in the records of Interactive Brokers.

LEXUS

8. **THIS COURT ORDERS** that the Receiver's motion for an order authorizing it to take possession of the Lexus automobile purchased by Stonebury Inc. and ancillary relief is adjourned so as to allow Ms. Zurini to retain counsel.

TONIN & CO. LLP

9. **THIS COURT ORDERS** that Tonin & Co. LLP ("Tonin") shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts,

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orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors including, but not limited to, Robert Mander, E.M.B. Asset Group Inc., Mand Assets Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc., Mander Group Inc., Pero Assets Inc. and/or the CO Group, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in Tonin's possession or control, and shall provide to the Receiver copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or paragraph 10 shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. With respect to Pero Assets Inc. this paragraph shall apply only to Records created on or before December 4, 2008.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

PETER WELSH

11. **THIS COURT ORDERS** that Peter Welsh shall forthwith deliver to the Receiver any and all files, books, documents, securities, contracts, orders, corporate and records, and any other papers, records and information of any kind related to the business or affairs of the Debtors Including, but not limited to, Robert Mander, E.M.B. Asset Group Inc., Mand Assets Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Welsh Records") in Welsh's possession or control.

12. **THIS COURT ORDERS** that if any Welsh Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Welsh Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Welsh Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Welsh Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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APPROVAL OF REPORTS AND ACTIVITIES


13. **THIS COURT ORDERS** that the Fourth Report, the Supplement and the activities of the Receiver referred to therein and since the date of the Receiver's First Report dated March 29, 2010, be and are hereby approved.

GENERAL

14. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


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

JUL 16 2010

PER / PAR: 

SA CAPITAL GROWTH CORP. and CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT
 Applicant MANDER, DECEASED AND E.M.B. ASSET GROUP INC.
 Respondents

APPLICATION UNDER Rule 14.05(3)(g) of the Rules of Civil Procedure and section 101 of the Courts of Justice
 Act, R.S.O. 1990, c. C.43, as amended

ONTARIO
 SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

Proceeding commenced at Toronto

FRESH AS AMENDED
 RECEIVERSHIP ORDER
 (RETURNABLE July 14, 2010)

DAVES WARD PHILLIPS & VINEBERG LLP
 44th Floor, 1 First Canadian Place
 Toronto, ON M5X 1B1

Matthew Gottlieb (LSUC #32268B)
 Tel: 416.863.5516
 Fax: 416.863.0971

Lawyers for the Receiver

This is **Exhibit "F"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Court File No. CV-10-8883-OOCL

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

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N :

ONTARIO SECURITIES COMMISSION

Applicant

- and -

**PETER SBARAGLIA, MANDY SBARAGLIA,
C.O. CAPITAL GROWTH INC. and 91 DAYS HYGIENE SERVICES INC.**

Respondents

**APPLICATION UNDER
Section 129 of the *Securities Act***

**AFFIDAVIT OF MEHRAN SHAHVIRI
(Sworn September 8, 2010)**

I, **MEHRAN SHAHVIRI**, of the Town of Oakville, in the Province of Ontario, make oath and say:

1. I am employed by the Ontario Securities Commission (the "Commission") as an investigator and as a member of its staff ("Staff"). In that capacity, I have been assigned as the primary investigator to Staff's ongoing investigation into the conduct of the respondent debtors and others, including the debtors in the receivership regarding the Estate of Robert Mander ("Mander"), E.M.B. Asset Group Inc. ("EMB"), and related entities (the "Mander Receivership"). As such, I have personal knowledge of the matters

deposed to in this affidavit. To the extent that any matters are not within my personal knowledge, I believe those matters to be true and have set out the basis for my information and belief.

2. I make this Affidavit in support of an Application by the Commission for an order pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") appointing RSM Richter Inc. ("RSM Richter") as receiver, without security, of all of the assets, undertakings and properties of Peter Sbaraglia and Mandy Sbaraglia (the "Sbaraglias"), C.O. Capital Growth Inc. ("CO") and 91 Days Hygiene Services Inc. ("91 Days").

The Respondent Debtors

3. Peter Sbaraglia and his spouse, Mandy Sbaraglia, are individuals residing in the Town of Oakville. Based on Staff's investigation and the materials filed with this Honourable Court in the Mander Receivership, it appears that Peter Sbaraglia is now the principal and directing mind of CO and Mandy Sbaraglia is the principal and directing mind of 91 Days.

4. Although CO was established in 2006 by the Sbaraglias, it appears that Mander was centrally involved in the business of CO and played an integral role in the business from its inception until late 2008, and likely thereafter. My understanding is based on statements made by Peter Sbaraglia and his counsel during the course of Staff's investigation as well as materials filed by Peter Sbaraglia and RSM Richter in the Mander Receivership, specifically the affidavits of Peter Sbaraglia sworn July 12, 2010 and August 10, 2010, and the Fourth Report of RSM Richter dated July 2, 2010.

5. I further understand from the above-noted sources that Mander was a director and officer of CO from January, 2006 until he resigned in November, 2008. Further, Mander appears to have been in charge of CO's investing and was its Chief Portfolio Strategist. Notwithstanding Mander's purported resignation as an officer and director of CO, an Ontario corporation, it appears that Mander remained involved in CO's business after his resignation, and Mander is still listed as an officer in the corporation profile report for

CO. Attached hereto as Exhibit "1" is a copy of the corporation profile report for CO dated September 1, 2010.

6. 91 Days is a company incorporated pursuant to the laws of Ontario. The corporation profile report for 91 Days indicates that Mandy Sbaraglia is the sole officer and director of 91 Days. Attached hereto as Exhibit "2" is a copy of a corporation profile report for 91 Days dated September 1, 2010.

7. It also appears from the materials filed by Peter Sbaraglia and RSM Richter in the Mander Receivership that 91 Days is the owner of real property bearing the municipal address of 239 Church Street, Oakville, Ontario ("239 Church"), which is the subject of a motion before the Court in the Mander Receivership (the "239 Church Street Motion").

OSC Investigation

8. In June 2008, Staff received information regarding a concern about certain activity of CO.

9. As a result, Staff reviewed certain records with respect to CO. Staff's review of CO showed that significant sums of money were flowing through certain CO accounts, the sources of which were primarily individuals resident in Ontario. Upon deposit, certain of the funds were transferred to Mander and entities seemingly controlled by Mander while others were transferred to trading accounts operated by Mander. It also appeared that some of the funds were being withdrawn for the Sbaraglias' personal use.

10. Following this review, I conducted telephone interviews of some of the individuals who had transferred funds to CO. These individuals indicated that they had entered into loan agreements with CO, evidenced by promissory notes (the "Notes").

11. On July 15, 2008, Staff obtained an order from the Commission pursuant to section 11(1) of the *Securities Act* (the "Section 11 Order") for it to further investigate and inquire into the business and affairs of Peter Sbaraglia, Mander, CO and Pero Assets Inc. ("Pero") with respect to trading in securities and potential breaches of Ontario securities laws. Attached hereto as Exhibit "3" is a copy of the Section 11 Order.

12. At the time that the Section 11 Order was issued by the Commission, Mander and Peter Sbaraglia were both officers of CO and Pero. At the time, Mander was also the sole officer and director of EMB as well as a number of related entities, including Mander Group Inc. ("Mander Group"), Stonebury Inc. ("Stonebury") and Dunn Street Gallery Inc. ("Dunn Street Gallery"). Attached respectively hereto as Exhibits "4", "5", "6", "7", "8" and "9" are copies of the corporation profile reports for CO, Pero, EMB, Mander Group, Stonebury and Dunn Street Gallery that were obtained by Staff as part of its investigation.

13. On June 23, 2009, I served summonses upon Peter Sbaraglia and Mander pursuant to section 13 of the *Securities Act* for them to attend at the offices of the Commission to give evidence on oath in connection with Staff's investigation (the "Summonses"). Attached respectively hereto as Exhibits "10" and "11" are copies of the Summonses.

14. Pursuant to the Summonses, Peter Sbaraglia was examined under oath on July 9, 2009 (the "Sbaraglia Examination") and Mander was examined under oath on July 15, 2009 (the "Mander Examination"). Attached respectively hereto as Exhibits "12" and "13" are copies of the transcripts and exhibits marked at the Sbaraglia Examination and further respectively attached hereto as Exhibits "14" and "15" are copies of the transcripts and exhibits marked at the Mander Examination.

15. At the time, both Peter Sbaraglia and Mander were represented by the same counsel at Aylesworth LLP ("Counsel"). Counsel attended with each of Peter Sbaraglia and Mander at their respective examinations.

(a) Examinations of Peter Sbaraglia and Mander

16. At the outset of his examination, Peter Sbaraglia, through Counsel, provided a volume of documents in support of his anticipated evidence regarding the investment scheme with Mander. The documents and anticipated evidence were summarized by way of an "Introductory Note" drafted by Counsel. The Introductory Note forms part of Exhibit "13" hereto.

17. The Introductory Note contained the following headings: a) Reputable Individuals; b) Relied on Legal Advice; c) Sufficient Assets; and d) Exiting Business - No New Loans, all of which were themes that Counsel and the witnesses returned to repeatedly throughout the course of the Sbaraglia Examination and the Mander Examination.

18. Peter Sbaraglia confirmed to Staff that CO had issued Notes to third parties whom he identified as friends and family of the Sbaraglias' (the "CO Investors"), in respect of loan advances made by them to CO pursuant to loan agreements with CO. He also acknowledged that he had informally transferred the funds received by CO to Mander and that it was Mander who was responsible for investing and trading activity that had generated the high returns specified in the Notes. Peter Sbaraglia also stated that he was buying and selling real estate, primarily focussing on undervalued properties, in order to generate returns to satisfy redemptions as set out in the Notes.

19. Peter Sbaraglia, through Counsel and through direct testimony, assured Staff that the Notes, including accrued interest, were being repaid as they became due, that CO was not (and would not be) taking in any new money from investors, and that the funds of CO Investors were not at risk. For example, Counsel stated:

"[...] Firstly, no one has ever asked for any money back that hasn't gotten money back. I just want to be clear.

And as far as we are aware -- you may be aware -- but we're aware of no one who is unhappy with anything that has gone on. Lots of people have asked for money back -- and you will see how much -- and have been given their money back when it's on maturity dates.

And we have got a list of what money we have and when it matures and what's owing. And we have a list of what assets. So aside from this background, there are, give or take, available to this group about \$12-and-a-half-million in assets.

And they're, give or take, right now owing between now and the end of '12 about \$10-million including -- there's about \$8-million of principal. And if everyone got their interest as it's planned, there would be about, \$10-million paid out.

We have listed the assets that the company and they personally have in here, and I will show you where they are. And we have listed the amounts of money owing and payable. So there's more -- the plan that they have come up with the proper legal advice is properly funded. So no one is at risk. No money is at stake here. So we wanted you to know there's sufficient assets" [22: 5 – 23:4].

20. Peter Sbaraglia maintained throughout the Sbaraglia Examination that it was his understanding, through legal advice obtained and relied upon by CO, that the business of CO was in compliance with Ontario securities law. Peter Sbaraglia produced various communications from CO's former corporate counsel in support of his contention.

21. I expressly advised Peter Sbaraglia, however, that Staff's primary concern was whether Peter Sbaraglia and Mander could account for investors' funds:

"But the other broad issue, of course, is the general concern we have with the accounting for what came in, what went out, where has it gone. And I have to say that is of greater concern. And we'd rather address that as our primary focus and then look at the future or past registration issues if, in fact, there are any" [27:20 – 27:25].

22. Staff was advised during the Sbaraglia Examination and the Mander Examination that although some of investors' funds had been used in "venture" or brokerage accounts, the bulk of the value of the investment structure was found in real estate assets acquired by Mander and Peter Sbaraglia and held in various names, including personally by the Sbaraglias and in various corporate names with Mander.

23. Staff received repeated assurances, both directly from Peter Sbaraglia in his sworn testimony and through Counsel, that the funds transferred to Mander/EMB were held for the benefit of CO Investors and that the assets of CO and the personal assets of the Sbaraglias and Robert Mander, were collectively in excess of all outstanding liabilities, and if necessary, would be used to repay CO Investors as the Notes became due.

24. In his testimony, Peter Sbaraglia acknowledged that the arrangement between CO and Mander/EMB to hold Mander/EMB assets in trust for the benefit of CO Investors had not been reduced to writing.

25. Later in the Sbaraglia Examination, I repeated Staff's concern about the lack of documentation to support the testimony about the investment scheme:

MR. SHAVIRI: At this point, it's not so much record keeping the way a registrant might have records. As I said at the very beginning, for the time being, we're just interested in third party documents that support all the assets.

And we won't know if there's liabilities unless you produce them, obviously, but we would hope you would. But the key is we need some comfort -- make that hard proof, that the assets that Mr. Sbaraglia and Mr. Mander say they have do, in fact, exist in the amounts that are represented in this document" [59:13 – 59:23] .

26. The Sbaraglia Examination concluded, in part, by Counsel assuring Staff that it was "dealing with genuine people" and that they would provide Staff with the evidence necessary to satisfy Staff's concerns.

27. During the Mander Examination, Mander personally and through statements by Counsel during the examination, largely corroborated Peter Sbaraglia's statements to Staff. For example, Mander, among other things, confirmed that certain real estate assets, held directly and indirectly by him, were for the benefit of CO Investors.

(b) Assets Held for the Benefit of CO Investors

28. In support of the testimony regarding the investment scheme, Mander produced a statutory declaration to Staff, dated July 15, 2009 (the "Statutory Declaration"), which effectively provided that:

- (a) he is the sole shareholder and senior officer of the legal owners of the real estate assets attached as Schedule A to the Statutory Declaration; and
- (b) he acknowledges that the cash value of the real estate assets in Schedule A is held in trust as security for the repayment of loans under promissory notes of EMB to CO as they become due.

Attached hereto as Exhibit "16" is a copy of the Statutory Declaration dated July 15, 2009 (marked as exhibit "5" at the Mander Examination).

29. On August 7, 2009, following the Sbaraglia Examination and the Mander Examination, Counsel provided to Staff a loan agreement between EMB and CO (the "Loan Agreement") and an undertaking from the Sbaraglias and CO to the Commission in respect of loans made by CO Investors and the real estate assets that were being held for the benefit of those investors (the "Undertaking"). Attached hereto as Exhibit "17" is a copy of the enclosing letter from Counsel dated August 7, 2009 and its attachments.

30. The salient terms of the Loan Agreement are consistent with the provisions in the Statutory Declaration and effectively provide that:

- (a) EMB is indebted to CO for the total amount of the loans advanced by CO Investors to CO, plus any accrued interest, as particularized in Schedule A to the Loan Agreement, the aggregate amount of which is slightly less than \$8.5 million, excluding interest (paragraphs 1.1 and 2.1);
- (b) CO irrevocably authorizes and directs EMB to pay the CO Investors directly as their loans become due, including accrued interest (paragraph 2.2);
- (c) EMB acknowledges that it has used funds borrowed by CO from CO Investors to purchase assets (primarily real estate) listed in Schedule B to the Loan Agreement, which are identified in Schedule B as having been valued at approximately \$11.9 million (paragraph 3.1);
- (d) EMB shall apply the net proceeds of the assets listed in Schedule B on account of repayment of the loans, including accrued interest (paragraph 3.1).

31. Further, the Undertaking effectively provides as follows:

- (a) CO will not enter into any more loan agreements with third party

investors;

- (b) CO will cause the outstanding loans to CO Investors (as particularized in a Schedule A to the Undertaking, the contents of which mirror the contents to Schedule A to the Loan Agreement) to be paid as they become due and will provide quarterly reports to the Commission with respect to the repayment of loans;
- (c) CO has used the loans by CO Investors to acquire the assets listed in Schedule B; and
- (d) the Undertaking constitutes an obligation and commitment in favour of the Commission.

32. Staff relied on the representations and assurances given by Peter Sbaraglia and Mander (and Counsel) in the Sbaraglia Examination and Mander Examination as well as the veracity and completeness of all documents provided by them (through Counsel) during Staff's investigation. Specifically, Staff relied on the representations that there were no other loan agreements or investors other than the CO Investors and that all CO Investors had been disclosed. On that basis, Staff did not broaden the scope of the investigation and did not take further enforcement action in respect of Peter Sbaraglia, Mander or any of their related entities other than to review CO's reports to Staff with respect to the repayment of loans to investors in accordance with the terms of the Notes and the Undertaking.

Misleading the Commission

33. During Staff's investigation, it appears that Peter Sbaraglia and Mander omitted material information regarding the business and affairs of Peter Sbaraglia and Mander and CO, particularly with respect to: a) the sufficiency of their assets; b) the existence of additional CO Investors as well as other investors; and c) the extent of their liabilities to all investors.

(a) Sufficiency of Assets

34. Based on the evidence of Peter Sbaraglia during the Sbaraglia Examination and my discussions with Counsel during the course of Staff's investigation, I understood that the assets of CO and the personal assets of the Sbaraglias and Mander, were in excess of the liabilities to the CO Investors.

35. It was my understanding that the Undertaking, the Statutory Declaration and the Loan Agreement were being provided in order to satisfy Staff's primary concern about whether Peter Sbaraglia and Mander and CO could account for investors' funds and were able to repay all investors as the Notes came due.

36. It now appears, however, from the affidavit of Peter Sbaraglia sworn on August 10, 2010 in support of the 239 Church Street Motion that: a) Peter Sbaraglia misled Staff during the Sbaraglia Examination; b) the Sbaraglias and CO misled Staff about the Undertaking; c) the Sbaraglias are insolvent; d) there remain significant sums outstanding and owing to CO Investors pursuant to the terms of the Notes and e) the Sbaraglias are seeking to pay out their friends and family (in priority to other investors) with any of the proceeds obtained from the sale of 239 Church.

(b) Other Investors

37. The evidence given on the Sbaraglia Examination, the Mander Examination and the documents provided to Staff in support of the investment scheme being carried out by Peter Sbaraglia, Mander and CO (i.e. the Undertaking, the Statutory Declaration, and the Loan Agreement) was that there were no other investors apart from the CO Investors. During the Mander Examination, Counsel expressly stated that:

"And we have – there are only two entities that have any money with EMB, which is not part of this order but is the company that is operated by Mr. Mander, and that is the money that has been lent to EMB by CO and Mr. Mander's personal funds.

So there are not other people out there, other entities, other investors, other lenders. There's no one else involved in Mr. Mander's EMB corporations or an associated and related company called Stonebury, which we'll get to and is in the information, but the only two entities that have - that any money that EMB is looking after is his personal money and a loan that was made to him by CO paid to EMB so he is not dealing with the public

or other people or other - it's just those two entities themselves in the company"[7:16 – 8:8].

38. The materials filed in the Mander Receivership indicate, however, that there were a number of investors in the Ponzi scheme in addition to those represented in the CO “spoke”.

39. It also appears, from paragraphs 32, 35 and 37 of the affidavit of Peter Sbaraglia, sworn August 10, 2010 in connection with the 239 Church Street Motion, that Peter Sbaraglia knew of the existence of other investor companies with whom Mander was dealing during the operation of CO.

40. At no time were Staff advised by Peter Sbaraglia or Mander that there were investors in the investment scheme other than CO Investors.

(c) Pero

41. In addition to their omissions regarding other spokes of the investment scheme, Peter Sbaraglia and Mander failed to advise Staff of the full amount of their liabilities to CO Investors, most particularly a liability of \$6 million to Pero that was outstanding at the time of the Sbaraglia Examination and Mander Examination and which I understand remains outstanding today.

42. Staff only became aware of this additional liability at or around the return date of the 239 Church Street Motion in August 2010.

43. From my review of the motion materials filed with the Court on the 239 Church Street Motion, it appears that, on March 1, 2008, an individual third party investor advanced the sum of \$6 million to Pero pursuant to a loan agreement (the “Pero Investment”). Attached hereto as Exhibit “18” is a copy of what appears to be the first page of the loan agreement for the Pero Investment (which I saw for the first time when it was appended as part of Exhibit 12 to the affidavit of Peter Sbaraglia, sworn August 10, 2010, in connection with the 239 Church Street Motion).

44. A current corporation profile report for Pero shows neither Peter Sbaraglia nor Mander as officers or directors of Pero since December 4, 2008. Attached hereto as

Exhibit "19" is a copy of the corporation profile report of Pero dated September 1, 2010.

45. Counsel to Pero in the Mander Receivership has confirmed that neither Peter Sbaraglia nor Mander have been involved in the operation of Pero since sometime in December 2008. I am further advised that the principal of Pero is its sole officer and a director and he wishes that his identity not be disclosed publicly through the filing of the Commission's materials on this Application. Accordingly, this investor's name and any identifying information has been redacted from any exhibits related to the Pero Investment.

46. Following the 239 Church Street Motion, counsel to Pero provided Staff with a copy of a loan agreement dated March 1, 2009 between Pero and CO for a principal amount of \$6 million. Staff were also advised that the principal amount from the Pero Investment was reinvested with CO in 2009 as a "rollover" pursuant to this loan agreement and that an amount of at least \$6 million remains outstanding to Pero today. Attached collectively hereto as Exhibit "20" is a copy of the loan agreement dated March 1, 2009 between Pero and CO and the corresponding promissory note issued by CO.

47. The schedules to both the Undertaking and the Loan Agreement do not disclose the liability outstanding to Pero. This additional \$6 million liability of CO was not mentioned during the Sbaraglia Examination or the Mander Examination, notwithstanding that the summons to Peter Sbaraglia and the Section 11 Order both specifically identified Pero as a party of interest to Staff's investigation.

48. Had the additional outstanding \$6 million liability of CO to Pero been disclosed to Staff during the course of the Sbaraglia Examination, Mander Examination or Staff's investigation immediately following, it would have become apparent to Staff that Peter Sbaraglia, Mander and CO had liabilities far in excess of assets available at that time.

Need for Appointment of Receiver

49. It now appears that throughout their dealings with Staff, Peter Sbaraglia and Mander misled Staff about a) the scope of CO's outstanding liabilities; b) the number of

CO Investors; c) the scope of the investment/Ponzi scheme, i.e. the number of total investors in addition to the CO Investors; and d) the sufficiency of assets available to satisfy those liabilities.


50. As a result, it is therefore clear that:

- (a) CO owes Investors a minimum of \$7,654,638 (Sbaraglia's Supplementary Affidavit sworn August 10, 2010);
- (b) In addition, CO owes Pero a minimum of \$6,000,000;
- (c) CO obtained, during the course of the Ponzi scheme, funds from Mander and his companies that were obtained from parties that invested with Mander and his companies in the Ponzi scheme;
- (d) CO is insolvent and does not have the ability to pay what it owes to its Investors; and
- (e) Peter Sbaraglia and CO have advised that they wish to make payments to family members from assets in priority to paying other Investors.

51. In the circumstances set out above, it is Staff's view that the Sbaraglias are not in an appropriate position to protect the interests of CO Investors or any other existing investors in the investment/Ponzi scheme.

52. I am advised by RSM Richter that it is of the view that its current authority as Receiver in the Mander Receivership to investigate the business and affairs of CO, the Sbaraglias and any corporations or entities associated with, related to or controlled by the Sbaraglias or CO, is not sufficient to protect the interests of CO Investors and those whose interests are represented in the Mander Receivership.

SWORN before me at the City of Toronto,
in the Province of Ontario this 8th day of
September, 2010.



A commissioner, etc.

)
) 
) MEHRAN SHAHVIRI
)
)

ONTARIO SECURITIES COMMISSION

**PETER SBARAGLIA, MANDY SBARAGLIA, CO CAPITAL
GROWTH INC., 91 DAYS HYGIENE SERVICES INC. and
MAND ASSETS INC.**

Applicant

Respondents

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**(PROCEEDING COMMENCED
AT TORONTO)**

**AFFIDAVIT OF MEHRAN SHAHVIRI
(sworn September 8, 2010)**

Ontario Securities Commission

20 Queen Street West
Suite 1900, P.O. Box 55
Toronto, Ontario
M5H 3S8

Sean Horgan

LSUC No. 41690R
Sr. Litigation Counsel
Enforcement Branch
Tel: (416) 593-2306

Pamela L. Foy

LSUC No. 45945S
Sr. Litigation Counsel
Enforcement Branch
Tel: (416) 593-2386
Fax: (416) 593-2319

This is **Exhibit "G"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

RSM Richter

**Seventh Report to Court of
RSM Richter Inc. as Receiver of the
Estate of Robert Mander, E.M.B. Asset
Group Inc. and the Related Entities**

RSM Richter Inc.
Toronto, September 9, 2010

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE RULES OF CIVIL PROCEDURE
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43**

**SEVENTH REPORT OF RSM RICHTER INC.,
AS RECEIVER**

September 9, 2010

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010.

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. ("SA Capital") for the appointment of a receiver over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, property and undertaking of entities related to EMB or Mander. These entities include, but are not limited to, Mand Assets Inc. ("Mand Assets"), Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc. ("Related Entities").

On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of proceedings was changed to reflect the continuance.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information in respect of the receivership proceedings;
- b) Provide an update on the status of the Receiver's investigation of the business, assets and affairs of the CO Group (as defined in Section 2 below);
- c) Provide an update concerning Mand Assets and issues related thereto; and
- d) Recommend that this Honourable Court issue an order appointing a receiver over the CO Group.

1.2 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Debtors as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various parties, including several financial institutions, the CO Group, Tonin & Co. LLP ("Tonin"), the former accountant to Mander and the CO Group, and

Aylesworth LLP (“Aylesworth”) and Peter R. Welsh, former legal counsel to the CO Group. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

2. BACKGROUND

The Receiver presented its fourth report (“Fourth Report”) at a motion before the Court on July 14, 2010. The Fourth Report identified issues which the Receiver believed justified an investigation into the business and affairs of C.O. Capital Growth Corp. (“CO”), Peter Sbaraglia and Mandy Sbaraglia (the “Sbaraglias”) and any corporation or entity associated with, related to or controlled by the Sbaraglias or CO (the “CO Related Entities”). A list of the known CO Related Entities is attached as Appendix “A”, (CO, the Sbaraglias and the CO Related Entities are collectively referred to as the “CO Group”). On the date of the motion, the Court made an order authorizing the Receiver to conduct an investigation into the CO Group (“July 14th Order”). A copy of the July 14th Order is attached as Appendix “B”.

The Receiver recently became aware that the Ontario Securities Commission (“OSC”) has brought an application (Court File No.: CV-10-8883-00CL) before this Court to have Richter appointed as Receiver over the property, assets and undertakings of the CO Group.

This Report is not an exhaustive review of all of the issues and inconsistencies related to the CO Group, including inconsistencies related to Peter Sbaraglia’s testimony before the OSC. The Report highlights only major issues identified by the Receiver.

3. STATUS OF THE RECEIVER'S INVESTIGATION OF THE CO GROUP

Since the making of the July 14th Order, the Receiver has commenced its investigation into the CO Group. Shortly after the motion on July 14, 2010, the Receiver requested information concerning the CO Group from various financial institutions. The Receiver only recently received certain of the information it requested, including information received on August 30th from the CO Group's main financial institution. (The Receiver appreciates that a reason for the delay resulted from the breadth of the Receiver's information request.) The Receiver continues to await additional information from the various financial institutions. As a result of the recent receipt of this information, the Receiver has not had sufficient time to complete its review of this information and to prepare and deliver a report to Court.

As part of its investigation the Receiver sent letters to the Sbaraglias dated July 27, 2010 and August 16, 2010. Davis Moldaver LLP ("Davis"), counsel to the Sbaraglias, responded in letters dated August 19, 2010 ("August 19th Letter") and August 24, 2010 to the Receiver's letters. The Receiver's letters (excluding attachments) are provided in Appendix "C" and the responses from Davis (excluding attachments) are provided in Appendix "D".

4. APPOINTMENT OF A RECEIVER

The following sections illustrate that:

- Peter Sbaraglia's testimony before the OSC in July, 2009 was misleading and incomplete;
- The CO Group knew, or ought to have known, that the CO Group was not generating returns sufficient to satisfy its obligations to its investors;
- The CO Group is insolvent, based on, *inter alia*, admissions in an affidavit sworn by Peter Sbaraglia on August 10, 2010 (the "Sbaraglia Affidavit"); and
- The CO Group has advised that it may wish to pay amounts allegedly owing to family members in priority to other creditors.

For these and other reasons, the Receiver is of the view that it is appropriate that the Court issue the order requested by the OSC placing the CO Group in receivership.

4.1 The OSC Undertaking

- In July, 2008, an order was issued under section 11(1) of the *Securities Act* by the OSC authorizing an investigation of Mander, CO, Peter Sbaraglia and Pero Assets Inc. ("Pero").
- During July, 2009, Peter Sbaraglia was examined under oath by the OSC pursuant to a Summons dated June 23, 2009. Thereafter, Peter Sbaraglia provided the OSC with an "Undertaking" setting out, *inter alia*, that the assets listed on Schedule "B" to the Undertaking were purchased with CO investor funds and that those assets were to be used to satisfy the CO investor obligations set out on Schedule "A" of the Undertaking. The Schedule "B" assets, when combined with the assets listed on a schedule attached to a statutory declaration provided by Mander to the OSC (the "Statutory Declaration"), appeared to be sufficient to satisfy the CO investor obligations listed on Schedule "A". Copies of the Undertaking and the Statutory Declaration are attached as Appendices "E" and "F", respectively.
- In August, 2010 the Receiver interviewed Michael Miller and Julia Dublin of Aylesworth, counsel to Robert Mander, Peter Sbaraglia and CO. The Receiver learned from the interviews with Dublin that the intention of the Undertaking and the Statutory Declaration was to illustrate to the OSC that the collective assets of Mander, EMB and the CO Group were sufficient to fully repay the obligations of CO to its investors. In essence, the approach taken by Peter Sbaraglia and his counsel was that notwithstanding any of the CO Group's activities, the assets were sufficient to satisfy the obligations and accordingly "no harm, no foul".

- The Undertaking was materially inaccurate and misleading. The Undertaking failed to disclose obligations totalling more than \$9 million. Disclosure of these obligations would have made it clear to the OSC that the combined assets of Mander, EMB and the CO Group were insufficient to fully repay CO investor obligations. A summary of the excluded obligations is as follows.

Loan Number	Loan Due Date	Amount (\$)
111-A	May 15, 2009	2,000,000
132-C	October 9, 2009	50,000
137-C	October 30, 2009	150,000
155-D	February 25, 2010	69,300
157-C	March 1, 2010	6,000,000
167-B	June 17, 2009	400,000
176-C	June 1, 2010	500,000
177-M	June 1, 2010	150,000
179-C	July 20, 2010	104,000
		<u>9,423,300</u>

- The terms of the Undertaking also required that the Sbaraglias and CO agree to cease entering into new loan agreements. Peter Sbaraglia also represented under oath that he was no longer taking loans. On August 21, 2009, 14 days after the Undertaking was executed, CO entered into a new one year loan agreement in the amount of \$54,925¹. A copy of this loan agreement was provided by Davis to the Receiver on August 24, 2010.
- The Undertaking states that all of the assets listed on Schedule "B" were acquired using investor monies. Schedule "B" included the Sbaraglias' **residential home** and four other assets owned by the CO Group. The Sbaraglias' residential home, a condominium which the Receiver believes is presently occupied by Mandy Sbaraglia's mother located at 381 Ellis Park Road, Toronto (the "Ellis Park Condominium") and the 239 Church Street property appear to have been purchased **prior** to the commencement of CO's dealings with Mander. Accordingly, it appears that the statement regarding use of investor funds in the Undertaking was inaccurate. The decision to include these properties on Schedule "B" was consistent with the strategy adopted by Peter Sbaraglia to address the OSC concerns; that is, it assisted Peter Sbaraglia to represent that his, EMB's and Mander's assets were sufficient to satisfy CO obligations.

¹ Loan agreement number 183-F.

- The fair market value of the Sbaraglias' home (63 Second Street) was listed on Schedule "B" of the Undertaking as being \$4 million. In the Sbaraglia Affidavit, Peter Sbaraglia states ***"our home will be listed at approximately \$2.9 million. If the renovations had been completed it was estimated that it would have a value in excess of \$4 million"***. It appears that the value of this property may have been intentionally overstated during the OSC examination to support the assertion that Mander's and the CO Group's assets were sufficient to satisfy the CO Group's obligations. (The Receiver notes that the Sbaraglias did obtain an "estimate of value" indicating that the home had a value of \$4 million. Because of the difference between the listing price and the estimate of value, the Receiver places little weight on the "estimate of value".)

4.2 Investment Activity

- Peter Sbaraglia detailed during his examination before the OSC certain investing strategies used by CO and Mander to generate large returns. These included trading real estate. The Receiver has determined, however, that neither CO nor Mander traded real estate. The Receiver identified that between September, 2005 and March, 2010, Mander sold only two pieces of real estate. These sales generated profit before selling costs of approximately \$45,000. The following statement was made by Dublin during Peter Sbaraglia's examination regarding the trading of real estate.

"And you will see the real estate holdings are at tab 10. And that's where really the bulk of the value is. It's in these properties that Robert Mander acquired for venture. And these are current ones. Of course, they have been buying and selling them on an ongoing basis [emphasis added]."

During the examination the following exchange took place regarding the real estate.

Mr. Shahviri²: ***"When did you make the transition to real estate, or was it staggered?"***

P. Sbaraglia: ***"Staggered. Understand that that page there does not belong - - those aren't my properties."***

Mr. Shahviri: ***"They are not your properties?"***

P. Sbaraglia: ***"No."***

Mr. Miller: ***"Yes. They're in the name of Mander's company. But Mander will tell you that they're held supporting these investments."***

² Mehran Shahviri is an investigator with the OSC.

Mr. Horgan³: ***“Those are the properties at tab 10?”***

Ms. Dublin: ***“Yes. You see - -”***

Subsequently the following exchange takes place between Mr. Shahviri and Peter Sbaraglia regarding the real estate and his investment strategy generally.

Mr. Shahviri: ***“Dr. Sbaraglia, I don’t mean for you to give away your proprietary trading secrets here. That’s not what I’m after. But I’m a little perplexed. If the bulk of the assets are held in real estate - -”***

A. ***“Today”***

Q. ***“As of when, though? You know what I’m getting at? Where does the 25% come from?”***

A. ***“Can I speak - - ”***

Q. ***“Sure. Absolutely”***

A. ***“Basically, what I do is look for value. And I’m not a trader of equities. I’m not a real estate speculator. I’m not a developer. Really, all I do is go around looking for things that are undervalued greatly.”***

Peter Sbaraglia continues in his examination to explain in detail his strategy of purchasing undervalued assets. The excerpt of the discussion regarding the investment strategy is attached as Appendix “G”. Based on its investigation, the Receiver believes that there are numerous inaccurate and misleading comments in the excerpt.

- CO and Mander represented to their investors, including David Amato and Thomas Obradovich⁴ that they were generating large profits trading equities and options. Similar comments are alleged by a CO investor, Dr. Joseph Radice, to have been made to him by Peter Sbaraglia, as detailed in a Statement of Claim dated June 24, 2010. A copy of the Statement of Claim is attached as Appendix “H”. The table below⁵, however, illustrates that the CO Group consistently suffered losses in its trading accounts.

³ Sean Horgan is legal counsel to the OSC.

⁴ Based on discussions between the Receiver and Messrs. Obradovich and Amato.

⁵ Includes unrealized gains and losses, foreign exchange gains and losses and any fees and commissions charged against the accounts.

Year	CO (\$)	CO (%) ⁶	Mand Assets (\$)	Mand Assets (%)	Pero (\$)	Pero (%)	Total (\$)	Total (%)
2007	(350)	(26)	-	-	5	16	(345)	(21)
2008	(2,058)	(27)	(374)	(38)	(1,833)	(49)	(4,265)	(35)
2009	(34)	(51)	14	17	(71)	(57)	(91)	(33)
2010 ⁷	6	17	3	9	12	22	21	17
	(2,436)	(30)	(357)	(36)	(1,888)	(51)	(4,681)	(37)

- The Receiver is of the view that the Sbaraglias had knowledge, or should have had knowledge, of the losses that were being incurred. In this regard, the Receiver reviewed the files of the CO Group's accountant, Tonin, which included documents provided by the Sbaraglias to Tonin detailing CO investor interest obligations and the gains and losses in each of the CO, Mand Assets and Pero trading accounts maintained at Interactive Brokers Canada Inc. ("Interactive Brokers"). These files indicate that the Sbaraglias appeared to be tracking the performance of the trading accounts and were aware of the results. Copies of these documents are attached as Appendix "I". It should also be remembered that between April, 2005 and around June, 2008⁸, Mander and CO shared space at 239 Church Street and that Mander's trading success was similar to CO's (see Appendix "J" which provides an excerpt from Section 5.1 of the Fourth Report).
- In his testimony to the OSC, Peter Sbaraglia provided great detail about his personal investment philosophy and how he created value to generate the returns for the investors. He represented to the OSC under oath that he was an active investor and participant in the investment decisions relating to the CO investor's money. This testimony is inconsistent with his current position that he and Ms. Sbaraglia were duped by Mr. Mander and that he had no knowledge of how the investor funds were being invested or Mr. Mander's activities. In addition, in his affidavit sworn on August 10, 2010, Peter Sbaraglia states that approximately \$25.9 million was lent to CO and approximately \$18.9 million went to Mander. The difference of \$7 million remained with CO and has not been satisfactorily accounted for. Further, in documents submitted to the OSC as well as in testimony before the OSC, Peter Sbaraglia advised that he and CO held trading accounts and also had made private equity investments in various venture capital projects. Once again, this is inconsistent with position that he and Ms. Sbaraglia were duped by Mr. Mander and were not actively involved in the investment of investor monies.

⁶ Percentage gains and losses are calculated using the following formula: gain or loss/(opening account balance + new deposits in the period).

⁷ For the period ending April 30, 2010.

⁸ The Receiver does not know the exact date that Mander moved his offices from 239 Church Street to 223 Church Street.

- The accounts maintained by CO and Pero at Interactive Brokers were opened by Peter Sbaraglia and the Mand Assets accounts at Interactive Brokers were opened by Mandy Sbaraglia. The account setup documents included agreements authorizing, *inter alia*, Interactive Brokers to send monthly account statements in electronic format to the account owners. Had the Sbaraglias reviewed these statements – which they likely did or should have done – they would have certainly realized that losses were being incurred.
- The Receiver also reviewed the correspondence files of Miller and Dublin. The Receiver identified an email from Dublin to Mandy Sbaraglia dated June 24, 2009 in which Dublin makes inquiries of Mandy Sbaraglia as to how CO had been able to repay investor obligations and how it will be able to manage the remaining loans for the following three years. Dublin advised the Receiver that Mandy Sbaraglia did not respond to those questions although she did respond to other questions in the same email. A copy of Dublin's email is provided in Appendix "K".

4.3 Personal Use of CO Investor Monies by the Sbaraglias

- In the August 19th Letter, Davis advises that the mortgage payments made in respect of the Sbaraglias home at 63 Second Street and the Ellis Park Condominium were sourced from investor monies.

"Following our clients' involvement with Robert Mander, the mortgage payments on their home and the Ellis Park condominium were made from dividends Peter Sbaraglia received from CO Capital. These funds were received directly from lenders to CO [emphasis added]. They are not EMB or Mander funds."

- The August 19th Letter also states the following regarding withdrawals by Peter Sbaraglia of funds received from CO investors.

"As directed by Mander, Peter received dividends out of CO Capital in 2007 and 2008, totalling approximately \$760,000. It is important to note that these funds were directly from lenders to CO. i.e. money that came into CO from lenders, not from Robert Mander or EMB funds [emphasis added]. In addition, approximately \$207,000 was taken out of CO on a variety of dates, (as directed by Mander)..."

- As discussed in the Receiver's sixth report to Court dated July 30, 2010, the Sbaraglias recently sold 239 Church Street for \$1.25 million. The property was purchased by 91 Days Hygiene Services Inc. ("91 Days") in April, 2005 for \$1.1 million, of which \$770,000 was financed with a mortgage from Royal Bank of Canada ("RBC"). The sale by 91 Days closed on or about August 13, 2010, at which time the mortgage on the property was approximately \$168,000⁹. As detailed in the table below, principal and interest paid on the mortgage between April, 2005 and August, 2010, totalled approximately \$783,000, including approximately \$712,000 during the time that CO was conducting its investment business (from January, 2006 to March, 2010).

	\$000s						
	2005	2006	2007	2008	2009	2010 ¹⁰	Total
Principal	38	51	51	51	392	17	600
Interest	26	46	45	34	25	5	181
Total	64	97	96	85	417	22	781

- The August 19th Letter and the Sbaraglia Affidavit¹¹ provide evidence that Peter Sbaraglia stopped working as a dentist in March, 2007 and Mandy Sbaraglia stopped working as a dentist by the end of 2007. In both the August 19th Letter and the Sbaraglia Affidavit, the Sbaraglias admit to using in excess of \$350,000 of investor funds to repay their mortgage. The table above suggests that the investor funds used to service the mortgage significantly exceeded \$350,000.

4.4 91 Days Hygiene Inc.

- The Undertaking indicates that the registered owner of 239 Church Street is Mandy Sbaraglia; however, this property is owned by 91 Days Hygiene Services Inc. ("91 Days"), a company owned by Mandy Sbaraglia. Because this property was listed in the Undertaking as an asset available to satisfy investor obligations, the Receiver believes that it is appropriate that this entity be included in the requested receivership proceedings.

⁹ The account statement provided by RBC reflects that the last payment made with respect to the mortgage was in April, 2010.

¹⁰ For the period ending April 26, 2010.

¹¹ The Sbaraglia Affidavit states that Peter Sbaraglia stopped working as a dentist in 2007 and Mandy Sbaraglia stopped working as a dentist in 2007/2008. The August 19th Letter provides the more specific dates.

4.5 Admission of Insolvency and Potential Intent to Prefer

- The Sbaraglia Affidavit references that the Sbaraglias' only assets are the net proceeds of sale from the 239 Church Street transaction and their home at 63 Second Street¹². The Sbaraglia Affidavit references the value of these assets to be approximately \$2.15 million, net of mortgages of approximately \$2 million. The Sbaraglia Affidavit also states that the CO Group has liabilities in excess of \$7 million. Based on these comments, and additional information regarding their assets and liabilities set out in the August 19th Letter, the CO Group has admitted that it is insolvent and that it cannot satisfy its obligations.
- During an attendance at Court on August 12, 2010, submissions were made by Milton Davis of Davis that CO and its principals wished to repay certain obligations to family members. Based on these submissions, it appears that the Sbaraglias may wish to prefer the interests of certain investors over other investors.

4.6 Mand Assets

Mand Assets is one of the Related Entities subject to the receivership order in the Mander proceedings. Mand Assets was incorporated in April, 2007. At the commencement of the receivership proceedings it was represented to the Receiver that Mand Assets was owned 50% by Mander and 50% by Mandy Sbaraglia. Subsequently the Receiver was advised that Mandy Sbaraglia owns 100% of the common shares of Mand Assets. Mandy Sbaraglia has taken the position that Mand Assets should not be subject to the Mander receivership proceedings.

In conducting its investigation, the Receiver reviewed the manner in which Mand Assets was capitalized. The Receiver identified that Mand Asset was capitalized through advances totalling \$910,000 from CO, \$75,000 from EMB and a further \$200,000 from sources not yet identified. Accordingly, since Mand Assets was primarily capitalized with CO investor funds and funds from EMB, the Receiver believes that it is appropriate that Mand Assets remains subject to receivership proceedings.

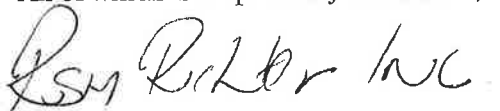
¹² The August 19th Letter also references a condominium in Toronto, Ontario that is owned by the Sbaraglias.

5. CONCLUSION AND RECOMMENDATION

The CO Group has admitted it is insolvent. The OSC was misled during its investigation – it appears that Peter Sbaraglia made inaccurate and inconsistent statements to the OSC under oath during his examination. The Sbaraglias have indicated that they wish to repay certain family members. The Receiver believes that a receiver should be appointed over the business and assets of the CO Group so that its assets can be realized upon and the proceeds can be distributed by a court officer. The Receiver also believes that it is not necessary to continue with an investigation of all of the transactions of the CO Group as doing so would result in unnecessary cost.

* * *

All of which is respectfully submitted,



**RSM RICHTER INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF THE ESTATE OF ROBERT MANDER,
E.M.B. ASSET GROUP INC. AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Present List of CO Related Entities¹

91 Days Hygiene Services Inc.

Mand Assets Inc.

2197204 Ontario o/a Atlas Global Financial Services

Mountainview Asset Management Inc.

Pero Assets Inc. (for the period prior to December 4, 2008)

2201043 Ontario Inc. o/a Claimatrix

Dr. Sbaraglia Professional Dental Corporation

Knight and Gale Health Services Inc.

¹ Subject to change.

This is **Exhibit "H** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

File No. CV-10-8883-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

PETER SBARAGLIA, MANDY SBARAGLIA,
CO CAPITAL GROWTH INC. and 91 DAYS HYGIENE SERVICES INC.
Respondents

This is the Cross-examination of MEHRAN SHAHVIRI, on his
Affidavit sworn September 8, 2010, held at the Offices of
Network Reporting & Mediation, One First Canadian Place,
100 King Street West, Suite 3600, Toronto, Ontario, M5X
1E3, on Wednesday, October 27, 2010.

APPEARANCES:

Pamela Foy Counsel for the Applicant

Milton Davis,
Kelly Preston Counsel for the Respondents

Matthew Gottlieb Counsel for The Receiver

Stephen M. Turk Counsel for Kathy Reid

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NO.	DESCRIPTION	PAGE
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THERE WERE NO UNDERTAKINGS NOTED
THERE WERE NO UNDER-ADVISEMENTS NOTED
REFUSALS ARE NOTED ON THE FOLLOWING PAGES:
26, 27, 33, 34, 40, 41, 43, 47, 52

Wed. Oct. 27, 2010

Mehran Shahviri 3

1 MEHRAN SHAHVIRI, Affirmed

2 CROSS-EXAMINATION BY MR. DAVIS:

3 1 Q. Your name is Mehran Shahviri?

4 A. Yes.

5 2 Q. And you've been affirmed to tell the truth?

6 A. Yes.

7 3 Q. How old are you, sir?

8 A. Forty-seven.

9 4 Q. That wasn't a hard question, just stick
10 around a while?

11 A. Wishful thinking.

12 5 Q. And what is the highest level of education
13 you've achieved?

14 A. I have a MBA.

15 6 Q. And following your completion, the completion
16 of your studies, where were you employed?

17 A. At the Ontario Securities Commission.

18 7 Q. When did you start working with the Ontario
19 Securities Commission?

20 A. In 1999.

21 8 Q. Sorry?

22 A. 1999.

23 9 Q. And you've been an investigator with the OSC
24 since 1999?

25 A. That's correct.

1 10 Q. And as an investigator what are your
2 duties?

3 A. I investigate breaches of the Securities Act.
4 A variety of cases are sent my way, everything from
5 insider trading, market manipulation, disclosure cases.
6 Whatever is assigned, basically.

7 11 Q. I'm going to tell you, you've already gone
8 back on your word because I can barely hear you and I'm
9 sure the people down the table can't. You've got to try
10 hard to keep your voice up. You have filed an Affidavit
11 sworn September 8, 2010. Correct?

12 A. That's right.

13 12 Q. And did you read it over before you came here
14 today?

15 A. Yes, I have.

16 13 Q. And are there any changes you wish to make to
17 that Affidavit?

18 A. There is one change somewhere in the
19 affidavit, and I can't point to exactly where, I said
20 that the first time I'd seen the Promissory Note, or the
21 Loan Agreement from Mr. Obradovich was when I saw it as
22 part of the filings of either one of the Affidavits filed
23 by Mr. Sbaraglia or the Receiver, I couldn't tell you
24 exactly which. But upon reviewing the materials that
25 were handed -- that were handed to me at Mr. Sbaraglia's

1 examination, I note that the first \$6 million contract
2 was, in fact, part of that material.

3 14 Q. Okay. Are there any other changes you wish
4 to make to your Affidavit?

5 A. No, that's the only one I'm aware of. Sorry,
6 let me clarify. I want to clarify that I didn't make a
7 misstatement in my Affidavit, I honestly hadn't seen that
8 particular document, or hadn't looked through the
9 documents that Mr. Sbaraglia handed over at an
10 examination, because I was relying on the summary
11 schedules accompanying the documents.

12 15 Q. Okay. Now, you understand that you have
13 filed this Affidavit in support of an application under
14 s. 129 of the Securities Act to appoint a Receiver over
15 CO Capital and the Sbaraglias?

16 A. That's right.

17 16 Q. And what benefit does the OSC hope to gain
18 from the appointment of a Receiver?

19 A. In our view the assets that Mr. Sbaraglia
20 has, first of all, were pledged for the benefit of CO
21 lenders. The funds that Mr. Sbaraglia transferred to
22 Mander and EMB were less than the funds that he received
23 from CO/EMB. It is our understanding that Mr. Mander had
24 only one other source of monies that came into
25 Mander/EMB. And in our view that means that the CO

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Mehran Shahviri 6

1 lenders and whatever assets that Mr. Sbaraglia or CO
2 would have acquired, or mortgages paid down, for example,
3 can be sourced back to non-CO lenders. And on that basis
4 it is our view that the CO lenders and the non-CO
5 lenders, i.e. Mander's lenders, should be viewed on the
6 same footing as each other.

7 17 Q. First of all, were you finished?

8 A. Yes.

9 18 Q. You understand that all of the CO lenders are
10 opposed to the appointment of a Receiver?

11 A. I do -- well, correction. I'm not aware of
12 opposition by Mr. Obricci (ph.), is it?

13 19 Q. Well, you weren't here this morning. There
14 is an Affidavit filed with his letter attached?

15 A. All right.

16 20 Q. You said there was only one other source of
17 money other than CO, do I have that right? I thought you
18 just said to me there were two sources of money for
19 Mander or EMB. One source was CO. And I thought you
20 said there was only one other source?

21 A. Yes.

22 21 Q. Who was that one other source?

23 A. Other lenders to Mander.

24 22 Q. One other source being all of the other
25 lenders to Mander?

1 A. Correct.

2 23 Q. And how many other lenders to Mander were
3 there?

4 A. I'm not aware of every single lender, but I
5 can tell you at a minimum there is SA Capital, Mr. Amato,
6 et al, A-M-A-T-O.

7 MS. FOY: I think you then said "et al.," meaning
8 others, of course.

9 THE DEPONENT: Yes.

10 BY MR. DAVIS:

11 24 Q. You are aware that Tasha Fluke advanced money
12 to Mander?

13 A. Yes.

14 25 Q. I take it you're aware that Tasha Fluke sued
15 Mander for \$1.5 million?

16 A. Yes.

17 26 Q. And I'm showing to you the Statement of
18 Claim, which has been marked as Exhibit 4. Are you
19 familiar with the advances referred to in paragraph 12?

20 A. No.

21 27 Q. Have you conducted any investigation to see
22 what happened to the money she advanced?

23 A. No, I have not.

24 28 Q. And are you aware of the fact that she sued
25 Mander in 2007?

1 A. Yes, I am now.

2 29 Q. When did you find that out?

3 A. It was in the course of reviewing one of the
4 filings in connection with the receivership. I can't
5 tell you exactly which one.

6 30 Q. And were you aware in 2007 Peter Welsh went
7 on the record, and then Aylesworth took over the case?

8 A. Again, something I've become aware of since
9 but not prior to reading these documents.

10 31 Q. And as an investigator dealing with those
11 lawyers you would have expected disclosure of this
12 lawsuit at the relevant time in 2008 or 2009 when you
13 were dealing with Mander. Correct?

14 A. Not necessarily. I have to say, I mean
15 I would have -- we were concerned with the more recent
16 activities of Mr. Mander.

17 MR. DAVIS: Let's go off the record.

18 --- Off the record

19 BY MR. DAVIS:

20 32 Q. I understand that Mander had six prime
21 investors. Is that your understanding?

22 A. Sorry. I don't have a number in mind, but in
23 that range, yes.

24 33 Q. There was CO Capital?

25 A. Yes.

1 34 Q. SA Capital?
2 A. Yes.
3 35 Q. Black Inc.
4 A. Yes.
5 36 Q. Who is Black Inc., do you remember?
6 A. No, I don't.
7 37 Q. Colleen Aurimmi.
8 A. That sounds right.
9 38 Q. Trafalgar?
10 A. Yes.
11 39 Q. Heather Shantori?
12 A. Yes.
13 40 Q. Pero and J.S. Bradley. Right?
14 A. Yes.
15 41 Q. And so when you told me that there were six
16 sources of capital, two sources of capital, really what
17 you mean is there was six sources of capital?
18 A. All right. Let me rephrase that. I meant
19 there were CO lenders, and non-CO lenders that went to --
20 whose monies went to Mander.
21 42 Q. Sorry. I didn't mean to interrupt you?
22 A. And the six entities or persons you just
23 mentioned.
24 43 Q. Yes?
25 A. Would be what I would term the "non-CO

1 lenders" whose monies went to Mander, yes.

2 44 Q. I'm concerned about the fact that you divided
3 the lenders into two groups, which is CO and others.
4 That's what you've done, right?

5 A. Yes.

6 45 Q. And is there a reason that you wouldn't
7 divide the lenders into six groups, as opposed to two
8 groups?

9 A. We have -- well, no, we're concerned with,
10 I'm concerned with monies flowing into CO and monies
11 flowing into Mander/EMB. So on that basis I have divided
12 them, as you say I have, into the two larger groups.

13 46 Q. But, you see, you know that money went from
14 Mander to SA Capital, right?

15 A. Yes.

16 47 Q. You know that money went from Mander to
17 Pero?

18 A. Yes.

19 48 Q. You know that money went from Mander to
20 Canadian Continental Exploration, Tom Obradovich's other
21 company?

22 A. Yes.

23 49 Q. You know that money went to Trafalgar from
24 Mander?

25 A. Yes.

1 50 Q. You know that money went to Black Inc. from
2 Mander?

3 A. Yes.

4 51 Q. You know that money went to J.S. Bradley?

5 A. Yes.

6 52 Q. You know that Tasha Fluke's investors, not
7 Task Fluke but Tasha Fluke's investors got money too,
8 they all got paid?

9 A. I'm not aware of that.

10 53 Q. You haven't spoken to Fluke's counsel?

11 A. No.

12 54 Q. Maybe you should. Anyhow. So you say to me
13 that you're only interested in money going to CO and CO
14 investors and Mander. Right?

15 A. That's right.

16 55 Q. But wouldn't you agree with me that if you're
17 going to trace where the money went you should be looking
18 where all of the money went, not just the CO money?

19 A. If I were going to trace. The fact is that
20 our investigation, at this point, isn't at the phase
21 where we've -- I shouldn't be talking in too much detail
22 about our investigation, but it hasn't advanced to the
23 point where we've been able to make any determinations.

24 What I do know, based on reviewing the Receiver's
25 reports, the schedule, I think you're familiar, I think

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1 it's the fourth Receiver's, report that shows the flow of
2 funds that went from CO to Mander and back to CO. And as
3 I said at the outset, it is the excess of what went into
4 Mander that is a concern.

5 56 Q. You've known for over a year and a half, if
6 not two years, that Mander was running a Ponzi scheme.
7 Right?

8 A. No.

9 57 Q. You were told that at least in June of
10 2009?

11 A. We had a complaint that came through the
12 OSC's contact centre. That complainant alleged that one
13 of his friends may be involved in a Ponzi scheme
14 involving Mander. My attempts to follow up on that
15 information were unsuccessful because the complainant
16 refused to provide information that I asked for to follow
17 up on that.

18 58 Q. Are you walking about Mr. Walker?

19 A. Yes, I am.

20 59 Q. That's Philip Walker?

21 A. That's right, Philip Walker.

22 60 Q. You were investigating the Mander Group as
23 early as 2008?

24 A. That's correct. Well, that's when it first
25 came to our attention. Correction. CO and Pero came to

1 our attention in 2008.

2 61 Q. When did CO first come to your attention?

3 A. June of 2008.

4 62 Q. How did it come to your attention?

5 A. Referral from the Royal Bank.

6 63 Q. From Mike Hubley?

7 A. That's right.

8 64 Q. Do you know Mike?

9 A. Yes.

10 65 Q. So Mike Hubley calls you up. Is that what
11 happened?

12 A. No. He didn't call me, it came through
13 another staff member.

14 66 Q. And he tells you that there's a concern about
15 the EMB and CO accounts at RBC?

16 A. I don't believe he mentioned EMB at all.

17 67 Q. Just CO?

18 A. CO and Pero.

19 68 Q. CO and Pero. And did you review those
20 accounts?

21 A. Initially, we received -- I think we provided
22 the spreadsheet to you. We received limited information
23 from RBC that showed selected transactions in the CO and
24 Pero accounts. And I did review that, of course.

25 69 Q. Does the OSC have an exemption under s.7 to

1 get bank records?

2 MS. FOY: We have an exemption under s. 153
3 definitely. I don't have the Act here, the Securities
4 Act. It's my only Act.

5 BY MR. DAVIS:

6 70 Q. Did you get the RBC bank records?

7 A. Initially?

8 71 Q. Yes?

9 A. I got just what Mr. Hubley's s staff member
10 provided to me which was, as I say, a subset or selected
11 transactions from the CO and Pero bank account.

12 72 Q. You saw the payments to EMB?

13 A. I saw some, yes.

14 73 Q. What investigation, if any, did you conduct
15 of EMB, at that point in time?

16 A. At that point I didn't know what EMB was. I
17 was more concerned with the transactions involving
18 Mr. Sbaraglia. You have to understand this was an
19 investigation in its very early phases. I was looking to
20 get a handle on what was going on in this account. I
21 noticed a lot of payments that appeared to be going
22 directly to Mr. Sbaraglia, some Visa bill payments; what
23 looked like personal expenses. So, at that point, I
24 limited my investigation to looking at certain payees and
25 not necessarily all of them.

1 74 Q. Well, you saw millions of dollars going to
2 EMB at some point because you got the bank records?

3 A. The bank records that we obtained, the full
4 set that we obtained was much later on in the year.

5 75 Q. When was that, later in 2008?

6 A. I don't recall, exactly. But I'm sure the
7 records would tell you.

8 MR. DAVIS: Let's go off the record?

9 --- Off the record

10 BY MR. DAVIS:

11 76 Q. I'm showing you your note dated August 25,
12 2008 where you made a note that you issued a summons for
13 bank statements in account opening documents for ten
14 different companies?

15 MS. FOY: Can you show the witness his note.

16 THE DEPONENT: I recall this one, actually.

17 BY MR. DAVIS:

18 77 Q. And you got those records through that
19 summons, correct?

20 A. Correct.

21 78 Q. Thank you. And you reviewed those records?

22 A. Yes.

23 79 Q. And you did that in 2008?

24 A. That's right.

25 80 Q. And those records would have showed, firstly,

1 payments from CO to EMB and to Mander?

2 A. Yes.

3 81 Q. Millions of dollars?

4 A. I don't recall the exact numbers; but, if you
5 say so, yes.

6 82 Q. Don't take my word?

7 A. Okay. I'd have to look at bank statements to
8 confirm that.

9 83 Q. Would you do that and let me know if I'm
10 right?

11 A. Okay.

12 84 Q. And even though you saw the flow of money
13 from CO Capital to Mander or EMB, you did nothing in 2008
14 to follow up with Mander. Is that your evidence?

15 A. That's right.

16 85 Q. Now, there's something that I don't
17 understand, maybe you can help me with. You opened the
18 file for this particular investigation, and it's file
19 number 5309. Correct?

20 A. Yes.

21 86 Q. And the name of the investigation is Mander
22 Group Inc.?

23 A. Yes.

24 87 Q. So you didn't open the file in the name of
25 CO. You didn't open the file in the name of Sbaraglia.

1 You opened the file in the name of Mander?

2 A. Yes.

3 88 Q. Even though you opened the file in the name
4 of Mander, it is your evidence that you didn't
5 investigate Mander, you investigated Sbaraglia. Right?
6 That's a fair question?

7 MS. FOY: Well, I think you've just put an
8 investigation note to him. And if I could have it back?

9 MR. DAVIS: Hold on a second. I think we have a
10 set for you.

11 MS. FOY: Thank you.

12 MS. PRESTON: It's your notes.

13 MS. FOY: Yes, but it's Mr. Davis'
14 cross-examination. What is the date of the note that you
15 put to him?

16 MR. DAVIS: August 25, 2008, counsel, are on
17 every single one. Just the name of the file.

18 MS. FOY: Yes. The name of the file. But you
19 are proposing to the witness that he hasn't investigated
20 Mr. Mander, yet he issued summonses with respect to the
21 bank statements and account opening documents related to
22 Mander other entities. So I think it's an unfair
23 proposition based on the evidence or the note you just
24 put to this witness.

25 BY MR. DAVIS:

1 89 Q. No. The question was, very simply: You
2 opened the file in the name of Mander?

3 A. Yes.

4 90 Q. You reviewed Mander bank records?

5 A. Yes.

6 91 Q. You reviewed CO bank records showing payments
7 to Mander and EMB?

8 A. Yes.

9 92 Q. And you did not investigate Mander, at that
10 point in time?

11 A. I think what you are saying is I didn't
12 investigate EMB. But the account documents that I
13 requested do include Mander Group, Robert Mander, Robert
14 Mander, In Trust. So. And I'd have to look at my
15 summons, as well, because -- I'll undertake to look at
16 this, as well. But I'm pretty sure I would have asked
17 for any accounts controlled by, or in the name of the
18 people listed.

19 93 Q. Just bear with me for one second. And I take
20 it at some point you got the EMB bank records?

21 A. Yes, but it was later.

22 94 Q. When?

23 A. It might have been even in '09. I'm not
24 sure.

25 95 Q. Can you undertake to let me know when you got

1 the EMB bank records?

2 A. Yes.

3 96 Q. First of all, when you got the EMB bank
4 records I take it that was before the s. 11 examinations
5 took place in July of 2009?

6 A. Yes.

7 97 Q. And you reviewed those bank records before
8 the examination?

9 A. Yes.

10 98 Q. So between all of the bank records that you
11 got, the ones listed in the August 25, '08 memo and the
12 EMB records, you would have seen the flow of funds to the
13 Mander Group and out of the Mander Group?

14 A. I can't say whether I'd necessarily seen that
15 flow of funds. I certainly had the records in my
16 possession, and I would have done some analysis. But you
17 have to understand this was not the only case I was
18 working on, at the time. I had competing priorities. So
19 I would have to put this aside for a while, work on
20 something else and back and forth.

21 99 Q. Okay. Before we go farther -- actually, I'm
22 going to suggest why don't we mark the whole package of
23 investigation notes as one exhibit if that is fine with
24 you? And we can just refer to the individual documents
25 as we go along?

1 MS. FOY: That's fine. So if we're continuing
2 with the numbering system, what is the exhibit?

3 --- EXHIBIT NUMBER 19: Investigation notes re Mander
4 Group Inc. File 5309

5 BY MR. DAVIS:

6 100 Q. Just coming back to the point I was making.
7 Your initial investigation was, what was of interest to
8 you at the outset was CO Capital and Sbaraglia. Right?

9 A. Yes.

10 101 Q. So can you explain to me, I'm not supposed to
11 ask you "why," but I'm going to because I can't help
12 myself. Can you explain to me why you called the file,
13 "Mander Group?"

14 A. I honestly don't recall on what basis the
15 file was named.

16 MS. FOY: I think you have to ask him if he was
17 involved in naming the group, or who does that at the
18 OSC.

19 BY MR. DAVIS:

20 102 Q. Was it you who called the file "Mander
21 Group," or was it somebody else?

22 A. I don't think it was me. I can't be a
23 hundred per cent sure.

24 103 Q. Who was it?

25 MS. FOY: I'm just trying to assist. Okay.

1 BY MR. DAVIS:

2 104 Q. Who was it? Who opened this file and called
3 it "Mander Group" at the OSC?

4 A. We have administrative staff who name files.
5 But I don't think that would have been their decision.

6 105 Q. They wouldn't known the name. Somebody would
7 have had to come up with the name, who did?

8 A. Sorry, I don't know.

9 106 Q. So as of today --

10 MR. GOTTLIEB: Can we take five minutes, please?

11 MR. DAVIS: Sure.

12 --- Whereupon proceedings recessed at 3:07 p.m.

13 --- Whereupon proceedings resumed at 3:10 p.m.

14 BY MR. DAVIS:

15 107 Q. Have you or anyone else at the OSC analyzed
16 the EMB bank statements to see what happened to the money
17 that was advanced to EMB or Mander by the various primary
18 investors that we spoke about?

19 A. No, not completely.

20 108 Q. And have you reviewed the CO Capital bank
21 statements to find out what happened to the money that
22 went into CO Capital?

23 A. That as well as ongoing.

24 109 Q. So I take it you don't know how much of the
25 investor money from the six primary or seven primary

1 investors went to EMB, how much came out of EMB, how much
2 Mander directed elsewhere, and how much the various
3 sub-investors, I'll call them, got. Correct?

4 A. That's right. My evidence in my Affidavit,
5 however, as I'm sure you've heard by now from counsel, as
6 well, is it's based on information that I've seen in the
7 Receiver's report.

8 110 Q. Okay. And if I understand correctly you had
9 all these bank records in either 2008 or the first half
10 of 2009?

11 A. That's right.

12 111 Q. And you had these records when the
13 examination of Mr. Mander was conducted, and you asked
14 him nothing about where the money went. Correct?

15 MS. FOY: You have the transcript as part of the
16 record, and I think the transcript speaks for itself.
17 Don't answer that, Mr. Shahviri.

18 BY MR. DAVIS:

19 112 Q. So you see here is what I don't understand.
20 You told me at the outset of this examination that the
21 appointment of the Receiver is being sought because money
22 from various of the investors -- one of the reasons was
23 that money from various of the investors went to CO or
24 could be traced to the Sbaraglias. Right?

25 A. Right.

1 113 Q. Doesn't that apply to every single investor,
2 every single one of the major investors in EMB and all of
3 their sub-investors?

4 A. Certainly. However what sets CO apart from
5 all the other spokes or "sub-investors" as they're
6 referred to, is none of the others had anything to do
7 with Mander in terms of managing the money, or trying to
8 create these rates of return that were promised in the
9 Promissory Notes.

10 114 Q. Are you telling me you didn't know that Tom
11 Obradovich arranged loans for people like Barbara
12 Humphrey, for example, at 20 per cent returns?

13 A. NO, that's not what I'm telling you. What
14 I'm telling you is they were -- all the spokes were
15 similar in that respect; they all were engaged in issuing
16 Promissory Notes. What sets CO apart from the other
17 spokes is that CO was actively engaged in the business of
18 generating income with Mander.

19 The way Mander and CO was presented to us, during
20 both examinations was that they were partners. I didn't
21 see any of the other spokes as being partners,
22 necessarily, with Mr. Mander in the same sense.

23 115 Q. Do you have any evidence at all that Peter
24 Sbaraglia or Mandy Sbaraglia were involved in the
25 generation of income, that they were actually actively

1 investing the money?

2 A. No. But their involvement was to the extent
3 that Mr. Sbaraglia was and Ms. Sbaraglia were involved in
4 research for Mr. Mander. During the examination of
5 Mr. Sbaraglia I think you counsel, if not Mr. Sbaraglia,
6 himself, indicated that they were both involved in buying
7 property as a group. Every reference to income
8 generation during those examinations was against the
9 backdrop of both of them doing this income generation.

10 116 Q. And if you review those transcripts, all of
11 those statements you're talking about were put to you by
12 counsel, not by Peter Sbaraglia. Correct?

13 A. I would have to review the transcripts to
14 agree with that.

15 117 Q. We can all read?

16 A. Right.

17 118 Q. Okay?

18 A. So I can't say "yes" or "no" to that
19 question.

20 119 Q. Now, you knew at the time of those
21 examinations Aylesworth was acting for both Mander and
22 for the Sbaraglias. Right?

23 A. Yes.

24 120 Q. And you knew by statute there was to be no
25 discussion of what was happening, say, in the Mander

1 examination or discussions and the Sbaraglia
2 examinations. There is a statutory privilege?

3 A. Yes. Absolutely.

4 121 Q. You knew when Peter Sbaraglia was being
5 examined that he had no idea what Mander was telling you,
6 or what was being said on behalf of Mander to you. You
7 know that, right?

8 A. I don't know. That's the law. I can't tell
9 you whether the law was breached or not.

10 122 Q. Fair enough?

11 A. Right.

12 123 Q. Now, you know that each of SA Capital,
13 Trafalgar, Black Inc. were all set up, they were all
14 raising money from other people at high rates of
15 return?

16 A. Yes.

17 124 Q. And so if I understand you correctly the
18 reason that you're targeting my clients is because you
19 say they were closer to Mander than the others, or they
20 were generating money and that's the only thing that sets
21 them apart from the other spokes?

22 MS. FOY: I'm going to object to the use of your
23 word, "targeting." I don't think Mr. Shahviri's evidence
24 would support that anybody has been "targeted." I'm
25 going to take issue with that.

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1 MR. DAVIS: Are you kidding? He's the only one
2 you're seeking to put into receivership.

3 MS. FOY: And the basis for the OSC's application
4 is set out in its materials.

5 BY MR. DAVIS:

6 125 Q. I know. But you're the guy who decided to do
7 this, aren't you?

8 MS. FOY: I'll let Mr. Shahviri answer that
9 question.

10 THE DEPONENT: No. My Affidavit and the decision
11 to ask for the Receiver to be appointed was based on
12 management instructions. I'm acting as instructed by
13 management.

14 BY MR. DAVIS:

15 126 Q. Okay. Do you have any idea how much this
16 receivership will cost?

17 MS. FOY: Don't answer the question. It's not a
18 relevant question for the investigator who conducted the
19 investigation to answer.

20 MR. DAVIS: He's the only affiant you put
21 forward. And what benefit do you hope to achieve by
22 having a Receiver appointed over the Sbaraglias?

23 MS. FOY: Don't answer that. You have our basis
24 in our materials for seeking the appointment.

25 --- REFUSAL

1 BY MR. DAVIS:

2 127 Q. I'm entitled to ask that question. He is the
3 OSC's witness. You can refuse, and that's fine. And
4 I'll ask the court to draw an inference. Okay.

5 Can you tell me what benefit the CO investors
6 would have by the appointment of the Receiver?

7 MS. FOY: I'm sorry, didn't we just refuse to
8 answer that question?

9 BY MR. DAVIS:

10 128 Q. Not that question. This is the CO Investors.
11 If you want to refuse that, too, go ahead. Go ahead?

12 MS. FOY: It's a legal answer that you are
13 looking for.

14 MR. DAVIS: No, it's not. It's a factual answer.
15 Are you refusing?

16 MS. FOY: Yes.

17 --- REFUSAL

18 MR. DAVIS: Good. When I say "good" I'm being
19 facetious, that's not what I mean.

20 MS. FOY: Well, you should say what you mean.

21 BY MR. DAVIS:

22 129 Q. It just makes the examination shorter. I
23 will ask the court to draw a negative inference with your
24 refusal?

25 I want you to turn to paragraph 20 of your

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1 Affidavit. You say at paragraph 20: "Peter Sbaraglia
2 maintained throughout the Sbaraglia examination that it
3 was his understanding through legal advice obtained and
4 relied upon by CO that the business of CO was in
5 compliance with Ontario securities law." Do you see
6 that?

7 A. Yes.

8 130 Q. I want you to show me where in the transcript
9 it says that? Where did Peter Sbaraglia say that in his
10 examination?

11 MS. FOY: Would you like him to do that now?

12 MR. DAVIS: Absolutely. Or you can just concede
13 that he didn't say that.

14 MR. GOTTLIEB: Let's go off the record.

15 --- Off The record

16 THE DEPONENT: So I take it you're looking for me
17 to point out to you where Mr. Sbaraglia said in his own
18 words that it was his understanding through legal advice
19 obtained and relied upon by CO that they were in
20 compliance with Ontario securities law.

21 I think the difficulty we might have here is with
22 the word "maintained." And by "maintain" what I mean is
23 that's what was conveyed during the examination through
24 counsel, and also looking at some of the supporting
25 documents that were provided at the examination. For

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1 example, on page 331 of the Application Record is an
2 email from Richard Austin to Peter Sbaraglia which
3 mentions a Revised Loan Agreement, Statement of Account;
4 talks about not having to issue an Offering Memorandum,
5 and so forth. It's generally in the nature of providing
6 the very legal advice that I refer to in paragraph 20.

7 BY MR. DAVIS:

8 131 Q. Well, Mr. Shahviri, you knew before you swore
9 this Affidavit that the Sbaraglias had advised the OSC
10 that their lawyers, Mr. Miller and Ms. Dublin, had made a
11 series of misrepresentations to the OSC. You knew that
12 before you swore the Affidavit. Right?

13 A. Yes.

14 132 Q. And the point that I'm trying to make here is
15 even though you knew that the Sbaraglias had come forward
16 and said, our lawyers had made misstatements to you, not
17 personally to you but the OSC, you then say Peter
18 Sbaraglia some things when it wasn't Peter Sbaraglia, it
19 was other people such as the lawyers. Correct?

20 A. Correct.

21 133 Q. Now, I want to move onto another subject.
22 Take a look at paragraph 33 of your Affidavit, and in
23 paragraph 33 you say: "During staff's investigation it
24 appears that Peter Sbaraglia and Mander omitted material
25 information regarding the business and affairs of Peter

1 Sbaraglia and Mander and CO. ..." And so on. Do you see
2 that?

3 A. Yes.

4 134 Q. When you use the phrase, "during staff's
5 investigation," you mean your investigation with others
6 assisting you?

7 A. Correct.

8 135 Q. And you go onto say, that one of the things
9 they omitted, item B, was the existence of additional CO
10 investors. Do you see that?

11 A. Yes.

12 136 Q. Who are those additional CO investors that
13 you say they omitted to tell you about?

14 A. If memory serves me correctly there are about
15 seven that are listed in the spreadsheet that came from
16 your office. I think your assistant swore an Affidavit
17 that included a spreadsheet and letters from CO
18 investors. And I believe there are about seven names
19 and/or loan numbers on that spreadsheet that are not in
20 the undertaking.

21 137 Q. So if I understand you correctly, what you're
22 saying is six or seven people who you can't name right
23 now, who are opposed to the appointment of the Receiver
24 are the very people you say they forgot to tell you
25 about. Right?

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1 A. And more importantly the dollar amounts
2 associated with those people, yes.

3 138 Q. Why is the dollar amounts important to that
4 point?

5 A. Because it have changed the asset liability
6 picture of CO and Mander with respect to their
7 liabilities.

8 139 Q. And what difference would that have made?

9 A. Well, had the liabilities of CO and Mander
10 exceeded their assets, at the time, I very much doubt
11 that management would have agreed for us to resolve this
12 matter with CO, Mander, EMB, et al, in July of 2009 the
13 way we did with a warning letter.

14 140 Q. Now, just so we're clear the six or seven
15 investors you're talking about, one of them is Tom
16 Obradovich or Pero. Correct?

17 A. No, the six or seven investors account for
18 about \$3.3 million that was not disclosed to us as part
19 of the undertaking. And Mr. Obradovich's debt was an
20 additional 6 million. So that would have put them
21 offside by another, I can't tell you what the net number
22 was but their liabilities would have increased by \$9
23 million roughly.

24 141 Q. You knew before you swore your Affidavit --
25 why are you putting your hand in front of him?

1 MS. FOY: Because I'm waiting for you to finish
2 your question before Mr. Shahviri answers.

3 BY MR. DAVIS:

4 142 Q. You knew before you swore the Affidavit that
5 it was the Sbaraglia's point of view that Pero's note was
6 payable by Mander or EMB you knew that?

7 A. I knew that.

8 143 Q. And you have not reviewed the EMB bank
9 records to find out what happened to the Pero money, have
10 you?

11 A. Correct.

12 144 Q. And I take it you didn't know when you swore
13 this Affidavit that Obradovich and Mander were doing
14 business directly in the summer of 2009?

15 A. I didn't know that.

16 145 Q. And is that news to you today?

17 A. No, I didn't know -- sorry. I didn't know
18 it, at the time, in the summer of '09. You're saying did
19 I know it at the time I swore the Affidavit?

20 146 Q. Yes?

21 A. Yes. I would have become aware of that, I
22 suppose, in reading the materials.

23 147 Q. Did you know that Mander sent \$650,000 to
24 Obradovich to buy a piece of real estate?

25 MS. FOY: How is this relevant?

1 BY MR. DAVIS:

2 148 Q. I take that as refusal.

3 Have you done anything to trace that money into
4 the real estate?

5 MS. FOY: That is a refusal, too. I don't see
6 this as being relevant, Mr. Davis.

7 --- REFUSAL

8 MR. DAVIS: Well, you see the relevance is my
9 clients are being sought to be put into receivership when
10 there is investor money going all over the place, and you
11 people aren't doing anything about it. Why my people?
12 Why target them? That's the point. You can choose to
13 say that's irrelevant, that's your prerogative.

14 MS. FOY: It is not relevant to the
15 application.

16 BY MR. DAVIS:

17 149 Q. We disagree. Tell me everything that the OSC
18 is doing to recover investor money other than this
19 application for receivership? And when I say "investor
20 money" I mean CO investor money, SA investor money,
21 everybody else's investor money. What are you doing?

22 MS. FOY: Mr. Shahviri is not going to answer
23 that question.

24 --- REFUSAL

25 MR. DAVIS: Is that because you say it's

1 irrelevant.

2 MS. FOY: It's irrelevant.

3 BY MR. DAVIS:

4 150 Q. You now know that the lawyers for Mander and
5 for the Sbaraglias made a series of misrepresentations to
6 you in their examinations. Correct?

7 A. I've never viewed those misrepresentations as
8 coming from counsel. The fact that both Mr. Sbaraglia
9 and Mr. Mander were present during those examinations,
10 and were silent in the face of those statements makes me
11 think that they were in agreement with those statements
12 at the time that they were made by counsel.

13 151 Q. But you know those statements were
14 misrepresentations?

15 MS. FOY: He's given you his answer.

16 BY MR. DAVIS:

17 152 Q. That is another question. You know those
18 statements were misrepresentations?

19 A. I have since learned that they were, yes.

20 153 Q. And what, if anything, have you done about
21 it?

22 MS. FOY: Don't answer that.

23 --- REFUSAL

24 BY MR. DAVIS:

25 154 Q. Okay. Do you have any evidence at all that

1 my clients were in on the Ponzi scheme?

2 A. No.

3 155 Q. You say in paragraph 36 of your Affidavit
4 that based on, I'll paraphrase, Peter's Affidavit you
5 say: A. Peter misled staff during the examination. B.
6 They misled staff about the undertaking. C. They are
7 insolvent. Where does it say that the Sbaraglias are
8 "insolvent?" in Peter's 2010 Affidavit?

9 --- Off the record

10 Let's go back.

11 Can I have the admission that it does not say
12 they're insolvent in that Affidavit?

13 MS. FOY: I think the OSC's position is that read
14 as a whole the Affidavit suggest that both CO and the
15 Sbaraglias personally are insolvent.

16 MR. DAVIS: You show me where the evidence is in
17 that Affidavit?

18 MS. FOY: We can disagree about that. That is
19 the position.

20 BY MR. DAVIS:

21 156 Q. Okay. You also say in paragraph 41 that:
22 Peter Sbaraglia and Mander failed to advise staff of the
23 full amount of their liabilities of CO to investors.
24 What liability do you say Peter Sbaraglia failed to tell
25 you about that he owed to CO investors?

1 A. Well, I think where you're driving is that
2 Mr. Sbaraglia personally -- is that what you mean,
3 personal liabilities?

4 157 Q. Yes?

5 A. Well, again, you know during the course of
6 all these examinations staff really did not distinguish
7 between Mr. Sbaraglia, CO or EMB. They were in business
8 together. They're affairs were very much intertwined.
9 And on that basis you can read instead of Peter Sbaraglia
10 you could read collective group of people or entities,
11 regardless as a whole. And particularly in light of --
12 there is one particular page in one of the exhibits at
13 the first examination, I think it's called a Matching
14 Summary, where we're presented with a table that clearly
15 is intended to demonstrate that we should be viewing all
16 these assets as a whole, and all the liabilities as a
17 whole. And it is that excess of assets or liabilities
18 that gave us the comfort that we needed to resolve this
19 matter at the time that we did.

20 158 Q. That is all very fine and well. But my point
21 is I am distinguishing between CO Capital and Peter
22 Sbaraglia. Do you understand that?

23 A. Yes, I do.

24 159 Q. So my point to you is what was not disclosed
25 to you, according to you, was not Peter Sbaraglia's

1 personal liabilities, but in fact CO Capital's personal
2 liabilities. That's your real complaint, isn't it?

3 A. Again, you know you have to look at who owns
4 CO. And I understand it is a limited liability company,
5 and all that. But at the end of the day for the
6 purposes -- you know, the spirit of our examination was
7 intended to capture the liabilities and assets of
8 everyone as a group. So I take your point about
9 Mr. Sbaraglia personally in a very technical, untechnical
10 level did not have those liabilities.

11 160 Q. Sir, you are the face of the OSC --

12 MS. FOY: Mr. Shahviri has told you what his role
13 at the OSC is. His role at the OSC is as an
14 investigator. Mr. Shahviri is not here to answer legal
15 questions about who the liabilities or obligations
16 attached to. Those are legal questions that the court
17 will decide. Mr. Shahviri is here to give you answers in
18 respect of his Affidavit.

19 MR. DAVIS: What question are you refusing to
20 answer? I didn't even get the question out before you
21 made that speech. I didn't get the question out.

22 MS. FOY: Sir, you made a comment about
23 distinguishing between the liabilities of Peter Sbaraglia
24 and CO. My comment was in answer to that.

25 BY MR. DAVIS:

1 161 Q. Well, I started a question by saying: You
2 are the face of the OSC for the purpose of this
3 proceeding? You understand that, correct?

4 A. Yes.

5 162 Q. And in the course of your duties you deal
6 everyday with the distinction between corporations and
7 individuals. Correct?

8 A. Yes.

9 163 Q. And so you understand that CO Capital and
10 Peter Sbaraglia are for the purpose of the work you do,
11 two different entities?

12 A. Yes.

13 164 Q. And so my point to you was simply that
14 looking at your Affidavit you're suggesting that Peter
15 Sbaraglia didn't tell you about his liability to CO
16 investors, as opposed to what it should have said which
17 is CO's liability to their investors. Correct?

18 A. Well, again, it would take me some time to
19 find the relevant reference in the statement,
20 Mr. Sbaraglia's statement. But there is at least one
21 occasion during which Mr. Sbaraglia, himself, does not
22 distinguish between CO's liabilities and his liabilities.
23 He talks about CO owes him the money, but I'm good for
24 it. Words to that effect.

25 165 Q. Okay?

1 MS. FOY: And --

2 MR. DAVIS: I don't need it. We got the point.

3 MS. FOY: I'm sorry.

4 MR. DAVIS: You don't get to make speeches.

5 MS. FOY: I'm not making a speech. I'm reminding
6 you of Mr. Shahviri's earlier evidence where he also
7 talked about \$3 million of liabilities that were not
8 disclosed.

9 BY MR. DAVIS:

10 166 Q. That wasn't Peter Sbaraglia's debt, that was
11 CO's liabilities. Correct?

12 A. Correct.

13 167 Q. You say in paragraph 50 (c) it is clear that
14 CO obtained during the course of the Ponzi scheme funds
15 from Mander and his companies that were obtained from
16 parties that invested with Mander and his companies in
17 the Ponzi scheme. Do you see that?

18 A. Yes.

19 168 Q. First of all, you don't have the slightest
20 bit of evidence that the Sbaraglias knew that a Ponzi
21 scheme is ongoing at the relevant time. Correct?

22 A. Correct.

23 169 Q. Now, the other thing you don't have is an
24 analysis of what money CO received from this Ponzi
25 scheme. In other words, from which investors did the

1 money come from that went to CO Capital from EMB or
2 Mander?

3 A. That's correct. And, again, as I said
4 earlier, I've relied on the Receiver's reports in that
5 regard.

6 170 Q. You understand the Receiver has not filed a
7 complete analysis of where the money went. So we don't
8 know which money went to real estate. We don't know
9 which money went to Mander's house. We don't know which
10 money went to CO Capital. We don't know which money went
11 to CCE. We don't know anything as to whose money went
12 where. Correct?

13 MS. FOY: Don't answer that.

14 --- REFUSAL

15 MR. DAVIS: Why?

16 MS. FOY: He's indicated that he's relied on the
17 Receiver's reports and what's contained in the Receiver's
18 reports. He's given you whatever answer is relevant.
19 He's answered the question.

20 MR. DAVIS: Ms. Foy, you've got a statement here
21 from this witness saying it is clear, to put that in
22 quotation marks. Funds from Mander and his companies
23 that were obtained from parties that invested with Mander
24 in this company in the Ponzi scheme went to CO. And I'm
25 pointing out to him that statement is incorrect, and

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1 you're refusing to let him answer.

2 MS. FOY: He's already answered what he relies
3 upon to make the statement in 50 (c).

4 BY MR. DAVIS:

5 171 Q. Fine. Do you want to agree with me that
6 statement is incorrect because you don't know what money
7 went where?

8 MS. FOY: Don't answer that.

9 --- REFUSAL

10 BY MR. DAVIS:

11 172 Q. Okay. And I want to show you Exhibit C to
12 Tom Obradovich's Affidavit. Have you seen this Agreement
13 before?

14 A. Yes, I have.

15 173 Q. When did you see it for the first time?

16 A. About a week ago.

17 174 Q. So you understand that the \$8 million that
18 Mander's company 2214625 said it is holding as of August
19 14, 2009 includes the \$6 million that you say in your
20 Affidavit at paragraph 50 (b) that CO owes to Pero?

21 MS. FOY: Sorry, you're asking him if the \$8
22 million.

23 BY MR. DAVIS:

24 175 Q. I'm asking if he knows that the \$8 million
25 that's referred to in Exhibit C of the Obradovich

1 Affidavit includes the \$6 million that is in your
2 Affidavit at 50 (b)?

3 A. I don't know that for a fact. But I would
4 assume it is, because I don't believe there's \$14 million
5 outstanding.

6 176 Q. Have you taken any steps to try to find out
7 where that \$6 million went?

8 MS. FOY: I'm sorry, where it went at which
9 point?

10 BY MR. DAVIS:

11 177 Q. At any point, we know Mander got \$4.7 million
12 and rolled over some other money. Where did it go?

13 A. No. The answer to the question is "no."

14 178 Q. You don't have any evidence that the
15 Sbaraglias got it, do you?

16 A. I go back to my original point, which is that
17 monies from the CO lenders which went through CO to
18 Mander/EMB, and monies that went directly into Mander/EMB
19 were co-mingled and before they went back to CO. And it
20 would be, I think, impossible to ascertain who got what
21 from whom.

22 179 Q. Well, have you looked?

23 A. No.

24 180 Q. The only reason I ask that question because
25 sometimes if, say, a cheque for a million dollars comes

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1 in from CO and a cheque for a million dollars goes out
2 the next day, you can figure out that it's probably the
3 same money?

4 A. I agree. I understand.

5 181 Q. And you haven't done that exercise?

6 A. No.

7 182 Q. You examined Davide Amato on February 26,
8 2010. Correct?

9 A. I don't recall the date; but, yes.

10 183 Q. By the way Davide has an "e" on the end of
11 it. Don't ask me why. Can I have a copy of that
12 transcript, please?

13 MS. FOY: No.

14 --- REFUSAL

15 MR. DAVIS: Why not?

16 MS. FOY: Because it's not relevant to this
17 application. What is the relevance? Would you like to
18 explain the relevance?

19 MR. DAVIS: It's actually really relevant.

20 MS. FOY: Okay. If you could tell me how?

21 BY MR. DAVIS:

22 184 Q. Just bear with me and you'll see. You knew
23 from your discussion with Davide Amato that his group had
24 invested some \$16 million with Mander. Correct?

25 A. Yes.

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1 185 Q. And you knew he was raising money from
2 various members of the public, much in the same way that
3 CO was?

4 A. Yes.

5 186 Q. And you knew that money was coming back from
6 Mander to those various investors, just like money was
7 coming back to CO who was paying back various investors.
8 Correct?

9 A. I don't have a sense of how much or whether
10 there was. I would have to, again, review some records.
11 But, probably.

12 187 Q. And from your interview of Mr. Amato it was
13 clear to you that Mander was running a Ponzi scheme.
14 Isn't that fair?

15 A. I can't say that we'd come to that conclusion
16 immediately following that interview. We had
17 essentially, at that point, started to look at Mander,
18 CO, EMB again after having issued the warning letter
19 which I'm sure you're aware of in the fall of '09.

20 188 Q. Yes?

21 A. So, at that point, I'm not sure that we
22 actually concluded that this was a Ponzi. I mean
23 certainly all the indications were that it was. But I
24 couldn't tell you honestly, at that point, whether we
25 made that determination.

1 189 Q. Well --

2 A. To the best of my recollection, in any event.

3 190 Q. I'm looking at your note of March 3, 2010.

4 If you look at the fourth last bullet on page 2 you say:

5 Amato admits to one instance of improperly using funds

6 loaned to Mander?

7 MS. FOY: With all due respect, Mr. Davis, can
8 you please tell me how this is relevant to an application
9 pursuant to s. 129 as of the Ontario Securities Act to
10 appoint an Receiver over CO and Peter and Mandy
11 Sbaraglia. The requirements for that application are
12 that it's (a) in the best interest of investors; or, (b)
13 for the due administration of Ontario securities law. I
14 don't see how an interview with Mr. Amato in February of
15 2010 and the question that you're asking him is relevant
16 to the application.

17 MR. DAVIS: OSC knew of this Ponzi scheme in
18 2008. They couldn't figure out when they were told in
19 2008? They surely knew it in 2009. And if they didn't
20 know it in 2009, it's put on a silver platter in February
21 of 2010 and the OSC doesn't do a thing about it. Then
22 they come along in the. Face of all of this and point
23 their finger at my clients, and nobody else -- nobody
24 else, my clients. They don't even take steps against
25 Mander in the face of overwhelming evidence, stuff that

1 they know, misrepresentations, they've got possession of
2 bank records. It's terrible. And you want to say it's
3 the due administration of securities law by doing this,
4 by putting these people in their personal capacity out on
5 the street? Go ahead, say that. I think it's
6 relevant.

7 MS. FOY: Mr. Davis, first of all, I don't think
8 there is any need for you to raise your voice.

9 MR. DAVIS: I'm sorry. I wasn't raising my
10 voice, I was just being emotional.

11 MS. FOY: As a result of being emotional you were
12 raising your voice. I don't think it's necessary, in
13 this cross-examination.

14 MR. DAVIS: I agree. I apologize. I wasn't
15 cross-examining. We were making speeches to each other.

16 MS. FOY: Well, if we're making speeches then we
17 obviously disagree entirely with the characterization of
18 the evidence that you just put on the record. And I
19 think it's clear, for the record, that certainly this
20 witness has not agreed with any of the propositions
21 contained in that speech of yours.

22 MR. DAVIS: Well, he is the only witness you
23 brought forward so he is the only one I can
24 cross-examine.

25 MS. FOY: I'm sorry, you've cross-examined Kathy

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1 Reid, Thomas Obradovich and now Mr. Shahviri. So I have
2 to disagree with you.

3 BY MR. DAVIS:

4 191 Q. You're right. Let the record show and
5 underline that Ms. Foy was right on that one instance.

6 You obtained your order in June of 2008 to
7 investigate CO. Correct?

8 A. Among others, yes.

9 192 Q. And I understand that in July of 2008 you
10 received trading data for CO, Pero and others from
11 Interactive?

12 A. Yes.

13 193 Q. And in August, 2008 you received monthly
14 statements for Mander and others from Quest Trade?

15 A. Yes.

16 194 Q. And then on August 25, 2008 you issue your
17 summons for the bank statements that we talked about?

18 A. Yes.

19 195 Q. Between August 25, 2008 and May 15, 2009 I
20 want you to tell me all the steps you took in your
21 investigation of CO, Mander, or the Sbaraglias?

22 MS. FOY: Mr. Shahviri is not answering that
23 question.

24 MR. DAVIS: And why?

25 MS. FOY: Because it's irrelevant.

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1 --- REFUSAL

2 MR. DAVIS:

3 196 Q. Okay. We don't agree. On May 15, 2009 John
4 Maracassa told you that money was being invested by CO in
5 the stock market. Right?

6 MS. FOY: Sorry where are you getting this from?

7 MR. DAVIS: His notes.

8 MS. FOY: Let's put the note in front of the
9 witness.

10 MR. DAVIS: That's fine.

11 MS. FOY: Point us to the note, if you would.

12 MR. DAVIS: I wasn't using the note. I was using
13 something else.

14 MS. FOY: Why don't you tell us where it is.

15 MR. DAVIS: You asked where it came from, I don't
16 you.

17 MS. FOY: Let's be fair to the witness and put
18 the note to him.

19 BY MR. DAVIS:

20 197 Q. I'm not arguing with you, this isn't a memory
21 test?

22 A. May 15th.

23 198 Q. What did I say. I said May 15th?

24 A. Sorry.

25 199 Q. It was on May 15th that Maracassa told you

1 that he'd loaned CO money to use to invest in the market.
2 Correct?

3 A. Yes.

4 200 Q. And the same day Stephen Diamond told you
5 he'd invested in a private equity fund run by Mander?

6 A. Yes.

7 201 Q. And the same day you got a phone call from
8 Mander, himself. Correct?

9 A. Yes, I did.

10 202 Q. And Mander told you that he was trading?

11 A. Yes.

12 203 Q. And you understood from that he was trading
13 securities, not that he was trading real estate or
14 anything else?

15 A. Correct.

16 204 Q. And at this point if I understand correctly,
17 you've got all the bank statements, you've got the
18 Interactive brokerage statements, you've got people
19 telling you that CO and Mander are investing in
20 securities. Correct?

21 A. Yes. And I should add, just to clarify, it
22 wasn't long after that point that we decided to compel
23 examinations of Mr. Sbaraglia and Mander.

24 205 Q. Okay. But let me just give you a hint. I'm
25 asking questions, you answer them. I appreciate you're

1 trying to help me, but I'd be grateful if you just
2 limited yourself to answering questions. Okay. On May
3 19, 2009 you spoke to Richard Austin?

4 A. There are two conversations, or one is a
5 voice mail one -- are you talking about the 10:20 a.m. or
6 the 2:42 p.m.?

7 206 Q. I'm talking -- I'm not smart enough to read
8 -- oh, 2:42. Right?

9 A. Okay.

10 207 Q. And Richard Austin, who I take it is somebody
11 you know as a securities lawyer at the OLG?

12 A. I heard of him after speaking with
13 Mr. Mander, I think.

14 208 Q. So Austin told you that the structure of the
15 organization was that CO borrows money from investors,
16 and then invests it. And you understood that CO was
17 investing the money securities. Correct?

18 A. Correct.

19 209 Q. And really the reason you were conducting
20 your investigation was because you thought there was
21 reason to look into whether or not securities laws were
22 being broken. Correct?

23 A. Among other possibilities, yes.

24 210 Q. Well, I can't imagine what else you and your
25 professional capacity would care about. If it was simply

1 a question of boring money and high interest rates, that
2 is simply not within your purview as an investigator for
3 the OSC. Correct?

4 A. Well, despite Mr. Austin's advice that these
5 notes were not securities, by this time I'm positive I
6 consulted with counsel in-house; and I was of the view,
7 by this time, that the notes were, in fact, securities.

8 211 Q. Okay. I believe you spoke to Joe Di Ricci
9 (ph.)?

10 A. Yes, I recall speaking to Di Ricci.

11 212 Q. And that was on June 8, 2009?

12 A. Yes.

13 213 Q. And he told you that Peter Sbaraglia was
14 trading and investing in small companies as a venture
15 capitalist?

16 A. Yes.

17 214 Q. And you understood he was referring to CO?

18 A. Not necessarily.

19 215 Q. Okay. And 20 days later you speak to Philip
20 Walker who tells you Mander is running a Ponzi scheme?

21 A. Well, he's making that allegation certainly;
22 yes.

23 216 Q. Well, at that point I take it you knew what
24 the rates of return were on the various Promissory Notes
25 that CO was issuing?

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1 MS. FOY: Sorry, I have to interrupt again to ask
2 how this is relevant?

3 MR. DAVIS: Object, I'm not going to argue.

4 MS. FOY: Fine. He's not answering, it's
5 irrelevant.

6 --- REFUSAL

7 MR. DAVIS: Just so I'm clear, what question of
8 are you refusing because I didn't finish it.

9 MS. FOY: He's not going to answer questions
10 about the investigation, or the contact from an
11 individual who doesn't even appear to have been invested
12 with Mander.

13 MR. DAVIS: What are you talking about?

14 MS. FOY: Philip Walker.

15 MR. DAVIS: I wasn't asking about Philip Walker.
16 You didn't let me finish the question.

17 MS. FOY: Ask your question.

18 MR. DAVIS: Is that an apology, almost, for
19 interrupting the question and refusing it before I asked
20 it?

21 Let's go off the record.

22 --- Whereupon proceedings adjourned at 4:15 p.m.

23 I hereby certify the foregoing to be
24 as true and accurate transcript of my
25 computerized shorthand notes, to the
best of my skill and ability.

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Debbie Anshan, CSR RPR
Real Time (Caption) Shorthand Reporter,

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COURT FILE NO. CV-10-883-OOCL
ONTARIO
SUPERIOR COURT OF JUST

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

PETER SBARAGLIA, MANDY SBARAGLIA,
CO CAPITAL GROWTH INC. and 91 DAYS HYGIENE SERVICES INC.
Respondents

This is the continued Cross-examination of MEHRAN
SHAHVIRI on his Affidavit sworn September 8, 2010, held
at the Offices of Network Reporting & Mediation, One
First Canadian Place, 100 King Street West, Suite 3600,
Toronto, Ontario, M5X 1E3, on Thursday, October 28, 2010.

APPEARANCES:

Pamela Foy Counsel for the Applicant

Milton Davis,
Kelly Preston Counsel for the Respondents

Matthew Gottlieb Counsel for The Receiver

Stephen M. Turk Counsel for Kathy Reid

Thursday, October 28, 2010

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THERE WERE NO EXHIBITS NOTED
UNDERTAKINGS WERE NOTED ON THE FOLLOWING PAGES:
59, 73
THERE WERE NO UNDER-ADVISEMENTS NOTED
REFUSALS WERE NOTED ON THE FOLLOWING PAGES:
60, 61, 63, 65, 66

1 MEHRAN SHAHVIRI, Previously affirmed

2 CROSS-EXAMINATION BY MR. DAVIS, continued:

3 217 Q. Good morning, sir?

4 A. Good morning.

5 218 Q. Do you have a copy of the copy of the
6 Responding Record with Mr. Sbaraglia, September 15th
7 Affidavit?

8 A. Yes, I do.

9 219 Q. I want you to turn to tab number 3 which is a
10 Loan Agreement between CO and EMB?

11 A. I have it.

12 220 Q. And I take it that you saw this Agreement for
13 the first time in July of 2009. Is that fair to say?

14 A. The version of this Agreement that I saw did
15 not have any handwritten numbers in it. And if you're
16 telling me that all the other -- if in substance is the
17 same agreement then, yes. But the version that I have, I
18 believe, had the, for example, the \$8.4 million typed in,
19 not handwritten.

20 221 Q. Can I see your version?

21 MS. FOY: Our version, or the witness' version is
22 at Volume 4 of the OSC's Application Record, at tab 17, I
23 believe. It is undercover of a letter from Aylesworth,
24 dated August 7, 2009 attaching A, the Loan Agreement
25 between EMB Asset Group Inc. and CO Capital Growth

1 Corporation. And, two, what we've been calling the
2 "undertaking."

3 BY MR. DAVIS:

4 222 Q. Okay. Let's go back on the record. Take a
5 look at page 980 of your record at tab 17?

6 A. Yes.

7 223 Q. And that's the same Loan Agreement, subject
8 to the changes you pointed out. In other words, the
9 typing of the various items. Okay?

10 A. Yes.

11 224 Q. And so your counsel has inadvertently
12 answered my question. You saw this for the first time
13 on/or about August 7, 2009. Right?

14 A. Correct.

15 225 Q. And what happened was you got the Loan
16 Agreement from EMB and undertaking from the Sbaraglias,
17 at the same time?

18 A. Correct.

19 226 Q. And as far as you were concerned these two
20 documents went hand-in-hand. Correct?

21 A. Yes.

22 227 Q. In other words, you were content with the
23 fact that EMB had given a priority to CO on the one hand,
24 and then on the other hand the Sbaraglias had given the
25 undertaking to pay out of the various assets listed in

1 the schedule to the undertaking?

2 A. Yes.

3 228 Q. If I understand the OSC's position today, you
4 rely on the undertaking for the purposes of seeking
5 appointment of the Receiver. Correct?

6 MS. FOY: I'm not going to allow Mr. Shahviri to
7 answer that question. If you'd like the OSC's legal
8 position, we will provide it to you. This witness was an
9 investigator, he's told you what his role was. He's not
10 involved in giving advice or giving instructions on how
11 to proceed, whether to proceed and on the basis upon
12 which the OSC is proceeding.

13 BY MR. DAVIS:

14 229 Q. Do you want to tell me what the OSC's
15 position is on the EMB/CO Loan Agreement?

16 MS. FOY: If you want that undertaking I will get
17 that for you.

18 MR. DAVIS: I would like it right now.

19 MS. FOY: I'm not going to provide it to you
20 right now.

21 MR. DAVIS: Will you undertake to provide it to
22 me.

23 MS. FOY: Can you ask the question?

24 BY MR. DAVIS:

25 230 Q. What is the position of the OSC to the EMB/CO

1 Loan Agreement?

2 MS. FOY: In what respect?

3 BY MR. DAVIS: In respect of its loan
4 enforceability? What effect, if any, it has on the
5 position of the OSC and the receivership application?
6 And what steps the OSC has taken in respect of that
7 agreement, if any. Okay?

8 MS. FOY: We will consider those and get back to
9 you. We will consider those and get back to you.

10 --- UNDERTAKING

11 MR. DAVIS: Can you just tell me whether you are
12 going to answer that undertaking or not?

13 MS. FOY: I think what I'm saying is that we'll
14 answer it, yes.

15 BY MR. DAVIS:

16 231 Q. Thank you. Take a look at paragraph 41 of
17 your Affidavit. I don't think I asked this yesterday,
18 but I'm sure your counsel will stop me if I did. You see
19 in paragraph 41 you allege an omission regarding a
20 liability of \$6 million?

21 A. Yes.

22 232 Q. Did you know about a Loan Agreement that was
23 entered into between Pero and CO in April of 2009 for a
24 million dollars?

25 A. No, I did not -- sorry. Correction. By the
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1 time I swore this Affidavit I had just become aware of
2 that, yes.

3 233 Q. And were you aware that no request in writing
4 for payment from CO had ever been made by Mr.
5 Obradovich?

6 A. I'm not aware of such a request.

7 234 Q. Did you know that he doesn't even know
8 whether he did or didn't get paid that money?

9 A. No.

10 235 Q. And were you aware of CO's position that that
11 \$6 million liability had been assumed by Mander or EMB?

12 A. I'm aware now. I'm not sure when I became
13 aware of that position by the CO or Mrs. Sbaraglia. I
14 mean you'd have to take me to one of his -- one of the
15 receiver's filings or the -- or Mrs. Sbaraglia's
16 Affidavit for me to put that in the right chronological
17 order.

18 236 Q. Well, did you ever speak to Mr. Obradovich
19 about it?

20 MS. FOY: Don't answer the question.

21 --- REFUSAL

22 MR. DAVIS: Why not? Are you claiming privilege
23 or relevance.

24 MS. FOY: It's irrelevant.

25 BY MR. DAVIS:

1 237 Q. Okay. Do you have Mr. Obradovich's affidavit
2 handy?

3 A. Yes.

4 238 Q. If you look at Exhibit C there is an
5 agreement there between 2214625 Ontario Inc. and Pero?

6 A. Yes, I see that.

7 239 Q. And I take it you saw this Agreement before
8 you swore your Affidavit, which was September 10th of
9 this year?

10 A. I'm not sure. I'd have to check. I received
11 a soft copy of this through counsel, but I don't remember
12 when I got it exactly. I'd have to check.

13 240 Q. When you say "a soft copy of this," you mean
14 the Affidavit, the exhibit?

15 A. I mean the soft copy contained the Affidavit.
16 I'm not sure if it contained the exhibits. I'd have to
17 look at my emails.

18 241 Q. Would you undertake to do that and let me
19 know?

20 MS. FOY: No. Could we understand the relevance
21 of this before we undertake to do that?

22 MR. DAVIS: Go ahead and refuse.

23 MS. FOY: Fine. I am instructing the witness
24 that we will not undertake to do that.

25 --- REFUSAL

1 BY MR. DAVIS:

2 242 Q. Now, surely you are aware today that the \$8
3 million dollars referred to in Exhibit C to the
4 Obradovich Affidavit includes the \$6 million that you
5 speak of in paragraph 41 of your Affidavit. Correct?

6 A. I believe I said yesterday that I didn't
7 think there was a \$14 million liability, so on that basis
8 I would make that reasonable assumption.

9 243 Q. You understand, then, that you have made an
10 allegation that my client omitted a liability when, in
11 fact, there is another explanation for whose liability
12 that is. Do you understand that?

13 A. Yeah. I understand that your client has a
14 different position about the liability's existence,
15 yes.

16 244 Q. And you are the lead investigator in this
17 matter for the OSC, aren't you?

18 A. Yes.

19 245 Q. And is it fair to say you have taken no steps
20 to investigate the accuracy of my client's position with
21 respect to that particular liability?

22 MS. FOY: I don't think that's a fair question.

23 MR. DAVIS: Why not?

24 MS. FOY: Because you've got his evidence; you've
25 got his Affidavit. I don't think that's fair.

1 MR. DAVIS: This guy has made an allegation
2 against my client that he withheld information. There is
3 clearly an alternative explanation. I'm asking the lead
4 investigator whether or not he has investigated that
5 position. And, surely, we're entitled to know because if
6 he hasn't either there is a failing in the investigation
7 or in the alternative he's just looking at one side of
8 the coin.

9 MS. FOY: He's explained to you that he
10 understands that your clients have a different position
11 with respect to liability, which is a legal question.

12 MR. DAVIS: No, it's not. I'm only asking if he
13 investigated it. And my next question will be: If he
14 didn't, why not?

15 MS. FOY: Don't answer that.

16 --- REFUSAL

17 BY MR. DAVIS:

18 246 Q. Now, in paragraph 42 you say: "Staff only
19 became aware of this additional liability at/or around
20 the return date of 239 Church Street." When you use the
21 word "staff" in paragraph 42 who, specifically, are you
22 referring to?

23 A. Well, it wasn't me myself having become aware
24 of that in August.

25 247 Q. You swore the Affidavit. When you said the

1 word "staff" in paragraph 42 who did you mean?

2 A. It would have been counsel or other
3 persons.

4 248 Q. Can you name a person? When you use the word
5 "staff" who did you mean in paragraph 42?

6 A. Ms. Foy.

7 249 Q. Thank you. It is suggested in this
8 application that contrary to the undertaking that the
9 Sbaraglias gave you they entered into an additional loan
10 agreement with an investor. What loan agreement are you
11 referring to?

12 A. That's something, again, I became aware of
13 reading the Receiver's, I think it was the seventh
14 report.

15 250 Q. Yes?

16 A. Which makes note of that particular loan. It
17 was about \$50,000 after the date of the undertaking.

18 251 Q. Which Loan Agreement are you referring to?

19 A. I'd have to look at the Receiver's seventh
20 report to tell you, specifically.

21 252 Q. Go ahead?

22 A. I'm referring to the Receiver's seventh
23 report.

24 253 Q. What page?

25 A. And on page 6 of that report in the second

1 bulleted paragraph it reads: On August 21, 2009, 14 days
2 after the undertaking was executed CO entered into a new
3 one-year loan agreement in the amount of 54,925. A copy
4 of this Loan Agreement was provided by Davis to the
5 Receiver on August 24, 2010. And that loan agreement
6 number is 183-F.

7 254 Q. What investigation, if any, did you conduct
8 with respect to that statement that a new Loan Agreement
9 had been entered and the circumstances surrounding it?

10 MS. FOY: I'm instructing the witness not to
11 answer it.

12 MR. DAVIS: Why not?

13 MS. FOY: It's not relevant. He's told you he's
14 relied upon the Receiver's report to make the statement
15 in his Affidavit.

16 MR. DAVIS: How do you know that report is
17 accurate?

18 MS. FOY: I'm instructing the witness not to
19 answer.

20 --- REFUSAL

21 BY MR. DAVIS:

22 255 Q. Do you know the circumstances surrounding the
23 making of that loan agreement?

24 MS. FOY: I'm instructing the witness not to
25 answer.

1 --- REFUSAL

2 BY MR. DAVIS:

3 256 Q. Do you know if any new money was advance?

4 MS. FOY: I am instructing the witness not to
5 answer.

6 --- REFUSAL

7 BY MR. DAVIS:

8 257 Q. Isn't it fair to say that all you did in
9 support of that allegation was read this report?

10 MS. FOY: I'm instructing the witness not to
11 answer. You have his evidence.

12 --- REFUSAL

13 BY MR. DAVIS:

14 258 Q. No. I don't, actually. I'm trying to get it
15 but you're refusing to give it to me.

16 You've alleged at paragraph 50(c) your Affidavit,
17 you say: "As a result it is, therefore, clear that, and
18 you say in (c): "CO obtained during the course of the
19 Ponzi scheme funds from Mander and his companies that
20 were obtained from parties that invested with Mander and
21 his companies in the Ponzi scheme." Do you see that?

22 A. Yes.

23 259 Q. Do you know how much money you're speaking
24 of, in that particular circumstance?

25 A. I'm talking about in that instance of the

1 excess that CO received over what CO transferred to
2 Mander. I think the Receiver's net figure is \$3 million,
3 or just over \$3 million. And I believe Mr. Sbaraglia's
4 Affidavit puts that number just over \$4 and a half
5 million.

6 260 Q. And do you know what happened to that money?

7 A. I believe Mr. Sbaraglia's Affidavit said that
8 he paid it out to some of his lenders, in part at least.

9 261 Q. And have you conducted any investigation as
10 to the veracity of that statement?

11 A. Mrs. Sbaraglia's statement?

12 262 Q. Yes?

13 A. No.

14 263 Q. You have no reason to believe that
15 Mr. Sbaraglia's as to what happened to the money is
16 inaccurate or incorrect, do you?

17 A. No.

18 264 Q. Now, here is the thing one of your grounds
19 for suggesting that it is staff's view that the
20 Sbaraglias are not in an appropriate position to protect
21 the interest of the CO investors, is that they got this
22 money that you refer to in paragraph 50 (c), correct?

23 A. You're saying the fact that they got the
24 money is grounds?

25 265 Q. You say, not me?

1 MS. FOY: Mr. Shahviri, I think, I've tried to
2 explain this, has not said it. It is the OSC's
3 application. Mr. Shahviri, is the investigator who
4 conducted the examinations, and was leading the
5 investigation. He hasn't brought the application.

6 MR. DAVIS: Ms. Foy?

7 MS. FOY: Yes.

8 MR. DAVIS: This man swore on his oath before God
9 those very words.

10 MR. GOTTLIEB: Mr. Davis, you may want to read it
11 a little more closely because that's not what it says.

12 MR. DAVIS: It says --

13 MR. GOTTLIEB: You're missing the key word.

14 MR. DAVIS: Which "key word" are you referring
15 to?

16 MR. GOTTLIEB: Staff's view.

17 MR. DAVIS: Okay. Fair enough.

18 MR. GOTTLIEB: If you are going to put to him and
19 say: You swore to God on the statement you made. You've
20 got to get it right, Mr. Davis

21 BY MR. DAVIS:

22 266 Q. That's fair. When you say here in paragraph
23 61 it's "staff view," you are one of the members of staff
24 that you're talking about. Correct?

25 A. Correct.

1 267 Q. Okay, Mr. Gottlieb, are we satisfied now?

2 MR. GOTTLIEB: I'm simply saying that if you are
3 going to put a statement of something he said you've got
4 to put accurately.

5 MS. FOY: Can you tell me what paragraph?

6 BY MR. DAVIS:

7 268 Q. 51. So coming back to my point. You swore
8 that it's "staff's view," and that includes you, that the
9 Sbaraglias are not in an appropriate position to protect
10 the interests of the various investors. And one of the
11 reasons you suggest that is because they got this money
12 we just spoke about that you referred to in paragraph 50
13 (c), correct?

14 A. I think that that's a component of the
15 reasoning that goes into "staff's view."

16 269 Q. That's your view, too?

17 A. Yes. Again, it's a component of.

18 270 Q. Okay. And you know that from your own
19 investigation that there were other people in partnership
20 with Robert Mander in various different spokes. You know
21 that, right?

22 A. Yes.

23 271 Q. For example, Heather Shantora (ph.) she was
24 in partnership with Robert Mander. Correct?

25 A. Yes.

1 272 Q. And according to your notes she told you that
2 she and Robert were 50/50 partners. Correct?

3 A. That's right.

4 273 Q. Do you know how much money Heather Shantora
5 got from Mander?

6 A. I don't recall, but I think she got some
7 money. I don't recall the numbers.

8 274 Q. Do you want to review your records and let me
9 know?

10 A. Sure.

11 275 Q. Thank you. Now, Colleen Aurimma. She's
12 Black Inc., correct?

13 A. Yes.

14 276 Q. She was also partners with Robert in Black
15 Inc., right?

16 A. I'm not sure if she was a partner or not, in
17 the same sense that Shantora was.

18 277 Q. Did you do any investigation into how much
19 Colleen Aurimma got?

20 A. Yes, I probably have the numbers.

21 278 Q. Would you undertake to let me know how much
22 she got?

23 MS. FOY: If I could interject to ask: How is it
24 relevant what other investors received?

25 MR. DAVIS: Well, you're seeking to protect

Thursday, October 28, 2010

Mehran Shahviri 71

1 certain people who got money partly because you allege
2 that my clients got money. So let's find out how much
3 they got and why you're targeting my people, and whether
4 it's in the interests required by s. 129 for a Receiver
5 to be appointed.

6 MS. FOY: So you'd like to know? What is the
7 undertaking you'd like.

8 MR. DAVIS: How much money she got.

9 MS. FOY: Ms. Aurimma?

10 BY MR. DAVIS: Yes.

11 279 Q. Now, I take it you're familiar with the name
12 Grant Walton?

13 A. I've seen that name in the records, yes.

14 280 Q. And you know that he had a company with
15 Mander?

16 A. No, I didn't know that.

17 281 Q. You didn't know that. Do you know his son,
18 Bill Walton?

19 A. No.

20 282 Q. You didn't know that Bill Walton worked with
21 Robert Mander?

22 A. No.

23 283 Q. You know that David Amato had a partnership
24 arrangement with David Mander?

25 A. Yes.

1 284 Q. Do you know how much money Amato got from
2 Mander?

3 A. No, not off the top of my head.

4 285 Q. But you have that information, and you'll
5 undertake to give it to me?

6 A. Yes.

7 286 Q. And Tasha Fluke, you know she had a
8 partnership with Mander she was FM Capital, I believe?

9 A. Yes. But our investigation I don't think
10 goes back to that period when Ms. Fluke was involved with
11 Mr. Mander.

12 287 Q. Is there any reason you didn't investigate
13 Tasha Fluke or her relationship with Mander?

14 MS. FOY: I'm instructing the witness not to
15 answer.

16 BY MR. DAVIS:

17 288 Q. Did you find out how much her investors
18 got?

19 A. I didn't know she existed until long after
20 June of '08.

21 289 Q. Okay. I just want to be clear that you did
22 give me an undertaking to get me the numbers for Colleen
23 Aurimma. I may be pronouncing her name wrong. Right?

24 MS. FOY: We have undertaken to get you what
25 information we have, and what information we rely upon.

1 We'll give you that.

2 MR. DAVIS: I don't want what you rely upon, I
3 want what you have. It's different. You may not be
4 relying upon it, but I might be relying upon it. Fair?

5 MS. FOY: We'll get you what we have.

6 --- UNDERTAKING

7 BY MR. DAVIS:

8 290 Q. Thank you. Now, I understand that after
9 Robert Mander died you called Mandy Sbaraglia -- sorry,
10 you called Peter Sbaraglia?

11 A. Yes, I did. Yes.

12 291 Q. And you asked to get together with him?

13 A. Yes.

14 292 Q. And he agreed to do that?

15 A. Yes.

16 293 Q. And he told you that he was eager to give you
17 whatever information you required?

18 A. Yes.

19 294 Q. And you said that you'd meet with him the
20 following week?

21 A. I don't recall when we said we'd meet but if
22 that's what my notes say, sure.

23 295 Q. And he agreed to do that whenever you wanted
24 to meet?

25 A. Yes.

1 296 Q. And then you never called him back?

2 A. That's right.

3 MR. DAVIS: Can we take a break for a minute.

4 --- Whereupon proceedings recessed at 12:07 p.m.

5 --- Whereupon proceedings resumed at 12:10 p.m.

6 MR. DAVIS: Subject to the undertakings and
7 refusals, those are all my questions for today.

8 --- Whereupon proceedings adjourned at 12:11 p.m.

9 *****

10 I hereby certify the foregoing to be
11 a true and accurate transcript of my
12 computerized shorthand notes, to the
13 best of my skill and ability.

14

15

16

17

18 _____
19 Debbie Anshan CSR RPR

20 Real Time (Caption) Shorthand Reporter

21 Network Reporting & Mediation

22

23

24

25

This is **Exhibit "I"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

RSM Richter

**Ninth Report to Court of
RSM Richter Inc. as Receiver of the
Estate of Robert Mander, E.M.B. Asset
Group Inc. and the Related Entities**

RSM Richter Inc.
Toronto, November 12, 2010

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Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE RULES OF CIVIL PROCEDURE
AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43**

**NINTH REPORT OF RSM RICHTER INC.,
AS RECEIVER**

November 12, 2010

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010.

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. ("SA Capital") for the appointment of a receiver over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority over the assets, property and undertaking of entities related to EMB or Mander. These entities include, but are not limited to, Mand Assets Inc. ("Mand Assets"), Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc. ("Related Entities").

On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of the proceedings was changed to reflect the continuance.

By order dated July 14, 2010, the Receiver was authorized to conduct an investigation into the business and affairs of C.O. Capital Growth Corp. ("CO"), Peter Sbaraglia and Mandy Sbaraglia ("Sbaraglias") and any corporation associated with, related to or controlled by the Sbaraglias or CO (collectively, the "CO Group"). A list of the corporations in the CO Group is attached as Appendix "A".

1.1 Purposes of this Report

The purposes of this Report are to:

- a) provide this Honourable Court with an update on the preliminary results of the Receiver's investigation of the business and assets of the CO Group, including the cross-examination of Peter Sbaraglia (the "Examination") conducted by the Receiver and the Ontario Securities Commission ("OSC"); and
- b) recommend that, in accordance with the motion brought by the OSC, this Honourable Court issue an order appointing a receiver over the business and assets of the CO Group.

1.2 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of EMB, Mander and the Related Entities as well as at various other locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various parties, including several financial institutions, the CO Group, Tonin & Co. LLP, the former accountant to Mander and the CO Group, Aylesworth LLP ("Aylesworth") and Peter R. Welsh, former legal counsel to the CO Group. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

2. BACKGROUND

2.1 The Fourth Report

The Receiver filed its fourth report to Court on July 2, 2010 ("Fourth Report"). A copy of the Fourth Report is attached as Appendix "B" (without appendices). The Fourth Report provided the following information regarding the CO Group:

- CO and the Sbaraglias received in excess of \$3 million more from Mander and his companies (the "Mander Group") than CO paid to the Mander Group (in essence, the losses incurred by the CO Group were not incurred by the Mander Group);

- The chart provided in Section 5 of the Fourth Report illustrates that CO received funds from investors who invested with the Mander Group, in addition to those who invested with CO. During the relevant period¹ the Mander Group had no source of funds other than the monies received from investors. As a result, the additional \$3 million paid by the Mander Group to CO included funds that the Mander Group received from its own investors;
- Mander was, at all times, integrally involved in the business of CO. He was a director and officer of CO between January, 2006 and November, 2008 and remained involved with the business thereafter;
- The CO Group and Mander Group businesses were intertwined²; and
- Peter Sbaraglia (personally and through his counsel) misled the OSC during his examination by the OSC in July, 2009.

As a result of the matters set out in the Fourth Report, the Court issued an order empowering and authorizing the Receiver to investigate the business and affairs of the CO Group.

2.2 The Seventh Report

The Receiver filed its seventh report to Court on September 9, 2010 ("Seventh Report"). A copy of the Seventh Report is attached as Appendix "C" (without appendices). The Seventh Report provided information and findings regarding the CO Group as a result of the Receiver's investigation and detailed issues identified by it, which led to its support of the OSC's application³ for the appointment of a receiver over the CO Group.

In the Seventh Report, the Receiver determined that, among other things:

- Peter Sbaraglia's testimony before the OSC in July, 2009 was misleading and incomplete;
- CO knew or ought to have known that CO was not generating returns sufficient to satisfy its obligations to its investors;

¹ September, 2005 to March, 2010.

² See, for example, pages 19-27 of the Fourth Report.

³ Court File No.: CV-10-8883-00CL

- CO and the Sbaraglias misled the OSC in the undertaking it provided to the OSC and breached the provisions of the undertaking immediately after they entered into it;
- CO is insolvent (based on its own admissions);
- the Sbaraglias used investors' funds for their own personal benefit;
- investors' funds were used to pay principal and interest owing on properties not owned by CO; and
- investors' funds were transferred from CO to other companies controlled by the Sbaraglias.

The Seventh Report details that the Receiver is of the view that the evidence supporting the appointment of a Receiver is sufficiently strong that it believes that no further investigation need be conducted. Due to opposition to the OSC's application by CO, the Sbaraglias and 91 Days Hygiene Services Inc. ("91 Days"), a company wholly owned by Mandy Sbaraglia (CO, the Sbaraglias and 91 Days are collectively referred to as the "CO Respondents"), the Receiver has been required to continue its investigation, including preparing for and attending at the Examination. This, unfortunately, has resulted in additional delay and cost.

The OSC's application, returnable September 10, 2010, was adjourned to provide the CO Respondents sufficient time to file responding materials and to allow for the cross-examination of various parties, including Peter Sbaraglia, on the materials filed in the proceedings.

3. FURTHER INVESTIGATION AND THE EXAMINATION

On October 27 and 28, 2010 and November 3, 2010, Matthew Gottlieb, of Davies Ward Phillips & Vineberg LLP, the Receiver's counsel, and Pamela Foy of the OSC, conducted the Examination. A copy of the transcript ("Transcript") from the Examination is attached as Appendix "D".

During the Examination, various admissions were made by Peter Sbaraglia. The Receiver is of the view that these admissions are consistent with all of its findings and support the appointment of a receiver over the business and assets of the CO Group. In fact, the admissions during the Examination went beyond the Receiver's findings detailed in the Seventh Report. Key items identified during the Examination are detailed in the sections below.

3.1 Repayment of Amounts Owed to CO by Mander and His Companies

The Receiver's investigation has identified that the Mander Group repaid to the CO Group more monies than were advanced by the CO Group to the Mander Group. The CO Group's losses were not incurred by the Mander Group.

- The Receiver performed a detailed review of bank accounts maintained by CO at Royal Bank of Canada ("RBC") and HSBC Bank Canada ("HSBC") for the period January 9, 2006 to July 26, 2010 (the period for which the bank account information was provided). (The RBC accounts and HSBC accounts are jointly referred to as the "Accounts".)
- In its Fourth Report, the Receiver states that its investigation revealed that CO and the Sbaraglias had collectively received in excess of \$3 million more than they had paid to the Mander Group. Since receiving the CO account information from RBC and HSBC, the Receiver completed a more detailed review of the transactions among the Mander Group and CO and the Sbaraglias. This additional review revealed that CO received approximately \$3.3 million more from the Mander Group than it paid to the Mander Group.
- A review of all of the money received by the Sbaraglias directly from the Mander Group and indirectly through CO (allegedly at Mander's direction), revealed that the Sbaraglias received approximately \$2.5 million more than they personally invested with the Mander Group⁴. (This is prior to additional benefits that the Sbaraglias received from CO. See Section 3.3 below.)
- During the Examination, Peter Sbaraglia was asked to confirm whether CO had been repaid amounts from the Mander Group that had been advanced by CO to the Mander Group. Peter Sbaraglia advised that it is his position that CO was repaid less than it advanced to the Mander Group. Peter Sbaraglia provided an

⁴ The records reflect that the Sbaraglias personally invested approximately \$672,000 with the Mander Group.

undertaking to evidence this. As of the date of this Report, the Receiver has not received a response to this undertaking.

- See the Transcript questions 474 to 484 for the portion of the Examination dealing with this matter.
- Peter Sbaraglia did, however, confirm that he and Mandy Sbaraglia received personally “a few million dollars” more from the Mander Group than they personally invested with the Mander Group. See the Transcript questions 413 to 419.

3.2 Investor Money Used to Pay Other Investors' Loans and Interest

CO repeatedly used funds raised from one investor to pay amounts owing to another investor.

This is commonly referred to as a “Ponzi scheme”.

- The Receiver’s review of the Accounts revealed that, *inter alia*, on numerous occasions, CO used funds it received from an investor/s to repay interest and/or principal amounts owing to another investor/s. Attached at Appendix “E” is a schedule that was prepared by the Receiver, which illustrates the clearest examples of this practice; however, the practice was carried out by CO throughout the period during which it operated⁵.
- During the Examination, Peter Sbaraglia acknowledged that the specific examples identified by the Receiver were evidence of this practice and further acknowledged that he was aware of it. The following is an excerpt from the Transcript (questions 954 to 959) dealing with this matter.

Q. And Ms. Burton was an investor?

A. Yes.

Q. And this payment of \$63,250 was paid to her in connection with her investment?

A. Yes.

Q. And that payment was made just using other investors’ funds also. Correct?

A. Yes.

⁵ The relevant documents including bank statements and cheques will be available at the return of this motion.

Q. And I can keep going through this book, but what we will see is throughout this entire piece payments are being made by CO Capital directly from funds paid into CO Capital by other investors?

A. Right.

Q. You're aware of that?

A. Yes.

Q. And you were aware that was going on through the piece. Correct?

A. Yes.

- Peter Sbaraglia signed the cheques whereby these payments were made. Mandy Sbaraglia performed the bank statement and loan contract reconciliation which showed the flow of funds.
- See the Transcript questions 844 to 960 for the portion of the Examination dealing with this matter.

3.3 Use of Investor Money

- The CO Group raised a total of approximately \$21 million⁶ from its investors. Of this amount, approximately \$6 million was retained by CO, the Sbaraglias and/or their companies (the "Retained Funds"). The CO Group either lost these monies investing in their own accounts or used them for personal and business purposes.
- The Receiver prepared a detailed analysis of the receipts and disbursements of the Accounts ("Schedule of Receipts and Disbursements"). The Schedule of Receipts and Disbursements is attached as Appendix "F".
- The Schedule of Receipts and Disbursement indicates that the Retained Funds were used and lost in various ways, including, *inter alia*, trading losses of approximately \$2.4 million in the CO Interactive Brokers Canada Inc. ("Interactive Brokers") accounts, personal withdrawals by the Sbaraglias of approximately \$2.1 million, payment of personal expenses charged by the Sbaraglias to their CO Visa accounts and payments to certain related entities. These are discussed below.

⁶ In Peter Sbaraglia's affidavit sworn August 10, 2010 he advises that CO received approximately \$26 million, versus the \$21 million the Receiver identified from its review of the records.

3.3.1 Use of Investor Money for Personal Purposes

The Sbaraglias used investor funds to pay for personal items that were not related to the business of CO, including dinners, alcohol, spas, movies, toys and clothing. These are summarized below.

Visa Credit Card Charges

- The Schedule of Receipts and Disbursements shows that CO made payments to Visa for credit cards used by Mander and the Sbaraglias, totalling \$328,000⁷. A detailed summary of the Visa charges is attached at Appendix "G". The majority of these (\$321,000) were charged to Peter Sbaraglia's CO Visa account during the period April, 2007 to June, 2010.
- A summary of Sbaraglias' CO Visa charges and Mander's CO Visa charges is provided in the following table⁸.

	\$000s			
	Peter	Mandy	Mander	Total
Restaurants	66	20	7	93
Technology and home theatre systems	43	-	4	47
Infinata Inc.	28	-	-	28
Bell, Rogers and Cogeco	28	3	-	31
Artwork	15	-	-	15
Clothing, entertainment, spa and other retail purchases	13	3	-	16
Wine distributors and LCBO purchases	12	-	-	12
Renovations	12	5	-	17
Limo and taxi services	11	-	-	11
Travel (airline and hotel)	13	6	-	19
Other charges	80	8	1	89
	321	45	12	378

- The schedule of Visa charges illustrates that Peter Sbaraglia used investor money to pay for various non-business expenses, including dinners at high-end restaurants (including Auberge du Pommier, Bymark, Mortons Steakhouse, One and Harbour Sixty), wine purchases, spa treatments, artwork, renovations to the offices at 239 Church Street, Oakville ("239 Church Street") and other sundry items, including movies, clothing and toy purchases.

⁷ Disbursements from the Accounts that were less than \$1,000 were not allocated to specific categories on the Schedule of Receipts and Disbursements, therefore the total spent by CO to pay Visa credit card charges is actually greater than \$328,000.

⁸ The majority of the charges were paid from the Accounts; however, there is approximately \$50,000 of Visa charges for which the Receiver has been unable to identify the source of payment.

- Peter Sbaraglia was asked at the Examination about the various Visa charges and acknowledged that these were paid using investor funds. He also acknowledged that to a large extent these expenses were not necessary to generate income for CO.
- See the Transcript questions 593 to 661 for the discussion regarding the CO Visa charges.

Other CO Disbursements

- The Sbaraglias also withdrew approximately \$2.1 million (net) from the Accounts during the period January, 2006 to July, 2010.
- Approximately \$413,000⁹ (net) was transferred to Mand Assets, a company owned by Mandy Sbaraglia¹⁰ and which had no connection or obligation to CO's investors. The payments to Mand Assets were identified as "loans" by CO to Mand Assets; however, there was no formal documentation between CO and Mand Assets with respect to the amounts transferred. The net outstanding "loans" were never paid back by Mand Assets. In the Examination Peter Sbaraglia confirmed that there was negligible value in Mand Assets.
- Approximately \$214,000 was paid to 91 Days, which at the time owned 239 Church Street. Of the \$214,000, approximately \$152,000 was for rent and the balance¹¹ was classified as "loans". There was no formal documentation between CO and 91 Days with respect to the amounts transferred. These amounts were never repaid.
- See the Transcript questions 554 to 592 and 662 to 697 for the portions of the Examination dealing with these matters.
- In addition to the admissions by Peter Sbaraglia with respect to the use of CO investor funds for personal purposes, there are several admissions in the August 19, 2010 letter ("August 19th Letter") provided to the Receiver by Davis Moldaver LLP ("Davis"), counsel to the CO Group. These include an admission that the mortgage payments on the Sbaraglias' home at 63 Second Street and their condominium at 381 Ellis Park Road ("Ellis Park Condominium") were paid directly from investor monies.

⁹ During the period reviewed by the Receiver, being January 9, 2006 to July 26, 2010, the Account records reflect that approximately \$913,000 was transferred from CO to Mand Assets and approximately \$500,000 was repaid by Mand Assets to CO. Accordingly, as at the date of this report the net amount owing by Mand Assets to CO is \$413,000.

¹⁰ At the commencement of the proceedings, it was represented to the Receiver that Mand Assets was owned 50% by Mander and 50% by Mandy Sbaraglia. Subsequently, the Receiver was advised that Mandy Sbaraglia owns 100% of the common shares of Mand Assets.

¹¹ With the exception of approximately \$5,000 that was classified as a reimbursement of expenses to 91 Days for amounts paid by 91 Days on behalf of CO.

“Following our clients’ involvement with Robert Mander, the mortgage payments on their home and the Ellis Park condominium were made from dividends Peter Sbaraglia received from CO Capital. These funds were received directly from lenders to CO [emphasis added]. They are not EMB or Mander funds.”

- As discussed in the Receiver’s sixth report to Court dated July 30, 2010, the Sbaraglias, through 91 Days, recently sold 239 Church Street for \$1.25 million. This property was owned by 91 Days and was purchased by it in April, 2005 for \$1.1 million, of which \$770,000 was financed with a mortgage from RBC. In addition to the mortgage, there was also an RBC line of credit that was secured against the property. The sale by 91 Days closed on or about August 13, 2010, at which time the combined amount owing on the mortgage and the line of credit was approximately \$235,000. As detailed in the table below, principal and interest paid on the mortgage between April, 2005 and August, 2010, totalled approximately \$781,000, including approximately \$712,000 during the time that CO was conducting its investment business (from January, 2006 to March, 2010). In both the August 19th Letter and the affidavit sworn by Peter Sbaraglia on August 10, 2010, the Sbaraglias admit to using investor funds (including potentially some from Mander investors) to repay the mortgage¹² on 239 Church Street. It should be noted that the Sbaraglias had no other source of income after 2007 as they had both discontinued their dental practices by the end of 2007.

	\$000s						
	2005	2006	2007	2008	2009	2010 ¹³	Total
Principal	38	51	51	51	392	17	600
Interest	26	46	45	34	25	5	181
Total	64	97	96	85	417	22	781

- The August 19th Letter also states the following regarding withdrawals by Peter Sbaraglia of funds received from CO investors.
- “As directed by Mander, Peter received dividends out of CO Capital in 2007 and 2008, totalling approximately \$760,000. It is important to note that these funds were directly from lenders to CO. i.e. money that came into CO from lenders, not from Robert Mander or EMB funds [emphasis added]. In addition, approximately \$207,000 was taken out of CO on a variety of dates, (as directed by Mander).”***

¹² The affidavit sworn by Peter Sbaraglia on August 10, 2010, states that in excess of \$350,000 of personal money went to pay the mortgage on 239 Church; however, after 2007 the Sbaraglias’ only source of income was investor funds.

¹³ For the period ending April 26, 2010.

3.3.2 Use of Investor Money to Fund CO Expenses

- The Receiver prepared a schedule detailing a list of expenses totalling approximately \$985,000 which were paid from investor monies. A copy of the schedule of expenses is attached at Appendix "H".
- A review of the Accounts illustrates that the expenses paid from investor monies include payroll, legal fees, accounting fees, interior design and renovation costs for the offices at 239 Church Street.
- As referenced in 3.3.1 above, CO also paid approximately \$214,000 to 91 Days, including rent of approximately \$152,000 (referenced above) for the office space at 239 Church Street.
- See the Transcript questions 557 to 566.

3.4 Misrepresentations to the OSC

Peter Sbaraglia and his counsel, Aylesworth, made several misrepresentations to the OSC during the OSC examination in July, 2009 and in the undertaking provided by the Sbaraglias and CO to the OSC in August, 2009 ("Undertaking").

- Peter Sbaraglia confirmed during the Examination that he was aware that during the OSC examination his counsel was speaking on his behalf and that the OSC had "every reason to believe that everything said in the transcript is accurate". See the Transcript question 332. A copy of the transcript from Peter Sbaraglia's OSC examination conducted on July 9, 2009 ("OSC Transcript") is attached as Appendix "I".
- Peter Sbaraglia also confirmed that he was aware that his lawyers were attempting to convince the OSC that the CO Group and the Mander Group had sufficient assets to repay in full CO's investor obligations. See the Transcript question 773.
- The Undertaking was materially inaccurate and misleading. The Undertaking failed to list nine loan agreements totalling approximately \$9.4 million, including a loan agreement for \$6 million between CO and Pero Assets Inc. ("Pero") (the "Pero Loan Agreement"). As a result, the Sbaraglias understated the amount CO owed to investors by that amount. Attached as Appendix "J" are copies of the nine loan agreements that were excluded from the Undertaking. The Receiver is of the view that if these obligations had been disclosed, the OSC would have known that CO was insolvent.

- Peter Sbaraglia advised at the Examination that the Pero Loan Agreement was excluded from the Undertaking as it was his view the obligations under the Pero Loan Agreement had been transferred to Mander. During an examination of Thomas Obradovitch ("Obradovitch"), a director and officer of Pero, on October 27 and 28, 2010, Obradovitch acknowledged that he was dealing with Mander; however, he had not relieved CO of its obligations under the Pero Loan Agreement. In any event, even if the Pero Loan Agreement had been transferred to Mander, Peter Sbaraglia acknowledged in a letter from Davis dated August 24, 2010 that he failed to disclose in the Undertaking eight CO loan agreements totalling over \$3.4 million.
- In the Examination, Peter Sbaraglia was asked if he, around the time of his OSC examination, discussed the Pero Loan Agreement with his legal counsel and specifically, whether the liability with respect to it remained with him or had been transferred to Mander. Peter Sbaraglia responded that he did not recall; however, he did confirm that at no time during the OSC examination or during his subsequent dealings with the OSC, did he disclose this obligation to the OSC. See the Transcript questions 1293 to 1317 for the discussion regarding the Pero Loan Agreement.
- The terms of the Undertaking required that the Sbaraglias and CO immediately cease entering into new loan agreements. On August 21, 2009, 14 days after the Undertaking was executed, CO entered into a new one-year loan agreement in the amount of \$54,925.
- During his OSC examination, Peter Sbaraglia detailed certain investing strategies used by CO and Mander to generate large returns, including trading real estate. The Receiver has determined, however, that neither CO nor Mander traded real estate.
- Contrary to his OSC testimony where he advised that CO's transition to real estate was "staggered", Peter Sbaraglia testified during the Examination that he had no involvement in trading real estate and that he was not aware of the extent to which Mander was trading real estate. See the Transcript questions 709 to 787.
- Peter Sbaraglia also advised during the Examination that he was not involved in the trading or investing carried on by CO. He advised that his role was to provide information and research to Mander. This is inconsistent with Peter Sbaraglia's testimony to the OSC, where he detailed at length his strategy for purchasing undervalued assets. See the Transcript questions 1056 to 1122.
- At no time during his OSC testimony did Peter Sbaraglia advise the OSC that the trading strategy he described had not been successful nor did he advise that by 2009, CO incurred losses in excess of \$2.4 million in the CO Interactive Brokers trading accounts. Peter Sbaraglia confirmed that he did not at any time disclose the losses in the CO Interactive Brokers accounts to the OSC. See the Transcript questions 513 to 534.

- During his OSC examination, Peter Sbaraglia advised that all of the investors in CO were very close friends and family and that all of CO's investors "had been to his house for dinner and had children who have sat in his lap". During the Examination, Peter Sbaraglia confirmed that this evidence was inaccurate. See the Transcript questions 426 to 432.
- During his OSC examination, Peter Sbaraglia's counsel, Michael Miller of Aylesworth, advised the OSC that Peter Sbaraglia had been successfully investing on his own prior to meeting Mander. (See page 8 of the OSC Transcript.) This is contrary to the admissions made by Peter Sbaraglia during the Examination wherein he acknowledges that he "did not invest in the securities market in a significant way" prior to meeting Mander and that his own investing was unsuccessful. See the Transcript questions 59 to 67.
- During the OSC examination, Miller advised the OSC that individuals invested with CO due to the Sbaraglias' success investing. (See page 9 of the OSC Transcript.) During the Examination, Peter Sbaraglia acknowledged that when CO's business commenced in January, 2006 he only had invested once with Mander - a \$100,000 investment in September, 2005 which he rolled over. By January 12, 2006, CO had four investors who had invested a total of \$275,000. At that date, Peter Sbaraglia did not have any evidence that his initial investment had been successful. See the Transcript questions 234 to 287.
- During the OSC examination, Miller advised the OSC that CO did not solicit investors. He advised that these people had approached Peter Sbaraglia and asked if they could invest with him based on the apparent success Peter Sbaraglia was having. (See page 20 of the OSC Transcript.) This again is contrary to the testimony provided by Peter Sbaraglia during the Examination, during which he acknowledged that he solicited his friends and family to invest in CO. See Transcript questions 193 to 210 and 234 to 235.

3.5 Peter Sbaraglia Agrees He is Personally Responsible to CO Investors

Peter Sbaraglia confirmed during the Examination that he represented to the OSC that he would make his personal assets available to CO's investors to ensure that the CO investors would be fully repaid. See the Transcript questions 433-445.

In the Undertaking, the Sbaraglias undertake to apply the net proceeds generated from the assets listed on Schedule "B" of the Undertaking, which includes their home located at 63 Second Street, Oakville, 239 Church Street and from the Ellis Park Condominium to repay all the loans owing to investors.

3.6 Admission of Insolvency

- Peter Sbaraglia acknowledged during the Examination that the current value of CO's business and assets is "not very much" and that there are significant liabilities outstanding in CO. Based on these representations and similar evidence provided by Peter Sbaraglia in his various affidavits and in the August 19th Letter, CO has admitted it is insolvent.
- Pursuant to the Undertaking, the Sbaraglias advise that their personal assets, including 239 Church, 63 Second Street and the Ellis Park Condominium, were assets available to satisfy investor obligations. Accordingly, it is the Receiver's view that it is appropriate to include these assets in the receivership proceedings sought by the OSC.
- During the Examination, and on various other occasions, Peter Sbaraglia has indicated that it is his intention to review the specific circumstances of certain CO investors and to repay in priority those investors deemed by the Sbaraglias to be in desperate need of funds.
- Peter Sbaraglia also advised that it is his view that he is in a better position than a receiver to realize on the assets and distribute the proceeds to creditors. Peter Sbaraglia and his counsel have not explained why that is the case.
- See Transcript questions 486 to 490 and questions 1342 to 1389 for the portion of the Examination dealing with these matters.

4. CO INVESTOR OPPOSITION TO THE RECEIVERSHIP

- In the affidavits sworn on September 15, 2010, and October 13, 19 and 26, 2010, by Catherine Garbig, a law clerk at Davis, it was represented to the OSC that the majority of the CO investors are opposed to the appointment of a receiver over the business and assets of the CO Respondents, and that the CO investors are of the view that they have a better chance of recovering their investments if the realization and distribution process is left to the Sbaraglias.
- Although the above referenced affidavits included letters signed by a majority of the CO investors, these letters are substantially similar and do not appear to be independently drafted by the investors, and it is unclear to the Receiver what representations have been made by the Sbaraglias to the CO investors.

- The single largest creditor of CO, being Pero (Obradovich), represents at least approximately 36%¹⁴ of the claims in CO¹⁵. The Receiver understands that Pero continues to support the relief sought by the OSC.
- It is the Receiver's view that any distribution to creditors should be handled by an independent officer of the Court to allow for the fair treatment of creditors and to ensure that no creditors are preferred.

5. ESTIMATED MONIES AND BENEFITS RECEIVED BY THE SBARAGLIAS

The Sbaraglias received at least \$2.5 million¹⁶ personally during the period January, 2006 to July, 2010. This excludes any benefits that they may have received from using CO's corporate credit card, monies advanced to 91 Days to service its mortgage and transfers to Mand Assets.

6. CONCLUSION AND RECOMMENDATION

As detailed in the Seventh Report, the Receiver was of the view that a receiver should be appointed over the CO Group in order to have a Court-supervised process undertaken by an independent officer of the Court. Based on information obtained since the date of the Seventh Report, the Receiver continues to be of the view that this is appropriate, particularly because the admissions of Peter Sbaraglia during his Examination make it apparent that he was involved in a Ponzi scheme and that CO is insolvent. The Undertaking pledges personal assets of Peter and Mandy Sbaraglia, including realty owned by 91 Days, and accordingly, the receivership order should include all of the business and assets of the CO Group. Entitlement to the proceeds of realization is an issue for another day that would be subject to the Court's approval.

¹⁴ Calculated based on the total of all claims referenced on the schedule to Catherine Garbig's affidavit sworn October 26, 2010.

¹⁵ Pero may be a larger creditor depending on how claims are valued. No claim process has been undertaken to date.

¹⁶ Approximately \$2.187 million from CO (net of amounts advanced by the Sbaraglias to CO), plus approximately \$357,000 directly from the Mander Group (net of amounts advanced by the Sbaraglias to the Mander Group).

* * *

All of which is respectfully submitted,

RSM Richter INC.

**RSM RICHTER INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF THE ESTATE OF ROBERT MANDER,
E.M.B. ASSET GROUP INC. AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

This is **Exhibit "J"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Court File No. CV-10-883-00CL

SUPERIOR COURT OF JUSTICE

5
B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- AND -

10
PETER SBARAGLIA, MANDY SBARAGLIA,
CO CAPITAL GROWTH INC. and 91 DAYS
HYGIENE SERVICES INC.

Respondents

15
BEFORE THE HONOURABLE MR. JUSTICE MORAWETZ, held at the
courthouse, 330 University Avenue, on December 23, 2010,
commencing at 10:00 a.m.

20
REASONS FOR JUDGMENT

25
A P P E A R A N C E S:

PAMELA FOY

FOR THE APPLICANT

M.P. GOTTLIEB

FOR RSM RICHTER INC., RECEIVER
AND ROBERT MANDER

MILTON DAVIS

FOR THE RESPONDENTS

30
KELLI PRESTON

FOR THE RESPONDENTS

PAUL ERIC VEEL

FOR CREDITOR, THE RESPONDENT CO
CAPITAL GROWTH INC.

1
December 23, 2010
Mr. Justice Morawetz,

REASONS FOR JUDGMENT

5
The Ontario Securities Commission ("OSC") brings this application for an order appointing RSM Richter Inc. as receiver of the assets, undertakings and property of Dr. Peter Sbaraglia, Ms. Mandy Sbaraglia, CO Capital Growth Inc. and 91 Days Hygiene Services Inc.

10
This matter has a long history. In July 2008, staff of the OSC obtained an order from the Commission pursuant to s. 11(1) of the Securities Act to investigate and inquire into the business and affairs of Dr. Sbaraglia, Mr. Robert Mander, CO and Pero Assets Inc. with respect to trading in securities
15 and potential breaches of Ontario securities law.

Based on the information that OSC staff received, it appeared that CO was obtaining funds from investors and investing those funds in securities.

20
The primary concern of the Commission was the use of investor funds by CO and Mr. Mander and Dr. Sbaraglia and whether funds and assets were available so as to ensure that the investors would be repaid.

25
During its investigation, the staff learned that a significant amount of funds obtained from investors had been transferred to Mr. Mander and his companies.

Mr. Mander operated and owned EMB Asset Group Inc. Through
30 EMB, Mr. Mander operated a fraudulent Ponzi scheme involving in excess of \$40 million of investors' funds. In certain instances, investors, such as CO Capital, invested money with

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Reasons, Morawetz, J.,

Mr. Mander or EMB which had been loaned to them from third-party investors.

CO was run by D. Sbaraglia and Mr. Mander. The record also establishes that Ms. Sbaraglia was integrally involved in the business of CO.

10 Throughout the period under review, CO was used by Dr. and Ms. Sbaraglia as an investment vehicle to solicit third-party investors to invest with Mr. Mander through CO.

Neither Dr. or Ms. Sbaraglia were registered with the OSC.
15 CO raised approximately \$21.2 million from investors, who Dr. Sbaraglia described as both friends and family. There were approximately 25 to 30 CO investors.

It has been determined that a significant portion of investor funds were not invested at all. Rather, the funds were used
20 by Mr. Mander, and by CO to repay other investors.

The OSC takes the position that the Sbaraglias, through their role in CO and their close involvement with Mr. Mander, participated in the Ponzi scheme in a manner which they knew
25 or ought reasonably to have known, perpetrated a fraud on investors contrary to s. 126(1)(e) of the Securities Act.

This is disputed by the Sbaraglias who take the position that they were victims of the fraud and not perpetrators of the fraud as they did not know about the fraud until the summer
30 of 2009.

CO was incorporated on January 5, 2006. The first investor

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Reasons, Morawetz, J.,

agreement is dated January 9, 2006 and CO continued to enter into loan agreements with investors until August 2009.

The OSC takes the position that CO's purported business model provided that CO would solicit investors to loan money; funds would then be loaned to CO for a fixed term, generally 1 to 3 years at a fixed high rate of interest ranging from 20% to 30%. CO would issue a loan agreement to each investor; funds from CO were transferred to Mr. Mander personally or through EMB or other Mander controlled companies for investment purposes and the profits generated from these investments above the fixed interest rate promised to investors were to be split equally between CO and Mr. Mander.

The record established that CO's actual business varied from the above model in a number of ways.. First, CO did not transfer all of the funds of CO investors to Mr. Mander as approximately \$6 - 7 million was not transferred directly to Mr. Mander or EMB. These funds were used in a number of ways by Dr. Sbaraglia, acting on behalf of CO, by making payments to CO investors with newly received funds from other CO investors, or in making investments in securities either directly in trading accounts in the names of other companies, which resulted in significant losses.

Further, it became clear that the funds that Mr. Mander did receive from CO were not invested, but were used to pay the returns to other investors that he was dealing with independently from CO.

RSM Richter as receiver of the EMB Asset Group, Mr. Mander and related entities obtained an order on July 14, 2010 in

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Reasons, Morawetz, J.,

the receivership proceedings of EMB, which authorized the receiver to conduct investigations into the business and affairs of Dr. Sbaraglia and Ms. Sbaraglia and the CO group.

According to the receiver's reports, \$15.4 million of the \$21.2 million raised by CO from its investors was transferred to Mr. Mander/EMB.

10

The balance of what CO raised, estimated to be between \$6 and 7 million can be accounted for as follows. \$2.1 million was received personally by Dr. and Ms. Sbaraglia at the direction of Mr. Mander, purportedly for profits earned by them from the actions of Mr. Mander.

15

Approximately \$2.4 million was lost through trading accounts.

Approximately \$985,000 in general expenses of CO were paid from the CO bank accounts. Approximately \$585,000 was used by CO to purchase open ventures securities, which securities have very little value today. Approximately \$213,000 in rent payments in respect of a property located at 239 Church Street, Oakville, Ontario were made by CO to 91 Days Hygiene, a company wholly owned by Ms. Sbaraglia. Approximately \$383,000 in charges were incurred on a corporate visa in the name of CO, a significant number of which were not for the benefit of CO investors, but rather, were for the personal benefit of the Sbaraglias, including significant payments for restaurants, renovations of 239 Church Street and numerous other personal expenses.

25

Dr. Sbaraglia, on behalf of CO, opened bank accounts over which he had signing authority. The accounts were used to pool investor funds. At no time were the funds segregated in

5
Reasons, Morawetz, J.,

any manner.

5
Dr. Sbaraglia acknowledged that throughout the review period
CO used funds raised from one investor to pay amounts owing
to other investors. This issue was specifically referenced
in cross-examination; the transcript of which reads,
commencing at Question 954 as follows:

10 Q. And Ms. Burton was an investor?

A. Yes.

Q. And this payment of \$63,250 was paid to
her in connection with her investment?

A. Yes.

15 Q. And that payment was made just using
other investors' funds also? Correct?

A. Yes.

Q. And I can keep going through this book,
but what we will see is throughout this
entire piece payments are being made by
CO Capital directly from funds paid into
CO Capital from other investors?

A. Right.

Q. And you are aware of that?

A. Yes.

20 Q. And you were aware that this was going on
throughout the piece?

A. Yes.

25
The payments to investors from the CO bank accounts were made
with cheques signed by Dr. Sbaraglia. Ms. Sbaraglia
30 undertook the bank statement and loan reconciliations for the
payments.

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Reasons, Morawetz, J.,

In July 2009, as part of its investigation, OSC staff conducted examinations of Mr. Mander and Dr. Sbaraglia. They were represented by the same legal counsel, who attended with each of them at their respective examinations.

Dr. Sbaraglia had retained legal counsel in or around June 2009 and it is apparent that Dr. Sbaraglia knew that the OSC's primary concern was whether investors' funds were at risk and whether CO could properly account for the funds. Dr. Sbaraglia understood that the OSC staff would be seeking verification from CO that the assets as between CO and Mr. Mander and EMB were in excess of what was owed to CO investors.

Dr. Sbaraglia specifically acknowledged that he was under oath and he swore to tell the truth at this OSC examination.

During the examination, OSC staff were advised by counsel to Dr. Sbaraglia of the following: CO investors consisted of only friends and family and that each of the investors had approached Dr. Sbaraglia about investing; CO had relied on legal advice obtained from another law firm with respect to CO's compliance with Ontario securities law in raising funds from third parties; CO investor funds were not at risk; the amount owing by CO to the CO investors was approximately \$8.5 million, but the bulk of the value of CO investors' funds were invested in real estate assets purchased by Mr. Mander and Dr. Sbaraglia; Dr. Sbaraglia and Mr. Mander had a verbal arrangement whereby all assets held by the Sbaraglias were used by Mr. Mander for the benefit of CO investors and that the assets held by Dr. Sbaraglia and Mr. Mander were valued at approximately \$12 million, and therefore well in excess of

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Reasons, Morawetz, J.,

all amounts owing to CO investors.

5
At no time during the examination did Dr. Sbaraglia correct his legal counsel. Further, it is clear that Dr. Sbaraglia was aware that his legal counsel was speaking on his behalf during the examination.

10
OSC takes the position that the statements made by Dr. Sbaraglia were materially misleading and that among other things, Dr. Sbaraglia did not advise that CO had raised almost \$1 million in 2006 prior to obtaining any legal advice as to whether CO was in compliance with Ontario securities law. Dr. Sbaraglia did not disclose a \$6 million obligation
15 to CO to Pero pursuant to a loan agreement dated March 1, 2009. Dr. Sbaraglia does take the position that the obligation is not one of CO and that it was transferred to Mr. Mander. Documentation was produced that evidences a transfer to EMB/Mander, but there is no documented release
20 from Pero in favour of CO or Dr. Sbaraglia. Further, Dr. Sbaraglia now claims that he feels only morally obligated to CO investors. Dr. and Ms. Sbaraglia wish to use the proceeds from the sale of their assets to pay certain of the CO investors in priority to others based on their assessment
25 of the relative needs of the CO investors. It is also apparent that all the assets of the Sbaraglias and Mr. Mander and CO were not, in fact, available to satisfy the amounts owing to CO investors as Mander had loans outstanding with many additional investors, other than the CO investors, all of which has been documented in the Mander receivership.

30
On August 7, 2009, following the examination, Dr. Sbaraglia's counsel provided OSC staff with a loan agreement between EMB

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Reasons, Morawetz, J.,

and CO and an undertaking to the OSC in respect of loans made by CO investors to the real assets, which are being held for the benefit of those investors.

The undertaking provided that: (a) CO would not enter into any further loan agreements with third-party investors; (b) CO would cause outstanding loans to CO investors to be paid as they became due; (c) CO had used the loans from CO investors to acquire the assets listed in the schedule to the undertaking.

OSC takes the position that the undertaking constitutes an obligation and commitment in favour of OSC.

OSC also takes the position that immediately after entering into the undertaking, CO breached the terms of the undertaking by entering into a new loan agreement on August 21, 2009 in the amount of approximately \$54,000. Dr. Sbaraglia takes the position that this was not a new loan agreement, but a rollover of an existing agreement.

OSC also takes the position that Dr. Sbaraglia failed to identify material obligations in its schedule of outstanding loans. The undertaking failed to list nine loan agreements for a total of approximately \$9.4 million, which includes the Pero investment of \$6 million. Even taking into account the position put forth by Dr. Sbaraglia that the \$6 million Pero investment was an obligation transferred to Mr. Mander, there remains \$3.4 million in loans which were not listed.

Counsel for Dr. Sbaraglia and Ms. Sbaraglia and the CO Group paints a very different picture of events. Counsel suggests

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Reasons, Morawetz, J.,

that the proper narrative should be that a well-intentioned family was caught in the middle of a Ponzi scheme, that they were led into error by a career fraudster and ill-advising lawyers. Counsel portrays his clients as victims of Mr. Mander, a predator fraudster. Counsel puts forth that his clients are guilty of no wrong-doing and that no investor had sued or made any claim against them. In fact, all investors
10 without exception, support them. Mr. Davis does acknowledge that Mr. Obradovich is one investor who raises the spectre of a claim against Dr. Sbaraglia through Pero, on the basis that notwithstanding the transfer of the obligation to Mr. Mander there is still no obligation from CO.

15 Counsel for the Sbaraglias takes the position that his clients are not to blame, but rather, others were involved. These include the lawyers who acted for both the Sbaraglias and also Mr. Mander. Mr. Davis also contends that these lawyers breached their fiduciary duty, hid information from
20 the Sbaraglias in their representation before the OSC and despite a grave conflict of interest, counsel advised the Sbaraglias and misinformed the OSC.

Mr. Davis also puts forth that Dr. Sbaraglia and Ms.
25 Sbaraglia have been and remain committed to helping repair the damage to repay those who invested with them and to co-operate with the OSC. The Sbaraglias are also suing their lawyers to pay for the repairs.

The Sbaraglias also take the position that the OSC has been
30 deficient in its investigation insofar as it had in its possession evidence of Mr. Mander's fraud for the better part of the year before examining Dr. Sbaraglia. Further, it

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Reasons, Morawetz, J.,

takes the position that the receivership is not necessary for
5a number of reasons including: (a) the creditors - who are
also victims of Mr. Mander - oppose the receivership; (b)
the receivership would strip the Sbaraglias of their assets
without any action or proceeding having been commenced, in
effect denying them due process; (c) the receivership would
be destructive, and it would diminish the Sbaraglias' efforts
10 to make the creditors whole; (d) it would punish the
Sbaraglias for Mr. Mander's wrong-doing and would ignore
their innocence; and (e) it would ignore the Sbaraglias'
diligence in trying to avoid this current predicament as it
would reduce the prospects of recovery in the litigation
15 against the lawyers. In all respects the Sbaraglias remain
transparent and wish to co-operate with the OSC.

The Sbaraglias also take the position that the receivership
will benefit no one and will be costly and consequently the
OSC's application, they take the position, should be
20 dismissed, and they should be relieved of their undertaking
and allowed to continue with their work.

From their standpoint, the matter began to unravel in the
spring of 2009 when CO Capital stopped making money for new
investments. As noted previously, the OSC served Dr.
25 Sbaraglia and Ms. Sbaraglia with a summons under the
Securities Act and they were required to attend examinations.
The Sbaraglias had no reasons, they say, to have known about
Mr. Mander's fraud at that point. There was also no reason
to think that they were caught in a fraudulent scheme, as Mr.
30 Mander had paid all investors to that date.

Dr. Sbaraglia acknowledges that his OSC examination and the

11

Reasons, Morawetz, J.,

participation of his counsel at this examination resulted in statements that may not have been accurate. Certain aspects were not true. He now says that he knew that some of the statements being made by his counsel were not true at the time, but he did not correct these statements. He now states that he was surprised by the disclosure. He also felt that he was under duress at the time. He acknowledges
10 that he knew the information was inaccurate, but he did not speak up. Dr. Sbaraglia is of the view that he has paid dearly for his legal counsel's transgressions and having already been victimized by the fraud, he now find himself victimized by his own lawyer. He has sued that lawyer.

15

Dr. Sbaraglia also referenced the undertaking to the OSC. It is described in his counsel's factum as being an ill-advised undertaking. It is also referenced that the undertaking was a misrepresentation in certain respects. The undertaking states that the property had been bought with
20 CO Capital's money; this was false. It was also false insofar as certain properties had been bought before CO Capital's incorporation.

Dr. Sbaraglia takes the position his legal counsel had prepared the statutory declaration which he had signed and
25 swore that assets that he owned or controlled would be held in trust as security for the repayment of loans. He also took the position that it was his legal counsel who provided assurances to him which misled him into signing the undertaking. Dr. Sbaraglia also takes the position that he
30 should be relieved of the undertaking as it was not freely given or independently given and that it was not accurate.

12
Reasons, Morawetz, J.,

It is apparent that the Sbaraglias have also acknowledged that they have suffered financial and personal devastation at Mr. Mander's hands and that they are now working to repay investors fully, but they are struggling to meet their expenses.. Their insolvency has been acknowledged.

10 Dr. Sbaraglia also takes the position that the OSC and the receiver are trying to access their personal assets, i.e., the proceeds or potential proceeds from the sale of their home or corporate assets, i.e. the proceeds through the sale of 239 Church Street to repay investors, most of whom are unrelated to the Sbaraglias.

15 The Sbaraglias also take the position that both the OSC and the receiver ignored the fact that the three properties in question were bought before the Sbaraglias met Mr. Mander and that there is no basis in law for stripping them of their personal assets.

20 The Sbaraglias also place certain responsibility on the OSC. The OSC was investigating Mr. Mander as early as 2008 and by August 2008 the OSC obtained bank records showing millions of dollars flowing to EMB, yet the Sbaraglias contend the OSC stood back and did nothing.

25 They do not accept the receiver's report as being accurate. They also stress that the receiver has not reviewed monies paid by CO Capital to its investors and, as a result, the accounting and subsequent allegations against Dr. Sbaraglia and Ms. Sbaraglia have been skewed.

30 Counsel for the Sbaraglias does acknowledge that mistakes

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Reasons, Morawetz, J.,

were made and that misrepresentations were made. However, she submits that there is nothing to be gained from a receivership; there are no hidden assets, the investigations have been complete and the most viable assets that the Sbaraglias have, mainly litigation against former counsel, can only be optimized in the absence of a receivership.

10 He also stressed that a number of CO Capital investors are in dire straits, that they are losing homes or businesses and that his clients are trying to arrange for these investors to receive some monies now so as to avoid disaster. Further, counsel contends that the Sbaraglias themselves are in dire
15 need and that while they seek to re-establish themselves professionally they need money for basic living expenses.

The two positions are diametrically opposed. The position put forward by the OSC is supported by the receiver and by counsel to Mr. Obradovich who claims he is a creditor for
20 some \$6 million. The position of Dr. Sbaraglia is supported by all of the remaining creditors, most of whom are family and friends.

Turning now to an analysis of the law. Section 129 of the Securities Act permits the commission to apply to the court
25 for an order appointing a receiver for all the property, assets and undertakings of a person or company. Such an order can be made where the court is satisfied that such an appointment is in the best interest of the company's creditors or the security holders or if it is appropriate for
30 the due administration of Ontario securities law.

A threshold question was raised by counsel on behalf of

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Reasons, Morawetz, J.,

certain creditors of CO Capital, contending that the court has no jurisdiction to appoint a receiver under s. 120 of the Act because constitutional principles impose a limitation on the power of the court to appoint a receiver under a provincial statute in situations where the entity over whose assets the receiver is sought to be appointed is insolvent

10 This position is based on the Constitution Act 1867, which gives exclusive jurisdiction over bankruptcy and insolvency to the federal parliament. On this basis, counsel contends that the Supreme Court has repeatedly held that a provincial statute which purports to impact creditors' priorities or to
15 otherwise substantially regulate the affairs of an insolvent person or company vis-à-vis its debtors is unconstitutional.

Counsel goes on to submit that in the present case, there is no challenge to the validity of s. 129 itself. It is not a necessary condition for the appointment of a receiver under
20 s. 129 that the person or company over whose assets the receiver is being appointed be insolvent. Section 129, therefore, does not in pith and substance relate to bankruptcy and insolvency.

25 The constitutional challenge was raised on behalf of creditors of CO Capital and not by counsel on behalf of Dr. Sbaraglia and Ms. Sbaraglia of CO Capital, who declined to take a position.

No notice of a constitutional question was served on the
30 Attorney General of Canada and the Attorney General of Ontario as provided for in s. 109 of the Courts of Justice Act. Counsel for the creditors who put forth this argument

15
Reasons, Morawetz, J.,

relies on his statement that there is no direct challenge to
the validity of s. 129 itself.

Counsel to the receiver submits that this submission is
belied by the statements contained at paragraph 25 of the
Factum of counsel for the CO Capital creditors, which takes
direct aim on the constitutional validity or constitutional
10 applicability of the Act in this context, and further, that
the notice provision in s. 109 of the Courts of Justice is
mandatory. In the absence of such notice, s. 109(2) of the
Courts of Justice Act provides that the Act, Regulation and
Bylaw, a rule of common law shall not be adjudged to be
15 invalid or inapplicable.

In my view, the position put forth by the creditors of CO
Capital calls into question the constitutional validity of
the Securities Act in this context. No case law was put
forward to support this position. This seems unusual because,
20 as was pointed out to counsel in argument, if this position
is correct with respect to the Securities Act, it would also
call into question the thousands and thousands of
receivership orders granted over the years under s. 101 of
the Courts of Justice Act. Counsel was unable to reference
25 any case law under which such a challenge had been
successfully made to receiverships granted under the Courts
of Justice Act.

I am satisfied that if counsel wished to raise this issue,
the same should have been done after providing the required
30 Notice of Constitutional Question.

A number of disputes have been raised by the Sbaraglias with

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Reasons, Morawetz, J.,

respect to the factual background. However, putting their position at its highest, there are still a number of facts that are most troubling:

1. Neither Dr. Sbaraglia or Ms. Sbaraglia were registered with the Commission. CO raised approximately \$21.2 million from CO investors.

10
2. CO did not transfer all the funds of CO investors to Mr. Mander and EMB. Approximately one-third of the funds raised, namely \$6 - 7 million, were not transferred. These funds were used in part to make investments with newly received funds from other CO investors. This activity took place over a number of months. It cannot be characterized as a mistake.

15
20
3. \$ 213,000 in payments were made in respect to property located at 239 Church Street. These payments were made by CO to 91 Days Hygiene Services Inc.

25
4. \$383,000 in charges were incurred on a corporate visa in the name of CO with a significant number of payments being made not for the benefit of CO investors, but rather, for the personal benefit of the Sbaraglias.

30
5. It is also clear that the OSC was misled in its investigation. The Sbaraglias did not advise the OSC that they raised almost \$ 1 million prior to receiving any legal advice as

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Reasons, Morawetz, J.,

5 to whether they were in compliance with securities law. They did not disclose the \$6 million obligation to Pero, regardless of whether the matter had been transferred to Mander. They did not fully disclose their remaining creditors.

10 6. With respect to the undertaking, it seems to me clear that the Sbaraglias knew counsel's strategy was to convince the OSC that there were sufficient assets to repay all CO investors and accordingly proceedings should not be taken against them. Through-out the investigation, the Sbaraglias sat by and let legal counsel make representations to the OSC that they knew were false. In this respect, the Sbaraglias did have options. They could have taken steps to ensure that the truth came out. They chose to remain silent.

20 The Sbaraglias take the position that the receivership will achieve nothing. They insist that the litigation can only be maximized under their direction. They insist that they are the ones who should be able to direct the payment of funds to creditors in dire straits.

25 Counsel to the Sbaraglias and also to the CO creditors submit that if there are any issues that require a resolution they can be brought forth to the court. In this respect, I take it from their submissions that there is a tacit
30 acknowledgement that there are several loose ends in this matter that will require further direction.

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Reasons, Morawetz, J.,

The criteria for determining what is in the best interests of creditors, security holders or subscribers for the purposes of the appointment of a receiver pursuant to securities legislation is broader than the solvency test. The criteria should take into consideration all the circumstances and whether in the context of the circumstances it is in the best interests of creditors that a receiver be appointed. The
10 criteria should also take into account the interest of all stakeholders (OSC v. Factorcorp 2007 OJ 4496; OSC v. Sextant 2009 OJ 3063).

Further, where there is a history of mismanagement, no
15 evidence of a tangible alternative resolution, evidence that investors' interests will not be served by maintaining the status quo and evidence that the company is not in a better position than a receiver to protect investors' interests, it is appropriate to appoint a receiver.

20 Further, where there is evidence of regulatory breaches and evidence that the value and integrity of the assets purchased with investor funds has been compromised, it is in the investors' best interests that a receiver be appointed such that the investors are provided with an independent and
25 verifiable review and analysis. Investors deserve treatment they can rely on (see Factorcorp., Sextant, and OSC v. ASL Direct).

The second part of the test, the alternate test, is that securities legislation has as its primary goal, the
30 protection of the investing public and the protection of the integrity of the capital markets. Section 1.1 of the Act provides that the purposes of the Act are to provide

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Reasons, Morawetz, J.,

protection to investors from unfair or improper or fraudulent practices and to foster fair and efficient capital markets and confidence in the capital markets.

It seems to me that an assessment of whether the appointment of a receiver is appropriate for the due administration of Ontario Securities law must therefore take into consideration the purposes of the Act to be undertaken with a view to determining whether such an appointment is consistent with the goals of protecting investors and protecting the integrity of the capital markets.

In this respect, it is noteworthy that, pursuant to s. 122 of the Act, it is an offence to mislead staff of the Commission during the course of an examination taken as part of an investigation.

The failure to advise staff of complete information about the flow of investor funds in the operation and business of the entity in question amounts to a contravention of s. 122 of the Act. The offence of misleading staff can occur by making affirmative statements and can equally occur by omission (Norshield Asset Management Canada Limited 2010, 33 OSCB 7171).

In addition, s. 126 of the Act prohibits conduct which perpetrates a fraud on investors. The use of investor funds to repay other investors and for personal benefit constitutes securities fraud pursuant to s. 126.1(b) of the Act.

Having considered the uncontradicted facts noted above, it is clear to me that this is a situation that cries out for the

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Reasons, Morawetz, J.,

appointment of a receiver. I am satisfied that by using investor funds to repay other investors, by using investor funds for personal use, by being untruthful to the OSC, by not fully disclosing creditors of CO to the OSC, it cannot be in the best interests of creditors of CO Capital that the continued administration of creditors' affairs be administered by the Sbaraglias. This is a situation that
10 requires an independent court officer to oversee.

I am making this finding notwithstanding the level of support provided by the family and friends who are creditors of the Sbaraglias. It could very well be that there are other
15 creditors, most notably Mr. Obradovich. It is essential, in my view, that a claims process be established which can be verified as being accurate. I am not satisfied that this can be accomplished without an independent court officer overseeing the process.

20 In making this determination I cannot overlook that CO, Dr. Sbaraglia and Ms. Sbaraglia retained and had access to funds in excess of \$6 million. I also cannot overlook that they improperly used some of these funds for personal use or for related corporate use. I also cannot overlook that some of
25 the new money was used to pay interest payments to old investors. To use the words of counsel of the receiver, "This is the hallmark of a Ponzi scheme where you keep the dollars rolling."

I have no doubt that Mr. Mander contributed significantly to
30 the problems that the Sbaraglias currently face. I also have to take into account that there may be issues with respect to deficiencies in the legal advice that can be

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Reasons, Morawetz, J.,

pursued in due course. With respect to the litigation against former counsel, I have not been persuaded that the Sbaraglias are the best party to direct such litigation. Rather, it seems to me that the insertion of an independent court officer is essential to ensure the best outcome for creditors.

10 The Sbaraglias have also blamed the OSC for not taking more prompt action. It could very well be that the OSC could have acted more promptly. However, the timing of the OSC's involvement does not excuse or explain the activities of the Sbaraglias that led to the determination being made today.

15 The Sbaraglias also take the position that breaches of securities legislation have not been clearly proven. I do note that under s. 129 there is a broad discretion that the courts can make such an order which does not require evidence of a breach. Having said that, there are certain very serious
20 concerns that have been raised by the OSC with respect to possible breaches of the statute.

With respect to the second part of the test which provides a receiver can be appointed if it is appropriate for the due
25 administration of Ontario securities law, I am satisfied that this is the type of case that calls for such an appointment.

The factors that have led to my decision to appoint a receiver as being in the best interests of the company's creditors and the potential Sbaraglia creditors is also applicable for the appointment under the second part of the
30 test. This was a Ponzi scheme. Although Mr. Mander may have been the head of the Ponzi scheme, it is clearly apparent that by using investors' money to repay other investors,

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Reasons, Morawetz, J.,

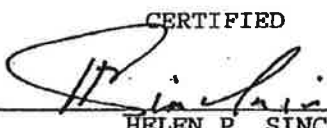
steps were taken by the Sbaraglias that were improper. The use of investors' money to pay personal and related company expenses is also improper. It also cannot be overlooked that the Sbaraglias misled the OSC in the course of its investigation. This type of activity cannot and should not be overlooked and I am satisfied that the appointment of the receiver is also justified under the second part of the test.

10
As Mr. Gottlieb summed up in his reply, the remedy of the appointment of a receiver goes beyond certain principles, it also takes into account the importance of a neutral court officer to oversee the claims process, the evaluation process and to provide appropriate recommendations as to the
15 administration of the estate.

A considerable amount of investigation has already been done. Most assets have been identified. However, issues remain outstanding with respect to the identification of proper
20 creditors, maximizing asset realization through litigation and the necessity to demonstrate that transparency exists in all respects in the resolution of all outstanding matters.

For the foregoing reasons, the application of the OSC is granted. I would be grateful if counsel could prepare an
25 appropriate order for my review.

CERTIFIED


HELEN P. SINCLAIR
OFFICIAL COURT REPORTER
SUPERIOR COURT OF JUSTICE

This is **Exhibit "K"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

RSM Richter

**Eleventh Report to Court of
RSM Richter Inc. as Court-Appointed
Receiver of the Estate of Robert Mander,
E.M.B. Asset Group Inc. and the Related
Entities**

RSM Richter Inc.
Toronto, March 15, 2011

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Schedule of Receipts and Disbursements as at March 14, 2011	"B"

Court File No.: 10-8619-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

SA CAPITAL GROWTH CORP.

Applicant

- and -

**CHRISTINE BROOKS AS EXECUTOR OF THE ESTATE OF ROBERT MANDER,
DECEASED AND E.M.B. ASSET GROUP INC.**

Respondent

**IN THE MATTER OF RULE 14.05(3)(G) OF THE
RULES OF CIVIL PROCEDURE AND SECTION 101 OF
THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**ELEVENTH REPORT OF RSM RICHTER INC.,
AS RECEIVER**

March 15, 2011

1. INTRODUCTION

This report ("Report") is filed by RSM Richter Inc. ("Richter") in its capacity as receiver ("Receiver") pursuant to an order of the Ontario Superior Court of Justice ("Court") dated March 17, 2010 ("Receivership Order"), as amended by orders of the Court made on March 17, 2010, March 19, 2010 and March 31, 2010 (the March 31, 2010 order being the "Fresh as Amended Receivership Order"). A copy of the Fresh as Amended Receivership Order (the "Order") is attached as Appendix "A".

Richter was appointed Receiver pursuant to an application by SA Capital Growth Corp. for the appointment of a receiver over the assets, property and undertaking of E.M.B. Asset Group Inc. ("EMB") and of Robert Mander ("Mander") (jointly, EMB and Mander are defined as the "Respondents") under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

As a result of the amendments to the Receivership Order, the Receivership Order provides the Receiver authority regarding the assets, property and undertaking of entities related to EMB or Mander. These entities include, but are not limited to, Mand Asset Inc., Dunn Street Gallery Inc., Trafalgar Capital Growth Inc., Stonebury Inc. and Mander Group Inc. ("Related Entities") (the Related Entities and the Respondents are collectively referred to as the "Mander Debtors").

On March 31, 2010, due to the death of Mander, this proceeding was continued against Christine Brooks as Executor of the Estate of Robert Mander and the title of proceedings was changed to reflect the continuance.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Summarize a claims procedure (the "Claims Procedure") to be carried out in accordance with a "Claims Procedure Order";
- b) Seek the approval of this Honourable Court to appoint Harvey Chaiton of Chaitons LLP ("Chaitons") as the claims officer ("Claims Officer") under the Claims Procedure;
- c) Recommend that this Honourable Court issue an order approving the Claims Procedure and authorizing the Receiver to administer the Claims Procedure in accordance with the Claims Procedure Order; and
- d) Recommend that this Honourable Court issue an order authorizing the Receiver to distribute to Pero Assets Inc. ("Pero") funds paid to it from accounts maintained by Pero at Interactive Brokers Canada Inc. ("Interactive Brokers"), as detailed in Section 5 below.

1.2 Currency

All currency references are in Canadian dollars.

1.3 Restrictions

In preparing this Report, the Receiver has relied upon unaudited financial information and books and records located at the premises of the Mander Debtors as well as at various other

locations where Mander carried on business or is believed to have carried on business, maintained an office, files or a safe, whether presently, in the past and/or periodically, and documents, records and information provided by various individuals and financial institutions. The Receiver has not performed an audit or other verification of the documents and information it has accumulated. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any information, documents and financial information presented in and/or discussed in this Report, or relied upon by the Receiver in preparing this Report.

Because of Mander's death, the Receiver has not had the benefit of speaking with the one individual - Mander - who could have provided first-hand information regarding the businesses he conducted. As a result, the Receiver has been required to conduct its investigation by reviewing documents and meeting with individuals with knowledge of Mander and his businesses.

2. BACKGROUND

Background information concerning these receivership proceedings is included in the initial application materials and in the Receiver's various reports to Court regarding these proceedings. These documents are available on the Receiver's website at www.rsmrichter.com.

3. REALIZATION PROCESS

The majority of the Mander Debtors' assets, which consisted primarily of real estate and certain other personal property assets, have been realized upon by the Receiver. The various transactions related to the realization process were approved by this Honourable Court throughout these proceedings. The remaining assets to be realized upon consist primarily of shares purchased by Mander and his companies in certain illiquid start-up companies. The

balance in the receivership account as at March 14, 2011 was approximately \$1.2 million. A schedule of receipts and disbursements is attached as Appendix "B."

4. CLAIMS PROCESS

Until recently, the Receiver believed that it was premature to commence a claims process, particularly due to the uncertainty regarding the status and outcome of its investigation of C.O. Capital Growth Corp., 91 Days Hygiene Services Inc., Peter Sbaraglia and Mandy Sbaraglia (the "CO Capital Debtors"). Based in part on the Receiver's findings as detailed in its ninth report to Court dated November 12, 2010, the Court issued an order appointing Richter as the Receiver of the CO Capital Debtors. As a result, the Receiver is now of the view that a Claims Procedure should be advanced with respect to both the Mander Debtors and the CO Capital Debtors.

The following is an overview of the proposed Claims Procedure regarding the Mander Debtors. The Receiver will be seeking an identical order in the CO Capital Debtors' proceedings. (Capitalized terms have the meanings given to them in the draft Claims Procedure Order.) If the Claims Procedure Order is made as proposed:

- The Receiver will, within five days of the Court making the proposed Claims Procedure Order, send by ordinary mail a copy of the Proof of Claim Document Package (which includes an Instruction Letter and Proof of Claim) to each known potential claimant of the Mander Debtors;
- The Receiver will post a copy of the Proof of Claim Document package on its website from the date of the Claims Procedure Order until ten business days after the Claims Bar Date;
- The Receiver will place an advertisement in *The Globe and Mail* (National Edition) on or before March 28, 2011. The advertisement, the form of which is attached to the draft Claims Procedure Order, is to advise of the Claims Procedure, call for Claims and provide notice of the proposed Claims Bar Date, being April 20, 2011; and
- Any and all Claims not filed by 5:00 p.m. (Toronto time) on April 20, 2011 (the Claims Bar Date) will be extinguished and forever barred.

The proposed forms to be used in the Claims Procedure (including the Proof of Claim form) are appended as Schedules to the draft Claims Procedure Order.

The intended purpose of the current Claims Procedure is to call for claims against the Mander Debtors. The Claims Procedure as set out does not contemplate the allowance or disallowance of claims at this stage in the process. After receipt of the claims the Receiver will undertake a review of the claims and will report back to this Honourable Court regarding its findings and the proposed next steps in the claims process.

Although at this time the Claims Procedure does not contemplate the allowance or disallowance of claims, the Receiver requests that this Honourable Court approve the retention by the Receiver of Harvey Chaiton of Chaitons as Claims Officer. During the next stage of the claims process, claims that cannot be resolved between the claimant and the Receiver may be turned over to the Claims Officer for resolution. Accordingly, the Receiver is of the view that it is appropriate to engage the Claims Officer at this time to participate in the initial stages of the Claims Procedure.

It is proposed that a claims process for creditors of the CO Capital Debtors will be carried out simultaneously with the claims process for creditors of the Mander Debtors.

5. PERO ASSETS INC.

Pero was originally owned equally by Mander and Peter Sbaraglia. During the time that Mander and Peter Sbaraglia owned Pero they maintained a bank account at Royal Bank of Canada, being the account into which parties invested with Pero. Monies would then be transferred from that bank account to trading accounts which Pero maintained at Interactive Brokers Canada Inc. ("Interactive Brokers"). During the Mander receivership, the equities in the Interactive Brokers'

account were liquidated and their proceeds (approximately \$21,000) were remitted by Interactive Brokers to the Receiver. The Receiver is holding these funds in a separate trust account ("Trust Account").

As a result of a transaction that was effective as of March 1, 2008, Pero's ownership was transferred from Mander and Peter Sbaraglia to Thomas Obradovich and his wife Katherine Reid. Prior to the transfer of the shares to Obradovich and Reid, two parties, Obradovich and a third party, invested approximately \$3.72 million, being substantially all of the investments in Pero (CO Capital invested approximately \$29,000). Based on the Receiver's review of the records, the third party has been fully repaid the amount she invested, including interest. Obradovich has requested that the Receiver remit to Pero the cash held by the Receiver in the Trust Account. Based on the Receiver's review of the available records, it is of the view that Pero should receive the funds held in the Trust Account in respect of this issue. The monies that arguably are due to CO Capital are exceedingly immaterial¹.

6. BLACK INK CAPITAL GROWTH LTD.

Due to concerns arising from statements in the Receiver's fourth report to Court dated July 2, 2010 ("Fourth Report"), the principals ("Principals") of Black Ink Capital Growth Ltd. ("Black Ink") requested that the Receiver provide an update concerning any findings it may have concerning Black Ink. In particular, the Principals expressed concern with the statement in the Fourth Report which indicated that Black Ink may have received more monies from Mander (and related parties) than Black Ink invested with those parties.

¹ Assuming a pro rata sharing of amounts deposited into Pero, CO Capital would be entitled to \$210.

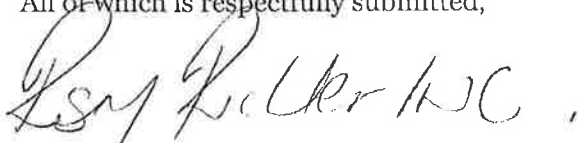
Based on information and documentation provided by the Principals subsequent to the date of the Fourth Report, it appears that Black Ink received at least approximately \$563,000² less from Mander and his companies than Black Ink paid to Mander and his companies. Based on this new information, Black Ink appears to have suffered losses as a result of the Mander scheme.

7. RECOMMENDATION

Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 of this Report.

* * *

All of which is respectfully submitted,



**RSM RICHTER INC.
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF THE ESTATE OF ROBERT MANDER,
E.M.B. ASSET GROUP INC. AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

² The documentation provided to the Receiver indicates that Black Ink received approximately \$738,000 less than it invested with Mander and his companies; however, based on the source documents available to the Receiver, the Receiver was only able to verify that Black Ink received approximately \$563,000 less from Mander and his companies than it invested with Mander and his companies.

This is **Exhibit "L"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
PETER SBARAGLIA**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“the Commission”) make the following allegations:

I. OVERVIEW

1. Between January 2006 and August 2009 (the “Relevant Period”), Peter Sbaraglia (“Sbaraglia”) operated C.O. Capital Growth Inc. (“CO”), a private issuer in Ontario, and was an officer and director of CO. For most of the Relevant Period, Sbaraglia ran CO together with Robert Mander (“Mander”).

2. CO was used by Sbaraglia as an investment vehicle to solicit third party investors (the “CO Investors”) to invest with Mander through CO. At no time during the Relevant Period was Sbaraglia registered with the Commission. CO raised approximately \$21.2 million from CO Investors, whom Sbaraglia described as friends and family. The funds were raised by way of loan agreements with CO and correspondingly issued promissory notes. The loan agreements and promissory notes issued by CO constitute securities under the *Securities Act*, R.S.O. 1990, c. s.5, as amended (the “Act”). In total, there were approximately 25 to 30 CO Investors.

3. Mander operated and owned E.M.B. Asset Group Inc. (“EMB”), and was its directing mind. Through EMB, Mander operated a fraudulent scheme where, contrary to his promises to investors to invest their funds, Mander used the funds to pay interest and principal to other investors, also known as a Ponzi scheme. Mander’s Ponzi scheme involved in excess of \$40 million of investors’ funds which it received from CO and other investors.

4. Although investors were told that their money would be invested by Mander/EMB, a significant portion of investors’ funds were used by CO, at the direction of Sbaraglia, in an unlawful and fraudulent manner. Sbaraglia, acting on behalf of CO, used investors’ funds to repay other investors and to pay for his and his family’s personal expenses and not for the benefit of CO Investors. In addition, Sbaraglia and his spouse (the “Sbaraglias”) received over \$2 million as purported profits earned by them in the Ponzi scheme.

5. As further described below, Sbaraglia, through his role in CO and his close involvement with Mander, participated in the Ponzi scheme in a manner which he knew or ought reasonably to have known perpetrated a fraud on investors contrary to s. 126(1)(b) of the Act.

6. In addition to the fraudulent conduct described herein, Sbaraglia materially misled Staff of the Commission in its investigation into Sbaraglia, Mander and CO about the business of CO and others. Throughout the investigation, a number of statements were made to Staff by Sbaraglia and by his counsel that Sbaraglia knew were false and that Sbaraglia knew would mislead Staff in determining whether investors’ funds were at risk. At no point in the investigation did Sbaraglia take any steps to correct his false statements or those of his counsel.

II. BACKGROUND AND PARTICULARS TO ALLEGATIONS

A. Sbaraglia Engaged in Securities Fraud Contrary to Section 126.1 of the Act

(i) CO’s Supposed Business Model

7. CO’s purported business model was as follows:

- (a) CO would solicit investors to loan money to it;
- (b) The funds were to be loaned to CO for a fixed term (generally one to three years) at a fixed, high rate of interest ranging from 20% to 30%;

- (c) CO would issue a loan agreement to each investor and, from 2007 onward, would issue a corresponding promissory note for the amount loaned together with the interest payable;
- (d) The funds from CO were to be transferred to Mander personally or through EMB to other Mander controlled companies for investment purposes; and
- (e) The profits generated from the investments above the fixed interest rate promised to investors were to be split equally between CO and Mander/EMB.

(ii) No Objective Evidence From Mander About Investment Profits

8. At the time that Sbaraglia began soliciting investors, he had no evidence whatsoever about the actual performance of Mander's supposed investments. Furthermore, at no time during the Relevant Period did Sbaraglia perform any due diligence or see any independent evidence of the exorbitant returns Mander claimed to be earning on investors' funds.

(iii) CO's Actual Business

9. In practice, and as further described below, CO's actual business varied from the above model in a number of ways. First, CO did not transfer all of the funds of CO Investors to Mander/EMB. Approximately one third of the funds raised by CO (approximately \$6-7 million) were not transferred to Mander/EMB. Those funds were used in one of a number of ways by Sbaraglia acting on behalf of CO, including: (i) making payments to CO Investors with newly received funds from other CO Investors; (ii) making investments in securities, either directly in trading accounts of CO or indirectly in trading accounts in the names of other companies, that resulted in significant losses; and (iii) making payments for personal expenses of the Sbaraglias.

10. Of the \$21.2 million raised by CO from its investors, \$15.4 million was transferred to Mander/EMB, the balance of which (between \$6-7 million) can be accounted for as follows:

- (a) \$2.1 million was received personally by Sbaraglia at the direction of Mander, notionally for profits earned by the Sbaraglias from the actions of Mander;
- (b) approximately \$2.4 million was lost through trading accounts;

- (c) approximately \$985,000 in general expenses of CO were paid from the CO bank accounts;
- (d) approximately \$585,000 was used by CO to purchase open venture securities, which securities have almost no current value;
- (e) approximately \$213,000 in rent payments in respect of a property located at 239 Church Street were made by CO to 91 Days Hygiene ("91 Days"), a company wholly owned by Sbaraglia's spouse;
- (f) approximately \$383,000 in charges were incurred on a corporate Visa in the name of CO, a significant number of which were not for the benefit of CO Investors but, rather, were for the personal benefit of the Sbaraglias, including significant payments for restaurants, renovations of a building owned by 91 Days and numerous other personal expenses.

11. In addition, throughout the Relevant Period, CO used funds raised from investors to pay amounts owing to other investors. The payments to investors were made from the CO bank accounts over which Sbaraglia had control and were made by cheques signed by him.

12. As a consequence of the foregoing conduct, Sbaraglia engaged or participated in acts, practices or courses of conduct relating to the securities of CO that they knew or ought to have known perpetrated a fraud on persons, contrary to section 126.1(b) of the Act.

B. Misleading Staff of the Commission Contrary to Section 122 of the Act

13. During Staff's investigation and as further described herein, Sbaraglia materially misled Staff in respect of the operation and business of CO, contrary to section 122(1) of the Act.

(i) Sbaraglia's Evidence Under Oath During The OSC Investigation

14. In July 2009, as part of an investigation into the business and affairs of Sbaraglia, Mander, CO and others, Staff conducted examinations of Sbaraglia and Mander. These examinations were conducted under oath with counsel present where Sbaraglia swore to tell the truth.

15. Sbaraglia was advised by Staff that Staff's primary concern in the investigation was whether investors' funds were at risk and whether CO could properly account for the funds.

16. Staff advised Sbaraglia during the investigation that it was seeking verification from CO that the assets between CO and Mander/EMB were in excess of what was owed to CO Investors. To that end, Sbaraglia gathered and prepared documentation for Staff.

17. During Sbaraglia's examination, Staff were advised by his counsel of the following:

- (a) CO Investors consisted of only friends and family of Sbaraglia and that each of the CO Investors had approached Sbaraglia about investing;
- (b) CO had relied on legal advice obtained by a Toronto law firm with respect to CO's compliance with Ontario securities laws in raising funds from third parties;
- (c) CO Investors' funds were not at risk;
- (d) The total amount owing by CO to the CO Investors was approximately \$8.5 million but the bulk of the value of CO Investors' funds were invested in real estate assets purchased by Mander and Sbaraglia;
- (e) Sbaraglia and Mander had a verbal arrangement whereby all assets held by Sbaraglia and Mander (either personally or through corporate entities) were for the benefit of the CO Investors and that the assets held by Sbaraglia and Mander were valued at approximately of \$12 million and were, therefore, well in excess of all amounts owing to CO Investors.

18. Sbaraglia knew his counsel was speaking on his behalf during the examination and that Staff would rely on the above statements as being true and at no time did he correct the record.

19. In addition to the above statements by counsel, Sbaraglia gave evidence under oath:

- (a) in detail about his strategy for purchasing undervalued assets, including equities and real estate;
- (b) that he would ensure that the CO Investors would be fully repaid and that he was pledging his own personal assets to ensure that the CO Investors would be protected.

(ii) Sbaraglia's Evidence Was Misleading

20. The above statements were materially misleading in a number of ways, including but not limited to:

- (a) Sbaraglia had solicited investors directly by making representations to them about his success with Mander and Mander's role in CO in achieving the promised returns for investors;
- (b) CO had raised almost \$1 million in 2006 prior to obtaining any legal advice about whether CO was in compliance with Ontario securities laws;
- (c) the actual business of CO did not involve the purchase of real estate assets;
- (d) the trading accounts operated by CO suffered aggregate losses of approximately \$2.4 million of investors' funds;
- (e) CO had additional obligations to investors beyond \$8.5 million, specifically additional private loan agreements totalling \$9.4 million, the knowledge of which was within the exclusive knowledge of Sbaraglia and CO;
- (f) all of the assets of Sbaraglia, Mander and CO were not, in fact, available to satisfy the amounts owing to CO Investors as Mander (and his companies, which were owners of many of the assets) had loans outstanding with many additional investors other than the CO Investors.

(iii) The Undertaking Given by Sbaraglia Was Also Misleading

21. On August 7, 2009, following the examination, Sbaraglia's counsel provided Staff with a loan agreement between EMB and CO and an undertaking in respect of loans made by CO Investors and the real estate assets which were being held for the benefit of those investors (the "Undertaking").

22. The Undertaking provided among other things that: (a) CO would not enter into any further loan agreements with third party investors; (b) CO would cause the outstanding loans to CO Investors to be paid as they become due; and (c) CO had used the loans by CO Investors to acquire the assets listed in a Schedule B to the Undertaking.

23. With respect to the Undertaking, Sbaraglia failed to identify material obligations of CO in its schedule of outstanding loans. The Undertaking failed to list nine loan agreements for a total of approximately \$9.4 million. Contrary to Sbaraglia's representations to Staff and due to his misleading Staff, the Undertaking was of no value in protecting investors. Subsequently, Sbaraglia has resiled from the Undertaking and ultimately sought to be relieved of his obligations under it.

24. As a consequence of the foregoing conduct, Sbaraglia materially misled Staff in respect of the operation and business of CO, contrary to section 122(1) of the Act.

III. RELATED PROCEEDINGS

25. In a related proceeding commenced by Staff, on behalf of the Commission, under section 129 of the Act, the Ontario Superior Court of Justice made an order appointing RSM Richter Inc. as receiver of the assets, undertakings and property of the Sbaraglias, CO and 91 Days on the basis that it was a) in the best interests of the creditors of CO; and b) that it was appropriate for the due administration of Ontario securities law.

26. In so doing, the Honourable Mr. Justice Morawetz stated that "I cannot overlook that CO, Dr. Sbaraglia and Ms. Sbaraglia retained and had access to funds in excess of \$6 million. I also cannot overlook that they improperly used some of these funds for personal use or for related corporate use. I also cannot overlook that some of the new money was used to pay interest payments to old investors. To use the words of counsel to the receiver: This is the hallmark of a Ponzi scheme where you keep the dollars rolling."

27. The Court also noted that the "[t]he factors that have led to my decision to appoint a receiver as being in the best interests of the company's creditors and the potential Sbaraglia creditors is also applicable for the appointment under the second part of the test. This was a Ponzi scheme." The Court went on to state that "[i]t cannot be overlooked that the Sbaraglias misled the OSC in the course of its investigation. This type of activity cannot and should not be overlooked and I am satisfied that the appointment of a receiver is also justified [as being appropriate for the due administration of Ontario securities law]."

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

28. By using investors' funds from the sale of securities of CO for personal use or for related corporate use and by using new investor funds to make payments to old investors, Sbaraglia engaged or participated in acts, practices or courses of conduct relating to the securities of CO that he knew or ought to have known perpetrated a fraud on persons contrary to section 126.1(b) of the Act.

29. Further, Sbaraglia made statements to Staff during the course of its investigation, including statements made by him under oath at his examination, that were materially misleading or untrue and/or failed to state facts which were required to be stated contrary to subsection 122(1) of the Act and contrary to the public interest.

30. Further, pursuant to section 127(10)3 of the Act, the findings of the Court in the Receivership Proceeding may form the basis of an order in the public interest in Ontario under section 127(1).

31. Staff allege that it is in the public interest to make orders against the Respondent.

32. Staff reserve the right to amend these allegations and to make such further and other allegations as they deem fit and the Commission may permit.

DATED at Toronto this 24th day of February, 2011.

This is **Exhibit "M"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
PETER SBARAGLIA**

**NOTICE OF HEARING
(Section 127)**

TAKE NOTICE THAT the Ontario Securities Commission (the “Commission”) will hold a hearing pursuant to section 127 of the *Securities Act*, R.S.O., c. S.5., as amended (the “Act”) at the offices of the Commission, 20 Queen Street West, Toronto, Ontario, 17th Floor, commencing on March 31, 2011 at 10:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is to consider whether it is in the public interest for the Commission to make an order that:

1. pursuant to clause 2 of subsection 127(1) of the Act, Peter Sbaraglia (“Sbaraglia”) shall cease trading in securities permanently;
2. pursuant to clause 2.1 of subsection 127(1) of the Act, acquisition of any securities by Sbaraglia is prohibited permanently;
3. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Sbaraglia permanently;

4. pursuant to clause 6 of subsection 127(1) of the Act, Sbaraglia is reprimanded;
5. pursuant to clause 7 of subsection 127(1) of the Act, Sbaraglia shall resign all positions he holds as a director or officer of an issuer;
6. pursuant to clause 8 of subsection 127(1) of the Act, Sbaraglia is permanently prohibited from becoming or acting as a director or officer of any issuer;
7. pursuant to clause 8.2 of subsection 127(1) of the Act, Sbaraglia is permanently prohibited from becoming or acting as a director or officer of a registrant;
8. pursuant to clause 8.4 of subsection 127(1) of the Act, Sbaraglia is permanently prohibited from becoming or acting as a director or officer of an investment fund manager;
9. pursuant to clause 8.5 of subsection 127(1) of the Act, Sbaraglia is permanently prohibited from becoming or acting as registrant, as an investment fund manager or as a promoter; and
10. to make such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff dated February 24, 2011 and such additional allegations as counsel may advise and the Commission may permit;

AND FURTHER TAKE NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place, the hearing may proceed in the absence of the party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 24th day of February, 2011.

"John Stevenson"

This is **Exhibit "N"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

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IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED

- AND -

PETER SBARAGLIA

DISCLOSURE BRIEF

VOLUME 1

ROYAL BANK OF CANADA

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Tab	Date	Document
A.	July 15, 2008	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial Group c/o Michael A. Hubley Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting documents for account numbers 00192-1095769 and 3502-1023019 during the period January 1, 2007 to June 20, 2008
B.	August 1, 2008	Memo from Maxine Siwinski to Mehran Shahviri Re: Summons dated July 17, 2008 enclosing with enclosures
1.	January 5, 2006- June 30, 2008	Exhibit "A" - Client Profile and Open Account documents for account in the name of C.O. Capital Growth Corp.; Statements and supporting documents for Account No. 00192-1095769 in the name of C.O. Capital Growth Corp.

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PETER SBARAGLIA

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Tab	Date	Document
2.	Various	Exhibit "B"- Client Profile and Open Account documents in the name of Pero Assets Inc.; Statements and supporting documents for Account No. 03502-1023019 in the name of Pero Assets Inc.
C.	August 25, 2008	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial Group c/o Nick Oscar Ruggiero Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting copies of account opening documents and monthly statements for the period January 1, 2006 to August 29, 2008 for Robert Mander, Mander Group, Robert Mander in Trust, Mand Assets, Peter Sbaraglia, Sbaraglia Dentistry Corp., Mandy Sbaraglia and 91 Days Inc.;
	August 28, 2008	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting copies of account opening documents and monthly statements for the period January 1, 2006 to August 29, 2008 for Robert Mander, Mander Group, Robert Mander in Trust, Mand Assets, Peter Sbaraglia, Sbaraglia Dentistry Corp, Mandy Sbaraglia and 91 Days Hygiene Services Inc.
D.	September 23, 2008	Memo from Maxine Siwinski to Mehran Shahviri Re: Summons dated August 28, 2008 with enclosures
1.	January 8, 2003	Client Profile and Signature card in the name of Peter Sbaraglia
2.	January 1, 2006- August 31, 2008	Statement for Personal Account No. 00192-5091814 in the names of Mandy Sbaraglia and Peter Sbaraglia

Tab	Date	Document
3.	January 1, 2006- August 31, 2008	Statement for Personal Account No. 08062-5050869 in the name of Mandy Sbaraglia and Peter Sbaraglia
4.	January 1, 2006- September 2, 2008	Investment Account Statement No. 524761491 in the names of Dr. M. Sbaraglia and Peter Sbaraglia
5.	April 16, 2001	Credit Application in the name of Mandy Sbaraglia for \$5,000.00 Visa Account
6.	January 5, 2006- August 29, 2008	Statements for Visa Account No. 4512111015802075 joint with no. 4512111015987538 in the names of Dr. Mandy Sbaraglia and Dr. Peter Sbaraglia
7.	August 4, 2005	Credit Application in the name of Mandy Sbaraglia for a mortgage in the amount of \$1,462,500.00
8.	Various	Mortgage documents for Royal Bank Mortgage Account No. 00192-31375009-001 in the names of M/P Sbaraglia
9.	January 31, 2006- August 31, 2008	Mortgage History Report for Royal Bank Mortgage Account No. 00192-31375009-001 in the names of M/P Sbaraglia
10.	July 6, 2006	Credit Application in the name of Mandy Sbaraglia for a mortgage in the amount of \$292,425.00

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

PETER SBARAGLIA

DISCLOSURE BRIEF

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Tab	Date	Document
11.	Various	Mortgage documents for Royal Bank Mortgage Account No. 00192-37789666-001 in the names of Mandy Sbaraglia and Peter Sbaraglia
12.	July 31, 2006- August 31, 2008	Mortgage History Report for Royal Bank Mortgage Account No. 00192-37789666-001 in the names of M/P Sbaraglia
13.	May 26, 2004	Credit Application in the name of Mandy Sbaraglia for a Credit Line in the amount of \$50,000.00
14.	July 15, 2004- August 16, 2008	History Report for Royal Credit Line Account No. 19547835-001 in the names of M/P Sbaraglia
15.	October 25, 2007	Credit Application in the name of Mandy Sbaraglia for HomePlan for the amount of \$1,840,000.00
16.	July 23, 2007- September 4, 2008	Statements for Visa Account No. 4516070002626028 joint with no. 4516070002626036 in the names of Pero Assets Inc. and Peter Sbaraglia
17.	April 20, 2007- September 4, 2008	Statements for Visa Account No. 4516070002333229 joint with no. 4516070002333237 in the names of C O Capital Growth and Peter Sbaraglia
18.	Various	Client Profile and Signature cards in the name of Dr. Mandy Sbaraglia
19.	January 1, 2006- August 31, 2008	Statement for Account No. 00192-5091301 in the names of Mandy Sbaraglia and Christian Peter Sbaraglia
20.	January 1, 2006- August 31, 2008	Statement for Account No. 08062-5057559 in the names of Olivia Frances Sbaraglia and Mandy Sbaraglia
21.	December 1, 2006- September 4, 2008	Statement for RESP Account No. 524760063 in the name of Dr. Mandy Sbaraglia
22.	December 8, 2005- September 5, 2008	Statements for Visa Account No. 4514093600604652 in the name of Mandy Sbaraglia

Tab	Date	Document
23.	April 20, 2007- September 4, 2008	Statements for Visa Account No. 4516070002333286 joint with no. 4516070002333294 in the names of C O Capital Growth and Mandy Sbaraglia
24.	April 20, 2007- September 4, 2008	Client Profile in the name of Robert Mander and Visa Statements for Account No. 4516070002332957 joint with 4516070002332965 in the names of C O Capital Growth and Robert Mander
25.	Various	Client Profile and Open Account Documents in the name of Mand Assets Inc.
26.	May 2, 2007- September 2, 2008	Statements for Account No. 035021-1023001 in the name of Mand Assets Inc.
27.	July 20, 2007- August 4, 2008	Visa Statements for Account 34516070002621292 joint with 4516070002621300 in the names of Mand Assets Inc. and Mandy Sbaraglia
28.	Various	Client Profile and Open Account Documents in the name of 91 Days Hygiene Services Inc.

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Tab	Date	Document
29.	December 23, 2005- August 27, 2008	Statements for Account No. 08062-1000629 in the name of 91 Days Hygiene Services Inc.
30.	January 23, 2006- August 7, 2008	Statements for Visa Account No. 4516070000430143 joint with no. 4516070000430159 in the names of 91 Days Hygiene Services and Peter Sbaraglia
31.	December 6, 2005- September 5, 2008	Statements for Visa Account No. 4516070000430233 joint with no. 4516070000430241 in the names of 91 Days Hygiene Services and Mandy Sbaraglia
32.	April 13, 2005	Documents relating to Credit Facility in the name of 91 Days Hygiene Services Inc.
33.	July 15, 2006- September 22, 2008	History Report for Demand Loan Account No. 22842702-002 in the name of 91 Days Hygiene
34.	July 15, 2006- September 15, 2008	History Report for Royal Credit Line Account No. 22842702-001 in the name of 1267244 Ont Ltd. (identified as 91 Hygiene Services)
35.	Various	Client Profile and Open Account Documents in the name of Dr. Sbaraglia Dentistry Professional Corporation
36.	December 8, 2005- August 8, 2008	Statements for Account No. 00192-1074012 in the name of Dr. Sbaraglia Dentistry Professional Corporation
37.	February 20, 2006- August 29, 2008	Statements for Visa Account No. 4516070000430118 joint with no. 4516070000430126 in the names of Dr. Sbaraglia Dentistry and Peter Sbaraglia
38.	April 13, 2005	Documents relating to Confirmation of Credit Facilities in the name of Dr. Sbaraglia Dentistry Professional Corporation
39.	February 15, 2006- August 15, 2008	History Reports for Credit Line/Loan Account Nos. 22846968-002/003/004 in the name of Dr. Peter Sbaraglia

Tab	Date	Document															
E.	October 22, 2009	<p>Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i>, issued to the RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i>, Dated July 15, 2008 requesting relevant documents for the bank drafts listed below:</p> <table> <tr> <td>August 28, 2008</td><td>94581545 4-416</td><td>\$937,500.00</td></tr> <tr> <td>July 23, 2008</td><td>94297726 5-416</td><td>\$312,500.00</td></tr> <tr> <td>December 4, 2008</td><td>94581305 3-416</td><td>\$181,799.14</td></tr> <tr> <td>December 4, 2008</td><td>94581304 6-416</td><td>\$1,580,022.10</td></tr> <tr> <td>December 4, 2008</td><td>94581302 0-416</td><td>\$250,000.00</td></tr> </table>	August 28, 2008	94581545 4-416	\$937,500.00	July 23, 2008	94297726 5-416	\$312,500.00	December 4, 2008	94581305 3-416	\$181,799.14	December 4, 2008	94581304 6-416	\$1,580,022.10	December 4, 2008	94581302 0-416	\$250,000.00
August 28, 2008	94581545 4-416	\$937,500.00															
July 23, 2008	94297726 5-416	\$312,500.00															
December 4, 2008	94581305 3-416	\$181,799.14															
December 4, 2008	94581304 6-416	\$1,580,022.10															
December 4, 2008	94581302 0-416	\$250,000.00															
F.	October 27, 2009	<p>Memo from Maxine Siwinski to Mehran Shahviri Re: Summons Dated October 22, 2009 with enclosures; Copies of bank drafts and supporting documents from Account No. 00192-1095769 in the name of C.O. Capital Growth Corp.</p>															
G.	March 12, 2010	<p>Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i>, issued to the RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i>, dated February 25, 2010 requesting copies of monthly bank statements for all business and personal accounts, held jointly or solely for the period from July 1, 2008 to present: Robert Mander, Peter Sbaraglia and Mandy Sbaraglia; copies of monthly bank statements for all accounts held jointly or solely for the period from July 1, 2008 to present: Mander Group Inc., Robert Mander in Trust, Mand Assets Inc., Sbaraglia Dentistry Corp, 91 Days Hygiene Services Inc., C.O. Capital Growth Corp, EMB Asset Group Inc., Trafalgar Capital Growth Inc., Stonebury Inc., Black Ink Capital Growth Ltd., 2142179 Ontario Inc., Dunn Street Gallery Inc. and Pero Assets Inc.</p>															

Tab	Date	Document
H.	March 17, 2010	<p>Memo from Maxine Siwinski to Mehran Shahviri Re: Summons dated March 12, 2010 – Robert Mander Et Al with enclosures; Statements for the following accounts:</p> <ul style="list-style-type: none"> – Account No. 00192-1095769 in the name of C.O. Capital Growth Corp. – Account No. 080062-1000629 in the name of 91 Days Hygiene Services Inc. – Account No. 03502-1023001 in the name of Mand Assets inc. – Account No. 03502-1023019 in the name of Pero Assets Inc. – Account No. 03502-1023241 in the name of Dunn Street Gallery Inc. – Account No. 03502-4004966 in the name of Dunn Street Gallery Inc. (US Account) – Account No. 00192-5091301 in the names of Mandy Sbaraglia and Christian Peter Sbaraglia – Account No. 00192-5091814 in the names of Mandy Sbaraglia and Peter Sbaraglia – Account No. 08062-5050869 in the names of Mandy Sbaraglia and Peter Sbaraglia – PCA History Inquiry for Account No. 08062-5057559 in the names of Olivia Frances Sbaraglia and Mandy Sbaraglia identifying there was no activity between the period of July 1, 2008 to March 12, 2010

- AND -

PETER SBARAGLIA

DISCLOSURE BRIEF

VOLUME 5

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Tab	Date	Document
A.	April 27, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated April 26, 2010 requesting copies of supporting documents for all amounts greater than or equal to \$5,000 for the account for the period of January 1, 2009 to present: a) 00192-1095769 b) 08062-1000629 c) 03502-1023001 d) 03502-1023019 e) 03502-1023241 f) 03502-4004966 g) 00192-5091301 h) 00192-5091814 i) 08062-5050869
B.	May 13, 2010	Memo from Maxine Siwinski to Mehran Shahviri Re: Summons dated April 27, 2010 with enclosures
1.	January 2009 – November 2009	Supporting documents relating to Royal Bank of Canada Account No. 00192-1095769
2.	January 2009 – December 2009	Supporting documents relating to Royal Bank of Canada Account No. 08062-1000629
3.	January 2009 – August 2009	Supporting documents relating to Royal Bank of Canada Account No. 03502-1023001
4.	January 2009 – March 2009	Supporting documents relating to Royal Bank of Canada Account No. 03502-1023241

Tab	Date	Document
5.	November 2009	Supporting documents relating to Royal Bank of Canada Account No. 00192-5091814
6.	January 2009 - December 2009	Supporting documents relating to Royal Bank of Canada Account No. 08062-5050869
C.	August 18, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated April 26, 2010 requesting supporting documents for transactions regarding account no. 00192-1095769
D.	August 31, 2010	Memo from Maxine Siwinski to Mehran Shahviri Re: Summons dated August 18, 2010 with enclosures; Supporting documents relating to 69 transactions from Royal Bank of Canada Account No. 00192-1095769

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ROYAL BANK OF CANADA

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Tab	Date	Document
A.	May 31, 2011	Letter from Stephanie Collins to Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial Group c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting copies of all supporting documentation for the transactions in account 505869 (transit 08062); account statements for loan account 53964730 001 (transit 00192) for the period January 1, 2007- December 31, 2007 and August 8, 2008 – March 31, 2010; a description of code “RBCI – Acc Prot” found on statements for account 505869 (transit 08062); and confirm that transactions in account 5050869 (transit 08062) for the period January 1, 2007 to March 12, 2010 in the amount of \$1.50 are for service charge
B.	June 2, 2011	Letter from Maxine Siwinski to Stephanie Collins Re: Summons dated May 31, 2011 with the following enclosures: <ul style="list-style-type: none">– Supported Documents for Transactions relating to Royal Bank of Canada Account No. 08062-5050869– History Reports for Royal Credit Line Account No. 53964730-001– Printout identifying RBCI as RBC Life Insurance Debits to account No. 08062-5050869

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HSBC BANK CANADA

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Tab	Date	Document
A.	August 25, 2008	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting copies of account opening documents and monthly statements for the period January 1, 2006 to August 29, 2008 for Robert Mander, Mander Group, Robert Mander in Trust, Mand Assets, C.O. Capital Growth, Pero Assets Inc. Peter Sbaraglia, Sbaraglia Dentistry Corp., Mandy Sbaraglia and 91 Days Inc.
B.	September 9, 2008	Letter from Lauren Kaiser to Mehran Shahviri Re: Request for Information – Robert Mander enclosing documents in response to Summons dated August 25, 2008
C.	March 3, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated February 25, 2010 requesting copies of account opening documents and monthly statements for the period from the account opening date to present for EMB Asset Group Inc, Trafalgar Capital Growth Inc., Stonebury Inc., Black Ink Capital Growth Ltd., 2142179 Ontario Inc, and Dunn Street Gallery Inc.;
		Copies of monthly statements for the period of September 2008 (inclusive) to present: Robert Mander, Robert Mander in Trust, Mander Group, Mand Assets, Peter Sbaraglia, C.O. Capital Growth, Pero Assets Inc. Sbaraglia Dentistry Corp., Mandy Sbaraglia and 91 Days Inc.

Tab	Date	Document
D.	March 11, 2010	Letter from Lauren Kaiser to Mehran Shahviri Re: Request for Information – All Names Listed in Schedule A, enclosing documents in response to Summons dated March 3, 2010

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HSBC BANK CANADA

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Tab	Date	Document
A.	April 27, 2010	<p>Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i>, issued to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i>, dated April 26, 2010 requesting copies of supporting documents for all amount greater than or equal to \$5,000 for the following accounts for the period of January 1, 2009 to present:</p> <ul style="list-style-type: none"> a. 342-013734 b. 342-010174 c. 342-008641 d. 342-008412 e. 342-013696 f. 342-003747 g. 342-009435
B.	Various	Documents received from HSBC Bank Canada in response to Summons dated April 27, 2010

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Tab	Date	Document
C.	August 6, 2010	Letter from Mimi Fok to Mehran Shahviri Re: Order to Produce Documents with enclosures
D.	April 19, 2011	Letter from Mehran Shahviri to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated April 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated April 25, 2010 requesting documents for account 13734-004 (transit 342) in the name of E.M.B. Asset Group Inc. and all supporting documentation for each transaction listed on Schedule "A" attached
E.	May 3, 2011	Letter from Mimi Fok to Mehran Shahviri Re: Order E.M.B. Asset Group Inc. enclosing documents in response to Summons dated April 19, 2011
F.	April 26, 2011	Letter from Mehran Shahviri to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated April 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting documents for account 008641-001 (transit 342) in the name of C.O. Capital Growth Corp. any and all supporting documentation for each transaction listed on Schedule "A" attached
G.	May 5, 2011	Letter from Mimi Fok to Mehran Shahviri Re: Order, C.O. Capital Growth Corp. enclosing documents as requested in Order dated April 25, 2011

Tab	Date	Document
H.	May 10, 2011	Letter from Mehran Shahviri to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting documents noted in Schedule "A"
I.	May 24, 2011	Letter from Mimi Fok to Mehran Shahviri Re: Order Trafalgar Capital Growth Inc. enclosing documents in response to letter dated May 10, 2011

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HSBC BANK CANADA

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Tab	Date	Document
J.	May 18, 2011	Letter from Stephanie Collins to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 requesting documents for account 003747-150 (transit 10342) in the name of Robert Mander and all supporting documentation for each transaction listed on Schedule "A"
K.	May 26, 2011	Letter from Mimi Fok to Stephanie Collins Re: Order, Robert Mander enclosing documents in response to Summons dated May 18, 2011
L.	May 27, 2011	Letter from Mimi Fok to Mehran Shahviri Re: Order, E.M.B. Asset Group Inc. enclosing documents in response to Summons dated April 19, 2011
M.	May 26, 2011	Letter from Stephanie Collins to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to HSBC c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 requesting documents for account 010174-001 (transit 10342) in the name of Stonebury Inc. and all supporting documentation for each transaction listed on Schedule "A"
N.	May 31, 2011	Letter from Mimi Fok to Stephanie Collins Re: Requirement to Provide Information and Documents Stonebury Inc. enclosing documents in response to letter dated May 26, 2011

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BMO BANK OF MONTREAL &
BANK OF NOVA SCOTIA

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Tab	Date	Document
BMO Bank of Montreal		
A.	August 25, 2008	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Phil Wilson, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting copies of account opening documents and monthly statements for the period January 1, 2006 to August 29, 2008 for Robert Mander, Mander Group, Robert Mander in Trust, Mand Assets, C.O. Capital Growth, Pero Assets Inc. Peter Sbaraglia, Sbaraglia Dentistry Corp., Mandy Sbaraglia and 91 Days Inc.
B.	Various	Documents received from BMO in response to Summons dated August 25, 2008
C.	May 10, 2011	Letter from Mehran Shahviri to Everyday Banking Processing Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2011 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Phil Wilson, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting all supporting documentation pertaining to the purchase of bank draft number 035049
D.	May 19, 2011	Response to Summons dated May 10, 2011
E.	May 20, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 requesting all supporting documentation pertaining to the purchase of bank draft numbers 932058, 932041, 932097, 932183, 60045711 3, 932149, 955213 and 955275

Tab	Date	Document
F.	May 26, 2011	Letter from BMO Bank of Montreal to Ontario Securities Commission RE: Source of Funds for Drafts enclosing response to Summons dated May 20, 2011
Bank of Nova Scotia		
G.	March 12, 2010	<p>Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i>, issued to Richard D. Lyon, Bank of Nova Scotia Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i>, dated February 25, 2010 requesting copies of monthly bank statement for all business and personal accounts held jointly or solely, for the period from January 1, 2007 to present: Robert Mander, Peter Sbaraglia and Mandy Sbaraglia;</p> <p>Copies of monthly bank statements for all accounts, held jointly or solely, for the period from January 1, 2007 to present: Mander Group Inc, Robert Mander in Trust, Mand Assets Inc., Sbaraglia Dentistry Corp., 91 Days Hygiene Services Inc., C.O. Capital Growth Corp., EMB Asset Group Inc., Trafalgar Capital Growth Inc., Stonebury Inc., Black Ink Capital Growth Ltd., 2142179 Ontario Inc. Dunn Street Gallery Inc., and Pero Assets Inc.</p>
H.	March 23, 2010	Letter from Debora Oliveira to Mehran Shahviri Re: Order issued under Section 11(1)(a) of <i>Securities Act</i> , dated February 25, 2010; Affidavit of Debora Oliveria sworn March 17, 2010; Letter dated March 17, 2010 from Debora Oliveira Re: Order issued under Section 11(1)(a) of <i>Securities Act</i> , dated February 25, 2010; Documents received in response to Summons dated March 12, 2010
I.	April 25, 2011	Letter from Mehran Shahviri to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting all supporting documents pertaining to the purchase of bank draft numbers, 268536, 736615, 268611, 268635, 268663, 268656, 736739, 268826, 268823, 737008, 737065, 269083, 335421, 335536, 420656, 335614, 335784 and 336018
J.	May 2, 2011	Letter from Benjamin Middleton to Mehran Shahviri Re: Order issued under Section 11(a) of the <i>Securities Act</i> , dated February 25, 2010 enclosing all available supporting documentation for the BNS Bank Drafts pursuant to the Summons dated April 25, 2011
K.	May 10, 2011	Letter from Mehran Shahviri to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting all supporting documentation pertaining to the purchase of bank draft number 488386

Tab	Date	Document
L.	May 13, 2011	Letter from Marcio Gomes to Mehran Shahviri Re: Production Order Draft #488386 enclosing all available supporting documentation pursuant to the Summons dated May 10, 2011
M.	May 20, 2011	Letter from Stephanie Collins to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 requesting all supporting documentation pertaining to the purchase of nine bank drafts
N.	May 25, 2011	Letter from Euna Seong to Stephanie Collins Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated May 11, 2011, enclosing documents in response to Summons dated May 20, 2011

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TD BANK FINANCIAL GROUP

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Tab	Date	Document
A.	October 1, 2010	Letter from Mehran Shahviri to Josie D'Agrosa enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Josie D'Agrosa, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated February 25, 2010 requesting documents for account 22122-5209103 in the name of Claimatrix and/or Mandy Sbaraglia
B.	Various	Documents received in response to Summons dated October 1, 2010
C.	April 20, 2011	Letter from Mehran Shahviri to Josie D'Agrosa Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 enclosing Summons to Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> issued to Josie D'Agrosa, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated February 25, 2010 requesting all supporting documentation for the purchase of bank draft number 47368523
D.	May 2, 2011	Documents received in response to Summons dated April 20, 2011
E.	May 24-26, 2011	Email chain between Mehran Shahviri and Lucy Arruda Re: Summons dated February 25, 2010
F.	May 30, 2011	Documents received in response to Summons dated February 25, 2010

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INTERACTIVE BROKERS CANADA INC.

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Tab	Date	Document
A.	June 20, 2008	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Interactive Brokers Canada Inc. requesting documents with respect to Peter G. Sbaraglia, Robert J. Mander, C.O. Capital Growth Corp., The Mander Group, Mand Assets, Pero Assets and Gervais Sales and Marketing Inc. (collectively the "Mander Group") including any accounts where any of the Mander Group have an interest or trading authority
B		Documents received pursuant to Direction dated June 20, 2008:
1.	October 25, 2007 - May 30, 2008	Regarding Pero Assets Inc., account no. U424033
2.	April 11, 2008 - May 30, 2008	Regarding Pero Assets Inc., account no. U468692
3.	July 3, 2007 - May 30, 2008	Regarding Pero Assets Inc., account no. U388022
4.	January 4, 2008 - May 30, 2008	Regarding Mand Assets Inc., account no. U443599
5.	July 3, 2007 - May 30, 2008	Regarding Mand Assets Inc., account no. U385758
6.	March 31, 2008 - May 30, 2008	Regarding C.O. Capital Growth Corp., account no. U468401
7.	October 25, 2007 - May 30, 2008	Regarding C.O. Capital Growth Corp, account no. U424034

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INTERACTIVE BROKERS CANADA INC.

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Tab	Date	Document
8.	May 1, 2007 – May 30, 2008	Regarding C.O. Capital Growth Corp, account no. U377778
C.	July 17, 2008	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Interactive Brokers Canada Inc. requesting full details of all funds over \$20,000 deposited into or withdrawn from accounts: U377778, U424034, U443599, U468401, U385758 and U468692 for the time period of January 1, 2007 to June 30, 2008
D.		Documents received in response to Direction dated July 17, 2008:
1.	May 1, 2007- April 23, 2008	Re: C. O. Capital Growth Corp, account no. U377778
2.	November 9, 2007- June 2, 2008	Re: C.O. Capital Growth Corp., account no. U424034
3.	January 24, 2008- July 16, 2008	Re: Mand Assets Inc., account no. U443599
4.	April 1, 2008 – April 23, 2008	Re: C.O. Capital Growth Corp., account no. U468401
5.	July 11, 2008 – July 17, 2008	Re: Mand Assets Inc., account no. U385758
6.	April 1, 2008 – April 23, 2008	Re: Pero Assets Inc., account no. U468692

Tab	Date	Document
E.	March 8, 2010	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Interactive Brokers Canada Inc. requesting monthly activity statements from June 2008 (inclusive) to present for accounts held by C.O. Capital Growth Corp, Mand Assets Inc. and Pero Assets Inc.; monthly activity statements from January 2007 (inclusive) to present for accounts held by Mander Group Inc., Peter Sbaraglia, EMB Asset Group Inc., Trafalgar Capital Growth Inc., Stonebury Inc., 2142179 Ontario Inc. and Dunn Street Gallery Inc.
F.		Documents received in response to Direction dated March 8, 2010:
1.	January 2, 2008 – February 28, 2010	Activity Statement for Mand Assets Inc., account no. U385758
2.	January 2, 2008 – February 28, 2010	Activity Statement for Mand Assets Inc., account no. U443599
3.	January 1, 2008 – December 31, 2009	Activity Statement for Trafalgar Capital Growth Inc., account no. U432984
4.	January 2, 2008 – February 28, 2010	Activity Statement for E.M.B. Asset Group Inc., account no. U482109

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Tab	Date	Document
5.	January 2, 2008 – February 28, 2010	Activity Statement for C.O. Capital Growth Corp., account no. U377778
6.	January 2, 2008 – February 28, 2010	Activity Statement for C.O. Capital Growth Corp., account no. U424034
7.	January 2, 2008 – February 28, 2010	Activity Statement for C.O. Capital Growth Corp., account no. U468401
8.	January 2, 2008 – February 28, 2010	Activity Statement for Pero Assets Inc., account no. U388022
9.	January 2, 2008 – February 28, 2010	Activity Statement for Pero Assets Inc., account no. U468692
10.	January 2, 2008 – February 28, 2010	Activity Statement for Pero Assets Inc., account no. U424033

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QUESTRADE INC.

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Tab	Date	Document
A.	June 20, 1998	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Questrade Inc. requesting documents with respect to Peter G. Sbaraglia, Robert J. Mander, C.O. Capital Growth Corp., The Mander Group, Mand Assets, Pero Assets and Gervais Sales and Marketing Inc. (collectively the "Mander Group") including any accounts where any of the Mander Group have an interest or trading authority
B.		Documents received in response to Direction dated June 20, 1998
1.	March 5, 2007 – April 30, 2008	Re: C.O. Capital Growth Corp., account no. 3BFZH8
2.	February 28, 2007- December 31, 2007	Re: C.O. Capital Growth Corp., account no. 3BFYL5
3.	February 8, 2008- April 30, 2008	Re: C.O. Capital Growth Corp., account no. 3BF544
4.	January 18, 2006 – June 30, 2008	Re: Mander Group Inc., account no. 3BFAJ2
5.	July 8, 2003 – December 31, 2007	Re: Robert J. Mander, account no. 3BECM9

Tab	Date	Document																																												
C.	July 17, 2008	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Questrade Inc. requesting documents with respect to the cash transactions for the accounts listed below:																																												
		<table><tr><th>Date</th><th>Account No.</th><th>Amount</th><th>Deposit/Withdrawal</th></tr><tr><td>July 27, 2007</td><td>3BF544</td><td>125,000.00</td><td>Deposit</td></tr><tr><td>Feb. 25, 2008</td><td>3BF544</td><td>411,865.15</td><td>Withdrawal</td></tr><tr><td>Feb. 25, 2008</td><td>3BF544</td><td>148,001.21</td><td>Deposit</td></tr><tr><td>Feb. 26, 2008</td><td>3BF544</td><td>411,865.15</td><td>Deposit</td></tr><tr><td>March 13, 2008</td><td>3BF544</td><td>543,350.87</td><td>Deposit</td></tr><tr><td>March 14, 2008</td><td>3BF544</td><td>411,733.90</td><td>Withdrawal</td></tr><tr><td>July 27, 2007</td><td>3BFZH8</td><td>125,000.00</td><td>Deposit</td></tr><tr><td>March 5, 2008</td><td>3BFZH8</td><td>146,083.79</td><td>Deposit</td></tr><tr><td>March 5, 2008</td><td>3BFZH8</td><td>246,153.47</td><td>Deposit</td></tr><tr><td>March 11, 2008</td><td>3BFZH8</td><td>310,175.90</td><td>Withdrawal</td></tr></table>	Date	Account No.	Amount	Deposit/Withdrawal	July 27, 2007	3BF544	125,000.00	Deposit	Feb. 25, 2008	3BF544	411,865.15	Withdrawal	Feb. 25, 2008	3BF544	148,001.21	Deposit	Feb. 26, 2008	3BF544	411,865.15	Deposit	March 13, 2008	3BF544	543,350.87	Deposit	March 14, 2008	3BF544	411,733.90	Withdrawal	July 27, 2007	3BFZH8	125,000.00	Deposit	March 5, 2008	3BFZH8	146,083.79	Deposit	March 5, 2008	3BFZH8	246,153.47	Deposit	March 11, 2008	3BFZH8	310,175.90	Withdrawal
		Date	Account No.	Amount	Deposit/Withdrawal																																									
		July 27, 2007	3BF544	125,000.00	Deposit																																									
		Feb. 25, 2008	3BF544	411,865.15	Withdrawal																																									
		Feb. 25, 2008	3BF544	148,001.21	Deposit																																									
		Feb. 26, 2008	3BF544	411,865.15	Deposit																																									
		March 13, 2008	3BF544	543,350.87	Deposit																																									
		March 14, 2008	3BF544	411,733.90	Withdrawal																																									
		July 27, 2007	3BFZH8	125,000.00	Deposit																																									
		March 5, 2008	3BFZH8	146,083.79	Deposit																																									
		March 5, 2008	3BFZH8	246,153.47	Deposit																																									
March 11, 2008	3BFZH8	310,175.90	Withdrawal																																											
D.	February, 2008	Documents received in response to Direction dated July 17, 2008																																												

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**TRADEFREEDOM SECURITIES INC., GMP PRIVATE CLIENT LP
& HOME TRUST COMPANY**

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Tab	Date	Document
Tradefreedom Securities Inc.		
A.	June 20, 2008	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to Tradefreedom Securities Inc., requesting documents with respect to Peter G. Sbaraglia, Robert J. Mander, C.O. Capital Growth Corp., The Mander Group, Mand Assets, Pero Assets and Gervais Sales and Marketing Inc. (collectively the "Mander Group") including any accounts where any of the Mander Group have an interest or trading authority
B.	July 4, 2008	Letter from Pat Del Mastro to Ms. Cousineau Re: Your Direction to Produce Documents – Mander Group, enclosing account opening documentation for C.O. Capital and Robert Mander and Monthly statements for C.O. Capital commencing April 07 to present and monthly statements for Robert Mander from May 3, to July 3
GMP Private Client L.P.		
C.	June 20, 2008	Direction to Produce Documents pursuant to S19(3) of the <i>Securities Act</i> , issued to GMP Private Client L.P., requesting documents with respect to Peter G. Sbaraglia, Robert J. Mander, C.O. Capital Growth Corp., The Mander Group, Mand Assets, Pero Assets and Gervais Sales and Marketing Inc. (collectively the "Mander Group") including any accounts where any of the Mander Group have an interest or trading authority

Tab	Date	Document
D.	July 2, 2008	Letter from Leo Ciccone to Mary Cousineau Re: Direction pursuant to Section 19(3) of the <i>Securities Act</i> , enclosing a copy of account opening documents for C.O. Capital Growth Corp.; and a copy of monthly account statements from February 2008 to March 2008
Home Trust Company		
E.	February 25, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Chris Ahlvik, Home Trust Company Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting documents with respect to E.M.B. Asset Management ("EMB"), Robert Mander ("Mander") or any other entities of which Mander is a beneficial owner, directly or indirectly
F.	March 4, 2010	Letter from Chris Ahlvik to Mehran Shahviri Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 with enclosures: Re: 223 Church Street & 225 Church Street, Oakville, ON 1. Mortgage Application 2. Disclosure to Borrower 3. Site Inspection 4. Appraisal 5. Requisition of Funds 6. Acknowledgement and Direction re Funds 7. Home Trust Commitment Lend 8. Faxed Home Trust Commitment Lend 9. Authorization to Wire Funds 10. Search of Title

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**RESEARCH IN MOTION LIMITED, ROGERS COMMUNICATIONS INC.,
TELUS COMMUNICATIONS COMPANY & BCE INC.**

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Tab	Date	Document
Research In Motion Limited		
A.	February 25, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Jackie M. Miller, Research in Motion Limited Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated July 15, 2008 requesting documents for the time period January 1, 2008 to February 25, 2010, inclusive relating to devices associated with the following telephone numbers: 905-339-2775 and 905-334-1933
B.	April 12, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Jackie M. Miller, Research in Motion Limited Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated February 25, 2010 requesting documents for the time period January 1, 2009 to March 31, 2010 inclusive relating to devices associated with the following telephone numbers: 905-808-1799, 416-434-4341, 905-399-2775 and 905-334-1933
C.	March 22, 2010	Letter from Jessica Youngs to Mehran Shahviri Re: CACR-04-100304-01 enclosing the results of a search for information in accordance with Summons dated February 25, 2010; CD enclosed

Tab	Date	Document
Rogers Communications Inc.		
D.	April 12, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Gordon Kent, Rogers Communications Inc. Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated February 25, 2010 requesting documents for the time period January 1, 2009 to March 31, 2010 relating to telephone numbers: 416-434-4341, 905-399-2775 and 905-334-1933
E.	May 4, 2010	Email from Gordon Kent to Mehran Shahviri enclosing response to Summons dated April 12, 2010; information provided via email attachment and transferred to CD
Telus Communications Company		
F.	April 13, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Rebecca O'Grady, Telus Communications Company Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated February 25, 2010 requesting documents for the time period January 1, 2009 to present relating to telephone number 905-808-1799 and for Peter Sbaraglia, C.O. Capital Growth Corp., E.M.B. Asset Group, Robert Mander and Stonebury Inc.
G.	Various	Documents received in response to Summons dated April 13, 2010 provided on a CD
H	May 10, 2010	Email from Rebecca O'Grady to Mehran Shahviri Re: Subscriber Information Request
BCE Inc.		
I	April 13, 2009	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Denise Murley, BCE Inc. Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated February 25, 2010 requesting documents for the time period January 1, 2009 to present relating to telephone numbers 905-844-7151 and 905-339-0650;
	May 7, 2009	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to Denise Murley, BCE Inc. Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated April 26, 2010, requesting documents for the time period January 1, 2009 to March 31, 2010 relating to the following telephone numbers: 905-337-1176, 905-845-1346, 905-659-7752, 905-337-1507, 905-845-9950, 905-849-9468, 905-844-7191, 905-315-7743
J.	July 19, 2010	Letter from Bell Corporate Security to Mehran Shahviri Re: Summons for Production of Records, enclosing the records for the time frame January 1, 2009 to March 31, 2010, CD enclosed

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CORPORATE DOCUMENTS

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Tab	Date	Document
1.	December 29, 1994	Corporation Profile Report: 1111454 Ontario Inc.
2.	September 10, 1996	Corporation Profile Report: 1198677 Ontario Limited
3.	December 30, 1998	Corporation Profile Report: 1334044 Ontario Inc.
4.	May 30, 2007	Corporation Profile Report: 1736298 Ontario Inc.
5.	November 21, 1997	Corporation Profile Report: 91 Days Hygiene Services Inc. (Report produced July 9, 2008)
6.	November 21, 1997	Corporation Profile Report: 91 Days Hygiene Services Inc. (Report produced September 1, 2010)
7.	November 21, 1997	Corporation Profile Report: 91 Days Hygiene Services Inc.
8.	May 20, 1998	Corporation Profile Report: Algario Communications Inc.
9.	November 25, 1999	Corporation Profile Report: Aphex Imaging Inc.
10.	December 15, 2000	Corporation Profile Report: Behaviorworx Inc.
11.	December 4, 2006	Corporation Profile Report: Black Ink Capital Growth Ltd.
12.	May 17, 2006	Corporation Profile Report: Carta Solutions Inc.
13.	April 23, 2009	Business Names Report: Claimatrix
14.	January 5, 2006	Corporation Profile Report: C.O. Capital Growth Corp. (Report produced June 18, 2008)
15.	January 5, 2006	Corporation Profile Report: C.O. Capital Growth Corp. (Report produced May 20, 2009)

Tab	Date	Document
16.	January 5, 2006	Corporation Profile Report: C.O. Capital Growth Corp. (Report produced September 1, 2010)
17.	February 9, 2005	Corporation Profile Report: Complex Interior Design & Renovations Ltd.
18.	September 14, 2006	Corporation Profile Report: Dunn Street Gallery Inc.
19.	February 13, 2008	Corporation Profile Report: E.M.B. Asset Group Inc.
20.	November 6, 2002	Corporation Profile Report: Gervais Sales and Marketing Inc.
21.	April 6, 2001	Corporation Profile Report: Ghostfill Technologies Inc.
22.	September 19, 2008	Corporation Profile Report: Havelock Private Equity Inc.
23.	May 16, 2007	Corporation Profile Report: J.S. Bradley Inc.
24.	April 18, 2007	Corporation Profile Report: Mand Assets Inc.
25.	July 28, 2005	Corporation Profile Report: Mander Group Inc.
26.	June 18, 2008	Corporation Profile Report: PCL Packaging Corporation
27.	April 18, 2007	Corporation Profile Report: Pero Assets Inc.
28.	September 14, 2007	Corporation Profile Report: S.A. Capital Growth Corp.
29.	July 12, 2007	Corporation Profile Report: Stonebury Inc.
30.	August 7, 2007	Corporation Profile Report: Trafalgar Capital Growth Inc.

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Tab	Date	Document
A.	June 23, 2009	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Peter Sbaraglia Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting documents for the period January 1, 2007 to June 30, 2009
B.	July 9, 2009	Transcript of the Examination of Peter Sbaraglia with exhibits
C.	July 15, 2008	Exhibit No. 1: Order (Section 11(1)(a)) of the <i>Securities Act</i> in the Matter of Robert J. Mander, Peter G. Sbaraglia, C.O. Capital Growth Corp. and Pero Assets Inc.
D.	June 23, 2009	Exhibit no. 2: Letter from Mehran Shahviri to Peter Sbaraglia c/o Aylesworth LLP Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated July 15, 2008 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the Act issued to Peter Sbaraglia
E.	July 9, 2009	Exhibit No. 3: Binder provided by Peter Sbaraglia with the following documents:
1.	Undated	Introductory Note
2.	Undated	Curriculum Vitae: Dr. Peter Sbaraglia
3.	Undated	Curriculum Vitae: Robert Mander
4.	Undated	Total Liabilities to Lenders and Total Assets Available for Repayment

Tab	Date	Document
5.	Undated	Outstanding Loan Obligations of CO Capital Growth Corporation 2009-2012
6.	Undated	Loan Repayments to Date By CO Capital Growth Corporation
7.	December 15, 2006	Borden Ladner Gervais LLP Legal Memorandum, Loan Documentation and E-Mail Discussion of Structure
8.	Various	CO Capital Growth Corporation Assets, Bank Account Statements and Brokerage Account Statements
9.	Various	Assets of Dr. Peter and Dr. Mandy Sbaraglia Available To Fund Loan Repayments (in trust for CO Capital Growth Corporation)
10.	Various	Assets of Robert Mander Available To Fund Loan Repayments (in trust for CO Capital Growth Corporation)
11.	December 2006 – December 2008	Borden Ladner Gervais LLP Ongoing Correspondence
12.	February 26, 2007- December 31, 2008	Borden Ladner Gervais Invoices
F.	April 17, 2009	Exhibit No. 4: Loan Agreement between Firehall Enterprises Inc. and C.O. Capital Growth Corp.
G.	April 17, 2009	Exhibit No. 5: Promissory Note for value received by C.O. Capital Growth Corp from Firehall Enterprises Inc. in the sum of \$500,000

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Tab	Date	Document
A.	June 23, 2009	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Robert Mander Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008 requesting documents for the period January 1, 2007 to June 30, 2009
B.	July 15, 2009	Transcript of the Examination of Robert John Mander with exhibits
C.	June 23, 2009	Exhibit No. 1: Letter from Mehran Shahviri to Robert Mander c/o Aylesworth LLP Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated July 15, 2008 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the Act issued to Robert Mander
D.	July 15, 2008	Exhibit No. 2: Order (Section 11(1)(a)) of the <i>Securities Act</i> in the Matter of Robert J. Mander, Peter G. Sbaraglia, C.O. Capital Growth Corp. and Pero Assets Inc.
E.	2008-2009	Exhibit No. 3: Two bundles of documents: 2009 Monies Paid Back to Lenders; 2008 Monies Paid Back to Lenders
F.	2009-2012	Exhibit No. 4: Three bundles of documents: Monies Due 2009, 2010 and 2012
G.	July 15, 2009	Exhibit No. 5: Statutory Declaration signed by Robert Mander

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Tab	Date	Document
A.	February 23, 2010	Transcript of Voluntary Interview of Heather Shantora with Exhibits
B.	February 23, 2010	Exhibit No. 1: Brief of Documents entitled "Documents Produced to the OSC by Heather Shantora, February 23, 2010"
1.	October 31, 2007 – November 30, 2009	HSBC Bank Statements for Trafalgar Capital Growth Inc., account no. 342-009435-001
2.	Undated	Sample Loan Agreement with Trafalgar Capital Growth Inc.
3.	January 22, 2009	Loan Agreement between Trafalgar Capital Growth Inc. and Mander Group Inc.
4.	January 7, 2009	Schedule "A" Notice of Demand on Maturity between Trafalgar Capital Growth Inc. and Robert J. Mander/Mander Group Inc.
5.	March 25, 2009	Trafalgar Capital Growth Inc. and Robert J. Mander Stock Option Agreement
6.	October 23, 2008	Peter R. Welsh, Barrister & Solicitor, Account in the amount of \$892.50 Re: Trafalgar Capital Growth Inc.; Letter dated May 7, 2009 from Peter Welsh to Heather Shantora Re: Trafalgar Capital Growth Inc.; Account dated may 7, 2009
7.	Undated	Contingency Plan for Trafalgar Capital Growth Inc.
8.	March 2, 2009 – March 31, 2009	Interactive Brokers Activity Statement for Trafalgar Capital Growth Inc., account no. U432984
9.	February 16, 2010	Tonin Chartered Accounts LLP, Invoice no. 21332 in the amount of \$5,124.00 to Trafalgar Capital Growth
10.	Undated	Discussion Points

Tab	Date	Document
11.	January 2007 – January 2010	Emails between Heather Shantora and Robert Mander
12.	Undated	Tracking TCG Deposits
13.	February 2007- August 2007	Emails between Heather Shantora and Robert Mander
14.	Undated	Expense Chart
15.	January 10, 2010	Letter from T.M. Charuk to Robert Mander cc. Heather Shantora Re: Trafalgar Capital Growth Inc.
16.	Undated	Company List

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Tab	Date	Document
A.	February 24, 2010	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Davide Amato Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated July 15, 2008
B.	February 26, 2010	Transcript of the Examination of Davide Amato with exhibits
C.	February 24, 2010	Exhibit No. 1: Summons to a Witness Before a Person Appointed Under Section 11 of the Act issued to Davide Amato
D.	July 15, 2008	Exhibit No. 2: Order (Section 11(1)(a)) of the <i>Securities Act</i> in the Matter of Robert J. Mander, Peter G. Sbaraglia, C.O. Capital Growth Corp. and Pero Assets Inc.
E.	February 25, 2010	Exhibit No. 3: Order (Section 11(1)(a)) of the <i>Securities Act</i> in the Matter of Robert J. Mander, Peter G. Sbaraglia, C.O. Capital Growth Corp. and Pero Assets Inc.;
F.	February 25, 2010	Exhibit No. 4: Letter from Ian Smith to Mehran Shahviri Re: Davide Amato with enclosures
1.	Various	Overview of the Evidence of Dr. Davide Amato
2.	November 2008 – January 2010	Dr. Amato's relevant cell-phone records
3.	November 30, 2008	Lease between Cornwall Business Court II Inc. and SA Capital Growth Corporation
4.	November 2008 – November 2009	Documents relating to a Letter of Credit provided by the Bank of Nova Scotia and SA Capital Growth Corporation

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Tab	Date	Document
5.	November 2006 – February 2009	Dr. Amato's relevant bank statements
6.	April 2008 – February 2010	Emails to and from Peter Welsh
7.	April 2009 – January 2010	Emails to and from Peter Tonin and Andrew Renner
8.	December 31, 2008	Financial Statements of SA Capital Growth Corp.
9.	2007 & 2008	Dr. Amato's tax returns for 2007 and 2008
10.	Undated	File labelled "ILA-NAMES"
11.	December 2008 – September 2009	Communications respecting R. Mander's partnership in SA Capital Growth Corporation
12.	October 2008 – September 2009	Documents referencing EMB Asset Group Inc. bank accounts
13.	Undated	Addresses of Mander real estate assets
14-16.	May 2008 – February 2010	Emails to and from R. Mander; Emails to and from C. Auriemma; Emails to and from E. Manning (items 14-16 referenced in Letter dated February 25, 2010 from Ian Smith to Mehran Shahviri Re: Davide Amato)

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Tab	Date	Document
17.	February 10, 2010	Proposal provided by C. Auriemma on February 17, 2010
18.	December 2007- October 2008	Files containing loan agreements and related documents
G.	Various	Client List and Contract Summary
1.	December 2007 – February 2009	Amato, Davide & Nancy
2.	August 2007 - February 2009	3893260 Canada Inc.
3.	March 2008 – April 2009	Amato, Mary
4.	March 2009 – June 2009	Boccia, Anthony
5.	April 2008 – August 2009	Boccia, Gaetano and Bruna
6.	December 2007 – December 2008	Bucciarelli, In Trust
7.	December 2007 – June 2009	Bucciarelli, Maria
8.	June 2009	Cafaro, Patrizia
9.	April 2008 – May 2009	Cavatassi Dentistry
10.	April 2008 – November 2009	Cavatassi, Diana

Tab	Date	Document
11.	April 2008 – April 2009	Cazzolli, John
12.	June 2008 – May 2009	D.C. Capital
13.	May 2009 – August 2009	Delle Donne, Antonio
14.	May 2009 – August 2009	Delle Donne, Assunta
15.	December 2007 – May 2009	Delle Donne, Domenic and Marie
16.	May 31, 2009	Delle Donne, Maria F
17.	October 29, 2009	DiCerbo, Pasquale
18.	October 2009- December 2009	DiFelice, Vincenza
19.	November 2009	DiMatteo, Christina
20.	July 27, 2009	Disceptor Inc.

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Tab	Date	Document
21.	March 2009 – September 2009	Dissegna, David & Paula
22.	May 2009 – August 2009	Dissegna, I/T Sarah
23.	May 2009 – August 2009	Dissegna, I/T Emily
24.	March 2009 – June 2009	Di Guilio, Maurizio and Christina
25.	July 2007 – February 2008	Dr. D. Amato Dentistry
26.	March 2009 – May 2009	Durstun, James
27.	October 2007 – December 2009	Dr. Delle Donne Dentistry
28.	February 2008 – February 2009	Dubosarski, Igor
29.	December 2008 – January 2010	Dulisse Consulting
30.	June 2008 – June 2009	Lancia, Michele
31.	June 2009 – August 2009	Longo, Antonela
32.	August 27, 2009	Manning Southern, Elfie
33.	March 2009 – August 2009	Marinovich, John

Tab	Date	Document
34.	September 2008 – September 2009	McCarthy, Michael
35.	April 2008 – April 2009	McCarthy, Ronald
36.	July 2008 – June 2009	McCarthy, Sean
37.	March 2009 – August 2009	Nuccitelli, Brian
38.	March 2009- August 2009	Nuccitelli, Gino
39.	November 2009	Parisi, Peter and Rosa
40.	September 22, 2009	Pedone, Donato and Laura
41.	March 2009 – May 2009	Petschar, Aldona
42.	March 2009 – July 2009	Scandolari, Jason
43.	March 2009 – June 2009	Shields, Cartier
44.	March 2009 – June 2009	Shields, Cartier
45.	March 2009 – May 2009	Stein, Brian
46.	March 2009 – May 19, 2009	Tesolin, Sante
47.	June 2008 – June 2009	Totaro, Luigi
48.	October 2008 – December 2009	Volpe, Christine
49.	March 2009 – June 2009	Volpe, Nick
50.	March 2009 – July 2009	Volpe, Steve

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Tab	Date	Document
AYLESWORTH LLP		
A.	August 7, 2009	Letter from Julia Dublin to Mehran Shahviri Re: CO Capital Growth Corporation, Peter Sbaraglia and Robert Mander with enclosing Loan Agreement between EMB Asset Group Inc. and CO Capital Growth Corporation and various undertakings of CO Capital Growth Corporation, Mandy Sbaraglia and Peter Sbaraglia regarding loans made to CO Capital Growth Corporation
B.	October 19, 2009	Letter from Julia Dublin to Mehran Shahviri Re: CO Capital Growth Corporation ("CO Capital"), Peter Sbaraglia and Robert Mander enclosing documents relating to loan repayments and asset valuation; written consents obtained from two of three lenders whose notes were due in September; two signed final statements of account which acknowledge receipt of bank drafts from CO Capital in the lender's name for the full amount of the promissory notes and confirmations from the two lenders whose notes come due in October that they expect to be repaid by October 31 and agents opinion regarding the value of Horseshoe Valley Road property held by EMB Asset Group Inc.

Tab	Date	Document
C.	November 13, 2009	Letter from Julia Dublin to Mehran Shahviri Re: CO Capital Growth Corporation ("CO Capital"), Peter Sbaraglia and Robert Mander enclosing documents relating to loan repayments and asset valuation; 124A bank draft copy and signed final statement of account, 125D bank draft copy and signed final statement of account, 136C bank draft copy and signed final statement of account, 135D bank draft copy and signed final statement of account, 133A bank draft copy and signed final statement of account, 131B bank draft copy and signed final statement of account and a real estate appraisal for the Barrie land, dated November 11, 2009
D.	November 27, 2009	Letter from Julia Dublin to Mehran Shahviri Re: CO Capital Growth Corporation ("CO Capital"), Peter Sbaraglia and Robert Mander enclosing copy of the Final Statement of Account for Loan 131-B
E.	February 10, 2010	Letter from Julia Dublin to Mehran Shahviri Re: CO Capital Growth Corporation ("CO Capital"), Peter Sbaraglia and Robert Mander enclosing Final Statement of Account for Loan 140A
OSC		
F	June 2008 – October 2010	Investigation Notes

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AYLESWORTH LLP		
1.	July 10, 2009	Land registry documents re: 239 Church Street, Oakville property
2.	July 10, 2009	Land registry documents re: Caledon property
3.	July 10, 2009	Land registry documents re: 1650 Highpoint Sideroad, Caledon property
4.	July 10, 2009	Land registry documents re: 223 Church Street, Oakville property
5.	July 10, 2009	Land registry documents re: 225 Church Street, Oakville property
6.	July 10, 2009	Land registry documents re: 17 Stonebury Place, Freelton property
7.	July 10, 2009	Land registry documents re: 63 Second Street, Oakville property
8.	July 10, 2009	Land registry documents re: 381 Ellis Park Road, #608, Toronto property
OSC		
9.	July 9, 2008 to February 12, 2010	Land registry documents and Sales History Report re: 239 Church Street, Oakville property
10.	July 14, 2009 to February 12, 2010	Sales History Reports and Land registry documents re: 223 Church Street, Oakville property
11.	July 14, 2009 to February 12, 2010	Sales History Reports and Land registry documents re: 225 Church Street, Oakville property
12.	July 14, 2009 to February 12, 2010	Sales History Reports and Land registry documents re: 17 Stonebury Place, Freelton property

Tab	Date	Document
13.	July 14, 2009 to February 12, 2010	Sales History Reports and Land registry documents re: 1650 Highpoint Sideroad, Caledon property
14.	February 12, 2010	Sales History Report and Land registry documents re: 63 Second Street, Oakville property

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Tab	Date	Document
A. BMO Bank of Montreal		
1.	June 1, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for all transactions in account 1015-608 (transit 3871) in the name of Mander Group Inc.
2.	June 29, 2011	Documents received from BMO Bank of Montreal in response to Summons dated June 1, 2011
3.	June 15, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for bank draft number 932014
4.	June 21, 2011	Documents received from BMO Bank of Montreal in response to Summons dated June 15, 2011

Tab	Date	Document
5.	June 20, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for bank draft number 902044
6.	June 27, 2011	Documents received from BMO Bank of Montreal in response to Summons dated June 15, 2011
7.	July 7, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for transactions noted in Schedule A as attached for account 3028-373 (transit 3871) in the name of Mr. Robert J. Mander including, but not limited to, cheques that were deposited in the account and cancelled cheques drawn on the account
8.	August 16, 2011	Documents received from BMO Bank of Montreal in response to Summons dated July 7, 2011;
9.	July 25, 2011	Letter from Stephanie Collins to Eddie Domingues Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Eddie Domingues, BMO Bank of Montreal Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation all supporting documentation for bank draft numbers 955002 and 769636 and statements for account 1015-608 (transit 3871) in the name of Mander Group Inc. for the period January 1, 2008 to March 31, 2010
10.	August 15, 2011	Banking Records Affidavit of Jamini Urethireswaran; Documents received from BMO Bank of Montreal in response to Summons dated July 25, 2011

Tab	Date	Document
B. Bank of Nova Scotia		
1.	June 15, 2011	Letter from Stephanie Collins to Rohan Gonsalves Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation pertaining to the purchase of bank draft numbers 080455, 080633, 080702, 080797, 953509, 953775, 953742, 953788, 735511, 735691, 735767, 735789, 954315, 954273, 954576, 954510, 878247, 878239, 736063, 878657, 736205, 736308, 878894, 878896
2.	June 21, 2011	Letter from Euna Seong to Stephanie Collins Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated May 11, 2011 enclosing documents in response to Summons dated June 15, 2011
3.	June 20, 2011	Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation pertaining to the purchase of bank draft 878895
4.	June 24, 2011	Letter from Syed Rizvi to Stephanie Collins Re: Summons for Documents & Information of David Amato enclosing documents in response to Summons dated June 20, 2011
5.	July 25, 2011	Letter from Stephanie Collins to Rohan Gonsalves Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Rohan Gonsalves, Bank of Nova Scotia Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation pertaining to the purchase of bank draft numbers 431952, 616083, 925734, 488149, 990142 and 354658
6.	August 8, 2011	Letter from Syed Rizvi to Stephanie Collins Re: Summons for Documents & Information of Elena Nagy and Others enclosing documents in response to Summons dated July 25, 2011
C. HSBC		
1.	May 26, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting documents for account 010174-001 (transit 10342) currently in the name of Stonebury Inc.

Tab	Date	Document
2.	June 21, 2011	Letter from Mimi Fok to Stephanie Collins Re: Requirement to Provide Information and Documents, Stonebury Inc. enclosing further documents in response to Summons dated May 26, 2011
3.	June 20, 2011	Letter from Stephen Yip to Stephanie Collins Re: Order issued under Section 11(1)(a) of the <i>Securities Act</i> , dated May 11, 2011 enclosing documents in response to Summons dated June 7, 2011
4.	June 20, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011
5.	June 20, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the transactions in account 342-003747-150 in the name of Robert Mander
6.	June 23, 2011	Letter from Mimi Fok to Stephanie Collins Re: Summons, Robert Mander enclosing documents in response to Summons dated June 20, 2011
7.	June 29, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the transactions in account 342-008412-150 in the name of Peter Sbaraglia and Mandy Sbaraglia
8.	July 6, 2011	Letter from Mimi Fok to Stephanie Collins Re: Summons, Peter Sbaraglia and Mandy Sbaraglia enclosing documents in response to Summons dated June 29, 2011
9.	July 25, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for all transactions noted in Schedule A for account 005138-150 (transit 342) in the name of Robert Mander in Trust

Tab	Date	Document
10.	August 2, 2011	Letter from Mimi Fok to Stephanie Collins Re: Summons, Robert Mander In Trust 342-005138-150 enclosing documents in response to Summons dated July 25, 2011
11.	July 25, 2011	Letter from Stephanie Collins to HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the HSBC Bank Canada c/o Chuck Perry Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011
12.	August 5, 2011	Letter from Mimi Fok to Stephanie Collins Re: Summons, dated July 25, 2011, File No. 124.2010.J enclosing documents in response to Summons dated July 25, 2011

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Tab	Date	Document
D. TD Bank		
1.	May 20, 2011	Letter from Stephanie Collins to Daniel Del Duca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Daniel Del Duca, Production Order Specialist, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft numbers 49758309, 49757162, 49757103, 49757037 and 46578320
2.	June 9, 2011	Documents received from TD Bank in response to Summons dated May 20, 2011
3.	June 7, 2011	Letter from Stephanie Collins to Daniel Del Duca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Daniel Del Duca, Production Order Specialist, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft numbers 46372081 and 46819742
4.	June 14, 2011	Documents received from TD Bank in response to Summons dated June 7, 2011

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5.	June 20, 2011	Letter from Stephanie Collins to Daniel Del Duca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Daniel Del Duca, Production Order Specialist, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting account opening documentation for account 5236301 (transit 20782) and statements for account 5236301 (transit 20782) for the period January 1, 2001 to March 31, 2010
6.	June 22, 2011	Documents received from TD Bank in response to Summons dated June 20, 2011 Re: account 5236301
7.	June 20, 2011	Letter from Stephanie Collins to Daniel Del Duca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Daniel Del Duca, Production Order Specialist, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft numbers 47367944, 45800574, 45800290, 45800289, 43711013 and 41088189
8.	July 5, 2011	Documents received from TD Bank in response to Summons dated June 20, 2011 Re: bank draft numbers 47367944, 45800574, 45800290, 45800289, 43711013 and 41088189
9.	July 25, 2011	Letter from Stephanie Collins to Daniel Del Duca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Daniel Del Duca, Production Order Specialist, TD Bank Financial Group Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft numbers 43844813, 42819689, 47202562, 44071473, 43550826, 27983190 and 45799110
10.	July 29, 2011	Documents received from TD Bank in response to Summons dated July 25, 2011
E. W.D. Latimer Co. Limited		
1.	May 26, 2011	Letter from Stephanie Collins to Sesto Deluca Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the Sesto Deluca, Chief Compliance Officer, W.D. Latimer Co. Limited Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for cheque 054739 payable to C.O. Capital Growth, May 29, 2009
2.	May 27, 2011	Email from Sesto DeLuca to Stephanie Collins enclosing response to Summons dated May 26, 2011

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F. Royal Bank of Canada		
1.	June 1, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the transactions in account 102-300-1 (transit 03502) and account statements for account 102-300-1 (transit 3502) for the period September 1, 2008 to March 31, 2010
2.	June 7, 2011	Memo from Maxine Siwinski to Stephanie Collins enclosing documents in response to Summons dated June 1, 2011; Statements for Royal Bank of Canada Account no. 3502-1023001 in the name of Mand Assets Inc. for the period September 2, 2008 (no activity for September 1, 2008) to April 1, 2010; Supporting documents relating to transactions on account no. 03502-1023001 as listed on Schedule "A" of Summons dated June 1, 2011

Tab	Date	Document
3.	June 7, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft number 94689751
4.	June 9, 2011	Memo from Maxine Siwinski to Stephanie Collins Re: Summons dated June 7, 2011 with enclosures: Copy of bank draft no. 94689751, Service Platform Printout identifying client #803104009 and Account #192-5033147, Account Owners printout identifying Account #00192-5033147 is held in the names of Paul Golini and Dr. Sharan Golini, Client Profile in the name of Paul Golini
5.	June 13, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011
6.	June 15, 2011	Memo from Maxine Siwinski to Stephanie Collins enclosing documents in response to Summons dated June 13, 2011
7.	June 20, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the purchase of bank draft number 91423625, 94297117 and 94581783
8.	June 21, 2011	Memo from Maxine Siwinski to Stephanie Collins enclosing documents in response to Summons dated June 20, 2011

Tab	Date	Document
9.	June 28, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011 requesting all supporting documentation for the transactions in account 5050869 (transit 08062) in the name of Mandy and Peter Sbaraglia; Statements for Royal Bank of Canada Visa card 4512 1110 1580 2075 in the name of Mandy Sbaraglia for the period August 5, 2008 to March 31, 2010; Statements for Royal Bank of Canada Visa card 4512 1110 1598 7538 in the name of Peter Sbaraglia for the period of August 5, 2008 to March 31, 2010; Statements for Royal Bank of Canada Visa card 4514 0936 0060 4652 in the name of Mandy Sbaraglia for the period September 6, 2008 to March 31, 2010; and Statements for account 1074012 (transit 00192) in the name of Dr. Sbaraglia Dentistry Professional Corporation for the period August 8, 2008 to March 31, 2010
10.	June 30, 2011	Memo from Maxine Siwinski to Stephanie Collins enclosing documents in response to Summons dated June 28, 2011
11.	July 25, 2011	Letter from Stephanie Collins to RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> dated May 11, 2011 enclosing Summons to a Witness Before a Person Appointed Under Section 11 of the <i>Securities Act</i> , issued to the RBC Financial c/o Maxine Siwinski Re: Order issued under Section 11(1) of the <i>Securities Act</i> , dated May 11, 2011
12.	July 27, 2011	Memo from Maxine Siwinski to Stephanie Collins enclosing documents in response to Summons dated July 25, 2011

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Tab	Date	Document
Obradovich, Thomas		
1.	October 27, 2010	Transcript of the Cross-Examination of Thomas Obradovich
2.	October 28, 2010	Transcript of the continued Cross-Examination of Thomas Obradovich
Sajan, Arif		
3.	November 15, 2010	Transcript of the Examination of Arif Sajan
Sbaraglia, Peter		
4.	October 28, 2010	Transcript of the Cross-Examination of Peter Sbaraglia on his Affidavits sworn August 10, 2010, September 15, 2010 and October 18, 2010
5.	October 29, 2010	Transcript of the continued Cross-Examination of Peter Sbaraglia on his Affidavits sworn August 10, 2010, September 15, 2010 and October 18, 2010
6.	November 3, 2010	Transcript of the continued Cross-Examination of Peter Sbaraglia on his Affidavits sworn August 10, 2010, September 15, 2010 and October 18, 2010
7.	November 15, 2010	Transcript of the continued Cross-Examination of Peter Sbaraglia on his Affidavits sworn August 10, 2010, September 15, 2010 and October 18, 2010
Shahviri, Mehran		
8.	October 27, 2010	Transcript of the Cross-Examination of Mehran Shahviri on his Affidavit sworn September 8, 2010

Tab	Date	Document
9.	October 28, 2010	Transcript of the continued Cross-Examination of Mehran Shahviri on his Affidavit sworn September 8, 2010
Reid, Kathy		
10.	October 27, 2010	Transcript of the Cross-Examination of Kathy Reid

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of Robert Mander, Deceased and E.M.B. Asset Group Inc.
Court File No. CV-10-8619-00CL

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Tab	Date	Document
1.	March 15, 2010	Applicant's Application Record Returnable March 17, 2010 Re: SA Capital Growth Corp. and Robert Mander and E.M.B. Asset Group Inc.
2.	March 29, 2010	Motion Record of the Receiver RSM Richter Inc. returnable March 31, 2010 Re: SA Capital Growth Corp. and Robert Mander and E.M.B. Asset Group Inc.
3.	May 28, 2010	Notice of Motion of the Receiver RSM Richter Inc. returnable June 3, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
4.	July 2, 2010	Motion Record of the Receiver, RSM Richter Inc. returnable July 14, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
5.	July 12, 2010	Affidavit of Peter Sbaraglia sworn July 12, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
6.	July 21, 2010	Motion Record of the Receiver, RSM Richter Inc. returnable July 23, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.

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Tab	Date	Document
7.	July 30, 2010	Motion Record of the Receiver, RSM Richter Inc. returnable August 11, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
8.	August 10, 2010	Affidavit of Peter Sbaraglia sworn August 10, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
9.	September 22, 2010	Motion Record returnable October 1, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
10.	October 15, 2010	Notice of Motion returnable October 21, 2010 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
11.	March 15, 2011	Motion Record of the Receiver, RSM Richter Inc. returnable March 21, 2011 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.
12.	August 18, 2011	Motion Record of the Receiver, RSM Richter Inc. returnable August 25, 2011 Re: SA Capital Growth Corp. and Christine Brooks as Executor of the Estate of Robert Mander, Deceased and E.M.B. Asset Group Inc.

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A.	September 8, 2010	Application Record of the Ontario Securities Commission Volume I of IV
B.	September 8, 2010	Application Record of the Ontario Securities Commission Volume II of IV

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C.	September 8, 2010	Application Record of the Ontario Securities Commission Volume III of IV
D.	September 8, 2010	Application Record of the Ontario Securities Commission Volume IV of IV

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A.	September 15, 2010	Collected Affidavits of Catherine Garbig
B.	August 23, 2011	Responding Record of Pero Assets Inc. (Motions returnable August 25, 2011)
C.	September 1, 2011	Factum of Certain Creditors of C.O. Capital Growth Inc. (in respect of the Receiver's motion returnable September 7, 2011)
D.	September 2, 2011	Affidavit of Peter Sbaraglia sworn September 2, 2011

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**REPORTS OF THE RECEIVER,
RSM RICHTER INC.**

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Tab	Date	Document
A.	June 8, 2010	Third Report to Court of RSM Richter Inc. as Receiver of the Estate of Robert Mander, E.M.B. Asset Group Inc. and the Related Entities
B.	September 9, 2010	Seventh Report to Court of RSM Richter Inc. as Receiver of the Estate of Robert Mander, E.M.B. Asset Group Inc. and the Related Entities
C.	November 12, 2010	Ninth Report to Court of RSM Richter Inc. as Receiver of the Estate of Robert Mander, E.M.B. Asset Group Inc. and the Related Entities

This is **Exhibit "O"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

IN THE MATTER OF THE SECURITIES ACT ,
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IN THE MATTER OF PETER SBARAGLIA

DISCLOSURE MOTION

Hearing : January 24th, 2012

Panel: James E.A. Turner
Christopher Portner

Counsel: Jennifer Lynch - for the Ontario Securities Commission

SUBMISSIONS

This motion requests the following three things from Staff with respect to disclosure.

1. To separate from the documents, those items that were obtained during the Mander investigation from those that are relevant to the OSC allegations against Mr. Sbaraglia only.
2. That Staff make available to Sbaraglia other potentially exculpatory documents in their control . Specifically, the investigation notes from the outset of the Receivership investigation, which ought to include both Receiver and OSC interviews with all other business associates of Mander , not just the two provided.

And,

3. To provide as soon as practicable, the documents and witness statements Staff intends to rely upon at the hearing on merits AND to recognize that the minimum 20 days is not enough time in this case.

Thus I respectfully submit the following:

I. Separation of Mander Relevant Material from Sbaraglia Relevant Material

Background:

As early as 2009 the OSC was investigating the business practice of Mander.

Among other things, this is evidenced by the following:

In the spring of 2009, Mr. Sbaraglia was summoned by the Ontario Securities Commission, “IN THE MATTER OF MANDER GROUP “ requesting information and a compelled interview.

Within the large volume of disclosure provided by the OSC to Mr. Sbaraglia, are significant amounts of material, which appear to be relevant to the OSC’s investigation of Robert Mander, but not of Mr. Sbaraglia, such as, but not limited to:

1. Loan agreements between Mander/EMB and Davide Amato/SA Capital Growth,
2. Documents of a land transaction between Mander/EMB and Thomas Obradovich,
3. SA Capital Lease Agreement with Cornwall Business District,
4. Phone records between Mander/EMB and Stonebury Inc. (another of Mander’s companies,
5. A list of SA Capital creditors and their loan agreements,
6. Emails between Thomas Obradovich and Maria Zurini , and
7. Emails between Davide Amato and his lawyers and accountants

Mr. Sbaraglia submits that Staff has simply made bulk disclosures of the documents it obtained from the Mander Group Investigation by the OSC and documents obtained from RSM Richter’s investigation of Robert Mander, without sifting the

material for relevance to Mr. Sbaraglia in particular.

The volume of the disclosure would make it very difficult for Mr. Sbaraglia to review each document in time for the hearing on the merits in June 2012, but adjourning that hearing would be severely prejudicial to him.

Reviewing counsel analysis of the Disclosure Motion, in the Matter of Biovail Corporation et. al.2008, the panel writes, “ we understand the investigation included issues much broader in scope than the specific allegations that were ultimately made against the respondents in this proceeding. We also note that, the Respondents have identified at least some documents in the Database that are clearly not relevant to this proceeding”.

In addition, the Stinchcombe standard requires that regarding relevant information, “the initial obligation to separate “the wheat from the chaff” rests with the Crown”.

II. That Staff Make Available to Sbaraglia any other Potentially Exculpatory Documents in their Control.

Background:

The position of the OSC from the outset is that they, in the absence of evidence, relied on information from the investigation by the Receiver, RSM Richter. The following is from Mr. Shaviri’s cross examination on October 27, 2010,

QUESTION NUMBER 154:

BY MR. DAVIS:

25 154 Q. Okay. Do you have any evidence at all that
1 my clients were in on the Ponzi scheme?

2 A. No.

ALSO ON THE SAME DATE, QUESTION #168

Q. First of all, you don't have the slightest
20 bit of evidence that the Sbaraglias knew that a Ponzi
21 scheme is ongoing at the relevant time. Correct?

22 A. Correct.

When asked for information or evidence with respect to some of the issues
regarding the appointment of the Receiver, Mr. Shaviri and his counsel both continued to
rely on the receiver's investigation, as evidenced by the following excerpts:

A. That's correct. And, again, as I said
4 earlier, I've relied on the **Receiver's** reports in that
5 regard.

And,

MS. FOY: He's indicated that he's relied on the
17 Receiver's reports and what's contained in the **Receiver's**
18 reports. He's given you whatever answer is relevant.
19 He's answered the question.

During the Receiver's investigation, information was collected from a

variety of sources that is potentially exculpatory to Mr. Sbaraglia. The Receiver would have in it's possession and thus within the OSC's control, interviews and documents from other sources that ought to have been included in the disclosure to Mr. Sbaraglia. For example:

1. Maria Zurini
2. Grant Walton
3. Colleen Auriemma
4. Tascha Fluke
5. Deryl Ward
6. Julia Dublin
7. Michael Miller
8. Peter Welsh
9. Peter Tonin
10. Terri Oldfield
11. JS Bradley
12. Thomas J Obradovich

Mr. Sbaraglia has never been supplied with any disclosure regarding information gathered from any of these individuals by either the Receiver, or the OSC and believes he is entitled to, based on the likely exculpatory nature of this evidence.

It is important to note that one of the allegations against Mr. Sbaraglia involves making misrepresentations during his OSC interview. Staff is aware that proceedings against his former counsel have been commenced to that end. It seems reasonable that given that his former counsel was interviewed by the receiver with Mr. Sbaraglia's permission, yet subsequently none of the interviews were used in their submissions, it would be completely reasonable to assume that those interviews may contain exculpatory evidence and therefore, should be included in disclosure.

The Stinchcombe standard requires the crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the crown, which discretion is reviewable by the court...[it further states]....Documents should not be withheld if there is reasonable possibility that doing so would impair the right of the accused to make full answer and defence.

Stinchcombe, paras. 20 and 29

Deloitte & Touche LLP v. Ontario (Securities Commission) [2003] 2 S.C.R. 713 (S.C.C.) para 26, aff'd [2002] O.J. No. 2350 (Ont. C.A.) (Deloitte CA) para 39-44

With respect to determining relevance, the following statement is adopted from the Court of Appeal decision in Deloitte:

“ Relevant material in the Stinchcombe, supra, sense includes material in the possession or control of Staff... Relevant material also includes material in Staff's possession which has a reasonable possibility of being relevant to the ability of the respondents to make full answer and defense to the Staff allegations. This latter category includes material that the respondents could use to rebut the case presented by Staff; material they could use to advance a defense; and material that may assist them in making tactical decisions”.

Deloitte CA, para. 44.

In the 2008 Disclosure Motion, in the Matter of the Biovail Corporation, counsel states,

“As a matter of law, Staff has an obligation to disclose to the Respondents all documents that are relevant to this proceeding, whether inculpatory or exculpatory, in accordance with principles akin to those articulated in Stinchcombe. There is no dispute between Staff and the Respondents with respect to that conclusion. The obligation to disclose in a matter of fundamental justice based on fairness to respondents to permit them to make full answer and defence to the allegations against them”.

III. To Provide as Soon as Practicable Statements and Documents Staff Intend to Rely Upon.

Staff's disclosure obligation is set out in Rule 3.3(2) of the OSC Rules of Practice, (1997)

O.S.C.B.1947 (“Rules of Practice”), which states:

In the case of a hearing under section 127 of the Securities Act....., staff of the Commission shall , as soon as is reasonably practicable after the service of the notice of hearing, and in any case at least 10 days before the commencement of the hearing, make available for inspection by every party all other documents and things which are in the possession or control of staff that are relevant to the hearing and provide copies, or permit the inspecting party to make copies , of the documents at the inspecting party’s expense.

Rules of Practice, rule 3.3 (2)

Mr. Sbaraglia stated that he was unable to continue working in any manner relating to his role in Mountainview Growth Fund, as a result of the affect of the Receivership, and the commencement of this proceeding on his reputation. It has also catastrophically affected his ability to find work as a Dental Anaesthesiologist This proceeding and its outcome have significant consequences for him personally and professionally. He submits that given the risk of harm to his reputation, section 8 of the Statutory Powers Procedure Act,R.S.O. 1990,c.S. 22, (“SPPA”) applies. That section states:

Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of allegations with respect thereto.

SPPA,s.8.

Rule 3.4 of the Rules of Practice imposes more onerous disclosure obligations where section 8 of the SPPA applies:

.....if the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party making the allegations shall , as soon as is reasonably practicable

after service of the notice of hearing, and in any case at least 10 days before the commencement of the hearing, provide particulars of the allegations and disclose to the party against whom the allegations are made all documents and things in the party's possession or control relevant to the allegations including [witness statements and experts' report]

Rules of Practice ,3.4.

Mr. Sbaraglia submits that Staff has failed to make meaningful disclosure of the relevant documents and material in accordance with the standard established for criminal proceeding sin R. v. Stinchcombe ,[1991] 3S.C.R.326 (S.C.C.) (“Stinchcombe”)

It is his further submission that given:

- (i) the length of time that has elapsed since delivery of notice of hearing materials,
- (ii) the fact that Staff is relying on expert witness testimony,
- (iii) the amount of potentially exculpatory evidence which is within Staff's control,

it is reasonable that Staff provide me with the documents to be relied upon, to further disclose potentially exculpatory items referenced above thus, Mr. Sbaraglia requests Staff to disclose all interviews relevant to the Receivership proceedings, as well as to provide him with expert witness statements now . To wait until the minimum 20 days before the hearing, in this case , would be both inappropriate and well beyond what is as, “soon as reasonably practicable “.

Respectfully submitted.

This is **Exhibit "P"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
PETER SBARAGLIA**

ENDORSEMENT

Hearing: January 24, 2012

Panel: Christopher Portner - Commissioner

Appearances: Peter Sbaraglia - Self-represented

Jennifer Lynch - for Staff of the Ontario Securities
Commission

ENDORSEMENT

[1] This is an Endorsement following a hearing held on January 24, 2012 to consider a motion brought by the respondent, Peter Sbaraglia (“Sbaraglia” or the “Respondent”). In his motion, Sbaraglia requests an order that:

- (a) Staff of the Ontario Securities Commission (“Staff”) separate the documents that are relevant to its investigation of Sbaraglia from the other documents included in Staff’s disclosure;
- (b) Staff provide disclosure of certain documents obtained by RSM Richter Inc. (the “Receiver”), the Court-appointed receiver of all assets, undertakings and properties of Sbaraglia, his wife and his two companies; and
- (c) The timelines for disclosure of documents Staff intends to provide or enter as evidence at the hearing and of witness lists and summaries set out in rules 4.3(1) and 4.5 of the *OSC Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the “Rules”) be abridged and Staff be required to disclose such information as soon as practicable, and in any case, sooner than the required number of days before the commencement of the hearing on the merits (20 days and 10 days, respectively).

[2] I am satisfied, with respect to the first request, that Staff has complied as diligently as appears to be possible with their disclosure obligations to Sbaraglia and I am satisfied with Staff’s explanation that they do not believe that they have burdened the Respondent with excessive disclosure in the sense of a full dump of irrelevant information that would otherwise burden the Respondent to separate “the wheat from chaff” (see *R. v. Stinchcombe*, [1991] 3 S.C.R. 326 at paras. 20 and 29 and *Re Biovail Corp.* (2008), 31 O.S.C.B. 7161 at para. 15). I do not believe that any relief is appropriate or justified in this particular circumstance.

[3] With respect to the second item, the Respondent has deep concerns about information that may be available in the Receiver’s files or possession that could be relevant to his ability to respond to the allegations made against him by the Commission. It also appears that the Respondent has been led to believe by third parties that they may have provided exculpatory information to the Receiver which, for one reason or another, has not yet surfaced. I can understand how deeply this would concern the Respondent if he feels that there is information that would assist him in addressing the allegations against him.

[4] Regrettably, however, I agree with Staff’s position that the Commission does not have the authority to order productions from the Receiver, who is an independent officer of the Court, as Staff has submitted (see Staff’s disclosure obligations pursuant to rule 4.3(2) of the Rules). I do this recognizing the Commission’s limitations of authority, which is not open-ended authority as an adjudicative tribunal. The Commission is not a court, but as counsel for Staff has submitted, the Respondent is not without remedies. The Respondent is not left devoid of any ability to address the very things that concern him the most on this motion.

[5] I am troubled by the third item only in one sense. The Commission has adopted the Rules to have uniform application, and Staff has responsibilities under the *Securities Act*, R.S.O. 1990 c. S.5, as amended and under the Rules to treat all respondents in a similar fashion and on a fair and open basis.

[6] That being said, the Commission is always very mindful of the burdens that are faced by unrepresented respondents, who do not necessarily have the skills, the experience or the resources on which to rely, in analyzing documents which have formed part of Staff's disclosure and the relevance of which to the case that will be made by Staff at the time of the merits hearing they have to anticipate.

[7] I am mindful of Staff's commitment set out in paragraph 49 of their submissions "... to work with the Respondent to provide its hearing briefs and witness statements in advance of the hearing on the merits to allow the Respondent sufficient time to prepare his case". I struggle between that soft commitment from Staff and the Respondent's need for predictability. I balance that against counsel for Staff's comment that any constraint imposed on Staff should, appropriately, be imposed on the Respondent, because each party has to meet the case made by the other party.

[8] I accept Staff's alternative submission to provide Sbaraglia with some modest relief. To provide a little more predictability, and recognizing that the hearing on the merits is approximately six months from this motion hearing, I order that the minimum time requirements under rules 4.3(1) and 4.5 of the Rules be extended by an additional 10 days. I do not view this as unduly burdensome on Staff, which has offered that as an alternative submission to providing no relief to the Respondent. Each party shall therefore deliver copies of all documents that the party intends to produce or enter as evidence at the hearing as soon as is reasonably practicable, and in any case, at least 30 days before the commencement of the hearing on the merits. Each party shall serve every other party and file with the Secretary, a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 20 days before the commencement of the hearing, and, if material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to the other party a summary of the evidence that the witness is expected to give at the hearing, at least 20 days before the commencement of the hearing.

[9] In making this order, I have weighed the Respondent's need for predictability with his need to maintain flexibility with respect to preparation for the hearing on the merits.

Dated at Toronto this 7th day of March, 2012.

"Christopher Portner"

Christopher Portner

This is **Exhibit "Q"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Richard Niman

From: Kevin D. Toyne
Sent: Tuesday, April 10, 2012 3:05 PM
To: 'mgottlieb@counsel-toronto.com'
Cc: Richard Niman; Kevin D. Toyne
Subject: Peter Sbaraglia

Matt,

As discussed, we have been retained by Peter Sbaraglia to obtain documentation in the possession of your client, RSM Richter Inc. (the Receiver in the Mander receivership, *SA Capital Growth v. Brooks et al*, Court File No. 10-8619-00CL), for use in a proceeding before the Ontario Securities Commission. Our client's motion seeking these documents from the OSC was recently dismissed (a copy of the Commissioner's Endorsement is attached). In particular, we are seeking the following documentation:

1 – Transcripts, recordings and/or notes of interviews conducted of the following individuals:

- a) Maria Zurini;
- b) Grant Walton;
- c) Colleen Auriemma;
- d) Tascha Fluke;
- e) Deryl Ward;
- f) Julia Dublin;
- g) Michael Miller;
- h) Peter Welsh;
- i) Peter Tonin;
- j) Terri Oldfield;
- k) Heather Shantora;
- l) David Amato;
- m) Bradley Ivanchuk;
- n) Thomas J. Obradovich;
- o) Andy Ecclestone;
- p) Christine Brooks; and
- q) Any interviews conducted with CO Capital employees.

2 – Documents provided by these individuals to the receiver in connection with their interviews;

3 - The "deleted e-mails" found on CO Capital's computers as referred to on page 41, subsection 6.3 of the Receiver's fourth report dated July 2, 2010; and

4 – Documents produced by Tonin and Welsh pursuant to Court order.

I understand that the OSC intends to rely heavily on the Receiver's reports and testimony from the Receiver himself at the hearing scheduled to begin on June 4, 2012. As you may be aware, hearsay evidence is admissible before the OSC and our client wishes to obtain the above documentation in order to prepare his defence. Our client may wish access to other documentation but without an index of the materials in the Receiver's possession, we are not in a position to advise what other documents may also be required to present his defence to the allegations made against him by the OSC. Is an index available? If so, can we please have a copy? If not, we also request that one be prepared so that we can determine whether our client requires any other materials from the Receiver.

The week of April 16 is wide open for 9:30 appointments. At the moment, I am available Tuesday – Friday that week. Please let me know which dates you prefer and the extent to which our client's request can be resolved prior to a hearing.

This e-mail is being sent in my absence by Richard Niman. I attempted to send it on Good Friday but was unable to do so due to a server maintenance failure and related issues. I am unable to reply to e-mails while away, so please copy Richard on any reply.

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

This is **Exhibit "R"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Vy Nguyen

From: Kevin D. Toyne
Sent: Wednesday, April 18, 2012 5:28 PM
To: 'wpepall@lernalers.ca'
Cc: 'llung@lernalers.ca'; Richard Niman
Subject: Peter Welsh (Sbaraglia)

Bill,

Hope you are doing well. We have been retained by Peter Sbaraglia to bring a motion in the Mander receivership proceeding (Court File No. 10-8619-00CL) to obtain certain documents from the Receiver to be used in our client's defence against allegations made by the OSC. The OSC proceeding is currently scheduled to commence on June 4, 2012.

The motion was set down for hearing this morning by Justice Morawetz for May 9, 2012. The materials we seek to obtain from the Receiver include any transcripts, recordings and/or notes of interviews conducted by the Receiver of your client, documents provided to the Receiver by your client in connection with the interview(s) and copies of documents produced to the Receiver pursuant to the July 14, 2010 Order (see paras. 11 – 12).

Can you please let me know whether you are in a position to provide me with copies of some or all of these documents?

If you have a spare moment, I can give you a call and provide additional information.

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

Vy Nguyen

From: Kevin D. Toyne
Sent: Wednesday, April 18, 2012 5:30 PM
To: 'Balogh, Boyd'
Cc: Richard Niman
Subject: Peter Tonin (Peter Sbaraglia)

Mr. Balogh,

Hope you are doing well. We have been retained by Peter Sbaraglia to bring a motion in the Mander receivership proceeding (Court File No. 10-8619-00CL) to obtain certain documents from the Receiver to be used in our client's defence against allegations made by the OSC. The OSC proceeding is currently scheduled to commence on June 4, 2012.

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Can you please let me know whether you are in a position to provide me with copies of some or all of these documents?

If you have a spare moment, I can give you a call and provide additional information.

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

This is **Exhibit "S"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

Vy Nguyen

From: Kevin D. Toyne
Sent: Sunday, April 22, 2012 7:42 PM
To: 'Lucas E. Lung'
Cc: Richard Niman; 'William E. Pepall'
Subject: RE: Peter Welsh (Sbaraglia)

Lucas – thanks. We'll email you our motion materials tomorrow (towards the end of the day, I suspect). If you need anything else from us, just let me know.

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

From: Lucas E. Lung [<mailto:llung@lerner.ca>]
Sent: Sunday, April 22, 2012 7:12 PM
To: Kevin D. Toyne; William E. Pepall
Cc: Richard Niman
Subject: RE: Peter Welsh (Sbaraglia)

Kevin, we are getting instructions and expect to be in a position to respond this coming week.

Lucas

Lucas E. Lung | Lerner's LLP | Partner | phone 416.601.2673 | direct fax 416.601.4192 | llung@lerner.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

LERNER'S

From: Kevin D. Toyne [ktoyne@btzlaw.ca]
Sent: April 22, 2012 6:11 PM
To: William E. Pepall
Cc: Lucas E. Lung; Richard Niman
Subject: RE: Peter Welsh (Sbaraglia)

Bill,

Further to my email below and the voicemail I just left for you, can you please let me know whether you can provide me with the requested documents?

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP

151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

From: Kevin D. Toyne
Sent: Wednesday, April 18, 2012 5:28 PM
To: 'wpepall@lernalers.ca'
Cc: 'llung@lernalers.ca'; Richard Niman
Subject: Peter Welsh (Sbaraglia)

Bill,

Hope you are doing well. We have been retained by Peter Sbaraglia to bring a motion in the Mander receivership proceeding (Court File No. 10-8619-00CL) to obtain certain documents from the Receiver to be used in our client's defence against allegations made by the OSC. The OSC proceeding is currently scheduled to commence on June 4, 2012.

The motion was set down for hearing this morning by Justice Morawetz for May 9, 2012. The materials we seek to obtain from the Receiver include any transcripts, recordings and/or notes of interviews conducted by the Receiver of your client, documents provided to the Receiver by your client in connection with the interview(s) and copies of documents produced to the Receiver pursuant to the July 14, 2010 Order (see paras. 11 – 12).

Can you please let me know whether you are in a position to provide me with copies of some or all of these documents?

If you have a spare moment, I can give you a call and provide additional information.

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

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Please consider the environment before printing this email.

Vy Nguyen

From: Kevin D. Toyne
Sent: Monday, April 23, 2012 11:39 AM
To: 'Boyd.Balogh@gowlings.com'
Cc: Richard Niman; Vy Nguyen
Subject: RE: Peter Tonin (Peter Sbaraglia)

Boyd,

Thanks for taking a few minutes to chat – we will send you copies of our motion materials and wait to hear back from you.

Kevin D. Toyne
Brauti Thorning Zibarras LLP
 151 Yonge Street, Suite 1800
 Toronto, Ontario
 M5C 2W7

Tel: 416.306.2961
 Fax: 416.362.8410
 E-mail: ktoyne@btzlaw.ca
 Web: <http://www.btzlaw.ca>

From: Vy Nguyen
Sent: Monday, April 23, 2012 10:12 AM
To: Boyd.Balogh@gowlings.com
Cc: Richard Niman; Kevin D. Toyne
Subject: RE: Peter Tonin (Peter Sbaraglia)

Dear Mr. Balogh,

Please find attached a copy of the Order of Justice Morawetz, dated July 14, 2010.

Yours truly,

Vy Nguyen
 Law Clerk

Brauti Thorning Zibarras LLP
 151 Yonge Street, Suite 1800
 Toronto, Ontario, Canada M5C 2W7
 Direct: 416.306.2955
 Tel.: 416.362.4567 ext. 5545
 Fax: 416.362.8410
www.btzlaw.ca

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From: Balogh, Boyd [<mailto:Boyd.Balogh@gowlings.com>]
Sent: Monday, April 23, 2012 07:40 AM
To: Kevin D. Toyne
Cc: Richard Niman
Subject: RE: Peter Tonin (Peter Sbaraglia)

396

Kevin - I thought that I had replied to you - apologies. Can you please provide me with a copy of the order. It was not provided as an attachment in your original email.

Regards,

Boyd Balogh
Partner
416-369-7385
gowlings.com

From: Kevin D. Toyne [<mailto:ktoyne@btzlaw.ca>]
Sent: April 22, 2012 6:11 PM
To: Balogh, Boyd
Cc: Richard Niman
Subject: RE: Peter Tonin (Peter Sbaraglia)

Mr. Balogh,

Further to my email below and the voicemail I just left for you, can you please let me know whether you can provide me with the requested documents?

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

From: Kevin D. Toyne
Sent: Wednesday, April 18, 2012 5:30 PM
To: 'Balogh, Boyd'
Cc: Richard Niman
Subject: Peter Tonin (Peter Sbaraglia)

Mr. Balogh,

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The motion was set down for hearing this morning by Justice Morawetz for May 9, 2012. The materials we seek to obtain from the Receiver include any transcripts, recordings and/or notes of interviews conducted by the Receiver of your client,

documents provided to the Receiver by your client in connection with the interview(s) and copies of documents produced to the Receiver pursuant to the July 14, 2010 Order (see paras. 9 – 10).

Can you please let me know whether you are in a position to provide me with copies of some or all of these documents?

If you have a spare moment, I can give you a call and provide additional information.

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
151 Yonge Street, Suite 1800
Toronto, Ontario
M5C 2W7

Tel: 416.306.2961
Fax: 416.362.8410
E-mail: ktoyne@btzlaw.ca
Web: <http://www.btzlaw.ca>

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This is **Exhibit "T"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

CV 10 402481

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

C.O. CAPITAL GROWTH INC., MANDY SBARAGLIA and PETER SBARAGLIA

Plaintiffs

and

MICHAEL MILLER, JULIA DUBLIN, PETER R. WELSH and AYLESWORTH LLP

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU BY the plaintiff(s). 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(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), 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 18(B) prescribed by the Civil Procedure. This will entitle you to ten day more within which to serve and file your statement of defence.

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

Date:

May 5, 2010

Issued by:

Local Registrar

Address of Court Office:

393 University Avenue
10th Floor
Toronto, Ontario M5G 1E6

TO: MICHAEL MILLER, 222 Bay Street, P.O. Box 124, Toronto, Ontario M5K 1H1
JULIA DUBLIN, 222 Bay Street, P.O. Box 124, Toronto, Ontario M5K 1H1
PETER R. WELSH, Suite 203, 1540 Cornwall Road, Oakville, L6J 7W5
AYLESWORTH LLP, 222 Bay Street, P.O. Box 124, Toronto, Ontario M5K 1H1

CLAIM

1. The Plaintiffs claim:

- a. damages for breach of fiduciary duty in the amount of \$15,000,000;
- b. in the alternative damages for negligence or breach of contract in the amount of \$15,000,000;
- c. additional damages by way of prejudgment and post judgment compound interest on the amounts awarded to the Plaintiffs at such rate as this Honourable Court deem just;
- d. in the alternative, prejudgment and post judgment interest in accordance with the *Courts of Justice Act*;
- e. costs of this action on a substantial indemnity basis;
- f. such further and other relief as may be just.

The Parties

2. The Plaintiffs Mandy Sbraglia ("Mandy") and Peter Sbaraglia ("Peter Sbaraglia") are husband and wife. Mandy is a periodontist. Peter is a dental anesthesiologist.
 3. C.O. Capital Growth Inc. ("CO Capital") is an Ontario corporation. Its sole director is Peter . CO Capital was incorporated as an investment vehicle for Peter and Mandy as well as for the investors that were brought by them to the parties described below, i.e., Robert Mander, and his corporations.
 4. Peter R. Welsh ("Welsh") is an Ontario lawyer, practicing both as a sole practitioner in Oakville Ontario, as well as counsel to Aylesworth LLP ("Aylesworth"). At all material times Welsh acted as the solicitor for the Plaintiffs.
 5. Michael Miller ("Miller") and Julia Dublin ("Dublin") are Ontario lawyers. At all material times Miller and Dublin practiced law as partners in the Aylesworth law firm. From in or about June 2009 to March 2010 these Defendants acted as counsel to the Plaintiffs.
 6. Aylesworth is a Toronto law firm partnership. Aylesworth is vicariously liable for the acts or omissions of Miller, Dublin and Welsh.
 7. As a result of the solicitor client relationships between the Defendants and the Plaintiffs, the Defendants owed fiduciary and other duties to the Plaintiffs.
-

Robert Mander and the Investments

8. 91 Days Hygiene Services Inc. ("91 Days"), a company controlled by Peter and Mandy was the owner of a commercial property located at 239 Church Street, Oakville Ontario. Robert Mander ("Mander") was an existing tenant in the property at the time of its acquisition in 2005. Mander had previously had experience in investing and in trading securities.

9. During the course of his tenancy, Peter became friendly with Mander, and at Mander's invitation invested some of his and Mandy's savings with Mander.

10. At Mander's urging, Peter incorporated CO Capital for the purpose of using that company as an investment vehicle for investments made by them, as well as by investors who were to be solicited by Peter and Mandy.

11. Welsh acted as solicitor with respect to the business affairs of CO Capital, Peter and Mandy. At the same time Welsh acted as solicitor for Mander and his companies.

12. After obtaining an opinion from a law firm, a structure was organized whereby:

- a. Peter would seek investors;
 - b. Peter, Mandy, and the investors that they solicited would provide capital in return for which they would be provided with promissory notes payable within a fixed time frame, from CO Capital. These notes contemplated high interest rates ranging from 20% to 30% or more;
 - c. the Plaintiffs' investment funds would be invested with Mander personally or later through his investment company E.M. B. Asset Group Inc. ("EMB"), or other Mander controlled companies;
 - d. the profits from the investments would be split equally between the Plaintiffs and Mander or his company.
-

13. Peter was successful in raising some \$20,000,000 in capital. This money, partly from their own savings, as well as from the savings of friends, relatives and business contacts was invested with Mander, EMB, or other Mander companies. The Plaintiffs do not have full particulars of the investments or how they were made by Mander.

14. As a result of the apparent success in their investment venture with Mander, Peter and Mandy both gave up their respective dental practices, and devoted their professional time to CO Capital, and their business dealings with Mander. They did so in the belief that they were making substantial returns on their investments, and profits on the investments of the third party investors that they had introduced to Mander.

15. In or about November 2008, Mander determined that he would resign as a director of CO Capital. Thereafter, he continued to operate EMB and invest money for the Plaintiffs and others using the CO Capital investment model. Welsh acted in the reorganization of CO Capital following the resignation of Mander.

THE OSC INVESTIGATION AND THE COLLAPSE OF THE MANDER OPERATION

16. In or about June 2009, the Plaintiffs were contacted by the Ontario Securities Commission (the "OSC"), who were investigating both their investment activities, as well as Mander's investment activities.

17. At Mander's suggestion, the Plaintiffs retained Miller and Dublin as well as Aylesworth to represent them in their dealings with the OSC.

18. The contact from the OSC was the first clue that something might have been amiss with respect to the Plaintiffs' investment business. The Plaintiffs, who were inexperienced in dealing with these types of matters, relied on the Defendants for advice in respect to their dealings with the OSC and with Mander.

19. During the course of the OSC investigation, the Defendants Miller and Dublin:

- a. acted as counsel to the Plaintiffs;
- b. represented Peter and Mandy as counsel when examined by the OSC pursuant to Section 11 of the *Securities Act*;
- c. represented Mander as counsel when examined by the OSC pursuant to Section 11 of the *Securities Act*;
- d. negotiated a settlement on behalf of the Plaintiffs with the OSC;
- e. negotiated a settlement with the OSC on behalf of Mander.

20. In the course of dealing with the OSC, Miller and Dublin represented to the OSC that all of CO Capital's investors were secure and that EMB or Mander had sufficient assets to repay EMB and Mander's obligations pursuant to the promissory notes held by CO Capital's investors.

21. To assuage the OSC, Miller and Dublin prepared a statutory declaration, whereby Mander swore that six parcels of real estate were:

"held in trust for the repayment of loans under promissory notes of EMB Asset Group Inc to CO Capital Growth Inc. as they become due."

22. The statutory declaration was sworn by Mander on July 15, 2009. Dublin commissioned Mander's oath.

23. Following execution of the statutory declaration, Miller and Dublin represented to the Plaintiffs that they were now fully secure, and that they should have no worries about their business dealings with Mander.

24. With the settlement of matters at the OSC and with the security of their investments in place, the Plaintiffs continued in their investment activities with Mander.

25. At or around that time, it became apparent that Mander was having difficulty in satisfying those investors who wished to withdraw the capital that was due and owing to them pursuant to their respective promissory notes.

26. The Plaintiffs continued to consult with the Defendants, who at all material times assured the Plaintiffs that matters were in hand and that any issues that Mander had would be resolved in due course.

THE RECEIVERSHIP AND THE DEATH OF MANDER

27. On March 17, 2010 SA Capital Growth Corp. ("SA") brought an application to appoint a Receiver over Mander and EMB. As the Order was being made, Mander took his own life.

28. Following the appointment of the Receiver, and the death of Mander, it was realized that Mander had been operating a scheme, and that the various investments that he was supposed to be making for the Plaintiffs and others, such as SA, were in fact not made. Many millions of dollars were missing. As at the date hereof, the Receiver has not located the substantial assets or investments that were supposed to have been made by Mander or EMB. They likely do not exist.

29. Real estate owned by Mander or companies controlled by him were found to be mortgaged or pledged. Mander had little or no equity.

30. As a result, Peter and Mandy have lost their entire life savings. CO Capital has lost the money invested through it for Peter, Mandy, and numerous other investors.

THE BREACH OF FIDUCIARY DUTY

31. At all material times, Welsh was the solicitor for the Plaintiffs, as well as for Mander and his companies.

32. Miller, Dublin and Aylesworth were also the long time solicitors and counsel to Mander and his companies.

33. The Plaintiffs were in a power dependency relationship. They relied on the Defendants to advise, counsel and to protect their interests.

34. As solicitors or counsel to the Plaintiffs, the Defendants owed fiduciary duties to the Plaintiffs. In breach of those duties, the Defendants failed to disclose material facts to the Plaintiffs regarding the business or affairs of Mander and his companies. The full extent of the material facts not disclosed to the Plaintiffs is not known as at the date hereof. The following facts are amongst those that were not disclosed by the Defendants to the Plaintiffs:

- a. Mander was in financial difficulty from at least 2007, if not earlier;
 - b. the investment scheme operated by Mander was likely illegal;
 - c. investors were not being repaid. Promissory notes were not being honoured;
 - d. Mander was highly leveraged and was not in a position to meet his obligations as they fell due;
-

35. In July 2007, Tascha Fluke, a former business associate of Mander, commenced an action against Mander and certain of his companies (action 07-CU-336612PD) claiming inter alia the return of \$1,500,000 that had been invested in Mander companies. The Defendants acted for Mander and his companies in that litigation and in the negotiations and dealing with Ms. Fluke.

36. Notwithstanding their fiduciary duty to do so, the Defendants failed to advise the Plaintiffs of the Fluke action, or their involvement in it.

37. Ultimately, after more than a year of litigation, the Defendants negotiated a settlement of the Fluke action. The fact of the settlement as well as the terms were not disclosed to the Plaintiffs.

38. In fact, the Defendants Miller and Welsh advised the Plaintiffs that payments were being made to Fluke's clients gratuitously. According to these Defendants, Fluke has raised money and not invested it with Mander. Notwithstanding that Fluke had failed to disclose these investors, Miller and Welsh represented to the Plaintiffs that Mander paid these investors out of the goodness of his heart.

39. The representation of Mander's paying the Fluke investors was intended to convey to the Plaintiffs an assurance as to Mander's integrity. In doing so, these Defendants suppressed their actual knowledge about Mander.

40. From the time that Miller and Dublin were retained, they and Aylesworth ought to have made full disclosure to the Plaintiffs of all of their knowledge and dealings, as well as the dealings that other members of the firm had with Mander or his company that might have been relevant or material to the Plaintiffs. They failed to do so.

41. The Defendants further failed to disclose the nature of the OSC investigation into Mander, as well as the particulars of their dealings with the OSC on behalf of Mander.

42. The Defendants were in a hopeless conflict of interest between Mander and his companies on the one hand and the Plaintiffs on the other. The Defendants duty to their client, which obliged them to make full disclosure was in conflict with the provisions of Section 16 of the *Securities Act* R.S.O. 1990, c. S.5.

43. The Defendants failed to disclose the conflict imposed by the *Securities Act*.

44. With a view to keeping Mander and his business operating, the Defendants convinced the Plaintiffs that they were fully secured by reason of the July 15, 2009 Statutory Declaration. In doing so, the Defendants wrongly preferred Mander's interests to those of the Plaintiffs. The Defendants knew or ought to have known that the Statutory Declaration was not security for anything.

45. In further breach of their fiduciary duty to the Plaintiffs, Aylesworth acted for Mander and his company Stonebury Inc. on a mortgage in favour of the Toronto Dominion Bank. That mortgage, in the amount of \$633,750 was registered against 17 Stonebury Place, Freelton

Ontario on September 1, 2009. That property was one of those purportedly secured in favour of the Plaintiffs by way of the statutory declaration.

46. The Defendants failed to disclose to the Plaintiffs any of the Mander mortgages on the allegedly secured properties, including the mortgage referred to above.

47. In failing to disclose what they knew of Mander's financial circumstances, the Defendants breached fiduciary duties owed to the Plaintiffs.

48. In addition to the matters referred to above and in addition to failing to disclose material facts to the Plaintiffs, the Defendants, in breach of fiduciary duties owed to the Plaintiffs:

- a. failed to protect the Plaintiffs' interests;
- b. failed to properly advise the Plaintiffs;
- c. purported to represent their interests in circumstances where they were conflicted;
- d. failed to advise the Plaintiffs to take action against Mander, or to immediately take steps to protect their investments.

49. The Plaintiffs failed to comply with their common law fiduciary duty, as well as the duties imposed on them by reason of the Law Society of Upper Canada Code of Professional Conduct, and in particular, Rule 2.04 and 2.04(6).

NEGLIGENCE OR BREACH OF CONTRACT

50. The Defendants were negligent or in breach of express or implied terms of their retainer agreements with the Plaintiffs in that:

- a. they failed to disclose relevant or material facts to the Plaintiffs;
- b. they failed to properly represent and advise the Plaintiffs;
- c. they represented to the Plaintiffs that they were secured creditors of Mander when in fact they were not;
- d. they failed to advise the Plaintiffs that their business dealings with Mander were likely in violation of the *Securities Act*;
- e. they failed to protect the Plaintiffs interests.

51. Particulars of the breaches of contract or negligence are set out in the paragraphs above. Full particulars of the breaches of contract or negligence are not known as at the date hereof.

DAMAGES

52. As a result of the breaches of fiduciary duty, negligence or breach of contract, the Plaintiffs have been devastated financially. Peter and Mandy had given up their professional practices to work with Mander and his companies. Those practices have been lost.

53. In addition, CO Capital has lost the monies invested with Mander and his companies.

54. Peter and Mandy have lost their life savings. They have no present source of income. As a result, they are now obliged to sell both their investment property and their home. In the circumstances, it is unlikely that they will be able to realize the full value of these assets, because of the financial constraints imposed by the losses they sustained.

55. The full particulars of the damages sustained by the Plaintiffs is not known as of the date hereof. The Plaintiffs undertake to deliver particulars of their damages prior to the trial of this action.

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

Date: May 5, 2010

DAVIS MOLDAVER LLP
Barristers & Solicitors
438 University Avenue, 21st Floor
Toronto, Ontario M5G 2K8

Tel. (416) 869-0077
Fax (416) 869-0369

Milton A. Davis
mdavis@davismoldaver.com

Solicitors for the Plaintiffs

C.O. CAPITAL GROWTH INC. et al

and MICHAEL MILLER et al et al

Court File No.

CV 16 402481

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced in TORONTO

STATEMENT OF CLAIM

DAVIS MOLDAVER LLP
Barristers & Solicitors
438 University Avenue, 21st Floor
Toronto, Ontario
M5G 2K8

Milton A. Davis (17380G)

Tel. (416) 869-0077
Fax (416) 869-0369
mdavis@davisoldaver.com
Solicitors for the Plaintiffs

This is **Exhibit "U"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

Peter and Mandy

From: Milton Davis [MDavis@davismoldaver.com]
Sent: Friday, July 23, 2010 7:22 AM
To: Peter and Mandy
Cc: brian@briantaran.com; Kelli Preston
Subject: RE: Sbraglia sale of Church Strett

I spoke to brian hanna yesterday and explained the situation. Coincidentally he acts for the purchaser of the mander property down the road. Partly because of that, I knew that disclosure had to be made today. I discussed it with brian greenspan last night before he left. I have also discussed it with Matt Gottlieb.

Matt thinks that Dave Amato will try to restrain the disposition of the proceeds of sale. I told Matt that Amato has no basis for doing that. The property was not bought with investor money. it was bought prior.

Matt is meeting with Miller and Dublin today. It should be interesting.

My suggestion is that you should get as much of an accounting together as soon as possible, so that we can give an accurate summary to the court should a court application be brought.

I am copying Brian Taran with this email so that he knows firstly of the extension, and secondly what is happening.

MILTON DAVIS

mdavis@davismoldaver.com



DAVIS MOLDAVER LLP
B A R R I S T E R S

Suite 2100 - 438 University Avenue • Toronto, Ontario • M5G 2K8 • Canada
voice: 416.869.0077 • direct: 416.860.6901 • fax: 416.869.0369
web: www.davismoldaver.com • map: maps.google.ca

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From: Peter and Mandy [mailto:msbaraglia@cogeco.ca]
Sent: Friday, July 23, 2010 6:39 AM
To: Milton Davis
Subject: RE: Sbraglia sale of Church Strett

Milton

Last night the buyers' lawyer requested the lawyer's clause be extended to Monday and the closing date to Aug 6th, which we agreed to.

I know you are extremely busy this week with court and we very much appreciate all your efforts on our behalf.

Mandy

3/9/2012

This is **Exhibit "V"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS
RICHARD NIMAN

August 3, 2011

DELIVERED BY COURIER

Norton Rose OR LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Attention: Alex Dimson

Dear Mr. Dimson:

Re: Estate of Robert Mander ("Mander"), E.M.B. Asset Group Inc. ("EMB") and the Related Entities listed on Schedule "A" attached (Mander, EMB and the Related Entities are collectively referred to as the "Debtors")
Our File No.: 10-0304

Further to your email of July 11, 2011 and our discussions subsequent to that date, enclosed please find a compact disk that contains the documents included under categories "A" and "B" in the list provided by Tonin & Co. ("Tonin") to RSM Richter Inc. in its capacity as Court-appointed receiver ("Receiver") of the Debtors.

Please note that we were unable to locate the following documents related to Black Ink Capital Growth Ltd., which were included on the list:

- Questrade statements for account 3B-FS52, for January to July, 2007;
- A 2007 email from Colleen Auriemma regarding preparation of year-end information and information from Mander regarding the definition of a capital gain versus active business income;
- A bank statement as at July 31, 2009, reflecting the US dollar account balance; and
- A list of T5s issued for 2008.

We will attempt to locate those documents and provide a copy to you. In the alternative, please contact Tonin directly for these documents.

This is Exhibit R referred to in the
affidavit of Alan Merskey
sworn before me, this 28th
day of September 2011

Alex Dimson

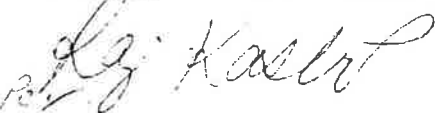
Alex Dimson

COMMISSIONER FOR TAKING AFFIDAVITS

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours very truly,

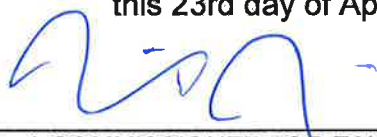
**RSM RICHTER INC.
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF
THE ESTATE OF ROBERT MANDER, E.M.B. ASSET GROUP INC.
AND THE RELATED ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**



Per: Lana Bezner

LB:rk
Encl.

This is **Exhibit "W"** referred to in the
affidavit of **Peter Sbaraglia**, sworn before me
this 23rd day of April, 2012.



A COMMISSIONER FOR TAKING AFFIDAVITS

RICHARD NIMAN

Vy Nguyen

From: jlynch@osc.gov.on.ca
Sent: Monday, April 23, 2012 2:44 PM
To: Kevin D. Toyne
Subject: Re: Motion re receiver's documents

We met with Dr. Amato and Thomas Obradovich last week. As discussed, materials from those meetings are part of the additional disclosure which we will be providing to you either late tomorrow or Wednesday.

Jennifer M. Lynch | Ontario Securities Commission | Enforcement | Senior Litigation Counsel
 20 Queen Street West, Suite 1903 | Toronto ON M5H 3S8
 416-593-8152 | jlynch@osc.gov.on.ca
 Please consider the environment before printing this e-mail

From: "Kevin D. Toyne" <ktoyne@btzlaw.ca>
 To: <jlynch@osc.gov.on.ca>
 Cc: "Richard Niman" <rniman@btzlaw.ca>
 Date: 04/23/2012 01:47 PM
 Subject: Motion re receiver's documents

Jennifer,

Further to our telephone discussion a few moments ago, Mehran Shahviri's name is being added to the list of people at issue in our client's motion seeking documentation and information from the Receiver.

Can you please advise whether any of the individuals on the list circulated last week have been interviewed by the OSC in recent weeks (or may be interviewed in the near future)?

Thanks,

Kevin D. Toyne
Brauti Thorning Zibarras LLP
 151 Yonge Street, Suite 1800
 Toronto, Ontario
 M5C 2W7

Tel: 416.306.2961
 Fax: 416.362.8410
 E-mail: ktoyne@btzlaw.ca
 Web: <http://www.btzlaw.ca>

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