

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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**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			Total
	Peter	Mandy	Mander	
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**

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.

Appendix “B”

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

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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,
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		
	Received from Investor	Paid to Investor ¹²	Net Received from Investor/(Net Paid to Investor)
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		Net (Paid) Received
	Receipts	Disbursements	
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

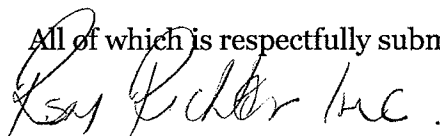
It is evident to the Receiver that Mander was operating a “Ponzi” scheme. Mander did repay some amounts to some Investors – but this is central to any Ponzi scheme. It is a game of confidence that is sure to be broken once the Ponzi-schemer fails to meet an obligation. Ultimately, Mander was unable to 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).

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**

Appendix “C”

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)**

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.**

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.

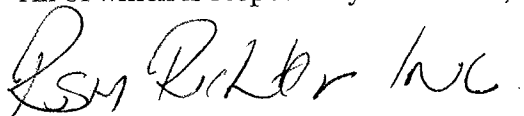
¹² The August 19th Letter also references a condominium in Toronto, Ontario that is owned by the Sbaraglias.

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,

A handwritten signature in black ink that reads "RSM Richter Inc." in a cursive, stylized script.

**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 “D”

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 Cross-examination of PETER SBARAGLIA on his
Affidavits sworn August 10, 2010 (2), September 15, 2010,
& October 18, 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

PROCEEDINGS

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UNDERTAKINGS WERE NOTED ON THE FOLLOWING PAGES:
59, 73

THERE WERE NO UNDER-ADVISEMENTS NOTED

THERE WERE NO REFUSALS NOTED

1 PETER SBARAGLIA: Affirmed

2 CROSS-EXAMINATION BY MR. GOTTLIEB:

3 1 Q. Mr. Sbaraglia, if I understand you became a
4 dental surgeon in 1990. Correct?

5 A. Yes.

6 2 Q. And in 1997 you received a Diploma in Dental
7 Anesthesiology?

8 A. Correct.

9 3 Q. And carried on that particular practice from
10 that point on, from '97 onward. Correct?

11 A. Yes.

12 4 Q. And you worked as a dental anesthesiologist
13 until approximately March of '07. Correct?

14 A. Yes.

15 5 Q. And I understand, if I can call her
16 Mrs. Sbaraglia, is that appropriate for Mandy?

17 A. Sure.

18 6 Q. I understand that Mandy worked as a
19 periodontist *?

20 A. Yes.

21 7 Q. And that was until some point in 2007 also,
22 correct?

23 A. Yes.

24 8 Q. Mr. Davis, do you have the document brief
25 that was given to the OSC?

1 MR. DAVIS: You mean the red binder.

2 MR. GOTTLIEB: The red binder, as we've come to
3 call it.

4 MR. DAVIS: In fact, just for the record, we
5 actually have the red binder here.

6 BY MR. GOTTLIEB:

7 9 Q. Thank you. If you could just pull that out,
8 please. So you are familiar with this binder,
9 Mr. Sbaraglia, what we're calling the "red binder?"

10 A. Yes.

11 10 Q. This was a bind that was prepared and given
12 to the Ontario Securities Commission on July 9, 2009
13 during the course of your examination. Correct?

14 A. Correct.

15 11 Q. And I just want to have you flip to tab 2 of
16 the binder, please. And at tab 2 this is a CV, a resume
17 for you. Correct?

18 A. Yes.

19 12 Q. Actually, that is your C.V. And my
20 understanding is, sir, you prepared this C.V. Correct?

21 A. Kimberley Gadlock prepared the C.V.

22 13 Q. And who is she?

23 A. She works for me, used to.

24 14 Q. So she prepared this C.V. for you and then it
25 was delivered to the OSC, correct?

1 A. Yes.

2 15 Q. And you checked it before it went to the OSC?

3 A. I don't remember, exactly.

4 16 Q. You saw it at/or around the time of your
5 examination or during the examination, because -- I don't
6 want to put words too much in your mouth, but I know from
7 the transcript that during the examination this document
8 was opened up and reviewed. Do you recall that?

9 A. Yes.

10 17 Q. And at no time did you advise the OSC during
11 the examination, or any point thereafter, that this C.V.
12 was inaccurate. Correct?

13 A. Correct.

14 18 Q. Okay. So I just want to take a look at this
15 C.V. for a moment, please. And it sets out your
16 educational background. And it sets out at the very top
17 239 Church Street as your address. That, obviously,
18 wasn't your home address. Correct?

19 A. Correct.

20 19 Q. Where were you living, at the time?

21 A. 63 2nd Street.

22 20 Q. Okay. And directly below that it sets out
23 your education and some charity work that was done, and
24 then it sets out your employment history. Do you see
25 that?

1 A. Yes.

2 21 Q. And if we go down, just follow it, to
3 1997/1998 it has a few different entries. And then
4 directly below that it says: 1998 to 2006 full time
5 dental anesthesia practice. Do you see that?

6 A. Yes.

7 22 Q. And it says, "concurrent managing of own
8 portfolio" which we'll come to. And then it says, "2006
9 retired from dental anaesthesia to pursue investment
10 career." Do you see that?

11 A. Right.

12 23 Q. Now that is not accurate because you didn't
13 retire from dental anesthesia in 2006. Correct?

14 A. Correct.

15 24 Q. Okay. Now, directly below that it says:
16 "2006 to present." And that was obviously as of July,
17 '09 you were President of CO Capital Growth Corp.
18 full-time management of own portfolio. Correct?

19 A. Yes.

20 MR. DAVIS: Just stop for a second. I have a
21 sense I could be wrong, that you might be speaking a
22 little fast for the Reporter.

23 MR. GOTTLIEB: Okay.

24 MR. DAVIS: Am I right? No? Okay. I'm just
25 trying to be a nice guy.

1 BY MR. GOTTLIEB:

2 25 Q. Now, do you have in front of you, or can you,
3 counsel --

4 MR. DAVIS: Can I put this away.

5 MR. GOTTLIEB: Yes. Thank you. For now.

6 MR. DAVIS: Just for the record, there is a full
7 copy of the red binder in that two-volume brief I
8 prepared yesterday.

9 MR. GOTTLIEB: Great. Thank you.

10 MS. FOY: It's also in the OSC's materials,
11 everything that was produced.

12 MR. DAVIS: A popular brief.

13 MS. FOY: A four-volume brief.

14 MR. DAVIS: I said the red binder is a popular
15 brief.

16 BY MR. GOTTLIEB:

17 26 Q. If you could just pull up your Affidavit of
18 July 12th. Okay. I've got another copy. I'll hand it
19 across. It will be easier if you have a paper copy. So
20 in your Affidavit of July 12th it says in paragraph four,
21 if you have that on page 2, it says in paragraph four: "
22 * Prior to meeting Mander in 2006 I was a successful
23 dental anaesthesiologist. My wife, Mandy Sbaraglia, was
24 a periodontist. Up until 2006 my wife and I made
25 significant income in our respective professions." Do

1 you see that?

2 A. Yes.

3 27 Q. Now, again, we know that you actually
4 continued on with that practice after 2006. Correct?

5 A. Yes.

6 28 Q. Okay. And when you say "significant income"
7 you use that identical phrase in your August 10th
8 Affidavit, as well, which I'm happy to turn you to, but
9 you can take my word for that. What did you mean when
10 you said "significant income in your respective
11 professions."?

12 A. You mean how much I would make a day, kind of
13 thing?

14 29 Q. Or, why don't you tell me yearly because
15 that's the way most people talk?

16 A. I'll tell you on a given day I would go to
17 work and make between two and \$6,000.

18 30 Q. But I'm going to ask you to tell me what you
19 meant by that in terms of a year, because when you talk
20 about "significant incomes," if you work one day a year
21 making \$6,000 a year that is not a significant income.
22 If you do that 365 days we've got something to talk
23 about. So tell me what you meant when you swore to
24 "significant income."

25 A. Hundreds of thousands of dollars.

1 31 Q. Okay. So you said, that: "Prior to meeting
2 Mander in 2006 I was a successful dental
3 anaesthesiologist. Up until 2006 my wife and I made
4 significant income in our respective professions." So
5 you're talking up to 2006, as you say, you were making
6 hundreds of thousands of dollars a year. That's your
7 testimony?

8 A. Yes.

9 32 Q. Okay. I want to just show you a couple of
10 documents. But first, sir, I'm going to hand you --
11 Mr. Davis, if you don't mind I'm just going to hand that
12 across the table. It's your 2005 tax return. And if you
13 wouldn't find mind just flipping, and I'm going to come
14 around, I just want you to tell me what it says your
15 employment income is for that year?

16 A. 28,589.

17 33 Q. And it says \$28,589 and it shows, and I
18 believe I'm reading this correctly, that you received
19 zero in dividends. Correct?

20 A. I don't remember.

21 34 Q. I'm asking to you look on the chart here on
22 the tax return?

23 A. Okay. Yep.

24 35 Q. And it also says that you received zero
25 interest and other investment income, you see there is no

1 entry for that?

2 A. Yes.

3 36 Q. And it says that you received zero by way of
4 taxable capital gains. Correct?

5 A. Okay.

6 37 Q. So it says for that year personally you had
7 income from all sources of \$28,589. Correct? That's
8 fair?

9 A. Okay.

10 38 Q. Okay. I'm going to show you, sir, just so we
11 have it, Mandy's Income Tax Return and benefit return for
12 2005. And I think you'll see that it's got zero for
13 Ms. Sbaraglia for employment income, but it does have
14 professional income of 52,305. Do you see that?

15 A. Yes.

16 39 Q. And it's also got RRSP income of \$1,276
17 dollars for a grand total of \$53,581. Do you see that?

18 A. Yes.

19 40 Q. And, again, I'll anticipate point out that
20 with respect to other types of income, for example
21 investment income, dividends, interest or other
22 investment incomes, et cetera, there is no figure there
23 so that the total we have for 2005 is \$53,581. Correct?

24 A. Yes.

25 41 Q. And I'm going to ask that we mark those two

1 tax returns as the next exhibit, Milt? Should we start
2 at number 1 now or should we continue?

3 MR. DAVIS: I'd continue.

4 MR. GOTTLIEB: Continue.

5 --- EXHIBIT NUMBER 25: Income Tax Returns (re Mandy
6 Sbaraglia)

7 MS. PRESTON: So you're going to be in charge of
8 these ones?

9 BY MR. GOTTLIEB:

10 42 Q. That's dangerous. But, yes.

11 Now, sir, we know that you have from the
12 documents some corporations through which you do
13 business. Correct? Pardon me, I'm going to rephrase it:
14 In 2005 through which you did business, the Dr. Sbaraglia
15 Corporation, for example?

16 A. Yes.

17 43 Q. But, sir, you'll agree with me based on the
18 returns I just showed you that you did not receive any
19 financial benefits from those because there were none
20 declared on your tax returns, there was no income shown,
21 there was no dividends shown, correct?

22 MR. DAVIS: I don't know if that is a fair
23 question. Because you can receive financial benefits
24 without money leave the company. For example, if you
25 have a personal corporation or a professional corporation

1 and invest money or take benefits within the corporation
2 you can money -- I said you can take benefits from the
3 Corporation without money leaving the Corporation. One
4 simple example would be if they bought your hockey
5 tickets, and you went to the hockey game. That would be
6 a benefit without taking money out of the company.

7 MR. GOTTLIEB: You know, Mr. Davis, I appreciate
8 you not answering questions for your client.

9 MR. DAVIS: I'm not answering. I said your
10 question wasn't fair.

11 MR. GOTTLIEB: Then you can say the question is
12 not fair, and I'll try to rephrase it. But then giving a
13 speech which feeds the witness your answer is not fair.

14 MR. DAVIS: That is not fair because I have no
15 idea if he bought hockey tickets from us.

16 BY MR. GOTTLIEB:

17 44 Q. Okay. Well, Mr. Davis, I'm not going to
18 give anybody in this room a tax lesson. But I will say
19 that it's a taxable benefit to Mr. Sbaraglia, and it
20 doesn't show up anywhere on the tax return. So my point
21 was, prior to your interference, was that nothing shows
22 up on your personal tax return, or Mandy's tax returns
23 that suggest either of you received a benefit financially
24 from your other corporations, correct? You saw that?
25 Correct?

1 A. I saw that piece of paper.

2 45 Q. Okay. Did you say 25?

3 MR. DAVIS: Yes.

4 BY MR. GOTTLIEB:

5 46 Q. Thank you. I'm going to show you sir -- I
6 apologize. Moving on. You met Mr. Mander for the first
7 time in the spring of 2005. Correct?

8 A. Yes.

9 47 Q. And you met him when you closed your purchase
10 of 239 Church. Correct?

11 A. Shortly thereafter.

12 48 Q. Shortly thereafter. And when I said "your
13 purchase" that was very imprecise, it wasn't actually
14 your purchase at all, it was a purchase by a company
15 called 91 Days Hygiene, correct?

16 A. Correct.

17 49 Q. Which is a company owned by Mandy, correct?

18 A. Yes.

19 50 Q. And I looked at the documents that your
20 counsel provided to us, and what I understand to be the
21 case is that the purchase price of 239 Church Street was
22 \$1.1 million. Does that sound correct?

23 A. Yes.

24 51 Q. And my understanding, based on everything I
25 read, is that the total amount of cash that was put down

1 by 91 Days or anyone, your wife, you or any of the
2 companies was a total of \$165,000. The rest of it was
3 financed. So there was a total of 165, is that
4 correct?

5 A. I don't know those numbers.

6 52 Q. Okay. I'm happy to show that to you.
7 Mr. Davis, it's your letter of August 19th to Ms. Bezner.
8 So I'm happy to just bring that over. Would that be
9 easier? Thanks. So this is a August 19th letter from
10 Mr. Davis to Ms. Bezner. And it says in the third
11 paragraph that 239 Church Street, Oakville, Ontario, it
12 says 91 Days Hygiene, and it says the purchase of this
13 property was financed through RBC. It says the details
14 of the purchase and finance are, as follows. It says
15 purchase for \$1.1 million. Do you see that?

16 A. Yes.

17 53 Q. And it says \$75,000 deposit paid February,
18 2005 by Dr. Sbaraglia Dental Professional Corp. So
19 \$75,000 was put down. And then it refers to 277,000 odd
20 dollars was paid on closing from 91 days, and it said the
21 amount is made up from \$60,000 from Dr. Sbaraglia
22 Professional Corporation. So if you take the 75 plus the
23 60?

24 A. Okay.

25 54 Q. And then it says: 30 from 1267245 Ontario

1 Ltd. carrying on business as Knight and Gayle, * April,
2 2005. So that adds on an additional 30. And it says:
3 142,000 from a line of credit?

4 A. Okay.

5 55 Q. And it says: 45 proceeds from a line of
6 credit?

7 A. Uh'hmm.

8 56 Q. And \$770,000 mortgage?

9 A. Okay.

10 57 Q. So when I say the cash that was put down,
11 what I'm referring to is the 75,000 deposit plus the
12 60,000 from Dr. Sbaraglia Professional Corp. plus the
13 \$30,000 from the numbered company. Do you see that? And
14 unless my math is wrong, and it might be, I don't think
15 so, it's \$165,000 paid down for that \$1.1 million
16 property and the rest was financed?

17 A. Okay.

18 58 Q. That's correct?

19 A. Yes.

20 59 Q. Now, prior to meeting Mr. Mander shortly
21 after you closed the purchase of 239 you did not invest
22 in the securities market in a significant way?

23 A. Prior to?

24 60 Q. Is that correct?

25 A. Prior to meeting Mander?

1 61 Q. Yes?

2 A. Well, define "significant?"

3 62 Q. Well, why don't you tell me the extent to
4 which you did and then we'll canvass that a little bit.
5 Prior to meeting Mander in '05?

6 A. Bought a few stocks here and there.

7 63 Q. Okay. That's what I thought the case was;
8 that was my understanding. So you bought a few stocks
9 here and there. You hadn't taken any courses on trading
10 in securities, for example?

11 A. Privately, that's all.

12 64 Q. Privately?

13 A. Just online stuff and reading books and so
14 on.

15 65 Q. I understand. You weren't in, if I can put
16 it this way, in the business of trading securities. That
17 was something you dabbled in on the side, if I can put
18 that way, but that wasn't your business. Correct?

19 A. That wasn't my business.

20 66 Q. And based on the records I've seen you
21 actually didn't make any money trading in securities
22 before meeting Mr. Mander. Is that correct?

23 A. That's correct.

24 67 Q. Is that correct?

25 A. Yes.

1 68 Q. I apologize, I'm having some trouble hearing
2 when you're answering. So that is why I'm asking for the
3 repetition?

4 MR. DAVIS: May I make a suggestion. Why don't
5 you try to keep your voice up.

6 MR. GOTTLIEB: It's hard sometimes, I acknowledge
7 that.

8 MR. DAVIS: If you can't hear it, Ms. Foy will
9 never hear. I was worried about her.

10 MS. FOY: Thank you. I'm fine.

11 BY MR. GOTTLIEB:

12 69 Q. Now, in 2005 when you met Mr. Mander he
13 introduced you and Mandy to his investment business,
14 correct?

15 A. Yes.

16 70 Q. And you became close with Mander?

17 A. When?

18 71 Q. Shortly after you met with him. Between the
19 time you met him in Spring of '05, shortly thereafter and
20 going forward you became close with him in the sense that
21 you spent time with him in the building, you talked to
22 him about his business actually frequently. Correct?

23 A. Not really.

24 72 Q. No. When did that start?

25 A. More like later on in the year. More like

1 towards the end of '05/'06, beginning, that kind of
2 stuff.

3 73 Q. So prior to the end of '05, beginning of '06
4 you weren't close with him and didn't spend a lot of time
5 with him?

6 A. Not tons.

7 74 Q. Okay. And you didn't speak to him a lot
8 about his business prior to that?

9 A. Not a lot, no.

10 75 Q. He did to some degree, even during this early
11 time, show you what I'm going to call generally trading
12 methods. He showed you his screens, he showed you how he
13 did things?

14 A. He showed me his screens.

15 76 Q. Yes. And he told you his philosophy about
16 how he invested?

17 A. When are we here.

18 77 Q. Prior to the beginning of '06?

19 A. No, not really. No.

20 78 Q. Okay?

21 A. Possibly in little bits. I don't remember,
22 exactly.

23 79 Q. But, so, again I'm not trying to twist. Not
24 a huge amount prior to the end of '05?

25 A. Not a huge amount.

1 80 Q. Okay. So little bits here and there, but not
2 a ton?

3 A. Correct.

4 81 Q. Okay. And that, I think, is what I heard you
5 say really didn't start at the beginning of '06, that
6 happened later on as your relationship got tighter. If I
7 can put it that way?

8 A. What are we talking about? I didn't follow
9 the first part.

10 82 Q. You becoming closer to Mr. Mander and Mr.
11 Mander sharing a lot of information about his philosophy
12 in business. That didn't happen at the beginning of '06,
13 either, it came about later on, I thought, is what you
14 were saying?

15 A. Probably around the beginning of '06 it
16 started with more regularity to talk about how he traded
17 and stuff.

18 83 Q. Okay. When, if you could put a pin in it,
19 and I know you can't be exact, when do you think by when
20 you really started to understand what Mander was talking
21 about regarding his business strategy in the way he
22 invested, and his investment strategy. Because if you
23 started at the beginning of '06 when did you really get a
24 handle on what he was saying?

25 MR. DAVIS: I don't know if that is a fair

1 question. The reason to believe it never happened,
2 otherwise he wouldn't be here.

3 BY MR. GOTTLIEB:

4 84 Q. I understand that. But I have people explain
5 to me all the time why the Maple Leafs are such a good
6 hockey team. I understand what they are saying that, it
7 doesn't mean they are. That is really what I am asking
8 Mr. Sbaraglia. When did you have so much information
9 from him or enough information from him that you
10 understood what his supposed strategy was?

11 MR. DAVIS: It may be that he thought he
12 understood.

13 BY MR. GOTTLIEB:

14 85 Q. Mr. Sbaraglia?

15 A. Early in 2006 he started telling me about his
16 options that he traded in Arizona.

17 86 Q. Yes?

18 A. And slowly after those periods of time he
19 started teaching me how to screen, started showing me
20 some stuff that was more technical.

21 87 Q. When was that, approximately, do you think?

22 A. I'm guessing rough dates, I would say
23 something like early '06, early '06.

24 88 Q. Early?

25 A. Early '06 makes sense here, roughly.

1 89 Q. Okay. If we go back to your July 12th
2 Affidavit, you have it in front of you, sir, paragraph 6
3 says: "Mander introduced Mandy and I to his investment
4 business." That was correct?

5 A. Where are we?

6 90 Q. I apologize, paragraph 6?

7 MR. DAVIS: It's on the screen in front of you,
8 if that helps.

9 THE DEPONENT: Yes.

10 BY MR. GOTTLIEB:

11 91 Q. It says: "Eventually Mandy and I decided to
12 make a series of investments with Mander which at first
13 were successful." That's what you understood to be the
14 case?

15 A. Yes.

16 92 Q. But you did make a series of investments with
17 Mander, that's what you're talking about. Correct?

18 A. We gave him some of our money, yes.

19 93 Q. Okay. But not just once, a series is my
20 point?

21 A. Over the entire period, yes.

22 94 Q. Okay. You says: "Eventually Mandy and I
23 decided to make a series of investments with Mander which
24 at first were successful." And then you say: "Shortly
25 thereafter I decided to leave my dental practice and

1 began making investing my business similar to the
2 business that Mander was operating." Correct? That is
3 what you swore to there, correct?

4 A. Yes.

5 95 Q. Okay. And then you say: "Mandy slowed down
6 her dental practice." And then you say in paragraph 8:
7 "We subsequently incorporated CO Capital Growth."?

8 A. Uh'hmm.

9 96 Q. "Subsequently" means after?

10 A. Right.

11 97 Q. So it says after all of that you incorporated
12 CO Growth. Correct?

13 A. We incorporated CO Capital Growth in January,
14 '06.

15 98 Q. That's exactly my point. That paragraph 8 is
16 just wrong because you hadn't decided to leave your
17 dental practice, you hadn't made a series of investments
18 with Mander which at first were successful; and, Mandy
19 hadn't slowed down her dental practice before you
20 incorporated CO Capital Growth. Correct? None of that
21 had happened by the time you incorporated CO Capital
22 Growth on January 5th?

23 A. No, some of that had happened.

24 99 Q. Okay?

25 A. We had invested money with him.

1 100 Q. You hadn't made a series of investments.

2 Correct?

3 A. We made two.

4 101 Q. We'll come back to that. Okay. You hadn't
5 decided to leave your dental practice by January 5th of
6 '06?

7 A. I started working less. I took Mondays and
8 Tuesdays off as of January, '06.

9 102 Q. And was that as a result of your successful
10 investments?

11 A. No, it was as a result of me being curious to
12 learn more about the business.

13 103 Q. Sir, we all get curious about things but we
14 need to make a living?

15 A. Right.

16 104 Q. So your decision to slow down at work, was
17 that as a result of your confidence that you were going
18 to make money in the investment world now?

19 A. I told you it was because I wanted to learn
20 more about what Mander was doing.

21 105 Q. I see?

22 MR. DAVIS: May I suggest you keep your voice up?

23 THE DEPONENT: Yes.

24 BY MR. GOTTLIEB:

25 106 Q. Okay. So when you incorporated CO you did so

1 you could get friends and family involved in investing.
2 Correct?

3 A. No.

4 107 Q. You incorporated CO so that you could raise
5 money from friends and family. Correct?

6 A. That's not why I incorporated CO.

7 108 Q. You didn't incorporate CO just so you
8 personally could put funds into CO. Correct?

9 A. When CO started I didn't know what it was
10 going to be exactly. I had a dental office, I had part
11 of my dental practice and I thought if these investments
12 were to grow this would be another company, another place
13 to put it and started CO Capital.

14 109 Q. So you won't concede that you started CO
15 Capital so that you could begin to raise funds from
16 people other than yourself?

17 A. No, it's possible it's for other people
18 too.

19 110 Q. So back to what I asked a couple of minutes
20 ago, that was the reason you incorporated CO?

21 A. I said it wasn't the reason.

22 111 Q. So one of the reasons that you incorporated
23 CO was so that you could raise funds from friends and
24 family for the purpose of investing. Correct?

25 A. Yes.

1 112 Q. Okay. Now, Mr. Davis, do you have the OSC
2 Application Record?

3 MR. DAVIS: Yes.

4 MR. GOTTLIEB: Okay. If you don't mind pulling
5 out volume 1.

6 MR. DAVIS: Okay.

7 BY MR. GOTTLIEB:

8 113 Q. And if you go to tab 4. This is as at June
9 18, '08?

10 MR. DAVIS: Can we just go slowly. I don't know
11 if this witness has actually seen this document.

12 MR. GOTTLIEB: Let me tell you what this is.

13 MR. DAVIS: I'll just point out the date. He's
14 got the date at the top June 18, '08. To be fair that is
15 the date this report came off the system.

16 BY MR. GOTTLIEB:

17 114 Q. Okay. And this is what's called a
18 Corporation Profile Report for CO Capital Growth Corp.
19 And if you see the name "CO Capital Corp." directly to
20 the right of that is the incorporation date of January 5,
21 2006. Correct?

22 A. Yes.

23 115 Q. And that is the date, you actually were the
24 one that I'll say incorporated this company but had it
25 incorporated. Correct?

1 A. Yes.

2 116 Q. And it shows the head office at 239 Church
3 Street?

4 A. Right.

5 117 Q. Which was your building, correct, 91 Days
6 Hygiene?

7 A. Yes.

8 118 Q. I apologize. And if you flip over to the
9 second page of this you see it shows: Administrator,
10 Robert J. Mander. So Mr. Mander was an officer of this
11 Corporation from the outset. Correct?

12 A. I'm not sure.

13 119 Q. Okay. What aren't you sure about?

14 A. I'm just not sure. I actually can't recall
15 something about this, something is ringing a bell about
16 this, and I'd have to check. If you'd allow me to check
17 and get back.

18 120 Q. That's fine. If your counsel is okay with
19 giving that undertaking you'll advise when Mr. Mander
20 first became a director and/or officer of CO?

21 MR. DAVIS: If we can. The reason for the
22 qualification because Mr. Welsh is the defendant in a
23 lawsuit, and I don't know what we can and can't get from
24 him.

25 MR. GOTTLIEB: Okay. That won't be a problem.

1 MR. DAVIS: Can we just go off the record for a
2 second, I just want to tell you about a little quirky
3 thing.

4 MR. GOTTLIEB: I don't want to go off the record.

5 MR. DAVIS: Fine, I'll do it on the record.
6 There was an issue with the name of the company that got
7 messed about because of the C period O period. And the
8 problems with the ministry as a result of the name as
9 opposed to being simply CO.

10 BY MR. GOTTLIEB:

11 121 Q. Okay. There is no doubt that at some point
12 Mr. Mander became a director and officer of CO. Correct?

13 A. Correct.

14 122 Q. Okay. And you were a director and officer of
15 CO, correct?

16 A. Uh'hmm.

17 MR. DAVIS: Have you to say "yes" or "no."

18 BY MR. GOTTLIEB:

19 123 Q. I apologize. And at any point in time was
20 anyone else a director or officer of CO?

21 A. No.

22 124 Q. Okay. And according to what I have read Mr.
23 Mander was involved in CO's business from the outset,
24 correct?

25 A. Correct.

1 125 Q. And CO was in the business of obtaining
2 people's money, and generating returns so that it could
3 pay back the money with a return. That's fair?

4 A. Part of it was, yes.

5 126 Q. Okay. What was the other part of it?

6 A. At the beginning CO raised money and it lent
7 that money to Robert Mander.

8 127 Q. Yes?

9 A. Robert Mander did the investing.

10 128 Q. Yes?

11 A. And it was on those profits that were
12 generated that came back.

13 129 Q. I understand that. But let's just break it
14 down into smaller pieces, then. From the outset the
15 business of CO was, in fact, step one to obtain money
16 from parties who would loan it to CO. Correct?

17 A. Again, we talked about this a little bit
18 already. That was part of it. Part of it.

19 130 Q. I'm saying what actually happened?

20 A. At the beginning people loaned CO money.

21 131 Q. Yep. Yes?

22 A. And we in turn --

23 132 Q. I'm not there yet. I'm breaking it down into
24 small pieces so we don't have a disagreement on this.
25 Step one was CO Capital raised money from people?

1 A. Borrowed money from people, yes.

2 133 Q. Borrowed money from people. As part of that
3 borrowing CO Capital guaranteed a rate of return.
4 Correct?

5 A. Yes.

6 134 Q. I think we can agree, because we've seen the
7 documents, in relative terms it was a high rate of return
8 that was guaranteed?

9 A. Yes.

10 135 Q. Okay. And once it got the money into CO it
11 would do one of two things with that money, and I'm
12 talking about not just on day one but as time rolled
13 forward with CO. Sometimes it would transfer the money
14 to someone outside of CO's business, a different entity,
15 such as Mr. Mander or Mr. Mander's company for investing.
16 Correct?

17 A. Correct.

18 136 Q. And in that case CO obtained a guaranteed
19 rate of return. Correct?

20 A. No.

21 137 Q. CO never had a guaranteed rate of return?

22 A. The way it worked was CO would get the rate
23 of return that was promised to the lender.

24 138 Q. Yes?

25 A. And CO would split the profits generated by

1 Mander above and beyond the obligation of the Promissory
2 Note to the lender.

3 139 Q. Okay. So we'll come back to that in just a
4 minute. And the other thing that CO would do once it
5 received money from lenders, was CO would not send the
6 money out to Mr. Mander but, in fact, would keep it
7 within CO. Correct?

8 A. At the beginning that was not correct.

9 140 Q. Right. That's why I said over the life or
10 going forward?

11 A. But you said smaller packets, that's why I
12 want to keep it into smaller packets.

13 141 Q. I understand, and we'll come back to that.
14 So at the beginning all the money was delivered to Mr.
15 Mander. Correct?

16 A. Yes.

17 142 Q. But as time went on not all of the money that
18 was provided to CO was given to Mr. Mander. Correct?

19 A. Yes.

20 143 Q. Okay. Now, at the beginning you said
21 straight off Mr. Mander was involved with CO from the
22 outset. Correct?

23 A. Yes.

24 144 Q. For what reason was the money sent out of CO
25 to Mr. Mander at the beginning?

1 A. For his investment stuff that he was doing in
2 what he told me Arizona Options Club.

3 145 Q. Yes. And he was, in fact, working at CO for
4 the purpose of doing investments. Correct? He was
5 involved from day one with CO. You've told me that he
6 was involved with CO from day one?

7 A. He controlled all the investing of CO from
8 day one.

9 146 Q. Correct. Yes, he did?

10 A. Okay. I want to find out about, we had an
11 issue with this thing, and I'll find out the particulars
12 that we touched on already.

13 147 Q. I understand?

14 A. Okay. From the very beginning Robert Mander
15 had me borrow money for him, and he would re-invest it in
16 a club that his father started, I believe, in Arizona and
17 generate these big rates of return, cover our Promissory
18 Notes and the profit on top of it would come to us.

19 148 Q. I understand that. But Mr. Mander, as you
20 said, from day one was in control of your investments,
21 meaning CO's investments, correct?

22 A. Yes.

23 149 Q. The investments could have been done within
24 CO, the funds need not have been transferred out to Mr.
25 Mander. Correct?

1 MR. DAVIS: What is the point of that, why is
2 that relevant?

3 MR. GOTTLIEB: If you want to object, just state
4 is your objection.

5 MR. DAVIS: Well, anything could have been. It's
6 a pointless question.

7 MR. GOTTLIEB: So you're just going to refuse
8 that?

9 MR. DAVIS: Go ahead, answer it.

10 THE DEPONENT: What I was told about Arizona, it
11 was a club, it was an old boys' club, you had to belong
12 to the club. He belong the to the club, his father
13 started it. The money had to go through him to get into
14 this Options Writing Club he had, and that's why CO
15 Capital could not go sign up with that club, here is a
16 cheque, invest it for us.

17 150 BY MR. GOTTLIEB:

18 151 Q. That's what you were told by Mr. Mander?

19 A. Yes.

20 152 Q. And you did zero due diligence to confirm any
21 of that. Correct?

22 A. Correct.

23 153 Q. Okay. Now, CO we talked about was in the
24 business of investing, as we talked about it, and in that
25 regard we know that CO opened up some bank accounts from

1 time to time. Correct?

2 A. Yes.

3 154 Q. And you were the signing authority on those
4 bank accounts. Correct?

5 A. Yes.

6 155 Q. And we also know that CO opened up trading
7 accounts. Correct?

8 A. Yes.

9 156 Q. In the name of CO, not in the name of Mr.
10 Mander?

11 A. Correct.

12 157 Q. Okay. So CO had bank accounts, it had
13 trading accounts. And the money received from, I'll call
14 them "lenders" because I believe that's what you call
15 them, the money received from lenders were deposited into
16 a CO bank account. Correct?

17 A. Yes.

18 158 Q. And the monies that were deposited into those
19 accounts were never segregated from any other funds; they
20 were all deposited into, if I can just call it, a pool of
21 funds?

22 A. The bank account we're talking about?

23 159 Q. The monies that were received from lenders.
24 The money received from lender A was never segregated
25 from the money received from lender B, it went into the

1 same pool?

2 A. That's correct.

3 160 Q. And that's the way these accounts operated at
4 all times. They were never funds that were segregated by
5 an investor/investor bases, they all went into the same
6 bank accounts. Correct?

7 A. No. We opened up other companies later.

8 161 Q. You opened up other companies?

9 A. Yes.

10 162 Q. I apologize, I don't know what that means.
11 What do you mean when you say "we opened up other
12 companies?"

13 A. There was Pero Assets.

14 163 Q. Yes?

15 A. And there was Mand Assets. So there was some
16 segregation of deposits in that sense.

17 164 Q. I understand that, and we'll come to that.
18 But the monies that CO Capital raised?

19 A. Right.

20 165 Q. Went into a CO Capital account. And at no
21 time were those amounts segregated by investor. They
22 were never held In Trust for investor X?

23 A. No.

24 166 Q. They all went into the same pot within CO is
25 my point?

1 A. Yes.

2 167 Q. And monies that went back into the CO
3 account, those monies were never segregated either, they
4 just went back into the same pool of funds. Correct?

5 A. Monies that came back from Mander?

6 168 Q. If that's where they came back from, yes, or
7 Mr. Mander's companies?

8 A. Yes.

9 169 Q. Okay. That's my point. So if a hundred
10 dollars each came in from five investors into the CO
11 investment pool, there would be \$500 into that CO
12 account. Correct?

13 A. Okay.

14 170 Q. And if Mr. Mander paid back \$600 into CO for
15 some reason, that \$600 would go into that same account.
16 Correct?

17 A. Yes.

18 171 Q. Okay. Now, CO Capital was incorporated, we
19 saw, on January 5, 2006. And it began entering into loan
20 agreements immediately after its incorporation with third
21 parties. Correct?

22 A. Yes.

23 172 Q. So, obviously, one of the reasons you
24 incorporated this company was so you could do that exact
25 thing. There was some planning involved, correct?

1 A. I was doing what Robert was doing already.

2 173 Q. Well, I'm not sure what Robert was doing
3 already. We'll park that. I'm talking about what you
4 were doing with CO. My point is CO was incorporated on
5 the fifth, and within a few days CO is taking in money.
6 Correct?

7 A. Let's back up a little bit to the end of the
8 fall of '05. Peter and Mandy's personal money went to
9 Robert. Robert came back to us in December, said:
10 You're doing very well; the money is up to this amount,
11 do you want it back? Do you want to re-invest it? What
12 do you want to do? He introduced to me what he called
13 CCs, what he called client companies. And he had a
14 series of them, at the time. Or so I was told. And he
15 said: Would you like to do that too? Would you like to
16 learn more about this? Would you like to get into this?
17 And the answer was: Yeah, I'd like to give it a shot.

18 174 Q. Right. So getting back to my question. By
19 the time you set up CO Capital on January 5, '06 you had
20 already it in the works that you were going to start
21 getting loans from people. It didn't happen on a
22 four-day period. This was something that you had in the
23 works, correct?

24 MR. DAVIS: Just so we're clear. You're
25 suggesting what he had in the works was the notion of

1 getting money from people into CO before he incorporated
2 the company?

3 MR. GOTTLIEB: Correct?

4 MR. DAVIS: Go ahead.

5 THE DEPONENT: Honestly, I don't remember
6 exactly. I honestly don't.

7 BY MR. GOTTLIEB:

8 175 Q. Let's look at the timing, then. So, again, I
9 apologize for repeating. But on January 5th CO is
10 incorporated, and its first Loan Agreements are entered
11 into on January 9th four days later?

12 A. If that's correct? I don't have that in
13 front of me. I'll assume it is correct.

14 MR. DAVIS: Assume it is correct. Isn't your
15 question really whether --

16 BY MR. GOTTLIEB:

17 176 Q. Mr. Davis, I don't need you to rephrase my
18 questions, please. I want you to turn up if you could,
19 please, your August 10th Affidavit?

20 MR. DAVIS: Yep.

21 BY MR. GOTTLIEB:

22 177 Q. If you could please go to tab 9. And this
23 is, on page 1 of tab 9, a chart that purports to show the
24 contracts entered into with CO between January and
25 December 31, '06. Correct?

1 A. Yep.

2 178 Q. And you'll see that there are three contracts
3 entered into on January 9, 2006. Do you see that?

4 A. Yes.

5 179 Q. One is in the amount of 50,000. The second
6 is in the amount of 50,000. The third is in the amount
7 of 100,000. Do you see that?

8 A. Yes, I do.

9 180 Q. So CO Capital raised \$200,000 four days after
10 it was incorporated. Correct?

11 A. Correct.

12 181 Q. My point was, that it wasn't on January 5th
13 that CO just got the idea that it would go raise some
14 funds from third parties, that concept and that idea was
15 in the works prior to January 5th?

16 A. The first one is my mother. The second one
17 is a young man I sponsored. The third one.

18 182 Q. Named?

19 A. Manual Zivoli.

20 183 Q. Z-I-V-O-L-I.

21 A. The third one I mc'd his wedding.

22 184 Q. Which is a gentleman by the name of Bruce
23 Pynn, P-Y-N-N?

24 A. Correct. And the fourth one I believe,
25 because these are initials, I think it says John

1 Maracassa.

2 185 Q. That's correct. For \$75,000 and that's
3 January 12th?

4 A. Right.

5 186 Q. Okay. I'm not sure why we're having trouble
6 with this right now, but we appear to be --

7 MR. DAVIS: Why is there trouble? That wasn't
8 fair. There is no "trouble" there. You asked a
9 question, and you got an answer.

10 BY MR. GOTTLIEB:

11 187 Q. I've been asking you to simply confirm for me
12 that the idea and the process of raising these funds
13 didn't start on January 5th, that the idea of it and the
14 process in doing it started before January 5th. Or is
15 your evidence that you didn't speak to anyone before, you
16 didn't talk to anybody before, you didn't think about it
17 before, but on January 5th or immediately thereafter you
18 thought: Hey, maybe I could raise some funds; I should
19 call people?

20 A. I don't remember exactly when I started
21 talking to people about it, or immediately thereafter.

22 188 Q. So you don't recall the timing, exactly. And
23 just before we go to the documents, themselves. If I've
24 read this chart correctly, that \$275,000 that was raised
25 was delivered to Mr. Mander or his company on January 12,

1 '06. So a hundred cent dollars was delivered immediately
2 to Mr. Mander on January 12th of all the funds.

3 Correct?

4 A. Yes.

5 189 Q. And the four people that we're talking about,
6 which is, obviously, your mother and Mr. Zivoli, Mr. Pynn
7 and Mr. Maracassa, you contacted each of them for the
8 purpose of getting them to lend money to CO. Correct?

9 A. Contacted my mother?

10 190 Q. Yes?

11 A. For that purpose?

12 191 Q. Yes?

13 A. I talk to my mom all the time. I talk to
14 Bruce all the time. I talk to Manuel all the time.

15 192 Q. I don't want to * mince words. You are the
16 ones that said to each of them: Lend money to CO, or
17 words to that effect?

18 A. I told them this is what I'm doing, I believe
19 in it.

20 193 Q. To put it bluntly, you solicited them to make
21 an investment or a loan to CO. Correct?

22 A. No.

23 194 Q. That was the whole reason you set up CO so
24 that, or that was a main reason or one of the reasons
25 that you set up CO so you could solicit people to invest

1 in CO. Correct?

2 A. We said this already, I didn't start CO just
3 because I wanted to go raise money. The initial people
4 that came in knew what I was doing because we are close
5 friends; they were interested in doing it, as well.
6 Robert had showed me that this is a system that he uses,
7 and I said: Sure, let's give it a try.

8 195 Q. One of the reasons that you established CO
9 was so that you could solicit investors, correct?

10 MR. DAVIS: That is the fourth time. You've had
11 the answers three times. That's enough. Move on.

12 MR. GOTTLIEB: I'm going to ask the Reporter to
13 find the answer to that question, because I'm almost
14 certain that question wasn't answered.

15 MR. DAVIS: It was answered. I'd be happy to
16 suggest the answer, but I don't want you to suggest that
17 I'm suggesting answers.

18 BY MR. GOTTLIEB:

19 196 Q. I agree with that. So why don't we just have
20 Mr. Sbaraglia answer it as a "yes" or "no." Part of the
21 purpose --

22 MR. DAVIS: He's answered it three times.

23 MR. GOTTLIEB: He actually answer hasn't. What
24 he has done is answered different questions. I'm asking
25 a very specific question that he hasn't answered,

1 Mr. Davis.

2 MR. DAVIS: How is that different from the prior
3 question?

4 BY MR. GOTTLIEB:

5 197 Q. Because I want an answer to the question
6 "yes" or "no": Is one of the purposes that CO was
7 established so they could solicit investors? It either
8 was or wasn't one of the purposes. Was it one of the
9 purposes?

10 MR. DAVIS: We think he answered it more than
11 once.

12 MR. GOTTLIEB: Okay.

13 MR. DAVIS: You know what, why don't you send him
14 out of the room and I'll tell you what he said.

15 MR. GOTTLIEB: No. Thank you.

16 MR. DAVIS: Just trying to be helpful.

17 BY MR. GOTTLIEB:

18 198 Q. Do you have your Responding Record of
19 September 15th? If you can please go to tab 5. Sir,
20 this is a Statement of Claim issued by CO Capital Growth
21 and you and Mandy. Correct?

22 A. Yes.

23 199 Q. And this was prepared by your counsel,
24 Mr. Davis, I understand it. Correct?

25 A. Yes.

1 200 Q. All right. And you've seen this document
2 before, obviously?

3 A. Yes.

4 201 Q. All right. I want you to go to page 4 of it,
5 please. Paragraph 10, I'll read it: "At Mander's urging
6 Peter incorporated CO Capital for the purpose of using
7 that company as an investment vehicle for investments
8 made by them, as well as by investors who were to be
9 solicited by Peter and Mandy." Is that statement in the
10 Statement of Claim accurate?

11 A. I don't remember the "Mandy" part.

12 202 Q. Other than it referring to "Mandy," that
13 statement is accurate. Correct?

14 A. I guess the issue is the word "solicited"
15 more than anything else.

16 203 Q. Well, it's your word, it's in your Statement
17 of Claim. Is it correct in your claim or isn't it? Sir,
18 you don't just flippantly put words into your claim?

19 MR. DAVIS: That is not fair.

20 MR. GOTTLIEB: With respect, that is fair.

21 MR. DAVIS: You know that is not fair, he didn't
22 draft it. So we're not going to agree to that, and that
23 is not a fair question.

24 BY MR. GOTTLIEB:

25 204 Q. Sir, is it accurate or isn't it? Answer the

1 question: Is that statement in your Statement of Claim
2 accurate or is it inaccurate?

3 A. It's roughly accurate.

4 205 Q. It's "roughly accurate?"

5 A. Uh'hmm.

6 206 Q. So it's not completely accurate?

7 A. Well, what I don't understand is what the
8 word "solicit" means here.

9 207 Q. Well, sir, it's in your claim. You know what
10 "solicit" means. "Solicit" means going to ask people for
11 things, that's what "solicit" means. You understand that
12 is what "solicit" means, don't you. Do you understand
13 that is what "solicit" means?

14 A. Pardon me?

15 208 Q. Do you understand that's what "solicit"
16 means?

17 A. Ah, yes.

18 209 Q. Okay. So you do know what that means. Is it
19 accurate or is it inaccurate when it says those words in
20 the pleading?

21 A. What I'm trying to remember five years ago is
22 if I actually went to people and asked or not, and who I
23 did and who I didn't, when I did, when I didn't, what I
24 said, what I didn't. That's why I'm hesitating here.
25 That's the only reason I'm hesitating.

1 210 Q. That's not what that paragraph says. So you
2 may want to read it again because it doesn't say what you
3 did, in fact, do which we will come to. It says, the
4 purpose of incorporating the CO vehicle. So I haven't
5 yet asked you what you did with respect to that
6 paragraph; I simply asked you to confirm that the
7 paragraph is accurate?

8 A. It's accurate.

9 211 Q. Okay. Now, we looked at the chart at tab 9,
10 of your August 10th Affidavit. And I just want to get
11 you to confirm a couple of documents if you could,
12 please. And this is what I understand to be the first
13 Loan Agreement entered into by CO. Is that correct?

14 A. Yes.

15 212 Q. And the Kathleen Sbaraglia is your mother?

16 A. Yes.

17 213 Q. And whose handwriting is it on the top of
18 this document?

19 A. My wife's.

20 214 Q. All right. And whose handwriting is it
21 filling in the details, which is the 50,000?

22 A. Mine.

23 215 Q. And the January 25th, that's all your
24 handwriting?

25 A. Yes.

1 216 Q. And if we flip over to the second page it's
2 signed by you on behalf of CO Capital. Correct?

3 A. Yes.

4 217 Q. And that's, I presume, your mother's
5 signature?

6 A. Correct.

7 218 Q. Okay. And this is a \$50,000 loan, and it's a
8 loan for one year. Correct?

9 A. Yes.

10 219 Q. And under this loan it was a 30 per cent
11 simple annual interest to be paid. Correct?

12 A. Yes.

13 220 Q. And this money we know was forwarded on to
14 Mr. Mander. Correct?

15 A. Yes.

16 221 Q. But I believe you told me before that Mr.
17 Mander didn't guarantee a rate of return?

18 A. No. What I told you was he guaranteed the
19 amount that was owed on a Promissory Note, and we'd split
20 what was on top of that.

21 222 Q. Okay. Perfect. Thank you. Go to page 3 of
22 this document, if you could?

23 MR. DAVIS: Are you talking about the Mander Loan
24 Agreement?

25 BY MR. GOTTLIEB:

1 223 Q. Correct. It says, "Mander Group and Client
2 Companies Loan Agreement." Do you see that?

3 A. Yes.

4 224 Q. And it's the Lender of CO Capital Growth and
5 the Borrower, Mander Group Inc. Do you see that? And it
6 shows a \$50,000 loan. Do you see that?

7 A. Yes.

8 225 Q. For one year?

9 A. Uh'hmm.

10 226 Q. And it shows a rate of return of 30 per cent.
11 Do you see that?

12 A. Yes.

13 227 Q. And then it shows what I'm going to call a
14 50/50 split between you and Mr. Mander regarding anything
15 above 30 per cent?

16 A. Yes.

17 228 Q. So that was the arrangement that you were
18 talking about before?

19 A. Yes.

20 229 Q. Okay. Can we please mark this as the next
21 exhibit, which is 26.

22 --- EXHIBIT NUMBER 26: Loan Agreement between CO Capital
23 and Kathleen Sbaraglia

24 BY MR. GOTTLIEB:

25 230 Q. And what I'll hand you, just to make things a

1 little quicker -- just give me a second, please. I'll
2 hand you a package of the next three. Sir, why don't you
3 just take a look at these three documents I just handed
4 you, because unless I'm mistaken they are the next three
5 Agreements that were referred to on Exhibit 9 to your
6 August 10th Affidavit. Have I got that right?

7 A. I believe so.

8 231 Q. And they are all one-year loans for a simple
9 rate of 30 per cent annual interest?

10 A. Uh'hmm.

11 232 Q. And that's, again, your wife's handwriting on
12 the tops of that?

13 A. Yes.

14 233 Q. Why don't we mark these three as Exhibit 27.
15 Mr. Davis, okay?

16 MR. DAVIS: Yes.

17 --- EXHIBIT NUMBER 27: Loan Agreement between CO Capital
18 and Kathleen Sbaraglia

19 MR. DAVIS: So my point was if you have others
20 you just want to put into the record, just give them to
21 me, we'll let him look at them and we'll submit them.

22 BY MR. GOTTLIEB:

23 234 Q. So with respect to those four individuals,
24 including your mother, you say you did not solicit them.
25 Is that your evidence, that you did not say to any of

1 them words to the effect of or words to have an impact
2 of: Why don't you lend some money to CO?

3 A. Probably yes.

4 235 Q. Okay. You probably did say that?

5 A. Yes.

6 236 Q. Okay. And you understood well that when you
7 lent the money you would be passing it on directly to Mr.
8 Mander. Correct?

9 A. Yes.

10 237 Q. That was your plan from the outset?

11 A. Yes.

12 238 Q. All right. You guaranteed a rate of return
13 and Mr. Mander guaranteed you the rate of return?

14 A. My company guaranteed the rate of return.

15 239 Q. And Mr. Mander's company guaranteed the rate
16 of return, correct?

17 A. Yes.

18 240 Q. And having known from the outset that you
19 were going to pass the money on to Robert Mander, you
20 must have at that time felt comfortable that Mr. Mander
21 would generate the return so that you could generate the
22 returns to pay back the principal plus the interest.
23 Correct?

24 A. Yes.

25 241 Q. And you, therefore, would have explained to

1 the four investors, and I do appreciate one is your
2 mother but as you said you talked to your mother
3 everyday, you would have explained to each of them Mr.
4 Mander's role in the business. Correct?

5 A. Yes.

6 242 Q. And you would have explained about his
7 success. Correct?

8 A. Yes.

9 243 Q. And you would have explained that you were
10 comfortable because of the success that you had had with
11 him. Correct?

12 A. Yes.

13 MR. GOTTLIEB: Okay. Can we take a break for a
14 few minutes, please, I'm sure all of us would agree with
15 that.

16 --- Whereupon proceedings recessed at 3:19 p.m.

17 --- Whereupon proceedings resumed at 3:27 p.m.

18 BY MR. GOTTLIEB:

19 244 Q. As at January 12, '06 we pointed out that
20 you'd raised \$275,000 from those four people, and as at
21 that date you had only entered into one transaction with
22 Mr. Mander. Correct?

23 A. Okay.

24 245 Q. You won't see it on that chart. I'm talking
25 about a transaction that you, in fact, had entered into

1 with Mr. Mander?

2 A. Like I say, it was two because we did the
3 first one we made interest on it and he asked us to
4 re-invest in it with him.

5 246 Q. Okay. I don't think your timing is right,
6 though. So we can deal with that. Let's go to -- well,
7 our records, I'll tell you what our records say and then
8 we can deal with it. Do you remember what the term of
9 the first loan was that you entered into with Mr. Mander?

10 MR. DAVIS: I was going to ask you to clarify
11 which one you're talking about?

12 BY MR. GOTTLIEB:

13 247 Q. The first loan transaction that you had with
14 Mr. Mander?

15 A. Yes.

16 248 Q. What was the term of it, do you recall?

17 A. I'm pretty sure it was a three-month term.

18 249 Q. Okay. It was a three-month term?

19 A. Yes.

20 250 Q. And it was for how much?

21 A. 10 per cent monthly for three months.

22 251 Q. And how much was the investment?

23 A. \$100,000.

24 252 Q. And when was it made?

25 A. The fall of '05. And I don't remember

1 exactly when.

2 253 Q. I'm going to suggest to you it was September
3 15th of '05. Does that sound right?

4 A. That sounds right.

5 254 Q. That's what the records show, it shows it was
6 September 15th of '05. Okay?

7 A. Yes.

8 255 Q. And it was a \$100,000 loan?

9 A. Yes.

10 256 Q. And that loan was, in fact, never paid back
11 to you in any way with interest or principal prior to,
12 for example, February of '06. Correct?

13 A. Correct. February, '06. I don't remember
14 why that date is significant.

15 257 Q. Well, you talked about it being "rolled?"

16 A. Right.

17 258 Q. But, in fact, that actually wasn't "rolled,"
18 at that time. I'll just confirm my dates. Our records
19 show that that was rolled on January 25 of '06. Does
20 that sound about right?

21 A. I don't recall.

22 259 Q. You don't recall. Okay. Well, if you have
23 any evidence at all to the contrary of that loan being
24 rolled on January 25, '06 will you advise us, please?

25 MR. DAVIS: Let's be clear. It doesn't work that

1 way. I don't know that any of those documents being in
2 the record, and I don't know that he has the ability to
3 find out. And you haven't put that on the record.
4 You've made the suggestion, and as you know your question
5 is not evidence. So the way you're putting it makes it
6 difficult. You shouldn't assume that he can't find out
7 to the contrary that that is a stated fact, it might be
8 right and it might not be right.

9 BY MR. GOTTLIEB:

10 260 Q. Okay. I can ask it differently. I wasn't
11 trying to be difficult. Will you undertake to advise me
12 the date that loan of September 15th or 14th, '05 was
13 rolled into a new loan?

14 MR. DAVIS: If we can get that information, yes.

15 --- UNDERTAKING

16 BY MR. GOTTLIEB:

17 261 Q. Happily, Ms. Bezner has passed to me a
18 document that I'll walk around the table. And it shows
19 as Lender, CO; and, Borrower, Mander Group Inc. Do you
20 see that?

21 A. Uh'hmm.

22 262 Q. And it's a loan from January 25, 2006 to
23 January 24, 2007. Do you see that?

24 A. Uh'hmm.

25 263 Q. Sorry. You have to say, "yes?"

1 A. Yes.

2 264 Q. Thank you. And the amount is \$133,000. Do
3 you see that?

4 A. Yes.

5 265 Q. And considering what you told me about the
6 loan that was given in September, would you agree with me
7 that this appears to be the roll of that loan?

8 A. Yes.

9 266 Q. Okay. So the date we have for that is
10 September 25th. And like I said --

11 A. I think you meant January.

12 267 Q. January 25th. Thank you. Thank you for
13 that, Mr. Sbaraglia. So my point was that by the time
14 you had raised this \$275,000 you, in fact, had never
15 received any money back from Mr. Mander on any investment
16 that you made with him?

17 A. Correct.

18 268 Q. Now, we know that by the time you had
19 incorporated CO Capital on January 5th you had not had a
20 single successful transaction with Mr. Mander, either
21 personally or through your corporations. Correct?

22 A. Pardon me? Repeat that?

23 269 Q. When you incorporated CO Capital on January
24 5, '06 you had not a single investment with Mr. Mander?

25 A. I thought I had.

1 270 Q. But you hadn't received any money back from
2 Mr. Mander at all?

3 A. That's correct.

4 271 Q. And you are talking about a single loan of
5 \$100,000 in September of '05. Correct?

6 A. Yes.

7 272 Q. And you had literally zero evidence,
8 whatsoever, whether that loan had done well or done
9 poorly from Mr. Mander. Correct?

10 A. Correct.

11 273 Q. And the same can be said by January 12, 2006
12 when you would raise \$275,000. Correct?

13 A. I don't remember exactly when I started
14 learning more about how he was trading, what he was doing
15 and so on. Because remember I said I took a couple of
16 days off a week and started learning?

17 274 Q. Yes?

18 A. I don't remember the exact dates, to tell you
19 the truth.

20 275 Q. I get that. But sitting here right now you
21 can't say that by January 12th you had any evidence,
22 whatsoever, that your investment with Mr. Mander had done
23 anything?

24 A. Other than his words.

25 276 Q. Other than his words?

1 A. No.

2 277 Q. You had zero. And, again, we're talking
3 about one investment only of a hundred thousand dollars.
4 Correct?

5 A. Right.

6 278 Q. Okay. Now, if we go back to the document you
7 have in front of you, it appears at tab 9 of the August
8 9th Affidavit, this shows that in 2006, in the first year
9 of CO's business, you raised \$923,820.55. Correct?

10 A. That's what it says. Yes.

11 279 Q. And that's correct, to your knowledge?

12 A. I'll say, "yes."

13 280 Q. Okay. And you raised those funds from a
14 variety of different parties?

15 A. Yes.

16 281 Q. For example, Cecil Russel. Correct?

17 A. Yes.

18 282 Q. And Dr. Radishee. Correct?

19 A. Yes.

20 283 Q. And Maple View Enterprises?

21 A. Yes.

22 284 Q. Who was Maple View?

23 A. My brother-in-law.

24 285 Q. His name, please?

25 A. Gary McIntosh, M-C-I-N-T-O-S-H.

1 286 Q. And, again, these transactions, I don't have
2 to put them all in front of you, were all similarly
3 structured as the four that we marked. Correct?

4 A. Correct.

5 287 Q. Guaranteed rates of return. You told him the
6 same things that you had told the prior four people,
7 correct, about your business and Mr. Mander, et cetera?

8 A. Yes.

9 288 Q. Okay. Now, I want to take you to the red
10 binder, please?

11 MR. DAVIS: Can I put these things away?

12 MR. GOTTLIEB: Pardon me?

13 MR. DAVIS: Can I put these things away.

14 BY MR. GOTTLIEB:

15 289 Q. Sure. And, again, Mr. Sbaraglia, sorry to
16 belabour it, we talked about this before, these were all
17 people who you knew and went to in the same manner that
18 we talked about before about your business because you
19 talked to these people. Correct?

20 A. I talked to them regularly.

21 290 Q. Okay. All right. And I want you to go to
22 the introductory note here, which is behind tab 1. And,
23 again, this note was prepared by your counsel at
24 Aylesworth?

25 A. Yes.

1 291 Q. And you've, obviously, read this note?

2 MR. DAVIS: Before today?

3 BY MR. GOTTLIEB:

4 292 Q. Yes?

5 A. I honestly don't remember if I read this.

6 293 Q. Okay. So you understood that this was a
7 document given to the OSC. Correct?

8 A. Yes.

9 294 Q. And you understood that it was given to the
10 OSC so that it could be relied on by the OSC. Correct?

11 A. I'm not sure.

12 295 Q. You don't know why this was given to the OSC?

13 A. My lawyers drafted this. They gave it to the
14 OSC. That's all I know.

15 296 Q. Well, to be fair, Mr. Sbaraglia, I'm not sure
16 that's all you know. Because the examination transcript
17 shows the way in which this introductory note was used by
18 your counsel on the examination. Correct?

19 A. Okay.

20 297 Q. That's correct, isn't it?

21 MR. DAVIS: The transcript says what the
22 transcript says.

23 BY MR. GOTTLIEB:

24 298 Q. Well, Mr. Sbaraglia was there. So let me put
25 it this way: You'll agree with me that during the course

1 of your examinations at parts your counsel actually
2 referred to this?

3 A. Yes, he did.

4 299 Q. And you knew that he was using this to
5 explain what he said were the facts of your situation to
6 the OSC. Correct?

7 A. Yes.

8 300 Q. And the reason this was put together was, to
9 put it bluntly, was to try to persuade the OSC not to
10 take steps against you and your company. Correct?

11 A. I wouldn't say "correct" to that.

12 301 Q. Okay. You didn't understand that part of the
13 strategy of your legal team was to try to convince the
14 OSC not to take proceedings against you?

15 A. Say that again? I missed that. Say that
16 again, please?

17 302 Q. I'll break it down into really small
18 pieces?

19 A. Right.

20 303 Q. You understood that the OSC had called you in
21 for an interview. Correct?

22 A. Yes.

23 304 Q. You understood that the OSC was conducting an
24 investigation you. Correct?

25 A. Yes.

1 305 Q. You understood the OSC was conducting an
2 interview against CO Capital. Correct?

3 A. Yes.

4 306 Q. You understood that as part of the OSC's
5 powers it could take some type of steps or proceedings,
6 or seek remedies against you and CO Capital. Correct?

7 A. Yes.

8 307 Q. You understood that part of the strategy that
9 was being undertaken by your counsel on your behalf was
10 to try to get the OSC not to take steps, proceedings or
11 seek remedies against you and CO Capital. Correct?

12 A. Okay. Yes.

13 308 Q. Okay. That's all I was getting at. You
14 understood that this binder was prepared by your
15 counsel?

16 A. Yes.

17 309 Q. To that end to try to convince the OSC, or
18 persuade the OSC that there was good reason not to take
19 steps against you or CO Capital. Correct?

20 A. Okay. Yes.

21 310 Q. And that is part of the purpose of the
22 introductory note to have that effect on the OSC, so that
23 it wouldn't take steps. Correct?

24 A. Okay. Yes.

25 311 Q. And this was handed over during the course of

1 your examination. Correct? You recall that?

2 A. Yes.

3 312 Q. And at your examination you actually gave an
4 oath to tell the truth at the examination. Correct?

5 A. Yes.

6 313 Q. Okay. I believe you swore to tell the truth
7 on that examination. Correct?

8 A. I don't remember.

9 314 Q. It says "sworn" at the front of the
10 transcript?

11 A. I don't even know what the difference
12 means.

13 315 Q. Okay. But you either swore or affirmed to
14 tell the truth. Correct?

15 A. Yes.

16 316 Q. And you understood that was important to tell
17 the truth at that examination. Correct?

18 A. Yes.

19 317 Q. Okay. Now, in this introductory note there
20 is a large part in the middle that is headed: Relied on
21 legal advice. You see that?

22 A. Yes.

23 318 Q. And we can read the whole thing, and I can go
24 through the whole transcript. But you'll agree with me
25 that one of the things that your side, you and your

1 counsel, repeatedly told the OSC was that you had relied
2 on legal advice with respect to this business enterprise.
3 Correct?

4 A. Yes.

5 319 Q. And that you had complied with the legal
6 advice. Correct?

7 A. Yes.

8 320 Q. Okay. Now, the legal advice that you
9 received with respect to this matter was from the Borden
10 Ladner Gervais firm?

11 A. Yes.

12 321 Q. And you got that advice at the end of 2006.
13 Correct?

14 A. Yes.

15 322 Q. So all of the loans we just talked about, the
16 900 odd thousand dollars of loans, you entered into all
17 of those agreements without first getting legal advice?

18 A. Robert had, though.

19 323 Q. I wasn't asking about Robert?

20 A. Did I personally go to a lawyer before I
21 entered into those loans. No, I didn't.

22 324 Q. What you told the OSC, and again we can go
23 through this little by little, was that you had relied on
24 the legal advice of Borden Ladner Gervais. Correct?

25 A. Uh'hmm.

1 325 Q. You hadn't done that in the beginning of 2006
2 when CO started to do business?

3 A. Yes.

4 326 Q. And the opinion you gave to the OSC was an
5 opinion delivered to you in December of '06?

6 MR. DAVIS: Are you talking about the one in the
7 binder?

8 BY MR. GOTTLIEB:

9 327 Q. Yes. That's correct?

10 A. Yes.

11 328 Q. You didn't show the OSC any other legal
12 opinion that you got. Correct?

13 A. No.

14 329 Q. Nor did you say to the OSC: We were relying
15 on an opinion from Robert Mander or some other opinion.
16 Correct? The opinion that you talked about was the
17 Borden Ladner Gervais' opinion?

18 A. Yes.

19 MR. DAVIS: Can we just stop and ask you to be
20 fair to the witness. Because when you say "talked
21 about," I presume you're referring to in the meeting, or
22 the examination by the OSC?

23 MR. GOTTLIEB: Yes.

24 MR. DAVIS: So I'm going to ask you to be a
25 little more careful, because the transcript speaks for

1 itself.

2 MR. GOTTLIEB: It does.

3 MR. DAVIS: And you are making suggestions to Mr.
4 Sbaraglia saying things that we know weren't said on that
5 transcript.

6 MR. GOTTLIEB: That we know weren't said?

7 MR. DAVIS: Yes.

8 MR. GOTTLIEB: I don't know of anything I
9 suggested was said on that transcript, that wasn't said
10 on that transcript.

11 MR. DAVIS: By him. You have to distinguish what
12 got said by him and what got said by counsel. You're
13 suggesting he said certain things. And all I'm telling
14 you is the transcript speaks for itself as to what he
15 said and what others said.

16 MR. GOTTLIEB: Okay.

17 MR. DAVIS: And I'm just asking you to be fair on
18 that point.

19 MR. GOTTLIEB:

20 330 Q. Okay. Well, let's deal with that point.
21 I've read the transcripts. At no time, not once on the
22 transcript do you say: What my counsel just said is
23 incorrect. That's true, isn't it?

24 A. That's true.

25 331 Q. And at no time after the examination do you

1 say to the OSC: What my counsel said on that transcript
2 in answer to that question was untrue. At no time do you
3 do that. Correct?

4 A. Correct.

5 332 Q. So from the OSC's perspective they have every
6 reason to believe that everything that is said in that
7 transcript was accurate. That's fair, isn't it?

8 A. I guess so, yes.

9 333 Q. And you knew very well at that examination
10 that your counsel, Mr. Miller and Ms. Dublin, were
11 speaking on your behalf at that examination. Correct?

12 A. Yes.

13 334 Q. All right. So let's go to the opinion that's
14 referred to in the introductory note, and that's referred
15 to on the examination. And that's at tab 7 of the red
16 binder. And this is the opinion December 15, 2006.
17 Correct?

18 A. Yes.

19 335 Q. No, I want to just look at a couple of points
20 of this. It says, and this was prepared by a Mr. Austin.
21 Correct?

22 A. Correct.

23 336 Q. And the first paragraph says: Further to our
24 recent meetings you have asked that we provide our advice
25 with regard to the Loan Agreements issued by CO Capital

1 Growth Corporation to finance some or all of its
2 operations and activities in terms of compliance with the
3 Securities Act. And that's why you asked for Borden
4 Ladner's advice. Correct?

5 A. Yes.

6 337 Q. And then you say: Specifically, you've asked
7 that we advise as to the availability of exemptions from
8 the Prospectus and registration provisions of the Act and
9 related regulations. That's correct, that's what you
10 asked an opinion on?

11 A. I don't remember specifically what I asked,
12 No.

13 338 Q. You never said to BLG, you've got it wrong
14 there that's not what we asked for an opinion on.
15 Correct?

16 A. No.

17 339 Q. So it's fair to say Mr. Austin was being
18 accurate in this letter. Correct?

19 A. Like I said, I don't remember exactly what I
20 asked them to do for us.

21 340 Q. But you have no reason to believe he's
22 misstated it, though, do you?

23 A. No.

24 341 Q. So if we go to the top of page 2 it refers to
25 the Loan Agreement. And it says they haven't been asked

1 to provide comments with respect to certain of the
2 documents. And then it says halfway down that paragraph:
3 You have also advised that an unnamed individual who is
4 not currently an officer, director or employee of CO is
5 your partner with regard to the selection of investments
6 to be purchased, held or sold by CO as principal.

7 A. Right?

8 342 Q. That is Mr. Mander?

9 A. Yes.

10 343 Q. Now, the opinion then goes on to talk about
11 the various exemptions. Correct?

12 A. Uh'hmm.

13 MR. DAVIS: It says what it says.

14 BY MR. GOTTLIEB:

15 344 Q. And then it goes on at the bottom of page 4
16 after it talks about the exemptions to refer to the
17 Offering Memorandum requirements. Do you see that,
18 it's on page 4 at the bottom?

19 A. Yes.

20 345 Q. And at the top of page 5 it refers to a
21 "market intermediary." Correct?

22 A. Yes.

23 346 Q. And it says the following -- and I presume,
24 Mr. Sbaraglia, you read this opinion when you got it from
25 Mr. Austin?

1 A. Yes.

2 347 Q. Okay. Because you wanted to make sure you
3 were in compliance with the laws, which is why you got
4 this opinion. Correct?

5 A. Uh'hmm.

6 348 Q. Yes?

7 A. Yes.

8 349 Q. Thank you. It says at the top of page 5:
9 While the exemptions discussed above generally provide
10 relief from both registration and prospectus
11 requirements, the registration exemptions are not
12 available in Ontario to market intermediaries. Do you
13 see that?

14 A. Yes.

15 350 Q. And then in the next paragraph it talks about
16 what does or doesn't make a market intermediary. Do you
17 see that?

18 A. Uh'hmm.

19 351 Q. And if we go to the last sentence of that
20 paragraph it says: We are of the view that the OSC from
21 an investor protection and public policy viewpoint would
22 see CO as a market intermediary as CO goes to the market
23 on a regular basis to obtain financing, and therefore is
24 in the business of trading in securities as principal.
25 Do you see that?

1 A. Yes.

2 352 Q. Then what it says is: Assuming that CO
3 limited itself to the sale of Loan Agreements pursuant to
4 one or more exemptions above, registration as a limited
5 market dealer or LMD would be sufficient. Do you see
6 that?

7 A. Yes.

8 353 Q. At no time did CO become registered as a
9 limited market dealer. Correct?

10 A. Correct.

11 354 Q. This opinion says that you need to?

12 MR. DAVIS: It says what it says.

13 MR. GOTTLIEB: Okay.

14 MR. DAVIS: Go off the record.

15 --- Off the record

16 THE DEPONENT: One point.

17 MR. GOTTLIEB: You're going to have to get your
18 counsel's permission to speak.

19 MR. DAVIS: Go ahead.

20 THE DEPONENT: This was December, '06 Richard,
21 Lynn McGrady and I sent back and forth a whole bunch of
22 emails, mostly Richard and I, coming up with this legal
23 way to do it. Okay. I brought him Robert's Loan
24 Agreements with Robert in the room with us. Robert paid.
25 I have the copies of those bank drafts from our initial

1 meetings. Okay. After months of doing this one of the
2 very last emails I have is: You may wish to consider
3 applying for registration as a LMD, there is some new
4 rule coming out, some national instrument, I don't it.
5 So after a couple months of doing this, lots of work with
6 Richard at the very end he said: You may wish to
7 consider applying for this registration thing. It
8 doesn't say: You need to get registered. And at that
9 point I said, okay, I may wish to consider applying for a
10 LMD.

11 BY MR. GOTTLIEB:

12 355 Q. I'm going to ask you to produce that email
13 tonight to me, please?

14 A. Sure. I'll get it to you.

15 356 Q. You'll get it to Mr. Davis, if you don't
16 mind, and then he'll it over to me?

17 A. Absolutely.

18 MR. DAVIS: It won't be tonight.

19 MR. GOTTLIEB: Well, why?

20 MR. DAVIS: I've been working since three o'clock
21 the morning, and I don't want to work tonight. That's
22 why.

23 MR. GOTTLIEB: I'm going to suggest pressing
24 forward and send Mr. Davis isn't going to be too much for
25 you.

1 MR. DAVIS: You know what, if I get it tonight
2 you'll have it before you get out of bed in the morning.

3 MR. GOTTLIEB: That would be helpful. Would you
4 also provide for me the bills of Borden Ladner with
5 respect to this opinion and proof of payment?

6 MR. DAVIS: We can get them.

7 --- UNDERTAKING

8 MR. GOTTLIEB: Okay.

9 MR. DAVIS: Are we off the record?

10 MR. GOTTLIEB: We're done for the day.

11 --- Whereupon proceedings recessed at 3:54 p.m.

12 *****

13 I hereby certify the foregoing to be
14 a true and accurate transcript of my
15 computerized shorthand notes, to the
16 best of my skill and ability.

17

Debbie Anshan CSR RPR
18 Real Time (Caption) 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 PETER
SBARAGLIA on his Affidavits sworn August 10, 2010 (2),
September 15, 2010, & October 18, 2010, held at the
Offices of Network Reporting & Mediation, One First
Canadian Place, 100 King Street West, Suite 3600,
Toronto, Ontario, M5X 1E3, on Friday, October 29, 2010.

APPEARANCES:

Pamela Foy Counsel for the Applicant

Milton Davis,
Kelly Preston Counsel for the Respondents

Matthew Gottlieb Counsel for The Receiver

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UNDERTAKINGS WERE NOTED ON THE FOLLOWING PAGES:
75, 91, 104, 106, 109, 110, 125, 131, 133, 135, 137, 152
THERE WERE NO UNDER-ADVISEMENTS NOTED
REFUSALS WERE NOTED ON THE FOLLOWING PAGES:
125

1 PETER SBARAGLIA, Previously Affirmed

2 MR. GOTTLIEB: When we left off yesterday I asked
3 that you get us the documents relating to the payment of
4 the BLG account that you say Mr. Mander paid. Were you
5 able to uncover those?

6 MS. PRESTON: I don't recall you asking for that.
7 Sorry, what was it you were asking for?

8 THE DEPONENT: I thought you asked for the BLG
9 bills?

10 MR. GOTTLIEB: Correct. And do we have those?

11 MR. DAVIS: I believe that I have electronic
12 copies. I'll check at the break.

13 MR. GOTTLIEB: Okay. And I believe I asked, and
14 if I didn't I'll ask now, but I thought I asked and
15 Mr. Sbaraglia said that Mr. Mander paid for those. I
16 asked for proof of those payments.

17 THE DEPONENT: I don't know.

18 MR. GOTTLIEB: And I may not have.

19 MS. FOY: You did, actually.

20 MR. GOTTLIEB: Okay. The record will say what it
21 say.

22 MR. DAVIS: If Mander paid how would we be able
23 to give you that?

24 MR. GOTTLIEB: Mr. Davis, you have a lot of
25 documents. There is a question about how you got them.

1 And there are a lot of documents in the file that had
2 nothing to do with the CO so I don't even understand the
3 statement. If you've got them, you got them. If you
4 don't, you don't.

5 MR. DAVIS: That I agree with.

6 MR. GOTTLIEB: So could I have an undertaking to
7 get those?

8 MR. DAVIS: You can have what I got or what I can
9 reasonably get. We have none of Mander's bank records.
10 We would have thought you had them.

11 --- UNDERTAKING

12 CROSS-EXAMINATION BY MR. GOTTLIEB, continued:

13 357 Q. Okay. This was work done for CO Capital,
14 correct? The letter is to CO Capital?

15 A. Yes.

16 358 Q. Okay. The bill was paid, I'm told, by Mr.
17 Mander?

18 A. The first one.

19 359 Q. Right. So I'm asking for the bill and the
20 payment of it. And I believe Mr. Davis, he just said
21 you're giving me, in my language, a best efforts
22 undertaking.

23 MR. DAVIS: Right?

24 --- UNDERTAKING

25 BY MR. GOTTLIEB:

1 360 Q. Thank you, very much. We talked about the
2 September 15, 2005 loan to Mr. Mander for \$100,000?

3 A. Yes.

4 361 Q. That was the first loan. Correct?

5 A. Yes.

6 362 Q. And in total you and Mandy, I'll use the term
7 "invested" or gave Mr. Mander for the purpose of
8 investment principal of \$672,000?

9 A. That sounds correct.

10 363 Q. I'll show you that breakdown, your July 12th
11 Affidavit said a million dollars, approximately. Then
12 you're later, and I'm not being critical, your later
13 affidavit said 700,000. When you do the math it's
14 actually 672,000. And I'll show you that breakdown, but
15 that sounds about right to you?

16 A. It does.

17 364 Q. Before I go to the documents you got back
18 from Mr. Mander more money than you gave for Mr. Mander
19 for investment purposes?

20 A. What I'll do with the money questions I'll
21 defer them to Mandy. She knows them inside and out, and
22 you'll get much more accurate answers from her than you
23 will from me about those.

24 365 Q. I'll say, frankly, I was trying not to have
25 to examine Mandy. But if you can't provide the

1 information, then I will. Why don't we see where we get
2 on some of this stuff?

3 A. Sure.

4 366 Q. And if you can give me answers to the
5 question, but if you want to qualify it by saying
6 "approximately" or "I can't be precise, but, yes, I'm
7 comfortable with that," and I think you should be
8 comfortable with that too. We're not going to talk
9 dollar for dollar. And if you think you are
10 uncomfortable with that then I'll rephrase it.

11 MR. DAVIS: If I get my computer up and running
12 here I may be able to get exact figures from Mandy who I
13 understand is at home waiting for your advice as to
14 whether she should show up here today. I may be able to
15 get that information relatively expeditiously.

16 BY MR. GOTTLIEB:

17 367 Q. Okay. Why don't we just see where we go. I
18 take it, Mr. Sbaraglia, without being accurate as to the
19 dollar figures you can acknowledge that Mr. Mander paid
20 to you and Mandy more money than you paid to Mr.
21 Mander?

22 A. No, you see that's the thing that I need
23 Mandy to explain to you to break that all down.

24 368 Q. Okay. So you can't acknowledge that?

25 A. No.

1 369 Q. Okay. Can you pull out Volume 1 of the Brief
2 of Documents prepared by Davis Moldaver, please. If
3 you'd go to tab 7, please. Who prepared this document?

4 MR. DAVIS: To be fair to the witness, that, I
5 understand, comes from the red binder. Am I not right
6 about that, is it part of the red binder?

7 MR. GOTTLIEB: I'm going to defer to Ms. Foy, I
8 sure don't think that comes from the red binder.

9 MS. FOY: I don't believe it is, either. I'm
10 checking it now.

11 MR. DAVIS: I'll try to find out the source of
12 the document. Just so we're clear this brief was
13 prepared from my Summation database.

14 MR. GOTTLIEB:

15 370 MR. DAVIS: I cannot tell the source of the
16 document looking at this other than it is in the file.
17 My guess is that Mandy prepared it, but I don't know
18 that. If you look at the document it is seven pages in
19 length.

20 MR. GOTTLIEB: Yes.

21 MR. DAVIS: And there are signatures on it.

22 MR. GOTTLIEB: The signatures are actually a bit
23 of an add on. The way the document works, as I see it,
24 is the first few pages are descriptive and the last set
25 of pages that contain some signatures back up the

1 descriptions on the first two pages.

2 MR. DAVIS: Well, it looks like that. The
3 document as found in our file was all seven pages
4 together.

5 MR. GOTTLIEB: I understand that. No. No. I
6 actually believe it's a seven-page document. I'm simply
7 pointing out that it's the first two pages that describe
8 the story.

9 MR. DAVIS: Well, they say what they say.

10 MR. GOTTLIEB: I know, Mr. Davis. I want to know
11 who prepared what they say.

12 MR. DAVIS: What I'm telling you is I don't have
13 that information, and I can't tell looking at my own
14 electronic database. Feel free to ask the witness.

15 MR. GOTTLIEB: Okay. We can do this a lot of
16 different ways. I was hoping to do it in the short way
17 using this document because you produced it.

18 MR. DAVIS: Can we go off the record for a
19 second?

20 MR. GOTTLIEB: Yes.

21 --- Off the record

22 BY MR. GOTTLIEB:

23 371 Q. So page 1 of this document. The heading is:
24 Personal money given to Mander. Do you see that?

25 A. Yes.

1 372 Q. And it breaks down the categories into
2 Options and Loan Agreements. And based on receipt view
3 of this there's actually only one thing missing, which is
4 the precursor. Because when you look at the loan
5 agreement, it says January 26, 2006 \$133,000. Do you see
6 that?

7 A. Yes.

8 373 Q. We know that the \$133,000 Loan Agreement was
9 actually a roll of the \$100,000 Loan Agreement that was
10 entered into in September of '05. Correct?

11 A. Yes.

12 374 Q. When you take all these eight items and look
13 at the cash put in?

14 A. Okay.

15 375 Q. Not interest that was rolled and things like
16 that?

17 A. I understand.

18 376 Q. It's \$672,000?

19 A. Okay.

20 377 Q. Which based on the records the Receiver has
21 reviewed that is an accurate number, \$672,000 went in?

22 A. And I said that sounds about right.

23 378 Q. Perfect. All right. If you flip over the
24 page we have a category entitled: Monies from Mander
25 Group, EMB, Robert, which is obviously Robert Mander, to

1 Sbaraglia. Before we do that you see -- sorry, you see
2 that and it gives a total of \$2.999 million?

3 A. Yes.

4 379 Q. I want to show you there is actually one
5 thing missing from this chart, go back to page 1. And
6 under Loan Agreement number 2, it says: We received
7 40,000 from Mander Group?

8 A. Yes.

9 380 Q. For some reason that \$40,000 doesn't show up
10 here on the chart. So I've gone through the material
11 that the Receiver uncovered as part of this document
12 review, including the bank statements and the cheques,
13 and all those things, and can show you line-by-line, for
14 example, the March 5, 2007 amount of \$307,464.92 from
15 Robert. But will you acknowledge that is, in fact, an
16 amount that was given to you by Mr. Mander, the
17 307,464.92.

18 A. Yeah. I do. I don't remember the exact
19 number. But, yes.

20 381 Q. That doesn't strike you as being wrong?

21 A. No.

22 382 Q. Okay. I'm going to skip the dividends' one,
23 the 760,000?

24 A. Right.

25 383 Q. Because that's actually many line items,

1 because it's over a period of time. But if we go to the
2 next one below that, the December 5, 2008 \$1 million in
3 profits?

4 A. Yes.

5 384 Q. I take it you remember receiving that \$1
6 million from Mr. Mander?

7 A. A hundred per cent.

8 385 Q. Okay. I had a feeling you'd remember
9 receiving the \$1 million?

10 A. I'm not Tommy O.

11 386 Q. All right. And the next line item, the June
12 24, 2009, that's \$550,000 from Robert re-partial profits?

13 A. Yes.

14 387 Q. I take it you remember that payment coming to
15 you, as well?

16 A. Yes.

17 388 Q. And, then, finally the Option profits based
18 on the money given from Sbaraglia to Robert. I can show
19 you this as well on a line-by-line, the \$380,000 payment.
20 You recall that, as well?

21 A. It came in in increments, that sounds about
22 right.

23 389 Q. Okay. So even before we get to the large
24 number of 760,000, which I will talk to you about in a
25 moment, when you add up the 307,000 with the 1 million,

1 with the 550,000 and the 380,000, you're talking about a
2 neighbourhood of \$2.2 million right there. Correct?

3 A. I didn't really follow you. I was trancing
4 out there for a second.

5 390 Q. Totally fine. Then let's just go back to the
6 beginning. Even if we leave out for now the \$760,000,
7 the dividends, the line two?

8 A. Yeah.

9 391 Q. Because that takes a little bit more time to
10 walk through. If you add up the 307?

11 A. Yes.

12 392 Q. With the 1 million?

13 A. Uh'hmm.

14 393 Q. With the 550,000?

15 A. Right.

16 394 Q. With the 380?

17 A. Yep.

18 395 Q. You're in the neighbourhood of \$2.2 million?

19 A. Okay.

20 396 Q. That's correct, rough math?

21 A. Rough math.

22 397 Q. I asked you moments ago if you could just
23 confirm for me that you and Mandy got more from Robert
24 and his companies than you put into Robert and his
25 companies. We agreed that you put in \$672,000, and

1 without even looking at one of the numbers we're up to
2 2.2 back?

3 A. Okay. But, again, this is one little
4 picture. I really would like Mandy to sit with you. I
5 really don't want her to have to come down, but the
6 numbers as she showed people on this side of the table
7 are solid that will show you exactly where all the
8 numbers really are. I'm not the right guy to ask. Okay.
9 And I'm not denying this, and I'm not saying you're
10 wrong, I'm saying there is more to the picture that's not
11 on this piece of paper. And I would love her to sit down
12 and explain to you in great detail where it all went,
13 where it all came from. And the fact that what you're
14 saying where you want me to admit that we got more than
15 we gave, there's a much bigger picture to that.

16 398 Q. And I appreciate your point. And there may
17 be at some point where the bigger picture is brought out.
18 But I'm entitled to get the information in the pieces
19 that I'm asking for the information. So right now all
20 I'm asking you to confirm for me is that you and Mandy
21 gave a total of \$672,000 to Mr. Mander and his companies,
22 which you've already said "that's true." I've asked you
23 now to confirm even based on -- guys, Milt?

24 MR. DAVIS: I'm listening.

25 MR. GOTTLIEB: No, I've got a problem because I

1 don't want the paper to be seen.

2 MR. DAVIS: He's not seeing the paper. He's not
3 seeing the paper. That's not fair.

4 THE DEPONENT: I'll look away.

5 BY MR. GOTTLIEB:

6 399 Q. I would appreciate that?

7 A. And by the way as hard as it was I didn't
8 talk to my wife yesterday or last night.

9 400 Q. I didn't think you did, I appreciate that?

10 MR. DAVIS: Go ahead.

11 BY MR. GOTTLIEB:

12 401 Q. I'm simply asking you to confirm,
13 Mr. Sbaraglia, based just on the numbers that we've
14 looked at here that you've acknowledged that you and
15 Mandy received more from Mr. Mander and his companies?

16 A. Based just on this right here, yes, I
17 acknowledge that.

18 402 Q. In fact, I know there's actually more that
19 you received. But I'm just simply trying to get you to
20 confirm for me that you and Mandy received more from Mr.
21 Mander and his companies than you gave to Mr. Mander and
22 his companies?

23 A. I want you to see the big picture, I really
24 do.

25 403 Q. Mr. Davis, can I get a direct answer to that?

1 I'm not sure why we are arguing about math?

2 MR. DAVIS: What he is trying to tell you is the
3 way you have phrased the question isn't really fair,
4 because X amount of dollars was paid to Mander and Y
5 amount of dollars was received from Mander.

6 MR. GOTTLIEB: But I'm not asking about where
7 they went. That's my point. I think I'm entitled to the
8 answer to my question. And if there are further
9 questions, if there are further stories I'm not asking
10 about those.

11 MR. DAVIS: I have the numbers if you want them.

12 MR. GOTTLIEB: Well, I'm not sure our numbers are
13 going to be exactly the same. I really want an answer to
14 my question.

15 MR. DAVIS: What is your question?

16 MR. GOTTLIEB: For the third or fourth time --

17 MR. DAVIS: If you want an answer that more money
18 was received than paid the answer is "yes."

19 MR. GOTTLIEB: And, in fact, it's amount well
20 over --

21 MR. DAVIS: Hold on a second. I'm wrong. They
22 did not get more money than they received.

23 MR. GOTTLIEB: Of course they did, Mr. Davis.

24 MR. DAVIS: Do you want to go off the record?

25 MR. GOTTLIEB: Sure.

1 --- Off the record

2 BY MR. GOTTLIEB:

3 404 Q. Mr. Sbaraglia, there are a couple of
4 different ways that you and Mandy got money given to you
5 and Mandy in your names. Okay. From this business, if I
6 can put it that way, one was payments made directly from
7 Robert Mander or his companies to you and/or Mandy.
8 Correct?

9 A. Yes.

10 405 Q. Okay. So that's one way to do it. The other
11 way was there were monies paid from Mr. Mander and his
12 companies into CO Capital?

13 A. Uh'hmm.

14 406 Q. And you were then told to take money out of
15 CO Capital on that basis. Correct?

16 A. Again, I'll defer to Mandy on most of those.
17 But it doesn't sound wrong.

18 407 Q. Okay. Well, there were times, for example,
19 where you took what I'll call "profits" out of CO at Mr.
20 Mander's direction?

21 A. Correct.

22 408 Q. And that was on the basis that there were
23 profits made, and therefore you were supposed to remove
24 them from CO and take them out. Correct?

25 A. Yes.

1 409 Q. Okay. So that's two ways we know it
2 happened. Again, we know from the records that you and
3 Mandy took out -- pardon me, paid into Mander 672?

4 A. Right.

5 410 Q. When you look at the amounts that you got
6 paid directly from Mr. Mander, Mr. Mander's companies and
7 that you took out of CO Capital in the form of profits?

8 A. Okay.

9 411 Q. Forgetting what you did with that money after
10 you received it. You received significantly more money
11 than you put in to the tune of a few million dollars, if
12 you do the math?

13 A. You just said something, you didn't ask me
14 anything.

15 412 Q. I'm asking you to concede that's the truth?

16 A. Did we not just talk about this?

17 MR. DAVIS: Go ahead.

18 THE DEPONENT: Yes.

19 BY MR. GOTTLIEB:

20 413 Q. Okay. Perfect. Give me a sec. please. All
21 right. Could we just take a break for one Minute,
22 please.

23 Mr. Sbaraglia, of the what I call a few million
24 dollars more than what you and Mandy got back from EMB
25 and Mr. Mander than you paid EMB and Mr. Mander, that

1 money went into your personal accounts, not a corporate
2 account?

3 MR. DAVIS: What money went into their personal
4 accounts?

5 MR. GOTTLIEB: The money that was received from
6 Mr. Mander and EMB and Mander Group Inc. that we're just
7 talking about.

8 MR. DAVIS: All of it?

9 MR. GOTTLIEB: The monies that I was just talking
10 about, yes?

11 MR. DAVIS: Do you know that?

12 THE DEPONENT: No, I don't know that. I'm not
13 saying you're wrong. I'm saying I don't know that.

14 BY MR. GOTTLIEB:

15 414 Q. Okay. Because these were monies that were
16 actually made payable to you, not to CO, I just want to
17 make sure you appreciate that?

18 A. Maybe that's my confusion. You just said
19 there were two ways and one of the ways it was money was
20 from Mander to CO.

21 415 Q. No, you completely misunderstood. I said
22 there are two ways: One, from Mr. Mander and his
23 companies directly to you?

24 A. Correct.

25 416 Q. And we know that number?

1 A. Yep.

2 417 Q. Plus money that you took directly from CO,
3 cheques written to you from CO?

4 A. Yes.

5 418 Q. Okay. Exactly. And those were cheques that
6 were at Mr. Mander's direction, is the way you've put it
7 before?

8 A. Yes.

9 419 Q. When you look at those numbers in total my
10 point was, and then I thought you agreed with, based on
11 those numbers, the numbers that you actually got cheques
12 for that you then deposited into your account because
13 they were made out to Peter Sbaraglia, that number
14 exceeded the amount that you put into Mr. Mander's
15 companies and Mr. Mander by a few million dollars when
16 you do the math. Correct?

17 A. Yes.

18 420 Q. Fine. We are on the same page. Fine.
19 That's perfect. The monies that you got made out to your
20 name, all those cheques, you didn't then pay those
21 monies, the monies that went into your pocket, your bank
22 account, to CO investors?

23 A. Some of it -- well, again, I'm going to defer
24 most of this to Mandy because she did the books and did
25 most of that stuff. I think some of it did, actually.

1 421 Q. Mr. Davis, will you give us an undertaking to
2 produce any evidence you have that the monies that went
3 into Mr. Sbaraglia or Mandy Sbaraglia's accounts went to
4 investors, thereafter?

5 MR. DAVIS: I think you've got to be a little
6 more specific. I'm happy to give you what I can.

7 MR. GOTTLIEB: I'm not sure why I have to be more
8 specific. I thought it was pretty clear. We know that,
9 and it's just been conceded, Mr. Sbaraglia received a
10 significant amount of money, using broad terms, from EMB
11 directly or from CO directly by way of cheques written to
12 the name of Peter Sbaraglia. I've got binders of them.

13 MR. DAVIS: Yes.

14 MR. GOTTLIEB: I asked Mr. Sbaraglia whether or
15 not any funds that he received personally in his name,
16 therefore was deposited into his account, went from him
17 to CO investors. He said he has to defer to Mandy, but
18 he thinks so. So I'm asking for any evidence of that
19 statement that monies went from Peter Sbaraglia or Mandy
20 Sbaraglia's accounts to the investors.

21 MR. DAVIS: We'll give you what we can.

22 --- UNDERTAKING

23 BY MR. GOTTLIEB:

24 422 Q. Okay. Now, between January of '06, we looked
25 at the first transaction with your mother, was the first

1 transaction, and August of '09?

2 A. August of '09. Okay.

3 423 Q. New Loan Agreements were entered into by CO
4 Capital with various parties. Correct?

5 A. Yes.

6 424 Q. And I haven't actually done the math, but
7 estimate how many parties, unique parties, separate
8 parties are we talking about?

9 A. Twenty-five -- 30. Something like that.

10 425 Q. I think that's about right. I thought in the
11 neighbourhood of 30. Okay. So we're on the same page.
12 You refer to them all as friends and family in various
13 places, including the transcript with the OSC.

14 MR. DAVIS: It says "mostly," I'm not sure it
15 says "all."

16 MR. GOTTLIEB: Okay.

17 MR. DAVIS: Am I wrong?

18 MR. GOTTLIEB: You are, but that's fine.

19 MR. DAVIS: I'll defer to you.

20 BY MR. GOTTLIEB:

21 426 Q. But I just want to make two points. It's not
22 correct that all of the people that invested money into
23 CO had been to your house for dinner. Correct?

24 A. My house for dinner? No, John Maracassa came
25 to my house for dinner.

1 427 Q. And others, if you go down the list?

2 A. I'm not sure.

3 428 Q. Stephen Diamond?

4 A. Never.

5 429 Q. Right. Okay?

6 A. But have we eaten together? Yes, we have.

7 430 Q. Okay. And I know this is going to sound a
8 bit odd. But not all of those that invested in CO have
9 kids who have sat on your lap. That's just not true?

10 A. That's not true. Stephen Diamond's daughter
11 never sat on my lap.

12 431 Q. Okay. I get the point. You recall,
13 Mr. Sbaraglia, that you told the Securities Commission
14 under oath the opposite of that?

15 MR. DAVIS: No. Don't answer that question. If
16 you want to cross-examine him on the transcript, it's
17 only fair to put the transcript to him.

18 BY MR. GOTTLIEB:

19 432 Q. Do you have the transcript? Before we do,
20 because I'll take the transcript in a second so Mr. Davis
21 is being fair, I'm going to withdraw that for a second
22 and then I'll come back to it. Okay.

23 The loans throughout this period, that we just
24 talked about, they were with CO Capital. Correct?

25 A. Yes.

1 433 Q. But notwithstanding that they were with CO
2 Capital, you considered yourself personally to be liable
3 to those investors to make sure they got paid.
4 Correct?

5 A. Say that again, please?

6 434 Q. Madam Reporter, would it be possible for you
7 to read that back?

8 --- Last question read back by the Reporter

9 THE DEPONENT: I'll answer it this way: CO
10 Capital owed them the money, not Peter Sbaraglia. But on
11 a moral level, and given that may be not every one of
12 them sat on my lap, but there were a lot of good friends
13 in there. On a moral level I would do what I could do to
14 pay them back.

15 BY MR. GOTTLIEB:

16 435 Q. You, in fact, agreed that your personal
17 assets would be used to ensure that they got paid?

18 MR. DAVIS: In fact, agreed with whom? Where?
19 What are we talking about, the OSC?

20 MR. GOTTLIEB: Yes.

21 MR. DAVIS: Okay. If you are putting the
22 transcript to him, you really should be fair.

23 MR. GOTTLIEB: I really will put it to him as
24 soon as I'm ready to put it to him. But I'm just asking
25 some questions right now.

1 MR. DAVIS: Okay. But if you are seeking to deal
2 with the prior inconsistent statement.

3 MR. GOTTLIEB: I haven't even tried.

4 MR. DAVIS: Okay.

5 BY MR. GOTTLIEB:

6 436 Q. Correct, Mr. Sbaraglia, you met with the OSC?

7 A. Yes.

8 437 Q. And we won't go nuts and bolts yet through
9 it?

10 A. Okay.

11 438 Q. But at the end of the day, as they say, you
12 made it clear to the OSC that you would put your personal
13 assets up so as to ensure that your investors and CO got
14 paid. Correct?

15 A. Yes.

16 439 Q. Okay. So I want you to go to page 48 of the
17 transcript. Do you have a hard copy?

18 MR. DAVIS: Yes.

19 BY MR. GOTTLIEB:

20 440 Q. Good. Okay. If you can go to page 48. And,
21 Mr. Sbaraglia, you know what, go back to page 4 just
22 because we talked about this last time for just a moment.
23 It's not really significant --

24 MR. DAVIS: Then why ask him, then?

25 BY MR. GOTTLIEB:

1 441 Q. It's not a bad point. But you see at the top
2 of page 4 it says: Peter Sbaraglia, Sworn?

3 A. Yes.

4 MR. DAVIS: I don't know how to break this to
5 you, but I was going to admit it was his transcript.

6 BY MR. GOTTLIEB:

7 442 Q. I know you were. So we're at page 48. And
8 you'll see in the first paragraph on page 48?

9 MR. DAVIS: Starting where, at the top of the
10 page?

11 MR. GOTTLIEB: Yes.

12 MR. DAVIS: Hang on a second.

13 BY MR. GOTTLIEB:

14 443 Q. Page 48, line 4. He's there, 48, line 4.
15 "What I know is that between now and the exit strategy of
16 this company here, I don't want to run it anymore. I
17 don't want to do this anymore. I know I want to go
18 somewhere formal, somewhere registered, somewhere more."
19 And then the interviewer asks: "I understand. But you
20 haven't answered my question."

21 MR. DAVIS: Just so we're clear I believe that is
22 Mr. Shahviri.

23 BY MR. GOTTLIEB:

24 444 Q. I believe so. And then the answer given is:
25 "So between now and then and a fallout of bed." The

1 answer is: "Extremely unlikely. Extremely, extremely
2 unlikely. Do I have personal assets? Yes, I do. I have
3 my home and my building. I have some money and so on.
4 Remember, these are all my friends. Will I make good on
5 that thing? The answer is, "yes."" So, sir, you are
6 telling the OSC that you are going to make sure that your
7 investors and CO get paid, and that you're putting your
8 personal assets up to ensure that happens. Correct?

9 A. Yes.

10 445 Q. Okay. And then the question is asked: "But
11 you're not personally liable to them on paper?" And your
12 answer is: On paper. But I shook their hands. Nobody
13 in there has a kid that hasn't sat on my lap. Nobody in
14 there has not eaten dinner in my house. Nobody in there
15 I don't know less than ..." And so on?

16 A. Yes.

17 446 Q. All right. I just want to move slightly on.

18 MR. DAVIS: Can I put the transcript away?

19 BY MR. GOTTLIEB:

20 447 Q. Yes, sir. Thank you. I said before that you
21 entered into various Loan Agreements up to August '09,
22 and I just want to deal with one point here. Do you have
23 a copy of the undertaking?

24 MR. DAVIS: Yes.

25 MR. GOTTLIEB: That was given to the OSC. And I

1 apologize we will jump around a little bit.

2 MR. GOTTLIEB: Its several places. Just so we
3 have it, where are you looking so I'll look in the same
4 place.

5 448 MS. PRESTON: It is in Volume 1 of the OSC
6 Application Record.

7 MR. GOTTLIEB: Volume 4.

8 MS. PRESTON: Right. Okay.

9 BY MR. GOTTLIEB:

10 449 Q. So, sir, this undertaking was signed by you
11 personally?

12 A. Yes.

13 450 Q. And signed by you on behalf of CO Capital
14 Growth?

15 A. Yes.

16 451 Q. And it was signed on August 7th. Correct?

17 A. Yes.

18 452 Q. '09?

19 A. Yes.

20 453 Q. And paragraph 1 of the document that you
21 signed says: "CO Capital growth Corporation will not
22 enter into any further Loan Agreements in reliance on
23 section 2.4 of the National Instrument 45-016 made under
24 the Securities Act, Ontario." Do you see that?

25 A. Yes, I do.

1 454 Q. And you understood when you signed this
2 document that this was an important document?

3 A. I did.

4 455 Q. Okay. And, therefore, you understood that
5 complying with the undertaking you and CO Capital gave
6 was important. Correct?

7 A. Yes.

8 456 Q. And I'm going to hand you Loan Agreement
9 number 183-F?

10 A. Yes.

11 457 Q. And this is a Loan Agreement, dated August
12 21, 2009?

13 A. Correct.

14 458 Q. And this is a Loan Agreement between CO
15 Capital and Colin Russel?

16 A. Correct.

17 459 Q. And this is a roll of an amount that came due
18 previously?

19 A. Correct.

20 460 Q. But this is as of August 21, '09 a new Loan
21 Agreement. Correct?

22 A. Correct.

23 461 Q. And that Loan Agreement was entered into
24 contrary to the first paragraph of the undertaking.
25 Correct?

1 MR. DAVIS: That actually is a legal point, so
2 I'm going to instruct him not to answer.

3 MR. GOTTLIEB: Okay. Thank you. Can we mark
4 that Loan Agreement as the next exhibit, please.

5 MR. DAVIS: Sure. Can we go off the record for
6 one second?

7 --- EXHIBIT NUMBER 28: Loan agreement, dated August 21,
8 2009

9 BY MR. GOTTLIEB:

10 462 Q. I want to talk now, Mr. Sbaraglia, about
11 monies that were brought into CO Capital?

12 A. Okay.

13 MR. DAVIS: Hang on a sec., can I put some of
14 this stuff away? Are you done with these things?

15 MR. GOTTLIEB: I think so.

16 MR. DAVIS: Has this been marked?

17 BY MR. GOTTLIEB:

18 463 Q. I marked it, yes, as Exhibit 28. In your
19 Affidavit of August 10th, that I can turn up, and if you
20 go to paragraph 69, for example?

21 A. What tab would that be?

22 464 Q. Under the index A. This is your Affidavit.
23 It says: "Since 2006 approximately \$29.9 million has
24 been left to CO." And it says: "Approximately 18.9 went
25 directly to Robert Mander, EMB and Mander Group."?

1 A. Right.

2 465 Q. Your evidence is that \$7 million,
3 approximately, that was given to CO Capital by investors
4 did not go to Mr. Mander?

5 A. Correct.

6 466 Q. Okay. I'm not sure a lot turns on it. The
7 numbers that the Receiver has are slightly different, and
8 I'll give you an example. If you go to tab 9 of this
9 brief, and this is a chart prepared by who?

10 A. I think Mandy.

11 467 Q. Okay. Mr. Davis, do you know? Mr. Davis,
12 can you help on that?

13 MR. DAVIS: I think Mandy.

14 MS. PRESTON: I can really help, Mandy did.

15 MR. DAVIS: Just go off the record.

16 --- Off the record

17 BY MR. GOTTLIEB:

18 468 Q. Back on, please. So page 3 of this document
19 is where I'm going to ask you to look. This document
20 purports to set out all of the contracts and the amounts
21 received, which is where the total of 25.9 million comes
22 from?

23 MR. DAVIS: I'm not sure that is right. You are
24 right with respect to the total in the numbers. I don't
25 know if I ever made the inquiry about the contract. This

1 was intended to show the dollars. I've never checked the
2 contracts. It looks like that.

3 MR. GOTTLIEB: Well, but the lender column?

4 MR. DAVIS: It looks like that. You asked the
5 question, it was intended -- what was intended to show
6 the flow of money. I'm presuming that all the contracts
7 are there, but I've never made that inquiry.

8 BY MR. GOTTLIEB:

9 469 Q. If you go on to page 3, which says "January
10 to December 31, 2008." You see that page?

11 A. Yes.

12 470 Q. You see just about an inch and a half down
13 there is two entries for March 1, 2008, 2.7 million and 2
14 million?

15 A. Yes.

16 471 Q. You see if you recall those are actually
17 amounts that went to Pero, they didn't actually go into
18 CO; they went directly to Pero?

19 A. Okay.

20 472 Q. Does that ring a bell that those numbers, the
21 2.7 and the 2 million 4.7, went in total to Pero?

22 A. It does ring a bell.

23 473 Q. Okay. So, again, I'm not sure we need to
24 fuss too much about the exact numbers. Your documents
25 would suggest, based on your Affidavit, that there was \$7

1 million that came into CO from investors that didn't go
2 downstream to Mr. Mander, the Receiver's number is
3 actually less than that it's in the neighbourhood of 5.6
4 to 6 million, in that range. But based on your own
5 evidence, sir, you acknowledge that somewhere in the
6 neighbourhood of \$7 million that was received from CO
7 didn't go to Mr. Mander?

8 A. Right. And we look forward to coming in and
9 explaining and showing it all.

10 474 Q. Okay. Got that. All right. Now, according
11 to your Affidavit, again paragraph 69, it says:
12 Approximately, \$18.9 million went directly to Robert
13 Mander, EMB Mander group. Do you see that number?

14 A. Yes, I do.

15 475 Q. Where does that number come from?

16 A. I'm going to defer that to Mandy.

17 476 Q. Because based on all of the documents that
18 the Receiver has reviewed, and again I can walk through
19 the bank statements and the ins and outs based on the
20 Receiver's report, just so that you know that this has
21 been disclosed, it was actually the number of \$15.4
22 million that went down to Mr. Mander and his group of
23 companies not the 18.9 So, Mr. Davis, will you undertake
24 to show us a calculation as to how that number 18.9 is
25 arrived at?

1 MR. DAVIS: I'm going to take that
2 under-advisement. Just so we're clear, it is the
3 position of my clients that the Receiver is not correct.
4 We don't know how you arrived at those. We believe those
5 figures are not correct.

6 MR. GOTTLIEB: That's interesting. That doesn't
7 have a lot to do with what I just asked. You've got a
8 number in a sworn Affidavit, and I'm asking you to
9 provide proof of that number. And you're not going to
10 undertake to do that?

11 MR. DAVIS: Ask again, what is it?

12 MR. GOTTLIEB: In paragraph 69 of the Affidavit
13 it says: "Approximately, \$18.9 million went directly to
14 Robert Mander, EMB and Mander Group." Would you provide
15 an undertaking to provide us with the evidence as to how
16 that number is arrived at?

17 MR. DAVIS: Yes.

18 --- UNDERTAKING

19 MR. GOTTLIEB: Okay. I will say that based on
20 the Receiver's records, just so you can look at this when
21 you answer that undertaking --

22 MR. DAVIS: Are those records in the evidence?

23 MR. GOTTLIEB: In the evidence on the motion?

24 MR. DAVIS: Yes?

25 MR. GOTTLIEB: No.

1 MR. DAVIS: Then don't say what it says. You
2 should be asking questions and not putting statements on
3 the record. There is no evidence from what you are
4 making suggestions, and to be fair to the witness I don't
5 think you should be putting that information before him
6 if that information is not in the record.

7 BY MR. GOTTLIEB:

8 477 Q. What you should look at when you're answering
9 that undertaking, is there is approximately \$3.5 million
10 that actually didn't go directly down with respect to
11 Pero?

12 MR. DAVIS: That didn't go directly down to
13 where?

14 MR. GOTTLIEB: EMB and Mander. So I'm trying to
15 help you when you answer the undertaking, when you say in
16 the sworn Affidavit that it's 18.9 million that went down
17 to Mr. Mander.

18 MS. PRESTON: I understand that you are saying
19 that 3.5 of that didn't go.

20 MR. GOTTLIEB: That's all I'm saying to try to
21 help you when you look at the document.

22 MR. DAVIS: I don't recall this off the top of my
23 head. Let's recall that at that point in time Mander had
24 control of the Pero bank account. But I don't know, but
25 I hear your point.

1 BY MR. GOTTLIEB:

2 478 Q. Thank you. Now, in the fourth report we can
3 turn it up or I can just stay with the statement, if you
4 want to look at it, that's fine, in the fourth report it
5 states that CO received directly from EMB and Mander and
6 Mander Group Inc., and this is page 11 of the report, \$18
7 million 446,000. Do you see that number?

8 A. Yes.

9 479 Q. Your counsel has just said that you don't
10 agree with the numbers in the Receiver's reports. Do you
11 have any evidence at all that number is incorrect? And
12 if so provide it, please, because the numbers were taken
13 from, I will put bluntly, your bank records, the bank
14 records of CO. --

15 MR. DAVIS: I don't know that there is a
16 disagreement as to that number. But if there is I will
17 let you know.

18 --- UNDERTAKING

19 BY MR. GOTTLIEB:

20 480 Q. Thank you, very much, I appreciate that. So
21 the bottom line in a nutshell that I'd like you to
22 concede for me, is that when you compare the back and
23 forths of what was sent by to Mander and EMB and Mander
24 Group Inc., and you compare that number to what was
25 delivered back upstream to CO, CO, as a company, forget

1 what it did once it got the money, CO as a company got
2 more than it gave?

3 MR. DAVIS: Well, I think that's a unfair
4 question. Because the part forgetting what it did with
5 the money, if it gave that money then that's an unfair
6 question and that is the position of my client. In other
7 words, they got X, right, they paid out X, they got back
8 Y and you're saying forget what they did with that
9 money.

10 MR. GOTTLIEB: Correct.

11 MR. DAVIS: And that's unfair, because if they
12 gave that money back to the investors --

13 MR. GOTTLIEB: You can make whatever arguments
14 you want, Mr. Davis. I'm allowed to get the facts from
15 the witness. I want the witness to confirm for me that
16 when you simply do the mathematical disbursements and
17 receipt comparison between what CO gave to Mr. Mander and
18 his companies and what CO, the Corporation, got back from
19 Mr. Mander and his companies, CO is in the positive not
20 the negative. I want an answer to that question. I'm
21 allowed to ask for the mathematical question, and you can
22 make whatever argument you want about it.

23 MR. DAVIS: Your mathematics is right here.

24 BY MR. GOTTLIEB:

25 481 Q. So you don't disagree with the mathematics?

1 A. I really don't have an opinion on this. I'm
2 going to ask you to give Mandy this question. She knows
3 the numbers.

4 MR. DAVIS: Why don't I do this. I'll give you
5 the undertaking. What do you want?

6 MR. GOTTLIEB: I want an answer to the question,
7 actually. You just said the numbers are there,
8 Mr. Davis. I want a concession that CO got more from Mr.
9 Mander and EMB than it gave to Mr. Mander and EMB.

10 MS. PRESTON: Isn't that the same question that
11 we started with this morning?

12 MR. GOTTLIEB: No, it was a completely different
13 question. I was asking about Mr. Sbaraglia personally
14 this morning.

15 MS. PRESTON: Oh, sorry.

16 THE DEPONENT: It doesn't take into account
17 enough things. It doesn't take into enough account the
18 venture that was bought. It doesn't take into account
19 things that were used to run the company, and so on.
20 This chart, to tell you the honest truth I have no reason
21 to doubt that you would lie about these numbers.

22 BY MR. GOTTLIEB:

23 Q. That we would lie?

24 A. Yes, I have no reason.

25 Q. You have no reason to believe we'd lie about

1 the numbers?

2 A. I don't. I don't. I don't know if these
3 numbers are correct or not. That's not what I'm saying,
4 though. What I'm saying is it's enormously important
5 that we give you the entire picture. You are asking for
6 a concession for something right now, I don't know if
7 it's right or wrong.

8 484 Q. I'm going to keep asking questions,
9 Mr. Davis. The bottom line is you will not concede, I
10 cannot get a concession from the witness that when you
11 simply do the math of the receipts and disbursements that
12 CO got more back from Mr. Mander and his group of
13 companies than it put into Mr. Mander and his group of
14 companies?

15 MR. DAVIS: Our position is very clear that CO is
16 a net user. That is the evidence. You just choose to
17 look at a portion of it, and I think that's unfair.

18 MR. GOTTLIEB: Will you give me an undertaking to
19 show that CO received less money back from Mr. Mander and
20 his companies than it put in? Just can I have the
21 undertaking?

22 MR. DAVIS: You can have the undertaking.

23 --- UNDERTAKING

24 MR. GOTTLIEB: Thank you.

25 MR. DAVIS: Wait. I wasn't finished. You can

1 have the undertaking as to how much they put in, how much
2 they got back and what happened to the money.

3 MR. GOTTLIEB: No, sir. You can't tell me that
4 you're going to give me more than I asked for. With
5 great respect, this isn't your examination. I'm allowed
6 to ask my question. If you want to refuse it, refuse it.
7 You can't say: I'm going to give you what you asked for,
8 But I get to answer more than you asked for. I'm sorry,
9 that's improper.

10 MR. DAVIS: You're right, actually.

11 MR. GOTTLIEB: Do I have the undertaking or not?

12 MR. DAVIS: Yes. You have that undertaking.

13 MR. GOTTLIEB: Thank you.

14 --- UNDERTAKING

15 BY MR. GOTTLIEB:

16 485 Q. Now, based on what the Receiver's report
17 says, when you look at the dollar numbers and this is
18 what you're going to give, what your counsel has just
19 given an undertaking about, CO Capital got more money
20 from Mr. Mander's companies than it put in. When we look
21 now at the values in CO, itself, as it stands today, CO
22 Capital, as a company, what is the value of the assets of
23 CO today?

24 A. I don't know. Not a lot.

25 MR. DAVIS: Well, I don't know that's right. One

1 of the assets of CO is the lawsuit that it maintains, and
2 I appreciate that you and I have a difference of opinion
3 as to the value of that asset.

4 BY MR. GOTTLIEB:

5 486 Q. Forgetting for a moment that asset, that
6 Mr. Davis just talked about, what is the value of the
7 assets in CO?

8 A. I said I don't know.

9 487 Q. But not very much?

10 A. Correct.

11 488 Q. Okay. Because when you take all the
12 information that the Receiver has looked at, it is not
13 very much?

14 A. Right.

15 489 Q. Plus it's got a whole bunch of liabilities on
16 top of that we know for certain. Correct?

17 A. Yes.

18 490 Q. But the net asset base is very small, agreed?

19 A. Agreed.

20 491 Q. Okay. We talked before about monies in the
21 neighbourhood, again, I'm not trying to be precise,
22 according to your Affidavit, of \$7 million more coming
23 into CO than going down to Mr. Mander?

24 A. Right.

25 492 Q. So that \$7 million that came in, either was

1 lost or somehow paid out. Correct?

2 A. Again, let Mandy come and explain the numbers
3 to you.

4 493 Q. Sorry?

5 MR. DAVIS: That \$7 million dollars is accounted
6 for in the Affidavits.

7 MR. GOTTLIEB: That \$7 million dollars is
8 accounted for in the Affidavit?

9 MR. DAVIS: Yes.

10 MR. GOTTLIEB: Okay. Show me that.

11 MR. DAVIS: Look at paragraph 70 of the August
12 10th Affidavit.

13 MR. GOTTLIEB: Yes. Yes, I see that.

14 MR. DAVIS: That's what I understand is the
15 answer.

16 MR. GOTTLIEB: You see, Mr. Davis, this is the
17 problem with you answering things like that because this
18 is not even close to an answer to the question I just
19 asked.

20 MR. DAVIS: Yes, it is, actually.

21 MR. GOTTLIEB: Okay. If that's the answer, with
22 great respect it's very inaccurate. So why don't you let
23 me deal with the witness on this, and then we can go
24 on.

25 MR. DAVIS: If you want the undertaking as to

1 what they know as to what happened to that money, they
2 can do that.

3 MR. GOTTLIEB: I'm going to actually go through
4 that right now a little bit.

5 MR. DAVIS: Go ahead.

6 BY MR. GOTTLIEB:

7 494 Q. CO had trading accounts. Correct?

8 A. Yes.

9 495 Q. You opened up those accounts?

10 A. Personally?

11 496 Q. Yes?

12 A. No, I might have -- no, sometimes. No.

13 497 Q. Pardon me?

14 A. Not that I recall.

15 498 Q. One sec., please. I'm just going to show you
16 a couple of things. I don't think we have to get too
17 fussed about this. For example, here is an Interactive
18 Brokerage Customer Disclosure Agreement. There is a
19 signature. Whose signature is that?

20 A. I signed it. Just so we're clear, it takes a
21 long time to open these accounts. And people at work
22 would go through all the steps of opening them. And once
23 they're opened I'd sign them. But the actual opening of
24 the account is a long, tedious process and that's how I
25 was answering your question.

1 499 Q. Okay. You were the one who directed the
2 opening of those accounts?

3 A. No. Robert directed everything that
4 happened. Robert was very much in charge.

5 500 Q. I understand Robert was very much in charge.
6 But you signed for the opening of the accounts?

7 A. Yes.

8 501 Q. Okay. And so you had accounts at Interactive
9 Broker, you had accounts at Questtrade, you had accounts
10 at Trade Freedom. Correct?

11 MR. DAVIS: Just the way you asked the question,
12 I'm sure you didn't mean to be misleading, but I'm sure
13 you meant CO had accounts?

14 BY MR. GOTTLIEB:

15 502 Q. CO had accounts, correct?

16 A. Yes.

17 503 Q. And trading accounts was opened by Mand Asset
18 Inc., as well?

19 A. Yes.

20 504 Q. And I can show you the documents again, but
21 Mandy signed for those?

22 A. Yes.

23 505 Q. And there were accounts opened for Pero. And
24 I can show you, you signed for those?

25 A. Okay. I believe you.

1 506 Q. Okay. Well, I'll just --

2 A. It's fine. I believe you.

3 507 Q. Okay. Yes. Perfect. So you signed for the
4 opening of those accounts. And I presume you, obviously,
5 had authority with respect to those accounts, signing
6 authority and transactional authority with respect to
7 those accounts?

8 A. Yes.

9 508 Q. And you got the account statements with
10 respect to those accounts?

11 A. Yes.

12 509 Q. And we've looked at, as you know, because I'm
13 sure you've read the Receiver's reports, that when you
14 look at the trading in those accounts on an aggregate
15 basis they lost \$2.4 million the trading in those
16 accounts. Correct?

17 A. I don't know the number, but I'll say
18 "correct."

19 510 Q. Would it be helpful if I showed you the
20 report?

21 A. No, I believe you.

22 511 Q. Okay. So when we talked about that some of
23 the money didn't go downstream to Mr. Mander?

24 A. Right.

25 512 Q. We know that some of the money came in

1 actually went to those trading accounts, the Interactive
2 brokers?

3 A. That's correct.

4 513 Q. And we know, therefore, that the money that
5 went in had a net loss of over \$2.4 million?

6 A. Correct.

7 514 Q. Okay. So that's where some of that money
8 went, okay, to losses?

9 A. Yes.

10 515 Q. Okay. And you, obviously, being the
11 recipient of those statements, knew about those losses as
12 they were occurring?

13 A. As they were -- yes, I did.

14 516 Q. Okay. And when you were examined by
15 Mr. Shahviri, by the OSC, and I am happy to take you to
16 it, you talked at length about the strategy that was
17 being used with respect to trading?

18 A. Correct.

19 517 Q. And the stock losses you recall, and all
20 that?

21 A. Yes.

22 518 Q. And you talked about how there was in those
23 schemes very little risk of significant loss?

24 MR. DAVIS: What page are you on?

25 MR. GOTTLIEB: The witness said he didn't need

1 the transcript, so I'm not sure why you're --

2 MR. DAVIS: If you're not cross-examining him on
3 the transcript --

4 MR. GOTTLIEB: I'm not.

5 MR. DAVIS: Okay. Fine. Go ahead.

6 BY MR. GOTTLIEB:

7 519 Q. And when you were being examined you were
8 giving your evidence as to your true version of the
9 trading strategy that was being employed. Correct?

10 A. Correct.

11 520 Q. And why losses were not of any significant
12 degree in those accounts. Correct?

13 A. Correct.

14 521 Q. And at no time during that examination at all
15 do you advise the OSC that, in fact, you knew there were
16 significant losses in the millions of dollars in the
17 trading accounts at CO. Correct?

18 A. Correct. But at the time of my interview
19 there were no CO accounts that were being traded, Robert
20 had all of them. They had been liquidated towards the
21 end of '08. Don't hold me to these dates, okay, but at
22 the end of '08 Robert wanted all the accounts liquidated
23 and put into a master account. At the time of our
24 interview there was very little held in CO accounts.

25 522 Q. If you want to turn up the seventh report of

1 the Receiver. I can just show it as one page it will
2 speed things up. That's fine. And I should tell you
3 that all of the records, the trading records are at
4 Appendix I of this document. So if you want to look back
5 at the Appendices I'm happy for you to. What you see is
6 in CO aggregate there is a loss of \$2.436 million. And
7 presume you knew that loss?

8 A. Yes.

9 523 Q. We know that 2.4 million of that had occurred
10 as a result of trading in '07 and '08. Do you see that?

11 A. But particularly over two was in '08.

12 524 Q. I understand that. Which was before you were
13 examined?

14 A. Yes.

15 525 Q. So when you were sitting in the chair being
16 examined talking about your low risk strategy, you didn't
17 say at any point to the OSC: My strategy isn't working
18 very well, because in CO I've lost 2.5 in two years in
19 trading?

20 A. No, that's not it. I'll explain that.

21 526 Q. Show me on the transcript where you say --
22 I'm asking show me on the transcript where you say
23 anything to the OSC about suffering losses in the
24 accounts that were being traded on behalf of CO?

25 MR. DAVIS: He's trying to give you an

1 explanation for the last request question. You're
2 interrupting in the witness. What I said was he should
3 be entitled to give his explanation. Go ahead.

4 THE DEPONENT: What I believe to be true on the
5 day of my examination was that Robert was a fabulously
6 wealthy trading, investing guru. What he taught me what
7 he did with his father's money with the Options Club,
8 with his own money, with his large cap stuff was exactly
9 the stuff that I said in my interview. What he always
10 said to us was CO relative to his net worth, it was his
11 small cap stuff that he enjoyed the volatility with, if
12 it went up, if it went down, he didn't care, he said:
13 Peter, I'm responsible for it. I'm going to pay you
14 back. Don't worry about it. This is nothing to worry
15 about. In 2008 he said: This is fantastic. Keep
16 letting it go down. I don't care how low it goes,
17 because eventually it's going to come back up and I'll
18 make a fortune off of this stuff. In the meantime --
19 oh.

20 527 Q. Keep going. I apologize for making the
21 gesture, the suggestion that it's good when stocks you
22 purchase go down. Sir, you'll agree with me that makes
23 no sentence?

24 MR. DAVIS: Let him finish. Let him finish.
25 You're saying it wasn't fair to make a gesture like that

1 when he was answering. Go ahead.

2 THE DEPONENT: The parts of the accounts that he
3 had with us he said it's the small cap stuff that enjoys
4 volatility, he enjoyed the volatility. And it didn't
5 matter if you had enough money to back it all up. He
6 said he had money in Options in Arizona, a fund in New
7 York, his personal money, his venture, his real estate.
8 And I, like everybody else, were spokes on his wheel,
9 believed him.

10 MR. DAVIS: Have you finished? Keep going.

11 THE DEPONENT: And all I'm saying is that when I
12 went in -- when I went into my interview I was explaining
13 to the OSC what Robert had taught me he was doing with
14 the overall big picture. He would even, he'd talk about
15 venture as being something that you might hit one out of
16 20 on. And he was willing to put money into venture
17 because of the potential pay off. And he didn't care.
18 He portrayed himself as having a net worth so vast that
19 to lose \$2 million was insignificant.

20 BY MR. GOTTLIEB:

21 528 Q. You're not answering my question. None of
22 this is answering the question I asked. I don't want to
23 seem rude by interrupting, but I'd really like an answer
24 to my question?

25 A. Which is what, one more time?

1 529 Q. You never told the OSC that, notwithstanding
2 the strategy, that you told them about that there was
3 very little risk to suffer any real losses; you didn't
4 tell them that, in fact, in the last two years you had
5 lost over \$2.5 million in the only account that CO was
6 operating?

7 A. Robert had, yes, you're correct. I didn't
8 tell them I had.

9 530 Q. You said that Robert had?

10 A. Robert controlled the accounts.

11 531 Q. But you knew about these losses?

12 A. Yes.

13 532 Q. You told the OSC about this strategy that was
14 being implored. And by the way, sir, at no time did you
15 say this was Robert Mander's strategy. You said this was
16 your strategy. At no time in the transcript, and if you
17 want to show me somewhere on the transcript that you
18 weren't speaking about yourself that were you speaking
19 about Mr. Mander you can show me that because I say to
20 you it's not there. So just to get to the point you told
21 the OSC about this low risk strategy?

22 A. Right.

23 533 Q. CO had trading accounts opened in '07 and
24 '08?

25 A. Yep.

1 534 Q. You lost \$2.5 million in the aggregate.

2 There wasn't a gain there. You lost 2.5 and you never
3 tell that to the OSC?

4 A. Right.

5 535 Q. And that was the money that was sent to you
6 by your friends and family, as you say?

7 A. Right.

8 536 Q. Correct?

9 A. Uh'hmm.

10 537 Q. And the fact that Mr. Mander may have had
11 personal wealth that was of no help to your friends and
12 family, whatsoever, because this was money they gave CO
13 Capital to invest?

14 A. Right.

15 538 Q. And if CO Capital lost it all, the fact that
16 Mr. Mander had personal wealth was of no moment to your
17 friends and family. Right?

18 A. No, that's incorrect, because he was always
19 backing the notes that we were signing.

20 539 Q. That's not true, sir, at no time was he
21 backing it. I've looked at every single shred of paper
22 in this file, and when you were taking money in '06 and
23 '07 and '08 and '09 there is not a stitch of paper from
24 Mr. Mander saying he's backing anything, is that right?

25 MR. DAVIS: I don't think you are right. Just

1 bear with me for one second. Can we go off the record?

2 BY MR. GOTTLIEB:

3 540 Q. I don't want to go off the record. I want to
4 stay on the record. So in answer to my question,
5 Mr. Davis says that there is a document that says my
6 statement is wrong, that throughout that time period. So
7 what document are we looking at?

8 MR. DAVIS: We're looking at the EMB/CO Capital
9 Loan Agreement that is dated as of June 26, 2007.

10 BY MR. GOTTLIEB:

11 541 Q. June 26, '07. When was that document
12 actually created and signed?

13 A. It was at the time in the interview.

14 542 Q. Right. It was created and signed in August
15 of '09. So in '06, '07, '08 and '09 when you're raising
16 funds from your friends and family there is literally no
17 guarantee or any form of written assurance, whatsoever,
18 from Mr. Mander that he's going to make good on these
19 loans that you've taken in from your friends and family.
20 Correct?

21 A. Two things. First of all, there were
22 guarantees, handshake is verbal. Second of all, there
23 were some -- robert was not the best paperwork guy in the
24 world, he really wasn't. And you might have noticed
25 that. And the third thing is that never, at any point,

1 ever once did he give me any reason to suspect that he
2 wasn't going to pay back ever. Ever.

3 543 Q. Again, Mr. Sbaraglia, you're going to have to
4 answer my questions as opposed to giving information that
5 you want to give. I asked you whether or not there was
6 anything in writing from Mr. Mander?

7 A. I said there were some things in writing.

8 544 Q. You've got to listen to my question: A
9 guarantee from Mr. Mander that he would make good on the
10 amounts CO owed?

11 A. There was some, yes.

12 545 Q. Show me?

13 A. Well, we have some Loan Agreements from when
14 CO Capital raised some money, and then CO Capital gave it
15 to either EMB or Mander, In Trust. Did he sign something
16 back to us?

17 546 Q. Back to?

18 A. CO saying --

19 547 Q. Not to your investors?

20 A. Pardon me?

21 548 Q. Not to your investors?

22 A. No, to CO.

23 549 Q. Right. Which means that -- and it was never
24 Mr. Mander, personally, was it?

25 A. Sometimes.

1 550 Q. Okay. Will you produce those, please?

2 A. Sure.

3 MR. DAVIS: Whatever we can.

4 --- UNDERTAKING

5 BY MR. GOTTLIEB:

6 551 Q. Okay. You say that Mr. Mander wasn't good at
7 recordkeeping?

8 A. Right.

9 552 Q. Sir, but with respect it was your obligation
10 to protect CO investors. Correct?

11 MR. DAVIS: Well, he's not going to answer that
12 question.

13 --- REFUSAL

14 BY MR. GOTTLIEB:

15 553 Q. All right. So where we were was that we've
16 acknowledged that based on the chart and the trading
17 records there was a \$2.4 million loss in the trading
18 accounts. So we know that some of the money that didn't
19 go down to Mr. Mander, approximately there was a negative
20 2.4 million in CO. Correct?

21 A. We established that, yes.

22 554 Q. Okay. Perfect. And I think we established,
23 and if not I'm happy to walk through this for you, based
24 on the bank records of CO when you compare the amount of
25 money that you and Mandy personally put into CO, and you

1 compare that with the amount of money that you and Mandy
2 took out of CO?

3 A. Right.

4 555 Q. That number was positive to you and Mandy by
5 approximately \$2.1 million. You took out \$2.1 million
6 more than you put into CO. Do you accept that?

7 A. Again, I defer the numbers to Mandy. I'm
8 not --

9 MR. DAVIS: Let me help you with that. I believe
10 that is the correct number. If it's wrong, I will let
11 you know.

12 MR. GOTTLIEB: Thank you. I appreciate that,
13 Mr. Davis. Just so you have it, so I'm accurate, it's
14 about 2.7 million. If that's wrong, you will advise me
15 on the basis of your statement?

16 MR. DAVIS: It actually sounds like I want to
17 make sure that I have this right, 2.7 you say that stayed
18 with CO?

19 MR. GOTTLIEB: No.

20 MR. DAVIS: Sorry, the Sbaraglias?

21 MR. GOTTLIEB: When you do a reconciliation of
22 the amounts in and the amounts out.

23 MR. DAVIS: Of CO?

24 MR. GOTTLIEB: Of CO between the Sbaraglias and
25 CO the Sbaraglias are positive 2.187 million.

1 MR. DAVIS: The 2.187 sounds correct. That they
2 got it I'm not so sure about, because my understanding IS
3 that includes expenses.

4 MR. GOTTLIEB: It doesn't. The expenses are on
5 top of that.

6 MR. DAVIS: The 2.17 figure sounds right. What
7 happened to that money is what we're quibbling about.

8 MR. GOTTLIEB: I don't think we're quibbling
9 about it.

10 MR. DAVIS: Well, actually, let's just go off the
11 record.

12 MR. GOTTLIEB: I would rather stay on the record.

13 MR. DAVIS: Let's leave it at your number is
14 right, unless I advise you to the contrary.

15 MR. GOTTLIEB: Perfect. Thank you, very much.

16 MR. DAVIS: And just so we're clear, over what
17 period of time? Over the total period of CO life?

18 BY MR. GOTTLIEB:

19 556 Q. That's right. Up until July, 2010. So we
20 know that 2.4 million was lost on trades, and we know
21 that 2.187 went to you and Mandy. So we're now up to
22 \$4.5 million. So we know where that money went. Are you
23 with me so far?

24 A. I'm with you.

25 557 Q. Now, Mr. Davis referred to expenses. And

1 just give me a second, if you would. Based on the
2 banking records that were reviewed when you just take
3 what are general expenses, if I can call them that way,
4 and I have a schedule of those expenses taken, which
5 again I'm happy to share, the number that is arrived at
6 is about \$985,000 for expenses over that January, '06 to
7 July, 2010 period. And I'm happy to show you a schedule
8 of the expenses --

9 A. You don't have to. It sounds like a
10 reasonable number. I don't know for sure, but you don't
11 have to show me your schedule.

12 558 Q. I'm just going to hand it across, just so you
13 can have a quick review of it because I want you to be
14 comfortable with the numbers.

15 MR. DAVIS: I don't think these numbers are
16 right.

17 MR. GOTTLIEB: Mr. Davis, if you can provide any
18 evidence -- again, I'm not trying to be cute, there is no
19 magic to this. What the Receiver did is went through the
20 RBC bank accounts and pulled out a line-by-line entry and
21 HSBC, pardon me. I apologize for not being clear. If
22 you want to go through the statements and show where the
23 numbers the Receiver came up with are wrong, by all
24 means. The Receiver doesn't want to get these numbers
25 wrong. So if you say that the numbers are somehow wrong,

1 by all means advise us so the Receiver can review it.

2 --- Whereupon proceedings recessed at 12:03 p.m.

3 --- Whereupon proceedings resumed at 12:15 p.m.

4 BY MR. GOTTLIEB:

5 559 Q. Mr. Davis, I'm sorry, I don't remember right
6 before the break I was asking to confirm that the expense
7 schedule coming to a total of 984 was accurate?

8 MR. DAVIS: He has no idea.

9 MR. GOTTLIEB: Okay. Well, these are the numbers
10 that the Receiver came up with. And I'm asking if you
11 can advise us whether you have any evidence at all that
12 those numbers are wrong?

13 MR. DAVIS: We don't have any evidence they're
14 wrong or right. We've never seen those numbers before.

15 MR. GOTTLIEB: Of course, he's seen those numbers
16 before.

17 MR. DAVIS: Not those. Are they in the report?

18 BY MR. GOTTLIEB:

19 560 Q. I'm going to deal with the witness on this.
20 These are all from CO bank statements, sir. You got the
21 CO bank statements?

22 A. I do.

23 561 Q. And either you have or Mandy reviewed them on
24 a monthly basis as they came in?

25 A. Maybe not monthly. But, yes.

1 562 Q. I'm pretty sure they did because there is
2 handwriting on each much them, which describes where
3 money came and went from?

4 A. Probably Mandy's handwriting.

5 563 Q. There is no doubt about it, either you or
6 your wife reviewed the statements on a monthly basis?

7 A. Okay.

8 564 Q. The numbers that I've suggested to you as
9 being accurate show that \$984,718 in what I'm going to
10 call "general expenses" were paid from the CO accounts
11 from January 9, 2006 to July 26, 2010. I put that
12 statement to you. You have access to those bank
13 statements. And as you said, you or your wife reviewed
14 them on a monthly basis. Do you have any reason, sitting
15 here today, to believe that the numbers I've put to you
16 are not accurate?

17 MR. DAVIS: That's not a fair question.

18 BY MR. GOTTLIEB:

19 565 Q. Okay. Will you undertake to provide me with
20 an analysis based on CO Capital's own bank records what
21 the expenses were paid from the CO Capital bank accounts
22 between January 9, 2006 and July 26, 2010?

23 MR. DAVIS: Before I answer that, can you explain
24 to me the relevance of that?

25 BY MR. GOTTLIEB:

1 566 Q. You just pointed me, Mr. Davis, to a
2 paragraph of an Affidavit where you said where the money
3 that went into CO Capital went that didn't go downstream
4 to EMB and Mr. Mander. What I'm doing, in a very
5 pain-staking manner, is showing where a bunch of the
6 money that was in CO Capital went.

7 MR. DAVIS: I actually think that is a good
8 response. I don't know if they are able to provide the
9 analysis. I just don't know that. They have the bank
10 records which you have, as well. Why don't I suggest
11 this, why don't you send me that document with that
12 analysis that you have and we'll give you a best efforts
13 undertaking to determine whether or not we do or don't
14 agree with it?

15 MR. GOTTLIEB: And if you do not agree where the
16 disagreements lie. Yes?

17 MR. DAVIS: Okay. If we can.

18 MR. GOTTLIEB: If you are going to say you
19 disagree, Mr. Davis, I think I'm entitled to say why and
20 on what basis.

21 MR. DAVIS: I think you are.

22 --- UNDERTAKING

23 MR. GOTTLIEB: I'm going to hand across now a
24 copy of the Schedule of Expenses for the period that I've
25 already said.

1 MR. DAVIS: I take no responsibility for this
2 piece of paper.

3 MR. GOTTLIEB: That's why I'm asking you to hand
4 it to Ms. Preston, who is very responsible with these
5 things.

6 MS. PRESTON: Perhaps you should mark it as an
7 exhibit?

8 MR. DAVIS: Bearing in mind that you wouldn't let
9 me examine Mr. Kofman. To then have his accounting put
10 forward wouldn't be fair. So.

11 MR. GOTTLIEB: Thank you for that. You'll
12 advise?

13 MR. DAVIS: If you can send me an electronic copy
14 that would be helpful, perhaps Mr. Kofman can get it off
15 his BlackBerry?

16 MR. GOTTLIEB:

17 567 Q. It's not in that form in one page, which is
18 why I simply can't say now. But I will get that to you
19 by email.

20 Also, based on the records, and I think you are
21 familiar with this, CO made a direct investment in
22 capital market technologies which is a company.
23 Correct?

24 A. Yes.

25 568 Q. And that investment resulted in a loss.

1 Correct?

2 A. It's unrealized so I don't think -- yeah, it
3 lost money. Yes, it did.

4 569 Q. Okay. And the total amount that was paid
5 with respect to that stock was, according to our records,
6 and I believe I saw this in the material that you gave to
7 the Securities Commission, as well, because -- I'm sorry
8 to go on a tangent, you recall, Mr. Sbaraglia, you gave
9 the OSC some schedules that showed the various venture
10 capital that you had?

11 A. Yes.

12 570 Q. One of those was CMKT?

13 A. Yes.

14 571 Q. And the number that I've got from those
15 records is approximately \$435,000 worth of shares. That
16 sounds about right? Because I can take you to the
17 documents?

18 A. That sounds about right. Again, I'll defer
19 the numbers to Mandy.

20 572 Q. If you have any information that the number
21 I've given is incorrect, Mr. Davis, will you please
22 provide us?

23 MR. DAVIS: As best we can.

24 --- UNDERTAKING

25 BY MR. GOTTLIEB:

1 573 Q. Thank you. And do you know the value of
2 those shares today in CMKT?

3 A. Not much.

4 574 Q. Okay. So we're not going to be exact on it,
5 those trades because there were various purchases of CMKT
6 resulted in losses in the neighbourhood of somewhere
7 between 400,000 -- 435,000. Does that sound about
8 right?

9 A. Yes.

10 575 Q. And so next what we know is that CO Capital
11 paid money directly to Mand Assets. You're familiar with
12 that?

13 A. Yes.

14 576 Q. And Mand Assets is a company that was
15 incorporated and is owned by Mandy. Correct?

16 A. It is now. It was Robert and Mandy's.

17 577 Q. It was Robert and Mandy. At any rate, it was
18 a related company to CO in that Mandy was a 50 per cent
19 shareholder of that, at the time?

20 A. Yes.

21 578 Q. And the amount of money that was sent over to
22 Mand Assets, according to the records, including the
23 amount that was sent over to the Mand interactive
24 broker's account was \$413,000. Does that sound about
25 right to you?

1 A. Matt, I don't know. I'm not doubting you, I
2 just don't know.

3 579 Q. Mr. Sbaraglia, I appreciate that. So, again,
4 I am trying to make these things a little bit simpler. I
5 can show you the bank records. But if you have any
6 information that number is inaccurate, I'd appreciate you
7 advising me and telling me what you say the accurate
8 number is based on the bank statements?

9 MR. DAVIS: If we can.

10 --- UNDERTAKING

11 MR. GOTTLIEB: Okay. Otherwise, Mr. Davis, we're
12 going to take it on the record that number is accurate.
13 Mr. Davis, I can, and I say this, and this is going to
14 come like a threat and I don't mean it like one, we have
15 all the bank records here, every one of them. I can go
16 through line item by line item and though where the money
17 went to Mand.

18 MR. DAVIS: You haven't shared with me previous
19 to today.

20 MR. GOTTLIEB: We haven't created financial
21 records. These are from CO Capital's bank statements.

22 MR. DAVIS: Created statements or summaries.
23 It's one thing to have 12 or 24 bank statements and come
24 along and say \$2,000 was spent on Hydro, that may be true
25 but we haven't seen it and we don't know that. We may

1 have 12 bank statements with payments to Ontario Hydro,
2 we haven't had the opportunity to look at it. It may be
3 right, but it may be wrong. But to put it to the witness
4 without having an evidentiary record, while it may be
5 something that you are entitled to do it doesn't make it
6 as a matter of fact. So we are trying to be
7 co-operative, and we're trying to say if we can figure it
8 out we will.

9 MR. GOTTLIEB: That sadly means, Mr. Davis, that
10 I'm going to pull out the statements and go line-by-line.
11 I'm trying to make it simpler by saying: Here is the
12 number that we get from the statements that we've added
13 it up. You are fully entitled to say: You've added it
14 up incorrectly, look at the statements. If you think the
15 court-appointed officer has incorrectly added, I get it,
16 you're entitled to do to it.

17 MR. DAVIS: All I'm telling you is to the best we
18 can figure it out we'll either confirm it or not. If it
19 turns out we can't confirm it -- I'm not taking it as a
20 fact.

21 MR. GOTTLIEB: I'm going to have to go
22 line-by-line then. Because what you are saying to me,
23 bluntly, is: I'm not going to let you put it in the
24 record that number.

25 MR. DAVIS: I'm not going to let you put a number

1 I haven't seen before in the record without knowing how
2 it came about. And the background surrounding it.

3 MR. GOTTLIEB: It would have been no different
4 than the undertaking I'm asking for now. And if you
5 don't want to give it, that's fine, we'll have to go
6 through line-by-line in the bank records. I mean if
7 that's what you want to do, that's fine, I'm happy to go
8 through it line-by-line.

9 MR. DAVIS: I don't want to do that. I'm trying
10 to be co-operative.

11 MR. GOTTLIEB: Because I'm asking you to simply
12 go back to the office and confirm or deny the number.

13 MR. DAVIS: And I said we would do that if we
14 can. If we can't, I'll tell you why we can't. That's
15 fair.

16 --- UNDERTAKING

17 MR. GOTTLIEB: It's not really, because I'm
18 simply going to have to have Mr. Sbaraglia come back
19 after I get that answer.

20 MR. DAVIS: You have a right to have him back
21 after undertakings are answered, anyhow.

22 MR. GOTTLIEB: With respect, I don't think that
23 is a helpful response. But we'll deal with that in
24 another manner if we have to.

25 MR. DAVIS: I'm trying to be helpful.

1 BY MR. GOTTLIEB:

2 580 Q. Okay. The money was given from CO to Mand,
3 correct? We just talked about certain monies were given?

4 A. Yes, that's true.

5 581 Q. There were no documents created between Mand
6 and CO whereby Mand agreed to do anything with respect to
7 those funds, correct? There is no written agreement,
8 there is nothing?

9 A. No.

10 582 Q. So there was no obligation, whatsoever, that
11 Mand owed directly to CO's investors with respect to
12 those funds, correct? None was created?

13 A. You're saying written?

14 583 Q. Correct?

15 A. No, none was created that was written.

16 584 Q. Why would the money have been sent from CO to
17 Mand for investment in Mand's Interactive broker's
18 account, as opposed to staying in CO Interactive broker's
19 account or other Interactive account?

20 A. Mand and Pero existed to take advantage of a
21 small business loan exemption that was set up by us for
22 the accounts we used, at the time.

23 585 Q. And that was on advice from Mr. Tonin?

24 A. No, that was advice from Price Waterhouse
25 Cooper.

1 586 Q. And when I asked you previously about the
2 value of the assets in CO you said very little. And
3 based on my review it's the same answer with respect to
4 Mand Assets, also, correct?

5 A. Today, yes.

6 587 Q. Meaning, although using my number in the
7 neighbourhood of \$400,000 was transferred from CO to
8 Mand?

9 A. Right.

10 588 Q. There's little to show for that now that can
11 go back to CO?

12 A. Correct.

13 589 Q. And, in fact, we looked at the trading
14 documents before the -- pardon me, to be fair in the
15 Receiver summary of the documents they were trading
16 losses in Mand also?

17 A. I don't remember looking at the Mand ones.

18 590 Q. Okay. I'll just bring it up real quick. See
19 it there, it's the same chart we looked at before on
20 Chart 11. And you see the bulk of the losses in 2008.
21 Yes?

22 A. And they weren't losses in 2009.

23 591 Q. Right. Just so we have it, there was a net
24 loss of \$357,000 in Mand. Correct?

25 A. According to that, yes.

1 592 Q. Yes. And that's because there was a net
2 \$347,000 loss in '08 and an aggregate positive of \$17,000
3 in '09 and '10, according to this. Correct?

4 A. Correct.

5 593 Q. Okay. Now, I want to show you another
6 expense that was paid from CO. But just before we go to
7 the particular details of it, you're aware that CO
8 Capital paid Visa statements?

9 A. Yes.

10 594 Q. Correct. In fact, you had a CO Capital
11 Visa?

12 A. Yes.

13 595 Q. And a great many expenses were charged to
14 that Visa account?

15 A. Yes.

16 596 Q. And paid by CO Capital. Correct?

17 A. Yes.

18 597 Q. So I want to go through those, if we could,
19 please?

20 MR. DAVIS: The Visa statements?

21 MR. GOTTLIEB: Yes, sir.

22 MR. DAVIS: Okay.

23 MR. GOTTLIEB: Again, I'm happy to do this in an
24 easy way as opposed to a difficult way.

25 MR. DAVIS: You know, It would have been a lot

1 easier if you had given me these things in advance so we
2 could review the summaries that you prepared. It's not
3 an unreasonable request.

4 BY MR. GOTTLIEB:

5 598 Q. So I'm going to hand this across. And the
6 number in the bottom right-hand corner of this is
7 \$383,830. Do you see that? Do I have that right,
8 Mr. Davis? You're holding the paper?

9 MR. DAVIS: Sure wish you would have used bigger
10 fonts. But it looks right.

11 MR. GOTTLIEB: Pardon me?

12 MR. DAVIS: That is the number. Yes, that is the
13 number.

14 BY MR. GOTTLIEB:

15 599 Q. So in the left side column of this chart it
16 says at the top: "Peter Sbaraglia, CO." Do you see
17 that?

18 A. Yes.

19 600 Q. And it's got a bottom there a total of
20 \$320,000?

21 MR. DAVIS: That's what it says.

22 THE DEPONENT: Yes.

23 BY MR. GOTTLIEB:

24 601 Q. Okay. Now, I've got a binder of all of the
25 Visa statements that I'm happy to put across and show

1 you. Okay? But what this chart shows -- and, again, I'm
2 going to hand this across to you which is a binder of
3 Visa statements that back this up. And feel free to flip
4 through these. And, again, Mr. Sbaraglia these come from
5 your files, the CO files. What this shows is that over
6 the -- these aren't the Receiver's files, these are the
7 CO files. So what we see here is that, Mr. Sbaraglia,
8 for that period of time \$66,000 -- over \$66,000 was paid
9 by CO for restaurant bills. Correct?

10 A. Yes.

11 602 Q. And those were not, if I can put it this way,
12 business expenses. These were personal meals.
13 Correct?

14 A. No. A lot of these relationships were taking
15 people out for dinner, lots of times, lunches and
16 dinners.

17 603 Q. For what purpose?

18 A. For what purpose? In business when people go
19 out together and they talk and develop relationships,
20 they strengthen relationship, they go over things, they
21 talk about stuff. Business dinners. Business trips.
22 Golf course trips, which I never golf. It's a very
23 common practice in business.

24 604 Q. For what purpose did you need to do that?

25 A. Like I just said, you have a relationship

1 with someone, a business relationship, you stay in
2 touch.

3 605 Q. So this \$66,000 of restaurant expenses?

4 A. Right.

5 606 Q. None of these were meals of just you and
6 Mandy?

7 A. I don't remember. How would I possibly
8 remember which of those meals were just Mandy and I?

9 607 Q. I didn't ask you which ones, Mr. Sbaraglia.
10 Is your evidence here that you don't recall whether
11 during this time period that you and Mandy went out for a
12 meal just the two of you, and had the CO Visa pay for
13 it?

14 A. Probably, yes.

15 608 Q. Okay. Probably, yes. And you talked about
16 that you needed to do this to develop the business
17 relationships, to strengthen the business relationships.
18 Correct?

19 A. That's one of them, yes.

20 609 Q. What else?

21 A. Mandy and I work together.

22 610 Q. Yes?

23 A. It's very common to go out and talk about
24 what happened at work: What did you do? What are you
25 thinking? It's not uncommon at all.

1 611 Q. But these were investor funds that you were
2 using?

3 A. Yes.

4 612 Q. And you said that the business relationships
5 were to build and develop the business relationship,
6 correct, that was an important component of this?

7 A. Yes.

8 613 Q. But these were all your friends and family,
9 you said?

10 A. Uh'hmm.

11 614 Q. And you said they all came to you. Is your
12 evidence that you needed to spend \$66,000 on meals?

13 A. Sorry. When did I say they all came to me?

14 615 Q. In the transcript with the OSC?

15 A. Okay.

16 MR. DAVIS: Do you want to point to him where he
17 said that in the transcript?

18 MR. GOTTLIEB: No.

19 MR. DAVIS: That is not a fair question.

20 BY MR. GOTTLIEB:

21 616 Q. So your evidence here is that the \$66,000
22 spent on restaurants?

23 A. Right.

24 617 Q. Was necessary for the business of CO, because
25 it was necessary to develop and strengthen business

1 relationships. That's your evidence?

2 A. Well, what I said, first, it's business
3 lunches, business dinners; was the style of maintaining
4 relationships with friends, family, clients --

5 618 Q. Stop there. I'm going to interrupt you?

6 A. Okay.

7 619 Q. You said: Friends, family and clients?

8 A. They're one in the same.

9 620 Q. There were no clients that weren't friends
10 and family?

11 A. There might have been one.

12 621 Q. Who is the one?

13 A. Well, no, I knew him a long time. I'll say
14 everybody in there I knew for years and years and years
15 and years, everybody.

16 622 Q. Okay. So, again, I was just asking you to
17 confirm, sir, that your evidence is that the \$66,371
18 spent on restaurants was all necessary, pardon me, for
19 you to carry on your business to develop a business
20 relationship, to strengthen the business?

21 A. I might not use the word "necessary." But
22 some guys buy Raptor tickets, some guys buy golf clubs,
23 some guys get Rolling Stones' tickets. I took people to
24 lunch and dinner.

25 623 Q. And when you add up the totals you're talking

1 of well over five -- \$600 a week on restaurants.

2 A. Okay.

3 624 Q. And your evidence is that those meals were
4 all paid for by CO with investor money, because they were
5 necessary?

6 A. I didn't say, "necessary."

7 625 Q. What word would you use?

8 A. Just for the purposes of maintaining these
9 relationships at dinners, lunches. Taking guys out.
10 Talking to new guys. Talking to old guys.

11 626 Q. And when we go down further on the Visa
12 statements you'll see that there are, for example,
13 renovations. You see that at number six?

14 A. Yes.

15 627 Q. For a total of \$16,000?

16 A. Yes.

17 628 Q. Renovations to what?

18 A. I don't recall exactly. I'd imagine it was
19 to the building.

20 629 Q. What building?

21 A. 239 Church Street.

22 630 Q. But CO didn't own 239 Church?

23 A. Yes. That's correct.

24 631 Q. So on what basis is CO using investor money
25 to renovate Church Street?

1 MR. DAVIS: CO is a private company. Why is that
2 relevant to this particular proceeding?

3 MR. GOTTLIEB: The whole issue in this
4 proceeding, with great respect, Mr. Davis, is protection
5 of investors. This is investor money that's being used
6 to renovate a property that's not owned by the company
7 that the investors invested in.

8 MR. DAVIS: So what?

9 BY MR. GOTTLIEB:

10 632 Q. Okay. If you take that objection, that's
11 fine. So you can't answer that?

12 MR. DAVIS: I'm letting you go very far afield
13 here.

14 BY MR. GOTTLIEB:

15 633 Q. With respect, I think I'm right on the centre
16 field. But, that's fine.

17 Airline tickets. \$16,000 of air tickets, 9,000
18 on yours alone to Denver, Colorado, Montreal, Calgary and
19 London, England, sir. On what basis were those expenses
20 paid from CO?

21 A. Denver, Colorado?

22 634 Q. Yes?

23 A. A venture deal that had to do with hockey
24 sticks. I went to check it out. Calgary was to go meet
25 Blackmont, because they were interested in investing in

1 the new fund that we had started up. London, England was
2 to go look for a venture for Mr. Mander. What was the
3 other one you said?

4 635 Q. Montreal?

5 A. Montreal, I don't recall.

6 636 Q. And you took each of these trips with
7 Mandy?

8 A. Nope.

9 637 Q. Which ones didn't you take with Mandy?

10 A. Ah, Calgary, Colorado, London and Montreal I
11 went once on my own, and once with Mandy -- maybe twice
12 with Mandy and the kids. I don't remember, exactly.

13 638 Q. And with respect to those trips what income
14 or revenue is generated for CO?

15 A. None.

16 639 Q. Next line item: Wine and L.C.B.O. of
17 \$11,726. Sir, to be fair, that was not an expense that
18 properly should have been charged to CO Capital; that was
19 not for the benefit of CO Capital and its investors.
20 Correct?

21 A. No, we'd take out guests from CO Capital lots
22 of times.

23 640 Q. So over a period of April of '07 to May '10,
24 which is three years, you gave out almost \$4,000 a year
25 in gifts to your friends and family?

1 A. I don't remember exactly, exactly how much.
2 But we certainly did give out wine as gifts at Christmas
3 time and so on. Yes.

4 641 Q. To friends and family?

5 A. Among other people, yes.

6 642 Q. Well, is it your evidence, sir, that the
7 almost \$12,000 spent on wine and other amounts from
8 L.C.B.O. was for the benefit of CO investors. Is that
9 your evidence?

10 A. No.

11 643 Q. Okay. And then we get limo and taxi
12 services, \$10,759 over a three-year period?

13 A. Uh'hmm.

14 644 Q. Is it your evidence that expense was properly
15 chargeable to CO because it benefitted CO investors?

16 A. It was for the running of CO, yeah. There
17 was a lot of times you'd go downtown to dinner, you'd
18 send guys and they'd have a couple of drinks and you'd
19 arrange for someone to drive them home. It's very, very
20 common.

21 645 Q. For \$3,000 a year. I'm asking you about your
22 business, not what's common elsewhere. Is it your
23 evidence that this \$10,759 on taxis and limos was spent
24 entirely for the CO's business and its investors?

25 A. I don't remember if it's entirely for the

1 benefit.

2 646 Q. To be fair, sir, if you think about it, you
3 know it's not. You know that you ran some expenses
4 through here that had nothing to do with CO business.
5 Correct?

6 A. No, I don't recall.

7 647 Q. You just don't recall that. So your
8 evidence, sitting here today, is that each and every taxi
9 and limo drive was for the benefit of CO investors?

10 A. I'm saying I don't really recall.

11 648 Q. Your answer is the same with respect to the
12 wine and L.C.B.O. charges. You're not really saying that
13 every dollar of that 11,000 odd dollars was spent for the
14 benefit of CO and its investors. Correct?

15 A. That's correct.

16 649 Q. And then clothing, sir, from Holt Renfrew, M
17 For Men, Bloomingdales, Lulu lemon. None of that was for
18 the benefits of CO and its investors. Correct?

19 A. That's correct.

20 650 Q. And if we go down to the spa charges of
21 \$3,790 dollars, Verede, The Spa, at the Old Mill and
22 Rosewater. You're familiar with those spas?

23 A. Not really. I never go to the spas.

24 651 Q. I was going to suggest that it wasn't you,
25 that it was probably Mandy. Correct?

1 A. No, it was probably wives of people we did
2 business with.

3 652 Q. So to be clear, is that your evidence that
4 none of these were Mandy?

5 A. I'm not saying none of them are. I'm just
6 saying I don't know which ones specifically how many and
7 when.

8 653 Q. Okay. You'll agree with me, though, the
9 \$3,700 spent by CO on spas were not all for the benefit
10 of CO or its investors?

11 A. Right.

12 654 Q. Flowers of \$903. You'll agree with me that
13 not all of that amount was for the benefit of CO and its
14 investors. Correct?

15 A. Correct.

16 655 Q. Movies, \$733. You will agree that not all of
17 that, if any of that was for the benefit of CO and its
18 investors. Correct?

19 A. Correct.

20 656 Q. Toys R Us and the cleaners for approximately
21 \$300 total. You'll agree that none of that was for the
22 benefit of CO and its investors. Correct?

23 A. No. Well, the cleaners clean CO., If I
24 remember.

25 657 Q. Sorry, I apologize. It's actually dry

1 cleaning bills?

2 A. Oh, dry cleaning?

3 658 Q. Yes?

4 A. No. That's not for the benefit of CO.

5 659 Q. Formally I should get you to identify these
6 Visa slips. And you can, by all means, flip through --

7 MR. DAVIS: I told you we don't dispute the
8 authenticity of documents.

9 BY MR. GOTTLIEB:

10 660 Q. You can confirm for the record, please, that
11 these are the Visa slips that we are talking about?

12 A. I'll say "yes."

13 661 Q. Okay. So I'd like to mark that, please, the
14 binder of the Visa slips, Mr. Davis?

15 MR. DAVIS: Go ahead.

16 MR. GOTTLIEB: That will be 29.

17 --- EXHIBIT NUMBER 29: Binder of Visa slips

18 MR. GOTTLIEB: Mr. Davis, I handed you that sheet
19 that is the summary of the Visa charges for that period.

20 MR. DAVIS: Isn't it that there?

21 MR. GOTTLIEB: Maybe it is. Yes, it looks that
22 way. If you intend to dispute the Receiver's arithmetic
23 that we just took from those Visa slips, that we just
24 marked as an exhibit, would you please advise?

25 MR. DAVIS: Sure.

1 --- UNDERTAKING

2 BY MR. GOTTLIEB:

3 662 Q. Thank you. Sir, we also know from the
4 records that you gave to the OSC and from the documents
5 that we've reviewed that there were shares of a company
6 called Carta, C-A-R-T-A, purchased by CO?

7 A. Yes.

8 663 Q. And just, very briefly, tell us what Carta
9 is?

10 A. Pre-paid credit card kind of company.

11 664 Q. And based on the records that we have those
12 shares, and we can go to the OSC documents that were
13 purchased in the neighbourhood for a \$150,000. Does that
14 sound about right?

15 A. Yes, it does.

16 665 Q. Do you know the value of those shares
17 today?

18 A. No, I don't. Not much.

19 666 Q. I was going to say can we agree not much.
20 Okay. Perfect --

21 A. You do understand it's venture.

22 667 Q. I do understand that. But that was money
23 that went from CO to purchase those shares, and therefore
24 there was loss in the neighbourhood of a \$150,000.
25 Correct?

1 A. Yes.

2 668 Q. Perfect. So what we know is that I've just
3 gone through is various expenses and purchases done with
4 money directly from CO's own bank accounts?

5 A. Right.

6 669 Q. Correct?

7 A. Yes.

8 670 Q. And based on what I just walked you through,
9 we know that -- I can go back and be exact with the
10 numbers, but millions of dollars went out for the purpose
11 of zero income generation. What I mean by that is
12 expenses were paid for a variety of things that we've
13 talked about. We talked about that you and Mandy took
14 out a particular amount. And that wasn't obviously for
15 income generation, either. So we've got the numbers that
16 went out for no income generation purposes?

17 A. Right.

18 671 Q. And then we also know that monies went
19 out that, in fact, didn't generate any income, the shares
20 and the trading accounts?

21 A. Correct.

22 672 Q. So based on everything that we've just seen
23 in the numbers I've just shown you none of those amounts,
24 whatsoever, that stayed in CO that we talked about
25 actually generated positive returns. In fact, it was all

1 negative?

2 A. Right.

3 673 Q. That's true?

4 A. Yes.

5 674 Q. And, in fact, I believe there was one number
6 I left out that I should have added on to that mix, and
7 that was the number that went to 91 Days Hygiene, because
8 you are aware there are amounts paid from CO directly to
9 91 Days Hygiene with respect to, including I think it was
10 referred to as "rent." Does that ring a bell to you?

11 A. Yes.

12 675 Q. Okay. And I can show you just a summary
13 chart that, again, comes from the bank statements and I
14 can walk through. But this shows a schedule of
15 transactions between CO and 91 Days Hygiene. And if we
16 flip over to page 2 you'll see the net amount?

17 MR. DAVIS: Yes, is it.

18 MR. GOTTLIEB:

19 676 Q. And the net amount is \$213,634 that went from
20 CO to 91 Days Hygiene. Does that strike you as
21 accurate?

22 A. I don't know.

23 677 Q. Mr. Davis?

24 MR. DAVIS: If you tell me that these come from
25 the bank records, and that they show on the records that

1 151,952 was rent, \$7,106 was a loan and 5,180 was others,
2 then we'll let you know if we have any dispute with
3 this.

4 BY MR. GOTTLIEB:

5 678 Q. Thank you. That's helpful. I appreciate
6 that very much. So when you add on that to the mix that
7 didn't generate any income for CO. In fact, it was money
8 out the door?

9 A. Yes.

10 679 Q. So the bottom line is you knew that the money
11 that didn't go to Mr. Mander and his companies that
12 stayed in CO was not generating any positive return for
13 investors. Correct?

14 A. Right.

15 680 Q. Which, in fact, we know that there is trading
16 losses, for example, correct? So it was actually not a
17 positive return at all, it was actually negative.
18 Correct?

19 A. Uh'hmm.

20 681 Q. Yes?

21 A. Yes.

22 682 Q. Okay. And that was throughout the piece when
23 CO Capital had loan obligations outstanding. Correct?

24 A. Yes.

25 683 Q. Where the interest rate varied between 25 and

1 30 per cent?

2 A. Yes.

3 684 Q. Because I've gone through the records and it
4 appears to me that it was always 25 or 30 per cent from
5 CO to its investors. Correct?

6 A. Yes.

7 685 Q. Which means that the money that was brought
8 in by CO had to get a return of a minimum of 25 per cent.
9 Correct?

10 A. Yes.

11 686 Q. But that doesn't take into account a single
12 expense?

13 A. Uh'hmm.

14 687 Q. So we know that the monies that were brought
15 in to CO had to generate returns by and large above 25 to
16 30 per cent to cover off expenses and other things.
17 Correct?

18 A. Including Robert's.

19 688 Q. The money that came in to CO?

20 A. Right.

21 689 Q. Wherever it went. Some stayed in CO, some
22 went to Robert. When we say "Robert" we mean the
23 companies too. Correct?

24 A. Yes.

25 690 Q. That money had to generate returns of a

1 minimum of over 30 per cent because you had to cover off
2 expenses during that process, as well?

3 A. Correct.

4 691 Q. All right. So we know that. But we also
5 know that the \$7 million that didn't go down to Mr.
6 Mander?

7 A. Right.

8 692 Q. Generated zero positive return?

9 A. Right.

10 693 Q. Which you knew meant that the amounts that
11 Mr. Mander were investing, that went down to Mr. Mander
12 and his companies?

13 A. Yes.

14 694 Q. Had to accrue well, well -- well beyond 30
15 per cent on an annual basis so as to cover off the losses
16 that were suffered at CO?

17 A. Right.

18 695 Q. And the expenses that were incurred at CO?

19 A. Right.

20 696 Q. Okay. So you knew that those returns, and we
21 can do the math together but if you take the number of 7
22 million as your base that stayed into CO over time, and
23 you said the total was 25.9 million, and again there are
24 many ways to take apart these numbers, you're talking a
25 minimum -- a minimum of 30 per cent of the asset value

1 that wasn't generating positive income.

2 MR. DAVIS: I really think that is an unfair
3 question. The problem is it is so long there is couple
4 of pieces in there that I don't buy.

5 BY MR. GOTTLIEB:

6 697 Q. Okay. The bottom line is, as you just said,
7 you knew that the returns that would have to be generated
8 by the piece that went down to Mr. Mander would have to
9 be very significant, well above 30 per cent?

10 A. Yes.

11 698 Q. Okay. And you also told me, I believe, that
12 Mr. Mander was the one in control of the CO trading
13 account for the purpose of the investments. Correct?

14 A. Yes.

15 699 Q. And Mr. Mander was the one, therefore, that
16 had made the investments that had lost all the value that
17 was put in those accounts. Correct?

18 A. Yes.

19 700 Q. And, notwithstanding that, you understood
20 that in his own accounts that I understand you say you
21 didn't see he must have been generating returns in the 50
22 per cent range in order to offset everything else.
23 Correct?

24 A. That's right.

25 701 Q. And that was 50 per cent on a yearly basis?

1 A. Yes.

2 702 Q. Okay. Now, other than what Mr. Mander was
3 telling you, you had no reason to believe that he was
4 actually generating those types of returns. Correct?

5 A. No, that's not correct.

6 703 Q. It's not correct. Did you see the trading?

7 A. No.

8 704 Q. Okay. Did he show you the records?

9 A. No.

10 705 Q. Did he have you speak to third parties that
11 said: Let me show you how much money Mr. Mander is
12 making in these accounts?

13 A. No.

14 706 Q. The only thing you had to go by was what Mr.
15 Mander was telling you?

16 MR. DAVIS: That is not a fair question.

17 BY MR. GOTTLIEB:

18 707 Q. Well, I don't want you to give me a speech
19 why, because I think it's a very fair question. You had,
20 sir, every reason to believe that Mr. Mander wasn't
21 generating returns on an annual basis of 50 per cent.
22 Correct?

23 A. No.

24 708 Q. You talked at length about your strategy.
25 And you said today that your strategy came from Mr.

1 Mander, and that Mr. Mander was operating the CO accounts
2 that had lost its value. And that was exactly the
3 strategy that you understood was being utilized by Mr.
4 Mander. Correct?

5 A. No. I said that earlier, No. I said earlier
6 the CO accounts he treated as his small cap stuff that he
7 allowed a lot of volatility to. There wasn't ever once
8 that he had the demeanour that he was worried about it at
9 all. And, hence, we weren't either.

10 709 Q. Now, you were aware that Mr. Mander -- and,
11 again, I mean Mr. Mander and his companies, were buying
12 real estate with the money provided by CO investors.
13 Correct?

14 A. I'm not sure.

15 710 Q. Okay. I'm not sure I understand that. You
16 were?

17 A. I knew he was buying real estate.

18 711 Q. Yes?

19 A. I knew he was increasing his real estate
20 portfolio.

21 712 Q. Yes?

22 A. I knew he opened a company specifically to
23 buy real estate.

24 713 Q. That is Stonebury?

25 A. Yes.

1 714 Q. Yes?

2 A. I know that he hired staff specifically for
3 that company.

4 715 Q. Yes?

5 A. I also know -- I don't know, this is what he
6 told me, that him and Maria's brother were buying a real
7 estate brokerage.

8 716 Q. Okay?

9 A. Okay. I knew real estate was something he
10 was getting more and more interested in.

11 717 Q. Okay. I appreciate all that. But as part of
12 that you understood that the monies that you were sending
13 down his way were being invested not only in the stock
14 market and options, but in real estate also?

15 A. I didn't know really, specifically, where our
16 monies went when we sent them down.

17 718 Q. So in answer to my question, you're saying
18 you didn't know that the CO investor's money was being
19 invested in real estate?

20 A. No, I said I didn't know how much. I didn't
21 know what percentage. I didn't know, specifically, what
22 he was doing with our money.

23 719 Q. In fact, we now know that most of the money
24 that was being sent down to Mr. Mander was being put in
25 real estate. Correct?

1 MR. DAVIS: I don't think we know that.

2 MR. GOTTLIEB: I'm allowed to put it to the
3 witness, Mr. Davis.

4 MR. DAVIS: You said, "we."

5 MR. GOTTLIEB: Yes.

6 MR. DAVIS: I never heard that before. I don't
7 know on what evidentiary basis you're asking that
8 question.

9 BY MR. GOTTLIEB:

10 720 Q. We'll get there. You knew that Mr. Mander
11 was buying real estate with your investors' money.
12 Correct?

13 A. I knew he was buying real estate. I knew he
14 had our investors' money.

15 721 Q. Okay. What you and your counsel told the
16 OSC, when you were interviewed, was that the money of CO
17 investors was being put into the real estate?

18 MR. DAVIS: What they told the OSC is on the
19 transcript. It's one o'clock.

20 MR. GOTTLIEB: How brief can we be for lunch?

21 MR. DAVIS: Go off the record.

22 --- Off the record

23 --- Whereupon proceedings recessed at 1:10 p.m.

24 --- Whereupon proceedings resumed at 1:59 p.m.

25 MR. GOTTLIEB: Do you have the transcript out?

1 MR. DAVIS: What page?

2 BY MR. GOTTLIEB:

3 722 Q. We're going to go to 30. So we were talking
4 before the break about the real estate. And on the
5 examination at page 30 Mr. Shahviri is talking about
6 documentation, and the question is asked: If there are
7 copies of the most recent bank or brokerage statements
8 that would back up the numbers we are seeing at tabs 6
9 and 7. And at tabs 6 and 7, I'm not sure why it's 6 and
10 7, at tab 67 is the loan repayments and the obligation.
11 So the answer given by Mr. Miller: "Most of the money is
12 not in brokerage accounts, most of it is in real estate."
13 Ms. Dublin says: "That's right." And you say: "And
14 venture." And Mr. Shahviri says: "And venture." "Okay,
15 so what sort of objective or third party documents would
16 exist to support?" And then we touch on what we already
17 looked at earlier this morning. Do you see that? Okay?

18 A. Uh'hmm.

19 723 Q. You just have to say "yes" okay?

20 A. Pardon me. Yes.

21 724 Q. Thank you. And then if we turn over to page
22 31 at line 11, you see the lines on the left-hand side,
23 it says, and this is Ms. Dublin talking again: "And
24 there is valuations and Deeds for two properties, one at
25 239 Church Street in Oakville and an opinion regarding a

1 value of one of them. I think an opinion is to be
2 forthcoming about the value of the other one." And the
3 other one was your home?

4 A. Yes.

5 725 Q. And then Ms. Dublin says: "And you will see
6 the brokerage accounts and the bank accounts are at tab.
7 8, they're not significant sums, though. The largest
8 bank account is \$400,000. Because the sums aren't being
9 held in cash they are being transformed mostly into real
10 estate or were. And you will see the real estate holdings
11 are at tab 10. And that's where, really, the bulk of the
12 value is. It's in these properties that Robert Mander
13 acquired for the venture." Do you see that?

14 A. Uh'hmm.

15 726 Q. Yes?

16 A. Yes.

17 727 Q. And tab 10, as you probably know, these are
18 the assets of Robert Mander available to fund loan
19 repayments. And at tab 10, if you go through it, it has
20 some shares of companies. And then it has the real
21 estate that we're aware of. Okay?

22 A. Yes.

23 728 Q. And I'm just going to stop there, and say:
24 You don't, obviously, at any time correct counsel or say
25 that's wrong. Correct?

1 A. You are correct.

2 729 Q. All right. And then it says: "And these are
3 the current ones" referring to the real estate. Right?

4 A. Where are we?

5 730 Q. Right. Where we left off at the top of page
6 32, it is?

7 A. Yes, okay.

8 731 Q. Do you see that?

9 A. Yes.

10 732 Q. "And these are the current ones, that's
11 referring to the real estate." Yes?

12 A. Yes.

13 733 Q. "Of course they have been buying and selling
14 them on an ongoing basis." Now, that statement wasn't
15 true, there had been no ongoing purchase or sale of real
16 estate during this time. Correct?

17 A. That I knew about, no.

18 734 Q. So you had no reason to believe that
19 statement was an accurate statement. Correct?

20 A. I'll say I didn't know.

21 735 Q. Okay. My understanding, Mr. Sbaraglia, is
22 that by this time, in July of '09, you and Mr. Mander
23 were very close. You spoke constantly, would be far too
24 high. But very frequently, absolutely certainly on a
25 daily basis. Correct?

1 A. No. Spoke?

2 736 Q. Yes?

3 A. No. No. Most of the communication with
4 Mander went through Skypes. Most of those went through
5 my wife.

6 737 Q. I understand that. But there were emails,
7 too?

8 A. Yes.

9 738 Q. And phone calls?

10 A. Not that many.

11 739 Q. I know not that many. But there were phone
12 calls?

13 A. Right.

14 740 Q. And you did get together?

15 A. Yes.

16 741 Q. Okay. And you said before that you knew, for
17 example, that he had the Stonebury company?

18 A. Yes.

19 742 Q. And at no time during your discussions with
20 Mander, your meetings with Mander, the information that
21 had been exchanged with Mander, were you ever made aware
22 by Mander that he was selling and buying real estate for
23 profit. Correct?

24 A. I knew he was buying real estate.

25 743 Q. No doubt about that?

1 A. And I was not aware of what he was selling if
2 he had sold anything. He may have, he may not have. I
3 didn't know.

4 744 Q. When he was talking to you about that things
5 were going very well, as you've said?

6 A. Right.

7 745 Q. That there was money being made, profits
8 being made?

9 A. Right.

10 746 Q. He never once said to you as a result of real
11 estate sales?

12 A. That's correct.

13 747 Q. Okay. And Ms. Dublin goes on to say: "So
14 when you add up the anticipated value or the estimated
15 market value of these properties and the other assets,
16 you have a figure that is in excess of 10 million that's
17 owed. And that's a lot of real estate." Just give me a
18 sec. And then, sir, if we flip the page to page 33, at
19 the top Mr. Shahviri asks: "But if I understood you
20 correctly the list of properties at tab 10 constitute the
21 bulk of the assets of CO." And the answer Mr. Miller
22 gives is -- remember we're talking about CO assets, and
23 at tab 10 these are the assets of Mr. Mander?

24 A. Correct.

25 748 Q. And Mr. Miller says: "Yes, vast majority."

1 You don't correct that statement?

2 A. No.

3 749 Q. Mr. Shahviri says: "Plus there's about maybe
4 half a million in cash." And you say: "In cash and then
5 some ventures." Do you see that?

6 A. Yes.

7 750 Q. And Ms. Dublin says: "And there's some real
8 estate, as well. That's sort of in the Sbaraglia's
9 bailiwick too. Some of it is held by them, and some of
10 it by Mander." And then it's referred to a few lines
11 down that it's at tab 9 that she's referring to. And at
12 tab 9 is the assets of Dr. Peter and Dr. Mandy Sbaraglia
13 available to satisfy the loans. Correct?

14 A. Yes.

15 751 Q. All right. And in your Affidavit you refer
16 to the fact that you added in the word "venturers." And
17 "venturers" was your way of trying to fix the
18 misstatement. Correct?

19 A. Yes.

20 752 Q. And I want you to go to page 51, please, of
21 this transcript. And at page 51, this is after what I'll
22 call the "lengthy discussion" about your strategy and the
23 way you're going to do things, and at 51 Mr. Panchuck of
24 the OSC asks at 18: "So you have 4 million to pay back
25 from January to December, '09 and I'm just doing it let's

1 call it a hypothetical problem. So it's approximately 4
2 million January 1, 2009 to December 31, '09. So you have
3 to be liquid for that amount." Your answer is: "Right."
4 And the question is: "At various points through the year
5 how do you manage that?" And your answer is: "Well, in
6 the worst case scenario you can get lines of credit and
7 mortgages." And when you're talking mortgages, you're
8 talking about on real property. Correct?

9 A. Yes.

10 753 Q. Thank you. The Reporter told me at the break
11 she's had trouble picking up some of the statements made,
12 so she asked me to make sure everybody keeps their voice
13 up.

14 "If you own them outright there is a value to
15 them, and you absolutely can access liquid cash because
16 of the value of the assets." And then Mr. Shahviri asks:
17 "And is that the case with the properties, they're all
18 owned outright?" And your answer is: "Yes. All on that
19 page there they're all owned outright, every one of
20 them." And then, sir, at the top of the next page the
21 question is asked: "When did you make the transition to
22 real estate, or is it staggered?" And your answer is:
23 "Staggered. Understand that page there does not belong,
24 those aren't my properties." They're not your
25 properties?" "No." And then we go further down the

1 page, and Mr. Miller and Ms. Dublin talk about that you
2 have to look at everything together and hold it
3 altogether in order to get the full picture of this. You
4 see that?

5 A. Yes.

6 754 Q. I can read it line-by-line?

7 A. I get what you're saying.

8 755 Q. Right. And, sir, when asked the question at
9 the top of page 52: "When did you make the transition to
10 real estate, or is it staggered?" You don't say: Well,
11 that's not true, we didn't make a transition to real
12 estate. You say: Staggered. Meaning we made the
13 transition to real estate, but we did it staggered.
14 Correct. That's your answer?

15 A. That's my answer.

16 756 Q. Right. And at that time, at the time you
17 gave that answer you knew that a significant amount of
18 the money had gone into the purchase of real estate and
19 that's why you gave that answer. Correct?

20 A. Say that again?

21 757 Q. You knew that a significant -- by the time of
22 this examination in July of '09 you knew that a
23 significant amount of the CO investor money had gone into
24 purchase that real estate, and that's why you said that
25 the transition to real estate had occurred and had been

1 staggered?

2 A. We talked about that earlier. I knew he was
3 buying real estate. I knew he was expanding his real
4 estate. I knew he had a pool of funds. And I knew that
5 my funds were part of that pool. And what percentage of
6 my funds went in to buy real estate, I did not know.

7 758 Q. But you knew, again, just to try to get an
8 agreement on this point, at a minimum some of those funds
9 had gone into real estate?

10 A. I had no way of knowing for sure.

11 759 Q. Did you never ask? Did you never once ask
12 Mr. Mander who you passed down, you say, over \$15 million
13 down to: Hey, Robert, where is our money? What's it in?
14 Never asked?

15 A. Yes.

16 760 Q. You did ask?

17 A. Yeah. If you think about if you read through
18 the four years of Skypes day in and day out there is an
19 awful lot of asking: What are you in? What are you out?
20 What are you doing? There is an awful lot.

21 761 Q. Okay. Go to, please, the top of page 54.
22 The question asked of you: "Let me see if I can follow.
23 Tell me if I've got this right. I thought I had it and
24 then I realized when you were speaking I didn't. So the
25 money came in from your friends and family? A. Yes.

1 Went to CO? A. Yes. Then it went to Mander?
2 Eventually, yes. And Mander bought these properties?
3 Yes." You understood that what was being asked of you
4 was bought the properties with the money?

5 A. I did understand.

6 762 Q. And your answer to that was "yes?"

7 A. Correct.

8 763 Q. Okay. So what we know from all of that
9 evidence was that, and we dealt with this at length
10 before the break, that Mr. Mander was going to have to
11 generate very significant increases to be able to allow
12 you to pay back your investors?

13 A. Yes.

14 764 Q. And you also knew that some of your
15 investor's money was in real estate held by Mr. Mander.
16 Correct?

17 A. I said a couple of times I didn't know for
18 sure. I didn't know. He never said: Peter, I bought
19 this with your money.

20 765 Q. But by July 9th you knew, that's the answer
21 you just gave. The last question and answer I just
22 showed you?

23 A. Yes. That's the answer I gave.

24 766 Q. And that was true when you gave that answer.
25 Correct?

1 A. The reality is that was a very awkward moment
2 for me.

3 767 Q. That doesn't answer my question. When you
4 gave that answer under oath, a one-word answer where you
5 said "yes", on page 54 at question 26, were you telling
6 the truth?

7 MR. DAVIS: Mr. Sbaraglia is going to reserve
8 that answer, unless it's understood and agreed that he is
9 afforded the protection of both the Evidence Act and the
10 Charter.

11 MR. GOTTLIEB: I'll tell you, Mr. Davis, and I
12 apologize for this, I'm not sure I have anything to say
13 about what you just said.

14 MR. DAVIS: I just want to make sure you are not
15 opposed to that position.

16 MR. GOTTLIEB: I don't, at this moment,
17 understand. I say this literally, not sarcastically, how
18 I could have or not have a position with respect to that
19 statement. My understanding is you are alleging to take
20 a position where you're reserving some client rights.
21 Whether you can do that, whether you have those rights,
22 whether they are affective or not affective I have no say
23 in them. I don't know the answer to that.

24 MR. DAVIS: I was only saying I want to make sure
25 you're not opposed to that. It sounds like you're not.

1 MR. GOTTLIEB: Well, it's difficult for me to
2 give an answer to that.

3 MR. DAVIS: No position is not relevant; no
4 position is fine by me.

5 MR. GOTTLIEB: All that I'm saying and,
6 obviously, desperately trying not to mislead you which is
7 I understand that you have just made a statement in an
8 attempt to protect your client's rights.

9 MR. DAVIS: Right.

10 MR. GOTTLIEB: If that is effective, it's
11 effective; if it is ineffective, it is ineffective. I'm
12 not taking a position one way or another today. I can't
13 say: Yes, I agree that you can do that. I'm not saying:
14 No, you can't do that. I'm just not saying anything
15 about it. I appreciate you've made the statement.

16 MR. DAVIS: I just want to make sure you're not
17 opposed to it.

18 MR. GOTTLIEB: You cannot make that assumption,
19 because I don't know whether there is any basis for me to
20 be opposed. I don't know whether legally I can oppose
21 it. I'm just being completely forthright with you. I'm
22 not going to stake out a position. This gentleman is
23 here under oath. He has an obligation to be here and
24 answer the questions. And if you are making a statement
25 in an attempt to protect his rights, I acknowledge that.

1 I don't take a position with it. I don't know how I
2 could be more clear than that.

3 MR. DAVIS: He'll give that answer on the
4 understanding it is subject to reservation of rights.
5 Okay.

6 MR. GOTTLIEB: Okay.

7 MR. DAVIS: Go ahead.

8 THE DEPONENT: When I showed up that day I had
9 not seen this binder. They had not discussed it with me.
10 The words that they were saying in that interview came as
11 a surprise to me. Matt, I was sitting there, I didn't
12 know what to do. I honestly didn't know what to do other
13 than put my faith in my counsel. That's what I did. I
14 went along with what they told Mr. Shahviri and
15 Mr. Holgan, Mr. Panchuck. That's what happened, Matt. I
16 was sitting there, my heart in my throat. I didn't know
17 what to do.

18 BY MR. GOTTLIEB:

19 768 Q. I don't want to interrupt you. Are you
20 done?

21 A. Yes.

22 769 Q. Okay. My question is: When you read the
23 questions and answers that I read to you a moment ago
24 from question 23 down to and including question 26, it
25 concludes with the answer: "Yes." And I asked you if

1 you understood that what that meant was that the money
2 that CO had delivered to Mander was used by Mander to buy
3 these properties, and you said "yes" to that. So I'm
4 asking you now under oath here whether that statement
5 that you gave under oath there was true or not?

6 A. It was unknown to me what Mander had done
7 with all my money, at that point. We had never spoken of
8 him buying real estate -- Peter, I went and bought real
9 estate. He never said that to me. He never said those
10 words. I knew he was buying real estate. My lawyer
11 said -- my lawyers who asked him for a whole bunch of
12 information, like they asked me for a whole bunch of
13 information said that he did. I was sitting there in
14 that interview, confused what to do to tell you the
15 honest truth.

16 770 Q. Sir, I understand you say you were confused.
17 But you gave an oath to tell the truth on the
18 examination. I think what you are saying now, and think
19 about it before you answer it, sir, to be fair, what
20 you're saying now is you weren't truthful when you gave
21 that answer; that you gave the answer that you thought
22 your lawyer wanted you to give. Is that what I'm
23 understanding?

24 A. No, I said I wasn't sure. I wasn't sure.

25 771 Q. You knew, sir, that what your lawyers were
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1 attempting to do with the OSC on your behalf was to say
2 to the OSC: Here are all the properties bought with the
3 investor money, and there are more than sufficient to pay
4 back the investors. Don't worry. Correct? You were
5 aware that was the strategy being put forward?

6 A. No, I was not. I did not see that binder
7 before Mr. Shahviri saw it. We went into that meeting,
8 they handed them out and as per the transcript turn to
9 tab 8, turn to tab 2, that's the first time I saw it.

10 772 Q. You're saying that prior to walking in the
11 room on July 9th when you were cross-examined that your
12 lawyers had never said to you words to the effect of:
13 Mr. Sbaraglia -- I'm not trying to pick words, I'm trying
14 to pick the concept, that they said: If we can satisfy
15 the OSC that there are sufficient assets to pay back all
16 the investors, we may be able to get the OSC to back
17 off?

18 A. Say that again, I didn't follow you?

19 773 Q. You knew that the strategy that was being
20 employed on your behalf was to convince the OSC that
21 there were sufficient assets to pay off all the
22 investors, and therefore the OSC shouldn't worry about
23 it?

24 A. I did know that.

25 774 Q. And you also know as part of that because the
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1 OSC obviously wanted to know where the investor money
2 was. Correct?

3 A. Yes.

4 775 Q. You also understood that what your lawyers
5 were trying to tell the OSC on your behalf was that the
6 investor money went into these properties?

7 MR. DAVIS: He knew in advance?

8 BY MR. GOTTLIEB:

9 776 Q. Yes?

10 A. No, I did not.

11 777 Q. You knew it when you were sitting at the
12 table, and the questions were being answered on your
13 behalf. Correct?

14 A. No.

15 778 Q. I'm sorry?

16 A. Ask it again, I want to be sure I got your
17 question.

18 779 Q. You knew when you were sitting at the table
19 there that was what your lawyers were saying on your
20 behalf?

21 A. Yes, I heard for the first time sitting at
22 the table in the interview that the bulk of the assets
23 are in real estate.

24 780 Q. And you didn't think that was true.
25 Correct?

1 A. I didn't know that was the case. And I
2 didn't probably think it was true.

3 781 Q. You didn't probably think it was true. But
4 you said "yes" that it was true at question 26.
5 Correct?

6 A. Correct.

7 782 Q. Even though you actually thought it wasn't
8 true?

9 A. I didn't say that. I wasn't sure.

10 783 Q. You just did say that?

11 A. I said I wasn't sure.

12 784 Q. That's not what you said?

13 MR. DAVIS: He said he thought it probably wasn't
14 true.

15 BY MR. GOTTLIEB:

16 785 Q. Even though you thought it probably wasn't
17 true, instead of saying you didn't know, instead of
18 saying: I'm not sure whether that's true, or I think
19 that may not be true?

20 A. Right.

21 786 Q. You gave the answer, "yes?"

22 A. Right.

23 787 Q. And that wasn't, from your point of view, a
24 honest, true answer. Correct?

25 A. Correct.

1 788 Q. Okay. And the reason you gave that answer
2 was because you were worried about what would happen if
3 you gave any other answer. Correct?

4 A. The reason I gave that answer, like I said
5 earlier, it's a very indescribably awkward position to be
6 into find out that your counsel is telling something that
7 you didn't know he was going to say. And really it's
8 just flying, saying, that the first thing that comes into
9 mind. It's not this real thought through pattern that
10 happens. I was sitting there with an element of -- the
11 right word is inexperience. I had no idea what to do.
12 Never been in a situation like that. Had my lawyers
13 talking for me.

14 789 Q. Okay. Okay?

15 A. And that's how I answered.

16 790 Q. Do you have a copy of the Statement of Claim
17 in the Aylesworth action, September 15th? If you can
18 turn that up, please?

19 MS. PRESTON: Turn up the September 15th
20 Affidavit?

21 BY MR. GOTTLIEB:

22 791 Q. Yes. September 15th Affidavit. Sorry. Just
23 the Affidavit, itself. I apologize. Now I understand
24 what Ms. Foy was telling me. Do you have that September
25 15th Affidavit?

1 A. Yes.

2 792 Q. If you would, please, sir, go to paragraph
3 15?

4 A. Yes.

5 793 Q. You say there when you met with Ms. Dublin in
6 her office after you'd been served with the Order
7 requiring you to attend, Mr. Miller came into the room?

8 A. Yep.

9 794 Q. That was true?

10 A. That was true.

11 795 Q. And you say there in your Affidavit that his
12 first words to you were the effect you could go to
13 jail?

14 A. Yeah, I remember that.

15 796 Q. Pardon me?

16 A. Yeah, he did.

17 797 Q. And you could receive a fine from the OSC?

18 A. Yep.

19 798 Q. And that made you very anxious?

20 A. It certainly did.

21 799 Q. Okay. And if you go over to paragraph 27 you
22 talk about the various parts of the transcript. You
23 don't actually talk about the part of the transcript that
24 I had just referred you to, but what you say here is: I
25 did not speak up against my lawyers because I was scared.

1 That was true?

2 A. Yes.

3 800 Q. You say: I felt under duress as I had
4 looming in the background Miller's strong statement that
5 I could be in a lot of trouble?

6 A. Yes.

7 801 Q. That was as a result of his prior statement
8 that you could go to jail?

9 A. When we first met, yep.

10 802 Q. But that's what you're talking about there.
11 The reason you didn't speak up and correct your lawyers
12 is because you were worried that if you do you could go
13 to jail, or get in real trouble?

14 A. I'd be in trouble, yes.

15 803 Q. Okay. Now, as of July 9th, though, based on
16 what your lawyers were saying on the record?

17 A. Right.

18 804 Q. Based on the documents that you were looking
19 at during the examination you knew, based on everything
20 that had been said at that examination, that, in fact, a
21 significant amount of the money that CO had sent down to
22 Mr. Mander and his companies was used to purchase real
23 estate, because that's what your lawyers were telling you
24 and that's what the documents?

25 A. Say that again? After July 9th?

1 805 Q. At the July 9th interview?

2 A. In the interview they said -- I don't want to
3 put words in your mouth, please ask it again.

4 806 Q. During that interview your lawyers had said,
5 and you had in fact said, that the money that CO had sent
6 down to Mr. Mander had been used to purchase real
7 estate?

8 A. Yes.

9 807 Q. As at that date you knew that to be true, as
10 at July 9th you knew it to be true?

11 A. We just said we didn't. We just went through
12 this.

13 808 Q. Sir, you're saying when you gave that answer
14 you weren't sure?

15 A. That was July 9th.

16 809 Q. I understand that. And you gave the answer
17 about how you felt when you were answering the questions
18 and all that. But having heard your lawyers talk, who
19 you had --

20 A. During the interview?

21 810 Q. Yes?

22 A. Okay.

23 811 Q. And having known, like you just said a moment
24 ago they had had obviously discussions with Mr. Mander
25 and received information from Mr. Mander?

1 A. Yes.

2 812 Q. You would have no reason to disbelieve your
3 lawyers that the money that CO had sent down had, in
4 fact, been used significantly to purchase real estate?

5 A. Sure I would.

6 813 Q. Sorry?

7 A. It was easy to.

8 814 Q. It was easy to what?

9 A. To not think all the money was in real
10 estate.

11 815 Q. I didn't say, "all the money?"

12 A. Or a significant portion.

13 816 Q. So you disbelieved your lawyers?

14 A. After the fact.

15 817 Q. Yes.

16 A. Am I clear that you are saying to me after
17 the fact it would have been obvious to me that most of my
18 money was in real estate with Robert Mander?

19 818 Q. Yes?

20 A. No.

21 819 Q. So when your lawyers were telling you that
22 and telling the OSC that on this transcript, you
23 disbelieved them?

24 A. I didn't know.

25 820 Q. Well, sir, you knew that they were counsel to

1 Mr. Mander. Correct?

2 A. Yes.

3 821 Q. You knew that they had gotten documents from
4 Mr. Mander. Correct?

5 A. Yes.

6 822 Q. The same way that and --

7 A. Actually, no, I don't know what they got from
8 Mr. Mander. We actually weren't allowed to speak.

9 823 Q. Sir, when you look at the binder some of the
10 documents came from Mander not from you and Mandy?

11 A. Okay.

12 824 Q. That was my only point?

13 A. All right.

14 825 Q. So the Purchase and Sale documents, for
15 example, with respect to Mander's property, they came
16 from Mr. Mander not from you and Mandy?

17 A. Right.

18 826 Q. Okay. So you knew that they were
19 representing Mr. Mander, you knew that they had received
20 documents from Mr. Mander?

21 A. Right.

22 827 Q. And you knew that they had talked to Mr.
23 Mander, obviously. They went on record at the OSC
24 proceeding, and told the OSC that the money that you had
25 sent downstream from CO to Mr. Mander and his companies

1 had been used to purchase real estate. Correct?

2 MR. DAVIS: He's answered that already.

3 BY MR. GOTTLIEB:

4 828 Q. I'm trying to elicit on what basis you
5 disbelieved your own lawyers on the record?

6 MR. DAVIS: He's told you twice that he didn't
7 know.

8 MR. GOTTLIEB: I get the answer I didn't know.
9 I'm trying to find out the I disbelieve my lawyers who
10 are answering on the record in an OSC interview. That's
11 what I want to know the answer to.

12 MR. DAVIS: You've been down this road twice, and
13 he's told you. The only question you haven't ask him is:
14 Why?

15 MR. GOTTLIEB: I don't think he said: I
16 disbelieved them.

17 MR. DAVIS: Sorry. The way I took his answer was
18 they said black, he said: I didn't know. Right?

19 MR. GOTTLIEB: Yes.

20 MR. DAVIS: That is not believing them.

21 MR. GOTTLIEB: No.

22 MR. DAVIS: You've really gone through it
23 twice.

24 MR. GOTTLIEB: I want to get the answer to the
25 question I'm asking.

1 MR. DAVIS: You want to get the answer which you
2 want, which you may not get.

3 BY MR. GOTTLIEB:

4 829 Q. I'm trying to get an answer to the question,
5 which is: You agreed that you knew they had talked to
6 Mr. Mander, had gotten documents from Mr. Mander.
7 Correct?

8 A. Correct.

9 830 Q. You knew that they were answering as counsel
10 to an OSC investigation. Correct?

11 A. Correct.

12 831 Q. You knew that the lawyers were telling the
13 OSC that the money that CO sent down to Mr. Mander and
14 his companies was used to purchase real estate. You knew
15 that, correct?

16 A. I found out in the interview.

17 832 Q. Absolutely during the interview you found
18 that out?

19 A. Right.

20 833 Q. Are you saying that notwithstanding all of
21 those facts that you knew they had talked to Mander, that
22 they had documents from Mander, they were Mander's
23 counsel and they were answering an OSC investigation?

24 A. Right.

25 834 Q. You disbelieve what they were telling the

1 OSC?

2 A. Yes.

3 835 Q. On what basis did you disbelieve that your
4 counsel was misleading the OSC?

5 A. When I was being asked for my information
6 before the OSC they wanted everything: Bank statements,
7 credit cards, venture, brokerage, blah, blah, blah.
8 Everything. I got emails that say: Show us what you
9 have, excluding holdings in CO, personal things. Show us
10 everything you have. And to the very best of our
11 ability, scrambling to keep it a secret, you can't tell
12 people about it, I did tell my wife about it, God bless
13 her, she helped me get all this stuff together. Okay. I
14 assumed fully that Miller and Dublin were asking Mander
15 for exactly the same thing. And Mander throughout the
16 course of this whole four years, like he told everybody.
17 And like you found out about the other spokes in the
18 wheels. You heard about options. You heard about Arthur
19 in New York. You heard about the fund in New York. You
20 heard about his Manhattan property. You heard about
21 blah, blah, blah, blah, blah. And he said to me: I got
22 all this money in all these different places. Okay.
23 What didn't ring true is that they said: All your money
24 is here in these six properties. That's why I had reason
25 to disbelieve him, because at that time I had no reason

1 to think Robert was a liar. And it turns out I think he
2 lied about an awful lot of things, and you'd probably
3 agree me.

4 836 Q. So on that reason, on that basis --

5 A. If they looked at his trading accounts, his
6 option accounts, his warrants, his real estate holdings,
7 his cash, his stuff, like they looked at mine.

8 837 Q. Yes?

9 A. Like they asked me for and I gave it to them,
10 it seemed strange to me that they would go in and say:
11 All your money is in these properties here. And the
12 other thing is, think about it, how do you get 20 or 30
13 or 50 per cent buying properties?

14 838 Q. That is exactly the question I was about to
15 ask you?

16 A. It didn't make sense.

17 839 Q. And you know you can't. In one year you
18 can't get that type of return on property. Correct?

19 A. I'm not a real estate guy. But you can't.

20 840 Q. In fact, if we cut to the chase and save a
21 whole whack of time he wouldn't have to generate 25 to 30
22 per cent, he'd have to generate a hundred per cent in
23 order to make the 25 per cent return?

24 A. That's right.

25 841 Q. Because there is carrying costs?

1 A. I'm aware.

2 842 Q. There is taxes?

3 A. Yes.

4 843 Q. So you knew that any investment of investor
5 funds into real estate would have to effectively double
6 in value in a year and be sold in a year to generate the
7 necessary money to pay off the investors. Correct?

8 A. Correct.

9 844 Q. Okay. The information we know from the
10 records is that CO got money from investors, and from
11 time-to-time paid back interest to those investors.
12 Correct?

13 A. Yes.

14 845 Q. Sometimes it rolled. Correct?

15 A. Correct.

16 846 Q. And sometimes principal was paid back?

17 A. Correct.

18 847 Q. My understanding is in the vast majority of
19 cases investors rolled their principal, is that
20 correct?

21 A. I'm not sure by, "vast majority."

22 848 Q. In majority?

23 A. Probably, yes.

24 849 Q. But a significant amount of principal was
25 also paid out to investors. Correct?

1 A. Yes.

2 850 Q. I mean it has to be the case based on the
3 number you said was raised, and the amount that's owing
4 now?

5 A. Right.

6 851 Q. So a significant amount. And I want to show
7 you a couple of examples of that. Okay. And I'm going
8 to start with some documents here. And I'll just get you
9 to identify them?

10 MR. DAVIS: If they're bank statements you don't
11 need to.

12 BY MR. GOTTLIEB:

13 852 Q. I'm actually going to need to because I just
14 want to go through them?

15 A. Again, I'm going to refer to Mandy. That's
16 going to be all Mandy's handwriting, I'm going to bet.

17 853 Q. It is. But I'm going to ask you some
18 questions.

19 MR. DAVIS: We admit the authenticity of that.

20 BY MR. GOTTLIEB:

21 854 Q. I appreciate that, Mr. Davis, and I
22 understand that. But I am still going to get the witness
23 to look at them. This is at tab 6. For example, of this
24 book that we're going to mark because it's all these
25 types of documents, this is a RBC bank statement for

1 account number 109-576-9. You see that? Correct?

2 A. Yeah, I see it. Yep.

3 855 Q. Sorry. I need to do this to identify it for
4 the record, that's why I'm asking. And it's for the
5 period December 5, '07 to January 4, '08. Do you see
6 that?

7 A. Yes.

8 856 Q. All right. And it's for CO Capital Growth
9 Corp., correct?

10 A. Yes.

11 857 Q. And you had signing authority on this?

12 A. Yes.

13 858 Q. And you, in fact, did sign cheques on this
14 account?

15 A. Okay.

16 859 Q. The handwriting here, not the blue but the
17 photocopied handwriting, that is Mandy's handwriting?

18 A. Right.

19 860 Q. And you'll see, I'll just give you a couple
20 of descriptions, the first one, meaning the one closest
21 to the top of the page, says SA re 72A. And then it
22 says: Dash with a number. Do you see that?

23 A. Yes.

24 861 Q. And I know I understand the nomenclature, but
25 what that means is it's a SA capital amount re that

1 numbered loan. Correct?

2 A. Probably, yes.

3 862 Q. Any reason to believe I'm wrong on that
4 one?

5 A. No.

6 863 Q. Because I checked the documents. And you'll
7 see them, they're all actually behind the tab. So I want
8 to show you something here. What we have is a starting
9 balance at the start of this period of \$11,511.12. Do
10 you see that?

11 A. Yes.

12 864 Q. And then there is a cheque written for an
13 amount which lowers the balance to \$10,723.67. Do you
14 see that?

15 A. Yes, I do.

16 865 Q. And then there is another cheque written
17 which lowers the amount to \$2,003.67. Do you see that?

18 A. Yes.

19 866 Q. And then what we see is deposits made into
20 the account. Correct?

21 A. Yes.

22 867 Q. And we've got a large deposit of 569?

23 A. Uh'hmm.

24 868 Q. Pardon me. For the record, that is \$569,000.
25 Do you see that?

1 A. I do.

2 869 Q. And then another one for \$1 million
3 474,993.50. Do you see that?

4 A. Yes, I do.

5 870 Q. And what Mandy's notes show is that this
6 money comes from SA Capital. And the contracts are
7 actually behind this tab. If you want to take a look at
8 them, they're here. As you can see we've got 200,000,
9 and if you add them all up we can show faithfully that
10 these are the numbers that were received?

11 A. Okay.

12 871 Q. Okay. 145,000. So according to Mandy's
13 notes these are the monies that come in from SA. Do you
14 see that?

15 A. Yes.

16 872 Q. All right. So we see as of that date there
17 was only \$2,000 in the accounts, but then there was
18 approximately 2 million put in from the SA investors.
19 Correct?

20 A. Uh'hmm.

21 873 Q. Yes?

22 A. Yes.

23 874 Q. And then what we see is there is some cheques
24 written out. And I want to concentrate first on the
25 cheque for \$550,000. Do you see that?

1 A. Yes, I do.

2 875 Q. Also on December 10th, which is the day that
3 the money comes in from SA Capital, do you see that?

4 A. Yep.

5 876 Q. All right. So if we go to the cheque for
6 \$550,000, which is cheque 0264?

7 A. Yep.

8 877 Q. You see it's a cheque made out to Tommy
9 Obradovich. Do you see that?

10 A. I see it.

11 878 Q. And that's your signature?

12 A. It is.

13 879 Q. This cheque of 550,000 went to Mr. Obradovich
14 in connection with his investment?

15 A. Yes.

16 880 Q. And that money was taken directly from the
17 amounts that were put in by SA Capital. Correct?

18 A. I don't know.

19 881 Q. Well, you have to know because there is no
20 other source for this in that account. That's what I'm
21 showing you?

22 A. Okay.

23 882 Q. I'm not wrong, am I? There was a balance of
24 \$2,000 and then 2 million went in. No more money went in
25 before the payments went out to Mr. Obradovich. Do you

1 see that?

2 A. Yes, I go.

3 883 Q. So the \$550,000 that was paid to Mr.
4 Obradovich with respect to his investment was taken
5 directly from the investment made by SA Capital.
6 Correct?

7 A. Yes. Because what happens sometimes is
8 Robert would say: What's in the account? 550. I owe
9 you 550. I'm going to give you 569 -- I'm making it up a
10 bit, I'm looking at the numbers. Okay. Just write it
11 from there, I owe it to you.

12 884 Q. Bottom line is what is shown here is in order
13 to pay Mr. Obradovich the money owed to him on his loan,
14 you used the money that was provided by SA Capital for a
15 new investment on the very same day. Correct?

16 A. As directed by Robert.

17 885 Q. But that's what you did. You signed the
18 cheque. You took SA money that was put in, and you put
19 it directly over to Mr. Obradovich?

20 A. Uh'hmm.

21 886 Q. And that happened repeatedly in these
22 accounts, and I can show you that repeatedly you took
23 money that was given to you from one investor and simply
24 turned that money around and used it to pay off another
25 investor. Correct?

1 A. I don't know.

2 887 Q. Okay. Well, I'm going to show you more if
3 that's okay, then. Okay?

4 A. Uh'hmm.

5 888 Q. So what we see here is \$10,000 payment. You
6 see that one there?

7 A. Yep.

8 889 Q. Okay. I'm just going to grab my little
9 chart. And that \$10,000 payment, if we go to the
10 documents behind it, you'll see pays -- is paid directly
11 to Cecil Russell. And Cecil Russell was another
12 investor. Correct?

13 A. Yes.

14 890 Q. And you'll see, again, that there are no
15 deposits made into that account?

16 A. Right.

17 891 Q. Prior to that money going to Mr. Russell?

18 A. Correct.

19 892 Q. And I'll just show you the \$10,000 cheque
20 that goes to Mr. Russell. So I'm looking behind the same
21 tab of documents, it's a cheque dated December 12, 2007
22 for \$10,000. Do you see that?

23 A. Yep.

24 893 Q. It's cheque number 271. Correct?

25 A. Uh'hmm.

1 894 Q. It's your signature?

2 A. Yes.

3 895 Q. And that money was to pay to Cecil Russell
4 with respect to the amounts owing to him on the
5 investment. Correct?

6 A. Yes.

7 896 Q. And to pay that account you took the money
8 that was paid into that account by SA Capital.
9 Correct?

10 A. Yes.

11 897 Q. If we go over to tab 7 of this binder what
12 we'll see is the next bank statement for that same
13 account. Do you see that?

14 A. Yep.

15 898 Q. It's for the period January 4, '08 to
16 February 5, '08. Do you see that?

17 A. Yes.

18 899 Q. And we start at the top there with a balance
19 of 79,111. Do you see that?

20 A. Yes.

21 900 Q. And if you look back at the prior statement
22 that was the same balance, obviously. And what you'll
23 see, sir, is although there was one deposit of 29,400
24 that went into that account, it was actually immediately
25 paid out to pay expenses, rent and the others?

1 A. Right.

2 901 Q. Which means the money that stayed in that
3 account was still the money raised by SA Capital.
4 Correct?

5 A. Those are my nieces, by the way, just for the
6 record.

7 902 Q. Sorry?

8 A. This here is my sister and my nieces.

9 903 Q. When you say "this here," I apologize?

10 A. That CHIL that is my sister and my niece.

11 904 Q. Okay. Perfect. So my point was that the
12 \$79,111.30 that was money that was raised from SA
13 Capital?

14 A. Say that again?

15 905 Q. Sure. I apologize if I'm not being clear.
16 There was a deposit into the account of the over \$2
17 million from SA?

18 A. Right.

19 906 Q. The only other money that went in was this
20 29,4?

21 A. Right.

22 907 Q. But that money was immediately paid out?

23 A. Okay.

24 908 Q. So the only amounts that remained in the
25 account were the amounts raised by SA?

1 A. Okay.

2 909 Q. And if we see here there were a variety of
3 payments made out to other investors. So there's a
4 \$1,000 payment to Sue. Do I have that right?

5 A. Yes, you do.

6 910 Q. Okay. And that was who?

7 A. Sue.

8 911 Q. Because what I have is, and I can show you,
9 just let me pull it up because it's right behind, cheque
10 293, it's a payment to Sue. What's the last name?

11 A. Collings.

12 912 Q. And who is she?

13 A. She is my sister-in-law.

14 913 Q. An investor?

15 A. Yes, and an employee.

16 914 Q. I understand. This \$1,000 cheque went to her
17 not as employee?

18 A. I don't know what that \$1,000 cheque was
19 for.

20 915 Q. There's a pavement made also for a thousand
21 dollars to Livio Sbaraglia?

22 A. That's my father.

23 916 Q. He wasn't an employee?

24 A. No.

25 917 Q. Because there is another thousand dollar

1 cheque right after that to Livio, and that was a payment
2 made with respect his investment. Correct? Well, there
3 is no other reason you'd be writing a cheque from Livio
4 to CO if it wasn't to pay his investment?

5 A. Probably not.

6 918 Q. Okay. So we've got that \$1,000 going out to
7 him?

8 A. Right.

9 919 Q. Okay. And then we get if we go to cheque
10 294, we get a cheque going to Kathleen Sbaraglia. That
11 is your mother?

12 A. Yes.

13 920 Q. Also in the amount of a thousand dollars?

14 A. Okay.

15 921 Q. And that was with respect to her investments,
16 as well? She wasn't an employee?

17 A. She was not.

18 922 Q. That thousand dollars was paid to her in her
19 connection with CO?

20 A. I think so. I really don't remember, but I
21 think so.

22 923 Q. But sitting here right now there is no other
23 reason that you can think of that CO would be writing her
24 a cheque for thousand, Livio a cheque for a thousand, Sue
25 for a thousand. Those were all payments made with

1 respect to investments, right?

2 A. No, I could think of reasons why.

3 924 Q. Well, right here, right now, you won't agree,
4 sir, that these are payments made with respect to their
5 investments?

6 A. I think they are. I just don't have any
7 recollection of what they are. I don't remember writing
8 my mom a thousand dollar cheque for an investment.

9 925 Q. Well, sir, if you have any evidence that
10 those cheques were not with respect to the investments
11 they made in CO would you advise, please?

12 A. Sure.

13 926 Q. Okay. And, again, up to this point, sir,
14 there is no money that comes into this account?

15 A. Right.

16 927 Q. So we're still relying on the SA money to pay
17 these investors. Correct?

18 A. Yes.

19 928 Q. And then what we see is there is actually a
20 deposit of \$50,000, which according to Mandy's note is
21 money put in by John Maracassa re 77C, which is another
22 Loan Agreement, correct?

23 A. Yes.

24 929 Q. And so he's giving in a \$50,000 investment,
25 if I can call it that, a loan?

1 A. Yeah. Uh'hmm.

2 930 Q. All right. And then what we see further
3 down, sir, is another \$350,000 being deposited with
4 respect to a new SA investment. Do you see that?

5 A. Yes.

6 931 Q. All right. So still what we don't have
7 anywhere in here at all is monies coming back in from Mr.
8 Mander, any profits, any other investment or anything.
9 Correct?

10 A. In those eight weeks, yes, that's correct.

11 932 Q. And, notwithstanding, that the account
12 started with a balance of \$2,000?

13 A. Right.

14 933 Q. You're paying some investors with money you
15 just got from another investor. Correct?

16 A. Correct.

17 934 Q. Okay. And again, sir, I can keep going with
18 a variety of these. But what you'll see is this is
19 commonly done by you throughout the piece. So I'll give
20 you another example, if that would be useful. Give me a
21 second, please. So we're now up to the next bank
22 statement, and I'm going in order. So we see that this
23 bank statement is February 5, '08 to March 5, '08?

24 A. Yes.

25 935 Q. And, again, it's the next one. And we see

1 the balance being brought forward is \$425,212. Right?

2 A. Yes.

3 936 Q. And, again, if we go back, and I'm sorry to
4 slip back and forth to the prior statement, the only
5 monies that are deposited into this account are from
6 investors who are investing money with CO. Correct?

7 A. Yes.

8 937 Q. And that continues, sir, here on this bank
9 statement when new monies are coming in from, it says,
10 David and Nancy for \$38,205. Do you see that?

11 A. Uh'hmm.

12 938 Q. And then immediately thereafter on February
13 8th another \$250,000 from SA. Do you see that?

14 A. Yes.

15 939 Q. And then there is another \$10,000 cheque
16 that's written, and I'll bring up that cheque so you see
17 it, there is a \$10,000 cheque written to Kathleen
18 Sbaraglia. That's, again, your mother, \$10,000?

19 A. Yes.

20 940 Q. And that was to pay off money towards an
21 investment she made in CO?

22 A. Probably, yes.

23 941 Q. All right. And, again, sir, I'll show you as
24 we go down here all the money that's being deposited --

25 A. I apologize, I just want to check it's not my

1 wife.

2 942 Q. Do you want to take a break for a second?

3 MR. DAVIS: Why don't we take a break. If that's
4 a convenient time, we could probably use a couple of
5 minutes.

6 --- Whereupon proceedings recessed at 3:06 p.m.

7 --- Whereupon proceedings resumed at 3:17 p.m.

8 BY MR. GOTTLIEB:

9 943 Q. We're looking at the bank statement from
10 February 5, '08 to March 5, '08. And I'm just making the
11 global point if you look down the deposits and credits
12 column you'll there is a significant amount of money
13 coming in. Correct?

14 A. Yes.

15 944 Q. And it's all coming in from investors making
16 new loans to the company?

17 A. Yes.

18 945 Q. And there is still not a penny since we
19 started looking coming in from Mr. Mander?

20 A. Yes.

21 946 Q. There is no monies coming in from other
22 investments?

23 A. Yes.

24 947 Q. And notwithstanding that and I'll show you,
25 again, monies are being paid out to investors to pay off

1 their loans or interest. Correct?

2 A. Yes.

3 948 Q. And I'll give you a couple more examples on
4 this page. There is a payment made to Florence
5 Moscovitz. And she was a lender?

6 A. Yes.

7 949 Q. All right. And that payment was made with
8 respect to a loan of hers?

9 A. Uh'hmm.

10 950 Q. Yes?

11 A. Yes.

12 951 Q. And that was cheque number 345. Next is
13 cheque 344 there is a payment of \$63,250 made to Rano
14 Burton?

15 A. Yes.

16 952 Q. Mr. (sic) Burton was a?

17 A. Ms. Burton.

18 953 Q. Oh, thank you. Rano, is it a short form?

19 A. I don't think so.

20 954 Q. And Ms. Burton was an investor?

21 A. Yes.

22 955 Q. And this payment of \$63,250 was paid to her
23 in connection with her investment?

24 A. Yes.

25 956 Q. And that payment was made just using other

1 investor's funds also. Correct?

2 A. Yes.

3 957 Q. And I can keep going through this book, but
4 what we will see is throughout this entire piece payments
5 are being made by CO Capital directly from funds paid
6 into CO Capital from other investors?

7 A. Right.

8 958 Q. You're aware of that?

9 A. Yes.

10 959 Q. And you were aware that was going on
11 throughout the piece. Correct?

12 A. Yes.

13 MR. GOTTLIEB: So, Mr. Davis, as opposed to going
14 through each one of them what I'm going to do is mark
15 these two binders, I've got two binders, which I will
16 tell you what they are. They are bank statements from
17 the CO Capital bank accounts. Behind those statements
18 are the cheques that are referenced on those bank
19 statements, as well as the Loan Agreements that are
20 relevant to the amounts that show up on the bank
21 statements, because Mandy Sbaraglia's handwriting is on
22 those showing where the monies come from with respect to
23 the Loan Agreements. Okay?

24 MR. DAVIS: That's it. I mean that's all in the
25 binder?

1 MR. GOTTLIEB: I think so.

2 MR. DAVIS: As opposed to your handwritten notes
3 saying: This is the killer documents, or something.

4 MR. GOTTLIEB: I am almost certain they don't say
5 that. But I'm going to go off the record for a second --

6 MR. DAVIS: As long as you tell me it doesn't,
7 I'll take your word.

8 MR. GOTTLIEB: I am going to double-check. I'm
9 just going to go off the record.

10 --- Off the record

11 BY MR. GOTTLIEB:

12 960 Q. I'm going to mark as the next exhibit, which
13 is Exhibit 30, a two-volume set which is entitled:
14 Supporting Documents for Loan Payment Analysis. And
15 there is one of two and there is two of two And that's
16 Exhibit 30.

17 --- EXHIBIT NUMBER 30: Supporting Documents for Loan
18 Payment Analysis

19 BY MR. GOTTLIEB:

20 961 Q. And I just want to get you to just identify
21 and confirm some documents, just so I can mark them on
22 this examination. Mr. Davis, I know you're not arguing
23 about authenticity. And what we have here --
24 Mr. Sbaraglia, I have another copy so you can flip when
25 your counsel flips. What I have here are documents that

1 start with an email from Julia Dublin from Aylesworth,
2 dated July 29th. Do you see that?

3 A. Yes.

4 962 Q. And it's an email to you and Mandy, and the
5 subject line is: Undertaking loan agreements. Do you
6 see that?

7 MR. DAVIS: Yes.

8 THE DEPONENT: Yes.

9 BY MR. GOTTLIEB:

10 963 Q. And by this email you were provided on July
11 29th with the draft undertaking. You see that?

12 A. Yes.

13 964 Q. And it's attached, actually?

14 A. Yep.

15 965 Q. And the attached Draft Loan Agreement that's
16 to be entered into by CO Capital on the one hand and EMB
17 Asset Group on the other?

18 A. Yes.

19 966 Q. And that was provided to you, if I have this
20 right, for the first time on July 29, 2009. Do you see
21 that?

22 A. Yes.

23 967 Q. And then the other documents are emails
24 between Mandy and Julia with a fax from, it says, you and
25 Mandy to Julia. And that's all about making corrections

1 to the schedules?

2 MR. DAVIS: Can I make a suggestion. It's
3 conceded that all these documents are what they purport
4 to be sent by the persons who appear to have sent them,
5 received by the persons to whom they're addressed and the
6 day that they're dated at/or about the time stamped on
7 them. And do you need anything else, really?

8 MR. GOTTLIEB: I'm going to mark them as the next
9 exhibit.

10 MR. DAVIS: That's fine.

11 BY MR. GOTTLIEB:

12 968 Q. And then I'll just make the point to you,
13 Mr. Sbaraglia, that you got a draft of these Agreements
14 and the undertaking from your lawyer some nine days
15 before you actually signed them?

16 A. Yes.

17 969 Q. Correct. And, therefore, you had a
18 significant amount of time to review and comment on these
19 documents. Correct?

20 MR. DAVIS: "Significant" is a relative term. He
21 had that amount of time.

22 BY MR. GOTTLIEB:

23 970 Q. You were free to make any changes,
24 corrections or suggestions during that time,
25 Mr. Sbaraglia?

1 A. Yes.

2 MR. DAVIS: Go off the record for a second.

3 --- Off the record

4 MR. GOTTLIEB: So we can go back on the record.
5 And this is Exhibit 31, which is the package of emails
6 that we're clipping together as one. Mr. Davis, that's
7 okay?

8 MR. DAVIS: Yes.

9 --- EXHIBIT NUMBER 31: Package of emails

10 MR. GOTTLIEB: Let's go off the record.

11 --- Off the record

12 --- Whereupon proceedings adjourned at 3:40 p.m.

13 *****

14 I hereby certify the foregoing to be
15 a true and accurate transcript of my
16 computerized shorthand notes, to the
17 best of my skill and ability.

17

18

19 _____
20 Debbie Anshan, CSR RPR
21 Real Time (Caption) Shorthand Reporter,

22

23

24

25

26

27

1 COURT FILE NO. CV-10-883-OOCL

2 ONTARIO
3 SUPERIOR COURT OF JUST

4
5 B E T W E E N:

6 ONTARIO SECURITIES COMMISSION

7 Applicant

8
9 - and -

10
11 PETER SBARAGLIA, MANDY SBARAGLIA,
12 CO CAPITAL GROWTH INC. and 91 DAYS HYGIENE SERVICES INC.
Respondents

13 -----
14 This is the continued Cross-examination of PETER
15 SBARAGLIA on his Affidavits sworn August 10, 2010 (2),
16 September 15, 2010, & October 18, 2010, held at the
17 Offices of Network Reporting & Mediation, One First
Canadian Place, 100 King Street West, Suite 3600,
Toronto, Ontario, M5X 1E3, on Wednesday, November 3,
2010.

18 APPEARANCES:

19 Pamela Foy Counsel for the Applicant

20 Milton Davis,
21 Kelly Preston Counsel for the Respondents

22 Matthew Gottlieb Counsel for The Receiver

23
24
25

PROCEEDINGS

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UNDERTAKINGS WERE NOTED ON THE FOLLOWING PAGES:

220, 228, 240, 241, 274

THERE WERE NO UNDER-ADVISEMENTS NOTED

REFUSALS WERE NOTED ON THE FOLLOWING PAGES:

245

1 PETER SBARAGLIA, previously affirmed

2 CROSS-EXAMINATION BY MR. GOTTLIEB, continued:

3 971 Q. Mr. Sbaraglia, last time we talked a little
4 bit at one point about Pero Assets Inc., and I just want
5 to get a couple of things on the record straight. You,
6 as I understand it, were a signing authority on Pero and,
7 in fact, wrote cheques on the Pero account. Correct?

8 A. As I recall, yes.

9 972 Q. Okay. And you also were involved in opening
10 up the Pero Asset accounts, as well, trading accounts.
11 Correct?

12 A. Yes.

13 973 Q. There were payments made between the period
14 of January 9, '06 to July 26, 2010 to a numbered company,
15 and the numbered company is 1516412 Ontario Inc. And the
16 bank records show that the payments were in the amount of
17 a global number of \$37,770. Does that number mean
18 anything to you?

19 A. No.

20 974 Q. Okay. The records indicate that Paul Maines
21 was director of that company. Does that help you
22 recall?

23 A. Yes.

24 975 Q. Okay. Tell us about that. What was that
25 company and why were funds from CO given to that

1 company?

2 A. That was part of a venture that was bought.

3 976 Q. Can you just be a little bit more explicit
4 about that? I presume the numbered Ontario company
5 wasn't a business?

6 A. Pardon me?

7 977 Q. The numbered Ontario company that I refer to
8 did not engage in an active business?

9 A. I have no idea.

10 978 Q. Okay. Well, why was the money given to it?
11 When you say "venture," just be more specific?

12 A. I don't remember, exactly. I believe what
13 happened was money was sent there to be disbursed to the
14 venture we were buying.

15 979 Q. Disbursed to?

16 A. The venture.

17 980 Q. And do you recall what the venture was?

18 A. No, not exactly. No.

19 981 Q. And whose decision was it to transfer the
20 funds to Paul Maines' company?

21 A. Robert always directed us where to send
22 money.

23 982 Q. Did Robert have the relationship with
24 Mr. Maines?

25 A. I'm not sure what you mean, "have a

1 relationship?"

2 983 Q. There must have been some form of
3 relationship with Mr. Maines that led to money being
4 given to him?

5 A. Robert and I met Mr. Maines on the same
6 day.

7 984 Q. When was that?

8 A. That would have been roughly January, '08.

9 985 Q. All right. And just tell me about that. How
10 did that come about the meeting with Mr. Maines?

11 A. Tony Blair was in town speaking.

12 986 Q. Okay?

13 A. Tommy Obradovich invited Robert and I as his
14 guests to go listen to Tony Blair. There were a couple
15 of tables of people, and Paul Maines was at that table.

16 987 Q. Was he invited by Tommy?

17 A. I don't know.

18 988 Q. So had Robert known Maines previously?

19 A. No, not that I'm aware of.

20 989 Q. We know that there were funds that went from
21 CO to Mountainview Asset Management Inc. You're aware of
22 that?

23 A. Not really, no.

24 990 Q. You weren't aware that money went from CO to
25 Mountainview Asset Inc.?

1 A. Oh, yes. Yes, I do.

2 991 Q. Do you know how much money over time went
3 from CO to Mountainview?

4 A. No, I don't have that in front of me.

5 992 Q. Where would we find those records? What bank
6 account was used at Mountainview, do you know?

7 A. At Mountainview? I have no idea.

8 993 Q. Okay. And why were funds sent to
9 Mountainview?

10 A. We were starting the fund together.

11 994 Q. Sorry. When you say, "we?"

12 A. Mountainview and CO are a Royalty
13 Agreement.

14 995 Q. I don't know what you mean, you're going to
15 have to expand on what you're saying?

16 A. To start a fund.

17 996 Q. All right. And what was the nature of the
18 fund?

19 A. It was a fund. A hedge fund. A mutual fund.

20 997 Q. Okay. And was that fund ever set up?

21 A. Yes.

22 998 Q. And where are the documents pursuant to which
23 that fund was set up?

24 A. My copies of them, do you mean?

25 999 Q. Yes?

1 A. There will be copies in my computer, probably
2 in my files.

3 1000 Q. Okay. Mr. Davis, can we get an undertaking
4 to produce the documents that were created regarding the
5 relationship between CO and Mountainview?

6 MR. DAVIS: I'm surprised to hear that you don't
7 have them. Are you sure you don't have them?

8 MR. GOTTLIEB: Well, what we have and what Mr.
9 Sbaraglia has may be different. So that's why we're
10 asking for the undertaking.

11 MR. DAVIS: I would suggest that why don't we
12 compare notes, and I'll let you know what we have, you'll
13 let me know what you have. And if there is a difference
14 between the two we'll give you what we have, and you give
15 us what we don't have.

16 MR. GOTTLIEB: That is not a happy answer for me.

17 MR. DAVIS: Me either.

18 MR. GOTTLIEB: I would rather just have the
19 undertaking.

20 MR. DAVIS: I'm not making for a make-work
21 project.

22 MR. GOTTLIEB: You're going to have to look for
23 them, anyhow.

24 MR. DAVIS: So will you.

25 BY MR. GOTTLIEB:

1 1001 Q. Yes, I get that part. I just think you are
2 making it a little more complicated. That's fine. I
3 have your answer. Thank you.

4 Where is the money now that went to
5 Mountainview?

6 A. The money that went to Mountainview?

7 1002 Q. Yes, from CO?

8 A. I presume it's still in Mountainview.

9 1003 Q. Who is in charge of Mountainview?

10 A. Andy Eccelstone.

11 1004 Q. And is Mountainview, to your knowledge, still
12 an ongoing business?

13 A. Yes.

14 1005 Q. And what business is it engaged in?

15 A. It's a group of funds.

16 1006 Q. How much money did CO to Mountainview?

17 A. I don't remember.

18 1007 Q. Mr. Davis, can you please advise us as to how
19 much money was transferred from CO?

20 MR. DAVIS: I don't know if we have the ability
21 to do that. If we have the ability to do that, we
22 will.

23 --- UNDERTAKING

24 BY MR. GOTTLIEB:

25 1008 Q. Thank you. Who has been on behalf of CO

1 monitoring what's been going on at Mountainview?

2 A. Say that again?

3 1009 Q. Who on behalf of CO has been monitoring
4 what's been going on at Mountainview with respect to the
5 operation of the funds?

6 MS. PRESTON: Currently?

7 BY MR. GOTTLIEB:

8 1010 Q. Yes?

9 A. No one. It's not operating right now.

10 1011 Q. Okay. How much of CO's funds are at
11 Mountainview?

12 A. In the fund?

13 1012 Q. Yes?

14 A. None.

15 1013 Q. You're going to have to explain. CO gave
16 money to Mountainview for the funds. Correct?

17 A. As part of the Royalty Agreement.

18 1014 Q. Sorry. What does that mean?

19 A. Basically, you have to -- we had an
20 arrangement where for certain number of dollars we could
21 have a portfolio manager with an IRBM running an audited
22 registered fund.

23 1015 Q. Yes?

24 A. That's what we were doing.

25 1016 Q. What was Mountainview doing for CO?

1 A. Mountainview was the vehicle through which CO
2 was recasting its new business model.

3 1017 Q. Did CO ever recast its business model?

4 A. Yes.

5 1018 Q. When did that happen?

6 A. In stages. The inception of it, you're
7 asking? The idea of it?

8 1019 Q. Well, not so much the idea as opposed to the
9 implementation?

10 A. It was a process over the course of early
11 2009 -- late 2000 and -- there is a whole bunch of back
12 and forth talking that was going on. But by the time up
13 and running, ready to go, would have been probably spring
14 or so of 2009.

15 1020 Q. And was Mountainview incorporated for the
16 sole purpose of being in business with CO?

17 A. No. No. It existed already.

18 1021 Q. It existed already. And it was run by
19 Eccelstone?

20 A. Correct.

21 1022 Q. So Mountainview is in operation, and then it
22 entered into an arrangement some time the spring of
23 '09?

24 A. In rough words, yes.

25 1023 Q. I understand that. What was the arrangement

1 to be? I don't understand what you say the arrangement
2 was between CO and Mountainview?

3 A. If you want to be a registered fund you need
4 an investment counsel portfolio manager designation to do
5 that. There are a lot of rules that Pam and Mehran can
6 tell you as to what goes into becoming, getting this
7 designation. Mountainview has that designation. And
8 Mountainview decided based on the philosophies, if you
9 will, based on the philosophies, if you will, that we
10 talked about with our Mountainview, allowed us to use the
11 IRBM portion. He became the portfolio manager of the
12 recast business model.

13 1024 Q. But how did CO's business change after spring
14 of '09 once the royalty arrangement was entered into with
15 Mountainview?

16 A. CO's business was based on Promissory Notes,
17 as you know.

18 1025 Q. Yes?

19 A. CO's business was changing. As the
20 Promissory Notes came due the idea was as per the Loan
21 Agreement I had with Robert pay back the people as the
22 Promissory Notes come due, pay them back in full. And if
23 they decided they could re-invest in Mountainview through
24 a brokerage account.

25 1026 Q. So that it would become a traditional

1 investment in a fund that traded securities?

2 A. Correct.

3 1027 Q. And did that ever actually happen with any of
4 those parties that had previously lent funds to CO?

5 A. Yes.

6 1028 Q. And who did that happen with?

7 A. I don't remember the specifics.

8 1029 Q. Were there agreements entered into with any
9 of your investors, the CO investors, whereby they
10 participated in the fund of Mountainview?

11 A. Say that again, I didn't catch it.

12 1030 Q. Are there any documents between your prior
13 investors and CO who entered into Loan Agreements with
14 CO?

15 A. Right.

16 1031 Q. Are there agreements between any of those
17 individuals and Mountainview?

18 A. No. The agreements would be with whoever
19 they open brokerage accounts with, which is probably
20 Canaccord Financial.

21 1032 Q. Go ahead?

22 A. Please, after you.

23 1033 Q. So an individual would open up a trading
24 account through Canaccord?

25 A. Yes.

1 1034 Q. Would give their money directly to
2 Mountainview?

3 A. No.

4 1035 Q. Where would they give their money?

5 A. Canaccord.

6 1036 Q. Okay. And Mountainview would do what?

7 A. If the individual directed the broker at
8 Canaccord to buy.

9 1037 Q. A unit?

10 A. Yes.

11 1038 Q. Of the Mountainview fund?

12 A. Yes.

13 1039 Q. Okay. What did CO have to do with any of
14 that?

15 A. CO was the information-gathering machine that
16 sent information to, in this case, Andy Eccelstone.

17 1040 Q. So when you say "sent" the information, what
18 does that mean?

19 A. We screen stocks for the whole value
20 investing thing that you've spoken about, is what we did.
21 Andy liked it. And the idea was to, like I say, as the
22 Promissory Notes come due pay people back in full. Done.
23 If they chose they could go to Canaccord, or whatever
24 institution. We're slowly getting more and more people
25 to accept us, buy the fund. Now they're buying an

1 audited registered fund that was to use the same
2 philosophy that we had been screening stocks for Robert
3 all along with.

4 1041 Q. So you were providing services to
5 Mountainview to assist it in deciding what stocks to
6 purchase?

7 MS. PRESTON: CO.

8 BY MR. GOTTLIEB:

9 1042 Q. When the I say "you," CO?

10 A. At that point, yes, that's correct.

11 1043 Q. Why, then, were you paying money to
12 Mountainview?

13 A. Well, you need an ICPM.

14 1044 Q. Mr. Sbaraglia, I'm clearly missing something.
15 How does this relationship benefit CO?

16 A. Okay. Well, eventually what happens is that
17 the monies that go into -- once CO has paid back all the
18 Promissory Notes, which is very much the plan, the money
19 -- most people were really happy with CO and Robert up
20 until the very end would put their money, if they chose,
21 into Mountainview. Mountainview is now a fund, and it's
22 typical of funds to charge a management fee. And it's
23 typical of someone like myself to share in that
24 management fee through this Royalty Agreement with
25 Mountainview. That was the recasting of the business

1 model.

2 1045 Q. When the CO investors were to be paid back
3 their loans, and then given the opportunity to re-invest
4 by having Canaccord invest their share, if I can put it
5 that way, in the Mountainview fund, you said that
6 actually happened with some investors?

7 A. Yes.

8 1046 Q. Starting in the spring of '09, thereabouts?

9 A. If you want an exact date I can get you one.
10 In broad strokes, yes.

11 1047 Q. What I really want is an undertaking that
12 you'll provide us with all of the documents that evidence
13 the establishment of the relationship between CO and
14 Mountainview, and any documents that show that former
15 investors in CO actually gave funds to the Mountainview
16 fund?

17 A. Well, to Canaccord.

18 1048 Q. I said the final line as opposed to
19 Canaccord. Any documents that you have that support that
20 being done?

21 MS. PRESTON: I don't know if we have any of
22 those documents, because some of it may not even be in
23 our possession because they would be documents between
24 investor and Canaccord. But to the extent that we have
25 them and they're available, we will produce them. And

1 the other part of the undertaking, Milton has already
2 addressed.

3 --- UNDERTAKING

4 BY MR. GOTTLIEB:

5 1049 Q. Thank you. Were the people who decided their
6 Canaccord investment in the Mountainview fund guaranteed
7 a rate of return?

8 A. No.

9 1050 Q. So it was a simple stock fund?

10 A. Yes.

11 1051 Q. So, counsel, what I'm looking for is a list
12 of, obviously, the documents I asked for already, but a
13 list of those individuals or companies that started
14 investing through Canaccord with Mountainview?

15 MS. PRESTON: To the extent that we can provide,
16 I will give you that.

17 MR. GOTTLIEB: The amounts they invested, and the
18 dates on which they invested to the extent that you can
19 provide that information.

20 MS. PRESTON: I'll give you that undertaking.

21 --- UNDERTAKING

22 BY MR. GOTTLIEB:

23 1052 Q. At the time that CO started to do this it had
24 a whole bunch of what I'll call "happy investors" because
25 they had been told, and in some cases, in fact, had come

1 to be that they were earning 25 or 30 per cent on their
2 investment?

3 A. Yes.

4 1053 Q. In a year period?

5 A. Yes.

6 1054 Q. Why would those investors have turned around
7 and invested in just another fund?

8 A. It wasn't "just another fund."

9 1055 Q. Why wasn't it "just another fund?"

10 A. Like I said earlier, we were using the
11 same -- I was using -- CO was using the same philosophies
12 in value investing, in screening, in creating this, I'll
13 call paw's investment potentials in stocks for
14 Mountainview. That amount of work was a value to
15 Mountainview.

16 1056 Q. Had you ever used that what you call
17 "philosophy" before?

18 A. Yes.

19 1057 Q. Where?

20 A. At CO.

21 1058 Q. As opposed to just using it hypothetically,
22 you had actually used that to purchase stocks that
23 philosophy?

24 A. Not me, personally.

25 1059 Q. Who?

1 A. Well, through Robert, again, through his.

2 1060 Q. So you had used that philosophy with Robert,
3 meaning you had said to Robert: Go buy these stocks.
4 Correct?

5 A. No. I never said: Go buy these stocks.

6 1061 Q. Then I don't understand how it was used,
7 then, this philosophy?

8 A. He would ask.

9 1062 Q. "He" being Robert?

10 A. "He" being Robert. These are the things I'm
11 looking for. These are the kinds of companies I'm
12 looking for. And I'd go search for them. And what I did
13 is I refined a system of screening stocks that were under
14 value, relative to the fundamentals of the company versus
15 the price per share of the company at that particular
16 moment.

17 1063 Q. Right?

18 A. It's a combination of technical analysis with
19 fundamental analysis. It's a very labour intensive
20 process. And that's basically what CO did for Robert.
21 And based on that information he would decide: Buy,
22 sell, hold, pass.

23 1064 Q. And he used that philosophy and your
24 suggestions when purchasing stocks for CO's accounts?

25 A. Yes. And, so he told me, his fund in New

1 York with Arthur and the same information went down to
2 his Options Writing Club in Arizona.

3 1065 Q.' But that philosophy was, to your knowledge,
4 used in the CO accounts, themselves, the CO trading
5 accounts?

6 A. No. Remember I said that philosophy in CO
7 accounts he was using the small cap stuff that was very
8 volatile.

9 1066 Q. So that philosophy wasn't used in the CO
10 accounts?

11 A. Well, it's not that black and white. But,
12 yes, he allowed CO accounts to be more volatile because
13 they were small relative to his other stuff. Some of the
14 screening we did, some of this value screening, this
15 value philosophy. The stocks were just way too expensive
16 for CO to buy. But for Robert's personal trading
17 accounts, and for his fund in New York, or for this group
18 he continued to ask us to screen these kinds of stocks.

19 1067 Q. It doesn't make sense when you say that the
20 stocks were too expensive for CO to buy. Because I know
21 from looking at the records about the money CO brought in
22 on a yearly basis that there was throughout the piece
23 sizeable amounts of money invested in CO for the purpose
24 of investing in the stock market?

25 A. Right.

1 1068 Q. Millions of dollars every year. The stocks
2 couldn't have been too expensive to buy them with
3 millions?

4 A. Some of them were. And you have to remember
5 that Robert was the ultimate decision-maker, and for CO
6 it was very rare for him to want to buy stock over \$5,
7 very rare. I would routinely screen stocks for him that
8 were very expensive stocks.

9 1069 Q. When you say, "very expensive?"

10 A. Anywhere from 20 to \$50 to a hundred
11 dollars.

12 1070 Q. That is my point. You've got a million
13 dollars to spend, funds do it every single day of the
14 week, thousands of times everyday of the week, purchases
15 stocks that are in the 10, 20, \$50 range per share.
16 There is nothing wrong with that?

17 A. But he was using the CO accounts for small
18 cap stuff.

19 1071 Q. I understand that, but that's not what you
20 said. What you said was that they were too expensive for
21 CO. My point is they weren't too expensive for CO if CO
22 wanted to spend the money on it. They may have chosen
23 not to, but it wasn't because they were too expensive.
24 That is my point. There was more than enough money CO to
25 buy more than \$10, \$20 stock?

1 A. Not necessarily. It would take a long time
2 to explain position sizing, and we talked about it with
3 Mehran that day. It would take a long time to explain,
4 quite frankly. The bottom line is for CO Robert wanted
5 less expensive stocks screened for, and that's what we
6 did.

7 1072 Q. So you screened the stocks for his purchase
8 at CO, as well?

9 A. Yes. Not exclusively, but yes.

10 1073 Q. But you knew what was going on in the trading
11 accounts at CO?

12 A. I thought I did, yes.

13 1074 Q. No. No. You actually did know what was
14 going on there. The records came to you. The records
15 were available there. You were the President, right?

16 A. Yes.

17 1075 Q. So your philosophy that you say was used was
18 losing money?

19 A. No, I didn't say the philosophy. Again,
20 Robert let CO accounts be volatile. He said relative to
21 his empire, I'll call it, he didn't mind the volatility;
22 it didn't bother him. And the screening that went on --

23 1076 Q. Mr. Sbaraglia, you've said that repeatedly.
24 It's just not right, though, because you can say if you
25 want that he didn't mind the volatility but there wasn't

1 volatility. The stocks just lost. If you go through the
2 trading accounts and look at the history of how those
3 accounts worked, they lost money. They weren't volatile,
4 they just lost money. And you knew that throughout the
5 piece that those accounts were losing money. You didn't
6 have big huge ups that all of a sudden turned into big
7 huge downs. You had losses, right? Let's just call it
8 what it really is. Let's not call it "volatility" and
9 make it sound like there were big gains at some point,
10 because there weren't, right. You knew those accounts.
11 Like my statement is correct, isn't it?

12 A. No it's not.

13 1077 Q. Okay. I'd like an undertaking for you to go
14 through those accounts, please, and show me the big ups
15 in those accounts of sizeable dollar values over the
16 trading history of those CO accounts directly?

17 MR. DAVIS: You have them all.

18 MR. GOTTLIEB: I'm asking for the witness to give
19 some proof of his answer based on those. I'm not going
20 to dig through them for that.

21 MR. DAVIS: You have all the accounts. He
22 doesn't have to conduct that analysis on your behalf.
23 You have them. You've had them all. And it's not fair
24 for him to do that analysis, especially in this short
25 period of time.

1 BY MR. GOTTLIEB:

2 1078 Q. The Pero accounts. The same thing, right?
3 They didn't have big gains in those accounts, correct?

4 A. No, the Pero accounts -- well, what are you
5 asking me specifically, please?

6 1079 Q. You keep using the word "volatile?"

7 A. Right.

8 1080 Q. And, with respect, volatility gives a nice
9 curtain to losses. That's what it does. And I'm simply
10 saying to you when you look at the history of those
11 accounts they weren't actually volatile, they just lost
12 money. I'm not saying there wasn't a day when there was
13 a black mark on those accounts. But if you looked at
14 them on a monthly basis, these accounts just lost money.
15 They didn't have gain. They didn't have big gains.
16 There wasn't huge volatility, huge up and a huge down.
17 There were downs. Is that true or isn't that true?

18 A. I don't remember every single up and down. I
19 couldn't graph it for you right now.

20 1081 Q. I know that. But you can confirm to me based
21 on your recollection of the way those accounts operated
22 they were by and large throughout the whole time they
23 traded down. Correct?

24 A. No, I can't confirm that for you.

25 1082 Q. Because you don't recall?

1 A. Because I don't recall exactly what you're
2 asking me.

3 1083 Q. Okay. And you can't confirm that with the CO
4 accounts, either? I was just talking about Pero?

5 A. Oh, right here right now? No.

6 1084 Q. Okay. You did say that your philosophy was
7 utilized at CO with respect to the accounts Robert traded
8 at CO, correct? You said he asked you to screen the
9 small cap stocks?

10 A. Right. I didn't say what you just said.

11 1085 Q. Okay. Okay. Your philosophy in screening
12 stocks was, in fact, used by Robert in the CO accounts.
13 Correct?

14 A. Partly.

15 1086 Q. And the other part?

16 A. Again, on the bigger cap stuff --

17 1087 Q. Sorry, you said there wasn't big cap stuff in
18 CO?

19 A. There wasn't in CO.

20 1088 Q. I'm only talking about CO. You needn't talk
21 to me about big cap stuff, we're talking about small cap?

22 A. So you're asking me the stuff I sent Robert,
23 the information we got for Robert was he using the CO
24 accounts?

25 1089 Q. You said: "Yes, partially."

1 A. Yes.

2 1090 Q. I asked what's the other part and you started
3 to give the answer about big cap, which my point was but
4 you didn't got big cap in CO so that can't be responsive
5 to my question. What was the other part of the trading
6 that Robert did in CO that wasn't based on your screening
7 philosophy that you gave to them?

8 A. You'd have to ask Robert. Robert was in
9 charge of the investment. Make no mistakes about it.
10 Robert ran the show.

11 1091 Q. You gave him the stock advice with
12 respect --

13 A. Information.

14 1092 Q. You gave him information?

15 A. Yes.

16 1093 Q. And you saw the trading in the accounts.
17 You've already said that. So I'm trying to figure out
18 what else other than your philosophy was used?

19 A. Stocks that he found; investment ideas that
20 he had. It wasn't just us. When I first started I
21 didn't know anything about what he was looking for. Just
22 as time went.

23 1094 Q. In which way did you give your screening
24 advice to Mr. Mander?

25 MR. DAVIS: Weren't they written, some of that?

1 BY MR. GOTTLIEB:

2 1095 Q. Yes. Where will we find that writing?

3 A. You must have it.

4 1096 Q. Tell me how it was given in writing? Was it
5 given by email? Was it given by paper, walked over to
6 him? Was it given by Skype?

7 A. Skype.

8 1097 Q. From you to him?

9 A. Largely my wife to me to Brooks to Sue to
10 him. There was a network of information-gathering.

11 1098 Q. Where will we find the Skype logs?

12 A. We let you copy our computers, you have
13 them.

14 1099 Q. Where will we find the Skype logs, what
15 computer?

16 A. When Richter --

17 1100 Q. Don't tell me what Richter, tell me about --

18 MR. DAVIS: Let him answer the question in the
19 way he's comfortable, please.

20 BY MR. GOTTLIEB:

21 1101 Q. I want him to answer the question I asked,
22 not about what Richter did. I want to know on what
23 computer the Skype logs are?

24 MR. DAVIS: Let him answer the question the way
25 he chooses.

1 THE DEPONENT: Skype logs on all the computers at
2 CO Capital at 239 Church. Mehran was there that day.

3 BY MR. GOTTLIEB:

4 1102 Q. Okay. We'll do it the long way. How many
5 computers were there at 239 Church utilized by people on
6 behalf of CO?

7 A. Four or a five.

8 1103 Q. Did you Skype with Robert on five of them?

9 A. No.

10 1104 Q. Okay. Which ones did you Skype with Robert
11 on?

12 A. Me.

13 1105 Q. Yes?

14 A. One. Mine.

15 1106 Q. That's what I'm asking. So what's yours?
16 When you talk about yours, help me understand what is
17 your computer?

18 A. The one on my desk.

19 1107 Q. What kind of computer?

20 A. Kind of computer?

21 1108 Q. Who is the manufacturer of your computer?

22 A. I don't know.

23 1109 Q. You don't know whether it was a Dell or a HP
24 or a Compact?

25 A. I don't know. I'll gladly find out, but I

1 just don't know.

2 1110 Q. And you still have the original computer,
3 right?

4 A. Yes.

5 1111 Q. Mr. Davis, would you please go through or
6 have Mr. Sbaraglia go through that computer and produce
7 the Skype logs?

8 MR. DAVIS: You have them. Are you telling me
9 you don't?

10 MR. GOTTLIEB: I wouldn't be asking the
11 question.

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

13 MR. GOTTLIEB: No, I want to stay on the
14 record.

15 MR. DAVIS: Are you sure you don't have Skype
16 logs?

17 MR. GOTTLIEB: Yes.

18 MR. DAVIS: We'll use our best efforts to give
19 you all of the Skype logs. Okay.

20 MR. GOTTLIEB: Yes. Thank you.

21 --- UNDERTAKING

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

23 --- Off the record

24 BY MR. GOTTLIEB:

25 1112 Q. There is a huge amount of data that was

1 deleted off these hard drives, which is why I'm asking
2 for them. So what we'd like is for you to go on to those
3 computers and provide us with the Skype logs?

4 MR. DAVIS: I can't do that.

5 MR. GOTTLIEB: What do you mean?

6 MR. DAVIS: For me or for him?

7 MR. GOTTLIEB: Either of you.

8 MR. DAVIS: We'll use our best efforts to give
9 you the Skype logs. But I thought you were looking at me
10 and I'm not going to do it, only for a lack of time.
11 Nothing else.

12 --- UNDERTAKING

13 BY MR. GOTTLIEB:

14 1113 Q. Okay. So you gave Mr. Mander the suggestion
15 of what stocks to buy with respect to the CO accounts?

16 MS. PRESTON: I don't think that was his answer,
17 actually. He said he gave them information, in fairness.

18 MR. GOTTLIEB: Okay. I'll do this the long way.

19 MR. DAVIS: That is unfair. That really is
20 unfair. When he gives you a certain answer and you
21 characterize it differently, then you're told it's not
22 what he answered. It's not reasonable to say: We'll do
23 it the long way. We were taking a fair position --

24 BY MR. GOTTLIEB:

25 1114 Q. CO's strength that you talked about,

1 "strength" is my word, the service it provided was to
2 screen stocks. Correct?

3 A. Yes.

4 1115 Q. The purpose you screen stocks is so that you
5 can give advice as to what stocks you would recommend to
6 be purchased. Correct?

7 A. No, it just feeds information.

8 1116 Q. Mr. Sbaraglia, feeding information isn't that
9 valuable it's not accompanied by a recommendation.
10 Correct?

11 A. No.

12 1117 Q. Like I've read Skypes and some Skypes are
13 clear outright recommendations to purchase stocks. I
14 think you should look at this, this looks like it's going
15 to go up?

16 A. Didn't you just say you don't have the
17 Skypes?

18 1118 Q. No. I said I don't have your Skypes. I
19 couldn't have been more precise that I was asking about
20 your Skypes. If it's your position I'll just take that
21 position and move on. Your position is that CO Capital
22 only provided information, and it didn't provide
23 recommendations of stocks. Correct? That's your
24 position?

25 A. My position is we gave information on

1 companies to Robert, and that's it.

2 1119 Q. That's it. So when you would talk about, as
3 you did at length on your transcript with the OSC, about
4 your skill in identifying under-value properties, whether
5 it is stocks or land or things like that, and you tell
6 Mr. Mander about that. Correct?

7 A. I never told him about land.

8 1120 Q. You never told him been land?

9 A. No.

10 1121 Q. Just with respect to stocks?

11 A. Yes.

12 1122 Q. Are you suggesting that when you were telling
13 him this is an under-valued stock that's trading below
14 what it should trade and it's got a huge upside to it,
15 you weren't at the same time recommending Mr. Mander
16 purchase it. So, again, just to have it based on that,
17 you're saying you weren't giving a recommendation to
18 Robert, you were just providing information?

19 A. There was this huge disparity between our
20 investing experience between Robert and myself, huge. To
21 make a recommendation to him would be not what we -- it
22 wouldn't be appropriate given the huge disparity. He
23 asked for us to screen a certain kind of stuff for him,
24 and we did.

25 1123 Q. Okay. What was Eccelstone's business?

1 A. In Mountainview?

2 1124 Q. Yes?

3 A. It's a fund.

4 1125 Q. What was Mr. Eccelstone's expertise?

5 A. He's a portfolio manager.

6 1126 Q. And does he pick stocks?

7 A. I'm sure he does.

8 1127 Q. How many years had he been at it by the time

9 CO entered into the royalty arrangement?

10 A. I'm sorry, I don't know. Years, but I don't
11 know how many exactly.

12 1128 Q. Had he been involved for more years in the
13 stock industry than you?

14 A. Mr. Eccelstone?

15 1129 Q. Yes?

16 A. Yes.

17 MR. GOTTLIEB: Okay. Just give me a couple of
18 minutes. Can we just go off for five, please.

19 --- Whereupon proceedings recessed at 2:50 p.m.

20 --- Whereupon proceedings resumed at 2:59 p.m.

21 BY MR. GOTTLIEB:

22 1130 Q. The payments that were made, Mr. Sbaraglia,
23 by CO to Mountainview?

24 A. Yes.

25 1131 Q. How frequently were those payments to be

1 made?

2 A. Quarterly.

3 1132 Q. And, again, those payments were made because
4 of the role that Mountainview played?

5 A. Yes.

6 1133 Q. I'm not understanding and I apologize,
7 because I think you've told me what CO's role was in all
8 of this that Mountainview was playing for CO? What was
9 Mountainview's role with respect to CO's business,
10 because CO was no longer bringing in any funds directly.
11 Correct?

12 A. Correct.

13 1134 Q. So it didn't need someone designated with
14 respect to CO's business, did it?

15 A. At the time that we're talking about?

16 1135 Q. Yes?

17 A. CO wasn't completely wound down yet.

18 1136 Q. Right?

19 A. So we're calling it "CO" just because it
20 still had outstanding Promissory Notes that Robert was to
21 pay back. So the recast model, like I talked about, was
22 for -- call it what you want, I'll still call it "CO," a
23 company which gathered information and fed that up to the
24 portfolio manager.

25 1137 Q. But did CO, to your understanding, need

1 Mountainview for that purpose?

2 A. To have a registered fund? Yes,
3 absolutely.

4 1138 Q. I get the fund. I understand that
5 Mountainview was a registered fund. Correct?

6 A. Yes.

7 1139 Q. And I understood that individuals could
8 invest in that fund. Correct?

9 A. Through a brokerage, yes.

10 1140 Q. Through a brokerage, yes. I got that part.
11 CO. The only business that CO was carrying on, according
12 to you, was feeding information to Mountainview.
13 Correct?

14 A. Basically, yes.

15 1141 Q. So CO didn't need to be registered for that
16 purpose. Correct?

17 A. I'm not sure.

18 1142 Q. You have said repeatedly that you wanted
19 Mountainview?

20 A. Yes.

21 1143 Q. Or you needed Mountainview because it was
22 registered?

23 A. Right.

24 1144 Q. But my point is Mountainview didn't need CO,
25 CO wasn't carrying on any business of taking in funds or

1 investing funds?

2 A. Correct.

3 1145 Q. So CO did not need a registered individual,
4 because it wasn't taking in funds or investing funds?

5 A. Well, the idea was to launch the fund and
6 then eventually become -- go and seek funds instead of
7 getting them from individuals to go to brokerages and go
8 to investment advisors, and so on.

9 1146 Q. I apologize. But that's what Mountainview
10 would do, not CO?

11 A. Again, we're calling it "CO" only because it
12 still existed at this time that we're talking about. But
13 the role was for CO to do a lot of leg work for the
14 portfolio manager. And based on that leg work the
15 portfolio manager would make recommendations, and based
16 on that the idea was to go on fund because it's an
17 audited registered fund.

18 1147 Q. And what would CO's roles be on a
19 going-forward basis?

20 A. Probably, just a -- I mean we never got
21 there. You know what happened.

22 1148 Q. Yes?

23 A. I would suggest that probably just the same
24 thing, continued screening stocks, finding under-value
25 companies and sending information up.

1 MR. GOTTLIEB: Okay. Subject to the answers to
2 the undertakings that have been given, those are all my
3 questions. Thank you.

4 CROSS-EXAMINATION BY MS. FOY:

5 1149 Q. So, Mr. Sbaraglia, I'm going to ask you some
6 questions now. Mr. Sbaraglia, the Loan agreement
7 template that CO initially used came from Robert
8 Mander?

9 A. Yes.

10 1150 Q. And that Loan Agreement template was used by
11 CO in 2006?

12 A. Yes.

13 1151 Q. And that was throughout that period,
14 throughout that year?

15 A. Yes.

16 1152 Q. And I think Mr. Gottlieb took you there the
17 other day, but in your August 10th Affidavit at tab 9
18 it's identified that there are approximately, or there
19 was approximately \$900,000 raised by CO in 2006?

20 A. Okay.

21 1153 Q. Do you remember that?

22 A. Yes.

23 1154 Q. Do you agree with that?

24 A. Yes.

25 1155 Q. And so that amount was raised by investors

1 using the Loan Agreement template for Mr. Mander?

2 A. Yes.

3 1156 Q. And at some point towards the end of 2006 CO
4 retains BLG to give it some legal advice. Correct?

5 A. I don't remember if it was CO or Peter and
6 Robert.

7 MR. GOTTLIEB: I apologize, I'm going to
8 interrupt. Mr. Davis, that was one of the things I
9 thought were you attempting to get us overnight last
10 time. That didn't happen, I take it? Okay. Thank you.
11 Because that would have helped Ms. Foy in her question.
12 But that undertaking is still outstanding for those
13 documents.

14 MR. DAVIS: I apologize. I haven't seen a
15 transcript, I've been a little busy.

16 BY MS. FOY:

17 1157 Q. So you don't remember if it was you or Mr.
18 Mander or CO who actually retained BLG, is that right?

19 A. Mr. Mander retained BLG.

20 1158 Q. Mr. Mander retained BLG on behalf of CO,
21 rather?

22 A. I just want to make sure. "Retains" means he
23 paid?

24 MR. DAVIS: No, actually it doesn't.

25 BY MS. FOY:

1 1159 Q. No. BLG was giving advice to CO, correct?

2 Is that right?

3 A. Yes.

4 1160 Q. So it wasn't giving advice to Peter

5 Sbaraglia, personally?

6 A. No.

7 1161 Q. It wasn't giving advice to Robert Mander,

8 personally?

9 A. I don't know that.

10 1162 Q. Okay. When do you think you first contacted

11 BLG, was it in 2006?

12 A. Yes.

13 1163 Q. And was it the fall, or was it later?

14 A. I don't remember, exactly.

15 1164 Q. Was it any earlier than the fall?

16 A. I doubt it.

17 1165 Q. Okay. And it was primarily Richard Austin

18 that you were dealing with at BLG?

19 A. Yes.

20 1166 Q. And do you know if Mr. Mander dealt directly

21 with Richard Austin, as well?

22 A. I don't know.

23 1167 Q. You don't know that. We haven't seen any

24 correspondence between Mr. Austin and Mr. Mander in the

25 documents that you've provided, is that correct?

1 A. I don't know what you've seen. But as far as
2 I know I dealt with Richard Austin. Did he deal with
3 Robert Mander? The answer is: I don't know.

4 1168 Q. And, Richard Austin, he didn't deal with
5 Mandy on any of these issues to your recollection?

6 A. No.

7 1169 Q. If you could go to the opinion letter from
8 BLG, dated December 15, 2006, it's at tab 13 of the OSC
9 record, which is Volume 2. Or it's in the red binder, as
10 well. Are you fine with an electronic copy?

11 A. Sure.

12 1170 Q. So this is a letter from BLG, dated December
13 15, 2006?

14 A. Yes.

15 1171 Q. And it's a direction to CO Capital Growth
16 Corporation?

17 A. Yes.

18 1172 Q. And it's to your attention as the President
19 of CO Capital Growth?

20 A. Yes.

21 1173 Q. And so you received this letter around the
22 time that it's dated?

23 MR. DAVIS: Can I remind you that we've actually
24 got an agreement that everything is received unless we
25 advise to the contrary. So you don't have to ask those

1 questions.

2 BY MS. FOY:

3 1174 Q. That's fine. So we know that you've received
4 it, because we have this agreement. But did you review
5 the letter?

6 A. Yes.

7 1175 Q. And do I correctly understand that the
8 purpose of this letter was so that CO could get advice on
9 compliance issues, securities compliance issues, or
10 regulatory compliance issues about the business of CO?

11 A. The business model Robert Mander had
12 started.

13 1176 Q. Regardless of whoever had started. The
14 business model of CO, at the time?

15 A. Yes.

16 1177 Q. Was something that CO wanted advice on in
17 terms of securities and regulatory compliance?

18 A. Yes.

19 1178 Q. And, specifically, correct me if I'm wrong,
20 but CO was asking for advice about the availability of
21 certain exemptions in Ontario securities law that might
22 be available to it?

23 A. Did I ask him for certain exemptions, is that
24 what you're asking me?

25 1179 Q. No. What I want to understand is, in terms

1 of the advice that CO was looking for?

2 A. Right.

3 1180 Q. You were looking for advice about
4 requirements that CO might have to meet under Ontario
5 securities law?

6 A. Yes.

7 1181 Q. And those requirements that you were
8 concerned about, or wanted advice on included the
9 registration requirements possibly of CO. Is that
10 fair?

11 A. I don't remember specifically. I just wanted
12 to make sure that what we were doing was being done
13 properly.

14 1182 Q. Okay. That's fine. So we know that up until
15 December 15, 2006 CO had raised somewhere around
16 \$900,000. Up until that point in time can you tell me
17 what exemptions CO was relying on?

18 MR. DAVIS: Are you talking about under the
19 Securities Act?

20 MS. FOY: Under the Securities Act, yes.

21 MR. DAVIS: He's not going to answer that
22 question.

23 MS. FOY: As the President of CO Capital who was
24 raising funds from investors, he can't tell me what
25 exemptions he was relying on?

1 MR. DAVIS: He's not going to answer a question
2 of law.

3 MS. FOY: It's into the question of law, it's a
4 question of fact.

5 MR. DAVIS: He's not answering that question.

6 --- REFUSAL

7 BY MS. FOY:

8 1183 Q. That's fine. In raising the \$900,000, or
9 thereabouts, prior to December of 2006 CO hadn't made any
10 filings with the OSC about an exemption that was being
11 relied upon. Is that correct?

12 A. That's correct.

13 1184 Q. And at that point in time no Prospectus had
14 been filed with the OSC On behalf of CO?

15 MR. DAVIS: I'm going to object to that question,
16 because this line of questioning is not relevant to the
17 application that is before the court. And I invite you
18 to tell me if I'm wrong, and how you think it is relevant
19 to the application to appoint a Receiver.

20 MS. FOY: I will absolutely tell you how it's
21 directly on point. If you've read the law dealing with
22 appointment of Receivers under s. 129 of the Securities
23 Act you'll see that the court has to assess whether it's
24 appropriate, first of all, for the best interest of the
25 stakeholders; or whether it's appropriate for the due

1 administration of Ontario Securities law. Under both
2 branches of that section the court has to assess
3 regulatory non-compliance. And where there is evidence
4 of regulatory non-compliance the court then takes that
5 into account in assessing what is appropriate. So it's
6 very much on point. What CO did or didn't do in
7 compliance with Ontario securities law in raising
8 funds.

9 MR. DAVIS: I'm not sure that I'm going to agree
10 with you, but without prejudice to any rights that my
11 client may have I'll let him answer the question.

12 BY MS. FOY:

13 1185 Q. Sure?

14 A. And, again, the question is, please?

15 1186 Q. The question is: As of December 15, 2006 CO
16 had not filed a Draft Prospectus with the OSC for its
17 business?

18 A. That's correct.

19 1187 Q. And so, therefore, no receipt had been
20 provided from the OSC for a Prospectus?

21 MR. DAVIS: It wasn't filed.

22 BY MS. FOY:

23 1188 Q. That's fine. And certainly at this point, or
24 at any point were you registered under the Ontario
25 Securities Act?

1 A. No.

2 1189 Q. Okay. So the letter, itself, describes, or
3 the way I read it it describes CO's business model. Do
4 you recall it would have been you that provided
5 Mr. Austin with that information?

6 MR. DAVIS: What information?

7 BY MS. FOY:

8 1190 Q. On what CO's business model was?

9 A. Robert and I, we went the first day
10 together.

11 1191 Q. So you're saying that the first day that you
12 met Mr. Austin Mr. Mander was with you?

13 A. Yes.

14 1192 Q. And were there any other meetings that you
15 attended with Mr. Austin?

16 MR. DAVIS: Can I just stop you for second.
17 There are alien spaceships outside and I can barely hear
18 you, so I'd be grateful if you keep your voice up. What
19 is that?

20 MR. GOTTLIEB: It's the marble replacement
21 machine replacing the marble on the side of the building.

22 MR. DAVIS: You've just got to keep your voice
23 up.

24 BY MS. FOY:

25 1193 Q. So in the first line of the letter where it

1 says: "Further to our recent meeting you have asked that
2 we provide our advice with regard to the loan agreements
3 as described below, issued by CO Capital growth Corp. to
4 finance some or all of its operations and activities in
5 terms of compliance with the Securities Act of Ontario."
6 As of that date had you just had one meeting with
7 Mr. Austin?

8 A. I don't recall exactly.

9 1194 Q. So the letter in the second paragraph says:
10 "We understand from our meeting that CO is incorporated
11 in Canada and intends to operate exclusively in Ontario,
12 and will issue Loan Agreements only to individuals
13 resident in Ontario." And that in terms of investors, if
14 you're reading the last sentence of that paragraph, it
15 says: "Such individuals received Loan Agreements which
16 set out the terms and conditions of their loan to CO.
17 Loan confirmations are sent regularly to investors which
18 provide details of their loan, including accrued
19 interest."?

20 A. Okay.

21 1195 Q. So that was part of CO's business model, at
22 the time?

23 A. Robert's business model -- but, yes.

24 1196 Q. So Robert's business model that you adopted
25 in running CO?

1 A. Yes.

2 1197 Q. And if you turn the page over, or scroll down
3 the page in your case --

4 MR. DAVIS: It's page 2.

5 BY MS. FOY:

6 1198 Q. Page 2, second sentence it says: "You have
7 provided specimens of the Loan Agreement and loan
8 confirmation that are currently in use." So just to
9 confirm, that was the Loan Agreement and loan
10 confirmation that Mr. Mander had provided to you?

11 A. Must have been, yes.

12 1199 Q. Well, you say "must have been" because there
13 was no other template, at that time?

14 A. That's right.

15 1200 Q. Okay. And it goes on to talk about some
16 aspects of the Loan Agreements, and some of the terms.
17 And then it says mid-way down the paragraph: ".....We
18 have not been asked to provide comments with regards to
19 these two documents. ..." referring to the Loan Agreement
20 and the loan confirmation. So, at that time, as of
21 December 15, 2006 the advice CO was seeking from BLG was
22 restricted to the compliance issues. That's right?

23 A. Just wanted to make sure that everything we
24 were doing was rate.

25 1201 Q. Right. And at this point BLG wasn't giving

1 you advice in terms of any revisions to the Loan
2 Agreements, or any other documents being used by CO?

3 A. At this point?

4 1202 Q. That's correct, at this point?

5 A. That's just the first letter after our first
6 meeting that I recall.

7 1203 Q. So the answer is: That's right that BLG was
8 only giving you advice on regulatory issues; they were
9 not giving you advice on revisions to the Loan Agreement,
10 as of this time?

11 A. No, that's not what I'm saying. We went to
12 BLG with some Loan Agreements to make sure that what we
13 were doing was compliant. Then they wrote me this
14 letter. Then the process started developing Loan
15 Agreements that eventually were used.

16 1204 Q. Okay. So as of this letter we're not dealing
17 with revisions to the Loan Agreement. The advice you're
18 getting from BLG is simply on the compliance issues?

19 A. I haven't gotten any advice from BLG yet.
20 This is just the letter after our first meeting.

21 1205 Q. Okay. So you told me that you received this
22 letter and you read it?

23 A. Yes.

24 1206 Q. Are you telling me you don't think this
25 letter contains any advice?

1 MR. DAVIS: The letter says what it says.

2 BY MS. FOY:

3 1207 Q. I'd like to have his understanding of the
4 letter when he received it. The letter says what it
5 says. But did you understand Mr. Austin was giving you
6 advice on whether or not CO was compliant?

7 A. Yes.

8 1208 Q. And if it wasn't compliant how it could be
9 compliant, is that what you understood this letter to
10 be?

11 A. Yes.

12 1209 Q. And so you understood that this letter had
13 nothing to do with BLG's advice on revisions to the Loan
14 Agreement that Mr. Mander had given you, or the template
15 that was being used up until that point -- this letter?

16 MR. DAVIS: I don't know if that is right. Say
17 that again.

18 BY MS. FOY:

19 1210 Q. That this letter has no advice relating to
20 revisions to the Loan Agreement?

21 MR. DAVIS: The letter speaks for itself.

22 BY MS. FOY:

23 1211 Q. That's fine. So looking at the second
24 paragraph of the second page of the letter it says: The
25 Loan Agreement issued by CO in return for an advance of

1 funds or retention of funds previously advanced
2 constitutes "a security" as defined by subsection 11 of
3 the Act. And it goes on to say some other things. It
4 goes on to say, that: "While the Act generally requires
5 that the issuance of a security be made by way of a
6 Prospectus and that CO be registered as a dealer of
7 securities or securities' issuer, there are a number of
8 exemptions which CO may rely upon in issuing the Loan
9 Agreements provided that all correspondent conditions are
10 met." My question is: You read that, at the time?

11 A. Yes.

12 1212 Q. And the letter goes on to describe a number
13 of exemptions: The credit investor exemption, the
14 private issuer exemption and others. Tell me, sir, what
15 did you understand about how someone would qualify as an
16 accredited investor, at that time?

17 MR. DAVIS: Sorry, how?

18 BY MS. FOY:

19 1213 Q. How someone, an individual, an investor,
20 would qualify as an accredited investor having received
21 this letter?

22 MR. DAVIS: He's not going to give you that
23 answer.

24 BY MS. FOY:

25 1214 Q. So, sir, you didn't understand, at that time,

1 that an accredited investor might be someone whose
2 assets, net financial assets exceeded a million dollars.
3 Did you understand that?

4 A. At that time?

5 1215 Q. Having received the letter and having read
6 the letter did you understand, at this time, that one way
7 that an investor might be an accredited investor or
8 qualify as an accredited investor is if they have net
9 financial assets of over a million dollars?

10 A. If it doesn't say it in that letter then I
11 wouldn't have known it, at that time.

12 1216 Q. So if it says it in the letter then you knew
13 it, at the time?

14 A. On December 15th, yes.

15 1217 Q. Okay. Thank you. All right. So moving
16 through this brief, which is Volume 2 of the OSC's
17 record. If you go to page 306 and 307. If you look to
18 the bottom of page 306 it looks like it's an email. So
19 this is an email chain, these two pages, but at the
20 bottom of page 306 there's an email from Peter and Mandy.
21 And then there is an email address to Richard Austin, and
22 the subject line is: "More stuff to do."

23 A. Right.

24 1218 Q. And this is an email that you sent to
25 Mr. Austin?

1 A. Yes.

2 1219 Q. And if you look to points 2 and 3?

3 A. On 306?

4 1220 Q. 307. Point 2 says: "Could you advise on the
5 two documents that we give out, i.e. Loan Agreement and
6 the loan confirmation statement. Should these be
7 reworked?" And then point 3: "Can you show us what we
8 need to have our investors sign agreeing that they are,
9 indeed, accredited investors?" So it looks to me like
10 you are asking Mr. Austin, amongst other things, for
11 advice, first of all, on whether or not the Loan
12 Agreements should be revised, the template that you've
13 been using from Robert Mander. Correct?

14 A. Okay.

15 1221 Q. Is my understanding correct, is that what
16 you're asking?

17 A. The whole thing with Borden Ladner Gervais
18 was to make sure that what I was doing with Robert and
19 through Robert was compliant.

20 1222 Q. I understand that. But I'm asking you a
21 specific question about a specific email that you sent.
22 And what I want to know is, is my understanding correct
23 about what you are asking in this email. You're asking
24 in this email for advice on whether or not the Loan
25 Agreement template that Robert Mander gave you to use

1 with CO should be revised, is that right?

2 A. That's what it says, yes.

3 1223 Q. And am I correct?

4 MR. DAVIS: Please slow down a bit. You're
5 talking really fast and I suspect the Reporter might
6 straining to keep up. Okay. You're sounding really fast
7 to me. Go ahead.

8 BY MS. FOY:

9 1224 Q. I think the Reporter can speak up if she
10 wants me to slow down, and I will happily do that. And
11 point three you're asking Mr. Austin about what you need
12 your investors to sign to show that they're accredited?

13 A. Yes.

14 1225 Q. And Mr. Austin responds, he says he'll
15 happily look at the Loan Agreements. And on point three
16 he says that the investors should sign a Declaration.
17 And that's right?

18 A. Yep.

19 1226 Q. Okay. And the Declaration that investors
20 should sign to identify or attest to the fact that
21 they're accredited, Mr. Austin does provide you with some
22 type of form for accredited investors. Is that right?

23 A. Yes.

24 1227 Q. And he also provides you with a Draft Loan
25 Agreement, which has revisions to the template that you

1 had previously been using?

2 A. Yes.

3 1228 Q. And if you look at the Declaration, the
4 Accredited Investor Declaration that he provides you, I
5 think it's attached to an email. Let's go to the one
6 provided to you on January 23, 2007, it's at page 31, of
7 the brief that you're looking at, Volume 2 of the OSC's
8 record. So the email at 331 says that Mr. Austin is
9 providing you with copies of certain documents, the
10 Revised Loan Agreement, other documents and the Revised
11 Accredited Investor Certificate. What do you understand,
12 at that point in time, then, is the purpose of the
13 certificate? What is CO supposed to do with their
14 certificate in raising capital?

15 A. If you're raising capital from an accredited
16 investor you have them fill it out, have them sign it.

17 1229 Q. Okay. And the purpose of doing that is to
18 show that CO is complying with Ontario securities law?

19 MR. DAVIS: His purpose in doing that? Whose
20 purpose?

21 BY MS. FOY:

22 1230 Q. The purpose. Why would you have an investor
23 certify that they're accredited?

24 A. Ask Richard Austin.

25 1231 Q. Okay. The purpose of the certificate that

1 we've just looked at is consistent, then, with your
2 request for him to show you what CO needs to have the
3 investor sign agreeing that they are, indeed, accredited
4 investors?

5 MR. DAVIS: I'm not sure that I understand your
6 question.

7 BY MS. FOY:

8 1232 Q. That's fine. So I'd like to look at the
9 final version of the Loan Agreement that Richard Austin
10 revises for CO?

11 A. Page, please?

12 1233 Q. Well, I don't actually know if it's helpful
13 to go through what's in the OSC brief, at this tab. Just
14 a second. Okay. I think what we'll do is use the Loan
15 Agreements attached to the Affidavit of Thomas
16 Obradovich. You can find them easily there. Tab A. So
17 this is the Loan Agreement between, it's actually the
18 Loan Agreement between Tom Obradovich and Pero Assets
19 which maybe isn't helpful.

20 MR. DAVIS: Did I hear you make the admission
21 that maybe it's not helpful?

22 MS. FOY: It maybe not helpful to look at that
23 particular document. What I'd like to look at is the
24 Loan Agreement that is used by CO after it received the
25 advice from BLG.

1 MR. DAVIS: Couldn't you just look at the Loan
2 Agreement post that date?

3 BY MS. FOY:

4 1234 Q. That's what I'm looking for. Turn to Volume
5 3 of the OSC'S record. Turn up page 635. If you could
6 look at the Loan Agreement at page 635, 636 and 637 and
7 tell me if this is the finalized version of the Loan
8 Agreement being used by CO with the benefit of advice
9 from BLG?

10 A. I'll say "probably." And the reason I say
11 that is we did get a Peter Welsh input to the Loan
12 Agreements somewhere along the line, and I don't remember
13 exactly when it was. But I think -- I think this was the
14 BLG one given the date it's signed. I can't really be
15 sure.

16 1235 Q. Well, if we do turn back to Mr. Obradovich's
17 Affidavit at tab B there is the Loan Agreement between
18 Pero Assets and CO Capital as of March 1, 2009. And that
19 Loan Agreement looks to be slightly different than the
20 one from 2008 that we were just looking at at page 635?

21 A. You've confused me a little bit. 635 you're
22 asking me is this the BLG revised Loan Agreement that we
23 used?

24 1236 Q. Yes?

25 A. And my answer was "probably." I don't

1 remember exactly when and what revisions were done by
2 Peter Welsh.

3 1237 Q. Okay. And I'm pointing you to the Thomas
4 Obradovich Affidavit with the Loan Agreement from March
5 1, 2009 to see if -- well, to identify that Agreement
6 appears to be somewhat different?

7 A. Right.

8 1238 Q. Than the one from 2008 that we were just
9 looking at?

10 MR. DAVIS: Give him a chance to read. Give him
11 a chance to read them.

12 BY MS. FOY:

13 1239 Q. You say Mr. Welsh gave you some input along
14 the line?

15 A. Yes.

16 1240 Q. About changes to the Loan Agreement?

17 A. Yes.

18 1241 Q. If there are differences in the Loan
19 Agreement from 2009 that you've got in front of you, and
20 the Loan Agreement from 2008 that you've got in front of
21 you, if there are differences in those would those
22 differences be as a result of input from Mr. Welsh?

23 A. Probably, yes.

24 1242 Q. Okay. Looking at both of these Loan
25 Agreements, they both contain at paragraph 10 a term

1 relating to a requirement by the lender, so the investor,
2 to provide the borrower, so CO, with "a duly executed
3 certificate in the form of Schedule "F" hereto, attesting
4 to the fact that the lender is an accredited investor as
5 defined therein unless the principal sum is equal to or
6 exceeds \$150,000."

7 MR. DAVIS: Paragraph 10. Okay.

8 BY MS. FOY:

9 1243 Q. You see that?

10 A. Yes.

11 1244 Q. And it's in both of the agreements?

12 A. Yes.

13 1245 Q. And the Schedule "F" that's being referred
14 to, is that the Accredited Investor Certificate?

15 A. I believe so.

16 1246 Q. So just to finish my question, the Accredited
17 Investor Certificate that Mr. Austin provided you back in
18 2007?

19 A. Yes.

20 1247 Q. That is what Schedule "F" is. Now, at tab K
21 of the Receiver's seventh report there is an email from
22 Julia Dublin and this is to Mandy Sbaraglia, your wife?

23 A. Yes.

24 1248 Q. So I'll just ask for your counsel to put that
25 in front of you.

1 MR. DAVIS: What is the date of it?

2 BY MS. FOY:

3 1249 Q. It is June 24, 2009. Well, first of all,
4 it's to Mandy and it's addressed to Mandy and it says:
5 "I've read over the business records you supplied and I
6 think there is a lot more work to be done before the OSC
7 examination on July 9th."?

8 A. Right.

9 1250 Q. So Julia Dublin, in this email, is
10 communicating with Mandy for the purpose of obtaining
11 documents in advance of the OSC examination. Is that
12 right?

13 A. Yes.

14 1251 Q. Just so I'm clear. So Mandy had your
15 permission; it wasn't a problem for Mandy to be dealing
16 directly with Julia, I take it?

17 A. Correct.

18 1252 Q. Even though Mandy wasn't being examined at
19 the OSC?

20 A. That's right.

21 1253 Q. And if you go to the second last paragraph of
22 this email, Ms. Dublin says: "To Mandy, also I don't see
23 any completed Accredited Investor Certificates. We need
24 to ensure that you can show the OSC you did your due
25 diligence on the applicable exemptions."?

1 A. That's correct.

2 1254 Q. And there is no response from Mandy. But I'd
3 like to know where those completed Accredited Investor
4 Certificates are?

5 A. We have them.

6 1255 Q. Pardon?

7 A. We have the Accredited Investor's
8 Certificates.

9 1256 Q. Okay. Were they ever provided to Ms. Dublin
10 or Mr. Miller at Aylesworth?

11 A. Eventually, I believe so. I don't remember
12 exactly, but --

13 1257 Q. Okay. Well, I haven't seen any completed
14 Accredited Investor Certificates?

15 A. Okay.

16 1258 Q. In the Aylesworth's file. But you're saying
17 there are some?

18 A. Absolutely.

19 1259 Q. And did you obtain Accredited Investor
20 Certificates in each case for each investor?

21 A. No.

22 1260 Q. And under what circumstances would you not
23 have obtained an Accredited Investor Certificate?

24 A. If they invested more than \$150,000. Of
25 if what Richard said we were talking about in one of the

1 emails about my mother, and he said there is a private
2 issuer exemption you can use for what he called people
3 close very to you.

4 1261 Q. Okay. So is there another Loan Agreement
5 that I haven't seen that has a clause in it for people to
6 certify that they're very close to you, that there is
7 some other exemption that's being relied upon?

8 A. No, other than -- no, just in the first
9 letter he talks about -- he told me -- there is an email,
10 and I don't remember the date, where he said you can use
11 a private issuer exemption for people who are close to
12 you.

13 1262 Q. So the circumstances in which you would not
14 have obtained an Accredited Investor Certificate from the
15 investor, you said if they purchased or invested more
16 than \$150,000?

17 A. Right.

18 1263 Q. Or if they are (quote) "people very close to
19 you?"

20 A. Well, paraphrased. I wouldn't say "quote."

21 1264 Q. I was saying "quote" because that's what you
22 said to me; that's what you understood if they were very
23 close to you, you didn't need an Accredited Investor
24 Certificate?

25 A. Friends, family and so on.

1 1265 Q. So is there a Loan Agreement, then, that I
2 haven't seen, a version of a Loan Agreement that was
3 created to deal not with the accredited investor
4 exemption, and not with the minimum \$150,000 exemption,
5 but with the private issuer exemption?

6 A. No.

7 1266 Q. Okay. So there about never any certificates
8 signed by investors that they would meet the category of
9 investor under the private issuer exemption?

10 A. That's correct.

11 1267 Q. And at no point when you were using the
12 Revised Loan Agreements from BLG, and then the Revised
13 Agreements with Mr. Welsh's input did you ever make any
14 filings with the OSC about any exemptions that were being
15 relied upon?

16 A. No.

17 1268 Q. And can you advise me, then, which investors
18 you have Accredited Investor Certificates for?

19 A. Off the top of my head?

20 1269 Q. No, if you could undertake to do that. We've
21 looked through the Aylesworth file, and I'm told that
22 there are no Accredited Investor Certificates?

23 MR. DAVIS: We'll use our best efforts to do
24 that.

25 --- UNDERTAKING

1 BY MS. FOY:

2 1270 Q. Just to get on the record what I'm looking
3 for. I'm looking for completed Accredited Investor
4 Certificates, not the form or the template but ones that
5 have been filled out and signed by investors?

6 MR. DAVIS: I understand.

7 THE DEPONENT: Sure.

8 BY MS. FOY:

9 1271 Q. Okay. Mr. Sbaraglia, when you came into
10 speak to the OSC staff on July 9, 2009 you'd been summons
11 to come in and give evidence?

12 A. Yes.

13 1272 Q. And when you came in for the interview, you
14 came in with counsel with Ms. Dublin and Mr. Miller?

15 A. Correct.

16 1273 Q. And when did you retain Aylesworth as your
17 counsel, was that around June?

18 A. Yes.

19 1274 Q. And that's 2009?

20 A. Yes.

21 1275 Q. Okay. And in advance of July 9, 2009 you and
22 Mandy together worked to gather documents to provide to
23 Aylesworth in anticipation, and in preparation of that
24 exam?

25 A. Yes.

1 1276 Q. And you, obviously, spoke to your counsel
2 either by email or directly in advance of that
3 examination?

4 MR. DAVIS: Just so we're clear, you're talking
5 about Miller or Dublin?

6 MS. FOY: Miller and Dublin?

7 MR. DAVIS: The way you asked the question it
8 could have been me.

9 MS. FOY: I'm sorry?

10 MR. DAVIS: You said you "spoke to your counsel,"
11 it could have been anybody. I just wanted to make sure
12 you're talking about Aylesworth.

13 BY MS. FOY:

14 1277 Q. Right. Now, we're talking about Aylesworth
15 and we're talking about Mr. Miller and Ms. Dublin. So in
16 advance of 2009, of your examination, you spoke directly
17 to your counsel?

18 A. Yes.

19 1278 Q. And some of what you talked about, or quite a
20 bit about what you talked about is what the OSC's
21 concerns were in terms of the business of CO. Correct?

22 A. I don't know what you mean by, "quite a bit."
23 But we talked to them about what documents they needed.

24 1279 Q. And between June, the beginning of June, I'll
25 say, and the date of your examination, so that month

1 leading up to your examination there was regular contact
2 between you and your counsel about the examination?

3 A. Yes.

4 1280 Q. And one of the things you discussed was what
5 the OSC's concerns were about the operation of OSC and
6 its business?

7 A. Yes.

8 1281 Q. And to be very straightforward about it
9 Ms. Dublin said to you, in a number of different ways,
10 that what the OSC was concerned about was where
11 investor's money is?

12 A. Yes.

13 1282 Q. And where it went?

14 A. Uh'hmm.

15 1283 Q. And that CO be in a position to properly
16 account for investors' funds?

17 A. Yes.

18 1284 Q. And you understood that there might be some
19 registration issues, but they weren't as important as
20 being able to account for investors' funds?

21 A. According to Julia, yes.

22 1285 Q. Okay. And so some of the documents you were
23 getting together for Ms. Dublin in advance of your
24 examination included a list of assets of CO?

25 A. Yes.

1 1286 Q. And you understood that part of what the OSC
2 would want to see is a list of assets between CO and EMB
3 in excess of what is owed?

4 A. Yes.

5 1287 Q. And you tried to get that information for
6 Ms. Dublin?

7 A. Yes.

8 1288 Q. Okay. And so when you attend at the
9 examination, you understand sitting there in the
10 examination that one of the OSC'S concerns is also that
11 there is nothing in writing between EMB and CO to ensure
12 that investors' assets are safeguarded?

13 A. There was not much in writing.

14 1289 Q. There is not much in writing. So there is a
15 lack of documentation to support what is being said to
16 the OSC about safeguarding investors' assets?

17 A. Yes.

18 1290 Q. And you knew that in addition to information
19 about the business of CO that OSC staff wanted
20 information about the business, or assets or obligations
21 of Pero?

22 A. Yes.

23 1291 Q. And you know that because you saw the summons
24 that was sent by OSC staff to Julia Dublin?

25 A. Yes.

1 1292 Q. And she said to you in advance in an email
2 that the OSC wanted information about Pero?

3 A. Yes.

4 1293 Q. Okay. So you say in this proceeding, in
5 response to the OSC's application, that the Pero
6 investment, and when I say the "Pero investment" I mean
7 the \$6 million investment, that that investment was as of
8 the date of your examination. Tell me where I get this
9 wrong if I get it wrong, but as of the date of your
10 examination, July 9, 2009, that the Pero investment was
11 an obligation of Mander directly and no longer an
12 obligation of CO. Is that right?

13 A. Yes.

14 1294 Q. And you say that's why the \$6 million Pero
15 investment is not listed in the Schedule "A" to your
16 undertaking?

17 A. Yes.

18 1295 Q. Okay. If we could turn to the Agreement with
19 Mr. Obradovich at tab B. And that's the Agreement, dated
20 March 1, 2009?

21 MS. PRESTON: With Pero, right?

22 BY MS. FOY:

23 1296 Q. I'm sorry. With Pero. Signed by Mr.
24 Obradovich on behalf of Pero. If you look to paragraph
25 14 -- well, first of all, before we get to paragraph 14.

1 At page 3 of this Agreement there's a signature for CO
2 Capital, and it indicates that you're the authorized
3 Officer for CO so you signed this agreement?

4 A. Yes, I did.

5 1297 Q. Paragraph 14 is a clause that indicates that
6 the Agreement constitutes the entire agreement between
7 the parties, and cancels and supersedes any prior
8 Agreements, undertakings, declarations or
9 representations, written or oral in respect to the
10 relationship of the parties. No amendments, supplement
11 or waiver of any provision of this Agreement shall, in
12 any event, be effective unless it shall be in writing and
13 signed by the parties. The lender may not assign,
14 prejudice or otherwise transfer this Agreement or
15 Promissory Note without the written consent of the
16 borrower?

17 MR. DAVIS: What is your question?

18 MS. FOY: Mr. Davis, I'm entitled to read
19 something from a document.

20 MR. DAVIS: It's a really long one. It sounded
21 like you were done.

22 BY MS. FOY:

23 1298 Q. I was done reading from the document. My
24 question for this witness is: Whether that is a
25 paragraph that appeared in all of the Loan Agreements, to

1 the best of your knowledge, entered into by CO?

2 A. To the best of my knowledge.

3 1299 Q. You're saying to the best of your knowledge
4 it did appear?

5 A. Well, again, Peter Welsh amended them. I
6 don't know, I couldn't count all of them. I don't
7 remember if it's all of them. But I'll say I think so.
8 I don't know.

9 1300 Q. And did anyone other than you sign Loan
10 Agreements on behalf of CO with investors?

11 A. No.

12 1301 Q. Okay. So you've said in your evidence that
13 we see in the records before us that, or I think it's
14 been suggested, anyway, that there was a meeting in June,
15 2009 where it was agreed that all of Mr. Obradovich's
16 money captured by the Pero investment would be
17 transferred to Mander directly?

18 A. Yes.

19 1302 Q. And I think the suggestion is that in
20 addition to that or the consequence of that would be that
21 Mander would be directly responsible for the Pero
22 investment to pay back?

23 A. Yes. Sorry, I apologize. Can you go back
24 two questions, because I day dreamed a little bit. Ask
25 me two questions ago, again?

1 MR. DAVIS: Your question two questions ago was
2 to the effect in June, 2009 there was an Agreement to
3 transfer the Pero account to Mander.

4 BY MS. FOY:

5 1303 Q. Mander directly?

6 A. There was no actual transfer. He was
7 assuming responsibility for it.

8 1304 Q. So there was no actual transfer. And that's
9 because Pero's money was already with Mr. Mander?

10 A. Yes.

11 1305 Q. Okay. So there's is nothing in writing from
12 CO in June, 2009 which documents this understanding?

13 A. No.

14 1306 Q. And there's nothing in writing from Pero
15 releasing CO of its obligation to Pero under the March 1,
16 2009 Agreement?

17 A. No.

18 1307 Q. And there is nothing in writing as of either
19 the date of your examination, or the date of the
20 undertaking?

21 A. No.

22 1308 Q. Or anything after that?

23 MR. DAVIS: Sorry?

24 MS. FOY: Or anything after that in writing
25 releasing.

1 MR. DAVIS: There is no Release.

2 BY MS. FOY:

3 1309 Q. So as of the date of your examination, July
4 9th, the only written Loan Agreement dealing with the \$6
5 million Pero investment is the one that we see here at
6 tab B of Mr. Obradovich's Affidavit?

7 A. Yes.

8 1310 Q. And that's also the only Loan Agreement in
9 place dealing with this Pero investment as of the date of
10 your undertaking, August 7, 2009?

11 MR. DAVIS: What's the date of that numbered
12 company Agreement?

13 MR. GOTTLIEB: 14th.

14 MS. FOY: It's August 14th, 2009 if what you're
15 referring to is the document at tab C.

16 MR. DAVIS: I want the record to show that Mr.
17 Gottlieb was correct, it's the 14th.

18 BY MS. FOY:

19 1311 Q. So you agree that as of August 7, 2009, the
20 date of your undertaking, the only written Loan Agreement
21 dealing with the Pero investment is the one dated March
22 1, 2009?

23 A. Written Loan Agreement.

24 1312 Q. Yes, that was my question?

25 A. Yes.

1 1313 Q. Now, at any point, in preparation for your
2 examination at the OSC do you raise the question with
3 either Mr. Miller or Dublin about who might have
4 liability to Pero in the circumstances that you've
5 described in your evidence? Did you ever ask Mr. Miller
6 or Dublin about whom might have liability to Pero in the
7 circumstances where there's a written Loan Agreement with
8 CO and Pero, and you say an oral agreement between Pero
9 and Mander that shifts the obligation to Mander or one of
10 his companies?

11 A. Right.

12 1314 Q. Did you ask Mr. Miller or Ms. Dublin about
13 that?

14 A. I don't recall, specifically, if I asked them
15 about that.

16 1315 Q. Do you believe that you did sitting here
17 today?

18 A. I don't recall in.

19 1316 Q. Certainly at no time during your examination
20 with the OSC do you mention anything about this Loan
21 Agreement.

22 A. No.

23 1317 Q. And you certainly don't say anything to OSC
24 staff about it as of August 7th, the day the undertaking
25 is signed?

1 A. No.

2 1318 Q. Your Affidavit of September 15th, which is
3 your Affidavit in response to the OSC's application. And
4 I'll try and go through this quickly, I won't cite
5 directly your Affidavit. But if I have anything wrong,
6 Mr. Davis, you'll tell me?

7 MR. DAVIS: Let's just go off the record.

8 --- Off the record

9 --- Whereupon proceedings recessed at 3:53 p.m.

10 --- Whereupon proceedings resumed at 4:02 p.m.

11 BY MS. FOY:

12 1319 Q. Mr. Sbaraglia, your Affidavit of September
13 15th, and I'm looking at paragraph 25, I think
14 effectively says that the representation by --

15 MR. DAVIS: Just hang on a second, let me get it
16 in front of him. Okay.

17 BY MS. FOY:

18 1320 Q. The representation by your counsel during
19 your examination at the OSC about the use of investor's
20 funds to purchase personal real estate was a
21 misrepresentation?

22 A. Yes.

23 1321 Q. And that's your evidence. And when you say
24 "personal real estate" are you referring to 63 2nd
25 Street?

1 A. Yes.

2 1322 Q. And are you referring to 239 Church Street?

3 A. Yes.

4 1323 Q. Are you referring to anything else?

5 A. Yes. Ellis Park, as well.

6 1324 Q. And Ellis Park. And if you read paragraphs
7 27, 28 and 29 together I think it effectively says that
8 you didn't speak up because you were scared to do so,
9 based on what Mr. Miller had told you about certain
10 potential consequences to misconduct?

11 A. We spoke with Matt on Friday.

12 1325 Q. And I don't intend to go over that. I just
13 want to understand that's what we're talking about in
14 those paragraphs?

15 A. Yes.

16 1326 Q. And then at paragraph 30 you say that you
17 raise the issue of the misrepresentation regarding the
18 purchase of your personal real estate with your counsel
19 at Aylesworth, and they essentially told you not to worry
20 about it that all would be well?

21 A. Yes.

22 1327 Q. And then your Affidavit goes on to deal with
23 the undertaking, and your knowledge that the undertaking
24 contain the same misrepresentation about the purchase of
25 your real estate but that you naively signed it?

1 MR. DAVIS: I think it's unfair to say "contain
2 the same misrepresentation."

3 BY MS. FOY:

4 1328 Q. That's fine. A misrepresentation regarding
5 the purchase of your real estate. Sorry. The
6 undertaking, again, represented that the respondents'
7 property were purchased with funds received from CO
8 Capital but that you signed it, in any event, naively?

9 A. Yes.

10 1329 Q. Sir, at that time, at the time of your
11 examination, July, 2009, did you speak to any other
12 lawyers outside of Aylesworth about your concerns
13 regarding Aylesworth's misrepresentations to the
14 commission?

15 A. No.

16 1330 Q. So you didn't seek a second opinion?

17 A. On?

18 1331 Q. Not a second opinion. You didn't seek an
19 opinion from another lawyer about your concerns?

20 A. No.

21 1332 Q. And is that the same answer in terms of
22 contacting another lawyer before signing the undertaking?
23 So you didn't contact any other lawyer about your
24 concerns prior to signing the undertaking?

25 A. No.

1 1333 Q. Your affidavit, I think, uses the word
2 "duress," that you felt under "duress?"

3 MR. DAVIS: Can you just point me to the
4 paragraph?

5 BY MS. FOY:

6 1334 Q. I will. Paragraph 27: "I felt under duress
7 as I had looming in the background Miller's strong
8 statement that I could be in a lot of trouble." Did you
9 ever contact another lawyer for an opinion about what to
10 do about the duress that you say you felt?

11 A. No.

12 1335 Q. And did you ever consider going to another
13 lawyer about those two issues?

14 MR. DAVIS: What difference does that make?

15 MS. FOY: I think if you read the law you'll
16 understand the difference I make.

17 MR. DAVIS: I read the law. And what he thought
18 about makes no difference.

19 BY MS. FOY:

20 1336 Q. You'll agree, sir, that it was open to you to
21 go and seek legal advice about the misrepresentations you
22 say were made or the duress you felt?

23 A. Yes.

24 1337 Q. At any point during the investigation, the
25 OSC investigation, up to the appointment of a Receiver in

1 March, 2010 in what I'll call the "Mander action," did
2 you advise the OSC of any duress that you felt as a
3 result of things said by your counsel?

4 MR. DAVIS: Sorry. I didn't catch the date?

5 BY MS. FOY:

6 1338 Q. March, 2010, the receivership?

7 A. No.

8 1339 Q. After giving the undertaking CO took certain
9 steps to comply with the undertaking?

10 A. Yes.

11 1340 Q. And that was done at your direction to comply
12 with the undertaking?

13 A. Yes.

14 1341 Q. CO complied at your direction?

15 A. Yes.

16 1342 Q. You've indicated in your various Affidavits
17 that you want to pay back your investors. When I say
18 your "investors," I mean the CO investors?

19 A. Yes.

20 1343 Q. So that's what you'd like to do?

21 A. Yes.

22 1344 Q. And you want to use the proceeds from the
23 sale of 239 church and 63 2nd Street to do so?

24 A. Yes.

25 1345 Q. You've indicated in your Affidavits that you

1 would make distributions or pay people, repay people
2 their loans based on an assessment of need. Is that
3 fair?

4 A. Big picture or small picture?

5 1346 Q. Well, let's just go to paragraph 75 of your
6 August 10th Affidavit, August 10, 2010. So the Affidavit
7 you swore in dealing with the proceeds of 239 Church.
8 And actually if you start at paragraph 74 you talk about
9 the amount that CO has outstanding to investors of \$7.6
10 million. Correct?

11 A. Yes.

12 1347 Q. And then in your next Affidavit you talk
13 about the dire straits that "a number of these investors
14 are in."?

15 A. Yes.

16 1348 Q. And you go on to identify three family
17 members or friends that you're aware of who told you that
18 they're in danger of losing their homes if they don't
19 receive some money back. There is another person who may
20 be required to sell their business in "a fire sale." And
21 that there are a few others that are struggling
22 financially, and receiving partial payment of their money
23 would drastically improve their situation?

24 A. Yes.

25 1349 Q. And your Affidavit of September 15th, I'm

1 going to suggest, is consistent with what you're saying
2 here at paragraph 75. Would you like to look at it?

3 MR. DAVIS: Yes.

4 BY MS. FOY:

5 1350 Q. So your affidavit of September 15th at two
6 paragraphs 53 and 54. Looking at the last sentence of 53
7 you say: "...The people we had sought to pay out a
8 portion of their principal from partial proceeds of the
9 sale of 239 Church are people whose needs are the most
10 desperate."

11 MR. DAVIS: I think it's only fair to refer to
12 the first sentence of that paragraph before you refer to
13 that sentence.

14 BY MS. FOY:

15 1351 Q. Okay. Fine. The paragraph is in response to
16 the Affidavit or paragraph in the Affidavit of
17 Mr. Shahviri. And the suggestion in paragraph 53 --
18 well, do you want me to read the whole paragraph on the
19 record?

20 MR. DAVIS: No. No. He can read.

21 BY MS. FOY:

22 1352 Q. I want you to look at paragraph 53 and 54?

23 A. Okay.

24 1353 Q. What I'm saying is that, first of all, 53 and
25 54 are consistent with what's in your previous Affidavit

1 at 74 and 75, correct, the ones we just read?

2 A. Yes.

3 1354 Q. There are desperate and needy people amongst
4 your CO investors, and you want to pay those people based
5 on who are in the most desperate situation first?

6 A. No. To be clear, we'd like to, if we could,
7 give them a little something to get them out of their
8 dire straits. The overall big picture is to pay people
9 back to the very best of our ability.

10 1355 Q. Okay. But that little bit upfront is based
11 on need?

12 A. Yes.

13 1356 Q. Okay. And the need of these investors is
14 something that is being assessed by you and Mandy? Who's
15 assessing the need of these investors in giving them that
16 little bit of money?

17 A. Us.

18 1357 Q. And it looks from paragraph 75 of your August
19 10th Affidavit that there are a number factors being
20 taken into account in determining whose needs ought to be
21 met first in giving that little bit of money?

22 A. Okay.

23 1358 Q. Do you agree that?

24 A. I don't know what you're reading right now.

25 1359 Q. I'm reading paragraph 75?

1 A. Of which one, please?

2 1360 Q. Your August 10th Affidavit?

3 A. August 10th.

4 1361 Q. You talk about three family members who've
5 told us they're in danger of losing their homes. So I'll
6 just wait until you turn it up. Do you have it, page
7 16?

8 A. This is not the same one that Pam is reading
9 from.

10 MR. DAVIS: Oh, sorry. Did you go back to August
11 10th while I was making notes?

12 MS. FOY: Yes, I did.

13 MR. DAVIS: What paragraph?

14 THE DEPONENT: 75.

15 MR. DAVIS: Yes.

16 BY MS. FOY:

17 1362 Q. So the people who you want to pay out first
18 and give a little bit of money to are the people whose
19 needs are the most desperate. You've said that?

20 MR. DAVIS: Just to be clear. You use two
21 phrases "pay out" and "give a little money to." He said
22 he wanted to pay a little money to, not pay out.

23 MS. FOY: I'm sorry. You're right.

24 MR. DAVIS: Can you underline that, Madam
25 Reporter?

1 BY MS. FOY:

2 1363 Q. Let me just to be clear, though. You would
3 be paying these investors a little bit of money as part
4 of their repayment of the loans they made to CO?

5 A. I would like to, yes.

6 1364 Q. Well, that's the idea?

7 A. Yes.

8 1365 Q. It's all part of repaying these investors
9 their ultimate -- the ultimate amount that's owed to
10 them?

11 A. Yes. Ideally. Yes.

12 1366 Q. Okay. And so those initial payments that you
13 want to make are to people who you've identified as those
14 whose needs are the most desperate. Those are your
15 words?

16 A. Yes.

17 1367 Q. And when I look at paragraph 75 where you
18 describe some of those people whose needs are the most
19 desperate, you see different factors influencing that
20 assessment. Some of the investors are about to lose
21 their home. Some of the investors are about to lose
22 their business, or one of anyway. Okay. So there are a
23 number of factors in forming your assessment of the needs
24 of these investors. Whether that's what's happening with
25 somebody in their home, you're shaking your head "yes?"

1 A. Yes.

2 1368 Q. And that's because you agree with what I'm
3 saying?

4 A. Yes.

5 1369 Q. And, presumably, there would be other
6 factors. Someone's age if they're elderly. Would that
7 be a factor which comes into your assessment of whose
8 needs are the most desperate?

9 A. Not really, no. Not necessarily.

10 1370 Q. But the loss of a home would?

11 A. Yes.

12 1371 Q. The loss of a business would?

13 A. Yes.

14 1372 Q. The fact that an investor has children that
15 they have to support?

16 A. If that were applicable to someone, yes.

17 1373 Q. Okay. It's fair to say that the assessment
18 of whose needs are the most desperate is an entirely
19 subjective assessment?

20 A. I don't think it's entirely subjective.

21 1374 Q. Is it partially subjective?

22 MR. DAVIS: What difference does that make? Come
23 on, let's move on. It is just so irrelevant.

24 MS. FOY: It is not irrelevant, sir.

25 MR. DAVIS: You know what, I promise you that

1 Justice Morawetz can figure out if it's subjective,
2 objective or inbetween. I promise you that.

3 MS. FOY: I'd like the witness' evidence on that
4 point.

5 MR. DAVIS: You got it.

6 MS. FOY: I don't have it.

7 MR. DAVIS: He said it's partially subjective.

8 BY MS. FOY:

9 1375 Q. Is that what you said, sir?

10 MR. DAVIS: That's what he said.

11 MS. FOY: Excuse me, I'm asking the witness if
12 that's what he said.

13 MR. DAVIS: He already answered the question.
14 Those were his words.

15 BY MS. FOY:

16 1376 Q. You're agreeing with your lawyer, sir?

17 A. Yes, I am.

18 1377 Q. As of today, Mr. Sbaraglia, you don't have a
19 claims process set up to distribute funds to your
20 investors?

21 MR. DAVIS: Do you know what a "claims process"
22 is?

23 THE DEPONENT: I don't even know what that
24 means.

25 BY MS. FOY:

1 1378 Q. Thank you. As of today have you identified
2 any mechanism to deal with disputes if one of your
3 investors doesn't agree with how much you have, or
4 haven't paid them in the process of repaying your
5 investors?

6 A. Please one more time, I didn't follow you?

7 1379 Q. You've said that it's your intention to repay
8 your investors in the bigger picture?

9 A. Yes.

10 1380 Q. But phase one or part of the initial phase is
11 to repay a portion of investor's funds to those people
12 whose needs are most desperate?

13 A. Yes.

14 1381 Q. If you have an investor who disagrees with
15 your assessment of whether they should get some money, a
16 little bit of money first, or how much you give them,
17 what mechanism do you have to deal with a dispute between
18 the investor and you on that issue?

19 MR. DAVIS: The answer is that they have counsel,
20 and they can take such remedies as they feel is
21 appropriate.

22 BY MS. FOY:

23 1382 Q. Okay. And, Mr. Sbaraglia, your undertaking,
24 as I read it, requires to you pay CO investors from the
25 proceeds of 239 Church and 63 2nd Street. I don't think

1 that's contentious?

2 MR. DAVIS: We can all read.

3 BY MS. FOY:

4 1383 Q. So you agree?

5 MR. DAVIS: We can read it. It says what it
6 says.

7 BY MS. FOY:

8 1384 Q. But as you've said in the bigger picture you
9 want to repay all of your investors?

10 A. Yes.

11 1385 Q. And the only proceeds that you would have to
12 do that are from the sale of 239 Church and 63 2nd
13 street?

14 MR. DAVIS: It's incorrect.

15 BY MS. FOY:

16 1386 Q. What are the other proceeds today that would
17 be used to repay investors?

18 MR. DAVIS: That's a different question.

19 MS. FOY: So answer that question.

20 MR. DAVIS: The question today is: Those are the
21 proceeds available. But that wasn't your last question.
22 And you know there is outstanding litigation for which
23 this witness has said proceeds would be forthcoming to
24 help pay the investors.

25 MS. FOY: You are talking about the Aylesworth

1 litigation?

2 MR. DAVIS: Yes.

3 BY MS. FOY:

4 1387 Q. So aside from the Aylesworth litigation and
5 the funds that may or may not come from a resolution of
6 that lawsuit, the only proceeds that would be available
7 to repay investors is 239 Church and 63 2nd Street?

8 A. Yes.

9 1388 Q. But it's your position, in this proceeding,
10 that you want to be released from the undertaking?

11 MR. DAVIS: That is his position. Correct.

12 BY MS. FOY:

13 1389 Q. So I just want some help on understanding
14 that. If the undertaking requires you to pay your
15 investors using the proceeds from those properties and
16 you say you, in fact, want to do that, why do you need to
17 be released from the undertaking?

18 MR. DAVIS: So that he can deal with the proceeds
19 in a more appropriate fashion than is contemplated by the
20 undertaking.

21 MS. FOY: What does "more appropriate" mean? Can
22 I have particulars of what "appropriate" means?

23 MR. DAVIS: No.

24 MS. FOY: Thank you. Why don't we stop for
25 today, it's 4:30.

1 MR. DAVIS: We're off the record.

2 --- Whereupon proceedings adjourned at 4:30 p.m.

3 *****

4 I hereby certify the foregoing to be
5 a true and accurate transcript of my
6 computerized shorthand notes, to the
7 best of my skill and ability.

8

Debbie Anshan CSR RPR
9 Real Time (Caption) Shorthand Reporter

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Appendix “E”

C.O. Capital Growth Corp.

Examples of Investor Money Used to Pay Other Investors' Principal and Interest

RBC Account Number 109-576-9

(Unaudited; \$C)

Legend

Loan received

Loan paid

Money to/from the Mander Group

Example 1

	Date	Deposit/(Payment)	Account Balance
Balance in account	01-Mar-07		4,990
Joe	02-Mar-07	10,000	14,990
Mander	02-Mar-07	307,465	322,455
Peter Sbaraglia	05-Mar-07	(307,465)	14,990
Thomas Obradovich	05-Mar-07	1,000,000	1,014,990
Questrade	05-Mar-07	(250,000)	764,990
Loan, 1334044 Ontario Ltd, 6	05-Mar-07	(62,500)	702,490
Bank error	05-Mar-07	(250,000)	452,490
Bank error	05-Mar-07	250,000	702,490
Questrade	05-Mar-07	(83,000)	619,490
Mander	05-Mar-07	(333,000)	286,490
Peter Sbaraglia	05-Mar-07	(50,000)	236,490
Expense	21-Mar-07	(600)	235,890
91 days - rent	21-Mar-07	(2,650)	233,240
Expense	26-Mar-07	(214)	233,026
Expense (paint office)	27-Mar-07	(1,840)	231,186
91 days - rent	02-Apr-07	(2,650)	228,536
Peter Sbaraglia	02-Apr-07	(60,000)	168,536
Expense	02-Apr-07	(10)	168,526
Expense	02-Apr-07	(2)	168,524
Expense	04-Apr-07	(191)	168,333
Expense - BLG	04-Apr-07	(2,262)	166,071
Expense	16-Apr-07	(488)	165,583
Expense	16-Apr-07	(687)	164,897
Expense - BLG	16-Apr-07	(6,059)	158,838
Loan 31 - Malkit, 007-041006-A	18-Apr-07	(62,500)	96,338
Expense	18-Apr-07	(360)	95,978
Expense	18-Apr-07	(360)	95,618
TradeFreedom	18-Apr-07	(25,000)	70,618
Loan, Heidi, Stephen, 31-041907A, 32-041907-A	19-Apr-07	300,000	370,618
Expense	19-Apr-07	(399)	370,219
Expense	19-Apr-07	(636)	369,583
Expense (User friendly computers)	19-Apr-07	(2,965)	366,617
Questrade	19-Apr-07	(100,000)	266,617

Example 2

	Date	Deposit/(Payment)	Account Balance
Balance in account	26-Jul-07	-	24,296
Loan, Amato, 52A	27-Jul-07	250,000	274,296
Expense	27-Jul-07	(435)	273,861
Altius Design Inc.	27-Jul-07	(1,500)	272,361
91 Days - rent	27-Jul-07	(2,650)	269,711
Expense	30-Jul-07	(450)	269,261
Expense	01-Aug-07	(32)	269,230
Expense	01-Aug-07	(6)	269,224
Payroll (DW)	03-Aug-07	(2,000)	267,224
Payroll (KG)	08-Aug-07	(1,200)	266,024
Expense	13-Aug-07	(508)	265,516
Loan, Cecil, 11-081106-B	14-Aug-07	(41,600)	223,916
Expense	15-Aug-07	(426)	223,490
Expense	16-Aug-07	(200)	223,290
Expense	17-Aug-07	(192)	223,098
Expense	17-Aug-07	(197)	222,901
Expense	17-Aug-07	(488)	222,414
Loan, Rano, 52B	20-Aug-07	55,000	277,414

Example 3

	Date	Deposit/(Payment)	Account Balance
Balance in account	06-Dec-07	-	10,724
Loans Amato, 72A, 73B, 74C	07-Dec-07	569,000	579,724
Complex Interior Designs	07-Dec-07	(8,720)	571,004
Loans, Amato, 71A, 70B, 75D, other	10-Dec-07	1,474,994	2,045,997
Interactive Brokers	10-Dec-07	(200,025)	1,845,972
Payroll (KG)	10-Dec-07	(1,180)	1,844,792
Mand Assets Inc.	10-Dec-07	(200,000)	1,644,792
Thomas Obradovich	10-Dec-07	(550,000)	1,094,792
Mander	10-Dec-07	(950,000)	144,792
Expense	11-Dec-07	141	144,933
Expense	12-Dec-07	(25)	144,908
Payroll (DW)	12-Dec-07	(1,462)	143,446
Peter Sbaraglia	12-Dec-07	(20,000)	123,446
Loan, Cecil Russel	12-Dec-07	(10,000)	113,446
Visa	14-Dec-07	(1,088)	112,357
Visa	14-Dec-07	(3,728)	108,629
Visa	14-Dec-07	(6,597)	102,032
Expense	17-Dec-07	(72)	101,960
Expense	21-Dec-07	(101)	101,860
Expense	21-Dec-07	(196)	101,664
Expense	21-Dec-07	(638)	101,026
Payroll (DW)	21-Dec-07	(1,046)	99,980
Payroll (DW)	21-Dec-07	(1,462)	98,517
Payroll (DW)	21-Dec-07	(1,462)	97,055
Payroll (KG)	24-Dec-07	(1,180)	95,875
Complex Interior Designs	24-Dec-07	(5,300)	90,575
Andrew Patterson - Portfolio Manager	31-Dec-07	(2,040)	88,535
Lane's Rugs	31-Dec-07	(9,690)	78,845
Expense	02-Jan-08	(26)	78,819
Expense	02-Jan-08	(1)	78,817
Loan, Chil 67B	03-Jan-08	29,400	108,217
Hudson York Media Inc	04-Jan-08	(2,000)	106,217
91 days - Rent	04-Jan-08	(2,650)	103,567
91 days - Rent	04-Jan-08	(4,456)	99,111
Peter Sbaraglia	04-Jan-08	(20,000)	79,111
Lane's gallery	07-Jan-08	(3,990)	75,121
Expense	08-Jan-08	(411)	74,711
CRA - pay	08-Jan-08	(4,588)	70,122
Complex Interior Designs	11-Jan-08	(2,000)	68,122
Payroll (KG)	14-Jan-08	(1,180)	66,942
Sue Collings	16-Jan-08	(1,000)	65,942
Expense	17-Jan-08	(474)	65,468
Loan, Livio Sbaraglia	17-Jan-08	(1,000)	64,468
Peter Sbaraglia	17-Jan-08	(15,000)	49,468
Loan, Kathleen Sbaraglia	18-Jan-08	(1,000)	48,468
Loan, Marccissa 77C	23-Jan-08	50,000	98,468
Expense	23-Jan-08	(7)	98,462
Expense	23-Jan-08	(393)	98,069
Mand Assets Inc.	23-Jan-08	(50,000)	48,069

Example 3

	Date	Deposit/(Payment)	Account Balance
Payroll (KG)	24-Jan-08	(1,180)	46,889
Loan, Amato 78E, 79B	25-Jan-08	350,000	396,889
Expense	25-Jan-08	(158)	396,731
Deryl	25-Jan-08	(1,462)	395,269
Kenneth Isaac Architect	25-Jan-08	(12,807)	382,462
Loan, Kathleen Sbaraglia	28-Jan-08	(1,000)	381,462
Expense	31-Jan-08	(400)	381,062
David Adjey	31-Jan-08	(3,300)	377,762
Visa	31-Jan-08	(6,091)	371,671
Visa	31-Jan-08	(9,642)	362,029
Expense	31-Jan-08	(19)	362,010
Basic Security Systems	01-Feb-08	(1,458)	360,552
Expense	01-Feb-08	(23)	360,529
Expense	01-Feb-08	(1)	360,529
Expense	04-Feb-08	(25)	360,503
Expense	04-Feb-08	(488)	360,016
Expense	04-Feb-08	(488)	359,528
Select Furniture	04-Feb-08	(4,009)	355,519
Loan, L&K 80B	05-Feb-08	100,000	455,519
Expense	05-Feb-08	(307)	455,212
Peter Sbaraglia	05-Feb-08	(30,000)	425,212
Payroll (KG)	06-Feb-08	(1,180)	424,032
Loan, Amato, 82C	07-Feb-08	38,251	462,283
Complex Interior Designs	07-Feb-08	(7,000)	455,283
Loan, Amato, 83F	08-Feb-08	250,000	705,283
CMKT	08-Feb-08	(107,536)	597,747
Deryl	11-Feb-08	(1,462)	596,284
Loan, Kathy	11-Feb-08	(10,000)	586,284
Loan, Bruce, 84	12-Feb-08	100,000	686,284
91 days - Rent	12-Feb-08	(2,650)	683,634
91 days - Rent	12-Feb-08	(4,456)	679,178
Loan, Amato, 90C, 89C, 88C	13-Feb-08	213,491	892,669
Interactive Brokers	15-Feb-08	(100,025)	792,644
Interactive Brokers	15-Feb-08	(240,025)	552,619
Mand Assets Inc.	15-Feb-08	(175,000)	377,619
Expense	19-Feb-08	(361)	377,259
Deryl	19-Feb-08	(1,462)	375,796
CRA - pay	19-Feb-08	(2,294)	373,502
Payroll (KG)	20-Feb-08	(1,180)	372,322
Loan, Amato, 91D	22-Feb-08	1,200,000	1,572,322
CMKT	22-Feb-08	(141,993)	1,430,329
Loan, Radice, 92	25-Feb-08	125,000	1,555,329
Kenneth Isaac Architect	25-Feb-08	(4,787)	1,550,542
Peter Sbaraglia	25-Feb-08	(10,000)	1,540,542
Expense	26-Feb-08	(13)	1,540,529
Expense	26-Feb-08	(225)	1,540,304
Sue Collings	26-Feb-08	(2,301)	1,538,003
Loan, Moskovitz, 31A	26-Feb-08	(24,400)	1,513,603
Loan, Rano, 52B	26-Feb-08	(63,250)	1,450,353

Example 3

	Date	Deposit/(Payment)	Account Balance
Interactive Brokers	27-Feb-08	(1,000,025)	450,328
Just Blinds and Shutters	28-Feb-08	(2,065)	448,264
Loan, Amato, 95E, 94G	29-Feb-08	550,000	998,264
Expense	03-Mar-08	(999)	997,264
Deryl	03-Mar-08	(1,462)	995,802
Sue Collings	03-Mar-08	(2,301)	993,501
Peter Sbaraglia	03-Mar-08	(10,000)	983,501
Expense	03-Mar-08	(30)	983,471
Expense	04-Mar-08	(2)	983,468
91 days - Rent	04-Mar-08	(2,650)	980,818
91 days - Rent	04-Mar-08	(4,456)	976,362
91 days	04-Mar-08	(20,000)	956,362
Peter Sbaraglia	04-Mar-08	(20,000)	936,362
Payroll (KG)	05-Mar-08	(1,180)	935,182
Expense	06-Mar-08	(294)	934,888
Security cameras	06-Mar-08	(5,600)	929,288
Expense	13-Mar-08	(23)	929,265
Expense	13-Mar-08	(121)	929,144
Expense	13-Mar-08	(277)	928,868
Expense	13-Mar-08	(307)	928,561
Expense	13-Mar-08	(736)	927,825
Visa	13-Mar-08	(11,571)	916,254
Visa	13-Mar-08	(12,709)	903,545
Expense	14-Mar-08	(193)	903,352
Expense	14-Mar-08	(271)	903,081
Expense	14-Mar-08	(409)	902,671
Expense	17-Mar-08	(81)	902,590
Expense	17-Mar-08	(434)	902,156
Expense	17-Mar-08	(991)	901,165
Colin Russell - Dolphin Swimming	17-Mar-08	(2,000)	899,165
Expense	18-Mar-08	(81)	899,084
Complex Interior Designs	18-Mar-08	(2,000)	897,084
Complex Interior Designs	18-Mar-08	(4,200)	892,884
Expense	19-Mar-08	(50)	892,834
Expense	19-Mar-08	(307)	892,526
Expense	19-Mar-08	(446)	892,080
Sue Collings	19-Mar-08	(2,301)	889,779
Peter Sbaraglia	19-Mar-08	(25,000)	864,779
Payroll (KG)	20-Mar-08	(1,180)	863,599
Peter Sbaraglia	20-Mar-08	(10,000)	853,599
Elizabeth Marwi	24-Mar-08	(40,468)	813,130
Expense	24-Mar-08	(19)	813,111
Expense	24-Mar-08	(388)	812,723
Deryl	24-Mar-08	(1,462)	811,261
GWL Benefits	26-Mar-08	(1,500)	809,761
Expense	27-Mar-08	(483)	809,278
91 Days	27-Mar-08	(2,500)	806,778
Tonin	27-Mar-08	(12,810)	793,968
Loan, Amato, 96H	28-Mar-08	60,000	853,968

Example 3

	Date	Deposit/(Payment)	Account Balance
Expense	28-Mar-08	(102)	853,866
Expense	28-Mar-08	(578)	853,289
CRA	28-Mar-08	(5,111)	848,177
Loan, RG Cap, 97A	31-Mar-08	150,000	998,177
Deryl	31-Mar-08	(1,462)	996,715
BLG	31-Mar-08	(3,024)	993,691
Interactive Brokers	01-Apr-08	(250,025)	743,666
Payroll (KG)	01-Apr-08	(1,180)	742,486
Sue Collings	01-Apr-08	(2,301)	740,184
91 days - Rent	01-Apr-08	(2,650)	737,534
91 days - Rent	01-Apr-08	(4,456)	733,078
Expense	01-Apr-08	(37)	733,042
Expense	01-Apr-08	(1)	733,041
Loan, Amato, 101J	04-Apr-08	100,000	833,041
Expense	07-Apr-08	(7)	833,035
Loan, J. McIntosh, 55B	07-Apr-08	(15,000)	818,035
Expense	08-Apr-08	(407)	817,628
Visa	10-Apr-08	(20,000)	797,628
Peter Sbaraglia	10-Apr-08	(25,000)	772,628
Deryl	14-Apr-08	(1,462)	771,165
Loan, Firehall 102B	14-Apr-08	25,000	796,165
Expense	15-Apr-08	(300)	795,865
Payroll (KG)	15-Apr-08	(1,180)	794,685
Sue Collings	17-Apr-08	(2,301)	792,384
CRA	18-Apr-08	(5,111)	787,272
Expense	21-Apr-08	(461)	786,811
Expense	21-Apr-08	(483)	786,328
Expense	21-Apr-08	(520)	785,809
Loan, Rick, Sue 104A,105A	21-Apr-08	400,000	1,185,809
Loan, RS Cap 106B	22-Apr-08	650,000	1,835,809
Interactive Brokers	23-Apr-08	(600,025)	1,235,784
Interactive Brokers	23-Apr-08	(600,025)	635,759
Payroll	23-Apr-08	(8,059)	627,700
Mand Assets Inc.	23-Apr-08	(230,000)	397,700
Mand Assets Inc.	23-Apr-08	(230,000)	167,700
Aphex Imaging	24-Apr-08	(12,025)	155,675
Complex Interior Designs	25-Apr-08	(315)	155,360
Big Al's Aquarium Services	25-Apr-08	(1,227)	154,133
Complex Interior Designs	28-Apr-08	(7,700)	146,433
Expense	01-May-08	(23)	146,411
Expense	01-May-08	(1)	146,410
Expense	01-May-08	(1)	146,409
Expense	02-May-08	(190)	146,219
91 days - Rent	02-May-08	(2,650)	143,569
Visa	02-May-08	(3,868)	139,700
Visa	02-May-08	(4,308)	135,393
91 days - Rent	02-May-08	(4,456)	130,937
Loan, Cecil Russell 45-1	02-May-08	(5,000)	125,937
Expense	06-May-08	(7)	125,930

Example 3

	Date	Deposit/(Payment)	Account Balance
Loan, Livio, 42-A	06-May-08	(2,100)	123,830
Payroll	07-May-08	(8,059)	115,771
Peter	07-May-08	(30,000)	85,771
Expense	08-May-08	(140)	85,631
Expense	08-May-08	(602)	85,029
Expense	09-May-08	(763)	84,267
GWL Benefits	09-May-08	(2,083)	82,184
Expense	12-May-08	(157)	82,027
Expense	12-May-08	(211)	81,816
Expense	12-May-08	(475)	81,341
Deryl	12-May-08	(1,132)	80,209
Loan, Pynn 109G	12-May-08	100,000	180,209
Visa	12-May-08	(20,187)	160,021
Expense	13-May-08	(307)	159,714
Loan, Deluca 111A	20-May-08	2,000,000	2,159,714
Mander	20-May-08	(2,000,000)	159,714
Payroll	21-May-08	(8,059)	151,655
Expense	22-May-08	(105)	151,550
Expense	29-May-08	(300)	151,250
Loan, Mapceviao 112A	30-May-08	300,000	451,250
Expense	30-May-08	(407)	450,844
Interactive Brokers	02-Jun-08	(300,025)	150,819
Expense	02-Jun-08	(23)	150,796
Expense	02-Jun-08	(2)	150,794
Expense	02-Jun-08	(1)	150,794
Payroll	04-Jun-08	(8,059)	142,735
Peter Sbaraglia	05-Jun-08	(25,000)	117,735
91 days - Rent	06-Jun-08	(2,650)	115,085
91 days - Rent	06-Jun-08	(4,456)	110,629
Expense	09-Jun-08	(674)	109,955
Peter Welsh	09-Jun-08	(2,151)	107,804
Peter Welsh	09-Jun-08	(5,793)	102,011
Expense	10-Jun-08	(25)	101,986
Expense - Sunview Press	11-Jun-08	(2,503)	99,483
Loan, RS Cap, 114C	12-Jun-08	75,000	174,483
Expense	13-Jun-08	(150)	174,333
GWL Benefits	16-Jun-08	(1,791)	172,541
Expense	17-Jun-08	(192)	172,349
Expense	20-Jun-08	(1)	172,349
Payroll	20-Jun-08	(8,059)	164,290
Expense	24-Jun-08	(7)	164,284
Expense	24-Jun-08	(77)	164,206
Expense	24-Jun-08	(109)	164,098
Expense	24-Jun-08	(223)	163,874
91 days	24-Jun-08	(2,000)	161,874
Pero Assets Inc.	24-Jun-08	(5,833)	156,041
Visa	24-Jun-08	(9,417)	146,624
Expense	26-Jun-08	(483)	146,141
Expense	26-Jun-08	(483)	145,658

Example 3

	Date	Deposit/(Payment)	Account Balance
Expense	26-Jun-08	(483)	145,175
BLG	26-Jun-08	(567)	144,608
BLG	26-Jun-08	(1,323)	143,285
Loan, C. Russell, 44J	26-Jun-08	(15,000)	128,285
Expense	30-Jun-08	(783)	127,503
Payroll	02-Jul-08	(8,060)	119,442
91 days - Rent	02-Jul-08	(2,650)	116,792
91 days - Rent	02-Jul-08	(4,456)	112,336
Expense	02-Jul-08	(25)	112,311
Expense	02-Jul-08	(1)	112,310
Expense	02-Jul-08	(0)	112,310
Peter Sbaraglia	03-Jul-08	(20,000)	92,310
Loan, Bruce, 117H	07-Jul-08	70,000	162,310
Expense	08-Jul-08	(25)	162,285
Expense	08-Jul-08	(274)	162,011
Stinger Humphrey LLP	08-Jul-08	(2,405)	159,606
Tonin	08-Jul-08	(4,305)	155,301
Tonin	08-Jul-08	(7,298)	148,004
Expense	09-Jul-08	(391)	147,612
Expense - GWL Benefits	10-Jul-08	(1,791)	145,821
Expense	11-Jul-08	(480)	145,341
Expense	15-Jul-08	(374)	144,967
Expense	15-Jul-08	(340)	144,627
Payroll	16-Jul-08	(8,071)	136,556
Mand Assets Inc.	18-Jul-08	300,000	436,556
Expense	21-Jul-08	(150)	436,406
Expense	21-Jul-08	(483)	435,923
Expense	21-Jul-08	(595)	435,328
Expense	22-Jul-08	(26)	435,302
Peter Welsh	22-Jul-08	(1,453)	433,849
Expense	22-Jul-08	(13)	433,836
Loan, Vand, 47A	23-Jul-08	(15,000)	418,836
Loan, Amato, 52A	23-Jul-08	(312,500)	106,336
Expense	24-Jul-08	(425)	105,911
Expense	25-Jul-08	(7)	105,904
Expense	25-Jul-08	(136)	105,768
Expense	25-Jul-08	(145)	105,623
Expense	25-Jul-08	(386)	105,237
Visa	25-Jul-08	(12,460)	92,776
Loan, Gary 51B	25-Jul-08	(55,200)	37,576
Expense	28-Jul-08	(150)	37,426
Expense	30-Jul-08	(783)	36,644
Payroll	30-Jul-08	(8,059)	28,585
Expense	01-Aug-08	(26)	28,559
Expense	01-Aug-08	(2)	28,556
Expense	01-Aug-08	(0)	28,556
91 days - Rent	06-Aug-08	(2,650)	25,906
91 days - Rent	06-Aug-08	(4,456)	21,450
EMB	08-Aug-08	1,000,000	1,021,450

Appendix “F”

C.O. Capital Growth Corp. ("CO Capital")
Schedule of Receipts and Disbursements
January 9, 2006 to July 26, 2010
(Unaudited; \$C)

	Note	Receipts	Disbursements	Net
Loans received from and paid to investors	1	21,224,924	(13,128,777)	8,096,147
Mander Group	2	18,682,339	(15,344,080)	3,338,259
Pero Assets Inc.	3	640,000	(3,337,900)	(2,697,900)
The Sbaraglias	4	97,438	(2,284,594)	(2,187,156)
Brokerages	5	2,717,803	(5,147,412)	(2,429,608)
Atlas Global Financial Services	6	-	(1,824,731)	(1,824,731)
General expenses	7	-	(984,718)	(984,718)
Capital Market Technologies Inc.	8	-	(435,484)	(435,484)
Mand Assets Inc.	9	500,000	(913,000)	(413,000)
91 Days Hygiene Inc.	10	-	(213,634)	(213,634)
Visa	11	-	(327,810)	(327,810)
Unknown	12	548,190	(337,653)	210,537
Adjustment, bank	13	119,800	-	119,800
Carta Solutions	14	-	(149,644)	(149,644)
Mountainview Asset Management Inc.	15	-	(56,250)	(56,250)
1516412 Ontario Inc.	16	-	(37,770)	(37,770)
		<u>44,530,494</u>	<u>(44,523,458)</u>	<u>7,037</u>

C.O. Capital Growth Corp. ("CO Capital")
Schedule of Receipts and Disbursements
January 9, 2006 to July 26, 2010
(Unaudited; \$C)

General Notes:

1. This schedule of receipts and disbursements was prepared based on bank account information provided by RBC and HSBC. The RBC account statements were provided for the period from inception of the accounts to March 5, 2010. The HSBC account statements were provided from inception of the account to the period ending July 26, 2010.
2. US dollars are converted to Canadian dollars at par.

Specific Notes:

1. Total loans received from investors and repaid to investors.
2. Funds received by CO Capital from Robert Mander and his companies ("Mander Group"). Does not include funds received by the Sbaraglias directly from the Mander Group.
3. Funds paid to and received from Pero Assets Inc. ("Pero"). Includes transactions prior to and after the transfer of shares of Pero to Thomas Obradovich.
4. Net funds withdrawn personally by the Sbaraglias (including by their professional corporations, excluding 91 Days).
5. Funds transferred to and received from CO Capital brokerage accounts (Interactive Brokers, Questrade and TradeFreedom). Reflects a loss in the trading accounts, i.e. more funds were transferred to the brokerages than were returned from the brokerages.
6. Funds transferred from the CO Capital bank accounts to the Atlas Global Financial Services.
7. General expenses paid by CO Capital.
8. Payments made for the purchase of shares of Capital Market Technologies Inc.
9. Net funds transferred to and received from Mand Assets Inc.
10. Net payments to and from 91 Days Hygiene Inc. ("91 Days"), including "loans" between CO Capital and 91 Days and payments to 91 Days in respect of rent.
11. Payments in respect of RBC CO Visa credit cards.
12. Unidentified receipts and disbursements.
13. Unknown credit adjustment reflected on the bank statement.
14. Payments to Carta Solutions for the purchase of shares in Carta Solutions.
15. Payments to Mountainview Asset Management Inc.
16. Payments to 1516412 Ontario Inc. Paul Maines is shown as a director of this company on the corporate profile.

Appendix “G”

C.O. Capital Growth Corp.
Schedule of Visa Charges
April 7, 2007 to June 4, 2010
(Unaudited; \$C)

Type of Expenditure	Notes	Peter Sbaraglia	Mandy Sbaraglia	Robert Mander	Total
Restaurants	1	66,371	19,977	6,578	92,926
Other	2	27,354	3,435	338	31,128
Technology	3	24,954	-	3,581	28,535
Infinata Inc.	4	28,071	-	-	28,071
Bell		19,737	1,673	-	21,410
Complete It Presentation	5	17,675	-	-	17,675
Renovations	6	11,874	4,726	-	16,600
Airlines	7	9,855	6,270	-	16,125
Artwork		15,023	-	-	15,023
Wine and LCBO		11,726	178	-	11,903
Limo and taxi services		10,759	-	-	10,759
Business/Office Depot		8,482	1,328	-	9,811
Reuters Datalink	8	8,028	-	-	8,028
Other general business expenses	9	5,397	1,038	1,130	7,565
Financial Trading Inc.		6,917	-	-	6,917
Best Buy and Future Shop		5,489	1,334	-	6,823
Clothing	10	5,555	599	-	6,155
Entertainment and other personal charges	11	3,686	2,096	-	5,783
Cogeco Cable System	12	4,945	-	-	4,945
Spa	13	3,790	756	-	4,546
Esignal	14	4,058	-	-	4,058
Rogers		2,989	854	-	3,844
UPS		3,328	101	-	3,429
Exchangemymail.com	15	2,874	461	-	3,335
Hotels		3,298	20	-	3,317
Toronto Stock Exchange		1,780	-	-	1,780
Gas		1,323	74	-	1,398
Flowers		903	34	-	937
Movies		733	151	-	883
Parking		774	10	-	784
Amazon and other book stores		722	-	-	722
Pitney Bowes		692	-	-	692
Other travel related expenses		280	357	-	638
Babytel	16	341	134	-	475
Toys "r" Us		246	26	-	272
Dry cleaners		55	149	-	204
Total		320,087	45,781	11,627	377,495

C.O. Capital Growth Corp.
Schedule of Visa Charges
April 7, 2007 to June 4, 2010
(Unaudited; \$C)

1. Restaurants, include but are not limited to, Auberge du Pommier, Bymark, Morton's Steakhouse, One, Hy's Steakhouse, Queue de Cheval and Harbor Sixty Steakhouse. Average weekly restaurant charges are approximately \$600.
2. Includes items that appear to be non-business related, including but not limited to, moving expenses, lock services, aquarium related expenses, philanthropic donations, lottery tickets and purchase interest.
3. Includes system related expenses. Vendors include TJPS Software, User Friendly Systems and Symtech Canada.
4. Infinata Inc. is a provider of business intelligence and marketing analytics solutions to the global financial services industry.
5. Complete It Presentation is a provider of home theatre and audio systems.
6. Renovations include expenses related to home decorations, furniture, hardwood flooring and lighting. Vendors include Classic Cool Décor, Raymar Lighting and Madeira Hardwood Flooring.
7. Over the course of the period it appears that various trips were taken, including to Denver Colorado, Montreal, Calgary and London England.
8. Reuters Datalink is a provider of technical financial data.
9. Includes items that appear to be business related. The most significant expense included in this category was a payment of \$4,673 to Commercial Sales Group (in British Columbia), which appears to be a subsidiary of Best Buy that specializes in digital signage. Other vendors included in this category are Fastsigns, Arvato Office Ready and JET Business Forms.
10. Clothing includes purchases from Holt Renfrew, M for Men, Bloomingdales and Lululemon Athletica.
11. Entertainment and other personal charges include all expenses that appear to be of personal nature that were not included in the "other" category referred to in note 2 above. Charges include Cirque du Soleil, the ROM, Bath & Body Works, and HMV.
12. Cogeco Cable System is a communications company that provides television, phone and internet services. Charges refer to Burlington. It is unknown if these charges were for a location in Burlington or if that is simply the way the Cogeco charges appear on the statement.
13. Spa expenses were incurred at various spas throughout the Greater Toronto Area, including Verity, the Spa at the Old Mill and Rosewater Spa.
14. Esignal is a provider of real-time financial and market information.
15. Exchangemymail.com is a host for email and blackberry services for individuals and businesses. Specifically, it hosts Microsoft Exchange email.
16. Babytel is a home phone service provider.

Appendix “H”

C.O. Capital Growth Corp.
Schedule of Expenses
January 9, 2006 to July 26, 2010
(Unaudited; \$C)

Type of Expense	Amount
Payroll, benefits and government remittances	(363,729)
Other expenses	(175,509)
Complex Interior Designs	(89,699)
Other renovation costs	(86,068)
Wishware/Deryl Ward (IT)	(78,821)
BLG LLP (legal)	(32,904)
Peter Welsh (legal)	(33,769)
Kimberly Gadwah (employee)	(28,521)
Kenneth Isaac Architect	(24,725)
Peter Tonin (accounting)	(24,413)
User Friendly Solutions (computer system)	(18,421)
Aylesworth LLP (legal)	(14,635)
Sue Collings (employee)	(13,507)
	<u>(984,718)</u>

Appendix “I”

IN THE MATTER OF THE SECURITIES ACT

R.S.O. 1990, c.S.5, as amended

- and -

IN THE MATTER OF MANDER GROUP

PURPOSE: SECTION 13 EXAMINATION OF
PETER SBARAGLIA

HELD ON: Thursday, July 9, 2009

HELD AT: Ontario Securities Commission
20 Queen Street West
8th Floor
Toronto, Ontario

APPEARANCES:

MEHRAN SHAHVIRI For Staff of the Commission

DON PANCHUK

SEAN HORGAN

MICHAEL MILLER For Peter Sbaraglia

JULIA DUBLIN

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1 --- Upon commencing at 1:10 a.m.

2 PETER SBARAGLIA: Sworn.

3 EXAMINATION BY MR. SHAHVIRI, MR. PANCHUK,
4 and MR. HORGAN:

5 BY MR. SHAHVIRI:

6 1 Q. Today is July the 9th, 2009. We are
7 located at the Bay meeting room of the Ontario Securities
8 Commission, 20 Queen Street West.

9 The attendees today are
10 Mr. Peter Sbaraglia, spelled S-B-A-R-A-G-L-I-A,
11 Mr. Michael Miller of Aylesworth, Ms. Julia Dublin, also
12 of Aylesworth, Sean Horgan, counsel for the OSC,
13 Don Panchuk, investigator with the OSC, and speaker,
14 Mehran Shahviri, investigator with the OSC.

15 This is a compelled examination of
16 Mr. Sbaraglia for a summons served via counsel,
17 Ms. Dublin. That was served on June 23rd, 2009.

18 Mr. Sbaraglia, as you know, you have the
19 right to be represented by counsel, and I see you have
20 availed yourself of that right. Is it Mr. Miller or
21 Ms. Dublin that is representing you today?

22 MR. MILLER: Both.

23 MR. SHAHVIRI: All right. What I'd like
24 to do right off the bat, Mr. Sbaraglia, is show you a
25 copy of the section 11 order that was signed, which was

1 the basis for the summons that was served on you. You
2 are welcome to look at that. Once you've had a chance to
3 read it over, we will mark that as an exhibit.

4 MR. MILLER: He received that.

5 MR. SHAHVIRI: That's the section 11
6 order, not the summons.

7 MR. MILLER: I'm sorry. Okay. That's
8 fine. Can we have a copy of that?

9 MR. SHAHVIRI: Yes, in due course. So the
10 section 11 order is being marked as Exhibit 1.

11 EXHIBIT NO. 1: Section 11 order.

12 MR. SHAHVIRI: The second item I would
13 like to show you, Mr. Sbaraglia, is again a copy of the
14 summons that was served on you by Ms. Dublin. And I
15 understand you have a copy of that. But if you'd like to
16 look at this, you can confirm that this is, in fact, a
17 copy of the summons that was served, including the
18 covering letter.

19 MR. MILLER: Yes. Thank you.

20 MR. SHAHVIRI: I'm going to mark a copy of
21 the summons as Exhibit 2.

22 EXHIBIT NO. 2: Summons.

23 BY MR. SHAHVIRI:

24 2 Q. Before we begin, Mr. Sbaraglia, can
25 you tell me if there is anyone else that is aware of your

1 attending here today besides your counsel?

2 A. My wife.

3 MR. MILLER: Robert Mander is also aware
4 of it.

5 MR. SHAHVIRI: And on what basis would he
6 have been advised of this particular examination?

7 MR. MILLER: Part of the assets are
8 intertwined. He was given a section 11 at the same time.
9 They are somewhat related. And they, in fact, were both
10 going to come on the same day, but just didn't turn out
11 that way.

12 MR. SHAHVIRI: I just wanted to get that
13 on the record.

14 MS. DUBLIN: If you recall, we talked
15 about the conceptual difficulties between ourselves --

16 MR. SHAHVIRI: I recall that. My reason
17 for asking was to make sure that was on the record.

18 BY MR. SHAHVIRI:

19 3 Q. Mr. Sbaraglia, could we start, please,
20 with your full name, address, phone number, and date of
21 birth?

22 A. Sure. It's Dr. Peter Sbaraglia,
23 November 8, 1964. And my present address is
24 105 Brant Street, unit 2.

25 4 Q. Phone number, please, and date of

1 birth.

2 A. 905-845-4342. And like I said,
3 November 8, 1964.

4 5 Q. And could we start, please, with your
5 current employment?

6 A. I'm not sure what the title is of it.
7 I look for value in investing, and I run a little --

8 MR. MILLER: You are employed, working
9 with C.O., right?

10 THE WITNESS: Yes.

11 BY MR. SHAHVIRI:

12 6 Q. And your title with C.O.?

13 A. President.

14 7 Q. President. We will get into what you
15 do at C.O. in due course. Prior to working at C.O., were
16 you in the same line of work?

17 A. I was in something else. I was a
18 dental anesthesiologist.

19 MR. MILLER: I wonder if I can make a few
20 introductory statements here and give you some
21 information that may be of assistance to you.

22 MR. SHAHVIRI: Sure.

23 MR. MILLER: If I can give you these
24 books, I have three volumes. And in it, there are some
25 of the things that I'm going to touch on just for a

1 moment, which has some information that may be helpful to
2 you. But I wanted to give you some background.

3 If you look at tab 1 of that book, this is
4 what's called a introductory note. Up until 2006,
5 Dr. Sbaraglia and his wife, Mandi, were both practicing
6 dentists, he as an anesthesiologist and she as a
7 periodontist.

8 And they started investing on their own.
9 And they were doing that, and they came across
10 Robert Mander. They were working with him and saw him
11 work. And what they decided to do, because their
12 investments on their own became so successful -- they
13 decided to stop work as practicing dentists in their two
14 specialties and go into this.

15 So if you look at tab 2, it's a
16 curriculum vitae of Dr. Sbaraglia and sets out his
17 degrees, his diplomas, and where he's been in the past to
18 where he is today. So that may help you with those
19 questions.

20 MR. SHAHVIRI: Okay.

21 MR. MILLER: If I can, just as an
22 overview, before you get into the specifics, tell you
23 that as a result of investing in different types of
24 things, he and his wife were quite pleased with the
25 results. They were -- as I'm sure you can imagine, as an

1 anesthesiologist and a periodontist -- making significant
2 incomes, but decided to give this a try.

3 They stopped their professional practices
4 to do this, and they incorporated the company
5 C.O. Capital. C.O. stands for the two initials of his
6 two children. And it was set up just for themselves.

7 But when he stopped working and his wife
8 substantially slowed down working, different dental
9 offices that he had worked with said, how come you are
10 stopping? You are making a ton of money. And why would
11 you quit at such an early age with all your degrees and
12 work?

13 And when he said, well, I have started to
14 do investing on my own, they started to ask could they
15 invest with him. That's how it came about. This was not
16 before 2006, but started in 2006.

17 And as a result of that and not being
18 aware of what he could and could not do, they retained
19 the law firm of Borden Ladner Gervais for legal advice,
20 how do we go about doing this. And that information is
21 all set out at tab -- I think it starts at tab 11.
22 That's the correspondence. Where is the --

23 MS. DUBLIN: There's the basics at 7, give
24 the general idea. And then a lot of documentation, the
25 ongoing relationship and advice given and sought appears

1 again at tab 11.

2 MR. MILLER: So they go to Borden Ladner
3 and say, family and friends want to do what we're doing
4 with us. And how do we do it? And the long and the
5 short of it -- or the short of that story is \$47,000 in
6 legal fees later, they're told that the method that C.O.
7 is using now is the valid and correct method of how to go
8 about doing what they're doing.

9 So we're starting with these are people
10 who have not been in the investment community, not
11 reached out to the public, have not ever done anything
12 like this before, but are professional people and go to
13 one of the better law firms in Canada and say, how do we
14 do it? We have got the accounts here, I think.

15 MS. DUBLIN: We do.

16 MR. MILLER: We do. You will see they
17 paid \$47,000 for the advice to set up the very system
18 that they have set up. They were at all times, as far as
19 investors go, naive. They weren't looking to be in any
20 business of any kind, but friends came to them.

21 They were doing well. People don't give
22 up two professional practices like that and do something
23 like this without getting some attention from their
24 friends who say, how come you're not doing this anymore.
25 So they said, please, do something with our money.

1 As a result of meeting with Borden Ladner
2 over several months period, the plan is set by Borden
3 Ladner that they will borrow money. People will lend
4 them money. And then they are free to do whatever they
5 want with that money.

6 They would have bona fide loan agreements.
7 And the interest rates were ridiculously high, it would
8 seem to most of us. They were 25 and 30 percent. And
9 they would have a finished date. Most of them were
10 one-year terms. Some were two. Some were three-year
11 terms.

12 So someone gave them \$10,000. They got a
13 promissory note for \$12,500 due in a year. And that's
14 what they thought was totally appropriate. They thought
15 that because the stuff that we're going to show you from
16 Borden Ladner basically said that.

17 And specifically, we have Borden Ladner's
18 initial reporting letter which is here and how they can
19 go about setting up their business. But if you turn in
20 tab 7 to -- I would say about six or seven pages in --
21 there's an e-mail. It says page 1 of 1 on the top. And
22 it says Peter and Mandi. Do you see that? It's an
23 e-mail, January 9th, '07.

24 So what happens is Richard Austin from
25 Borden Ladner -- finally, this is the fruition of the

1 plan. I hope you had a merry Christmas. I have attached
2 the following: a loan agreement, certificate of
3 accredited investor, loan statement, and receipt.

4 Those are the documents that they now are
5 told -- you can take these documents, and if your friends
6 want to lend you money for you to do whatever you want
7 with it and give them back more money, that's fine. So
8 that's the system that they had thought was fine. That
9 was the system that Borden Ladner told them was fine.

10 If you go in about another 8 or 9 or 10
11 pages, you will see an e-mail of January 30th of '07. It
12 says at the top, subject re: one more thing. You see
13 that? That's Tuesday, January 30th, '07. And it says,
14 the loan agreement.

15 And you will see they talk about -- this
16 is the system. The loan agreement is structured such
17 that the lender must give at least 45 days notice in a
18 specified form if he wants his money back at the end of
19 the one-year term. They talk about new co. and the
20 lender throughout.

21 And if you look at the next paragraph,
22 this is in response to an e-mail that Peter -- there's
23 lots of e-mails back and forth from Peter to
24 Richard Austin, talking about the technical aspects of it
25 in different wording. But Richard Austin of BLG says:

1 "I have concerns regarding the phrasing
2 'we need three to four weeks to zero an account for those
3 clients who want out.' First, the relationship between
4 the lender and new co. is that of a debtor/creditor, and
5 the creditor is not a client of new co.

6 "New co. is not supplying any services.
7 A good standing lender only promises to repay principal
8 and accrued interest in accordance with the terms of the
9 loan agreement. The loan agreement as drafted gives
10 new co. 45 days to liquidate its assets and raise funds
11 to pay the lender back.

12 "New co., as I understand it, is not
13 providing investment management services to any lender,
14 and the terminology 'zero' and 'account' seems to suggest
15 something to the contrary. New co. is managing its own
16 money, not that of the lenders, and this must be clear in
17 the minds of all involved."

18 So the system that Borden Ladner tells
19 C.O. and Mr. Sbaraglia -- Dr. Sbaraglia, Peter -- is you
20 will give them a promissory note. They will lend you
21 money. And then that's it.

22 They're not investing with you. You're
23 not investing for them. You're simply borrowing money
24 and doing whatever you want with it. That is the basis
25 of what they have done.

1 If you look at tab -- honestly, I'm not
2 going to be too much longer. I just want to highlight --

3 MR. HORGAN: It's helpful.

4 MR. MILLER: If you turn to tab 11, which
5 is entitled Borden Ladner Gervais ongoing correspondence,
6 and go in six pages to January 16th, '07, this is -- when
7 Dr. Sbaraglia came to us, we went to Borden Ladner and
8 said, may we please have the full file, so we would
9 understand.

10 What you are looking at now is an internal
11 memo in Borden Ladner. It's not something that is
12 between Dr. Sbaraglia and them. But you see at the
13 bottom, it's to Paul Findlay -- name you may know. And
14 Richard Austin is writing him. They're talking about the
15 Momentas decision. And they're saying:

16 "During a brief telephone conversation
17 yesterday afternoon" -- which they say who was in it,
18 Findlay, McGrade, and Austin -- "you mentioned a case you
19 thought was on point.

20 "I thought it was called Momentas. Is
21 this correct? The library couldn't find anything in the
22 OSC bulletin. Before I go through the bulletins one by
23 one for the last few years, I thought I'd better check
24 with you."

25 So they have the correct name. So they're

1 thinking internally on this file, is this an example of a
2 problem. I don't have to tell you about the Momentas
3 case. You know there was fraud involved. It was
4 something that -- I understand there was fraud involved.
5 I'm not giving evidence to that.

6 But they're wondering whether there's a
7 connection between the scheme -- the setup that
8 Borden Ladner is telling Dr. Sbaraglia you can do and
9 Momentas. And you can see -- if you go in a whole bunch
10 of pages, it says 4 of 17 at the bottom. As you flip
11 through, it's about 10 or 15 pages in.

12 At the top, it's an e-mail. It says
13 Peter and Mandi. It's from Richard Austin,
14 January 23rd --

15 MS. DUBLIN: They actually had included
16 copies of the Momentas decision in that file. And
17 once you plow through the copies of the two Momentas
18 pieces, this is the next communication we have to Peter
19 from BLG.

20 MR. MILLER: So it's April 17, I guess,
21 2007, page 1 of 1. It's not. It's page 4 of 17. But
22 it's an e-mail January 23rd. Now, he is talking to
23 Peter. This is subsequent to him considering Momentas.
24 And it says:

25 "Peter, I have attached a revised loan

1 agreement, statement of account, final statement of
2 account, notice of demand for payment, and revised
3 accredited investor certificate.

4 "I have tried to make things as simple as
5 possible for you from an ongoing operational perspective
6 in light of my understanding that you intended to cap the
7 business at about \$20-million. I tried to keep you away
8 from needing to issue an offering memorandum to minimize
9 initial and ongoing legal fees."

10 So I don't think he was successful at
11 minimizing legal fees because, as I say, they ended up at
12 \$47,000. But he's considering what he's proposing to us
13 to do, having considered other cases, having talked to
14 other people in around his office.

15 And now, as January 23rd comes around,
16 he's saying, here's your revised documents. Go ahead and
17 do this plan. Keeping in mind, please, the plan was not
18 one devised by our client. It was one that came from
19 legal advice, what should we do about this.

20 And then if you go on, there are the
21 documents, the loan agreements and other things that
22 Borden Ladner sends. But there's another Peter and Mandi
23 one. It says at the top, page 1 of 3. And this is
24 February 9th.

25 You can see, by this time, Richard Austin

1 is obviously quite friendly with Dr. Sbaraglia. The last
2 e-mail I showed you said Pierre/Peter. This is
3 Peter/Pedro. I guess that's what Richard thought was
4 humor. But anyway, he says:

5 "I will try calling you in the afternoon
6 around 2 o'clock. I will be in on Sunday around 11 until
7 about 5 if that's better for you."

8 Then he says:

9 "Regarding the scenarios you've set out,
10 the greater the number, the greater the complexity of the
11 documentation and chance for error. The following are my
12 suggestions as to scenarios that can be addressed without
13 adding a lot of complexity."

14 So knowing the scheme, here's what he's
15 talking about. And here, there's discussion about --
16 he's talking -- number 1, whatever it is, was done.
17 Number 2, he's talking about securities regulators.

18 There was questions here about -- if
19 someone lent C.O. \$150,000 and then wanted to again lend
20 more money, did the next tranche have to be 150,000, or
21 could it be less? I think he sort of comes to the
22 conclusion it had to be 150,000.

23 But he's addressing -- this has been going
24 on since December. It's now February. And it's going
25 on. And there was a question -- the Sbaraglia's had some

1 of Dr. Sbaraglia's -- Peter's mother's money. And there
2 was a question if she wasn't giving 150,000, how they
3 deal with that. But it's all on everyone's mind.

4 And if you continue through, there's
5 another form and some other stuff. If you go to a Peter
6 and Mandi e-mail, February 16th, find that. It's from
7 Richard Austin. And he says:

8 "Peter, I'm happy to do whatever you
9 want, provided, of course, that if it is contrary to
10 legal requirements in my judgment, that I bring these
11 points to your attention. I will not recommend taking a
12 course of action or admitting to do something that's
13 illegal."

14 So the client believes that whatever he is
15 doing, whatever has been recommended is certainly fine.
16 And again, three paragraphs down, there's just a two-line
17 paragraph:

18 "I have tried to limit the number of
19 different documents where possible for ease of
20 administration."

21 And then a few more pages -- just a few
22 more pages by -- I think about four pages by -- there is
23 another Peter and Mandi heading. And this is an e-mail
24 February 25th from Richard. And the first paragraph
25 says:

1 "Peter, I quickly reviewed the file and
2 the private issuer exemption."

3 What you will see, if you went through the
4 trouble of reading all this, Dr. Sbaraglia actually
5 brings up to Richard -- I have heard these words, private
6 issuer. Is that something that I should be thinking
7 about or can do or should do, or what does it mean? And
8 he says:

9 "I quickly reviewed the file" -- which is
10 obviously their file -- "and the private issuer exemption
11 is discussed in my letter of December 15th" -- that was
12 the very first letter we talked about -- "and should give
13 you the exemption you need for your mother and other
14 close relatives and associates. I suspect this was what
15 your friend was referring to."

16 So even when Peter brings it to his
17 attention, I have heard something from a friend, am I
18 okay? And the answer is, I have gone through your file;
19 you're okay.

20 And if you just turn to the next page,
21 which is page 2 of 3, I think this is -- at the bottom
22 paragraph is what Peter is asking Richard. And he says:

23 "The only two things are now talking to a
24 friend that's in a business not dissimilar to my own, he
25 said that beyond the accredited investor exemption, the

1 \$150,000 minimum investment exemption, that there's also
2 one for friends and family."

3 Obviously -- and I say with all respect to
4 Dr. Sbaraglia who is very well educated -- he doesn't
5 know what he's talking about when it comes to
6 requirements, and he's reaching out to the lawyer.

7 And in the answer which started on the
8 next page -- just go up to the second paragraph of the
9 page we are on. Second paragraph says:

10 "Peter, I enjoyed working with you on this
11 and wish you and Robert the best of luck with this
12 venture."

13 So there's nothing -- by the way, guys,
14 you're doing something that may be wrong, or you should
15 get legal advice, or you could have a problem with the
16 OSC, or you could end up, on July 8th, at an OSC meeting.

17 So as a result, they go along, borrow
18 money from people who come to them. No advertisements.
19 There's nothing in any newspapers. There's not them
20 reaching out.

21 They haven't called one person and said,
22 do you want to give us money. They haven't done anything
23 except to friends and family who have contacted them and
24 said, I hear what you're doing; can I give you some money
25 and you give me back some money. They say, sure.

1 So that's the background of where he is.
2 And just a couple more things, and then, honestly, I will
3 stop.

4 There's one on February 27th from Richard.
5 So it's February 27th. It says Peter and Mandi at the
6 top, and it's page 1 of 1. And the bottom part -- were
7 you able to find it? Sort of looks like this.

8 MR. SHAHVIRI: Yes, I have got it.

9 MR. MILLER: You have got it? And at the
10 bottom paragraph, which Dr. Sbaraglia has asked me to
11 read to you, he's writing:

12 "Thanks for everything. I enjoyed working
13 with you. In fact, I would like to continue working with
14 you in terms of us maintaining ongoing compliance if the
15 Securities Commission changes rules. Could we pay your
16 retainer now or something like that? If you would let me
17 know, I would appreciate it."

18 So at the end of the plan that they have
19 set up and paid for and organized, we have got
20 Dr. Sbaraglia saying, if there's changes with the law,
21 let me know. In fact, I will offer to give you monthly
22 money just to tell me if there's something I should be
23 doing differently.

24 So that's the position that he established
25 for himself. So that's the background of how they got in

1 the business. And that's sort of -- not sort of --
2 that's who they are.

3 I just want to give you a few more
4 highlights of this book, so you can understand what's in
5 it. Firstly, no one has ever asked for any money back
6 that hasn't gotten money back. I just want to be clear.

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

12 And we have got a list of what money we
13 have and when it matures and what's owing. And we have a
14 list of what assets. So aside from this background,
15 there are, give or take, available to this group about
16 \$12-and-a-half-million in assets.

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

22 We have listed the assets that the company
23 and they personally have in here, and I will show you
24 where they are. And we have listed the amounts of money
25 owing and payable. So there's more -- the plan that they

1 have come up with with the proper legal advice is
2 properly funded. So no one is at risk. No money is at
3 stake here. So we wanted you to know there's sufficient
4 assets.

5 And if you look at tab 6, this is a list
6 of what people got paid back in '08, which totaled
7 \$4,064,000. And in '09, this has been paid back.

8 THE WITNESS: Whatever the date is, yeah.

9 MR. MILLER: This has been paid back to
10 people as the money has come due.

11 MR. SHAHVIRI: Sorry, Michael. Just to
12 make sure I understand, the second page in on tab 6, if I
13 am reading this correctly, if I have understood you
14 correctly, is \$4-million -- just over \$4-million was paid
15 back in terms of comprising principal and interest?

16 MR. MILLER: In '08.

17 MR. SHAHVIRI: In '08 alone.

18 MR. MILLER: And the third page is what's
19 been paid back in '09.

20 MS. DUBLIN: And at tab 5 is what is still
21 in the future.

22 MR. MILLER: So if you look at the second
23 page of tab 5, you will see in '09, there are dates on
24 the left, the maturation dates and the principal amount
25 that was borrowed, plus the interest rate that was

1 promised to be paid back. There is \$2,400,000 to be paid
2 back in '09. And on the next page, you will see there's
3 \$6,700,000 of principal and interest to be paid back in
4 '10. And in '12, there's 1,400,000. So there's a total
5 of 10,600,000 to be paid back.

6 At tab 8, it shows some bank accounts and
7 different things that show some money. It shows some
8 venture -- there's a page entitled venture after some
9 bank statements and some share certificates.

10 At tab 9, you will see some specific
11 shares and some details of some properties. And about
12 seven pages in, there's a heading personal -- this is on
13 tab 9 -- personal real estate holdings of Dr. Sbaraglia.
14 You will see that property with some opinions as to the
15 value.

16 And at tab 10 is assets of Robert Mander.
17 Robert Mander is holding this in trust for this venture.
18 At tab 11, there's a whole bunch of correspondence for
19 your records with Borden Ladner. And one of the tabs
20 that I missed -- I think I covered the tabs.

21 Now, finally -- I'm sure you are happy to
22 hear me say that. But finally, prior to receiving your
23 section 11, it was clear to Dr. Sbaraglia that he wanted
24 to do things differently. He didn't think this was the
25 best way for him personally to build the career for the

1 rest of his life and had stopped taking in money -- not
2 because of any problem, not because of the OSC.

3 But their movement is to go with -- turn
4 all the money as it comes due either back to the people
5 or have people roll it over to an appropriate brokerage
6 house. And they have got all sorts of plans to do that.
7 Some of the money is not due, so it's not being turned
8 over.

9 But if it gives any comfort to this table,
10 he's not in this business anymore. But he is very
11 actively in this business with five employees working
12 this business, but they're not taking in anymore new
13 money. But they stopped taking in new money before this
14 happened, and they have started a whole plan of how
15 they're going to do this.

16 Peter is going to take courses. He's
17 going to become registered and do all sorts of stuff.
18 Because as he has come along, he realizes that there's a
19 lot more to this world that he's opened up than he was
20 aware of and that he knew of 2007.

21 We're dealing with -- and I'm saying
22 this -- what I believe to be good people who have, in
23 their minds, done nothing inappropriate, who are
24 well-secured with the money, who have happy clients as
25 far as we know.

1 When you read the correspondence, there's
2 all sorts of stuff from Richard Austin of BLG saying,
3 don't tell these lenders where you are investing the
4 money because then they'll think they're investors, not
5 lenders. They end at loaning you money. That's where it
6 ends.

7 So what you do with the money is your
8 business. It's not their business. Because if you
9 tripled it, they don't get triple. And if you lost it,
10 they still get their money. Because they just lent you
11 money.

12 As a result of all that, their books and
13 records aren't the type of books and records that you
14 would like to see from someone that's taking money in
15 from the public because they weren't taking money in from
16 the public. They were taking money in from their friends
17 and family.

18 And as far as they were concerned, then it
19 was their money. All their assets -- everything they
20 have worked for in their life is on the line. They know
21 that. That was the deal. And they don't have a problem
22 with that.

23 So that's sort of what I wanted to give
24 you a feel of. We're not dealing with people who came up
25 with a great scheme to take money from the public and not

1 pay it back. They're not here saying we don't have any
2 money, and one day I'm going to pay it back. They have
3 got assets and money, and they are going to pay it back,
4 but it's not due.

5 And they wouldn't have the normal books
6 and records that a brokerage or somebody is supposed to
7 have because they're not reporting to anybody, in their
8 minds. So that's sort of -- they're nice guys is what
9 I'm saying. On the record, I am saying it. So now, he's
10 here to answer what --

11 MR. SHAHVIRI: Okay. Thanks. Again,
12 before I get into specifics, I think you have covered, to
13 some extent, the two broad areas that are of concern to
14 us.

15 One is the registration issue, which I'm
16 not a securities lawyer, but I think staff will address
17 that issue once we have taken a closer look at the
18 materials from Mr. Austin and other documents that we
19 have.

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

1 MR. MILLER: That's great. I imagine
2 everyone in trouble sits across from you and says,
3 whatever I have to do to make it right, I'll make it
4 right.

5 MR. HORGAN: Surprisingly, a lot of people
6 don't.

7 MR. MILLER: Okay. Well, they should.
8 But in any event, whatever ultimately -- if the plan that
9 BLG has given us is not in keeping with what you people
10 think it should be, and you say here's what you have to
11 do because this is no good, then we intend to do that.

12 Number 2, with the money, I don't think
13 today, in this book, you have all the answers you want to
14 have. What we wanted you to know is we will get you what
15 you need to know.

16 But you have to understand the reason we
17 don't have it is because we didn't expect to be in a
18 position where we were reporting to anyone because it was
19 thought of as their money.

20 So whatever is required bookkeeping-wise,
21 we will provide. You will let us know, and we will
22 provide that. We're not going anywhere.

23 MR. SHAHVIRI: Okay. You have gone to a
24 lot of work. I'm sure it's been tedious and time
25 consuming and expensive to put this together, and I

1 appreciate that.

2 MR. MILLER: Not \$47,000.

3 MR. SHAHVIRI: Right. But having said
4 that, I think we were looking for something far simpler
5 and far more pedestrian in nature. We were simply
6 looking for the documents on the money side now that form
7 the basis of these schedules. And that would have
8 sufficed, to be honest.

9 I'm not saying you've wasted your time
10 because this gives us a nice overview. So again, in a
11 nutshell, given that our primary focus is the accounting
12 for the assets and getting a sense of what the
13 liabilities are -- I don't know whether you have these
14 with you today or not --

15 MS. DUBLIN: We have the loan agreements.
16 I think we have the loan agreements, both those that have
17 been paid out with the cancelled cheques and the loan
18 agreements that are yet to come. Now, we have only one
19 copy. It's a voluminous package. We can have it copied
20 it for you, or we can leave it with you.

21 MR. MILLER: Well, we have the loan
22 agreements for everything, not just the ones paid out.
23 We have the loan agreements for the money that people
24 have lent us. So you will be able to see 100 percent of
25 the money that has come in. And from that, you will see

1 what money has gone out and what is still owing.

2 MR. SHAHVIRI: Are there third party
3 documents? Again, for example, copies of the most recent
4 bank or brokerage statements that would back up the
5 numbers we are seeing at tabs 6 and 7.

6 MR. MILLER: Most of the money is not in
7 brokerage accounts. Most of it is in real estate.

8 MS. DUBLIN: That's right.

9 THE WITNESS: And venture.

10 MR. SHAHVIRI: And venture. Okay. So
11 what sorts of objective or third party documents would
12 exist to support?

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

18 They're personal assets of the
19 Sbaraglia's. They're in various corporate names with
20 Robert Mander. But the notion is these are all held or
21 traded to sustain the obligations to the lenders.

22 So you will see at tab 9, the venture was
23 two shareholdings. One is a company that's listed on the
24 Frankfurt Stock Exchange. This is the current trading
25 price as of today in euros, translated into -- it's a

1 sheet called venture. That's one of the investments.

2 The other in Carta Solutions, Peter, I
3 don't have a current market price because it's not
4 traded. It's a private issuer.

5 MR. PANCHUK: Sorry to interrupt you.
6 Which level of the Frankfurt Exchange?

7 MS. DUBLIN: I would guess the lowest
8 level, you know, that level. Because it's no longer an
9 OTC company. So these are high risk investments. On the
10 other hand, you will see it's not a huge sum.

11 And there is valuations and deeds for two
12 properties, one at 239 Church Street in Oakville, and an
13 opinion regarding the value of one of them. I think an
14 opinion is to be forthcoming about the value of the other
15 one.

16 THE WITNESS: We have it. I saw it in
17 here. That one was a lot, actually.

18 MS. DUBLIN: And you will see the
19 brokerage accounts and the bank accounts are at tab 8.
20 They're not significant sums, though. The largest bank
21 account is \$400,000. Because the sums aren't being held
22 in cash. They're being transformed mostly into real
23 estate -- or were.

24 And you will see the real estate holdings
25 are at tab 10. And that's where really the bulk of the

1 value is. It's in these properties that Robert Mander
2 acquired for the venture. And these are the current
3 ones. Of course, they have been buying and selling them
4 on an ongoing basis.

5 So when you add up the anticipated value
6 or the estimated market value of these properties and
7 the other assets, you have a figure that is in excess of
8 the 10-million that's owed. And a lot of it is real
9 estate.

10 MR. MILLER: We can get you -- we had
11 delayed, I think, one meeting because we're trying to get
12 together a package for you that makes you happy. We can
13 get you all the real estate documents, the registered
14 title and all that stuff. We can do all that, so you
15 will see that.

16 And we haven't gone out to hire appraisers
17 to do appraisals. Because if you don't require it, we
18 don't want to spend the money. If that's something you
19 decide you want to see, written appraisals, we will hire
20 appraisers to do.

21 MR. PANCHUK: Some type of audited
22 financial statements --

23 MR. MILLER: There isn't one. We can
24 provide one for you. That would probably take more than
25 ten days, though. But we can do that for you.

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

4 MR. MILLER: Yes, vast majority.

5 MR. SHAHVIRI: Plus there's about maybe
6 half a million in cash?

7 THE WITNESS: In cash. And then some
8 ventures.

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

12 MR. MILLER: So at tab 9, you will see
13 there's another -- where is the real estate at tab 9?

14 MS. DUBLIN: It's the personal holdings.
15 One is valued at 4-million. And the other --

16 MR. SHAHVIRI: Which tab is that?

17 MR. MILLER: It's tab 9. It's six pages
18 in.

19 MR. SHAHVIRI: I see. Yes.

20 BY MR. SHAHVIRI:

21 8 Q. Dr. Sbaraglia, I don't mean for you to
22 give away your proprietary trading secrets here. That's
23 not what I'm after. But I'm a little perplexed. If the
24 bulk of the assets are held in real estate --

25 A. Today.

1 9 Q. As of when, though? You know what I'm
2 getting at? Where does the 25 percent come from?

3 A. Can I speak --

4 10 Q. Sure. Absolutely.

5 A. Basically, what I do is I look for
6 value. And I'm not a trader of equities. I'm not a real
7 estate speculator. I'm not a developer. Really, all I
8 do is go around looking for things that are undervalued
9 greatly.

10 Component of that which is enormously
11 important -- many, many people tell me 25 percent is an
12 impossible number. And in a certain structure, they're
13 correct.

14 If I were to open a trading account for
15 you, and I'm going to put your money in, and you could
16 call me next week and say, buy this, sell that, so on --
17 in 60 days, say, could I have all my money back and so on
18 and need to be liquid enough all the time that I can give
19 you your money back all the time, you become susceptible
20 to the vicissitudes of the market.

21 It becomes enormously difficult to do a 25
22 percent promissory note if I have to pay you back maybe
23 in 45 days. Now, if you can imagine the situation we
24 have here, your friends, your family -- mom, what do you
25 want to do? Keep it, do what you got to do. Sign for a

1 year. Okay. But I don't want it back. Okay.

2 So now, if you know you have a year, two
3 years, three years, and you see a little real estate
4 development, or you see a junior -- here's a good example
5 of something. Venture capital.

6 Two years ago, it was very, very high risk
7 stuff. Because when you applied venture to risk, well,
8 you are buying pre-revenue. What happened between
9 September and January of last year that was unprecedented
10 in my lifetime, all our lifetimes, except Michael's --

11 MR. MILLER: That's an age joke.

12 THE WITNESS: What it means is that now
13 venture allows you to buy post-revenue streams. So
14 typically, when you buy revenue stream as an investment
15 vehicle -- we're all aware of EBITA or revenue, okay, but
16 just in gross earnings before taxes, interest, and so on.

17 Companies get evaluated somewhere between
18 5 and 15 times their EBITA. It's very, very common. And
19 that's how one enters a deal. There are deals still on
20 the table now -- and in October, they were rife with
21 them -- where you could buy companies at one half
22 revenue, one half EBITA.

23 So if you have contracts -- CMT, for
24 example, the one that you will see in my venture there,
25 those holdings there are anchored by two five-year

1 contracts with two of the biggest banks in the world,
2 HSBC and Royal Bank of Scotland. The revenue generated
3 from those will guarantee a takeover or a stock price
4 once it goes to something --

5 Frankfurt is really not where it deserves
6 to stay. I have no control over it, but it really
7 deserves to be in a North American market because it's
8 better here.

9 But what my point is is that -- it would
10 take a long time to go through the process. And I'm
11 happy to spend it with you if you want to hear the
12 detail, okay. But know that you have the money for a
13 while, know that you have -- only going to buy stuff
14 that's undervalued.

15 If your house is worth \$500,000 today, and
16 it you offer it to the market at \$500,000, it's not a
17 deal. It's fair market value. If you could buy that
18 house for \$300,000, it becomes a deal. It becomes
19 something that you're interested in.

20 In the broadest strokes, the equities used
21 to be much better than they are now. It's not a nice
22 time to be in equities. That's why all the guys that
23 trade and so on are having such a tough time. But
24 equities markets start -- every single company has a
25 balance sheet. Every single company has cash flow.

1 When the balance sheet speaks louder than
2 the price per share, when the debt obligation of the
3 company is exceeded by the assets -- the liquid assets
4 available for that company to service that debt, and if
5 they're not dependent on one company's contracts to
6 maintain, like a Walmart or something like this, if they
7 were in a sector which has growth potential --

8 For example, sometimes oil is down, and
9 the growth potential of oil-bearing companies goes up.
10 If you have a good balance sheet, and if you have good
11 cash flow -- and what you look for is a certain number of
12 things like daily liquidity.

13 It's very, very important. Because you
14 never want to influence the market when you buy your
15 stuff. Very, very important.

16 Second thing is you have to operate with
17 very, very tight stopgaps. Have you ever heard of
18 Alexander Elder by any chance? He's a technician. He's
19 a guy that speaks about how to limit your risk.

20 Anyway, you put in stopgaps. You buy
21 below value. You buy a strong balance sheet. You be in
22 no particular rush to sell off those assets because
23 Mr. Shahviri called and says I want my money back, and
24 got to sell, and it's a bad position.

25 So in those situations, when you have the

1 luxury of time, and it takes three months or four months
2 for something to come back to approach value, it's okay.
3 It really doesn't matter. So that's sort of the -- in
4 equities, that sort of philosophy applies everywhere.

5 For example, the one holding I have,
6 239 Church Street, that was bought from a power of
7 attorney. That was bought well under market value, and
8 that's doubled its value since I bought it. It's more
9 than doubled its value, as a matter of fact.

10 So if you think just that -- it wasn't a
11 development deal. That was 25 percent a year right
12 there. The house on 63 2nd Street was bought in a very
13 similar circumstance. So it wasn't that I was looking
14 for a house so much as this was a great deal for me. So
15 I went out, and I took it.

16 So with the notion in mind all the time --
17 and I will say that the house and the building, I bought
18 well before any of this ever started. That wasn't that I
19 borrowed my mom's money to go buy myself a house. That's
20 not it at all.

21 But the philosophy is the same. I
22 remember when I started in dentistry years and years ago,
23 friends of mine went out and leased Mercedes and stuff,
24 and I walked to work for 18 months. As a matter of fact,
25 I moved up north. I paid \$250 in rent for a couple of

1 years.

2 I have always been value minded. I have
3 always been driven towards finding something that has
4 more intrinsic worth than the price it goes for. So with
5 that underneath the whole system -- and I would take six
6 months for me to explain the actual process. But at the
7 core of it, long-term redemptions are very, very
8 important, buying under value.

9 And the beauty of the catastrophe that
10 happened between October and December is that you could
11 buy companies or parts of projects for less than the cash
12 that particular company had in the bank. You cannot lose
13 money on those deals. What used to be speculative and
14 what used to be a venture now became sort of junior --
15 junior startup, but you were paying venture prices for
16 it.

17 So the approach initially was very, very
18 equities driven because the market was comfortably
19 providing a good mechanism to yield those sorts of
20 profits from the equities market.

21 As things started to go south a little
22 bit, you really have to say, look, our big picture was we
23 want to stop doing what we're doing, anyway. It's not a
24 big long-term picture. It's not me building a company
25 that my kids could one day become a part of. I want to

1 move towards that -- whatever the word -- let's say
2 something more formal.

3 We have this opportunity to buy these
4 kinds of real estate stuff. We have an ability to very,
5 very safely lock in assets and give everybody their money
6 back as we transition into something more -- formal is
7 the word I will use. And that's basically how we do it.

8 And I do know that I have friends of mine
9 that day trade. I have friends of mine that are brokers
10 and so on. And they can't do that because of the
11 nature -- the business model is set up differently.

12 I have friends of mine -- sometimes they
13 will ask me, why can't CIBC Wood Gundy do what you do?
14 And the answer is, well, they can, but their business
15 model is set up differently.

16 Their business model is set up such that
17 they make their money from commissions and management
18 fees. It becomes a volume business. Well, we have a
19 billion dollars, and we charge people 2.5 percent to
20 manage this money. That's \$25-million.

21 Interestingly, just recently, CIBC World
22 Markets -- Jeff Rubin, he just wrote "The World is About
23 to Get a Whole Lot Smaller". Not sure if you're familiar
24 with the book. He got fired by CIBC Wood Gundy by saying
25 that their business plan does not involve generating

1 returns for clients. And it doesn't. It doesn't.

2 So there's that aspect of it. There's the
3 size of them, which makes it very, very difficult for
4 them to be as flexible as we are. We are in a position
5 where you can come in and out of companies, in and out of
6 holdings relatively easily compared to, you know, a
7 \$2-billion fund could do.

8 So there's lots of companies available out
9 there that have small to medium market caps that do
10 millions of shares a day in volume that it is very, very,
11 very common to see fluctuations in price between 25 and
12 100 percent in one-month periods. It's very, very, very
13 common.

14 And if one exercises good money
15 management, good fundamental analysis, use your timing
16 and technical analysis, one has an ability to generate
17 very, very good returns.

18 There's a book called Trade Wizards -- I
19 don't know if you're familiar with it -- by Jack Swagger.
20 Excellent book. There's another one by Michael Covel
21 about Richard Dennis' turtle program.

22 If you trade a certain way, and you have
23 the money for a long time, 25 percent becomes a number
24 that is very, very doable. A lot of people have done it.

25 If you think about real estate developers,

1 people like Peter Gilgan, for example, who now has some
2 \$600-million, if you told him 20 years ago that 25
3 percent a year is impossible, he would never have gotten
4 to \$600-million. There are ways to generate those.

5 Friend of mine does real estate
6 development, and he has to book every once in a while
7 what's called mezzanine financing. It's to shore up a
8 finishing project as a new one starts to get started.
9 And he pays 30 percent for those. And no one says to him
10 that's impossible; it can't be done.

11 The reality is it can be done. If you set
12 up your business plan the right way, it can be done.
13 And our business plan is set up that we have the money
14 for a while, and that is how we are able to do it.

15 BY MR. PANCHUK:

16 11 Q. Let me ask you one question because
17 there's one word that is missing from everything you have
18 said -- is risk. How do you factor in risk? And I see
19 risk all over the place here. How do you communicate
20 that to your -- what's the appropriate word? I was going
21 to say clients.

22 MR. MILLER: Lenders.

23 BY MR. PANCHUK:

24 12 Q. Lenders.

25 A. Well, like Mr. Miller was saying

1 earlier, it was hammered into me from Borden Ladner
2 Gervais, don't tell them what you're doing and just
3 borrow their money. And don't let them think that they
4 are part of that real estate development or part of that
5 purchase of that venture. So that was very clear. But
6 how do we match risk?

7 BY MR. SHAHVIRI:

8 13 Q. Before you answer that question, let
9 me jump in. You are aware that I have spoken to a few
10 investors, a few lenders. My recollection -- I don't
11 have my notes here.

12 But my recollection is that all of the
13 people I spoke to had some sense that you were investing
14 their money in the market and that that is how the
15 returns were generated. So while they're not directly
16 investing, my sense was that they clearly had an
17 understanding that this is what they were indirectly, if
18 not directly involved in.

19 A. If you can imagine that every one of
20 them is a friend, every single one of them. Hey, Pete,
21 what's up? What are you doing? Do you mind if I come by
22 and say hi? Do you want to go for a coffee? What are
23 you doing?

24 Well, we look at this. We look at that.
25 We look at this other thing. And some of them are

1 curious people, and they say, well, where do you set your
2 stop-loss? How does that work? What do you look at?
3 These kinds of things.

4 And again, because they're friends and
5 family, sure, this is what we do. And that's why they
6 have that sense of this money is being invested. But
7 again, on paper, it wasn't being invested directly for
8 them. As long as --

9 MR. MILLER: I think it's fair to say that
10 everyone knew that he was doing something with the money.
11 Otherwise, how could he give the promissory note to give
12 them 25 percent? So they all knew he was investing in
13 things.

14 I wouldn't be surprised if what he just
15 told you now is what he probably told them, but not on
16 the basis of reaching out to them. They reached out to
17 him.

18 But they weren't -- I guess if someone
19 said to me in a year, you can have 25 percent back, and
20 you know me, and you can trust me, and I have got assets
21 to back it up -- I don't think they cared what he did
22 with the money. They were thrilled to get their 25
23 percent. Most people would be.

24 MS. DUBLIN: And I think one point to
25 throw in here is this loan documentation, this bare bones

1 promissory note, no covenants, no nothing, was developed
2 for these guys by BLG with the assurance that this will
3 work. This will create that distance between your
4 activity and the lenders such that you won't be
5 triggering an obligation to them.

6 And you will not see any advice, any
7 warning about how securities regulators might take
8 another view. So they really did rely on the loan
9 structure as the most important piece in the relationship
10 they were forming with these people.

11 MR. MILLER: I do think one other thing.
12 I think in relation to your question -- if the year was
13 up, and the real estate market was devastated, how would
14 they get their money back --

15 MR. PANCHUK: And I'd like to hear
16 actually from your client if he can answer that for me.

17 MR. SHAHVIRI: And on that note, I mean,
18 the loan agreement is with a limited liability company,
19 not you, the assets that are in your name. So in the
20 context of that, I'd like to hear --

21 BY MR. PANCHUK:

22 14 Q. And that's exactly what I see. For
23 instance, you mentioned previously about the two
24 contracts that some venture company you invested in had
25 with HSBC and Royal Bank of Scotland. Seems to me

1 Royal Bank of Scotland is a fairly risky proposition
2 right now.

3 A. Well, actually --

4 15 Q. Well, just a minute. And it could, at
5 any time, withdraw the contract, costing millions of
6 dollars in legal fees to collect perhaps, perhaps not.
7 But that's a risk. There's a real risk that the value of
8 this company that you invested in may drop.

9 And similarly, as Mr. Miller correctly
10 stated, with real estate, we don't know what's going to
11 happen in six months. Nobody does.

12 So then if we get back to my original
13 question, how do you manage that risk if your portfolio
14 drops from whatever the worth was -- I will say
15 12-million -- I don't remember the exact number -- to
16 6-million, and you owe 10-million to these individuals?
17 What will happen?

18 A. Well, first of all, what we talked
19 about earlier -- it's not that you're in real estate.
20 That's what you do for a living, and you go up and down
21 as real estate goes up. You buy your value when your
22 value is there.

23 Is there risk? Of course, there's always,
24 always, always risk. There's risk getting on that
25 elevator. There's risk every single time you do

1 anything. You can't invest money without some element of
2 risk. What you do is you minimize the risk.

3 What you do is you spread yourself out
4 into different sorts of properties. What you also want
5 to do is be in a situation -- with the equities part of
6 it, you have stop-losses and liquidity. So can stuff go
7 down? The answer is absolutely, yes, it can.

8 But if I have enough volume on a day, a
9 month, on a week, whatever your time frame is that you're
10 getting rid of your stuff in, if it moves down a certain
11 bit, you have ordered off your stop. So you're willing
12 to say -- I am willing, on this particular purchase, to
13 risk .5 percent of the portfolio.

14 If it goes against you, well, you have
15 lost .5 of your portfolio. If you have done your
16 homework correctly, they are going to go against you less
17 often than they go for you.

18 So there's that aspect of risk based on,
19 like I said, the fundamental analysis, the technical
20 analysis of price per share and so on, the sector
21 rotation. What I do takes a long time, and that's why I
22 have people working for me. It's a tremendously
23 labor-intensive information-gathering machine.

24 As far as real estate risk goes right now,
25 I can't ever imagine a better situation right now than

1 real estate, quite frankly. Are you asking me why stay
2 in it for eight years or ten years and just let it ride?
3 The answer is -- I have absolutely no idea.

4 What I know is that between now and the
5 exit strategy of this company here -- I don't want to run
6 it anymore. I don't want to do this anymore. I know I
7 want to go somewhere formal, somewhere registered,
8 somewhere more --

9 16 Q. I understand. But you haven't
10 answered my question.

11 A. So between now and then, can it fall
12 out of bed? The answer is extremely unlikely, extremely,
13 extremely unlikely. Do I have personal assets? Yes, I
14 do. I have my home and my building. I have some money
15 and so on. Remember, these are all my friends. Will I
16 make good on that thing? The answer is yes.

17 BY MR. SHAHVIRI:

18 17 Q. But you're not personally liable to
19 them on paper.

20 A. On paper. But I shook their hands.
21 Nobody in there has a kid that hasn't sat on my lap.
22 Nobody in there has not eaten dinner in my house. Nobody
23 in there I don't know less than --

24 MR. MILLER: If I can say -- to the very
25 point that you say that he's not personally liable, that

1 point goes to the people who have lent him the money.
2 Know that. They know these people who have sufficient
3 funds to give the money, that we're not talking about an
4 uninformed group of people on the street who just
5 answered an ad in the paper and don't know what they're
6 doing.

7 They very well are aware of the difference
8 between him personally and the corporation. My guess is
9 they are also relying on the fact that -- don't worry,
10 Peter is never going to let us down. Peter will be good
11 for it, or Peter will do whatever he has to do to pay me
12 back.

13 But I guess the same question about risk
14 is in their minds too. When they say I'm going to get
15 25 percent back, they must have had a discussion with
16 themselves on that issue and assessed the risk
17 themselves.

18 So if these were uninformed people who
19 were strangers to the Sbaraglia's, that is something that
20 to me is a much higher concern than a friend who knows
21 Peter who says, okay, Peter, I will roll the dice with
22 you. I believe you. I believe you will never let me
23 down. I believe if the company can't pay me -- but none
24 of them have said to him, by the way, I am only going to
25 do this if you give me a personal guarantee. They're

1 aware of that. It's a trust thing.

2 Now, is that the way a business should be
3 built? No. And that's why he's changing it. But when
4 you go to your lawyer, a respectable law firm, and say,
5 my friends want to do this, how do I do it, and he says
6 you can do it this way, and the friends want to do it
7 this way, then that's sort of where you are.

8 You know, the same way you say, in
9 essence, how can he guarantee that the money is going to
10 be there when the note is due --

11 MR. PANCHUK: I'm not asking for a
12 guarantee. Don't misunderstand me.

13 MR. MILLER: How is he smart enough to
14 figure out the money is going to be there.

15 MR. PANCHUK: Well, there is models for,
16 okay, what is my percentage of probability that real
17 estate is going to drop 30 percent over the next six
18 months. Do you have a response to that?

19 And what happens if there's more
20 redemptions than I'm able to pay back because my
21 portfolio has dropped 30 percent in that time? What
22 happens? These are things that --

23 MR. MILLER: But I think the difference
24 here is you can't ask for your money back at any
25 particular time. There's a year. So if you look in

1 2010, I think it was, he has to pay back \$4-million, not
2 \$10-million. So it's not like a market fluctuation in
3 real estate or the stock market or whatever -- has a
4 terrible year in '09. He doesn't have to pay it all back
5 in '09.

6 BY MR. PANCHUK:

7 18 Q. Maybe I can ask your client the
8 question. It's actually your interview. So you have
9 \$4-million to pay back from January to December '09. And
10 I'm just doing it -- let's call it a hypothetical
11 problem. So it's approximately \$4-million, January 1st,
12 '09, to December 31st, '09. So you have to be liquid for
13 that amount --

14 A. Right.

15 19 Q. -- at various points through the year.
16 How do you manage that?

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

21 BY MR. SHAHVIRI:

22 20 Q. And is that the case with the
23 properties? They're all owned outright?

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

1 21 Q. When did you make the transition to
2 real estate, or is it staggered?

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

5 22 Q. They are not your properties?

6 A. No.

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

9 THE WITNESS: Yes.

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

13 MR. HORGAN: Those are the properties at
14 tab 10?

15 MS. DUBLIN: Yes. You see --

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

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

20 MR. MILLER: No.

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

1 commitment. So this was the premise.

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

9 But again, this gets to our point about
10 the lack of the kind of formal documentation you would
11 expect if this were a public issuer or a mutual fund or
12 anything other than a private company which had borrowed
13 money. And this is the model that they followed.

14 Now, whether or not we see difficulties
15 with this, with the theory of the model or the kind of
16 warnings about compliance issues that are lacking in
17 their communications with counsel is -- to some extent,
18 is beside the point. It's interesting.

19 But the legal question is: Is this a
20 private company validly relying on exemptions? And if
21 so, then they could take the money and flush it down the
22 toilet, and they have got a civil problem with all their
23 IOU holders, but not necessarily a securities regulatory
24 problem.

25 BY MR. SHAHVIRI:

1 23 Q. Let me just see if I can follow. Tell
2 me if I have got this right. I thought I had it, and
3 then I realized, as you were speaking, I didn't. So the
4 money came from your friends and family?

5 A. Yes.

6 24 Q. Went to C.O.?

7 A. Yes.

8 25 Q. Then it went to Mander?

9 A. Eventually, yes.

10 26 Q. And Mander bought these properties?

11 A. Yes.

12 27 Q. So is there any contractual agreement
13 in place between you and Mr. Mander that gives you any
14 kind of right to these assets?

15 A. Did you get the --

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

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

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

25 But as a result of whatever we come out

1 with -- of whatever process we end up coming out with,
2 we're going to be correcting all of that stuff. So we
3 will be getting that.

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

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

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

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

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

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

25 MR. MILLER: We understand not, but we're

1 in the process of getting those documents. We will
2 certainly have those documents when we meet with
3 Mr. Mander next week. It was just a matter of time.

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

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

8 BY MR. SHAHVIRI:

9 28 Q. So C.O. would have liabilities in the
10 \$400,000, and Mander companies, whether they're EMB or
11 whatever, would have the assets; is that right? So we
12 would have to consolidate these two to get the total
13 picture is what you're saying?

14 A. Yes.

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

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

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

23 MR. SHAHVIRI: Right. So notionally,
24 basically.

25 MR. MILLER: I don't know. I don't want

1 to say here that there's something in writing. We --

2 BY MR. SHAHVIRI:

3 29 Q. Well, maybe Mr. Sbaraglia can address
4 that.

5 Is it a notional --

6 A. It's a notional.

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

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

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

18 BY MR. SHAHVIRI:

19 30 Q. Sorry. Not to be slow about this, but
20 for the monies that came in from your friends and family
21 that went to C.O., you, in turn, effectively lent that
22 money to Mr. Mander?

23 A. Effectively, yeah.

24 31 Q. Is there paper that supports that
25 lending?

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

6 MR. PANCHUK: Wrong guys to talk to. We
7 work on the fraud side.

8 MR. MILLER: I think the better answer for
9 your side of the table is it's all going to be -- now
10 that they've come to us, and we're aware -- they have
11 come to us -- by the way, Robert Mander had come to speak
12 with Ms. Dublin about better organization before we knew
13 you wanted better organization.

14 So this is a process that's been started.
15 That's how Dr. Sbaraglia got to us. Because when this
16 came about, he was referred to us. So we're in the
17 process now of making it more paper positive. Listen,
18 the OSC doesn't work on friends trusting friends. So --

19 MR. HORGAN: Typically not, no.

20 MR. SHAHVIRI: Most businesses don't
21 either.

22 MR. MILLER: But in this particular case,
23 friends gave him the money, loaned him the money and said
24 do whatever you want and pay me back on this date. And
25 he and Robert Mander have the same arrangement. Now,

1 either we're in never-never land, or these are two
2 exceptional guys.

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

9 MS. DUBLIN: There's no doubt that record
10 keeping was the kind of record keeping that you would
11 expect where you didn't think you would ever have to keep
12 any records. And we have to fix that.

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

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

24 So if we can get an undertaking from you
25 prior to meeting with Mr. Mander. I mean, again, the

1 documents are really, really simple, the most recent bank
2 statements, the most recent brokerage statements. We can
3 do our own property searches. We can get into --

4 MR. MILLER: You don't want us to do that?

5 MR. SHAHVIRI: I don't know.

6 MR. MILLER: We will do it. We're going
7 to do it, anyway. It's not like we're not seeing you
8 next week. So we will do the property searches. Julia
9 spent 18 years in this building or around here, so she
10 has a good idea of what sort of you would want.

11 And I think it's fair to say we wanted
12 today for -- when this was over today, for you not to
13 say, man, there's a fire out there that we have got to
14 run and put out, for at least you to have a little
15 comfort you're dealing with genuine people who have done
16 a plan that they thought was okay. And we have provided
17 you at least why they thought it was okay.

18 And now, we're going to get you the proof
19 these assets exist and in what form. And we will do
20 that. I'm not sure -- certainly, the real estate stuff,
21 we can do. I don't know what we can provide -- we have
22 less than a week, I think. I'm not sure of the date.
23 But we will do our best to get as much for you.

24 And at least when you meet Mr. Mander, you
25 won't see the trust shining from him as maybe

1 Dr. Sbaraglia does, but at least you will see he's real.
2 And at least we're in the process of getting you
3 everything you need.

4 We're not walking out of here today
5 thinking that we're glad this is over. We know it's far
6 from over. And we know what we have to do to satisfy
7 you, and we're going to do it.

8 MR. SHAHVIRI: And to be perfectly honest,
9 my comfort level hasn't risen a whole lot because of the
10 absence of third party documents, to be very blunt about
11 it.

12 So I was hoping we would have something --
13 again, I appreciate, and I have no reason to doubt that
14 the schedules in this binder represent true and accurate
15 numbers from whatever other source.

16 But ideally, I think we would have
17 preferred to see the underlying third party documents. I
18 don't know how much more plainly I can put that.

19 MR. MILLER: We got it. It wasn't
20 surprising you would have liked it today either.

21 MR. SHAHVIRI: Which would have been less
22 work than this, to be frank.

23 MR. MILLER: It's a nice story, and it's
24 good for you to know who you are dealing with. I mean,
25 there is a difference between someone that has been here

1 five times and just come up with another scheme and
2 Dr. Sbaraglia. So I mean, I think that is --

3 MR. SHAHVIRI: Sure.

4 MR. MILLER: So we will do it. Do you
5 know the date for Mr. --

6 MR. SHAHVIRI: It's the 15th.

7 MR. MILLER: Do you want to give us one
8 more week for that, so we can get all this stuff?
9 There's no sense coming if we don't have more things for
10 you. Because we may be in the same position. Or we can
11 come with as much as --

12 MR. SHAHVIRI: I think we have had so much
13 difficulty lining up these meetings with six schedules,
14 trying to make them all mesh. Why don't we stick with
15 the 15th, and we will get what we get on that date. And
16 on that date, we will decide what else we need to keep
17 after.

18 MR. MILLER: Okay.

19 MR. SHAHVIRI: I just want to make sure I
20 haven't got that date wrong.

21 MS. DUBLIN: We tried so many different
22 dates, and we changed it so many times.

23 BY MR. SHAHVIRI:

24 32 Q. Which is a Wednesday, yeah. Okay.

25 Just since we are all here, may as well make the most of

1 our time. If I could run through a few specific
2 questions.

3 Have we covered all the broad strokes,
4 generalities?

5 A. I just want to understand that -- we
6 show you that the assets exist, that we can pay people
7 back, that we're people of means, and the suspicion level
8 goes down? This is correct?

9 33 Q. Right.

10 A. No problem, then. No problem.

11 34 Q. You have to understand where we're
12 coming from.

13 A. You know what? I respect where you're
14 coming from. I do.

15 35 Q. If you were in my shoes, you'd have
16 the exact same questions.

17 A. 100 percent. You know, we were
18 talking about this a little bit. It's not a comfortable
19 chair to sit in --

20 36 Q. You know what? Nor is this one. I
21 got to tell you.

22 A. But I will say this, I'm happy I'm
23 here. Because in my heart -- I haven't proven it to you
24 yet, but in my heart, I know we're good guys. I like the
25 idea of going through, getting perspective. Like Michael

1 said, you go to the airport, you got to take off your
2 shoes, do this, walk barefoot, whatever. If the big
3 picture overall is we have a safer flight, no problem.

4 37 Q. My thoughts exactly.

5 A. If the big picture overall is that
6 some bad guys out there are getting caught, good. And
7 for me, if, after we have gone through this process, you
8 say, you know what, he's not a bad guy; in fact, he's a
9 good guy, all right, that's comforting to me.

10 MR. MILLER: Feel good. Let him ask his
11 questions.

12 THE WITNESS: You want to go home.

13 MR. MILLER: I want you to get the
14 information you need.

15 BY MR. SHAHVIRI:

16 38 Q. We might have covered a whole bunch of
17 these already. Bear with me a second.

18 In the terms of the day-to-day running of
19 C.O., is it you and Mr. Mander primarily that head up the
20 investment strategy?

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

23 39 Q. Why was that? Why did he resign?

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

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

3 BY MR. SHAHVIRI:

4 40 Q. Is that it?

5 A. Basically.

6 41 Q. There wasn't a falling out or anything
7 like that?

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

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

11 BY MR. SHAHVIRI:

12 42 Q. To this day?

13 A. Yes.

14 43 Q. Does anyone else have any input into
15 the running of C.O.?

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

17 44 Q. I mean third party advisors.

18 A. No, no.

19 45 Q. So you and Mr. Mander really were the
20 brains? You were the directing minds of C.O.?

21 A. Yes.

22 46 Q. Are there any foreign investments that
23 C.O. has?

24 A. No. Well -- no, no. That thing
25 trades on the Frankfurt --

1 47 Q. -- things like that, are there any
2 real estate holdings offshore?

3 A. No, no, nothing like that.

4 48 Q. Any debts owing to foreign creditors?

5 A. No.

6 49 Q. So you had mentioned earlier that when
7 an investor or a would-be lender who wants to place money
8 with C.O. -- they approach you?

9 A. Uh-huh.

10 50 Q. And you would provide them with a loan
11 agreement such as this one?

12 A. Yes.

13 51 Q. Just take a look at it before we mark
14 it as an exhibit.

15 MR. MILLER: Should be also the one in the
16 binder that BLG provided. That's the one.

17 THE WITNESS: Same one.

18 MR. SHAHVIRI: We will make a binder
19 that's been provided by Mr. Sbaraglia Exhibit 3.

20 EXHIBIT NO. 3: Binder provided by
21 Mr. Sbaraglia.

22 MR. MILLER: Well, he hadn't seen it until
23 this morning. I mean, he's had input into the contents,
24 but we've provided it.

25 BY MR. SHAHVIRI:

1 52 Q. But you're happy with what's in here,
2 I take it?

3 A. Yes. Haven't read every page.

4 53 Q. It's been sourced --

5 MR. MILLER: It's been sourced from him.
6 I wrote the introduction.

7 MR. SHAHVIRI: You more or less read it
8 out, and he heard it. So the loan agreement will be
9 Exhibit 4.

10 EXHIBIT NO. 4: Loan agreement.

11 BY MR. SHAHVIRI:

12 54 Q. And then upon execution of that loan
13 agreement, I take it you would issue a promissory note?

14 A. Yes.

15 55 Q. Such as this one here? Is that
16 typical of the kinds of things --

17 A. Yes.

18 MS. DUBLIN: There's one of those in the
19 binder too.

20 MR. MILLER: It's in Exhibit 3 as well.

21 MR. PANCHUK: Exhibit 5? Promissory note.

22 MR. SHAHVIRI: Yes, five.

23 EXHIBIT NO. 5: Promissory note.

24 BY MR. SHAHVIRI:

25 56 Q. One of the investors or lenders,

1 rather, mentioned that they got T5's for earned but not
2 necessarily received interest.

3 A. Correct.

4 57 Q. How does that work?

5 A. You have to talk to the accountants
6 about that. That was another -- I will show you my
7 accounting bills from that one. The argument that
8 Revenue Canada would make -- I'm going to paraphrase what
9 the accountant told me, the best I understood it.

10 MR. MILLER: Would you like a written
11 explanation from the accountant rather than Dr. Sbaraglia
12 telling you what he thinks the accountant told him? If
13 you just want to know the story, that's fine. If you
14 want to know specifically why the T5 --

15 BY MR. SHAHVIRI:

16 58 Q. Maybe I will get the principal
17 explanation, and then we can get that as well.

18 A. Apparently, the government of Canada
19 will say that if you have earned money, whether you've
20 got it in your pocket or not, they view it as income to
21 your household and therefore should declare it as income
22 and therefore issue a T5. Because it's interest income
23 that these people --

24 59 Q. And the T5 slip would say from
25 C.O. Capital?

1 A. I never actually saw them because the
2 accounting firm did it on behalf of us.

3 60 Q. Okay. So C.O., then, would obviously
4 show those interest payments as a deduction, right?

5 A. Yes.

6 61 Q. As an expense. All right.

7 BY MR. HORGAN:

8 62 Q. And those were T5's generated when a
9 loan would come due?

10 A. No. The way it works, if I understand
11 it right, is from -- is it February 25th of the year
12 after something is due, you have to declare it on that
13 year's taxes. I think it's something like that. So if
14 you came due in March '08, it wouldn't show up until
15 February 25th, '09, which means it doesn't go in until
16 April '09.

17 63 Q. But the issuance of the T5 was
18 triggered based on the maturity of the loan?

19 A. Yes.

20 64 Q. Whatever year it was?

21 A. Yes.

22 BY MR. SHAHVIRI:

23 65 Q. When was the last time C.O. raised
24 money?

25 A. A while ago. Months, months ago.

1 MS. DUBLIN: Should be on the chart.

2 MR. MILLER: They never raised money.

3 People lent them money.

4 MR. SHAHVIRI: Borrowed money. If you
5 just point me to the tab --

6 MS. DUBLIN: It would be tab 5, the most
7 recent -- looks like April, may have been.

8 MR. SHAHVIRI: April of '09?

9 MS. DUBLIN: Yes.

10 MR. SHAHVIRI: I'm just maintaining a
11 running list of the undertakings. Did I understand
12 correctly we'd be getting a set of copies of the loan
13 agreements?

14 MR. MILLER: Yes.

15 MS. DUBLIN: We actually have them.

16 MR. MILLER: We'll take them home and
17 photocopy them.

18 MS. DUBLIN: We have got one set. It's
19 about this thick.

20 BY MR. SHAHVIRI:

21 66 Q. All right. So you think it might be
22 April?

23 A. April-ish. Just something that wasn't
24 made possibly as clear as it could have been when we were
25 talking is that the idea of exiting from this working

1 model into something more formal is not a brand new
2 notion. It started back in March of '08, and we have an
3 e-mail chain to support that as well.

4 MS. DUBLIN: We didn't include every
5 single e-mail --

6 THE WITNESS: There was an awful lot of
7 paper. So the idea as time went by -- I didn't want to
8 deepen this well at all. The idea was all along this was
9 good, nice. It's enough.

10 MR. MILLER: No new money, in any event,
11 since -- for sure since the section 11, no new money has
12 or will be borrowed.

13 BY MR. SHAHVIRI:

14 67 Q. Does C.O. owe you or Mr. Mander any
15 money again, any liabilities?

16 A. No, just the lenders.

17 68 Q. I have a specific question on one of
18 the amounts that came in to C.O. In May of 2008 -- you
19 may remember this transaction -- C.O. received a cheque
20 from W. D. Latimer. Can you enlighten as to what that
21 transaction -- I mean, that's not one of your dentist
22 friends?

23 A. He is a friend.

24 69 Q. So who is a friend?

25 A. The president of W. D. Ladner.

1 70 Q. Mr. Brecken?

2 A. No.

3 71 Q. Sesto?

4 A. Sesto. Been friends for 25 years now.

5 72 Q. Just for the record, that's

6 Sesto Deluca; is that right?

7 A. Yes.

8 73 Q. So Mr. Deluca personally invested -- I
9 mean, the cheque is from W. D. Latimer. Was it his money
10 that has been invested in C.O.?

11 A. Yes.

12 MR. MILLER: Loaned to.

13 MR. SHAHVIRI: Sorry. Yes. Lent to C.O.
14 I'm not doing that on purpose. Just a slip. Okay. All
15 right.

16 BY MR. SHAHVIRI:

17 74 Q. The other specific item again, who is
18 J. S. Bradley? Does that name not ring a bell with you?

19 A. No. J. S. Bradley?

20 75 Q. It's an account that --

21 MR. MILLER: He's not a lender, is he?

22 THE WITNESS: I honestly draw a blank. I
23 have no recollection of Bradley.

24 BY MR. SHAHVIRI:

25 76 Q. Okay. If you don't remember, you

1 don't remember. That's fine. So EMB Asset Group is
2 Mr. Mander? That's his company?

3 A. Yes.

4 77 Q. You mentioned Carta Solutions as one
5 of your investments. In November of '07, C.O. paid Carta
6 about \$74,000. Was that the investment that you are
7 referring to? Does that sound about right?

8 A. Sounds about right. We bought a
9 couple different times, actually. And because that
10 company -- I forget what the valuation was that day. And
11 they did it. I don't remember exactly, quite frankly.
12 But, yeah, that's about right.

13 78 Q. What does Carta do exactly?

14 A. Prepaid credit card facilities that
15 can be -- you can send it from this cell phone to your
16 daughter's credit card someplace if she's at university
17 or something.

18 79 Q. Kind of like PayPal?

19 A. I don't know exactly what PayPal does,
20 but that sort of thing. It's a company that has their
21 own processor, which is huge, a lot of growth potential.

22 80 Q. One last one. There's a company by
23 the name of Gervais Sales and Marketing.

24 A. Yes, friend of mine.

25 81 Q. So this friend invested -- lent money

1 to C.O. as well?

2 A. Yes.

3 MR. SHAHVIRI: That's it. I don't have
4 any other specifics.

5 MR. MILLER: We will see you next week.

6 MR. SHAHVIRI: Yes, on Wednesday. Thank
7 you. The time is now 2:48. Going off the record. Thank
8 you.

9 --- Whereupon proceedings adjourned at 2:48 p.m.

10
11
12
13 I HEREBY CERTIFY THE FOREGOING
14 to be a true and accurate
15 transcription of my shorthand notes
16 to the best of my skill and ability.

17
18
19
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25

Jennifer Weller
Certified Shorthand Reporter

Appendix “J”



No. 111-A

LOAN AGREEMENT

This Agreement made in duplicate the May 16, 2008, between [REDACTED] (the "Lender") and C.O. Capital Growth (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the sum of Two Million Dollars (\$2,000,000.00) of the lawful money of Canada (the "Principal Sum") for a period of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by the Borrower in accordance with the terms of this Agreement (the "Advance Date"). The Maturity Date for purposes of this Agreement shall be the first anniversary of the Advance Date, subject to any Renewal.
2. The Borrower agrees to pay the Lender interest on the Principal Sum at the simple rate of twenty-five (25%) per annum commencing on the Advance Date.
3. The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the terms of this Agreement.
4. Where the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, at its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.
5. Where the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, at its sole and unfettered discretion determine that the Total Amount to the Lender on the Maturity Date is payable and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that

C
initials

the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

6. Where the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to lend the Principal Sum and accrued interest (the Total Amount) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be lent to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right at its sole and unfettered discretion to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10.

7. The Borrower shall send written notice to the Lender of a Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty there shall be no limit as to the number of Renewals under this Agreement.

8. The Borrower may prepay any portion or all of the Principal Sum outstanding together with interest accrued thereon at anytime without notice and without penalty of any kind.



9. The advance of the Principal Sum shall be evidenced by a promissory note in the form of Schedule "E" hereto.

10. Prior to any advance, the Borrower shall provide the Lender with a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to lend funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

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initials

11. All advances and payments by parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank
12. All notices to be given under this Agreement shall, save as otherwise specifically provided, be in writing to the party to who it is intended at the addresses noted below or such other address that the party may provide notice of in writing and shall not be deemed received until actually received except if sent by regular mail provided that there is no threat of disruption or actual disruption of mail service, in which case it shall be deemed received on the fifth day after being mailed.
13. Time is of the essence in all respects.
14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of it. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.
15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the province of Ontario and the laws of Canada applicable in the province, excluding the choice of law rules of that province.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by authorized persons.

By: _____	By: _____
	C.O. Capital Growth Authorized Officer: Name: Peter G. Sbaraglia Title: President
Address: _____	Address: _____
	239 Church Street, Suite 100E Oakville, ON L6J 1N4 (905) 339-0650
By: _____	

Address: 





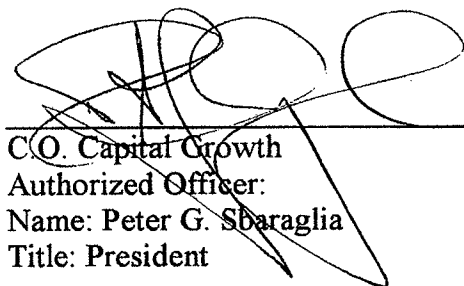
May 21st, 2008

This Agreement made in duplicate May 21, 2008, between C.O. Capital Growth Corp. (the "Lender") and Robert J. Mander (the "Borrower") (collectively the "Parties").

This is to verify that C.O. Capital Growth Corp. has lent an amount of Two Million Dollars (\$2,000,000.00) to Robert J. Mander. This Two Million Dollars (\$2,000,000.00) was lent to C.O. Capital Growth Corp. by Anne De Luca and Sesto De Luca on May 16th, 2008 and filed as Loan Agreement 111-A.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by authorized persons.

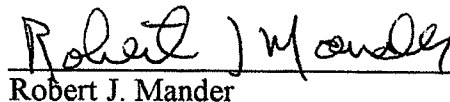
By:



C.O. Capital Growth
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

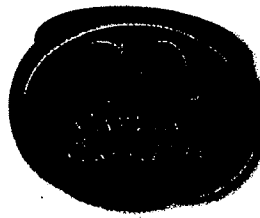
Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650

By:



Robert J. Mander

Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650



No. 132-C

LOAN AGREEMENT

This Agreement made in duplicate the October 10, 2008, between Dr. Kai Chau(the "Lender") and C.O. Capital Growth (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the sum of Fifty Thousand Dollars (\$50,000.00) of the lawful money of Canada (the "Principal Sum") for a period of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by the Borrower in accordance with the terms of this Agreement (the "Advance Date"). The Maturity Date for purposes of this Agreement shall be the first anniversary of the Advance Date, subject to any Renewal.
2. The Borrower agrees to pay the Lender interest on the Principal Sum at the simple rate of twenty-five (25%) per annum commencing on the Advance Date.
3. The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the terms of this Agreement.
4. Where the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, at its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.
5. Where the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, at its sole and unfettered discretion determine that the Total Amount to the Lender on the Maturity Date is payable and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that

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the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

6. Where the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to lend the Principal Sum and accrued interest (the Total Amount) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be lent to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right at its sole and unfettered discretion to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10.

7. The Borrower shall send written notice to the Lender of a Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty there shall be no limit as to the number of Renewals under this Agreement.

8. The Borrower may prepay any portion or all of the Principal Sum outstanding together with interest accrued thereon at anytime without notice and without penalty of any kind.

9. The advance of the Principal Sum shall be evidenced by a promissory note in the form of Schedule "E" hereto.

10. Prior to any advance, the Borrower shall provide the Lender with a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to lend funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

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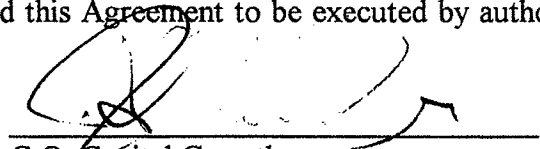
11. All advances and payments by parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank
12. All notices to be given under this Agreement shall, save as otherwise specifically provided, be in writing to the party to who it is intended at the addresses noted below or such other address that the party may provide notice of in writing and shall not be deemed received until actually received except if sent by regular mail provided that there is no threat of disruption or actual disruption of mail service, in which case it shall be deemed received on the fifth day after being mailed.
13. Time is of the essence in all respects.
14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of it. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.
15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the province of Ontario and the laws of Canada applicable in the province, excluding the choice of law rules of that province.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by authorized persons.

By:


Dr. Ka Chau

By:


C.O. Capital Growth
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:

Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650

**Mander Group
And
Client Company**

LOAN AGREEMENT

016-101206-A

The "Lender": CO. CAPITAL GROWTH CORP.

The "Borrower": MANDER GROUP INC

1. Loan

The Lender hereby lends Forty five thousand dollars Cdn (the "Loan Amount") to the Borrower for a period of one year from October, 12th 2006 to October, 11th, 2007 (which second date shall be known as the "Loan End Date").

2. Interest on Loan

Borrower agrees to pay Lender 30% simple annual interest on the Loan Amount. Any income earned by Borrower through investment of the Loan Amount in excess of the 30% interest cost shall be divided equally between Lender and Borrower.

3. Loan Agreement Termination and Renewal

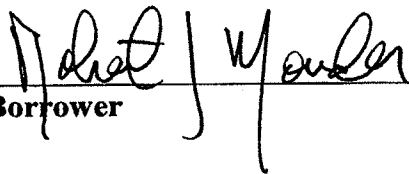
- a) Neither the Lender nor the Borrower may not terminate the Loan Agreement before Loan End Date unless agreed to in writing by both parties;
- b) At least 10 business days prior to Loan End Date, Lender shall send to Borrower written notice indicating whether Lender wishes to terminate Loan Agreement on Loan End Date, or to renew Loan Agreement in accordance with subparagraph 3(c) hereof;
- c) Lender may renew Loan Agreement for another one year period in which case a new Loan Agreement specifying amount, dates, rate of interest and other particulars will be signed by both parties;
- d) In the event Lender indicates a wish to terminate Loan Agreement on Loan End Date in accordance with subparagraph 3(b) hereof, Borrower shall repay Loan Amount plus any interest owing as provided in paragraph 2 hereof to Lender within 10 business days of Loan End Date. Borrower shall also pay to Lender 50% of income earned through investment in excess of the 25% interest cost within 10 business days of Loan End Date.

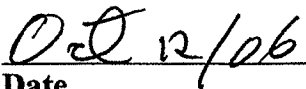
4. Giving of Notice

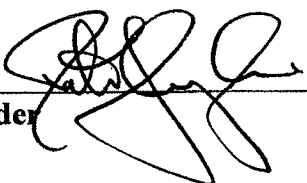
Any notice that must be given under this Loan Agreement will be given by delivering it in person or by mail or by fax at the respective addresses listed below. Any notice mailed is deemed to be received on the 5th business day from date of mailing.

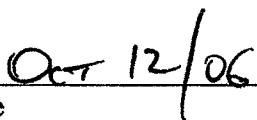
5. Transactions

All transactions between Borrower and Lender will be through bank drafts.


Borrower


Date


Lender


Date



No. 137-C

LOAN AGREEMENT

This Agreement made in duplicate the October 31, 2008, between ~~_____~~ (the "Lender") and C.O. Capital Growth (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the sum of One Hundred And Fifty Thousand(\$150,000.00) of the lawful money of Canada (the "Principal Sum") for a period of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by the Borrower in accordance with the terms of this Agreement (the "Advance Date"). The Maturity Date for purposes of this Agreement shall be the first anniversary of the Advance Date, subject to any Renewal.
2. The Borrower agrees to pay the Lender interest on the Principal Sum at the simple rate of twenty-five (25%) per annum commencing on the Advance Date.
3. The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the terms of this Agreement.
4. Where the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, at its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.
5. Where the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, at its sole and unfettered discretion

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determine that the Total Amount to the Lender on the Maturity Date is payable and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

6. Where the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to lend the Principal Sum and accrued interest (the Total Amount) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be lent to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right at its sole and unfettered discretion to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date in such circumstance, or may without prior notice deem that the Lender has agreed to lend the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose and both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, in the event of a Renewal, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10.

7. The Borrower shall send written notice to the Lender of a Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty there shall be no limit as to the number of Renewals under this Agreement.

8. The Borrower may prepay any portion or all of the Principal Sum outstanding together with interest accrued thereon at anytime without notice and without penalty of any kind.

9. The advance of the Principal Sum shall be evidenced by a promissory note in the form of Schedule "E" hereto.

10. Prior to any advance, the Borrower shall provide the Lender with a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to lend funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

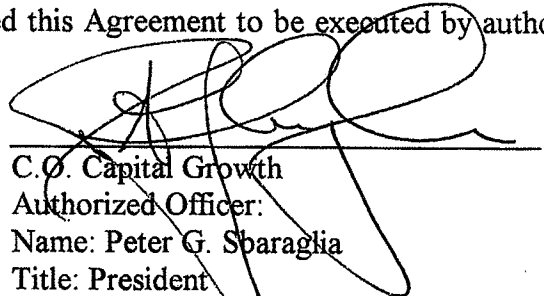
11. All advances and payments by parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank
12. All notices to be given under this Agreement shall, save as otherwise specifically provided, be in writing to the party to who it is intended at the addresses noted below or such other address that the party may provide notice of in writing and shall not be deemed received until actually received except if sent by regular mail provided that there is no threat of disruption or actual disruption of mail service, in which case it shall be deemed received on the fifth day after being mailed.
13. Time is of the essence in all respects.
14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal in respect of it. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.
15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the province of Ontario and the laws of Canada applicable in the province, excluding the choice of law rules of that province.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by authorized persons.

By: _____



By: _____



C.O. Capital Growth
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:

Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650





No. 155-D

LOAN AGREEMENT

This Loan Agreement made in duplicate this day of February 26, 2009, between Kathleen Sbaraglia (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. **The Loan:** The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of Sixty Nine Thousand Three Hundred (\$69,300.00) of lawful money of Canada (the "Principal Sum") for a term of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the first anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.
2. **Promissory Note:** The advance of the Principal Sum shall be evidenced by a promissory note, (the "Promissory Note") in the form of Schedule "E" hereto.
3. **Interest:** The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of Twenty-Five Percent (25%) per annum calculated from the Advance Date and accrued from the Advance Date to the Maturity Date which interest shall become due and payable upon the date the Principal Sum is repaid in full.
4. **Repayment:** The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.
5. **Renewal:** In the event the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, in its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.
6. **Partial Repayment:** In the event the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, in its sole and unfettered discretion either (i) determine that the Total Amount is due and payable to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or such Total Amount in such circumstance, or (ii)


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may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

7. **Additional Loan:** In the event the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to loan the Total Amount (as defined in Paragraph 5) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be loaned to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right in its sole and unfettered discretion either (i) to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or the Total Amount in such circumstance, or (ii) may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

8. **Renewal Notice:** The Borrower shall send written notice to the Lender of any Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for such Renewal and for the purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty, there shall be no limit as to the number of Renewals under this Agreement.

9. **Prepayment:** The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind.

10. **Accredited Investor:** Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

11. **Bank Drafts/Certified Cheques:** All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank



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12. **Notices:** All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.

13. **Time:** Time shall be of the essence in all respects.

14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.

15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

By:


Kathleen Sbaraglia

By:

C.O. Capital Growth Corp.

Authorized Officer:

Name: Peter G. Sbaraglia

Title: President

Address:

Address:

239 Church Street, Suite 100E

Oakville, ON L6J 1N4

(905) 339-0650



**Mander Group
and
Client Companies.**

LOAN AGREEMENT

001-012506-A

The "Lender": C.D. Capital Growth Corp.

The "Borrower": Mander Group INC

1. Loan

The Lender hereby lends (\$50,000) Fifty thousand dollars (the "Loan Amount")
to the Borrower for a period of one year from January 25th 2006
to January 24th 2007 (which second date shall be known as the
"Loan End Date").

2. Interest on Loan

Borrower agrees to pay Lender 30% simple annual interest on the Loan Amount. Any income earned by Borrower through investment of the Loan Amount in excess of the 30% interest cost shall be divided equally between Lender and Borrower.

3. Loan Agreement Termination and Renewal

- a) Neither the Lender nor the Borrower may not terminate the Loan Agreement before Loan End Date unless agreed to in writing by both parties;
- b) At least 10 business days prior to Loan End Date, Lender shall send to Borrower written notice indicating whether Lender wishes to terminate Loan Agreement on Loan End Date, or to renew Loan Agreement in accordance with subparagraph 3(c) hereof;
- c) Lender may renew Loan Agreement for another one year period in which case a new Loan Agreement specifying amount, dates, rate of interest and other particulars will be signed by both parties;
- d) In the event Lender indicates a wish to terminate Loan Agreement on Loan End Date in accordance with subparagraph 3(b) hereof, Borrower shall repay Loan Amount plus any interest owing as provided in paragraph 2 hereof to Lender within 10 business days of Loan End Date. Borrower shall also pay to Lender 50% of income earned through investment in excess of the 30% interest cost within 10 business days of Loan End Date.

4. Giving of Notice

Any notice that must be given under this Loan Agreement will be given by delivering it in person or by mail or by fax at the respective addresses listed below. Any notice mailed is deemed to be received on the 5th business day from date of mailing.

5. Transactions

All transactions between Borrower and Lender will be through bank drafts.

Robert Mander
Mander Group LLC

Borrower

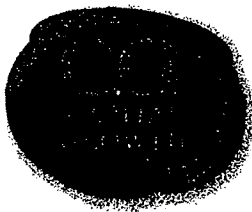
January, 25th, 2006

Date

Lender

Jan 25th / 2006

Date



No. 157-C

LOAN AGREEMENT

This Loan Agreement made in duplicate this day of March 1, 2009, between Pero Assets Inc. (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. **The Loan:** The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of Six Million Dollars(\$6,000,000.00) of lawful money of Canada (the "Principal Sum") for a term of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the first anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.

2. **Promissory Note:** The advance of the Principal Sum shall be evidenced by a promissory note, (the "Promissory Note") in the form of Schedule "E" hereto.

3. **Interest:** The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of Thirty-Five Percent (35%) per annum calculated from the Advance Date and accrued from the Advance Date to the Maturity Date which interest shall become due and payable upon the date the Principal Sum is repaid in full.

4. **Repayment:** The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.

5. **Renewal:** In the event the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, in its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

6. **Partial Repayment:** In the event the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, in its sole and unfettered discretion either (i) determine that the Total Amount is due and payable to the Lender on the Maturity Date and interest will not accrue after the



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Maturity Date upon either the original Principal Sum or such Total Amount in such circumstance, or (ii) may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

7. Additional Loan: In the event the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to loan the Total Amount (as defined in Paragraph 5) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be loaned to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right in its sole and unfettered discretion either (i) to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or the Total Amount in such circumstance, or (ii) may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

8. Renewal Notice: The Borrower shall send written notice to the Lender of any Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for such Renewal and for the purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty, there shall be no limit as to the number of Renewals under this Agreement.

9. Prepayment: The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind.

10. Accredited Investor: Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

11. Bank Drafts/Certified Cheques: All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank



initials



12. **Notices:** All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.


13. **Time:** Time shall be of the essence in all respects.

14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.

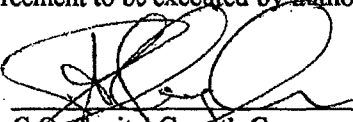
15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

By:


Pero Assets Inc.

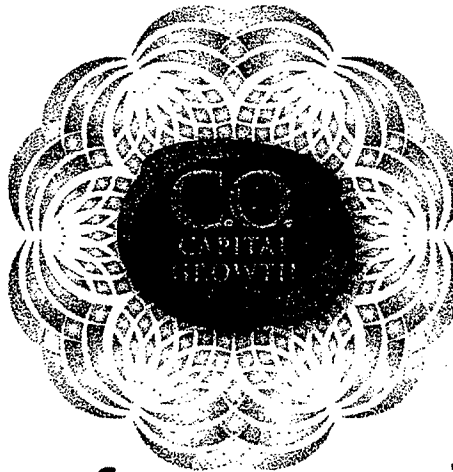
By:


C.O. Capital Growth Corp.
Authorized Officer
Name: Peter G. Sharaglia
Title: President

Address:

Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650





Promissory Note

Onkville, Ontario this date: March 1, 2009

FOR VALUE RECEIVED, C.O. Capital Growth Corp., hereby promises to pay to

Pero Assets Inc.

the sum of

Six Millions Dollars

\$

6,000,000.00

plus simple interest at the rate of 35 % per annum

on any unpaid balance owing as of the Maturity Date in accordance with and subject to the terms of Loan Agreement, No. 157-C.

between the lender Pero Assets Inc.

and the C.O. Capital Growth Corporation dated as of March 1, 2009

This Promissory Note is not assignable, negotiable or transferable without the express written consent of C.O. Capital Growth Corporation. All capitalized terms have the meanings ascribed to them in the Loan Agreement, unless the context otherwise provides. C.O. Capital Growth Corporation hereby waives presentment for payment, notice of dishonour, protest and notice of protest.

C.O. Capital Growth Corporation

PRESIDENT

I have the authority to bind the Corporation.



No. 167-B

LOAN AGREEMENT

This Loan Agreement made in duplicate this day April 23, 2009, between Jody Mangiardi (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

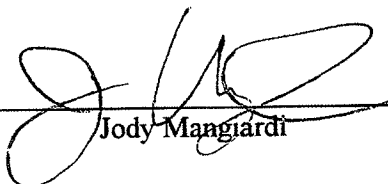
The Parties agree as follows:

1. **The Loan:** The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of Four Hundred Thousand Dollars (\$400,000.00) of lawful money of Canada (the "Principal Sum") for a term of not less than eight weeks, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the eighth week anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.

2. **Interest:** The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of ten Percent (10%) calculated from the Advance Date and accrued from the Advance Date to the Maturity Date which interest shall become due and payable upon the date the Principal Sum is repaid in full.

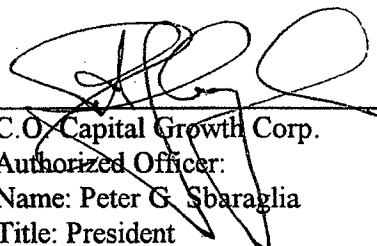
IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

By:


Jody Mangiardi

Address:

By:


C.O. Capital Growth Corp.
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:

239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650



No. CO 010

LOAN AGREEMENT

This Loan Agreement made in duplicate this day of April 22, 2009, between C.O. Capital Growth (the "Lender") and E.M.B. Asset Group Inc. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. The Loan: The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of Four Hundred Twenty Five Thousand Dollars (\$425,000.00) of lawful money of Canada (the "Principal Sum") for a term of eight weeks, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date").

2. Interest: The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of Fifteen Percent (15%) calculated from the Advance Date and accrued from the Advance Date to the Maturity Date which interest shall become due and payable upon the date the Principal Sum is repaid in full.

3. Repayment: The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.

4. Renewal: In the event the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, in its sole and unfettered discretion shall have the option without prior notice, to deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

5. Partial Repayment: In the event the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial


Initials

5. Partial Repayment: In the event the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower shall have the option without prior notice, in its sole and unfettered discretion to either (i) determine that the Total Amount is due and payable to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or such Total Amount in such circumstance, or (ii) deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

6. Additional Loan: In the event the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to loan the Total Amount (as defined in Paragraph 5) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be loaned to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the option, without prior notice in its sole and unfettered discretion to either (i) pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or the Total Amount in such circumstance, or (ii) deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

7. Renewal Notice: The Borrower shall send written notice to the Lender of any Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for such Renewal for the purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty, there shall be no limit as to the number of Renewals under this Agreement. Notwithstanding the foregoing and irrespective of whether the Lender has provided its notice requesting a renewal of the Loan Agreement, any renewal of the Loan Agreement shall be in the sole and unfettered discretion of the Borrower.


initials

8. Prepayment: The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind. Upon full repayment of the Principal Sum together with interest as aforesaid, this Loan Agreement shall become null and void.

9. Accredited Investor: Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

10. Bank Drafts/Certified Cheques: All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank.

11. Notices: All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Loan Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.

12. Time: Time shall be of the essence in all respects.

13. Entire Agreement: This Loan Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Loan Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Loan Agreement or the Promissory Note without the written consent of the Borrower.

14. Jurisdiction: This Loan Agreement and any dispute arising from or in relation to this Loan Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.


initials

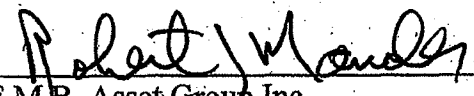
IN WITNESS WHEREOF the Parties have caused this Loan Agreement to be executed by authorized persons.

By: _____

C.O. Capital Growth
Authorized Officer:
Name: Peter Sbaraglia
Title: President

Address:
239 Church Street
Oakville, ON L6J 1N4

By: _____


E.M.B. Asset Group Inc.
Authorized Officer:
Name: Robert Mander
Title: President

Address:
225 Church Street
Oakville, ON L6J 1N4



No. 176-C

LOAN AGREEMENT

This Loan Agreement made in duplicate this day June 2, 2009, between Sesto & Anne Deluca (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. **The Loan**: The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of Five Hundred Thousand Dollars (\$500,000.00) of lawful money of Canada (the "Principal Sum") for a term of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the first anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.
2. **Interest**: The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of ten Percent (10%) per quarter calculated from the Advance Date and accrued from the Advance Date to the last business day of the next quarter.
3. **Repayment**: The Borrower agrees to pay the Lender the interest earned at the end of each quarter at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.
4. **Prepayment**: The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind.
5. **Accredited Investor**: Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.
6. **Bank Drafts/Certified Cheques**: All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank
7. **Notices**: All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally

delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.

8. **Time:** Time shall be of the essence in all respects.

9. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.

10. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

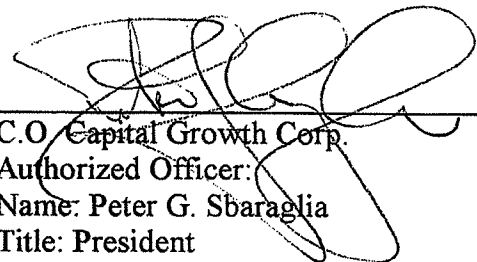
By:



Sesto & Anne Deluca

Address:

By:



C.O. Capital Growth Corp.
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:

239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650





No. 177-M

LOAN AGREEMENT

This Loan Agreement made in duplicate this day June 2, 2009, between Joe Radice (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. **The Loan:** The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of One Hundred & Fifty Thousand Dollars (\$150,000.00) of lawful money of Canada (the "Principal Sum") for a term of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the first anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.
2. **Interest:** The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of Eight Percent (8%) per quarter calculated from the Advance Date and accrued from the Advance Date to the last business day of the next quarter.
3. **Repayment:** The Borrower agrees to pay the Lender the interest earned at the end of each quarter at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.
4. **Prepayment:** The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind.
5. **Accredited Investor:** Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.
6. **Bank Drafts/Certified Cheques:** All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank
7. **Notices:** All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally

delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.

8. **Time:** Time shall be of the essence in all respects.

9. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.

10. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

By: _____
Joe Radice

Address:

By: _____
C.O. Capital Growth Corp.
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:
239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650





Royal Bank of Canada
Banque Royale du Canada

3300 HIGHWAY 7 - STE 100
CONCORD, ON

CANADIAN DOLLAR BANK DRAFT - TRAITE EN DOLLAR CANADIEN

95779113 0-416

DATE 20090529
Y/A M/M D/J

PAY TO THE ORDER OF C.O. CAPITAL GROWTH
PAYEZ À L'ORDRE DE

\$150,000.00

EXACTLY 150000000

CANADIAN DOLLARS CANADIENS

RE/OBJET

PURCHASER NAME

NOM DE L'ACHETEUR

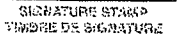

AUTHORIZED SIGNATURE / SIGNATURE AUTORISÉE


SIGNATURE STAMP / TIMBRE DE SIGNATURE

PURCHASER ADDRESS

ADRESSE DE L'ACHETEUR


COUNTERSIGNED / CONTRESIGNÉ


SIGNATURE STAMP / TIMBRE DE SIGNATURE

95779113 00192003 0990135

Joe Radice - Options
Re # 177-m

C. O. CAPITAL GROWTH
239 CHURCH ST., SUITE 100E
OAKVILLE, ONTARIO L6J 1N4

0005

DATE 2 00 9 06 02
Y Y Y Y M M D D

PAY to
the order of

EMB Asset Group Inc

\$ 150,000 -

One Hundred & Fifty Thousand ~~xx~~ DOLLARS

HSBC Bank Canada

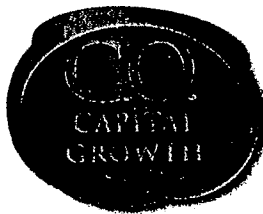
2500 APPLEBY LINE
BURLINGTON, ONTARIO L7L 0A2

C.O. CAPITAL GROWTH

RE

⑈000005⑈ ⑆10342⑈016⑆ 008641⑈001⑈

Re: Joe Radice
Options
177-m



No. 179-C

LOAN AGREEMENT

This Loan Agreement made in duplicate this day of July 21, 2009, between Gary McIntosh (the "Lender") and C.O. Capital Growth Corp. (the "Borrower") (collectively the "Parties").

The Parties agree as follows:

1. **The Loan:** The Lender agrees to loan to the Borrower and the Borrower agrees to borrow from the Lender the sum of One Hundred And Four Thousand (\$104,000.00) of lawful money of Canada (the "Principal Sum") for a term of not less than one year, subject to the terms of this Agreement, commencing on the date on which good funds are received by and are satisfactory to the Borrower in accordance with the terms of this Agreement (the "Advance Date"). For the purposes of this Agreement, the first anniversary of the Advance Date shall be the expiry date of the term (the "Maturity Date"), subject to any Renewal as hereinafter provided.
2. **Promissory Note:** The advance of the Principal Sum shall be evidenced by a promissory note, (the "Promissory Note") in the form of Schedule "E" hereto.
3. **Interest:** The Borrower agrees to pay to the Lender interest on the Principal Sum at the simple rate of Twenty Five Percent (25%) per annum calculated from the Advance Date and accrued from the Advance Date to the Maturity Date which interest shall become due and payable upon the date the Principal Sum is repaid in full.
4. **Repayment:** The Borrower agrees to repay the Lender at the Borrower's address as noted below or at any other place in Canada that the Borrower may give notice of in writing in accordance with the Notice provisions of this Agreement.
5. **Renewal:** In the event the Lender provides written notice in the form of Schedule "A" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the Principal Sum and accrued interest thereon (referred to as the "Total Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue after the Maturity Date in such circumstance. If the Lender fails to provide such written notice, the Borrower, in its sole and unfettered discretion, may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and the Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.
6. **Partial Repayment:** In the event the Lender provides written notice in the form of Schedule "B" hereto to the Borrower, not less than 45 days prior to the Maturity Date, the portion of the Principal Sum and accrued interest thereon as noted on Schedule "B" (referred to as the "Partial Amount") will be payable to the Lender on the Maturity Date. Interest will not accrue on the Partial Amount after the Maturity Date in such circumstance. Should the Lender fail to comply with the requirements as set out in Schedule "B", the Borrower may, without notice, in its sole and unfettered discretion either (i) determine that the Total Amount is due and payable to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or such Total Amount in such circumstance, or (ii)


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may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

7. **Additional Loan:** In the event the Lender provides written notice in the form of Schedule "C" hereto to the Borrower of his or her desire to loan the Total Amount (as defined in Paragraph 5) plus an additional amount (the "Additional Amount") as noted on Schedule "C" and complies with the requirements set out in such schedule, the Total Amount shall not be paid to the Lender on the Maturity Date, but shall be treated as an advance of a portion of the amount to be loaned to the Borrower on the Maturity Date. Should the Lender fail to comply with the requirements as set out in Schedule "C", the Borrower shall have the right in its sole and unfettered discretion either (i) to pay the Total Amount to the Lender on the Maturity Date and interest will not accrue after the Maturity Date upon either the original Principal Sum or the Total Amount in such circumstance, or (ii) may without prior notice deem that the Lender has agreed to loan the Total Amount to the Borrower for an additional one year term (the "Renewal"), and such Total Amount shall be deemed to be the Principal Sum for such purpose with interest thereon at the aforesaid rate again calculated and accruing and becoming due and payable in the same manner as set out above to the Renewal Maturity Date. In the event of such Renewal, both Parties shall be subject to the terms of this Loan Agreement, *mutatis mutandis*, save that the Lender shall not be required to provide the certificate referred to in Paragraph 10 hereof.

8. **Renewal Notice:** The Borrower shall send written notice to the Lender of any Renewal in the form of Schedule "D" hereto. In the event of a Renewal, the Maturity Date for such Renewal and for the purposes of this Agreement shall be the new Maturity Date as stated on such written notice. The Lender may obtain a Promissory Note reflecting a Renewal from the Borrower, provided that the Lender surrenders any Promissory Note(s) previously provided by the Borrower. For greater certainty, there shall be no limit as to the number of Renewals under this Agreement.

9. **Prepayment:** The Borrower may prepay all or any portion of the Principal Sum outstanding together with interest accrued thereon at anytime without notice, penalty or bonus of any kind.

10. **Accredited Investor:** Prior to any advance, the Lender shall provide to the Borrower a duly executed certificate in the form of Schedule "F" hereto attesting to the fact that the Lender is an Accredited Investor as defined therein, unless the Principal Sum is equal to or exceeds \$150,000.00. If the Principal Sum is equal to or exceeds \$150,000.00, the Lender certifies that he, she or it is lending the Principal Sum as principal and that the Lender has not been created or is used solely to loan funds to the Borrower or otherwise acquire or purchase securities sold or distributed in reliance on the exemptions from registration and prospectus requirements available under Section 2.10 of National Instrument 45-106.

11. **Bank Drafts/Certified Cheques:** All advances and payments by Parties hereunder shall be made by certified cheque or bank draft drawn on a Canadian chartered bank



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12. **Notices:** All communications between the Parties shall be in writing, personally delivered or sent by registered mail, charges prepaid, or by facsimile or other means of electronic communication, charges prepaid, to the address set forth below in this Agreement or to such other address as a Party hereto may from time to time designate to the other in such manner, provided that no communication shall be sent by mail pending any threatened or actual postal strike or other disruption of postal service in Canada. Any communication so personally delivered shall be deemed to have been validly and effectively given and received on the date of such delivery. Communications so sent by any means of electronic transmission mentioned above shall be deemed to have been validly and effectively given and received on the business day next following the day on which it is sent. Communications so sent by mail shall be deemed to have been validly and effectively given and received on the fifth business day next following the day on which it is sent.

13. **Time:** Time shall be of the essence in all respects.

14. This Agreement constitutes the entire agreement between the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or oral in respect to the relationship of the Parties. No amendment, supplement or waiver of any provision of this Agreement shall in any event be effective unless it shall be in writing and signed by the Parties. The Lender may not assign, pledge or otherwise transfer this Agreement or the Promissory Note without the written consent of the Borrower.

15. This Agreement and any dispute arising from or in relation to this Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario to which jurisdiction the Parties attorn and the laws of Canada applicable therein, excluding the choice of law rules of that Province.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by authorized persons.

By:


Gary McIntosh

Address:

By:

C.O. Capital Growth Corp.
Authorized Officer:
Name: Peter G. Sbaraglia
Title: President

Address:

239 Church Street, Suite 100E
Oakville, ON L6J 1N4
(905) 339-0650

**Mander Group
and
Client Companies.**

LOAN AGREEMENT

010-072706-A

The "Lender": C.O. CAPITAL GROWTH CORP.

The "Borrower": Mander Group INC

1. Loan

The Lender hereby lends \$70,000 USD (the "Loan Amount")
to the Borrower for a period of one year from July 20th 2006
to July 20th 2007 (which second date shall be known as the
"Loan End Date").

2. Interest on Loan

Borrower agrees to pay Lender 30% simple annual interest on the Loan Amount. Any income earned by Borrower through investment of the Loan Amount in excess of the 30% interest cost shall be divided equally between Lender and Borrower.

3. Loan Agreement Termination and Renewal

- a) Neither the Lender nor the Borrower may not terminate the Loan Agreement before Loan End Date unless agreed to in writing by both parties;
- b) At least 10 business days prior to Loan End Date, Lender shall send to Borrower written notice indicating whether Lender wishes to terminate Loan Agreement on Loan End Date, or to renew Loan Agreement in accordance with subparagraph 3(c) hereof;
- c) Lender may renew Loan Agreement for another one year period in which case a new Loan Agreement specifying amount, dates, rate of interest and other particulars will be signed by both parties;
- d) In the event Lender indicates a wish to terminate Loan Agreement on Loan End Date in accordance with subparagraph 3(b) hereof, Borrower shall repay Loan Amount plus any interest owing as provided in paragraph 2 hereof to Lender within 10 business days of Loan End Date. Borrower shall also pay to Lender 50% of income earned through investment in excess of the 30% interest cost within 10 business days of Loan End Date.

4. Giving of Notice

Any notice that must be given under this Loan Agreement will be given by delivering it in person or by mail or by fax at the respective addresses listed below. Any notice mailed is deemed to be received on the 5th business day from date of mailing.

5. Transactions

All transactions between Borrower and Lender will be through bank drafts.

Robert J Mander
Mander Group LLC

Borrower

July 26th 2006

Date

Lender

July 27 / 06

Date