

In the matter of:                   **The Companies Law, 5759-1999**  
**The Companies Law**

And in the matter of:               **The Companies Ordinance [New Version], 5743-1983**  
**The Companies Ordinance**

And in the matter of:               **Urbancorp Inc., Canadian company no. 2471774**  
**The company**

And in the matter of:               **Adv. Guy Gissin, the functionary of the company**  
By his attorneys, Advocates Yael Hershkovitz and/or Gilad Bergstein and/or Sharon Eisner-Bel  
Of the firm of Gissin & Co., Law Offices  
Of 38B Habarzel Street, Tel-Aviv 69710  
Telephone: 03-7467777; fax. 03-7467700  
**The functionary**

And in the matter of:               **The Official Receiver**  
Of 2 Hashlosha Street, Tel-Aviv  
Tel. 03-6899695; fax. 02-6467558  
**The Official Receiver**

**Update Report no. 17 from the Functionary**  
**and Motion for Instructions**  
**(for approval of an additional interim distribution to the company's creditors)**

The honorable court is requested to exercise its power and to give the functionary of Urbancorp. Inc. (hereinafter: **'the functionary'** and **'the company,'** respectively) approval to distribute to the secure creditor of the company, Reznik Paz Nevo Trusts Ltd., trustee for the holders of the series A bonds (hereinafter: **'the secure creditor'**), a second interim dividend from money that was received from the sale of assets of subsidiaries in a sum of NIS 16,484,851 and a first interim dividend to the unsecured creditors of the company in a sum of NIS 2,795,149, all of which as stated below.

This motion is being filed further to the functionary's update report that was filed on May 28, 2018 (motion no. 60) (hereinafter: **'report no. 16'**) and previous update reports that were filed with the honorable court.

**A. Introduction**

1. Prior to the date of the filing of this report, a sum of approximately 4.6 million Canadian dollars was received in the functionary's account, and an additional sum of approximately 0.4 million Canadian dollars is expected to be received in the coming weeks.

2. On June 15, 2018, the Canadian monitor gave notice that he agreed to the functionary's request and would act to make an additional immediate distribution of a dividend into the account of the arrangement of the company's creditors, in a sum of 3.05 million Canadian dollars, which is expected to be made during June 2018 (**'the additional immediate distribution'**) in a manner that will make the receipts in the arrangement account from the current distributions from the monitor amount to approximately 8 million Canadian dollars (hereinafter: **'the receipts'**).
  - A copy of the monitor's report no. 26 dated June 15, 2018, which includes (in section 4.0 of the report) reference to the additional immediate distribution is attached hereto as **Annex 1** of the motion.
3. According to an analysis of the sources of the receipts that was made together with the monitor and with the assistance of the financial consultant of the functionary in Canada, 85% of the receipts are attributed to money that was received from the assets that are security for and are intended for the secured debt, and the balance of 15% is attributed to money that was received from other assets and is intended for the unsecured creditors of the company.

## **B. The filing of debt claims and decisions of the functionary**

### **B.1 Ordinary debt claims**

4. As was presented to the honorable court within the framework of previous update reports that were filed by the functionary, as of the date of filing this motion 18 debt claims have been filed with the functionary by various creditors of the company, both Israeli and Canadian. The amount of the debt claims that were received and approved by the functionary is NIS 188,047,482. Of this amount, a sum of NIS 135,411,391 was recognized as a secure debt of the holders of the bonds issued by the company (the secured part out of the total approved debt claim of the trustee for the bondholders).
5. As of the date of this report, two appeals have been filed by creditors of the company against decisions of the functionary that rejected their debt claims: (1) Janterra Real Estate Advisors Inc., which filed a debt claim in a sum of NIS 158,267<sup>1</sup> for fees for commercial real estate valuations; (2) Harris Shaeffer law firm, which filed a debt claim in a sum of NIS 413,499<sup>2</sup> for fees for legal services that were provided to the company (**'the appeals on the debt claims'**). It should be noted that we are speaking of parties who are being sued by the functionary within the framework of legal proceedings in Israel and Canada, as stated in report no. 14 of December 18, 2017 (Motion no. 55) and in report no. 16.
6. It should be clarified that, even after making the additional interim distribution proposed below, money will remain in the functionary's account that will make it possible, if necessary, to pay the proportional amount of all the unsecured debts being

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<sup>1</sup> The amount was calculated according to the representative rate (according to the rate from the Bank of Israel's end of a day publication) of the Canadian dollar and the US dollar on April 25, 2016, the date of receiving the appointment order.

<sup>2</sup> As stated in note 1 above.

paid in this distribution (an amount of approximately 5%) also with respect to the debt claims that were rejected and with respect to which appeals were filed as aforesaid.

## **B.2 Contingent debt claims**

7. Pursuant to the decision of the honorable court of May 15, 2018 (in motion 56), Pechthold's claim to recognize the debt claimed by him as a secured debt was rejected (hereinafter: '**the court's decision**').
8. Pursuant to the court's decision, which permitted Pechthold to file a motion for an extension to file a debt claim as an ordinary creditor, on June 7, 2018, Pechthold filed with the functionary a request to extend the time for filing the debt claim as an ordinary creditor, which was accompanied by a contingent debt claim.<sup>3</sup> The request for an extension and the contingent debt claim attached to it have not yet been decided.
9. An additional proceeding that is pending is an appeal that was filed by Apex Issuances Ltd. (hereinafter: '**Apex**') regarding the functionary's rejection of the contingent debt claim (in an unknown amount) that was filed by it against the company.<sup>4</sup>
10. Unlike the other debt claims stated above, the debt claims of Mr. Pechthold and Apex are debt claims that are conditional upon the results of class actions that are still in preliminary stages of motions for certification for the filing of class actions.
11. According to case law, the distribution of an interim dividend should not be delayed because of the existence of contingent debt claims that have not yet been approved. This is particularly correct when the amounts of the conditional debt claims are not defined (as in the case of Apex's debt claim) or they are for huge amounts (like the debt claim of Pechthold).<sup>5</sup> In this context, it has been determined that reserves should not be retained if they are likely to delay the implementation of the entire creditors' arrangement.
12. With regard to debt claims that were not approved, the honorable Justice Solberg held in LCA 9524/16 *Shalom Cohen v. Seglovitz Earth and Development Works Ltd. (in a creditors' arrangement)* (reported by Nevo, April 19, 2017) that:

**'Pursuant to the provisions of sections 132-133 of the Bankruptcy Ordinance and regulation 99 of the Bankruptcy Regulations, the trustee is entitled to distribute a dividend to creditors prior to the final decision on additional debt claims that were filed by the creditors. Insofar as the trustee decides to make such a distribution, he shall take into account, when determining the amount of the distribution, the additional debt claims that have not**

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<sup>3</sup> For the sake of completeness, it should be stated that on June 6, 2018, Mr. Pechthold filed a motion with the Supreme Court 'for an extension of time to file a motion for leave to appeal' on the court's decision. This motion has not yet been heard.

<sup>4</sup> MCA 5249-06-17 *Apex Issuances Ltd. v. Gissin*. Apex's debt claim is conditional on the results of the class action (CIA 16652/04/16, which is being heard by the Economic Court in Tel Aviv).

<sup>5</sup> The amount of Pechthold's conditional debt claim, assuming that he will be granted an extension to file it, is approximately NIS 43 million, and the amount of Apex's debt claim is unknown.

**yet been finally decided, and the other financial expenses that are expected in the proceeding. Insofar as after distribution of the dividends a debt claim of a creditor will be accepted and money will be awarded to him, then that creditor will be given precedence in the next distribution of a dividend.'**

13. With respect to contingent debt claims, which are for huge amounts and which are likely to delay distributions and the making of creditors' arrangements, it has been determined that no reserves should be kept – see the remarks of the honorable Justice Alshech in BC (TA) 1361/02 *AGICOA – Association of International Collective Management of Audiovisual Works v. Accountant Zvi Yochman* (reported by Nevo, March 29, 2004):<sup>6</sup>

**'After I have considered the circumstances of the case, in view of the proper law in a stay of proceedings, I have found that I should not grant the applicant's motion to keep a reserve in the account in the amount of their huge claim, and *de facto* in this way to stay the performance of the whole creditors' arrangement. We are dealing with a complex and large creditors' arrangement, whose success if of great importance not only for the many parties involved in it but also for very broad swathes of the public'** [emphases not in the original].

14. One way or another, as stated above and in report no. 16, the functionary estimates that in the coming months substantial additional amounts are expected to be received as a result of operations that the functionary is carrying out, mainly in Canada. These future receipts shall be used for additional distributions. It is self-evident that if necessary, and insofar as a change will occur in any of the contingent debt claims, it will be possible to address the issue by means of giving precedence to such claims.

### **C. Summary**

15. The functionary is of the opinion that there is no basis for leaving reserves in the arrangement coffers for the contingent debt claims, as opposed to the ordinary debt claims that have not yet been finally decided.
16. In view of the aforesaid, the honorable court is requested to give the functionary approval to distribution the receipts to the company's creditors in a total amount of NIS 19.280 million as stated at the beginning of this motion.

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Guy Gissin, Adv.

The functionary

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\_\_\_\_\_  
Yael Hershkovitz, Adv.

Attorneys for the functionary of Urbancorp Inc.

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Sharon Eisner Bel, Adv.

Today, June 19, 2018, Tel Aviv

<sup>6</sup> In BC (TA) 1361/02 *AGICOA – Association of International Collective Management of Audiovisual Works v. Accountant Zvi Yochman* (reported by Nevo, March 29, 2004).

# **ANNEX 1**

(English)



**The Tel Aviv Jaffa District Court**

LC 44348-04-16 *Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc., Canadian company 2471774, et al.*

Motion no. 61

Telephone of Information Center: 077-2703333

**Confirmation of opening a motion**

**Confirmation is given that on June 20, 2018, 7:00 a.m., a motion of the following type was filed: filing of written pleadings** – motion of the first applicant, filing of written pleadings

In the case LC 44348-04-16 *Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc., Canadian company 2471774 et al.*

The motion number is: 61.

In any communication with the court regarding this motion, you should state the motion number.

**In the matter of:**                    **The Companies Law, 5759-1999**  
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**And in the matter of:**            **Adv. Guy Gissin, the functionary of the company**  
By his attorneys, Advocates Yael Hershkovitz and/or Gilad Bergstein and/or Sharon Eisner-Bel  
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Telephone: 03-7467777; fax. 03-7467700  
**The functionary**

**And in the matter of:**            **The Official Receiver**  
Of 2 Hashlosha Street, Tel-Aviv  
Tel. 03-6899695; fax. 02-6467558  
**The Official Receiver**

**Motion for Instructions**  
**for Approval of the Functionary's Interim Remuneration**

The honorable court is hereby requested:

- (a) To approve the payment of interim remuneration for the functionary in a sum of NIS 2 million plus VAT according to law.
- (b) To approve the payment of the Official Receiver's supervision fee pursuant to regulation 64(b) of the Companies (Liquidation) Regulations, 5747-1987.

**The following are the grounds of the motion:**

- 1. As explained in detail in the update reports that were filed with the honorable court by the functionary in this proceeding, since the date of his appointment, more than two years ago (on April 25, 2016), the functionary has acted and is acting, in Canada and Israel, intensively, around the clock (as a result of the fact that the main activity is carried out in Canada) in order to maximize the receipts for the company's creditors.
- 2. Within the framework, the functionary is acting with the Canadian functionaries (the monitors), is initiating and is a part to legal proceedings with interested parties and

other creditors in the subsidiaries in Canada, in order to bring money into the coffers of the creditors' arrangement and maximize the receipts for the company's creditors in general, and first and foremost the bondholders.

3. The functionary has carried out so far a large number of operations and legal proceedings in Israel and Canada and has filed claims against the controlling owners of the company, the guardians who were involved in the issue (underwriters, valuers, accountants, the rating company) and recently a legal proceeding in Canada against the Canadian attorneys of the company, in amounts of tens of millions of Canadian dollars.
4. The functionary is also involved in discussions with third parties with regard to the possibility of realizing the assets of the remaining subsidiaries and is in contact with and is mainly cooperating with KSV Kofman Inc. (**'the monitor'**) for this purpose.
5. *Inter alia*, without derogating from the generality of the aforesaid, the functionary has filed many proceedings in order to enforce promissory notes in a sum of approximately 8 million Canadian dollars plus expenses and interest, which the controlling owners purported to assign to the company as a condition for the issue of the bonds. As stated in report no. 16 of May 28, 2018, after litigating lengthy proceedings in Canada to realize the company's rights pursuant to the aforesaid promissory notes, and after it transpired according to the decision of the Canadian court that the assignment of the rights was unfounded, the functionary succeeded in obtaining recognition of the monitor of the company's rights in a sum of 8 million Canadian dollars, plus interest and expenses, by virtue of claims in tort against the subsidiary TCC/Urbancorp (Bay) LP (**'TCC'**).
6. As stated in report no. 17 that was filed by the functionary (motion no. 61), in which the court was requested to approve for distribution a sum of more than an additional NIS 19 million to the company's creditors (hereinafter: **'the distribution motion'**), approximately 3 million Canadian dollars out of the receipts that are designated for distribution to the creditors derive from a payment that was approved on account of the aforesaid debt claim that the functionary filed with the monitor of TCC.
7. At the same time as dealing with the realization of the company's assets and the creditors' rights therein, the functionary and attorneys from his firm are required to deal with and take part in class actions that were filed with respect to the company with the large number of proceedings that are taking place in them (CIA 1746-04-16 *Pechthold et al. v. Urbancorp Inc. et al.*; CIA 16652-04-16 *Monrov v. Apex Issuances Ltd. et al.*; and CIA 11403-05-16 *Monrov v. Midroog*).
8. For details of the operations of the functionary and his firm, see further Update Report no. 12 of October 2, 2017 – motion no. 52; Update Report no. 13 of October 29, 2017 – motion no. 54; Update Report no. 14 of December 18, 2017 – motion no. 55; Update Report no. 15 of February 18, 2018 – motion no. 58; Update Report no. 16 of May 28, 2018 – motion no. 60; and Update Report no. 17 (the distribution motion).
9. **The economic results expected in this case are unprecedented and speak for themselves. The many operations carried out by the functionary in this case, including the litigation of legal proceedings in Canada against a large number of**



**parties, alongside many legal proceedings that were litigated in Israel, including proceedings against third parties, have led rapidly to an optimal legal and economic result for the creditors, and are expected to produce even more amounts in the future.**

10. As described above, the activity of the functionary and his team and their efforts deviated from any standard framework of insolvency proceedings and creditors' arrangements.

As stated in the distribution motion, the functionary is seeking to distribute to the secured and unsecured creditors jointly an additional sum of more than NIS 19 million. Together with the first distribution that was made to the bondholders in a sum of NIS 76,000,000, the total repayment to the company's creditors is expected to amount to a sum of more than **NIS 95 million**.

11. This total amount constitutes a repayment of more than 50% of the total approved debt. As stated in the distribution motion, substantial additional receipts are expected to be received in the coming months, and these will be used for additional distributions that are expected to increase the amount and percentage of the repayment to the creditors even more.
12. In the circumstances of the case, in view of the significant amounts and percentage of the repayment and the special efforts invested on an ongoing basis by the functionary and his firm's staff, the honorable court will be requested to approved for the functionary an additional interim payment of fees in a sum of NIS 2 million plus VAT. This amount is requested on account of the final distribution remuneration and a motion to approve this will be filed when the time comes, after the final repayment percentages will become clear. This interim remuneration is consistent with the Companies (Rules regarding Appointment of Receivers and Liquidators and their Remuneration) Regulations, 5741-1981.
13. For the sake of completeness, it should be mentioned that on July 18, 2017, the honorable court approved interim remuneration for the functionary in a sum of NIS 2 million plus VAT according to law, while it was clarified that an appropriate accounting would be made when awarding the final remuneration.
14. The honorable court is also requested to give the functionary approval to pay out of the account the supervision fee of the Official Receiver pursuant to regulation 64(b) of the Companies Regulations (Liquidation), 5747-1987, in an amount of 20% of the amount of the fees that will be approved for the functionary, in a sum of NIS 400,000.

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Yael HersHKovitz, Adv.

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Gilad Bergstein, Adv.

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Sharon Eisner Bel, Adv.

**Attorneys for the functionary of Urbancorp Inc.**

Today, June 19, 2018, Tel Aviv



**The Tel Aviv Jaffa District Court**

LC 44348-04-16 *Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc., Canadian company 2471774, et al.*

Motion no. 62

Telephone of Information Center: 077-2703333

**Confirmation of opening a motion**

**Confirmation is given that on June 20, 2018, 7:00 a.m., a motion of the following type was filed: filing of written pleadings** – motion of the first applicant, filing of written pleadings

In the case LC 44348-04-16 *Reznik Paz Nevo Trusts Ltd. v. Urbancorp Inc., Canadian company 2471774 et al.*

The motion number is: 62.

In any communication with the court regarding this motion, you should state the motion number.