

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

DBDC SPADINA LTD.,
AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO

Applicants

and

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD. and EGLINTON CASTLE INC.

Respondents

and

THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE
BOUND BY THE RESULT

SUPPLEMENTARY MOTION RECORD
(In Support of the Motion of the Respondent Norma Walton)

Motion returnable:
January 11, 2018 at 10:00 a.m.

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Toronto ON M5H 2T7
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Lawyers for
THIRD PARTY INVESTOR
DUNCAN COOPLAND

INDEX

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

**DBDC SPADINA LTD.,
AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO**
Applicants

and

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD. and EGLINTON CASTLE INC.**
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**THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE
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NOTICE OF MOTION

The Respondent, Norma Walton, will make a motion to the Court on November 16, 2017
at 10 am, or such other date determined by the Court.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

1. An Order that the sum of \$330,000 that the Manager is holding in trust from Twin

Dragons be paid as follows:

- (a) \$150,000 capital repayment plus \$15,000 profits be paid to Duncan Coopland;

(b) \$100,000 capital repayment plus \$10,000 profits be paid to Joe and Teresa Memme; and

(c) \$50,000 capital repayment plus \$5,000 profits be paid to Gideon and Irene Levytam.

2. An Order that the \$553,200 that is due to the Waltons and that is being held in trust by the Manager continue to be held in trust by the Manager pending a determination of the following two claims:

(a) Trez Capital's litigation wherein they are suing both the Waltons and Dr. Bernstein personally in fraud for \$15.3 million; and

(b) The monies due from the Waltons to the Schedule C investors in the amount of \$14 million less whatever amount is ultimately paid to the Schedule C investors from the proceeds the Manager is holding related to the sale of the Schedule C properties; and

3. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Monies due to Coopland, Memme and Levytam

1. Schonfeld Associates Inc. ("Schonfeld") brought a motion to pay their fees and disbursements; to pay their lawyers' fees and disbursements; to distribute monies to the Applicants; to hold back in their trust account the sum of \$330,691.84 that is due to Duncan Coopland, Joe and Teresa Memme and Gideon and Irene Levytam; and other relief claimed.

2. Schonfeld has confirmed that Duncan Coopland provided \$150,000 to Twin Dragons; Joe and Teresa Memme provided \$100,000 to Twin Dragons; Gideon and Irene Levytam provided \$50,000 to Twin Dragins; and Ange Boudle provided \$50,000 to Twin Dragons.

3. Schonfeld has further confirmed that Ange Boudle was repaid his \$50,000 plus profits of \$25,000 in 2013, but the other investors have not been paid back.

4. There is no reason to hold back the monies due to Coopland, Memme and Levytam. It has already been four years of litigation and it is clear that those people contributed money directly to Twin Dragons in exchange for equity.

5. Schonfeld is recommending that Dr. Bernstein be paid back money from Twin Dragons based on his equity contributions to Twin Dragons. It is only fair and equitable, then, that Coopland, Memme and Levytam be treated the same.

Monies due to the Waltons

6. Schonfeld proposes to pay to the Applicants \$2,426,800 representing the Applicants' claimed equity in five of the Schedule B companies. That is not opposed.

7. Schonfeld proposes to pay to the Applicants \$553,200 of monies that is due to the Waltons or to the Waltons' creditors. That is opposed.

8. It is premature to make any such payments; there is no urgency; and Schonfeld does not have a court ordered mandate to make recommendations for payment in favour of the Applicants as one creditor of the Waltons over and above the interests of the Waltons and their other creditors.

9. There are two creditors that should be taken into account before any such distributions are authorized:

(a) Trez Capital has sued both the Waltons and Dr. Bernstein for \$15.3 million alleging fraud. That litigation is ongoing.

(i) Just prior to his retirement, Justice Newbould rendered an Endorsement that was damning of Dr. Bernstein's credibility and the credibility of his CFO James Reitan. In that Endorsement, Justice Newbould stated that had he known back in November 2013 what he knows now, he would not have ordered the receivership.

(ii) The Trez Capital matter has raised significant triable issues which could result in a finding of fraud, which could arguably disentitle Dr. Bernstein to any equitable distribution.

(b) The Waltons' Schedule C investors are due money from the Waltons.

(i) The Schedule C investors invested \$14 million into the Waltons' real estate portfolio.

(ii) Schonfeld is holding between \$4 and \$5 million for distribution to the Schedule C investors from the sale of property owned by the Schedule C investors.

(iii) Depending on how much of the \$4 to \$5 million is distributed to the Schedule C investors, the Waltons will owe to them the difference.

- (iv) Those creditors need to be considered before any distributions are made to Dr. Bernstein of the Waltons' monies.

10. Such further and other grounds as the Respondents may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Cross-Motion:

- (a) Affidavit of Norma Walton sworn October 4, 2017;
- (b) Endorsement of Justice Newbould dated May 24, 2017; and
- (c) Such further and other material as the lawyers may advise and this Honourable Court may permit.

October 20, 2017

**HOWARD C. COHEN &
ASSOCIATES**

357 Bay St., Suite 901
Toronto, ON, M5H 2T7

Howard C. Cohen (LSUC# 18272C)
Tel : 416.364.7436
Fax: 416.364.0083

COUNSELS FOR THE RESPONDENTS

TO: **SERVICE LIST**

DBDC SPADINA LTD., and those corporations listed on Schedule

-and-

NORMA WALTON et al.

A hereto

Applicants

Respondents

Court File No. CV-13-10280-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

**HOWARD C. COHEN &
ASSOCIATES**

357 Bay St., Suite 901
Toronto, ON, M5H 2T7

Howard C. Cohen (LSUC# 18272C)
Tel : 416.364.7436
Fax: 416.364.0083

COUNSELS FOR THE RESPONDENTS

TAB 2

Court File No. CV-13-10280-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**DBDC SPADINA LTD.,
AND THOSE CORPORATIONS LISTED ON SCHEDULE A HERETO**
Applicants

and

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD. and EGLINTON CASTLE INC.**
Respondents

and

**THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE
BOUND BY THE RESULT**

AFFIDAVIT OF DUNCAN COOPLAND
(Sworn on December 29, 2017)

I, DUNCAN COOPLAND, of the Regional Municipality of York, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a third-party investor of Twin Dragons Corporation, one of those corporations listed on Schedule "B". As such, I have personal knowledge of the matters set forth below, save and except for those statements based on my information and belief, in which case I state the source of that information and believe same to be true.

2. I submit this affidavit in support of the Motion of the Respondent Norma Walton to the extent it seeks an Order directing the Manager to distribute funds held in trust in connection with Twin Dragons Corporation to me for the purpose of repaying my \$150,000.00 capital investment in Twin Dragons Corporation, plus an additional \$15,000.00 in profits from my investment.
3. I am advised by counsel and do verily believe that according to the Manager's Fiftieth Report, the Manager has completed a claims process in respect of Twin Dragons Corporation and is holding \$330,700.00 in trust to address potential claims by third party investors of Twin Dragons Corporation.¹
4. After reviewing a prospectus for the 241 Spadina-Twin Dragons project prepared by The Rose & Thistle Group Ltd., on or about October 29, 2010 I invested the sum of \$150,000.00 into the project in exchange for equity in Twins Dragons Corporation. I have yet to receive repayment towards the monies invested therein.
5. Attached hereto and marked **Exhibit "A"** to this my affidavit is a true copy of cheque #146 drawn from my bank account at TD Canada Trust in the sum of \$150,000.00 payable to Twin Dragons Corporation bearing confirmation that the cheque was deposited on October 29, 2010.
6. Attached hereto and marked **Exhibit "B"** to this my affidavit is a true copy of the Deposit Account History for my account at TD Canada Trust showing that a debit for cheque #146 in the sum of \$150,000.00 posted to my account on November 1, 2010.
7. Attached hereto and marked **Exhibit "C"** to this my affidavit is a true copy of the share certificate I received for my investment in Twin Dragons Corporation.
8. Schonfeld Inc. has confirmed in the Manager's Fiftieth Report that my capital investment of \$150,000.00 was deposited into Twin Dragons' bank account on October 29, 2010.²

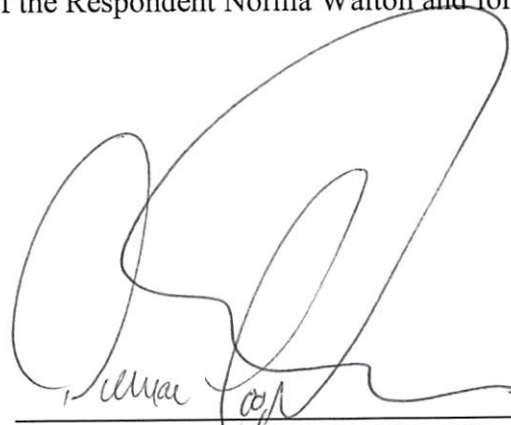
¹ Fiftieth Report of the Manager, Schonfeld Inc., dated September 28, 2017 at paras. 49-54.

² *Ibid* at para. 83 and following.

9. According to the Manager's Fiftieth Report, funds remain available from the sale proceeds of properties which had been owned by Twin Dragons Corporation from which to repay my capital investment of \$150,000.00, plus an additional \$15,000.00 as nominal profits for my invested funds.
10. The deprivation of my \$150,000.00 investment, in addition to the lost profits and interest expected to be derived therefrom, has caused me to suffer considerable financial hardship. Said hardship is compounded by the fact that I was terminated from my job in sales on August 31, 2017 and I am presently unemployed. I am presently searching for employment. I am a single father with two dependent children, aged 10 and 12. I am responsible for paying my ongoing child support obligations of \$2,397.00 per month.
11. I am advised by counsel and do verily believe that in the interests of justice and equity, an innocent third party investor such as myself should be granted repayment of the capital investments made, in addition to nominal profits thereon.
12. I make this Affidavit in support of the Motion of the Respondent Norma Walton and for no improper purpose.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 29 day of December 2017

)
)
)
)



DUNCAN COOPLAND


 Commissioner for Taking Affidavits

Andrew Scott Francis, a Commissioner,
etc., Province of Ontario, for Chand
Snider LLP, Barristers and Solicitors.
Expires January 25, 2020.

TAB A

This is **Exhibit "A"** referred to in
the Affidavit of **Duncan Coopland**
sworn December 29, 2017



A Commissioner for Taking Affidavits (or as may be)

ANDREW FRANCIS

Andrew Scott Francis, a Commissioner,
etc., Province of Ontario, for Chand
Snider LLP, Barristers and Solicitors.
Expires January 25, 2020.

Scanned Cheque Image

www.tdcanadatrust.com www.tdcanadatrust.com www.tdcanadatrust.com www.tdcanadatrust.com

MR DUNCAN F COOPLAND

DATE 20103026

PAY TO THE ORDER OF TWIN DRAGONS CORPORATION
One Hundred's Fifty Thousand Dollars

\$150,000.00

TD Canada Trust
MARKHAM BRANCH
100 HWY. 7 AT GALLSWORTHY DRIVE
MARKHAM, ONTARIO L3R 9V8

[Signature]

⑆146⑆ ⑆19962⑆004⑆ 0625⑆3135492⑆ ⑆0015000000⑆

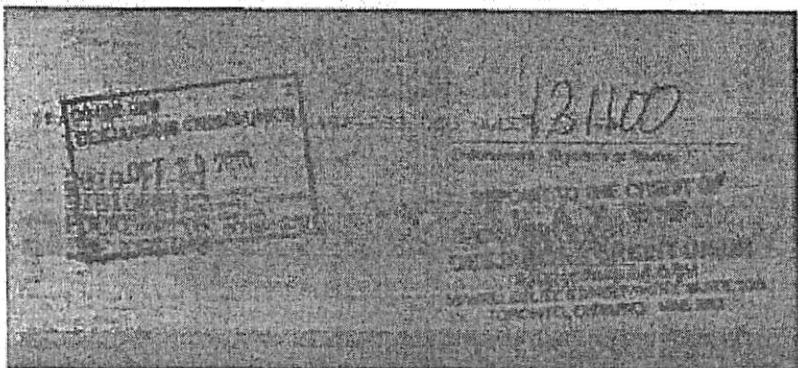
CERTIFIED TRUE COPY

TD Canada Trust

NEWMARKET PLAZA
8009-130 DAVIS DRIVE
NEWMARKET, ONTARIO L3Y 2N1

03072-004

[Signature]
MANAGER



TAB B

This is **Exhibit "B"** referred to in
the Affidavit of **Duncan Coopland**
sworn December 29, 2017



A Commissioner for Taking Affidavits (or as may be)
ANDREW FRANCIS

Andrew Scott Francis, a Commissioner,
etc., Province of Ontario, for Chand
Snider LLP, Barristers and Solicitors.
Expires January 25, 2020.

BR #: 307

DEPOSIT ACCOUNT HISTORY
FINANCIAL ENQUIRY

PAGE 161 OF 170 +

13

BR #: 1996 ACCOUNT: 3135492 MBA - ALL SHORTNAME: COOPLAND D
 FROM: 01 / 01 / 2004 TO: 02 / 02 / 2015 ACCESS TO FUNDS AMT: 100.00

FN	DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
-	11/01/2010	ETR 407 K2U3Q2	33.69 DR	
-	11/01/2010	ENBRIDGE K2U3Q3	78.43 DR	
-	11/01/2010	PYT TO: 19963214325	458.65 DR	
-	11/01/2010	CHQ#00145-0100701702	140.00 DR	
✓	11/01/2010	CHQ#00146-0500597407	150,000.00 DR	17,228.73
-	11/02/2010	BAGEL NASH	6.60 DR	17,222.13
-	11/03/2010	RETURNED CHEQUE	400.00 DR	
-	11/03/2010	GM W/D 003617	100.00 DR	
-	11/03/2010	GM DEPOSIT 003209	3,000.00 CR	19,722.13
-	11/04/2010	GM W/D 003302	100.00 DR	
-	11/04/2010	CHQ#00109-0500630300	1,700.00 DR	17,922.13

FN=> R-RETURN REQUEST, S-SELECT DETAILS, X-EXEMPT

USER ID: SEPKOM2

PSWD:

1/HELP 3/END 4/MENU 5/PRINT 7/BKWD 8/FWD 12/LOGOFF
 IMSTX TDASHF LTRM M2100358 MOD DASHFEO 2015-02-02 12.32

TAB C

This is **Exhibit "C"** referred to in
the Affidavit of **Duncan Coopland**
sworn December 29, 2017



A Commissioner for Taking Affidavits (or as may be)

ANDREW FRANCIS

Andrew Scott Francis, a Commissioner,
etc., Province of Ontario, for Chand
Snider LLP, Barristers and Solicitors.
Expires January 25, 2020.

Cancelled 146.

No. P-4

INCORPORATED UNDER THE LAW OF THE PROVINCE OF ONTARIO

150,000 Shares

TWIN DRAGONS CORPORATION

This is to Certify that Duncan Coopl and

is the registered holder of one hundred and fifty thousand (150,000) Preference Shares of


TWIN DRAGONS CORPORATION

The class or series of shares represented by this certificate has rights, privileges, restrictions or conditions attached thereto and the Corporation will furnish to the holder, on demand and without charge, a full copy of the text of,

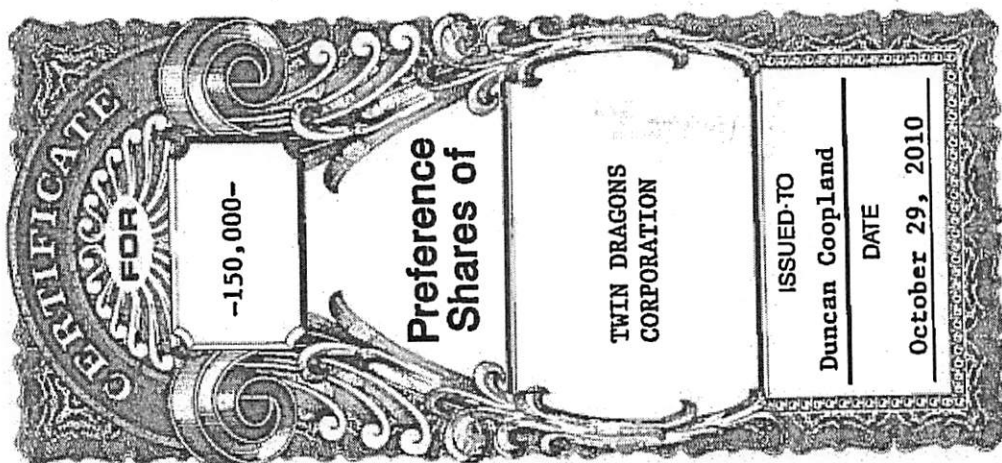
- (i) the rights, privileges, restrictions and conditions attached to the said shares and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors, and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

PREMIUM
TWIN DRAGONS CORPORATION has a lien on the shares represented by this Certificate for any debt of the shareholder to the Corporation.
RESTRICTIONS ON TRANSFER. There are restrictions on the right to transfer the shares represented by this certificate.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its duly authorized officers this 29th day of October 2010 (year)


North Malton

NO PAR VALUE



For Value Received, _____ hereby assign and transfer unto

_____ Preference Shares

represented by the within Certificate.

Dated _____ (year) _____

In the presence of _____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

DBDC SPADINA LTD., et al.
Applicants

NORMA WALTON et al.
and Respondents

Court File No. CV-13-10280-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF DUNCAN COOPLAND

CHAND SNIDER^{LLP}
357 Bay Street, Suite 901
Toronto ON M5H 2T7

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Tel: (416) 583-2377
Fax: (416) 583-1844

Lawyers for Third Party Investor
Duncan Coopland

TAB 3

Court File No.: CV-13-10280-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

DBDC SPADINA LTD.,
and THOSE CORPORATIONS LISTED ON SCHEDULE "A" HERETO

Applicants

- and -

NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD. and EGLINTON CASTLE INC.

Respondents

- and -

THOSE CORPORATIONS LISTED IN SCHEDULE "B" HERETO, TO BE
BOUND BY THE RESULT

FIFTIETH REPORT OF THE MANAGER, SCHONFELD INC.

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I. Introduction

1. This is the Fiftieth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of (i) certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule “B” Companies**”),¹ together with the properties owned by those companies (the “**Schedule “B” Properties**”); and (ii) the properties listed at Schedule “C” to the Judgment and Order of Justice Brown dated August 12, 2014 (the “**Schedule “C” Properties**” and together with the Schedule “B” Properties, the “**Properties**”).

A. Purpose of this Report

2. The Manager has brought a motion for certain relief, including an Order:

- (a) approving the fee allocation methodology proposed by the Manager (the “**Fee Allocation Methodology**”) in respect of the fees of the Manager and its counsel, Goodmans LLP, applicable to the Schedule “B” Companies and the Schedule “C” Properties;
- (b) approving the fees of the Manager and its counsel, Goodmans LLP, for the period from January 1, 2017 to August 31, 2017;
- (c) authorizing the Manager to allocate interest paid on funding advanced by the Applicants;
- (d) authorizing the Manager to reallocate certain professional fees to certain Schedule “B” Companies;
- (e) authorizing the Manager to allocate the repayment of certain advance funding provided by the Manager to the Schedule “B” Companies with sufficient capital to make such repayments;
- (f) authorizing the Manager to make certain equity distributions, which are described in detail below;

¹ Schedule “B” was amended by Order dated January 16, 2014.

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- (g) authorizing the Manager to pay certain GST refunds paid to Fraser Properties Corp. to certain mortgagees having a valid security interest in the refunds;
- (h) authorizing and directing the Manager to distribute funds held in trust in respect of Weston Lands Ltd. unless a dispute between the mortgagee and construction lien claimant is resolved prior to December 31, 2017.

3. This Fiftieth Report contains a summary of the facts relevant to the Manager's motion and a recommendation that the relief sought by the Manager in its Notice of Motion be granted.

B. Terms of reference

4. Based on its review and interaction with the parties to date, nothing has come to the Manager's attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Schedule "B" Companies or of the companies that own the Schedule "C" Properties (the "**Schedule "C" Companies**", and collectively with the Schedule "B" Companies, the "**Companies**"). The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies' financial information that may be in this Report.

C. Background and history of this proceeding

5. This proceeding was commenced in October 2013. Since that time, the parties have appeared before this Court more than 200 times. More than 200 orders and endorsements have been granted. The lengthy history of this matter has been summarized below, to the extent that it is relevant to the relief sought in this proceeding. The facts set out below are all based on the findings of this Court.

6. This proceeding begins with a business relationship between Dr. Stanley Bernstein and Norma and Ronauld Walton (the "**Waltons**"). Dr. Bernstein is the owner of a chain of diet clinics. The Waltons were trained as lawyers and were members of the Law Society of Upper Canada but, during the period relevant to this proceeding, they were operating as real-estate developers. The Waltons operated their business through numerous corporate vehicles, but the primary operating entity was The Rose & Thistle Group Inc. ("**Rose & Thistle**").

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7. Pursuant to a series of joint venture agreements (the “**Agreements**”), Dr. Bernstein and the Waltons were to each hold a 50% interest in the Schedule “B” Companies. Dr. Bernstein’s interest was held through a series of single purpose holding companies (collectively, “**Bernstein**” or the “**Applicants**”). Each of the Schedule “B” Companies was to own one real-estate property (the “**Schedule “B” Properties**”). Between 2010 and 2013, Dr. Bernstein invested approximately \$110 million in 34 Schedule “B” Companies through the Applicants.

8. The Agreements required that each Company be used solely for matters related to the Property it owned. Before Dr. Bernstein invested in any Schedule “B” Property, he was provided with a *pro forma* statement that showed the funds that would be required to purchase and, in some cases, redevelop and/or renovate the property. Dr. Bernstein provided his share of the anticipated budget when the Agreement was executed and the Waltons agreed to provide the balance of the funding once Dr. Bernstein’s funds were exhausted.

9. In addition to the Schedule “B” Properties, the Waltons were the beneficial owners of a separate portfolio of properties (the “**Schedule “C” Properties**”) that Dr. Bernstein did not invest in. The Waltons issued shares in the companies that owned the Schedule “C” Properties (the “**Schedule “C” Companies**”) to various individuals and entities (the “**Schedule “C” Investors**”). Exactly what was invested by the Schedule “C” Investors, and the nature of their interest in the Schedule “C” Companies, is a complex matter that need not be determined as part of this motion.

10. The Waltons were responsible for operating the Schedule “B” Properties. As a result, they controlled the Schedule “B” Companies’ bank accounts (the “**Schedule “B” Accounts**”). But they did not manage the Schedule “B” Companies’ financial affairs in the manner required by the Agreements. Instead, they transferred Dr. Bernstein’s investment in the Schedule “B” Companies, and any revenue derived from those companies, into Rose & Thistle’s bank account (the “**Rose & Thistle Account**”). From there, funds were transferred to other Schedule “B” Companies, Schedule “C” Companies and the Waltons’ personal accounts.

11. This proceeding began in October 2014, when the Manager was appointed Inspector pursuant to the *OBCA* and authorized to investigate the affairs of the Schedule “B” Companies. The Inspector discovered the co-mingling of funds described above, as well as several other

- 4 -

issues relating to the management of the Schedule “B” Companies. These findings are described in detail in the Endorsement of Justice Newbould dated November 5, 2013 (the “**November 5 Endorsement**”), which is attached as **Appendix “A”**

12. By Order of Justice Newbould dated November 5, 2013 (the “**November 5 Order**”), the Manager was appointed to provide independent management to the Schedule “B” Companies in the interest of all stakeholders. The November 5 Order is attached as **Appendix “B”**

13. When the Manager was appointed, the Schedule “B” Properties were in various stages of development. Some properties had appreciated in value since they were purchased and were sold for amounts significantly in excess of the debt secured by them. Other properties, however, suffered from very substantial issues. Significant construction and development work would have would have been required to recover Dr. Bernstein’s investment in these properties. No funds were available to conduct this work and, in any event, recovery might have been impossible.

14. After it was appointed, the Manager, with assistance of N. Barry Lyons Consultants Limited (“**Lyons**”, a leading real-estate consulting firm) and CBRE (a leading real estate brokerage)² developed a plan to market and sell the Schedule “B” Properties.

15. The Manager ultimately sold 20 Schedule “B” Properties. Each of these sales was approved by the Court, on notice to affected stakeholders. The Waltons’ appeal of the November 5 Order was dismissed by reasons for decision dated May 21, 2014 and attached as **Appendix “C”**. The balance of the Schedule “B” Properties were sold in enforcement proceedings commenced by mortgagees. Some of these sales generated proceeds in excess of what was owed on the relevant mortgage. In such cases, the excess proceeds were paid to the Manager.

16. During the period from November 5, 2013 to July 16, 2014, the Manager (in its capacity as Inspector) undertook a further investigation into the Schedule “B” Companies’ affairs. The results of this investigation confirmed the Inspector’s initial conclusions. The Inspector concluded that, almost every time Dr. Bernstein invested funds into one Schedule “B” Company, the Waltons transferred such funds to the Rose & Thistle Accounts. From the Rose & Thistle

² Before selecting CBRE, the Manager conducted a competitive tender process.

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Account, Dr. Bernstein's funds were disbursed into various Schedule "B" Companies, Schedule "C" Companies and other accounts controlled by the Waltons.

17. Throughout the period examined by the Manager (in its capacity as Inspector), there was a constant transfer of funds between the Schedule "B" Companies, the Schedule "C" Companies and the Rose & Thistle Account. However, there was a consistent pattern of the Schedule "C" Companies receiving more from Rose & Thistle than they paid to Rose & Thistle. Conversely, there was a consistent pattern of the Schedule "B" Companies paying more to Rose & Thistle than they received from Rose & Thistle.

18. In all, the Inspector concluded that the Schedule "B" Companies suffered a net transfer out of approximately \$23 million as a result of transactions with Rose & Thistle and the Schedule "C" Companies received a net benefit of approximately \$25 million as a result of such transactions. These conclusions were accepted by Justice D.M. Brown (as he then was) in Reasons for Decision dated August 12, 2014 (the "**August 12 Reasons**").

19. The August 12 Reasons, which are attached as **Appendix "D"**, were an important step in the litigation between the applicants and the respondents. Justice Brown concluded that the Waltons had breached their contracts with Dr. Bernstein and acted oppressively by co-mingling funds and failing to make the equity contributions required of them by the Agreements. The Waltons were, therefore, not entitled to the 50% interest they claimed to own in each Schedule "B" Company. Instead, Justice Brown ordered that the Waltons were entitled to "one share for each dollar invested,"³ and ordered that:

the Waltons' shareholder interests in each of the Schedule "B" Companies be calculated by reference to the contribution provisions contained in each Schedule "B" Company Agreement and that the shares issued to the Waltons be limited to those for which they have actually paid and that any other shares be cancelled.

20. This relief was incorporated into the Judgment of Justice Brown dated August 12, 2014 (the "**August 12 Judgment**"). The August 12 Judgment, which is attached as **Appendix "E"**, also appointed the Manager as receiver/manager of the Schedule "C" Properties.

³ August 12 Reasons, para. 230.

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21. The August 12 Judgment was upheld by the Court of Appeal on September 17, 2015, pursuant to reasons attached as **Appendix "F"**.

22. The Applicants' claim for, among other things, damages from the Waltons and the Schedule "C" Companies was the subject of an application before Justice Newbould heard June 3, 2016. By Reasons for Decision dated September 23, 2016, and attached as **Appendix "G"**, Justice Newbould found that:

- (a) the Waltons were liable to Dr. Bernstein for damages in the amount of \$66,951,021.85 for fraudulent misrepresentation;
- (b) the Waltons liability to Dr. Bernstein would survive bankruptcy, if the Waltons declared bankruptcy;
- (c) the Schedule "C" Companies were not liable to Dr. Bernstein for knowing assistance in breach of fiduciary duty and knowing receipt of trust money.

23. These findings were reflected in the Order of Justice Newbould dated September 23, 2016 (the "**September 23 Order**").

24. The Waltons and Bernstein both appealed Order. The Waltons did not perfect their appeal on time and it was dismissed. Bernstein's appeal was heard June 2, 2017. The Court of Appeal has not yet rendered a decision on that appeal.

D. Completed Claims Procedures

25. As noted, all of the Schedule "B" Properties were sold and some of these sales resulted in net proceeds following payment of transaction costs and repayment of any valid mortgages. The Manager held these proceeds in trust pending completion of a Claims Process in respect of each such Schedule "B" Property. Since each Schedule "B" Company has its own creditors, a separate Claims Process was required for each Schedule "B" Company.

26. On June 18, 2014, the Court granted the June Claims Procedure Order authorizing the Manager to commence and conduct a Claims Process following the completion of the sale of a Schedule "B" Company's Property, without further Order of the Court, upon determination by the Manager that such a Claims Process is appropriate in the circumstances.

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27. The form of claims process approved pursuant to the June Claims Procedure Order was designed as a template so that a specific Claims Process can be run for any Schedule "B" Company in respect of which the sale of its Schedule "B" Property generates, or has generated, net proceeds available for potential distribution to creditors.

28. The June Claims Procedure Order sets out procedures for, among other things, (i) the provision of notice to creditors; (ii) the distribution of Proof of Claim forms and related materials to creditors; (iii) the review of Proofs of Claim submitted by creditors and the determination of creditors' claims (including claims to priority) by the Manager; (iv) the resolution of any disputes in respect of creditors' claims; and (v) establishing a claims bar date for the filing of claims against a particular Company. The June Claims Procedure Order also includes forms of notices, proofs of claim and related materials to be used for each Claims Process. The distribution of any proceeds to creditors following the determination of their claims pursuant to the June Claims Procedure Order is subject to further Order of this Court. A copy of the June Claims Procedure Order is attached as **Appendix "H"**.

29. Since the issuance of the June Claims Procedure Order, the Manager has completed a separate Claims Process in respect of each of the following Schedule "B" Companies:

- (a) Ascalon Lands Ltd. – 3765 St. Clair Avenue East, Toronto;
- (b) Bannockburn Lands Inc. – 1185 Eglinton Avenue East, Toronto;
- (c) Donalda Developments Ltd. – 1500 Don Mills Road, Toronto;
- (d) Dupont Developments Ltd. – 1485 Dupont Street, Toronto;
- (e) Eddystone Place Inc. – 153 Eddystone Avenue, Toronto;
- (f) Hidden Gem Development Inc. – 14 Trent Avenue, Toronto;
- (g) Lesliebrook Holdings Ltd. – 1131A Leslie St., Toronto;
- (h) Liberty Village Properties – 32 Atlantic Avenue, Toronto;
- (i) Northern Dancer Lands Ltd. – 140 Queen's Plate Drive, Toronto;

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- (j) Richmond Row Holdings Ltd. – 620 Richmond St. West, Toronto;
- (k) Riverdale Mansion Ltd. – 450 Pape Avenue, Toronto;
- (l) Royal Agincourt Corp. – 5770/5780 Highway 7, Vaughan;
- (m) Royal Gate Holdings Ltd. – 1 & 20 Royal Gate Boulevard, Vaughan;
- (n) Skyway Holdings Ltd. – 115-119 Skyway Avenue and 30-34 Meridian Drive, Toronto;
- (o) Tisdale Mews Inc. – 78 Tisdale Avenue, Toronto;
- (p) Twin Dragons Corporation. – 241 Spadina Avenue, Toronto; and
- (q) Weston Lands Ltd. – 355 Weston Road, Toronto.

30. The Manager determined that a Claims Process was not required in respect of the following Schedule “B” Companies given the sales of their respective Properties did not result in any net proceeds following payment of transaction costs and repayment of any valid mortgages:

- (a) Cityview Industrial Ltd.;⁴
- (b) Dewhurst Developments Ltd.;
- (c) Double Rose Developments Ltd.;
- (d) Fraser Lands Ltd.;
- (e) Fraser Properties Corp.;
- (f) Global Mills Inc.;
- (g) Lesliebrook Lands Ltd.;
- (h) Liberty Village Lands Inc.;

⁴ The sale of the property owned by this Company generated proceeds after payment of the mortgages. However, construction liens registered against the property exceed the proceeds available.

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- (i) Queen's Corner Corp.;⁵
- (j) Salmon River Properties Ltd.;
- (k) West Mall Holdings Ltd.;
- (l) Wynford Professional Centre Ltd.; and
- (m) Red Door Developments Inc. and Red Door Lands Ltd.

II. Fee Allocation Methodology

31. A methodology for the allocation of fees incurred by the Manager and its counsel from the Manager's appointment on November 5, 2013 to November 30, 2014 (the "**First Period**") was approved by Order dated April 20, 2015 (the "**First Methodology**"). A methodology for the allocation of fees incurred by the Manager and its counsel from December 1, 2014 to December 31, 2015 (the "**Second Period**") was approved by Order dated September 16, 2016 (the "**Second Methodology**"). The Second Methodology was utilized by the Manager for the allocation of fees relating to the period from January 1, 2016 to December 31, 2016 (the "**Third Period**"), and was approved by Order dated April 12, 2017. This Report relates to the allocation of fees relating to the period from January 1, 2017 to August 31, 2017 (the "**Fourth Period**"), for which the Manager proposes using the Second Methodology.

32. As explained in the Manager's Twenty-Second Report, given the number of Companies subject to these proceedings and the interconnectedness of their respective Properties, it would have been impractical (and very expensive) to administer each Company and track professional costs on an individual Company basis. Accordingly, the Manager and its counsel developed the First Methodology, which calculated a weighting for each company based upon a sophisticated

⁵ The Manager completed a modified Claims Process in respect of Queen's Corner Corp. pursuant to the Order of Justice Newbould dated October 25, 2016 in order to identify creditors who may have had warranty claims only.

formula that included assigned weightings for six categories and the length of time that the Property was under management. The First Methodology was required because the quantity and quality of the work performed by the Manager and its counsel during the First Period meant that a property by property allocation based on the descriptions contained in the docket entries of the Manager and its counsel was not feasible. Among other things, the Manager and its counsel dealt with issues that related to many Properties (or all Properties) at the same time or on the same day and also spent significant time on issues relating to the very active litigation between the Applicants and Respondents (which was required in order to effectively complete its mandate in respect of all of the Properties).

33. There are important differences in the Manager's mandate between the First Period and the Second, Third and Fourth Periods. Among other things:

- (a) the volume of work required on the part of the Manager and its counsel decreased substantially during the Second, Third and Fourth Periods relative to the First period;
- (b) the number of Properties that the Manager was managing and marketing decreased substantially as Properties were either sold or turned over to mortgagees for enforcement. This decreased the number of issues and Properties dealt with on any given day; and
- (c) the litigation between the Applicants and the Respondents was significantly less active during the Second and Third Periods relative to the First Period, resulting in the decrease (although not the elimination) of dockets that did not relate to any specific property.

34. Furthermore, in response to the First Methodology, two groups of affected stakeholders asserted that the Manager should have attempted to allocate its time based on the docket

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descriptions entered by the various professionals that worked on the file. Although this complaint was found to be without merit, the Manager considered the concerns articulated in response to the First Methodology in formulating the Second Methodology.

35. The fee allocation for the Second Period, which used the Second Methodology, was approved by Order dated September 16, 2016, which is attached as **Appendix "I"**. No stakeholder opposed the Second Methodology at the hearing.⁶ The Second Methodology was approved again for the Third Period by Order dated April 12, 2017, which is attached as **Appendix "J"**.

36. In light of all of the foregoing, and similarities between the Second, Third and Fourth periods, the Manager determined that the Second Methodology should be used to allocate fees incurred during the Fourth Period.

37. The allocation process began with the Manager and its counsel, Goodmans, each conducting a review of the docket descriptions entered in respect of fees incurred during the Third Period, as they had done in respect of fees incurred during the Second Period. Based on this review, the Manager determined that it was feasible to allocate a significant portion of the time spent based on docket descriptions.

38. This allocation was performed in accordance with the following principles:

- (a) As a general rule, where dockets referenced multiple properties, the relevant time was divided evenly among the properties unless either the docket itself or

⁶ Two groups of stakeholders did raise concerns about the Second Methodology and obtained an adjournment of the original return date to investigate these concerns. These concerns were addressed before the ultimate return date for the motion.

contemporaneous notes or correspondence indicated that time should be divided unevenly among the properties.

- (b) Where a docket did not relate to any particular property, the relevant docket was categorized as “general”. The allocation of general costs among the properties is described below. General allocations are spread evenly over all Companies that the Manager worked on during the relevant period.⁷

39. The allocation described above is summarized in **Appendix “K”**.

40. Based on this methodology, a total of 81% of the Manager’s fees and 53% of Goodmans’ fees were allocated to specific properties.

III. Fee Approval

41. Attached hereto as **Appendix “L”** is the Affidavit of Harlan Schonfeld sworn September 25, 2017 (the “**Schonfeld Affidavit**”), attesting to the fees and disbursements of the Manager for the Fee Approval Period in the amount of \$251,692.21 inclusive of HST and disbursements.

42. Attached hereto as **Appendix “M”** is the Affidavit of Brian Empey, a partner at Goodmans sworn September 25, 2017 (the “**Empey Affidavit**”), attesting to the fees and disbursements of Goodmans acting on behalf of the Manager for the Fee Approval Period in the amount of \$102,848.77 inclusive of HST. The Manager has received and reviewed Goodmans’ invoices and concluded that (i) the fees and disbursements set out in Goodmans’ invoices relate to advice sought by the Manager; and (ii) in the Manager’s view, Goodmans’ fees and disbursements are reasonable.

IV. Allocation of Interest Accrued on the Applicants’ Advances

43. 368230 Ontario, a company related to the Applicants, advanced a total of \$2,678,700 (the “**Advance Funding**”) in respect of professional fees and bank fees and to pay certain expenses and mortgage payments for the Schedule “B” Properties and Schedule “C” Companies. These

⁷ The Manager’s management of the general allocation properties consisted of, among other things, addressing accounting issues, preparing and filing tax returns, addressing any remaining disputes relating to some Companies, conducting claims processes, distribution available funds, after seeking court approval for same. The Manager’s activities are described below and in the other reports filed in this matter.

advances were described in the Manager's Second Report and approved by Order of Justice Newbould dated January 16, 2014.

44. The funds advanced by the Applicants were repaid in 2014, together with accrued interest in the amount of \$153,490.25. At the time of repayment, the interest was not allocated to any of the Companies. The Manager now recommends allocating that interest as detailed in **Appendix "N"** hereto. This allocation is based on (a) the funding advanced to the various companies; and (b) the allocation of professional fees paid from the Advance Funding.

V. Reallocation of Professional Fees to certain Schedule "B" Companies

45. Certain Companies do not have sufficient capital to pay professional fees allocated to them in the Third Period and Fourth Period. The Manager recommends reallocating those fees, which total \$327,658.44 for the Schedule "B" Companies, equally among Lesliebrook Holdings Ltd., Royal Agincourt Corp., Royal Gate Holdings Ltd., Tisdale Mews Inc. and Twin Dragons Corporation.

46. The amount for which certain Schedule "C" Properties are unable to pay totals \$38,387.59, which the Manager recommends reallocating to Cecil Lighthouse.

47. The proposed reallocation described above is detailed in **Appendix "O"** hereto.

VI. Reallocation of Liabilities Owning by Schedule "B" Companies

48. Certain Schedule "B" Companies and Schedule "C" Properties have insufficient capital to repay advances made by the Manager. The unpaid advances total \$147,000 in respect of the Schedule "B" Companies and \$12,190.31 in respect of the Schedule "C" Properties. In the Manager's view, the only way to account for these unpaid advances is to reallocate the liability for repayment to the few remaining Companies and Properties with funds remaining. As set out in the reallocation proposal attached as **Appendix "P"**, the Manager recommends reallocating the unpaid advances of the Schedule "B" Companies to Twin Dragons Corporation, which has the most surplus funds of any of the Schedule "B" Companies, and reallocating the unpaid advances of the Schedule "C" Properties to Cecil Lighthouse Ltd. The Manager has completed a Claims Process in respect of each of Twin Dragons Corporations and Cecil Lighthouse Ltd. and all creditors have been paid.

VII. Proposed Distributions

A. The Manager's recommendation

49. As described in detail below, the Manager is recommending an equity distribution from five Schedule "B" Companies. Specifically:

- (a) The Manager recommends that a total of \$2,426,800 be distributed to the Applicants in their capacity as shareholders of the relevant companies;
- (b) The Manager has determined that the Waltons may be entitled to distributions totalling \$553,200 in its capacity as a judgment creditor of the Waltons. It recommends that these funds be paid to the Applicants in partial satisfaction of their judgment against the Waltons;⁸
- (c) The Manager proposes holding back a total of \$330,700 to address potential claims by third party investors. The Manager has not yet assessed the merits of these potential claims.

50. The basis for the Manager's recommendation is set out below.

B. Background

51. The Manager's motion proposes that a total of \$2,980,000 be distributed from the following Schedule "B" Companies:

- (a) Tisdale Mews Inc. ("**Tisdale**");
- (b) Twin Dragons Corporation ("**Twin Dragons**");
- (c) Royal Gate Holdings Ltd. ("**Royal Gate**");
- (d) Royal Agincourt Corp. ("**Royal Agincourt**");

⁸ A minor adjustment to this distribution may be required to address a judgment obtained by another creditor, as described below.

- (e) Lesliebrook Holdings Ltd. ("**Lesliebrook**" and collectively, the "**Distribution Companies**").

52. The amount to be distributed is comprised of proceeds from the sale of the properties owned by each company and, in some cases, tax refunds. The details of the distribution proposed by the Manager are set out in the Proposed Distribution Chart dated September 30, 2017 and attached as **Appendix "Q"**.

53. The Manager has conducted a claims process in respect of each of the Distribution Companies. All creditors of these companies have been paid and any further claims against them (apart from the a potential allocation of professional fees in this proceeding) are barred by the Claims Procedure Order.

54. In the circumstances, the Manager respectfully recommends that the available funds be distributed to the shareholders of the relevant company. The Manager also respectfully recommends that certain funds be held back from the distribution to secure professional fees that may be incurred in connection with the completion of the Manager's mandate.

C. Entitlement to distributions

55. Before making an equity distribution, it is first necessary to identify the shareholders of each of the Distribution Companies. The shares of each of these companies (together with all of the other Schedule "B" Companies) were originally to be divided equally between Bernstein and the Waltons. However, as noted above, the August 12 Judgment required that ownership of the Schedule "B" Companies be allocated based on the equity contributions made by each party. Accordingly, if Bernstein provided all of the equity paid into a company then it is entitled to all of the shares of that company. In such cases, all of the funds available for an equity distribution would be paid to Bernstein.

56. The identification of Bernstein's equity contributions was relatively simple. These contributions were paid by Bernstein to either the Rose & Thistle Account or a bank account opened in the name of the applicable Schedule "B" Company. Each amount paid by Bernstein is referred to below as a "Direct DBDC Contribution".

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57. Identification of the Waltons' contributions (if any) is much more complicated. As noted above, the Waltons routinely diverted funds invested by Bernstein. In some cases, money paid by Bernstein into one company were transferred by the Waltons to another company and characterized as a Walton equity contribution to that company. In such cases, it is possible to establish that the Waltons used Bernstein's money to fund their own equity contributions. Such payments are not, in the Manager's view, Walton equity contributions in the sense required by the August 12 Judgment. Where a purported Walton equity contribution can be traced directly to funds provided by Bernstein, the relevant payment was treated as an "Indirect DBDC Contribution".

58. Indirect DBDC Contributions and Direct DBDC Contributions have the same effect under the August 12 Judgment. Whether Bernstein made an equity contribution knowingly (in the case of a Direct DBDC Contribution) or unwillingly (in the case of an Indirect DBDC Contribution) the contribution entitles it to shares of the relevant company.

59. The converse is not necessarily true. Because the Waltons' comingling and diversion of funds was so pervasive, it is difficult (and perhaps impossible) to make a definitive determination with respect to what (if any) equity contributions they made using their own money. Accordingly, contributions made by the Waltons that cannot be traced directly to Bernstein are referred to below as Recorded Contributions. Further analysis would be required to determine where the funds used to make the Recorded Contributions originated and, for the reasons described below, the Manager does not recommend that this analysis be undertaken at this stage.

D. The Manager's analysis

60. The Manager has completed an analysis in respect of each of the Distribution Companies in accordance with the principles described above. The Manager's methodology was previously described in the Second Supplemental Report to the Manager's 22nd Report, which is attached as **Appendix "R"**, without appendices. That methodology was accepted by Justice Newbould and used as the basis for an interim distribution approved by Order dated January 27, 2015 (the "**First Distribution Order**"), which is attached as **Appendix "S"**.

61. As described below, three of the Distribution Companies were specifically analyzed by the Manager in the First Distribution Report and funds were distributed from these companies pursuant to the First Distribution Order.

62. The Manager's analysis is based largely on the Property Investment Profile Report (the "**Investment Profile**") that was first served on the parties by the Inspector in October 2013. The accuracy of this document, which is attached as **Appendix "T"**, has not been challenged. To a more limited extent, the Manager's analysis is based on the Inspector's⁹ analysis of the use of the largest of Bernstein's contributions to the Schedule "B" Companies, which is attached as **Appendix "U"**. This analysis was challenged by the Waltons, but relied on by Justice Brown in granting the August 12 Judgment. As noted, the August 12 Judgment was upheld by the Court of Appeal.

63. The Manager's analysis can be summarized as follows:

- (a) If the Investment Profile shows that the Applicants made all of the equity contributions to a company (a "**Direct Contribution**"), then the Manager has concluded that the Applicants are entitled to 100% of the shares of that company;
- (b) If the Investment Profile shows that the Waltons made some of the equity contributions (a "**Recorded Contribution**") then the Manager reviewed its tracing analysis to determine whether the funds apparently contributed by the Waltons can be traced directly to one of the Applicants' equity contributions. If such a tracing is possible then the relevant contribution has been treated as an Indirect DBDC Contribution by the Applicants;
- (c) In one case, Tisdale, the Waltons have previously claimed that they are entitled to equity to reflect the increase in value between when the property was acquired and when Bernstein invested in it. This arrangement was set out in the agreement between Bernstein and the Waltons.

⁹ Prior to its appointment as Manager, Schonfeld Inc. was appointed Inspector of the Schedule "B" Companies pursuant to the Order of Justice Newbould dated October 4, 2014.

E. Relevance of the Recorded Contributions

64. The methodology applied by the Manager, and described above, was previously used as the basis for a distribution approved by Order of Justice Newbould dated January 27, 2015. At that time, the Manager held back funds to make an equity distribution to the Waltons or their creditors if they were found to be entitled to shares equal to their Recorded Contributions (if any) in the relevant companies.

65. The Manager has not completed the detailed tracing that would be required to determine definitively what (if any) equity contributions the Waltons made to the Schedule "B" Companies using their own money (or money taken from someone other than the Applicants, such as the Schedule "C" Investors). For the reasons described below, it is the Manager's view that the cost of a detailed tracing analysis is not warranted.

66. The distinction between the Applicants' contributions and the Waltons' contributions is now less significant because on September 23, 2016 the Applicants obtained a final judgment against the Waltons for close to \$67 million. In the event that the Waltons are entitled to shares in, and/or distributions from, the Schedule "B" Companies, the Applicants would likely be entitled to seize those shares or garnish any dividends or distributions paid. Thus, it is very likely that the Applicants will receive all of the equity distributions from the Schedule "B" Companies.

67. The treatment of the Recorded Contributions is not relevant to the Waltons' debts to Bernstein. If a distribution is paid to the Waltons but garnished by Bernstein, then that distribution would be a partial payment of the Waltons' debt to Bernstein. However, if the payment is treated as a distribution to Bernstein then it would reduce Bernstein's damages and the amount of the Waltons' debt, by the same amount. In light of this, the Manager's tracing analysis is unlikely to have any practical effect on the Waltons.

68. That analysis could, however, affect the Waltons' creditors. If the Waltons are entitled to shares in the Schedule "B" Companies then such shares (and any associated right to receive equity distributions) could conceivably be available to pay creditors other than Bernstein. The Manager is aware of several contingent creditors of the Waltons but, as described below, only one such creditor has obtained judgment against the Waltons.

F. The Waltons' creditors

69. The Manager has no mandate relating to the Waltons personally. Ira Smith Trustee & Receiver Inc. ("**Ira Smith**") was appointed receiver over the Waltons' personal assets by Order dated September 5, 2014. Ira Smith did not realize any amounts for distribution to the Waltons' creditors. Because of this, it did not conduct a claims process to identify such creditors. Ira Smith was discharged by Order of Justice Newbould dated November 12, 2015.

70. To the knowledge of the Manager, the Waltons' debts and alleged debts include:

- (a) The Applicants' judgment, which is described above;
- (b) Potential liability to investors in the various Schedule "C" Properties (the "**Schedule "C" Investors**"). In affidavits previously sworn in this proceeding, Ms. Walton has deposed that the Waltons are personally liable to repay \$14 million to the Schedule "C" Investors;
- (c) A claim by Trez Capital Limited Partnership in the amount of \$14.3 million for fraudulent misrepresentation and \$1 million in punitive damages;
- (d) Potential claims from other mortgagees who hold personal guarantees from the Waltons and were not paid in full;
- (e) The Canada Revenue Agency, which had registered a lien against the Waltons' home for unpaid income taxes;
- (f) A claim by the Bank of Nova Scotia ("**BNS**"), relating to the Waltons' guarantee of loans advanced to one of their companies, Urban Amish Interiors. By Judgment dated July 22nd, 2016 (the "**BNS Judgment**"), the Waltons were ordered to pay \$98,562.76 to BNS.

71. To the Manager's knowledge, only the claim listed in (c) above is the subject of an ongoing court proceeding. Accordingly, the Manager is not aware of any creditors, other than the Applicants and BNS, who have the right to seize any shares awarded to the Respondents or garnish any payment that they might be entitled to in respect of the Schedule "B" Companies.

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72. In light of the foregoing, and the analysis below, the Manager respectfully recommends that a distribution to the Applicants in accordance with the Proposed Distribution Table dated September 27, 2017 and attached as **Appendix “Q”** (the “**Distribution Table**”).

73. The Manager was only recently made aware of the judgment in favour of BNS. It is in the process of determining what (if anything) has been paid to BNS on account of its judgment, and may recommend a change to the Distribution Table to reflect the BNS Judgment. In any event, the impact of the BNS Judgment is likely to be limited. It is possible that BNS has a claim to any distributions owed to the Waltons in connection with the Schedule “B” Companies. However, such a claim would rank *pari passu* with Bernstein’s much larger claim. On this basis, BNS would be entitled to 0.1% of amounts that would otherwise be owed to the Waltons. The balance of such funds would be paid to Bernstein.

G. Prior distribution

74. In the First Distribution Report, the Manager described its tracing analysis in respect of three of the Distribution Companies, Lesliebrook, Royal Agincourt and Royal Gate. By Order dated January 27, 2015 (the “**First Distribution Order**”), Justice Newbould authorized an interim equity distribution to these companies based on the following percentages:

Company	DBDC Percentage
Lesliebrook	98%
Royal Agincourt	73.2%
Royal Gate	97.6%

75. The January 27 Order was without prejudice to the Applicants’ right to argue that their share of the distributions should be higher. There was no similar reservation of rights by the Respondents or any of their creditors. As a result, the percentages above represent a minimum percentage of the funds to be distributed to the Applicants.

76. As described above, the contributions that could not be traced directly to Bernstein were not necessarily made by the Waltons with their own money. Significant further tracing work would be required to determine the exact source of the funds used by the Waltons to make these

contributions. For the reasons described above, the Waltons' entitlement (if any) to shares in the Distribution Companies is unlikely to have any practical effect on the distributions proposed by the Manager. Accordingly, the Manager does not recommend that further tracing be conducted at this time.

H. Tisdale Mews Inc.

77. As described in the Forty-Eighth Report of the Manager, a copy of which is attached (without appendices) as **Appendix "V"**, the Schedule "B" Company, Tisdale Mews Inc. ("**Tisdale**") formerly owned the Property located at 78 Tisdale Avenue, Toronto ("**78 Tisdale**"). The sale price obtained in respect of 78 Tisdale was sufficient to pay off all of the debt secured against the property and yield net proceeds of \$1,353,152.74.

78. Pursuant to the Order of Justice Conway dated June 19, 2017, a copy of which is attached as **Appendix "W"**, the Manager paid \$14,136.98 from Tisdale to Tisdale's mortgagees in respect of professional fees that they incurred. This Order, which was granted on consent, resolved a long-standing dispute between the relevant mortgagees and the Manager with respect to the appropriate allocation of legal fees incurred by the mortgagees of four Schedule "B" Companies that had borrowed from syndicates of mortgagees assembled by Stephen Handelman.

79. The Manager had held back funds from the sale of 78 Tisdale to satisfy an award of additional fees to these mortgagees. Now that the dispute has been resolved, these funds are available for distribution. The June 19 Order authorizes such a distribution, without further approval. However, in the Manager's view, it is appropriate to report to the Court certain facts relevant to 78 Tisdale before making the distribution.

80. 78 Tisdale is one of two properties purchased by the Waltons before Bernstein's investment. Specifically, the Waltons purchased 78 Tisdale for approximately \$1.4 million. Bernstein subsequently purchased an interest in Tisdale (the corporate owner of 78 Tisdale) pursuant to an agreement dated January 11, 2012. That agreement valued 78 Tisdale at approximately \$6.7 million.

81. After Bernstein invested in Tisdale, Rose & Thistle delivered an invoice for development services in the amount of \$4.4 million. The purpose of this invoice, according to Ms. Walton,

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was to withdraw the increased value of the Waltons' equity interest in Tisdale. The Manager (in its capacity as Inspector) questioned the validity of this invoice. In response, the invoice was withdrawn and the Waltons' equity account was increased to reflect the increase in value between when the property was purchased and when Bernstein invested.

82. In the August 12 Reasons, Justice Brown found that funds originating in Tisdale were used to fund \$268,104.57 in renovations to the Waltons' home at 44 Park Lane Circle, and that there was no reasonable explanation for this use of Tisdale's funds. However, the August 12 Reasons do not address how (if at all) the foregoing facts affect the Waltons' entitlement to shares in Tisdale. As noted above, the Waltons' entitlement to shares of each Schedule "B" Company is to be based on their financial contribution to each Schedule "B" Company. As noted, the Waltons previously characterized the increase in value between when they purchased 78 Tisdale and when Bernstein invested in Tisdale as an equity contribution. If this argument is accepted, the Waltons would be entitled to up to 50% of the shares of Tisdale.

I. Twin Dragons

83. The Manager has not previously analyzed Twin Dragons' accounting records to determine what (if any) equity contributions were made by the Waltons.

84. According to the Property Investment Profile, Bernstein made an equity contribution of \$1,085,894 and the Waltons made a Recorded Contribution of \$350,000. Based on these contributions, the Applicants are entitled to 75.6% of the funds available for distribution.

85. Based on the Manager's review and analysis, the \$350,000 Recorded Contribution appears to relate to funds solicited from third party investors (the "**TD Investors**") by the Waltons and then recorded in Twin Dragons' books and records as a Walton equity contribution. Ms. Walton represented to Dr. Bernstein that these investments were subsequently "moved" to Rose & Thistle, but it is not clear whether the TD Investors consented to this. The facts relevant to this issue are summarized below.

86. The Agreement relating to Twin Dragons was executed on September 24, 2010, and is attached as **Appendix "X"**. The Agreement prohibits, among other things, any shares being issued to third parties. Both before and after the TD Agreement was executed, the Waltons

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appear to have solicited investments from third parties. These investments are summarized below:

- (a) On September 1, Gideon and Irene Levytam deposited \$50,000 into Twin Dragons' bank account. The same day, this amount was transferred to the Waltons' personal account;
- (b) On September 30, 2010, Ange Boudle deposited \$50,000 into Twin Dragons' bank account. These funds were transferred to the Rose & Thistle Account later the same day.
- (c) On October 22, 2010, Teresa and Joe Memme deposited \$100,000 into Twin Dragons' bank account. These amounts were transferred to the Rose & Thistle Account on October 27 and 28, 2010.
- (d) On October 29, 2010, Duncan Coopland deposited \$150,000 into Twin Dragons' bank account. These amounts were transferred to the Rose & Thistle Account later the same day.

87. These contributions were recorded in a receivable account set up to recognize equity that had not yet been funded. The relevant general ledger is attached as **Appendix "Y"**. The effect of these entries was to make it appear as if the Waltons had contributed \$350,000 in equity to Twin Dragons.

88. There is also some evidence that Ange Boudle, one of the Twin Dragons investors, was paid \$75,000 on account of his \$50,000 investment. This payment is recorded in a general ledger set up to record return of capital, which is attached as **Appendix "Z"**.

89. On June 7, 2013, Jim Reitan (Bernstein's Director of Accounting and Finance) wrote to Ms. Walton to raise a number of concerns relating to the management of the Schedule "B" Properties. One of the issues raised by Mr. Reitan was that the TD Investors appeared to own shares in Twin Dragons. Mr. Reitan's letter is attached as **Appendix "AA"**.

90. In light of the foregoing, the rights (if any) of the TD Investors to participate in an equity distribution is unclear. Accordingly, the Manager proposes holding 25% of the amount available for distribution from Twin Dragons pending a determination of this issue.

J. Fraser Properties Corp.

91. The properties owned by Fraser Properties Corp. ("**Fraser**") were sold by their mortgagees (the "**Handelman Mortgagees**") by power of sale. Unfortunately, the sale of these properties did not generate sufficient sale proceeds to pay the mortgages in full.

92. The Handelman Mortgagees secured the mortgages they advanced by a General Security Agreement which, among other things, granted a security interest in:

All debts, accounts, claims, monies and choses in action, which now are, or which may at any time hereafter be due or owing to or owned by [Fraser] and also all securities, mortgages, bills, notes and other documents now held, or owned, or which may be hereafter taken, held or owned by or on behalf of [Fraser], in respect of the said debts, accounts, claims, monies and choses in action, or any part thereof: and also all books, documents and papers recording, evidencing or relating to the said debts, accounts, claims monies and choses in action, or any part thereof. All of which are hereinafter called the "Accounts Receivable".

93. A copy of the General Security Agreement is attached as **Appendix "BB"**.

94. Fraser has now received a GST refund in the amount of \$36,447.35. In the Manager's view, the GST refund forms part of the collateral that secures the Handelman Mortgagees' mortgage pursuant to the General Security Agreement. Accordingly, the Manager proposes making a distribution to the Handelman Mortgagees in respect of Fraser in the amount of \$36,447.35.

K. Weston Lands Ltd.

95. As described in the Manager's Forty-Seventh Report, a copy of which is attached (without appendices) as **Appendix "CC"**, by Order dated January 15, 2015, this Court approved the sale of a Schedule "B" Property located at 355 Weston Road (the "**Weston Property**"). At the time of the sale, a vendor take-back mortgage in favour of the former owners of the Weston

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Property (the "**Weston Mortgagee**") and a construction lien in favour of Laser Heating & Air Conditioning Inc. ("**Laser**") were both registered on title to the Weston Property. Laser claimed that its lien was entitled to priority over the Weston Mortgagees' mortgage. In order to ensure that this priority dispute did not interfere with the sale of the Weston Property, the Manager agreed to hold \$11,057 in trust (the "**Weston Trust Funds**") pending resolution of this dispute.

96. This dispute remains unresolved and the Manager has written to counsel for both Laser and the Weston Mortgagees encouraging them to take steps to resolve the dispute so that the funds can be released from trust.

97. To date, the Manager has seen no evidence of Laser's asserted priority position. Accordingly, the Manager's view is that the Weston Trust Funds ought to be paid to the Weston Mortgagee pursuant to its vendor take-back mortgage and that the other funds held by the Manager in respect of Weston be distributed to creditors in accordance with the proposed distribution attached as **Appendix "DD"**, unless the matter is addressed on or before December 31, 2017.

VIII. Conclusions and Recommendations

98. For the reasons set out in this Report, the Manager respectfully recommends granting the relief sought in its Notice of Motion.

All of which is respectfully submitted this 28th day of September, 2017.

SCHONFELD INC.

In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013

Per: 

James Merryweather, CPA, CGA
Authorized Signing Officer

SCHEDULE "A" COMPANIES

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen's Corner Ltd.
14. DBDC Queen's Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc.
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Lands Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.

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SCHEDULE "B" COMPANIES

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Inc.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Development Ltd.
29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.
31. El-Ad Limited
32. 165 Bathurst Inc.

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SCHEDULE "C" PROPERTIES

1. 3270 American Drive, Mississauga, Ontario
2. 0 Luttrell Ave., Toronto, Ontario
3. 2 Kelvin Avenue, Toronto, Ontario
4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
5. 1 William Morgan Drive, Toronto, Ontario
6. 324 Prince Edward Drive, Toronto, Ontario
7. 24 Cecil Street, Toronto, Ontario
8. 30 and 30A Hazelton Avenue, Toronto, Ontario
9. 777 St. Clarens Avenue, Toronto, Ontario
10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
11. 66 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 260 Emerson Ave., Toronto, Ontario
15. 44 Park Lane Circle, Toronto, Ontario
16. 19 Tennis Crescent, Toronto, Ontario
17. 646 Broadview, Toronto, Ontario

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DBDC SPADINA LTD., et al.
Applicants

and
NORMA WALTON et al.
Respondents

Court File No. CV-13-10280-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at TORONTO

SUPPLEMENTARY MOTION RECORD

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