11. PACE is a credit union incorporated under the Ontario *Credit Unions and Caisses Populaires Act*, 1994 (the "**Act**"). It operates seventeen (17) branches in the Greater Toronto Area and Southwestern Ontario and had over $1 billion in assets prior to FSRA taking over the administration of PACE. PACE is regulated by FSRA.

12. The Defendant, Brent Bailey ("**Brent**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Brent joined as a member of the Board of PACE in or around 2013. Brent was a secondary school teacher with the Toronto District School Board and served in the Etobicoke Teachers' Credit union, which eventually merged with PACE.

13. The Defendant, Deborah Baker ("**Deborah**"), is an individual residing in the Province of Ontario and a former member of the board of PACE. Deborah joined as a member of the Board of PACE in or around the mid-1990s, when Cangeco Credit Union merged with PACE . At the time of her membership with the Board, Deborah was a financial analyst and Chartered Accountant working with GE Canada.

14. The Defendant, Ian Goodfellow ("**Ian**"), is an individual residing in the Province of Ontario and a former member of the board of PACE. Ian joined as a member of the Board of PACE in or around 2013. At the time of his membership, Ian was the Director of Finance/Treasurer for the Town of Bradford West Gwillimbury (a position he holds to this date), and served on the Board of Directors of Peoples Credit Union. Ian joined PACE's Board of Directors following its merger with Peoples Credit Union and became the Chair of the Board of PACE in or around 2016.

15. The Defendant, Al Jones ("**Al**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Al joined as a member of the Board of PACE in or around

2013. Al is self-employed and in the business of providing insurance, investment and retirement income products.

16. The Defendant, Wendy Mitchell ("**Wendy**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE, which she served for approximately twenty (20) years. At the time of her membership with the Board, Wendy was an employee with IBM's Human Resources department and joined the Board of PACE following its amalgamation with IBM's employee credit union.

17. The Defendant, Peter Rebellati ("**Peter**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Peter joined as a member of the Board of PACE in or around 2001 to 2004, and then joined again in or around 2008. Peter is employed as the Financial Officer in the Development Financing Section in the Finance Department with the Region of Peel.

18. The Defendant, Jim Tindall ("**Jim**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Jim joined as a member of the Board of PACE in the 1990s as a result of its mergers with the Markham Stouffville Credit Union and the IBM Employees Credit Union. Jim is a food producer in the Durham Region and a Deacon at Goodwill Baptist Church. Jim also serves as a member of the Board of Directors of the Goodwood Cemetery.

19. The Defendant, Pauline Wainwright ("**Pauline**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Pauline joined as a member of the Board of PACE in or around 1988. She is presently employed as a Funeral and Cemetery Pre-Planning Advisor with the Mount Pleasant Group of Cemeteries.

20. The Defendant, Neil Williamson ("**Neil**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. Neil joined as a member of the Board of PACE in or around 2003 at the time of its merger with North York Community Credit Union, where he served as a member of the Board. Neil is retired from full-time employment as a Math Department Head and Consultant and Administrator with the North York Board of Education.

21. The Defendant, George Pohle ("**George**"), is an individual residing in the Province of Ontario and a former member of the Board of PACE. George joined as a member of the Board of PACE when it merged with Peoples Credit Union. George is the General Manager of a gasoline station and convenience store. George retired from the Board of PACE prior to the Administrative Order (as defined below), in or around 2018.

22. Brent, Deborah, Ian, Al, Wendy, Peter, Jim, Pauline, Neil and George are hereinafter collectively referred to as the "**D&Os**". Most of the D&Os joined the PACE Board when it merged with other credit unions or entities which had been successful organizations. DICO in fact encouraged many of the D&Os to take positions as D&Os on the PACE board. Further, not all the D&Os were not on the PACE board at all the material times referenced to in the Claim.

23. The Defendant, Larry Smith ("**Larry**") was an employee of PACE and its predecessors from 1988 until his employment was terminated for alleged cause in December 2018. He was the CEO of PACE for 20 years until 2016.

24. Phillip Smith ("**Phil**") is Larry's son and was appointed the CEO of PACE in 2016.

25. Malek Smith ("**Malek**") is also Larry's son.

26. Larry, Phil, Malek, 1428245 Ontario Ltd. (“**142**”), 809755 Ontario Ltd. (a.k.a. Elective Benefit Insurance Services) (“**809**”), 1916761 Ontario Ltd. (“**191**”), 1724725 Ontario Ltd. (“**172**”), Frank Klees (“**Klees**”), Klees & Associates Ltd., Ron Williamson (“**Williamson**”), R. Williamson Consultants Limited, Ron Williamson Quarter Horses Inc., Brian Hogan (“**Hogan**”), and Jane Lowrie (“**Lowrie**”) and Joanna Whitfield (“**Whitfield**”) are hereinafter referred to as the “**Other Defendants**”.

The Role of the D&Os

27. The D&Os of PACE were all voluntary board members whose role was to oversee the overall business and affairs of the Credit Union.

28. At all material times, the D&Os attended regular monthly meetings of the Board of Directors to discuss the overall affairs and management of PACE. The D&Os would receive board packages (comprising various reports from committees) prior to each board meeting. In addition, Larry and/or Phil would be present at the monthly meeting of the Directors and, among other things, presented a report of the management of PACE and answered questions of the D&Os in respect of various day-to-day activities being undertaken by PACE’s management. PACE’s management included, but was not limited to, the following individuals: Kim Colacicco (Corporate Secretary), Sandra Delabbio (Controller and Privacy Officer), Mary Benincasa (Chief Operating Officer), Dan Caldwell (Chief Marketing and Community Relations Officer), Gary Lockwood (Chief Risk Officer), Heather MacDonald (Senior Vice President Branch Sales), Joe Thompson (Vice President, Pace Securities), Brian Hogan (Vice President, Commercial Credit), Heather Lee (Vice President, Credit), Kumarie Annibale (Compliance Officer) and Kim Stoddart (Chief

Information Officer) (collectively, with Larry and Phil, hereinafter referred to as the "**Management**")

29. The D&Os plead that the duties of the board of PACE did not include the direct management or involvement in the day-to-day activities of PACE. Rather, the board oversees the Management's performance of those functions.

30. It is not the function of the board to duplicate the Management's functions. The D&Os correctly relied on PACE's Management to investigate and negotiate the transactions at issue, and such reliance was reasonable. The role of D&Os is to obtain reasonable assurance from the various reports and information provided to it.

31. As required by the *Act* and in accordance with the common law duties, the D&Os had various internal and external controls and checks and balances in place at the Credit Union in addition to their reliance on Management. These included, among other things, the following:

(a) Various committees established by the D&Os, including a Credit Committee and Audit Committee;

(b) Internal loan staff;

(c) PACE's internal auditor;

(d) PACE'S external auditor, Deloitte LLP, which would perform a yearly audit and provide a report to management in respect of its practices, including performing an audit of PACE's financial statements; and

(e) FSRA/DICO's periodic reviews of PACE's business, including On-Site Verifications

(collectively, the "**Safeguards**").

32. In addition to its own oversight of Management, the D&Os reasonably relied upon the Safeguards to ensure PACE was performing in accordance with the appropriate regulatory scheme. These Safeguards provided reasonable assurances to the D&Os with respect to the day-to-day operations of the Management.

33. Contrary to the allegations in paragraphs 154-160 of the Claim, the D&Os fulfilled their legislative and common law duties and plead and rely upon sections 97 (2), 109 and 121 of the Act.

The Whistleblower

34. In or around 2017, DICO, after conducting a routine examination of PACE, alleges that it found adverse findings in the areas of commercial lending, internal audit and board governance.

35. In or around October 2017, DICO learned about the CCE Transaction (as defined below at paragraph 55) through a letter from an anonymous whistleblower(s) (the "**Whistleblower Letter**").

36. On or about March 21, 2018, DICO delivered a Letter of Concern to PACE's management and Chair of the Board of Directors of PACE, setting out a number of concerns based on its findings and other information contained in the Whistleblower Letter.

37. At no time did DICO provide the D&Os with a copy of the Whistleblower Letter, nor did the whistleblower(s) approach the D&Os with any of the allegations regarding Larry, Phil or the general management of PACE that were the subject matter of the Whistleblower Letter.

38. On or about April 19, 2018, DICO met with individuals from PACE to discuss concerns, including meeting with the Board, Phil and Larry.

39. In or around May 2018, DICO appointed KSV Advisory Inc. ("**KSV**"), as special auditor and examiner to assist DICO in undertaking a special audit and examination of PACE pursuant to section 171(5) of the Act.

40. On or about May 10, 2018, DICO met with D&Os to discuss the nature of the allegations raised in the Whistleblower Letter and advised the D&Os that KSV was appointed by DICO to perform the special audit in accordance with the Act. The Whistleblower Letter was not produced at this meeting

41. It was around this time that the D&Os became aware and could have reasonably been aware of the allegations of the improprieties of Larry, Phil and others in the management of PACE. The whistleblower(s) did not report a complaint to the D&Os, and the D&Os received no advance indication of the specific irregularities until DICO began its investigation and the process for placing PACE under Administration.

42. When these matters were brought to the attention of the D&Os , the D&Os at all time co-operated with DICO and followed the orders of the DICO.

The Administrative Order

43. Within a few months of the Whistleblower Letters, on or about September 28, 2018, DICO issued an Administrative Order in respect of PACE, whereby, DICO suspended the powers of the the D&Os (with limited exceptions) and assumed the powers of same, thereby effectively taking control of PACE, among other things.

44. DICO subsequently terminated the employment of Phil and Larry.

Allegations Against the Other Defendants

Failure to Disclose Compensation

45. The D&Os do not have any knowledge of the allegations contained at paragraphs 30 to 37 of the within Claim, including among other things, allegations that Larry and/or Phil:

(a) Knowingly or recklessly underreported their income;

(b) Structured employment agreements with PACE, 142 and 809 to underreport their income (the "**Employment Agreements**");

(c) Failed to report all of their income in the audited financial statements for PACE as required under the Act; and

(d) Misrepresented the true financial position of PACE.

46. To the knowledge and belief of the D&Os, Larry accurately disclosed to the D&Os all income purportedly earned by Larry, 142 and 809. It was the D&Os understanding and belief that

all income purportedly received by Larry, 142 and 809 was reported on PACE's financial books and records in the normal course.

47. PACE's financial statements were subjected to multiple levels of yearly audits and regulatory checks. PACE received guidance and advice from its accountants and auditors and received a clean audit opinion. No issues were raised by PACE's internal and external auditors regarding the underreporting of income.

48. Larry provided information to PACE for the purposes of preparing financial statements. All information provided by Larry in respect of and in preparation for PACE's financial statements was reviewed by the Board for its exercise of appropriate diligence and discretion.

49. At all material times, the Employment Agreements were valid, commercial reasonable and approved by the Board through its exercise of reasonable diligence in reviewing and approving the Employment Agreements.

50. Further, these Employment Agreements were in place prior to the current D&Os assuming their role on the Board and were reviewed and approved or ought to have been reviewed and approved by DICO for all those years. At no time prior to the within Claim did DICO raise any issues with the Employment Agreements which go back decades.

51. Further, any unreported income by Larry, 142 or 809 is not a compensable loss to PACE that was caused by the D&Os. The Plaintiff has failed to prove a casual connection in respect of the breach and the damages being sought.

Improper Payments Received

52. The D&Os do not have knowledge of the allegations in the within Claim that Larry improperly obtained approvals for expenses and other payments received from third parties. The D&Os state that the Plaintiff has failed to particularize the payment(s) it objects to and puts the Plaintiff to the strictest proof thereof.

53. The D&Os approved expenses and/or payments to senior officers by exercising reasonable diligence in advance of their duties to PACE. All payments that were approved were appropriate, reasonable and considered by the D&Os in exercising their duties to PACE and applying business judgment.

54. If Larry is found to have improperly obtained approvals for expenses and other payments received from third parties, of which the D&Os have no knowledge, and if it is found that Larry underreported his income and created, among other things, a "contract scheme" with his related companies to facilitate the under reporting of his income, Larry knowingly or recklessly misrepresented the information to the D&Os.

55. Larry and Phil, as senior executives of PACE, were responsible for the financial reporting of PACE and the reporting of their own incomes. The D&Os were entitled to rely on the representations made by the Management and accept the representations as truthful, accurate and in the best interest of PACE. The D&Os applied their reasonable diligence in exercising their duties to PACE. It is not the role of the D&Os to identify alleged intentional misreporting, which is confirmed, reviewed by committees and audited by the internal and external auditors and DICO.

The Transactions

The CCE Transaction

56. In or around 2017, Larry and Phil approached the D&Os with the opportunity to purchase Continental Currency Exchange Canada Ltd. ("**CCE**") to raise capital and membership for PACE.

57. The Minutes of the Board of Directors dated November 29, 2017 provide the following in respect of the discussion of the Board of Directors and Larry in respect of CCE:

> CCE
>
> PACE investment/ownership is 30% only – CCE is a completely separate entity from PACE. Internal audit of all CCE locations has been completed. No plan at this time to introduce CCE services to PACE members and will move slowly to determine next steps. Smith [Larry] reiterated a detailed summary of the original rational for the investment and the rationale for the loan advance to 2340938 Ontario Limited and the Board **confirmed** support for the rational for the transaction, for the financing structure and its approval of same.

58. The Minutes of the Board of Directors dated December 14, 2017 provide the following:

> CCE
> In addition to the information previously provided to the board and recently requested by and provided to DICO, of which the board have been kept informed, the president again reviewed in detail the structure, ownership and reasoning for the investment and loan transaction. The board had no further questions of note.
>
> Scott Penfound, CEO of CCE provided a company history highlights of which include; family business, 30 successful years of which the past 5 years have been record breaking, largest independent foreign exchange company. 18 offices in prime retail locations, 98% client satisfaction rating, good value, consistency in results and services, untarnished record, no hidden skeletons, integrity, internal controls, compliance and a schedule 1 bank licence holder.

59. At the time Larry and/or Phil approached the D&Os in respect of CCE, the D&Os asked questions and after hearing from the CEO of CCE and other independent voices reasonably,

supported the strategic direction and growth of PACE's capital, membership and services. The D&Os were advised by Larry and Phil, among other things, that CCE would provide foreign exchange services to PACE members and provide access and growth to the memberships, including provide members access to automated teller machines at widespread locations.

60. Larry and Phil advised the D&Os of a structure that complied with the regulatory restrictions on the ownership of subsidiaries while PACE could raise the capital and await regulatory approval by DICO to own CCE in its entirety.

61. The structure proposed by Larry and Phil would allow PACE to own the maximum allowable percentage of CCE (30%) until such time as regulatory capital and approval could be obtained for it to acquire the rest and would grant an interest-bearing loan to 2340938 Ontario Limited ("**2340**"), for its purchase of a 45% share in CCE (the "**CCE Transaction**"). The D&Os approved the loan to 2340 at the meeting of the Board of Directors on or about February 28, 2018.

62. At the Board meetings, Larry regularly kept the D&Os apprised of various regulatory requirements in respect of the CCE Transaction. The Minutes of the monthly meeting of the Board of Directors held on April 25, 2018 set out the following in respect of regulatory updates in respect of the CCE Transaction:

> CCE
>
> Provide DICO with a Board-approved clear, consistent and conclusive account of the flow of funds in the CCE transaction and such other information as may be necessary for DICO to fully understand the transaction, including, but not limited to the actual purchase price paid by PACE. Provide DICO with a Board-approved clear, consistent and definitive explanation of the rationale for the transaction and PACE's future intentions for CCE and 234.

63. At all material times, the D&Os were aware that once PACE received regulatory approval, it would acquire 2340's share in CCE. Larry and Phil advised the D&Os that PACE had sought approval for a greater ownership stake in CCE from DICO and advised the D&Os that it was PACE's intention to acquire the additional 45% share of CCE from 2340 once PACE was granted approval by DICO. In the meantime, PACE would continue to retain profit by way of its receipt of interest on the loan to 2340 and its ownership of a 30% share of CCE.

64. At no time during the CCE Transaction did Larry, Phil or any one else advise the D&Os of the alleged relationship between 2340, advise on any related company to the CCE Transaction or advise on the financial health of 2340, and no such facts are within the knowledge of the D&Os.

65. At all material times, the D&Os, were aware of the regulatory requirements and obtained reasonable assurance that PACE was meeting applicable regulatory requirements. This transaction was, to the D&Os knowledge, also disclosed to FSRA, the internal and external auditors. No regulatory improprieties were brought to the D&Os by any other party.

66. Further, FSRA has failed to provide an accounting for the alleged losses it seeks from the CCE Transaction. Even if the regulatory requirements were not met as alleged by FSRA and of which the D&Os have no knowledge, the losses alleged were not caused by the approval of the CCE Transaction. In fact, the losses, if any, which are denied, were caused by mismanagement of CCE by FSRA since its Administration Order.

Geranium Joint Ventures

67. Contrary to the allegations in the Claim, the D&Os were informed by Larry and Phil that the joint ventures all complied with sections 198 and 200 of the *Act*. Details of each joint venture

were publicly disclosed in the Credit Union's financial statements, which were subject to rigorous internal and external audit. None of those audits raised concerns with the structure of any joint venture.

68. Further, the payments arrangement that was approved by the D&Os was reviewed by PACE's external auditors – Deloitte – who were tasked with reviewing such arrangements. Neither Deloitte nor FSRA, who over the years was also aware or ought to have been aware of these joint ventures, raised any concerns with the D&Os. All these arrangements were fully disclosed to all parties.

69. In the alternative, if any of the joint ventures is contrary to those sections of the *Act*, then PACE has suffered no damages as a result of those breaches, and the alleged breaches did not cause any damages that are being alleged by PACE or FSRA.

SusGlobal Energy Corp.

70. The D&Os have no knowledge of the allegations as set out in the within Claim of Larry or Phil's activities in causing PACE to advance funds to SusGlobal Energy Corp. ("**SusGlobal**").

71. Moreover, the D&Os have no knowledge of the allegations related to Larry's or Phil's activities in causing PACE to pay the Defendants, Ron Williamson, R. Williamson Consultants Limited and Ron Williamson Quarter Horses Inc. (the "**Williamson Defendants**") a "finder's fee". This alleged finder's fee represented 25% of the funds advanced from which Larry thereafter received a secret commission of $150,000 USD from the Williamson Defendants through the Defendants, 172, 1916 and Malek.

72. The D&Os have no knowledge of the allegation that Larry and Williamson each received 810,000 shares in SusGlobal. If it is found that Larry and Phil improperly received a financial benefit, the D&Os plead that the D&Os had no knowledge of same and were deceived by Larry and Phil.

73. Further, as with all transactions, it remains unclear what caused the losses, if any, which are denied, as alleged in the Claim and when such losses were occurred. The D&Os rely upon the statements in paragraph 58 of Amended Statement of Defence and Counterclaim of the Defendants, Larry Smith, 1428245 Ontario ltd. and 809755 Ontario ltd. (the "**Larry Defence**") which states that in the more than two years after the date of the Administration Order, the loan continued to perform and the Credit Union had suffered no loss. No details to the contrary have been pleaded by FSRA and the losses, if any, which are denied, as alleged in the Claim were caused by mismanagement of FSRA after the Administration Order.

Inveraray Glen

74. Larry approached the D&Os with the opportunity of the Inveraray Glen investment. Larry advised the D&Os that this was a Muskoka Resort Corporation and possible joint venture opportunity with a book value of $10.5 million that could bring PACE a share value in joint venture of $13.5 million. It was always the understanding of the D&Os that they would continue discussions and that the Management would return with a plan for the D&Os for further consideration, review and due diligence in regards to this opportunity.

75. The D&Os have no knowledge of the allegations that Larry and Phil intentionally refused to record bad loan charges in respect of loans to Inveraray Glen, or that Larry and Phil refused to book those charges in accordance with the by laws of the Credit Union and the *Act*.

76. Further, as with all transactions, it remains unclear what caused the losses, if any, as alleged in the Claim and when such losses were incurred. The D&Os further plead if PACE has suffered losses, which are denied, such losses were caused by mismanagement of FSRA after the Administration Order.

Lora Bay and Noble House

77. The D&Os deny that any loan was advanced to the Lora Bay Corporation and Noble House that was contrary to reasonable loan underwriting practices or the Credit Union Policies.

78. The D&Os have no knowledge of the remaining allegations in paragraphs 81-85 of the Claim. Further, as with all transactions, it remains unclear what caused the losses, if any, as alleged in the Claim and when such losses were occurred. The D&Os further plead if PACE has suffered losses, which are denied, such losses were caused by the mismanagement of FSRA after the Administration Order and as FSRA caused PACE to breach its commitments for these loans after the Administration Order as stated in paragraph 66 of the Larry Defence.

Lagasco Transaction

79. The D&Os have no knowledge of the allegations in paragraphs 100-108 of the within Claim in respect of the improvident loan of $30 million to Lagasco Inc. advanced by Larry, Phil and Hogan in breach of the *Act.* No such transaction was approved by the D&Os.

80. Further, as with all transactions, it remains unclear what caused the losses, if any, as alleged in the Claim and when such losses were occurred. The D&Os further plead if PACE has suffered losses, which are denied, such losses were caused by the mismanagement of FSRA after the Administration Order.

Diversion of Funds to Golanski and False Invoices

81. The D&Os have no knowledge of the allegations contained in paragraphs 109-114 of the within Claim. At all material times, Larry, Phil and the Management assured the D&Os that all transactions in respect of 172 and invoices issued by Larry, 142 and 809 were legitimately rendered and paid in respect with valid contracts.

82. Amounts in respect of invoices and payments to 172 were approved by PACE's internal accounting staff and were subject to regular audit. The payments spanned a period of time before and after the current D&Os took on their role as the Board. The underlying contracts and payments were disclosed in the financial reports and no red flags were raised by the internal auditor, external auditor or FSRA over the years.

No breach of By-Law 6

83. At no time was any breach of By-Law 6 brought to the attention of the D&Os. Compliance with By-Law No. 6 is the responsibility of the Management of PACE.

84. The Credit Committee, Audit Committee and the internal auditor then conducted periodic reviews and prepared reports to ensure compliance with By-Law 6. No report was provide to the D&Os to indicate that PACE was lending money in breach of By-Law 6.

85. Further, the external auditors reviewed the loan portfolios and conducted specific checks to ensure that the true financial position of PACE was reflected in its audited financial statements every year. No reservations or limitations on financial statements were ever identified by the external auditors.

86. Further the entire loan portfolio was available to FSRA to audit during their Onsite Verifications or at anytime it so desired.

87. The D&Os deny that PACE was lending money in breach of By-Law 6 or in the alternative if it was, which is denied, then such breach was intentionally hidden from the D&Os by Larry and Phil.

D&Os have no knowledge of false invoices, conspiracy and concealment of monies by Larry and Phillip

88. The D&Os have no knowledge of the alleged transactions and activities of Larry and Phil Smith that PACE alleges precipitated the events leading to the Claim. Further, these alleged transactions and activities, as described in the Claim, were conducted through a web of shell corporations and related corporate entities. These were sophisticated, and any impropriety, if true, was never brought to the attention of the D&Os and were not reasonable discoverable by the D&Os. The role and standard of care applicable to the D&Os is that to obtain reasonable assurance from the information presented to them. The D&Os are not forensic auditors to be able to pierce through the various layers of corporations to discover the issues that have allegedly been discovered by FSRA after extensive forensic audits and information from the Whistleblowers.

89. Larry, Phil and Hogan were all officers of PACE and, accordingly, along with the Management, owed PACE and the D&Os a fiduciary duty and duty of care. It was incumbent on these Defendants that they provide:

(a) The D&Os information in a truthful and forthcoming manner keeping in mind the best interest of PACE;

(b) complete information that is accurate and not meant to conceal anything from the D&Os;

(c) accurate and sufficient reporting on contents of documents so as to present a fulsome picture of various transactions;

(d) accurate and fulsome information about or the relationship between Larry, Phil, Malek, and their related companies with various individuals and companies named within the Claim; and

(e) accurate reporting and information as received from the various committees and independent sources as retained by PACE for the purposes of the various transactions.

No Liability of D&Os regarding PSC

90. The D&Os deny all allegations in paragraphs 154-171 of the Claim. Specifically, the D&Os plead that the allegations in the Claim involving PSC are incorrect both in fact and law.

91. PACE, and its D&Os, do not owe any duty of care in law to the purchasers of the Preferred Shares. The D&Os had no duty to ensure that the Preferred Shares issued by PACE Financial ("**PFL**") and First Hamilton Holdings Inc. were distributed in a regulatory compliant manner.

92. FSRA, on behalf of PACE, has no right in law to commence a claim and seek to recover alleged damages on behalf of the Investor Claimants (as defined in the Claim) from the D&Os. D&Os are not liable to PACE or FSRA for contribution and indemnity relating to losses claimed

by Investor Claimants in connection with their investments in Preferred Shared issued by PFL. These allegations and claim for contribution and indemnity has no basis in law.

93. PSC provided brokerage, investment and business management services to PFL in respect of the Preferred Shares. Such liability for any damages to purchasers of Preferred Shares lies with PSC, which had its own directors and officers, compliance structure and was subject to the supervision of its regulator, the Investment Industry Regulatory Organization of Canada.

94. The D&Os deny that PSC required approvals by PACE for its issuance of the Preferred Shares. PSC had the expertise and responsibility for its own dealings.

95. Further, at the time the losses were allegedly suffered by the Investor Claimants, which are denied, PACE was controlled by FSRA and subject to the Administrative Order. To the extent the Investor Claimants suffered any losses, which is denied, FSRA/PACE bear responsibility.

96. The D&Os deny that they owed a duty of care and fiduciary duties to PACE and in respect to its relationship with PSC and its subsidiaries and in respect of the distribution of Preferred Shares.

97. Further, the D&Os deny that PACE sustained damages of $25,000,000.00 paid to resolve the claims of the Investor Claimants. FSRA chose to settle with the Investor Claimants without informing the D&Os and chose to keep the D&Os in the dark in regard to this alleged settlement, the details of which have not been disclosed even today. FSRA cannot in good faith seek to recover these alleged settlement monies from the D&Os. FSRA by choosing to not involve the D&Os in the settlement has caused irreparable prejudice to their ability to assess the merits of the claims, if any, by the Investor Claimants.

98. D&Os plead that FSRA is barred in equity and law from seeking any recoveries from the D&Os.

The D&Os met the standard of care

99. The D&Os exercised the care, diligence and skill that a reasonable person acting as a director and officer of a credit union would exercise in comparable circumstances. The D&Os attended monthly meetings of the Board of Directors; asked questions of the Management including Larry and Phil; undertook efforts to ensure that PACE was in compliance with its regulatory requirements; sought explanations from the Management including Larry and Phil during the meetings regarding the various opportunities advanced by the Management; and provided information and reporting to the regulator when it requested same.

100. The D&Os acted reasonably and fairly in the administration of their duties to PACE and in their exercise of business judgment. It was not reasonably foreseeable to the D&Os that the Other Defendants would engage in the improprieties, as alleged, which are outside the knowledge of the D&Os and which caused the alleged damages, if any, suffered by PACE.

101. In all of the above-cited transactions and activities of the Other Defendants, the D&Os acted reasonably and fairly in administrating their duties to PACE, including exercising their business judgment to reasonably rely on:

(a) Information provided by the Management, all of whom held a fiduciary duty to PACE;

(b) Reports provided by various sub committees including the Credit Committee and Audit committees at PACE;

(c) Reports and information provided by PACE's internal auditor and its independent external auditors, Deloitte LLP. Nothing in the reports of PACE's internal and external auditor gave the D&Os any reason to mistrust the assurances given to them by management or raise any red flags in regards to any agreements or transactions referenced in the Claim;

(d) Independent sources such as lawyers, the CEO of CCE and other parties who were involved in the various transaction, none of whom raised any concerns with the D&Os; and

(e) The oversight control processes established by FSRA, including its regular onsite verifications.

102. The D&Os exercised proper diligence, skill, care and control in the circumstances, and obtained reasonable assurances from all sources, and met the standard of care applicable to them in accordance with the *Act.*

103. The D&Os plead and rely upon, *inter alia*, sections 97-101, 105,109, 121 and 137 of the *Act.*

No recoverable damages

104. The D&Os deny that they are liable for any damages as alleged by the Plaintiff and puts FSRA/PACE to the strictest proof thereof. The D&Os further state that any alleged damages, as claimed, are exaggerated, excessive, remote and unrecoverable in law.

105. Any damages suffered by PACE which are not admitted but specifically denied, were caused or contributed to by the negligence of FSRA and/or the conduct of the Other Defendants, all of whom were directly in involved in the transactions referenced in the within Claim.

106. In particular, FSRA has taken steps to call loans that have been otherwise performing according to their terms, and which were not in default; caused loans to go into default that were otherwise performing; and has either sold or is in the process of selling PACE's interest in profitable investments, thereby harming PACE's long-term financial position. FSRA has not failed to mitigate the damages that were being suffered by PACE, which are not admitted but denied, and has in fact increased PACE's losses by mismanaging the assets of PACE in its role as the Administrator.

107. In particular, while under administration, PACE's operating income dropped to $3.7 million in 2019 from $8.5 million in 2018, and the value of its commercial lending portfolio fell over $100 million, to $760 million. FSRA and PACE have admitted publicly that those declines are largely the result of the Administration Order. In particular, the "direct" costs of the Administration Order were estimated in January 2020 to be between $4 million and $5 million. In addition, FSRA's CEO, Mark E. White, stated that Administration Order has another "hidden" cost: "*Regulators are not meant to operate businesses…The book is being de-risked, which is of course what a regulator would like to do. But there is also the possibility that business is not being done to its fullest*".

108. The D&Os plead and rely on the *Negligence Act*, R.S.O. 1990, c.N-1, as amended.

Action is Statute Barred

109. The D&Os plead that the Plaintiff discovered material facts relevant to its claim, or ought to have discovered the material facts relevant to its claim through the exercise of reasonable diligence, more than two years before the action was commenced and rely upon the provisions of the *Limitations Act*, *2002, S.O*. 2002, c.24, s.B.

110. The D&Os plead that this action be dismissed as against them with on a substantial indemnity basis.

COUNTERCLAIM

111. The Plaintiffs by Counterclaim, Brent Bailey, Deborah Baker, Ian Goodfellow, Al Jones, Wendy Mitchell, Peter Reballati, Jim Tindall, Pauline Wainwright, Neil Williamson, and George Pohle (collectively, the **"D&Os"),** claim the following against PACE, by its administrator, FSRA:

(a) an order pursuant to PACE's By-Law No. 1 and, *inter alia*, section 123 of the Act directing PACE to indemnify the D&Os for all damages, costs, charges and expenses, including any amounts paid to settle any action or satisfy any judgment against them; and

(b) Such further and other relief as to this Honourable Court may seem just.

112. The D&Os are entitled to complete indemnification for negligence claims under PACE's By-Laws. PACE will be liable for any award it can achieve in negligence against them, and therefore no damages will be at stake, rendering the within Claim moot and/or academic.

113. Pursuant to the By-Law, PACE is obligated to indemnify the D&Os for the within action. The By-Law states:

> **8.02** subject to the limitations contained in the Act, the Credit Union shall indemnify a director, officer, or committee member, a former director or officer or committee member, or a person who acts or acted at the Credit Union's request as a director of officer of a body corporate of which the Credit Union is or was a member, shareholder or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding which he or she is made a party by reason of being or having been a director or officer of the Credit Union or such a body corporate, if:
>
> (a) he or she acted in good faith with a view to the best interest of the Credit Union; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for being that his or her conduct was lawful.

The Credit Union shall also indemnify such person in such other circumstances as the Act permits of requires.

114. Further, and in the alternative, Section 123 of the Act states that:

Indemnification

(2) A credit union may indemnify an eligible person in respect of any proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity.

Exception

(3) Despite subsection (2), the credit union may not indemnify the person in respect of a proceeding by or on behalf of the credit union to procure a judgment in its favour.

Advance to pay for costs, etc.

(4) A credit union may advance money to an eligible person to pay for the costs, charges and expenses of any proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity, but the person is required to repay the money if either of the conditions described in subsection (5) is not satisfied.

Same, derivative action

(5) With the approval of a court, a credit union may indemnify an eligible person in respect of a proceeding by or on behalf of the credit union or entity to procure a judgment in its favour to which the person is made a party by reason of serving or having served in a qualifying capacity.

[…]

Restriction

(7) The credit union may indemnify an eligible person under this section only if,

(a) the person acted honestly and in good faith with a view to the best interests of the credit union; and

(b) in the case of a proceeding enforced by a monetary penalty, the person had reasonable grounds for believing that the impugned conduct was lawful.

Right to indemnity

(8) An eligible person is entitled to indemnity from the credit union in connection with the defence of a proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity if the eligible person,

(a) was substantially successful on the merits in the defence of the proceeding; an

(b) fulfils the conditions set out in clauses (5) (a) and (b).

115. The D&Os are "eligible persons" under subsection 123(1) of the Act. At all material times, the D&Os acted honestly and in good faith with a view to the best interests of PACE. There are no allegations of bad faith made against the D&Os nor is there any basis in fact or law to make such allegations. Therefore, the D&Os, are entitled to complete indemnification from the within Claim.

116. The D&Os submit that this Counterclaim should be tried together with, or immediately following, the trial of the main action.

CROSSCLAIM

117. The D&Os claim against the Other Defendants in this action, Larry Smith, Phillip Smith, 1428245 Ontario Ltd., 809755 Ontario Ltd. (a.k.a. Elective Benefit Insurance Services), Malek Smith, 1916761 Ontario Ltd., 1724725 Ontario Ltd., Frank Klees, Klees & Associates Ltd., Ron Williamson, R. Williamson Consultants Limited, Ron Williamson Quarter Horses Inc., Brian Hogan Joanna Whitfield, for the following:

(a) contribution and indemnity under sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, for any amounts which the D&Os may be found to be responsible to the Plaintiff;

(b) contribution and indemnity under the common law and equity for any amounts which the D&Os may be found to be responsible to the Plaintiff;

(c) the costs of the main action and Crossclaim plus all applicable taxes;

(d) Pre-judgment and post-judgement interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(e) such further and other Relief as to this Honourable Court may seem just.

118. The D&Os repeat and rely upon the allegations contained in the Statement of Defence in support of the Crossclaim.

119. For the purposes of this Crossclaim only, the D&Os incorporate by reference herein, the allegations contained in the Claim by the Plaintiff as against the Other Defendants.

120. The D&Os plead and rely on the *Negligence Act*, R.S.O. 1990, c.N-1, as amended.

121. The D&Os submit that this Crossclaim should be tried together with, or immediately following, the trial of the main action and the within Counterclaim.

Date: June 10, 2022

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Court File No. CV- 19-00616388-00CL

PACE SAVINGS & CREDIT UNION LIMITED, BY ITS ADMINISTRATOR, FINANCIAL SERVICES REGULATORY AUTHORITY
Plaintiff

- and -

LARRY SMITH et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSSCLAIM

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TAB H

Court File No.: CV-19-00616388-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED, by its administrator, FINANCIAL SERVICES REGULATORY AUTHORITY

Plaintiff

- and -

LARRY SMITH, PHILLIP SMITH, 1428245 ONTARIO LTD., 809755 ONTARIO LTD., (a.k.a ELECTIVE BENEFIT INSURANCE SERVICES), MALEK SMITH, 1916761 ONTARIO LTD., ALISON GOLANSKI, 1724725 ONTARIO LTD., FRANK KLEES, KLEES & ASSOCIATES LTD., RON WILLIAMSON, R.WILLIAMSON CONSULTANTS LIMITED, RON WILLIAMSON QUARTER HORSES INC., BRIAN HOGAN, BRENT BAILEY, DEBORAH BAKER, IAN GOODFELLOW, AL JONES, WENDY MITCHELL, GEORGE PHOLE, PETER REBELLATI, JIM TINDALL, PAULINE WAINWRIGHT, NEIL WILLIAMSON, KIM COLACICCO, and JANE LOWRIE

Defendants

STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE DEFENDANT BRIAN HOGAN

1. The defendant, Brian Hogan (**"Brian"**), denies all allegations made in the Amended Fresh as Amended Statement of Claim (the "**Claim**").

BACKGROUND

2. The Financial Services Regulatory Authority of Ontario (the "**FSRA**"), has made a series of meritless allegations against the defendant, Brian, in this action as well as by leaking confidential information and meritless insinuations and allegations about him, and his

member ship of Pace Savings and Credit Union Limited ("**PACE**") to the public press and especially reporters of The Globe and Mail (the "**Globe**").

3. It appears that FSRA's allegations against Brian allege breach of employment, fiduciary duty and trust, knowing assistance, conversion and conspiracy and unjust enrichment related to the participation in an involvement in identified transactions in the Claim. These and all other allegations in the Claim are illegitimate and without foundation and are denied.
4. Prior to Brian's employment with PACE he was gainfully employed with banks and other financial institutions since 1974.
5. During 2003 Brian was recruited by PACE and commenced full-time employment with PACE on January 4th, 2004, as a Senior Manager, Commercial Lending.
6. Brian's duties at PACE included sourcing and reviewing lending opportunities and preparing potential loans with a "term sheet" for approval by the Credit Committee. At no time did Brian have any individual loan approval or lending authority.
7. A "term sheet" is a conditional offer letter to the borrower that outlines the proposed terms of the loan approval subject to stated conditions, and PACE's approval and governance processes with legal documents to follow.
8. All term sheets and loan applications required approval of the Credit Committee in accordance with PACE's approval and governance processes. Without failure, all loans were later reviewed by the Board. Brian was a member of the Credit Committee from 2015-2018 (his retirement date) but not part of the Executive Committee or the Board of Directors. He never formally attended any Board meetings.
9. In addition to the Credit Committee approval and Board approval, the loans were subject to review by the audit committee, internal audit, external audit (being Deloitte) and DICO (now

FSRA). Only in 2015 did Brian become one of a number of members of the Credit Committee.

10. Brian did not at any time divide loans so as to enable or by-pass qualification limits.
11. At no time did Brian report to Larry Smith (President) or Phillip Smith (CEO). He reported to Rene Laffree until his retirement and then to Mary Benincasa. The Plaintiffs allegations that Brian was Larry's "right hand man" are unfounded and defamatory given they attempt to tie Brian to the misfeasance alleged against Larry.
12. While Brian's title at the time of his retirement as VP Commercial Credit may suggest some executive or loan authority he was never a member of the Executive Committee that managed PACE. Brian was much lower on the "totem pole". Risk assessment, loan policy, and legal compliance were at levels above him, including the Board.
13. Brian was never asked for input, comments, or participation in the preparation of financial statements.
14. The governance structure of PACE obligated matters of Risk Assessment, Loan Policy, and overall compliance with the Act under the watch of the Executive committee which the Board validated by internal and external auditors including FSRA (formerly Deposit Insurance Corporation of Ontario).
15. Brian retired effective February 28, 2018 at age 62 and ceased doing any work for PACE. Consistent with his employment contract that had been approved by the Board, Brian was entitled to a retirement allowance. Rather than a lump sum he accepted PACE's offer for a staged payout which ended May 31, 2019. Other senior personnel were extended similar terms.

16. Brian acted in the best interest of PACE throughout his 14 years of employment. He is not responsible if there were failures or breaches of governance or misconduct at levels above him. Again, Brian recites that he had no individual authority to approve loans.

17. Brian denies any improper conduct, fraud, conspiracy, and all allegations against him and in respect of the following transactions listed in the Claim

THE CCE TRANSACTION

18. Brian formatted the commercial loan credit application for 2340938 ONTARIO LTD. for credit committee approval based on information, background contact and financial information provided by PACE executives Larry Smith, Phillip Smith, and Sandra Delabio (CFO). Brian was not responsible to vet same and had no involvement in PACE's investment. In the event there were breaches of compliance they ought to have been intercepted by the Compliance Officer, or the Executive, or the Board, or all of them.

THE GERANIUM JOINT VENTURES

19. Brian had no responsibility nor involvement in these alleged joint ventures or any "secret" commissions in the matter nor any other alleged violations.

SUS GLOBAL ENERGY CORP.

20. Brian was not the account manager on this file, Usual process would have been required that the loan was duly approved by the Credit Committee as it was required to approve all term sheets and commercial applications. Therefore it ought to have been reviewed at the Board level. Brian was not aware of any fees, commissions paid or shares issued nor any of the alleged improprieties.

INVERRARY GLEN

21. Brian had no involvement with these loans or appraisals which to the best of his knowledge preceded his employment with PACE.

LORA BAY

22. To Brian's knowledge the Lora Bay loans were adequately secured by real estate security and other general security. Brian was unaware of any alleged fees paid to Malek Smith or anyone else or 1916 which FSRA alleges was a "secret" commission. Any compliance issues as alleged would be captured by the PACE approval process and at levels above Brian's position.

NOBLE HOUSE CORPORATION

23. Brian was not the account manager on the Noble House file. To the best of his limited knowledge, in the ordinary course, the usual loan process would be expected to follow that account manager's formatting of the loan documents for approval of the Credit Committee and as well as the Board with the involvement of outside counsel. The allegations in paragraph 79 and 80 or elsewhere in the Claim that Larry *and Brian* caused the loan to be advanced are unfounded and denied as to Brian's conduct.

1934811 ONTARIO LIMITED ("193")

24. This loan involves a prime residential subdivision and development lands in Barrie, Ontario which 193 was purchasing. From the get go, in addition to proper valuations and favourable due diligence as to feasibility and development of the lands, 193 had already secured an agreement for the pre-sale of a significant phase of lots. Upon city approval, these lot sales to a well-recognized third party developer of substance would, upon closing, liquidate the entire PACE debt and leave the balance of the lands free and clear for further development

and profit. In addition to the mortgage land security, PACE included personal guarantees of 193's owner, and his haulage company who were credit worthy and a known PACE member. This was a well secured loan and performed well and to the best of Brian's knowledge was paid in full without any loss attributable to Brian or at all.

25. To Brian's knowledge the inflammatory allegations in the Claim as to the involvement by Bill Player were not part of the 193 loan.
26. The allegations as to a fee in the nature of a "secret commission" are denied by Brian. The written term sheet signed by the borrower and the guarantor clearly disclosed a commitment fee to PACE in the amount of $150,000.00 and a fee to R. Williamson Consultants Limited of $600,000. There was no "secret fee" or "secret commission" as the term sheet stating same was approved by the Credit Committee and was and signed by 193 and the guarantors. The commissions or fees for a loan referral to Williamson and PACE's commitment fee were not out of the ordinary for a mortgage loan in excess of ten million dollars. Upon the advance to 193 the full $600,000.00 fee was couriered to Williamson at his Florida address as he had requested.
27. The ultimate payout of the stated fees or the manner thereof as deducted from the loan advance are the administrative duties of others and not part of Brian's responsibility. Once fully approved, other PACE staff prepare instructions to the solicitor to document and secure the registered and other legal documents. Administration deducts the fees, advances the loan and then pays out the fees as agreed in the term sheet.
28. Brian denies any deceit or the involvement in these alleged secret commissions herein and elsewhere as alleged. The fees payable by 193 were fully disclosed, approved in accordance

with PACE's underwriting and approval policies, and the consent of the borrower and guarantors.

29. These commissions were not paid by PACE but the borrower in any event so PACE has no loss in that respect.

LAGASCO TRANSACTION

30. To Brian's knowledge only minimal Lagasco discussions had taken place by the time of his retirement. Any loan approvals or advances that took place would have post-dated his retirement from PACE in February 2018. Brian neither participated in, nor is aware of any violation of section 191 of the Act.

CONCEALMENT AND CONSPIRACY ALLEGATIONS

31. The allegations of Brian's involvement in a collective agreement and conspiracy among Larry, Phillip, Klees and his company, and the Williamson defendants, or any Defendant, are unfounded, defamatory and denied, and are designed to intimidate Brian

32. Brian was not involved in any meetings, agreements or conspiracy with said parties, or anyone, nor any fake invoices, "secret commissions" or other nefarious conduct as alleged.

33. Brian received regular salary payments and occasional bonus payments in the ordinary course as approved by management. Declared bonus payments were not uncommon at PACE or in the banking industry.

34. Brian's updated employment contract dated December 15, 2015 states that he "will participate in any annual bonus".

35. At all times Brian carried out his job as a dutiful and loyal servant of PACE. If there was such a conspiracy as alleged to harm PACE, which is not admitted, Brian was not a part of it nor did he benefit by it.

36. Any allegations of Brian's participation in any concealment from Credit Committee or the Board are denied; Brian was never a member of the Board, and took no part in preparation of the Board packages nor did he receive them.

37. Brian did not attend Board meetings except a Christmas dinner invite wherein Brian and other senior staff were invited to attend a social portion of the Christmas Board meetings. In 2015, 2016, and 2017 he attended the festive dinner portion. He had no involvement or input into the formal business part of said Board meetings.

RETIREMENT COMPENSATION AGREEMENTS

38. As earlier stated, the terms of the retirement allowance were part of his recruitment to work for PACE after an already decades long career with other banks and financial institutions. Beyond that, he had no reason, then or now, to believe the terms of his retirement allowance were unlawful and he does not believe it so. Brian believes his employment terms and payments were approved by Senior Management and the Board. Brian has no recollection of any formal performance reviews during his employment at Pace.

NO FRAUD, DECEIT OR CONVERSION

39. Brian again states he had no individual loan approval authority which to his knowledge without fail occurred at a formal and structured process when he was at PACE. There are no specific allegations pled in the Claim to support these allegations. They are unfounded and defamatory.

NO CONSPIRACY

40. Brian did his job as a dutiful employee. At no time did he conspire with anyone to engage in any conduct that was unlawful. He did not engage in any conduct designed to injure PACE or cause it damage. Such damages are denied.

NO BREACH OF CONTRACT OR FIDUCIARY OR OTHER DUTY

41. Brian conducted himself in a reasonable and dutiful manner and attempted to act in the best interest of his employer. There was no breach of fiduciary duty, duty of care, or breach of trust by him. He was not negligent in the performance of his employment.

ALLEGED ASSISTANCE IN BREACHES OR UNLAWFUL FUNDS

42. At no time, did Brian assist others in any breach of duty, receipt of illicit funds or breach of the law. In the event such matters occurred among the other defendants Brian is not responsible or liable for such conduct

UNJUST ENRICHMENT OR CONSTUCTIVE TRUST

43. Beyond his earned employment remuneration during his employment and then in his approved retirement package Brian did not receive any funds that would be the foundation upon which could be based a claim of unjust enrichment or constructive trust. There is no juristic reason for Brian to be liable to repay any monies he received for compensation as employee or in his retirement package.

JOINT AND SEVERAL LIABILITY

44. Brian denies any joint and several liability with the co-Defendants as alleged in the Claim.

DAMAGES

45. Brian denies that PACE suffered any damages attributable to his actions or conduct and puts the Plaintiff to the strict proof thereof. If PACE did sustain damages, which are not admitted, they were not attributable to Brian's breach of his employment contract. Losses do occur in the ordinary course of the lending business which is not a perfect science. Brian relied upon established governance processes during his employment and if there was any failure or illegality he is not responsible. The actions of DICO/FSRA as administrator of

PACE may well be responsible for alleged losses. In the event any damages are proved and attributable to Brian, the Plaintiff has failed to mitigate such losses.

THE CLAIM IS STATUTE BARRED

46. While Brian denies the allegations against him, he pleads that the facts upon which the statement claims against him were discoverable with the exercise of reasonable diligence more than two years before this Claim was issued to commence this action. Internal audits, external audits and investigations by PACE and the Plaintiff provided full access to facts well prior to commencement of this claim. Brian pleads and relies upon the *Limitations Act*, 2002, SO 2002, c.24.

47. The defendant, Brian Hogan, asks the claim be dismissed as against him with costs:
    a. on a solicitor and own client and full indemnity basis given the inaccurate allegations of fraud against him
    b. alternatively on a substantial indemnity basis
    c. if neither, on a party and party basis
    d. plus all applicable taxes in addition.

COUNTERCLAIM

48. Brian (as Plaintiff by counterclaim) claims:
    a. damages for defamation in the amount of $1,000,000;
    b. general damages for mental and physical distress, pain and suffering, and loss of enjoyment of life in the amount of $1,000,000.00;
    c. special damages in the amount of $1,000,000.00 for defamation, loss of income and related health issues and expenses;

d. punitive damages and exemplary damages, in the amount of $1,000,000, for the conduct described above and below;

e. An interim order pursuant to PACE's By-law No. 1 and section 157 of the *Credit Union's and Caisse Populaires Act*, 1994, S.O. 1994 Charter 11 (the Act) directing PACE to make advances for the legal expenses incurred by Brian in defence of the Claim, pending its disposition, including those costs already expended in defence of the claim;

f. An order pursuant to PACE's by-law No. 1 and section 157 of the Act directing PACE to indemnify Brian for his legal expenses incurred in defending the claim;

g. Pre-judgement interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c C-43, as amended;

h. Post judgement interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c C-43, as amended;

i. the costs of this proceeding, plus all applicable taxes on a substantial indemnity basis;

j. such further and other relief as this Honourable Court may deem just.

49. Brian repeats the facts pled in his Statement of Defence. Brian states that FSRA (formerly DICO), its officers, employees or agents became the administrator of PACE in September 2018. Prior to that, DICO had access to examinations of the PACE operations. Such access was privileged information and as it concerns Brian Hogan became the subject of unfounded allegations against him made by DICO/FSRA both prior to and after the administration order.

50. Notwithstanding the Statement of Claim was issued and placed under seal, the Plaintiff before, then and after maliciously released this information to members of Pace and the public press including the Globe. Such leaks to PACE members and to the press, and in particular the Globe, has caused unfounded allegations of fraudulent conduct by Larry Smith

and others tying in Brian Hogan without evidence. Said releases of information as to unlawful monies, a yacht, cottage and other valuable assets linked to Larry Smith alleged and implied that Brian was a co-conspirator in the alleged fraudulent transactions and malfeasances of other Defendants.

51. The often full pages of the Globe articles came to link Brian as "Larry's side-kick" in purported conduct leading to these alleged frauds, illicit gains and the scandal at PACE. In the result without any evidentiary foundation, Brian's 43 plus years of exemplary reputation as a career banker was destroyed. His personal, family, client, and business relationships became the subject of unfounded common gossip.

52. Despite such stressors and defamation, Brian attempted employment with another financial institution. He soon found his reputation so tarnished he could not present himself nor be received by clients as the reputable banker he had always been. He was unable to succeed in garnering trust and business for his new employer. Brian left this position after only six months. He has not felt able to return to his banking career in the face of such defamation. The open wound that he was *"Larry's right-hand man"* to a scheme and to fraudulently strip monies from PACE remains.

53. Brian has sustained ongoing stress, loss of sleep, and loss of credibility and reputation since these scandalous allegations were made. He has a loss of good health and social and employment activities that he enjoyed prior to these events.

54. Brian has been under his doctor's care for anxiety and depression related to these unfounded allegations. Brian has been prescribed anti-depression and panic disorder medication (Teva-Setraline). These health concerns cause a loss of enjoyment of life. The most recent stab was PACE's direction that Brian should take his PACE mortgage and accounts elsewhere

despite a perfect payment record. Brian's forty-three year career as a trusted banker, friend, and family member has been destroyed by the Plaintiff without cause. Brian claims general damages for his mental and physical distress, loss of enjoyment of life, and the consequences of PACE's damage to his reputation. He has lost income being unable to present himself as an experienced banker having been stripped of his credibility by the conduct of PACE and the Plaintiff.

55. The DICO/FSRA allegations of fraud by senior executives of PACE were broad enough to implicate Brian and its release of his private information to the press was malicious and with callous disregard for Brian such that it caused the Globe articles to implicate Brian as a co-conspirator and fraudster because PACE and the Plaintiff linked Brian to these fraudulent activities of others.

56. Certain derogatory reports by DICO/FSRA surmising the fraudulent or illegality might have been committed were carelessly publicized and calculated to intimidate the defendants including Brian and has defamed him. Brian adopts the pleadings of Phillip in his paragraph #150 that various oral and other statements were made to PACE members including at the PACE "Town Hall" of December 2019 that fraud had been committed. PACE members, many of which were his business contacts, his friends and family, were caused to believe he was a fraudster because PACE and the Plaintiff linked Brian to these fraudulent activities of others.

57. The conduct of the Plaintiff and its releases of confidential and private material have caused Brian to be defamed and suffer physical, emotional and other damages, embarrassment and humiliation that is ongoing.

PUNITIVE DAMAGES

58. The Plaintiff has engaged in an independent and actionable cause of conduct for which it is liable for punitive and exemplary damages.

59. The Plaintiff's conduct meets the test of harsh, vindictive, reprehensible and malicious conduct as it concerns Brian. Efforts to tie Brian's conduct to the allegations against other defendants are without foundation and without even asking Brian for information. The Plaintiff's conduct is deserving of an award of punitive and exemplary damages in favour of Brian. The Plaintiff was careless and in disregard of Brian's entitlement to a fair investigation as to the truth as a loyal employee. The defamatory words and evidence revealed to the Globe and published by their natural meaning claim that the plaintiff has proved fraud and that Brian was a participant and an enabler of such fraud and in breach of his employment duties.

BRIAN IS ENTITLED TO BE INDEMNIFIED

60. Brian is entitled to indemnification and an advance to his legal and other costs.

61. Pursuant to the bylaw and structure of PACE, Brian's title of VP Commercial Credit casts him as an officer of PACE.

62. Brian adopts paragraph 158 of Phil's Counterclaim as adapted that pursuant to Article 8.02 of PACE bylaw No. 1 (the By-law), PACE is obligated to indemnify Brian, as a former officer of PACE, and to advance his legal expenses to defend the Claim and related civil and administrative proceedings. The By-law states:

> *8.02 subject to the limitations contained in the Act, the Credit Union shall indemnify a director, officer, or committee member, or a former director, or officer, or committee*

member, or a person who acts or acted at the Credit Unions request as a director or officer of a body corporate of which the Credit Union is or was a member, shareholder, or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses including an amount paid to settle an action or satisfy a judgement, reasonably incurred by him or her in respect of any civil, criminal, or administrative action or proceeding to which he or she is made a party by reason of being or having been a director or officer of the Credit Union or such body corporate, if :

a) he or she acted in good faith with a view to the best interests of the Credit Union; and

b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

63. The Credit Union shall also indemnify such person in such other circumstances as the Act permits or requires. Section 157 of the Act states that:

(3.1) A Credit Union may advance money to an eligible person to pay for the costs, charges, and expenses of any proceeding to which the person is made a party by reason of serving or having served in a qualifying capacity, but the person is required to re-pay the money if either of the conditions described in sub-section (5) is not satisfied.

(4) With the approval of a court, a Credit Union may indemnify an eligible person in respect of a proceeding by or on behalf of the Credit Union or entity to procure a

judgement in its favour to which the person is made a party by reason of serving or having served in a qualifying capacity.

64. Brian was an officer of the Credit Union identified under its By-Laws and policies at all relevant times and is an "eligible person" under section 157 (1) (b) of the Act. At all times, Brian acted in good faith, and in the best interest in PACE. He had reasonable grounds for believing his conduct was lawful at all times. He fulfills the requirements under the By-Law and under section 157 of the Act.

65. Brian also pleads and relies upon the terms of his employment contract dated December 15, 2015 when he became Vice-President, Commercial Lending. Said contract, drawn by PACE, states at paragraphs 10 and 11:

> 10. *The Credit Union acknowledges and agrees that the Employee is an "eligible person" as defined in subsection 157 (1) of the Act.*
> 11. *The Credit Union agrees to maintain officers and directors liability insurance as permitted by section 158 of the Act, for the benefit of the Employee, in an amount of not less than $2,000,000.00.*

66. Brian states that there were no exclusions of liability in the PACE agreement to provide liability insurance. In the event the policy PACE relies upon was that of CUMIS General Insurance Company who purports to exclude coverage based upon policy exclusions Brian states no such exclusions were stated in his employment contract drawn by PACE. Brian pleads and relies upon the doctrine of *contra proferentem*.

67. Brian states that as an officer of PACE and as provided in his employment contract that at Title H, paragraph 11, he is entitled to be indemnified for the claims alleged and to his complete defence costs.

68. Brian is entitled to indemnification of the legal fees that he has already incurred in defending the Claim and is entitled to continuing advancement of legal fees pending disposition of the action. In the alternative, this action was commenced by FSRA, acting as administrator for PACE. In the event that this is a derivative action pursuant to the Act, then Brian is entitled to indemnification for his fees pursuant to section 157 (4) of the Act and for the continuing advancement of legal fees pending disposition of the claim.

COSTS

69. The Plaintiff by Counterclaim seeks his costs of this counterclaim action on a substantial indemnity basis.

70. The Plaintiff by Counterclaim requests that the trial of this action be heard with the main action or immediately following the main action.

DATE: March 25, 2021

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PACE SAVINGS & CREDIT UNION LTD. by its administrator FINANCIAL SERVICES REGULATORY AUTHORITY
Plaintiff

LARRY SMITH et al

Defendants

Court File No. CV-19-00616388-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at
Toronto, Ontario

STATEMENT OF DEFENCE AND COUNTERCLAIM OF THE DEFENDANT, BRIAN HOGAN

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TAB I

Court File No. CV-19-00616388-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

PACE SAVINGS & CREDIT UNION LIMITED, by its administrator,
FINANCIAL SERVICES REGULATORY AUTHORITY

Plaintiff

- and –

LARRY SMITH, PHILLIP SMITH, 1428245 ONTARIO LTD.,
809755 ONTARIO LTD. (a.k.a. ELECTIVE BENEFIT INSURANCE SERVICES),
MALEK SMITH, 1916761 ONTARIO LTD., ~~ALISON GOLANSKI~~, 1724725 ONTARIO LTD., FRANK KLEES, KLEES & ASSOCIATES LTD., RON WILLIAMSON,
R. WILLIAMSON CONSULTANTS LIMITED, RON WILLIAMSON QUARTER HORSES INC., BRIAN HOGAN, BRENT BAILEY, DEBORAH BAKER, IAN GOODFELLOW, AL JONES, WENDY MITCHELL, GEORGE POHLE, PETER REBELLATI, JIM TINDALL, PAULINE WAINWRIGHT, NEIL WILLIAMSON, ~~KIM COLACICCO~~ and JOANNA WHITFIELD

Defendants

AMENDED STATEMENT OF DEFENCE, ~~AND~~ COUNTERCLAIM AND CROSSCLAIM OF THE DEFENDANTS, FRANK KLEES and KLEES & ASSOCIATES LTD.

1. The Defendants deny paragraphs 4, ~~20~~, 22, ~~24~~, 27 ~~and 26~~, 59, 63, 64, 65(b), 125, 156, 157, in particular and thereafter, the balance of the Fresh as Amended Statement of Claim.

2. These Defendants state that at no time was Frank Klees an officer of Pace Savings & Credit Union Limited (hereinafter referred to as "Pace").

3. These Defendants state that Klees & Associates Ltd. was a party to valid

enforceable agreements with Pace relative to Geranium Corp. Developments ("Geranium") that entitled Klees & Associates Ltd. to receive certain payments from those developments whereupon they achieved certain designated milestones.

4. These Defendants state that Klees & Associates only received payments upon those conditions being met and were thereby earned and due.

5. These Defendants state that the invoicing of fees related to any and all payments related to the agreements with Pace relative to Geranium were issued in accordance with direction given to the Defendants by the President of Pace, Larry Smith.

6. These Defendants state that all of the terms, conditions and payments contained in the aforesaid agreements were fully disclosed, valid, enforceable and lawful.

7. These Defendants state that Klees & Associates was not only entitled to funds so paid and earned, but further state and plead that those agreements have been breached by the Plaintiff and that Klees & Associates continues to be entitled to receive further ongoing amounts, fees and entitlements as they become further due.

8. These Defendants state that at no time was Frank Klees an officer of Pace, but that he acted solely as an employee of a consultant with a limited role and mandate restricted to development issues. Neither of these Defendants had any obligation or duty to cause Pace to obtain any assistance or advice, or take any steps regarding the Geranium deals.

9. These Defendants further state that all Geranium deals substantially, adequately and validly benefitted Pace.

10. These Defendants deny that Frank Klees misrepresented or concealed any material fact from the Plaintiff or any relevant parties and, at all times, state that full and complete disclosure, if required, was made.

11. These Defendants repeat that at no time was Frank Klees a Vice President of Pace.

12. These Defendants deny any liability to the Plaintiff on any juridical ground, and in fact state that substantial funds are due Klees & Associates pursuant to the terms and conditions contained in the Development Agreements.

13. These Defendants therefore submit that the Plaintiff's claim be dismissed with full indemnity costs against them.

COUNTERCLAIM

14. By way of Counterclaim, the Defendant Klees & Associates Ltd, Plaintiff by Counterclaim, claims:

(a) damages in the amount of $5,000,000.00;

(b) pre-judgment interest pursuant to the Courts of Justice Act;

(c) post-judgment interest pursuant to the Courts of Justice Act;

(d) their costs of this action on a substantial indemnity basis; and

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

15. The Defendant, Plaintiff by Counterclaim, repeats and relies on the allegations contained in the Statement of Defence herein.

16. The Plaintiff by Counterclaim states that a number of Development Agreements remain lawfully in place, which by their terms and conditions entitle the Plaintiff by

Counterclaim to ongoing fees.

17. The Plaintiff by Counterclaim states that due to the breach of contract of each and every one of those Agreements by the Defendant by Counterclaim, that they have been excluded from progress information dissemination. As such, the Plaintiff by Counterclaim cannot at this time calculate the details and full amount that would be due under those Agreements.

18. The Plaintiff by Counterclaim undertakes to file a Bill of Particulars setting out the amounts and consequences of the damages suffered by the unlawful acts of the Defendant by Counterclaim prior to trial.

19. The Plaintiff by Counterclaim requests that the trial of this action be heard with the main action or immediately following the main action.

CROSSCLAIM

20. The Defendants/Plaintiff by Counterclaim (hereinafter referred to as the Defendants) claim as against the co-Defendant Larry Smith:

(a) Contribution and indemnity for any amounts for which they may be found liable;
(b) Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act;
(c) Costs on a full indemnity basis together with applicable HST and;
(d) Such further and other Relief as this Honourable Court may deem just

21. The Defendants/Plaintiff by counterclaim repeat the allegations contained in their Defence and Counterclaim.

22. The Defendants state that any and all services provided to the Plaintiff were rendered in accordance with the Defendant's consulting agreement and as such any

damages suffered by the Plaintiff, which are not admitted but expressly denied, were as a result of the conduct of Larry Smith.

23. The Defendants state that at all material times Larry Smith represented to the Defendants that the consulting agreement was lawful and appropriate.

24. The Defendants state that they have no knowledge of any misrepresentations made by Smith to the board regarding the amounts collected by the Defendants and deny any liability for same.

25. The Defendants repeat that they only received payments upon certain conditions being met and were thereby earned and due and these Defendants further state that the invoicing of fees related to any and all payments related to the agreements with Pace were issued in accordance with direction given to the Defendants by the President of Pace, Larry Smith.

26. The Defendants state that such direction renders the co-defendant Smith primarily liable and responsible in the course of their relationships.

27. The Defendants seek full indemnity costs.

DATED: ~~November 19, 2019~~ June 8th, 2022

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PACE SAVINGS & CREDIT UNION LIMITED, by its administrator, FINANCIAL SERVICES REGULATORY AUTHORITY -and- LARRY SMITH et al

Plaintiff

Defendants

Court File No. CV-19-00616388-00CL

ONTARIO

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TAB J

AMENDED THIS / MODIFIÉ CE AUG 0 5 2022 PURSUANT TO / CONFORMÉMENT À
☒ RULE/LA RÈGLE 26.02 (A)
☐ THE ORDER OF / L'ORDONNANCE DU
DATED / FAIT LE
REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-22-00677550-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

PACE SAVINGS & CREDIT UNION LIMITED, by its Administrator, FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

Plaintiff

- and -

CUMIS GENERAL INSURANCE COMPANY

Defendant

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $2,500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

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

Date 28 Feb 2022

Issued by "Electronically Issued"
Local registrar
Superior Court of Justice
330 University Avenue
Toronto, ON
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TO: CUMIS GENERAL INSURANCE COMPANY
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CLAIM

1. The Plaintiff, PACE Savings & Credit Union Limited ("**PACE**" or the "**Credit Union**"), by its administrator, Financial Services Regulatory Authority of Ontario ("**FSRA**", or the "**Administrator**"), claims against the Defendant, CUMIS General Insurance Company ("**CUMIS**"):

(a) $10,~~000~~025,000.00 in indemnity, payable to the Plaintiff under the fidelity insurance coverage bearing Policy Number 01501254 and with an Effective Date of January 1, 2018, and an Expiry Date of January 1, 2019, including any relevant successor bond (the "**Bond**"), contained in the ~~contract~~contracts of insurance issued by CUMIS (the "**Policy**"), in respect of losses incurred by PACE in connection with the various dishonest acts detailed in a Proof of Loss sworn October 16, 2019, and submitted to CUMIS on or about October 16, 2019, in accordance with the requirements of the Policy (the "**Claim**") and set out below;

(b) for a declaration that the Claim, in full or any portion thereof, is covered by the Policy and Bond;

(c) damages, in an amount to be quantified before trial, for breach of the Bond, including all costs and expenses associated with the recovery of insurance proceeds under the Policy and steps taken as a consequence of the breach of the Bond;

(d) damages for breach of the duty of good faith in the amount of $10,~~000~~025,000;

(e) punitive damages in an amount of $1,000,000;

(f) ~~pre-judgment~~pre-judgment interest (at a rate equal to PACE's or, alternatively, CUMIS' return on capital) and post-judgment interest on all amounts claimed herein pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.42, as amended;

(g) costs of this action on a full indemnity basis; and

(h) such further and other relief as to this Honourable Court may seem just.

I. OVERVIEW

A. The Parties

2. The Credit Union is a credit union incorporated pursuant to the *Credit Union and Caisses Populaires Act, 1994*, S.O. 1994, c. 11 (the "**Act**").

3. The Credit Union's head office is located in Vaughan, Ontario. The Credit Union has multiple branches throughout southwestern Ontario and has over $1 billion in assets under management.

4. FSRA is the regulator of credit unions in Ontario pursuant to the Act. FSRA provides deposit insurance to members of Ontario's credit unions and, where necessary, acts as the supervisor, administrator and liquidator of credit unions (as those terms are defined by the Act). Effective June 8, 2019, FSRA amalgamated with the Deposit Insurance Corporation of Ontario, the former entity that carried out the prudential regulation of credit unions in Ontario under the Act. For ease of reference, the regulator shall be referred to as FSRA regardless of whether the event described took place prior to or after June 8, 2019.

5. On September 28, 2018, FSRA issued an administration order placing the Credit Union into administration pursuant to section 240.1(7) of the Act (the "**Administration Order**").

6. CUMIS is an insurance company incorporated under the laws of Canada, with its head office in Burlington, Ontario. CUMIS carries on business as an insurance company specializing in providing insurance to credit unions and their members throughout Canada, which business includes issuing contracts of insurance, such as the Bond, and collecting and receiving premiums for contracts of insurance in Ontario, including those paid under the Bond. CUMIS offered a specific insurance program for credit unions, which it described as the Credit Union Bonding Program (the "**CUB Program**"), and represented itself as a "trusted partner of Canadian credit unions" which allowed credit unions to "experience timely claims processing with broad coverage interpretations" and provided coverage "designed exclusively to meet the needs of credit unions" (the "**Representations**").

B. Insurance – The Bond

7. CUMIS issued the Bond to the Credit Union. Pursuant to the terms of the Bond, CUMIS is liable to indemnify the Credit Union for covered losses to a maximum of $10,~~000~~025,000.00. CUMIS sold the Bond directly to the Credit Union; there was no broker representing the Credit Union when it purchased the Bond from CUMIS and the Credit Union, in determining whether the Bond and the Policy were appropriate for its needs, relied on the Representations made by CUMIS in respect of the CUB Program.

8. The Credit Union remitted premiums pursuant to the Bond in accordance with the Bond's provisions. The Bond was valid and in force at all relevant times.

9. The Bond is a binding and enforceable contract as between CUMIS and the Credit Union and subject to the doctrine of utmost good faith and the Representations made by CUMIS.

10. The Bond provides, *inter alia*, insurance against the risk that those charged with operating the Credit Union will act dishonestly and cause the Credit Union to incur a direct loss of property. In particular, the Bond covers, *inter alia*, losses resulting from the dishonest or fraudulent acts of the Credit Union's directors, employees (including contractors performing employee duties) and committee members.

11. The Bond's dishonesty coverage is set out in two paragraphs. The first paragraph (the "**First Paragraph**") provides coverage for losses caused by dishonest and/or fraudulent acts of any director, employee, contractors performing employee duties or committee members with the active and conscious purpose to cause the Credit Union to sustain a loss. As set out below, PACE satisfies each aspect of this insuring agreement.

12. The second paragraph of the Bond's dishonesty coverage (the "**Second Paragraph**") deals with losses related to extensions of credit. With respect to losses relating to extensions of credit, the Bond covers losses resulting from dishonest or fraudulent acts of any director, employee, contractors performing employee duties, or committee member, with the active and conscious purpose to cause the Credit Union to sustain such loss and there is a financial benefit with a value in excess of $5,000.00 for the employee, director, contractor performing employee duties or committee member, or his or her spouse, parent, child, brother or sister. As set out below, PACE satisfies each aspect of this insuring agreement.

In addition to the foregoing, the Bond insures, *inter alia*, losses that result from the transfer of property where that property was transferred as a result of reliance in good faith on a forged chattel instrument, evidence of debt or guarantee, security or mortgage instrument. Additionally, up to $1,000,000 of the Bond's $10,000,000.00 in coverage is available for losses that result from fraudulent instruction provided by e-mail, facsimile or telephone. As set out below, PACE satisfies each aspect of these insuring agreements.

C. The Participants

~~14.~~13. The Claim relates to the dishonest conduct of the following employees, contractors performing employment duties, and directors (the "**Primary Participants**"):

(a) Larry Smith ("**Larry**") was both the President and CEO of the Credit Union in its various forms for approximately 20 years until 2016, at which point he relinquished the CEO role but continued as President. Larry was placed on administrative leave with pay upon the issuance of the Administration Order and was terminated for cause on December 5, 2018. Larry performed certain of his duties personally and ostensibly through his numbered companies 1428245 Ontario Ltd. ("**142**") and 809755 Ontario Ltd. ("**809**").

(b) Phillip Smith ("**Phil**") served as CFO of the Credit Union until he took over the role of CEO from Larry in 2016. Phil was placed on administrative leave with pay upon the issuance of the Administration Order and was terminated for cause on December 5, 2018.

(c) Frank Klees ("**Klees**") is a long-time friend of Larry. Klees was also a consultant of the Credit Union and acted as a Vice President of the Credit Union through his company, Klees & Associates Ltd. Klees was also purportedly appointed as a director of the Credit Union in or around April 2018 and also had an office at the Credit Union.

~~15.~~14. The following employees, contractors performing employee duties and directors (the "**Secondary Participants**", and together with the Primary Participants, the "**Participants**") ~~knowingly or unknowingly~~ helped the Primary Participants execute the schemes that caused the losses detailed in the Claim:

(a) Alison Golanski ("**Golanski**") is Larry's common law wife and was a consultant of the Credit Union through her numbered company, 1724725 Ontario Ltd. ("**172**").

(b) Brian Hogan ("**Hogan**") is a former Vice President, Commercial of the Credit Union and was Larry's "right-hand man".

~~16.~~15. Each of the Participants are directors, employees (including contractors performing employee duties) and/or committee members within the meaning of the Bond.

D. The Losses

~~17.~~16. The Claim relates to losses sustained by the Credit Union as a result of the Participants unlawfully and without authorization causing the Credit Union to advance funds to or in respect of:

(a) the Credit Union's acquisition of Continental Currency Exchange Canada Ltd. ("**CCE**");

(b) the Credit Union's joint venture projects with Geranium Corporation ("**Geranium**");

(c) the Credit Union's extension of credit to SusGlobal Energy Corp. ("**SusGlobal**");

(d) the Credit Union's extension of credit to Lora Bay Corporation ("**Lora Bay**");

(e) the Credit Union's extension of credit to Noble House Development Corporation ("**Noble House**");

(f) the Credit Union's extension of credit to 1934811 Ontario Ltd. ("**193**");

(g) the Credit Union's loan to Lagasco Inc. ("**Lagasco**");

(h) 172 as commission payments for work neither 172 nor Golanski performed; and

(i) Larry, 142, 172 and/or 809 for false invoices for services that were not rendered.

~~18.~~17. As is set out in greater detail below, the Credit Union suffered a "direct loss of property" within the meaning of the Bond totalling more than $23,500,000 (the "**Losses**") as a result of the events giving rise to these nine (9) schemes, which includes $25,000 in expenses relating to audits, investigations, legal, records reconstruction, and other professional expenses part of its efforts to identify the wrongdoing and correct the records of the Credit Union for each of the nine (9) schemes.

~~19.~~18. In particular, each loss, as set out in the Claim, was:

(a) caused by the dishonest and/or fraudulent actions of one or more of the Participants, acting alone or in collusion with others;

(b) caused by one or more of the Participants acting alone or in collusion with others with the active and conscious purpose to cause the Credit Union to suffer a loss; and

~~(c) caused by one or more of the Participants acting alone or in collusion with others with the active and conscious purpose to confer a benefit on a person or entity; and~~

~~(d)~~(c) in the case of Losses resulting from an extension of credit, one or more of the Participants obtained a financial benefit for themselves (or their spouse, parent, child, brother or sister) with a value of at least $5,000.

~~20.~~19. A "loss" within the meaning of the Bond includes a financial loss incurred by the Credit Union resulting directly from an actual depletion or diminution of assets owned or held by the Credit Union. The Bond expressly contemplates coverage for *indirect* loss: "if some or all of the INURED's loss results directly or indirectly from a LOAN, then that portion of the loss is not covered unless…" All references to the term "direct" in the Bond and herein are to be read accordingly. PACE relies upon the principle of *contra proferentem*. Any ambiguities in the Bond are to be resolved in favour of PACE.

E. The Proof of Loss

~~21.~~20. The Claim (i.e., the Credit Union's Proof of Loss) was filed on October 16, 2019.

~~22.~~21. The Credit Union has worked in good faith to provide CUMIS with an extensive documentary record in support of the Claim, including five substantive affidavits and hundreds of supporting exhibits.

~~23.~~22. The circumstances giving rise to the Claims have also been reported to the police.

F. CUMIS Improperly Delayed Responding to the Claims

~~24.~~23. The Claim relates to losses that are covered under the Bond.

~~25.~~24. CUMIS improperly failed to investigate the Claim in a timely manner or at all. It delayed responding to the Credit Union for nearly two years, failed to provide information which it had obtained through its investigation into the Claim and only confirmed coverage for certain losses in the Claim on October 28, 2021~~ but has failed to make any payment under the Bond to the Credit Union.~~. At the same time, CUMIS advised that it was not satisfied there was coverage for certain other losses. CUMIS has still not responded to confirm its position regarding other losses set out in the Claim.

~~26.~~25. The Bond provides that, upon the payment by CUMIS in respect of losses, CUMIS shall be subrogated to the rights or causes of action of the Credit Union to recover against any person or entity to the extent of such payment (the "**Subrogation Provision**"). The Subrogation Provision provides for CUMIS to make a payment on losses to the Credit Union on an immediate basis, and for CUMIS to be subrogated to the rights or causes of action of the Credit Union rather than requiring the Credit Union to wait to recover losses in actions against the Participants (or other individuals or entities). ~~Nevertheless, CUMIS has still not made any payment to the Credit Union, even for those losses for which it has confirmed coverage.~~

~~27.~~26. As described below, the Losses are covered by the First Paragraph and, in the alternative, the Second Paragraph of the Bond's dishonesty coverage, and in the further alternative, the Bond's Forgery and Extended Forgery coverage. As a result, CUMIS is liable to the Credit Union in the amount of $10,~~000~~025,000, under the Bond, and in the alternative, for breach of contract.

II. THE CREDIT UNION

A. The Credit Union's Management Prior to the Administration Order

~~28.~~27. Since the year 2000, the Credit Union undertook an initiative to grow through acquiring or merging with other credit unions throughout southwestern Ontario.

~~29.~~28. Throughout much of this period of growth, Larry was both the President and CEO of the Credit Union (in its various forms) for approximately 20 years, years, until the appointment of his son Phil as the CEO in 2016. After Phil was appointed as CEO in 2016, Larry continued to act as President of the Credit Union.

~~30.~~29. After the Administration Order was issued on September 28, 2018, the Administrator immediately placed Larry and Phil on administrative leave, with pay, pending further investigation by the Administrator.

~~31.~~30. The Administrator terminated the employment of Larry and Phil for cause on December 5, 2018.

III. THE TRANSACTIONS UNDERLYING THE CLAIM

A. The CCE Transaction

(i) The Regulatory Context

~~32.~~31. The Act and the Regulations prescribe limits on the extent of any investment that a credit union may make in a company without first receiving FSRA's approval. In particular, (a) section 200 of the Act requires a credit union to obtain FSRA's prior approval before forming a subsidiary; and (b) section 198 of the Act and section 64 of the Regulations provides that a credit union may not directly or indirectly acquire more than a 30% ownership interest in a company or unincorporated entity without first obtaining FSRA's approval.

(ii) The Scheme to Acquire CCE

~~33.~~32. CCE was a foreign exchange company that operated branches in southwestern Ontario to sell foreign currency to travellers. While CCE was developing other products, the vast bulk of its business was selling foreign currency to individual travellers.

~~34.~~33. In 2016, Larry and Phil developed a scheme to evade the statutory and regulatory requirements applicable to the Credit Union's acquisition of CCE. This scheme involved: (i) causing PACE to acquire a 30% interest in CCE for $9.5 million; (ii) causing PACE to lend 2340938 Ontario Ltd. ("**2340**") $15 million to enable 2340 to acquire 45% of CCE; and (iii) agreeing with 2340 and the vendor that, pursuant to a Unanimous Shareholders Agreement, as of March 31, 2019 the vendor could exercise a put option to force PACE to purchase the vendor's remaining 25% interest in CCE.

~~35.~~34. 2340 was a sham entity controlled by Larry and Phil. It was a company that was ostensibly owned by Joanna Whitfield ("**Whitfield**"), who had a personal relationship with Larry, and was a

failed, defunct company that was still indebted to the Credit Union for over $2 million following a previous failed and problematic loan that Larry had caused PACE to provide to it. Whitfield had no involvement in the negotiation of the CCE deal or management or control of 2340. Moreover, 2340 had no employees, and it was principally Larry's personal assistant at the Credit Union who administered the affairs of 2340.

~~36.~~35. Although the board of the Credit Union ostensibly approved the CCE Transaction, there was no actual or informed approval by the board of the transaction that Larry and Phil implemented due to Larry and Phil's misrepresentation of the true nature of the transaction. Larry and Phil did not disclose important and material information that was required to be disclosed to the Credit Union's Board, including 2340's role in the transaction or Larry and Whitfield's personal relationship. Larry's connections to and interest in 2340, and with Whitfield in particular, were also never disclosed to the Credit Union's Board.

~~37.~~36. In connection with the CCE Transaction, Larry and Phil caused certain funds that should have been paid to the Credit Union from 2340 to instead be paid to themselves and others under the false pretence that the funds were being paid by CCE (the operating company) as fees for services provided to CCE when in fact the funds were paid by 2340 from funds that were to be paid to the Credit Union or held in trust for the Credit Union. These payments totalled $174,000.

~~38.~~37. Larry and Phil also directed and/or acquiesced to the improper diversion of $591,000 of funds held by 2340, which were to be paid to or held in trust for the Credit Union, as follows:

(a) 2340 received quarterly dividends from CCE of $450,000 to service interest on the loan payments from PACE. These dividend payments were in excess of the funds

2340 required to pay the interest on its loan from PACE. Whitfield herself received $141,000 in payments from 2340 since January 2017 but did no work for the company; and

(b) after the Administration Order was issued, Larry, Phil or Whitfield misdirected the $450,000 dividend payment from CCE that was payable on November 1, 2018, and caused it to be paid into an account at Royal Bank of Canada in violation of the various contracts with PACE requiring that the dividends be deposited at PACE. These funds were recovered by the receiver put in place over 2340 as a result of the 2340 Receivership Proceedings (defined below).

~~39.~~38. The $591,000 in diverted funds related to CCE alone and the other payments directed by Larry and Phil to themselves and others total approximately $800,000.

~~40.~~39. The Administrator also uncovered evidence that, in 2018, Larry was purchasing the shares of 2340 from Whitfield for his own benefit.

~~41.~~40. In December 2018, the Administrator commenced receivership proceedings in respect of 2340 in order to protect the Credit Union's interests in the funds that had been misdirected (the "**2340 Receivership Proceedings**"). The Fuller Landau Group Inc. was appointed as the receiver. The Credit Union has suffered loss and/or damages as a result of the dishonest conduct of Larry and Phil in the amount of the costs associated with the prosecution of the 2340 Receivership Proceedings, any losses on the loan to 2340, and any losses on the amounts paid for CCE in excess of the actual reasonable value of CCE (which amounts, if any, are to be determined based upon the sale of CCE which remains pending and will be completed on or before March 31, 2022). As part

of the 2340 Receivership Proceedings, the shares of CCE held by 2340 have been transferred to the Credit Union.

~~42.~~41. The transactions through which Larry and Phil caused the Credit Union to acquire the interests in CCE also required the Credit Union to acquire the remainder of the shares from CCE's founder ("**Penfound**") anytime after March 2019 pursuant to a put option. Penfound exercised the option, and as a result, the Credit Union was left owning the entirety of CCE, contrary to the provisions of the Act and Regulations.

~~43.~~42. In March 2020, the COVID-19 pandemic crisis began in North America, resulting in the cessation or severe curtailment of international travel and the mandatory closure of all or the majority of CCE locations that are located in malls. As a result, the Credit Union has suffered losses as a result of the loss of revenue and diminution of the value of the CCE, an entity that the Credit Union would not have acquired contrary to the Act and Regulations but for the dishonest and fraudulent conduct of Larry and Phil.

~~44.~~43. In total, the transactions involving CCE gives rise to a claim for losses to the Credit Union of at least the following amounts:

(a) A loss in the amount of $174,000 for improper payments by 2340 from funds advanced by PACE, to Larry, Phil, and other employees of the Credit Union based on misrepresentations by Larry to PACE's board of directors;

(b) A loss in the amount of $141,000 for improper payments by 2340 from funds advanced by PACE, to Whitfield based on misrepresentations by Larry to PACE's Board of Directors;

(c) loss of revenue~~ as a result of the COVID-19 pandemic~~;

(d) diminution in value of CCE, which will be quantified following the completion of the sale of CCE by the end of March 2022;

(e) A claim for costs, in an amount to be determined, incurred related to the 2340 Receivership Proceedings; and

(f) A claim for losses, in an amount to be determined, arising from the losses incurred from the loan that Larry caused PACE to advance to 2340 in exchange for payments, for his own personal benefit in acquiring shares of CCE and for the Credit Union's involvement in the ownership of CCE.

B. The Geranium Joint Venture

~~45.~~44. Geranium is a company that develops residential real estate projects.

~~46.~~45. Larry and Phil caused the Credit Union to enter into six (6) joint venture projects with, and to make loans to, certain of Geranium's projects.

~~47.~~46. Larry and Phil structured these agreements so PACE ostensibly owned only the statutory-limit of 30% of each joint-venture entity, but PACE in fact took more of the ownership rights by being entitled to more than 30% of the profits and was obligated to provide more than 30% of the capital for each of the projects. This structure was in breach of the limits in the Act and Regulations regarding the ownership of subsidiaries (as described above at paragraph 30), for which no permission from FSRA was sought or obtained. Larry and Phil deliberately structured the

agreements to conceal the true nature of PACE's ownership and to evade compliance with the Act and Regulations.

~~48.~~47. The following chart sets out the various rights and obligations of the partners in the joint ventures – as can be seen, while PACE's "ownership" stake remains at a constant 30%, the actual ownership rights and obligations (profits and capital contributions) greatly exceed the 30% limit:

JV Name	Date of JV	Property Location	PACE "Ownership"	PACE Profit	PACE Capital
Ballantrae	July 2010	Stouffville	30%	33.34%	56.67%
Ninth Line	July 2010	Stouffville	30%	50%	85%
Bloomington	February 2014	Stouffville	30%	50%	85%
Claremont	April 2015	Pickering	30%	50%	85%
Scugog	September 2015	Port Perry	30%	50%	100%
Highland Gate	December 2014	Aurora	30%	50%	100%

~~49.~~48. In every instance, Larry and Phil deliberately committed PACE to make capital contributions in excess of its notional or actual ownership interest.

~~50.~~49. In connection with two of the Geranium joint ventures, Larry caused the Credit Union to pay $5.33 million to him (directly, and indirectly through 142, 809 and 172) from PACE and two companies related to Geranium (who took such funds from monies belonging to PACE):

Company	2013	2014	2015	2016	2017	2018	Total
PACE	-	-	316,400	542,400	1,246,650	923,550	3,029,000
JLG Management Consulting Ltd.	-		565,000	154,434	678,000		1,397,434

Company	2013	2014	2015	2016	2017	2018	Total
Prime "R" Management Inc.	304,208	249,470	159,892	114,278	80,326	-	908,174
Totals:	**304,208**	**249,470**	**1,041,292**	**811,112**	**2,004,976**	**923,550**	**5,334,608**

~~51.~~50. Larry was already being paid~~ indirectly~~ by PACE through 142 and 809 for "property development services". These additional amounts were not earned and were not approved by the Credit Union, and were funds that belonged to the Credit Union.

~~52.~~51. In addition to these payments, Larry caused PACE to pay Klees, who purportedly had a consulting agreement that also made him an officer of the Credit Union, $2.7 million in connection with the Geranium projects, despite the fact that the Credit Union's Board was only advised that Klees would receive $1.5 million over the life of certain of these projects and despite the fact that those projects were in early stages of development and the funds were not due and owing. Klees kept these funds despite not being entitled to such funds. Furthermore, Klees concealed his relationship with Larry and the Credit Union from the other directors and officers, including the fact he received monthly payments under his consulting agreement with the Credit Union and his purported appointment as a Vice President of the Credit Union, when he applied to become a director and despite the fact he was required to disclose such information by the Act and the forms he filled out to become a director. This further concealed the improper payments taken by Klees from the Credit Union.

~~53.~~52. Furthermore, Larry directed Geranium, or companies related or connected to it, to pay him, directly~~ or indirectly ~~/through 142, 809 and 172, additional sums on account of "consulting fees" or commissions. These amounts were taken from funds advanced by the Credit Union to Geranium or

funds that were the Credit Union's share of profits from the various joint ventures. Larry misled Geranium into making the payments by falsely representing that the payments were authorized by the Credit Union when in fact they were not.

~~54.~~53. These secret commissions or amounts dishonestly taken, many of them styled as "advance" payments, were not disclosed to the Credit Union's Board as required by the Act or Regulations.

~~55.~~54. In total, the Geranium joint venture transactions give rise to a claim for losses of $6,588,531, the entirety of which relates to improper fees and secret commissions paid to Larry and Klees which came from PACE funds or amounts owing to PACE.

C. SusGlobal Transaction

~~56.~~55. Larry and Phil caused the Credit Union to advance funds to SusGlobal, a borrower of the Credit Union.

~~57.~~56. Larry and Phil caused PACE to advance $1.6 million as part of the first tranche of a loan when, at that time, SusGlobal's only asset – a contract with two municipalities – had been terminated. The advancement of this loan was contrary to the Credit Union's risk tolerance and policies, and was contrary to any reasonable loan underwriting practices.

~~58.~~57. As part of the advancement of this tranche, Larry caused PACE to pay Ron Williamson (or R. Williamson Consultants Limited, Ron Williamson Quarter Horses Inc. or another company owned or controlled by Williamson) ("**Williamson**") a "broker fee" of USD$300,000, from which Larry thereafter ~~directly or indirectly~~ received a secret commission of USD$150,000 back from Williamson or his companies by directing the funds to 1916761 Ontario Ltd. ("**1916**"), a company controlled by Larry and his son, Malek Smith ("**Malek**").

~~59.~~58. Additionally, in conjunction with advancing the loan to SusGlobal, Larry and Williamson each received 810,000 shares in SusGlobal as part of the secret commission.

~~60.~~59. Subsequently, in September 2017, PACE advanced an additional $3.9 million to SusGlobal for a combined total exposure of $5.5 million. The advance was contrary to the Credit Union's risk tolerance and policies, and was contrary to any reasonable loan underwriting practices. All of the advances to SusGlobal were done to facilitate the secret commissions received by Williamson and Larry and/or 1916.

~~61.~~60. In total, the SusGlobal transaction gives rise to a loss to the Credit Union of approximately $3,210,983, plus the value of 1,620,000 shares issued to Larry and Williamson, which consists of the following:

(a) A claim in the amount of USD$150,000 plus the value of 810,000 shares of SusGlobal, the entirety of which relates to a secret commission that was paid ~~indirectly~~ by PACE to Larry;

(b) A claim in the amount of USD$150,000 plus the value of 810,000 shares of SusGlobal, the entirety of which relates to a secret commission that was paid directly by PACE to Williamson; and

(c) A claim in the amount of $3,800,000 being the impaired amount of the improvident loan that Larry caused PACE to advance to SusGlobal in exchange for the secret commission.

D. Lora Bay

~~62.~~61. Larry and Phil caused PACE to advance $6 million, in the form of a convertible debenture that was converted to equity, to the Lora Bay, a real estate development project company. Lora Bay is a company that is majority owned by Larry Dunn ("**Dunn**") or a company related to him. Dunn already had millions of dollars in loans with the Credit Union at the time of the Credit Union's investment.

~~63.~~62. The advancement of this loan to Lora Bay was contrary to the Credit Union's risk tolerance and policies, and was contrary to any reasonable loan underwriting practices. The loan was made to facilitate the secret commission received by Larry, Malek and/or 1916.

~~64.~~63. In January 2017, Larry caused the Credit Union to directly or indirectly pay to Malek or 1916, a company controlled by Larry and Malek, $180,000 in "consulting and referral" fees in connection with Lora Bay, which fees were not payable, not earned, and were in fact a secret commission or a false invoice that constitute a loss to the Credit Union.

E. Noble House

~~65.~~64. Noble House owns a public storage facility in Huntsville, Ontario.

~~66.~~65. Larry caused PACE to advance a $5.5 million secured line of credit to Noble House to replace the incumbent lender.

~~67.~~66. The advancement of this loan was contrary to the Credit Union's risk tolerance and policies, and was contrary to any reasonable loan underwriting practices. The loan was made to facilitate the secret commission received by Williamson, Larry, Malek and/or 1916.

~~68.~~67. Larry received a secret commission with respect to a loan advanced to Noble House. The funds advanced by PACE were also used to pay a $452,000 "broker fee" to R. Williamson Consultants Limited, who then paid 1916, a company owned or controlled by Larry or Malek, 50% of the "broker fee".

~~69.~~68. The Noble House transaction gives rise to a claim for losses to the Credit Union of approximately $5,352,000, which consists of the following:

(a) A claim in the amount of $226,000, being the amount of a secret commission that Larry caused Noble House to ~~indirectly~~ pay to 1916 using funds advanced by PACE;

(b) A claim in the amount of $226,000, being the amount of a secret commission that Larry caused Noble House to directly pay to Williamson using funds advanced by PACE; and

(c) A claim in the amount of $4,900,000, being the impaired amount of the expected losses on the improvident credit facility that Larry caused PACE to advance to Noble House in exchange for the secret commission.

F. Loan to 193

~~70.~~69. PACE provided 193 a loan facility of up to $10 million. The current amount outstanding under the facilities is approximately $8.2 million.

~~71.~~70. The advancement of this loan was contrary to the Credit Union's risk tolerance and policies, and was contrary to any reasonable loan underwriting practices. The loan was made to facilitate the secret commission received by Williamson, Larry and/or 172.

~~72.~~71. Larry received payments in the nature of a secret commission in connection with the Credit Union's loan to 193. Hogan participated in or helped to facilitate Larry's secret commission.

~~73.~~72. As part of an agreement between the parties involved in the transaction, Larry was paid $275,000 for causing PACE to advance funds to 193, while Williamson received $300,000. Larry directed his secret commission, with Hogan's involvement, to 172.

~~74.~~73. The 193 loan transaction gives rise to a claim for losses to the Credit Union of approximately $610,750, which consists of the following:

(a) A claim in the amount of $275,000 plus HST (being $310,750), which relates to a secret commission paid by 193 to 172 from funds advanced by PACE;

(b) A claim in the amount of $300,000, which relates to a secret commission paid by 193 to Williamson from funds advanced by PACE.

G. Lagasco Transaction

~~75.~~74. Section 191 of the Act stipulates that a credit union "shall not make loans in excess of such lending limits as may be prescribed or as may be ordered under subsection (2) or (5)". The lending limits for credit unions are specified in the Regulations. Under section 58(2) of the Regulations, "a credit union may make a loan to a person if, as a result of making the loan, the total amount of all outstanding loans made to the person and any connected persons would not exceed 25% of the credit union's regulatory capital".

~~76.~~75. At the time and known to Larry and Phil, PACE's regulatory lending limit was approximately $16.8 million to a single borrower or a group of "connected" persons (as defined by the Regulations).

~~77.~~76. Larry and Phil undertook efforts to dishonestly evade the restrictions in the Act and Regulations that limit the amount that may be lent to any group of persons who are connected.

~~78.~~77. The principal of Lagasco is Jane Lowrie ("**Lowrie**"). Both Larry and Lowrie are connected to another business, Tribute Resources Inc. ("**Tribute**"), a publicly traded company. Larry is a director of Tribute, as is Lowrie.

~~79.~~78. Larry and Phil (and Hogan, until he retired) undertook efforts to structure the Lagasco transaction to make it appear that the total loans of almost $30 million were going to be advanced to Lagasco and a purported separate and independent entity purportedly controlled by Lowrie's four adult children. In doing so, they provided false information to the Credit Union and ignored information and advice from the Credit Union's staff and the Credit Union's own counsel.

~~80.~~79. Although the Administrator was able to stop the bulk of this transaction after the commencement of the Administration proceedings, the Credit Union incurred substantial costs and damages in attempting to limit the damage caused as a result of their breaches of fiduciary duties.

~~81.~~80. The Lagasco Transaction gives rise to a claim for losses to the Credit Union of approximately $7,342,862.26 plus costs of preventing further consequences arising from the dishonest conduct.

H. Diversion of Funds to Golanski/172

~~82.~~81. Larry engaged in secret transactions in which he caused the amounts owing to the Credit Union to be diverted to Golanski (his common law partner) or 172, which is a company ostensibly controlled by Golanski, but is *de facto* controlled by Larry and used by him for his own benefit. These secret transactions occurred without the required disclosure to the Credit Union's Board of Directors or their approval.

~~83.~~82. In addition to the transactions described above related to the Geranium joint ventures and PACE's loan to 193, Larry caused the diversion of funds to 172 through PACE's arrangement with City View Bus Sales & Service Ltd. ("**City View**"), in which Larry directed that 172, referred to as Golanski's company, be paid commission for work that she did not do.

~~84.~~83. On or about October 2016, Larry agreed to provide City View, through PACE, with a $5 million asset-based financing facility which City View would draw upon based on purchase orders it received for the construction of busses. In addition, PACE would charge a fee or commission of 30% of the gross margin expected under the purchase orders. Larry required that this fee owing to PACE would be split between PACE and 172, Golanski's company, despite 172 or Golanski not providing any services to City View or PACE in relation to the business.

~~85.~~84. Furthermore, Larry caused PACE to enter into a consulting agreement with 172 under which 172 received monthly payments from PACE for purported consulting services. However, this consulting agreement was merely another means of diverting funds to 172 through the payment of retainers and expenses so that the funds could be accessed and used by Larry. Between January 1, 2015 and September 30, 2018, 172 received $149,160 in monthly retainers but only earned $9,788 in alleged commissions.

~~86.~~85. Larry's diversion of funds from the Credit Union to 172 give rise to a claim for losses of $139,372.

I. False Invoices

~~87.~~86. Larry and Phil caused the Credit Union to pay invoices rendered by 142, 809, 1916, and 172 for services that were not actually provided. In the alternative, if the services were rendered, the quantum of the invoices was grossly disproportionate to the value of the services rendered, and was a dishonest scheme to enrich Larry at the expense of the Credit Union.

~~88.~~87. The types of services allegedly rendered, as described on the invoices, include "trust fund administration". These were ostensibly fees for managing the trust fund holding the termination or severance payments for certain employees at the Credit Union. Arn Reisler, a lawyer and long-time friend of Larry's, was the trustee of the trust fund, while the Credit Union's Corporate Secretary administered the trust fund at the Credit Union. Further, the trust fund required little-to-no administration. Despite this, the Credit Union paid to 142 and 809 at least $215,000 in improper trust fund administration fees between 2011 and 2018, which amounts are above and beyond those amounts paid to 142 pursuant to 142's consulting contract with the Credit Union for trust fund administration services.

~~89.~~88. Additional false invoices were rendered for pension administration, consulting fees, referral fees, retainers, commissions, for "contractual adjustments", and for other miscellaneous services.

~~90.~~89. The false invoices issued by Larry (and his related corporate entities), and the corresponding amounts paid by the Credit Union in respect of them, give rise to a claim for losses of approximately $2,676,165, being the cumulative amount of invoices paid by the Credit Union for improper fees

and commissions charged and taken by Larry and others associated with him, and for services not rendered.

J. Professional Expenses

~~91.~~90. The Credit Union has incurred audit expenses, records reconstruction, and other professional fees in excess of $25,000 for each activity as part of its efforts to identify the wrongdoing and correct the records of the Credit Union, which amounts are recoverable under the Bond. This amount is expressly above the aggregate limits available under the Bond.

IV. THE PARTICIPANTS' DISHONEST CONCEALMENT OF THEIR CONDUCT

~~92.~~91. At both Board and sub-committee meetings, Larry would bring a folder. This folder contained various invoices, agreements, and other documents, including documents that purported to justify the payment of amounts to Larry, his family and friends, and their personal corporations. Documents were added to the folder upon Larry's instruction.

~~93.~~92. Larry brought the folder to various Board and sub-committee meetings. The documents inside the folder were already stamped with an "Approved by Audit Committee" stamp.

~~94.~~93. During or after a Board or sub-committee meeting, Larry sat with two directors and caused them to sign or initial beside the stamp. Larry purposefully and deceitfully did not give accurate or sufficient information to the two directors as to the contents of the documents, the nature or purpose for any payments or the relationship of Larry and Phil to the various individuals and companies named within those documents. Nor did Larry show the contents of the folder to the whole Board or sub-committee members. Larry discouraged any inquiries by other directors as to the contents of

the folder. Moreover, the information contained in the folder was not sufficient to describe the nature and purpose of the payments or the basis on which the payments were justified.

~~95.~~94. Larry purposefully provided insufficient disclosure in order to obfuscate the existence or amount of the monies being received by Larry, and the individuals and companies related to him, in relation with the transactions, loans, secret commissions and false invoices that give rise to the losses that are the subject of the Claim.

~~96.~~95. This "folder method" was purposefully employed by Larry so that he could create a record that made it appear that the monies he received were ostensibly approved by the Board, even though he knew or ought to have known that the Board was in fact not made aware of such payments or the contents of the folder, and no approval had actually been given.

~~97.~~96. As a result of the above methods, the documents within the folder were not properly approved by the Board, but were rather part of Larry and Phil's fraudulent efforts to conceal their unlawful and unauthorized diversion of funds from the Credit Union.

V. BAD FAITH

~~98.~~97. CUMIS owes the Credit Union a duty of utmost good faith. That duty extends to the manner in which CUMIS investigates and assesses the Claim and the decision it makes as to whether or not to pay the Claim.

~~99.~~98. CUMIS has breached its duty of utmost good faith in the following respects:

(a) by delaying its investigation of the Claim;