

**IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE
OF THE CANADIAN INVESTOR PROTECTION FUND**

AND

IN THE MATTER OF [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Heard By Teleconference: October 6, 2015, January 27, February 10 and April 5, 2016

PANEL:

PATRICK J. LESAGE) Appeal Committee Member

APPEARANCES:

[REDACTED]) Appellants on behalf of themselves individually,
[REDACTED]) jointly, In Trust and [REDACTED]
)

JAMES D.G. DOUGLAS) Counsel for Canadian Investor Protection
NICOLAS BUSINGER) Fund Staff

DECISION AND REASONS

1. The [REDACTED] and [REDACTED] in their individual capacities, their joint capacity, their In Trust capacity and [REDACTED] on behalf of [REDACTED] ("the Appellants"), were clients of First Leaside Securities Inc. ("FLSI"), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the "First Leaside Group"). FLSI was registered with the Ontario Securities Commission ("OSC") and was a member of the Investment Industry Regulatory Organization of Canada ("IIROC"). It was also a member of the Canadian Investor Protection Fund ("CIPF" or the "Fund") until its suspension by IIROC on February 24, 2012, being the same date that FLSI was

declared to be insolvent and the day after FLSI sought protection under the *Companies' Creditors Arrangement Act*. The relevant history leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee's decision in relation to an appeal heard on October 27, 2014, released on December 17, 2014.¹

2. On October 6, 2015, January 27, February 10, and April 5, 2016, I heard these appeals from the decision of CIPF Staff that denied the Appellants' claims for compensation of losses suffered. All hearings were conducted via teleconference. Mr. and Mrs. [REDACTED] attended the first hearing; Mr. [REDACTED] attended the others on behalf of all the Appellants. Counsel for CIPF attended on each of the hearing dates.

3. At the initial hearing on October 6, 2015, Mr. and Mrs. [REDACTED] submitted that their claims, which totalled more than \$3.3 million, were wrongfully rejected by CIPF Staff. They submitted that FLSI had unlawfully converted most if not all their funds. In addition to their oral submissions, in their written submissions at pages 262 -284 of the Appeal Record, Volume 1, Tab E2, Schedule A (as an example), the Appellants rely on the fact that the invested monies were not used as they intended for the primary purpose of funding the acquisition and/or development of various real estate projects. They also assert that "after reviewing our original documents I found that the documents were not what I originally signed. White-out was used and changes were made to our original documents. Pension should not have accepted the documents that were not original nor transferred the funds."

4. They continued, "Further, by investing our funds without advising us that they were under investigation by the OSC, and certainly after they had received the Grant Thornton Report in August 2011, FLSI was unlawfully converting our money. In September and October 2011, we were induced by FLSI to invest more than \$2.3 million." The Appellant also submitted, at page 263 of Appeal Record, Volume I, that "FLSI unlawfully induced me to deposit the claimed funds. Specifically, representatives of FLSI sold us a brand-new investment called "Prime Time Living". This was an investment with a 10% monthly interest payout.... They said that this is Dave Phillips and Dr. DeBever's best work ever. We later learned this to be "Special Notes and Venture Limited Partnership"... they never provided an Offering Memorandum for this investment." The Appellants

¹ This decision is available on the CIPF website and will be referenced throughout as the "October 27, 2014 decision".

also submitted at Volume 1, Tab E2, page 264, para. 9 that... “Given CIPF’s express mandate to contribute to the security and confidence of customers of Canadian investment dealers by maintaining adequate resources to return assets to eligible customers in cases where a Member becomes insolvent ... [CIPF] should compensate us for this egregious fraudulent and unlawful conversion by the insolvent Broker.”

5. The Appellants acknowledge they made a mistake when they transferred their investments from Dundee to Penson, since Penson was obviously ‘in league’ with First Leaside to operate a fraudulent operation with fraudulent documents, fraudulent non-disclosure, and forgery of Directions, authorizing purchases. “We never saw an Offering Memorandum.”

6. At the October 6, 2015 hearing, the Appellants also stated that “Agreements were signed by Elizabeth and Jan, employees of FLSI. Statements were all online and I didn’t receive many/most of them. We thought our investments were the same as the ones at Dundee except at 6 or 7% instead of 2.5%... I never looked at anything...” In cross-examination, he acknowledged that a number of the signatures were his and his wife’s, but suggested their signatures did not relate to the subject matter i.e. the product, the units, the specific investments described in the “Direction” - “A lot of ‘whiteout’ then written over... I do not recall signing Subscription Agreements. All the Directions were blank when I signed them.”

7. I was concerned about the Appellants’ allegations of forgery made at that initial hearing. After consideration of the forgery issue over a period of time, and because the Appellants were not represented by counsel, I invited them to return, if they wished, to be more specific about exactly what documents they alleged were forged and what, if any, expert evidence they might wish to present. The Appellants indicated they would like to re-attend. All parties agreed to a new date of January 27, 2016.

8. At the return date of the hearing on January 27, 2016, the Appellants’ submissions changed somewhat. The Appellant advised that - although documents that purported to display his signature were usually his or his wife’s signature - the subject matter of the documents e.g., in a Direction to Purchase, the quantity and type of investments was not in fact the investment he/they agreed to buy. He indicated that the specific product he/they intended to buy had been “whited out” and was replaced with a different product. Or in some cases he submitted that he/they signed the Direction in

blank and that FLSI later filled in the product naming a different investment than the one(s) he had agreed to buy.

9. The Appellant specifically referred to a Subscription Agreement found at Tab 2, pp. 24-39 of the Supplementary Record of Subscription Agreements filed by Staff on January 15, 2016. He said, "If I had received it, I would have initialled every page, which did not occur with this document". When questioned by Staff counsel regarding a Client Statement dated April 30, 2011(found at Tab A2, page 2 of the Appeal Record, Volume 1) addressed to the Appellants, which displays account activity during the month of April 2011, the Appellant advised he had never seen it.

10. Later on, after being shown a number of pertinent documents that appeared to be his or his wife's signature, he acknowledged they obviously appear to be "our" signatures, but the documents were all altered.

11. The Appellant testified that documents shown to him were all copies and that if he, and probably a forensic expert, were able to view the original documents at Grant Thornton, the alterations would become apparent.

12. Because of the Appellants' desire to have an expert examine the original documents, I agreed to further adjourn the hearing to February 10, 2016 to permit the Appellant and Staff counsel to agree on a mutually convenient date on which the parties could attend, with or without their forensic experts, to examine the original documents in Grant Thornton's possession.

13. On February 10, 2016, the parties having agreed on date(s) to attend with their "experts" at Grant Thornton, the hearing was further adjourned to March 30, 2016, and later, at my request, rescheduled to April 5, 2016.

14. That attendance at Grant Thornton took place, as I understand, on February 25, 2016. Present were Mr. [REDACTED] and a CIPF Staff representative with their document examiner. (See Appendices "A", "B" and "C" attached.)

15. Both Staff and the Appellants filed further written material for the April 5, 2016 resumption of the hearing. That additional material from the Appellants included among others:

Photocopy of a 12-page Relationship Disclosure for new clients of FLSI signed by the Appellants dated June 17, 2011. Each page of that document was initialled by the Appellants.

Photocopy of Dundee Wealth Tracker Account Summary describing Dundee accounts as of December 13, 2011.

Photo of a corner of the back of a page or more paper with what appears to be holes in the paper that could well have occurred by reason of the removal of staples.

Photo of two Directions (to purchase) dated September 22, 2011 and September 30, 2011, each of which bear signatures of the Appellants. The Appellant described this photo as depicting numerous whiteouts in each of the documents.

Photo of Know Your Client with whiteouts.

16. Staff counsel filed a bound volume of Record of Directions, which included close-up photos of Directions to purchase with apparent whiteouts. These Directions reflect investments of approximately \$1.5 million.

17. At the April hearing, the Appellant advised “that from ‘the get-go’ there had been a practice of change to documents and that original documents reflecting investments of \$2.75 million were missing.” He pointed out various whiteouts in the documents identified during the February 25, 2016 visit to Grant Thornton. For example, the Know Your Client form (KYC) had whiteouts. Other documents displayed different colours of ink at different places in the same form (See Tabs 2 and 4) and blank pages of the KYC that had not been initialled by him, and yet other KYC documents signed by him had blank pages initialled. He also submits that the holes in the corner of pages of the Grant Thornton documents are clear evidence that those documents had, on at least one occasion, if not more, had other documents attached to them. He said, “There was no consensual agreement by my wife nor by me” to these purchases/investments where whiteouts have occurred. “... What is the purpose of documents if made without consent... Had my wife or I have seen the changes we might have withdrawn our consent... and documents are missing.”

18. Counsel for CIPF Staff submit that, in essence, the Appellants are alleging fraud and forgery. However, Staff point out that all Subscription Agreements are signed by him and/or by his wife. Counsel for Staff submits that all changes are clerical in nature. For example, Staff points out that there are five separate accounts held in the names of the various Appellants. There is one RRSP account for each of the husband and the wife. There is one joint account in the names of the

husband and the wife. There is one account held in the name of the husband and wife "In Trust for their son" and there is the numbered company account.

19. Staff Counsel submits that the whiteouts were simply a reflection of the appropriate accounts being shown on the Direction, or occasional changes of date, which in the circumstances were not of any relevance. He submits there can be no doubt that the Direction to Purchase documents including the number of units, the cost of the units and the name of the entity being invested in, displayed no evidence of change or alteration. Staff submits that the evidence therefore points to the fact that the Appellants purchased the entities they bargained for, at the price they bargained for, and even if there may have been changes in the date that would not, in the circumstances, have affected the quantity or the price or the substance of the transaction. Although there are a few changes to the account specified in a particular Direction, all five of the accounts are controlled by the Appellants. These are clerical changes. The wife initialled changes relating to the spelling of her name. Counsel for Staff also submits that the Appellants have had ample opportunity over many months, in fact since November 2011, to have an expert examine the documents, even if all the originals may not be easily accessible. That has not happened. The available copies of the documents covering all the relevant transactions unequivocally confirm they are signed by the Appellants and that they are for a quantity and a price that was current. They submit the Appellants, notwithstanding their very large losses, have not chosen to provide any additional evidence, expert or otherwise, to show they individually or collectively did not willingly purchase the product shown on the FLSI statements that were forwarded as directed by them.

20. The certificates, as directed, were forwarded to their Person account, to their home or business address or held on book. All have been received by them. In the circumstances of this claim, any inappropriate changes to the KYC documents may be violations of IIROC or OSC regulations. They do not, on the evidence, affect the fundamental issue of whether these Appellants directed FLSI to purchase these units at these prices.

21. The Appellant's submissions were broad ranging and articulate, but sometimes inconsistent. He pointed out that a number of Directions to Purchase have been altered in that, very clearly, whiteout had been used. He pointed out that his initial KYC document may have been altered. He pointed out that he/they have been away on dates that some Directions have been dated. He pointed

out that one of his wife's directions was dated on her birthday and that his wife would not have signed such a document on her birthday. He pointed out that the originals of some documents relating to his dealings with FLSI could not be located. He pointed out that much of the money he/they invested was not used for the purpose they intended. He alleged that they have been misled by Ms. VanWyk and Ms. Gerecke at FLSI. He alleged that Penson and FLSI had conspired to defraud them. He alleged that they were defrauded and their investments were unlawfully converted, particularly after the OSC investigation had begun without their knowledge and certainly after the failure of FLSI to disclose the Grant Thornton Report. To quote one excerpt from his written submission, the Appellant expressed it this way at Volume 1, Tab E6, page 263, paragraph 8:

FLSI's solicitation and use of the Claimed Funds represented an unlawful conversion of that money. In particular, in soliciting and accepting my money while knowingly concealing from me that First Leaside's financial viability was entirely contingent on FLSI's ability to obtain such further deposits, FLSI unlawfully induced me to deposit the Claimed Funds. Specifically, representatives of FLSI a brand-new Investment called "Prime Time Living" Offering a 10% monthly interest payout. The company is offering (sic) an opportunity for their best clients only. They said that "this is Dave Phillips and Dr. DeBever's best work ever". They mentioned that sales are booming. FLSI is only raising 15M and it will sell out fast. The Primetime Living offering (which we later found out to be "Special Notes and Venture Ltd. Partnership"). FLSI misrepresentation was that they never provided an OFFERING MEMORANDUM for this LP, avoiding the revelation of their true intentions (or avoiding a written falsehood). They referenced the safety of the investment as a GIC. In such circumstances, any indirect or implied consent which I may have provided to withdraw the Claimed Funds from my account(s) in order to purchase investment products offered by First Leaside was vitiated and of no force or effect.

22. Although the Appellants suffered an enormous loss in excess of \$3.3 million, their loss was the result of poor investments. There is no doubt that at least a substantial portion of that loss was induced by misleading, fraudulent representations by members of the FL Group, including FLSI (see the OSC enforcement decision regarding Phillips and Wilson). A significant portion of the Appellants' investment occurred in September and October 2011, well after FLSI had received the Grant Thornton Report. The OSC found the FL Group including FLSI principals were acting in a fraudulent manner during this time period, when substantial investments were made by the Appellants.

23. The evidence, including all the documentation, does not cause me to believe that the essence of the Directions to Purchase, all of which were signed by one or both of the personal Appellants, or the husband on behalf of the numbered company, were forgeries. On occasions when changes were made to documents they were not material to the Appellants' decision to purchase FL Group entities. There is no doubt there were changes made at points which are unclear, but those changes related to which of the five Appellant client accounts were declared as the purchaser, the address and/or the spelling of names. The signatures on all the documents are those of the Appellants.

24. I do not accept that any of the Appellants' investments occurred because of changes that appear on documents. Nor do I accept that the Appellants, who present as experienced, knowledgeable entrepreneurs, had their funds unlawfully converted by FLSI. As can be seen by the excerpt from the Appellants' submissions (see above at para 22), the Appellants were induced by FLSI/FL Group employees and/or principals to invest very large amounts of money in a very high return product (one at least with a 10% return) in the period July to October 2011. The exhibits including the Subscription Agreements, the Directions (to Purchase) are all signed by the Appellants. The product to be purchased and the price per unit show no signs of alterations or changes. The alterations and changes relate to spelling errors, description of which of the five accounts the product was to be assigned and on occasion, the date of the transaction. I am not satisfied that any of those changes are material changes to the essence of the purchase/investment, nor does the fact that the 'Accredited Investor' qualification, not display the initials of the change to the appropriate box in that document. I note that the Relationship Disclosure For New Clients of FLSI, submitted by the Appellants, displays the Appellants' initials at the bottom of each of its 12 pages. The Appellants submit that this is an example of their practice - to initial all pages of documents - and that other documents that do not bear their initials support their position that FLSI forged those other documents. However, the Relationship Disclosure document is different than other documents. By design, it provides a specific place at the bottom of each page with a description "Initials_____". Other FLSI documents that the Appellants describe as forgeries given the absence of their initials do not provide such a specific place for initialling. I do not accept that the absence of initials on every page supports a finding of forgery.

25. As to whether they received Offering Memoranda, those memoranda and trust agreements were clearly in existence and presumably accessible if requested. (See Tabs 7, 8 and 9 of the Record of Subscription Agreements filed by Staff, January 15, 2016).

26. The Appellants, as have so many former clients of FLSI, sought compensation for their loss on the basis that their investments were not used by FL Group entity for the purpose the investor intended. Rather, their investments, or at least significant portions of their investments, were used to pay management fees/expenses or as loans or transfers to other FL Group entities, but not to invest in 'real estate' as was the primary object of the entity. All the entities in which the Appellants invested were described in their respective Offering Memoranda. Under Business of The Fund, the use of such funds as described as including "repaying any indebtedness or satisfying any obligation, including any indebtedness or obligation to any First Leaside Group Member and ... lending it to any member of the First Leaside Group ... provided terms are... no less favourable than the FLWM Notes..." In addition – statements such as Use of Proceeds state ... "to invest in project of members of the First Leaside Groups." The last sizable investments of the Appellants were in First Leaside Venture Limited Partnership and Special Notes Limited Partnership. That Offering Memorandum described their "Use of Net Proceeds" using \$25,000 as an example: Business development fees – \$3750.00---Selling Commission and Fees \$1,250.00---Working Capital \$16,250.00. The footnotes to these estimates make clear that proceeds could be used for a multitude of purposes, all at the discretion of management. (See Appeal Record, Volume 2, filed September 2015).

27. Further and importantly, CIPF coverage does not extend to the entities in which the investments were made. Only to the broker, FLSI. Any misconduct or misuse of funds by the invested-in entity is beyond the scope of CIPF coverage.

28. CIPF coverage basically is a custodial coverage. It ensures the return to the client of money, certificates or other assets that are in the custody of a registered broker at the time of insolvency, and/or compensation for any asset of the client that has been unlawfully converted by the broker.

29. Unlawful conversion is a form of theft. If the registered broker unlawfully converts the client's assets, the client is entitled to make a claim for compensation from CIPF. If, however, the broker misleads the client in any fashion about the product he/she is obtaining for the client that is fraud. Fraud is not covered by CIPF.

30. FLSI received the Appellants' money on terms that FLSI comply with the client's direction. When FLSI complies with that direction they are fulfilling the terms on which they received the client's money. When FLSI receives the indicia of that purchase from the entity in which the investment is made, usually in the form of certificate, shares, bonds, etc., their obligation is to deal with that documentation as directed by the client. That direction could be to hold 'on book', to 'transfer' to another dealer or to forward to the client or other person designated by the client. That is what happened in this case.

31. As has been noted in earlier decisions of the Appeal Committee, CIPF coverage does not extend to the acts of malfeasance, misfeasance or for a loss that flows from the diminution of the value of investments. It does cover unlawful conversion and return of monies or securities being held by the broker. It does not cover acts of deceit, falsehood, material representation, non-disclosure or other fraudulent conduct. Although the principals, Phillips and Wilson of FLSI, were found by the OSC to have committed fraud, at least during a specific period of time when the Appellants made investments, fraud is not included in CIPF coverage.

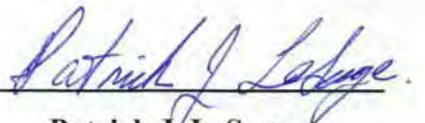
32. I have not set out in detail all of the matters covered in the Appellants' written/oral submissions; I have taken them all into consideration in deciding this appeal. Although some submissions seemed to have little relevance to the issues in this appeal; nevertheless, I have considered them.

33. The Appellants in this case provided 'Directions' to FLSI to purchase on their behalf units, etc. in specific First Leaside Group entities. FLSI did just that. The certificates and other indicia of the ownership/investment in those entities, as can be seen from the existing documentation, were dealt with as directed by the Appellant purchasers. There was no unlawful conversion by FLSI of the Appellants' assets.

34. As unfortunate as the consequences have been for the Appellants, there is no basis on which to overturn the decision of Staff denying coverage. Staff's decision is upheld.

35. These appeals must therefore be dismissed.

Dated at Toronto, this 19th day of May, 2016



Patrick J. LeSage

Appendix "A"

Tuesday, March 15, 2016 at 9:30:54 AM Eastern Daylight Time

Subject: FW: CIPF - Continuance of CIPF Appeal Hearing for [REDACTED]
Date: Tuesday, March 15, 2016 at 8:58:49 AM Eastern Daylight Time
From: Shannon Godfrey
To: Stephen Sforza

Please upload to

From: Nicolas Businger <NBusinger@blg.com>
Date: Monday, March 14, 2016 at 5:20 PM
To: Shannon Godfrey <sgodfrey@cipf.ca>
Subject: FW: CIPF - Continuance of CIPF Appeal Hearing for

From: Businger, Nicolas
Sent: March-14-16 5:21 PM
To: [REDACTED]
Cc: dparker@cipf.ca
Subject: RE: CIPF - Continuance of CIPF Appeal Hearing for [REDACTED]

As indicated in my letter, there appears to be little likelihood of Grant Thornton locating additional documents. It is, of course, your decision whether you wish to have a forensic expert examine the documents that were made available by Grant Thornton on February 25th. On the basis of your past statements, Staff of CIPF understands that you do not wish to do so. However, if you decide otherwise, please advise immediately so that arrangements can be made well in advance of the April 5th return date of your appeal.

Staff does not view your belief that there may be additional documents in the possession of Grant Thornton that have not been made available to you as providing sufficient grounds for a further adjournment. To be clear, Staff will oppose any further adjournment requests.



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P **Request** **approval** **for** **government** **aid** **after** **the** **war** **over**

Subject: RE: CIPF - Continuance of CIPF Appeal Hearing for [REDACTED] [REDACTED] [REDACTED]

Mr. Businger

Unfortunately my expert got caught in a storm. With regards to the documents, As mentioned in your letter all documents were not accounted for, Can the missing documents be retrieved? I need a yes or no to continue.

My forensic expert and myself would like to see all documents at the same time to draw our conclusions. My wife and I are relying on these documents to prove our claim.

From: Businger, Nicolas [<mailto:NBusinger@blg.com>]

Sent: March 14, 2016 11:46 AM

To: [REDACTED]

Subject: CIPF - Continuance of CIPF Appeal Hearing for [REDACTED] [REDACTED]

Please see the attached letter putting forward the position of CIPF Staff with respect to the continuance of your appeal hearing on April 5, 2016.

Thank you,



Nicolas Businger

Associate Lawyer

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[illegible]

Appendix "B"

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BLG
Borden Ladner Gervais

March 14, 2016

Delivered by Email and Regular Mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Continuance of Appeal Hearing before the Canadian Investor Protection Fund ("CIPF")

This letter sets out the brief history of your appeal and puts forward the position of Staff of the CIPF ("Staff") with respect to the continuance of your appeal hearing, now scheduled for April 5, 2016, at 10 a.m., at Neeson & Associates, 141 Adelaide Street West, 11th Floor, Toronto, Ontario.

Following your initial appeal hearing on October 6, 2015, the member of the appeal committee assigned to hear your appeal, The Honourable Mr. Patrick LeSage, directed the parties to attend before him to discuss the evidence and your allegation that documents, which directed First Leaside Securities Inc. to purchase the securities that are the subject of your claim to CIPF, had been altered. At the attendance on January 27, 2016, Mr. LeSage granted your request for an adjournment in order to seek counsel and consider whether you wished to obtain forensic evidence to support the appeal.

On February 10, 2016, the parties re-attended before Mr. LeSage. You indicated that you had been gathering forensic information and estimated that you required an additional 8-10 weeks. In order to assist your efforts to obtain forensic evidence, Staff undertook to coordinate with Grant Thornton Limited ("Grant Thornton") in order to access the original documents. Mr. LeSage granted a further seven-week adjournment to March 30, 2016 (later rescheduled to April 5, 2016, at Mr. LeSage's request).

At the appearance on February 10, 2016, you indicated that you were available to attend at the offices of Grant Thornton during the week of February 22, 2016, and that February 24 or 25 would work best for you. Staff asked you to confirm that you would be attending with your forensic expert, to which you replied, "Depending on cost, yes".

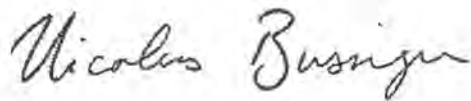
On February 25, 2016, you, representatives of Staff, and a forensic expert retained by Staff, to complement the expert you were to retain, attended at the offices of Grant Thornton. Jonathan Krieger of Grant Thornton advised that he had made available what he believed to be the totality of the documents that are accessible to Grant Thornton without conducting a box-by-box

prospecting search of the entire set of First Leaside documents at its off-site storage facility. After reviewing the available documents, you indicated your belief that many documents were missing, particularly those relating to your corporation, [REDACTED]. Based on its own review of the documents, Staff confirmed that many of the documents that you allege were altered, including a number of signed account opening documents, directions and subscription agreements, were present in their original form and, on their face, do not appear to have any material alterations.

Moreover, you did not bring a forensic expert to the offices of Grant Thornton (but did confirm that you had retained one). When asked whether you intended to return with your forensic expert to review the available documents, you indicated that you would not unless Grant Thornton was able to locate other documents in addition to those that were made available to you on February 25, 2016. As the likelihood of Grant Thornton locating additional documents in the circumstances would seem to be excessively low, we can only assume that no further forensic investigation or analysis will be undertaken by you.

As you were previously advised, Staff takes the position that you have been provided with every opportunity to obtain the forensic evidence for which your hearing was adjourned. Accordingly, Staff will oppose any further request for an adjournment when the appeal hearing resumes before Mr. LeSage on April 5, 2016.

Yours truly,
BORDEN LADNER GERVAIS LLP



Per: Nicolas Businger

TOR01: 6247090: v1

Appendix "C"

April 4 2016

IN THE MATTER OF AN APPEAL BEFORE THE APPEAL COMMITTEE OF CANADIAN INVESTORS
PROTECTION FUND

-AND-

IN THE MATTER OF [REDACTED]
[REDACTED]

APRIL 4 2016

Delivered via email

Dear Mr. Nicolas Businger

Re: Continuance of Appeal Hearing before the Canadian Investors Protection Fund (CIPF)

With respect to your letter dated March 14 2016. On February 25th my forensic advisor was stuck in snow storm in Chicago and was unable to attend. This information was provided same day to representatives attending the meeting. As indicated at the document review meeting 2 files were not present for review. The files for [REDACTED] and personal file for [REDACTED] in the amount of \$750,000.00.

As indicated in your letter. "Staff confirmed documents we in their original form and do not appear to have any material alterations."

As I examined the files it is very apparent that white out was used throughout our NAAF (new account application forms). On the direction documents. As well as several different ink colours and different individuals hand writing. I don't know how your staff came to the conclusion that the documents "do not appear to have any material alteration" The documents obviously have been altered without our consent. We are also unable to confirm the authenticity of the 2 missing files. These original files are the basis of the appeal. We will be providing supporting documentation during the appeal to support the claim.

Yours, truly

[REDACTED]

[REDACTED]