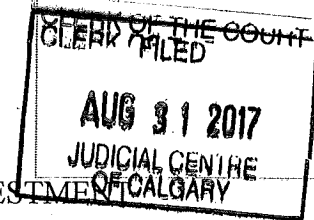


Clerk's Stamp



COURT FILE NUMBER 1701- 11656
COURT QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF CROSSROADS-DMD MORTGAGE INVESTMENT CORPORATION
DEFENDANTS CMS FINANCIAL MANAGEMENT SERVICES LTD., CMS REAL ESTATE LTD., GERRY MACDONALD, MAUREEN MACDONALD, GERRY GARVEY, JAMES DEVLIN, 1658062 ALBERTA LTD., LTO REALTY LTD. AND BRENT ISFELD
DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **PEACOCK LINDER HALT & MACK LLP**
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FILE: 7010/EWH

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

IDENTIFICATION OF PARTIES AND PERSONS

1. The Plaintiff, Crossroads-DMD Mortgage Investment Corporation ("Crossroads") is an Alberta corporation, duly registered, which carries on business as a mortgage investment corporation ("MIC") in Alberta and elsewhere in western Canada.

2. The Defendant, CMS Financial Management Services Ltd. (“CMS”) is an Alberta corporation which, from 2009 until November 30, 2016, acted as the Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager of Crossroads.
3. In addition to acting as the Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager for Crossroads, CMS also acted in such capacities in respect of other MICs, including:
 - DMD Mortgage Investment Corporation (“DMD”);
 - DMD II Mortgage Investment Corporation (“DMD II”);
 - DMD III Mortgage Investment Corporation (“DMD III”);
 - DMD IV Mortgage Investment Corporation (“DMD IV”);
 - DMD V Mortgage Investment Corporation (“DMD V”); and
 - Sun Country Mortgage Investment Corp. (“Sun Country”)(collectively the “Other CMS MICs”)
4. In or about August, 2016, following an examination ordered pursuant to section 58 of the *Securities Act*, the Alberta Securities Commission (“ASC”) imposed terms and conditions on CMS, requiring that CMS either be subject to special supervision by a third party monitor or that Crossroads retain a new Investment Fund Manager and Restricted Portfolio Manager and Exempt Market Dealer. As a result, the CMS engagement with Crossroads was terminated on November 30, 2016. On or about April 1, 2017, the ASC revoked the registration of CMS as an Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager.
5. The Defendant, CMS Real Estate (“CMS Realty”) is an Alberta corporation which carries on business as a licensed mortgage brokerage and a licensed real estate brokerage firm.
6. The Defendant, Gerry Macdonald (“G. Macdonald”) is an individual resident in the City of Calgary, in the Province of Alberta. At all material times, G. Macdonald was a director of Crossroads and its president. He was also a director of CMS and CMS Realty. G. Macdonald was also registered with the ASC as CMS’s advising representative, dealer representative, chief compliance officer, and ultimate designated person under National Instrument 31-103 (“NI 31-103”) G. Macdonald was also a director of all of the Other CMS MICs.
7. The Defendant, Maureen Macdonald (“M. Macdonald”) is an individual resident in the City of Calgary, in the Province of Alberta and is the spouse of G. Macdonald. At all material times, M. Macdonald was a director of CMS and CMS Realty. She was a dealer representative of CMS and its secretary/treasurer and chief financial officer. She was also a director of all of the Other CMS MICs.

8. The Defendant, Gerry Garvey ("G. Garvey") is an individual resident in the City of Calgary, in the Province of Alberta. At all material times, G. Garvey was a director of Crossroads and its vice president. He also served as a dealer representative with CMS and as a mortgage broker associate with CMS Realty.
9. The Defendant, James Devlin ("Devlin") is an individual resident in the City of Calgary, in the Province of Alberta. At all material times, Devlin was a director of Crossroads and its secretary/treasurer. He also served as an accountant with CMS and CMS Realty. Devlin and his wife, Donna Devlin ("D. Devlin") were also directors of all of the Other CMS MICs, with the exception of Sun Country. Devlin is also the brother of M. Macdonald.
10. The Defendant, 1658062 Alberta Ltd. ("165") is an Alberta corporation duly registered in Alberta.
11. The Defendant, LTO Realty Ltd ("LTO") is an Alberta corporation duly registered in Alberta.
12. The Defendant, Brent Isfeld ("B. Isfeld") is an individual resident in the City of Calgary, in the Province of Alberta. At all material times he was a director of 165 and LTO and is the spouse of Geraldine Isfeld ("G. Isfeld") who at material times was a licensed realtor who was employed by CMS Realty. B. Isfeld and G. Garvey have long been friends of one another.

THE BUSINESS OF CROSSROADS, ITS RELATIONSHIP WITH CMS AND DUTIES AND OBLIGATIONS OWED BY PRINCIPALS OF CROSSROADS AND CMS

13. At all material times, Crossroads, as a MIC, has been engaged in the business of raising investor money through the issuance of offering memoranda, seeking the investment by individuals in Crossroads through the issuance of preferred class B shares which entitle investors to receive dividends out of the profits of Crossroads. Crossroads, in turn, was to use the investment funds in accordance with the terms of the offering memoranda to provide mortgage financing to qualified borrowers.
14. As directors and officers of Crossroads, each of G. MacDonald, G. Garvey and Devlin owed fiduciary and common law duties to Crossroads, including
 - (a) A duty to act honestly and in good faith with a view to the best interests of Crossroads;
 - (b) A duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 - (c) A duty to provide proper supervision, governance and financial stewardship;

- (d) A duty to ensure that mortgages issued on behalf of Crossroads were in conformity with the offering memoranda of Crossroads, the requirements imposed on Crossroads as a MIC and in the best interests of Crossroads;
- (e) A duty of loyalty;
- (f) A duty to avoid conflicts of interest;
- (g) A duty to refrain from self-dealing and from putting his interests ahead of those of Crossroads;
- (h) A duty of full disclosure;
- (i) A duty to reasonably monitor, supervise and oversee the actions of CMS and CMS Realty insofar as they affected or had the potential to affect the interests of Crossroads, including a duty to monitor the fees and expenses charged by CMS and CMS Realty to Crossroads;

(the "Directors' and Officers' Duties")

15. CMS entered into a written Management Agreement with Crossroads effective April 30, 2011. Subsequently, CMS entered into a revised written Management Agreement with Crossroads effective May 30, 2013. The Management Agreements set forth the contractual obligations of CMS and the terms of compensation to which CMS was entitled as a management fee. Among the obligations which CMS owed pursuant to the Management Agreements, CMS was obliged to
- (a) establish and maintain an effective compliance system in order for Crossroads to meet its ongoing fitness requirements of applicable securities laws;
 - (b) maintain an effective compliance system in order for Crossroads to meet all proficiency and compliance requirements of applicable securities laws;
 - (c) perform its services in a proper and businesslike manner to industry standards and at all times in compliance with all laws applicable to Crossroads and CMS;
 - (d) ensure that the investments of Crossroads complied with investment policies, guidelines and criteria specified, including the offering memoranda issued on behalf of Crossroads;
 - (e) ensure that it took necessary actions to protect and preserve the investments of Crossroads, including enforcement steps in relation to all security, in the event of default, including foreclosing on mortgaged property;
 - (f) supervise the negotiation and execution of any agreements, including term sheets, mortgage commitments and all mortgage documents;
 - (g) provide general administration of Crossroads' books and records;

- (h) manage and administer all of Crossroads' funds and assets in accordance with the requirements of the arrangements, mortgages, agreements undertakings and contracts therefore;
- (i) provide day-to-day administrative services to Crossroads;
- (j) provide regular and continuing accounting on the basis of GAAP, respecting all costs and expenses of Crossroads;
- (k) institute, prosecute and defend legal actions affecting Crossroads;
- (l) maintain and administer all records, documents and materials in the possession or control of Crossroads;
- (m) process all documentation relating to the business of Crossroads including applications, appraisals, commitments, registration, funding, collection and discharge of such documents;
- (n) provide ongoing assistance and guidance to Crossroads to ensure it was compliant at all times with all legislation and its business and capital raising activities including the *Income Tax Act*, the *Real Estate Act*, the *Securities Act* and any associated regulations and policies including National Instrument 45-106 and National Instrument 31-103;
- (o) refrain from making any investment which would result in Crossroads not qualifying as a MIC pursuant to the *Income Tax Act*; and
- (p) refrain from making any investments that would result in CMS developing or managing real property on behalf of Crossroads.

(collectively the "CMS Obligations")

16. Given its express statutory and regulatory obligations as an Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager and given CMS's scope for the exercise of discretion and power over Crossroads, its ability to exercise such discretion and power to affect the interests of Crossroads, and the vulnerability of Crossroads to CMS, CMS also owed fiduciary and common law duties to Crossroads, including,

- (a) A duty to act fairly, honestly and in good faith and in the best interests of Crossroads;
- (b) A duty to exercise the degree of care, diligence and skill that a reasonably prudent person or company would exercise in the circumstances;
- (c) A duty of loyalty;
- (d) A duty to avoid conflicts of interest;

- (e) A duty to refrain from self-dealing and from putting its interests ahead of those of Crossroads;
- (f) A duty of full disclosure;
- (g) A duty to establish and enforce a system of controls and supervision to ensure compliance with statutory and regulatory requirements;
- (h) A duty to manage risks in accordance with prudent business practices;
- (i) A duty to maintain accurate records regarding its business activities, financial affairs and client transactions;
- (j) A duty to disclose the nature and extent of the relationship or connection when a security being recommended is a security of a related or connected issuer;
- (k) A duty to accurately calculate the net asset value (“NAV”) of Crossroads and make adjustments in a timely manner;
- (l) A duty to recommend adjustments to class B share value in a timely manner;
- (m) A duty to make appropriate mortgage investments as prescribed by Crossroads’ offering memoranda;
- (n) A duty to properly manage mortgage defaults and enforcement steps.

(collectively the “CMS Duties”)

- 17. By virtue of her respective role with CMS, and her inter-relationship with G. Macdonald, G. Garvey and Devlin, M. Macdonald owed common law and fiduciary duties to Crossroads co-extensive with the Directors’ and Officers’ Duties, the CMS Obligations and the CMS Duties (“M. Macdonald Duties”).
- 18. By virtue of their respective roles with CMS and their inter-relationships with each other and M. Macdonald, each of G. Macdonald, G. Garvey and Devlin owed common law and fiduciary duties to Crossroads, in addition to the Directors’ and Officers’ Duties, co-extensive with the CMS Obligations and the CMS Duties (“Supplementary Duties”).

CROSSROADS IDENTIFIES BREACHES ON THE PART OF CMS, CMS REALTY, G. MACDONALD, M. MACDONALD, G. GARVEY AND DEVLIN

- 19. As a result of the termination of the relationship between CMS and Crossroads on November 30, 2016, Crossroads engaged Caplink Financial Corporation (“Caplink”) effective that date as its Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager and entered into a Mortgage Administration and Management Agreement with Caplink (the “Caplink Engagement”).

20. Following the Caplink Engagement, Crossroads discovered numerous breaches of the Directors' and Officers' Duties, the CMS Obligations, the CMS Duties, the M. Macdonald Duties and the Supplementary Duties. Particulars of the facts underlying such breaches are provided below.
21. Crossroads states that the breaches were committed knowingly and deliberately and in concert among CMS, CMS Realty, G. Macdonald, M. Macdonald, G. Garvey and Devlin or among one or more of them. Alternatively, such breaches were committed recklessly or negligently by one or more of these Defendants.

Loans in respect of 1339 9th Avenue SE

22. 1339 9th Avenue SE is undeveloped, vacant land located in the Inglewood district of Calgary (the "Inglewood Land").
23. On May 1, 2012, Rim Capital Corporation ("Rim") entered into a purchase contract to acquire the Inglewood Land for \$1,470,000.
24. On July 11, 2012 Rim entered into an assignment of the purchase contract with 165.
25. 165 was incorporated on February 9, 2012 and B. Isfeld" became its sole director and officer on July 11, 2012. Prior to then, it had been a shelf company owned by Daniel Aberle. 165 did not carry on any business prior to the assignment of the purchase contract and had no income, operating history or assets.
26. By a letter dated July 9, 2012, Crossroads issued a mortgage commitment to 165 in the sum of \$1,830,000. The commitment letter offered to loan to 165 the sum of \$1,830,000, of which \$1,775,000 was to be initially advanced, with a lender bonus of \$55,000 to be paid on maturity of the loan. The loan was to be of 8 months duration and only required the payment of interest. The commitment letter contemplated the funds being used to pay the purchase price of \$1,440,000, an 8 month interest reserve of \$118,000, a lender fee of \$35,500 and a brokerage fee to CMS Realty of \$17,750 (the "Isfeld Mortgage").
27. G. Garvey was the individual that underwrote the Isfeld Mortgage on behalf of CMS and Crossroads. The mortgage application and related memo prepared by G. Garvey contained no meaningful underwriting information. The mortgage application listed B. Isfeld as self-employed with no reported annual income. Though there was no meaningful mortgage analysis shown, the application referred to the underwriting analysis as "excellent".
28. G. Garvey's memo to the file indicated that the property was to be developed as an 18 unit residential condominium complex with 5,000 square feet of main floor retail lease space. It referred to a letter of interest to lease from Co-op Liquor Store and an agreement from the vendor to purchase 3 condominium units.
29. Notwithstanding the contemporaneous purchase price of \$1,470,000, G. Garvey's memo referred the property as having a value of \$2,091,000 based on an appraisal prepared for

Rim with a value of \$1,891,000 and a note that an additional \$200,000 of value existed based on purported progress in the development.

30. G. Garvey's memo calculated projected payments of the mortgage proceeds as including the payment of \$99,500 of costs incurred by RIM and \$64,250 for working capital and soft costs.
31. There were numerous improprieties related to the Isfeld Mortgage, including:
 - (a) The loan was for an amount in excess of the purchase price by approximately \$400,000;
 - (b) Neither 165 nor B. Isfeld contributed any of its own funds toward the purchase;
 - (c) Even the payment of interest was taken out of the mortgage proceeds such that neither 165 nor B. Isfeld had to make any payment from their own resources;
 - (d) No personal net worth statement was obtained from B. Isfeld;
 - (e) B. Isfeld was not required to provide a personal guarantee and neither 165 nor B. Isfeld was required to provide any collateral security;
 - (f) At the time, B. Isfeld's wife, G. Isfeld, was a realtor with CMS Realty;
 - (g) No pro forma income and expense summary was obtained from 165;
 - (h) No current appraisal of the Inglewood Land "as is" or "as improved" was obtained by 165 with a letter of transmittal to Crossroads as lender;
 - (i) The value used for the loan of \$2,091,000 was unsubstantiated;
 - (j) Crossroads' mortgage underwriting guidelines permitted it to generally invest in mortgages with loan to value ratios of up to 85%. Even utilizing the unsubstantiated value of \$2,091,000, the loan value of \$1,830,000 comprised 87.5%, not the 83%. The calculation ought to have been based on the actual purchase price of the land rather than the unsubstantiated value, resulting in a loan to value ratio of 124.5%. Regardless, industry practice was to not lend more than 50% of value for undeveloped raw land;
 - (k) No current geotechnical report addressed to 165 with a letter of transmittal to Crossroads as lender was provided;
 - (l) No current environmental report addressed to 165 with a letter of transmittal to Crossroads as lender was provided;
 - (m) No property tax assessments were provided;
 - (n) No construction cost pro forma reviewed by a qualified quantity surveyor was provided;

- (o) No executive summary for the project was provided;
- (p) No resume of B. Isfeld detailing his real estate development experience and qualifications was provided;
- (q) No list of experts and consultants involved with the project was provided;
- (r) No architectural drawings or renderings were provided;
- (s) No copies of condominium unit purchase and sale agreements were provided;
- (t) The documentation indicated that Rim was only acquiring one condominium unit rather than three and for a price at less than half of market value;
- (u) No current real property report with surveyor's certification was provided;
- (v) No letter of interest from Co-op Liquor store was provided;
- (w) On July 6, 2012, Jenkins Architecture Ltd. invoiced G. Garvey at CMS Realty for a pre-application meeting for the Inglewood Land;
- (x) The \$55,000 fee which was to be paid on loan maturity, was paid from the initial loan proceeds;
- (y) The Isfeld Mortgage was underwritten, committed to and instructed all within a single day, July 9, 2012, and was funded seven days later, an extraordinary turnaround for any commercial mortgage.

32. The events from and following the granting of the Isfeld Mortgage include:

- On July 16, 2012, the initial mortgage amount of \$1,775,000 was advanced to 165;
- On July 17, 2012, Crossroads received its \$55,000 lender bonus fee. It was first credited to the 165 mortgage advance account and then debited to Crossroads' operating income, which has the net effect of the mortgage balance remaining unchanged;
- On July 17, 2012, Crossroads received its \$118,000 interest reserve. The calculations in the mortgage commitment were inaccurate such that the interest reserved was short of the actual interest required;
- On July 17, 2012, Crossroads received its \$35,500 lender fee. It was first credited to the 165 mortgage account and then debited to Crossroads' operating income, which has the net effect of the mortgage balance remaining unchanged;
- On December 12, 2012, the \$55,000 lender bonus was reversed which had the effect of both reducing Crossroads' operating income and the mortgage balance. It effectively treated the lender bonus like it never happened;

- On December 12, 2012, Crossroads advanced an additional \$44,603.03. On the same day, CMS issued a cheque in that amount payable to LTO Realty, an entity owned by B. Isfeld but which had nothing to do with the mortgage transaction;
- On March 15, 2013 the 8 month term of the Isfeld Mortgage matured;
- On October 23, 2013 Crossroads paid the outstanding property taxes for 165. Failure to pay property taxes constituted default by the borrower;
- On November 29, 2013, CMS adjusted the interest rate factor from 10% to 11 % based on a mortgage renewal agreement which was executed on September 28, 2013 but made effective March 16, 2013. The Isfeld Mortgage was renewed even though 165 was in default. Furthermore, no mortgage renewal fee was charged and monthly mortgage payments were waived in favour of interest accruing, thereby increasing the amount outstanding under the mortgage;
- On August 31, 2014 Crossroads charged 165 a \$52,375 mortgage renewal fee but instead of it being paid by 165, CMS capitalized the fee into the loan principal, again increasing the amount of the mortgage. The March 16, 2013 mortgage renewal had a 12 month term. However, the renewal was not executed until August 12, 2014. Once again, interest was capitalized into the mortgage, resulting in the mortgage balance increasing. As of August 31, 2014, the mortgage balance had increased from \$1,775,000 to \$2,124,046.65;
- On March 11, 2015, Crossroads paid the outstanding property taxes for 165 in the sum of \$50,318.91 and other expenses on behalf of 165 in the cumulative sum of \$48,403.15. Of that amount, \$45,051.58 was used to pay out a builder's lien claim of Jenkins Architecture Ltd. No attempt was made to recover any of these amounts from 165 and no foreclosure proceedings were commenced despite 165 being in default;
- On June 24, 2015, Crossroads paid legal fees of \$2,223.16 on behalf of 165 in respect of a sale of the Inglewood Property from 165 to 1864069 Alberta Ltd., the principal of which was James Clayton, and 1884108 Alberta Ltd., the principal of which was John Torode, (the "165 Sale").
- Although the 165 Sale occurred on March 19, 2015, it was not recorded until August 31, 2015. As part of the purchase of \$1,800,000, the purchasers obtained a new mortgage from Crossroads, through CMS, in the sum of \$1,799,999 ("186-188 Mortgage"). After three years, 165 never made a single mortgage payment to Crossroads. The original principal balance grew to \$2,475,671.41. In turn, the 186-188 Mortgage did not require personal guarantees or the provision of collateral security. Once again, the mortgage file was devoid of any underwriting documentation supporting the loan. Further, this mortgage had a three year term where interest accrued to the principal balance and where the mortgage could be postponed twice. Firstly, it could be postponed in favour of a \$400,000 first mortgage and secondly, it could be postponed in favour of a construction first

mortgage of up to \$13,500,000. In exchange, Crossroads received a carried interest whereby Crossroads is entitled to receive \$600,000 of the first \$1,000,000 of profit from the development. This potentially makes Crossroads an equity partner, which is something a MIC is prohibited from doing pursuant to section 130.1(6)(b) of the *Income Tax Act*;

- On August 31, 2015 CMS wrote down \$52,865.72 from the 165 mortgage and transferred it to the 186-188 Mortgage. With the transfer of mortgage principal and interest to the 186-188 Mortgage, the 165 mortgage balance was reduced to \$675,672.41;
 - On August 31, 2015, CMS wrote down \$42,829.04 of accrued interest and charged it to Crossroads' operating income;
 - On August 31, 2016, CMS wrote down the 165 mortgage by a further \$47,285.10, bringing the balance to \$600,000 which coincided with the carried interest of Crossroads under the 186-188 mortgage;
 - After writing the 165 mortgage down to \$600,000, CMS transferred the balance to a new non-interest calculating mortgage in contemplation of the carried interest of Crossroads under the 186-188 mortgage.
33. At no time did CMS cause Crossroads to pursue any enforcement proceedings against any of 165, B. Isfeld or LTO Realty, nor did Crossroads make any such request of CMS.
34. In summary, Crossroads funds were used to make an unsubstantiated and improvident loan to an entity whose principal, B. Isfeld, had direct and indirect ties to the principals of Crossroads and CMS ("the Improvident Mortgage Scheme"). Based on the events, the roles and responsibilities of the parties and the documents created, G. Garvey, G. Macdonald and M. Macdonald were direct participants in the Improvident Mortgage Scheme which was contrary to the interests of Crossroads. Further, given the role and involvement of Devlin, he participated in the Improvident Mortgage Scheme or was aware of and acquiesced to it. Alternatively, Devlin at the very least ought to have learned of the Improvident Mortgage Scheme and taken steps to protect the interests of Crossroads.

Unauthorized and Excessive Payment of Fees and Expenses

35. CMS charged and recovered overstated management fees as a result of it failing to properly report corporate losses of Crossroads.
36. In addition, CMS charged Crossroads from \$1,050 to \$4,711 a month for storage of Crossroads' closed files in a warehouse owned by CMS Realty. In addition to the Crossroads closed files, the warehouse stored the records of CMS, the closed files for the Other CMS MICs and the personal belongings of G. and M. Macdonald, including a jet ski and a motor boat. Subsequent to Caplink assuming management of Crossroads, the files were relocated to a proper storage facility (Western Archives) for a monthly fee of

approximately \$76. The difference in cost to Crossroads over the last 8 years is in excess of \$200,000.

37. Furthermore, CMS improperly charged Crossroads a renewal fee of \$200 on mortgages which Crossroads renewed with borrowers and the Crossroads renewal fee was capitalized into the balance owing under the renewed mortgages. These renewals occurred in circumstances where the borrowers were already in default and/or where there was no executed FTA compliant renewal form from the borrower. It is estimated that these fees charged by CMS approximate \$150,000.
38. CMS also improperly charged Crossroads \$2,625 as agreement for sale documentation fees whether the transaction actually closed. It is estimated that these fees approximate \$144,000.
39. CMS also improperly charged Crossroads consulting fees to which it was not entitled to reimbursement including:
 - (a) In excess of \$40,000 to G. Isfeld for managing foreclosures on behalf of CMS Realty;
 - (b) In excess of \$60,000 to Blair Robertshaw for Race Car Sponsorship;
 - (c) In excess of \$90,000 to Blair Robertshaw for EMD consulting work, despite him not being registered as an EMD and/or not qualified to provide expert consulting services;
 - (d) In excess of \$55,000 to G. Garvey for marketing costs on behalf of CMS;
 - (e) In excess of \$5,000 to CMS Realty and M. Macdonald for Cutco Knives bearing the CMS Realty brand.

Improvident, Improper and Poorly Documented Loans to Other CMS MICs

40. CMS, the directors of Crossroads and M. Macdonald caused Crossroads to make several improvident, improper and poorly documented loans to Other CMS MICs or their borrowers. Particulars include:
 - (a) Crossroads made unsecured and poorly or entirely undocumented loans to one or more of the Other CMS MICs in circumstances where those MICs lacked the ability to meet their obligations and had no reasonable prospect of repaying Crossroads. These advances were made with the knowledge that the advancement of unsecured loans was contrary to the offering memorandums of Crossroads and contrary to the regulatory restrictions placed on CMS and Crossroads;
 - (b) In other instances, Crossroads made loans to one or more of the Other CMS MICs which were secured by mortgages. However, no steps were taken to realize on mortgages which were not renewed or otherwise extended, with the result that

Crossroads has been found to be precluded by the *Limitations Act* from any recovery in respect of such mortgages;

- (c) Crossroads made loans to one or more of the Other CMS MICs to cover their operating expenses. Such loans were inherently inappropriate and, moreover, as a result of such loans being made, CMS received the benefit of such advances to cover its management fees charged to the Other CMS MICs;
 - (d) Crossroads granted mortgages, the proceeds of which were used in an attempt to protect Other CMS MICs as second mortgage holders by assisting them in paying out mortgagees holding priority security in circumstances where Crossroads had no reasonable prospect of recovering on the loan. In several instances, Crossroads had no interest in the second mortgage for which the financial assistance was being provided. In other instances, Crossroads funds were used to pay out the priority security holder without Crossroads stepping into that security holder's position. Instead, CMS simply noted that one of the Other CMS MICs owed it for such advance.
- 41. Several of the Other CMS MICs are now in receivership or bankruptcy. Sun Country has been placed into bankruptcy while DMD, DMD II, and DMD III are in receivership. All Other CMS MICs, including DMD IV and DMD V, are in various stages of liquidation.
 - 42. Secured Claims filed by Crossroads with the receiver or trustee in bankruptcy have been disallowed as the receiver and trustee maintain that CMS never took any enforcement proceedings on behalf of Crossroads to enforce and realize on the defaulted loans within the period required under the *Limitations Act*.
 - 43. It is estimated the Crossroads' damages flowing from the losses on the inter-MIC loans approximates \$7,400,000.
 - 44. Given the inter-relationship between the principals of Crossroads, CMS, CMS Realty and the Other CMS MICs, each of G. Macdonald, M. Macdonald, G. Garvey and Devlin knowingly participated in the improper, unauthorized and unlawful conduct for their own benefit and the benefit of each other.
 - 45. Alternatively, to the extent any of G. Macdonald, M. Macdonald, G. Garvey or Devlin did not knowingly participate, they either acquiesced in such improprieties or, at the very least, breached their duties and obligations to Crossroads by failing to protect Crossroads from such wrongdoing by failing to exercising reasonable care, diligence and skill to identify the wrongdoing and take action to protect the interests of Crossroads.

CLAIMS IN RESPECT OF B. ISFELD, 165 AND LTO

- 46. Crossroads states that B. Isfeld, 165 and LTO knowingly participated in the Improvident Mortgage Scheme and accordingly are jointly and severally liable with the other Defendants, for the damages caused to Crossroads.

47. In the alternative, 165 remains liable to Crossroads under the covenants contained in the Isfeld Mortgage for which Crossroads is entitled to judgment.

TRIAL OF ACTION

48. This Plaintiff proposes that the trial of this action be held at the Court House in the City of Calgary, in the Province of Alberta. The Plaintiff does not anticipate that the trial of this action will exceed 25 days in length.

Remedy sought:

49. Crossroads seeks damages from the Defendants, other than B. Isfeld, 165 and LTO, jointly and severally in the sum of \$10,000,000 or such other amount as may be awarded at Trial of the Action;
50. Crossroads seeks damages or judgment against B. Isfeld and 165 for the full amount of principal and interest resulting from the Isfeld Mortgage, presently estimated to be in excess of \$2,400,000;
51. Crossroads seeks damages against LTO for any benefits it derived as a result of the Isfeld Mortgage, in an amount to be proved at Trial;
52. Crossroads seeks costs against the Defendants on a solicitor and client basis, or on such basis as awarded by the Court; and
53. Crossroads seeks the recovery of interest on its damages at the rate it would have reasonably earned on these sums had the Defendants not deprived Crossroads of these funds. Alternatively, Crossroads seeks the recovery of interest in accordance with the *Judgment Interest Act*.

WARNING

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.