

Court File No. CV-09-8396-00CL

Court File No. CV-10-8533-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER of Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER of a plan of compromise or arrangement of Canwest Global Communications Corp. and other Applicants

AND IN THE MATTER of a plan of compromise or arrangement of Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) Inc.

BETWEEN :

GLUSKIN SHEFF + ASSOCIATES INC.

Moving Party

- and -

CANWEST MEDIA INC., and CANWEST PUBLISHING INC.

Responding Parties

**MOTION RECORD OF THE MOVING PARTY
(Returnable: JUNE 16, 2010)**

April 20, 2010

Wardle Daley Bernstein LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Helen A. Daley LSUC#: 26867F
Tel: (416) 351-2772
Fax: (416) 351-9196

Daniel Bernstein LSUC#: 44874D
Tel: (416) 351-2772/2775
Fax: (416) 351-9196

Lawyers for the Moving Party

TO: Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON M5X 1B8

Marc S. Wasserman
Tel: (416) 862-4908
Fax: (416) 862-6666

Lawyers for the Responding Parties

AND TO: Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Monitor

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NOTICE OF MOTION

The Moving Party will make a motion to a Judge, on Wednesday, June 16, 2010, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) A declaration that the stay of proceedings (the “**Media Stay**”) contained in sections 15 and 16 of the October 6, 2009 Initial Order made in the Matter of a Plan of Compromise or Arrangement of Canwest Media Inc. (“**Media**”) and others under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) does not apply to the action commenced by Gluskin Sheff + Associates Inc. (“**GS+A**”) in the Superior Court of Justice as Court File No. 10-8547-00CL against Media and Canwest Publishing Inc. (“**Publishing**”) in representative capacities (the “**Action**”);
- (b) In the alternative to (a), an order granting leave to GS+A pursuant to the terms of the October 6, 2009 Initial Order to continue the Action against Media in a representative capacity;
- (c) A declaration that the stay of proceedings (the “**Publishing Stay**”) contained in sections 21 and 22 of the January 8, 2010 Initial Order made in the Matter of a Plan of Compromise or Arrangement of Publishing and others under the CCAA does not apply to the Action;
- (d) In the alternative to (c), an order granting leave to GS+A pursuant to the terms of the January 8, 2010 Initial Order to continue the Action against Publishing in a representative capacity;
- (e) In the further alternative to (a) – (d), an order under Rule 10.01 of the *Rules of Civil Procedure* appointing one or more persons other than Canwest (defined below) to represent the members of the Plans (defined below) in the Action and permitting the Action to proceed in the ordinary course;
- (f) Its costs of this Motion on a substantial indemnity scale; and
- (g) Such further or other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

The Parties and Their Relationship

- (a) GS+A is an independent investment firm located in Toronto, Ontario;
- (b) The respondent Media is a corporation with its head office in the Province of Manitoba. Media maintains and acts as administrator / trustee of the registered pension plans listed in Schedule 1 to this Notice of Motion;
- (c) The respondent Publishing is a corporation with its head office in the Province of Manitoba. Publishing maintains and acts as administrator / trustee of the registered pension plans listed in Schedule 2 to this Notice of Motion. The plans listed in Schedules 1 and 2 are collectively referred to as the “Plans”;
- (d) At all material times, GS+A provided investment services to the Plans pursuant to a contract entitled “Investment Management Agreement” (the “IMA”). The IMA states expressly that Publishing and Media are contracting on behalf of the Plans;
- (e) The IMA provides, *inter alia*, for payment to GS+A of (i) a monthly management fee, and (ii) in specified circumstances, an annual performance fee;
- (f) GS+A provided investment services to the Plans and their members at the request of Publishing and Media throughout calendar 2009. It did so both before and after Media’s October 2009 CCAA filing, and rendered invoices for the performance fee and the monthly management fees to which it was entitled under the IMA;
- (g) At no time prior to or following the October 2009 Initial Order did the respondents:
 - (i) advise GS+A that Media was the subject of a CCAA filing in the fall of 2009 or that Publishing was expected to be;

- 4.
- (ii) treat GS+A as either (A) a critical supplier in respect of its ongoing services, or (B) a creditor for the purposes of the CCAA proceedings in respect of its outstanding invoices or otherwise; or
 - (iii) deliver any claims package or other notice to GS+A under the Claims Procedure Order of October 14, 2009;
 - (h) The respondents requested and paid for the moving party's services after the October 2009 CCAA filing;
 - (i) Canwest on behalf of the Plan and its members purported to terminate the IMA "effective immediately" on December 23, 2009;
 - (j) In breach of the IMA, Canwest on behalf of the Plan and its members refused to pay GS+A \$849,648.51 in management and performance fees which GS+A had earned up to December 23, 2009 and which were invoiced in July, 2009 pursuant to the IMA;
 - (k) On or about January 20, 2010, GS+A commenced the Action seeking payment of these fees;
 - (l) Canwest was at all times aware that GS+A was providing investment services to the Plans and their members during the period following the Initial Order and until the December 23, 2009 termination, and that GS+A expected compensation for these services in accordance with the IMA;
 - (m) In the Action GS+A does not seek any damages or other payment from Canwest, or allege any wrongdoing by it;
 - (n) Canwest is a defendant in the Action solely as trustee representing the Plans and their members, in accordance with Rule 9.01(1) of the *Rules of Civil Procedure*;
 - (o) The Plans are not legally incorporated entities at law, but rather a changing collection of a large number of individual members. It is not feasible for

GS+A to sue the members of the Plans directly for its fees, as the members cannot readily be ascertained, found or served;

- (p) The Action concerns both the interpretation of the IMA and the determination of a question arising in the administration of a trust;

The CCAA Proceedings

- (q) The Media Stay and the Publishing Stay (collectively, the “Stays”) pertain to proceedings, rights and remedies “against or in respect of” Canwest or “affecting” Canwest’s business or property;
- (r) The Action advances no such rights and claims no such remedies;
- (s) The Action pertains to GS+A’s rights and remedies against the Plans and their members – not against Canwest. It affects the Plans’ assets – not Canwest’s assets or business;
- (t) Alternatively, if the Stays do apply to the Action, then leave to permit the Action to continue ought to be granted for the reasons indicated in subparagraphs (d) to (p);
- (u) Canwest’s anticipated involvement in the Action as administrator / trustee would be minimal and would not prejudice Canwest’s restructuring efforts;
- (v) In the further alternative, a representative defendant other than Canwest could be appointed to respond to the Action on behalf of the Plans and their members;

Other Grounds

- (w) Sections 9, 10(1), 11 and 11.02(3) of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, Chapter C-36;
- (x) Rules 9.01(1), 10.01 and 14.05(2) of the *Rules of Civil Procedure*;

- (y) Sections 22(5) and 22(11) of the *Pensions Benefits Act*, R.S.O. 1990, c. P.8;
- (z) Sections 27.1 and 66 of the *Trustee Act*, R.S.O. 1990, C. T.23;
- (aa) the inherent jurisdiction of this Honourable Court; and
- (bb) Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Jeremy Freedman, sworn April 14, 2010, and the exhibits thereto; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court permit.

April 20, 2010

Wardle Daley Bernstein LLP
401 Bay Street
Suite 2104, P.O. Box 21
Toronto, ON M5H 2Y4

Helen A. Daley LSUC#: 26867F
Daniel Bernstein LSUC#: 44874D

Tel: (416) 351-2772/2775
Fax: (416) 351-9196

Lawyers for the Moving Party

TO: Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON M5X 1B8

Marc S. Wasserman
Tel: (416) 862-4908
Fax: (416) 862-6666

Lawyers for the Responding Parties

AND TO: Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova
Tel: (416) 869-5230
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SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

NOTICE OF MOTION

Wardle Daley Bernstein LLP
401 Bay Street
Suite 2104, P.O. Box 21
Toronto, ON M5H 2Y4

Helen A. Daley LSUC#: 26867F
Daniel Bernstein LSUC#: 44874D

Tel: (416) 351-2772/2775
Fax: (416) 351-9196

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B E T W E E N :

GLUSKIN SHEFF + ASSOCIATES INC.

Plaintiff
(Moving Party)

- and -

CANWEST MEDIA INC. and CANWEST PUBLISHING INC.

Defendants
(Responding Parties)

**AFFIDAVIT OF JEREMY FREEDMAN
(sworn April 14, 2010)**

I, Jeremy Freedman, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Deputy Chief Executive Officer of the Moving Party, Gluskin Sheff + Associates Inc. ("GS+A"), and as such have knowledge of the matters to which I hereinafter depose.
2. GS+A is an independent investment firm which manages investments on behalf of high net worth private clients and institutions. It has been in business since 1984.

The Investment Management Agreement

3. In or about March 2006, GS+A entered into an Investment Management Agreement (“**IMA**”) with CanWest Media Works Inc. and CanWest Media Works Publications Inc., both expressly “on behalf of” certain pension plans which were identified within a schedule to the contract (referred to collectively as the “**Plans**”). The IMA is attached hereto as **Exhibit “A”**.
4. For the purpose of this affidavit I will refer to the above-named CanWest entities as “**CanWest**” unless otherwise noted.
5. Pursuant to the IMA, GS+A was given responsibility to act as investment counsel and portfolio manager for a portion of the Plans’ assets, defined in the IMA as the CanWest Inc. Income Trust Account (the “**Account**”). As provided within clause A3 of the IMA, the Account was registered in the name of “CanWest Pooled Fund”.
6. Under clause B1 of the IMA, GS+A was to manage and invest the Account assets in a portfolio of securities with the objective of “providing stable income, quarterly distributions and capital appreciation”.
7. With respect to fees, the IMA provided that GS+A was entitled to receive a management fee, calculated monthly and paid monthly based upon the net asset value of the Account at the end of each month (see clause D2 of the IMA).
8. As an incentive for GS+A to achieve superior investment performance, the IMA also entitled GS+A to an annual performance fee, provided that certain levels of performance were achieved. This provision is contained in clause D4 of the IMA.
9. Under clause A5 of the IMA, the ability of CanWest to withdraw cash or other assets from the Account was “subject to any fees owing to GS+A in respect of the Account”.

Issues Arising Under the IMA

10. GS+A always understood that its prime mandate was to generate stable income, quarterly distributions and capital appreciation while assuming relatively low levels of risk

within the Account. The IMA initially contemplated that the Account would be invested in a diversified portfolio of income trust units.

11. The Account was to be invested conservatively with a view to achieving a 6% to 8% annual return.

12. On October 31, 2006, the Federal Government announced its intention to introduce legislation that would reduce the attractiveness to issuers utilizing the income trust structure. As a result, the "universe" of available income trust securities began to shrink at that time and continued to shrink in subsequent years.

13. As a consequence, the number of available income trust securities became limited and highly concentrated in specific economic sectors. Both of these factors in GS+A's professional opinion increased the risk of remaining invested solely in income trust units. Accordingly GS+A, with an eye to prudently managing risk, began to include other income-oriented securities in the Account.

14. As a result, while the securities within the Account changed from 100% income trust units, the quality and risk characteristics of the portfolio within the Account remained suitable for the mandate and achieved and in fact exceeded the rate of return desired by the client.

15. CanWest was at all times aware of the mix of securities within the Account and took no objection. In December 2006, GS+A communicated the change in the income trust market to CanWest and noted that GS+A would adapt the Account portfolio in order to maintain the objective of stable income with relatively low risk.

16. In 2007 and again in 2008 GS+A communicated directly with the client and the Plans' Pension Committee to discuss changes in the portfolio as a result of the legislative change concerning income trusts. At no time prior to April 2009 did CanWest ever raise any objection to GS+A's management of the Account. Indeed, GS+A earned and was paid a performance fee in fiscal year 2007 as its performance exceeded the benchmarks established in the IMA.

The Events from April to December 2009

17. In or about April 2009, GS+A requested RBC Dexia, the custodian of the Account, to open a U.S. Dollar account. When the custodian informed CanWest of that request, Wally Hassenrueck (“Wally”), who was a financial officer with CanWest, contacted GS+A to question why the U.S. account was needed. She also wanted to discuss the component of the portfolio that were Canadian securities but which were not income trust units. On June 16, 2009 a conference call was held involving representatives of CanWest and GS+A. GS+A again explained why it was suitable and prudent for the Account portfolio to include securities other than income trust units.

18. At the conclusion of that conference call, CanWest instructed GS+A to sell the U.S. securities, but to continue holding the Canadian non-income trust securities that were within the Account. A true copy of GS+A’s June 17, 2009 correspondence to Wally outlining the rationale for diversifying the portfolio is attached hereto as **Exhibit “B”**.

19. As a result of the instructions received following the June 16th conference call, GS+A continued to manage the Account (minus the U.S. securities) in accordance with the investment objectives specified in the IMA. That entailed creating and managing a diversified portfolio consisting of approximately 40% income trust units, 23% high-yield equities, 23% cash, and a mixture of fixed income securities for the balance.

The Performance Fees and Management Fees

20. The performance year end of the Account is June 30th. At the end of each performance year the performance of the Account over the year is determined, and if it exceeds the benchmark specified within the IMA (the Scotia Capital Income Index Trust plus 2%), GS+A becomes entitled to a performance fee. If the performance falls short of the benchmark, a deficiency is carried forward and added to the benchmark for the following year.

21. The Account’s performance for the year ended June 30, 2009 dramatically outperformed the benchmark. The incremental benefit to the Plans of this superior performance was approximately \$3.5 million.

22. As a result of achieving that performance, GS+A became entitled to a performance fee in the amount of \$740,247.41. On or about July 7, 2009, GS+A issued an invoice for this performance fee and for the quarterly management fee payable for the quarter-ended June 2009. A true copy of GS+A's July 7, 2009 invoice is attached hereto as **Exhibit "C"**.

23. In mid-September 2009, in advance of an upcoming meeting of the Pension Committee, Wally for the first time questioned the propriety of the performance fee charged because the index against which performance was to be measured under the IMA was an income trust index. A true copy of Wally's September 15, 2009 correspondence to us raising this issue is attached hereto as **Exhibit "D"**.

24. I had a telephone conversation with Wally on September 22, 2009 about her concerns. A true copy of my correspondence to her of that date summarizing our discussion is attached hereto as **Exhibit "E"**.

25. In response to Exhibit "E", I heard from Wally on or about October 2, 2009. Understanding that the mandate of the Account had shifted away from exclusively income trust units, she suggested that on an interim basis we draft a written mandate that correlated with the existing structure of the Account portfolio. She also asked for my recommendation on the wording of the mandate on a "go forward" basis, and on the appropriate performance benchmark. A true copy of my response e-mail to Wally of October 8, 2009 is attached hereto as **Exhibit "F"**. Within Exhibit "F", I responded to her various requests. I concluded Exhibit "F" by requesting a further discussion with her so that the issues of the outstanding invoice and the nature of the future mandate could be resolved.

26. On October 8, 2009, GS+A issued an invoice to CanWest for the management fees earned during the quarter-ended September 30, 2009. A true copy of that invoice is attached hereto as **Exhibit "G"**.

27. I had no indication whatsoever in my discussions with Wally in September and October that CanWest Media Inc. or any related entities were intending to imminently file a CCAA application. Throughout my dealings with Wally in the balance of the fall 2009, at no time did she suggest that she was pre-occupied with CCAA matters, or even that an Initial

13.

CCAA Order had been made on October 9, 2009 in relation to CanWest Media Inc., or that GS+A's outstanding invoices and continued work in managing the Account were subject to the CCAA proceeding. In fact, her words and conduct were to the contrary.

28. The IMA was with a company called "CanWest Media Works Inc." on behalf of certain of the Plans, and this entity was not the entity named in the Initial CCAA Order. GS+A was never provided with any notices from CanWest suggesting that GS+A was viewed as a creditor for purposes of the CCAA proceedings. It was not for several months and after further investigation that I ascertained that the party named in the IMA had been succeeded by the applicant in the CCAA proceeding. GS+A had not been advised of this corporate re-organization at the time it occurred.

29. GS+A continued to manage the Account from and after the Initial CCAA Order of October 9, 2009, in accordance with the manner discussed with Wally since June, 2009. The management fees portion of our July 7, 2009 invoice (Exhibit "C") in the amount of \$32,458.94 were paid on October 28, 2009, a date well after the initial CCAA filing. This payment was consistent with my understanding that any insolvency issues affecting CanWest Media Inc. had no bearing on the IMA or the payment of fees to GS+A for managing the Plans' Account.

30. On October 21, 2009, and in the context of our ongoing discussions about our outstanding performance fees, Wally informed me in a telephone conversation that there were "no issues" with the management fees invoiced for the quarter-ended September 30, 2009. GS+A continued rendering services to the Plans.

31. In sum, GS+A and Wally on behalf of the Plans were conducting "business as usual", at least as I understood it, and I was given no indication that the CCAA application had any bearing on our business relationship. This is precisely what I had expected as the IMA was a contract with CanWest in a representative capacity, the Account is an asset of the Plans, and the Plans were the ultimate payors of GS+A's fees under the IMA.

32. Wally also told me in our October 21st conversation that the new mandate suggested by me in Exhibit "F" was consistent with her thinking. Wally told me that she was preparing a

submission to the Pension Committee which would deal with the mandate going forward, the current asset allocation, and how performance fees would be calculated in the future. I was told to expect a response by the end of October. A copy of my November 2, 2009 e-mail to Wally following up on these items is attached as **Exhibit "H"**.

33. I heard from Wally on November 18th, to the effect that she had no further details to offer at that time and that the Pension Committee had sought legal advice regarding our invoice for performance fees.

34. In December 2009, CanWest requested a withdrawal of certain of the funds in the account. Wally asked me if this would pose any problem. I noted that the only issue was that the IMA specifically states that withdrawals from the Account are subject to GS+A's fees (as I set out in paragraph 9 of this affidavit), and we still had management and performance fees outstanding. Despite the provisions of the IMA, CanWest insisted upon withdrawing assets from the Account without payment of our outstanding performance and management fees. GS+A objected to this. However, the full amount of the withdrawal nonetheless occurred at CanWest's direction.

35. On or about December 22, 2009, GS+A received a cheque for the management fees invoiced in Exhibit "G" for the period ended September 30, 2009, and about which Wally had specifically represented on October 28, 2009 that there would be "no issues".

36. The very next day, on December 23, 2009, GS+A received a letter from Terra Klink at Heenan Blaikie on behalf of the Pension Plans. A true copy of that correspondence is attached hereto as **Exhibit "I"**.

37. Amongst other things, Exhibit "I" states that the cheque paying our September 30, 2009 management fees was to be countermanded, that the IMA was being terminated without notice, and that GS+A had 3 ½ trading days over the Christmas and New Year holidays to redeem all of the assets in the Account. The purported basis for CanWest's actions was that GS+A had allegedly breached the IMA by purchasing securities that were not income trusts.

38. GS+A did redeem all of the assets in the Account as instructed.

39. Knowing the entire history of what had occurred in the income trust market and that CanWest both knew and approved of the portfolio shift away from 100% income trust units, GS+A disagreed that it was not entitled to the performance fees and management fees invoiced and accrued.

40. Again, there is nothing in Exhibit "T" which would suggest that this dispute somehow falls within the ambit of CCAA proceedings and that GS+A was required to advance its claim within those proceedings. Indeed, the letter suggested that GS+A itself might be sued by CanWest, presumably on behalf of the Plans.

41. I subsequently became aware that the Court made a Claims Procedure Order on October 19, 2009, setting out the process by which claimants/creditors were to be contacted and given claims packages to submit. GS+A was never contacted by the Monitor nor given a claims package to submit. It was not and has not been treated as a claimant under the Claims Procedure Order at any time.

42. Accordingly, having reviewed the factual and legal situation, and in particular that GS+A had expressly contracted with the Plan members and not with CanWest, GS+A issued an action against CanWest solely in their capacity as administrators of the Plans. In the action GS+A seeks to have the fees paid out of the assets of the Plans; and seeks no damages against CanWest. A true copy of that Statement of Claim is attached as **Exhibit "J"**.

43. I am advised by my solicitors and believe that they spoke with and wrote to CanWest's CCAA counsel at least twice before issuing the action to obtain their concurrence that the action and the underlying claim were not affected by the CCAA proceeding.

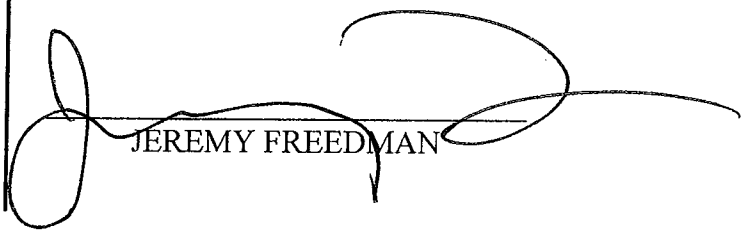
44. Since in Exhibit "H" GS+A had been threatened with a lawsuit, and absent any substantive response from CanWest's solicitors to our counsel's position, we gave instructions to issue the action.

45. CanWest's counsel thereafter responded by letter dated January 28, 2010, and this motion has been brought as a result. A true copy of the letter is attached as **Exhibit "K"**.

46. To the best of my knowledge and belief, this action, if allowed to proceed, will not consume CanWest's attention and resources in such a fashion as to hinder the restructuring efforts. As can be seen from the Statement of Claim, most if not all of the events pleaded are documented; and the amount of money claimed is not material in the context of CanWest and in any event I understand will be paid by the Plans. The IMA and the GS+A relationship was handled on behalf of CanWest by one senior employee, Wally. The litigation is narrowly focussed and very manageable, particularly in light of the time-limited examinations for discovery provided for in the new Rules.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on April 14, 2010.

Commissioner for Taking Affidavits



JEREMY FREEDMAN

GLUSKIN SHEFF + ASSOCIATES INC.
Plaintiff (Moving Party)

and
CANWEST MEDIA INC. et al
Defendants (Responding Parties)

Court File No: CV-09-8396-00CL
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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

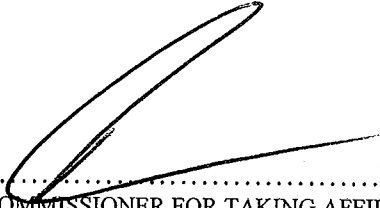
AFFIDAVIT OF JEREMY FREEDMAN
(SWORN APRIL 14, 2010)

Wardle Daley Bernstein LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Helen A. Daley LSUC#: 26867F
Daniel Bernstein LSUC#: 44874D
Tel: (416) 351-2772 / 2775
Fax: (416) 351-9196

Lawyers for the Plaintiff (Moving Party)

This is *Exhibit "A"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this *17th* day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

INVESTMENT MANAGEMENT AGREEMENT

THIS AGREEMENT is made on the 1st day of March 2006

BETWEEN:

GLUSKIN SHEFF + ASSOCIATES INC.,
a company incorporated under the laws of Ontario

- and -

CANWEST MEDIAWORKS INC.,
a company governed by the laws of Manitoba on behalf of the pension funds listed in Schedule I

- and -

CANWEST MEDIAWORKS PUBLICATIONS INC., a company governed by the laws of Canada on behalf of the pension funds listed in Schedule II

WHEREAS:

CanWest MediaWorks Inc. ("MediaWorks") and various of its subsidiaries maintain and act as administrator of the registered pension plans listed on Schedule I hereto for the purpose of providing pensions and other benefits to certain of their employees that participate in these registered pension plans.

CanWest MediaWorks Publications Inc. ("Publications Inc.") maintains and acts as administrator of the registered pension plans listed on Schedule II hereto for the purpose of providing pensions and other benefits to certain of its employees that participate in these registered pension plans (MediaWorks and Publications Inc. are hereinafter collectively referred to as the "Corporations", and individually a "Corporation", and the registered pension plans listed on Schedule I and Schedule II hereto are hereinafter collectively referred to as the "Plans" and individually a "Plan").

The Corporations are retaining Gluskin Sheff + Associates Inc. ("GS+A") to serve as investment counsel and portfolio manager in respect of the management of a portion of the Plans' assets.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

A. Administration of Account

1. The Corporations hereby appoint GS+A as investment counsel and portfolio manager for the "CanWest Income Trust Account" (the "Account"). For purposes of this Agreement, the Account shall consist of the assets of the Plans which are credited to the Account from time to time, the securities in which such assets are invested and all dividends, interest and other income earned thereon and the proceeds of the disposition thereof.
2. GS+A accepts the engagement to manage the assets which from time to time constitute the Account upon the terms and conditions set out in this Agreement.
3. The Account will be registered in the following name: "CanWest Pension Pooled Fund".
4. The individuals listed in Schedule III, as updated by the Corporations from time to time, are authorized by the Corporations to provide GS+A with instructions from time to time regarding the administration of the Account, e.g. the addition of funds, the withdrawal of funds, etc..
5. On seven (7) days' notice, the Corporations may withdraw cash or other assets from the Account, subject to any fees owing to GS+A in respect of the Account.
6. GS+A shall at all times maintain appropriate, accurate and complete records concerning the Account, which records shall be fully accessible for inspection by the Corporations or their authorized representatives. All such records concerning the Account shall be the property of GS+A; however, the Corporations shall have the right to obtain copies of all such records. GS+A shall not dispose of or destroy such records without the prior consent of the Corporations.
7. GS+A shall provide the Corporations with quarterly financial statements for the Account.
8. GS+A shall provide the Corporation with quarterly written investment management reports containing investment performance information as agreed upon by parties from time to time. As well, GS+A shall issue a quarterly compliance report, signed by the Chief Compliance Officer of GS+A, to the Corporations. Such compliance reports shall confirm that GS+A and its employees, officers and agents, have complied with all internal controls, applicable ethical guidelines and such other requirements as agreed to by the parties from time to time.

B. Authority

1. GS+A shall manage and invest the assets of the Account in a diversified portfolio of income trusts, including, without limitation, interests in oil and gas royalty trusts, income trusts and REITS (real estate investment trusts), with the objective of providing stable income, quarterly distributions and capital appreciation (the "Income Trust Model"), unless the Corporations instruct GS+A, in writing, to adopt a different investment mandate for the Account, and GS+A accepts such mandate.

Further details regarding GS+A's powers and responsibilities regarding the investment and administration of the Account are set out in Schedule IV hereto.

2. GS+A shall ensure that the investment of the assets of the Account complies with all applicable laws, regulations, rules and policies ("Applicable Laws"). Without limiting the generality of the foregoing, GS+A shall ensure that the portfolio: (a) does not contravene the investment restrictions of the *Income Tax Act* (Canada) applicable to registered pension plan funds; and (b) does not contravene the investment restrictions of pension standards legislation applicable to registered pension plan funds.
3. The Corporations have executed an agreement with RBC Dexia Investor Services Trust (the "Custodian"). The assets of the Account are held by the Custodian. The Corporations shall instruct the Custodian to accept instructions from GS+A in relation to the investment of the Account.
4. GS+A shall provide the Custodian with such reports and information as the Custodian requires from time to time to complete transactions and reconcile the Account and comply with Applicable Laws.
5. Unless instructed otherwise by the Corporations, GS+A has the right (but not the obligation) to vote in respect of any securities held in the Account as GS+A sees fit, and GS+A will not send the Corporations proxy materials.

C. Good Faith

1. GS+A undertakes to act honestly, in good faith and in the best interests of Plans in the performance of its duties.
2. GS+A shall exercise the degree of care, diligence and skill as would be expected of a reasonably prudent person in comparable circumstances.
3. GS+A does not guarantee the performance of the assets held in the Account and shall not be responsible for any loss sustained by the Account except where such loss arises as the result of negligence, wilful misconduct or breach of this Agreement by GS+A, its affiliates, agents, advisors, officers or employees, or the failure of GS+A, its affiliates, agents, advisors, officers or employees to comply with Applicable Laws.
4. It is GS+A's policy to attempt to allocate investment opportunities among its clients in a fair and equitable manner. However, GS+A shall not be liable for failure to allocate a specific investment opportunity to any particular client.
5. GS+A represents and warrants that it and each of its directors, officers, employees and agents has obtained, completed, executed, filed, received and passed, each as the case may be, all registrations, filings, approvals, authorizations, consents and/or examinations required under any Applicable Laws by reason of its activities hereunder. GS+A shall promptly notify the Corporations in writing if the foregoing representation and warranty ceases to be true in any respect.
6. GS+A, its affiliates, agents, advisors, officers and employees shall treat all information pertaining to the Account, the Corporations and the Plans as confidential and shall not disclose any such information to any person or entity who is not involved in the management of the Account, except as may be necessary to comply with Applicable

Laws, and shall not use such information other than for purposes of the management of the Account.

- 7. GS+A shall meet with the Corporations at least semi-annually to present its analysis of the investment performance of the Account and to describe its current and future investment strategies regarding the Account.

D. Fees and Costs

Model	Management Fee per Annum	Fiscal Year End	Annual Performance Fee	Deficiency
Income Trust Model	0.5% of the assets held in the Account	June 30	See below	See below

- 1. GS+A shall provide the Corporations with 60 days notice of any changes in fee arrangements, which will then be deemed incorporated herein.

Management Fees and Costs

- 2. Management fees are calculated monthly, and paid monthly, based upon the asset value of the Account net of fees, at the end of each month.
- 3. All maintenance and operating fees charged by brokers, custodians, banks or trust companies shall be borne by the Account.

Performance Fees

- 4. GS+A shall be entitled to an annual performance fee equal to 25% of any Net Appreciation (less any Deficiency carried forward from the immediately preceding Fiscal Year) in excess of the applicable Hurdle, appropriately adjusted to reflect additions and withdrawals of funds during such Fiscal Year, payable as soon as practicable following the end of each such Fiscal Year of the Account.
- 5. If, in a particular Fiscal Year there is a Deficiency, such Deficiency shall be carried forward for one Fiscal Year and deducted from the Net Appreciation in respect of the next following Fiscal Year for the purposes of determining any performance fee payable in respect of such next following Fiscal Year.
- 6. In circumstances where the Account is open for less than a full year (e.g. in the year the Account is opened or closed), the performance fee shall reflect, and be based on, the Net Appreciation and the Hurdle calculated for the period the Account is open.
- 7. For purposes of Sections D.4 – D.6 above, the following words and phrases have the meaning set forth below:
 - a) “Carry Forward Hurdle” means, in respect of a particular Fiscal Year, the amount that is the annual return of the Scotia Capital Income Index Trust minus 2%,

multiplied by the Net Asset Value of the Account determined as at the beginning of such Fiscal Year.

- b) "Deficiency" means, in respect of a particular period, the amount, if any, by which the Carry Forward Hurdle in respect of such Fiscal Year exceeds the Net Appreciation in respect of such period.
- c) "Fiscal Year" shall mean, the 12 months ending June 30 of each year.
- d) "Hurdle" shall mean, in respect of a particular Fiscal Year, the annual return of the Scotia Capital Income Index Trust plus 2%, multiplied by the Net Asset Value of the Account determined as at the beginning of such Fiscal Year.
- e) "Net Appreciation" means, in respect of a particular period, Net Asset Value of the Account determined as at the end of such period (before giving effect to any accrued performance fees) less the Net Asset Value determined as at the beginning of such period, which amount may be negative implying a depreciation in the Net Asset Value of the Account for the particular period.
- f) "Net Asset Value" means the total assets less total liabilities, including management and accrued performance fees payable to GS+A pursuant to this Agreement, of the Account (determined on the basis of generally accepted accounting principles consistently applied). Securities will be valued at the last publicly reported transaction on the exchanges which constitute the major trading markets for such securities or if no such publicly reported transaction is available, at the last available bid price in each case with an allowance for normal selling costs. In the event of the suspension of trading of any portfolio security, GS+A will have discretion to provide a valuation for that security until such time as trading resumes.

E. Governance

- 1. This Agreement may be terminated by either party on thirty (30) days' written notice.
- 2. GS+A may provide instructions to the Custodian relating to the investment of the assets of the Account by means of electronic communications, in accordance with prevailing industry practices.

Any other notice, report or other communication which must or may be given under this Agreement shall be in writing and addressed to the appropriate party as follows:

a) **TO THE CORPORATIONS:**

CanWest MediaWorks Inc.
 31st Floor, CanWest Global Place
 201 Portage Avenue
 Winnipeg, Manitoba
 R3B 3L7

Attention: Director, Treasury
 Fax: (204) 947-9841

CanWest MediaWorks Publications Inc.
31st Floor, CanWest Global Place
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

Attention: Director, Treasury
Fax: (204) 947-9841

b) **TO GS+A:**

BCE Place
181 Bay Street
Suite 4600
Box 774
Toronto, ON M5J 2T3

Attention: Chief Financial Officer
Fax: (416) 681-6090

c) **TO THE TRUSTEE:**

RBC Dexia Investor Services Trust
Institutional and Investor Services
1055 West Georgia Street
6th Floor
Vancouver, British Columbia
V6E 4P3

Attention: Director, IIS Pacific Region
Fax: (604) 257-6126

A copy of all notices, reports and other communications to the Corporations which must or may be given under this Agreement shall also be provided in writing to:

CanWest Global Communications Corp.
31st Floor, CanWest Global Place
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

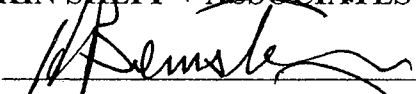
Attention: Legal Department
Fax: (204) 947-9841


3. This Agreement (including the Schedules hereto) may be amended or modified by a written instrument signed by the parties hereto.
4. This Agreement may not be assigned by GS+A without the written consent of the Corporations.

- 5. This Agreement with any amendments, schedules, appendices, or exhibits hereto constitutes the whole and entire agreement between the parties in respect of the subject matter hereof and cancels and supersedes any prior written or verbal agreements including undertakings, declarations or representations made with respect thereto.
- 6. The terms and operation of this Agreement shall be governed by the laws of the Province of Ontario.

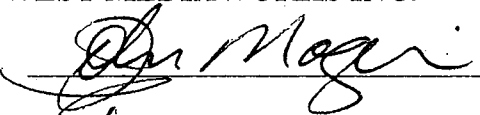
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized signing officers.


GLUSKIN SHEFF + ASSOCIATES INC.

By:  _____

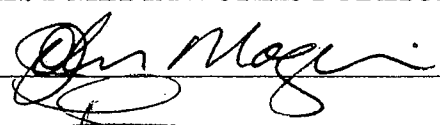
By:  _____


CANWEST MEDIAWORKS INC.

By:  _____

By:  _____

CANWEST MEDIAWORKS PUBLICATIONS INC.

By:  _____

By:  _____

SCHEDULE I

Global Communications Limited Master Trust*

National Post Retirement Plan

Retirement Plan for Bargaining Unit Employees of CanWest Television Inc.

Retirement Plan for Management and Non Bargaining Unit Employees of CanWest Television Inc.

Global Communications Limited Employees Pension Fund

CanWest Maritime Television Employees Pension Fund (Global Atlantic)

* As at March 1, 2006 the following pension plans participated in the Global Communications Limited Master Trust:

Global Communications Limited Retirement Plan for Former WIC Allarcom Employees

Global Communications Limited Retirement Plan for BCTV Senior Management

Global Communications Limited Retirement Plan for BCTV Staff

Global Communications Limited Retirement Plan for CHBC Executives

Global Communications Limited Retirement Plan for CHBC Management

Global Communications Limited Retirement Plan for CHBC Staff

Global Communications Limited Retirement Plan for Former WIC Designated Executives

Global Communications Limited Retirement Plan for CH Employees

Global Communications Limited Retirement Plan for CICT and CISA Employees

SCHEDULE II

CanWest Publications Inc. Retirement Plan
CanWest Pension Plan for Vancouver Island Employees (defined benefit component)
CanWest Windsor Star Group Inc. Pension Plan

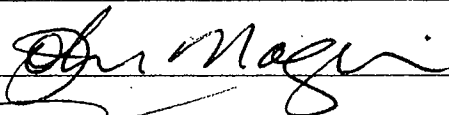
**SCHEDULE III
AUTHORIZED SIGNING OFFICERS**

The approved signing officers for the Account are the following, along with their specimen signatures:

Name

Specimen Signature

JOHN MAGUIRE



TOM STRIKE

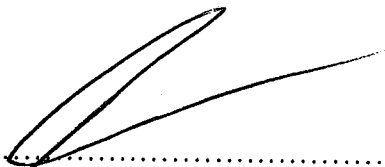


SCHEDULE IV

MANAGEMENT AND OPERATION OF THE ACCOUNT

1. GS+A has full power and authority to control, administer and invest the Account. GS+A shall have and may exercise all powers and rights necessary or advisable to invest the assets of the Account, which powers shall include:
 - a.) to administer the day-to-day investment operations of the Account including, without limitation, the placing of orders with brokers, investment dealers, banks or trust companies for the purchase and sale of securities, the purchasing of securities directly from the holders or issuers thereof and the selling of securities directly to the issuers thereof or to other persons and the buying, selling or exercising of right and warrants to subscribe for securities and the exercising of conversion and redemption, extension and retraction privileges pertaining to securities held in the Account;
 - b.) to deposit, withdraw, pay, retain and distribute the Account's funds in accordance with authorized instructions;
 - c.) to purchase securities of a fund, mutual fund or pooled investment fund or similar entity managed by a person other than the manager;
 - d.) to purchase securities on behalf of the Account on margin up to 25% of the net asset value of the Account (i.e., total assets less total liabilities);
 - e.) to purchase derivative securities having regard to the investment mandate of the Account;
 - f.) to pay or authorize the payment of expenses related to the investment of the Account such as brokerage fees, interest and bank charges for borrowing; and
 - g.) to invest or direct the investment of assets of the account not immediately required for the conduct of the operations of the account in bank certificates of deposit, treasury bills, commercial papers and other money market instruments.

This is *Exhibit "B"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

Dharshika Watson

From: Dharshika Watson
Sent: June 17, 2009 12:51 PM
To: 'Hassenrueck, Wally (Corporate)'
Cc: Jamie Simmonds; Jeannine LiChong; Adrian Wong; Esther Marino; Jeffrey Moody; Michael Ceccarelli
Subject: Follow-up to June 16th Conference Call

****PRIVATE AND CONFIDENTIAL****

The information contained in this communication is privileged and/or confidential and intended solely for the use of the intended recipient. If you are not the intended recipient or the person responsible for delivering it to the intended recipient, you must not use, copy, disclose, distribute or retain this communication. If you have received this communication in error, we would ask that you please delete this communication and contact the sender immediately at 416-681-6000 or by return email. Thank you.

Dear Wally,

Thank you for taking the time to speak with us yesterday.

Although there is no specific provision in the Investment Management agreement restricting investments in US securities within the portfolio, following your direction we will be liquidating all US positions from the portfolio before month end.

As discussed, the Federal government's changes to legislation affecting income trusts since this document was executed have severely limited the availability of "Income Trust" securities. As a firm, we have modified our internal models in order to gain similar levels of exposure, risk and return as we would have expected from an Income Trust Portfolio however the securities in which we are investing may not fit the portfolio as originally envisioned by your Pension and Investment Committee. Currently, the investment objective is to provide stable income with some opportunity for capital appreciation and a yield of approximately 6-7%.

In terms of a historical recap, at the end of October 2006, just prior to the government announcement, the market capitalization of the income trust market was over \$230 billion dollars with over 260 companies. As a result of the change in legislation, significant merger and acquisitions in 2007 by both private equity and strategic players, over 20 conversions (or announced conversions) to corporations, and of course, market conditions, the market capitalization of the income trust market today is \$114 billion, approximately half of its peak. The number of income securities has shrunk from over 260 to 179 today. Of these 179 income trusts, approximately 70 have a market capitalization of less than \$100 million. Due to liquidity and other considerations, we typically invest in companies with greater than \$100 million market capitalization, making the universe of investable income trusts of about 109. In addition, of the total \$114 billion market capitalization of the income trust market, approximately \$56 billion, or almost half of the total, is related to oil and gas income trusts. While the oil and gas sector has historically dominated the income trust market, we believe a portfolio with 50% weighting in one sector is inconsistent with the risk parameters in building a well-diversified portfolio.

As a result of the shrinking universe of income trusts candidates, we expanded the types of securities we included in this portfolio while keeping the main objective of the portfolio consistent: to provide stable income with some opportunity for capital appreciation and a running yield of approximately 6-7%. As one of the first institutional investors in income trusts, we recognize the attractiveness of the yield in securities and its historical contribution to overall returns.

The dramatic decline and volatility in the market throughout 2008 to present provided us with the opportunity to include other types of securities in the Premium Income Model.

As at June 15, 2008, the breakdown of the portfolio was:

- 39% in income trusts securities. The average yield of the income trusts securities is approximately 8.6%.

- 23% in high yielding equities with an average yield of 5.2%. Of the 23%, approximately 6% of the equities were formerly income trusts (for example, BFI Canada (now called IESI-BFC Ltd), CI Financial, and Bonterra Oil & Gas) which have converted to high yielding corporations. While the form of the equity has changed, the fundamentals of the company and its attractiveness as an investment have remained the same. Further, all of the corporations have decided to pay a relatively high dividend.

Of the remaining 17% invested in equities, we added higher yielding equities to the portfolio. Examples include BCE, TMX Group, Philip Morris International and Lorillard, all of which had yields of approximately 6% when they were added to the portfolio. The US equities were purchased in March 2009. Due to market conditions, equities provided exceptionally high yields as stock prices were impacted despite having what we believed to be sustainable dividends. As a result of our conference call yesterday, we are in the process of divesting Philip Morris and Lorillard (approximately 2.8% of the portfolio).

- 6% in preferred shares. The average cash yield on the preferred shares in the portfolio is approximately 7.7%. Its yield to retraction is close to 10%. As a result of market volatility and heavy tax loss selling in late 2008, preferred share securities became attractive candidates for the portfolio. Many of them were trading at double digit yields, which are historically very high levels. Further, these yields were even more attractive considering preferred securities are higher up the capital structure than equity. We were familiar with all of the preferred securities that we added to the portfolio, having owned the equity security in the past. One of the preferred share securities, FirstService, has a cash yield of 10.2%. We have owned the equity security in the past and have followed the company for over 10 years and know the management team well. The company was founded and is based in Toronto (its founder still resides in Toronto), however, the preferred security pays its dividend in US dollars and, given our conversation yesterday, we will be divesting the FirstService preferred share along with the US equities. Our weight in FirstService preferred shares is approximately 1.2%.
- 1% in Convertible Debentures. Our weight in convertible debenture is in Trinidad Drilling which has a cash yield of 8.6% and a yield to maturity of 11.7%. We had owned both the income trust equity and its convertible debenture before its recent conversion to a corporation. With the new legislation, income trusts were limited in the dollar amount of capital they could raise in equity as an income trust and as result, Trinidad converted in order to be able to access the market. As a result of changes in the fundamentals of the company, we had sold the equity but kept the convertible debenture due to our belief that its cash flows were sufficient to pay the interest and the company's intent to repay the debentures in cash rather than shares. Recently, Trinidad raised \$140M in equity giving us more comfort in its ability to meet its obligations.
- 8% in Corporate Bonds with an average yield of 8.2%. In late 2008, due to market conditions and scarcity of capital, credit spreads reached historically high levels. As with our preferred share position, we are familiar with all of these companies having owned its equity at one point in the past. We compared the yield and risk of the bond versus the income trust/equity security and chose to invest in the debt given its position higher up in the capital structure. The underlying equity security often had a comparable or lower yield and yet is lower in the company's capital structure. For example, we own Aeroplan and RioCan REIT debt rather than the equity security.

Many companies with debt maturities in 2009 had no choice but to access the debt market and pay the higher cost of debt. We took advantage of these opportunities to add these positions to the portfolio. Two of our bond positions have US dollar exposure: Altria, which has a cash yield of 8.4% and Teck Resources, which has a cash yield of 8.3%. While Teck Resources is a Canadian company, its bonds are denominated in US\$. We will be divesting these bonds, which combined, have a weight of approximately 1.6%.

- The remaining weight is in cash, approximately 23%. This is a historically high level but is due to a combination of lack of candidates in the income trust sector and market conditions.

We feel that given the ever shrinking universe of Income Trust Securities in which to invest and the mandate of our agreement, we feel that these securities are appropriate for the portfolio. Until such time as we are provided with a revised Investment Management Agreement, we will take your written direction on how to move forward with this portfolio model.

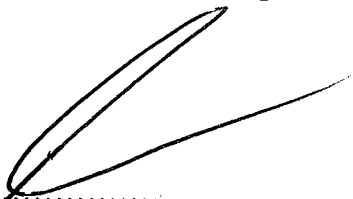
Again, thank you for your time and we look forward to your response.

Regards,

James Simmonds
Chief Compliance Officer
Gluskin Sheff + Associates Inc.

Jeannine LiChong
Vice-President & Portfolio Manager
Gluskin Sheff + Associates Inc.

This is *Exhibit "C"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein



July 7, 2009

Canwest Media
3100 TD Centre
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

GST REGISTRATION
NO.: R102124377

Attn: Ms. Karen Franklin

Dear Ms. Franklin:

Re: Management Fees - Canwest Media GS A/C # 145304001

Please forward a cheque payable to Gluskin Sheff + Associates Inc. for the amount due as noted below at your earliest convenience.

Calculation: Total Assets x 0.5% x Days in the Month / Days in the Year:

	<u>Total Assets</u> <u>at Market</u>	<u>Management</u> <u>Fees</u>	<u>GST</u>	<u>Performance</u> <u>Fees</u>	<u>GST</u>
April 30, 2009	23,984,120.09	9,856.49	492.82		
May 31, 2009	24,926,708.07	10,585.31	529.27		
June 30, 2009	25,480,608.90	10,471.48	523.57	740,247.41	37,012.37
		30,913.28	1,545.66	740,247.41	37,012.37

TOTAL AMOUNT DUE :

\$ 809,718.72

* Detailed calculations of the Performance Fees are attached for your information.

Thank you for your help with this matter.

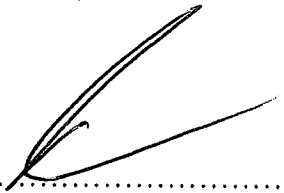
Yours very truly,

Valerie Barker
Chief Financial Officer

VB:la

(SCANWEFEES)

This is *Exhibit "D"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 11th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

From: Hassenrueck, Wally (Corporate) [mailto:WHassenr@canwest.com]
Sent: Tuesday, September 15, 2009 6:38 PM
To: Jeffrey Moody
Subject: RE: Your Portfolio at GS+A

Hi Jeff:

Best wishes on what sounds like a fabulous sabbatical. (I had some friends who packed up their family and did a similar tour of South America by car and by bike---they had a great time.)

I did have one issue that I wanted to discuss with you and, although I hate to burden you with this one when you're trying to clear your desk, I think you and I should talk about this one, rather than leaving it for Tim.

The issue relates to the change made to the Canwest portfolio and the performance fee subsequently charged by Gluskin Sheff ("GS"). Briefly, sometime prior to mid June of 2009, GS moved away from the mandate granted by Canwest in the Investment Management Agreement ("IMA") and re-configured the Canwest portfolio from a 100% Canadian income trust portfolio to a combination of CAD and USD investments in income trusts, preferred shares, high yielding equities, convertible debentures and corporate bonds. This shift occurred without Canwest's knowledge and approval.

Canwest first became aware of the shift in mid May, when RBC Dexia notified us of GS' request for a USD account. Further investigation by Canwest revealed that, although the Q1 compliance certificate indicated that the portfolio was compliant with the Canadian income trust mandate, the portfolio holdings as of March 31, 2009 included USD investments. A subsequent conversation with GS staff in mid June revealed that in addition to the USD investments, the portfolio held other assets that were not mandated by Canwest in the IMA. In response to our request for further details on these investments, Canwest received an email from Dharshika Watson on June 17, 2009 which revealed that the income trust portion of the portfolio had been reduced from 100% to 39% of the holdings.

In early July Canwest received GS' invoice for the quarterly management fee as well as a performance fee. The performance fee covered the 12 month period ending June 30, 2009 and was based on a comparison of the portfolio returns to the income trust index returns.

9/17/2009

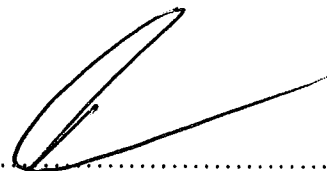
Although the IMA includes a performance fee provision, the IMA calls for the fee to be calculated on the performance of a Canadian income trust portfolio (i.e. the approved mandate) against a hurdle rate that is set based on an index for that mandate (i.e. an income trust index). Although GS moved away from the approved mandate, the return on the restructured portfolio continued to be assessed against the income trust index resulting in the performance fee included on GS' July 7, 2009 invoice.

Canwest is of the opinion that a performance fee is not warranted if the performance assessment is based on a portfolio that does not correspond to the approved mandate and is not reflective of the performance benchmark.

As noted by Canwest in the June conversation, asset shifts away from the approved mandate required the approval of Canwest's board; the Q2 compliance certificate subsequently received by Canwest identified that the portfolio was not compliant, that the revised asset mix had been disclosed to Canwest and that this mix would be presented to the Board Pension Committee. I would like to discuss this matter with you, prior to our Board Pension Committee meeting which will be held next week. Please let me know when you are available for a call on this matter.

Wally

This is *Exhibit "E"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long horizontal stroke.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein



September 22, 2009

VIA EMAIL & REGULAR MAIL

CanWest Media Works Publications Inc.
31st Floor, CanWest Global Place
201 Portage Avenue
Winnipeg, MB R3B 3L7

Attention: Ms. W. Hassenrueck

Re: CanWest Media Works and CanWest
Media Works Publications Inc. Pension Plan

Dear Ms. Hassenrueck,

Thank you for our telephone discussion of earlier today. Further to that conversation, I am writing to summarize that discussion.

First, on behalf of the Firm, let me reiterate that in respect of the investments that were made in the CanWest account that were non-compliant with the Investment Management Agreement (IMA), we are both embarrassed and apologetic. It was never our intention to violate the spirit of either the IMA or our relationship. While there was clearly a lack of compliance with the IMA, I want to re-emphasize that there was never a lack of actual risk management – rather, it was in an effort to mitigate and manage the changing and increasing risk presented by the narrowing of the offerings within the income trust market that lead to the change in the security selection that occurred. The investment management of the portfolio was always guided by the well-intentioned effort to achieve reasonable yield-based returns, while taking lower levels of risk.

As you are aware, in late 2006 the Federal government announced its intention to introduce legislation that would reduce the attractiveness of issuers utilizing the income trust structure. As a consequence, the universe of available income trust securities has been shrinking over time. As our Portfolio Manager, Jeannine LiChong, expressed to you in her correspondence of June 17, 2009, the number of income trust securities now available has become both limited and concentrated in specific sectors. For example,



“Energy” now accounts for approximately 60% of the S&P/TSX Income Trust Index. In an effort to prudently manage risk, over time we adjusted all of our “income oriented” investment models to compensate for this limited investment selection and increasing sector risk, by choosing substitute securities that our research lead us to believe would offer similarly attractive yields, but which offered sector diversification. These were all issuers and securities of those issuers that we were comfortable with based on our fundamental analysis. Such securities included debt securities issued by income trusts or converted income trusts (such as Riocan, Aeroplan and Brookfield Renewable Power), as well as preferred shares that we believed offered similar risk and return characteristics as income trust issuers. Our failing on the compliance side was a consequence of our having grouped the CanWest portfolio with our other income-oriented mandates, rather than to classify it specially (and uniquely) as restricted to strictly “income trusts” only. This failure was why our “tilt alarm” never sounded when we began to diversify the portfolio into income-oriented securities that were not structured as income trusts. I offer this by way of explanation, not excuse. The error was entirely ours.

Let me now turn to the question of performance and fees. For the performance year ended June 30, 2009, the Scotia Capital Income Trust Total Return Index declined by 31.4%. Over this same time, the CanWest Media portfolio, following our internal “income oriented” model, declined by approximately 20%. While we are never happy with declining portfolios, this mandate is, and has always been, benchmarked by relative, rather than absolute, performance. On a relative basis, outperformance by 1100 basis points is, by any standard, outstanding. In the context of the dismal state of all of the capital markets over the period July 1, 2008 – June 30, 2009, CanWest should be, in our view, and we hope is, extremely pleased with our performance. In dollar terms, this outperformance translates into an additional \$3.5 million in value remaining within the CanWest Media portfolio, versus where the portfolio would have stood had our performance been equal to that of the Scotia Capital Income Trust Total Return Index.

Our agreement with CanWest is structured such that on a performance basis, we are to be compensated when our investment outperformance exceeds by 2% the performance of the stated benchmark – the Scotia Capital Income Trust Total Return Index. When such outperformance is achieved, we partner or share in the extra value delivered – 75% for CanWest, 25% to us. In this particular case, the returns



achieved in excess of the benchmark plus 2% were approximately \$2.96 million, of which 25%, or approximately \$740,000, is the basis for the performance fee number set out in our July invoice.

One question you raised was whether GS+A should be disentitled to earn performance fees for the past year given that we invested in a non-compliant fashion *vis-à-vis* the IMA. As I responded, while there might possibly be some merit to such a position if we had recklessly gone off and sought and secured returns by investing in pork bellies, orange juice futures, and similar high risk, completely inappropriate-in-kind securities, I believe there is no justification for such a position in the real circumstances here. What we in fact did was motivated by risk reduction, not incremental risk taking, and we did take less, rather than more risk, than was presented by the overall income trust market. This is borne out by a comparison of the "risk" of the Scotia Capital Income Trust Total Return Index *vs.* the risk of the CanWest portfolio we constructed. As we expected and intended, the addition of bonds, preferred shares and high dividend paying common shares lowered the overall riskiness of the portfolio when compared with the aforementioned Index, as measured by both Standard Deviation and Sharpe ratios. I have attached a schedule (Appendix "A" – Risk Measures) which compares these risk characteristics. Greater return while taking less risk is always our objective, and this was achieved in this case.

I also understand your point that since we deviated from the "income trusts only" mandate, it raises the question of whether the specified relevant benchmark – the Scotia Capital Income Trust Total Return Index – is the appropriate or relevant benchmark – both for the past year, and presumably for the year we are now currently in. I believe this could be argued either way – on the one hand, we did look outside of the income trust universe; on the other hand, the spirit of the mandate was that, within prudent risk parameters, CanWest would be pleased with performance that did better than the Scotia Capital Income Trust Total Return Index for that piece of the CanWest pension fund that was entrusted to our management. We delivered extremely well against that objective.

All things considered, on a principled basis, a reasonable alternative in my view would be to examine the composition of the portfolio for the period under review and use a blended benchmark that more accurately reflects the composition of the investments held in the portfolio over the year. We have undertaken that exercise, and that blended benchmark (a blend of the Scotia Capital Income Trust Total



Return Index, the S&P/TSX 500 and the DEX Universe Bond Index) would result in a "benchmark" return of approximately -31.6% for the performance year, or 0.2% less than the Scotia Capital Income Trust Total Return Index. These calculations are set out in Appendix "B". This would result in a Performance Fee of approximately \$760,000, or slightly higher than the present calculation. While I think this would be a principled way to look at last year, please let me be clear – we are not suggesting this be done in the circumstances looking backward, given the resulting increase in performance fees it would lead to.

Looking forward, the current Investment Management Agreement, although reasonable at the time it was drafted, clearly needs to be, and we discussed is, under review by CanWest. In the short term, we appreciate that the CanWest Investment Committee is considering a broadening of the investment guidelines and we would obviously welcome some clarity and guidance regarding how we are to proceed from here.

Wally, thank you again for today's conversation. I reiterate that we regret any inconvenience or difficulty this situation has caused you and assure you that it will not occur again.

I look forward to hearing from you shortly regarding the issues of the continuing definition of the mandate and the resolution of the question of our fees and performance fee benchmark, both past and future.

Yours very truly,

Jeremy Freedman
Deputy Chief Executive Officer

JF/bep



APPENDIX "A"

RISK MEASURES

A) Rates of return (after all fees) before and after shift in asset mix:

	<u>SCITI</u>	<u>CanWest</u>
Before (6/30/08 to 10/31/08)	-28.5%	-21.4%
After (10/31/08 to 6/30/09)	-15.1%	2.1%

The CanWest portfolio, already outperforming the Scotia Capital Income Trust index before the asset mix change began, more significantly outperformed it in the period after the change began.

B) Monthly Standard Deviation before and after shift in asset mix:

	<u>SCITI</u>	<u>CanWest</u>
Before (6/30/08 to 10/31/08)	9.22	6.44
After (10/31/08 to 6/30/09)	7.87	2.44

-14.6% -62.1%

The portfolio's outperformance after the asset mix change was achieved with significantly reduced risk. The CanWest portfolio's standard deviation (the most commonly used measure of absolute risk) declined substantially more than did the SCITI after the asset mix changed.

C) Monthly Sharpe Ratio before and after shift in asset mix:

	<u>SCITI</u>	<u>CanWest</u>
Before (6/30/08 to 10/31/08)	-0.86	-0.92
After (10/31/08 to 6/30/09)	-0.05	0.07

The CanWest portfolio's Sharpe Ratio increased more than the Scotia Capital Income Trust Index after its asset mix changed. The Sharpe ratio (reward-to-variability ratio) is a measure of the excess return (or Risk Premium) per unit of risk in an investment portfolio.



APPENDIX "B"

CanWest Media Works Inc.

Blended benchmark asset class allocation

Cash and cash equivalents are allocated proportionally to each asset class

Month Ended	INCOME TRUST		BOND		EQUITY		PREFERRED		Blended Index
	Portfolio Weight	Index #1	Portfolio Weight	Index #2	Portfolio Weight	Index #3	Portfolio Weight	Index #4	
6/30/2008	99.0%		1.0%		0.0%		0.0%		
7/31/2008	98.8%	-7.2%	1.2%	0.9%	0.0%	-5.9%	0.0%	-2.2%	-7.1%
8/31/2008	98.8%	5.1%	1.2%	0.7%	0.0%	1.5%	0.0%	2.6%	5.1%
9/30/2008	98.4%	-14.8%	1.6%	-1.9%	0.0%	-14.4%	0.0%	-2.9%	-14.7%
10/31/2008	98.2%	-14.0%	1.8%	-0.8%	0.0%	-16.7%	0.0%	-7.2%	-13.7%
11/30/2008	95.4%	-9.8%	1.5%	2.4%	3.0%	-4.7%	0.0%	-11.1%	-9.6%
12/31/2008	87.9%	-6.8%	1.4%	2.9%	10.7%	-2.6%	0.0%	7.3%	-6.6%
1/31/2009	83.5%	-0.9%	1.7%	-1.0%	11.5%	-3.0%	3.3%	3.4%	-1.1%
2/28/2009	75.3%	-9.0%	1.5%	0.7%	17.5%	-6.3%	5.7%	-1.2%	-8.3%
3/31/2009	61.9%	4.8%	6.6%	1.8%	26.9%	7.8%	4.6%	0.7%	4.9%
4/30/2009	59.4%	7.5%	12.5%	0.0%	22.1%	7.3%	6.0%	7.0%	7.0%
5/31/2009	57.0%	11.4%	12.2%	-0.1%	23.9%	11.5%	6.9%	4.1%	9.5%
6/30/2009	62.0%	1.0%	11.4%	1.4%	20.7%	0.3%	6.0%	1.4%	1.0%
		-31.4%		7.0%		-25.7%		0.2%	-31.6%

LEGEND

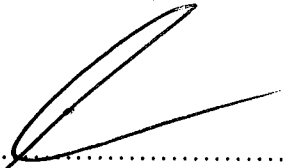
Index #1 Scotia Capital Income Trust Total Return Index

Index #2 DEX-Universe Bond Index

Index #3 S&P/TSX Total Return Index

Index #4 S&P/TSX Preferred Shares Total Return Index

This is *Exhibit "F"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

Jeremy Freedman

From: Jeremy Freedman
Sent: Thursday, October 08, 2009 4:44 PM
To: 'Hassenrueck, Wally (Corporate)'
Subject: CanWest Mandate
Attachments: Canwest Val Wts Jun09 (Summary)_v2.xls

Hi Wally.

Here are some thoughts on the mandate going forward. This is very much a preliminary "suggestion in process" for discussion purposes.

Mandate

The mandate of the Portfolio is to provide stable income distributions from the cash yield component of the portfolio together with moderate capital appreciation of the underlying securities. The objective is to deliver lower volatility, yet strong risk-adjusted returns.

Composition

With a yield-focused mandate, the Portfolio will be flexible and opportunistic in investing in different types of yield-oriented securities, including income trusts, high yielding equities, preferred securities, convertible debentures and publicly traded debt securities.

In its early days, income trust securities offered the best opportunity to achieve this return objective. As we approach 2011, most income trusts will likely convert to high yielding corporations. The investment opportunity has broadened beyond income trusts. In today's market, many common stocks, converted income trusts and preferred shares are attractive candidates for the portfolio due to their higher yield attributes. In addition, publicly traded debt securities are an extension of the convertible debt securities of income trusts that were previously part of the portfolio.

The invested portion of the Portfolio would be allocated in a range of between the following securities:

- 70%-90% equities (includes income trusts, equities, preferred shares)
- 10%-30% debt (includes publicly traded debt and convertible debt)

The cash component of the portfolio would be strategic and would not exceed 35%. The percentages listed above for equities and debt would be percentages of the non-cash invested portion of the portfolio.

Fees

Base fees would remain at 0.5% of the assets held in the account, and would be calculated in the same manner as in the past.

GS+A shall be entitled to an annual performance fee equal to 25% of any net appreciation in excess of 6.2%, appropriately adjusted to reflect additions and withdrawals of funds during the fiscal year ending June 30. This absolute hurdle rate is suggested having regard to the 10-year return on the S&P/TSX Composite Total Return Index being 6.2% and the 10-year DEX Bond Universe Index Return having been 6.3%. A deficiency in any one year is carried forward and added to the hurdle for the following year.

As you requested, we have also run a benchmark "index" taking out the cash levels that existed at every month end in the last performance year for the portfolio, which I've also attached. You can see that on that basis, the portfolio returns were in line with this revised "index". Having said that, I would respectfully suggest that using such an "index" to assess our performance makes no sense whatsoever. There is no limit in the IMA regarding cash—that is

to say, we were given a free hand to run the portfolio with as much, or as little cash, as we thought prudent, with such a decision being a real investment decision on our part. We began raising cash levels in June, 2008, and kept such cash levels high by our historical standards throughout the market meltdown. We began bringing cash levels down in March, 2009. Cash in such circumstances was a security of choice, for which we would either be rewarded, or punished, performance-wise, depending on whether we got that security choice right. The logic of this is clear if we look at it this way: had we run these high cash levels and then seen the market rise dramatically, imagine how CanWest would have reacted had we come to you and said "well, our dramatic underperformance relative to our benchmark index (whether it was the Scotia Income Trust Index or a blended index) was due to our having chosen to run high cash levels, which caused us to miss the market run, and you should extract the portion of the underperformance attributable to the cash levels in determining whether we are entitled to a performance fee having been earned, or whether there is a deficiency to be carried forward for purposes of next year's performance fee calculation." If the 60% of the portfolio that was invested outperformed the equity or income trust indexes, but we underperformed because we chose to run 40% cash, neither CanWest nor ourselves would have considered it reasonable or appropriate, I would suggest, for us to assert that we were entitled to earn a performance fee—rather, there would clearly have been a deficiency to be carried forward because our underperformance on the portfolio overall was due to our having chosen to run high cash levels. The reverse must similarly apply—the decision to run high cash, rather than have that cash invested in a market that was, and that continued to decline rapidly and dramatically—turned out to be an insightful tactical investment decision, from which CanWest benefitted handsomely. Accordingly, it must be factored in when determining our entitlement to performance fees. The most principled way to do this, we believe, is the way we did it originally, by allocating the cash weights across the various asset classes in proportion to those month-end asset class weightings.

Wally, once you have had a chance to review the above, I look forward to discussing this with you and to moving forward expeditiously to resolve the issues of our outstanding invoice and the nature of our mandate going forward.

Regards,

Jeremy Freedman
Deputy Chief Executive Officer
Gluskin Sheff + Associates Inc.
Brookfield Place, 181 Bay Street
Suite 4600, P.O. Box 774
Toronto, ON, M5J 2T3
Tel: 416.681.6010
Fax: 416.681.6060
Strategic wealth and risk management.

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Jeremy Freedman
Deputy Chief Executive Officer

11/24/2009

Gluskin Sheff + Associates Inc.
Brookfield Place, 181 Bay Street
Suite 4600, P.O. Box 774
Toronto, ON, M5J 2T3
Tel: 416.681.6010
Fax: 416.681.6060

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Indices and Blended Benchmark Monthly Returns

	SC Income Trust TR	S&P/TSX TR	S&P/TSX Preferred Share TR	DEX Bond Universe	DEX 91 Day T-Bill	Blended Benchmark - Scenario 1
6/30/2008						
7/31/2008	-7.2%	-5.9%	-2.2%	0.9%	0.3%	-7.1%
8/31/2008	5.1%	1.5%	2.6%	0.7%	0.2%	5.1%
9/30/2008	-14.8%	-14.4%	-2.9%	-1.9%	0.3%	-14.7%
10/31/2008	-14.0%	-16.7%	-7.2%	-0.8%	0.2%	-13.7%
11/30/2008	-9.8%	-4.7%	-11.1%	2.4%	0.2%	-9.6%
12/31/2008	-6.8%	-2.6%	7.3%	2.9%	0.3%	-6.6%
1/31/2009	-0.9%	-3.0%	3.4%	-1.0%	0.1%	-1.1%
2/28/2009	-9.0%	-6.3%	-1.2%	0.7%	0.1%	-8.3%
3/31/2009	4.8%	7.8%	0.7%	1.8%	0.1%	4.9%
4/30/2009	7.5%	7.3%	7.0%	0.0%	0.1%	7.0%
5/31/2009	11.4%	11.5%	4.1%	-0.1%	0.0%	9.5%
6/30/2009	1.0%	0.3%	1.4%	1.4%	0.0%	1.0%
FYTD ROR	-31.4%	-25.7%	0.2%	7.0%	2.0%	-31.6%

Blended Benchmark - Scenario 2	Blended Benchmark - Scenario 3
-7.1%	-6.3%
5.1%	4.0%
-14.7%	-11.2%
-13.8%	-8.1%
-9.7%	-4.5%
-6.7%	-3.0%
-1.0%	-0.5%
-8.7%	-4.0%
4.8%	2.6%
7.3%	4.3%
10.1%	6.6%
1.0%	0.7%
-31.7%	-19.0%

This is *Exhibit "G"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

45



October 8, 2009

Canwest Media
3100 TD Centre
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

GST REGISTRATION
NO.: R102124377

Attn: Ms. Karen Franklin

Dear Ms. Franklin:

Re: Management Fees - Canwest Media GS A/C # 145304001

Please forward a cheque payable to Gluskin Sheff + Associates Inc. for the amount due as noted below at your earliest convenience.

Calculation: Total Assets x 0.5% x Days in the Month / Days in the Year:

	<u>Total Assets</u> <u>at Market</u>	<u>Management</u> <u>Fees</u>	GST	Total
July 31, 2009	25,429,734.59	10,798.93	539.95	11,338.88
August 31, 2009	26,431,911.00	11,224.51	561.23	11,785.74
September 30, 2009	27,381,598.32	11,252.71	562.64	11,815.35
		<u>33,276.15</u>	<u>1,663.82</u>	
AMOUNT DUE				\$ <u>34,939.97</u>

Thank you for your help with this matter.

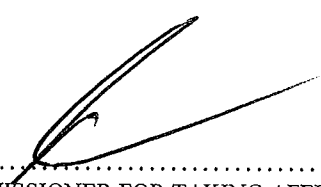
Yours very truly,

Valerie Barker
Chief Financial Officer

VB:la

(8CANWEFEES)

This is *Exhibit "H"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

Jeremy Freedman

From: Jeremy Freedman
Sent: Monday, November 02, 2009 9:18 AM
To: 'Hassenrueck, Wally (Corporate)'
Subject: update

Hi Wally.. I was just wondering if you could update me on when I might expect to receive the mandate/benchmark/outstanding fees letter that I understand is coming my way?

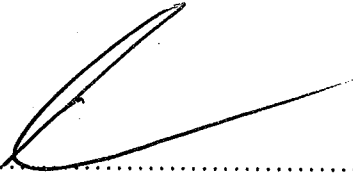
Thanks!

Jeremy

Jeremy Freedman
Deputy Chief Executive Officer
Gluskin Sheff + Associates Inc.
Brookfield Place, 181 Bay Street, Suite 4600
Toronto, Ontario, Canada M5J 2T3
416.681.6010 (Tel.)
416.681.6060 (Fax)
jfreedman@gluskinsheff.com
www.gluskinsheff.com

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This is *Exhibit "I"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 17th day of April, 2010.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein



HUMAN RESOURCES
LAW AND ADVOCACY

Toronto
Waterloo
London
Kingston
Ottawa

Hicks Morley Hamilton Stewart Storie LLP
TD Tower, 66 Wellington St. W., 30th Floor, Box 371
Toronto, ON M5K 1K8
Tel: 416.362.1011 Fax: 416.362.9680

TERRA L. KLINCK
terra-klinck@hicksmorley.com
Direct: 416.864.7351

JOHN C. FIELD
john-field@hicksmorley.com
Direct: 416.864.7301

December 23, 2009

VIA E-MAIL (jfreedman@gluskinsheff.com)
AND REGULAR MAIL
PRIVATE AND CONFIDENTIAL

WITHOUT PREJUDICE

Mr. Jeremy Freedman
Deputy Chief Executive Officer
Gluskin Sheff + Associates Inc.
Brookfield Place
181 Bay Street, Suite 4600
Toronto, Ontario M5J 2T3

Dear Mr. Freedman:

Re: Canwest Pension Plan Account - Income Trust Investment Mandate

We are writing regarding the compliance issue that has arisen in relation to the investment of assets held in respect of various Canwest pension plans by Gluskin Sheff + Associates Inc. ("Gluskin"), and in specific response to your e-mail to Wally Hassenrueck of December 21, 2009. For purposes of this letter, "Canwest" refers to Canwest Media Inc. and Canwest Publications Inc. (successors to Canwest Mediaworks Inc. and Canwest Mediaworks Publications Inc.) and their affiliates who administer the applicable pension plans.

Background

To start, we will set out some of the key factual background. To be clear, this background is not an exhaustive review of the events that have transpired to date.

In 2006 Gluskin was appointed to serve as investment counsel and portfolio manager in respect of a portion of the assets held in Canwest's registered pension plans (the "Account"). A formal Investment Management Agreement ("IMA") was executed by the parties. As you know, Section B.1. of the IMA specifically provides that Gluskin is required to invest the Account in a diversified portfolio of income trusts unless Canwest instructs Gluskin in writing to adopt a different mandate for the Account.

In the spring of this year, Canwest was advised by RBC Dexia (the custodian of the Account) that Gluskin had requested RBC Dexia to open a US account. After several e-

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mails were exchanged regarding the need for a US account, Wally Hassenrueck and Terra Klinck had a telephone discussion with Jeannine LiChong, James Simmonds and others in your office on June 16, 2009. As a result of these discussions, Canwest became aware of the fact that the Account was not solely comprised of income trust securities. Gluskin had purchased and was holding US and Canadian equities, preferred shares, convertible debentures, corporate bonds and cash in the Account.

During the June 16, 2009 call, Gluskin was instructed to liquidate the US securities. Gluskin was also advised that the unauthorized changes made by Gluskin to the composition of the assets held in the Account would need to be brought to Canwest's Board Pension Committee ("BPC") for a decision as to what actions should be taken. In July 2009, Gluskin invoiced Canwest for a performance fee for the period from July 2008 to June 2009. By letter dated September 22, 2009, you acknowledged that the Account had been invested contrary to the terms of the IMA.

The compliance issue was in fact brought to the BPC's next meeting following the June, 2009 conference call, which was held on September 23, 2009. At that meeting the BPC instructed management to undertake further investigation. Throughout October and November, 2009, Canwest obtained further information from Gluskin as well as other third party advisors regarding the historic investment of the Account. It was not until receipt of information provided by Gluskin in October, 2009 that Canwest learned the full magnitude of the non-compliance, including the significant cash holdings that were not authorized. Additional historical information provided by other service providers has revealed that securities other than income trusts have been held in the Account dating back to at least July, 2007.

In light of the foregoing, Canwest strongly objects to the suggestion in your e-mail of December 21, 2009 that it has unduly delayed making a decision in this matter – Gluskin's failure to fully disclose the scope and extent of the compliance issue when it was first identified by Canwest this past spring has been one of the main factors in causing what you perceive to be undue delay in bringing this matter to conclusion.

I would also highlight that Gluskin delivered quarterly Compliance Certificates, signed by Gluskin's Chief Compliance Officer, to Canwest throughout 2007 and 2008 and in March 2009. These Compliance Certificates *inter alia* certified that the Account was invested in a portfolio of income trusts. These Compliance Certificates did not disclose the change in the securities being held in the Account – a change which in fact is not in compliance with Gluskin's mandate under the IMA.

Legal Framework Applicable to the Investment of the Account

The compliance failures previously mentioned are heightened in the current circumstances because the Account is solely comprised of registered pension plan assets. Gluskin owes fiduciary duties to Canwest (as administrator of the pension plans) and the plan beneficiaries when investing plan assets held in the Account

49.



HUMAN RESOURCES
LAW AND ADVOCACY

(pursuant to pension legislation, the terms of the IMA and under common law principles). An investment manager may be subject to fines and penalties under pension legislation and civil claims by beneficiaries if it fails to meet its fiduciary duties.

The achievement of good investment performance by an investment manager does not mean that its fiduciary responsibilities have been met. The fiduciary standard of care for pension investment is process-driven, rather than results-based. Fiduciary duties require that the fiduciary exercise care, diligence and skill when making investment decisions. An investment manager's adherence to investment processes and the stated mandate is as important as the investment return earned, if not more so. An investment manager's failure to follow its stated mandate is *prima facie* a breach of its duty to exercise care, diligence and skill.

Canwest's fiduciary duties (as administrator of the various pension plans) require it to hire duly qualified investment advisors and to prudently monitor/supervise such investment advisors. Monitoring responsibilities go beyond monitoring of investment performance and include ensuring that investment advisors comply with their stated mandate and the prescribed investment restrictions. Canwest relied upon the Compliance Certificates provided by Gluskin when performing its monitoring responsibilities.

Canwest's Position

Gluskin's investment of the Account has contravened the clear terms of the IMA. These actions constitute a breach of contract and failure to exercise the requisite level of skill and diligence. Gluskin's delivery of false Compliance Certificates also constitutes a breach of contract as well as a failure to exercise the requisite level of care and skill. Finally, Gluskin's failure to be forthcoming at the earliest possible date regarding the period of time that the Account did not comply with the IMA and the magnitude of the non-compliance is yet another breach of its obligations to Canwest and plan members. Individually and in the aggregate, these actions are serious breaches of Gluskin's fiduciary duties.

After due consideration of the circumstances, Canwest has decided to terminate Gluskin's appointment effective immediately. On behalf of Canwest we are directing you to redeem all of the assets held in the Account prior to January 4, 2010, and to deposit the cash redemption amount to the RBC Dexia sub-account by no later than January 4, 2010, with no reduction for fees.

It is well established under Canadian law that, not only can a beneficiary obtain damages for any losses incurred where a fiduciary breaches its fiduciary duty, but also beneficiaries are entitled to seek disgorgement of the fiduciary's profits, even where the beneficiary has suffered no loss. In the present circumstances, all of Gluskin's fees that have been paid while the Account was not compliant with the IMA should be considered the profit that is subject to disgorgement.



HUMAN RESOURCES
LAW AND ADVOCACY

Canwest has an obligation to protect the interests of the pension funds' beneficiaries. On this basis, Canwest:

(1) will not authorize the payment of the performance fees from the Account for the period from June 2008 to June 2009;

(2) will not authorize the payment of any further management fees to Gluskin (specifically, a stop payment has been put on the cheque that RBC Dexia has already sent to Gluskin in respect of base fees for the 3 month period ending September 30, 2009);

(3) is demanding reimbursement of all management fees and performance fees paid to Gluskin for the period of time that the Account was not compliant with the IMA.

Canwest is completing its investigation on the period of time that the Account was non-compliant and confirming the amount of fees paid to Gluskin during this period. We will provide you with further information on these issues in the near future.

Canwest will take immediate legal action if Gluskin makes any attempt to withhold any fees from the redemption of the assets held in the Account or otherwise impedes the timely and orderly transition of the Account to the successor investment manager.

Yours truly,

Terra L. Klinck

John C. Field

TLK/v

This is *Exhibit "J"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 14th day of April, 2010.

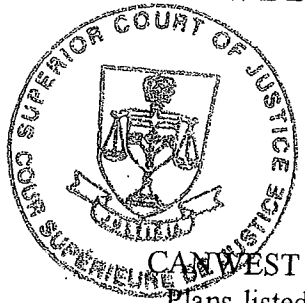


.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

BETWEEN:



GLUSKIN SHEFF + ASSOCIATES INC.

Plaintiff

- and -

CANWEST MEDIA INC., solely in its capacity as Administrator of the Registered Pension Plans listed in Schedule 1, and CANWEST PUBLISHING INC., solely in its capacity as Administrator of the Registered Pension Plans listed in Schedule 2

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANTS

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 \$1,500.00 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 \$500.00 for costs and have the costs assessed by the court.

Date January 20, 2010

Issued by 
Local Registrar

Address of 330 University Avenue, 7th floor
Court Office: Toronto, Ontario

TO: CANWEST MEDIA INC.
31st Floor, CanWest Global Place
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

AND TO: CANWEST PUBLISHING INC.
31st Floor, CanWest Global Place
201 Portage Avenue
Winnipeg, Manitoba
R3B 3L7

CLAIM

1. The plaintiff claims:

- (a) \$849,648.51 for fees (including GST) owing on account of services rendered to registered pension plans administered by the defendants, as more specifically described below;
- (b) in the alternative, damages in the amount of \$849,648.51 on a quantum meruit basis;
- (c) pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) its costs of this action on a substantial indemnity basis;
- (e) an order that judgment be satisfied out of the assets of the registered pension plans (as described below); and
- (f) such other relief as this Court deems just.

The Parties

2. The plaintiff Gluskin Sheff + Associates Inc. (“GS+A”) was established in 1984 and since that time has been an independent investment firm located in Toronto, Ontario. GS+A manages investment portfolios on a discretionary basis for high net worth private clients, charitable foundations, estates and institutional investors.

3. The defendant CanWest Media Inc. is a corporation with its head office in the Province of Manitoba which maintains and acts as administrator of the registered pension plans listed in Schedule 1 to this Statement of Claim for the purpose of providing pensions and other benefits to certain of its employees and those of its affiliates.

4. The defendant CanWest Publishing Inc. is a corporation with its head office in the Province of Manitoba which maintains and acts as administrator of the registered pension plans listed in Schedule 2 to this Statement of Claim for the purpose of providing pensions

and other benefits to certain of its employees and those of its affiliates. The plans described in Schedules 1 and 2 are collectively referred to as "the Plans".

5. The defendants CanWest Media Inc. and CanWest Publishing Inc. are respectively the successors to CanWest MediaWorks Inc. and CanWest MediaWorks Publications Inc., which were the original parties to the Investment Management Agreement with GS+A described in paragraph 15 below, and as a result are bound by the provisions of that Agreement. The defendants are collectively referred to throughout this Statement of Claim as "CanWest".

GS+A's Premium Income Portfolio

6. Prior to 2001, the focus of GS+A's investing had principally been on generating capital gains for its clients. GS+A had also invested from time to time in securities which offered attractive yields, including high dividend-paying common stocks, real estate investment trusts and oil and gas royalty trusts.

7. In or about 2001, a broader universe of tax-advantaged, high yielding securities, known as business trusts, emerged on the Canadian market. These were securities of operating businesses that sought to offer investors a return through enhanced yield, together with the potential for capital appreciation. These business trusts, together with the more longstanding oil and gas royalty trusts and real estate investment trusts, made up what came to be known as the "income trust market" in Canada.

8. Recognizing the attractiveness of both the yields and the potential for capital gains offered by many of the businesses issuing these "business trust" securities, in 2001 GS+A initiated a new investment model for its clients called the "Premium Income" portfolio, the objectives for which were to generate and provide a high level of stable income, along with distributions and capital appreciation.

9. The Premium Income portfolio was structured to meet these objectives by investing in income trusts and higher dividend-paying traditional equities. The portfolio was also to be invested in securities that were diversified across a broad range of industries.

GS+A successfully managed this portfolio for the mutual benefit of its clients and itself beginning in 2001.

CanWest Approaches GS+A for the Purpose of Investing Pension Assets

10. In the summer of 2005, CanWest approached GS+A for the purpose of investing pension assets with GS+A. CanWest's stated investment objectives were to achieve "stable income, quarterly distributions and capital appreciation". CanWest's express interest was in investing in limited partnership units in GS+A's pooled fund vehicle, the GS+A Premium Income Fund (hereinafter the "Premium Income Fund").

11. GS+A supplied CanWest with its background and marketing materials regarding the Premium Income Fund. As stated in these materials, the Premium Income Fund's objectives were to provide stable income dividends and capital appreciation. These materials described the "Portfolio Profile" as achieving the stated objectives "through a diversified portfolio of stable, income producing investments across a broad range of industries ... The portfolio is composed of income-yielding securities, whose primary purpose is to distribute the operating income of a business enterprise, together with some higher dividend-paying traditional equities ...".

12. At the time, the Premium Income Fund only held securities that were structured as income trusts; it did not at the time own any "higher dividend-paying traditional equities" or other income-producing securities (apart from cash).

13. The fee structure of the Premium Income Fund provided that GS+A would earn an entitlement to performance fees in certain circumstances where the net return over a performance year exceeded 9%. As CanWest required a fee structure that would measure GS+A's entitlement to performance fees on a relative, rather than an absolute, level-of-return basis, CanWest requested that GS+A create a separate class of limited partnership units for its existing Premium Income Fund. When this did not prove feasible, the parties agreed that CanWest would invest through a segregated account following the Premium Income Fund's portfolio.

The Investment Management Agreement

14. On or about March 1, 2006, CanWest on behalf of the Plans retained GS+A to serve as investment counsel and portfolio manager for certain of the assets of the Plans, to be deposited to a segregated account (the "Account") held by the custodian, RBC Dexia Investor Services Inc. ("RBC Dexia").

15. The terms of the relationship between CanWest on behalf of the Plans and GS+A are set out in an Investment Management Agreement (the "IMA") dated March 1, 2006. The IMA provides, *inter alia*, that:

- (a) the objective of GS+A's mandate is to provide "stable income, quarterly distributions and capital appreciation";
- (b) the assets of the Account are to be invested in a diversified portfolio of income trusts;
- (c) on seven days' notice, CanWest may withdraw cash or other assets from the Account, subject to any fees owing to GS+A in respect of the Account;
- (d) GS+A is entitled to the following fees:
 - (i) a management fee calculated at 0.5% of the assets in the Account, to be paid monthly; and
 - (ii) an annual performance fee equal to 25% of the amount by which the Net Appreciation (as defined) of the Account for the year exceeds the Scotia Capital Income Trust Index (the "Income Trust Index") plus 2%;
- (e) it is governed by the laws of the Province of Ontario; and
- (f) it may be terminated by either party on thirty days written notice.

16. GS+A pleads that, properly interpreted, its overriding obligation under the IMA was to comply with the investment objective of providing stable income, quarterly distributions and

capital appreciation while prudently managing risk. This required the selection of a diversified portfolio of securities that were suitable for this objective.

Access to and Communications Regarding the Account

17. From inception up to and including December, 2009, CanWest had complete access to the Account and was able to review all holdings and transactions. In addition, CanWest received regular quarterly reports from GS+A as well as from sources other than GS+A which collectively showed all transactions and holdings in the Account, along with a written commentary thereon.

18. CanWest received from GS+A regular market commentaries and was able to participate in quarterly investor conference calls and webcasts regarding GS+A's management of its Premium Income-related portfolios.

The Operation of the Account

19. From inception, the Account was managed by GS+A as a derivative of its management of the Premium Income Fund.

20. The Account initially held cash and income trust securities. In September, 2006, the Account purchased a significant position in Telus, a higher-dividend paying common stock.

The Elimination of the Tax Advantages of the Income Tax Regime

21. On the evening of October 31, 2006, the Government of Canada announced its intention to introduce legislation to effectively eliminate the comparative tax advantages of the income trust structure.

22. The impact of this announcement, and the Government's subsequent steps in furtherance of it, was that over time the number and variety of available income trust securities became more limited, as there were no further initial public offerings of such securities, and a number of existing issuers converted to the traditional corporate form or were acquired. In addition, the remaining universe of income trusts became highly concentrated in

a few specific industry sectors, particularly the highly volatile (and thus more risky) energy sector.

23. In a letter to clients, including CanWest, in December 2006, GS+A provided an update on developments related to the Government announcement. This letter noted:

- (a) that even prior to the Minister’s announcement, GS+A had added high dividend-yielding equity names to its Premium Income portfolios;
- (b) that “the income trust market of the future may not exist as we know it today”; and
- (c) that GS+A would “adapt the portfolio to take advantage of any new structures or opportunities that present themselves. We will however remain committed to maintaining the same consistent investment philosophy.”

GS+A’s Prudent Management of the Account Following the Announcement

24. In order to prudently manage the risk level and to fulfil the investment objective of the Account, over time GS+A expanded and increased the holdings in the Account to include debt securities issued by income trusts or converted income trusts, other debt securities, preferred shares and higher dividend-paying traditional equities.

25. These purchases and sales were reported to CanWest through the quarterly delivery of the Account’s holdings to CanWest, and were expressly discussed in various mailings and quarterly commentaries, along with “Top 10” lists of securities held in the Account. In particular:

- (a) Following the purchase of a significant position in Telus Corporation in September, 2006, the quarterly review for September 30, 2006 made specific mention of the addition of Telus – a traditional equity – to the Account;
- (b) Top Ten Holdings lists provided to CanWest for September 30, 2006, Dec. 31, 2006, March 31, 2007, June 30, 2007, and September 30, 2007 all referenced

the Account's holding in Telus, including pointing out that Telus was the single largest holding in the Account as at September 30, 2006;

- (c) The quarterly review for June 30, 2007 referenced the Account's participation in the initial public offering of Northstar Healthcare, a high dividend yielding traditional equity;
- (d) The quarterly portfolio review for September 30, 2007 explicitly noted that Northstar Healthcare was not an income trust.

26. Each of the quarterly reviews, which would have been scrutinized in detail by CanWest representatives to fulfill their obligation as Administrator to pension plan members, set out in plain view all non-income trust holdings of the Account.

GS+A's Meeting with the CanWest Board Pension Committee of September 17, 2007

27. By e-mail from Wally Hassenrueck, the Chief Financial Officer of CanWest, to Jeremy Freedman (at the time Executive Vice-President and Chief Operating Officer of GS+A, and currently Deputy Chief Executive Officer) dated August 30, 2007, CanWest invited GS+A to meet with the CanWest Board Pension Committee (hereinafter the "Pension Committee") in Toronto on September 17, 2007.

28. Hassenrueck's e-mail reads, in part, as follows:

We would like to invite Gluskin Sheff to meet with the Board Pension Committee at their next meeting, which will be held from 2:00-4:00 p.m. on September 17 in Toronto. We have set aside 30 minutes for a GS presentation on the investment performance which should include:

- (1) A review of the performance since the 2006 appointment (including performance against benchmarks),
- (2) *An assessment of the October 2006 announcement re: income trust and the actions taken as a result,*
- (3) *The strategy going forward and*

- (4) The recommendations re: changes that should be made in anticipation of the 2011 changes in the tax treatment. ...”
[Emphasis added]

29. On September 17, 2007 senior representatives of GS+A, including Freedman and Jeannine LiChong, the Portfolio Manager of both the Account and the Premium Income Fund, met with the CanWest Pension Committee. Four members of the CanWest Pension Committee, along with CanWest’s CFO, its Director of Legal and Hassenrueck, were present in person. Others may have been present by telephone.

30. The presentation materials provided by GS+A to CanWest in advance of this meeting consisted of a Portfolio Review, a list of the Top Ten Holdings and a listing of each of the 47 securities held by the Account.

31. In its written Portfolio Review, addressing the issue of the government’s October 31, 2006 announcement, GS+A wrote, among other things, the following:

“Our investment focus has always been cash flow predictability and stability, business model, balance sheet strength and quality of management. *The substance of the business was always more important than the structure.* For trusts, the additional consideration has been the Company’s ability to maintain and grow cash distributions.” [Emphasis added]

32. On the list of “Top 10 Holdings”, Telus is listed as the seventh largest holding.

33. Shaw Communications Inc. and Northstar Healthcare Inc. – both of which are common stocks – as well as Harvest Energy Debentures and Trinidad Energy Debentures, were also clearly listed on the full listing of the securities held in the Account.

34. None of the CanWest representatives at this meeting expressed any concern or voiced any objection to the fact that the Account was investing in yield-oriented securities that were not “income trusts”.

The October, 2008 Webcast

35. On October 21, 2008 Hassenrueck participated in a webcast presentation conducted by GS+A regarding the then current position and future plans for the management of the

Premium Income portfolio. During this presentation, LiChong noted that this portfolio held a high cash position. She also discussed various traditional equity securities. Hassenrueck expressed no concern or objection following the webcast about the way in which the model was being managed or the types of securities LiChong was focusing on.

CanWest has Waived any Right to Seek Strict Conformance

36. Indeed, from the time non-income trust securities were first purchased for the Account in September, 2006, to April, 2009, CanWest raised no concern or objection whatsoever regarding GS+A's having done so. GS+A pleads that, by its conduct, CanWest waived any right it may have had to seek strict conformance with the term of the IMA providing that the Account would be invested in a portfolio of income trusts, or, in the alternative, that CanWest is estopped from doing so.

The Erroneous Compliance Certificates

37. In 2008 and 2009, for compliance purposes, GS+A provided CanWest with compliance certificates which stated that the Account was invested in a portfolio of income trusts.

38. GS+A acknowledges that these certificates were erroneous. GS+A denies, however, that CanWest relied on such certificates. Throughout CanWest knew and understood, or ought to have known and understood, that the Account was not exclusively invested in income trusts, as a result of the changes to the Account since inception, the developments in the income trust sector following the Government's announcement on October 31, 2006, the presentation to, and discussion with, the Pension Committee on September 17, 2007 and the numerous communications to CanWest which disclosed and discussed the holding of non-income trust securities.

The June 16, 2009 Conference Call

39. In March 2009, GS+A purchased a few U.S.-based non-income trust securities for its Premium Income Portfolio model, including for the Account. Doing so required the custodian of the Account, RBC Dexia, to open a U.S.-dollar account. This required CanWest's

concurrence. Hassenrueck contacted GS+A in late April to question why this would be necessary when the investment mandate was a segregated Canadian income trust mandate.

40. After repeated attempts by GS+A to contact CanWest to discuss Hassenrueck's question, on June 16, 2009 a conference call was held involving representatives of CanWest and GS+A. GS+A explained that the Account had invested in securities other than income trusts as this was consistent with the objectives of generating stable income and maintaining some opportunity for capital appreciation, while also being mindful of the increasing risks presented by a shrinking and increasingly energy-concentrated income trust market.

41. CanWest's only instructions to GS+A coming out of that conference call were to sell the U.S. securities. CanWest specifically confirmed that none of the other non-income trust securities held in the Account were to be sold.

42. All indications from CanWest at that time, and following, indicated an understanding and acceptance of the prudence of GS+A having invested in non-income trust securities.

43. GS+A confirmed the June 16, 2009 conversation by e-mail the next day, and asked for written direction as to how to move forward with the portfolio model "until such time as we (GS+A) are provided with a revised Investment Management Agreement ...".

44. GS+A also confirmed on June 16, 2009 that as at June 15, 2009 the breakdown of the portfolio was 39% in income trust securities, 23% in high yield equities, 6% in preferred shares, 1% in convertible debentures, 8% in corporate bonds, and 23% in cash.

45. From June to December, 2009, GS+A continued to manage the Account as described above, and without any instructions to the contrary from CanWest. To the knowledge of, and with the consent of CanWest, the Account continued to invest in common stocks, bonds, preferred shares and convertible debentures, as well as income trust securities.

GS+A Becomes Entitled to a Performance Fee

46. For the performance year ended June 30, 2009, the performance of the Account was dramatically better than the performance of the Income Trust Index. The incremental benefit to the Plans of this superior performance was approximately \$3.5 million. Taking into

account the performance hurdle rate (the Income Trust Index +2%), GS+A, for the incremental value delivered, was entitled to a performance fee of \$740,247.41, plus GST of \$37,012.37, for a total of \$777,259.78.

47. On or about July 7, 2009, GS+A issued an invoice to CanWest in the amount of \$809,718.72 for:

- (a) management fees of \$32,458.94 (inclusive of GST) for the period April to June 2009; and
- (b) the performance fee of \$777,259.78, (inclusive of GST).

48. Over the next few months, GS+A continued to manage the Account in good faith.

The September 22, 2009 Call between Freedman and Hassenrueck

49. On or about September 15, 2009, Hassenrueck, in an e-mail to Jeffrey Moody at GS+A, raised, for the first time, an "issue" regarding GS+A's invoice for performance fees. Hassenrueck stated that she wished to discuss the issue.

50. That discussion took place on September 22, 2009 and involved, principally, Hassenrueck on behalf of CanWest and Freedman, then Deputy Chief Executive Officer, on behalf of GS+A. That conversation was then confirmed by letter from Freedman to Hassenrueck of the same date.

51. The principal points made by Freedman were:

- (a) The change in security selection had been taken in an effort to mitigate and manage the increasing risk presented by the narrowing of offerings within the income trust market following the Government announcement;
- (b) that GS+A had delivered outstanding relative investment returns to the Plans over the performance year July 1, 2008 to June 30, 2009, generating an additional \$3.5 million in value for the Account, while taking measurably less risk than was present in the remaining income trust universe;

- (c) having regard to CanWest's express concern about the appropriateness of benchmarking the Account against an index exclusively comprised of income trusts, if a blended benchmark was used, GS+A's outperformance, and thus the calculated performance fee, would actually be higher than that invoiced on July 7th, and
- (d) given the advice of CanWest that the Pension Committee was considering a broadening of the investment guidelines, that GS+A welcomed "some clarity and guidance regarding how we are to proceed from here."

Hassenrueck Confirms the Existing Structure of the Portfolio

52. On or about October 2, 2009, Hassenrueck advised Freedman that on an interim basis, the parties should "paper something" so that the written mandate would be consistent with the existing structure of the portfolio. She also asked Freedman to provide a recommendation on what the wording of the mandate going forward should be, and what the appropriate performance hurdle should be.
53. In response to Hassenrueck's request, on October 8, Freedman e-mailed Hassenrueck with some suggestions on wording for the mandate going forward, as well as suggestions for a modified performance hurdle.
54. On or about October 8, 2009, GS+A issued an invoice to CanWest for \$34,939.97 for management fees for the period July to September, 2009. A further \$37,448.76 became owing for the period October 1, 2009 to December 23, 2009, which amount was invoiced on January 8, 2010.
55. On October 21, 2009, in a telephone conversation, Hassenrueck advised Freedman that a long-outstanding invoice for management fees for the period April 1, 2009 to June 30, 2009 had been approved for payment (payment was received on or about October 28, 2009) and that with respect to management fees for the next quarter, there would be "no issues". She also advised that the mandate statement suggested on October 8th was consistent with her thinking. She also asked that the cash levels in this portfolio start to be reduced.

56. Hassenrueck also advised that she was preparing a submission to the Pension Committee that would include a recommendation regarding:

- (a) the current asset allocation of the assets managed by GS+A;
- (b) the mandate going forward; and
- (c) performance fees.

She was anticipating having a response to GS+A by the end of October.

CanWest Redeems a Portion of the Assets in the Account

57. The end of October came and went, without word from CanWest. Thereafter, on various occasions, Freedman sought clarification from CanWest regarding the outstanding fees, the mandate and the benchmark performance hurdle going forward. None was forthcoming.

58. On November 18, 2009, Hassenrueck thanked Freedman for his "various messages" (e-mails and phone calls that had previously gone unresponded to), but advised that she had no further details at that time. She further advised that the Pension Committee had sought legal advice on the matter.

59. By e-mail dated December 11, 2009, Hassenrueck advised Freedman that CanWest was redeeming a portion of the assets in the Account. She asked whether Freedman had any comments or questions regarding the redemption.

60. Freedman responded by noting that, in accordance with the IMA, redemptions were to take place at net asset value, as opposed to market value, i.e., net of management and performance fees. Freedman noted that the issue of the outstanding performance fees – and the appropriate performance fee hurdle for the performance year that had begun July 1, 2009 (which the Account was now 5½ months into) had been issues GS+A had been seeking to resolve for some time. He concluded that "I expect a holdback will be a reasonable way to approach things."

61. Hassenrueck's response rejected this approach, and insisted that the full amount be redeemed.

62. Over GS+A's objections, CanWest instructed its Custodian, RBC Dexia, to redeem the full amount requested, without regard to the fees owing to GS+A, contrary to section A(5) of the IMA.

CanWest Purports to Terminate the IMA

63. On or about December 22, 2009, GS+A received from CanWest a cheque for \$34,939.97 in respect of GS+A's outstanding invoice for management fees for the period July 1, 2009 to September 30, 2009.

64. The very next day - December 23, 2009 - CanWest wrote to GS+A and:

- (a) took the position that GS+A was not entitled to the performance fees on the basis that it had breached its fiduciary duty to CanWest and its pension plan members;
- (b) demanded reimbursement of all fees earned since the Account first included non-income trust securities;
- (c) purported to terminate the IMA "effective immediately", despite the clear language of the agreement requiring 30 days notice;
- (d) advised GS+A that it had issued a "stop payment" on the cheque for management fees for the period July 1 to September 30, 2009 (which GS+A had received the day before); and
- (e) demanded that GS+A redeem all of the assets in the Account on or before January 4, 2010 (a period which included only 3½ trading days).

65. GS+A denies that adding non-income trust securities to the Account amounted to a breach of fiduciary duty, or entitled CanWest to terminate the IMA other than on 30 days notice. At all times CanWest was well aware of the changes made to the Account, as outlined

above, and raised no concern or objections to those changes. Indeed, the members of the pension Plans benefitted significantly from the management of the Account by GS+A throughout.

GS+A's Claim

66. At all times GS+A acted in good faith, in the best interests of the pension Plan members, and managed the Account prudently, effectively, and in accordance with the agreed upon objective for the Account.

67. As outlined above, GS+A is owed the sum of \$849,648.51 for management and performance fees owing in connection with its management of the Account under the terms of the IMA. In the alternative, if such fees are not owing under the IMA, GS+A is entitled to be compensated appropriately, and in the same amount, for its efforts on a quantum meruit basis, as its services throughout have benefited the members of CanWest's pension Plans.

68. In accordance with the terms of the IMA, the management and performance fees due to GS+A are payable from the Account or such other Plan assets into which the Account has been converted.

69. GS+A states that CanWest is attempting, in bad faith, to take advantage of an innocent and inconsequential discrepancy between the language of the IMA document and the intent of the parties as evidenced by their conduct throughout to avoid its contractual obligations.

70. This Statement of Claim may be served on the defendants outside Ontario without Court order, as the proceeding concerns damages sustained in Ontario arising from a breach of contract. GS+A relies upon the provisions of Rule 17.02(h).

71. GS+A proposes that this action be tried in Toronto.

January 20, 2010

Wardle Daley Bernstein LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Peter C. Wardle LSUC#: 26412D
Daniel Bernstein LSUC#: 44874D
Helen A. Daley LSUC#: 26867F
Tel: (416) 351-2771/2775/2772
Fax: (416) 351-9196

Lawyers for the Plaintiff

SCHEDULE I

Global Communications Limited Master Trust*

National Post Retirement Plan

Retirement Plan for Bargaining Unit Employees of CanWest Television Inc.
Retirement Plan for Management and Non Bargaining Unit Employees of CanWest Television Inc.

Global Communications Limited Employees Pension Fund

CanWest Maritime Television Employees Pension Fund (Global Atlantic)

* As at March 1, 2006 the following pension plans participated in the Global Communications Limited Master Trust:

Global Communications Limited Retirement Plan for Former WIC Allarcom Employees

Global Communications Limited Retirement Plan for BCTV Senior Management

Global Communications Limited Retirement Plan for BCTV Staff

Global Communications Limited Retirement Plan for CHBC Executives

Global Communications Limited Retirement Plan for CHBC Management

Global Communications Limited Retirement Plan for CHBC Staff

Global Communications Limited Retirement Plan for Former WIC Designated Executives

Global Communications Limited Retirement Plan for CH Employees

Global Communications Limited Retirement Plan for CICT and CISA Employees

SCHEDULE II

- CanWest Publications Inc. Retirement Plan
- CanWest Pension Plan for Vancouver Island Employees (defined benefit component)
- CanWest Windsor Star Group Inc. Pension Plan

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

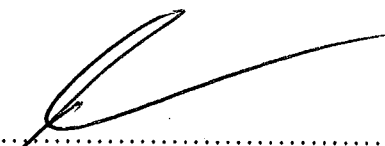
STATEMENT OF CLAIM

Wardle Daley Bernstein LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Peter C. Wardle LSUC#: 26412D
Daniel Bernstein LSUC#: 44874D
Helen A. Daley LUSC#: 26867F
Tel: (416) 351-2771/2775/2772
Fax: (416) 351-9196

Lawyers for the Plaintiff

This is *Exhibit "K"* referred to in the
affidavit of **Jeremy Freedman** sworn
before me, this 11th day of April, 2010.



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

Daniel Bernstein

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

Toronto
Montréal
Calgary
Ottawa
New York

January 28, 2010

Marc S. Wasserman
Direct Dial: 416.862.4908
MWasserman@osler.com
Our Matter Number: 1117119

Sent By Electronic Mail

Ms Helen A. Daley
Wardle Daley Bernstein LLP
Suite 2104
401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Dear Ms Daley:

Re: Gluskin Sheff + Associates Inc. v. Canwest Media Inc. ("CMI") and Canwest Publishing Inc. ("CPI")

As you know, we are counsel to Canwest Global Communications Corp., CMI and certain other related entities (the "CMI Entities") and to CPI and certain related entities (the "LP Entities"). The LP Entities were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") by an order dated January 8, 2010 (the "LP Initial Order"). The CMI Entities were granted protection under the CCAA by an order dated October 6, 2009 (the "CMI Initial Order"). Both the CMI Initial Order and the LP Initial Order (collectively, the "Initial Orders") provide for a stay of proceedings.

By letter dated January 22, 2010 you provided us with a copy of a Statement of Claim issued by your client against CMI and CPI. You asked that we provide our clients' position. We understand that the Statement of Claim was served on CMI and CPI yesterday.

Your client is apparently of the view that the stay does not prevent them from commencing a proceeding against either CMI or CPI. We disagree with that view. Your client had a contract with certain of the CMI Entities and LP Entities. It alleges that contract was breached, and it has sued CMI and CPI for damages. This claim is clearly stayed under the Initial Orders, in particular because it is a claim "against or in respect of" the LP Entities and the CMI Entities pursuant to the terms of the Initial Orders.

The issuance and service of the Statement of Claim against our clients is in clear violation of the Initial Orders. Service of the Statement of Claim was not valid and any attempt to take further steps in the proceeding are also not valid. To be clear, it is our position that time periods under the *Rules of Civil Procedure* have not commenced because the Statement of Claim was invalidly issued and served in violation of the Initial

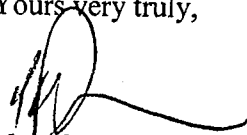
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Orders. If your client discontinues the proceeding forthwith, our clients will not seek costs of the discontinuance.

If your client wishes to pursue the matter, appropriate recourse from the court supervising the CCAA proceedings will need to be sought on notice to the service lists. If your client intends to pursue such a motion, we suggest that you contact the Monitor (FTI) or its counsel (Stikeman Elliot). If your client does bring any such motion, we will vigorously oppose it in the CCAA proceedings and will be seeking our clients' costs in such proceeding.

As always, we remain available to discuss this matter further.

Yours very truly,



Marc S. Wasserman
MSW:krs

- c: R. Richard, *Canwest*
- T. Klinck, *Hicks Morley*
- T. Sandler, *Osler*
- D. Mackenzie, *Stikeman*
- P. Bishop and J. Rosenberg, *FTI*

GLUSKIN SHEFF + ASSOCIATES INC.
(Moving Party)

CANWEST MEDIA INC. et al
(Responding Parties)

Court File No. CV-09-8396-00CL
Court File No. CV-10-8533-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

MOTION RECORD OF THE MOVING PARTY
(RETURNABLE: JUNE 16, 2010)

Wardle Daley Bernstein LLP
2104-401 Bay Street
P.O. Box 21
Toronto ON M5H 2Y4

Helen A. Daley LSUC#: 26867F
Tel: (416) 351-2772

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Tel: (416) 351-2772/2775

Fax: (416) 351-9196
Lawyers for the Moving Party