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IN THE MATTER 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 LIGHTSTREAM RESOURCES LTD, 1863359 ALBERTA LTD, LTS RESOURCES PARTNERSHIP, 1863360 ALBERTA LTD AND BAKKEN RESOURCES PARTNERSHIP

DOCUMENT

BENCH BRIEF OF MUDRICK CAPITAL MANAGEMENT, FRONTFOUR CAPITAL CORP, AND FRONTFOUR CAPITAL GROUP LLC

HEARING

November 15 and 16, 2016

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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I. INTRODUCTION

1. This Bench Brief is submitted on behalf of Mudrick Capital Management, FrontFour Capital Corp., and FrontFour Capital Group LLC (collectively, the "**Oppression Claimants**") in response to the bench briefs filed by Lightstream Resources Ltd. ("**Lightstream**" or the "**Company**") and Apollo Management, L.P. and GSO Capital Partners ("**Apollo/GSO**").

2. The Oppression Claimants' case is – and has always been – an *oppression case* and the remedy sought is with respect to their claim to secured status.

3. Prior to July 2015, Lightstream had one class of unsecured noteholders each of whom ranked equally as creditors of Lightstream (the "**Unsecured Noteholders**"). Those Unsecured Noteholders held $800 million unsecured notes (the "**Unsecured Notes**") which ranked in second position behind the secured bank debt. At the behest of Apollo/GSO, and at a time when it had no need for a transaction, Lightstream entered into a transaction whereby it redeemed Apollo/GSO's Unsecured Notes, and, in exchange for that and other consideration, issued secured notes (the "**Secured Notes**") which immediately ranked ahead of the remaining Unsecured Notes (the "**Exchange Transaction**"). Lightstream did not offer the Exchange Transaction to the remaining Unsecured Noteholders when it knew that the effect of this transaction would be to devalue the Unsecured Notes, refused to allow the Oppression Claimants to participate in the Exchange Transaction, and only offered a limited follow-on exchange transaction on substantially inferior terms.

4. The Exchange Transaction was entered into despite Lightstream's assurances to the market and the Oppression Claimants that it had no need for additional liquidity and despite specific representations to the Oppression Claimants that if it entered into an exchange transaction it would offer that transaction equally to all bondholders.

5. The Oppression Claimants from the outset have sought remedies under the *Alberta Business Corporations Act*[1] (the "***ABCA")*** which would require Lightstream to extend the Exchange Transaction to the Oppression Claimants or provide an equivalent remedy which would allow the Oppression Claimants to exchange their notes for secured notes on the same terms and conditions as the Exchange Transaction.

6. The purpose of this hearing (the "**Threshold Motion**") was determined at the hearing on October 11, 2016 (the "**Comeback Hearing**") and requires the court to answer two questions:

[1] *Business Corporations Act*, RSA 2000, c B-9.

(a) Does this Court have the jurisdiction to grant the relief sought by the Oppression Claimants; and

(b) If so, and accepting the case of the Oppression Claimants as set forth by them, would the Court grant the relief sought.[2]

7. Despite the clearly articulated scope of the Threshold Motion, Lightstream and Apollo/GSO have:

(a) Not accepted the Oppression Claimants' case and instead dispute the facts and conclusions that the Oppression Claimants have put forward as their case;

(b) Filed a record containing additional facts and documents which they use to argue the merits of the case, when the Oppression Claimants do not accept the facts contained or the conclusions drawn from them;

(c) Consistently mischaracterized the Oppression Claimants' claims variously as: breach of contract, specific performance, misrepresentation, constructive trust, and equitable subordination; none of which have been claimed or are argued by the Oppression Claimants.

8. As the Oppression Claimants will demonstrate: (1) the Court does have jurisdiction to hear the oppression actions and grant the remedy sought in this *CCAA*[3] proceeding; and (2) and accepting the Oppression Claimants' case, the Court would exercise its discretion to grant the remedy sought.

II. FACTS

A. The Proper Scope Of The Threshold Motion

9. At the Comeback Hearing, this Court held:

> …it's entirely appropriate for this Court in this situation where we are in what somebody has called a real time litigation to say, okay, given the most favourable view of the [Oppression] [C]laimants here and their claim of oppression, is this the kind of a case where the Court would exercise its jurisdiction, if it has jurisdiction. I think it's entirely appropriate and so I'm directing that that be done.[4] [emphasis added]

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[2] Transcript from the Hearing before Justice McLeod, dated October 11 2016 (the "Come-Back Hearing Transcript"), p. 84, ll. 23-26.
[3] *Companies' Creditors Arrangement Act,* RSC 1985, c C-36 ("*CCAA*").
[4] Come-Back Hearing, Transcript, p. 84, ll. 23-26.

10. The Oppression Claimants disagree with Lightstream and Apollo/GSO's formulation of the second threshold issue which refers to the court "mak[ing] an order…varying the secured notes transaction."[5] The remedy sought by the Oppression Claimants does not require variation of the existing Exchange Transaction; rather, the Oppression Claimants ask that Lightstream be required to issue secured notes to them on the same terms and conditions as those in the Exchange Transaction (including the additional consideration to Lightstream).[6]

11. The Court ordered that the Threshold Motion take place prior to the final bid deadline, and provided additional dates for the trial of an issue to hear the Oppression Actions on their merits if the Oppression Claimants are successful on this motion.

B. The Oppression Claimants' Case

12. The facts and conclusions that constitute the Oppression Claimants' case, are set out in the paragraphs following and are supported in the material contained in the Oppression Claimants' Motion Record (the "**Record**"). Below, the Oppression Claimants first set out a chronology of facts that they rely upon distinguishing between the conduct of Lightstream vis-à-vis the Oppression Claimants and the public, and the conduct of Lightstream vis-à-vis Apollo/GSO; and second, list additional facts that form part of the Oppression Claimants' case.

[5] Brief of Argument of Lightstream Resources Ltd, 186339 Alberta Ltd, and 1863360 Alberta Ltd ("Lightstream Bench Brief"), at paras 2(a) and (b)

[6] Statement of Claim of Mudrick Capital Management, LP, Oppression Claimants' Record ("Record") Tab 1, pp. 9; Statement of Claim of Frontfour Capital Corp and FrontFour Captial Group LLC, Record Tab 2, pp. 18; Affidavit of David Kirsch, sworn September 23, 2016 ("Kirsch 2016 Affidavit"), Record Tab 3, pp. 29; Will-Say Statement of David Kirsch, dated October 21, 2016, Record Tab 4, pp. 220; Will-Say Statement of Stephen Loukas, dated October 21, 2016, Record Tab 5, pp. 223.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
January 30 2012	Lightstream issues $900 million of 8.625% Senior Notes due 2020 issued pursuant to an indenture by and among PetroBakken (now Lightstream) as Issuer, PetroBakken Capital Ltd and PBN Partnership as Guarantors, US Bank National Association as Trustee, and Computershare Trust Company of Canada as Canadian Trustee (the "**Indenture**"). The holders of those Unsecured Notes ranked equally in their positions as creditors of Lightstream.[7]	
January 27 2014	Stephen Loukas (FrontFour) attends a dinner with Badal Pandhi (FrontFour), Peter D. Scott (Lightstream CFO) and John D. Wright (Lightstream CEO). They discussed Lightstream's business strategy, the Canadian oil and gas market generally, and Lighstream's balance sheet at that time.[8]	
January 2015		Credit Suisse prepares a PowerPoint Presentation titled "Debt Exchange Alternatives". The Presentation states that (1) the Company had meaningful 2nd lien debt capacity;[9] (2) the transaction would be a tender offer;[10] and (3) the "layering of existing Notes hurts recover on Notes not exchanged or tendered"[11]
January 15 2015	David Kirsch emails Lightstream's Investor Relations department to inquire about setting up a conference call.[12]	

[7] Kirsch 2016 Affidavit, Exhibit A: Unsecured Notes Indenture dated January 30, 2012, Record Tab 3A, pp. 34.
[8] Affidavit of Stephen Loukas, sworn June 28 2016, ("Loukas Affidavit"), at para. 11, Record Tab 7, pp. 368.
[9] Prod No. L000644 – Credit Suisse Presentation dated January 2015, Record Tab 10, Slide 1, pp. 442
[10] Prod No. L000644 – Credit Suisse Presentation dated January 2015, Record Tab 10, Slide 3, pp. 444; and Slide 4, p. 445. ,
[11] Prod No. L000644 – Credit Suisse Presentation dated January 2015, Record Tab 10, Slide 5, p. 446.
[12] Affidavit of David Kirsch, sworn July 29, 2015 ("Kirsch 2015 Affidavit"), at para. 11, Record Tab 6, Kirsch Affidavit, Exhibit A, Record Tab 6A, pp. 228.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
January 21 2016	Mr. Kirsch, Mr. Wright, and Mr. Scott hold a conference call. Mr. Wright and Mr. Scott explain that Lightstream could obtain CDN$1.5 billion in total secured debt, and that they expected Lightstream to be cash flow positive. Mr. Wright and Mr. Scott further state that since liquidity was not an issue, Lightstream did not need to, nor did it intend to, restructure its debt.[13]	
January 22 2015	Mudrick makes its first purchase of Unsecured Notes at USD$14,500,000.	
February 2 2015	FrontFour makes its first purchase of Unsecured Notes at USD$1,182,913.	
February 3 2015		Mr. Scott prepares notes titled "Debt Considerations 2015". In this document he discusses a number of transaction alternatives including an exchange transaction involving the Unsecured Notes. In respect of this latter possibility, on page 3, he comments "might require to be a tender for fairness to all note holders".[14]
February 11, 2015	Mr. Loukas, Mr. Pandhi (one of FrontFour's analysts), Mr. Scott, and Mr. Wright hold a conference call. They discuss Lightstream's forward-looking strategy, generally. Mr. Loukas raises concern with respect to Lightstream's working relationship with Apollo and concern that Apollo would try to convince Lightstream to exchange their Unsecured Notes into bonds that were structurally senior to the existing Unsecured Notes.	

[13] Kirsch 2015 Affidavit, paras. 11-12, Record Tab 6, pp. 228.
[14] Excerpt from the Examination of Peter Scott, p. 33, line 20 – p.34, l. 12, Record Tab 11, pp. 453-455; Prod No. L000680 – Peter Scott's Notes dated February 3, 2015 (MNPI), Record Tab 11, pp. 458.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	Mr. Scott states that no transaction was contemplated at that time and.that Lightstream had ample liquidity.[15]	
February 18 2015	Mr. Kirsch and various members of the Mudrick team travel to Calgary to meet with Mr. Wright and Mr. Scott. They discuss Lightstream's financial situation. Mr. Kirsch asks whether Mr. Wright and Mr. Scott foresaw any possibility that Lightstream would be left without sufficient liquidity if oil prices remained the same and did not increase. Mr. Scott and Mr. Wright state that Lightstream has sufficient liquidity.[16]	
Early March 2015		Apollo/GSO approach Lightstream about a possible exchange transaction.
March 13 2015	FrontFour invites Mr. Wright and Mr. Scott to their offices for a meeting with Mr. Pandhi and David Lorber (FrontFour). Mr. Loukas and Mr. George attend by teleconference. They discuss Lightstream generally and also discuss Lighstream's liquidity. Mr. Loukas again asks about Lightstream's relationship with Apollo and reiterate that if Lightstream was going to pursue some type of debt exchange, they should do so by making an offer to all of the Unsecured Noteholders. In response, Mr. Wright advised (among other things) that Lightstream has ample liquidity, that there is no contemplated debt exchange, and that if Lightstream were to enter into an exchange they would offer it to all of the Unsecured Noteholders.[17]	

[15] Loukas Affidavit, at para. 11, Record Tab 7, pp. 368; Affidavit of Badal Pandhi, sworn October 21 2016 ("Pandhi Affidavit") at para. 8, Record Tab 8, pp. 431; Affidavit of David Lorber, sworn October 21, 2016 ("Lorber Affidavit") paras. 7-10, Record Tab 9, pp. 437-438.
[16] Kirsch 2015 Affidavit, at para. 49, Record Tab 6, pp. 229.
[17] Loukas Affidavit, at para. 11, Record Tab 7, pp. 369; Pandhi Affidavit paras. 9-10, Record Tab 8, pp. 431-432; Lorber Affidavit paras. 7-8, Record Tab 9, pp. 437-439.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	After the meeting, Mr. Wright states to Mr. Lorber and Mr. Pandhi that Lightstream was not contemplating a debt restructuring and that if they did enter into a deal, it would be offered to all bondholders.[18]	
Early May 2015		Lightstream decides to retain a financial advisor for the Exchange Transaction.
May 9 2015		Apollo emails Lightstream a term sheet proposal containing the proposed terms for the Secured Note Transaction.[19]
May 12 2015	Unsecured Notes trade for 79.000.[20]	
May 14 2015	Lightstream holds its 2015 Annual General Meeting (the "**AGM**") and posts a webcast of the meeting on its website. Mr. Wright, Mr. Scott, Ms. LaPrade, and Ms. Belecki are in attendance along with Kenneth McKinnon as Chairman. Lightstream's representatives are asked whether it has capacity to layer secured debt on top of the Unsecured Notes. Mr. Scott responds by stating that it would be possible to include second lien capacity. However, although this would add additional liquidity: "...it would be at a much higher cost than what we would see within our banking facility, and so at this point, I'm not enamoured about adding on a bunch of high cost debt just to add liquidity that we don't see using, but there is the potential to do, you know, a material amount	

[18] Pandhi Affidavit at para. 11, Record Tab 8, pp. 432; Lorber Affidavit at para. 9, Record Tab 9, pp. 438.
[19] Excerpt from the Examination of Peter Scott, Record Tab 12, pp. 460-463; Term Sheet dated May 2015 (produced in response to Undertaking No. 3 from the Examination for Discovery of Peter Scott), Record Tab 12, pp. 460-463.
[20] LTS Trading Price, Record Tab 26, pp. 995-996.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	of deals, I won't get into specific numbers, but the market is open on that standpoint."[21] [emphasis added].	
May 14 2015	Lightstream publishes its AGM PowerPoint Presentation indicating that:[22] • Slide 9: Lightstream had USD$110 million of available liquidity "for 2015 and beyond". • Slide 10: Lightstream had decreased its "overall debt position since 2012, with continuous access to an appropriate level of liquidity".	
May 14 2015	Lightstream publishes its First Quarter Results – the following comments are made:[23] "We continue to be proactive in managing our debt and, as of the date of this MD&A, are in advanced stages of negotiating the debt terms within our credit facility to avoid potential covenant issues through the downside of this commodity cycle and provide a borrowing base that offers sufficient liquidity for 2015 and beyond" "In addition to the liquidity noted above, other possible sources of funds available to Lightstream include the following: funds flow from operations; sale of producing or non-producing assets (including joint venture structures); cash generated from a sale may be reduced by any required debt repayments; further adjustments to capital program; monetization of any risk management assets; issuance of additional subordinated or convertible debt; issuance of equity. We expect to	

[21] Kirsch 2015 Affidavit, at para. 49, Record Tab 6, pp. 239.
[22] Kirsch 2015 Affidavit, at para. 49Record Tab 6, pp. 239; Kirsch 2015 Affidavit, Exhibit M, Record Tab 6M, pp. 308-309.
[23] Kirsch 2015 Affidavit, at para. 49, Record Tab 6, pp. 240; Kirsch 2015 Affidavit, Exhibit N, Record Tab 6N, pp. 320 and 337.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	satisfy ongoing working capital requirements with funds flow from operations and available credit." [emphasis added]	
Mid-May 2015	Lightstream cancels its first quarter call.[24]	
May 21 2015	Lightstream issues a press release. The following comment are made:[25] "The revised borrowing base and amendments to our covenants are expected to provide an appropriate level of liquidity to current low-price commodity environment and support an acceleration of our drilling program should oil prices increase and/or costs come down."	
May 26 2015		RBC emails Mr. Scott attaching an RBC PowerPoint Presentation, which states: "Apollo & GSO's goal will be to secure an attractive price and protective terms for their new notes, while maximizing influence across the capital structure…Primary objective is to secure their currently unsecured debt and curtail secured leverage in priority to or pari with their position"[26]
May 27 2015	Mr. Kirsch calls Mr. Scott. Mr. Scott states that he feels "very comfortable" with Lightstream's liquidity. Mr. Kirsch asks whether Lightstream is contemplating a transaction involving the issuance of secured or "second lien" notes in exchange for the existing Unsecured Notes. Mr. Scott explains that this type of deal is unlikely.[27]	

[24] Kirsch 2015 Affidavit, at para. 51, Record Tab 6, pp. 241.
[25] Kirsch 2015 Affidavit, at para. 49, Record Tab 6, pp. 240; Kirsch 2015 Affidavit, Exhibit O, Record Tab 6O, pp. 362.
[26] Prod No. L001713 – May 26, 2015 email exchange between RBC and Lightstream Record Tab 13, pp. 465-466; Prod No. L001715R (unredacted) – RBC PowerPoint Presentation dated May 26, 2015, Record Tab 13, pp. 470.
[27] Kirsch 2015 Affidavit, at para. 20, Record Tab 6, pp. 231.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
June 2, 2015		Mr. Scott and Mr. Wright exchange emails discussing a call with Apollo and GSO regarding the structure of the Transaction and preparation of updated term sheets.[28]
June 2 2015	Mr. Loukas, Mr. Pandhi, and Mr. Wright attend a meeting in New York. They discuss Lightstream generally. Mr. Loukas again reiterates that if they are going to pursue some type of debt exchange, they should do so by making an offer to all of the Unsecured Noteholders. Mr. Wright advises that the financing offers the company had been receiving were becoming more reasonable but that there was no contemplated debt exchange, and that if Lightstream was to enter into an exchange they would offer it to all of the Unsecured Noteholders. Mr. Loukas takes notes of this meeting and writes down Mr. Wright's comments.[29]	
June 3 2015	Mr. Wright attends the Bank of America Merrill Lynch 2015 Energy and Power Leveraged Finance Conference in New York. A webcast of Mr. Wright's presentation is posted on Lightstream's website. During the presentation, he is asked whether Lightstream plans to reduce its debt by exchanging bonds. Mr. Wright responds by stating:[30] "Underneath our bond we have a significant amount of room for other secured assets and <u>our focus is not on generating liquidity or generating the ability to fund a big development program right now</u>, so we will look at rational actions with our balance sheet that either reduce headline debt or reduce or maintain the cost of capital with a better security structure. We have the advantage I guess, of some time and some patience to look at a bunch of different options. We	

[28] Excerpt from the Examination of Peter Scott, Record Tab 14, pp. 475; Prod No. L001726 –email exchange between John Wright and Peter Scott, Record Tab 14, pp. 480.
[29] Loukas Affidavit at para. 11, Record Tab. 7, pp. 369; Loukas Affidavit, Exhibit B, Record Tab 7B, pp. 383-406.
[30] Kirsch June 2016 Affidavit at para. 40, Record Tab 6, pp. 238.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	are evaluating a full range of options and I'd like to thank a number of people in the room today, I get a lot of incoming suggestions on how best to do that and manage that and we are looking at all potential variants on that, but we don't have to act in any way, there is no burning fire, no big issue or hidden cost that we have on our books that we need to address right away, so we're going to be very careful. I think you all appreciate that once you lock in, in any kind of a structure, that's the structure that you're in for the next years to come and it's important to both assess the perceived and maybe falsely perceived implications of any lock-in for the long term, so we're looking at that." [emphasis added]	
June 3 2015	Mr. Kirsch attends the Bank of America Merrill Lynch 2015 and also attends a meeting with Mr. Wright and several analysts from other funds. After the meeting he has a private conversation with Mr. Wright and asks him about the veracity of the rumours that Lightstream was going to restructure its debt. Mr. Wright explains that although Lightstream was receiving many proposals to restructure its debt, Lightstream is not interested in such proposals because their terms are not favourable for Lightstream and its stakeholders. Mr. Wright further states that if Lightstream decides to restructure its debt, an offer would be made to all of the holders of Unsecured Notes. Specifically, he states that an offer to some but not all holders of Unsecured Notes would not be attractive to Lightstream and that it would be an "un-Canadian" way of doing business.[31]	
June 4 2015		RBC emails Lightstream attaching RBC PowerPoint Presentation titled "Liquidity and Apollo Response Review".

[31] Kirsch 2015 Affidavit paras. 21-22, Record Tab 6, pp. 231.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
		The Presentation states: "Apollo/GSO motivated to lock up the capital structure on an exclusive basis."[32]
June 5 2015		Lightstream emails a marked-up term sheet to Apollo and GSO.
June 10, 2015		Lightstream emails GSO and Apollo discussing the terms for the Exchange Transaction. They discuss the fact that terms for any follow-on deals could be more favourable to Lightstream, but could not be offered on terms more favourable than those accepted by Apollo/GSO.[33]
June 10 2015	Mr. Kirsch emails Mr. Wright and Mr. Scott and thanks them for meeting him earlier that month. He further explains that since Mudrick owned a significant stake in the Unsecured Notes, they wanted to be kept apprised of any proposals that were made to Lightstream so that they could participate in any discussions Lightstream was having about an exchange or other transaction. Mr. Kirsch does not receive a response.[34]	
June 11 2015		RBC emails Lightstream attaching a PowerPoint Presentation titled: "Review of Proposed Debt Exchange Transaction". The Presentation states that "based on the modeling completed, Lightstream would have liquidity on the credit facility through 2016, but would be constrained by year end 2017, absent any asset sale or an improvement in

[32] Excerpt from the Examination of Peter Scott, Record Tab 15, pp. 485; Prod No. L000103 – email exchange between RBC and Lightstream, Record Tab 15, pp. 487; Prod No. L00104 – RBC Presentation, Record Tab 15, Slide 3, p. 490.
[33] Excerpt from the Examination of Peter Scott, Record Tab 16, pp. 505; Prod No. L001741R (unredacted) – Email between GSO, Lightstream, and Apollo, Record Tab 16, pp. 506-507.
[34] Kirsch 2015 Affidavit at para. 24, Record Tab 6, pp. 232; Kirsch 2015 Affidavit Exhibit D, Record Tab 6D, pp. 259.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
		commodity pricing;". The Presentation also states "Anticipate neutral to negative reaction for the remaining unsecured bond pricing. Market observed downward bias to remaining unsecured bond trading values post transactions of a similar nature."[35]
June 11 2015		Lightstream sends a signed Letter Agreement to Apollo/GSO attaching the final term sheet.[36]
June 29 2015	Mr. Kirsch emails Mr. Wright, following up with respect to Mr. Kirsch's June 10 email. Mr. Wright responds explaining that he and his team are not available to discuss Mudrick's inquiry until the following week. A call is scheduled for July 8, 2015.[37]	
June 30 2015	Unsecured Notes trade at 64.25.[38]	
July 2 2015	Lightstream enters into Note Purchase and Exchange Agreement with Apollo/GSO, and at the same time enters into an Indenture respecting the issuance of the Secured Notes.[39] Lightstream issues a press release announcing a transaction whereby it agreed to exchange $465 million of the Unsecured Notes for $395 million of secured second lien notes (defined previously as "**Secured**	

[35] Prod No. L001749 – June 11, 2015 email from RBC to Lightstream, Record Tab 15, pp. 483-486; Prod No. L001751 – RBC PowerPoint Presentation dated June 11, 2015, Record Tab 15, Slide 4, pp. 500 and Slide 6. pp. 502; .
[36] Excerpt from the Examination of Peter Scott, Record Tab 17, p. 515; Letter Agreement and Term Sheet dated June 11, 2015 (produced in response to Undertaking Nos. 9 and 20 from the Examination for Discovery of Peter Scott), Record Tab 17, pp. 516-524.
[37] Kirsch 2015 Affidavit, at para. 26, Record Tab 6, pp. 232; Kirsch 2015 Affidavit Exhibit E, Record Tab 6E, pp. 262-263.
[38] LTS Trading Price, Record Tab 26, pp. 995-996.
[39] Prod No. L002082R – Note Purchase and Exchange Agreement dated July 2, 2015, Record Tab 18, pp. 526-580; Prod No. L001853 – Secured Noted Indenture dated July 2, 2015, Record Tab 19, pp. 591-740.

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Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	Notes"), and issued a further $200 million of Secured Notes (previously defined as "the Exchange Transaction").[40]	
July 3, 2015	Mr. Loukas, Mr. Pandhi, Mr. Wright, and Mr. Scott hold a call. Mr. Loukas expresses frustration with the fact that Lightstream had decided to pursue a selective exchange. Mr. Loukas is told that FrontFour could not participate on the same terms as the Secured Transaction Parties. Mr. Wright acknowledges the assurances he had made during his previous meetings with FrontFour (i.e. March 13, 2015 and June 2, 2015).[41]	
July 6, 2015	Unsecured Notes trade for the first time after the announcement of the Exchange Transaction. The Unsecured Notes trade at 53.000.[42]	
July 6 2015	Mr. Kirsch phones Salim Mawani, a representative of RBC. Mr. Mawani explains that the Secured Notes Transaction is complete and that a similar offer will not be extended to the remaining holders of Unsecured Notes even though Mudrick was willing to participate on the same terms (including providing new capital).[43]	
July 6 2015	Mr. Scott, Mr. Wright and Mr. Kirsch hold a call. Mr. Wright and Mr. Scott refuse Mudrick's offer to participate in the Exchange Transaction.[44]	
July 8 2015	Mr. Mudrick, Mr. Kirsch, and Mr. Scott hold a call. Mr. Mudrick and Mr. Kirsch emphasize that the Secured Notes Transaction is oppressive and	

[40] Kirsch 2015 Affidavit, at para. 27, Record Tab 6, pp. 232; Kirsch 2015 Affidavit Exhibit F, Record Tab 6F, pp. 266-267.
[41] Loukas Affidavit, Record Tab 7, pp. 24; Pandhi Affidavit, at para. 13, Record Tab 8, pp. 433; Record Tab 9, Lorber affidavit, at paras. 7-9, pp. 437-439.
[42] LTS Trading Price, Record Tab 26, pp. 995-996.
[43] Kirsch 2015 Affidavit, at para. 31, Record Tab 6, pp. 233.
[44] Kirsch 2015 Affidavit, paras. 33-36, Record Tab 6, pp. 234.

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Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
	unfair and unsupported by the Indenture. They reiterate that the Secured Notes Transaction should be made available to all holders of Unsecured Notes and that Mudrick would participate if such an offer was made. Mr. Scott explains that in his view, the Secured Notes Transaction is not problematic and it would not be extended to other holders of Unsecured Notes.[45]	
July 9 2015	Mudrick's United States counsel, Kasowitz, Benson, Torres & Friedman LLP notify the Company that Mudrick is prepared to challenge the Exchange Transaction on a variety of legal grounds.[46]	
July 14 2015	Lightstream issues a press release announcing that it had closed a portion of the Secured Notes Transaction with the Apollo/GSO involving the issuance of an additional USD$200 million in Secured Notes for cash proceeds.[47]	
July 22 2015	Mr. Loukas holds a further call with Mr. Wright and advises that FrontFour wants to participate in the Exchange Transaction.[48]	
July 23 2015	Mr. Wright emails Mr. Loukas advising that the "point man" at RBC is Salim Mawani and that FrontFour could discuss their participation in the Transaction with Mr. Mawani. Mr. Loukas calls with Mr. Mawani and discusses pricing generally.[49]	

[45] Kirsch 2015 Affidavit, paras. 42-43, Record Tab 6, pp. 236.
[46] Kirsch 2015 Affidavit, at para. 44, Record Tab 6, pp. 237; Kirsch 2015 Affidavit, Exhibit K Record Tab 6K, pp. 292-293.
[47] Kirsch 2015 Affidavit, at para. 45, Record Tab 6, pp. 237; Kirsch 2015 Affidavit, Exhibit K Record Tab 6K, pp. 292-293.
[48] Kirsch 2015 Affidavit, at para. 46, Record Tab 6, pp. 237; Kirsch 2015 Affidavit, Exhibit L Record Tab 6L, pp. 296-297.
[49] Loukas Affidavit, at para. 11, Record Tab 7, pp. 371.

Chronology of Events		
Date	**Lightstream v. Oppression Claimants and the Public**	**Lightstream v. Apollo/GSO**
August 4 2015		Lightstream enters into follow-on transactions with three Unsecured Noteholders, on terms substantially less favourable than those offered to Apollo/GSO.[50]
August 5 2015	Lightstream releases Second Quarter Results. In it, it reiterates that it had USD$124 million of liquidity as of June 30 2015, immediately prior to the Exchange Transaction, which is greater than the USD$110 million in liquidity disclosed in May 2015.	
August 20 2015	The Unsecured Notes trade at 20.000.[51]	

[50] Excerpt from the Examination of Peter Scott, Record Tab 20, pp. 742-745; Note Purchase and Exchange Agreements dated August 4, 2015 (produced in response to Undertaking No. 1 from the Examination for Discovery of Peter Scott), Record Tab 20, pp. 746-946.
[51] LTS Trading Price, Record Tab 26, pp. 995-996.

13. In addition to the chronology of events outlined above, the Oppression Claimants' case includes the following:

(a) When each of Mudrick and FrontFour acquired the Unsecured Notes, they expected that they would be treated equally with other holders of the Unsecured Notes;[52]

(b) Lightstream was not looking for a transaction at the time that it entered into discussions with Apollo/GSO and consistently represented to the investment community that it had adequate liquidity and had no plans for a restructuring or a further transaction.[53] In May, when describing possible changes to its capital structure, Lightstream lists a number of possible initiatives – notably absent from this list was a secured notes exchange transaction;[54]

(c) Lightstream had no need for liquidity at the time it entered into the Exchange Transaction and in fact had sufficient liquidity for the short and medium term, extending into 2017;

(d) In entering into the Exchange Transaction, Lightstream acceded to the Apollo/GSO's demands for exclusivity without challenging these demands or negotiating them;

(e) Lightstream did not call Apollo/GSO's bluff on their demands for exclusivity even though it was patently obvious that all Unsecured Noteholders would have participated in the transaction, therefore allowing Apollo/GSO to participate exclusively so as not to suffer the detrimental effects that Unsecured Noteholders are now experiencing;[55]

(f) Lightstream knew that entering into a discriminatory transaction with some but not all of the Unsecured Noteholders would significantly decrease the value of the Unsecured Notes;[56]

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[52] Kirsch 2016 Affidavit, at para. 16(a), Record Tab 3, pp. 25.
[53] Kirsch 2015 Affidavit, at para. 49(a)-(f), Record Tab 6, pp. 238-240.
[54] Kirsch 2015 Affidavit, at para. 49(d)(iv), Record Tab 6, pp. 240; Kirsch 2015 Affidavit, Exhibit N, Record Tab 6N, p 337.
[55] Excerpt from the Examination of David Kirsch, Record Tab 23, p. 966.
[56] Prod No. L001749 – June 11, 2015 email from RBC to Lightstream, Record Tab 15, pp. 483-486; Prod No. L001751 – RBC PowerPoint Presentation dated June 11, 2015, Record Tab 15, Slide 4, pp. 500 and Slide 6. pp. 502.

(g) Lightstream did not investigate alternative transactions which could be offered to all Unsecured Noteholders;[57] and

(h) The Indenture governing the Unsecured Notes did not authorize a discriminatory transaction of the kind Lightstream entered into and provided protections that required pro rata treatment in the event that Lightstream did enter into an exchange transaction. Specifically, the Exchange Transaction failed to comply with the following provisions of the Indenture:[58]

(i) Section 3.04(a) requires that if less than all of the notes are to be redeemed, they must be redeemed on a pro rata basis. Since the Transaction redeemed[59] USD$465MM out of USD$800MM of unsecured notes, it was a partial redemption that required to be offered to all of the Unsecured Noteholders.

(ii) Section 4.06(a) provides that Lightstream can incur "Permitted Debt". One type of "Permitted Debt" is "Permitted Refinancing Indebtedness". The qualify, the debt must have a final maturity date or redemption date no earlier than the Unsecured Notes. The Unsecured Notes mature in 2020. The Secured Notes, however, mature in 2019. As such, the Secured Notes do not qualify as "Permitted Refinancing Indebtedness".

(iii) Section 4.06(c) provides that if Lightstream incurs subsequent debt that is subordinated to the bank debt, then the subsequent debt must also be subordinated to the Unsecured Notes. The indenture governing the Secured Notes refers to an inter-creditor agreement which subordinates the Secured Notes to the bank debt. As such, the Secured Notes ought to have been subordinated to the Unsecured Notes. Since they are not, the Transaction runs afoul of this section.

(iv) Section 9.02 requires the Unsecured Noteholders consent to any change to the Indenture. The Transaction affected the Unsecured Noteholders' rights to receive principal, premium, and interest on the Unsecured Notes.

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[57] Excerpt from the Examination of Peter Scott, Record Tab 15, p. 479; Excerpt from the Examination of David Kirsch, Record Tab 23, p. 966.
[58] Kirsch 2015 Affidavit, at para. 13, Record Tab 6, pp. 228; Kirsch 2016 Affidavit, Exhibit B, Record Tab 3B, pp. 34-162.
[59] *Black's Law Dictionary,* 10th ed, *sub verbo* "redemption": The reacquisition of a security by the issuer.

> The Transaction was a material change to the rights that the Unsecured Noteholders understood they had pursuant to the Indenture and required their consent.

III. LAW AND ARGUMENT

A. This Court Clearly Has Jurisdiction To Grant The Remedy Sought By The Oppression Claimants

14. The *CCAA* as a whole is remedial legislation designed to engage the court's supervision to ensure that the restructuring proposed for the company is fair to its various stakeholders. Section 11 of the *CCAA* grants a court broad discretion to "make any order that it considers appropriate in the circumstances".

15. In 2010, the Supreme Court of Canada was called upon to interpret the *CCAA* directly for the first time. The SCC emphasized the flexible nature of the *CCAA* and noted that the intent of the legislation is not to provide an exhaustive code to courts about what they can or cannot do:[60]

> The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA.* The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.[61] [emphasis added]

16. Furthermore, section 42 of the *CCAA* specifically contemplates that other statutes can apply in conjunction with the *CCAA*. Specifically, section 42 of the *CCAA* permits the Court to apply the *CCAA* in conjunction with "the provisions of any Act of Parliament, or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them."[62]

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[60] *Ted Leroy Trucking [Century Services] Ltd., Re,* 2010 SCC 60 ("*Century Services*"), at para 61, Oppression Claimants' Book of Authorities ("Oppression Claimants' BOA"), Tab 1.
[61] *Century Services*, Oppression Claimants' BOA, Tab 1
[62] *CCAA*, s 42.

17. In *Re Stelco*, the Ontario Court of Appeal interpreted section 42 in the context of an oppression claim when it had to determine whether the motion judge acted within his jurisdiction in removing directors of a company who had been appointed to the board during the *CCAA* restructuring. The motion judge relied on his inherent jurisdiction under the *CCAA* to justify this order. The Court stated:

> The fact that s. 11 does not itself provide the authority for a *CCAA* judge to order the removal of directors does not mean that the supervising judge is powerless to make such an order, however. Section 20 [now 42] of the *CCAA* offers a gateway to the oppression remedy and other provisions of the CBCA and similar provincial statutes.[63]
>
> ...
>
> I do not read s. 20 [now 42] as limiting the application of outside legislation to the provisions of such legislation dealing specifically with the sanctioning of compromises and arrangements between the company and its shareholders. The grammatical structure of s. 20 [now 42] mandates a broader interpretation and the oppression remedy is, therefore, available to a supervising judge in appropriate circumstances.[64] [emphasis added]

18. The Court of Appeal concluded that the discretionary powers of a judge under s. 11 of the *CCAA* could be applied together with the provisions of the CBCA, including the oppression remedy provisions of that statute.[65] Since the *ABCA* is the provincial equivalent of the *CBCA*, this interpretation of section 42 unquestionably applies in this case.

19. Section 42 therefore buttresses the court's broad discretionary power under section 11 of the *CCAA*. These sections of the *CCAA* – as well as the Act as a whole – provide the Court with the flexibility needed to ensure that *CCAA* fulfills its mandate as remedial legislation directed at ensuring fairness vis-à-vis the Company and its various stakeholders.[66]

20. Although Lightstream concedes that section 42 "may authorize resort to the oppression provisions of the *ABCA* in appropriate circumstances", it states that such a broad reading is not warranted.[67] Lightstream goes on to argue that the interpretation arrived at by the Court of Appeal in *Stelco* is not supported by the wording of section 42.[68] In fact, no court has

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[63] Oppression Claimants' BOA, Tab 2: *Stelco Inc., Re,* 75 OR (3d) 5, [2005] OJ No. 1171 at para 52.
[64] Oppression Claimants' BOA, Tab 2: *Stelco Inc., Re,* 75 OR (3d) 5, [2005] OJ No. 1171 at para 53.
[65] Oppression Claimants' BOA, Tab 2: *Stelco Inc., Re,* 75 OR (3d) 5, [2005] OJ No. 1171 at para 53.
[66] Oppression Claimants' BOA, Tab 3: *Tucker v Aero Inventory (UK) Limited*, 2011 ONSC 4223 at para 160.
[67] Lightstream Bench Brief, at para 94.
[68] Lightstream Bench Brief, at para 101.

questioned the Court of Appeal's interpretation of section 42[69] – Lightstream's position is unique in this regard.

21. Notably, however, Lightstream does rely on *Re Canada Airlines,*[70] a case which predates *Stelco*. In this case, oppression claims were made after the commencement of the *CCAA* proceeding, and the court concluded that the oppression claims had to be determined through the lens of the *CCAA*. The Court did not explicitly discuss whether it had jurisdiction to do adjudicate the oppression claim, but simply assumed that it did. The Court also recognized that the *ABCA* is remedial legislation which balances investor protection and management flexibility.[71] In this way, the *ABCA* is similar to the *CCAA* – both are remedial and both are designed to balance the needs of the Company with the rights of its stakeholders.

22. The *CCAA*, and the case law interpreting it, clearly provide the court with jurisdiction to grant the oppression remedy sought.

23. Finally, subsection 242(3)(e) of the *ABCA* clearly encompasses the remedy sought in this proceeding. This section provides that the court "may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following…an order directing an issue or exchange of securities."

B. The Oppression Claimants' Case Would Result In The Court Exercising Its Discretion To Grant The Remedy Sought

24. In *BCE*, the Supreme Court of Canada established a two-part framework for oppression claims. First, the court must assess whether the Company's actions contravened the reasonable expectations of the stakeholders involved. Second, the court must consider whether the Company's conduct in doing so amounts to oppression, unfair prejudice, or unfair disregard.[72] Notably, the bench briefs from Lightstream and Apollo/GSO are silent with respect to this framework.

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[69] Oppression Claimants' BOA, Tab 3: *Tucker v Aero Inventory (UK) Limited*, 2011 ONSC 4223 at paras. 159-160; Oppression Claimants' BOA, Tab 4: *Beatrice Foods Inc., Re*, 1996 CarswellOnt 5598; Oppression Claimants' BOA, Tab 5: *Landdrill International Inc., Re*, 2012 NBQB 355 at para 13.
[70] Oppression Claimants' BOA, Tab 6: *Re Canadian Airlines Corporation,* 2000 ABQB 442.
[71] Oppression Claimants' BOA, Tab 6: *Re Canadian Airlines Corporation,* 2000 ABQB 442 at para. 140.
[72] Oppression Claimants' BOA, Tab 7: *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at para 56.

25. The Supreme Court of Canada is clear that the oppression inquiry is fact-specific and requires the court to determine what is just based on a determination of the reasonable expectations of the stakeholders and the conduct of the Company.[73]

26. In particular, in *BCE*, the SCC stated that the oppression inquiry encompasses "the duty of the directors to act in the best interests of the corporation [which] comprehends a duty to treat individual stakeholders affected by corporate actions equitably and fairly."[74]

27. Subsequent cases have found that where stakeholders are not treated equally, that may support a finding of oppression. For example in *Alharayeri*,[75] the claimant argued that a private placement of the company diluted his common shares. The court considered a variety of factors to determine whether the transaction was oppressive and concluded that the key factors were the purpose of the transaction *and* the fact that the transaction was offered to all bondholders.[76] The trial court emphasized that the private placement was open to all shareholders, and was required for the company's survival – therefore it was not oppressive.[77] This is the exact opposite of the situation that the Oppression Claimants find themselves in.

28. Similarly, in *Paul v. 1433925 Ontario Limited*,[78] the court found oppression where a share offering was used to squeeze out a minority shareholder. Although the court emphasized the improper purpose of the transaction, a key element was the differential treatment of the shareholder.[79]

1. Reasonable Expectations

29. The Supreme Court set out seven factors that guide a court in determining what the reasonable expectations of the stakeholders are and whether they have been breached.[80] The Oppression Claimants' case satisfies the framework put forward in BCE and would result in a finding of oppression:

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[73] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at paras 58-59, and 71, Oppression Claimants' BOA, Tab 7.
[74] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at paras 58-59, Oppression Claimants' BOA, Tab 7.
[75] 2014 QCCS 180, ("*Alharayeri")*, Oppression Claimants' BOA, Tab 8.
[76] *Alharayeri,* at para 122, Oppression Claimants' BOA, Tab 8.
[77] *Alharayeri v Black,* 2014 QCCS 180 at para. 141, Oppression Claimants' BOA, Tab 8; on appeal, the court noted that this finding was not appealed and summarized the judges' findings with approval (see: *Black v Alharayeri,* 2015 QCCA 1350, Oppression Claimants' BOA Tab 9.
[78] 2013 ONSC 7002, ("*Paul*") Oppression Claimants' BOA, Tab 10.
[79] *Paul,* at paras 122-126, Oppression Claimants' BOA, Tab 10.
[80] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at paras 72-82, Oppression Claimants' BOA, Tab 7.

a) *Commercial Practice*: A departure from normal business practices that undermines or frustrates the complainant's exercise of his legal rights will generally give rise to a remedy.[81] There are no facts demonstrating that exchanges which divide a group of bondholders, otherwise equal as creditors of the company, are the "norm" in the industry in Canada. In fact, Mudrick from its prior experience understood that it could not proceed with a similar transaction unless the transaction was offered to all bondholders.[82]

b) *Nature of the Corporation*: Courts tend to be more lenient towards smaller companies than publicly held corporations. In this case, Lightstream is a sophisticated, publicly held corporation that made public representations at least nine times that it had sufficient liquidity and was not contemplating the transaction that the Company ultimately entered into. Further, at the time of the Exchange Transaction, Lightstream viewed itself as having sufficient liquidity in short and medium term and had no need for a transaction, and made such statements publicly and privately.[83]

c) *Relationships & Preventative Steps*: The Oppression Claimants consistently and frequently communicated with the Company to check on its liquidity position and whether it was contemplating any transactions that they wished to, or were entitled to, be involved in. During discussions with the Company, Mudrick and FrontFour emphasized that they wanted to participate in any transaction that the Company was contemplating, and specifically any exchange transaction. They were continuously assured that Lightstream was not looking to add liquidity, but that if Lightstream were to do a deal, they would offer it to all the bondholders.

d) *Past Practice*: There is no evidence that Lightstream was involved in a similar Transaction in the past – that is, a Transaction whereby certain of the bonds were elevated and became structurally senior to the remaining unsecured bonds. In fact, as mentioned above, the evidence demonstrates that such Transactions were *not* the norm because they were understood to contravene Canadian law.[84]

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[81] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at para 73, Oppression Claimants' BOA, Tab 7.
[82] Excerpt from the Examination of David Kirsch, Tab 22, pp. 954-959; Excerpt from Answers to Undertakings of David Kirsch, Record Tab 24, p. 974.
[83] Kirsch 2015 Affidavit, paras.14, 17, 49 Record Tab 6, pp. 229, 235, 238; Kirsch 2015 Affidavit, Exhibit N, Record Tab 6N, pp.320.
[84] In fact notwithstanding the absence of an oppression remedy in the United States, discriminatory transactions similar to this have been held to offend applicable US law: see *Marblegate Asset Management v Education Management Corp*., 75 F Supp (3d) 592 (2014), Oppression Claimants' BOA, Tab 11 and

e) *Representations:* Lightstream publicly stated that it had no need for liquidity and that it was not interested in a transaction that would increase interest rates and load on extra debt.[85] In direct communications with Mudrick and Lightstream, Lightstream reiterated that it had ample liquidity, that it was not contemplating a transaction which would exchange Unsecured Notes for bonds that were structurally senior, and that if such a transaction was contemplated, it would be offered to all bondholders. Contrary to these statements, as of June 2/3, 2015, Lightstream had:

   (i) already entered into a confidentiality agreement with Apollo/GSO,

   (ii) received a term sheet from Apollo/GSO,

   (iii) marked it up,

   (iv) received a further response from Apollo/GSO,

   (v) received advice from RBC Capital Markets respecting the proposed transaction; and

   (vi) continued negotiations to finalize a term sheet, which created room for certain follow-on exchanges but only in the total amount of USD$54.75 million[86] and only on terms less favourable than those which had been offered to Apollo/GSO.

f) *Agreements*: The Indenture did not authorize the Company to engage in discriminatory transaction whereby certain of the bondholders were structurally elevated in status while the rest remained unsecured and watched the value of their notes plummet. In fact, as summarized above, the Indenture contained various provisions to protect the Unsecured Noteholders from debt initiatives pursued by the Company, which the Exchange Transaction breached.

g) *Fair Resolution of Conflicting Interests*: Lightstream did not fairly resolve, or consider, the interests of the Unsecured Noteholders. Lightstream never took the position that a tender to all bondholders was a "hot button" issue and that they would not go through

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MeehanCombs Global Credit Opportunities Funds v Caesars Entertainment Corp., 80 F Supp (3d) 507 (2015), Oppression Claimants' BOA, Tab 12.

[85] Kirsch 2015 Affidavit, para. 49, Record Tab 6, pp. 239.

[86] Excerpt from the Examination of Peter Scott, Record Tab 17, pp. 524.

with the deal.[87] Lightstream also never "shopped the deal" or looked for alternative ways to structure the Transaction.[88] Instead, Lightstream acceded without complaint to Apollo/GSO's demand for exclusivity even though it did not need to enter into the transaction and made no effort to obtain advice with respect to alternative transactions. Lightstream was clearly aware that the value of the Unsecured Notes would drop as a result of the Exchange Transaction[89] and took advantage of this by offering follow-on exchanges at less favourable terms than had been offered to Apollo/GSO.[90] Lightstream, quite simply, did *nothing* to address the interests of the Unsecured Noteholders even though it knew that fairness *did* require a tender to all Unsecured Noteholders. Lightstream, quite simply, catered to a select contingent of its Unsecured Noteholders whose only desire was to exert more capital control over the Company. This is completely antithetical to Lightstream's duty to treat all stakeholders "equitably and fairly".[91]

2. The Conduct Complained Of is Oppressive, Unfairly Prejudicial, and Unfairly Disregards the Interests of the Oppression Claimants

30. Section 243 of the *ABCA* prohibits conduct that is "oppressive, unfairly prejudicial or that unfairly disregards the interests of any security holder…". The words "oppressive", "unfairly prejudicial" and "unfair disregard" cover a spectrum of inappropriate activity. Behaviour which falls within any one of these three categories is sufficient to cause the Court to "make an order to rectify the matters complained of".

31. The Oppression Claimants' case demonstrates that Lightstream's conduct satisfies most, if not all, three types of behavior. Lightstream entered into the Exchange Transaction, knowing that it was patently unfair, completely unnecessary, and would depress the value of the Unsecured Notes.

32. The Unsecured Noteholders suffer not only because of the decline in the value of the Unsecured Notes, but also because of their loss of position in the priority pecking-order and the loss of rights that would have accrued to them as secured noteholders. These *CCAA* proceedings shine a spotlight on the severity of these consequences – the Unsecured

[87] Excerpt from the Examination of Peter Scott, Record Tab, 14, p. 477.
[88] Excerpt from the Examination of Peter Scott, Record Tab, 14, p. 479.
[89] Prod No. L001749 – June 11, 2015 email from RBC to Lightstream, Record Tab 15, pp. 483-486; Prod No. L001751 – RBC PowerPoint Presentation dated June 11, 2015, Record Tab 15, Slide 4, pp. 500 and Slide 6. pp. 502; .
[90] Prod No. L001741R (unredacted) – Email between GSO, Lightstream, and Apollo, Record Tab 16, pp. 506-507.
[91] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at para 82, Oppression Claimants' BOA, Tab 7.

Noteholders are said to be out of the money and are denied the opportunity to be part of the credit bid as secured noteholders; which would not have been the case had the Exchange Transaction been properly entered into and offered to all Unsecure Noteholders.

33. Furthermore, the business judgment rule would not save the Company from a finding of oppression. In *BCE*, the court explained that the business judgment rule accords deference to a business decision, *so long as it lies within a range of reasonable alternatives*." [emphasis added].[92] Although the court does afford deference to the company and will not subject decisions to microscopic examination, the company is not immune from court review. This is particularly so where the decision is not exercised in good faith, not within the range of reasonable alternatives, and was not arrived at with scrupulous deliberation and demonstrated diligence.

34. An Alberta case, *Carlson Family Trust v MPL Communications Inc*.[93] has also commented on the existence of the business judgment rule. The court stated:

> The business judgment rule protects Boards and directors from those that might second-guess their decisions…However, directors are only protected to the extent that their actions actually evidence their business judgment. *The principle of deference presupposes that directors are scrupulous in their deliberations and demonstrate diligence in arriving at decisions.* Courts are entitled to consider the content of their decision and the extent of the information on which it was based and to measure this against the facts as they existed at the time the impugned decision was made. *Although Board decisions are not subject to microscopic examination with the perfect vision of hindsight, they are subject to examination.*[94]

35. The Oppression Claimants' case demonstrates that Lightstream was not "scrupulous in its deliberations" and did not "demonstrate diligence at arriving in its decisions". Lightstream could have – and should have – recognized Apollo/GSO's position as a negotiation tactic to ensure that they received the best deal.[95] Instead, Lightstream acted blindly on Apollo/GSO's threats that they would only participate if the deal was exclusive, without calling their bluff or investigating alternatives and did so to the detriment of the remaining Unsecured Noteholders.

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[92] *BCE Inc. v 1976 Debentureholders,* 2008 SCC 69 at para. 40; Oppression Claimants' BOA, Tab 7. See also *Alberta (Securities Commission) v Workum,* 2010 ABCA 405*,* Oppression Claimants' BOA, Tab 13.
[93] *Carlson Family Trust v MPL Communications Inc.*, 2009 ABQB 77 ("*Carlson*"), Oppression Claimants' BOA, Tab 14.
[94] *Carlson* at para. 17, Oppression Claimants' BOA, Tab 14.
[95] Excerpt from the Examination of Peter Scott, Record Tab 15, pp. 485; Prod No. L000103 – email exchange between RBC and Lightstream, Record Tab 15, pp. 487; Prod No. L00104 – RBC Presentation, Record Tab 15, Slide 3, p. 490.

3. The Remedy Sought Is Appropriate

36. As set out above, the *ABCA* explicitly authorizes the remedy sought in this case. In crafting a remedy to rectify the oppressive conduct, the court must determine what would adequately protect the claimants. The court must try to put the claimant "back into the position he was in prior to the wrongful and oppressive actions of the [Company]".[96]

37. Any remedy must rectify the oppressive conduct.[97] In this case, a damages award does not rectify the oppressive conduct because it does not address the loss the Oppression Claimants have suffered. This loss is not simply the depreciation of the Unsecured Notes, but extends to the loss of the opportunity to participate in the Exchange Transaction and to acquire secured status and all of the rights and remedies that accompany that status. Indeed, Apollo/GSO have already used their improperly gotten secured notes to exert outsized leverage and influence over Lightstream. Requiring Lightstream to issue securities on the same terms as those offered to Apollo/GSO creates the transaction that the Company should have entered into in the first place (i.e. one that was offered to all bondholders).

38. Restricting the Oppression Claimants to a damages claim in this case is doubly inappropriate given these *CCAA* proceedings. The Company has represented that currently it will not have enough money to satisfy the Unsecured Notes, let alone pay a separate damages award for the oppressive conduct. A damages award in this case is an empty remedy that does nothing to rectify the oppressive conduct.

C. The Opposing Bench Briefs Consistently Mischaracterize The Oppression Claimants' Case And Confuse The Purpose Of This Threshold Motion

39. The Opposing Bench Briefs consist of a series of distractions that never address the heart of the Oppression Claimants' case.[98] The Opposing Bench Briefs argue that:

(a) The Oppression Claimants' are not entitled to the remedy sought because they did not name Apollo/GSO as parties;[99]

(b) The Oppression Claimants are not entitled to the remedy sought because it would have a detrimental effect on Apollo/GSO;[100]

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[96] *Naneff v Con-Crete Holdings Ltd.* (1995), 23 OR (3d) 481 (ONCA), at para 22, Oppression Claimants' BOA, Tab 15.
[97] *864789 Alberta Ltd. v Haas Enterprises Inc.,* 2008 ABQB 555, at paras 62-63, Oppression Claimants' BOA, Tab 16.
[98] A chart providing examples of mischaracterizations is provided at Appendix "A" of this factum.
[99] Bench Brief of Apollo Management, LP and GSO Capital Partners ("Apollo/GSO Bench Brief"), at paras 18-28.

(c) The Oppression Claimants seek to "jump the queue";[101] and

(d) The Oppression Claimants' claims must be determined as of the date of the *CCAA* filing. The Oppression Claimants' claims are "contingent" claims and are therefore not provable within the *CCAA*;[102]

1. The Oppression Claimants Were Not Required to Name Apollo/GSO

40. Apollo/GSO argue that they should have been named as defendants in the actions because the remedy sought would affect them, and not being named disentitles the Oppression Claimants to the remedy they seek.[103] This is not correct for the following reasons:

(a) Nothing in the *ABCA* requires joinder of other stakeholders in an oppression action;

(b) The oppression remedy is lies solely on the actions or omissions of the corporation or its directors;

(c) There is no cause of action in oppression against other third party creditors;

(d) There is no requirement under the *Alberta Rules of Court*[104] (the "*Rules of Court*") that requires or even allows the joinder of a person as a defendant against whom there is no reasonable claim alleged. In fact, had Apollo/GSO been so named, they would be subject to being struck out under rule 3.68(2)(b) of the *Rules of Court*;

(e) If Apollo/GSO wanted to participate in the Oppression Claimants' actions, the onus has always been on them to bring an application for leave to intervene under Rule 2.10[105] These actions have been proceeding for over fifteen months and at no point did Apollo or GSO bring any such application despite being aware of the claims of the Oppression Claimants at all times.

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[100] Apollo/GSO Bench Brief, at para 24; Lightstream Bench Brief, at para 125.
[101] Apollo/GSO Bench Brief, at paras 55-57 and 70-74; Lightstream Bench Brief, at para 118.
[102] Apollo/GSO Bench Brief, at paras 48-54; Lightstream Bench Brief, at paras 118 and 124-125.
[103] Bench Brief of Apollo Management, LP and GSO Capital Partners ("Apollo/GSO Bench Brief"), at paras 18-28.
[104] Alta Reg 390/1968 ("*Rules of Court*").
[105] *Rules of Court,* Alta Reg 390/1968, Rule 2.10, Oppression Claimants BOA, Tab 23.

(f) In any event, even if joinder were required, it is not fatal to the claim. Rule 3.73(1) of the *Rules of Court* says that "No claim or action fails solely because "… (c) a party … was incorrectly omitted from being named as a party." Apollo/GSO are now before the court in this matter and they are availing themselves of full status as a party participating in this *CCAA* proceeding.

41. As submitted below, there is no requirement in an oppression case that the court consider the impact of the oppression remedy sought on other stakeholders. Any oppression remedy can have the effect of affecting other stakeholders in the company, whether they be secured creditors, unsecured creditors, or shareholders.[106] The proposition argued by Apollo/GSO would require the joinder of every stakeholder in every oppression remedy proceeding.

2. Apollo/GSO's Claim of Detrimental Effect is Inappropriate

42. Apollo/GSO further argue the remedy sought by the Oppression Claimants would not be granted because it would have a detrimental effect on Apollo/GSO. This argument is misplaced.

43. The Court is not required to consider the effect of the oppression remedy on third parties. As stated above, virtually any oppression remedy (damages or otherwise) could have an impact on the interests of other stakeholders whether secured creditors, unsecured creditors, or shareholders.

44. The remedy which the Oppression Claimants seek will not in any way affect the status of the existing secured noteholders as security holders. The Oppression Claimants simply seek to have the Exchange Transaction, or a transaction on the same terms extended to them. Extending the Exchange Transaction to the Oppression Claimants will not deprive the secured noteholders of any security.

45. Further, the law is clear that a court-ordered oppression remedy may require an act of default under third party agreements. The fact that the remedy sought by the Oppression Claimants would cause Lightstream to breach the very agreement which the Oppression Claimants complain of is not grounds to refuse the remedy sought.[107]

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[106] *ABCA*, Section 242(3)(e), Oppression Claimants' BOA, Tab 20.
[107] *Safarik v Ocean Fisheries* (1995), 17 BCLR (3d) 354; 25 BLR (2d) 44 at para. 15, Oppression Claimants' BOA, Tab 17.

46. Most importantly, however, these arguments advanced by Apollo/GSO miss the entire purpose of this exercise before the Court. If this Court decides that it would exercise its discretion to grant the remedy sought, then the Court has already concluded that it would make a finding of oppression. Apollo/GSO would therefore only lose what they were never entitled to in the first place. In other words, Apollo/GSO's argument about the detrimental effect of the proposed remedy conveniently ignores that they have no entitlement to their status as secured noteholders, to the exclusion of others, if it is determined that that status arose from the oppressive actions of the Company.

3. The Oppression Claimants are not "jumping the queue"

47. Apollo/GSO argue that the Oppression Claimants are attempting to "disguise" their debt claim as an oppression claim so that they can "manouevre" their position and jump the queue. This conveniently ignores that the Oppression Claimants have *always* sought to change their status from unsecured to secured noteholders; this is not a request that suddenly arose in the context of these *CCAA* proceedings. Further, the Oppression Claimants have never stated that damages were the sole appropriate remedy. Rather, the primary remedy sought by the Oppression Claimants has always been to be included in the Exchange Transaction or to allow the Oppression Claimants to exchange their notes for secured notes on the same terms and conditions as the Exchange Transaction.

48. Apollo/GSO conveniently ignore that their own priority position resulted from the oppressive actions of the Company occasioned by conditions demanded by Apollo/GSO to their sole advantage.

49. In this case, if the Court decides that it would exercise its discretion to grant the remedy sought, it would not be doing so based on "individual notions of fairness"[108] – it would be doing so because the Oppression Claimants' have satisfied the court that Company's actions were oppressive, unfairly prejudicial, and/or unfairly disregarded the Oppression Claimants' interests. It is disingenuous – and quite plainly false - for the Lightstream and Apollo/GSO to argue that the Oppression Claimants have "disguised" their claim only to reveal it in the context of the *CCAA* proceeding.

50. Finally, the argument that the actions of the Oppression Claimants will have the affect of disadvantaging other Unsecured Noteholders is ludicrous. The Oppression Claimants have always taken the position that the Exchange Transaction was oppressive of all Unsecured

[108] Apollo/GSO Bench Brief, at para. 74.

Noteholders. The fact that other Unsecured Noteholders have taken no action or chose to participate in the disadvantageous follow-on transaction is a matter for their own decision. Further the fact that none of those noteholders have seen fit to participate in this *CCAA* application is not something that affords any criticism of or defence to the actions of the Oppression Claimants in seeking to enforce their rights.

4. The Oppression Claimants' claims are not "contingent claims"

51. Apollo/GSO argue that the "status of a creditor's claim must be determined as of the date of the *CCAA* filing" and that as of the date of the filing the claim of the Oppression Claimants was nothing more than a contingent claim.[109] While the Oppression Claimants do not dispute the first proposition, they dispute the second proposition.

52. A contingent claim is a claim that has not yet accrued but which may depend on a future event.[110] In this case, the Oppression Claimants' cause of action in oppression accrued as of the date of the Exchange Transaction. It is not dependent upon a future occurrence which may or may not happen. Further, the value of the Oppression Claimants notes is liquidated and will only vary as to whether they are classified as unsecured notes under the existing Indenture or secured notes on the same terms as the Exchange Transaction. In either case, the value is a liquidated amount, not subject to court determination or damage assessment.

53. Further, the reliance by Apollo/GSO on s. 20 of the *CCAA* is similarly misplaced and misleading. Section 20 deals explicitly with the valuation of claims following their categorization as secured, unsecured, or equity. That section will only apply to the Oppression Claimants following a determination as to whether they are entitled to exchange their notes on the same terms as the Exchange Transaction (in which case they will be secured creditors) or not (in which case they will be unsecured creditors).

54. Apollo/GSO go on to argue that the Oppression Claimants' case amounts to equitable subordination. That is not the case. The Oppression Claimants do not plead equitable subordination or anything like it. As they have stated throughout, they take the position they were entitled to participate in the Exchange Transaction and wish to be able to exchange their Unsecured Notes for Secured Notes on the same terms as the Exchange Transaction. This is not the reordering of priorities on some vague equitable basis. This is providing the Oppression Claimants with a remedy that rectifies their oppressive and unfair exclusion from the Exchange

[109] Apollo/GSO Bench Brief, at paras 48-54; Lightstream Bench Brief, at paras 118 and 124-125.
[110] *Anstead Estate*, 2002 SKQB 238, at para 13, Oppression Claimants' BOA, Tab 18.

Transaction in the first place. That is clearly a matter that is within the jurisdiction of the court considering and applying the oppression remedy under the *ABCA*

55. Finally, the argument that the mere fact of the *CCAA* stay order acts to freeze the position of the Oppression Claimants as unsecured creditors, despite their prior claims, has no foundation in law, and in fact, is completely consistent with the overarching aim of the *CCAA* to treat stakeholders fairly and make any order that is appropriate in the circumstances. In fact, *CCAA* courts routinely deal with claims of stakeholders who seek to modify their position or priorities as creditors to the Company under *CCAA* protection.[111]

IV. CONCLUSION AND RELIEF SOUGHT

56. The Oppression Claimants respectfully request that the answer to the Threshold Motion be:

(a) Yes; and

(b) Yes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of November, 2016.

BENNETT JONES LLP Per: _____ Chris Simard & Sean Zweig Solicitors for the Oppression Claimants	**CASSELS BROCK & BLACKWELL LLP** Per: _____ Tim Pinos & Stephanie Voudouris Solicitors for the Oppression Claimants

[111] See for example *Cash Store Financial Services (Re)*, 2014 ONSC 4326, Oppression Claimants' BOA, Tab 19.

APPENDIX "A"

Mischaracterizations and Inaccuracies of the Oppression Claimants' Case

Lightstream's Bench Brief

Para.	Lightstream's Claim	The Oppression Claimants' Case
5	"The allegation is that but for the alleged assurances that Lightstream would not enter into the Secured Notes Transaction without offering it to all Unsecured Noteholders, the Plaintiffs would not have purchased their notes…"	The Oppression Claimants have not made any allegation of reliance.
6	"The essential legality of the Secured Notes Transaction is underscored by the fact that the Plaintiffs have consistently demanded that they be allowed to participate on the same selective basis as those that participated, and continued to do so".	This is misleading and false. The Exchange Transaction is oppressive because it was *only* offered to Apollo/GSO. The Oppression Claimants' request to participate is a request aimed at rectifying the very oppressive conduct complained of. Further, the remedy sought (i.e. participation in the Exchange Transaction), is contemplated by section 242(3)(e) of the *ABCA*.
12	"Lightstream is proceeding on this motion on the basis of the Plaintiffs' evidence filed, and some supplementary portions of the record which contain undisputed facts."[112]	This is incorrect and misleading. Lightstream refers to facts that were not included in the Oppression Claimants' record and draws inferences/conclusions from those facts that the Oppression Claimants' dispute. For example: • "FrontFour was aware at this time that Lightstream's liquidity situation was deteriorating. On May 22, Mr. George emailed Mr. Loukas and stated 'LTS – getting tighter' in reference to Lightstream's liquidity."[113] While it is true that Mr. George made this statement, nothing about this email suggests that FrontFour was aware of Lightstream's "deteriorating" liquidity; and it does not change the Company's public and private

[112] Apollo/GSO state that they adopt the facts as described by Lightstream (see paragraph 6 of the Apollo/GSO Bench Brief).
[113] Lightstream Bench Brief, at para 50.

Para.	Lightstream's Claim	The Oppression Claimants' Case
		representations that it had sufficient liquidity and was not contemplating a transaction. • "At or about this time, Mudrick also suspected that a second lien deal could be imminent... 'I asked about the potential for a 2nd lien deal, and although he certainly didn't say he thought it was likely, he did seem slightly more inclined to it than before, so maybe they are kicking that 'round as an idea, and that is what is weighing on the bonds."[114] This fact is irrelevant to the Oppression Claimants' case – nothing about this email suggests that Lightstream needed to enter into a 2nd lien deal or that Lightstream would end up offering the 2nd lien deal only to two of the Unsecured Noteholders, to the exclusion of all other Unsecured Noteholders. • "The Plaintiffs, while disappointed not to be included in the Secured Notes Transaction, nonetheless agreed that it was of benefit to Lightstream. On the call of July 3, 2015 between Mr. Loukas and the Lightstream principals, Mr. Loukas told Lightstream that the Secured Notes Transaction was a 'great deal'. Mr. Loukas subsequently agreed on discovery that the Secured Notes Transaction 'enhanced Lightstream's liquidity'".[115] These facts are misleading. The Oppression Claimants' agree that the Exchange Transaction added liquidity; but it was liquidity that the Company *did not* need and consistently represented that it did not need. Furthermore, Company received the "benefit" of the Exchange Transaction by significantly devaluing the Unsecured Notes and prejudicing these Unsecured Noteholders' position vis-a-vis the Secured Noteholders.
26	"As a result, Lightstream anticipated that it could have problems servicing its debt."	There is no contemporaneous evidence supporting the statement that Lightstream was concerned with liquidity. In fact, all of the evidence demonstrates that the Company stated explicitly that it did not need additional liquidity. For example, on May 14, 2015, Mr. Scott stated that liquidity was *not* a pressing

[114] Lightstream Bench Brief, at para 51.
[115] Lightstream Bench Brief, at para 128.

Para.	Lightstream's Claim	The Oppression Claimants' Case
		concern and that he was not "not enamoured about adding on a bunch of high cost debt just to add liquidity that we don't see using…". Then, on June 3 2015, at the Bank of America Merrill Lynch 2015 Conference, Mr. Wright states that "but we don't have to act in any way, there is no burning fire, no big issue or hidden cost that we have on our books that we need to address right away, so we're going to be very careful." Finally, in Lightstream's Second Quarter Results, dated August 5, 2015, the Company states that it had USD$124 million of liquidity as of June 30 2015, immediately prior to the Exchange Transaction, which is greater than the USD$110 million in liquidity disclosed in May 2015. The footnote accompany Lightstream's statement that it anticipated problems "servicing its debt" is to a Bloomberg article dated July 8th 2015 – after the Exchange Transaction occurred – and does not contain commentary from the Company with respect to the requirement of additional liquidity.
36	LTS was not aware that a refinancing transaction "would adversely affect the value of the remaining Unsecured Notes...Mr. Scott stated on discovery that Lightstream's feeling on this point was that the market's reaction to the Secured Notes Transaction could be positive or negative."	This is incorrect. The Oppression Claimants' case is that Lightstream clearly knew that the Exchange Transaction would depress the value of the Unsecured Notes. RBC advised the Company that the Exchange Transaction would have a "neutral to negative reaction for the remaining unsecured bond pricing. Market observed downward bias to remaining unsecured bond trading values post transactions of a similar nature".
45	"In response, Mr. Pandhi alleges, Mr. Wright again stated that Lightstream was not contemplating a debt exchange, and further agreed that he would inform FrontFour of any contemplated debt exchange, and that if Lightstream decided to pursue	This is incorrect. FrontFour has consistently alleged that Mr. Wright assured FrontFour that a transaction would be offered to all bondholders. For example, Mr. Loukas testified at his examination for discovery in March 2016 that: "We once again asked him [Wright] about Apollo, and we reiterated that if they were to pursue some type of debt exchange, that they make sure to issue an offer to all bondholders."

Para.	Lightstream's Claim	The Oppression Claimants' Case
	one it would be offered to all bondholders. Mr. Pandhi's affidavit sworn for the purpose of this motion is the first time this allegation has been raised by FrontFour in the litigation and does not appear in FrontFour's Statement of Claim or the Affidavit of Stephen Loukas sworn in support."	Further, Mr. Loukas stated in his affidavit sworn June 28, 2016 that "Mr. Wright advised (among other things) that Lightstream had ample liquidity, that there was no contemplated debt exchange, and that if Lightstream was to enter into an exchange they would offer it to all of the Unsecured Noteholders"
57	"Mr. Scott subsequently stated on discovery that he would not have made any statements to any bondholder or investor concerning Lightstream's plans to carry out a transaction such as the Secured Notes Transaction beyond saying 'we would have the option to do a second lien transaction full stop'".	While Mr. Scott made this statement during his examination for discovery, it is false and misleading. The Oppression Claimants' case is that both Mr. Scott and Mr. Wright made statements that Lightstream did not need liquidity, that it was not contemplating an exchange transaction, and that if it did contemplate such a transaction, it would be offered to all bondholders.
63	"Subsequent events demonstrate that the Secured Notes Transaction was both necessary from Lightstream's financial standpoint and in the best interests of the corporation. On May 4, 2016, Lightstream announced its results for the first quarter of 2016. By that time, benchmark oil prices had reached their lowest point since the commodity cycle downturn began in 2014"	This is misleading. The Exchange Transaction cannot be justified retroactively. The Oppression Claimants' case is that at the time Lightstream entered into the Exchange Transaction, it did not need liquidity.
Heading above	"The Plaintiffs are Offered the Opportunity to Participate in the	This is incorrect. The Oppression Claimants were *not* offered the opportunity to participate in *the* "Secured Notes Transaction". The Oppression Claimants were

Para.	Lightstream's Claim	The Oppression Claimants' Case
para. 64 and para. 69	Secured Notes Transaction"	offered the opportunity to participate in a follow-on transaction on substantially inferior terms.
70	"Lightstream subsequently entered into additional exchanges with three other holders of Unsecured Notes in early August of 2015. These holders were asked to submit their interest to RBC, and advised that they would be selected based on the volume and price at which they were willing to exchange."	This is misleading. The follow-on exchanges were entered into on terms substantially less favourable than the Exchange Transaction and the Oppression Claimants' were consistently advised that they could not participate in the Exchange Transaction on terms offered to Apollo/GSO. The June 11, 2015 term sheet contemplated USD$54.75 million of additional secured notes as part of future exchanges on terms at least as favourable to the *issuer* as the Exchange Transaction. In an email exchange on June 10, 2015, Apollo states "Apollo and GSO are fine with the extra $4.75mm of 2nd lien capacity with the condition that exchanges are done at terms no more favourable than our deal." Mr. Wright then clarifies that the exchanges be done on terms more favourable to Lightstream, and Apollo *agrees* that Lightstream should capture more of a discount on the follow-on exchanges.