

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP
CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION
of the City of Toronto, in the Province of Ontario**

**MOTION RECORD
OF ALBERTA CAPITAL CORPORATION**

May 15, 2015

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Solicitors for Alberta Capital Corporation

TO: THE SERVICE LIST

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TAB 1

**ONTARIO
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**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP
CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION
of the City of Toronto, in the Province of Ontario**

NOTICE OF MOTION

Alberta Capital Corporation ("ACC"), a creditor in these proceedings, will make a motion, without notice, to a judge of the Commercial List on a date to be fixed at the Courthouse, 393 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. an Order pursuant to section 38 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), substantially in the form of **Appendix "A"** hereto (the "**Draft Order**");
 - (a) authorizing ACC to continue the appeal pending brought by Alliance Atlantis Equicap Corporation (the "**Bankrupt**") against Her Majesty the Queen as represented by the Minister of National Revenue (the "**Crown**") before the Tax Court of Canada ("**TCC**"), bearing court file number 2013-366(IT)G as set out in the Draft Order (the "**Appeal**") to appeal a notice of reassessment by the Canada Revenue Agency ("**CRA**") for the Bankrupt's 2002 taxation year relating to:
 - (i) the proper calculation of the Bankrupt's share in the income of the Sentinel Hill Alliance Atlantis Equicap Limited Partnership under the Income Tax Act ("**ITA**"); and,
 - (ii) the proper assessment of penalties under the ITA in respect of the Bankrupt's 2002 filings.

- (b) authorizing and directing FTI Consulting Canada Inc., the trustee in bankruptcy (the "Trustee") to execute an assignment substantially in the form appended hereto as **Schedule "B"** to the Draft Order in respect of the Appeal;
 - (c) granting other relief ancillary to the foregoing;
 - (d) abridging the time for giving notice of this motion and validating the manner of service thereof, if necessary; and,
2. such further and other relief as ACC may request and this court deems just

THE GROUNDS FOR THE MOTION ARE:

- 1. On December 19, 2011, the Bankrupt made an assignment in bankruptcy and FTI was appointed as trustee of the Bankrupt's estate.
- 2. ACC is a creditor of the Bankrupt's in the approximate amount of \$780,000 in respect of commissions for collection services under a Collection Agreement between ACC and the Bankrupt.
- 3. ACC has written the Trustee twice requesting that it continue the Appeal and has not received any affirmative response from the Trustee.
- 4. ACC, a creditor of the Bankrupt, wishes to pursue the Appeal in its own name and at its own risk and for its own benefit to the extent of its debt and any related costs.
- 5. Section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- 6. Rules 3.02 and 16.08 of the *Rules of Civil Procedure*; and,
- 7. Such other grounds as counsel may advise and of which this court will take notice.

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

- 1. the Affidavit of John Mallett, sworn May 8, 2015; and

2. such further and other evidence as counsel may advise and of which this court will take notice.

DATE: May 15, 2015

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Solicitors for Alberta Capital Corporation

TAB A

APPENDIX "A"

Court File No. 31-456973

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

MR./MADAM JUSTICE)
) THIS DAY OF
) MAY, 2015
)

**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP
CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION.
of the City of Toronto, in the Province of Ontario**

ORDER

THIS MOTION made by Alberta Capital Corporation ("ACC"), a creditor of the above named bankrupt, for an order pursuant to s.38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), was heard this day at 393 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion and the Affidavit of John Mallett sworn May 8, 2015, and upon hearing submissions of counsel for ACC and it appearing that ACC has requested FTI Consulting Canada Inc., the trustee in bankruptcy (the "**Trustee**") to take certain proceedings and that the Trustee has failed to take such proceedings,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this motion is properly returnable today, and service upon those parties described in the Affidavit of Service is hereby validated and further service of the Notice of Motion and Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that ACC be authorized, pursuant to section 38 of the *Bankruptcy and Insolvency Act*, to continue the appeal pending brought by Alliance

Atlantis Equicap Corporation (the “**Bankrupt**”) against Her Majesty the Queen as represented by the Minister of National Revenue (the “**Crown**”) before the Tax Court of Canada, bearing court file number 2013-366(IT)G (the “**Appeal**”) as set out in the Notice of Appeal attached as **Schedule “A”**.

3. **THIS COURT ORDERS AND DIRECTS** the Trustee to:
 - (a) execute an assignment substantially in the form appended hereto as **Schedule “B”** assigning all its right, title and interest in the Appeal to ACC, for the benefit of ACC and such other creditors as may join in the Appeal;
 - (b) transfer and make available to ACC and such other creditors as may join in the Appeal all books and documents in support thereof or relevant thereto; and,
 - (c) post a copy of this Order on its website as set out in paragraph 5 below.
4. **THIS COURT ORDERS AND DIRECTS** that the Trustee shall provide ACC with a list of the names and addresses of all creditors who have proven claims against the said estate within two days of the date of this Order.
5. **THIS COURT ORDERS** that notice of the making of this Order upon the other creditors of the Bankrupt (the “**Notice**”) shall be deemed to be sufficiently served on the date of mailing or posting described below, as applicable (the “**Date of Service**”) by:
 - (a) mailing, within 7 days of the date of this order, a letter substantially in the form appended hereto as **Schedule “C”** (the “**Notice Letter**”) in a prepaid addressed envelope by regular registered mail to each of the said creditors who have proved claims against the bankrupt estate at their place of business or address as shown in their proof of claim; and,
 - (b) posting a copy of this order, the motion record filed by ACC in support of this motion and the text of s.38 of the BIA at:

<http://cfcanada.ficonsulting.com/cmi/bankAAEC.htm> for 30 days from the Date of Service (as defined below).

6. **THIS COURT ORDERS** that, in addition to any dividends to which they may be entitled out of the Bankrupt's other assets, all benefits derived from the Appeal, together with any costs payable by the Respondents to the Appeal (the "**Benefits of the Appeal**"), shall vest exclusively in ACC and in such other creditors of the Bankrupt who, within twenty-one (21) days of the Date of Service, notify ACC's solicitors of their agreement to contribute to the expense and risk of this motion and the Appeal, *pro rata* according to the amount of their respective claims (including, without limitation and unless otherwise ordered by this court, any monetary retainer required by ACC's counsel), in writing, by fax, directed as follows:

Gowling Lafleur Henderson LLP
Barristers and Solicitors
1 First Canadian Place, Suite 1600
100 King Street West
Toronto, Ontario M5X 1G5

Attention: C. Haddon Murray
Fax: (416) 862-3604

and such vesting shall be free and clear of any and all of the estates, titles, rights, benefits, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts (whether statutory or otherwise), assignments, executions, judgments, options, agreements, rights of distress, legal, equitable or contractual set-offs, options, adverse claims, levies, agreements, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives, provided that:

- (a) the Benefits of the Appeal shall be used first to pay or reimburse the actual costs of bringing this Motion and then the actual costs of bringing the Appeal
- (b) that the total amount recovered by ACC and such others as may join with it in the Appeal shall not exceed the amount of their respective claims in this bankruptcy together with the costs of bringing this Motion and the Appeal; and,
- (c) nothing in this order or any action taken pursuant to this order shall be determinative of the standing of any party other than ACC as a creditor and, in the event that the claim of a party which has elected to participate in the Appeal is subsequently determined to be invalid, then that party shall only be entitled to have their costs of the Appeal reimbursed out of the Benefit of the Appeal and, for greater certainty, they shall not be entitled to any other share of the Benefit of the Appeal.

7. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in the Appeal as provided for in paragraph 6 within twenty-one (21) days of the Date of Service, they shall thereafter be excluded from participating in the Benefits of the Appeal.
8. **THIS COURT ORDERS** that in the event that there is a surplus after paying or reimbursing the costs of bringing this Motion and the Appeal and the claims of ACC and of such other creditors, if any, entitled to participate in the Appeal, according to the priority of the same, respectively, as determined by paragraph 6 hereof, such surplus shall be paid to the Trustee in augmentation of the Bankrupt's estate.

SCHEDULE "A"

(Attached)

TAX COURT OF CANADA
GENERAL PROCEDURE

BETWEEN:

ALLIANCE ATLANTIS EQUICAP CORPORATION
C/O FTI CONSULTING CANADA INC.
SUITE 2010, 79 WELLINGTON STREET WEST
TORONTO, ONTARIO M5K 1G8

Appellant

AND

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
Section 169 of the *Income Tax Act* (R.S.C. 1985 (5th Supp.) c.1 as amended)

THE APPELLANT HEREBY APPEALS FROM A NOTICE OF REASSESSMENT ISSUED MARCH 12, 2009 (THE "REASSESSMENT") BY THE MINISTER OF NATIONAL REVENUE (THE "MINISTER") UNDER THE *INCOME TAX ACT* (THE "ACT") FOR ITS TAXATION YEAR ENDING MARCH 31, 2002 (THE "PERIOD").

A. FACTS

Part II – The Parties

1. The Appellant is a corporation incorporated under the *Business Corporations Act* (Canada). During the Period, the Appellant was wholly-owned by Alliance Atlantis Communications Inc. ("Alliance Atlantis"). The Appellant is currently wholly-owned by 4437691 Canada Inc.

2. Sentinel Hill Alliance Atlantis Equicap Limited Partnership (“SHAAELP”) is a limited partnership formed under the laws of the Province of Ontario.
3. At all material times, Sentinel Hill GP Corporation (“SHGPC”) was the general partner of SHAAELP with a 0.01% interest, Sentinel Hill Ventures Corporation (“SHVC”) held a 69.99% interest as limited partner and the Appellant held a 30% interest as a limited partner.
4. Bradley Sherman (“**Sherman**”), Kenneth Gordon (“**Gordon**”), Robert Strother (“**Strother**”) and Paul (“**Darc**”) each indirectly owned 25% of the outstanding shares of SHVC.
5. At all material times, the business of SHAAELP was substantially to promote, market, sell and manage structured finance and tax assisted transactions related to filmed entertainment products. SHGPC, as general partner, was responsible for operating the business of SHAAELP.
6. SHAAE (2001) Master Limited Partnership (“**SHAAE 2001**”) is a limited partnership formed under the laws of the Province of Ontario. Sentinel Hill Productions IV Corporation (“**SHIVPC**”) is the general partner of SHAAE 2001.
7. SHAAELP contracted with SHAAE 2001 pursuant to a management agreement (the “**Management Agreement**”) to provide management services to SHAAE 2001 and to assume liability for payment of certain fees and expenses incurred by SHAAE 2001 in offering its units for sale, including sales agents’ commissions. Pursuant to the Management Agreement, SHAAE 2001 agreed to pay a fee to SHAAELP as a percentage of each unit subscription.
8. SHAAE 2001 raised funds by offering its limited partnership units (the “**Units**”) to the public pursuant to an offering memorandum dated March 1, 2001 (the “**Offering Memorandum**”). The subscription price for a unit in SHAAE 2001 was \$17,200 per unit, which included \$1,000 per unit to be paid as a deposit towards interest on a loan (the “**Unit Loan**”).

9. SHAAE 2001 was required by the terms of its partnership agreement and the Offering Memorandum to sell the Units for \$16,200 per Unit (not including interest on a Unit Loan).
10. SHAAE 2001 acquired limited partnership units of a number of limited partnerships (collectively known as the “**Production Partnerships**”) which were established to provide or arrange for the provision of financing and production services for feature films, movies of the week and television series.
11. During the first half of 2001, the Production Partnerships contracted with several television and film studios (the “**Studios**”) to provide production services to the Studios (the “**Production Services Agreements**”). To induce the Studios to enter into the Production Services Agreements, the Production Partnerships agreed to pay the Studios a fee which was calculated as a percentage of qualifying production expenses (the “**Studio Fee**”).
12. In order to gain an advantage over competitors and secure productions from the Studios, Alliance Atlantis guaranteed the Studio Fee to be paid to some of the Studios regardless of the number of Units sold in SHAAE 2001 (the “**Guarantees**”). Alliance Atlantis and SHVC agreed to be severally liable for any amounts payable by Alliance Atlantis under the Guarantees.
13. In addition SHAAELP made arrangements with a particular Studio to have the film “**Baby Geniuses**” produced in Canada. The cash advance, meant to secure the production for a Production Partnership, was made based on calculations under the Act, prior to changes to section 18.1 of the Act. Consequently, a portion of the advance made by SHAAELP (\$1,414,051) could not be recovered in full from the participating Studio (the “**Unrecoverable Advance**”).
14. On September 18, 2001, the Minister of Finance proposed amendments to the section 18.1 of the Act. The proposed amendments were designed to eliminate film tax shelters such as the SHAAE 2001 offering of Units.

15. On October 26, 2001, the Department of Finance issued a comfort letter to SHAAE 2001 advising that it would recommend to the Minister of Finance additional transitional relief to the proposed amendments.
16. In a Status Report dated October 29, 2001 issued (in reference to the comfort letter) by SHVC to agents and friends of SHAAE 2001, SHVC stated "The letter confirms that all investors in the Partnership whose subscriptions close in 2001, either before or after September 18, will be unaffected by the elimination of film tax shelters as of January 2002 (provided that grandfathering rules have been complied with)."
17. Meanwhile, the Canada Revenue Agency (the "CRA") had by 2001 commenced income tax audits of production services transactions offered by the Sentinel Hill group and other groups in prior years.
18. The combination of the proposed legislative amendments, the CRA audits and the economic downturn following the events of September 11, 2001 resulted in a virtual halt in subscriptions for Units.
19. All parties were concerned that the slowdown in Unit subscriptions would result in the Production Partnerships and others being unable to meet their contractual commitments to the Studios. In order to increase subscriptions, SHAAELP, with the authorization of SHIVPC, decided to negotiate incentive payments (the "Payments") to SHAAE 2001 subscribers calculated by reference to their unit subscription price. SHAAELP had the authority to negotiate the best deal for each subscription, but the Payments were capped at the amount that would, after paying all variable costs of subscription (sales commissions, legal fees etc.) leave SHAAE 2001 and SHAAELP with a sufficient amount to fund a production including the Studio Fee.
20. The Payments were not offered to all investors; rather only investors making sufficiently large Unit subscriptions or investors who would not otherwise purchase the Units without the cost reduction represented by the Payments.
21. SHAAELP began offering the Payments in November, 2001. While this strategy resulted in some subscriptions, it became increasingly clear to SHAAELP by the end

of November and into the first weeks of December that the level of subscriptions would not cover the financing obligations of productions to which the Production Partnerships had committed.

22. By the end of December, 2001, the obligations of SHAAE 2001 and SHAAELP were still not covered by subscriptions for Units. To allow SHAAE 2001 and SHAAELP to meet the most pressing obligations, the direct and indirect shareholders of SHVC subscribed for Units and received the Payments.

23. The amounts of Payments and the parties involved are described in the following table:

	Amount	Units Purchased	Rebate Amount/Unit
Management Group + related companies	\$ 9,188,844	4,418	\$ 2,080
Employees of companies related to SHVC	\$ 80,800	40	\$ 2,020
Relatives of Management Group	\$ 62,357	70	\$ 891
Stern & Co	\$ 2,520,000	1,575	\$ 1,600
Sheinin & Co	\$ 2,492,800	1,558	\$ 1,600
Non-resident of Canada	\$ 530,000	1,785	\$ 297
Other payments to various parties	\$ 1,097,269	770	\$ 1,426
	\$ 15,972,070	10,215	\$ 1,564

24. The Appellant neither purchased Units nor received any Payments. A senior executive of the Appellant purchased some Units and personally received a Payment which was not transferred to the Appellant.

25. In computing income for its 2002 taxation year to allocate to its partners, SHAAELP deducted the amount of the Payments and the Unrecoverable Advance. SHAAELP reported taxable income of \$38,758,238.

26. In computing its income for the Period, the Appellant included \$11,627,471 as income allocated from SHAAELP which represented its 30% share of SHAAELP's income.
27. The Minister issued a Notice of Assessment to the Appellant on December 19, 2002 in respect of its 2002 taxation year.
28. The Appellant filed a waiver in respect of the normal reassessment period with the Minister in respect of, *inter alia*, the Payments on July 25, 2006.
29. By the Reassessment, the Minister reassessed the Appellant to increase its taxable income from SHAAELP to \$15,564,340 on the basis that the Payments and the Unrecoverable Advance were not deductible to SHAAELP. In addition, the Minister imposed a penalty on the Appellant pursuant to subsection 163(2) of the Act.
30. The Appellant filed a Notice of Objection to the Reassessment on June 10, 2009.
31. The Minister confirmed the Reassessment by Notice of Confirmation (the "Confirmation") on October 29, 2012.

B. ISSUES TO BE DECIDED

32. Whether the Appellant's pro rata share of the income of SHAAELP as a limited partner of SHAAELP has been properly calculated in computing the Appellant's income for the Period.
33. Whether the Appellant, knowingly, or under circumstances amounting to gross negligence, has made a false statement or omission in its return filed in respect of its 2002 taxation year.

C. RELIEF SOUGHT

34. To reduce the Appellant's taxable income for its 2002 taxation year by the amount of \$3,936,869 by reversing the disallowance of the deductions of the Payments and the Unrecoverable Advance in computing the taxable income of SHAAELP.

35. To vacate the penalty imposed pursuant to subsection 163(2) of the Act.
36. To reduce taxable income by any applicable outstanding non-capital losses.

**D. STATUTORY PROVISIONS UPON WHICH THE APPELLANT RELIES
AND REASONS WHICH IT SUBMITS**

37. The Appellant relies, *inter alia*, upon section 9, paragraph 18(1)(a), sections 67 and 96, and subsection 163(2) of the Act.
38. The Payments and the Unrecoverable Advance were made by SHAAELP to allow SHAAE 2001 and SHAAELP to meet their contractual obligations with arm's length third parties. At all times, all parties involved conducted themselves in accordance with their obligations that arose through the legal agreements to the various transactions.
39. SHAAELP began offering the Payments to encourage subscriptions by arm's length investors. As the end of December, 2001 approached and it became apparent that all of the Units would not be fully subscribed, SHAAELP was required to seek investments from related parties and to increase the quantum of the Payments.
40. SHAAELP made the Unrecoverable Advance in anticipation of certain expenditures being incurred by one of the Production Partnerships to earn income under a Production Services Agreement. Accordingly, the Unrecoverable Advance was incurred to earn income.
41. The Appellant did not receive any portion of the Payments or the Unrecoverable Advance. Instead, these amounts reduced the earnings of SHAAELP and consequently, the Appellant's distributions from SHAAELP. The Appellant was a limited partner of SHAAELP, and consequently was not involved in the management of SHAAELP or the execution of any of its business decisions,
42. The Reassessment and the Confirmation are ill-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

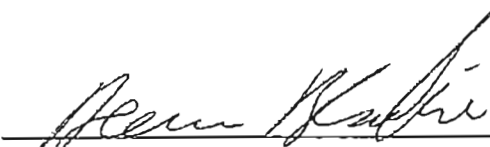
ALLOW the appeal;

SET ASIDE the Confirmation and the Reassessment, as requested;

REFER the Reassessment back to the Minister for reassessment on the basis that the Payments and the Unrecoverable Advance are deductible in computing SHAAELP's taxable income in its 2002 taxation year.

THE WHOLE WITH COSTS.

TORONTO, this 28th day of January, 2013



HEENAN BLAIKIE LLP
Solicitors for the Appellant

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333 Bay Street, Suite 2900
Toronto, ON M5H 2T4

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Facsimile: (877) 640-7929

TAX COURT OF CANADA

GENERAL PROCEDURE

BETWEEN:

**ALLIANCE ATLANTIS EQUICAP
CORPORATION**

*c/o FTI Consulting Canada Inc.
Suite 2010, 79 Wellington Street
West
Toronto, Ontario M5K 1G8*

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
*(Section 169 of the Income Tax Act
(R.S.C. 1985 (5th Supp.) c.1 as
amended)*

Yves St-Cyr

HEENAN BLAIKIE LLP
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Direct line: (416) 777-4172
Facsimile: (877) 640-7929

SCHEDULE "B"

(Attached)

Schedule "B"

ASSIGNMENT

This Assignment made this day of , 2015

B E T W E E N :

FTI Consulting Inc.,
Trustee in Bankruptcy of Alliance Atlantis Equicap Corporation
(the "**Assignor**")

— and —

Alberta Capital Corporation (the "**Assignees**")

WHEREAS FTI Consulting Inc was appointed the Trustee in Bankruptcy of Alliance Atlantis Equicap Corporation (the "**Bankrupt**") on December 19, 2011;

AND WHEREAS the Assignees obtained leave on [DATE] to continue the appeal pending brought by the Bankrupt against the federal Crown before the Tax Court of Canada, bearing court file number 2013-366(IT)G (the "**Appeal**");

AND WHEREAS by Order of [JUDGE] dated [DATE], the Assignor was authorized to execute this assignment assigning all its right, title and interest in the subject matter of the Proceeding to the Assignees;

NOW THIS ASSIGNMENT WITNESSES that, in consideration of the premises and pursuant to the directions in the said order contained, the Assignor agrees with the Assignees as follows:

1. The Assignor does hereby assign absolutely to the Assignees and such other creditors as may be entitled to share pursuant to the provisions in the said order, all of the estate, right, title, interest, claim and demand whatsoever both at law and in equity, including any document in support thereof and any and all rights, claims, demands and causes of action which the Assignor in the Proceedings but without recourse of any kind whatsoever to the Assignor.

2. The Assignor represents and warrants to the Assignees that it has not previously pledged, assigned or encumbered the Appeal.
3. Subject to the representation and warranty in paragraph 2 hereof, the Assignor makes no representation or warranty of any kind whatsoever with respect to the Appeal. Without limitation to the foregoing, the Assignor makes no representation or warranty of any kind whatsoever with respect to the validity, enforceability, existence, assignability, collectability, value, or any other matter whatsoever with respect to the Appeal.
4. Until such time as the Assignor is discharged as Trustee of the Bankrupt, the Assignor agrees to execute and deliver to the Assignees at the Assignees' expense all such further documents and instruments as the Assignee may reasonably require to more fully vest it with the Assignor's rights in the Appeal.

FTI Consulting Inc.,
Trustee in Bankruptcy of Alliance
Atlantis Equicap Corporation

SCHEDULE "C"

(Attached)



montréal · ottawa · toronto · hamilton · waterloo region · calgary · vancouver · moscow · london

[Insert Date]

C. Haddon Murray
Direct (416) 862-3604
Fax (416) 862-7661
haddon.murray@gowlings.com

To: **Attached List of Creditors**

Dear Sirs / Mesdames:

**Re: In the Matter of the Bankruptcy of Alliance Atlantis Equicap Corporation, 4437691
Canada Inc., and Equicap Financial Corporation of the City of Toronto**

We are solicitors for Alberta Capital Corporation (“ACC”), a creditor of the above named bankrupt estate. We have been instructed by our client to continue the appeal pending brought by Alliance Atlantis Equicap Corporation (the “**Bankrupt**”) against the federal Crown before the Tax Court of Canada, bearing court file number 2013-366(IT)G (the “**Appeal**”) on behalf of FTI Consulting Inc. in its capacity as Trustee of the Bankrupt (the “**Trustee**”).

On [DATE], the Ontario Superior Court of Justice issued an order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 authorizing ACC and any other creditor who chooses to join with it to continue the Appeal at its own expense and risk (the “**Order**”). Pursuant to the Order, the Trustee has executed an assignment assigning all of its right, title and interest in the subject matter of the Appeal to ACC and such other creditors as may join with it in the Appeal. A copy of the Order is enclosed.

If you wish to join in the Appeal, you must complete and return this form to us within 21 days from the date of this letter together with your retainer cheque made out to this firm in trust. The cheque should be in the amount of 25% of your claim against the Bankrupt or \$5,000.00, whichever is less. We draw your attention to paragraph 6 of the enclosed Order which provides that creditors who fail to join in the Appeal within the time limited by the Order will be excluded from participating in any benefits derived from the Appeal.

If we are successful in recovering money from the Appeal, the money recovered will be applied first to pay outstanding legal costs incurred in connection with the Appeal, including disbursements and GST. The balance of the funds recovered will be divided among the creditors participating in the Appeal pursuant to this letter of agreement on a *pro rata* basis. If surplus funds remain after payment of all such claims in full, that surplus will be remitted to Trustee for the benefit of the other creditors.



In the course of the Appeal, you will continue to be responsible for a *pro rata* share of the costs of the action. If the action is unsuccessful, you will be liable on a *pro rata* basis for any costs awarded against the plaintiff.

Important decisions concerning the conduct of the Appeal will be settled by a vote of the creditors who have joined in the Appeal. Each creditor will have one vote for each dollar of its claim against the Bankrupt. A majority of the votes cast will determine each issue. If more than 10 creditors join in the Appeal, the creditors will be asked to appoint up to 5 creditor representatives to form a committee to instruct counsel on routine matters that are not determinative of the Appeal. If you wish to join in this litigation, please return this executed agreement together with your retainer cheque to this firm within 21 days from the date of this letter.

Yours truly,

GOWLING LAFLEUR HENDERSON LLP

C. Haddon Murray

CHM/adc
Attachment

[*name of addressee*] agrees to join in the proposed litigation described in this letter agreement and to be bound by the terms and conditions set out in this letter agreement and in the Order.

The amount of my/our claim against the Bankrupt is \$_____ and I enclose my/our retainer cheque payable to Gowling Lafleur Henderson LLP in trust for \$_____.

(Signature of Creditor or Authorized Signing Officer.)

**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION of the City of Toronto, in the Province of Ontario**

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Clifton P. Prophet / C. Haddon Murray
LSUC Nos.: 34845K / 61640P

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Solicitors for Alberta Capital Corporation

**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION of the City of Toronto, in the Province of Ontario**

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION

GOWLING LAFLEUR HENDERSON LLP
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Toronto ON M5X 1G5

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Solicitors for Alberta Capital Corporation

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP
CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION.
of the City of Toronto, in the Province of Ontario

AFFIDAVIT OF JOHN MALLETT

I, **John Mallett**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a consultant to Alberta Capital Corporation (the “**ACC**”), a claimant in the Estate of Alliance Atlantis Equicap Corporation (the “**Bankrupt**”). As such, I have knowledge of the matters to which I hereinafter depose, except where my evidence is expressly based upon information provided to me by others. In those instances where I do give evidence based upon information provided by others, I believe that information to be true.
2. I am swearing this affidavit in support of a motion brought by ACC for an order pursuant to section 38 of the *Bankruptcy and Insolvency Act* authorizing ACC to continue an appeal in the Tax Court of Canada, in its own name and at its own expense and risk, to set aside or obtain judgment for damages resulting from certain transactions completed by the Bankrupt and for other related relief.

Background

3. The Bankrupt is a company which carried on business structuring arrangements for the financing of films and television in Canada. On December 9, 2011, FTI Consulting Canada Inc. (“**FTI**”) was appointed as Receiver over the Bankrupt pursuant to the Order of Justice Pepall (the “**Receivership Order**”). Attached as **Exhibit “A”** is the Receivership Order dated December 9, 2011.

4. Article 4(a) of the Receivership Order Authorized FTI to file assignments in bankruptcy on behalf of the Bankrupt pursuant to the Bankruptcy and Insolvency Act, RSC 1985, c. B-3.
5. On December 19, 2011, the Bankrupt made an assignment in bankruptcy and FTI was appointed as trustee of the Bankrupt's estate (in such capacity, the "**Trustee**"). Attached as **Exhibit "B"** is the Bankrupt's Statement of Affairs.
6. ACC is a corporation incorporated under the laws of the Province of Alberta. Among its business activities, ACC provides advisory services to companies engaged in structured financings of Canadian limited partnerships in the Canadian film industry.
7. ACC entered into an agreement with the Bankrupt whereby ACC would collect, on the Bankrupt's behalf, outstanding debts owed to the Bankrupt by certain individual investors in several limited partnerships (the "**Collection Agreement**").
8. ACC has a provable claim against the bankrupt in respect of commissions for collection services under the Collection Agreement, either as a property claim with respect to the funds held in escrow or, in the alternative, a claim for payment against the estate. ACC's claim is in the approximate amount of \$780,000.

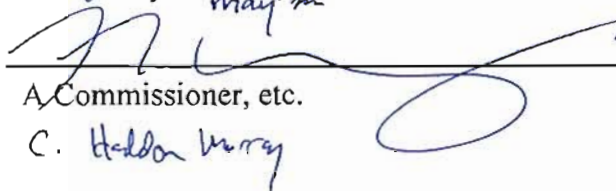
Tax Appeal

9. ACC is aware that the Bankrupt has an appeal pending against the federal Crown before the Tax Court of Canada ("**TCC**"), bearing court file number 2013-366(IT)G (the "**Appeal**"). The appeal is against a notice of reassessment (the "**Reassessment**") issued by the Canada Revenue Agency ("**CRA**") for the Bankrupt's 2002 taxation year. According to the Bankrupt's pleadings, the issue in the Appeal is whether the Bankrupt's share of the income of Sentinel Hill Alliance Atlantis Equicap Limited Partnership ("**SHAAELP**") was properly calculated in computing the Bankrupt's income for the 2002 taxation year under the Income Tax Act (Canada) (the "**ITA**"). A secondary issue is whether the Bankrupt was properly assessed penalties under the ITA in respect of its 2002 tax filings. Some of the facts in the Appeal are disputed by the Crown. Paragraphs 11 and 12 below summarize the Bankrupt's position in the Appeal.

10. At all material times, the Bankrupt had a 30% partnership interest in SHAAELP. The Bankrupt filed its 2002 tax return including \$11,627,471 as income allocated to it from SHAAELP. By the Reassessment, the CRA increased income allocated from SHAAELP from \$11,627,471 to \$15,564,340 (a difference of \$3,936,869). SHAAELP was part of a group of entities involved in structuring financial and tax-driven transactions connected to film and television production. The Reassessment was based on the denial of two deductions claimed by SHAAELP that reduced the income allocation to the Bankrupt in 2002. The two deductions were:
- a) The “**Unrecoverable Advance**” (as defined in the TCC pleadings): SHAAELP provided a cash advance to a film studio based on calculations made before a certain ITA provision was amended. Ultimately, a portion of the advance could not be recovered. SHAAELP deducted the lost advance in calculating its 2002 income allocation to partners, including the Bankrupt.
 - b) The “**Payments**” (as defined in the TCC pleadings): Three issues led to a reduction in sales of SHAAE (2001) Master Limited Partnership (“**SHAAE 2001**”), an entity with which SHAAELP conducted business related to tax-driven film and television financing. These issues were: amendments to the ITA; CRA audits of related entities; and a market downturn following the September 11, 2001 attacks. The lack of funds from selling SHAAE 2001 units put business activities at risk. To increase SHAAE 2001 subscriptions, the Payments were made by SHAAELP to certain unit holders as inducements. SHAAELP deducted the Payments in calculating its 2002 income allocation to partners including the Bankrupt.
11. Although the related entities including SHAAELP were engaged in tax-driven financing transactions related to film and television production, the issue in the appeal is simply the deductibility of expenses in the calculation of partnership income allocation. Again, while some of the facts are in dispute, the Crown’s pleadings frame the case as a deductibility issue.

12. The legal issues in dispute are worth an approximate value of \$4 million. Attached as **Exhibits "C"** and **"D"** are the Notice of Appeal and Reply to Notice of Appeal, respectively.
13. TCC has held the Appeal in abeyance pending the adjudication of this motion. Attached as **Exhibit "E"** is a copy of a letter from TCC Senior Registrar Line Lanthier to counsel for Department of Justice and counsel to the Bankrupt dated April 24, 2015.
14. ACC has requested the trustee proceed with the Appeal in two letters and has received no confirmation that the Trustee will continue the Appeal as requested. Attached as **Exhibits "F"**, and **"G"** are correspondence from Frank Lamie, counsel to ACC, to Maria Konyuhkova, counsel to the Trustee, requesting that the trustee continue the Appeal.
15. ACC now takes the position that the Trustee has declined to proceed with the Appeal.
16. ACC wishes to pursue the Proceedings in its own name and at its own risk and for its own benefit to the extent of its debt and any related costs.

SWORN BEFORE ME at the City of
London, in the Province of Ontario,
this 8 day of April, 2015


A Commissioner, etc.
C. Haddon Murray



John Mallett

TOR_LAW 86916172

TAB A

THIS IS **EXHIBIT "A"** TO THE
AFFIDAVIT OF **JOHN MALLET**
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



Commissioner for Taking Affidavits, etc.

C. Haddon Murray

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 9TH DAY
)
JUSTICE PEPALL) OF DECEMBER, 2011

FTI CONSULTING CANADA INC. IN ITS CAPACITY AS
THE COURT-APPOINTED MONITOR OF
CANWEST GLOBAL COMMUNICATIONS CORP. (NOW 2737469 CANADA INC.)
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Applicant

- and -

4437691 CANADA INC., ALLIANCE ATLANTIS EQUICAP CORPORATION
and EQUICAP FINANCIAL CORPORATION

Respondents

ORDER

THIS MOTION made by FTI Consulting Canada Inc. in its capacity as the court-appointed monitor of Canwest Global Communications Corp. (now 2737469 Canada Inc.) ("Canwest Global") and not in its personal or corporate capacity for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing FTI Consulting Canada Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Alliance Atlantis Equicap Corporation, 4437691 Canada Inc., and Equicap Financial Corporation (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application and the Twenty-Sixth Report of FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of Canwest Global and certain of its subsidiaries dated December 2, 2011 prepared and filed in the proceedings of Canwest Global and certain subsidiaries under the *Companies' Creditors Arrangement Act* (Canada), Court File No. CV-09-8396-CL, and on hearing the submissions of counsel for the Applicant, and on consent of GS Capital Partners VI Fund L.P., GSCP VI AA One Holding S.ar.l and GSCP VI AA One parallel Holdings S.ar.l, and on consent of the CTLP and New Canwest (as these terms are defined in the Plan of Compromise and Arrangement of Canwest Global and certain related entities), no one appearing for Debtor although duly served as appears from the affidavit of service filed and on reading the consent of FTI Consulting Canada Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that absent further order of this Court:
 - (a) the Receiver shall not take possession or control of the Property;
 - (b) the Receiver shall not operate the business of the Debtor or employ any employees of the Debtor; and
 - (c) subject to the terms of this Order and any further Order of this Court, the Property shall remain in the possession and control of the Debtor.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to:
 - (a) file assignments in bankruptcy on behalf of the Debtor pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"); and
 - (b) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

NO PROCEEDINGS AGAINST THE RECEIVER

5. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

6. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

LIMITATION ON THE RECEIVER'S LIABILITY

7. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

DISCHARGE OF RECEIVER

8. **THIS COURT ORDERS** that upon the Receiver filing a certificate certifying that it has filed assignments in bankruptcy on behalf of the Debtor pursuant to the provisions of the BIA, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein the Receiver shall continue to have the benefit of the provisions of all Orders

made in this proceeding, including all approvals, protections and stays of proceedings in favour of FTI Consulting Canada Inc. in its capacity as Receiver.

GENERAL

9. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

10. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

FILED AT / IN A LAIT À TORONTO
DATE / BOOK NO:
LE / DANS LE REGISTRE NO.:

DEC 09 2011


RECEIVED



Giuseppe Di Pietro
Registrar

FTI CONSULTING CANADA INC. IN ITS CAPACITY
AS THE COURT-APPOINTED MONITOR OF
CANWEST GLOBAL COMMUNICATIONS CORP.
(NOW 2737469 CANADA INC.)

Applicant

and

4437691 CANADA INC.

et al

Respondents

Court File No: CV-11-9510-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

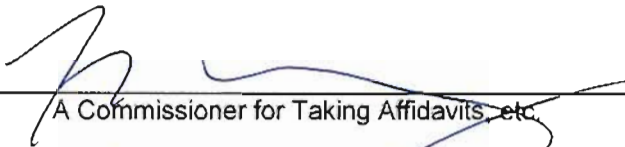
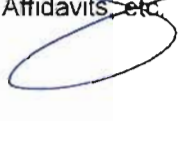
ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9
David R. Byers LSUC#: 22992W
Tel: (416) 869-5697
Maria Koryukhova LSUC# 52880V
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicant

TAB B

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF JOHN MALLET
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.


A Commissioner for Taking Affidavits, etc.
C. Haldon Murray 

District of Ontario
Division No. 09 - Toronto
Court No. 31-456973
Estate No. 31-456973

Notice of Bankruptcy and First Meeting of Creditors
(Subsection 102(1) of the Act)

Alliance Atlantis Equicap Corporation

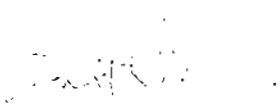
Take notice that:

1. Alliance Atlantis Equicap Corporation filed an assignment in bankruptcy on the 19th day of December 2011, and the undersigned, FTI Consulting Canada Inc., was appointed as trustee of the estate of the bankrupt by the official receiver on the 19th day of December 2011, subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.
2. The first meeting of creditors of the bankrupt will be held on the 9th day of January, 2012, at 10:15am at:

25 St. Clair Avenue East
Suite 600
Toronto, Ontario
M4T 1M2

3. To be entitled to vote at the meeting, a creditor must have lodged with the trustee, before the meeting, a proof of claim and, where necessary, a proxy.
4. Enclosed with this notice is a proxy form and list of creditors with claims amounting to \$25 or more showing the amounts of their claims.
5. Creditors must have proven their claims against the estate of the bankrupt in order to share in any distribution of the proceeds realized from the estate.

Dated at Toronto, this 21st day of December, 2011.


FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

District of: Ontario
 Court No. 09 - Peel
 Court No. CV-11-9510-00CL
 Estate No.

Original Amended

- FORM 78 -

Statement of Affairs (Business Bankruptcy) made by an entity
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

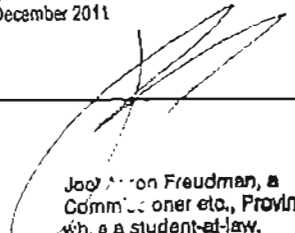
To the bankrupt


You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of your bankruptcy, on the 19th day of December 2011. When completed, this Form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES (As stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A"	1. Inventory
7,320,685.72	0.00
Balance of claims unsecured as per list "A"	2. Trade fixtures, etc.
0.00	0.00
Total unsecured creditors	3. Accounts receivable and other receivables, as per list "E"
7,320,685.72	Good
2. Secured creditors value of security as per list "B"	0.00
0.00	Doubtful
3. Preferred creditors as per list "C"	0.00
0.00	Bad
4. Contingent, trust claims or other liabilities as per list "D"	0.00
estimated to be reclaimable for	Estimated to produce
0.00	0.00
Total liabilities	4. Bills of exchange, promissory note, etc., as per list "F"
7,320,685.72	0.00
Surplus	5. Deposits in financial institutions
NIL	0.00
	6. Cash
	0.00
	7. Livestock
	0.00
	8. Machinery, equipment and plant
	0.00
	9. Real property or immovables as per list "G"
	0.00
	10. Furniture
	0.00
	11. RRSPs, RRIFs, life insurance, etc.
	0.00
	12. Securities (shares, bonds, debentures, etc.)
	0.00
	13. Interests under wills
	0.00
	14. Vehicles
	0.00
	15. Other property, as per list "H"
	1,900,000.00
	If bankrupt is a corporation, add:
	Amount of subscribed capital
	0.00
	Amount paid on capital
	0.00
	Balance subscribed and unpaid
	0.00
	Estimated to produce
	0.00
	Total assets
	1,900,000.00
	Deficiency
	5,420,685.72

I, FTI Consulting Canada Inc. in its capacity as Receiver of Alliance ^CAtlantic and not in its personal capacity, of the city of Toronto in the Province of Ontario, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 19th day of December 2011 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)
 before me at the city of Toronto in the Province of Ontario
 on this 19th day of December 2011


 Jonathan Freudman, a
 Commissioner etc., Province of Ontario,
 who is a student-at-law.
 Expires April 12, 2013.


 FTI Consulting Canada Inc. in its capacity
 as Receiver of Alliance Atlantic ^{FTI} Corp
 Corporation and not in its
 personal or corporate capacity

ALLIANCE ATLANTIC
 EDVILAP CORPORATION

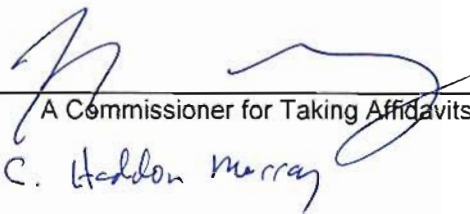
In the Matter of the Bankruptcy of
Alliance Atlantis Equicap Corporation
of the City of Toronto
in the Province of Ontario

Listing of Creditors

Heenan Blaikie LLP	\$	680,685.72
Canada Revenue Agency	\$	2,200,000.00
Alberta Capital Corporation	\$	640,000.00
Alliance Releasing Limited Partnership	\$	3,800,000.00

TAB C

THIS IS **EXHIBIT "C"** TO THE
AFFIDAVIT OF **JOHN MALLET**
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



A Commissioner for Taking Affidavits, etc.
C. Gordon Murray

TAX COURT OF CANADA
GENERAL PROCEDURE

BETWEEN:

ALLIANCE ATLANTIS EQUICAP CORPORATION
C/O FTI CONSULTING CANADA INC.
SUITE 2010, 79 WELLINGTON STREET WEST
TORONTO, ONTARIO M5K 1G8

Appellant

AND

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
Section 169 of the *Income Tax Act* (R.S.C. 1985 (5th Supp.) c.1 as amended)

THE APPELLANT HEREBY APPEALS FROM A NOTICE OF REASSESSMENT ISSUED MARCH 12, 2009 (THE "REASSESSMENT") BY THE MINISTER OF NATIONAL REVENUE (THE "MINISTER") UNDER THE *INCOME TAX ACT* (THE "ACT") FOR ITS TAXATION YEAR ENDING MARCH 31, 2002 (THE "PERIOD").

A. FACTS

Part II – The Parties

1. The Appellant is a corporation incorporated under the *Business Corporations Act* (Canada). During the Period, the Appellant was wholly-owned by Alliance Atlantis Communications Inc. ("Alliance Atlantis"). The Appellant is currently wholly-owned by 4437691 Canada Inc.

2. Sentinel Hill Alliance Atlantis Equicap Limited Partnership (“SHAAELP”) is a limited partnership formed under the laws of the Province of Ontario.
3. At all material times, Sentinel Hill GP Corporation (“SHGPC”) was the general partner of SHAAELP with a 0.01% interest, Sentinel Hill Ventures Corporation (“SHVC”) held a 69.99% interest as limited partner and the Appellant held a 30% interest as a limited partner.
4. Bradley Sherman (“Sherman”), Kenneth Gordon (“Gordon”), Robert Strother (“Strother”) and Paul (“Darc”) each indirectly owned 25% of the outstanding shares of SHVC.
5. At all material times, the business of SHAAELP was substantially to promote, market, sell and manage structured finance and tax assisted transactions related to filmed entertainment products. SHGPC, as general partner, was responsible for operating the business of SHAAELP.
6. SHAAE (2001) Master Limited Partnership (“SHAAE 2001”) is a limited partnership formed under the laws of the Province of Ontario. Sentinel Hill Productions IV Corporation (“SHIVPC”) is the general partner of SHAAE 2001.
7. SHAAELP contracted with SHAAE 2001 pursuant to a management agreement (the “**Management Agreement**”) to provide management services to SHAAE 2001 and to assume liability for payment of certain fees and expenses incurred by SHAAE 2001 in offering its units for sale, including sales agents’ commissions. Pursuant to the Management Agreement, SHAAE 2001 agreed to pay a fee to SHAAELP as a percentage of each unit subscription.
8. SHAAE 2001 raised funds by offering its limited partnership units (the “**Units**”) to the public pursuant to an offering memorandum dated March 1, 2001 (the “**Offering Memorandum**”). The subscription price for a unit in SHAAE 2001 was \$17,200 per unit, which included \$1,000 per unit to be paid as a deposit towards interest on a loan (the “**Unit Loan**”).

9. SHAAE 2001 was required by the terms of its partnership agreement and the Offering Memorandum to sell the Units for \$16,200 per Unit (not including interest on a Unit Loan).
10. SHAAE 2001 acquired limited partnership units of a number of limited partnerships (collectively known as the "**Production Partnerships**") which were established to provide or arrange for the provision of financing and production services for feature films, movies of the week and television series.
11. During the first half of 2001, the Production Partnerships contracted with several television and film studios (the "**Studios**") to provide production services to the Studios (the "**Production Services Agreements**"). To induce the Studios to enter into the Production Services Agreements, the Production Partnerships agreed to pay the Studios a fee which was calculated as a percentage of qualifying production expenses (the "**Studio Fee**").
12. In order to gain an advantage over competitors and secure productions from the Studios, Alliance Atlantis guaranteed the Studio Fee to be paid to some of the Studios regardless of the number of Units sold in SHAAE 2001 (the "**Guarantees**"). Alliance Atlantis and SHVC agreed to be severally liable for any amounts payable by Alliance Atlantis under the Guarantees.
13. In addition SHAAELP made arrangements with a particular Studio to have the film "Baby Geniuses" produced in Canada. The cash advance, meant to secure the production for a Production Partnership, was made based on calculations under the Act, prior to changes to section 18.1 of the Act. Consequently, a portion of the advance made by SHAAELP (\$1,414,051) could not be recovered in full from the participating Studio (the "**Unrecoverable Advance**").
14. On September 18, 2001, the Minister of Finance proposed amendments to the section 18.1 of the Act. The proposed amendments were designed to eliminate film tax shelters such as the SHAAE 2001 offering of Units.

15. On October 26, 2001, the Department of Finance issued a comfort letter to SHAAE 2001 advising that it would recommend to the Minister of Finance additional transitional relief to the proposed amendments.
16. In a Status Report dated October 29, 2001 issued (in reference to the comfort letter) by SHVC to agents and friends of SHAAE 2001, SHVC stated "The letter confirms that all investors in the Partnership whose subscriptions close in 2001, either before or after September 18, will be unaffected by the elimination of film tax shelters as of January 2002 (provided that grandfathering rules have been complied with)."
17. Meanwhile, the Canada Revenue Agency (the "CRA") had by 2001 commenced income tax audits of production services transactions offered by the Sentinel Hill group and other groups in prior years.
18. The combination of the proposed legislative amendments, the CRA audits and the economic downturn following the events of September 11, 2001 resulted in a virtual halt in subscriptions for Units.
19. All parties were concerned that the slowdown in Unit subscriptions would result in the Production Partnerships and others being unable to meet their contractual commitments to the Studios. In order to increase subscriptions, SHAAELP, with the authorization of SHIVPC, decided to negotiate incentive payments (the "Payments") to SHAAE 2001 subscribers calculated by reference to their unit subscription price. SHAAELP had the authority to negotiate the best deal for each subscription, but the Payments were capped at the amount that would, after paying all variable costs of subscription (sales commissions, legal fees etc.) leave SHAAE 2001 and SHAAELP with a sufficient amount to fund a production including the Studio Fee.
20. The Payments were not offered to all investors; rather only investors making sufficiently large Unit subscriptions or investors who would not otherwise purchase the Units without the cost reduction represented by the Payments.
21. SHAAELP began offering the Payments in November, 2001. While this strategy resulted in some subscriptions, it became increasingly clear to SHAAELP by the end

of November and into the first weeks of December that the level of subscriptions would not cover the financing obligations of productions to which the Production Partnerships had committed.

22. By the end of December, 2001, the obligations of SHAAE 2001 and SHAAELP were still not covered by subscriptions for Units. To allow SHAAE 2001 and SHAAELP to meet the most pressing obligations, the direct and indirect shareholders of SHVC subscribed for Units and received the Payments.

23. The amounts of Payments and the parties involved are described in the following table:

	Amount	Units Purchased	Rebate Amount/Unit
Management Group + related companies	\$ 9,188,844	4,418	\$ 2,080
Employees of companies related to SHVC	\$ 80,800	40	\$ 2,020
Relatives of Management Group	\$ 62,357	70	\$ 891
Stern & Co	\$ 2,520,000	1,575	\$ 1,600
Sheinin & Co	\$ 2,492,800	1,558	\$ 1,600
Non-resident of Canada	\$ 530,000	1,785	\$ 297
Other payments to various parties	\$ 1,097,269	770	\$ 1,426
	<u>\$ 15,972,070</u>	<u>10,215</u>	<u>\$ 1,564</u>

24. The Appellant neither purchased Units nor received any Payments. A senior executive of the Appellant purchased some Units and personally received a Payment which was not transferred to the Appellant.

25. In computing income for its 2002 taxation year to allocate to its partners, SHAAELP deducted the amount of the Payments and the Unrecoverable Advance. SHAAELP reported taxable income of \$38,758,238.

26. In computing its income for the Period, the Appellant included \$11,627,471 as income allocated from SHAAELP which represented its 30% share of SHAAELP's income.
27. The Minister issued a Notice of Assessment to the Appellant on December 19, 2002 in respect of its 2002 taxation year.
28. The Appellant filed a waiver in respect of the normal reassessment period with the Minister in respect of, *inter alia*, the Payments on July 25, 2006.
29. By the Reassessment, the Minister reassessed the Appellant to increase its taxable income from SHAAELP to \$15,564,340 on the basis that the Payments and the Unrecoverable Advance were not deductible to SHAAELP. In addition, the Minister imposed a penalty on the Appellant pursuant to subsection 163(2) of the Act.
30. The Appellant filed a Notice of Objection to the Reassessment on June 10, 2009.
31. The Minister confirmed the Reassessment by Notice of Confirmation (the "Confirmation") on October 29, 2012.

B. ISSUES TO BE DECIDED

32. Whether the Appellant's pro rata share of the income of SHAAELP as a limited partner of SHAAELP has been properly calculated in computing the Appellant's income for the Period.
33. Whether the Appellant, knowingly, or under circumstances amounting to gross negligence, has made a false statement or omission in its return filed in respect of its 2002 taxation year.

C. RELIEF SOUGHT

34. To reduce the Appellant's taxable income for its 2002 taxation year by the amount of \$3,936,869 by reversing the disallowance of the deductions of the Payments and the Unrecoverable Advance in computing the taxable income of SHAAELP.

35. To vacate the penalty imposed pursuant to subsection 163(2) of the Act.
36. To reduce taxable income by any applicable outstanding non-capital losses.

**D. STATUTORY PROVISIONS UPON WHICH THE APPELLANT RELIES
AND REASONS WHICH IT SUBMITS**

37. The Appellant relies, *inter alia*, upon section 9, paragraph 18(1)(a), sections 67 and 96, and subsection 163(2) of the Act.
38. The Payments and the Unrecoverable Advance were made by SHAAELP to allow SHAAE 2001 and SHAAELP to meet their contractual obligations with arm's length third parties. At all times, all parties involved conducted themselves in accordance with their obligations that arose through the legal agreements to the various transactions.
39. SHAAELP began offering the Payments to encourage subscriptions by arm's length investors. As the end of December, 2001 approached and it became apparent that all of the Units would not be fully subscribed, SHAAELP was required to seek investments from related parties and to increase the quantum of the Payments.
40. SHAAELP made the Unrecoverable Advance in anticipation of certain expenditures being incurred by one of the Production Partnerships to earn income under a Production Services Agreement. Accordingly, the Unrecoverable Advance was incurred to earn income.
41. The Appellant did not receive any portion of the Payments or the Unrecoverable Advance. Instead, these amounts reduced the earnings of SHAAELP and consequently, the Appellant's distributions from SHAAELP. The Appellant was a limited partner of SHAAELP, and consequently was not involved in the management of SHAAELP or the execution of any of its business decisions,
42. The Reassessment and the Confirmation are ill-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

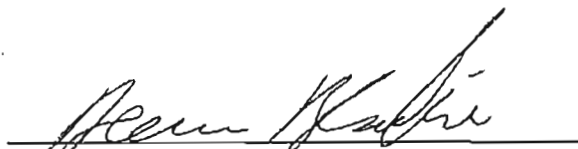
ALLOW the appeal;

SET ASIDE the Confirmation and the Reassessment, as requested;

REFER the Reassessment back to the Minister for reassessment on the basis that the Payments and the Unrecoverable Advance are deductible in computing SHAAELP's taxable income in its 2002 taxation year.

THE WHOLE WITH COSTS.

TORONTO, this 28th day of January, 2013

A handwritten signature in black ink, appearing to read "Heenan Blaikie", is written over a horizontal line.

HEENAN BLAIKIE LLP
Solicitors for the Appellant

Yves St-Cyr
Bay Adelaide Centre
333 Bay Street, Suite 2900
Toronto, ON M5H 2T4

Direct line: (416) 777-4172
Facsimile: (877) 640-7929

**TAX COURT OF CANADA
GENERAL PROCEDURE**

BETWEEN:

**ALLIANCE ATLANTIS EQUICAP
CORPORATION**
c/o FTI Consulting Canada Inc.
Suite 2010, 79 Wellington Street
West
Toronto, Ontario M5K 1G8

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
*(Section 169 of the Income Tax Act
(R.S.C. 1985 (5th Supp.) c.1 as
amended)*

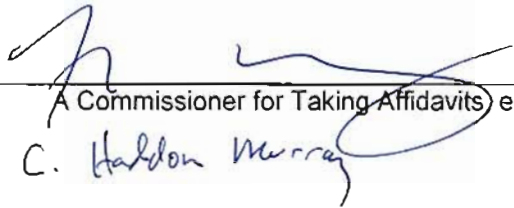
Yves St-Cyr

HEENAN BLAIKIE LLP
Solicitors for the Appellant
Bay Adelaide Centre
333 Bay Street, Suite 2900
Toronto, ON M5H 2T4

Direct line: (416) 777-4172
Facsimile: (877) 640-7929

TAB D

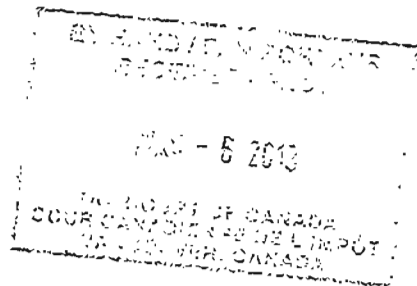
THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF JOHN MALLET
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



A Commissioner for Taking Affidavits etc.
C. Haddon Murray

2013-366(IT)G

TAX COURT OF CANADA



BETWEEN:

ALLIANCE ATLANTIS EQUICAP CORPORATION
 C/O FTI CONSULTING CANADA INC.
 SUITE 2010, 79 WELLINGTON STREET WEST
 TORONTO, ONTARIO M5K 1G8

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REPLY TO NOTICE OF APPEAL


In reply to the Appellant's Notice of Appeal with respect to the taxation year ending March 31, 2002, the Deputy Attorney General of Canada says:

A. STATEMENT OF FACTS

1. He admits the facts stated in paragraphs 1 to 6, 8, 17, 24, 27, 30 and 31 of the Notice of Appeal.
2. He denies the facts alleged in paragraphs 9, 11, 12, 18, 19, 22 and 28 of the Notice of Appeal and puts the Appellant to the strict proof thereof.
3. He has no knowledge of the facts alleged in paragraphs 13 to 16, 21 and 29 of the Notice of Appeal and puts the Appellant to the strict proof thereof.

- 2 -

4. With respect to paragraph 7 of the Notice of Appeal, he admits the second sentence of that paragraph but has no knowledge of the facts alleged in the first sentence and puts the Appellant to the strict proof thereof.
5. With respect to paragraph 10 of the Notice of Appeal, he admits that the SHAAE 2001 Master Limited Partnership ("SHAAE 2001") acquired limited partnership units in a number of other limited partnerships but denies the remainder of the facts set out.
6. With respect to paragraph 20 of the Notice of Appeal, he admits that payments were not offered to all investors in SHAAE 2001 but denies the remainder of the facts set out, in particular he denies that the payments were "incentive payments".
7. With respect to paragraphs 23, 25 and 26 of the Notice of Appeal, he
- a) states that Sentinel Hill Alliance Atlantis Equicap Limited Partnership ("SHAAELP") deducted the amount of \$17,386,122 as "Investor and studio inducement expense", which amount was made up of payments to the following:

	
Management + related companies	\$9,188,844
Employees of companies related to SHVC	\$80,800
Relatives of Management	\$62,357
Stern & Co *	\$2,520,000
Sheinin & Co	\$2,492,800
Non-resident of Canada	\$530,000
Other payments to various parties	\$1,097,269
	<u>\$15,972,070</u>
Loss on Advance to studio ("Studio Payment")	\$1,414,051
	<u>\$17,386,121</u>

* Made up of payment of \$2.4 million ("Stern Payment") and \$120,000

- 3 -

- b) states the \$9,188,844 (the "Management Group Payment") was made up of payments from SHAAELP to Robert Strother ("Strother"), Paul Darc (Darc"), Bradley Sherman ("Sherman") and Kenneth Gordon ("Gordon") and/or their related companies (collectively, the "Management Group") as follows:

Name	Payment
University Hill Holdings Ltd ("University")(Strother)	\$3,120,000
Pacific Cascadia Capital Corporation ("PCCC")(Darc)	\$3,120,000
Sherman	\$1,370,422
Gordon	<u>\$1,578,422</u>
	<u>\$9,188,844</u>

- c) admits that SHAAELP reported taxable income of \$38,758,238;
- d) states that the Appellant did not report its 30% share (\$11,627,471) of the net income of SHAAELP. Instead, in calculating its income for 2002 for federal tax purposes, the Appellant consolidated 30% of the income and expenses for SHAAELP for 2001 with direct income and expenses of the Appellant for 2002. Thus, the Appellant reported 30% of SHAAELP's revenue and 30% of most of SHAAELP's expense items for the year ended December 31, 2001 in the Appellant's own income statement. In addition, the Appellant reported 30% (\$5,215,836) of the "Investor and studio inducement expense" of \$17,386,122 claimed by SHAAELP as part of "Other expense" or "General & Admin" expenses of the Appellant. The resulting net income reported by the Appellant relating to its interest in SHAAELP was \$3,571,470. The income reported of \$3,571,470 was less than the Appellant's 30% share of the net income of SHAAELP because the Appellant deducted additional related party expenses (i.e. management fee expenses etc) as part of "Other expenses" or "General & Admin expenses"; and

- 4 -

- e) denies that the deducting, reporting and including was in accordance with the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "*Act*").
8. The Appellant filed its tax return for the taxation year ended March 31, 2002 on Sept 30, 2002. In its tax return, the Appellant did not report its limited partnership income (i.e. its 30% share) from SHAAELP for the year ended December 31, 2001.
9. The Appellant was initially assessed with respect to its 2002 year by notice dated December 19, 2002. That initial assessment made an adjustment for overstated prior year non-capital losses applied to the 2002 year.
10. In or about October 2003, the Appellant filed an amended T2 tax return for its taxation year ended March 31, 2002 to report income from SHAAELP for the year ended December 31, 2001. The Appellant did not report its 30% share (\$11,627,471) of the net income of SHAAELP. Instead, in calculating its income for 2002 for federal tax purposes, the Appellant consolidated 30% of the income and expenses for SHAAELP for 2001 with direct income and expenses of the Appellant for 2002. Thus, the Appellant reported 30% of SHAAELP's revenue and 30% of most of SHAAELP's expense items for the year ended December 31, 2001 in the Appellant's own income statement. In addition, the Appellant reported 30% (\$5,215,836) of the "Investor and studio inducement expense" of \$17,386,122 claimed by SHAAELP as part of "Other expense" or "General & Admin" expenses of the Appellant. The resulting net income reported by the Appellant relating to its interest in SHAAELP was \$3,571,470. The income reported of \$3,571,470 was less than the Appellant's 30% share of the net income of SHAAELP because the Appellant deducted additional related party expenses (i.e. management fee expenses etc) as part of "Other expenses" or "General & Admin expenses".
11. By notice of reassessment dated February 10, 2004, the Minister reassessed the Appellant's 2002 taxation year.

- 5 -

12. By Notice of Reassessment dated March 12, 2009, (the "Second 2002 Reassessment") the Minister reassessed the Appellant with respect to its 2002 taxation year to increase its share of income from SHAAELP by \$3,900,869 as a result of disallowing deduction of the Management Group Payment, the Stern Payment and the Studio Payment in the calculation of SHAAELP's income for its 2001 year and to levy gross negligence penalties with respect to the failure of the Appellant to include its share of the Stern Payment in its income.
13. On June 9, 2010, the Appellant filed a notice of objection to the 2002 Reassessment.
14. By Notice dated November 21, 2012, the Minister confirmed the 2002 Reassessment.
15. In so reassessing the Appellant's 2002 taxation year and in so confirming the 2002 Reassessment, the Minister relied on the following assumptions of fact:
 - a) SHAAELP was established as a limited partnership on February 25, 2000.
 - b) At all material times, the partners of SHAAELP were as follows:

Sentinel Hill GP Corporation ("SHGP")	0.01% general partner
Sentinel Hill Ventures Corporation ("SHVC")	69.99% limited partner
Appellant	30% limited partner
 - c) SHGP managed and controlled the operations of SHAAELP during 2001; however, neither entity had any employees.
 - d) SHGP used the services of Strother (through Strother's company University), Darc (through Darc's company PCCC), Sherman and Gordon (collectively, the previously defined "Management Group") to manage the activities of SHGP and SHAAELP.
 - e) SHVC is the 100% shareholder of SHGP and Sentinel Hill Productions IV Corporation ("SHPC").

- 6 -

- f) At all material times, the Management Group controlled SHVC, SHGP, SHPC and SHAAELP.
- g) The business of SHAAELP was substantially to promote, market and sell, and manage structured finance and tax assisted transactions related to filmed entertainment products. The business included selling limited partnership units of SHAAE 2001.
- h) SHAAE 2001 is a registered tax shelter for 2001 for tax purposes.
- i) SHPC is the general partner of SHAAE 2001.
- j) SHAAE 2001 invested in a number of so-called production limited partnerships ("Production Partnerships") that were purportedly formed for the purpose of providing production services for one or more films or television programs.
- k) The subscription price for a unit in SHAAE 2001 was \$17,200 per unit, calculated as follows, which included \$1,000 per unit to be paid as a deposit towards interest on the financed portion of the unit.

Cash payment - re: interest on note		\$1,000	\$1,000
Cash payment	\$1,800		\$1,800
Promissory Note	\$14,400		\$14,400
	<u>\$16,200</u>	<u>\$1,000</u>	<u>\$17,200</u>

- l) Under the Offering Memorandum, the proceeds of \$17,200 received by SHAAE 2001 from a subscriber will be used to pay \$1,000 of interest on a unit loan, and the amount of \$16,200 will be applied by SHAAE 2001 as follows:

Fees to the General Partner, SHPC, approximately	\$	10
Sales commission, approximately	\$	100

- 7 -

To acquire Class A units
of a Production Partnership, approximately \$16,090
\$16,200

- m) The amount of approximately \$16,090 received by a Production Partnership from the sale of Class A units to SHAAE 2001 was to be applied by a Production Partnership as follows:

Payment of a "Coordination fee", approximately	\$ 990
Repayment of a portion of a production loan, approximately	\$14,625
Portion of sales commission, approximately	\$ 390
To the general partner of the Production Partnership to pay fees, approximately	\$ 85
	<u>\$16,090</u>

- n) SHAAELP sold 52,233.6 units of SHAAE 2001 to 2,349 investors during the period from on or around April 2001 to December 31, 2001, for proceeds of \$846,184,320 (52,233.6 units x \$16,200 = \$846,184,320).
- o) The Management Group, in aggregate, purchased 4,417.714 units of SHAAE 2001, for themselves or for companies related to them, for a total cash portion of \$7,951,885 (4,417.714 x \$1,800 per unit = \$7,951,885) as follows:

Closing Date	Name	Units	Cash Paid*
27-Dec-01	University (Strother)	1500.00	\$2,700,000
27-Dec-01	PCCC (Darc)	1500.00	\$2,700,000
27-Dec-01	Sherman	658.86	\$1,185,948
27-Dec-01	Gordon	<u>758.86</u>	<u>\$1,365,948</u>
		<u>4417.72</u>	<u>\$7,951,896</u>

Management Group Payments

- 8 -

- p) In or about December 2001, the Management Group directed SHAAELP to pay to themselves or their related companies amounts aggregating to \$9,188,844 (the previously defined "Management Group Payments") as follows:

Name	Units	Payment	Payment per Unit
University (Strother)	1500.00	\$3,120,000	\$2,080
PCCC (Darc)	1500.00	\$3,120,000	\$2,080
Sherman	658.86	\$1,370,422	\$2,080
Gordon	<u>758.86</u>	<u>\$1,578,422</u>	\$2,080
	<u>4417.72</u>	<u>\$9,188,844</u>	

- q) The Management Group Payments exceeded the cash portion of \$7,951,885 paid by the Management Group or their related companies for the units they purchased of SHAAE 2001.
- r) SHAAELP sold units of SHAAE 2001 during December 2001 to hundreds of investors without SHAAELP agreeing to pay any amounts to those investors. 95 investors who purchased units in SHAAE 2001 on or after the date units were purchased by the Management Group did not receive and were not offered any rebate or inducement.
- s) Less than 3% of investors in SHAAE 2001 received payments from SHAAELP and it was only the investors that received payments that were aware of and were offered any payments.
- t) No investors that were arms length to the Management Group were offered or received any payments from SHAAELP. The only payments made were as follows:

- 9 -

Management Group	\$9,188,844	4,418	\$2,080
Employees of companies related to SHVC	\$80,800	40	\$2,020
Relatives of Management Group	\$62,357	70	\$891
Stern & Co *	\$2,520,000	1,575	\$1,600
Sheinin & Co *	\$2,492,800	1,558	\$1,600
Non-resident of Canada *	\$530,000	1,785	\$297
Other payments to various parties	\$1,097,269	770	\$1,426
	<u>\$15,972,070</u>	<u>10,215</u>	<u>\$1,564</u>
Loss on Advance to studio	<u>\$1,414,051</u>		
	<u>\$17,386,121</u>		

* Party was not an investor in units of SHAAE (2001)

- u) SHAAELP earned income in the form of management fees (before expenses) of \$71,621,169 in 2001 from the sale of SHAAE 2001 units.
- v) The average Management Fee per unit sold was \$1,371 ($\$71,621,169 / 52,233 = \$1,371.19$), before direct transaction and operating costs.
- w) Direct transaction and operating expenses (not including Investor and Studio inducements) for SHAAELP in 2001 were \$15,476,810 ($\$31,885,642 + 977,289 - \$17,386,121$) or \$296 per unit ($\$15,476,810 / 52,223$).
- x) The Management Group Payments exceeded the average Management Fee income earned by SHAAELP.
- y) The Management Group Payments were not needed to ensure any contractual obligations to the studios could be fulfilled. There was no binding contract to pay each studio a guaranteed per unit amount. Rather, SHPC was only required to make its best efforts to raise funds in order to complete transactions with the studios.

- 10 -

- z) The Management Group Payments represented substantially all the profit that SHAAELP and its limited partners earned on the sale of SHAAE 2001 units made to the Management Group and their related companies.
- aa) The Management Group, as indirect shareholders of SHVC, agreed and consented to pay the Management Group and their related companies the Management Group Payments.
- bb) The Management Group Payments were deducted at 100% as a business expense by SHAAELP in 2001. Therefore the taxable income allocated to SHAAELP partners was reduced by \$9,188,844 in 2001.
- cc) The Management Group Payments:
 - a. are not an expense incurred by SHAAELP or the Appellant;
 - b. are not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. were unreasonable in the circumstances.

Studio Payment

- dd) The Studio Payment is part of the cash advanced, on behalf of Sentinel Hill No. 05 Limited Partnership, one of the Production Partnerships, to Crystal Sky, a U.S. studio, in the total amount of \$2,762,051 for production expenditures related to the film "Baby Geniuses".
- ee) The Studio Payment:
 - a. is not an expense incurred by SHAAELP or the Appellant;
 - b. is not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. was unreasonable in the circumstances.

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Stern Payment

- ff) 637089 British Columbia Ltd. ("637089") and 637087 British Columbia ("637087") are two companies in the Stern Group of Companies controlled by Mr. Stern ("Stern").
- gg) Under a Contribution Agreement between SHVC and 637089 dated December 31, 2001, (the "Contribution Agreement") SHVC agreed to pay 637089 \$2,400,000 to assist 637089 in subscribing for common shares in 637087. The Contribution Agreement was signed by Gordon on behalf of SHVC.
- hh) Pursuant to the Contribution Agreement
 - a. the amount of \$2,400,000 was to be paid by SHVC to 637089 as follows: the amount of \$750,000 on December 31, 2001, and the balance of \$1,650,000 on February 15, 2002;
 - b. SHVC issued a promissory note, guaranteed by Alliance Atlantis Communications Inc., to 637089 in the amount of \$1,650,000 payable on February 15, 2002.
- ii) Alliance Atlantis Communications Inc is the parent company of the Appellant.
- jj) None of Stern or any entity controlled by him, received a rebate or incentive or had any right to receive a rebate or incentive of any kind for the purchase of units of SHAAE 2001.
- kk) The Stern Payment deducted by SHAAELP in computing its income for 2001 (30% of which was deducted by the Appellant in computing its income for 2002) was a loan or financial assistance paid by SHVC to 637089 to assist 637089 in subscribing to shares in 637087.

- 12 -

- ll) The Stern Payment is not a rebate or inducement payment to Stern or any entity controlled by him to allegedly assist SHAAELP in meeting its obligations to various film studios or satisfy the business obligations of the Production Partnerships.
- mm) The Stern Payment:
 - a. is not an expense incurred by SHAAELP or the Appellant;
 - b. is not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. was unreasonable in the circumstances.
- nn) The Appellant understated their income from SHAAELP for the Appellant's 2002 taxation year and was not entitled to a deduction in the amount of \$720,000.

Gross Negligence Penalty

- oo) The Appellant made or participated in, assented to or acquiesced in the making of, a false statement or omission in its 2002 income tax return by knowingly, or under circumstances amounting to gross negligence, deducting 30% of the Stern Payment in computing its income for its 2002 year.

B. ISSUES TO BE DECIDED

- 16. The issues are:
 - a) whether, in computing its income for the 2002 taxation year, the Appellant properly deducted the following amounts:
 - i) Management Group Payments;
 - ii) Studio Payment; or

- 13 -

iii) Stern Payment; and

- b) whether the Appellant is liable for a gross negligence penalty for deducting 30% of the Stern Payment in computing its income for its 2002 year.

C. STATUTORY PROVISIONS RELIED ON

17. He relies on sections 3, 9, 18, 67, 96, 152 and 163 of the *Act*.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

18. He submits that the Minister properly disallowed deduction of the Management Group Payments, Studio Payment and Stern Payment by the Appellant in computing its income for the 2002 taxation year.
19. He submits the Appellant is liable for a gross negligence penalty with respect to its 2002 year as the Appellant knowingly, or under circumstances amounting to gross negligence, made a false statement or omission in its return for 2002 in for deducting 30% of the Stern Payment in computing its income for 2002.
20. He requests that the appeal be dismissed, with costs.

DATED at the City of Vancouver, the Province of British Columbia, this 6th day of May, 2013.

William F. Pentney
Deputy Attorney General of Canada
Solicitor for the Respondent

Per:



Robert Carvalho
Counsel for the Respondent

Department of Justice
B.C. Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Telephone: (604) 775-7465
Facsimile: (604) 666-2214

TO: The Registrar
Tax Court of Canada
200 Kent Street
Ottawa, Ontario
K1A 0M1

AND TO: Heenan Blaikie LLP
Barristers and Solicitors
2200-1055 West Hastings Street
Vancouver, British Columbia
V6E 2E9
Attention: Yves St. Cyre

TAB E

THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF JOHN MALLET
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



A Commissioner for Taking Affidavits, etc.

C. Heather Murray



April 24, 2015

Yves St-Cyr
Dentons Canada LLP
77 King Street West
Suite 400
Toronto, Ontario
M5K 0A1

Robert Carvalho
Department of Justice
Tax Litigation Section
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Dear Sirs:

RE: Alliance Atlantis Equicap Corporation
v. Her Majesty the Queen
2013-366(IT)G

Reference is made to the parties' letter dated March 17, 2015 wherein the parties' requested the above noted appeal be held in abeyance pending the decision of the motion being brought pursuant to section 38 of the Bankruptcy and Insolvency Act.

Please be advised that the Court has granted your request to have the above noted appeal held in abeyance pending the decision of the motion.

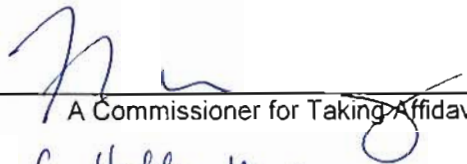
The parties are asked to submit a mutually agreeable timetable **30 days** from the date of the decision on that said motion.

Yours truly,

Line Lanthier
Senior Registry Officer
(613) 947-1133

TAB F

THIS IS **EXHIBIT "F"** TO THE
AFFIDAVIT OF **JOHN MALLET**
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



A Commissioner for Taking Affidavits, etc.
C. Haddon Murray

March 2, 2015

VIA EMAIL - MKONYUKHOVA@STIKEMAN.COM

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario, Canada, M5L 1B9

Frank Lamie
Direct (416) 862-3609
Direct Fax (416) 862-7661
frank.lamie@gowlings.com

Attention: Ms. Maria Konyukhova

Dear Ms. Konyukhova:

**Re: In the Matter of the Bankruptcy of Alliance Atlantis Equicap Corporation
Estate No. & Court File No. 31-456973**

As you know, we are the solicitors for Alberta Capital Corporation ("ACC"), a contingent creditor of Equicap.

We write to you in your capacity as counsel to FTI Consulting Canada Inc. ("FTI"), the Trustee (in such capacity, the "Trustee") of Alliance Atlantis Equicap Corporation ("Equicap").

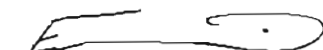
ACC hereby requests the Trustee, for the benefit of the estate, to immediately continue the chose in action comprising the appeal in *Alliance Atlantis Equicap Corporation v. Her Majesty the Queen* bearing Tax Court of Canada Appeal No. 2013-366(IT)G (the "Tax Appeal"), which is currently before the Tax Court of Canada. ACC is of the view that the Tax Appeal is for the benefit of the estate of Equicap.

In the event the Trustee has not confirmed by **5:00pm EST Monday, March 9, 2015**, that it will be immediately continuing the Tax Appeal and that it has authorized and directed its counsel in respect of the Tax Appeal, Dentons Canada LLP, to immediately continue the Tax Appeal, please be advised that ACC will bring a motion pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 seeking, *inter alia*, an Order (i) authorizing ACC to take the proceeding in ACC's name for its own benefit and at its own expense and risk, and (ii) authorizing and directing the Trustee to assign and transfer to ACC all of the Trustee's right, title, and interest in the Tax Appeal.

We look forward to hearing from you and thank you for your attention to this matter.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP



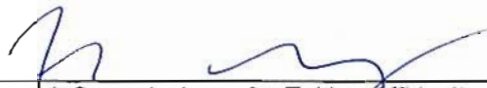
Frank Lamie



cc: David Byers, Stikeman Elliott LLP
Kenneth Kraft, Dentons LLP
Sara Wilson, Dentons LLP
Clifton P. Prophet, Gowling Lafleur Henderson LLP

TAB G

THIS IS EXHIBIT "G" TO THE
AFFIDAVIT OF JOHN MALLET
SWORN BEFORE ME
THIS 8 DAY OF MAY, 2015.



A Commissioner for Taking Affidavits, etc.

C. Haddon Murray



montreal · ottawa · toronto · hamilton · waterloo region · calgary · vancouver · moscow · london

March 24, 2015

VIA EMAIL - MKONYUKHOVA@STIKEMAN.COM

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario, Canada, M5L 1B9

Frank Lamie
Direct (416) 862-3609
Direct Fax (416) 862-7661
frank.lamie@gowlings.com

Attention: Ms. Maria Konyukhova

Dear Ms. Konyukhova:

**Re: In the Matter of the Bankruptcy of Alliance Atlantis Equicap Corporation
Estate No. & Court File No. 31-456973**

As you know, we are the solicitors for Alberta Capital Corporation ("ACC"), a contingent creditor of Equicap.

We write to you further to our Letter of March 2, 2015 (a copy of which is enclosed for your ease of reference), in your capacity as counsel to FTI Consulting Canada Inc. ("FTI"), the Trustee (in such capacity, the "Trustee") of Alliance Atlantis Equicap Corporation ("Equicap").

ACC repeats its requests of the Trustee, for the benefit of the estate, to immediately continue the chose in action comprising the appeal in *Alliance Atlantis Equicap Corporation v. Her Majesty the Queen* bearing Tax Court of Canada Appeal No. 2013-366(IT)G (the "Tax Appeal"), which is currently before the Tax Court of Canada. ACC is of the view that the Tax Appeal is for the benefit of the estate of Equicap.

As the Trustee has advised, Dentons Canada LLP is counsel to the Trustee in the Tax Appeal. We understand the Trustee is continuing to review and evaluate the merits of the Tax Appeal, as well as the risks to the estate of Equicap. In order to facilitate such review, and in response to the Trustee's request for information, please find enclosed the documentation and information relating to the Tax Appeal which is in ACC's possession. ACC is of the view that the Trustee, given that it has counsel in respect of the Tax Appeal, has all of the information concerning the Tax Appeal.

In the event the Trustee has not confirmed by **5:00pm EST Monday, March 30, 2015**, that it will be immediately continuing the Tax Appeal and that it has authorized and directed its counsel in respect of the Tax Appeal, Dentons Canada LLP, to immediately continue the Tax Appeal, please be advised that ACC will bring a motion pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 seeking, *inter alia*, an Order (i) authorizing ACC to take the proceeding in ACC's name for its own benefit and at its own expense and risk, and (ii) authorizing and directing the Trustee to assign and transfer to ACC all of the Trustee's right, title, and interest in the Tax Appeal (together, the "**Section 38 Motion**"). The Commercial List Court Office has advised that it currently has availability on April 20, 21, and 22 for the purpose of the Section 38 Motion. In the



event the Trustee does not confirm that it will be immediately be continuing the Tax Appeal, please advise which date the Trustee is amenable to us booking for the Section 38 Motion.

We look forward to hearing from you and thank you for your attention to this matter.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP

A handwritten signature in cursive script that reads "F. Lamie".

Frank Lamie

Encl.

cc: David Byers, Stikeman Elliott LLP
Kenneth Kraft, Dentons LLP
Sara Wilson, Dentons LLP
Clifton P. Prophet, Gowling Lafleur Henderson LLP

March 2, 2015

VIA EMAIL - MKONYUKHOVA@STIKEMAN.COM

STIKEMAN ELLIOTT LLP
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We write to you in your capacity as counsel to FTI Consulting Canada Inc. ("FTI"), the Trustee (in such capacity, the "Trustee") of Alliance Atlantis Equicap Corporation ("Equicap").


ACC hereby requests the Trustee, for the benefit of the estate, to immediately continue the chose in action comprising the appeal in *Alliance Atlantis Equicap Corporation v. Her Majesty the Queen* bearing Tax Court of Canada Appeal No. 2013-366(IT)G (the "Tax Appeal"), which is currently before the Tax Court of Canada. ACC is of the view that the Tax Appeal is for the benefit of the estate of Equicap.

In the event the Trustee has not confirmed by **5:00pm EST Monday, March 9, 2015**, that it will be immediately continuing the Tax Appeal and that it has authorized and directed its counsel in respect of the Tax Appeal, Dentons Canada LLP, to immediately continue the Tax Appeal, please be advised that ACC will bring a motion pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 seeking, *inter alia*, an Order (i) authorizing ACC to take the proceeding in ACC's name for its own benefit and at its own expense and risk, and (ii) authorizing and directing the Trustee to assign and transfer to ACC all of the Trustee's right, title, and interest in the Tax Appeal.

We look forward to hearing from you and thank you for your attention to this matter.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP



Frank Lamie



cc: David Byers, Stikeman Elliott LLP
Kenneth Kraft, Dentons LLP
Sara Wilson, Dentons LLP
Clifton P. Prophet, Gowling Lafleur Henderson LLP



Department of Justice Ministère de la Justice
Canada Canada

FACSIMILE TRANSMISSION TRANSMISSION PAR TÉLÉCOPIEUR

SEND TO / ENVOYER À		FROM / DE	
Name / Nom: Yves St-Cyr		Name / Nom: Robert Carvalho General Counsel	
Address / Adresse: Heenan Blaikie LLP Bay Adelaide Centre P.O. Box 2900 333 Bay Street, Suite 2900 Toronto, Ontario M5H 2T4		Address / Adresse: B.C. Regional Office 900 - 840 Howe Street Vancouver, British Columbia V6Z 2S9	
Fax # / No du télécopieur: 1-877-640-7929	Tel No. / No du Tél: 416-777-4172	Fax # / No du télécopieur: (604) 666-2214	Tel. No. / No du Tél: (604) 775-7465
Comments / Commentaires: ORIGINAL WILL NOT FOLLOW BY MAIL			
Re: <i>Alliance Atlantis Equicap Corporation v. Her Majesty The Queen</i> Tax Court of Canada No.: 2013-366(IT)G Our File No. 3-277798 Please see attached letter of today's date, with enclosure. Thank you.			
SECURITY INSTRUCTIONS / INSTRUCTIONS SÉCURITÉ			
Unclassified documents only VIA clear transmission. Protected information permitted within Justice secure FAX network. Documents non cotés à transmettre sans protection. Renseignements protégés par le réseau des télécopieurs protégés de la Justice. Protected document / Document protégés? <input checked="" type="checkbox"/> Yes / Oui <input type="checkbox"/> No / Non			
NOTICE: This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you have received this communication in error, please notify us immediately by telephone. Thank you. Cette communication est exclusivement destinée à qui elle est adressée. Elle peut contenir de l'information privilégiée, confidentielle et ne pouvant être divulguée selon la loi applicable à l'espèce. Si vous avez reçu cette communication par erreur, veuillez nous en aviser immédiatement par téléphone. Merci.			
Transmission			
Pages (including cover sheet)	Date:	Time:	
17	May 6, 2013		

In the event of transmission problems, kindly contact / Si cette liaison n'est pas claire, communiquer avec:
Name / Nom: Ruby Manget at / au: 604-666-9953



Department of Justice
Canada

Ministère de la Justice
Canada

B.C. Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Phone: (604) 775-7465
Fax: (604) 666-2214

May 6, 2013

BY FAX & REGULAR MAIL

Heenan Blaikie LLP
Bay Adelaide Centre
P.O. Box 2900
333 Bay Street, Suite 2900
Toronto, Ontario
M5H 2T4

Attention: Yves St-Cyr

Dear Sir:

**Re: Alliance Atlantis Equicap Corporation v. Her Majesty The Queen
Tax Court of Canada Appeal No. 2013-366(IT)G
Our File: 3-277798**

We enclose for service upon you a filed copy of our Reply to the Notice of Appeal with respect to the above-noted matter.

Please acknowledge service of the Reply by signing the duplicate copy of this letter and returning it to us at your earliest convenience.

Yours truly,

Robert Carvalho
General Counsel
Tax Law Services

for:

/rm

Enclosure

c: CRA (tk)
Max Matas

Service of a true copy hereof
admitted this ____ day of
_____, 2013.

**Yves St-Cyr
Solicitor for the Appellant**



Department of Justice
Canada

Ministère de la Justice
Canada

B.C. Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Phone: (604) 775-7465
Fax: (604) 666-2214

May 6, 2013

BY FAX & REGULAR MAIL

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Bay Adelaide Centre
P.O. Box 2900
333 Bay Street, Suite 2900
Toronto, Ontario
M5H 2T4

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Tax Court of Canada Appeal No. 2013-366(IT)G
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Please acknowledge service of the Reply by signing the duplicate copy of this letter and returning it to us at your earliest convenience.

Yours truly,

Robert Carvalho
General Counsel
Tax Law Services

/rm

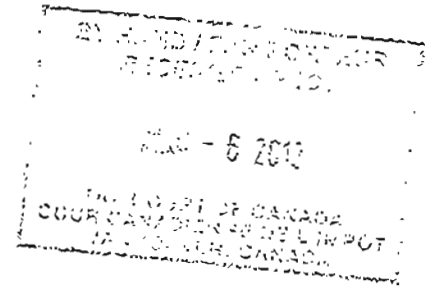
Enclosure

c: CRA (tk)
Max Matas

Service of a true copy hereof admitted this ____ day of _____, 2013. _____ Yves St-Cyr Solicitor for the Appellant

2013-366(IT)G

TAX COURT OF CANADA



BETWEEN:

ALLIANCE ATLANTIS EQUICAP CORPORATION
 C/O FTI CONSULTING CANADA INC.
 SUITE 2010, 79 WELLINGTON STREET WEST
 TORONTO, ONTARIO M5K 1G8

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REPLY TO NOTICE OF APPEAL

In reply to the Appellant's Notice of Appeal with respect to the taxation year ending March 31, 2002, the Deputy Attorney General of Canada says:

A. STATEMENT OF FACTS

1. He admits the facts stated in paragraphs 1 to 6, 8, 17, 24, 27, 30 and 31 of the Notice of Appeal.
2. He denies the facts alleged in paragraphs 9, 11, 12, 18, 19, 22 and 28 of the Notice of Appeal and puts the Appellant to the strict proof thereof.
3. He has no knowledge of the facts alleged in paragraphs 13 to 16, 21 and 29 of the Notice of Appeal and puts the Appellant to the strict proof thereof.

- 2 -

4. With respect to paragraph 7 of the Notice of Appeal, he admits the second sentence of that paragraph but has no knowledge of the facts alleged in the first sentence and puts the Appellant to the strict proof thereof.
5. With respect to paragraph 10 of the Notice of Appeal, he admits that the SHAAE 2001 Master Limited Partnership ("SHAAE 2001") acquired limited partnership units in a number of other limited partnerships but denies the remainder of the facts set out.
6. With respect to paragraph 20 of the Notice of Appeal, he admits that payments were not offered to all investors in SHAAE 2001 but denies the remainder of the facts set out, in particular he denies that the payments were "incentive payments".
7. With respect to paragraphs 23, 25 and 26 of the Notice of Appeal, he
- a) states that Sentinel Hill Alliance Atlantis Equicap Limited Partnership ("SHAAELP") deducted the amount of \$17,386,122 as "Investor and studio inducement expense", which amount was made up of payments to the following:

Management + related companies	\$9,188,844
Employees of companies related to SHVC	\$80,800
Relatives of Management	\$62,357
Stern & Co *	\$2,520,000
Sheinin & Co	\$2,492,800
Non-resident of Canada	\$530,000
Other payments to various parties	\$1,097,269
	<u>\$15,972,070</u>
Loss on Advance to studio ("Studio Payment")	\$1,414,051
	<u>\$17,386,121</u>

* Made up of payment of \$2.4 million ("Stern Payment") and \$120,000

- b) states the \$9,188,844 (the "Management Group Payment") was made up of payments from SHAAELP to Robert Strother ("Strother"), Paul Darc (Darc"), Bradley Sherman ("Sherman") and Kenneth Gordon ("Gordon") and/or their related companies (collectively, the "Management Group") as follows:

<u>Name</u>	<u>Payment</u>
University Hill Holdings Ltd ("University")(Strother)	\$3,120,000
Pacific Cascadia Capital Corporation ("PCCC")(Darc)	\$3,120,000
Sherman	\$1,370,422
Gordon	<u>\$1,578,422</u>
	<u>\$9,188,844</u>

- c) admits that SHAAELP reported taxable income of \$38,758,238;
- d) states that the Appellant did not report its 30% share (\$11,627,471) of the net income of SHAAELP. Instead, in calculating its income for 2002 for federal tax purposes, the Appellant consolidated 30% of the income and expenses for SHAAELP for 2001 with direct income and expenses of the Appellant for 2002. Thus, the Appellant reported 30% of SHAAELP's revenue and 30% of most of SHAAELP's expense items for the year ended December 31, 2001 in the Appellant's own income statement. In addition, the Appellant reported 30% (\$5,215,836) of the "Investor and studio inducement expense" of \$17,386,122 claimed by SHAAELP as part of "Other expense" or "General & Admin" expenses of the Appellant. The resulting net income reported by the Appellant relating to its interest in SHAAELP was \$3,571,470. The income reported of \$3,571,470 was less than the Appellant's 30% share of the net income of SHAAELP because the Appellant deducted additional related party expenses (i.e. management fee expenses etc) as part of "Other expenses" or "General & Admin expenses"; and

- 4 -

- e) denies that the deducting, reporting and including was in accordance with the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "*Act*").
8. The Appellant filed its tax return for the taxation year ended March 31, 2002 on Sept 30, 2002. In its tax return, the Appellant did not report its limited partnership income (i.e. its 30% share) from SHAAELP for the year ended December 31, 2001.
9. The Appellant was initially assessed with respect to its 2002 year by notice dated December 19, 2002. That initial assessment made an adjustment for overstated prior year non-capital losses applied to the 2002 year.
10. In or about October 2003, the Appellant filed an amended T2 tax return for its taxation year ended March 31, 2002 to report income from SHAAELP for the year ended December 31, 2001. The Appellant did not report its 30% share (\$11,627,471) of the net income of SHAAELP. Instead, in calculating its income for 2002 for federal tax purposes, the Appellant consolidated 30% of the income and expenses for SHAAELP for 2001 with direct income and expenses of the Appellant for 2002. Thus, the Appellant reported 30% of SHAAELP's revenue and 30% of most of SHAAELP's expense items for the year ended December 31, 2001 in the Appellant's own income statement. In addition, the Appellant reported 30% (\$5,215,836) of the "Investor and studio inducement expense" of \$17,386,122 claimed by SHAAELP as part of "Other expense" or "General & Admin" expenses of the Appellant. The resulting net income reported by the Appellant relating to its interest in SHAAELP was \$3,571,470. The income reported of \$3,571,470 was less than the Appellant's 30% share of the net income of SHAAELP because the Appellant deducted additional related party expenses (i.e. management fee expenses etc) as part of "Other expenses" or "General & Admin expenses".
11. By notice of reassessment dated February 10, 2004, the Minister reassessed the Appellant's 2002 taxation year.

- 5 -

12. By Notice of Reassessment dated March 12, 2009, (the "Second 2002 Reassessment") the Minister reassessed the Appellant with respect to its 2002 taxation year to increase its share of income from SHAAELP by \$3,900,869 as a result of disallowing deduction of the Management Group Payment, the Stern Payment and the Studio Payment in the calculation of SHAAELP's income for its 2001 year and to levy gross negligence penalties with respect to the failure of the Appellant to include its share of the Stern Payment in its income.
13. On June 9, 2010, the Appellant filed a notice of objection to the 2002 Reassessment.
14. By Notice dated November 21, 2012, the Minister confirmed the 2002 Reassessment.
15. In so reassessing the Appellant's 2002 taxation year and in so confirming the 2002 Reassessment, the Minister relied on the following assumptions of fact:
 - a) SHAAELP was established as a limited partnership on February 25, 2000.
 - b) At all material times, the partners of SHAAELP were as follows:

Sentinel Hill GP Corporation ("SHGP")	0.01% general partner
Sentinel Hill Ventures Corporation ("SHVC")	69.99% limited partner
Appellant	30% limited partner
 - c) SHGP managed and controlled the operations of SHAAELP during 2001; however, neither entity had any employees.
 - d) SHGP used the services of Strother (through Strother's company University), Darc (through Darc's company PCCC), Sherman and Gordon (collectively, the previously defined "Management Group") to manage the activities of SHGP and SHAAELP.
 - e) SHVC is the 100% shareholder of SHGP and Sentinel Hill Productions IV Corporation ("SHPC").

- 6 -

- f) At all material times, the Management Group controlled SHVC, SHGP, SHPC and SHAAELP.
- g) The business of SHAAELP was substantially to promote, market and sell, and manage structured finance and tax assisted transactions related to filmed entertainment products. The business included selling limited partnership units of SHAAE 2001.
- h) SHAAE 2001 is a registered tax shelter for 2001 for tax purposes.
- i) SHPC is the general partner of SHAAE 2001.
- j) SHAAE 2001 invested in a number of so-called production limited partnerships ("Production Partnerships") that were purportedly formed for the purpose of providing production services for one or more films or television programs.
- k) The subscription price for a unit in SHAAE 2001 was \$17,200 per unit, calculated as follows, which included \$1,000 per unit to be paid as a deposit towards interest on the financed portion of the unit.

Cash payment - re: interest on note		\$1,000	\$1,000
Cash payment	\$1,800		\$1,800
Promissory Note	\$14,400		\$14,400
	\$16,200	\$1,000	\$17,200

- l) Under the Offering Memorandum, the proceeds of \$17,200 received by SHAAE 2001 from a subscriber will be used to pay \$1,000 of interest on a unit loan, and the amount of \$16,200 will be applied by SHAAE 2001 as follows:

Fees to the General Partner, SHPC, approximately	\$	10
Sales commission, approximately	\$	100

- 7 -

To acquire Class A units
of a Production Partnership, approximately \$16,090
\$16,200

- m) The amount of approximately \$16,090 received by a Production Partnership from the sale of Class A units to SHAAE 2001 was to be applied by a Production Partnership as follows:

Payment of a "Coordination fee", approximately	\$ 990
Repayment of a portion of a production loan, approximately	\$14,625
Portion of sales commission, approximately	\$ 390
To the general partner of the Production Partnership to pay fees, approximately	<u>\$ 85</u> <u>\$16,090</u>

- n) SHAAELP sold 52,233.6 units of SHAAE 2001 to 2,349 investors during the period from on or around April 2001 to December 31, 2001, for proceeds of \$846,184,320 (52,233.6 units x \$16,200 = \$846,184,320).
- o) The Management Group, in aggregate, purchased 4,417.714 units of SHAAE 2001, for themselves or for companies related to them, for a total cash portion of \$7,951,885 (4,417.714 x \$1,800 per unit = \$7,951,885) as follows:

Closing Date	Name	Units	Cash Paid*
27-Dec-01	University (Strother)	1500.00	\$2,700,000
27-Dec-01	PCCC (Darc)	1500.00	\$2,700,000
27-Dec-01	Sherman	658.86	\$1,185,948
27-Dec-01	Gordon	<u>758.86</u>	<u>\$1,365,948</u>
		<u>4417.72</u>	<u>\$7,951,896</u>

Management Group Payments

- 8 -

- p) In or about December 2001, the Management Group directed SHAAELP to pay to themselves or their related companies amounts aggregating to \$9,188,844 (the previously defined "Management Group Payments") as follows:

Name	Units	Payment	Payment per Unit
University (Strother)	1500.00	\$3,120,000	\$2,080
PCCC (Darc)	1500.00	\$3,120,000	\$2,080
Sherman	658.86	\$1,370,422	\$2,080
Gordon	<u>758.86</u>	<u>\$1,578,422</u>	\$2,080
	<u>4417.72</u>	<u>\$9,188,844</u>	

- q) The Management Group Payments exceeded the cash portion of \$7,951,885 paid by the Management Group or their related companies for the units they purchased of SHAAE 2001.
- r) SHAAELP sold units of SHAAE 2001 during December 2001 to hundreds of investors without SHAAELP agreeing to pay any amounts to those investors. 95 investors who purchased units in SHAAE 2001 on or after the date units were purchased by the Management Group did not receive and were not offered any rebate or inducement.
- s) Less than 3% of investors in SHAAE 2001 received payments from SHAAELP and it was only the investors that received payments that were aware of and were offered any payments.
- t) No investors that were arms length to the Management Group were offered or received any payments from SHAAELP. The only payments made were as follows:

- 9 -

Management Group	\$9,188,844	4,418	\$2,080
Employees of companies related to SHVC	\$80,800	40	\$2,020
Relatives of Management Group	\$62,357	70	\$891
Stem & Co *	\$2,520,000	1,575	\$1,600
Sheinin & Co *	\$2,492,800	1,558	\$1,600
Non-resident of Canada *	\$530,000	1,785	\$297
Other payments to various parties	\$1,097,269	770	\$1,426
	<u>\$15,972,070</u>	<u>10,215</u>	<u>\$1,564</u>
Loss on Advance to studio	\$1,414,051		
	<u>\$17,386,121</u>		

* Party was not an investor in units of SHAAE (2001)

- u) SHAAELP earned income in the form of management fees (before expenses) of \$71,621,169 in 2001 from the sale of SHAAE 2001 units.
- v) The average Management Fee per unit sold was \$1,371 ($\$71,621,169 / 52,233 = \$1,371.19$), before direct transaction and operating costs.
- w) Direct transaction and operating expenses (not including Investor and Studio inducements) for SHAAELP in 2001 were \$15,476,810 ($\$31,885,642 + 977,289 - \$17,386,121$) or \$296 per unit ($\$15,476,810 / 52,223$).
- x) The Management Group Payments exceeded the average Management Fee income earned by SHAAELP.
- y) The Management Group Payments were not needed to ensure any contractual obligations to the studios could be fulfilled. There was no binding contract to pay each studio a guaranteed per unit amount. Rather, SHPC was only required to make its best efforts to raise funds in order to complete transactions with the studios.

- 10 -

- z) The Management Group Payments represented substantially all the profit that SHAAELP and its limited partners earned on the sale of SHAAE 2001 units made to the Management Group and their related companies.
- aa) The Management Group, as indirect shareholders of SHVC, agreed and consented to pay the Management Group and their related companies the Management Group Payments.
- bb) The Management Group Payments were deducted at 100% as a business expense by SHAAELP in 2001. Therefore the taxable income allocated to SHAAELP partners was reduced by \$9,188,844 in 2001.
- cc) The Management Group Payments:
 - a. are not an expense incurred by SHAAELP or the Appellant;
 - b. are not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. were unreasonable in the circumstances.

Studio Payment

- dd) The Studio Payment is part of the cash advanced, on behalf of Sentinel Hill No. 05 Limited Partnership, one of the Production Partnerships, to Crystal Sky, a U.S. studio, in the total amount of \$2,762,051 for production expenditures related to the film "Baby Geniuses".
- ee) The Studio Payment:
 - a. is not an expense incurred by SHAAELP or the Appellant;
 - b. is not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. was unreasonable in the circumstances.

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Stern Payment

- ff) 637089 British Columbia Ltd. ("637089") and 637087 British Columbia ("637087") are two companies in the Stern Group of Companies controlled by Mr. Stern ("Stern").
- gg) Under a Contribution Agreement between SHVC and 637089 dated December 31, 2001, (the "Contribution Agreement") SHVC agreed to pay 637089 \$2,400,000 to assist 637089 in subscribing for common shares in 637087. The Contribution Agreement was signed by Gordon on behalf of SHVC.
- hh) Pursuant to the Contribution Agreement
 - a. the amount of \$2,400,000 was to be paid by SHVC to 637089 as follows: the amount of \$750,000 on December 31, 2001, and the balance of \$1,650,000 on February 15, 2002;
 - b. SHVC issued a promissory note, guaranteed by Alliance Atlantis Communications Inc., to 637089 in the amount of \$1,650,000 payable on February 15, 2002.
- ii) Alliance Atlantis Communications Inc is the parent company of the Appellant.
- jj) None of Stern or any entity controlled by him, received a rebate or incentive or had any right to receive a rebate or incentive of any kind for the purchase of units of SHAAE 2001.
- kk) The Stern Payment deducted by SHAAELP in computing its income for 2001 (30% of which was deducted by the Appellant in computing its income for 2002) was a loan or financial assistance paid by SHVC to 637089 to assist 637089 in subscribing to shares in 637087.

- 12 -

- ll) The Stern Payment is not a rebate or inducement payment to Stern or any entity controlled by him to allegedly assist SHAAELP in meeting its obligations to various film studios or satisfy the business obligations of the Production Partnerships.
- mm) The Stern Payment:
 - a. is not an expense incurred by SHAAELP or the Appellant;
 - b. is not an expense incurred by SHAAELP or the Appellant for the purpose of earning income from a business or property; and
 - c. was unreasonable in the circumstances.
- nn) The Appellant understated their income from SHAAELP for the Appellant's 2002 taxation year and was not entitled to a deduction in the amount of \$720,000.

Gross Negligence Penalty

- oo) The Appellant made or participated in, assented to or acquiesced in the making of, a false statement or omission in its 2002 income tax return by knowingly, or under circumstances amounting to gross negligence, deducting 30% of the Stern Payment in computing its income for its 2002 year.

B. ISSUES TO BE DECIDED

16. The issues are:

- a) whether, in computing its income for the 2002 taxation year, the Appellant properly deducted the following amounts:
 - i) Management Group Payments;
 - ii) Studio Payment; or

- 13 -

iii) Stern Payment; and

- b) whether the Appellant is liable for a gross negligence penalty for deducting 30% of the Stern Payment in computing its income for its 2002 year.

C. STATUTORY PROVISIONS RELIED ON


17. He relies on sections 3, 9, 18, 67, 96, 152 and 163 of the *Act*.

D. GROUNDS RELIED ON AND RELIEF SOUGHT

18. He submits that the Minister properly disallowed deduction of the Management Group Payments, Studio Payment and Stern Payment by the Appellant in computing its income for the 2002 taxation year.
19. He submits the Appellant is liable for a gross negligence penalty with respect to its 2002 year as the Appellant knowingly, or under circumstances amounting to gross negligence, made a false statement or omission in its return for 2002 in for deducting 30% of the Stern Payment in computing its income for 2002.
20. He requests that the appeal be dismissed, with costs.

DATED at the City of Vancouver, the Province of British Columbia, this 6th day of May, 2013.

William F. Pentney
Deputy Attorney General of Canada
Solicitor for the Respondent

Per: 
Robert Carvalho
Counsel for the Respondent

Department of Justice
B.C. Regional Office
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Telephone: (604) 775-7465
Facsimile: (604) 666-2214

TO: The Registrar
Tax Court of Canada
200 Kent Street
Ottawa, Ontario
K1A 0M1

AND TO: Heenan Blaikie LLP
Barristers and Solicitors
2200-1055 West Hastings Street
Vancouver, British Columbia
V6E 2E9
Attention: Yves St. Cyr

Heenan Blaikie

Of Counsel

The Right Honourable Pierre Elliott Trudeau, P.C., C.C., C.H., O.C., FRSC (1984 - 2000)
The Right Honourable Jean Chrétien, P.C., C.C., O.M., O.C.
The Honourable Donald J. Johnston, P.C., O.C., O.C.
Pierre Marc Johnson, G.O.Q., FRSC
The Honourable Michel Bastarache, C.C.
The Honourable René Dussault, O.C., O.O., FRSC, Ad. E.
The Honourable John W. Morden
Peter M. Blaikie, O.C.
André Bureau, O.C., O.O.

January 28, 2013

Registry of the Tax Court of Canada
200 Kent Street
Ottawa, Ontario
K1A 0H9

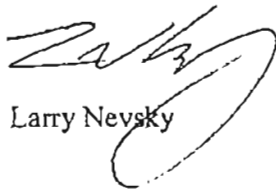
Our Reference: 009184-0395

**Re: ALLIANCE ATLANTIS EQUICAP CORPORATION C/O FTI
CONSULTING CANADA INC. SUITE 2010, 79 WELLINGTON STREET
WEST TORONTO, ONTARIO MSK 1G8 v. HER MAJESTY THE QUEEN**

Dear Madame or Sir:

Enclosed herein is the Appellant's notice of appeal.

Heenan Blaikie LLP



Larry Nevsky

LN

HBdocs - 14120380v1

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TAX COURT OF CANADA
GENERAL PROCEDURE

BETWEEN:

ALLIANCE ATLANTIS EQUICAP CORPORATION
C/O FTI CONSULTING CANADA INC.
SUITE 2010, 79 WELLINGTON STREET WEST
TORONTO, ONTARIO M5K 1G8

Appellant

AND

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
Section 169 of the *Income Tax Act* (R.S.C. 1985 (5th Supp.) c.1 as amended)

THE APPELLANT HEREBY APPEALS FROM A NOTICE OF REASSESSMENT ISSUED MARCH 12, 2009 (THE "REASSESSMENT") BY THE MINISTER OF NATIONAL REVENUE (THE "MINISTER") UNDER THE *INCOME TAX ACT* (THE "ACT") FOR ITS TAXATION YEAR ENDING MARCH 31, 2002 (THE "PERIOD").

A. FACTS

Part II – The Parties

1. The Appellant is a corporation incorporated under the *Business Corporations Act* (Canada). During the Period, the Appellant was wholly-owned by Alliance Atlantis Communications Inc. ("Alliance Atlantis"). The Appellant is currently wholly-owned by 4437691 Canada Inc.

2. Sentinel Hill Alliance Atlantis Equicap Limited Partnership (“SHAAELP”) is a limited partnership formed under the laws of the Province of Ontario.
3. At all material times, Sentinel Hill GP Corporation (“SHGPC”) was the general partner of SHAAELP with a 0.01% interest, Sentinel Hill Ventures Corporation (“SHVC”) held a 69.99% interest as limited partner and the Appellant held a 30% interest as a limited partner.
4. Bradley Sherman (“**Sherman**”), Kenneth Gordon (“**Gordon**”), Robert Strother (“**Strother**”) and Paul (“**Darc**”) each indirectly owned 25% of the outstanding shares of SHVC.
5. At all material times, the business of SHAAELP was substantially to promote, market, sell and manage structured finance and tax assisted transactions related to filmed entertainment products. SHGPC, as general partner, was responsible for operating the business of SHAAELP.
6. SHAAE (2001) Master Limited Partnership (“**SHAAE 2001**”) is a limited partnership formed under the laws of the Province of Ontario. Sentinel Hill Productions IV Corporation (“SHIVPC”) is the general partner of SHAAE 2001.
7. SHAAELP contracted with SHAAE 2001 pursuant to a management agreement (the “**Management Agreement**”) to provide management services to SHAAE 2001 and to assume liability for payment of certain fees and expenses incurred by SHAAE 2001 in offering its units for sale, including sales agents’ commissions. Pursuant to the Management Agreement, SHAAE 2001 agreed to pay a fee to SHAAELP as a percentage of each unit subscription.
8. SHAAE 2001 raised funds by offering its limited partnership units (the “**Units**”) to the public pursuant to an offering memorandum dated March 1, 2001 (the “**Offering Memorandum**”). The subscription price for a unit in SHAAE 2001 was \$17,200 per unit, which included \$1,000 per unit to be paid as a deposit towards interest on a loan (the “**Unit Loan**”).

9. SHAAE 2001 was required by the terms of its partnership agreement and the Offering Memorandum to sell the Units for \$16,200 per Unit (not including interest on a Unit Loan).
10. SHAAE 2001 acquired limited partnership units of a number of limited partnerships (collectively known as the "**Production Partnerships**") which were established to provide or arrange for the provision of financing and production services for feature films, movies of the week and television series.
11. During the first half of 2001, the Production Partnerships contracted with several television and film studios (the "**Studios**") to provide production services to the Studios (the "**Production Services Agreements**"). To induce the Studios to enter into the Production Services Agreements, the Production Partnerships agreed to pay the Studios a fee which was calculated as a percentage of qualifying production expenses (the "**Studio Fee**").
12. In order to gain an advantage over competitors and secure productions from the Studios, Alliance Atlantis guaranteed the Studio Fee to be paid to some of the Studios regardless of the number of Units sold in SHAAE 2001 (the "**Guarantees**"). Alliance Atlantis and SHVC agreed to be severally liable for any amounts payable by Alliance Atlantis under the Guarantees.
13. In addition SHAAELP made arrangements with a particular Studio to have the film "Baby Geniuses" produced in Canada. The cash advance, meant to secure the production for a Production Partnership, was made based on calculations under the Act, prior to changes to section 18.1 of the Act. Consequently, a portion of the advance made by SHAAELP (\$1,414,051) could not be recovered in full from the participating Studio (the "**Unrecoverable Advance**").
14. On September 18, 2001, the Minister of Finance proposed amendments to the section 18.1 of the Act. The proposed amendments were designed to eliminate film tax shelters such as the SHAAE 2001 offering of Units.

15. On October 26, 2001, the Department of Finance issued a comfort letter to SHAAE 2001 advising that it would recommend to the Minister of Finance additional transitional relief to the proposed amendments.
16. In a Status Report dated October 29, 2001 issued (in reference to the comfort letter) by SHVC to agents and friends of SHAAE 2001, SHVC stated "The letter confirms that all investors in the Partnership whose subscriptions close in 2001, either before or after September 18, will be unaffected by the elimination of film tax shelters as of January 2002 (provided that grandfathering rules have been complied with)."
17. Meanwhile, the Canada Revenue Agency (the "CRA") had by 2001 commenced income tax audits of production services transactions offered by the Sentinel Hill group and other groups in prior years.
18. The combination of the proposed legislative amendments, the CRA audits and the economic downturn following the events of September 11, 2001 resulted in a virtual halt in subscriptions for Units.
19. All parties were concerned that the slowdown in Unit subscriptions would result in the Production Partnerships and others being unable to meet their contractual commitments to the Studios. In order to increase subscriptions, SHAAELP, with the authorization of SHIVPC, decided to negotiate incentive payments (the "Payments") to SHAAE 2001 subscribers calculated by reference to their unit subscription price. SHAAELP had the authority to negotiate the best deal for each subscription, but the Payments were capped at the amount that would, after paying all variable costs of subscription (sales commissions, legal fees etc.) leave SHAAE 2001 and SHAAELP with a sufficient amount to fund a production including the Studio Fee.
20. The Payments were not offered to all investors; rather only investors making sufficiently large Unit subscriptions or investors who would not otherwise purchase the Units without the cost reduction represented by the Payments.
21. SHAAELP began offering the Payments in November, 2001. While this strategy resulted in some subscriptions, it became increasingly clear to SHAAELP by the end

of November and into the first weeks of December that the level of subscriptions would not cover the financing obligations of productions to which the Production Partnerships had committed.

22. By the end of December, 2001, the obligations of SHAAE 2001 and SHAAELP were still not covered by subscriptions for Units. To allow SHAAE 2001 and SHAAELP to meet the most pressing obligations, the direct and indirect shareholders of SHVC subscribed for Units and received the Payments.

23. The amounts of Payments and the parties involved are described in the following table:

	Amount	Units Purchased	Rebate Amount/Unit
Management Group + related companies	\$ 9,188,844	4,418	\$ 2,080
Employees of companies related to SHVC	\$ 80,800	40	\$ 2,020
Relatives of Management Group	\$ 62,357	70	\$ 891
Stem & Co	\$ 2,520,000	1,575	\$ 1,600
Sheinin & Co	\$ 2,492,800	1,558	\$ 1,600
Non-resident of Canada	\$ 530,000	1,785	\$ 297
Other payments to various parties	\$ 1,097,269	770	\$ 1,426
	<u>\$ 15,972,070</u>	<u>10,215</u>	<u>\$ 1,564</u>

24. The Appellant neither purchased Units nor received any Payments. A senior executive of the Appellant purchased some Units and personally received a Payment which was not transferred to the Appellant.

25. In computing income for its 2002 taxation year to allocate to its partners, SHAAELP deducted the amount of the Payments and the Unrecoverable Advance. SHAAELP reported taxable income of \$38,758,238.

26. In computing its income for the Period, the Appellant included \$11,627,471 as income allocated from SHAAELP which represented its 30% share of SHAAELP's income.
27. The Minister issued a Notice of Assessment to the Appellant on December 19, 2002 in respect of its 2002 taxation year.
28. The Appellant filed a waiver in respect of the normal reassessment period with the Minister in respect of, *inter alia*, the Payments on July 25, 2006.
29. By the Reassessment, the Minister reassessed the Appellant to increase its taxable income from SHAAELP to \$15,564,340 on the basis that the Payments and the Unrecoverable Advance were not deductible to SHAAELP. In addition, the Minister imposed a penalty on the Appellant pursuant to subsection 163(2) of the Act.
30. The Appellant filed a Notice of Objection to the Reassessment on June 10, 2009.
31. The Minister confirmed the Reassessment by Notice of Confirmation (the "Confirmation") on October 29, 2012.

B. ISSUES TO BE DECIDED

32. Whether the Appellant's pro rata share of the income of SHAAELP as a limited partner of SHAAELP has been properly calculated in computing the Appellant's income for the Period.
33. Whether the Appellant, knowingly, or under circumstances amounting to gross negligence, has made a false statement or omission in its return filed in respect of its 2002 taxation year.

C. RELIEF SOUGHT

34. To reduce the Appellant's taxable income for its 2002 taxation year by the amount of \$3,936,869 by reversing the disallowance of the deductions of the Payments and the Unrecoverable Advance in computing the taxable income of SHAAELP.

35. To vacate the penalty imposed pursuant to subsection 163(2) of the Act.

36. To reduce taxable income by any applicable outstanding non-capital losses.

**D. STATUTORY PROVISIONS UPON WHICH THE APPELLANT RELIES
AND REASONS WHICH IT SUBMITS**

37. The Appellant relies, *inter alia*, upon section 9, paragraph 18(1)(a), sections 67 and 96, and subsection 163(2) of the Act.

38. The Payments and the Unrecoverable Advance were made by SHAAELP to allow SHAAE 2001 and SHAAELP to meet their contractual obligations with arm's length third parties. At all times, all parties involved conducted themselves in accordance with their obligations that arose through the legal agreements to the various transactions.

39. SHAAELP began offering the Payments to encourage subscriptions by arm's length investors. As the end of December, 2001 approached and it became apparent that all of the Units would not be fully subscribed, SHAAELP was required to seek investments from related parties and to increase the quantum of the Payments.

40. SHAAELP made the Unrecoverable Advance in anticipation of certain expenditures being incurred by one of the Production Partnerships to earn income under a Production Services Agreement. Accordingly, the Unrecoverable Advance was incurred to earn income.

41. The Appellant did not receive any portion of the Payments or the Unrecoverable Advance. Instead, these amounts reduced the earnings of SHAAELP and consequently, the Appellant's distributions from SHAAELP. The Appellant was a limited partner of SHAAELP, and consequently was not involved in the management of SHAAELP or the execution of any of its business decisions,

42. The Reassessment and the Confirmation are ill-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

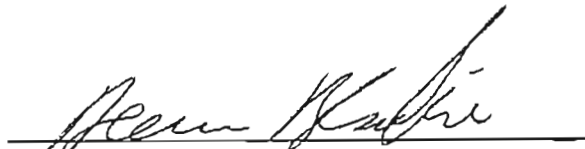
ALLOW the appeal;

SET ASIDE the Confirmation and the Reassessment, as requested;

REFER the Reassessment back to the Minister for reassessment on the basis that the Payments and the Unrecoverable Advance are deductible in computing SHAAELP's taxable income in its 2002 taxation year.

THE WHOLE WITH COSTS.

TORONTO, this 28th day of January, 2013

A handwritten signature in black ink, appearing to read "Heenan Blaikie", is written over a horizontal line.

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TAX COURT OF CANADA

GENERAL PROCEDURE

BETWEEN:

**ALLIANCE ATLANTIS EQUICAP
CORPORATION**

c/o FTI Consulting Canada Inc.
Suite 2010, 79 Wellington Street
West
Toronto, Ontario M5K 1G8

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

NOTICE OF APPEAL
(Section 169 of the Income Tax Act
(R.S.C. 1985 (5th Supp.) c.1 as
amended)

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**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION of the City of Toronto, in the Province of Ontario**

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

AFFIDAVIT OF JOHN MALLET
(Sworn May 8, 2015)

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Solicitors for Alberta Capital Corporation

**IN THE MATTER OF THE BANKRUPTCY OF ALLIANCE ATLANTIS EQUICAP CORPORATION, 4437691 CANADA INC.,
and EQUICAP FINANCIAL CORPORATION of the City of Toronto, in the Province of Ontario**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD
OF ALBERTA CAPITAL CORPORATION**

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