[Rule 3.25]

Clerk's Stamp

CLERK OF THE COURT

OCT 0 5 2015

JUDICIAL CENTRE OF GALGARY

COURT FILE NUMBER

1501-08782

COURT

Court of Queen's Bench of Alberta

JUDICIAL CENTRE

Calgary

PLAINTIFF

MUDRICK CAPITAL MANAGEMENT, LP

DEFENDANT

LIGHTSTREAM RESOURCES LTD.

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CASSELS BROCK & BLACKWELL LLP

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NOTICE TO DEFENDANT(S)

You are being sued. You are a Defendant.

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

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

Statement of facts relied on:

1. The Plaintiff brings this claim on the basis that the Respondent, Lightstream Resources Ltd. ("Lightstream" or the "Company"), has conducted itself in a manner that is oppressive, unfairly prejudicial to, and unfairly disregards the interests of, the Applicant, Mudrick Capital Management, L.P. ("Mudrick") in violation of section 242 of the Business Corporations Act, Alberta, RSA 2000, c B-9 (the "ABCA");

The Parties and Basis for the Claim

- 2. Lightstream is a light oil-focused exploration and production company operating in Western Canada. Lightstream is publicly traded on the Toronto Stock Exchange ("TSX") and its corporate headquarters is located in Calgary, Alberta. In 2013 it changed its corporate name from PetroBakken Energy Ltd. ("PetroBakken") to Lightstream.
- 3. Mudrick is an SEC-registered investment advisor which manages capital for a diverse group of institutions and individuals. It is a complainant under section 239 of the ABCA.
- 4. In 2012, Lightstream issued \$900 million of 8.625% Senior Notes due 2020 (the "Unsecured Notes") issued pursuant to an indenture dated January 30, 2012 by and among PetroBakken (now Lightstream) as Issuer, PetroBakken Capital Ltd and PBN Partnership as Guarantors, US Bank National Association as Trustee, and Computershare Trust Company of Canada as Canadian Trustee (the "Indenture"). The holders of those Unsecured Notes ranked equally in their positions as creditors of Lightstream.
- 5. As described below, Mudrick acquired approximately USD\$32 million of Unsecured Notes issued pursuant to the Indenture for its clients between January and April 2015.

- 6. In July 2015, Lightstream announced a transaction whereby it agreed to exchange \$465 million of the Unsecured Notes for \$395 million of secured second lien notes (the "Secured Notes"), and issued a further \$200 million of Secured Notes ("the Secured Notes Transaction" and "Transaction"). The Secured Notes Transaction was entered into with some (the "Secured Transaction Parties"), but not all, of the holders of the Unsecured Notes. Lightstream did not offer the Transaction to Mudrick, and refused to extend such offer when requested to do so.
- 7. The Secured Notes Transaction had the effect of promoting the Secured Transaction Parties into secured creditors, thereby placing them in a superior security position to the remaining holders of Unsecured Notes who were excluded from the Secured Notes Transaction, including Mudrick and its clients. It also adversely affected the market price of the remaining Unsecured Notes.
- 8. The Secured Notes Transaction by Lightstream is oppressive of and unfairly prejudicial to its interests, and unfairly disregards those interests.

Mudrick's Decision to Purchase Unsecured Notes from Lightstream

- 9. Mudrick reviewed the Indenture and understood that it provided a number of protections for holders of Unsecured Notes. Mudrick also contacted Lightstream on a number of occasions and Lightstream represented that it had adequate liquidity, was cash flow positive and had no requirement or intention to restructure its debt which included the Unsecured Notes.
- 10. Mudrick's decision to acquire Unsecured Notes was based on the following factors:
 - (a) Lightstream appeared to have sufficient liquidity and continuing oil production to withstand any short to medium-term declines in oil prices without the need for additional capital or debt restructuring;
 - (b) Lightstream had a limited amount of debt ahead of the Unsecured Notes; and

- (c) Mudrick viewed the value of Lightstream as being in excess of the market valuation of USD\$1.1 billion.
- 11. Mudrick acquired the Unsecured Notes for its clients in several instalments as follows:
 - (a) On January 22, 2015, Mudrick acquired Unsecured Notes in two instalments:
 - (i) USD\$10,000,000 Unsecured Notes; and
 - (ii) USD\$4,500,000 Unsecured Notes;
 - (b) On January 29, 2015, Mudrick acquired Unsecured Notes in another two instalments:
 - (i) USD\$5,000,000 Unsecured Notes; and
 - (ii) USD\$10,000,000 Unsecured Notes.
 - (c) On April 1, 2015, Mudrick acquired USD\$500,000 Unsecured Notes;
 - (d) On April 7, 2015, Mudrick acquired USD\$1,000,000 Unsecured Notes; and
 - (e) On May 28, 2015, Mudrick acquired USD\$1,200,000 Unsecured Notes.

Lightstream Enters Into The Secured Notes Transaction to the Exclusion of Mudrick and Other Unsecured Note Holders

- 12. In May 2015, rumours began circulating in the industry that Lightstream was receiving many proposals to restructure its debt and enter into private transactions which could involve the exchange of Unsecured Notes for Secured Notes.
- 13. Both in private communications with Mudrick and in Lightstream's public communications, the Company continued to represent that it was sufficiently liquid, with positive cash flows, and did not need to restructure its debt and had no requirement for any such transaction.

- 14. Notwithstanding these representations, on July 2, 2015, Lightstream announced the Secured Notes Transaction,
- 15. Lightstream did not disclose and has not disclosed the identities of the Secured Transaction Parties. Various media outlets have since speculated that Apollo Global Management LLC and Fidelity Investments, two of Lightstream's largest holders of Unsecured Notes, participated in the Secured Notes Transaction.
- 16. The Secured Notes Transaction was only offered to the Secured Transaction Parties, to the exclusion of other holders of the remaining \$335 million of the Unsecured Notes, including Mudrick, despite Mudrick's repeated requests to participate in the Secured Transaction. Mudrick is not aware of any other holders of Unsecured Notes, aside from the Secured Transaction Parties, being made aware of the Secured Notes Transaction prior to the July 2, 2015 announcement.
- 17. Throughout the time when Mudrick first acquired Unsecured Notes in January of 2015, up to and including the present, there was ample opportunity for Lightstream to present the Secured Notes Transaction to Mudrick especially given that Mudrick repeatedly communicated its desire to be part of any debt restructuring that Lightstream might consider.
- 18. Furthermore, when the rumours of a restructuring emerged, Mudrick had considered the possibility of selling off its position in the Unsecured Notes so as not to be left holding Unsecured Notes in the event of an exchange or other transaction which might negatively impact them. Based on assurances received from Lightstream, both privately and publicly, Mudrick decided not to sell its Unsecured Notes.

- 19. In addition to its discussions with Lightstream, Mudrick also spoke to a representative of RBC Capital Markets, LLC ("RBC"), Lightstream's financial advisor in connection with the Secured Notes Transaction. Mudrick made its desire to participate in the Transaction clear. Mudrick was told that the Transaction would not be offered to the remaining holders of Unsecured Notes, but that Lightstream was considering an additional transaction on terms significantly less favourable than those that had been offered to, and accepted by, the Secured Transaction Parties. Mudrick was further told to provide the lowest price it would be willing to accept for an exchange and Lightstream would consider the offer.
- 20. Mudrick explained that it would not accept terms less favourable than those offered to the Secured Transaction Parties and again reiterated its desire to participate in the Transaction.

The Transaction Was Oppressive, Unfairly Prejudicial To and Unfairly Disregarded the Interests of the Applicant

- 21. Lightstream's conduct was oppressive, unfairly prejudicial to, and unfairly disregarded the interests of the Applicant for the following reasons:
 - (a) The Secured Notes Transaction unfairly discriminated among holders of Unsecured Notes notwithstanding that all of the holders had purchased the exact same type of debt from Lightstream as governed by the indenture;
 - (b) The Secured Notes Transaction was unnecessary. In Lightstream's private communications with Mudrick, as well as its public filings, and public communications, it indicated that it had sufficient liquidity and did not need to – or plan to – add additional liquidity or restructure its debt;
 - (i) Further, even if Lightstream believed that the Transaction would be beneficial, it was still obligated to treat all of its Unsecured Note holders equitably. Offering the Transaction only to some of the Unsecured Note holders was opportunistic, prejudicial, and unfairly discriminated within the class of holders of Unsecured Notes;

- (ii) The Transaction significantly increased the amount of secured debt ahead of the remaining Unsecured Notes and caused the Unsecured Notes to decrease in value. If the transaction had been offered to all holders of Unsecured Notes, all of the holders including the Secured Transaction Parties would have participated and exchanged Unsecured Notes for Secured Notes because not doing so would have left any remaining holder of Unsecured Notes in a significantly worse position. The current trading price of the remaining Unsecured Notes confirms how the Secured Notes Transaction has left the excluded holders of the Unsecured Notes in a much worse position.
- (c) The Secured Notes Transaction did not comply with the terms of the Indenture;
- (d) Lightstream repeatedly assured Mudrick that it was not contemplating a transaction similar to the Secured Notes Transaction, and that if it did, it would make any such transaction available to all holders of the Unsecured Notes; and
- (e) Lightstream repeatedly declined Mudrick's request to participate in the Secured Notes Transaction and indicated that it would not be making the Transaction available to the remaining holders of Unsecured Notes.
- 22. As a result of the Secured Notes Transaction, the Unsecured Notes have substantially decreased in value and are subordinated to the Secured Notes issued pursuant to the Transaction. Specifically:
 - (a) The market price for the Unsecured Notes peaked at \$0.7900 on the dollar in the middle of May. As rumours began circulating that Lightstream was contemplating an exchange, the Unsecured Notes dropped to \$0.6400 on the dollar. Immediately following the announcement of the Transaction, the notes further dropped to \$0.5000 on the dollar and, at present, the

Unsecured Notes are being offered at \$0.4400 on the dollar, well below the value of the Unsecured Notes at the times Mudrick had made its acquisitions between January 21 2015 and May 28 2015; and

(b) Prior to the Transaction, the Company had CDN\$638 million in debt senior to the Unsecured Notes. After the Transaction, the amount of debt ahead of the Unsecured Notes increased by CDN\$480 million such that there is now CDN\$1.121 billion in debt senior to the Unsecured Notes.

Remedy sought:

- 23. The Applicant seeks the following:
 - (a) an Order pursuant to section 242 of the ABCA, declaring that the Secured Notes Transaction was oppressive, unfairly prejudicial, and unfairly disregarded the interests of the Applicant;
 - (b) Appropriate remedial orders pursuant to section 242, specifically:
 - (i) that the Secured Notes Transaction be set aside;
 - (ii) alternatively, that Lightstream be required to offer the Transaction to Mudrick and its clients on the same terms and conditions as offered to the Secured Transaction Parties;
 - (iii) alternatively, that Lightstream be required to redeem the Unsecured Notes of Mudrick's clients for the "make-whole" price specified in the Indenture;
 - (iv) further, that Lightstream compensate Mudrick and its clients for its losses as a consequence of the Secured Notes Transaction;
 - (v) the reasonable and proper costs of this application on full indemnity basis or double or triple costs basis, as appropriate; and

(vi) such other order as may be appropriate under section 242 and be just in the circumstances.

NOTICE TO THE DEFENDANT(S)

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

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiff's(s') address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a Court may give a judgment to the Plaintiff(s) against you.

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Form 10 [Rule 3.25]

Court File Number

1501-07813

Clerk's stamp

Court

COURT OF QUEEN'S BENCH OF ALBERTIZERK OF THE COURT

Judicial Centre

CALGARY

Plaintiffs

FRONTFOUR CAPITAL CORP.

FRONTFOUR CAPITAL GROUP LLC

Defendant

LIGHTSTREAM RESOURCES LTD.

Document

STATEMENT OF CLAIM

JUDICIAL CENTRE OF CALGARY

FILED

JUL 0 9 2015

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Lawyers for the Plaintiffs, FrontFour Capital Corp. and FrontFour

Capital Group LLC File no.: 01029273-0002

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

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

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

Statement of facts relied on:

(I) The Parties

- 1. The Plaintiff, FrontFour Capital Corp., is the Investment Fund Manager and Portfolio Manager of the FrontFour Opportunity Fund. FrontFour Capital Corp is based in Toronto, Ontario.
- The Plaintiff, FrontFour Capital Group LLC, is the Investment Advisor to the FrontFour Master Fund Ltd. and separately managed accounts. FrontFour Capital Group LLC is headquartered in Greenwich, Connecticut, USA.

CALGARY: 2512375\2A

- 3. Collectively, FrontFour Capital Corp. and FrontFour Capital Group LLC are referred to herein as **FrontFour**.
- 4. FrontFour primarily invests in Canada and the United States.
- 5. The Defendant, Lightstream Resources Ltd. (**Lightstream** or the **Company**), is a light oil exploration and production corporation with its registered and records office in Calgary, Alberta. Until May 22, 2013, when the company was renamed, Lightstream operated as Petrobakken Energy Ltd. (**Petrobakken**).

(II) The Unsecured Notes and Indenture

- 6. On January 30, 2012, Lightstream (then operating as Petrobakken) closed a private placement of unsecured senior notes (the **Unsecured Notes**) having a principal amount of \$900,000,000.00 (USD). The Unsecured Notes bear interest at a rate of 8.625% per annum and mature February 1, 2020.
- 7. In 2014, Lightstream repurchased \$100,000,000.00 (USD) of the principal amount of the outstanding Unsecured Notes and retired them, leaving a total of \$800,000,000.00 (USD) of the principal amount of Unsecured Notes that remain outstanding to this date.
- 8. The Unsecured Notes are governed by an indenture (the **Indenture**) dated January 30, 2012 between Lightstream (Petrobakken as it then was) as issuer, Petrobakken Capital Ltd. and PBN Partnership as guarantors (together with such other parties as may become guarantors under the Indenture from time to time, the **Guarantors**), U.S. Bank National Association as trustee, and Computershare Trust Company of Canada as Canadian trustee.
- 9. The Indenture provides for a number of rights to holders of the Unsecured Notes (the Unsecured Noteholders), enumerates binding covenants on Lightstream giving rise to default remedies should they be breached, and places certain strict restrictions on the Company regarding the incurrence of further debt.
- 10. The Indenture provides that the Company may incur or issue **Permitted Refinancing** Indebtedness which the Indenture defines, among other things, to include indebtedness used to refinance any other indebtedness of Lightstream or its subsidiaries.
- 11. The Indenture states that Lightstream may only incur Permitted Refinancing Indebtedness if particular conditions are met, including that the refinancing indebtedness in question has a final maturity date or redemption date no earlier than the final maturity date of the Unsecured Notes.
- 12. The Indenture further restricts Lightstream by providing that the Company and the Guarantors may not incur any indebtedness that is contractually subordinated to any other indebtedness, unless such indebtedness is also contractually subordinated to the Unsecured Notes and the applicable guarantees, on substantially identical terms. This ensures that the Unsecured Noteholders would always rank only behind, or be primed by, the existing first lien lender to the Company (the existing first lien lender

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- being a syndicate of creditors including certain major Canadian banks, pursuant to a secured credit facility with the Company).
- 13. The Indenture restricts Lightstream from incurring or permitting to exist any lien other than **Permitted Liens** unless the Unsecured Notes are secured by a lien on such property or assets on an equal and ratable basis with the other indebtedness so secured. The Indenture defines Permitted Liens, among other things, as liens securing Permitted Refinancing Indebtedness.
- 14. The Indenture provides that Lightstream may not, without the prior consent of each affected Unsecured Noteholder, modify any of the provisions related to the Unsecured Noteholder's unconditional right to receive principal, premium (if any), and interest on the Unsecured Notes, and such right may further not be affected or impaired without such consent.

(III) FrontFour Subscribes to the Notes

- 15. Beginning in or about February 3, 2015 and until March 12, 2015, FrontFour, in its capacity as investment advisor to funds that it manages, purchased a substantial principal amount of the Unsecured Notes.
- 16. As at May 12, 2015, FrontFour's resultant holdings of Unsecured Notes of the Company bore a face value of \$31,750,000.00 (USD).
- 17. The Indenture terms bind Lightstream. Lightstream must perform its various obligations thereunder and abide by its restrictions. Further, the Indenture crystallizes the duties owed to FrontFour as an Unsecured Noteholder.

(IV) The Proposed Refinancing Transaction

- 18. On July 2, 2015, Lightstream issued a press release (the **July 2 Press Release**) in which the Company announced for the first time that it had entered into a privately negotiated agreement (the **Proposed Refinancing Transaction** or **Transaction**) with certain but not all of the Unsecured Noteholders.
- 19. The July 2 Press Release was posted to the System for Electronic Document Analysis and Retrieval (SEDAR). FrontFour located the July 2 Press Release through SEDAR shortly after its posting.
- 20. The July 2 Press Release came as a total surprise to FrontFour, which had previously not been notified of the Transaction by Lightstream, notwithstanding that FrontFour and Lightstream had been in communication to that time.
- 21. The Proposed Refinancing Transaction contemplates, among other things:
 - (a) the exchange of a total of \$465,000,000.00 (USD) Unsecured Notes for an aggregate amount of \$395,000,000.00 (USD) newly issued 9.875% second-lien secured notes due June 15, 2019 (the **Secured Notes**) representing an exchange ratio of Unsecured Notes to Secured Notes of 1.00:0.85;

- (b) the issuance to the same select parties of an additional \$200,000,000.00 (USD) in Secured Notes for cash; and
- (c) the contractual subordination of the Secured Notes to holders of the Company's existing first lien debt pursuant to an undisclosed intercreditor agreement.
- 22. The July 2 Press Release states that the Company expects to close the Transaction in mid-July 2015.

(V) Lightstream's Oppressive Conduct

- 23. The cumulative effect of the Proposed Refinancing Transaction is oppressive, unfairly prejudicial to, and unfairly disregarding of the interests of FrontFour.
- 24. Lightstream never provided notice of the Proposed Refinancing Transaction to FrontFour prior to the July 2 Press Release. Nor was any other Unsecured Noteholder not party to the Transaction previously notified.
- 25. Lightstream never provided FrontFour an opportunity to participate in the Proposed Refinancing Transaction on the same basis as the undisclosed parties who are to be issued Secured Notes in the Transaction, or at all.
- 26. The Proposed Refinancing Transaction currently contemplates inclusion of only certain existing Unsecured Noteholders to the exclusion of FrontFour and other interested Unsecured Noteholders in the same class.
- 27. The Proposed Refinancing Transaction would create a scenario in which Unsecured Noteholders not party to it will arbitrarily, oppressively, and prejudicially see the value of their debt significantly downgraded, and their exposure to loss in an event of default greatly increased.
- 28. The Company's announcement of the Proposed Refinancing Transaction shortly before the national Fourth of July holiday in the United States and the Calgary Stampede in Alberta demonstrates the Company's apparently calculated timing, the purpose of which was to attempt to execute the Proposed Refinancing Transaction without considered attention or scrutiny from affected Unsecured Noteholders not party to the Transaction.
- 29. Contrary to the terms of the Indenture and in an oppressive and unfairly prejudicial manner to FrontFour;
 - (a) the Proposed Refinancing Transaction would result in the issuance of Secured Notes bearing a final maturity date earlier than the final maturity date of the Unsecured Notes;
 - (b) the Proposed Refinancing Transaction would result in indebtedness that is not contractually subordinated to the Unsecured Notes—indeed, the Secured Notes, by virtue of being secured, improperly rank in priority to the Unsecured Notes;

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- (c) the Proposed Refinancing Transaction will result in the incurrence of a lien in circumstances where: (i) the Transaction will not constitute a Permitted Refinancing Indebtedness under the Indenture; and (ii) in any event, the Unsecured Notes will not be secured by a lien on such property or assets on an equal and ratable basis with the other indebtedness so secured (i.e. the Secured Notes) or at all; and
- (d) Lightstream did not obtain the prior consent of FrontFour as a holder of Unsecured Notes, notwithstanding that the Proposed Refinancing Transaction would have the *de facto* effect of significantly impairing the repayment rights of the Unsecured Noteholders under the Indenture while benefitting a select group of Unsecured Noteholders to the express detriment of FrontFour.

(VI) Market Reaction to the Transaction Announcement

- 30. The trading price for the Unsecured Notes immediately and dramatically fell following the July 2 Press Release of the Transaction, causing damage to be suffered by FrontFour.
- 31. Bloomberg Business described Lightstream's actions as "dividing its lenders into winners and losers". As an Unsecured Noteholder not included in the Transaction, FrontFour would be such a "loser".
- 32. Bloomberg Business further stated that "Those left out of the private deal got knocked down the capital structure, saw their holdings plunge in trading to about half their original value, and then got downgraded by Moody's Investors Service".
- 33. Moody's Investors Service stated that they viewed the Unsecured Noteholders not party to the private Transaction "as losing and having a much lower recovery level than they would have had before."
- 34. FrontFour states, and the fact is that, but for the Company's surprise announcement of the Transaction in the July 2 Press Release, the market price of the Unsecured Notes would not have been so severely diminished.
- 35. FrontFour states, and the fact is that, had the Company properly notified affected Unsecured Noteholders of the Transaction, and provided an equal opportunity to all such Unsecured Noteholders to participate therein, the market would have absorbed that information and, while the market price of the Unsecured Notes may well have dropped, FrontFour would have:
 - (a) been on an equal footing with the undisclosed parties that ultimately became party to the Transaction in circumstances where their rights under the Indenture were identical;
 - (b) carefully considered and likely entered into the Transaction; and
 - (c) alternatively, even if FrontFour had not became party to the Transaction, the resulting damage would not have been nearly as grave.

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(VII) Lightstream's Oppression Caused FrontFour Damages

- 36. FrontFour advances this claim pursuant to Part 19 of the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended from time to time (the **ABCA**).
- 37. FrontFour is a "complainant" within the meaning of s. 239(b)(ii) of the ABCA.
- 38. The actions of Lightstream in respect of the conduct of its business and affairs are oppressive, unfairly prejudicial to, and unfairly disregarded the interests of FrontFour as security holder and creditor.
- 39. As a result of these oppressive acts, Lightstream has caused serious harm and prejudice to FrontFour as well as to the rights and interests of FrontFour as a security holder and creditor of the Company.
- 40. FrontFour reasonably believed and relied upon the expectation that Lightstream would act in accordance with the terms of the Unsecured Notes and the Indenture and not in a manner oppressive to FrontFour and its interests.
- 41. FrontFour is entitled to immediate relief from Lightstream under the ABCA to remedy and redress past, present and ongoing oppression.
- 42. In particular but without limitation, FrontFour is entitled to immediate injunctive relief to restrain the Proposed Refinancing Transaction from proceeding in its current form. FrontFour therefore claims interim and final Orders restraining Lightstream from taking further actions to advance the Transaction in its current form or at all.
- Alternatively, FrontFour seeks an Order directing Lightstream to permit FrontFour to participate in the Proposed Refinancing Transaction on the same basis as the undisclosed parties who are to be issued Secured Notes in the Transaction.
- 44. FrontFour seeks an Order requiring the payment of damages by Lightstream to FrontFour to compensate the Plaintiff for the loss in value of its security interest in the Company resulting from the announcement of the Proposed Refinancing Transaction and in the amount of at least \$4,524,375.00 (USD), or as may be proven at trial.
- 45. Particulars in this regard include that Lightstream fundamentally harms the rights of FrontFour by:
 - (a) deliberatively and knowingly creating this private Transaction;
 - (b) depriving FrontFour the opportunity to participate in the Transaction;
 - (c) not providing any notice of the Transaction;
 - (d) proposing to complete the Transaction which confers benefits that are unavailable to other Unsecured Noteholders of the same class (such as FrontFour) principally by creating a separate and unequal class of debt ranking ahead of the Unsecured Notes;
 - (e) subordinating FrontFour's debt contrary to the terms of the Indenture;

- (f) granting a lien as security to the Secured Notes when a lien has not been granted as security to the Unsecured Notes on the same basis, contrary to the terms of the Indenture;
- (g) arbitrarily increasing the likelihood that, in an event of default, Lightstream's indebtedness to FrontFour will not be satisfied while the select undisclosed parties to the Transaction will have their debt secured;
- (h) causing the market value of the Unsecured Notes to drop precipitously in direct response to the Transaction and July 2 Press Release (in FrontFour's case, resulting in loss in excess of \$4,524,375.00 (USD)); and
- (i) such further particulars as may be proven at the trial of this Action.
- 46. FrontFour made a formal written demand to Lightstream on July 6, 2015, to rectify these oppressive acts. Lightstream has failed to comply with this demand.

(VIII) Lightstream Breached its Duty of Honest Contractual Performance

- 47. It is a term of the Indenture, express or implied, that the Parties shall conduct themselves at all times in good faith, and engage in fair and honest dealing.
- 48. In breach of the Indenture, Lightstream has failed to conduct itself in good faith and has failed to engage fairly and honestly with FrontFour in relation to its performance under the Indenture.

Remedy sought:

- 49. FrontFour proposes that this action be tried at Calgary.
- 50. FrontFour seeks the following relief on an interim, interlocutory, and final basis:
 - (a) a declaration pursuant to sections 239 and 242 of the ABCA that the business affairs of Lightstream and the powers of the board have been carried on, conducted or exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of FrontFour;
 - (b) an injunction Order restraining the Company from proceeding with the Proposed Refinancing Transaction on its current terms or at all;
 - (c) alternatively, an Order directing that Lightstream provide FrontFour an opportunity to participate in the Proposed Refinancing Transaction on the same basis as the undisclosed parties who are to be issued Secured Notes in the Transaction, and varying the Transaction to effect same;
 - (d) damages in the amount of \$4,524,375.00 (USD) or such amount to be proven at trial;
 - (e) costs on a solicitor-client basis, or alternatively costs; and

(f) such further and other relief as counsel for the Plaintiff may advise and this Honourable Court may deem just.

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