

COURT FILE NUMBER **1455 of 2019**

COURT **COURT OF QUEEN'S BENCH FOR SASKATCHEWAN**

JUDICIAL CENTRE **SASKATOON**

APPLICANTS **IN THE MATTER OF SECTION 204 OF *THE BUSINESS CORPORATIONS ACT*, RSS 1978, c B-10**

AND IN THE MATTER OF THE VOLUNTARY LIQUIDATION AND DISSOLUTION OF PRIMEWEST MORTGAGE INVESTMENT CORPORATION

DOCUMENT **FIRST SUPPLEMENTAL REPORT OF THE LIQUIDATOR FOR THE COURT OF APPEAL AUGUST 21, 2020**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **LIQUIDATOR**

KPMG Inc.
Suite 3100, Bow Valley Square II
205 - 5th Ave SW
Calgary, Alberta T2P 4B9
Neil Honess/Joe Sithole
Tel: (403) 691-8014/(403) 691-8070
neilhoness@kpmg.ca
jsithole@kpmg.ca

COUNSEL

The W Law Group LLP
Suite 300, 110 – 21st Street East
Saskatoon, Saskatchewan S7K 0B6
Mike Russell/Michelle Tobin
Tel: (306) 244-2242
mrussell@wlawgroup.com
mtobin@wlawgroup.com

Table of Contents

1. INTRODUCTION AND PURPOSE OF REPORT 1

Listing of Appendices

Appendix "A" - PROOFS OF CLAIM FILED BY MERCHANT

Appendix "B" - LIQUIDATOR'S LETTER OF AUGUST 21, 2020 TO MERCHANT

1. INTRODUCTION AND PURPOSE OF REPORT

1. PrimeWest Mortgage Investment Corporation (“**PrimeWest**” or the “**Corporation**”) was incorporated under *The Saskatchewan Business Corporations Act* on March 22, 2005, and commenced operations in October of 2005 as a Mortgage Investment Corporation (“**MIC**”).
2. The Corporation provided lending on security of mortgages on real properties situated in Saskatchewan, Manitoba and Alberta. The mortgages transacted by the Corporation did not generally meet the underwriting criteria of conventional lenders. As a result, the Corporation’s investments were subject to a greater risk and accordingly earned a higher rate of interest than is typical with conventional mortgage lending activities.
3. In June of 2016, the contract of the then-President and CEO of the Corporation, Mr. Don Zealand (“**Zealand**”), was terminated, and an interim CEO was engaged, effective August of 2016. Subsequently, an in-depth review of the Corporation’s portfolio was performed, which included updated appraisals of properties on which the Corporation’s loans were secured (the “**Portfolio Review**”).
4. The Portfolio Review revealed that a number of mortgage loans were under-secured and non-compliant with the Corporation’s lending guidelines and policies. As a result, the Corporation was required to increase its loan loss provision by over \$4 million for the year and suspend payment of dividends to shareholders for the first time in its history.
5. The interim CEO subsequently resigned in May of 2017, and was replaced by the Corporation’s CFO.
6. In response to the Portfolio Review, in October of 2017 the Corporation filed a Statement of Claim against Zealand, claiming a breach of the Corporation’s corporate policy, gross negligence and breach of fiduciary duty while he was President and CEO (the “**Zealand Action**”). Zealand denies all the allegations and has filed a counter-claim against the Corporation for wrongful dismissal. A defence to the counter-claim has been filed by the Corporation’s solicitors.
7. Throughout 2017 and 2018, the Corporation initiated a number of steps to attempt to improve its financial position, including extensive cost cutting, initiation of foreclosure proceedings on non-performing mortgage loans and pursuit of new investments and capital into the Corporation.

8. Such efforts did not result in significant financial improvement and, in June of 2018, the Corporation sought to sell its entire portfolio of assets. No acceptable proposals were received, culminating in the engagement of KPMG Inc. (“**KPMG**”) by the board of directors (the “**Board**”) on or about May 29, 2019, to evaluate potential strategies for the Corporation.
9. Following KPMG’s analysis and recommendations, the Corporation determined that an orderly liquidation pursuant to Section 204 of *The Business Corporations Act*, RSS 1978, c B-10 would be the most effective means of winding up the Corporation.
10. On September 24, 2019, at an annual and special meeting of the shareholders of the Corporation, a detailed liquidation plan was presented to and approved by the shareholders (the “**Liquidation Plan**”).
11. The Liquidation Plan provides a mechanism to:
 - a) Cease operations in an efficient and definitive manner;
 - b) Safeguard the current assets of the Corporation and move to realize them in due course;
 - c) Establish a claims process by which to address all Claims in a timely and cost-effective manner; and
 - d) Make distributions to creditors and, in the event of there being remaining equity, to shareholders in as expedited and equitable a manner as possible.
12. The voluntary liquidation and windup of the Corporation commenced effective October 24, 2019 (the “**Effective Date**”), at 5:00PM CST. At that time, all powers of the Corporation’s directors ceased and the directors were deemed to have resigned. KPMG was appointed as liquidator (the “**Liquidator**”).
13. On October 31, 2019, the Court of Queen’s Bench for Saskatoon (the “**Court**”) issued an order (the “**Order**”) approving the Liquidation Plan and affirming the appointment of KPMG as Liquidator. The Order further appointed former directors of PrimeWest, Tom Robinson, Wilson Olive, Francis Bast and Tom Archibald, as inspectors of the Corporation’s liquidation (collectively, the “**Inspectors**”).
14. On December 18, 2019 the Liquidator filed its first report (the “**First Report**”), which described, among other things:
 - a) The Company’s primary assets and liabilities;

- b) The Receiver's activities to date;
 - c) The Company's interim receipts and disbursements from October 25, 2019 to December 20, 2019 including a discussion of professional fees incurred to date by the Liquidator and its counsel; and
 - d) The Liquidator's proposed claims process for the identification, resolution and barring of claims (the "**Claims Process**").
15. On January 10, 2020, the Court issued an order (the "Claims Process Order") approving the Claims Process.
16. Merchant Law Group LLP ("**Merchant**") is counsel for a putative class action lawsuit against the Company and its directors and officers (the "**Merchant Action**").
17. Merchant was notified via mail of the requirement to submit a claim in the proceedings pursuant to the Claims Process Order. Merchant was served with notice and all materials in respect of the Claims Process Order application.

Purpose of the Liquidator's Supplemental Report to the Court of appeal

18. This is the Liquidator's supplemental report to the Saskatchewan Court of Appeal (the "**First Supplemental Report**") and has been prepared for the sole purpose of providing background and supporting documents received and sent in relation to the Merchant Action. The First Supplemental Report is not intended as an update regarding the progress of the Liquidation Proceedings or addendum to the First Report of the Liquidator.
19. On January 31, 2020, the Liquidator received an Appearance Day Notice from Merchant for an application to be heard at a date to be determined. Subsequently, a hearing on this matter was scheduled for March 19, 2020 at 10AM. The Court was then closed because of the COVID-19 Pandemic.
20. On May 22, 2020, the Liquidator's counsel brought an application for the advice and directions of the Court as to how the matters and issues in regards to the class action were to be determined in the liquidation proceedings pursuant to the Claims Process Order.

21. On July 7, 2020, a fiat was issued by the Court of Queen's Bench for Saskatchewan which stated that Randy Koroluk, the representative plaintiff in the class action represented by Merchant was required by the terms of the Claims Process Order to file with the Liquidator a proof of claim within 30 days and the Claims bar was extended to August 7, 2020.
22. On August 6, 2020, Merchant filed two proofs of claim attached hereto as **Appendix "A"**.
23. The Liquidator reviewed the two proofs of Claim filed by Merchant and determined that it meets the definition of a Claim as defined in article 1.1 of the Liquidation Plan. On August 21, 2020 the Liquidator sent a letter in response to the proofs of claim filed by Merchant attached hereto as **Appendix "B"**.
24. Further background and information regarding the Corporation and these liquidation proceedings, including a copy of the Order and the Liquidation Plan, which forms Schedule "A" thereto, can be found on the Liquidator's website at <https://home.kpmg/ca/primewest> (the "**Liquidator's Website**").

This Report is respectfully submitted this 21st day of August, 2020.

KPMG Inc.

**In its capacity as Liquidator of
PrimeWest Mortgage Investment Corporation
and not in its personal or corporate capacity.**



Per: Neil Honess

Senior Vice President

APPENDIX "A"

PROOFS OF CLAIM FILED BY MERCHANT



2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

E.F. Anthony Merchant, Q.C.
tmerchant@merchantlaw.com
(306) 539-7777

August 6, 2020

KPMG Inc.
Suite 3100, 205 - 5th Ave SW
Calgary, AB T2P 4B9

Via Email cpimienta@kpmg.ca

Attention: Cristina Pimienta

Dear Ms. Pimienta:

**RE: Q.B. No. 1455 of 2019 - In the Matter of the Voluntary Liquidation and Dissolution of Primewest Mortgage Investment Corporation
Statement of Account - Schedule "A"
Our File # 77000646**

We represent Randy Koroluk, the representative plaintiff and the class in the action filed under QBG 1455 of 2018 against the directors of PrimeWest Mortgage Investment Corporation ("PrimeWest"). A copy of the Amended Statement of Claim is enclosed.

The class consists of two sub-groups: 1- Those who invested and should have been warned that the Net Asset Value was much lower than the directors, the company and Ernst & Young first indicated; and 2- the larger group, all the shareholders.

Hence we are filing two proofs of claim.

The general principle of damages is to place the class in the position they would have been in had they not suffered the wrong: *Dodd Properties (Kent) Ltd. v Canterbury City Council*, [1980] 1 WLR 433 (Eng QB); *Cyr v Kopp*, 2016 BCSC 679.

Damages are to be assessed at the time of loss: *Jens v Mannix Co.*, 1986] 5 WWR 563 (BCCA), para 11. This is not a fixed rule. Courts can set a date for assessing damages: *Neher v Marathon Homes Inc.*, 2011 CarswellAlta 197 (Alta QB).

The Court is not concerned with the mathematically measurable damages, but with reasonable damages: *Abraham v Wingate Properties*, 1985 CarswellMan 215 (Man CA).

Difficulty in assessment is neither a bar nor a justification for nominal damages: *Campobello Fisheries Ltd. v Jackson Brothers Ltd.*, [1992] 132 NBR (2d) 91 (NBQB); *Hyman v Kinkel*, 1939 CarswellOnt 103 (SCC).

In the absence of an actuarial assessment, a lump sum may be awarded: *Nicholson v Nova Scotia (Attorney General)*, [1991] 110 NSR (2d) 181 (NSTD) (affirmed on appeal).

Without evidence of a clear and certain quantum, the quantum may be little more than a guess: *Penvidic Contracting Co. v International Nickel Co. of Canada Ltd.*, 1975 CarswellOnt 299 (SCC).

Most of our causes of action relate to breach of duty. Hence, most translate as negligence. In so far as we plead breach of statutory duty, pursuant to the Canadian Encyclopedic Digest, *Damages IV.22*, para 576 such breach is considered in the context of the law of negligence.

In *321665 Alberta Ltd. v Mobil Oil Canada Ltd.*, 2013 ABCA 221 the Court held:

Damages "at large" is an approach that arises when the nature of the tort has made it impossible for the plaintiff to prove damages with precision...But the outcome must still reasonably approximate actual or foreseeable loss, or else it becomes disconnected from its foundational rationale.

I first discuss the second group.

The Proof of Claim requests the amount by which the Debtor is indebted to the creditors as at October 25, 2019. The closest preceding value to that date available through the Canada Securities Exchange ("CSE") is October 19, 2019 at \$1.31/share.

Our claim pertains to mismanagement and waste that is evident from the CSE's charts. From July 2, 2016 until September 10, 2016 the share price remained stable at \$9.60 per share.

The date of the class' claim is approximately the date of issue of the statement of claim, i.e. June 12, 2018. The closest preceding value to that date available through the CSE is March 31, 2018 at \$1.63/share.

Pursuant to the *Condensed Interim Financial Statements (Unaudited)*, three and six months ended June 30, 2018, available through the CSE, paragraph 8(b) stipulates that there were 1,890,729 shares in issue around June 12, 2018.

Pursuant to the *Condensed Interim Financial Statements (Unaudited)*, three and six months ended September 30, 2016, available through the CSE, paragraph 8(b) stipulates that there were 1,890,729 shares in issue around September 10, 2019.

The number of shares in issue remained unchanged.

PrimeWest's market capitalization according to CSE values was \$18,150,998.40 on September 10, 2016, calculated as the product of the number of shares in issue and their traded value.

The market capitalization according to CSE values was \$3,081,888.27 on June 12, 2016, calculated the same way.

The difference is \$15,069,110.13. This is the amount of realistic losses, i.e. based on values an investor would have received if trading those shares on the open market.

I now discuss the second group. The Net Asset Value of PrimeWest was \$10.00/share since the spring of 2016, and was reduced to \$6.50/share by the Listing Application. Our Amended Statement of Claim addresses this:

29. The Listing Application also released April 3, 2017 lists the Defendants Fondall, Robinson, and Bast as the Audit Committee for Prime West.

30. The Listing Application reduced the Net Asset Value of Prime West to \$6.50 per share. This was a significant reduction from the price of \$10.00 per share that had been in place since spring 2016. At this time, all share dividends and redemptions were suspended.

Pursuant to the *Condensed Interim Financial Statements (Unaudited)*, three months ended March 31, 2017, paragraph 9(b), the number of issued shares remained unchanged. At a \$3.50 discount on the Net Asset Value, loss is equal to \$6,617,551.50.

Pursuant to the fiat of Mr. Justice Gabrielson on July 7, 2020 these claims are included in this liquidation.

Yours truly,

MERCHANT LAW GROUP LLP

Per:



E.F. Anthony Merchant, Q.C.

CC - Mike Russell, The W Law Group

NOTICE TO CREDITOR

January 16, 2019

RE: IN THE MATTER OF A CLAIMS PROCESS ORDER UNDER THE VOLUNTARY LIQUIDATION AND DISSOLUTION OF PRIMEWEST MORTGAGE INVESTMENT CORPORATION

On October 24, 2019, **PRIMEWEST MORTGAGE INVESTMENT CORPORATION** (the "**Company**") commenced voluntary liquidation under *The Business Corporations Act*, RSS 1978, c B-10 (the "**Liquidation**") and, by Order of the Court of Queen's Bench for Saskatchewan dated October 31, 2019, continued the Liquidation under Court supervision (the "**Liquidation Proceedings**"), with KPMG Inc. appointed as the Liquidator (the "**Liquidator**").

As part of the Liquidation Proceedings, the Court of Queen's Bench for Saskatchewan has ordered that a Claims Process be initiated in order that all claims against the Company and its directors and officers can be determined.

Only a creditor who establishes its claim against the Company or its directors and officers in accordance with the Claims Process will be entitled to receive a distribution on account of such claim.

The Order establishing the Claims Process granted by the Honourable Mr. Justice N.G. Gabrielson on January 10, 2020, as well as all relevant instructions and documents related to the Claims Process, including the Proof of Claim form, can be obtained from the Liquidator's webpage located at <https://home.kpmg.ca/primewest> or by contacting the Liquidator at:

Bow Valley Square II, 3100, 205 – 5th Avenue SW, Calgary, Alberta, T2P 4B9
Attention: Neil Honess
Email: neilhoness@kpmg.ca
Attention: Cristina Pimienta
Email: cpimienta@kpmg.ca

The deadline for a creditor to submit a Proof of Claim, if required under the Claim Procedure, in respect of any claim it has, or believes it has, against the Company or its directors and officers is 4:00 p.m. (Saskatchewan Time) on Tuesday, March 10, 2020 (the "**Claims Bar Date**").

Claims which are not submitted to the Liquidator by way of Proof of Claim, or otherwise acknowledged by a Claim Amount Notice, on or before the Claims Bar Date will be forever barred and Creditors holding such Claims will be forever barred from making or enforcing any Claim against the Company or its directors or officers and the Claim shall be forever released and extinguished.

Yours truly,

KPMG Inc., in its capacity as liquidator
Of PrimeWest Mortgage Investment Corporation
And not in its personal or corporate capacity



Neil Honess, Senior Vice President

PROOF OF CLAIM (CLAIMS PROCEDURE)

For claims arising before October 25, 2019 relating to PrimeWest Mortgage Investment Corporation.

(See Reverse for Instructions)

Randy Koroluk, the representative plaintiff in the Class Action
Regarding the claim of QBG 1727 of 2018, and the members of the Class he represents. (referred to
in this form as "**the creditor**"). (name of creditor)

All notices or correspondence regarding this claim to be forwarded to the creditor at the following address:

E.F. Anthony Merchant, Q.C., Merchant Law Group LLP, 2401 Saskatchewan Dr, Regina

SK S4P 4H8

Telephone: 306-359-7777

Fax: 306-522-3299

E.F. Anthony Merchant, Q.C. on behalf of Randy
I, Koroluk and said class members

Residing in the _____ city

(name of person signing claim)

(city, town, etc.)

of Regina

In the province of Saskatchewan

(name of city, town, etc.)

Do hereby certify that:

1. I am the creditor

or

I am _____ counsel for _____ of the ~~creditor~~ creditors.
(if an officer or employee of the company, state position or title)

2. I have knowledge of all the circumstances connected with the Claim, as defined in the Claims Procedure Order, dated 2020.1.10, referred to in this form.

3. I have a Claim against PrimeWest Mortgage Investment Corporation (the "**Debtor**"), specifically:

(a) a Claim against the Debtor; [Claim against the Debtor through defendant Ernst & Young's indemnity]

(b) an Equity Claim, as defined in the Liquidation Plan; or

(c) a claim against the directors and officers of the Debtor.

4. As at October 25, 2019, the Debtor was and still is indebted to the creditor in the sum of \$ 15,069,110.13 CDN as shown by the statement of account attached hereto and marked

Instructions for Completing Proof of Claim Forms

In completing the attached form, your attention is directed to the notes on the form and to the following requirements:

Proof of Claim:

1. The form must be completed by an individual and not by a corporation. If you are acting for a corporation or other person, you must state the capacity in which you are acting, such as, "Credit Manager", "Treasurer", "Authorized Agent", etc., and the full legal name of the party you represent.
2. The person signing the form must have knowledge of the circumstances connected with the claim.
3. A Statement of Account containing details of secured and unsecured claims, and if applicable, of the amount due in respect of property claims, must be attached and marked Schedule "A". Claims should **not** include the value of goods and/or services arising after October 25, 2019. It is necessary that all creditors indicate the date and location of the delivery of all goods and/or services. Any amounts claimed as interest should be clearly noted as being for interest.
4. The nature of the claim must be indicated by ticking the type of claim which applies. e.g. –

Ticking (A) indicates the claim is unsecured;

Ticking (B) indicates the claim is secured, such as a mortgage, lease, or other security interest, and the value at which the creditor assesses the security must be inserted, together with the basis of valuation. Details of each item of security held should be attached as Schedule "B" and submitted with a copy of the chattel mortgage, conditional sales contract, security agreement, etc.

5. The person signing the form must insert the place and date in the space provided, and the signature must be witnessed.
6. Additional information regarding PrimeWest Mortgage Investment Corporation and the Liquidation process, as well as copies of claims documents may be obtained at <http://home.kpmg/ca/primewest>. If there are any questions in completing the notice of claim, please write or telephone the office of the Liquidator at:

KPMG Inc., Liquidator of PrimeWest Mortgage Investment Corporation.

By Mail/Courier/Email/Facsimile:

KPMG Inc.
Suite 3100, 205 – 5th Ave SW
Calgary, AB T2P 4B9

Attention: Cristina Pimienta
Email: cpimienta@kpmg.ca
Phone: (403) 691-8406
Fax: (403) 691-8009

Note: Any claim not delivered to the Liquidator at the above noted address by March 10, 2020, will, unless otherwise ordered by the Court of Queen's Bench for Saskatoon, be barred and may not thereafter be advanced against the Debtor.

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Claims which are not submitted to the Liquidator by way of Proof of Claim, or otherwise acknowledged by a Claim Amount Notice, on or before the Claims Bar Date will be forever barred and Creditors holding such Claims will be forever barred from making or enforcing any Claim against the Company or its directors or officers and the Claim shall be forever released and extinguished.

Yours truly,

KPMG Inc., in its capacity as liquidator
Of PrimeWest Mortgage Investment Corporation
And not in its personal or corporate capacity



Neil Honess, Senior Vice President

PROOF OF CLAIM (CLAIMS PROCEDURE)

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(See Reverse for Instructions)

Randy Koroluk, the representative plaintiff in the Class Action
Regarding the claim of QBG 1727 of 2018, and the members of the Class he represents. (referred to
in this form as "**the creditor**"). (name of creditor)

All notices or correspondence regarding this claim to be forwarded to the creditor at the following address:

E.F. Anthony Merchant, Q.C., Merchant Law Group LLP, 2401 Saskatchewan Dr, Regina

SK S4P 4H8

Telephone: 306-359-7777 Fax: 306-522-3299
E.F. Anthony Merchant, Q.C. on behalf of Randy
I, Koroluk and said class members Residing in the _____ city
(name of person signing claim) (city, town, etc.)
of Regina In the province of Saskatchewan
(name of city, town, etc.)

Do hereby certify that:

1. I am the creditor
or
 I am _____ counsel for _____ of the ~~creditor~~ creditors
(if an officer or employee of the company, state position or title)
2. I have knowledge of all the circumstances connected with the Claim, as defined in the Claims Procedure Order, dated 2020.1.10, referred to in this form.
3. I have a Claim against PrimeWest Mortgage Investment Corporation (the "**Debtor**"), specifically:
- (a) a Claim against the Debtor; [Claim against the Debtor through defendant Ernst & Young's indemnity]
 - (b) an Equity Claim, as defined in the Liquidation Plan; or
 - (c) a claim against the directors and officers of the Debtor.
4. As at October 25, 2019, the Debtor was and still is indebted to the creditor in the sum of \$ 6,617,551.50 CDN as shown by the statement of account attached hereto and marked

"Schedule A". Claims should **not** include the value of goods and/or services supplied after October 25, 2019. If a creditor's claim is to be reduced by deducting any counter claims to which the Debtor is entitled and/or amounts associated with the return of equipment and/or assets by the Debtor, please specify. All Equity Claims and claims against directors and officers must include full particulars of the claim together with supporting documentation.

5. The statement of account must specify the vouchers or other evidence in support of the claim including the date and location of the delivery of all services and materials. Any claim for interest must be supported by contractual documentation evidencing the entitlement to interest.

6. A. **Unsecured claim.** \$ 6,617,551.50. In respect to the said debt, the creditor does not and has not held any assets as security.

B. **Secured claim.** \$ _____ . In respect of the said debt, the creditor holds assets valued at \$ _____ as security:

Provide full particulars of the security, including the date on which the security was given and the value at which the creditor assesses the security together with the basis of valuation, and attach a copy of the security documents as Schedule "B".

Dated at Regina, this 6th day of August, 2020.
(Insert city)

Witness

(signature of individual completing the form)

Must be signed and witnessed

Instructions for Completing Proof of Claim Forms

In completing the attached form, your attention is directed to the notes on the form and to the following requirements:

Proof of Claim:

1. The form must be completed by an individual and not by a corporation. If you are acting for a corporation or other person, you must state the capacity in which you are acting, such as, "Credit Manager", "Treasurer", "Authorized Agent", etc., and the full legal name of the party you represent.
2. The person signing the form must have knowledge of the circumstances connected with the claim.
3. A Statement of Account containing details of secured and unsecured claims, and if applicable, of the amount due in respect of property claims, must be attached and marked Schedule "A". Claims should **not** include the value of goods and/or services arising after October 25, 2019. It is necessary that all creditors indicate the date and location of the delivery of all goods and/or services. Any amounts claimed as interest should be clearly noted as being for interest.
4. The nature of the claim must be indicated by ticking the type of claim which applies. e.g. –

Ticking (A) indicates the claim is unsecured;

Ticking (B) indicates the claim is secured, such as a mortgage, lease, or other security interest, and the value at which the creditor assesses the security must be inserted, together with the basis of valuation. Details of each item of security held should be attached as Schedule "B" and submitted with a copy of the chattel mortgage, conditional sales contract, security agreement, etc.
5. The person signing the form must insert the place and date in the space provided, and the signature must be witnessed.
6. Additional information regarding PrimeWest Mortgage Investment Corporation and the Liquidation process, as well as copies of claims documents may be obtained at <http://home.kpmg/ca/primewest>. If there are any questions in completing the notice of claim, please write or telephone the office of the Liquidator at:

KPMG Inc., Liquidator of PrimeWest Mortgage Investment Corporation.

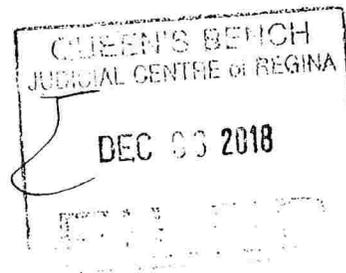
By Mail/Courier/Email/Facsimile:

KPMG Inc.
Suite 3100, 205 – 5th Ave SW
Calgary, AB T2P 4B9

Attention: Cristina Pimienta
Email: cpimienta@kpmg.ca
Phone: (403) 691-8406
Fax: (403) 691-8009

Note: Any claim not delivered to the Liquidator at the above noted address by March 10, 2020, will, unless otherwise ordered by the Court of Queen's Bench for Saskatoon, be barred and may not thereafter be advanced against the Debtor.

Form 3-9
(Rule 3-9)



COURT FILE NUMBER QBG NO 1727 OF 2018

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

PLAINTIFF RANDY KOROLUK

DEFENDANT(S) DAN ANDERSON
TOM ARCHIBALD
FRANCIS BAST
DOUG FRONDALL
MIKE HOUGH
WILL OLIVE
TOM ROBINSON
IRENE SEIFERLING
ERNST & YOUNG INC.

Brought under *The Class Actions Act*

NOTICE TO DEFENDANT

1 The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:

- (a) serve a Statement of Defence on the plaintiff; and
- (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2 The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

- (a) 20 days if you were served in Saskatchewan;
- (b) 30 days if you were served elsewhere in Canada or in the United States of America;
- (c) 40 days if you were served outside Canada and the United States of America.

3 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4 This Statement of Claim is to be served within 6 months from the date on which it is issued.

5 This Statement of Claim is issued at the above-named judicial centre on the 12th of June, 2018.

6 This Amended Statement of Claim is issued at the above-named judicial centre on the 3rd day of December, 2018.

AMENDED STATEMENT OF CLAIM

THE PARTIES

1.—The Plaintiff, RANDY KOROLUK (“Koroluk”) resides in Regina, Saskatchewan, and is an investor and registered shareholder in Prime West.

1.

~~2.—All of the Defendants are current or previous members of the Board of Directors (the “Board”) for PRIME WEST MORTGAGE INVESTMENT CORPORATION (“Prime West” or “the Corporation”). Prime West is a publicly traded mortgage Saskatchewan investment company.~~

~~3.~~2. The Defendant, DAN ANDERSON Q.C. (“Anderson”) resides in Saskatoon, Saskatchewan, and served on the Prime West Board from June, 2009 until May, 2016. Anderson is senior legal counsel in Saskatoon.

~~4.~~3. The Defendant, TOM ARCHIBALD (“Archibald”) resides in Saskatoon, Saskatchewan, and served on the Prime West Board from May, 2007 until the present. Archibald is the president of Eden Health Solutions, a privately held consulting company specializing in health care and business consulting.

~~5.~~4. The Defendant FRANCIS BAST (“Bast”) resides in Regina, Saskatchewan, currently serves on the Prime West Board, and is a businessman with many ventures, including real estate sales and development, finance, and investment.

~~6.~~5. The Defendant DOUG FRONDALL (“Fron dall”) resides in Saskatoon, Saskatchewan and served on the Prime West Board from May, 2008 until June, 2017. Frondall is an Accountant and a Partner at Virtus Group. He is the chairman of Sask Works.

~~7.~~6. The Defendant, MIKE HOUGH (“Hough”) resides in Saskatoon, Saskatchewan, and served on the Prime West Board from May, 2007 until May, 2016. Hough was the General Manager of the Saskatoon Christian Centre.

~~8.~~7. The Defendant WILL OLIVE Q.C. (“Olive”) currently serves on the Prime West Board. Olive is senior legal counsel and a partner at the law firm Olive Waller Zinkhan & Waller LLP, which has provided legal services to Prime West since 2005.

~~9.~~8. The Defendant TOM ROBINSON (“Robinson”) resides in Regina, Saskatchewan and presently serves on the Prime West Board. Robinson is the former managing partner of KPMG LLP, which

provides audit, business advisory, and consulting services to both private and public organizations.

9. The Defendant, IRENE SEIFERLING ("Seiferling") resides in Saskatoon Saskatchewan and served on the Prime West Board from May, 2008 until May, 2016. Seiferling owns a corporate governance consultation firm called "Board Dynamics" which specifically specializes in board governance and business planning.

10. All of the above Defendants are current or previous members of the Board of Directors (the "Board of Directors Defendants") for PRIME WEST MORTGAGE INVESTMENT CORPORATION ("Prime West" or "the Corporation"). Prime West is a publicly traded mortgage Saskatchewan investment company.

~~10.~~ 11. The Defendant, ERNST AND YOUNG INC. ("E & Y") is a corporation registered pursuant to the *Canada Business Corporations Act*. They provide professional and accounting services. E & Y carried on business in Saskatchewan and maintains Saskatchewan officers. Their registered office is 100 Adelaide Street West, Suite 3900, Toronto ON M5H 0B3.

THE PROPOSED CLASS

~~11.~~ 12. The Defendants have, by their acts or omissions, caused harm and damages to Members of the Class. The Plaintiff acts as Representative Plaintiffs on behalf of an affected Class of several persons in the Province of Saskatchewan. The Plaintiff institutes this Claim as Representative on behalf of the Class of persons who have suffered harm or damages as a result of the Defendants' acts, omissions, wrongdoings, and breaches of legal duties and obligations, including, but not limited to, breach of trust, breach of fiduciary duty, breach of duty to act with honesty and good faith, negligence and failure to fulfill their statutory or common law duties, or other obligations due to the Plaintiff and Class Members collectively.

~~12.~~ 13. The Plaintiff on behalf of all Class Members claims the following relief, on a joint and several basis, against each of the Defendants, for the following proposed Class:

- a. All persons who invested in Prime West;
- b. All persons who are registered shareholders in Prime West;
- c. All persons who are beneficial shareholders in Prime West;
- d. All family members of the above.

(Collectively "Class Members" or "Class")

BACKGROUND FACTS

~~14.~~ Prime West has been operating in the Province of Saskatchewan since 2005. Prime West is a public corporation based in Saskatoon, Saskatchewan and operates as a Saskatchewan based mortgage Investment Corporation. The Corporation's Class A common shares are listed for trading on the Canadian Securities Exchange under the symbol PRI.

~~13.~~

~~14.~~ ~~15.~~ Each of the Board of Directors Defendants was a member of the Board of Directors for Prime West and participated in the Defendants' Wrongful Acts.

~~15.~~ ~~16.~~ Each of the Board of Directors Defendants' responsibilities as a Board Members and officers of Prime West included, *inter alia*:

- a. Assuming responsibility for the overall stewardship and development of the corporation;
- b. Monitoring the Corporation's business interests;
- c. Identifying the principal risks and opportunities of the Corporation's business and ensuring the implementation of appropriate systems to manage these risks;
- d. Overseeing ethical management and succession planning, including appointing, training, and monitoring senior management and directors,
- e. Overseeing the Corporation's internal financial controls and management information systems;
- f. Implementing and enforcing corporate governance policies; and
- g. Following the code of ethics and written charters of the Corporation.

~~9.~~

~~17.~~ E & Y was retained by Prime West to do yearly audits of Prime West's financial information for 2014, 2015, and 2016. These audits were done by E & Y and Prime West released it audited financial statements for each year about the end of March of the next year

~~18.~~ E & Y was appointed as the auditor for Prime West by the shareholders. In undertaking the work for Prime West and in providing audits to Prime West, E & Y knew that members of the investing public, including current and prospective shareholders would rely upon the professionalism, fidelity, and accuracy of E & Y's audited financial statements.

THE DEFENDANTS' WRONGFUL ACTS

~~16.~~ ~~19.~~ On or about March, 2011, the Board of Directors Defendants and other members of the Board began to employ Don Zealand ("Zealand") as CEO of Prime West.

~~17-20.~~ In 2015-2016, Zealand began to invest in high risk rural and commercial loans, in many instances second position mortgages, subject to the actions of other mortgage interests, contrary to the Corporation's mandate to invest in primarily short-term residential mortgages.

21. Zealand invested in 19 condo units in Regina on a high rise unit that was known or should have been known to be an uncertain and high-risk investment, which the Defendants knew, or ought to have known was contrary to the best interests of Class Members. As a result, a significant amount of financial risk was created for shareholders. The Defendants' knew or ought to have known that Zealand was conducting business of this kind in a way that was outside the parameters set by the Board and failed to adequately supervise his conduct.

~~18-22.~~ The 2015 annual financial statements audited by E & Y did not acknowledge, flag, or communicate that high-risk investments had been entered into by Prime West. The nature of the audit process has prevented the Class from ascertaining whether this was a failure of E & Y to preform due dilligence or if it was a willful lack of transparency from the Board of Directors Defendants.

~~19-23.~~ In Spring of 2016, the Board raised nearly two million dollars for the purpose of investment. To this date, the shareholders have not been informed of what has happened to this money, nor has it been returned to them. Instead, the funds raised have been misappropriated for other purposes. This money was raised at the rate of \$10.00 per share.

~~20-24.~~ On or about June 6, 2016, the Defendants dismissed Zealand. At the time, the Defendants, Archibald and Fondall became acting CEO until August, 2016. Neither of these Defendants had the requisite competency to take on this role, which caused further damage and financial risk for the Class.

~~24-25.~~ On or about August, 2016, the Defendants' employed Brad Penno. Penno began to sell properties off for less than they could have retrieved contrary to the interests of the Class.

26. In September of 2016, the Board raised \$1,000,000 in equity for Prime West's operating costs from a third party at an 8% per annum interest rate. This loan began to be paid back in 2017. The Defendants, Bast and Robinson, were shareholders in this third party, and personally profited from the loan. In January of 2017, the Board, including the Board of Directors Defendants took an additional loan of \$500,000 from the same third party at an 8% per annum. As a result of the losses from these loans the dividends to be paid from Class Members were suspended in 2017.

27. Prime West released the audited annual financial statement for 2016 received from E & Y on or about March 31, 2017 as usual. The 2016 Audited Financial Statements prepared by E & Y drew attention to the accumulated deficit of \$3,399,834 and cast doubt on Prime West's ability to continue as a going concern. On or about April 3, 2017 Prime West released a statement that summarized the wrongful acts as follows:

During the year ended December 31, 2016, the Corporation's new management performed a detailed review of its mortgage portfolio. The Corporation determined that certain loss events occurred in prior periods that should have more properly been considered in determining the specific allowance for mortgage losses at December 31, 2015 and 2014. In addition it was determined that the security value assigned to certain mortgages and assets taken in settlement of debt were not appropriate and did not consider the facts and circumstances that existed at December 31, 2015 and 2014. The combination of these events also impacted the collective allowance that should have been recorded as of December 31, 2015 and 2014 and were considered as errors in accordance with IFRS [International Financial Reporting Standards].

28. The error in the 2014 and 2015 audited financial statement was discovered when new management took over Prime West. It was not discovered by E & Y in their role as auditor. E & Y caused, or allowed by inaction, the error to be propagated over several years of audited financial statements. E & Y did not properly probe the information provided to them to ascertain Prime West's true financial position. E & Y failed to take care that errors and omissions did not exist in the documents they prepared. These failures obscured Prime West's true financial positions, maintained shares at an artificial value, and caused investors to purchase shares at a value greater than their actual worth.

29. The Listing Application also released April 3, 2017 lists the Defendants Fondall, Robinson, and Bast as the Audit Committee for Prime West.

30. The Listing Application reduced the Net Asset Value of Prime West to \$6.50 per share. This was a significant reduction from the price of \$10.00 per share that had been in place since spring 2016. At this time, all share dividends and redemptions were suspended.

22—

23-31. The Board of Directors Defendants did not begin to establish loan loss provisions or adequate corporate governance until 2017-2018. Despite the fact that the Defendant, Sieferling, specializes in consulting boards on developing effective corporate governance practices.

24-32. Over the previous few years, when shareholders and Class Members voiced their concern to the Board, including each of the Board of Directors Defendants, their inquiries have been repeatedly and actively ignored.

~~25-33.~~ The facts pleaded in this section (the "Defendants' Wrongful Acts") apply to each and every cause of action stated in this Statement of Claim, even where not specifically reiterated.

THE PLAINTIFF'S HARMS

~~34.~~ Each of the Defendants have, by their acts or omissions, caused harm and damages to Members of the Class. The Plaintiff institutes this Claim as a Representative on behalf of the Class of persons who have suffered harm or damages as a result of the Defendants' acts, omissions, wrongdoings, and breaches of legal duties and obligations, including, but not limited to, negligence and failure to fulfill their statutory or common law duties, or other obligations due to the Plaintiff and Class Members.

~~26-35.~~ The Class has suffered and continues to suffer loss and damages, which include but are not limited to, loss of share value and loss of dividend income.

VICARIOUS LIABILITY

~~36.~~ As members of the Board, each of the Board of Directors Defendants were at all material times required to manage or supervise the management of the business and affairs of Prime West, including the actions of its agents and employees, pursuant to section 97 of the *Business Corporations Act*, RSS 1978, c. B-10, s. 97 and are all therefore personally liable for the Wrongful Acts, especially those committed by CEOs and CFOs under their supervision.

~~27.~~

~~37.~~ E & Y is a firm of professional accounts with members registered pursuant to *The Accounting Profession Act*, SS 2014, c A-3.1. E & Y is vicariously liable for the Wrongful Acts of its employees, agents, and partners.

BREACH OF TRUST

~~28-38.~~ At all material times, each and every of the Board of Directors Defendants owed duties of trust to Class Members by virtue of their position of trust on the Board.

~~29-39.~~ The Trust required an accounting of funds from business conducted on behalf of Class Members and using capital raised from Class Members through the Board of Directors Defendants' day to day operations, with certain funds to be held in trust by the Board of Directors Defendants for the Class.

~~30-40.~~ The Board of Directors Defendants' Wrongful Acts were dishonest and either fraudulently or

negligently designed to decrease the amounts held in trust for Class Members and ultimately misappropriated.

31-41. The Board of Directors Defendants knowingly received funds that were subject to the Trust and engaged the Board of Directors Defendants' Wrongful Acts.

32-42. The Board of Directors Defendants' responsibility was to receive funds that were subject to the Trust and this engaged the Board of Directors Defendants' Wrongful acts.

33-43. In the alternative, any Board of Directors Defendant who did not directly handle the funds to be held in trust for the Class is liable as a trustee *de son tort* as each took upon themselves to act as trustee and administer funds that were intended to be held in trust for Class Members.

BREACH OF DUTY OF HONESTY AND GOOD FAITH

34-44. Pursuant to the common law and section 117 of *The Business Corporations Act*, RSS 1978, C. B-10, s.117, each and every Board of Directors Defendant was required at all material times to act honestly and in good faith and in keeping with the best interests of the corporation, including keeping the Members of the Class in mind to exercise due care, diligence, and skill in the circumstances.

35-45. Each of the Board of Directors Defendants has failed to meet the standard of honesty and good faith required of them as Board Member by engaging in the Defendants' Wrongful Acts.

36-46. The Board of Directors Defendants' Wrongful Acts were engaged to lie and mislead Class Members.

37-47. The Board of Directors Defendants engaged in Wrongful Acts knowing that the said actions were not in good faith or would negatively affect the legitimate business and financial interests of the Class

BREACH OF FIDUCIARY DUTY

38-48. All of the Board of Directors Defendants are sophisticated individuals with experience in business and finance, and at all material times were aware of their fiduciary and financial obligations to the Class.

39-49. At all material times, each of the Board of Directors Defendants, owed duties of trust to the Class by virtue of their position on the Board. As Board Members, the Board of Directors Defendants, owed a duty of loyalty to the Class, and a fiduciary obligation not to act adversely to Class Members' interests.

40-50. The Board of Directors Defendants were entrusted to raise and manage funds acquired for the purposes of investment and required to hold the funds in trust for Class Members among other duties.

41-51. The independence of the Board of Directors Defendants, and the level of trust placed in them by Class Members to act honourably and honestly, and with Class Members' interests in mind, which were always to precede and be in priority to their own interests, created in each of the Board of Directors Defendants a fiduciary duty towards the Class which required each Board of Directors Defendant to:

- a. Act with the utmost honesty and good faith;
- b. Follow the established practices and procedures of the corporation;
- c. Raise and manage investment capital with the interests of the Class before their own;
- d. Fully and accurately account for all funds received;
- e. Prioritize Class Members' interests over their own; and
- f. Not use funds raised for investment for any personal or other improper purposes.

42-52. The Plaintiff, on behalf of the Class, pleads that each of the Board of Directors Defendants, breached their duty of trust and the fiduciary duties owed to Class Members by, inter alia:

- a. Misdirecting, dissipating, and misappropriating monies accepted on behalf of the Corporation and the Class;
- b. Failing to account to Class Members with respect to monies received in the course of business;
- c. Using monies received on behalf of the Class or for the purposes of investment for their own personal benefit, the personal benefit of the other Defendants, or other persons unknown;
- d. Preferring his or hers own personal interests and gains and completely disregarding the interests of the Plaintiff, which they are duty bound to protect and uphold;
- e. Using client information and other confidential information for his or hers own personal benefit to the detriment of the Plaintiffs;
- f. Soliciting clients and staff members to cancel services or act in a manner contrary to the interests of the Plaintiff;

- g. Abusing their positions on the Board to gain personal benefit;
- h. Such further particulars as may be advised prior to trial.

43-53. As a result of the actions of the Board of Directors Defendants as pleaded herein, Class Members have suffered damages and harm in an amount to be proven at trial and following a full accounting of the Board of Directors Defendants' activities.

WASTE OF CORPORATE ASSETS

44-54. The Plaintiff, on behalf of the Class, pleads and relies upon the allegations contained herein and pleads that the Board of Directors Defendants owed Class Members a duty of care not to waste corporate assets by overpaying for property or employment services. The Board of Directors Defendants breached this duty of care by, *inter alia*:

- a. Employing senior management who they knew or ought to have known were grossly underqualified for their roles;
- b. Grossly overpaying officers of the Corporation by way of unethical bonus structures; and
- c. Borrowing money in an irresponsible and unethical fashion

INTERFERENCE WITH ECONOMIC RELATIONS

45-55. The Board of Directors Defendants have committed injurious acts against the Class, as pleaded herein, which deprived Class Members of the revenue and proceeds from the dividends of their investments.

46-56. The Board of Directors Defendants committed these acts with full knowledge of the harm and effect this would have on the Class.

47-57. The actions of the Board of Directors Defendants have thereby unlawfully interfered with Class Members' economic interests and the Defendants are liable therefor.

48-58. By reason of the foregoing, the Board of Directors Defendants are liable for all losses suffered by Class Members as a result of said unlawful interference.

NEGLIGENCE

49-59. In the alternative to the intentional wrongs pleaded, the Plaintiff claims that the Board of Directors Defendants are liable for Negligence.

50-60. The Board of Directors Defendants owed a duty of care to the Plaintiffs to, *inter alia*:

- a. Ensure that their subsidiaries, agents, or affiliates did not engage in the Board of Directors Defendants' Wrongful Acts;
- b. Act in a manner befitting a Board Member with the Corporation;
- c. Act in a manner in accordance with their duties as trustees, fiduciaries, and privileged positions.

51-61. The Board of Directors Defendants breached the standard of care of reasonable members of a Board and knew or ought to have known that engaging in the Board of Directors Defendants' Wrongful Acts would cause harm to the Class.

62. As a result of the Board of Directors Defendants' negligence, Class Members have suffered damage.

63. E & Y was negligent in the preparation of the audited financial statements of 2014, 2015 and 2016. They breached their duty as an expert providing core documents pursuant to *The Securities Act, 1988*, SS 1988-89, c S-42.2 and their duties as professional accountants to audit with diligence and accuracy.

64. Alternatively, the information and disclosure provided to E & Y which was used to create the audited annual financial statements was negligently made to E & Y by the Board of Directors Defendants, or other Prime West officers and management. So which in the alternative, the Plaintiff and Class seek recovery from all the Defendants other than E & Y.

52-65. The negligent conduct of E & Y has caused significant harm to Class members. Class members made investment decisions based on the audited annual financial statements and lost money because of their inaccuracy.

DAMAGES

53-66. The Defendants' conduct has caused significant harm to Class Members. The Class has suffered and continue to suffer loss and damage, which includes, but is not limited to the amount of the misappropriated funds.

54-67. As a result of the Defendants' wrongful acts and omissions Class Members are entitled to general damages for their losses in amounts yet to be determined, the particulars of which will be provided prior to trial.

PUNITIVE DAMAGES

55-68. The Defendants have acted in a high-handed, malicious, and reprehensible fashion, and in wanton and reckless disregard for Class Members' rights, which ought not to be countenanced by this Honourable Court. Accordingly, the Plaintiff is entitled to punitive, aggravated, and exemplary damages, the particulars of which will be provided prior to Trial.

PRAYER FOR RELIEF

56-69. The Plaintiffs therefore claim against the Defendants:

- a. General Damages in an amount to be proven at trial;
- b. Special damages in an amount to be proven at trial;
- c. Aggravated, exemplary and punitive damages;
- d. An accounting of all funds misappropriated by the Board of Directors Defendants;
- e. An equitable tracing of all funds misappropriated by the Board of Directors Defendants;
- f. Interest pursuant to the *Pre-judgement interest act*;
- g. Costs;
- h. Such further and other relief as this honourable court may allow.

DATED at Regina, Saskatchewan, this 12th day of June, 2018.

—“E.F.A Merchant”——
E. F. Anthony Merchant, Q.C.
Solicitor for the Plaintiff

AMENDED STATEMENT OF CLAIM DATED at Regina, Saskatchewan, this 3rd day of December, 2018.



E.F. Anthony Merchant, Q.C.
Solicitor for the Plaintiff

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of firm:	MERCHANT LAW GROUP LLP
Name of lawyer in charge of file:	E. F. Anthony Merchant, Q.C.
Address:	2401 SASKATCHEWAN DRIVE, REGINA, SK, S4P 4H8
Telephone number:	(306) 359-7777
Fax number:	(306) 522-3299
E-mail address:	tmerchant@merchantlaw.com

Y:\Wpdata\Class Actions\Prime West\Statement of Claim

QUEEN'S BENCH FOR SASKATCHEWAN

Date: 2020 07 07
Docket: QBG 1455 of 2019
Judicial Centre: Saskatoon

IN THE MATTER OF SECTION 204 OF *THE BUSINESS CORPORATIONS ACT*, RSS 1978, c B-10

AND IN THE MATTER OF THE VOLUNTARY LIQUIDATION AND DISSOLUTION OF
PRIMEWEST MORTGAGE INVESTMENT CORPORATION

Counsel:

Michael J. Russell, Nicholas P. Conlon and Michelle M.A. Tobin	for the applicant, KPMG Inc. in its capacity as and liquidator of PrimeWest Mortgage Investment Corporation
E.F. Anthony (Tony) Merchant, Q.C.	for the representative plaintiff, Randy Koroluk and the putative class in QBG 1727 of 2018
Donald D. Hanna	for the defendant, Ernst & Young LLP
Amanda M. Quayle, Q.C.	for the former directors of PrimeWest Mortgage Investment Corporation, Dan Anderson, Tom Archibald, Francis Bast, Doug Frondall, Mike Hough, Wilson Olive, Tom Robinson and Irene Seiferling

FIAT
July 7, 2020

GABRIELSON J.

Introduction

[1] There are currently two applications before the Court:

- (a) an application by way of appearance day notice, brought by the representative plaintiff, Randy Koroluk, for an order that the claim issued under QBG 1727 of 2018 [class action] is excluded from the

liquidation proceedings in QBG 1455 of 2019;

- (b) an application by the liquidator, KPMG Inc.[KPMG], for an order:
 - (i) providing the liquidator with advice and directions of the Court in the discharge of its powers pursuant to the liquidation order and the Claims Process Order [Claims Process Order] and providing the liquidator with assistance in carrying out the terms of the liquidation order and the Claims Process Order; and
 - (ii) declaring that the allegations against Dan Anderson, Tom Archibald, Francis Bast, *et al*, in QBG 1727 of 2018 constitute a claim pursuant to and subject to the Claims Process Order, and that all matters and issues in regard to the action shall be determined in the liquidation proceedings in such manner and procedure as prescribed by further order of this Honourable Court.

Background

[2] PrimeWest Mortgage Investment Corporation [PrimeWest] is a mortgage investment corporation incorporated pursuant to *The Business Corporations Act*, RSS 1978, c B-10 [*Act*], on March 22, 2005. PrimeWest is in the business of investing in and managing a diversified portfolio of commercial and residential mortgages.

[3] On October 9, 2019, PrimeWest applied pursuant to an originating application for an order approving a plan of liquidation and dissolution pursuant to ss. 204(8), 210, 215 and 216 of the *Act* [PrimeWest application].

[4] Pursuant to a directors' resolution dated October 23, 2019, the liquidation plan was to take effect on October 24, 2019.

[5] A hearing was held on October 31, 2019 in respect to the PrimeWest application. In attendance were Ian Sutherland and Craig Firth as counsel for PrimeWest, Scott Spencer as counsel for Donald Zealand, a former CEO of PrimeWest, and Tony Merchant, Q.C. and Evatt Merchant as counsel for Randy Koroluk, the representative plaintiff in the class action. After discussion with counsel, the Court approved of the liquidation plan, including the appointment of KPMG as liquidator and the appointment of Tom Robinson, Wilson Olive, Francis Bast and Tom Archibald as inspectors of the corporation's liquidation.

[6] The draft order which had been submitted with the original application had included a reference to proceedings against directors or officers in Article 14. It read:

No Proceedings Against Directors or Officers

14. No Proceeding shall be commenced or continued against any of the former or current directors or officers of the Corporation with respect to any Claim except with leave of the Court.

[7] Mr. Merchant, on behalf of the representative plaintiff in the class action, objected to the wording of Article 14. The article was therefore changed by agreement of counsel to delete reference to the directors in Article 14 and was thereafter issued by the Court on October 31, 2019 as follows:

No Proceedings Against the Directors or Officers

14. No Proceeding shall be commenced or continued against any of the former or current officers of the Corporation with respect to any Claim, except with leave of this Court.

[8] Mr. Merchant then sent an email dated November 4, 2019 to Mr. Sutherland, suggesting that they should jointly return to court for rectification of the order of October 31, 2019 under the “slip rule” as the order “leaves the liquidation plan lame, contradictory, and embarrassing”. He suggested that the action known as QBG 1727 of 2018, which had been referred to in the definition of “claim”, should be excluded from the liquidation order.

[9] The order as issued read:

INTERPRETATION

...

2. For greater certainty, the definition of “Claim” in the Liquidation Plan and this Order includes but is not limited to:
 - (a) the following court of Queen’s Bench actions in which the Corporation is named as a defendant or defendant-by-counterclaim, as the case may be:
 - (i) QB No. 1559 of 2017;
 - (ii) QB No. 1889 of 2018;
 - (iii) QB No. 1395 of 2018
 - (b) the Court of Queen’s Bench action commenced against certain current and former directors of the Corporation in QBG No. 1727 of 2018.
- (the “**Actions**”).

[10] On November 6, 2019, Mr. Sutherland responded to Mr. Merchant’s correspondence consenting to the proposed amendment but rejecting Mr. Merchant’s characterization of the form of the order as follows:

I am not going to comment further on your characterization of the current form of the Order as referenced in your most recent letter other than to state that we reject it in its entirety. Having said that, it is very much the goal of PrimeWest Mortgage Investment Corporation to focus its remaining resources on an orderly liquidation in as

expeditious and efficient manner as possible and so my instructions are to accommodate your request as it does not appear to be actively harmful to the process.

[11] Counsel, therefore, filed a consent order removing paragraph 2(b) from the order of October 31, 2019. The amended and restated order of the Court, which was issued November 25, 2019, therefore, read:

INTERPRETATION

...

2. For greater certainty, the definition of "Claim" in the Liquidation Plan and this Order includes but is not limited to:

(a) the following court of Queen's Bench actions in which the Corporation is named as a defendant or defendant-by-counterclaim, as the case may be:

(i) QB No. 1559 of 2017;

(ii) QB No. 1889 of 2018;

(iii) QB No. 1395 of 2018

(the "Actions").

[12] Mr. Merchant did not request any amendment to the definition of "claim" as contained in the Plan of Liquidation and Dissolution, which was attached as Schedule A to the Order and the Amended and Restated Order. The Plan of Liquidation and Dissolution reads as follows:

1.1 Definitions

In this Liquidation Plan:

...

"**Claim**" means:

(a) any right of any Person against the Corporation in connection with any indebtedness, liability or obligation of any kind of the Corporation and any interest accrued thereon or costs payable in respect thereof, whether

liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any claim made or asserted against the Corporation through any affiliate or associate or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future with respect to any matter, action, cause or chose in action; and

- (b) any existing or future right of any Person against any one or more of the Directors which arose or arises as a result of such Director's position, supervision, management or involvement as a Director or otherwise in any other capacity in connection with the Corporation, whether such right, or the circumstances giving rise to it, arose before or after the Effective Date and whether enforceable in any civil, administrative or criminal proceeding,

but does not include an Equity Claim; ...

[Emphasis added]

[13] On December 19, 2019, Mr. Russell, counsel for KPMG, filed the first report of the liquidator dated December 18, 2019 and a notice of application also dated December 18, 2019, wherein he sought an order *inter alia* approving a Claim's Process Order. The application was served upon all parties referred to in the service order. On January 10, 2020, I approved the Claims Process Order as filed. The Claims Process Order did not specifically refer to QBG 1727 of 2018 and more specifically, it did not remove QBG 1727 of 2018 from the Claims Process Order or the need to file a proof of claim in respect to it.

[14] On January 15, 2020, KPMG wrote a letter to Mr. Merchant stating that "Randy Koroluk had been identified by the liquidator as a creditor" of PrimeWest and must file a proof of claim on or before the claims bar date (March 10, 2020 as set out

in the Claims Process Order). If he did not do so, his claim would be forever barred, estopped, enjoined and extinguished.

[15] Mr. Merchant then brought an appearance day notice seeking an order that the claim of Randy Koroluk issued in QBG 1727 of 2018 be excluded from the liquidation proceedings.

[16] The W Group, counsel for KPMG, took issue with the appearance day notice and suggested that a formal hearing was required in respect to Mr. Merchant's appearance day notice.

[17] The court was then closed because of the COVID-19 pandemic.

[18] On May 22, 2020, counsel for KPMG brought an application for the advice and directions of the Court as to how the matters and issues in regard to the class action were to be determined in the liquidation proceedings pursuant to the Claims Process Order.

QBG 1727 of 2018

[19] QBG 1727 of 2018 is a claim brought pursuant to *The Class Actions Act*, SS 2001, c C-12.01, by Randy Koroluk on behalf of himself and other members of a class, being shareholders of PrimeWest, against the defendants, who were or are members of the board of directors for PrimeWest, as well as Ernst & Young Inc. [Ernst & Young] as auditor of PrimeWest. Some, but not all, of the defendant directors have been served with a copy of the statement of claim in the said class action. Ernst & Young has not been served with a copy of the statement of claim. While PrimeWest is not named in the said statement of claim, all of the said defendants in QBG 1727 of 2018 have filed proofs of claim with the liquidator against PrimeWest in respect to an

indemnity agreement they had with PrimeWest. As liquidator, KPMG gave notice to the said defendants that it had reviewed the said proofs of claim and that they would be notified in due course of the status of the claims.

Positions of the Parties

Position of Randy Koroluk

[20] Mr. Merchant, on behalf of the representative plaintiff in QBG 1727 of 2018, Randy Koroluk, submits that it is important to recognize that this action is against the directors and auditor of PrimeWest and not against the corporation itself. Mr. Merchant submits that at the original hearing for the liquidation order, which was held on October 31, 2019, representations were made on behalf of the representative plaintiff that the word “directors” be removed from paragraph 14 of the draft order to ensure that the plaintiff’s claim against the directors could proceed without reference to the liquidation proceedings. Mr. Merchant further submits that after issuance of the original order for liquidation his attention had been drawn to paragraph 2(b) of the order, which still referred to QBG 1727 of 2018 as being included in the definition of a claim. He, therefore, contacted counsel for PrimeWest suggesting that paragraph 2(b) needs to be deleted because it unwittingly “leaves the liquidation plan lame, contradictory, and embarrassing.” Mr. Merchant submits that counsel for PrimeWest consented to the removal of clause 2(b) from the definition of “claim” and that PrimeWest is therefore estopped from relitigating this issue. Neither PrimeWest or the liquidator appealed the exclusion matter. Furthermore, as the removal of QBG 1727 of 2018 from the order of November 25, 2019 was by way of a consent signed by counsel for PrimeWest and himself, as counsel for the representative plaintiff, the order cannot now be changed. Finally, Mr. Merchant submits that the representative plaintiff and the members of the class would have priority to any claim of indemnity brought by the

directors and/or the auditor against the assets of the corporation.

Position of the Liquidator

[21] Counsel for the liquidator submitted that the liquidator is an officer of the court and is appointed by court order. It is integral to the mandate of the liquidator that all claims impacting the assets of PrimeWest be determined expeditiously and with the least expense in accordance with the liquidation proceedings. Proof of claims have been filed by the directors and auditor of PrimeWest claiming indemnity from PrimeWest regarding the class action. The liquidator has a duty to consider the claim of the representative plaintiff as well as the claims of the directors and auditor in meeting the terms of the Claims Process Order. Finally, the liquidation order was amended by way of consent and can only be changed if it arose as a result of a mutual mistake, whether it was fraud or the equivalent of fraud on the part of the party resisting rectification and that the Claims Process Order did not bar QBG 1727 of 2018 from consideration in the liquidation.

Position of the Directors

[22] The position of the directors is that they are not a named party to the liquidation order or the amended order. Some of the directors have never been served with the statement of claim issued in respect to the class action. Counsel submits that the amended order did not exclude a claim of indemnification by the directors arising out of the class action. Liquidation proceedings cannot, therefore, be concluded until the indemnity issue is decided.

Position of Ernst & Young Inc.

[23] Ernst & Young has never been served with the statement of claim in QBG

1727 of 2018. It only became aware of the claim when it was contacted by the liquidator in January 2020. A claim against Ernst & Young as auditor of PrimeWest may only be made by the company, not the shareholders. The time for service of this claim expired in 2019 and the claim must be therefore deemed to have been abandoned against Ernst & Young. To protect its position, Ernst & Young has filed a contingent proof of claim pursuant to the Claims Process Order. The proof of claim cannot be determined until the underlying action has been heard. It makes sense to have both actions heard together.

Issues

[24] The issues are:

1. What is the purpose of the liquidation and the role of the liquidator?
2. What are the duties of the liquidator?
3. Was the class action included in the Claims Process Order?
4. What is the effect of the removal of the word “directors” from paragraph 14 of the liquidation plan?
5. What is the effect of the removal of paragraph 2(b) from the definition of “claim” in the liquidation plan referred to the Amended and Restated Order of November 25, 2019?

1. What is the purpose of the liquation and the role of the liquidator?

[25] The primary purpose of the liquidation is to convert the assets of the corporation to cash, to pay off the debts of the corporation, and to distribute the residual

property to the shareholders and other persons entitled to it. (Kevin P. McGuinness, *Canadian Business Corporations Law*, 3d ed, vol 3 (Toronto: LexisNexis Canada, 2017) at §25.25.

[26] As was stated by Professor McGuinness, the purpose of the liquidation also guides the liquidator's role. When the Court appoints a liquidator, the liquidator is bound to wind up the corporation and to act in the place of the directors.

§25.27 ... The liquidator acts as a receiver and manager of the corporation (as well as of its assets) for the purpose of closing up the corporation's business, realizing its assets and making the proceeds obtained among the creditors and shareholders of the corporation.

...

§25.46 ... The effect of a court-ordered winding-up, is to place the corporation under the custodianship of a court-appointed liquidator. It must be understood that the role of this officer is not simply to take over the management of the corporation while some dispute or other matter relating to the corporation is decided by the court (as would be the case with the appointment of a court appointed receiver-manager). Instead, it is implicit in the winding-up process that the business and affairs of the corporation are to be liquidated. A court-appointed liquidator has been described as being the statutory representative of the corporation for the purposes of the winding up. In *Coopérants, Mutual Life Insurance Society (Liquidator of) v Dubois* [[1996] 1 SCR 900], Gonthier J. stated:

34 From the perspective of the legal winding-up scheme, therefore, the liquidator is an officer of the court whose function it is to close up the company's business and distribute its assets to its creditors. The liquidator is not a third party in relation to the insolvent company, but is the person designated by the court to act in place of the directors of the company being wound up. ...

[27] In this case, the directors of PrimeWest at an annual and special meeting of shareholders held on September 24, 2019, presented a plan of liquidation and dissolution pursuant to s. 204(1) of the *Act*. Once the liquidation plan was approved by

the shareholders, PrimeWest applied for court approval of the liquidation plan pursuant to ss. 204(8) and 210 of the *Act*. Pursuant to these sections, the Court has the authority to make any orders it sees fit in respect to the liquidation, including the power to appoint a liquidator.

[28] Sections 204(8) and 210 of the *Act* provide:

204(8) ... any interested person may, at any time during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Division, and upon such application the court may so order and make any further order it thinks fit.

...

210 In connection with ... the liquidation ..., the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing:

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing his remuneration ...

...

2. *What are the duties of the liquidator?*

[29] The duties and powers of the liquidator are set out in ss. 214 and 215 of the *Act*. The general nature of the duties of a liquidator were described in the case of *Re Home and Colonial Insurance Company*, [1930] 1 Ch 102 at 124-125 as follows:

The statutory duties cast upon him involve the getting in of the property and applying such property in satisfaction of the liabilities *pari passu*, and subject thereto the distribution of the balance among the members. ... I think there can be no doubt that, in the circumstances of the case, a high standard of care and diligence is required from a liquidator. ... He is, of course paid for his services, he is able to obtain wherever it is expedient the assistance of solicitors

and counsel; and, which is a most important consideration, he is entitled, in every case of serious doubt or difficulty in relation to the performance of his statutory duties, to submit the matter to the Court, and to obtain its guidance.

[30] The liquidator has the power to apply to the Court, as it did in the present case, to obtain guidance in carrying out its duties and to fulfill its mandate of winding up the corporation.

[31] One of the powers set out in s. 215 of the *Act* is the power to settle or compromise. Section 215(1)(g) provides as follows:

215(1) A liquidator may:

...

(g) settle or compromise any claims by or against the corporation.

[32] In this case, once it was appointed as liquidator, and following the Claims Process Order, which had been ordered by the Court on January 10, 2020, KPMG determined that the claim brought by the representative plaintiff against the directors of the corporation was included in the definition of “claim” included in Article 1.1 of the liquidation plan. KPMG also determined the representative plaintiff and the class of shareholders he represents may be creditors of the corporation bound under para. 12 of the Claims Process Order. The liquidator, therefore, wrote a letter to Mr. Merchant, who was the solicitor for Mr. Koroluk, the representative plaintiff, requesting that Mr. Koroluk file a proof of claim on or before the claims bar date and suggested that if he did not do so, “the claim will be forever barred, estopped, enjoined, and extinguished.”

[33] Furthermore, proofs of claim have also been filed by the former directors of PrimeWest claiming indemnity from and against the corporation regarding the class

action. A proof of claim has also been filed by Ernst & Young, a co-defendant in the class action. The liquidator had the power and the duty to consider the claim brought against the directors and PrimeWest in carrying out the liquidator's duties.

[34] I am satisfied therefore that the liquidator had a duty to apply to the Court for direction in respect to the liquidation plan and the Claims Process Order. Neither the orders, nor the plan of liquidation specifically stated that the class action would not be included in the Claims Process Order.

3. *Was the class action included in the Claims Process Order?*

[35] The liquidation plan, which was attached to the Amended and Restated Order of November 25, 2019 as Schedule "A" includes a definition in Article 1.1 of a claim. It provides:

1.1 In this Liquidation Plan:

...

"Claim" means:

- (a) any right of any Person against the Corporation in connection with any indebtedness, liability or obligation of any kind of the Corporation and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any claim made or asserted against the Corporation through any affiliate or associate or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future with respect to any matter, action, cause or chose in action; and

- (b) any existing or future right of any Person against any one or more of the Directors which arose or arises as a result of such Director's position, supervision, management or involvement as a Director or otherwise in any other capacity in connection with the Corporation, whether such right, or the circumstances giving rise to it, arose before or after the Effective Date and whether enforceable in any civil, administrative or criminal proceeding.

but does not include an Equity Claim; ...

[Emphasis added]

[36] As indicated previously, the liquidator is bound to follow the Liquidation Plan and the Claims Process Order. As was stated in §25.147 of *Canadian Business Corporations Law*, 3d ed:

§25.147 ... However appointed, the liquidator of a corporation is a fiduciary *vis-à-vis* the corporation and those who are concerned in it. He or she must administer the property of the corporation as a general fund for the benefit of those persons in accordance with their respective rights. The duties of the liquidator are owed to the persons concerned in the corporation generally (whether as creditors, shareholders or contributories), not to any of them individually, no matter how great or small their respective claims may be. ...

[37] I find therefore that the class action QBG 1727 is included in the Liquidation Plan pursuant to Article 1.1(b) and the Claims Process Order.

4. *What is the effect of the removal of the word "directors" from paragraph 14 of the liquidation plan?*

[38] At the time of the hearing at which the original order for the liquidation of PrimeWest was granted on October 31, 2019, Mr. Merchant objected to the original order which read:

No Proceedings Against Directors or Officers

14. No Proceeding shall be commenced or continued against any of

the former or current officers of the Corporation with respect to any Claim except with leave of this Court.

[39] Mr. Merchant objected to having the word “directors” included in para. 14 which he submitted would prevent him from continuing with the class action which he had brought on behalf of Mr. Koroluk in QBG 1727 of 2018, Judicial Centre of Regina. Mr. Merchant suggested that the class action was not brought against PrimeWest and that any reference to the class action should be removed from the liquidation order.

[40] The Court proposed to the parties that the order be amended to remove the word “directors” from para. 14 and all parties at the hearing advised that the order could then issue. The order excluded the reference to a proceeding against the directors being barred. That would not mean that the planned liquidation would not take place.

5. *What is the effect of the removal of paragraph 2(b) from the definition of “claim” in the liquidation plan referred to the Amended and Restated Order of November 25, 2019?*

[41] Counsel for PrimeWest and Randy Koroluk, on behalf of the class action, submitted to the Court a consent order referred to as the Amended and Restated Order, which the Court issued on November 25, 2019. It removed a reference to the class action from para. 2(b) of the liquidation plan:

2 ...

(b) the Court of Queen’s Bench action commenced against certain current and former directors of the Corporation in QBG No. 1727 of 2018.

[42] Mr. Merchant, on behalf of the class action, and Mr. Sutherland, on behalf of PrimeWest, disputed then and still dispute, their rationale for signing the consent

order, but there is no doubt that the consent order removed the reference to QBG 1727 of 2018. Mr. Merchant suggests that re-litigation of the exclusion is barred by issue estoppel and referred the Court to *Sherwood v Burston* (1995), 127 Sask R 71 (QB). However, as stated in that case, in order to find an issue estoppel, three conditions must be fulfilled: (1) the same matter was decided in both proceedings; (2) the judicial decision was final; and (3) the parties were the same.

[43] I am not satisfied that issue estoppel applies in the circumstances of this case. It is not clear why the reference to the class action was removed from the amended and restated order. Also the parties to the consent order were not the same as the parties in this action. KPMG, the liquidator appointed by the Court, did not appear as a party in the liquidation plan or the order which confirmed the liquidation plan; neither did the directors of PrimeWest or Ernst & Young. Furthermore, KPMG is bound to follow the Claims Process Order dated January 10, 2020 and the definitions that are found within the Claims Process Order. Neither Mr. Merchant or PrimeWest objected to or appealed the Claims Process Order.

[44] The Claims Process Order makes it clear that a proof of claim must be filed in respect to every claim that is identified by the liquidator. In this case, the liquidator has identified the class action as well as the claim for contribution and indemnity by the directors in respect to the class action as potential claims against the assets of PrimeWest. The liquidation order would be meaningless as far as determining the issues necessary for the winding up of PrimeWest if it could be held up until final adjudication on the class action. The statement of claim in the class action has not even been served on all the named defendants. Furthermore, a review of the class action file does not indicate any steps have been taken towards certification even though the action was commenced in 2018. Finally, the class action could take years to proceed to any judgment. The question of priority as between any judgment or settlement in the class

action and the directors or the auditor can be determined by the liquidator or by court order at a later date.

Conclusion

[45] I therefore find:

- (a) The representative plaintiff in the class action QBG 1727 of 2018, Randy Koroluk and the members of the class action he represents, are not excluded from the liquidation proceedings in QBG 1455 of 2019.
- (b) Randy Koroluk, the representative plaintiff in the class action, is required by the terms of the Claims Process Order to file with KPMG a proof of claim within 30 days of the date of this order. The claims bar date found in the Claims Process Order is extended to August 7, 2020.
- (c) The claim of the representative plaintiff, Randy Koroluk, as well as the claims of the directors and the auditor, Ernst & Young, for contribution and indemnity may be considered by KPMG in its role of liquidator and its recommendations to the Court in respect to the liquidation of PrimeWest.
- (d) There will be no order as to costs of the applications.

 J.
N.G. GABRIELSON

APPENDIX "B"

LIQUIDATOR'S LETTER OF AUGUST 21, 2020 TO MERCHANT



KPMG Inc.
DA – Restructuring & Turnaround
205 5th Avenue SW
Suite 3100
Calgary, AB T2P 4B9
Tel 403-691-8000
Fax 403-691-8008
www.kpmg.ca

E. F. Anthony Merchant, Q.C.

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

August 20, 2020

Dear Sir:

Re: PrimeWest Mortgage Investment Corporation – In Liquidation

NOTICE OF STATUS OF CLAIMS

On October 24, 2019, **PRIMEWEST MORTGAGE INVESTMENT CORPORATION** (the “**Corporation**”) commenced voluntary liquidation under *The Business Corporations Act*, RSS 1978, c B-10 (the “**Liquidation**”) and, by Amended and Restated Order of the Court of Queen’s Bench for Saskatchewan dated November 25, 2019, continued the Liquidation under Court supervision (the “**Liquidation Proceedings**”), with KPMG Inc. appointed as the Liquidator (the “**Liquidator**”).

As part of the Liquidation Proceedings, the Court of Queen’s Bench for Saskatchewan ordered that a Claims Process be initiated in order that all Claims against the Corporation and its directors and officers can be determined. A copy of the Claims Process Order of the Honourable Mr. Justice N.G. Gabrielson dated January 10, 2020, is enclosed. All terms not otherwise defined in this letter shall have the meanings ascribed to them in the Claims Process Order.

You are receiving this letter for the following reasons:

- 1) You have filed two Proofs of Claim against the Directors.
- 2) The term “Claim” is defined at Article 1.1 of the Liquidation Plan attached as Schedule “A” to the Order of the Honourable Justice N.G. Gabrielson dated November 25, 2019, which Liquidation Plan was approved by such Order. The definition of “Claim” in the Order dated November 25, 2019, was adopted in the Claims Process Order. A Claim includes “...any right of any Person against the Corporation in connection with any indebtedness, liability or obligation of any kind of the Corporation and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed,



legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any claim made or asserted against the Corporation through any affiliate or associate or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future with respect to any matter, action, cause or chose in action; and any existing or future right of any Person against any one or more of the Directors which arose or arises as a result of such Director's position, supervision, management or involvement as a Director or otherwise in any other capacity in connection with the Corporation, whether such right, or the circumstances giving rise to it, arose before or after the Effective Date and whether enforceable in any civil, administrative or criminal proceeding".

- 3) The Liquidator has reviewed the two Proofs of Claim filed by your office, and has determined that it meets the definition of a "Claim" against the Directors.
- 4) The Liquidator has further determined that it is unable to accept, revise or reject the Claim summarily and, therefore, pursuant to paragraph 22 of the Claims Process Order, the Liquidator is required, in due course, to file and serve upon your office a Notice of Application returnable in the Liquidation Proceedings seeking the direction of the Court.
- 5) This letter constitutes written notice to the Claimant by the Liquidator that it will serve the Notice of Application upon your office at the earliest possible opportunity.
- 6) **No further action is required by or on behalf of you in regard to this claim at this time.**

Should you have any questions or concerns regarding the foregoing, please contact Cristina Pimienta at 403-691-8406, or cpimienta@kpmg.ca.

Yours faithfully,

KPMG Inc., in its capacity as liquidator
of PrimeWest Mortgage Investment Corporation,
and not in its personal or corporate capacity

Neil Honess, Senior Vice President
Enclosure