Court File No. 02-CV-231809 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ROBERT TOEVS

Plaintiff

- and -

YORKTON SECURITIES INC., YORKTON FINANCIAL INC.
(formerly YORKTON HOLDINGS LIMITED),
and GORDON SCOTT PATERSON

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

FRESH STATEMENT OF CLAIM
(Notice of Action Issued on June 26, 2002)

DEFINED TERMS

1. The following terms used throughout this pleading have the following meanings:

(a) "**ASE**" means the Alberta Stock Exchange;

(b) "**Amalgamation Agreement**" means an agreement entered into between **Somerville** and **Book4Golf Private** dated August 12, 1999;

(c) "**Book4Golf**" means the corporation resulting from the amalgamation and reverse takeover of **Somerville** by **Book4Golf Private**;

(d) "**Book4Golf Financial Advisory Service Agreement**" means an agreement entered into with Yorkton on June 4, 1999;

(e) "**Book4Golf Private**" means Book4Golf.com Corporation before its amalgamation and reverse takeover of **Somerville**;

(f) "**Book4Golf Private Insiders**" means **DeLeon, Pollack, Drolet and Hawtin**;

(g) "**Book4Golf Underwriting Agreement**" means an agreement entered into with Yorkton on June 4, 1999;

(h) "**Cassels**" means Cassels Brock and Blackwell;

(i) "**CDNX**" means the Canadian Venture Exchange Inc.;

(j) "**Class**" or "**Class Members**" means each and every person, wherever resident, except **Excluded Persons**, who, during the period of October 14, 1999 to June 26, 2002, were customers of **Yorkton** and traded in **Book4Golf** shares through **Yorkton** and suffered a net loss as a result thereof;

(k) "**Class Period**" means the period from October 14, 1999 to June 26, 2002;

(l) "**Co-Conspirators**" means **Dent, Pavan, McCullough, Siebens, Portman, DeLeon, Pollack, Lambert and OnX**;

(m) "**DeLeon**" means Philip A. DeLeon, a **Book4Golf Private Insider,** an **OnX Insider,** and one of the **Co-Conspirators**;

(n) "**Dent**" means Roger Dent, vice chairman and director of research of **Yorkton**, a shareholder of **Somerville**, a director of **Book4Golf,** and one of the **Co-Conspirators**;

(o) "**Donnini**" means Pierre George Donnini, head of institutional trading at **Yorkton**;

(p) "**Drolet**" means Dan Drolet, a **Book4Golf Private Insider**;

(q) "**Excluded Persons**" means the defendants and Co-Conspirators and any person claiming directly or indirectly on behalf of any one of them; their spouses, children and any entity in which any one of them has a controlling interest; and, the legal representatives, heirs, predecessors, successors and assigns of any one of them;

(r) "**Hawtin**" means Robert Hawtin, a **Book4Golf Private Insider**;

(s) "**IDA**" means the Investment Dealers' Association of Canada;

(t) "**IPO**" means an Initial Public Offering;

(u) "**Information Circular**" means an information circular issued by **Somerville** dated August 17, 1999;

(v) "**Lambert**" means Alain Lambert, a director of **Book4Golf,** and one of the **Co-Conspirators**;

(w) "**McCullough**" means Harry McCullough, a **Somerville Insider,** and one of the **Co-Conspirators**;

(x) "**OSC**" means the Ontario Securities Commission;

(y) "**OnX**" means OnX Corporation, one of the **Co-Conspirators**;

(z) "**OnX Agreement**" means an agreement entered into between **OnX** and **Book4Golf Private** in early January, 1999;

(aa) "**OnX Insiders**" means **DeLeon** and **Pollack**, two of the **Co-Conspirators**;

(bb) "**Opalick**" means Todd Opalick, a registered representative employed by **Yorkton** at its Ottawa office;

(cc) "**Paterson**" means the defendant, Gordon Scott Paterson, chairman, chief executive officer and a director of **Yorkton** and **Yorkton Financial**, and a shareholder of **Yorkton Financial** and **Book4Golf**;

(dd) "**Pavan**" means Mark Pavan, an officer and e-commerce analyst of **Yorkton**, and one of the **Co-Conspirators**;

(ee) "**Pollack**" means Sheldon M. Pollack, a **Book4Golf Private Insider**, an **OnX Insider,** and one of the **Co-Conspirators**;

(ff) "**Portman**" means Kurt Portman, a **Somerville Insider**, and one of the **Co-Conspirators**;

(gg) "***Securities Act***" means the *Securities Act*, R.S.O. 1990, c. S. 5, as amended;

(hh) "**Siebens**" means W. Carter Siebens, a **Somerville Insider**, and one of the **Co-Conspirators**;

(ii) "**Somerville**" means Somerville Capital Inc.;

(jj) "**Somerville Insiders**" means **McCullough**, **Siebens** and **Portman**, three of the **Co-Conspirators**;

(kk) "**Steinhart**" means Gary Steinhart, a director of **Book4Golf Private** and **Book4Golf**, and a member of **Cassels**;

(ll) "**TSE**" means the Toronto Stock Exchange;

(mm) "**Toevs**" means the plaintiff, Robert Toevs;

(nn) "**Yorkton Financial**" means the defendant, Yorkton Financial Inc., an Ontario corporation; and

(oo) "**Yorkton**" means the defendant, Yorkton Securities Inc., an Ontario corporation.

PRAYER FOR RELIEF

2. The plaintiff claims, on his own behalf and on behalf of the Class Members, against the defendants:

(a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff;

(b) general and special damages in the amount of $500,000,000, including the costs of administering any settlement or judgment;

(c) an accounting of all funds received by the defendants directly or indirectly related to their fees, services and commissions earned from Book4Golf, Somerville and OnX, or from the trading in securities of Book4Golf, an equitable tracing order and an order requiring the defendants to disgorge these amounts;

(d) a declaration that the defendants hold all proceeds received by them from the purchase and sale of Book4Golf shares, and any other proceeds or income received by them relating directly or indirectly to Book4Golf, Somerville and OnX in a constructive trust for the benefit of the Class Members;

(e) punitive damages in the amount of $20,000,000;

(f) an order for costs of this action on a substantial indemnity basis;

(g) prejudgment and post judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C. 43, as amended; and

(h) such further and other relief as counsel may advise and this Honourable Court may permit.

OVERVIEW OF THE CONSPIRACY

3. Throughout Book4Golf's history, the defendants and the Co-Conspirators wrongfully used Book4Golf for their own unlawful purposes as hereinafter described. They unlawfully conspired to artificially inflate the market price of shares of Book4Golf so as to be able to earn underwriting fees, consulting fees and other income and to be able to sell the

shares they owned or controlled to the Class Members and others and earn unlawful profits and income. Alternatively, if Yorkton and Yorkton Financial were not parties to the conspiracy, they were systemically negligent.

THE PARTIES

THE PLAINTIFF

4. Toevs is a retired businessman residing in the City of Ottawa. At all material times, Toevs was a client of Opalick and of Yorkton. On November 12, 1999, Toevs purchased through Yorkton 10,000 shares of Book4Golf at a price of $3.65 per share. Opalick and Yorkton acted on the purchases. Toevs continued to hold these Book4Golf shares which are now worthless.

THE CLASS

5. This action is for damages for the losses incurred by the Class Members as a result of their purchase and sale or trading in the shares of Book4Golf during the Class Period.

THE DEFENDANTS

6. Yorkton is registered as a broker and as an investment dealer under the *Securities Act*. Yorkton is a member of the TSE and the IDA. It had a contractual arrangement with each Class Member which was the same in all material respects. As such, it owed a duty to the Class Members to act prudently, carefully and reasonably and to comply with all requirements of Ontario securities law (as that term is defined by the *Securities Act*), the by-laws and requirements of the TSE and the IDA, and the common law duties and obligations of a broker and investment dealer.

7. Yorkton Financial is the parent company of Yorkton. On February 1, 2001, Yorkton Holdings Limited changed its name to Yorkton Financial. At all material times, Yorkton was the agent for and alter ego of Yorkton Financial and, as such, each is vicariously responsible for the acts and omissions of the other as particularized herein.

8. At all material times, Paterson was the chairman, chief executive officer and a director of Yorkton and Yorkton Financial and owned approximately 15% of Yorkton Financial and a significant percentage of Book4Golf.

9. During the Class Period, Yorkton carried on business in three principal areas, namely, investment banking, retail brokerage and proprietary trading.

10. During the Class Period, Yorkton's investment banking business had a focus on technology companies. Yorkton provided, among other services, underwriting services, financing through private placements, financial advice and mergers and acquisition advice. In addition, Yorkton's investment analysts provided coverage of the very same companies and industry sectors which were the focus of Yorkton's investment banking business. In particular, Yorkton's investment analysts provided coverage of public companies that were Yorkton's investment banking clients.

CORPORATE ORGANIZATION OF THE CORPORATE DEFENDANTS

11. Yorkton Financial owns Yorkton, in whole or in part, and exercises effective and actual control and management of Yorkton's business.

12. Yorkton Financial is organized in such a way that Yorkton Financial and Yorkton function as an ongoing, organized and continuing business unit sharing common purposes and objectives.

13. Yorkton Financial has operated Yorkton as if it were not a separate corporation but rather as if it were functionally part of Yorkton Financial. Yorkton Financial has directly controlled the day-to-day operations of Yorkton.

14. Yorkton reports directly to the management of Yorkton Financial. As a result of this relationship, Yorkton reported to and took direction from Yorkton Financial.

15. "Yorkton" is a household name in Ontario and the rest of Canada in the area of investment and brokerage firms. Services offered by Yorkton Financial and/or its subsidiaries are provided in Ontario and elsewhere in Canada. Consumers in Ontario purchase services associated with the name "Yorkton" because "Yorkton" has substantial brand-name recognition in Ontario and elsewhere in Canada.

16. At all material times, Yorkton Financial and Yorkton shared the common purpose of marketing, brokerage and investment dealer services for profit.

17. Yorkton Financial and Yorkton also shared the common purpose of concealing the conspiracy from both regulatory authorities and Class Members. Pursuant to the organizational structure described above, Yorkton Financial directed, acquiesced in and approved Yorkton's decision to engage in the conspiracy, and conceal its disclosure.

18. Yorkton Financial is liable for the acts and omissions of its subsidiary, Yorkton, because:

(a) it operated itself and Yorkton as a single entity;

(b) it prepared its financial statements on a consolidated basis and reported profits from the sale of Book4Golf, Somerville and OnX fees and commissions;

(c) it controls the "Yorkton" brand-name;

(d) it controlled, through its management, the day-to-day operations of Yorkton; and

(e) it conspired with Yorkton as particularized herein.

THE CONSPIRACY

19. During the period from on or about June 23, 1997 through at least November 21, 2001, at Toronto, Calgary and elsewhere, Paterson, the other defendants, by their directors, officers, servants and agents, and the Co-Conspirators wrongfully, unlawfully, maliciously and lacking *bona fides*, conspired and agreed together, the one with the other or others of them and with a person or persons unknown wrongfully:

(a) to engage in the unlawful means and conduct particularized in paragraphs 26 to 123 directed to the Class Members where they knew or ought to have known that Class Members and others would be injured and they were, in fact, injured;

(b) to engage in various means, artifices, acts and devices, lawful and unlawful, with the predominant purpose of perpetrating a fraud and causing injury or loss to the Class Members and others;

(c) to create a public trading vehicle, Book4Golf, that had virtually no possibility of generating revenues to support a significant market capitalization;

(d) to secure for themselves significant fees and a significant equity position in Book4Golf at minimal cost and to strip monies out of Book4Golf;

(e) to promote Book4Golf shares to Class Members and the capital markets by causing Yorkton's investment analysts to strategically issue false, misleading, or fraudulent research reports containing buy recommendations and inflated target prices of Book4Golf shares;

(f) to cause the value of Book4Golf's shares to be artificially inflated;

(g) to enhance unreasonably the price of shares of Book4Golf;

(h) to promote Book4Golf shares by causing Yorkton's investment advisors to encourage the Class Members and others who were Yorkton's retail brokerage clients to purchase and hold Book4Golf shares and to discourage Book4Golf shareholders from selling their shares;

(i) to provide substantial blocks of shares and other securities of Book4Golf to employees of Yorkton and their families and agents, including, among others, its analysts, retail brokers, and investment advisors, as incentives to further promote and facilitate the unlawful market manipulation of Book4Golf shares; and

(j) to engage in, or authorize, permit and acquiesce in, unlawful trading.

20. The defendants and the Co-Conspirators were motivated to conspire and their predominant purposes and predominant concerns were:

(a) to earn income and capital gains;

(b) to manipulate the price of the shares of Book4Golf so that the shares would trade at an artificially high price on the TSE;

(c) to breach the reporting requirements of the *Securities* Act;

(d) to realize significant profit from trading in Book4Golf shares by selling the shares of Book4Golf owned by them, their relatives and affiliates on the TSE to the Class Members and others so that they might benefit financially;

(e) to use Book4Golf to fund OnX which would then be sold to the public;

(f) to avoid detection;

(g) to injure a class of persons, including the plaintiff and other Class Members by causing them to buy, hold and not sell Book4Golf;

(h) to engage in undisclosed trading and trading from undisclosed brokerage accounts to obtain income and revenue;

(i) to increase the value of Yorkton and Yorkton Financial; and

(j) to place personal and corporate gains above their duties to the Class Members and the financial well-being of the Class Members and others.

21. In furtherance of the conspiracy, the following acts were done by the defendants and the Co-Conspirators:

(a) they breached their common law, equitable and statutory duties to disclose their elaborate and extensive involvement with and financial interest in Book4Golf and its predecessor corporations, as well as the association and financial interests amongst and between the various stakeholders in those entities;

(b) they unlawfully promoted Book4Golf through the strategic issuance of false and misleading investment analyst reports and other public statements;

(c) they unlawfully promoted Book4Golf through improperly recommending and encouraging Yorkton retail brokerage clients to purchase and not sell Book4Golf shares;

(d) they engaged in and facilitated unlawful trading in the securities of Book4Golf, Somerville and OnX;

(e) they engaged in and facilitated an unlawful market manipulation of the securities of Book4Golf; and

(f) they unlawfully garnered fees, commissions and trading profits from Book4Golf, Somerville and OnX.

22. Full particulars of the acts done in furtherance of the conspiracy are found at paragraphs 26 to 123.

23. The acts particularized in paragraphs 26 to 123 were unlawful and the defendants and the Co-Conspirators knew, or were wilfully blind and should have known, that injury, damage and loss to the members of the Class and others would result.

24. The conspiracy was directed towards the Class Members and other persons who participate in the capital markets. The conspiracy did, in fact, cause injury and loss to the members of the Class and others as hereinafter particularized.

25. The acts done by Paterson and certain of the Co-Conspirators as hereinafter described are independently tortious and were done in the course of their employment with Yorkton, and were integral to their responsibilities and Yorkton and Yorkton Financial are vicariously responsible for their tortious conduct and the damages which resulted.

PARTICULARS OF THE CONSPIRACY

SOMERVILLE

26. On June 23, 1997, Somerville was incorporated under the laws of the Province of Alberta. Prior to becoming a public company, Somerville had 2 million common shares issued and outstanding. Approximately 1,585,500 of these shares were held by the Somerville Insiders, Paterson and others as follows:

(a) 500,000 by McCullough issued for $0.10 each;

(b) 250,000 by Siebens issued for $0.10 each;

(c) 250,000 by Portman issued for $0.10; and

(d) 585,500 by Paterson and other employees of Yorkton issued in two tranches on November 7, 1997 and June 8, 1998 for $0.20.

27. Before Somerville became a public company, Paterson and members of Yorkton owned 29.25% of the total issued and outstanding shares of Somerville.

28. From 1997 until Somerville's amalgamation with Book4Golf Private in September of 1999, McCullough was a director, promoter and a major shareholder of Somerville. McCullough had, and continued to have, significant dealings with Paterson and Yorkton in junior public companies.

29. Siebens and Portman were the other two directors of Somerville and they also had significant dealings with Paterson and Yorkton in junior public companies.

30. On July 17, 1998, Somerville amended its articles of incorporation to delete its private company provisions and restrictions on the sale of its shares to the public.

31. On July 18, 1998, Yorkton entered into an agency agreement with Somerville to take Somerville public. The business of Somerville was to be the identification and evaluation of assets or businesses in Canada with a view to completing a "major transaction" approved by the ASE.

32. On July 21, 1998, Somerville issued a prospectus for an IPO. Yorkton agreed to use its best efforts to arrange for the subscription of 1 million common shares of Somerville at a price of $0.20 per share.

33. Provided the IPO was fully subscribed, Somerville would have, in addition to funds previously generated through the issuance of shares while it was a private company, approximately $500,000. The purpose of these funds was stated to be to complete the process of identifying and completing a "major transaction." As of the date of the IPO, Somerville had not carried on any active business nor had it identified any potential acquisition.

34. In the event the issue was fully subscribed, Yorkton was to receive an 18-month option for an additional 100,000 common shares of Somerville, 50% of which were exercisable immediately and the remaining 50% only upon the completion of a "major transaction."

35. The Somerville prospectus provided for the issuance of 300,000 director's stock options with a strike price of $0.20 and an expiry date of November 30, 2002, to be allocated to McCullough (110,000), Portman (150,000) and Siebens (40,000). It also provided that the 1 million shares owned by McCullough, Portman, and Siebens were to be held in escrow until the completion of the "major transaction." There was no limitation on the

sale of the remaining shares, including the 585,500 shares held by Paterson and other Yorkton employees.

36. The Somerville prospectus, wrongfully, did not list Yorkton or any member of Yorkton as a principal shareholder. This material omission occurred even though Yorkton insiders jointly owned almost 30% of the shares in Somerville. The only disclosure provided in the Somerville prospectus in connection with Yorkton's interest in Somerville was that Paterson was a shareholder of Somerville (without specifying the percentage) and that Paterson was a director and officer of Yorkton and a shareholder of Yorkton Financial.

37. The Somerville prospectus, also wrongfully, did not disclose the extensive and continuing associations between McCullough (the largest single shareholder, director, and president of Somerville) and Paterson and Yorkton, a fact which, if it had been disclosed, would have alerted investors and regulators that the offering of Somerville shares to the public was the very early stage of a market manipulation scheme.

38. On September 21, 1998, Somerville issued 1 million common shares in connection with the IPO. Following the issuance of the 1 million common shares, Somerville granted Yorkton the option to purchase 100,000 common shares of Somerville at a price of $0.20 per share.

39. On October 8, 1998, Somerville commenced trading on the ASE and had approximately 3 million common shares issued and outstanding. From October 1998 until December 1998, a total of 138,500 Somerville shares were traded, the vast majority of which were traded through Yorkton. The number of trades executed within this period averaged between one and three trades per day and trading prices ranged from $0.20 to $0.30. During this period, Somerville spent virtually no money on operations.

40. On January 27, 1999, Somerville issued a press release announcing an anticipated private placement of 331,400 units priced at $0.25 each to raise an additional $84,000 in cash. Each unit entitled the holder to one common share and one purchase warrant with an exercise price of $0.31 expiring on February 22, 2001. Somerville also reported that a "registered dealer" would receive a 10% commission in connection with the transaction. Somerville did not explain why it required this additional capital.

41. The sole purpose of the January 1999 private placement was to place cheap securities in the hands of the defendants, Co-Conspirators and their associates, in anticipation of the planned market manipulation.

42. On February 22, 1999, Somerville issued the additional 371,140 units at $0.25 per common share in connection with the private placement.

43. From January 1999 to April 1999, a total of 259,000 Somerville shares were traded on the ASE. Most of these shares were traded through Yorkton. The number of trades executed within this period ranged from between one and four trades per day at prices ranged from $0.30 to $0.70. There was no basis for the increased trading price and volume during this period other than the defendants and the Co-Conspirators were acting in furtherance of the conspiracy.

44. For the fiscal year ending March 1999, Somerville financial statements stated that virtually none of the approximately $584,000 raised by Somerville had been spent.

BOOK4GOLF PRIVATE

45. To further the conspiracy, the defendants and the Co-Conspirators required a "business" to promote to unsuspecting investors that had at least a veneer of legitimacy. That "business" was Book4Golf Private.

46. On January 19, 1999, Book4Golf Private was incorporated as a private company under the laws of Canada.

47. On April 30, 1999, Book4Golf Private had a capitalization of 7.167 million common shares, distributed among the Book4Golf Private Insiders, issued as follows:

(a) 6.319 million shares on January 19, 1999 for nominal consideration of $52.50; and

(b) 848,000 shares on April 1, 1999 for an aggregate price of $1,000,000.

48. In addition, the Book4Golf Private Insiders, DeLeon, Pollack, Drolet and Hawtin, also owned 2 million purchase warrants in Book4Golf Private with an exercise price of $1.50.

49. Book4Golf Private's only source of cash came from the share issuances particularized above which generated $1,053,000.50.

50. On or about April 1, 1999, OnX advanced $1,000,000 to DeLeon and Pollack to fund the share issuance. This amount was later "repaid" by DeLeon and Pollack through a set-off against OnX dividends.

OnX

51. OnX was a private company incorporated under the laws of Ontario engaged in the business of providing end-to-end e-Business solutions to medium and large companies and public sector organizations. From and after 1988, the OnX Insiders, DeLeon and Pollack, had been officers and directors of OnX. As is particularized below, OnX had, and continued to have, substantial business dealings with Book4Golf Private and Yorkton.

52. In early 1999, OnX entered into the OnX Agreement with Book4Golf Private. The OnX Agreement stated that OnX was to design systems and software for Book4Golf Private. In addition, OnX was to provide support and assistance to Book4Golf Private in connection with its management, administration and operations. The OnX Agreement was to expire on June 30, 2000. As particularized below, the OnX Agreement was extremely lucrative for OnX. The fees earned by OnX from Book4Golf Private from January to April 1999 totalled $1,451,922.

53. Book4Golf Private's financial statements for the period from January 1999 to April 1999 stated that the company had assets totalling $201,688 and liabilities totalling $851,179. The financial statements also stated that Book4Golf Private had incurred

$1,476,922 on account of operations, of which $1,451,922 was paid or owing to OnX pursuant to the OnX Agreement.

54. The inter-dealings between the defendants, the OnX Insiders and OnX continued. On December 10, 1999, Yorkton entered into an underwriting agreement with OnX together with DeLeon and Pollack in their capacities as OnX shareholders for the private placement of "special warrants" and "placement units" of OnX. This financing raised $25,000,000 of which $20,750,000 was paid to OnX and $4,725,000 to DeLeon and Pollack. Yorkton received $1,625,000 in underwriting fees of which $1,317,875 was paid by OnX and $307,125 by DeLeon and Pollack. In addition, Yorkton received "compensation warrants" that would entitle it to shares of OnX.

55. On April 16, 2000, OnX filed a final prospectus pursuant to an IPO. Yorkton acted in connection with the IPO as a lead underwriter and received a share of the underwriting fees of $2,600,325 and a number of "compensation options" good for common shares of OnX. In April of 2000, OnX was listed on the TSE at a price of $10. OnX's share price has steadily declined since then and today it is a penny stock.

THE SOMERVILLE "MAJOR TRANSACTION"

56. A further critical step in the conspiracy was the consummation of a "major transaction" in order to preserve Somerville's public listing status. Accordingly, on May 12, 1999, an anonymous director of Somerville reported that Somerville was in negotiations with an arm's-length party in connection with a proposed "major transaction."

57. On May 20, 1999, Yorkton exercised the option granted to it in connection with its agency agreement with Somerville and Somerville issued 100,000 common shares to Yorkton. At this time, the defendants were in possession of undisclosed material information that Somerville would enter into a "major transaction" with Book4Golf, and by exercising its options Yorkton violated section 76 of the *Securities Act*.

58. On May 21, 1999, Somerville issued a press release identifying Book4Golf Private as the party with whom it had agreed to enter into a "major transaction."

59. In May 1999, following the announced "major transaction," Somerville's share price surged on the ASE with trading prices ranging from $0.70 to $3.75 and a total trading volume of 805,500 shares. The vast majority of the trades were handled by Yorkton. The daily number of trades remained relatively low, with the exception of the days leading up to Somerville's May 21, 1999 press release.

60. Somerville's financial statements as of June 30, 1999 stated that Somerville had no active business and had not expended any of the approximately $530,000 in cash it had raised. In fact, only approximately $20,000 was expended by Somerville to locate the "major transaction" with Book4Golf Private.

61. In June, 1999, shares of Somerville traded on the ASE in the range of $2 to $2.90, with a total trading volume of 676,880 shares. The daily number of trades remained low, the vast majority of which continued to be traded through Yorkton.

62. On June 4, 1999, Book4Golf Private, Yorkton and a group of Book4Golf Private shareholders who wished to sell shares, including DeLeon and Pollack, entered into the Book4Golf Financial Advisory Service Agreement and the Book4Golf Underwriting Agreement.

63. The Book4Golf Underwriting Agreement contemplated Book4Golf Private issuing, by way of a private placement, 3.3 million "special shares" for $1.50 per share. Yorkton negotiated the private placement with Book4Golf Private and the selling shareholders. In addition, 1.867 million Book4Golf Private common shares owned by the selling shareholders would be converted into 1.867 million "special shares" priced at $2,800,500.

Each of the 5.167 million "special shares" would, in effect, be convertible into one common share and 1/5 purchase warrant with a strike price of $1.50 (expiry of June 2, 2001) in the newly formed public company, Book4Golf, after Book4Golf Private had completed its reverse take-over and amalgamation with Somerville.

64. In connection with the Book4Golf Underwriting Agreement, Yorkton received an underwriting fee of $450,000 that Yorkton used to subscribe for 300,000 of the Book4Golf Private 3.3 million "special shares." Further, as additional consideration, Yorkton received 300,000 "compensation warrants" convertible at a strike price of $1.50 until June 2, 2001 into 300,000 "compensation options" that would entitle Yorkton to 300,000 common shares plus 1/5 purchase warrants with a strike price of $1.50 until June 2, 2001.

65. The Book4Golf Financial Advisory Service Agreement contemplated Yorkton providing Book4Golf Private and Somerville with advice in connection with the reverse take-over and amalgamation. For these fiscal advisory services provided, Yorkton received 250,000 "special B shares" in connection with the amalgamation. The grant of the "special B shares" resulted, in effect, in a grant of 250,000 common shares and 50,000 purchase warrants with a strike price of $1.50 until June 2, 2001 in the capital of Book4Golf.

66. In addition, Yorkton and Book4Golf Private agreed to a private placement of 400,000 "special warrants." The "special warrants" would be priced at $2.50 and would permit the holder to convert them into one common share and ½ purchase warrant with a strike price of $2.50. Yorkton was to receive an underwriting fee of 10%, or $100,000, that it used to subscribe to an additional 40,000 "special warrants" comprising 40,000 common shares and 20,000 purchase warrants with a strike price of $2.50. Further, as additional consideration, Yorkton was to receive 40,000 "compensation warrants" convertible into "compensation options" that were in turn convertible into 40,000 common shares and 20,000 purchase warrants at a strike price of $2.50.

67. To avoid the scrutiny and review process by Regulators that would arise from a prospectus filing, the defendants and the Co-Conspirators caused Somerville to enter into an Amalgamation Agreement with Book4Golf Private on August 12, 1999. Pursuant to the Amalgamation Agreement, Book4Golf Private security holders would receive 5.3 million common shares and 2.9 million purchase warrants of Book4Golf, while Somerville security holders would receive 3,471,140 common shares, 371,140 purchase warrant, and 300,000 stock options of Book4Golf.

68. Somerville, with the assistance of the defendants and certain of the Co-Conspirators, issued an Information Circular dated August 17, 1999 for the purposes of the

proposed amalgamation with Book4Golf Private. At this time, McCullough was the only shareholder listed as owning more than a 10% interest in Somerville. The shareholdings of the Yorkton insiders in Somerville were not disclosed, in contravention of applicable securities laws.

69. The Information Circular proposed a slate of five directors for Book4Golf. The five proposed directors were Dent, who was reported to own 9,000 shares of Somerville, DeLeon, Pollack, Lambert and Steinhart. Steinhart was a director of Book4Golf Private and a partner at Cassels. Cassels had performed, and would continue to perform, legal services for Book4Golf Private and Book4Golf. Lambert had and would continue to have significant dealings and associations with Paterson.

SOMERVILLE AND BOOK4GOLF PRIVATE AMALGAMATE TO FORM BOOK4GOLF

70. On September 22, 1999, Book4Golf Private and Somerville amalgamated to form Book4Golf.

71. Following the amalgamation, Book4Golf had a total of 14,628,140 common shares issued and outstanding, of which Paterson, Yorkton, and members of Yorkton held 1,309,240 shares, approximately 9%; the Somerville Insiders held 1 million shares,

approximately 7%; and the Book4Golf Private Insiders held 7.167 million shares, approximately 49%.

72. Book4Golf also had a total of 5,434,540 outstanding purchase warrants, of which Paterson, Yorkton, and members of Yorkton held 583,740, approximately 11%; and the Book4Golf Private Insiders held 3,273,400, over 60%. Together with the common shares, on a fully diluted basis, the interest of members of Yorkton in Book4Golf was approximately 10% of Book4Golf, which, when taken together with the interests of the Book4Golf Private Insiders, totalled approximately 66.5% of the company.

73. Book4Golf also had a total of 1.4 million outstanding options of which 300,000 were owned by the Somerville Insiders and priced at $0.20 each. The remaining 1.1 million options were priced at $0.56 and 760,000 were granted to executive officers; 240,000 to non-executive directors; and 100,000 to employees of Book4Golf. Shortly after the amalgamation, the Somerville Insiders exercised all of their Book4Golf options.

74. Prior to the commencement of trading of Book4Golf, Somerville's share price had surged on the ASE from July 1999 until October 1999, with trading prices ranging from $2.50 to $4.95 and a total trading volume of approximately 578,000 shares. The daily number

of trades was relatively low, generally less than 10. The vast majority of these trades continued to be facilitated through Yorkton.

75. When on October 14, 1999, Book4Golf began trading on the ASE, there were approximately 15 million common shares issued and outstanding. A share of Book4Golf traded at $3.90 and Book4Golf had total market capitalization of approximately $58,500,000. Shortly thereafter, in February 2000, the share price of Book4Golf peaked at nearly $24 per share. At that time, Book4Golf had approximately 19.2 million common shares issued and outstanding and total market capitalization of approximately $461,000,000.

76. Book4Golf filed an October 1999 prospectus in connection with the amalgamation and the "special shares" and "special warrants." This prospectus was receipted on October 29, 1999.

77. The October 1999 prospectus revealed the following details concerning Book4Golf:

(a) The business plan of Book4Golf described the company as a developer and owner of 'Book4Golf.com' an e-commerce Web portal that would allow golfers to book tee times at golf courses over the internet. The plan further stated that Book4Golf was expected to generate revenue by the first quarter of 2000 and that Book4Golf would generate revenues through earning percentages of golf booking fees and through Web based advertising. The

business plan contained no statement of projected revenues or income statements;

(b) Book4Golf was to issue 1.1 million additional stock options to be granted to management, directors, and employees of Book4Golf. The prospectus detailed that the options were to be priced at $0.56 and that this price was based on a market valuation of $0.60 per common share. The justification for this market valuation was the closing price of Somerville common shares on May 11, 1999 and that the valuation "was price protected in connection with the granting of [the] options." Of these 1.1 million options, executive officers and directors, including DeLeon, Pollack, Lambert, Dent and Steinhart were to receive 1 million. The remaining 100,000 options were reserved for employees of Book4Golf and included Paul M. Stein, a partner of Cassels, and Kathy Gardos, a vice president of OnX since 1998;

(c) The use of the net proceeds of $5,262,500 generated through the "special share" and "special warrant" financings was stated to be:

(i) $2,800,000 for payments to OnX for services rendered to July 31, 1999 pursuant to the OnX Agreement;

(ii) $350,000 for sales and marketing;

(iii) $1,450,000 to enhance software;

(iv) $172,622 to pay dividends;

(v) $400,000 to fund strategic investments; and

(vi) the balance for working capital;

(d) Book4Golf had a minimal complement of employees as the vast majority of operations were "facilitated through the services provided by OnX under the OnX Agreement";

(e) the directors of Book4Golf were DeLeon, Pollack, Steinhart, Dent, and Lambert; and

(f) DeLeon's and Pollack's interests in OnX were partially disclosed.

78. There was no disclosure in the October 1999 prospectus of:

(a) Dent's role with Yorkton;

(b) Lambert's substantial association with Paterson;

(c) Cassel's role as Book4Golf's solicitors;

(d) Yorkton's prior security holdings in Somerville; or

(e) Yorkton's role and interests as underwriter and as a continuing security holder in Book4Golf, notwithstanding Yorkton's role as an underwriter to both Somerville and Book4Golf Private, and as an advisor to both Somerville and Book4Golf Private in connection with the formation of Book4Golf.

79. From October 14, 1999 to November 12, 1999, Book4Golf traded at a price of approximately $4 a share. The vast majority of trades were facilitated through Yorkton. Following the amalgamation and reverse take-over, Yorkton remained active in the affairs of Book4Golf as a financial advisor and as agent for financings undertaken by Book4Golf.

80. At the same time, in furtherance of the conspiracy, Yorkton provided false or misleading research coverage of Book4Golf through its analysts. As particularized below, the coverage of Book4Golf by Yorkton's analysts had a significant impact on the Book4Golf share price. Furthermore, the coverage in question coincided with announcements of Book4Golf financings underwritten by Yorkton.

81. On November 12, 1999, Book4Golf announced that it had entered into a private placement agreement with Yorkton to issue and sell another 3,335,000 "special warrants." In connection with this agreement Yorkton was granted an option to subscribe to an additional 500,250 "special warrants" at a price of $3.50. The November 1999 special warrants were to be convertible into one Book4Golf common share and ½ purchase warrant with a strike price of $4.25 for two years. In addition to the subscription option, Yorkton received an underwriting fee of $1,073,870.

82. On February 16, 2000, Book4Golf filed a February 2000 prospectus in connection with the November 1999 private placement. The February 2000 prospectus was to qualify the 3,835,250 November 1999 "special warrants." The 3,835,250 November 1999 "special warrants" included 500,250 subscribed to by Yorkton. The November 1999 "special warrants" had been sold for $3.50 and generated total gross proceeds of $13,423,375.

83. In addition to the November 1999 "special warrants" subscribed to, and the underwriter's fee of $1,073,870, Yorkton was also granted 383,525 "compensation options" that were exercisable at $3.50 for 383,525 common shares plus 191,763 purchase warrants, also exercisable at a price of $3.50.

84. The February 2000 prospectus stated that the use of the net proceeds of $12,149,505 generated through the financing was to be as follows:

(a) $4,500,000 for payments to OnX pursuant to the OnX Agreement;
(b) $4,000,000 for sales and marketing;
(c) $1,000,000 to enhance software;
(d) $2,000,000 to fund strategic investments; and
(e) the balance for working capital.

85. On or about February 29, 2000, Yorkton agreed to act as agent in connection with another private placement of 1,333,500 "special units" of Book4Golf at a price of $15 per "special unit" for gross proceeds of $20,002,500. In addition to underwriting fees Yorkton was also given an "agent's option" to acquire "special units" equal to 10% of "special units" sold at the subscription price of $15. Book4Golf stated that the purpose of the funds generated was to be for "working capital and strategic acquisitions."

86. On March 16, 2000, the CDNX accepted for filing a further private placement for Book4Golf for which Yorkton would earn $1,410,675 in underwriting fees plus additional compensation of 134,350 "compensation options."

87. On June 8, 2000, Book4Golf filed a prospectus that was receipted on June 13, 2000. The June 2000 prospectus was to qualify 1,343,500 units for common shares and ½ purchase warrants exercisable at $17 issued in connection with the March 2000 private

placement by Book4Golf. The units were sold for $15 and generated total gross proceeds of $20,152,500. The June 2000 prospectus confirmed that Yorkton had received an underwriter's fee of $1,410,675 and 134,500 "compensation options" exercisable for $15 for 134,500 common shares and 67,175 purchase warrants with a strike price of $17.

88. The June 2000 prospectus revealed that $4,000,000 of the net proceeds from the financing would be paid to OnX pursuant to the OnX Agreement, a further $2,000,000 used for sales and marketing and $2,000,000 used for the development of a web site, which may or may not have been paid to OnX.

89. For the first time, Book4Golf disclosed in the June 2000 prospectus Dent's role with Yorkton as its director of research and that one of the director's was a partner in a law firm that had provided since January 1999, $1,075,363 worth of services for Book4Golf. There continued to be no disclosure of Lambert's substantial association with Paterson or of Yorkton's extensive involvement with Book4Golf and its predecessor corporations.

90. On September 20, 2000, Book4Golf announced a private placement of 15 million "special units" at a price of $2 for proceeds of $30,000,000. Book4Golf reported that the funds were required for "working capital."

91. On December 21, 2000, Book4Golf filed a December 2000 prospectus to qualify the 16,050,000 units issued in connection with the September private placement. The December 2000 prospectus confirmed that Book4Golf had requested, and Yorkton had agreed to accept, an underwriter's fee of 7% by way of 1,050,000 units that would entitle it to 1,050,000 common shares and 525,000 purchase warrants with a strike price of $2.75. As additional consideration Yorkton also received 1.5 million "compensation options" exercisable for $2 for 1.5 million common shares and 750,000 purchase warrants exercisable at $2.

92. The December 2000 prospectus, under the heading "Plan of Distribution" for the first time described, in limited fashion, Yorkton's past history with the company. The prospectus stated that the additional disclosure was in response to the OSC's investigation of Yorkton and stated that Yorkton "strongly refutes any suggestion it has contravened [securities laws] in connection with [its role as underwriter]."

93. The December 2000 prospectus also revealed that OnX would no longer provide the majority of Book4Golf's operational services, and that Lambert was no longer a director.

YORKTON'S ANALYST COVERAGE

94. A further critical component of the conspiracy was the strategic issuance and publication of Yorkton's investment analyst reports recommending that investors purchase and hold shares of Book4Golf. The investment analyst coverage, summarized in part below, was designed to, and did in fact, artificially inflate the Book4Golf share price, to the benefit of the defendants and the Co-Conspirators and to the detriment of the plaintiff and other Class Members.

95. The first publicly reported signs of the promotion being undertaken by the defendants began to emerge on December 13, 1999, when *The Vancouver Sun* accurately reported that Book4Golf was a top stock pick of Yorkton's analyst Pavan . Pavan mentioned Book4Golf in an interview with a reporter from *The Vancouver Sun* and stated that like "Cybersurf" and "Ecompark," Book4Golf was a promising internet company on the ASE that would "fare even better with the launch of the CDNX." Pavan also said that he was "not fazed by talk about excessive valuations and fears that the sector is a bubble just waiting to burst." On December 13, 1999, the share price of Book4Golf had closed at $9.80. Pavan had no reasonable basis for expressing these opinions.

96. On January 31, 2000, Yorkton strongly recommended that investors buy Book4Golf shares. Yorkton recommended Book4Golf with a 12 to 18-month price target of

$40. Yorkton stated that Book4Golf had the potential to achieve $80 million in revenues (a claim that proved to be exaggerated by approximately 14,800%) for the year ending May 31, 2000 and to trade at 12.5 times its projected fiscal 2000 sales. Yorkton had no reasonable basis for expressing this opinion.

97. On February 1, 2000, without any reasonable basis for expressing this opinion, Yorkton and Pavan produced an analyst report recommending Book4Golf as a "strong buy."

98. The trading volume of Book4Golf steadily increased through January, 2000 and the shares traded above $20 during the later part of January and into February 2000, and peaked at $24. The share price thereafter began to steadily decline.

99. On February 18, 2000, Pavan told 500 investors at the Atrium of BCE Place that Book4Golf's share price could easily reach $50 to $100. Pavan had no reasonable basis for expressing this opinion.

100. Paterson stated in an interview with the *Vancouver Sun* that: "When I say $100, I'm understanding it…this [the share price of Book4Golf] is going to $200 to $300 per share. This is going to become one of the great Canadian tech stories of all time…This is one

of the best Canadian technology stories we have ever seen. Ever." Paterson had no reasonable basis for expressing this opinion.

101. On March 17 and March 22, 2000, Yorkton and Pavan produced an analyst report recommending Book4Golf as a "strong buy." They had no reasonable basis for expressing this opinion.

102. Despite the promotion, the share price of Book4Golf declined during March 2000 from $15 to $10.

103. Undeterred, on April 11, 2000, without any reasonable basis, Yorkton and Pavan produced an analyst report recommending Book4Golf as a "strong buy." On April 12, 2000, the share price of Book4Golf was $6, after having fallen below $10 on March 30, 2000.

104. On April 28, 2000, Yorkton and Pavan produced an analyst report recommending Book4Golf as a "strong buy." They had no reasonable basis for making this recommendation.

105. On May 3, June 5, June 26, July 17 and July 31, 2000, without a reasonable basis, Yorkton and Pavan produced further analyst reports that continued to recommend Book4Golf as a "strong buy."

106. Finally, on September 26, 2000, Pavan down-rated Book4Golf, but only from a "strong buy" to a "speculative buy." Pavan put his target of $40 "under review" and suggested a 12 to 18-month target between $5 and $8. On that date Book4Golf closed at $1.90. By November 14, 2000, the share price slid below $1. Thereafter, over the next 9 months, the share price of Book4Golf continued its downward course, closing on June 1, 2001, at $0.18.

107. The analyst coverage of Book4Golf published by Yorkton was not objective and impartial. Rather, it was false and misleading. Its sole or predominant purpose was to unlawfully promote the share price of Book4Golf and thereby perpetrate a fraud on the Class Members and the capital markets to cause the plaintiff and other Class Members to purchase Book4Golf shares at inflated prices, to the benefit of only the defendants and the Co-Conspirators, and to the loss of the plaintiff and the other Class Members.

108. Yorkton's analyst advice, recommendations and coverage of Book4Golf deliberately misrepresented the merits of Book4Golf as an investment. Yorkton failed to

operate its research department independently of its investment banking business. Furthermore, Yorkton breached its duties to the plaintiff and other Class Members to provide impartial investment advice by following an institutional strategy of promoting and recommending the securities of issuers that Yorkton was advising in its investment banking capacity. In the case of Book4Golf, the defendants stood to profit from Book4Golf share issuances and from active trading in the secondary market by Yorkton's retail brokerage clients.

BOOK4GOLF'S FINANCIAL PERFORMANCE

109. Book4Golf's first year-end financial statements, for the-8 month period ending September 30, 1999, reported that Book4Golf had earned no revenues, had a net operating loss of $5,134,000, and a loss per share of $0.51. Book4Golf's sole source of cash during this period was $5,765,000 that it raised through public financings. The vast majority of Book4Golf's operating expenses during this period was paid to OnX on a basis that did not represent fair value for services performed.

110. On August 29, 2000, Book4Golf released its financial statements for the 9-month period ending June 30, 2000. Book4Golf announced that it had revenues of only $250,000 (compared with Yorkton's absurd prediction of revenues of $80,000,000) and a

loss of $18,900,000 during this period. On August 29, 2000, shares in Book4Golf closed at $1.80.

111. In Book4Golf's second year of operations, its audited year-end financial statements for the year ending September 30, 2000, revealed that Book4Golf had total revenues of only $658,838, net revenue of $180,913, an operating loss of $25,021,000, and a loss per share of $1.36. The only substantial source of cash for Book4Golf during this period was $63,600,000 that it raised through public financings.

112. In Book4Golf's last full year of operations, Book4Golf's annual audited financial statements for the year ending September 30, 2001, reported that Book4Golf had generated total revenues of only $1,365,000, net revenue of only $400,000, an operating loss of $24,437,000 and a loss per share of $1.37. Book4Golf was unable to raise additional public financing during the year.

113. As of June 26, 2002, Book4Golf traded at a price of $0.03 per common share. It has approximately 49.3 million common shares issued and outstanding and a total market capitalization of approximately $1,500,000.

BOOK4GOLF'S BANKRUPTCY

114. On July 2, 2002 Book4Golf's directors resigned effective June 28, 2002.

115. On July 8, 2002 Book4Golf was petitioned into bankruptcy. On July 19, 2002, a receiver was appointed.

TRADING BY SOME OF THE DEFENDANTS

116. On at least one occasion, a senior employee of Yorkton and Paterson were involved in the manipulation of the price of Book4Golf shares on their quoted market, the CDNX.

117. On January 24, 2000, a U.S. client of Yorkton's Chicago office instructed Donnini, the head of institutional trading in Yorkton's Toronto office, to sell 100,000 shares of Book4Golf. Donnini and Paterson offered a bid price of $13.75, a discount to the lowest transaction price on that date. Donnini personally purchased 25,000 of the shares and Paterson personally purchased the remaining 75,000. The sale of the 100,000 shares of Book4Golf was not disclosed to the CDNX. The size and nature of this transaction would have depressed the market price of Book4Golf if it had been placed through the facilities of the

CDNX. Donnini was subsequently disciplined by the CDNX for these and other off floor trades.

118. Paterson actively traded Book4Golf shares on January 24, 2000, prior to buying the above-mentioned 75,000 shares. Between January 26 and February 18, 2000, Paterson sold 75,000 shares of Book4Golf at prices ranging from $16 to $23.25. Over a period of 8 to 14 business days subsequent to January 24, 2000, Donnini sold his 25,000 shares through the facilities of the CDNX. Full particulars of Paterson's trading in Book4Golf are unknown to the plaintiff.

119. In addition to manipulating the price of Book4Golf shares by purchasing large block trades from institutional investors at discounted prices and then failing to report them, the defendants, in furtherance of the conspiracy, systematically encouraged the Class Members, who were some of the retail brokerage clients of Yorkton, to purchase and hold Book4Golf shares in order to support the share price, particularly in periods leading up to planned transactions.

120. Up until November 1999, approximately 90% percent of all trades in shares of Book4Golf were executed through Yorkton. As the trading volume and share price of Book4Golf increased, Yorkton continued to conduct a substantial portion of all Book4Golf

trades. As part of the defendants' unlawful promotion of Book4Golf, a significant number of Yorkton private clients were encouraged to purchase Book4Golf through Yorkton pursuant to the above-mentioned private placements and in the secondary market. In addition to publishing positive analyst recommendations, Yorkton systematically encouraged the Class Members, who were the retail brokerage clients, to purchase and hold their Book4Golf shares in order to support the share price, particularly in periods leading up to planned financing transactions.

THE OSC'S INVESTIGATION OF YORKTON

121. On or about November 17, 2000, the OSC announced an investigation into the affairs of Yorkton. The OSC stated the purpose of the investigation was to look for "potential conflicts in Yorkton's role as underwriter in connection with certain past and unspecified financings (unrelated to Engineering.com)." Two days before the OSC investigation was officially announced, Lambert was removed from Book4Golf's board of directors. Then, on January 10, 2001, Dent was also removed from Book4Golf's board of directors. Only three months thereafter, on April 17, 2001, Dent resigned as Yorkton's director of research to manage a $15,000,000 private equity fund operated by Yorkton.

122. On Friday December 14, 2001, Paterson was dismissed for cause by Yorkton's board of directors. Three days later, on December 17, 2001, the OSC issued a Notice of Hearing and Statement of Allegations and scheduled a hearing to approve a settlement it had reached with members of Yorkton and several of its members, including Yorkton, Paterson and Dent in connection with several companies for which Yorkton had acted as underwriter, including Book4Golf.

123. The terms of the settlement, *inter alia,* required Yorkton to make a $1,250,000 voluntary payment to the OSC, Paterson to make a voluntary payment of $1,000,000 and receive a suspension from the securities industry for two years, and Dent to make a voluntary payment of $50,000. Yorkton, Paterson and Dent were reprimanded by the OSC.

NEGLIGENCE OF YORKTON AND YORKTON FINANCIAL

124. Yorkton and Yorkton Financial owed a duty of care to the Class Members because each Class Member was a customer of Yorkton.

125. The standard of conduct required of Yorkton and Yorkton Financial:

(a) to operate Yorkton so that it complied with obligations under the *Securities Act* and as a member of the TSE and IDA;

(b) to act fairly, honestly and prudently;

(c) to maintain an independent and active compliance department at Yorkton; and

(d) to establish and operate a research department completely independent of Yorkton's investment banking department.

126. Yorkton and Yorkton Financial failed to meet the standard of conduct expected in the circumstances and they were systemically negligent. Particulars of their systemic negligence follow:

(a) they failed to establish clear lines of management authority to ensure that persons in the compliance department were truly independent of persons in the investment banking aspects of the business;

(b) they failed to establish a compliance department which was truly independent of Yorkton's retail brokerage and investment banking business;

(c) they failed to establish any mechanism which would permit persons in the compliance department to respond directly to a committee of Yorkton's or Yorkton Financial's board of directors which was independent of management;

(d) they failed to institute an appropriate financial and accounting infrastructure to allow proper supervision and management of the business;

(e) they failed to establish an audit committee and an executive committee of their board of directors independent of management;

(f) they failed to institute or implement proper internal accounting controls;

(g) they failed to institute appropriate controls to ensure that each transaction was recorded in a timely manner;

(h) they failed to institute any or any reasonable system to ensure that employees, officers and directors complied with the rules of the TSE, IDA and the provisions of the *Securities Act*;

(i) they failed to institute or establish any or any reasonable structure or system to ensure the independence and impartiality of the research department;

(j) they failed to establish a research department independent of the investment banking business;

(k) they failed to establish any reasonable system to ensure that the members of the research department did not have any conflicts of interest;

(l) they permitted research analysts to be compensated on a basis which created conflicts of interest;

(m) they failed to institute or establish any or any reasonable system or controls to independently monitor and evaluate trades by their employees;

(n) they failed to institute or establish any rules or guidelines to authorize house trades;

(o) they failed to institute any rule to govern the situations where the research department intended to issue a research report about a company with whom Yorkton had substantial business dealings or in which Yorkton had an ownership interest;

(p) they permitted the research department to be operated as an adjunct of the investment banking business;

(q) they failed to institute any, or any reasonable system, to hire competent and ethical persons;

(r) they failed to institute any, or any reasonable system, to evaluate the performance and activities of its employees;

(s) they failed to implement and maintain appropriate internal compliance policies and procedures;

(t) they failed to disclose to the members of the Class in a timely manner or at all that they and their employees were selling shares of Book4Golf;

(u) they failed to establish any or any reasonable system to disclose to Class Members their interests in Book4Golf;

(v) they failed to establish any or any reasonable system to ensure that their officers, partners and sales persons dealt "fairly and in good faith with" the Class Members as required by Part 2 of Rule 31-505 of the OSC Rules, "Conditions of Registration," and similar rules in each other province;

(w) they failed to establish any standards or systems to ensure that their officers, partners and salespersons complied with By-Law No. 29.1 of the IDA By-Laws;

(x) they failed to establish any system that they transacted their business relating to the shares of Book4Golf in accordance with the requirements of section 11.17 of the TSE General By-Laws;

(y) they failed to establish policies and procedures for dealing fairly and reasonably with the Class Members;

(z) they failed to establish policies and procedures so that their business confirmed prudent business practices;

(aa) they failed to establish policies and procedures that ensured they complied with section 40 of the *Securities Act*;

(bb) they failed to establish policies and procedures to cause to be printed on every report, memorandum and other publication issued by them, which was intended for general circulation, a statement that they and certain of their officers and directors would receive fees as a result of such purchases and, with respect to those reports, memoranda and other publications contrary to section 41 of the *Securities Act* and other comparable legislation in other provinces where the defendants do business; and

(cc) they failed to establish policies and procedures to ensure that a designated director, partner or officer established and maintained procedures for account supervision and that the handling of client business was within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry contrary to regulation 1300.2 of the IDA Regulations.

127. Had Yorkton and Yorkton Financial not acted negligently, then the conspiracy among Paterson and his Co-Conspirators could not have and would not have occurred or, alternatively, would have been discovered and stopped by Yorkton and Yorkton Financial before any Class Members suffered any loss or damages.

CONSTRUCTIVE TRUST AND EQUITABLE TRACING ORDER

128. The defendants sold common shares of Book4Golf and profited from their conduct particularized above. As such, they are constructive trustees and all monies received by them as a result of selling common shares of Book4Golf are impressed with a trust in favour of the plaintiff and other Class Members.

129. In addition, at various times the defendants earned fees and commissions on the purchase and sale of Book4Golf shares by Class Members and others. They also earned fees relating to the prospectus, IPOs, and consulting agreements relating to Somerville, OnX

and Book4Golf. As such, they are constructive trustees. All monies received by them for these fees or commissions are impressed with a trust in favour of the plaintiff and other Class Members. The plaintiff seeks an equitable tracing order.

130. Yorkton paid dividends and fees to Yorkton Financial. Yorkton Financial knew of and was a party to the conspiracy. Even if it was not a party to the conspiracy, Yorkton Financial is obligated to account for the proceeds of the conspiracy paid to it.

131. Alternatively, the defendants are constituted as constructive trustees in favour of the Class Members for the proceeds of sale of their Book4Golf shares and the fees and commissions earned on the underwriting, purchase and sale of Book4Golf, Somerville and OnX shares because:

(a) these monies were acquired in such circumstances that the defendants may not in good conscience retain the beneficial interest;

(b) justice requires the imposition of a constructive trust;

(c) the integrity of the Canadian capital markets would be undermined if a constructive trust was not imposed; and

(d) the Class Members have suffered a loss and the defendants have been unjustly enriched for the reasons set out above.

DAMAGES

132. The plaintiff pleads that as a result of the conspiracy and negligence particularized above, the plaintiff and other Class Members purchased and held or purchased and sold at a loss, shares of Book4Golf and suffered loss and damages in the amount of $500,000,000.

COSTS

133. The plaintiff and the other Class Members are entitled to recover their full costs of investigation and their legal fees, disbursements and taxes from the defendants on a substantial indemnity basis paid in accordance with the *Class Proceedings Act*, 1992.

134. The plaintiff and the other Class Members are also entitled to recover as damages or costs in this action, the costs of administrating the plan to distribute the recovery in this action that will in all likelihood be in excess of $5,000,000.

PUNITIVE DAMAGES

135. The plaintiff pleads that the defendants conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in disregard of

the rights of each Class Member, indifferent to the consequences, and motivated by their own economic considerations and as such render them liable to pay punitive damages in the amount of $20,000,000. The acts in furtherance of the conspiracy were in breach of the *Securities Act*.

RELEVANT STATUTES

136. The plaintiff pleads and relies upon the *Class Proceedings Act*, *1992* S.O. 1992, c. 6 as amended; the *Securities Act* and in particular sections 38, 40, 76 and 122; the *Criminal Code*, R.S.C. 1985, c. C-46, as amended and in particular section 380(2); the OSC Rules and in particular Part 2 of Rule 31-505 of the OSC Rules; the IDA By-Laws and in particular By-Law 29.1 of the IDA By-Laws; regulation 1300.2 of the IDA Regulations; the General By-Laws of the TSE and in particular section 11.17 of the General By-Laws of the TSE.

137. The plaintiff proposes that the trial of this action be held in the City of Toronto.

July 26, 2002

GROIA & COMPANY
Lawyers
The Sterling Tower
372 Bay Street, Suite 1000
Toronto ON M5H 2W9

Joseph Groia LSUC #20612J
Tel: (416) 203-4472
Alistair Crawley LSUC #38726D
Tel: (416) 203-4473
Fax: (416) 203-9231

KOSKIE, MINSKY
900 – 20 Queen Street West
Toronto ON M5H 3R3

Kirk M. Baert LSUC #309420
Tel: (416) 595-2117
Fax: (416) 977-3316

SUTTS, STROSBERG LLP
Barristers & Solicitors
P.O. Box 670
600-251 Goyeau Street
Windsor ON N9A 6V4

Harvey T. Strosberg LSUC #126400
Tel: (519) 258-9333
Fax: (519) 561-6203

Solicitors for the plaintiff

Plaintiff

Defendants

Court File No. 02-CV-231809CP

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

FRESH STATEMENT OF CLAIM

GROIA & COMPANY
Lawyers
The Sterling Tower
372 Bay Street, Suite 1000
Toronto ON M5H 2W9

JOSEPH GROIA LSUC #20612J
ALISTAIR CRAWLEY LSUC #38726D
Tel: (416) 203-4472
Fax: (416) 203-9231

KOSKIE, MINSKY
Barristers and Solicitors
20 Queen Street West, Suite 900
Toronto ON M5H 3R3

KIRK M. BAERT LSUC #309420
Tel: (416) 595-2117
Fax: (416) 977-3316

SUTTS, STROSBERG LLP
Barristers & Solicitors
251 Goyeau Street, Suite 600
Windsor ON N9A 6V4

HARVEY T. STROSBERG LSUC #126400
Tel: (519) 258-9333
Fax: (519) 561-6203

SOLICITORS FOR THE PLAINTIFF

FILE: 98-027-000
REF: HTS/ba