

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROBERT TOEVS

Plaintiff

- and -

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

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM OF
YORKTON SECURITIES INC. AND
YORKTON FINANCIAL INC. (FORMERLY
YORKTON HOLDINGS LIMITED)**

I. Overview

1. Yorkton Securities Inc. and Yorkton Financial Inc. (referred to collectively herein as “Yorkton”) deny each and every one of the allegations of wrongful conduct or negligence made against them in the Fresh Statement of Claim (the “Statement of Claim”).

2. The allegations made against Yorkton in the Statement of Claim concern Yorkton’s involvement in the creation, financing and promotion of Book4Golf.com Corporation (“Book4Golf”). To the extent Yorkton was involved in such activities, it acted at all material times in compliance with securities industry standards and statutory requirements. Yorkton further denies that it breached any contractual or other duties that it may have owed to the plaintiff or the proposed class members, or that the plaintiff or the proposed class members have suffered any losses or damages for which Yorkton is responsible.

3. The Statement of Claim is rife with false and reckless allegations made against the defendants and a number of other persons. The allegations of conspiracy, fraud and other misconduct by their very nature impugn the reputation and integrity of Yorkton and the others

referred to in the claim. Such allegations were pleaded without any proper basis or foundation, but rather are based wholly on speculation.

4. The plaintiff and his solicitors have not named as defendants many of the persons alleged to have committed the wrongful acts described in the Statement of Claim, providing such persons with no opportunity to participate as parties in these proceedings or to properly refute the serious and far reaching allegations made against them. This will also limit Yorkton's ability to defend the claim.

5. As explained in more detail below, a class proceeding is not in any event appropriate in this action. The essence of the claim pleaded against Yorkton is that the firm owed certain duties to the plaintiff and the proposed class members and that it breached such duties by participating in the alleged conspiracy or by reason of its negligence (all of which allegations are strongly denied). None of the plaintiff or the proposed class members has a cause of action, or can establish liability or damages, unless the plaintiff and each of the proposed class members can establish that the alleged conspiracy caused or resulted in that person's loss. This is impossible to do on a class basis. There are a multitude of individual issues that will have to be considered to determine the many questions of liability and damages that arise in respect of each and every member of the proposed class.

6. Yorkton more particularly denies the allegations made in the Statement of Claim in paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, 36, 37, 39, 40, 41, 43, 44, 45, 47, 48, 49, 50, 52, (the last two sentences) 54, 55 (the last sentence), 56, 57, 59, 60, 61, 67, 68, 71, 72, 73, 74, 75, 77, 79, 80, 86, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135 and 136.

7. Yorkton admits the allegations contained in paragraphs 4, 30, 31, 32, 33, 34, 38, 42, 46 51, 52 (except the last two sentences) 53, 55 (except the last sentence), 58, 62, 63, 64, 65, 66, 69, 70, 76, 81, 82, 83, 84, 85, 87, 91, 114, 115 and 137 of the Statement of Claim.

II. The Plaintiff

8. The plaintiff was a retail client of Yorkton over the material period. On about September 16, 1999, at the request of the plaintiff, Yorkton agreed to open an investment account in the plaintiff's name for the purposes of trading securities on margin. In consideration of Yorkton acting as broker and maintaining the plaintiff's account, the plaintiff executed a New Account Application Form. Yorkton pleads and relies upon this form in its entirety, including the plaintiff's specific representation that it was complete and true. Yorkton also relies upon the positive obligation imposed on the plaintiff to notify Yorkton in writing of any dispute respecting any transaction in his account within a specified period of time after the date of transmittal by Yorkton to the plaintiff of reports of the confirmation of orders and statements of the accounts, failing which all actions taken by Yorkton in the account were deemed to have been ratified by him.

9. Further, the New Account Application Form executed by the plaintiff contained the following additional information:

- a) investment objectives - 50% long term, 25% short term and 25% venture;
- b) risk level - 50% high risk and 50% medium risk;
- c) total estimated net worth - \$5,000,000; and
- d) investment knowledge - good (3 to 10 years investing).

10. The relationship between Yorkton and Toevs was that of principal and agent, and Yorkton specifically denies that it breached any contractual obligations owed to Toevs.

11. On about November 12, 1999, the plaintiff purchased 10,000 shares of Book4Golf at \$3.65 per share. At the time of purchase, the shares represented approximately 10% of the plaintiff's portfolio and were suitable for him. The plaintiff held these shares throughout the material period.

12. Yorkton further denies that it breached any duty of care owed to Toevs, but states that, in any event, Toevs was contributorily negligent and pleads and relies upon the *Negligence Act*, R.S.O. 1990, c.N1. Yorkton further states that Toevs failed to mitigate his damages, which damages are denied, by refusing or failing to sell his shares of Book4Golf despite having ample opportunity to do so.

III. The Proposed Class

13. A class action is not the appropriate method for the adjudication of the matters alleged in the Statement of Claim. There are a the multitude of individual issues which must be examined on a client-by-client basis to determine the issues of liability and damages, if any.

14. The definition of “Class Members” contained in the Statement of Claim appears to encompass all retail and institutional clients of Yorkton who over the material period suffered a loss in connection with trading in Book4Golf shares. However, the remainder of the Statement of Claim suggests that the proposed class is comprised only of retail clients.

15. The claim against Yorkton is founded on allegations that it owed certain duties to the plaintiff and the proposed class members. It is alleged that Yorkton breached such duties and thereby caused the plaintiff and the proposed class members loss and damage. It is alleged that Yorkton did so a) by participating in the alleged conspiracy or b) through its negligence.

16. In order to succeed in a claim for damages founded on the alleged conspiracy or negligence, the plaintiff and the proposed class members must, among other things, show that the conspiracy or negligence caused the damages claimed. In order to determine whether it was the alleged conspiracy that “caused” the “loss” allegedly suffered, it is necessary to examine in detail how each and every individual retail client came to suffer that loss. In so doing, the Court will have to examine a multitude of individuals issues such as:

- Whether Yorkton owed the particular client a duty in the terms alleged in the Statement of Claim, and, if so, the nature of such duty in the particular circumstances of each and every individual retail client.
- Whether Yorkton breached the duty it owed to the particular client.

- Whether the particular client reasonably relied on one, some or all of the alleged misstatements (which are denied) concerning Book4Golf (including those contained in the Yorkton research reports) alleged in the Statement of Claim.
- Whether the alleged manipulation of the market (which is denied) affected the decisions made by the particular client in trading Book4Golf shares.
- Whether the alleged failure to disclose the facts and circumstances described in the Statement of Claim (which is denied) had a material impact made on the decisions made by the particular client in trading Book4Golf shares.
- Whether the allegedly artificially inflated price of the Book4Golf shares (which is denied) had a bearing on the particular client's decision making. In this respect, not all individual retail clients of Yorkton who traded in Book4Golf shares suffered a loss. That is because they were able to sell such shares for an amount equal to or greater than the purchase price. Many of the proposed class members would have had exactly the same opportunity.
- Whether the particular client was actually encouraged or advised by Yorkton or its employees to buy, hold or sell Book4Golf shares, or whether such client received different advice or no advice at all.
- Whether the particular client received, or had the opportunity to receive, any other information or advice from sources other than Yorkton that may have affected the client's decisions to buy, sell or hold Book4Golf shares.

17. Further, Yorkton participated in the Book4Golf Venture primarily as an investment banker/corporate finance advisor.

18. On the other hand, Yorkton dealt with the plaintiff and the proposed class members through its retail brokerage business. Such clients were party to a wide range of different contractual arrangements with Yorkton, and dealt with Yorkton through Yorkton's registered

investment advisors or representatives. Each registered representative had his or her own personal obligations to each client.

19. The regulatory regime governing the relationship between Yorkton and its clients imposed on Yorkton the duty to operate and supervise each client's account on an individual basis, to ensure that transactions recommended or conducted on behalf of the particular client were suitable for that client. This would include transactions involving Book4Golf shares. Accordingly, in order to assess the issue of liability of Yorkton on the grounds alleged in the Statement of Claim, the court will have to determine the cause of the client's loss in the context of each individual client relationship.

20. It is also an individual, not a class issue whether a particular client mitigated or failed to mitigate the client's damages, or whether the client contributed to such loss or was otherwise at fault.

21. It is also an individual, not a class issue whether a particular client in fact suffered overall losses in respect of Book4Golf, taking into account all of that client's transactions in Book4Golf, whether at Yorkton or elsewhere.

The Relationship Between Yorkton and its Client

22. The plaintiff alleges that the duties owed by Yorkton to each of its clients are the same for each such client. This is incorrect. The relationship between Yorkton and its client must be considered in the context of each individual retail client's relationship with the client's registered representative, to determine if the conduct of the individual retail client's account gave rise to any breach of duty and any liability under common law, regulatory or statutory principles. Each registered representative also had his or her own obligations to each individual retail client.

23. The general relationship between a brokerage firm and its client is contractual, that of principal and agent. The terms of the contract for a particular client can only be determined by examining the particular account agreements for that client. There are a wide range of such agreements for retail clients, including agreements for cash, margin and RRSP accounts.

24. Further, the existence of a duty beyond the terms of the individual client agreements by Yorkton to the proposed class members, and the question of whether that duty was breached by Yorkton can only be determined by examining the precise nature of each individual client's relationship to Yorkton and to that client's registered representative. In so doing, the court will have to examine factors such as trust, confidence, complexity of the subject matter, reliance on skill and custom or industry standards. In the context of the purchase and sale of Book4Golf shares, the sophistication, investment knowledge and experience of the client, the client's investment objectives and risk tolerance and the client's particular relationship with Yorkton registered representative who placed the trades, will also be relevant, together with the other factors described in paragraph 26 below.

Retail Client Individual Issues

25. Retail investors are individuals or entities (such as personal holding corporations, trusts, investment clubs or partnerships) with varying degrees of sophistication, investment knowledge and experience, net worth, and individual investment objectives. Transactions in retail client accounts are conducted by registered representatives employed by Yorkton who have individual responsibilities pursuant to regulatory requirements and Yorkton policies over the conduct of their clients' accounts. Each retail client must disclose information as to that client's sophistication, investment knowledge and experience, net worth and investment objectives, to Yorkton and to the client's registered representative, pursuant to regulatory requirements and Yorkton policies, so that Yorkton can gain knowledge of its client and address the client's suitability to conduct transactions in his or her account. There are also many different types of accounts a retail investor can open, including cash, margin, option and RRSP accounts, and there are specific account opening agreements (and other documentation) for the different types of accounts. These are more detailed than those employed for institutional clients, particularly in regard to "know your client" and "suitability" regulatory requirements.

26. Assuming that the class includes only retail clients, the following individual issues are relevant to determine if the "conspiracy" and/or the alleged negligence caused the loss suffered by a proposed class member, if Yorkton breached its duties or was negligent in respect of any

particular client, and whether such breach of duty or negligence caused the loss suffered by the particular client.

Investor profile issues for retail clients

- the type of client account, whether cash, margin, option or RRSP;
- the account opening procedure employed;
- the degree of sophistication of the client;
- the investment experience of the client, including but not limited to whether the client had traded before and was trading in other securities during the material time, either with Yorkton or with other investment dealers and in what type of securities;
- the particular financial circumstances of the client (ranging from millions of dollars net worth to limited net worth);
- the investment knowledge of the client, including but not limited to the client's knowledge of shares in technology companies;
- the client's general approach to investment and whether the client was involved in speculative trades, to what extent and for how long;
- the client's appreciation of the risk involved in trading in Book4Golf shares;
- the client's investment objectives and how trading in Book4Golf shares fit in with those objectives;

Advice/reliance issues for retail clients

- the investment experience of the client, including but not limited to whether the client had traded before, or was trading in other securities

during the material period, either with Yorkton or with other investment dealers (whether full service or “self directed”),

- whether the client had a third party financial planner or adviser;
- whether investment advice was given by the registered representative to the client in respect of the purchase or sale of Book4Golf shares;
- if investment advice was given by the registered representative, the nature of such advice;
- if investment advice was given by the registered representative, whether the client followed it;
- whether the client received, relied upon or reacted to other Book4Golf information which was available from the public domain both before and during the material time in making his or her investment decision; including but not limited to press releases from Book4Golf or OnX, the Book4Golf or OnX web sites; chat lines on the Internet, articles in publications such as The Globe and Mail or information provided by other analysts;
- whether the client was acting on market rumours;
- the extent of any other independent or “inside” knowledge of the client concerning Book4Golf or e-commerce companies similar to Book4Golf, or of any person authorized to trade on the client’s behalf, unrelated to any information provided through Yorkton;
- whether in purchasing or selling shares the client was trying to take advantage of market volatility or market momentum;

- whether the client received, relied upon or reacted to investment advice from other registered representatives or investment advisors not employed by Yorkton, including investment newsletters;
- whether the client received and read copies of the research reports and conducted trades in reliance thereon;

Trading issues for retail clients

- the level and type of trading each client engaged in and proportion of the trading attributable to Book4Golf shares;
- who had trading authority over the account (trusted advisor, a family member, the account holder);
- whether shares of Book4Golf purchased through Yorkton were transferred out of the client's Yorkton account;
- whether shares of Book4Golf purchased through Yorkton were sold ultimately through other investment dealers;
- whether the client's account was operated on a delivery against payment basis, whether the securities were held by the client's third party custodian, and whether these shares were sold through other investment dealers;
- whether Yorkton was performing a custodial service for the client of segregated securities or monies;
- whether the shares were purchased on margin and if so whether any margin call was made, resulting in the losses allegedly suffered;
- the actual trading by the client in shares of Book4Golf, at Yorkton or elsewhere, whether purchases, sales, or short sales and an analysis of:
 - realized profits and losses;

- unrealized profits and losses;
- the opportunity to realize profits or to reduce losses during the period the client held the shares.

Issues relating to the relationship with Yorkton and registered representatives for retail clients

- the obligations of the registered representative to a client in light of the client's sophistication, investment knowledge and investment experience of the client;
- the client's relationship with the individual registered representative, including but not limited to whether the relationship involved elements of trust, confidence, control and/or reliance;
- whether statutory and regulatory requirements and securities industry standards were met in relation to margin calls and general compliance and supervision issues, etc.

27. In the particular circumstances of this case, in order to determine how a particular client came to suffer a loss, if any, in trading Book4Golf shares, it will also be necessary to determine how that client acquired Book4Golf shares in the first place.

28. The proposed class will likely include clients who acquired Book4Golf shares in a number of different ways, including the following:

- by reason of their having held Somerville Capital Inc. ("Somerville") shares prior to its amalgamation with Book4Golf Private (as defined in the Statement of Claim). Book4golf.com Corporation was the amalgamated corporation. Somerville security holders received Book4Golf shares, warrants and options. Shareholders may then have exercised the warrants or options to purchase more shares;
- the Somerville shares, in turn, could have been purchased by way of,
 - the Initial Public Offering ("IPO") of Somerville in 1998;

- on the secondary market through the Alberta Stock Exchange;
- by way of the January 1999, private placement; and
- pursuant to the special share and special warrant offerings that occurred at or around the amalgamation;
- as part of the November 1999 private placement of special warrants;
- as part of the March 2000 private placement of special units;
- as part of the September 2000 private placement of special units; or
- by way of the secondary market, using the facilities of the Alberta Stock Exchange or, following January 1, 2000, the CDNX.

29. For those who acquired warrants, units or shares of Somerville or Book4Golf other than by way of the secondary market, such securities would have been acquired under or qualified by the following:

- subscription agreements (and other contractual documents) and the Somerville prospectus of July 1998;
- the August 1999 Information Circular of Somerville concerning the amalgamation of Somerville and Book4Golf Private;
- subscription agreements (other contractual documents) and the prospectus regarding the private placement of October 1999;
- subscription agreements (and other contractual documents) and the prospectus regarding the private placement of February 1999;
- subscription agreements (and other contractual documents) and the prospectus regarding the private placement of June 2000;

- subscription agreements (and other contractual documents) and the October 2000 prospectus regarding the September 2000 private placement.

30. Each of the public disclosure documents was reviewed and received by either or both of the Alberta Securities Commission (“ASC”) and the Ontario Securities Commission (“OSC”).

31. Yorkton pleads further that each subscriber to a private placement likely utilized the sophisticated investor exemption to allow him/her to make the purchase. Further, with respect to each purchase under a subscription agreement, the court will have to examine, for each individual retail client, the terms of the particular subscription agreements executed by the client. During the material period, it was typical for such subscription agreements to contain the following provisions, among others:

Purchaser’s Acknowledgements

The Purchaser acknowledges and agrees (on its own behalf and, if applicable, on behalf of those whom the Purchaser is contracting hereunder) with the Corporation and the Underwriter that (which acknowledgements and agreements shall survive the Closing:

.....

- (a) no person has made any written or oral representations:
- (b) as to the future price or value of the Special Units or the Common Shares or Warrants to be issued upon the exercise of the Special Units;

.....

Representations, Warranties and Covenants

The Purchaser hereby represents, warrants and covenants (on its own behalf and, if applicable, on behalf of those for whom the Purchaser is contracting hereunder) to the Underwriter and that the corporation (which representations, warranties and covenants shall survive the Closing that:

- (p) the Purchaser is capable of assessing the proposed investment as a result of the Purchaser’s financial or investment experience or as a result of advice received from a registered person other than the Corporation or an affiliate thereof, and is able to bear the economic loss of its investment; and
- (q) the Purchaser has such knowledge in financial and business affairs as to be capable of evaluating the merits and risks of its investment and it is able to bear the economic risk of loss of its investment.

.....

32. Further, the court will have to examine each purchase or trade of Book4Golf securities in light of the extensive disclosure contained in the public record. Yorkton denies each and every allegation made in the Statement of Claim concerning disclosure in connection with the Book4Golf venture and states that the public documents referred to above contained in each case full, plain and true disclosure of all the material facts relevant to the purchase of Book4Golf securities. Yorkton pleads further that each and every client who purchased or traded in Book4Golf shares over the material period was aware of or had access to all material facts concerning the Book4Golf, whether through such publicly filed disclosure documents or otherwise.

33. Accordingly, the court will have to determine a) whether each such client was provided with an opportunity to review the disclosure documents, and whether the client did so, b) whether the disclosure documents contained material misrepresentations, c) whether the client reasonably relied on such misrepresentations, if any, and e) whether such reliance caused damage. The court will also have to examine the full range of individual client issues referred to and described above.

34. For those clients who purchased warrants and options, each would have had the ability to convert such securities into common shares. With respect to each such client, the court will have to examine whether the client in fact did so, and why.

IV. Scott Paterson

35. Scott Paterson was not the Chairman, Chief Executive Officer and a Director of Yorkton throughout the material period. In fact, Mr. Paterson left Yorkton in December 2001. The material period for the purposes of the Statement of Claim would appear to be the period from November 1999 to June 2002.

V. Yorkton Financial Is Not the Same as Yorkton Securities

36. The Plaintiff alleges that Yorkton Securities and Yorkton Financial should be treated, in effect, as one entity, and that the damages claimed should be paid by both entities on a joint and several basis. Yorkton denies this allegation. Yorkton Securities and Yorkton Financial admit that they are related companies. They are not, however, alter egos. It was Yorkton Securities

that participated in the Book4Golf transactions, not Yorkton Financial. Similarly, the proposed class members were clients of Yorkton Securities and not Yorkton Financial. Yorkton Financial was not a party to any contract relevant to the claim, and owed no duties, contractual or otherwise, to any members of the proposed class.

VI. OnX

37. Yorkton denies the allegations concerning OnX. OnX acted at all times in good faith and for legitimate business reasons. OnX provided very extensive services to Book4Golf and received proper and appropriate compensation for such services. Yorkton states further that it is improper for the plaintiff to have made the far reaching and very serious allegations against OnX and related persons without having named them as parties.

VII. No Basis for Claim for an Accounting, Tracing Order, Declaration of Constructive Trust or Punitive Damages

38. Yorkton states that the plaintiff's claim for an accounting, tracing order and the declaration of constructive trust is misconceived in fact and in law. Yorkton denies such claims and states further that the Statement of Claim discloses no cause of action whereby such claims could possibly succeed.

39. Yorkton also denies the claim for punitive damages.

VIII. Yorkton Was Not Negligent and Did Not Participate in a Conspiracy

40. Yorkton denies the allegations concerning the existence and operation of the alleged conspiracy. Yorkton further denies the allegations contained in paragraph 20, and elsewhere, that Yorkton's participation in the Book4Golf venture was motivated by anything other than legitimate and appropriate business reasons.

41. Yorkton denies that it acted illegally, inappropriately or was wilfully blind in the manner alleged by the plaintiff or otherwise. Yorkton further denies that its actions in any way caused or contributed to any injury, loss or damage suffered by the plaintiff or the proposed class members.

42. Yorkton denies the allegations, contained in paragraph 19 and elsewhere, that it or the others referred to therein conspired or agreed to commit the acts complained of, or that Yorkton

knew or ought to have known that because of its involvement in the Book4Golf venture, the plaintiff and the proposed class members would be, and were, injured, or that Yorkton participated in the Book4Golf venture for any purpose other than for legitimate and good faith business reasons.

43. Yorkton denies the allegations contained in paragraph 21 and elsewhere, that it breached any common law equitable or statutory duties to disclose Yorkton's involvement, financial and otherwise, with Book4Golf or its predecessor corporations, as well as the relevant associations and financial interests amongst and between the various stakeholders in such entities.

44. Yorkton denies the claims of negligence as particularized in paragraph 126 and elsewhere. Yorkton and its employees acted at all times in compliance with securities laws and industry standards. At no time did Yorkton breach any duty of care it owed to any of its clients in connection with Book4Golf.

45. Yorkton denies the allegations, contained in paragraphs 19(j), 21(d) and elsewhere, that it participated, authorized, engaged, permitted or acquiesced in any unlawful or inappropriate trading in the securities of Book4Golf, Somerville or OnX.

46. Yorkton also denies the allegations, contained in paragraphs 19(d), 21(f) and elsewhere, concerning Yorkton's compensation, and pleads that it received fees and shares in Book4Golf as payment for the substantial work it undertook in the Book4Golf venture, all in accordance with industry standards and practices, and in absolute good faith.

47. Yorkton denies the allegations, contained in paragraphs 19(h), 21(c) and elsewhere, that it unlawfully or otherwise inappropriately promoted Book4Golf shares by causing its investment advisors to encourage the class members who were Yorkton's retail brokerage clients to purchase and hold Book4Golf shares and to discourage Book4Golf shareholders from selling their shares. At all material times, Yorkton and its investment advisors acted completely in accordance with industry standards and regulations, and carried out the duties owed to individual class members properly and in good faith.

Book4Golf Was Not A Sham

48. Yorkton denies the allegation, contained in paragraph 19(c), that Book4Golf had virtually no possibility of generating revenues to support a significant market capitalization.

49. Yorkton denies the allegations, contained in paragraph 19(f) and elsewhere, that Yorkton acted in any manner that was inappropriate, illegal or otherwise not in accordance with the standards of the industry in promoting the shares of Book4Golf. Book4Golf share prices declined steadily and substantially during the same period as a severe decline in stock markets generally, and for technology stocks in particular.

50. Further, the essence of the conspiracy allegation is that the Book4Golf business was a sham. Yorkton strongly denies this. The business was not a sham. Many of the transactions described in the statement claim occurred during a period of tremendous optimism concerning the internet and new internet businesses. Many persons outside of the defendants and alleged co-conspirators enthusiastically supported the Book4Golf venture and predicted that it would be successful.

Press Coverage of Book4Golf

51. The far reaching and speculative allegations contained in the Statement of Claim are not based on facts or evidence. Some of the allegations appear to be based on a series of incomplete and misleading press reports in which similar allegations are made or implied. Certain of these press reports, in fact, appeared in the popular financial press commencing in approximately March 2000. Such press reports were accessible to all members of the proposed class over the material period. It is impossible to say, without an examination of each class member, whether or not such class member read, relied on or was otherwise affected by such reports. These issues are relevant at the very least to determine whether or not the alleged conspiracy caused any damage to a particular class member, as to whether Yorkton breached any duty it may have owed to the class member, and as to whether such class member contributed to, or failed to mitigate, the loss alleged to have been suffered.

52. Further, Book4Golf also received substantial positive press coverage. For example, in June 2000, the Globe and Mail published the results of a survey conducted by Bain and

Company, one of the world's leading management consulting firms. Bain evaluated 285 Canadian internet companies in five categories: innovation, impact, execution, funding, and fame. Bain rated these companies as to which would be the "strongest bets for the future". As reported by the Globe and Mail, Bain's report ranked Book4Golf second out of the 285 companies surveyed. As with the reports referred to in paragraph 50 above, it is impossible to say, without an examination of each proposed class member, whether a particular client, read, relied on or was otherwise affected by this positive press coverage.

53. Yorkton denies that the research reports referred to in the statement of claim had the impact alleged on Book4Golf share price. In fact, as is readily apparent from the Statement of Claim, the Book4Golf share price moved steadily downwards following the publication of the research reports described therein.

Role of Lawyers, Regulators and Accountants

54. The description of the transactions, and of the disclosure concerning the Book4Golf venture is incorrect, misleading, and incomplete. Yorkton, in any event, denies that it acted unlawfully or inappropriately in any fashion in connection with the Book4Golf venture and that there was any failure to disclose material facts in connection with such transactions or otherwise.

55. Throughout the Book4Golf venture, each of Book4Golf and Yorkton had the benefit of independent, respected and experienced professional advisors, including legal counsel, accountants and auditors. Throughout the process, Yorkton was entitled to, and did, reasonably rely on such professionals.

56. Yorkton at all times reasonably relied on information disseminated by Book4Golf and by professionals retained by or associated with it as being full, fair, accurate and reliable.

57. Further, the Book4Golf transactions took place within a program developed and promoted by the Alberta Stock Exchange ("ASE") and Alberta Securities Commission ("ASC") for Junior Capital Pool ("JCP") companies.

58. The JCP program permitted an initial public offering (IPO) to be conducted and a stock exchange listing to be achieved by a new company which, other than cash, had no assets,

business or operations. The only business permitted to be undertaken by a JCP/CPC was the identification and evaluation of assets or businesses with a view to completing a “Major Transaction”.

59. A significant feature of the JCP program was the early, ongoing and close regulatory scrutiny of all facets of the process; from the filing and clearing of a JCP prospectus, the listing of the JCP, to the approval of the prospectus level disclosure contained in an information circular concerning the Major Transaction and beyond.

60. Throughout the material period, the role of the defendant Paterson and Yorkton in the Book4Golf venture, including the organization and financing of the JCP and Somerville, was clear and evident to the ASE and the ASC. It was never raised as the subject of any concern by the ASE or ASC. In fact, senior executives of the ASE, with full knowledge of the Yorkton sponsorship, repeatedly and publicly highlighted Book4Golf as a model JCP transaction.

61. The ownership interest of Yorkton staff in Somerville was also fully disclosed to the ASE and a list of the specific Yorkton staff shareholders was reviewed and approved by the ASE. The ownership of Somerville shares by Yorkton staff was in full compliance with the rules and policies of the ASE in force at that time, specifically subsection 2.5.5 of ASE Circular No. 1.

62. The role played by Yorkton as sole underwriter was also clear to all concerned. This role was not contrary to existing law, policy or custom. Due to the small size of the financing involved in a JCP, as restricted by the JCP policies, JCPs virtually always had a single underwriter.

63. The interests of Paterson and other employees of Yorkton in the seed capital shares of Somerville were also disclosed to the ASE and the ASC.

64. Yorkton states that it played an integral role in the Somerville Major Transaction. The Corporate Finance department of the ASE at that time was actively encouraging member firms such as Yorkton not to “orphan” JCPs for which they had acted as underwriter.

65. It was also common and accepted in the securities industry for the underwriter of the IPO to finance the private company involved in the Major Transaction, or to complete another financing for the JCP concurrent with the Major Transaction closing, as was often required by the ASE as a condition of granting approval.

66. The involvement of Yorkton in the Somerville Major Transaction was consistent with the expectations of ASE staff and custom in the industry at that time. The compensation received by Yorkton from Somerville was within the standard range charged by the brokerage industry for such transactions. It was also customary for the underwriter of the JCP to be involved with the Major Transaction and subsequent financings of the JCP at the time of completion of the Major Transaction. It was not uncommon for staff of the member firm underwriting the JCP to own shares of the JCP.

67. The Somerville transaction was the norm for JCP financings at that time, was in full compliance with the rules and policies of the ASE in force at that time, and did not create an unacceptable conflict of interest.

Prior Relationships with JCP Directors

68. Yorkton denies that its prior association with others involved in the Book4Golf Venture was inappropriate or created an inappropriate conflict of interest. All such persons in any event carried out their duties appropriately and independently. The ASC and the ASE were also fully aware of and approved of such prior associations.

69. It would have been unusual for the participants in the JCP not to have had some prior relationship with the underwriter, the investment dealer completing the JCP, or the corporate finance staff reviewing the JCP.

70. Prior JCP experience was not only a positive factor but an essential criterion imposed by the ASE. During 1997 and 1998 the ASE had developed two categories of JCPs. The first category of JCPs were those that had competent management with industry experience in a particular area where the JCP had already identified a proposed transaction that was acceptable to the ASE and would be disclosed in the JCP prospectus (“Non-Blind JCPs”). The second category of JCP was the true “blind pool” where there was no intended Major Transaction

contemplated or disclosed at the time of closing the IPO (the “Blind JCPs”). The ASE only permitted directors and officers who met a higher standard of ability and experience, and had a previous successful track record of completing JCP Major Transactions, to complete Blind JCPs. The Somerville directors, for example, met the higher standard, thereby permitting Somerville to proceed as a Blind JCP, in part as a result of their prior involvement in JCPs.

71. It was also customary for underwriters to have prior relationships with the JCP directors and officers because the underwriters were required by the ASE to provide reporting/sponsorship letters with respect to the management of a proposed public company, including JCPs.

72. ASE Circular No. 14 required Yorkton or any other underwriter to:

“As a minimum, such review shall include:

a review of the past conduct of existing and proposed officers, directors, promoters and major shareholders of the issuer for purposes of assessing their general business acumen and their experience in the type of business carried on by the applicant. This review is necessary in order to be satisfied that the business of the issuer will be conducted in the best interests of the public, and in compliance with all Exchange Requirements and the applicable legislation, rules and policies of all other regulatory bodies having jurisdiction over the applicant and its management.”

73. The extensive review obligations which were imposed on the underwriter by ASC Circular 14 required, to the knowledge of the ASC, a strong familiarity between the member firm and the directors.

74. A June 17, 1997 letter of counsel to Somerville to the ASE explicitly described the background and qualifications of the directors of Somerville, which directors were ultimately approved by the ASE staff and the ASE Listing Committee.

Allegations regarding trading at Yorkton

75. Yorkton denies that the fact it was the dominant trading firm for Book4Golf shares was in any fashion illegal, inappropriate, or somehow otherwise an indication of wrongdoing. The fact that Yorkton, as Book4Golf’s underwriter, was the dominant trading member firm in Book4Golf shares is consistent with the vast majority of initial public offerings, as well as financings

contemporaneous with or following a Major Transaction under the JCP program. This occurs as a result of the lead underwriter's underwriting commitment, its role in undertaking appropriate market stabilization trading activity and its interest in ensuring liquidity for investors that it has solicited to participate in the offering. In the context of JCP issuers, it was not only customary for the JCP underwriter to be the lead trading firm in the issuer's securities, but a practice that was encouraged by the ASE.

76. In any event, at its highest, the total number of accounts at Yorkton in which Book4Golf shares were traded represented just over 1% of the total client accounts of Yorkton at the time.

Allegations concerning the role of Roger Dent

77. The fact that Roger Dent was the Director of Research at Yorkton was disclosed fully and repeatedly in the public record, and elsewhere, during the material period. ASE Circular No. 7 required detailed disclosure of the composition of the proposed board of directors of Book4Golf and Yorkton's participation in the private placement financings of Book4Golf. Further, and in any event, the fact that Dent served as a director of Book4Golf was not in any way inappropriate or in violation of the law.

78. The Information Circular of Somerville submitted to ASE staff disclosed that Roger Dent, an officer of Yorkton and its Research Director, would be one of five directors. The ASE was also provided with a personal information form concerning Mr. Dent. ASE staff reviewed and completed searches against the proposed directors of Somerville and recommended the directors and the Major Transaction for acceptance by the ASE Filing Committee of the ASE, which included the most senior ASE executive officers. The ASE Filing Committee approved the Major Transaction and the directors of Somerville, including Mr. Dent, as one of five directors.

79. In respect of Dent's roles as Director of Research of Yorkton and a director of Book4Golf, Dent declared his interest to the board of directors of Book4Golf with respect to any board matter involving Yorkton, including the Book4Golf financings underwritten by Yorkton. Further, Dent was not proposed as a Director of Book4Golf for any of the wrongful reasons

described in the Statement of Claim. Rather, Dent was proposed as a director specifically to safeguard and protect the interests of investors in general, and of Yorkton clients in particular.

80. Dent had no meaningful role in or any influence on the development of Yorkton's research reports on Book4Golf. The analyst involved, Mark Pavan, worked independently of Dent, obtaining data in the public domain and often directly from company officials, as he did with all other stocks that he covered.

81. In any event, neither Dent nor Pavan ever held or sold any material number of shares. Each of Dent and Pavan acquired 10,000 Book4Golf shares in a 1997 private placement by Somerville. Dent had purchased an additional 19,000 Book4Golf shares prior to the Major Transaction. On becoming a director of Book4Golf, Dent received options to acquire 20,000 Book4Golf shares on the same basis as the other outside directors of Book4Golf, none of which were exercised by him. Pavan has sold none of his Book4Golf shares. Dent sold 1,000 of his 29,000 shares prior to the Major Transaction and prior to becoming a director of Book4Golf.

No Failure to Disclose

82. Yorkton denies each of the allegations contained in the Statement of Claim concerning disclosure of the Somerville and Book4Golf transactions and Yorkton's involvement in such transactions. Yorkton, Somerville and Book4Golf complied fully with all of their respective disclosure obligations in connection with the Book4Golf venture.

83. The allegations containing disclosure in the Statement of Claim are incorrect on their face, incomplete, or otherwise highly misleading. Many important and relevant aspects of such disclosure are misstated or left out entirely.

84. Extensive public documentation was filed in connection with the various financing and transactions that involved Yorkton. In each case, such documentation contained or disclosed, among other things, the following:

- A detailed description of the Book4Golf business, including its corporate and operational history.

- The substantial risk factors that investors should have considered prior to purchasing securities of Book4Golf.
- The identities, including business background, of Book4Golf directors and officers, the involvement of such directors and officers in transactions with Book4Golf and the security holdings of such directors and officers.
- The role played by Yorkton in the particular transaction.
- The compensation, in cash, shares or options, to be paid to Yorkton in connection with its role in the transaction.

85. As an example, among the extensive disclosure contained in the public record, the Information Circular of August 1999, concerning the amalgamation of Book4Golf Private with Somerville, disclosed the following information not referred to in the Statement of Claim:

- “Book4golf.com Web site was not yet operational (pg. 10).”
- “... a description of the principal risk factors with respect to the Corporation (Somerville) and Book4Golf...(pg. 10).”
- “The Corporation has no operational history or earnings... no other assets, other than cash. The Corporation has no present intention to pay dividends. (pg. 10).”

...

- “**Book4Golf has not yet launched its Book4Golf.com Website.** Book4Golf has no operating history upon which an evaluation of Book4Golf and its prospects could be based. Book4Golf anticipates incurring significant additional costs to fund increased marketing initiatives, additional strategic alliances, enhancements to the Book4golf.com Web site, and technological and hardware improvements. Although Book4Golf anticipates generating revenues, significant operating losses are anticipated for at least the foreseeable future. To the extent that such expenses do not

result in appropriate revenue increases, Book4Golf's business may be materially adversely affected. (pg. 11)."

...

- "If the proposed Major Transaction of the Corporation is approved, the Corporation, through Book4Golf, will be engaged in the e-commerce and golf industries. These industries involve a substantial degree of risk, which even a combination of experience, knowledge and careful evaluation may not be able to overcome. Shareholders must rely on the ability, expertise, judgement, direction, integrity and good faith of the management of the Corporation and Book4Golf. (pg. 11)."

...

- "Book4Golf expects to experience significant fluctuations in future quarterly operating results that may be caused by many factors, including: (i) the pace of development of the market for e-commerce; (ii) changes in the level of marketing and other operating expenses to support future growth; (iii) seasonal trends, including those related to the golf industry; (iv) competitive factors; and (v) general economic conditions. (pg. 11)."

...

- "Although Book4Golf has generally provided for the proposed use of proceeds from its financing activities, Book4Golf cannot specify with certainty the amount of the net proceeds from its financing activities which will be allocated for each purpose. Accordingly, Book4Golf's management will have broad discretion in the application of such proceeds. (pg. 11)."

...

- "As the common shares are currently listed on the ASE, factors such as announcements of quarterly variations in operating results, or new actions by competitors of Book4Golf, as well as market conditions in this industry, may have a

significant impact on the market price of the common shares. The stock market has from time to time experienced extreme price and volume fluctuations, which have often been unrelated to the operating performance of particular companies. Share prices for several companies in the technology industry in particular have experienced wide fluctuations that have been often unrelated to the operating performance of the companies themselves. In addition, there can be no assurance that an active public market will develop or be sustained for the Amalco Common Shares following the completion of the Major Transaction. The market price of the Amalco Common Shares after completion of the Major Transaction could be subject to significant fluctuations in response to quarterly variations and operating results of Amalco, announcements of technological innovations through software, services or products by Amalco or its competitors, changes in financial estimates by securities analysts or other events or factors, many of which will be beyond Amalco's control. There can be no assurance that holders of Amalco Common Shares will be able to resell their Amalco Common Shares without sustaining a loss on their investment. (pg. 12)."

...

- Concerning the election of directors, it was proposed that Roger Dent, among others be elected as director of the Corporation...(pg. 27). He was described as follows:

“Vice-Chairman and Director of Research for Yorkton Securities Inc. since April 1996; prior thereto a Managing Director of CIBC Wood Gundy in Toronto, Ontario”.

86. As another example, in the Prospectus dated October 22, 1999 for Book4Golf, the following information was disclosed (but not referred to in the Statement of Claim”:

- “Investment in the securities offered hereby should be considered to be speculative due to various factors, including the nature of the Company's business and its present stage of development. The Company has not yet launched its Book4golf.com Web site, has no operating history and anticipates incurring significant operating losses for

at least the foreseeable future. The integration of Book4Golf's software program with the point-of-sale software utilized by golf courses is not complete. See "Risk Factors"...(pg. 3)."

- "Although the integration of Book4Golf's software program with the point-of-sale software utilized by golf courses is not complete, Book4Golf believes it has developed the product design and system architecture required to satisfy the needs of golf course owners and managers, as well as golfers... (Pg. 5)"

...

- "One of the principal advantages of Book4golf.com lies within the multi-threaded search engine and filters which will enable golfers to search by tee time, golf course, city, price range, slope and rating (difficulty), region, number of golfers and dates or any combination of the foregoing. As at the date of this prospectus, the Book4golf.com Web site is still under development and is not yet operational. See "Risk Factors". The Company anticipates that Book4golf.com will be an operational Web site by the first quarter of 2000... (Pg. 5)"

...

- "An investment in the securities qualified hereby should be considered speculative. In evaluating the securities offered hereunder, prospective investors would consider a number of risk factors including the following: (i) the Company has not yet launched its Book4golf.com Web site, has no operating history and anticipates incurring significant operating losses for at least the foreseeable future; (ii) both the e-commerce market and golf industry are highly competitive; (iii) the Company expects to experience significant fluctuations in future quarterly operating results; (iv) use of the Internet by consumers is at a relatively early stage of development, and market acceptance of the Internet as a medium for commerce is subject to a high level of uncertainty; (v) the Internet and the e-commerce industry are characterized by rapid technological change, changes in user and client requirements and preferences,

frequent new product and service introductions embodying new technologies and the emergence of new industry standards and practices that could render the Company's existing Web site and proprietary technology and systems obsolete. If the Company is unable, for technical, legal, financial or other reasons, to adapt in a timely manner and respond to changing market conditions or client requirements, the Company's business could be materially adversely affected; (vi) the Company has designed its products to operate on the Microsoft Windows NT and Microsoft Book Office Platforms; (vii) the Company could be adversely affected by the availability of capable and reliable software from licensees in the future; (viii) security concerns relating to computer break-ins, Internet security and computer viruses could have an adverse material affect on the Company's business; (ix) the Company's business could be adversely affected by systems overload or failure, and/or damage to or failure of the Company's technological infrastructure; (x) there can be no assurance that the Company will be able to acquire, maintain or adequately protect its domain names; (xi) adoption of laws and regulations relating to the Internet and e-commerce could reduce the rate of growth of the Internet, which could potentially decrease the usage of the Company's Web site or could otherwise have a material adverse affect on the Company's business; (xii) the Company's management will have broad discretion in the application of the net proceeds from its financing activities; (xiii) the Company's computer systems as well as the computer systems of its suppliers and its strategic partners, may be adversely affected by the "Year 2000" problem; (xiv) market demand for the services of the Company is substantially dependent upon the adoption of the Internet network for commerce; (xv) the Company's revenues will be derived from a limited scope of services in the near term; (xvi) the Company's success will depend in part on its ability to establish and maintain business relationships with golf and computer industry participants; (xvii) the success of the Company will depend, in part, on its ability to maintain trade secret protection and operate without infringing the proprietary rights of third parties; (xviii) the Company is substantially dependent upon the services of a few key personnel; (xix) the Company relies upon the accuracy and proper utilization of a management

information system to provide timely distribution services and to track properly its financial information; (xx) the future revenue growth of the Company will depend in large part on its ability to successfully expand its direct sales force and its client support capability; (xxi) there can be no assurance that the Company will be successful in its efforts to arrange additional financing on terms satisfactory to the Company; (xxii) the Company may be subject to growth-related risks, including capacity constraints and pressure on its internal systems and controls; (xxiii) it cannot be assumed that the Company will complete any acquisition it pursues on favourable terms, or that any acquisitions completed will ultimately benefit the Company's business; (xxiv) there is currently no market for the Series B Special Shares or the Purchase Warrants underlying the Series B Special Shares or the Special Warrants or the Series B Purchase Warrants underlying the Special Warrants, and none may ever develop. In addition, such securities are subject to indefinite hold periods; (xxv) fluctuations in the United States dollar against the Canadian dollar could result in unanticipated fluctuations in the Company's financial results which are denominated and reported in Canadian dollars; (xxvi) the Company's business could be adversely affected by exchange controls, currency fluctuations, taxation and laws or policies of the United States affecting foreign trade, investments or taxation; (xxvii) certain directors of the Company may be in a position of conflict from time to time; and (xxviii) the Company does not anticipate paying any dividends on its Common Shares in the foreseeable future. See "Risk Factors"... (Pgs. 7 and 8)"

- "As at the date hereof, the names, municipalities of residence, positions with the Company, and principal occupations of the directors and officers of the Company are as follows:

.....

<u>Name and Municipality of Residence</u>	<u>Position</u>	<u>Principal Occupation for the Past Five Years</u>
Roger A. Dent ⁽¹⁾ Toronto, Ontario	Director	Vice-Chairman and Director of Research for Yorkton Securities Inc. (investment dealer) since April 1996 and prior thereto Managing Director of CIBC Wood Gundy Securities Inc.

...(Pgs. 26 and 27)”

- “Since its inception, the Company has incurred losses primarily as a result of research and development costs and its marketing efforts. From inception through April 30, 1999, accumulated losses totalled \$1,476,922. As the Company seeks to aggressively build and expand its business, it expects to continue to incur losses for the foreseeable future. The Company expects to incur additional costs related to the continued technical enhancement of the Book4golf.com Web site and Book4 Tee Sheet Application, and marketing of its service and products to golfers and golf course owners and operators. The ability of the Company to produce revenues and attain profitability depends upon its ability to successfully market its Book4 Tee Sheet Application to golf course owners and operators, launch its Web site and successfully market the Book4golf.com Web site to golfers. The Company has a limited operating history on which to base an evaluation of its future business prospects... (Pgs. 29-30)”
- “The Company is continuing to develop its infrastructure, which is comprised of marketing, sales, research and development and administration functions. The success of future marketing and research and development efforts will have a significant impact upon the future capital requirements of the Company. In June 1999, the Company completed the private placement of Series B Special Shares that generated net proceeds to the Company of \$4,672,500 after deduction of the Underwriter’s fee. In addition, in September 1999, the Company generated net proceeds of \$1,000,000 through the issue and sale of the Special Warrants after deducting the Underwriter’s fee. Management anticipates that the Company will continue to incur losses for the foreseeable future. Based on current operating levels, the Company will require additional financing in order to meet the Company’s working capital needs for the next 12 months which the Company anticipates will be

approximately \$20 million. The Company is currently evaluating its financing options and anticipates that it will obtain the required financing through the issuance of additional equity and, possibly, debt. See “Risk Factors”... (Pg. 30)”

87. Similar complete, true and plain disclosure was also made in the prospectus of February 2000, the prospectus of June 2000 and the prospectus of December 2000.

Research Reports and other Public Statements

88. Yorkton denies the allegations, contained in paragraphs 19(e) and 21(b) of the Statement of Claim, and elsewhere, that it unlawfully or inappropriately promoted or recommended Book4Golf shares to the plaintiff or any particular class member, or that it caused investment analysts to strategically issue false, misleading or fraudulent research reports containing buy recommendations and inflated target prices of Book4Golf shares.

89. Yorkton denies the allegations concerning its research reports on Book4Golf and the actions of Mark Pavan and Roger Dent. As with many of the allegations of the plaintiff, the descriptions of the research reports are incorrect, incomplete or highly misleading.

90. At all material times, Pavan conducted himself appropriately as an analyst. His recommendations and analyses were made in good faith, based on his knowledge of and experience in the securities industry, on his discussions with knowledgeable third parties, and on publicly available information relating to Book4Golf, all of which Pavan reasonably believed to be reliable.

91. At all material times, Pavan acted within the scope of his employment duties and responsibilities and within security industry norms in respect of his analysis of Book4Golf and his conduct in relation thereto.

92. The research reports referred to in the statement of claim were, a) not offers or solicitations for the purchase of Book4Golf shares, b) disseminated for information purposes only, c) not guaranteed by Yorkton for accuracy or completeness, and d) based on information obtained by Yorkton from sources reasonably believed to be reliable.

93. All of these facts: a) were disclosed to recipients thereof, b) are standard securities industry terms and conditions, and c) are widely known by retail and corporate clients.

94. In carrying out his analysis, as is the normal and reasonable practice in the securities industry, Pavan collected, summarized and evaluated publicly available information concerning Book4Golf, including press releases and public statements by Book4Golf and others, as well as the findings and conclusions of any professionals retained by or associated with Book4Golf.

95. All clients of Yorkton knew or ought to have known that any opinion or recommendation that emanated from Yorkton or its employees including registered representatives, in regard to the shares of Book4Golf, as with the shares of any issuer, was an opinion only, based upon an analysis and interpretation of information received.

96. It was for the individual client to make his, her or its own decision as to whether to buy, hold or sell a particular share after considering the multitude of factors referred to in paragraph 26 above. The decision of a client to buy, sell or retain shares of any issuer, including Book4Golf, was a decision freely made by each of Yorkton's clients, for which Yorkton is not liable.

97. An analyst's recommendation is a forecast of an essentially unknown future without any guarantee of accuracy. It is not and does not purport to be investment advice.

98. To the extent that the research reports are found to constitute investment advice, and there were any deficiencies in such advice, which is not admitted, but expressly denied, the issue of whether a particular client relied on the particular piece of allegedly deficient advice to his, her or its detriment, in addition to or to the exclusion of other investment information or advice received from other sources including the substantial media coverage of Yorkton, the Book4Golf or OnX web sites, chat rooms, other investment dealers' analyses and reports, advice, opinions and recommendations received from registered representatives at other investment dealers, investment advice received from his, her or its Yorkton registered representative, and investment news letters, with respect to a particular purchase transaction of Book4Golf, is an issue requiring factual determinations and analysis on an individual basis, and does not lend itself to class or subclass categorization.

99. The Statement of Claim contains no reference to the fact that Yorkton's Research Reports also included a disclosure provision, in compliance with the disclosure provisions of the applicable securities legislation, as follows:

“This report is based on information available to the public. Information presented, which is obtained from sources we believe to be reliable, is not guaranteed either as to accuracy or completeness. Estimates and projections contained herein are Yorkton's own or obtained from our consultants. This report is not an offer to buy or sell or a solicitation of an offer to buy or sell the securities mentioned herein....Yorkton Securities Inc., Yorkton Capital Inc. and their respective officers and directors has, or may have, a position or holding in, or may effect transactions in the investments concerned, or related investments, and is providing, or has provided within the last three years, significant advice or investment services in relation to the investments concerned or related investments. Yorkton Securities Inc. has or may perform financial advisory, investment banking, or other services for the companies mentioned herein. Copyright Yorkton Securities Inc.”

“...Yorkton Securities Inc. has acted as agent for financing of or financial advisor for Book4golf.com Corporation within the past three years.”

100. The Statement of Claim also fails to indicate that the research reports contained, among other things, the following concerning Book4Golf:

- **Research Comment - Software, Electronic Commerce - 12 to 18-Month Target: \$40.00 - February 1, 2000** - Due to the early stage nature of the company, the projections are subject to a high degree of uncertainty, but should the company execute their business plan successfully, our target may prove conservative. We strongly recommend that investors Buy Book4golf.com stock. A complete report of Book4golf.com will be published shortly.
- **Forecast and Valuation - March 17, 2000** - Book4golf.com is an early-stage company with negligible revenues and a product that is still being finalized. The valuation methodology employed relies on estimates that are subject to wide potential variances. Notwithstanding these comments, we believe that Book4golf.com has the

potential to become the dominant golf-related Internet portal. Due to the early-stage nature of the company, the projections are subject to a high degree of uncertainty, but should the company execute its business plan successfully, our target may prove conservative. We strongly recommend that investors Buy Book4golf.com stock.

- **The Wake Up Call - Software, Electronic Commerce - April 28, 2000** - We continue to believe in Book4Golf's value as a leading golf vertical portal and do not feel it is constrained as some of its competitors are today by the state of capital markets. We are reducing our 12 to 18-month price target based on multiple compression in the sector from \$40 to \$20. We highlight that comparable portal and Web site companies have seen multiple reductions of between 20% and 90% in the recent past, with the average drop being approximately 50%.
- **The Wake Up Call - Software, Electronic Commerce - June 26, 2000** - In recent months the company has taken many steps to solidify its position as a leading golf portal and ensure that growth continues at a rapid pace. These moves have included:
 - appointment of Kim Robinson, formerly with ClubLink Corporation (LNK, TSE) to Chief Operating Officer and John Mattes, formerly with Golfweek and Golfweek.co, to Director of Sponsorship Sales;
 - acquired tee-sheet company TeeMaster Inc.;
 - signed an exclusive partnership with golf portal, Golf.com;
 - finalized exclusive agreement with travel reservation company, Sabre Inc. (SBR, NYSE);
 - entered into letter of intent to acquire package vacation firm, America West Golf Vacations;
 - entered into letter of intent to become the exclusive on-line tee-time provider to American Golf Corporation and Meadowbrook Golf Group, respectively the largest and third largest golf course operators in North America;

- launched the company's Tee-Time Reservation Network on May 2, 2000 allowing for on-line reservations via the telephone, PC and mobile phone browser; and
- entered into an exclusive three year definitive agreement with the National Golf Course Owners Association (NGCOA), in which Book4golf.com will join the NGCOA's group purchasing program, the Smart Buy Network, as its exclusive Internet tee-time reservation system and electronic tee-sheet provider.
- The company is also well capitalized with over \$20 million in cash reported in its last quarter; we believe this represents an advantage over competitors who are finding financing challenging under current capital market conditions. As an aside, Book4Golf was recently ranked No. 2 in a Globe and Mail survey of the hottest e-businesses in Canada. We expect that as site-traffic begins to build both advertising and transactional revenue will become significant. The agreement with the NGCOA should assist in increasing the pace of course additions. We also expect that the company will continue to enlist strategic partners such as the NGCOA and Golf.com.

IX. Conclusion

101. With respect to all of the claims of the plaintiff or the proposed class members, Yorkton pleads and relies upon the *Negligence Act*, R.S.O. 1990, c.N.1.

102. Yorkton pleads that the allegations contained in paragraphs 121, 122 and 123 are irrelevant, scandalous and embarrassing and should be struck. Yorkton, as above, denies that it in any respect breached securities laws or industry standards in connection with Book4Golf. There is nothing in the regulatory matters or the settlement agreements referred to in such paragraphs that would indicate otherwise or support the allegations of conspiracy and negligence made elsewhere in the Statement of Claim.

103. Yorkton denies that it breached the legislative provisions, rules and by-laws listed in paragraph 136 of the Statement of Claim.

104. Yorkton further denies the allegations contained in paragraph 57 and elsewhere that it or any of its employees acted in violation of section 76 of the *Securities Act*.

105. The claims against Yorkton have been made without foundation in fact or evidence. The spurious, reckless and bald allegations that have been asserted against Yorkton and others in the Statement of Claim have been made for the primary purpose of attracting media attention to the Statement of Claim, and as a means of promoting this class action to potential class participants and financiers of this class action. The Action should accordingly be dismissed in its entirety.

106. Yorkton pleads further that it is entitled to its costs of this action on a substantial indemnity basis.

CROSSCLAIM

107. Yorkton crossclaims against the defendant Scott Paterson for:

- (a) contribution and indemnity in respect of any liability found on the part of Yorkton in connection with the plaintiff's claims against Yorkton including all claims for damages, an accounting, punitive damages, interest and costs;
- (b) costs of this action on a substantial indemnity basis; and
- (c) such further relief as may be necessary and this Honourable Court may deem just.

108. Yorkton repeats and adopts the allegations contained in the Statement of Defence.

109. During the material time, until December, 2001, Paterson was the Chairman, Chief Executive Officer and a Director of Yorkton.

110. As the Chairman, Chief Executive Officer and a Director of Yorkton, Paterson owed to Yorkton a fiduciary duty to act in good faith and in the best interests of Yorkton, and in accordance with all regulatory requirements applicable to registrants under the *Securities Act* and the by-laws and regulations of the Investment Dealers Association.

111. Yorkton states that if the plaintiff is able to prove that he, or any of the proposed class members, have suffered any of the damages and losses alleged in the Statement of Claim, which are strongly denied, and it is determined that Yorkton is partially or fully liable for such damages and losses, which is also strongly denied, Yorkton is entitled to be fully indemnified by Paterson.

February 7, 2003

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