

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

**BANNERS BROKER INTERNATIONAL LIMITED and
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.**

Plaintiffs

- and -

**RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED**

Defendants

MOTION RECORD

(Motion for Consent Judgment against Dixit Defendants)

July 16, 2018

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TAB 1

Court File No. CV-16-11413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

**BANNERS BROKER INTERNATIONAL LIMITED and
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.**

Plaintiffs

- and -

**RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED**

Defendants

NOTICE OF MOTION

(Motion for Consent Judgment against Dixit Defendants)

The plaintiff, msi Spergel inc. ("**Spergel**") in its capacity as receiver (in such capacity, the "**Receiver**") of Banners Broker International Limited ("**BBIL**") and Stellar Point Inc. ("**Stellar Point**") will make a motion to a Judge presiding over the Commercial List, on July 25, 2018, at 9:30 a.m. or as soon after that time as the motion can be heard, at the Court House, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An order granting the Receiver judgment against Rajiv Dixit ("**Dixit**"), Dixit Holdings Inc., Dixit Consortium Inc., and Dreamscape Ventures Ltd. (collectively, the "**Dixit Defendants**").

THE GROUNDS FOR THE MOTION ARE:

- (a) The Receiver and Dixit have consented to an order granting the Receiver judgment against the Dixit Defendants on a joint and several basis in the amount of \$200,000,000.

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

- (a) A consent signed by counsel for the Receiver and by Dixit; and
- (b) The Thirteenth Report of the Receiver, dated July 10, 2018.

July 16, 2018

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BANNERS BROKER INTERNATIONAL LTD. by its receiver,
MSI SPERGEL INC., et al
Plaintiffs

and RAJIV DIXIT et al.
Defendants

Court File No. CV-16-11413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

**THIRTEENTH REPORT OF MSI SPERGEL INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
BANNERS BROKER INTERNATIONAL LIMITED AND STELLAR POINT INC.**

July 10, 2018

Court File No. CV-14-10663-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1992, c. 27, s.2, AS AMENDED**

**AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,
c. C-43**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

AND IN THE MATTER OF THE RECEIVERSHIP OF STELLAR POINT INC.

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,
UNDER PART XIII OF THE *BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER
INSOLVENCIES)**

**13th REPORT OF THE
COURT-APPOINTED RECEIVER OF
BANNERS BROKER INTERNATIONAL LIMITED AND STELLAR POINT INC.
("THIRTEENTH REPORT")**

July 10, 2018

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I. Overview

1. This is a foreign recognition and cross-border insolvency proceeding involving Canada and the Isle of Man. The debtors, Banners Broker International Limited ("**BBIL**") and Stellar Point Inc. ("**Stellar Point**"), were part of the "Banners Broker" online enterprise, a platform whereby registered members known as "affiliates" could advertise their businesses on websites within the Banners Broker network of publishers while, at the same time, earn revenues as an advertising publisher through specialized and targeted publisher sites created, designed and hosted by a variety of active companies associated with Banners Broker.

2. Winding up proceedings in respect of BBIL commenced in the Isle of Man in January 2014. Six months later, on August 22, 2014, the Isle of Man proceedings were recognized in Canada as a "foreign main proceeding" for the purposes of Part XIII of the *Bankruptcy and Insolvency Act*, R.S.C. 1992, c. 27, s.2, as amended ("**BIA**").

3. msi Spergel inc. was appointed receiver of BBIL in Canada on August 22, 2014, and receiver of Stellar Point on April 8, 2016 (in such capacities, the "**Receiver**"). The Receiver also has investigatory authority over an additional six Banners Broker associated entities, including Dixit Holdings Inc., Dixit Consortium Inc. and Dreamscape Ventures Ltd.

4. In April 2017, Christopher Smith and Rajiv Dixit ("**Dixit**"), two of Banners Broker's three principals, plead guilty to operating an illegal pyramid scheme in connection with Banners Broker.

5. This is the thirteenth report to court of the Receiver ("**Thirteenth Report**"). This Thirteenth Report is filed in support of the Receiver's motion ("**Motion**") for a consent judgment in its action against Dixit, and Dixit Holdings Inc., Dixit Consortium Inc., and Dreamscape Ventures Ltd., companies controlled by Dixit (collectively, the "**Dixit Defendants**").

6. The Thirteenth Report may be read in conjunction with the Receiver's prior reports to court as follows:

(a) **Receiver's First Report** (dated October 2, 2014)

This report described the Receiver's actions upon appointment, including initial inquiries and the discovery of a criminal investigation in respect of Banners Broker. The report was filed in support of the Receiver's request for additional investigatory powers extending to certain specifically identified associated corporations.

(b) **Receiver's Second Report** (dated January 12, 2015)

This report was filed in support of the Receiver's motion for an order restricting the disposition of certain monies and credits held by electronic payment processors, which monies were then frozen by *ex parte* restraint orders granted in the context of the criminal investigation.

(c) **Receiver's Third Report** (dated July 30, 2015)

This report was filed in support of the Receiver's motion for approval of a settlement agreement with a Banners Broker associated company, and for the grant of certain limited investigatory authority in respect of certain Banners Broker associated companies. The report also provided an update on the activities of the Receiver since its First Report.

(d) **Receiver's Fourth Report** (dated January 8, 2016)

This report was filed in support of the Receiver's motion for the production of certain banking records from the Royal Bank of Canada and the Canadian Imperial Bank of Commerce.

(e) **Receiver's Fifth Report** (dated April 4, 2016)

This report was filed in support of the Receiver's motion for the conversion of the investigatory receivership of Stellar Point into a standard possessory receivership and a declaration that certain funds held by an off-shore financial institution were property of the BBIL estate. The Fifth Report also provided an update on the Receiver's activities since the Third Report.

(f) **Receiver's Sixth Report** (dated May 19, 2016)

This report was filed in support of the Receiver's motion for an order in furtherance of the transition of certain BBIL insolvency administration matters from the Joint Liquidators in the liquidation proceedings in the Isle of Man to the Receiver.

(g) **Receiver's Seventh Report** (dated May 30, 2016)

This report was filed in support of the Receiver's *ex parte* motion for an interim and interlocutory *Mareva* order ("**Mareva Order**") restraining Banners Broker principals Dixit and Kuldip Josun ("**Josun**"), as well as BBIL-affiliated corporations Dreamscape Ventures Ltd., 8643989 Canada Inc. o/a Dixit Consortium Inc., and Dixit Holdings Inc. from selling, removing, dissipating, alienating, transferring, assigning encumbering, or similarly dealing with any assets pending the final disposition of the Receiver's action against those parties for recovery of funds that were misappropriated from Banners Broker.

(h) **Receiver's Eighth Report** (dated December 9, 2016)

This report was filed in support of the Receiver's *ex parte* motion for an order freezing two bank accounts that received funds transferred in violation of the *Mareva* Order granted by the court on May 31, 2016, and continued on June 7, 2016.

(i) **Receiver's Ninth Report** (dated February 27, 2017)

This report was filed in support of the Receiver's motion for an order declaring that the Receiver could administer the restrained funds in accordance with the terms of the receivership order, dated August 22, 2014, as amended, and authorizing the Receiver, in its capacity as Receiver of BBIL, to fund any and all expenses of the Receiver of Stellar Point. The Ninth Report also provided an update on the Receiver's activities from May 1, 2016 to August 31, 2016.

(j) **Receiver's Tenth Report** (dated May 9, 2017)

This report was filed in support of the Receiver's motion for the approval of certain prior reports to court, the Receiver's conduct and activities from September 1, 2016 to May 9, 2017, the Receiver's interim statement of receipts and disbursements and the fees and disbursements of the Receiver and its counsel. The Tenth Report provides an update on developments since September 2016.

(k) **Receiver's Eleventh Report** (dated July 28, 2017)

This report was filed in support of the Receiver's motion for a default judgment against Josun in the amount of USD\$6,070,790.

(l) **Receiver's Twelfth Report** (dated June 4, 2018)

This report was filed in support of the Receiver's motion for the approval of certain prior reports to court, the Receiver's interim statement of receipts and disbursements and the fees and disbursements of the Receiver and its counsel. The Twelfth Report also provides an update on developments since May 2017.

II. Receiver's Action Against the Dixit Defendants

7. As further detailed in the Receiver's Tenth Report, the Receiver commenced an action against the Dixit Defendants and others on May 30, 2016, on behalf of BBIL and Stellar Point for the recovery of over \$200 million in damages for negligent and/or fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duties, breach of contract, negligence and oppression arising from the alleged misappropriation of millions of dollars in affiliate funds by, among others, the Dixit Defendants ("**Action**"). A copy of the Receiver's statement of claim in the Action is attached as **Appendix "A"**.

8. Dixit is the sole director or directing mind of each of the corporate Dixit Defendants.

9. On or about September 14, 2016, the Receiver and the Dixit Defendants agreed to a settlement of the Receiver's claims against the Dixit Defendants in the Action ("**Settlement Agreement**").

10. The terms of the settlement agreement require Dixit to, among other things, assist the Receiver in the recovery of Banners Broker assets that may be held by third parties, including assets held by friends, relatives and associates of the Dixit Defendants, as well as the funds held by payment processors that were the subject of the Receiver's Ninth Report.

11. Dixit is further required to turn over to the Receiver any and all assets obtained by the Dixit Defendants using Banners Broker funds.

12. Dixit, on behalf of the Dixit Defendants, also consented to judgment against the Dixit Defendants in the amount of \$200 million.

13. In exchange, the Receiver agreed to not seek a judgment that was not dischargeable in any future bankruptcy proceedings by Dixit, and to not oppose any future bankruptcy application by Dixit. The Receiver also agreed to amend the *Mareva* Order to permit Dixit to access his personal bank accounts.

14. To date, Dixit has complied with the terms of the Settlement Agreement.

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15. To that end, late last year, Dixit provided the Receiver with a copy of the signed consent judgment.

III. Recommendations

16. Based on the foregoing, the Receiver respectfully requests that this Honourable Court issue an order for granting the Receiver consent judgment against the Dixit Defendants in the amount of \$200 million.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of July, 2018.

msi Spergel inc.

Court-appointed Receiver of
Banners Broker International Limited and Stellar Point Inc.



Per: Philip H. Gennis, J.D., CIRP, LIT

APPENDIX “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

BANNERS BROKER INTERNATIONAL LIMITED and
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Plaintiffs

- and -

RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

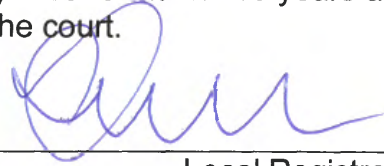
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 30, 2016

Issued by



Local Registrar

Address of
court office:

Superior Court of Justice—Commercial
List

~~393 University Avenue,
Toronto, ON
M5G 1E6~~

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL
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AND TO: **Dixit Holdings Inc.**
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AND TO: **World Web Media Inc.**
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AND TO: **Real Profit Limited**
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1.0 CLAIM

1. The plaintiffs, Banners Broker International Limited and Stellar Point Inc. (hereinafter termed “**BBIL**” and “**Stellar Point**”, or collectively the “**Plaintiffs**”), by their receiver, msi Spergel inc. (the “**Receiver**”), claims the following:

(a) As against the defendant Rajiv Dixit (“**Dixit**”):

- i. Damages in the amount of \$200 million CAD for negligent misrepresentation, fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duty, breach of contract, negligence and oppression under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “**CBCA**”);
- ii. An Order for disgorgement and restitution of monies unlawfully received, or profits unlawfully derived from the corporate assets of BBIL and its creditors by virtue of unjust enrichment or waiver of tort;

(b) As against the defendant Kuldip Josun (“**Josun**”):

- i. Damages in the amount of \$100 million CAD for negligent misrepresentation, fraudulent misrepresentation, conspiracy, conversion, breach of fiduciary duty, negligence and oppression under the *CBCA*;

- ii. An Order for disgorgement and restitution of monies unlawfully received, or profits unlawfully derived from the corporate assets, accounts receivable or invested capital of BBIL and its creditors by virtue of unjust enrichment or waiver of tort;

(c) As against each of Dixit and Josun:

- i. Punitive, aggravated and exemplary damages in an amount that would satisfy the common law objectives of denunciation, deterrence, and causing the defendants to regret their unlawful activities;

(d) As against all defendants, including Dixit Holdings Inc., Dixit Consortium, and Dreamscape Ventures Ltd. (the “**Dixit Companies**”) and World Web Media Inc. and Real Profit Limited (the “**Josun Companies**”):

- i. An Order, injunctive or otherwise, interim and permanent, to preserve, trace and locate all funds improperly had and received by the defendants; declaring that any funds so traced are impressed with a constructive trust for the benefit of the plaintiffs; and ordering an accounting of the same;
- ii. An interim, interlocutory and permanent injunction in the form of *Mareva* relief, restraining the defendants, their servants, officers, employees, agents, assigns, directors, shareholders and anyone else acting on their behalf or in conjunction with any of them, and

any and all persons with notice of such injunction, from directly or indirectly, by any means whatsoever, selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any funds or assets of the defendants; instructing, requesting, counselling, demanding or encouraging any other person to do so, or facilitating, assisting in, aiding, abetting or participating in any acts the effect of which is to do so, otherwise than is explicitly authorized by this Honourable Court;

- iii. Costs of this action on a full indemnity basis;
- iv. Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
- v. Such further and other relief as counsel may advise and this Honourable Court may deem just.

2.0 OVERVIEW

2.1. Summary of Claims

2. The within action is brought by the court-appointed Receiver of two corporations: Banners Broker International Limited, or “**BBIL**”, and Stellar Point Inc., or “**Stellar Point**”, on behalf of the insolvent corporations and their creditors.

3. At all material times, BBIL was one of a number of related entities that between approximately 2010 and 2014 conducted operations under the trade name 'Banners Broker'.

4. At all material times, Stellar Point was essentially BBIL's 'service provider', and provided BBIL with virtually everything relevant to its operations, including staff, management and equipment.

5. The management of BBIL, including the defendants Dixit and Josun (operating at all times indistinguishably through the corporate identities of BBIL and Stellar Point), held Banners Broker out as an internet advertising service that operated on a multi-level marketing model. Investors (or "**Affiliates**") were induced to purchase advertising space on the internet through Banners Broker, which represented that it would then 'lease' that space to advertisers.

6. Affiliates were said to earn income based on the amount of internet traffic flowing to those advertisements. They were further encouraged to recruit others into the Banners Broker system in order to earn commissions on their earnings as well.

7. Despite generating hundreds of millions of dollars in investments internationally, Banners Broker was not a *bona fide* advertising business. Affiliates' accounts were manipulated to show extraordinary profits when the company in fact had no source of revenue.

8. In reality, and contrary to their representations to Affiliates, management improperly converted the invested capital of the corporations to fund extravagant lifestyles for themselves and gifts for their families and friends. Affiliates' demands for repayment from BBIL were satisfied with the invested funds of other Affiliates. Once it became impossible for BBIL to meet those demands in that way, the winding-up process was commenced.

9. Following BBIL's winding-up, an ongoing multinational investigation into Banners Broker involving Canadian and American law enforcement and regulatory authorities was concluded. That investigation has resulted in various *Criminal Code* and *Competition Act* charges against the management of Banners Broker, including BBIL's former Chief Operating Officer, the defendant Rajiv Dixit.

10. Since its appointment in August of 2014, the Receiver has undertaken extensive investigations into Banners Broker's operations and has successfully recovered tens of millions of dollars that had been unlawfully distributed out of Banners Broker entities by management.

11. In the course of that recovery, it became clear that Affiliates' investments in BBIL bled through to Stellar Point and into the possession of the defendants with virtually no observation of formality. It was thus necessary for the Receiver to obtain the receivership over Stellar Point as well.

12. The Receiver now brings the within action on behalf of both companies and their creditors, in order to recover such funds and assets as may still be held and enjoyed by the defendants, who were among the primary beneficiaries of defalcation from the accounts of BBIL and Stellar Point, the entirety of which originated from the defrauding of BBIL Affiliates and the misappropriation of their investments.

2.2. The Parties

2.2.1. Background: Banners Broker Corporate Structure

13. The Banners Broker network of companies, entities and unincorporated ventures appears to be highly complicated in its legal structure, involving a number of related entities either incorporated in numerous jurisdictions internationally or unincorporated altogether, all of which are bound together with various and shifting formal or informal agreements, trusts, and share ownership.

14. In practice, however, the principals of these entities did not make a practice of respecting these corporate forms or segregating their funds. As pleaded further below, affiliated corporations, entities and individuals would often pay one another's bills and invoices, sign contracts on one another's behalf, employ one another's staff, and otherwise elide the distinctions between their corporate personalities in the normal course of business.

2.2.2. Plaintiff: Banners Broker International Limited

15. BBIL is a corporation incorporated pursuant to the laws of the Isle of Man. It came into existence as a shelf company originally incorporated by a legitimate

professional management service firm in that jurisdiction, the shares of which are owned by one of its subsidiaries. It was converted to its identity as 'Banners Broker International Limited' on or about March 29, 2012.

16. Although it came into this corporate form on that date, the term 'Banners Broker International Limited' was in use as a trade name for an unincorporated venture and an Ontario corporation, 2087360 Ontario Inc., for nearly two years before that trade name was applied to this Isle of Man corporation.

17. Once the company had been reconstituted as BBIL, the company's corporate directorship continued to be technically based overseas by the legitimate professional management service firm OCRA Worldwide. BBIL's shares were owned by one of OCRA Worldwide's subsidiaries, the Seychelles corporation Targus Investments Limited, in trust for a Belizean corporation, Monetize Group Inc. ("MGI").

18. Although the company was technically headquartered in the Isle of Man, its operations were in fact completely controlled by Ontario residents working in Ontario who were nominally employees of the plaintiff Stellar Point: a non-arm's-length 'service provider' which in turn was majority-owned and unilaterally operated by the defendant Dixit.

19. Despite the corporate diversion through the Isle of Man and Belize, and the artificial separation it appeared to create between BBIL and its ultimate beneficial parent, MGI, the two companies were not at arm's length. Both companies were fully controlled by the management of BBIL in Ontario, and frequently satisfied one another's obligations, both legal and financial.

20. The specifics of BBIL's incorporation, directorship and control are pleaded in further detail below at Paragraph 86 *et seq.*

21. BBIL was petitioned into liquidation in the Isle of Man on February 26, 2014.

22. That proceeding was recognized as a foreign main proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the '**BIA**') and MSI Spergel Inc. was appointed the receiver over BBIL in Canada, by the Orders of Justice Matheson of the Ontario Superior Court of Justice issued August 22, 2014.

23. The Receiver therefore stands in the shoes of BBIL for the purposes of the within proceeding. MGI continues to be BBIL's nominal beneficial shareholder.

2.2.3. Plaintiff: Stellar Point Inc.

24. Prior to BBIL's conversion from a shelf company to its present use, the defendants were carrying on business as "Banners Broker" through a number of different entities, non-entities and companies. One of those companies, majority-owned and controlled by the defendant Dixit, was 7250037 Canada Inc.: a corporation incorporated under the *CBCA* with its headquarters in the city of Oshawa, Ontario.

25. 7250037 Canada Inc. carried on business variously as "Bannersbroker Limited", "Banners Broker Canada", "BB Canada" and other trade names during the rapid expansion of the Banners Broker enterprise and was the central corporate body driving Banners Broker's operations.

26. Although BBIL was ostensibly converted from a shelf corporation into use as the nexus of Banners Broker operations, it did not conduct any operations of its own. Rather, Bannersbroker Limited carried on as the Canadian-based operating company of Banners Broker, employing Banners Broker's staff and management, and controlling its office space and equipment.

27. Later, as information began to disseminate publicly about the nature of Banners Broker's operations, Dixit took several steps to distance himself on paper from Banners Broker's operations while in practice carrying on business as usual. One of these distancing steps was renaming "Bannersbroker Limited" to "Stellar Point Inc."

28. Bannersbroker Limited – the domestic arm of the Banners Broker project – was thus reimagined as a services provider to BBIL and rebranded, and maintains that new trade name to this day.

29. msi Spergel inc. was appointed the receiver over Stellar Point by the Order of Justice Hainey of the Ontario Superior Court of Justice issued April 8, 2016.

2.2.4. Defendants: Rajiv Dixit, Dixit Holdings Inc. and Dixit Consortium

30. Rajiv Dixit is an individual residing at Langley, British Columbia.

31. When Dixit joined the Banners Broker enterprise in late 2010, he was hired primarily to serve as a seminar host promoting investment in Banners Broker.

32. Over the following two years, his role expanded at his own behest to encompass duties as the Chief Operating Officer and Compliance Officer of the Banners Broker enterprise – both in his role as an officer of BBIL and as the President of the company that was contracted to carry out all of BBIL's day-to-day operations.

33. At the time he was hired as a Banners Broker's spokesperson and its general manager, Dixit's recent work history revolved around multi-level marketing enterprises. In the role closely preceding his role at BBIL, he served as the National Sales Manager and Compliance Officer of ICF World Homes Inc., an organization that had been ordered to cease sales by the Competition Bureau in or around 2009 for having no legitimate source of income and unlawfully relying on 'recruitment enticement' to generate capital. Through that experience, Dixit gained firsthand knowledge of the unlawful nature of recruitment enticement enterprises and the potential consequences for operating such an enterprise.

34. Dixit was originally an Affiliate of Banners Broker in its early stages, but after meeting with one of its co-founders, Christopher Smith ("**Smith**"), divested himself of his investment in the enterprise and 'came inside', assuming executive control over the Banners Broker enterprise.

35. The legal basis upon which Dixit exercised control over the Banners Broker enterprise was never completely clear. He was retained as the Chief Operating Officer and Compliance Officer by contract, which caused him to be an officer of BBIL; but he was also the President of Bannersbroker Limited (later known as Stellar Point), which was ostensibly a 'service provider' for BBIL.

36. In reality, because BBIL was almost exclusively used as an offshore company through which to route funds and Bannersbroker Limited/Stellar Point actually carried out the enterprise's operations, Dixit's operational role as President of Bannersbroker Limited/Stellar Point was indistinguishable from his operational role as Chief Operating Officer of BBIL. Accordingly, his *de facto* control over the enterprise could be said to arise from either of these overlapping roles.

37. Through the apparatus of Stellar Point, Dixit was responsible for the actions of BBIL's staff, including the misrepresentations made to Affiliates in respect of Banners Broker's operations and profitability and the handling of their investment funds. In his variously described roles as the *de facto* head of both BBIL and Stellar Point, Dixit redirected Affiliate funds generally as follows. Dixit:

- (a) caused Stellar Point on behalf of BBIL to make misrepresentations to Affiliates to induce their investment;
- (b) caused Stellar Point to bill BBIL's parent company, MGI, extraordinary amounts for its 'services';
- (c) caused BBIL to pay those amounts;
- (d) turned Stellar Point's funds to his own personal use; and
- (e) caused Stellar Point to make misrepresentations to Affiliates as to the status of their investment in BBIL.

38. As is pleaded in greater detail below, Dixit made extensive personal use of Affiliate funds held by BBIL and Stellar Point, to the extent that he was able to live a life of extreme luxury and affluence with those misappropriated funds, all while fixed with the knowledge that BBIL did not generate revenue and would never create any actual return on investment for the Affiliates with whom he and his staff dealt on a daily basis.

39. He also failed to conduct the business of BBIL and Stellar Point in a competent manner, having failed as Compliance Officer to retain legal counsel or accounting experts for the purpose of advising on Banners Broker's compliance with relevant laws and accounting standards. He also failed to cause the companies to comply with relevant laws; and in fact took active steps to ensure that proper advice was not obtained, or followed when offered, as described further below at Section 3.2.12.

40. Dixit Holdings Inc. is a company incorporated pursuant to the *CBCA* with its headquarters in Toronto, Ontario. It is owned wholly or in large part by the defendant Dixit and unlawfully received Affiliate funds, as well as personal property, vehicles and other assets derived therefrom that were put to Dixit's personal benefit.

41. The Dixit Consortium Inc. was a company incorporated pursuant to the *CBCA* and was formerly headquartered in Toronto, Ontario. It, too, was owned wholly or in large part by the defendant Dixit and unlawfully received Affiliate funds, as well as other assets derived therefrom that were put to Dixit's personal benefit. It was dissolved on March 25, 2015 – within two years of the issuance of the within claim – and accordingly has standing to be sued pursuant to Section 226(2)(b) of the *CBCA*.

42. The defendant Dreamscape Ventures Ltd. is a corporation incorporated under the laws of the British Virgin Islands, and is a corporation set up by Dixit with the investment funds of Affiliates with a view to flowing Affiliate funds through those companies, out of the reach of creditor recovery, and into ventures that would unlawfully generate further profit for Dixit personally.

2.2.5. Defendants: Kuldip Josun, Web World Media Inc. and Real Profit Limited

43. The defendant Kuldip Josun is an individual residing in Brampton, Ontario.

44. Josun was one of the two founders of the Banners Broker concept, along with co-founder Smith (who is not named as a defendant in this action). He was Banners Broker's primary spokesperson until Dixit joined the enterprise and usurped that role on a domestic basis. At that time, Josun became Banners Broker's main representative among international Affiliates.

45. In that role, Josun would travel to meet with international Affiliates, or potential Affiliates, and conduct conference calls and seminars via videoconferencing. His day-to-day occupation with Banners Broker was to maximize Affiliate investment into the program, as well as to establish the Banners Broker Network. That is, he was responsible for encouraging the development of overseas Affiliates into 'super-Affiliates' (or "**Resellers**"), who would establish their own networks of Affiliates, their own customer service support network, and so on.

46. In his role as Banners Broker's international representative, Josun would frequently fly to overseas locations with a significant amount of company funds. Those funds were intended to be, and were, used to advertise a lifestyle of success and luxury to potential Affiliates. Josun spent existing Affiliate funds lavishly in maintaining this façade, as he carried out a campaign to woo wealthy new Affiliates to the Banners Broker enterprise.

47. There was no oversight of Josun's spending. He did not report on the results of his business trips or prepare budgets. He merely advised fellow members of the Banners Broker management of the amount of money he expected he would need and the staff would provide him with either cash or a pre-loaded credit card. Upon his return, he might or might not make an oral report on his venture.

48. This lack of oversight led to predictable issues in respect of moral hazard. Josun was known to convince potential or existing Affiliates to invest sums of money in the Banners Broker project. He would then take possession of their funds or provide the associates with transfer information for his own personal accounts. He would then advise the Banners Broker office in Canada to credit the Affiliate's account to reflect the funds he had received, and fail to remit those funds to the company. He would then obfuscate those facts and mislead other members of Banners Broker management when confronted by these missing funds or abnormal payment instructions to customers.

49. Josun took care to redirect those funds into tax havens or into offshore corporate accounts held by corporations incorporated in remote foreign jurisdictions beyond the reach of Interpol in order to frustrate creditor recovery and criminal prosecution.

50. The defendant Web World Media Inc. is a struck-off corporation incorporated pursuant to the Republic of Seychelles *International Business Companies Act*, 1994 (Act 24 of 1994). Despite being struck off the companies register, it and its officers remain liable for all claims, debts, liabilities and obligations pursuant to Section 97(7) of that Act.

51. The defendant Real Profit Limited is a corporation incorporated and/or continued under the laws of the Republic of Vanuatu and/or the State of Israel.

52. Both Web World Media Inc. and Real Profit Limited are, or were, corporations set up by Josun with the investment funds of Affiliates with a view to flowing Affiliate funds through those companies, out of the reach of creditor recovery, and into ventures that would unlawfully generate further profit for Josun personally.

3.0 FACTS

3.1. Banners Broker

3.1.1. The Banners Broker Concept

53. Banners Broker came about as a result of an idea Smith had while operating a previous multi-level marketing campaign (“**MLM**”) known as the Silverline Club. Members of that MLM were particularly interested in a feature by which they could

ostensibly obtain commissions and profits from the web traffic to their 'Silverline Club'-related member pages. That venture was also the basis for the relationship between Smith and Josun, who met and came to work for Smith as a spokesperson and webinar host for the Silverline Club.

54. Banners Broker, as it was described to Affiliates, was an internet marketing company structured as an MLM and engaged in the sale of 'banner' advertisements on popular websites. Individual Affiliates were told that with their investment dollars they were advertising on, or leasing advertising space out on, high-traffic websites and gathering advertising revenue based on the traffic to those advertisements.

55. They were not. The company did not track website traffic, nor did it have access to high-volume websites. It did not have the infrastructure to track an Affiliate's success or lack thereof in investing in online advertising. Banners Broker did not earn revenue, and relied instead on recruitment and investment enticement for cash flow.

56. Tens of thousands of people worldwide invested at least \$156 million USD in Banners Broker. Although the program appeared to grow exponentially and the staff was consistently busy, the fact remained that Banners Broker had no means of generating revenue to meet its obligations or to repay Affiliates when they sought to take profits.

57. However management may have wished to advertise the operations of Banners Broker, they could not never accurately refer to it as a business. It took an enormous volume of money in from Affiliates, but it offered no goods or services to the public and did not – could not – actually *make* money.

3.1.2. Banners Broker as Advertised to Affiliates

58. Banners Broker purported to offer Affiliates three distinct opportunities:

- (a) First, an **Advertiser** could purchase advertising space on certain websites, including the Banners Broker website itself, to promote its own business;
- (b) Second, a **Publisher** could offer advertising space on its own web page to Banners Broker for a per-impression fee (or alternatively, a publisher could partner with Banners Broker to invest in offering advertising space on a Banners Broker website); or
- (c) Third, an Affiliate could purchase both opportunities simultaneously (an '**Ad-Pub Combo**'), using the revenue generated from offering advertising space to offset (or even profit from) the purchase of advertising space from Banners Broker.

59. Banners Broker offered its advertising on three distinct networks:

- (a) The **Choice Network**, which was purportedly a series of several dozen websites designed and maintained by Parrot Marketing Inc. ("**Parrot Marketing**"), a non-arm's-length corporation operating on behalf of MGI, which in turn owned the shares of BBIL pursuant to a trust instrument, as pleaded above in Section 2.2.2;

- (b) The **Banners Broker Network**, which consisted of the sites offered by Affiliate Publishers in exchange for their commission, which were reviewed and accepted by Banners Broker; and
- (c) The **Blind Network**, run by a third-party vendor—at first a company named Yesup eCommerce Solutions and later, another company called Adzerk, Inc.—in which Advertisers would not know the identity of the websites upon which their products were being advertised. In practice, the blind network was only used sparingly at the outset of the Banners Broker project as affiliates preferred to advertise on the other networks.¹

60. After investing with Banners Broker, Publishers were to be assigned blank advertising space on the websites in their chosen network.

61. At first, Affiliates were advised by sales personnel that traffic on those sites was sufficiently strong and steady that a ‘revenue cap’ would have to be placed on the purchased space, restricting the Affiliates’ profits to double their initial investment. Once that limit was reached, a new banner would have to be purchased.

62. After the first two banners (or “**panels**”) were purchased, however, Affiliates would be required to ‘qualify’ their panels by demonstrating sufficient traffic to begin earning income on that panel.

¹ The Banners Broker database was never connected to the third party database for the purposes of determining entitlement to funds based on actual web traffic. Banners Broker attempted to process that information manually until it became too onerous and Banners Broker advertisements began to appear only on its own affiliated sites.

63. That traffic could be established by the Affiliate either making referrals to the relevant site, or by directly purchasing the 'traffic hits' necessary to qualify directly from Banners Broker. This 'qualification' process was said to be complimentary in respect of the first two panels only.

64. As a result of the foregoing system, a new Affiliate would typically find that on the first two panels purchased, (s)he had ostensibly doubled the initial investment. Purchasing more expensive panels, and purchasing 'traffic hits' to qualify them, were presented as a means of maximizing that initial investment.

65. Throughout their affiliation with Banners Broker, Affiliates were generally able to access an account summary showing a balance reflecting a positive return on investment and a collection of sales credits that could be used to purchase more panels. Their interface would also reflect an e-wallet of dollars 'available to withdraw',² and an option to purchase advertising through Banners Broker, which in turn would ostensibly increase traffic to his or her own published panels.

66. Where the Affiliate had no product or service of his or her own to advertise, the Affiliate would commonly advertise Banners Broker itself and thereby further increase traffic to its related sites, which may have been thought to increase the amount of traffic flowing to that Affiliate's panels.

² In the later stages of the Banners Broker enterprise, as cash flow was at a premium, Affiliates were only permitted to withdraw 50% of the purported earnings in their e-wallets, and were required to recruit other investors in order to 'unlock' the remainder. As recruitment faltered in the final stages of the enterprise and cash ceased to flow into the organization, Affiliates were barred from withdrawing any funds at all.

67. If an Affiliate was having difficulty qualifying his or her own panels with adequate traffic, it was always possible either to make referrals of friends and acquaintances to Banners Broker in order to generate 'sales credits', which could be used to expedite qualification. Alternatively, the Affiliate could purchase 'traffic packs' or 'traffic boosters' that were said to somehow either direct traffic to the site containing the relevant panel, or to increase the frequency of that page receiving views.

68. In the result, Affiliates were encouraged to spend money to purchase panels, to spend money or recruit further Affiliates to 'qualify' those panels, to advertise Banners Broker on those panels, and to reinvest any dollars purportedly accrued as a result back into Banners Broker through the purchase of more panels.

3.1.3. Reality of Investment with Banners Broker

69. Invariably, every panel would reach its 'revenue cap' of doubling the initial investment. The end result was that individual Affiliates were advised of overwhelmingly positive returns. In some cases, Affiliates investing \$500 would find themselves with a \$100,000 balance in virtual money. Others would invest \$50 and actually withdraw \$5,000 in a matter of a few years.

70. Affiliates were required to trust that these results were legitimate. There was no Affiliate-facing transparency to Banners Broker's revenue reporting as would be the case with legitimate advertising services. Affiliates did not know where their banners were displayed and had no direct means of verifying the amount of traffic their advertisements were receiving.

71. In reality, there was nothing to verify because Banners Broker had nothing resembling sufficient advertising volume to generate meaningful revenue. It did not actually assign panels to individuals, nor could it track traffic to each individual panel, even if this had actually occurred.

72. Banners Broker did not have access to the kind of traffic that could produce anything comparable to the results reported by the company on an Affiliate-by-Affiliate basis. Its advertisements, to the extent they were actually made, were only placed on the Choice Network of websites owned and operated by Banners Broker's affiliated corporation, the Blind Network, or the personal websites of Affiliates.

73. The websites on which these panels were placed in the Choice Network were largely inactive shells containing a few blog posts that were never updated, and that would be of no interest to the general public, or potentially, anyone. (It is, of course, extremely difficult to simply launch a website people will wish to visit, let alone dozens, when the persons launching the websites have no particular skill at writing or any interesting content to share.) Most often, the advertisements only advertised Banners Broker itself. It was a closed system.

74. The few Affiliates that actually did attempt to advertise a business through Banners Broker – that is, to hire the advertising business that Banners Broker held itself out as operating – found that it was impossible to do so. They purchased the same Banners Broker products as every other Affiliate, but actually did attempt to advertise a real business.

75. These Affiliates, however, noted that their allocated advertising 'hits' never depleted. In essence, they were never asked to pay again once their advertising time was up. It seemed that no one was keeping any track of the ostensible income stream of the business. Despite the reportedly strong traffic, complaints to authorities surfaced from *bona fide* advertisers who were attempting to participate in Banners Broker that no one ever contacted them about their business.

76. Banners Broker never actually kept track of whether or not anyone ever viewed these panels, let alone to what extent they might have done so. The legitimate third party providers, to the extent they continued to work with BBIL, actually *did* keep track of the traffic data generated by the advertising panels that *did* exist, but that information was never used by Banners Broker for any purpose.

3.1.4. Disbursements and Withdrawals

77. The funds earned by the Affiliates and reflected in their e-wallets were not true statements of the growth of an Affiliate's investment. The web traffic on the various networks, outside of traffic caused by visits from other Banners Broker Affiliates, was virtually non-existent.

78. There was no objective or automated process by which an Affiliate could withdraw the funds from his or her account. Banners Broker management would arbitrarily and capriciously determine which Affiliates would get paid, and when. The determination and payout of claims was handled manually.

79. The timing of disbursements to existing Affiliates correlated to new Affiliates putting money into the scheme, and did not reflect any increase in internet traffic. Affiliates would not be paid on demand, but rather would be paid according to who had been waiting for payment the longest or was causing management the greatest risk of liability.

80. Affiliates demanding repayment that were not at the top of management's priority list would be stalled and mollified by Banners Broker's customer service staff. Affiliates began to complain that they were only receiving automated messages; or were left on hold indefinitely; or were told they were not following instructions; or were told they were in violation of the Terms and Conditions; or would be repeatedly transferred and left to speak with a series of different representatives at different companies internationally with little or no information about Banners Broker accounts.

81. There was no correlation between the amounts Affiliates invested and the panels that were notionally distributed to them. In March of 2012, a Banners Broker staffer calculated at least a \$27 million discrepancy between the transaction records of Affiliates purchasing panels through the Banners Broker website and the number of panels ostensibly distributed.

82. At its height, Banners Broker was receiving in excess of \$300,000 *per day* from Affiliates.

3.1.5. Banners Broker's Corporate Structure

83. Corporate formalities were never respected by the management of Banners Broker, with the exception of a few fringe corporations left in the hands of professional management services.

84. Banners Broker corporations would frequently pay one another's bills or forward funds to one another as necessary, without keeping proper records; or, if records were kept, these transfers were recorded under various euphemistic ledger entries.

85. The principals of these corporations, including the individual defendants Dixit and Josun, would frequently sign agreements on behalf of notional companies and only later cause those companies to be brought into existence; or would 'hire' individuals without providing them with a clear employer, fixed salary or job title, leaving them to request funds as needs arose, from whatever corporation had available cash, and to assume whatever title they felt necessary to employ in the course of their activities.

86. Accordingly, Banners Broker began without any formal existence. Josun and Smith operated the venture at first without ties to any particular entity, referring to their operations in the abstract as "Banners Broker", and when necessary, through the use of one of Smith's existing companies, "Local Management Services": an informal name for 2087360 Ontario Inc.

87. 2087360 Ontario Inc. would frequently be referred to improperly as “Banners Broker” or “Bannersbroker Limited” in agreements and formal documents despite not legally bearing either such trade name. (The latter name, “Bannersbroker Limited”, would eventually be used as a trade name for a different company: the Dixit-controlled defendant, Stellar Point Inc.)

88. Banners Broker operated in this way approximately from the date of its inception to October of 2011, when Smith came into contact with a Banners Broker Affiliate that had a record of operating MLMs at the management level.

89. That man, the defendant Dixit, became involved in Banners Broker as described immediately below in Section 3.2. Dixit and Smith signed an agreement between Dixit’s non-existent company, Dixit Consulting, and the equally non-existent ‘Banners Broker International’ (which would not formally come into existence as BBIL until the following year) to oversee the day-to-day operations of the latter entity and act, *inter alia*, as its general manager and Compliance Officer.

90. The bulk of Banners Broker’s domestic operations would eventually be transferred from Local Management Services to Dixit’s company, 7250037 Canada Inc., which would shortly be renamed ‘Bannersbroker Limited’ as the venture began to grow exponentially—and then renamed again as the plaintiff ‘Stellar Point Inc.’ (“**Stellar Point**”) as regulatory investigations into Banners Broker began and Dixit took steps to distance himself from Banners Broker. This process is described further below in Section 3.2.13.

91. As noted above at Section 2.2.2, the plaintiff BBIL—intended to be the international operating arm of Banners Broker—was incorporated in the Isle of Man. It came into existence as a shelf company called “Bedford Limited”, owned by a legitimate professional management service, OCRA Worldwide (“**OCRA**”).

92. In early 2012, Smith retained OCRA to manage for him a company named “Banners Broker International Limited” in compliance with the local laws. OCRA converted Bedford Limited to this use on March 29, 2012. Its shares were owned by a Seychelles corporation, Targus Investments Limited, a subsidiary of OCRA used for nominee shareholdings. Those shares were made subject to a trust deed in favour of BBIL’s parent company, MGI, which was incorporated by Smith in Belize.

93. In this way, as sole beneficial owner of MGI, Smith caused the corporate structure of Banners Broker to allow for MGI to beneficially own BBIL, while BBIL was nominally managed by an offshore service that had no practical relationship to the company’s operations.

94. *In theory*, BBIL was the international operating company of Banners Broker, owned beneficially by MGI and managed by OCRA. Affiliates understood themselves to be investing in BBIL, and the Terms and Conditions of their investments were entered into with BBIL. In theory, BBIL further licensed many of its operations to affiliated companies and third-party licensees, whereas Stellar Point (formerly known as 7250037 Canada Inc. and Bannersbroker Limited), ostensibly ran the Canadian domestic operations and centralized customer service operations for Banners Broker.

95. *In reality*, these corporate and legal formalities were not respected by the management of these companies and there was little, if any, formal distinction between work done for one company or the other, or the obligations of one company or the other. The companies were operated, in effect, as though they were a number of bank accounts held by the same enterprise.

3.2. Dixit Joins Banners Broker

3.2.1. Contact with Christopher Smith

96. Prior to 2010, Rajiv Dixit was engaged with a number of different MLMs, and was a frequent webinar and conference host for several, including ICF, as described above at paragraph 33.

97. He joined an MLM run by Smith in 2010 as an investor, and eventually joined Banners Broker itself when the concept was reasonably new, on or about November of that year, with approximately a \$5,000 initial investment.

98. Shortly thereafter, in approximately November of 2010, Dixit was contacted by Chris Smith with an offer to act as a webinar host for the purpose of promoting Banners Broker, in exchange for a small cash consideration and 'panels' of his own.

99. After gaining Smith's confidence as a webinar host over the course of a year, in October of 2011, the two met at a Jack Astor's in Scarborough and discussed the terms upon which Dixit would come to work for Banners Broker in an 'insider' capacity.

3.2.2. Dixit Consulting 'Contract Agreement'

100. Subsequent to that meeting, Smith and Dixit drew up a 'Contract Agreement' effective October 15, 2011 that would ultimately be executed as between Dixit personally under his unregistered business name, Dixit Consulting ("**Dixit Consulting**") and BBIL, which had yet to come into formal existence (the "**Dixit Contract**"). Through the Dixit Contract, BBIL putatively retained Dixit to perform the following services:

Oversee the day to day operations of Banners Broker International

Coordinate and run the Reseller Program [described in further detail below]

Serve as the Compliance Officer for Banners Broker International

Develop and keep current all powerpoints [sic] for the company and create new ones as needed

Will schedule webinars, and run them

Be the official spokesperson for the Banners Broker International webinars

Will serve as President for Banners Broker Canada

Will oversee Corporate Training working in conjunction with Mr. Kuldip Josun

Will develop and maintain the Terms and Conditions for Banners Broker International and Canada

Will work directly with Mr. Christopher Smith on special projects as necessary

Will serve as General Manager for Banners Broker International and help make sure that all deadlines are met and that the company is moving in a positive direction

101. The Dixit Contract further required Dixit to resign his Banners Broker membership and restricted his ability to continue running and promoting other MLMs.

102. Dixit was retained for a monthly salary of \$4,500.00 plus 2% of gross sales in Canada (excluding e-wallet sales, taxes and fees), as well as a stipend for reimbursements for travel and business expenses.

103. The Dixit Contract was set to expire on October 15, 2013.

3.2.3. Reseller Agreement

104. Subsequent to the execution of the Dixit Contract, on January 1, 2012, Dixit signed an agreement with Smith establishing one of Dixit's existing companies, 7250037 Canada Inc. as a Reseller of BBIL. Just over a month later, on February 22, 2012 – four months after the meeting at the Scarborough Jack Astor's – 7250037 Canada Inc. was renamed Bannersbroker Limited.

105. This agreement (the "**Reseller Agreement**") authorized Bannersbroker Limited to be 'a legal representative of BANNERS BROKER INTERNATIONAL for any purpose, and [to have] authority to act for, bind or commit BANNERS BROKER INTERNATIONAL'.

106. The Reseller Agreement further provided as follows:

2.2 Reseller has authority to make any commitment on behalf of BANNERS BROKER INTERNATIONAL with respect to quantities, delivery, modifications, interfacing capacity, suitability of software or suitability in specific applications. Reseller has authority to modify the warranty offered with BANNERS BROKER INTERNATIONAL products...

12. Merchant Account

Banners Broker International [sic] authorized Bannersbroker Limited (7250037 Canada Inc.) to serve as the Official Reseller to collect all funds globally for online sales. Bannersbroker Limited will have full authority to enter into a contract with a merchant, setup [sic] the API on Banners Broker International's site, and process all sales for the International Markets.

Bannersbroker Limited will transfer the funds designated for Banners Broker International at the set timelines to the appropriate bank accounts.

107. The Reseller Agreement was set to expire on January 1, 2017.

108. Dixit prepared and ultimately signed the draft Reseller Agreement. He understood while assisting to draft it that this agreement would be used as a template for all future resellers. He did not have it reviewed by a lawyer.

109. One of Banners Broker's concerns in expanding internationally was the challenge of navigating compliance regimes in various jurisdictions. Their solution was to license significant Affiliates – 'Resellers' – in the Banners Broker system to be responsible for front-line customer service and advertising over large, foreign geographical areas in exchange for significant commissions on the investments in that area above and beyond the standard commissions payable under the Banners Broker system. Causing these Resellers to sign these Reseller Agreements had the ancillary benefit of deputizing them as *de facto* Compliance Officers in those various jurisdictions.

110. Through Dixit's Reseller Agreement, Dixit and Smith intended for Dixit, via Bannersbroker Limited, to take control of BBIL's sales and operations domestically in Canada and to operate as the hub for all international Banners Broker commerce.

111. Conversely, on or about this time, Smith agreed to be hired by Bannersbroker Limited as its Chief Technology Officer, thus continuing to be intimately involved in both companies. He acted as an executive of both Bannersbroker Limited and of BBIL, that company's chief source of revenue.

112. In this way, both Smith and Dixit were centrally involved in the management of both BBIL and Bannersbroker Limited's operations by contract of employment.

113. Dixit ultimately caused Bannersbroker Limited to terminate the Reseller Agreement with BBIL as of June, 2012: a reorganizational step that coincided with an Ontario Securities Commission (“OSC”) investigation into the operations of Bannersbroker Limited.

3.2.4. Operation and Mismanagement of Bannersbroker Limited and BBIL

114. Once Dixit was on the ‘inside’ of Banners Broker as the principal of Bannersbroker Limited, he divested himself of his Banners Broker account and never returned to participation as an Affiliate.

115. It was approximately eight months after Banners Broker opened for business as a concept that Bannersbroker Limited took control of the enterprise’s day-to-day operations. All Banners Broker staff operated at first out of an office in downtown Toronto, and subsequently most of the staff, with the exception of a few individuals including Smith, moved to operate out of Bannersbroker Limited’s offices in Whitby.

116. Bannersbroker Limited took control over the staffing concerns of Banners Broker generally, including the management of salaries and the hiring and firing of customer support personnel in Canada.

117. As general manager of Banners Broker, Dixit never turned his mind to hiring a staffing solutions company or customer service outsourcing company other than Bannersbroker Limited. Despite the arbitrary and exorbitant fees charged by Bannersbroker Limited, Dixit did not recommend, in the best interests of BBIL, that it should consider hiring someone other than himself or the company he owned.

118. The services of Bannersbroker Limited were not tied to any market value or fixed fee schedule. Wherever there *were* fixed costs in the form of business expenses, Dixit would ostensibly cause Bannersbroker Limited to charge BBIL a 10% markup as a matter of course, despite the fact that BBIL was indistinguishable in any practical sense from Bannersbroker Limited. In practice, however, Dixit would simply advise Smith as to the amount of money he wished to receive from BBIL and would very infrequently remember to cause Bannersbroker Limited to draw up an invoice after having received the funds.

119. The monies paid by BBIL (or, occasionally, and without disambiguation, its parent company MGI) to Bannersbroker Limited for services rendered were ultimately withdrawn by Dixit for his own personal use, for distribution to friends and family, or for investment in his many other business ventures.

120. At no time were Affiliates' funds segregated from the operating funds of BBIL or Bannersbroker Limited. Indeed, Affiliates' funds were the sole source of operating funds of those companies. BBIL and Bannersbroker Limited funds, whatever their source or intended use, were applied to whatever ends the companies or their management required.

121. At no time during his management of BBIL's affairs, personally or through the mechanism of Stellar Point, or during his management of Bannersbroker Limited in its own right, did Dixit perform in the role of a responsible individual charged with the management of a corporation. Although Bannersbroker Limited handled 'customer service' and 'managed payments' in a manner of speaking, Dixit:

- (a) did not arrange for BBIL to be audited;
- (b) did not engage a qualified accountant to prepare financial statements;
- (c) did not raise any concerns in respect of the fact that Banners Broker did not generate profit;
- (d) did not evaluate or manage the expenses of BBIL in respect of its income;
and
- (e) did not consult with lawyers or accountants about the legitimacy and sustainability of the Banners Broker enterprise, which had assets under management in excess of nine figures.

122. Neither did Dixit perform any of the foregoing actions in furtherance of his responsibilities as President of Bannersbroker Limited. In neither case did he arrange for any degree of formality, accountability, reporting or independent oversight, as would be required of any reasonable or prudent person left in charge of a corporation's affairs.

3.2.5. The "Good Times" for Dixit and Bannersbroker Limited

123. Banners Broker was by any measurement an enormous success in terms of attracting investment internationally.

124. Affiliates were very interested in the program and sufficiently misled by the confusing description of the internet processes that seemed to generate such exceptional returns that hundreds of thousands of people invested significant amounts of their personal savings into the scheme.

125. Affiliates came from all over the world. Panels were purchased by Affiliates in 108 different countries, and the quantum of funds invested into Banners Broker – or intended to have been invested in the enterprise – was well in excess of \$150 million USD.

126. At its height in January of 2013, Banners Broker was collecting in excess of \$300,000 per day. Receipts of \$2 million per week were common.

127. Many online payment services were not capable of processing—or were unwilling to process—the volume of funds flowing to Banners Broker, a suspicious number of which were subject to refund demands and chargebacks.

128. Schedule I Banks and credit card companies would accept cash from Banners Broker for a time, then drop them as customers as red flags continued to be raised by the sheer volume of funds flowing through the company without adequate lawful explanation.

129. Dixit did not have the necessary education, training or experience to manage assets of this magnitude. When investment funds began to come in faster than Banners Broker was equipped to handle, Banners Broker neglected to retain competent professional advisors or to hire experienced staff.

130. The plaintiffs plead that this oversight was intentional; the defendants Dixit and Josun were aware that they were operating an unlawful enterprise and did not wish to engage individuals that would pose a risk of alerting, or threaten to alert, the authorities.

131. As a result, Affiliates' funds were not properly invested or accounted for. The funds were diverted to management's personal use; or invested in dubious business ventures proposed by their friends or family; or were directed to payment processors or, on occasion, money-changing services. Funds were directed to such ventures and services as a martial arts gymnasium and a catering company operated by a non-professional cook.

132. For his part, Dixit would request that BBIL pay Bannersbroker Limited hundreds of thousands of dollars monthly, then pull those funds out of his company for his own use, through euphemistically named 'shareholder loans', 'consulting fees' or 'business expenses'.

133. The accounting records of Bannersbroker Limited bear no resemblance to the financial reality of the company. As a single example, despite having no stock-in-trade and making no actual sales, the general ledgers of Bannersbroker Limited showed millions of dollars going out of the company for 'Cost of Goods Sold'.

134. Dixit would wire funds to himself from Bannersbroker Limited and withdraw extraordinary amounts of cash in five-figure amounts multiple times per month.

135. Rather than hiring competent staff, Dixit hired friends and family, appointing them executives of various Banners Broker-affiliated corporations without having any discernible responsibilities to the enterprise.

136. Rather than investing Affiliates' funds into a legitimate business or otherwise investing them in legitimate interest-bearing instruments, Dixit invested those funds into his own unsuccessful ventures and those of his friends, associates and family.

137. Instead of operating BBIL's business legitimately as an online advertising concern with the benefit of the enormous venture capital he had received, Dixit purchased luxury goods and services for himself, his family and friends. These purchases included, but were by no means limited to:

- (a) The chartering of private jets at a rate of hundreds of thousands of dollars per trip for his own use and that of his family;
- (b) Several Mercedes vehicles for his personal use and for the use of his friends and family;
- (c) A number of luxury timepieces, notably Breitling and Hublot watches;
- (d) Several cutting-edge, top-of-the-line home theatre systems;
- (e) Family trips to water parks and 'Chuck E. Cheese';
- (f) Multiple shipments of luxury furniture;
- (g) Bespoke suits for himself and associates at upscale menswear retailers;
- (h) Extremely valuable liquor and spirits;
- (i) Visits to high-end 'gentlemen's clubs'; and
- (j) Thousands of dollars in jewellery for his assistant-turned-wife.

3.2.6. Stephanie Schlacht Joins Banners Broker

138. Stephanie Schlacht (“**Schlacht**”) was both a key figure in the operations of Bannersbroker Limited and a primary and ongoing beneficiary of Dixit’s defalcations.

139. Schlacht was first noticed by Josun while she was waiting his table at a chain restaurant in Toronto’s Eaton Centre. He offered her a job as his assistant and she accepted.

140. Schlacht’s education was in the form of an Education degree from Trinity Western University, and her work experience was restricted to the service industry. On social media, she held herself out as a fitness enthusiast and wellness coach, with no suggestion of a background in business or marketing.

141. A short time after having been hired by Josun, she was reassigned to be Dixit’s personal assistant.

142. Her role in working for Dixit involved handling internal communications, calculating reseller commissions, and forwarding inquiries and complaints to management. She was privy to private conversations amongst Banners Broker management personnel on a regular basis. The job also appears to have entailed an extraordinary amount of international travel with Dixit, often on private or first-class flights, and stays in luxury hotels in exotic locations, including but not limited to Italy, Cyprus, Greece, Israel, Sweden, Ireland, India, Portugal, and Belize.

143. Schlacht and Dixit commenced a relationship on or before October 29, 2013.

144. Dixit ultimately promoted Schlacht to a loosely defined managerial position in respect of the customer service staff at Bannersbroker Limited, operating on behalf of BBIL. In that role, Schlacht was responsible for – and proactively set about – training staff in respect of the representations to be made to Affiliates as they called with queries about their accounts. Despite her complete lack of any relevant training, education or experience, Dixit effectively made Schlacht the head of investor relations for an enterprise with more than \$150 million under management.

145. Over time, Schlacht came to accept shares in and directorships of Dixit's various corporations to an extent unknown to the plaintiffs but known to the defendants. This included a period of time in which she was the sole shareholder of the defendant Dixit Holdings Inc., which was in turn the majority shareholder of Bannersbroker Limited – thus causing her to briefly stand in the shoes of her own employer.

146. Without apparent consideration or legitimate juristic reason, Schlacht would accept and divest herself of Dixit's assets and power over his companies whenever it became inconvenient for Dixit to have his name associated with them; or alternatively, at her own demand in lieu of being the beneficiary of Dixit's life insurance policy.

147. In furtherance of those objectives, Schlacht would agree to sign corporate resolutions on behalf of various corporations as she came to control them without any interest in or knowledge of what she, or the company, was doing with the funds of Banners Broker Affiliates.

148. Schlacht married Dixit on June 1, 2014 and is currently his wife.

149. Dixit misappropriated hundreds of thousands of dollars in Affiliate funds for use on family expenses; and a substantial amount of Affiliates' investments were thereby converted to assets that continue to be enjoyed by Dixit and Schlacht, both jointly and individually.

3.2.7. Josun's Role and Spending

150. During the 'good times' for Banners Broker, Josun assumed titles for himself that reflected his executive role with the corporation in respect of sales and marketing. He also improperly held himself out to Affiliates as an owner of Banners Broker.

151. Josun's work for Banners Broker consisted largely of enticing Affiliates to purchase as many panels as possible, at the highest rates possible, through a series of online sales conference calls via Skype and rally-style pitches to hundreds of potential Affiliates at a time. This role did not change significantly before or after Dixit joined the company; the primary difference appears to have been that Josun's role developed from a primarily North American one to a primarily international one. He began to target European Affiliates specifically.

152. Josun's representations were particularly instrumental in gaining the trust of significant and well-connected Affiliates, although there were frequent complaints that Josun could not satisfactorily describe Banners Brokers' operations, or how those operations were intended to make money.

153. Josun was compensated generously but his role had no official parameters. His job was broadly to convince as many individuals as possible to participate in Banners Broker.

3.2.8. Josun's International Travel

154. When potential Affiliates showed an interest in joining Banners Broker but had questions or concerns about its operations or legitimacy, Josun would attend to their concerns and fly to their location—usually in Europe—to woo them and host recruitment seminars to encourage further investment in Banners Broker.

155. Josun was also tasked with travelling internationally to meet with Affiliates that were particularly active in recruitment, or that had invested particularly large sums of money. He maintained those relationships personally to encourage further investment, to discourage withdrawal demands and to promote further efforts on the Affiliate's part to recruit further Affiliates.

156. No budget was set for Josun's business trips. There was no oversight of Josun's activities, and no control over his spending.

157. Rather, Josun would independently advise management of what he considered to be a business priority overseas, and would be provided with tens of thousands of dollars of company money to fund his trip. (These funds would be transferred in a number of ways, including but not limited to the loading of prepaid credit cards.) Then, after one to three weeks of recruitment and relationship maintenance, he would return.

158. There was no formal accounting of Josun's expenses nor the amounts he received from Affiliates on BBIL's behalf on these trips.

159. Josun's daily occupation was to host webinars and to travel internationally to promote further Affiliate investment and involvement in Banners Broker. He did so with no accountability whatsoever in respect of the disposition of Banners Broker funds *out*, or Affiliate funds that he agreed to take *in*. At no point was he required to make a business case for these trips to other members of Banners Broker management, nor to account for the outcomes of his expenditures.

3.2.9. Theft and the Swiss Bank Account

160. At some point in his tenure, Josun went beyond dubious business practices and misrepresentation and directly embezzled at least \$3.6 million USD of Affiliate funds.

161. These funds were deposited in a Swiss bank account held by one of his companies, the defendant World Web Media Inc.

162. In addition to this direct embezzlement, Josun conducted a campaign of more indirect misappropriation. On his overseas trips and webinars, he would occasionally provide Affiliates with transfer information for his own personal accounts, misrepresenting them as being the transfer information for Banners Broker accounts; or alternatively encouraging Affiliates to provide him with negotiable instruments intended by the Affiliates to be invested towards further Banners Broker panels or 'products' such as 'boosters', as described above in Section 3.1.2.

163. Josun would then advise the IT staff of Banners Broker to credit the Affiliate's account but keep the money for himself. In part due to Dixit's failure to maintain proper records, to retain anyone qualified to maintain proper records, or to exercise proper oversight over Josun or his IT department, these embezzlements went unnoticed.

164. The existence of the Swiss account was only discovered after Smith attended on a sales call with Josun, in which Josun directed the Affiliates to whom he had just made a sale to deposit their funds into a Swiss bank account of which Smith had never heard. There was, and is, no record of any such account in BBIL's name.

165. Josun was given an opportunity by BBIL's other management personnel to repay those funds, but he refused to do so. It was clear, as a result, that the Swiss bank account to which Josun directed Affiliates to forward their funds was, directly or indirectly, controlled by Josun and not BBIL.

3.2.10. Josun's Side Businesses

166. In addition to his operations within Banners Broker, Josun also promoted an MLM of his own. This business venture was a German cosmetics program operating under the name 'NWA'.

167. Josun managed this other enterprise alongside his associate, John Rock, discussed further below at Section 3.2.12.

168. Josun had further solicited Dixit, who through Bannersbroker Limited (or Stellar Point, as it may have been named at the material time) and/or Dixit Consulting, to provide him with Banners Broker Affiliates' funds both for the NWA investment and a renovation of his sister's house.

169. Both requests were granted in amounts approximating \$40,000. Neither disbursement was for any legitimate business purpose. Those funds were drawn out of Banners Broker for Josun's own personal use without juristic reason for that withdrawal.

170. Dixit also provided Josun with an Audi A8 for no legitimate business purpose. Josun wrecked that vehicle at some point during the height of Banners Broker's 'success', such that it ceased to have any value.

171. It has also come to the Receiver's attention that between November of 2011 and February of 2012, payments were made out from a Banners Broker-affiliated corporation, Banners Broker (UK) Ltd. to World Web Media, one of Josun's personal companies. Those payments total at least £1,432,000.00, and also originated from Banners Broker Affiliates.

3.2.11. The Rise of Dissent

172. While the defendants were in possession and enjoyment of Affiliate funds, the Affiliates themselves were beginning to grow restless.

173. Despite the overwhelmingly positive results shown on their online accounts, many Banners Broker affiliates never successfully withdrew any money. Rumours began to circulate on the internet that Banners Broker was a Ponzi scheme.

174. Dixit took responsibility for freezing the accounts of Affiliates that were saying negative things about Banners Broker online, and for taking steps in order to counteract those negative statements by posting information online about Banners Broker's success and reliability as an investment.

175. Despite his efforts, affiliates became increasingly agitated as more and more of them were unable to withdraw their funds and realize upon what was represented to them as being a financial success.

176. Telephone calls and e-mails demanding the return of funds increased steadily in number and aggression through early 2013 as Affiliates began to allege publicly that Banners Broker was a 'scam'.

3.2.12. Compliance Flags are Raised

177. On or about April of 2012, Dixit finally agreed to hire one independent contractor, John Rock, in order to assist in compliance matters. Rock was a friend of Josun's with whom he had previously worked in respect of other MLMs.

178. Rock did accurately identify that the company did not appear to have any means of making money other than soliciting further investments from new or existing affiliates. He raised the concern that the Competition Bureau would order Banners Broker to cease operating if steps were not taken to provide legitimate goods or services to the public.

179. Despite having had direct experience of this phenomenon through his past venture, ICF (as described above in Section 2.2.4), Dixit took no action on Rock's advice.

180. At some point in the first half of 2012, Josun and Rock jointly proposed to Smith and Dixit that the company ought to move in a different direction, purportedly because of the compliance infractions upon which the company relied, and which ultimately did result in a criminal investigation and charges against Dixit personally.

181. Dixit again took no action on Josun and Rock's advice.

3.2.13. Dixit Attempts to Distance his Operations from Banners Broker

182. In light of the rising wave of complaints from Affiliates, Bannersbroker Limited changed its name to its current nomenclature – the plaintiff 'Stellar Point, Inc.' – and further distanced itself from Banners Broker by purporting to terminate its Reseller Agreement.

183. By letter of June 13, 2012, Dixit wrote to BBIL on Stellar Point's behalf advising that 'our company has decided to go into a new direction' and that it would terminate the agreement, no longer operating as Bannersbroker Limited.

184. This ostensibly clear break with Banners Broker was not reflected in reality, as Stellar Point largely continued to operate as it had under the name Bannersbroker Limited.

185. There were a few differences. In the letter of June 13, 2012, Dixit proposed that rather than operating directly under the Banners Broker name, the new Stellar Point company would instead offer its services to Banners Broker by providing '[s]upport for your customers via Call Center, Live Chat and e-Ticketing system. But we are also planning on taking on new clients, and due to this we have chosen to chase [sic] our name as well as the services we are going to over [sic].'

186. In that letter, Stellar Point indicated that it would 'no longer process Canadian sales, serve as a processor or act on your behalf in any fashion when it comes to money transactions taking place'.

187. Despite the fact that Dixit claimed Stellar Point would no longer act on BBIL's behalf 'in any fashion when it comes to money transactions', Stellar Point's entire staff – which was also essentially Banners Broker's entire staff – was at that very time preparing for a massive sales convention in Portugal that had been promoted by the company for some time. Those preparations continued uninterrupted, and the defendants, their extended families and their growing entourage flew to Portugal first-class to attend the convention.

3.2.14. The Portugal Convention

188. The convention was hosted by renting out the five-star Tivoli Marina Vilamoura beach resort in Portugal. It was the company's first major convention in Europe. Affiliates, Resellers and potential Affiliates were enticed to register and attend by a chance to win a Mini Cooper.

189. Despite its relative insignificance as a market for BBIL Affiliates, Josun insisted upon the Portugal location because he had family connections there, and he intended to take this company-funded opportunity to fly his extended family along with him to the event for a vacation.

190. The event took place from July 7-15, 2012 and was organized largely by Tara Josun, whom Josun had arranged to be hired by Dixit as a Stellar Point employee responsible for event planning and customer service representative training. The event required the booking of the entire hotel, at a cost of more than half a million Euros.

191. More than a thousand Affiliates and potential Affiliates registered and took the trip to Vilamoura to attend the convention over the course of two weekends.

192. By this time, complaints about Affiliates being unable to withdraw their purported gains or to receive clear responses to their inquiries had reached a boiling point.

193. Dixit attended the convention with a private security detail, and advised his staff that he had received death threats from furious Affiliates and was concerned that the convention proceedings may be interrupted by Interpol. Stellar Point staff were given instructions to ensure that management's families were transported safely home in the event of their arrest.

194. During the course of the convention, on July 11, 2012, it became known to Dixit that Josun and Rock had been using their time addressing the convention to promote business other than Banners Broker: specifically, their 'NWA' business, which they represented as being more compliant with international laws than Banners Broker.

195. Dixit confronted Josun and Rock in the lobby of the hotel, engaging in a heated argument and advising Josun and Rock that their employment was terminated. He then ordered his personal security detail to eject them, as well as Josun's extended family, physically from the hotel with the exception of Tara Josun, who resigned from Stellar Point shortly after returning to Canada.

3.2.15. Fallout from the Portugal Convention

196. Josun and Rock were terminated by Stellar Point shortly after this incident, on or about July 11, 2012. It is unclear from which company, or by which executive, directors', and/or shareholders' resolution these terminations were effective, because no such formalities were ever observed by any company related to the Banners Broker enterprise. As with most corporate operations in the Banners Broker Network, Dixit was simply understood to be in charge, and Josun and Rock understood themselves to have been fired.

197. Less than a year later, after having been approached by the Competition Bureau and the RCMP to provide evidence with respect to Banners Broker's operations, Josun claimed that he had been fired at this convention because he had been uncomfortable with the Ponzi scheme he had been promoting internationally, and that he had threatened other executives that he would advise Affiliates that Banners Broker was 'not 100% compliant' with the law.

198. Josun is not known by the plaintiffs to have taken any action at any point to contact Affiliates, regulators, law enforcement or the media to advise them of the true nature of Banners Broker's operations.

199. Rather, Josun is known to have approached Smith with a proposal at the point of his termination. Josun was aware of the nature of Banners Broker's business and knew, further, that he could jeopardize BBIL's operations if he were to approach regulators or law enforcement with his evidence. For his part, Smith knew that Josun had been embezzling funds.

200. A deal was therefore struck – Smith agreed that he would not pursue the millions known to have been hidden by Josun in his Swiss bank account(s), and Josun would not approach the authorities.

3.2.16. Dixit Resigns in Personal Capacity Only

201. A Consulting Agreement ostensibly dated July 31, 2012 was at some point signed between BBIL and Stellar Point. Under the terms of that Agreement, Stellar Point purported to cease holding itself out as processing payments and conducting advertising directly for BBIL, and to carry on exclusively by managing its staff and operations.

202. Once again, despite the positions taken in writing, in practice, little, if anything, of Banners Broker's operations actually changed.

203. A few months later, by way of letter dated October 30, 2012, Dixit resigned from BBIL in his capacity as 'Acting Chief Operating Officer'. The letter was signed by Dixit, subscribed 'Dixit Consulting'. The letter indicated, however, that Stellar Point would continue to offer its services as usual, including 'customer service and event planning'.

204. Again, little, if anything, of Banners Broker's operations actually changed.

3.2.17. International Operations Continue to Grow

205. Despite the fact that Stellar Point and Dixit were attempting to create a perception of distance between themselves and Banners Broker, 'Stellarpoint Consulting India Private Limited' ("**Stellar Point India**") was incorporated as an Indian Non-Government Company on March 6, 2013. Its directors were Dixit, his cousin Rajesh Dikshit and Tanushree Cornelius.

206. This company, which attached Dixit's cousin Rajesh to the Banners Broker payroll, was intended to be the Reseller for Banners Broker's Indian operations. Contrary to Dixit's representations about the operations of Stellar Point being reduced in scope *vis-à-vis* Banners Broker, there was no obfuscation of the fact that Stellar Point India did indeed process payments and advertise for Banners Broker.

207. Dixit's cousin was named Stellar Point India's director and president, while Dixit himself remained on the masthead and payroll as a director. Three leading Indian Resellers were also put in charge of the company's daily operations.

208. Stellar Point India had a direct contractual relationship with BBIL and bore primary responsibility under that contract for the payment of commissions to Indian affiliates.

209. In May or June of 2013, however, a full commission payout was scheduled to take place for a number of Affiliates and BBIL was incapable of meeting those demands.

210. On or about this time, two of the three Indian Resellers responsible for overseeing Indian operations through Stellar Point India broke into a bitter romantic dispute. In the course of that dispute, one of the Resellers called the local police force and reported that Stellar Point India was 'running a fraud'.

211. The police subsequently raided Stellar Point India's offices and seized much of its property.

212. The status of Affiliate funds held by Stellar Point India, if any, and the whereabouts of the estranged Resellers Dixit entrusted with those funds is not known to the plaintiff, but known to Dixit.

3.2.18. Ontario Securities Commission Investigates Banners Broker

213. Before or about the early part of 2013, the OSC began to investigate Banners Broker and its investment scheme, concerned that Stellar Point was selling Banners Broker securities in Canada. The OSC began to communicate with Dixit in the course of its investigation.

214. In June of 2013, Stellar Point purported to formally 'report' to BBIL that the OSC had alleged that Stellar Point was carrying on Banners Broker's business in Canada, and that it may be taking action against it.

215. On June 10, 2013, by way of a very brief letter, Smith resigned from Stellar Point as its Chief Technology Officer. The resignation was effective June 21, 2013.

216. Possibly in anticipation of possible regulatory action by the OSC, MGI signed an indemnity agreement ostensibly dated June 19, 2013 in favour of Stellar Point in respect of any such action. There does not appear to have been any consideration for this unilateral indemnity agreement.

217. The status of the OSC's investigation into Banners Broker is unknown; charges against any or all defendants personally, or their various Banners Broker-related entities, including the plaintiffs, may therefore still be pending.

3.2.19. Termination of the Consulting Agreement with Stellar Point

218. On or about this time, Dixit consulted with counsel and appears to have determined that he should cease to have interactions with Banners Broker generally.

219. Shortly after the purported execution date of the indemnity agreement, a Termination, Release and Indemnity Agreement was signed between BBIL and Stellar Point, in which BBIL and MGI committed to indemnify Stellar Point and related parties from any liabilities flowing from the Banners Broker business and releasing Stellar Point from the same form of liability. (This agreement also appears to have been entered into without any consideration.)

220. Dixit then resigned from Banners Broker, without being specific as to the role in which he did so, or from which organizations he was resigning, or whether this constituted a termination of various agreements between his companies and others within the Banners Broker network.

221. The relationship between the companies, and Dixit and Banners Broker was thereby facially at an end. Despite that fact, however, Dixit arranged for BBIL to continue to pay Stellar Point's staff—when they had no tasks to perform, and were ostensibly arm's-length 'service providers'—up to and including September of 2013 for no legitimate reason.

222. Shortly after these resignations were purportedly effective, Dixit and Schlacht were continuing to travel the world in furtherance of the Banners Broker enterprise. On one such occasion, in the autumn of 2013, Dixit and Schlacht flew to Belize to conduct staff training for Banners Broker before Dixit tendered yet another 'resignation' in October.

3.2.20. Insolvency Proceedings

223. A few months later, on February 26, 2014, following a claim by its shareholder, Targus Investments Limited, with the participation of an incensed Reseller, one Ian Driscoll, a winding-up order was made and liquidation proceedings began in respect of BBIL.

224. An application was made in the Isle of Man High Court of Justice by BBIL's *de jure* shareholder, Targus Holdings Limited. That Court ordered that BBIL be wound up pursuant to Part V of the *Companies Act 1931* (Isle of Man).

225. Miles Andrew Benham and Paul Robert Appleton were appointed by that Court as Joint Provisional Liquidators and Deemed Official Receivers of BBIL.

226. On August 22, 2014, the Ontario Superior Court recognized that Isle of Man proceeding as a foreign main proceeding pursuant to Section 270(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

227. Upon recognition, the Court also granted a Supplemental Order pursuant to Section 272 of that *Act* appointing MSI Spergel Inc. the Receiver of BBIL with receivership powers in respect of that company. The Receiver was further authorized to act as the investigatory receiver of Stellar Point on October 15, 2014, and as its full possessory receiver by the Order of Justice Hainey, issued April 8, 2016.

228. Pursuant to its investigations into BBIL, associated corporations and Banners Broker's operations generally, the Receiver gathered the information in the within claim. It now brings this action on behalf of both companies over which it is the possessory receiver; as well as on behalf of the victimized Affiliates of BBIL that the Receiver now represents, as they are now reduced to being creditors of the insolvent corporation.

3.2.21. Criminal Proceedings against Dixit

229. On December 9, 2015, the Toronto Police Service held a press conference announcing that Dixit and Smith had been arrested that morning and that no further arrests were anticipated in respect of the Banners Broker enterprise.

230. The Toronto Police Service advised at that press conference that Dixit and Smith are charged with the following offences in respect of their activities with Banners Broker:

- (a) Defraud the Public – Over \$5,000 (*Criminal Code*, R.S.C. 1985, c. C-46 (“***Criminal Code***”), s. 380(1));

- (b) Possession of the Proceeds of Crime (*Criminal Code*, s. 354(1));
- (c) Launder Proceeds of Crime (*Criminal Code*, s. 462.31(1));
- (d) Operate Pyramid Scheme (*Competition Act*, R.S.C. 1985, c. C-34 (“**Competition Act**”), s. 55.1);
- (e) Make False or Misleading Representation (*Competition Act*, s. 52).

231. A trial date has not yet been scheduled.

4.0 CAUSES OF ACTION

232. The within pleaded causes of action are organized, first, by the party whose cause of action has been assumed by the Receiver (i.e., the creditors of BBIL, BBIL itself and then Stellar Point); and second, by cause of action. Each cause of action heading identifies the specific defendants against whom the Receiver brings that claim.

233. The plaintiffs seek the damages set out in Section 1 on the following grounds:

4.1. Claims of the Receiver on Behalf of Affiliates as BBIL Creditors

4.1.1. Fraudulent Misrepresentation (Dixit and Josun)

234. Banners Broker was not a *bona fide* business. It was an enterprise that relied upon false representations as to its profitability, false reports as to Affiliates’ return on investment, and false statements as to the nature of its operations to induce Affiliates to invest in Banners Broker.

235. Dixit and Josun caused Affiliates to believe that they were purchasing advertising space on the internet. They were not. The majority of their invested funds were put into the pockets of Banners Broker management, who would then fraudulently misrepresent to Affiliates that their funds had been safely invested and were generating an excellent return.

236. Dixit, in setting policy for BBIL operations and speaking at conventions and various training seminars, induced Affiliates to invest in Banners Broker. He did so while being in a position that caused him to be fixed with the knowledge that none of the representations he was making, directly or indirectly through staff, to Affiliates about the company's profitability were, or could be, true.

237. Josun was largely responsible for the misrepresentations inducing investment from international affiliates. His misstatements about the company, its profitability and operations were known, or ought to have been known, by Josun to be false and were made with the intention of inducing Affiliates to invest with Banners Broker; and in turn, to ensure Josun's personal enrichment.

238. In each instance of their communications with Affiliates, Dixit and Josun:

- (a) Made false representations to Affiliates with respect to the nature of the business, its profitability, its legitimacy as a going concern, and the likelihood of Affiliate profit by investing funds with Banners Broker;
- (b) Were aware that these representations were false; or alternatively, were reckless as to whether or not the representations were false;

(c) Caused Affiliates to act upon their advice by purchasing panels, traffic boosters, traffic packs and other associated 'products', or by declining to take action to recover their investments; and

(d) Caused Affiliates to lose some or all of their investment as a result of their reliance upon those representations.

239. The Receiver therefore, in its capacity as creditor representative, claims against Dixit and Josun for the full reckoned sum of Affiliate funds invested in reliance upon their fraudulent misrepresentations.

4.1.2. Negligent Misrepresentation (Dixit and Josun)

240. In the alternative to the claim for fraudulent misrepresentation, Dixit and Josun are liable to the Affiliates *qua* creditors for negligent misrepresentation.

241. It was plainly foreseeable by both defendants that their representations as to the profitability of investment in Banners Broker would cause Affiliates to rely on those representations, and to make disastrous purchases of panels and other intangible, illusory products as a result.

242. Dixit and Josun breached their duty of care in making those representations negligently, having no good cause to believe in their truth.

243. The Affiliates did reasonably rely on their misrepresentations and lost some or all of their invested funds as a result.

244. Accordingly, the Receiver claims, in its capacity as creditor representative, the full reckoned sum of Affiliate funds invested pursuant to Dixit and Josun's negligent misrepresentations.

4.1.3. Predominant Purpose Conspiracy (Dixit and Josun)

245. Banners Broker was not operated as a legitimate business. It did not sell goods or provide legitimate services, and what services it could be said to have offered in the form of hosting web advertising were not adequately functional to be described as a going concern. Simply put, an advertising business cannot operate if it does not charge properly for advertising; or if it does not track to whom those charges should be paid.

246. Banners Broker may have resembled a company but it did not function as one. It was not concerned with budgets or business plans, did not generate profit, did not track expenses, and was never intended to do any of those things. The purpose of Banners Broker was to entice recruitment investment and to convert those invested funds to the defendants' own personal use.

247. The defendants Josun and Dixit knew that Banners Broker's purpose was to induce Affiliates to invest in a corporation that did not have any legitimate operations, and to enjoy those invested funds themselves.

248. The plaintiffs therefore plead that the management of Banners Broker, including Dixit and Josun, acted in concert for the predominant purpose of harming Affiliates, and did in fact cause, and profit from, that harm to them.

4.1.4. Unlawful Act Conspiracy (Dixit and Josun)

249. Dixit and Josun were engaged in a daily course of fraudulent misrepresentations in respect of virtually every Affiliate, Reseller or manager that they would encounter. The daily operations at Stellar Point / BBIL were conducted in knowing and intentional furtherance of those misrepresentations at the expense of Banners Broker Affiliates.

250. Those defendants are thereby responsible for the damages caused to the Affiliates of BBIL by virtue of their agreement to make and maintain these fraudulent representations as against those creditors together. They were all fixed with the knowledge that their acts were unlawful and that injury to the creditors of BBIL was inevitable.

251. That injury was ultimately done, and resulted in considerable financial harm done to the tens of thousands of Banners Broker Affiliates worldwide. The Receiver therefore claims against Dixit and Josun in an amount equivalent to the losses of Affiliates as a result of the individual defendants' conspiracy.

4.1.5. Unjust Enrichment and Accounting (All Defendants)

252. Because Banners Broker was not a *bona fide* business, virtually all of the funds coming into any of the Banners Broker entities originated in intended purchases by Affiliates. Because those purchases were for illusory goods and services and never put to their intended use, the Affiliates were thereby deprived of their funds and the defendants were correspondingly enriched without juristic cause.

253. Accordingly, virtually all of the funds passing through any of the Banners Broker entities at any time are recoverable by creditors as money had and received by the defendants but never lawfully vesting in them.

254. To the full extent that any or all of the defendants are in possession of funds originating in intended purchases by Affiliates, the Receiver therefore claims for the same in unjust enrichment on behalf of creditors, and further claims for an Order tracing the disposition of those funds and impressing the same with a constructive trust in favour of the Receiver on behalf of BBIL creditors.

255. In the alternative, Dixit and Josun collected and managed BBIL's funds, or funds intended for BBIL or associated corporations in the Banners Broker Network, in the capacity of BBIL's agent and is liable to account for the disposition of those funds.

4.1.6. Aggravated Damages (Dixit and Josun)

256. The Banners Broker enterprise targeted, in large part, individuals that did not have the financial literacy to recognize the implausibility of its claims and the dubiousness of its business model. Particularly given that Dixit and Josun had prior experience working in failed MLM operations, it was foreseeable to them that such a class of persons would invest an unreasonable proportion of their savings and put their future prosperity at risk in reliance on the representations they made.

257. As pleaded above, Dixit and Josun conspired to defraud these individuals; or alternatively acted negligently in respect of handling their invested funds, resulting in losses to Affiliates that may have been in relatively small amounts objectively, but that in most cases were of great personal significance to each individual Affiliate.

258. Put simply, Affiliates invested not only a disproportionate amount of their savings, but also a disproportionate amount of their hope for the future in the Banners Broker enterprise. Dixit and Josun encouraged and induced this line of thinking and this emotional investment in the Banners Broker project through the seminars, webinars, public appearances and private meetings they would arrange with Affiliates.

259. When the Affiliates realized that all had effectively been lost, their response was not restricted to that of an aggrieved investor in a normal business. Websites and Facebook pages were erected, and support groups formed to discuss the fallout of the collapse of Banners Broker. Many Affiliates were ruined.

260. Some were reported to have taken their own lives in despair.

261. The Receiver pleads that mere compensatory damages will not suffice to compensate Affiliates for the impact Dixit and Josun's wrongdoing had on their lives. Many of them, all these years later, continue to populate message boards and online communities, following the criminal and civil proceedings with intense interest as a result of the crushing emotional, intangible and non-pecuniary harm that was done to them as a result of their victimization at the hands of the defendants.

262. Despite the stark reality faced by Affiliates in the wake of Banners Broker's collapse, the defendants persist in denying any wrongdoing, and continue to assert that their business was legitimate, as described more fully below at paragraphs 320, 324 and 325 herein.

263. The Receiver therefore claims on behalf of the Affiliate creditors of BBIL aggravated damages in an amount that would adequately compensate those creditors for the non-pecuniary harm they suffered as a result of their participation in the Banners Broker enterprise.

4.2. Claims of the Receiver on Behalf of BBIL

4.2.1. Fraudulent Misrepresentation (Dixit, Dixit Companies and Josun)

264. As Banners Broker's General Manager and BBIL's *de facto* Chief Operating Officer, Dixit was responsible for arranging the staffing and operations of BBIL. Wherever possible, he caused BBIL to employ his own companies whenever a purported need for services arose. In so doing, he invoiced BBIL in arbitrary and capricious amounts according to his personal desires and the interests of the companies he owned.

265. Dixit represented to BBIL that these invoiced amounts were legitimate as an executive of those non-arm's-length companies and, as his own customer, caused BBIL to rely upon, accept and pay the arbitrary and capricious invoice amounts that he represented as being valid business expenses despite his knowledge that they were not.

266. For Josun's part, he claimed or was pre-paid for expenses that were not *bona fide* business expenses, including but not limited to his expenses incurred while overseas. Josun knew, or ought to have known, that these expenses were not commercially justifiable and that his representations as to their legitimacy were false. He nevertheless caused BBIL to act upon those false representations by causing BBIL to reimburse or pre-pay him for the said expenses, to the detriment of the company.

267. Both Dixit and Josun benefited, directly or indirectly, from the funds they induced BBIL to pay to them or their companies by representing that the said business expenses were legitimate when they were not.

4.2.2. Breach of Fiduciary Duty (Dixit and Josun)

268. BBIL pleads that the granting of powers to Dixit under the Dixit Contract to generally manage all aspects of BBIL's company operations and finances, his position as *de facto* Chief Operating Officer of BBIL, and his practice of holding himself out to Affiliates and other stakeholders as a member of the management of Banners Broker, gave rise to fiduciary duties upon Dixit to act in the best interests of BBIL.

269. BBIL further pleads that by holding himself out as, in turns, an owner and executive of BBIL, and thereby inducing other parties to rely on those representations, Josun took upon himself the duties of a director and officer of BBIL at common law and in equity, including the fiduciary duty to act in the best interests of the corporation.

270. In the alternative, the plaintiff pleads that Josun was a management employee of BBIL and owed an actionable fiduciary duty to the company in equity on that basis.

4.2.3. Overview of Fiduciary Breaches (Dixit and Josun)

271. Dixit and Josun operated BBIL in a manner that did not comport with the best interests of the corporation.

272. At all times, those defendants preferred their own interests to those of the company and its stakeholders. In so doing, they breached their obligations in equity, the common law and under statute to discharge their duty by operating the company in good faith, and they did so to the detriment of its stakeholders, including Affiliate-creditors.

4.2.4. Breach of Fiduciary Duty: Misappropriation (Dixit, Dixit Companies and Josun)

273. As a matter of common practice, Dixit would take advantage of his position as both General Manager of Banners Broker and Chief Operating Officer of BBIL to direct funds out of proportion to the agreements between BBIL and both Stellar Point and the Dixit Companies to those companies under his control, resulting in his own enrichment at BBIL's expense.

274. In those roles, Dixit would also cause funds held by third-party payment processors for BBIL's benefit to be redirected from BBIL or its authorized affiliates to his own business ventures or his own personal bank accounts.

275. Similarly, Josun took possession of Affiliates' investment funds intended for BBIL at a time when he was impressed with a fiduciary duty both as an executive and as agent, and diverted those funds directly to his own use in an amount known to the defendant, and known by the plaintiffs to be in the amount of at least \$4 million.

276. Each of these actions constitute misappropriations of the BBIL funds that Dixit and Josun were charged with managing in the best interests of the corporation and its stakeholders. Any direct misappropriation from a company by a fiduciary is a clear breach of duty, and BBIL pleads that it suffered damages in equal proportion to the funds improperly diverted out of the company's coffers to the defendants. The Receiver therefore claims that sum of damages on behalf of BBIL.

4.2.5. Breach of Fiduciary Duty: Preferring Their Own Interests to Those of the Corporation (Dixit and Josun)

Dixit

277. Dixit had a clear conflict between acting in the best interests of BBIL, to whom he stood as fiduciary, advancing his own personal financial interests and satisfying his duties as an executive of Stellar Point. As the President of Stellar Point, Dixit had a duty to maximize that company's profits, which conflicted with his duty as an officer of BBIL to make prudent business decisions in allocating corporate funds. Moreover, as the majority owner of Stellar Point, Dixit had a direct financial incentive to overcharge the plaintiff BBIL for services rendered.

278. At no point did Dixit take any steps to declare or mitigate the conflict between his roles as general manager of BBIL's operations and as a shareholder of Stellar Point, standing to profit personally from overcharges to that customer. He did not recuse himself from BBIL corporate decisions concerning the retention of Stellar Point. Rather, he had sole control over all decisions concerning staffing and outsourcing and wherever possible he preferred his own corporation exclusively to the detriment of BBIL.

279. The Reseller Agreement and the Consulting Agreement should never have been signed. Acting in the best interests of BBIL, it was Dixit's duty to seek out a cost-effective means of managing BBIL's operations. Instead, Dixit failed even to consider spending BBIL's money on a service provider other than the one he owned, and from which he drew a direct personal financial benefit from BBIL's business.

280. BBIL, through the Receiver, therefore claims against Dixit in his capacity of General Manager of Banners Broker and Chief Operating Officer of BBIL for all preferential transactions to Stellar Point, or any other company not at arm's length from Rajiv Dixit to which he improperly diverted company funds.

Josun

281. Josun had a fiduciary obligation to ensure that the corporate funds with which he was entrusted were spent prudently in the advancement of lawful business objectives.

282. Instead of fulfilling that duty, Josun preferred his own interests to those of BBIL by engaging in overseas travel and customer entertainment for unjustified and unlawful business purposes.

283. He also preferred his own interests to those of BBIL and its Affiliates by appropriating corporate funds for his own use as money had and received.

284. To whatever extent Josun's overseas expenditures cannot be commercially justified – and the Receiver pleads that if the commercial activity results in contracts void for illegality, such activity cannot be justified – then those funds were spent in breach of Josun's fiduciary duty and BBIL has suffered damages in direct proportion thereto.

285. The Receiver therefore claims against Josun for the total amount of funds spent on these excursions, from which he personally benefited, and from which there accrued no benefit to BBIL.

286. The Receiver also claims against Josun for the total amount of receipts Josun intercepted and yet retains in breach of his fiduciary duty to the corporation.

4.3. Negligence (Dixit and Josun)

287. In the alternative, if Dixit and Josun's acts were not fraudulent in nature, they were grossly negligent. Their operation of BBIL fell drastically below the standard of care expected of any corporate executive, who would be expected to gather and act upon the knowledge that BBIL did not generate profit, offer a legitimate product or service to the market, or deal truthfully with customers about the status of their accounts.

288. Dixit and Josun knew or ought to have known that Banners Broker did not generate any revenue and operated entirely on the invested capital of Affiliates. They knew, or ought to have known, that the enterprise had no legitimate advertising business and that the products and services Banners Broker offered for sale were illusory. It was incumbent upon them to exercise the care, diligence and skill expected of any prudent person to recognize that this business model was unsustainable and that the representations being made to Affiliates were false, and ought not to be made.

289. Dixit was fixed with the knowledge through his own experience with ICF and other MLM programs, and Josun was fixed with the knowledge through his experience with the Silverline Club, that ventures such as Banners Broker that relied on recruitment enticement were inherently unstable and unsustainable, and potentially illegal; and that the representations being made to customers and potential customers about the profitability of the enterprise and the prospects of their investment were not true.

290. By engaging in a course of conduct the foreseeable result of which was the near-complete loss of Affiliates' funds, a criminal investigation, and the insolvency of the company, Dixit and Josun fell below the minimum standard of care required of them: namely, to take care that the business operated lawfully, dealt with customers honestly and generated a profit.

291. The defendants further breached their fiduciary obligations to the company by failing to inquire or act in respect of laws and regulations applicable to the company – most particularly Dixit in his role as BBIL's Compliance Officer.

292. Specifically, these defendant fiduciaries acted in ongoing breach of, and failed to investigate or accept advice in respect of the breach of, applicable Canadian laws.

293. Apart from the failure to discharge the fundamental duties of compliance and operating a *bona fide* business, BBIL, through its service provider Stellar Point, simply did not offer competent customer service. There was one prevailing issue amongst Affiliates; namely, that they were unable to access their funds. It was a breach of Dixit and Josun's duty to exercise due care, diligence and skill to overlook that omnipresent issue and to continue to operate BBIL without a view to addressing that problem and the underlying issue that funds were not, and never would be accessible because BBIL paid extraordinary expenses without generating any offsetting profit.

294. Dixit, in fact, deliberately contributed to that problem by dictating Stellar Point/BBIL policy, actively silencing Affiliate communications online and making misrepresentations personally on the internet for Affiliate consumption.

295. Dixit further breached specific duties of care he took upon himself by agreeing to act as BBIL's Chief Operating Officer and Compliance Officer.

296. As the acting Chief Operating Officer of BBIL for a short time, and the *de facto* Chief Operating Officer at all material times, Dixit fell below the standard of a reasonably prudent executive by incurring hundreds of millions of dollars in liability by directing Stellar Point, on behalf of BBIL, to make fraudulent misrepresentations to Affiliates, while fixed with the knowledge that those Affiliates could not possibly profit from the company's operations.

297. He further fell below that standard through improper management of corporate funds. Without limiting the generality of that allegation, Dixit did so in the following specific ways:

- (a) He failed to arrange for the proper segregation of invested funds from operating funds;
- (b) He failed to ensure Affiliates' money was properly invested in order to preserve shareholder and stakeholder value;
- (c) He failed to engage bookkeeping or accounting staff with an appropriate degree of experience and training for an operation of BBIL's size;
- (d) He failed to engage employees of the necessary skills and experience, and instead compensated employees with inadequate skills and experience well beyond market value; and
- (e) He mismanaged BBIL's finances directly by causing it to agree to the overbilling, double-billing and arbitrarily billing he arranged through the mechanism of Stellar Point.

298. Any competent executive, observing the incredible influx of Affiliate funds and the impossibility of generating profit, would have taken steps to preserve those investments and either wind up the company or to cause it to provide lawful goods or services for sale.

299. Dixit and Josun, however, received and spent the funds on themselves, misrepresenting those facts to Affiliates. Even if their intent was not fraudulent, which the plaintiffs plead it was, that course of conduct was contrary to common sense, grossly negligent, and the catastrophic results visited upon BBIL were entirely foreseeable by any reasonable person.

300. Accordingly, the Receiver – standing in the shoes of BBIL – claims against Dixit and Josun for their failure to operate BBIL competently as a law-abiding enterprise in a quantum adequate to cover the exposure to Affiliates and regulatory, criminal and quasi-criminal penalties BBIL may face as a result of their negligence.

4.3.1. Oppression (Dixit and Dixit Companies)

301. The Receiver, standing in the shoes of BBIL, makes application under Section 241 of the *CBCA* for a remedy in relief of Dixit's oppressive acts.

302. The operations of Stellar Point were conducted in such a manner as to be oppressive, unfairly prejudicial to, and unfairly disregarding the interests of BBIL, its main creditor.

303. Dixit's regular practice of using Stellar Point to overcharge, double-bill and arbitrarily invoice BBIL, and causing BBIL to pay those unreasonable charges was done for the purpose of moving Affiliates' funds to Stellar Point *en route* to diverting those funds to himself through shareholder loans, consulting fees and other miscellaneous disbursements. In so doing, Dixit caused Stellar Point to incur massive liability to BBIL.

304. Dixit's course of conduct, which prioritized the disbursement of funds to himself and his companies over the repayment of creditors unfairly disregarded their interests and attracts a remedy under Section 241 of the *CBCA*.

305. The Receiver now seeks an order under the *CBCA* unwinding and tracing those preferential transactions out of Stellar Point, a *CBCA* company. Any monies overcharged and therefore owing to BBIL as a creditor of Stellar Point that were then diverted to Dixit, Josun or other non-arm's length ventures, friends or family, must be traced and returned to BBIL; and any monies *properly* vesting in Stellar Point that were improperly diverted to Dixit, Josun or other non-arm's length ventures, friends or family without proper regard for the interests of creditors must be traced and returned to Stellar Point for the benefit of BBIL.

4.4. Claims of the Receiver on Behalf of Stellar Point

4.4.1. Fraudulent Misrepresentation (Dixit and Dixit Companies)

306. Throughout his tenure as Chief Operating Officer at BBIL, and as President of Stellar Point, Dixit frequently charged Stellar Point for purported business expenses, and caused those expenses to be reimbursed.

307. Many of those purported business expenses were personal expenses that had no actual business justification, such as the purchase of an All-Terrain Vehicle for his sister, or flights and hotel costs for his family members to accompany him on trips.

308. Moreover, Dixit would charge Stellar Point consulting fees through various Dixit Companies for services he was required to be providing in the normal course of his employment with Stellar Point. He would also cause numerous euphemistic and deceptive ledger entries to mask his withdrawals of cash from the company for his own use, including 'shareholder loans' and 'cost of goods' (where Stellar Point was not in the business of selling goods).

309. Dixit knew, or ought to have known, that these expenses were not commercially justifiable and that Dixit's representations as to their legitimacy were false. They nevertheless caused Stellar Point to act upon those false representations by reimbursing Dixit for the said expenses or releasing the funds for these improper purposes, to the detriment of Stellar Point.

310. The Receiver therefore claims against Dixit for compensation in respect of the expenses thus incurred and charged to the plaintiffs under the false pretence of a valid business justification.

4.4.2. Breach of Fiduciary Duty: Misappropriation (Dixit)

311. As a matter of common practice, Dixit would take advantage of his position as President of Stellar Point to divert the company's funds to the Dixit Companies or otherwise to withdraw funds from the company for his own use in the form of unjustifiable 'shareholder loans'; 'cost of goods sold' (where neither Banners Broker nor Stellar Point were in the business of selling goods); or 'consulting fees' to Dixit Consulting (i.e., himself under an assumed business name), Dixit Holdings, Inc., or other Dixit Companies.

312. These funds, withdrawn from Stellar Point, were not transferred for value under any binding agreement, and the services allegedly provided by Dixit and the Dixit Companies that purportedly justified these disbursements overlapped entirely with the services Dixit was already retained to provide in the course of his employment with Stellar Point.

313. The Receiver, standing in the shoes of Stellar Point, therefore claims that Dixit breached his fiduciary duty to the company by authorizing and engaging in these unjustifiable transfers for his own benefit, and claims damages in the amount of that defalcation.

4.4.3. Breach of Fiduciary Duty: Preferring Personal Interests to those of the Corporation (Dixit)

314. As an individual collecting such things as reimbursements and consulting fees from Stellar Point, Dixit had a direct financial incentive to overcharge Stellar Point for *those* services rendered. Dixit did not declare or mitigate the conflict between himself and Stellar Point; nor did he recuse himself from the decisions involved in setting his own compensation, 'consulting fees', or the approval of business expenses. It was his responsibility to Stellar Point stakeholders to ensure the profitability and growth of the company, and to declare that conflict and to disburse dividends only in equal proportion with other shareholders.

315. The Receiver therefore claims against Dixit in his capacity of President of Stellar Point for damages equal to the sum of all preferential transactions he undertook for his own benefit or for the benefit of the Dixit Companies or any other company not at arm's length from Dixit, in breach of his fiduciary duty.

4.5. Punitive and Exemplary Damages (Dixit and Josun)

316. The Receiver pleads that this is an appropriate case for punitive and exemplary damages.

317. Each of Dixit and Josun, by virtue of their leadership roles in the Banners Broker enterprise, have engaged in a malicious, oppressive, and high-handed course of conduct that ought to offend the court's sense of decency and represents a marked departure from ordinary standards of decent behaviour.

Dixit

318. **Blameworthiness of Conduct:** Dixit has engaged in more than one scheme intended to defraud the public of its savings; Banners Broker was merely the most recent, and by far the most successful. He freely and unabashedly took a veritable cascade of funds that he knew were intended to be invested into his company and used those funds to afford himself a life of extravagant luxury with a complete lack of restraint. His actions are blameworthy as they constitute a deliberate fraud on the public, with no higher aim in place other than to become rich.

319. **Harm to the Plaintiff and Wrongful Gain of the Defendant:** Many thousands of people worldwide bought into Banners Broker with enthusiasm and have lost everything. Having relied on the fraudulent misrepresentations of BBIL customer service personnel and the online e-Wallet that fraudulently suggested that their investments were growing, the creditors represented by the plaintiff BBIL suffered grave, in some cases life-altering harm upon finding that their savings had not been

invested, but rather freely spent by Dixit for his own enjoyment and that of his friends and family. The greater the harm to the public, the more Dixit benefited. As the inflow of funds came faster and faster, Dixit began to travel in greater luxury, to afford himself more expensive food and spirits, and to surround himself with masterpieces of watchmaking and automotive engineering. The more the plaintiffs suffered, the more Dixit gained.

320. **Need for Deterrence:** To date, despite having had another enterprise terminated by the Competition Bureau, the present enterprise thoroughly examined by the Receiver, and now facing indictment on serious criminal charges, Dixit still does not apprehend that he was at any point in the wrong. He still feels entitled to the Affiliates' money and has threatened the Receiver and its legal team with extraordinary monetary penalties exceeding *one billion dollars per month* if they do not 'undo' the receivership and return the recovered funds to him for his own use and enjoyment. In his threatening correspondence, Dixit takes the inexplicable position that by investigating the events surrounding BBIL and recovering misappropriated funds, the Receiver has sullied his good name and impugned the morals with which he conducts his affairs.

321. The situation warrants an unequivocal statement by the Court that Dixit's protests of being in some way the *victim* in this case – when his conduct has caused some of the Affiliates whose lives he has ruined to *take their own lives* – are intolerable and reprehensible.

Josun

322. **Blameworthiness of Conduct:** Whereas Dixit has misappropriated Affiliate funds rather plainly, Josun has been more clandestine and calculated in his approach to wrongfully obtained monies. Whereas Dixit purchased a great many cars, watches and luxury furniture after coming into Banners Broker money, Josun has secreted funds away in offshore locations, in amounts and by methods undetectable and unascertainable even by the rest of Banners Broker's management by ensuring he had no supervision as the funds were diverted. He has headquartered his newest operating company in Vanuatu: one of the few states in the world outside the grasp of Interpol. Josun appears to have known exactly what he was doing with Affiliates' money, how best to get it, and how he intended to get away with it.

323. **Harm to the Plaintiff and Wrongful Gain of the Defendant:** Just as was the case with Dixit, thousands of Affiliates worldwide invested significant savings into the Banners Broker project. Josun, moreso than Dixit, seems to have gone about converting Affiliates' nest eggs into his own.

324. **Need for Deterrence:** Whereas Dixit appears not to have learned any lessons from the collapse of Banners Broker, Josun appears to have learned his lessons all too well. He is operating another online, commission-based, social-networking platform at present – only this time in a remote jurisdiction more hostile to civil and criminal investigation and enforcement.

325. Both individual defendants share one final factor in common in respect of punitive damages: neither has yet been made to regret their actions, even for a moment. None has yet been given any concrete reason to reflect upon Banners Broker as anything but the adventure of a lifetime. They all continue to live in a lifestyle to which they could never have aspired prior to their involvement in the enterprise and resent the lawful authorities for their encroachment upon what they universally regard as 'theirs'.

326. Particularly for Josun, who is not being charged with offences in relation to his central role in the Banners Broker enterprise, the within proceeding may be the only opportunity the justice system will have to express its condemnation of the defendants' acts.

5.0 JURISDICTION AND FORUM

327. The plaintiffs plead and rely on Rule 17.02 in respect of the foreign corporate defendants, as the claims herein pertain to torts committed, contracts made and breached, and injunctions sought to take effect in the Province of Ontario.

328. The plaintiffs propose that this action be tried in the City of Toronto.

May 30, 2016

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BANNERS BROKER INTERNATIONAL LTD. by its receiver,
MSI SPERGEL INC.
Plaintiff

and **RAJIV DIXIT et al.**
Defendants

Court File No. **CV-16-11413-000**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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TAB 3

Court File No. CV-16-11413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN:

BANNERS BROKER INTERNATIONAL LIMITED and
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.

Plaintiffs

- and -

RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED

Defendants

CONSENT TO JUDGMENT

By their respective lawyers, the parties, none of whom are under disability, irrevocably consent to a Judgment being granted against the defendants Rajiv Dixit, Dixit Holdings Inc., Dixit Consortium Inc., and Dreamscape Ventures Ltd. in the form attached as Schedule "A" hereto.

DATED AT TORONTO, ONTARIO, this
..... day of October, 2017

CASSELS BROCK & BLACKWELL LLP


By:

David S. Ward
Name: David S. Ward
Title: Partner

-2-

DATED AT TORONTO, ONTARIO, this
..... day of October, 2017

Home of Rajiv Dixit
~~MEHRABI LAW OFFICE~~

By: 
Name: Rajiv Dixit
Title: Defendant
Oct 18, 2017

Court File No. CV-16-11413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE REGISTRAR)
)
) DAY OF , 2017

BETWEEN:

BANNERS BROKER INTERNATIONAL LIMITED and
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.

Plaintiffs

- and -

RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
WORLD WEB MEDIA INC., and REAL PROFIT LIMITED

Defendants

JUDGMENT

THIS MOTION, made by the plaintiffs, for judgment in the action pursuant to a consent to judgment executed by the parties, was read this day at the Court House, 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the consent of the parties,

1. **THIS COURT ORDERS AND ADJUDGES** that the defendants Rajiv Dixit, Dixit Holdings Inc., Dixit Consortium Inc., and Dreamscape Ventures Ltd., jointly and severally, pay to the plaintiffs the sum of \$200,000,000.00.

2. **THIS JUDGMENT** bears interest, from the date of this judgment, at the "post-judgment interest rate" (as defined in section 127(a) of the *Courts of Justice Act*) in effect on the date of judgment, being 2.0 percent per annum.

BANNERS BROKER INTERNATIONAL LTD. by its receiver,
MSI SPERGEL INC.
Plaintiffs

and

RAJIV DIXIT et al.
Defendants

Court File No. CV-16-11413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

JUDGMENT

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Lawyers for the Plaintiffs

BANNERS BROKER INTERNATIONAL LTD. by its receiver,
MSI SPERGEL INC.
Plaintiffs

and
RAJIV DIXIT et al.
Defendants

Court File No. CV-16-11413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

CONSENT TO JUDGMENT

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Lawyers for the Plaintiffs

TAB 4

Court File No. CV-16-11413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE)	WEDNESDAY, THE 25TH
)	
JUSTICE)	DAY OF JULY, 2018

B E T W E E N:

BANNERS BROKER INTERNATIONAL LIMITED and
STELLAR POINT, INC., by their receiver MSI SPERGEL INC.

Plaintiffs

- and -

RAJIV DIXIT, KULDIP JOSUN, DIXIT HOLDINGS INC.,
DIXIT CONSORTIUM INC., DREAMSCAPE VENTURES LTD.,
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

JUDGMENT

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BANNERS BROKER INTERNATIONAL LTD. by its receiver,
MSI SPERGEL INC., et al
Plaintiffs

and RAJIV DIXIT et al.
Defendants

Court File No. CV-16-11413-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(Motion for Consent Judgment against Dixit Defendants)**

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