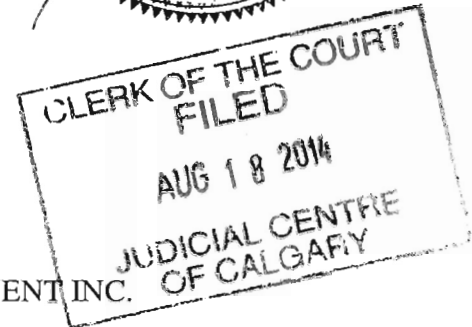


COURT FILE NUMBER 1401-05797
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) LANNY K. MCDONALD
DEFENDANT(S) BROOKFIELD ASSET MANAGEMENT INC.
BROOKFIELD SPECIAL SITUATIONS PARTNERS LTD.
HAMMERSTONE CORPORATION



Brought under the Class Proceedings Act

DOCUMENT **AFFIDAVIT OF RESPONDING PARTY**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MCDONALD & ROSS
9 BRANT ROAD, SOUTH
CAMBRIDGE, ONTARIO, N1S 2W4
TELEPHONE 519-622-0499
FACSIMILE 519-740-6368
ATTENTION: JOHN W. MCDONALD

AFFIDAVIT OF DAVID JOHNSON SWORN ON JULY 15, 2014

VOLUME ONE

I, David Johnson, of the Town of Grimsby, in the Region of Niagara, in the Province of Ontario, MAKE OATH AND SAY THAT:

I am a consultant to lawyer, John W. McDonald, and to the proposed representative plaintiff, Lanny K. McDonald. I have personal knowledge of the matters deposed to in this affidavit, except where I state below that the information contained in the affidavit was obtained from a third party and therefore based on information and belief, in which case I believe it to be true.

I make this affidavit in support of responding to an application of the defendants. Exhibits are identified by number, date and description as follows:

<u>Exh</u>	<u>Date</u>	<u>Description</u>
1.	Aug 26, 2005	Birch Mountain Short Form Prospectus
2.	Jun 26, 2006	Birch Mountain Press Release re \$1.6 billion valuation
3.	Aug 01, 2006	AMEC Report \$1.6 billion valuation
4.	Nov 28, 2006	Short Form Prospectus \$30,000,000 USC Debentures
5.	undated	Brookfield Code of Conduct
6.	undated	Brookfield/Tricap Restructuring Representations
7.	Apr 02, 2007	Birch Mountain Press Release re \$15.5 loan agreement
8.	Sep 18, 2007	Birch Mountain Press Release re \$ 4.0 million loan advance
9.	Nov 26, 2007	Birch Mountain Press Release re \$31.5 million loan advance
10.	Dec 21, 2007	Loan Agreement between re \$31.5 million private placement
11.	Dec 24, 2007	Tricap Press Release re \$31.5 million private placement
12.	Dec 24, 2007	Tricap Early Warning Report re \$31.5 private placement
13.	Dec 24, 2007	Birch Mountain Press Release re \$31.5 private placement
14.	Dec 31, 2007	Birch Mountain Annual Financial Report
15.	Mar 31, 2008	Birch Mountain Audited Consolidated Financial Statements
16.	May 05, 2008	Birch Mountain Press Release re environmental approvals
17.	May 30, 2008	Birch Mountain Information Circular re Annual Meeting
18.	Jun 06, 2008	Birch Mountain letter to Eng re South Haul Road Agreement

19. Jul 03, 2008 Birch Mountain (Rowe) email re Meeting with Reid and Eng
20. Jul 03, 2008 Birch Mountain Press Release re interest payment default
21. Jul 10, 2008 Tricap Notice re breach of Loan Agreement s. 6.3 (a)
22. Jul 10, 2008 Birch Mountain Press Release re product order
23. Jul 11, 2008 SHR Agreement with Suncor, Imperial Oil and Husky Oil
24. Jul 11, 2008 Confidentiality Agreement re Potential Transaction
25. Jul 17, 2008 Sully email to Dabbs re SHR Agreement and use of proceeds
26. Jul 23, 2008 Birch Mountain Press Release re Notice of Default et al
27. Jul 31, 2008 Birch Mountain Press Release re Notice of Default et al
28. Aug 01, 2008 SEC Notice re Pattison 13G filed at 5:04
29. Aug 01, 2008 SEC Notice re Pattison 13GA filed at 5:06
30. Aug 01, 2008 SEC Notice re Brookfield 13D filed at 5:07
31. Aug 01, 2008 Amending Agreement re BMR/Tricap Loan Agreement
32. Aug 07, 2008 Tricap Early Warning Report re 55% control
33. Aug 14, 2008 Birch Mountain Press Release re AMEX delisting
34. Aug 15, 2008 Lawson Lundell Letter (Houghton) to TSE
35. Aug 27, 2008 Birch Mountain Press Release re Amending Agreement
36. Sep 08, 2008 Pattison Group - Final Itinerary re Potential Transaction
37. Sep 08, 2008 Slide Show for Pattison Group re Potential Transaction
38. Sep 12, 2008 Birch Mountain Press Release re SHR Proceeds
39. Sep 19, 2008 Tricap Press Release re Amending Agreement
40. Sep 19, 2008 Tricap Early Warning Report re Amending Agreement
41. Oct 03, 2008 Macleod Dixon (Fedun) email to Lawson Lundell (Houghton)
42. Oct 03, 2008 Adair Morse retainer re death spiral stock trading
43. undated, 2008 Birch Mountain Status Update
44. Oct 17, 2008 Lawson Lundell Email (Houghton) re valuation
45. Oct 22, 2008 Birch Mountain Sales by Customers
46. Oct 28, 2008 Birch Mountain Sales Summaries Reporting the Turnaround
47. undated, 2008 Birch Mountain Quarterly Sales Trend

48. Oct 28, 2008 Notes re Discussion with Acumen Capital (Stuart)
49. undated, 2008 Norwest report for Brookfield re Birch Mountain resource
50. Nov 04, 2008 Eng's Affidavit re Receivership Order
51. Nov 05, 2008 Justice LoVecchio's Receivership Order
52. Nov 07, 2008 Birch Material Change Report re receivership notice etc
53. Nov 07, 2008 Gerrish emails re Kiewit supply agreement re Imperial
54. Nov 09, 2008 Tricap is to fund the Court Appointed Receivership
55. Nov 11, 2008 PwC (Roberts) email confirms Tricap is PwC focus
56. Nov 14, 2008 Don Dabbs letter re Jarding reference
57. Nov 19, 2008 PWC Notice re BMR Acquisition Opportunity
58. assorted Potential Purchaser - Chinese Wealth Fund
59. Nov 21, 2008 Notice of Receiver re Mineral Book Value of \$51 million
60. Nov 26, 2008 1439442 - Corporation Profile Report
61. Nov 27, 2008 Pattison Assignment re preferential treatment
62. Dec 10, 2008 1439442/Tricap Early Warning Report re deb acquisition
63. Dec 12, 2008 Tricap Offer to Purchase
64. Dec 16, 2008 Tricap SEC filing re 97.6 % control
65. Dec 16, 2008 PwC (Roberts) email re Tricap accommodations
66. Dec 31, 2008 PwC (Roberts) email re Tricap business plan
67. Jan 08, 2009 Justice LoVecchio's Transcript of Hearing
68. Jan 28, 2009 1439442 name change to Hammerstone Corporation
69. Apr 02, 2009 Tricap Announcement re Hammerstone Corporation
70. Apr 03, 2009 Tricap Announcement re Hammerstone Corporation
71. Apr 09, 2009 Macleod Dixon LLP Welcomes Terry Owen
72. Jun -, 2010 NRCB Board Decision NR 2010-01 (selected pages)
73. Nov 16, 2011 Ontario Court of Appeal- Justice Laskin Quotation
74. May 31, 2012 Calgary Herald Article re positive growth in Fort McMurray
75. Jan 05, 2014 Renee Allem email re Birch Mountain Financial Losses

1. **DEFINITIONS**

2. “Birch Mountain or BMR” means Birch Mountain Resources Ltd., an Alberta corporation.
3. “AMEC Report” means the AMEC Americas Ltd. Report dated August 01, 2006 that estimates the projects pre-tax NPV at a discount rate of 7.5% as \$1.669 billion.
4. “McDonald” means Mr. Lanny K. McDonald, the plaintiff, a former director, a registered shareholder and an unsecured trade creditor of Birch Mountain and the proposed representative plaintiff for the proposed Class in this class action.
5. “Brookfield” means Brookfield Asset Management Inc.
6. “Tricap” means Tricap Partners Ltd., now Brookfield Special Situations Partners Ltd.
7. “1439442” means 1439442 Alberta Ltd., now Hammerstone Corporation.
8. “Pattison” means Mr. James A. Pattison, an owner of Great Pacific Capital, a director of Brookfield and the former beneficial owner of the Unsecured Subordinated Convertible Debentures.
9. “Great Pacific Capital” means Great Pacific Capital Corporation, a British Columbia corporation controlled by Pattison and/or the Pattison Group and a party to the Pattison Agreement.
10. “Pattison Group” means a combination of Pattison, Great Pacific Capital and other corporations controlled by Pattison or Great Pacific Capital.
11. “MVQ” means the Birch Mountain Muskeg Valley Quarry.

12. “Hammerstone Project” means the project to develop the MVQ limestone reserves.
13. “Hammerstone Tour” means the tour of the Hammerstone Project on September 08, 2014.
14. “SHR Proceeds” means the South Haul Road sale of property proceeds.
15. “RBC” means RBC Capital Markets.
16. “PwC” means PriceWaterhouseCoopers LLP.
17. “BCA” means the Alberta *Business Corporations Act*.
18. “CPA” means the Alberta *Class Proceedings Act*.
19. “BIA” means the Alberta *Bankruptcy and Insolvency Act*.
20. “Unsecured Subordinated Convertible Debentures” means the \$30,000,000 aggregate principal amount 6% unsecured subordinated convertible debentures issued December 06, 2006 and due December 31, 2011 of Birch Mountain.
21. “Confidentiality Agreement” means the Confidentiality Agreement made as of July 11, 2008 between Birch Mountain and Great Pacific Capital.
22. “Loan Agreement” means the Loan Agreement dated December 21, 2007 between Tricap and Birch Mountain.
23. “Senior Secured Convertible Debenture” means the \$31,500,000 aggregate principal amount senior secured convertible debenture issued December 31, 2007 and due June 30, 2012 of

Birch Mountain.

24. “Convertible Debentures” means both the Unsecured Subordinated Convertible Debentures and the Senior Secured Convertible Debenture.
25. “Amending Agreement” means the Acknowledgement, Waiver and Amending Agreement dated August 01, 2008 between Tricap and Birch Mountain.
26. “Pattison Agreement” means the Assignment and Option Agreement made as of November 27, 2008 between Great Pacific Capital, 1439442 and Tricap.
27. “Second Amending Agreement” means the proposed Second Acknowledgement, Waiver and Amending Agreement unexecuted between Tricap and Birch Mountain.
28. “OSC” means the Ontario Securities Commission.
29. “SEC” means the Securities and Exchange Commission.
30. “TSX” means the Toronto Stock Exchange.
31. “AMEX” means the American Stock Exchange.

32. **CHRONOLOGY**

33. The following chronology is a brief summary of important dates:

Aug 26, 2005	Birch Mountain Prospectus for \$36,000,000
Jun 26, 2006	AMEC Report re \$1.6 billion valuation
Nov 28, 2006	Unsecured Subordinated Convertible Debentures for \$30,000,000

Aug 29, 2007	Pattison owns 4,849,394 Birch Mountain common shares
Oct 11, 2007	Pattison owns 11,522,727 Birch Mountain common shares
Jul 10, 2008	Tricap Notice of Default re minimum shareholder equity - 6.3(a)
Jul 11, 2008	SHR Agreement with Suncor, Imperial and Husky for \$4.8 million
Jul 11, 2008	Confidentiality Agreement executed
Aug 01, 2008	Pattison and Brookfield jointly file SEC forms
Aug 01, 2008	Amending Agreement executed
Aug 07, 2008	Tricap Early Warning Report re 55% control etc
Aug 14, 2008	Birch Mountain Material Change Report re AMEX delisting
Aug 15, 2008	TSE Application for Financial Hardship Exemption
Sep 08, 2008	Brookfield, Pattison, RBC tour/presentation
Sep 19, 2008	Tricap Early Warning Report re interest amendment to 20% etc
unknown	Brookfield, Tricap and Pattison reach agreement re receivership et al
Sep 30, 2008	Sale to Brookfield, Tricap and Pattison allowed to expire
Sep 30, 2008	Equity Financing for \$10 million allowed to expire Oct 28, 2008
Sep 30, 2008	Birch Mountain first profitable quarter ended
Oct 28, 2008	Kiewit Energy negotiated order for \$540,000
Oct 31, 2008	Macleod Dixon (Gorman) issues Demand for Repayment
Oct 31, 2008	Macleod Dixon (Gorman) issues Notice to Enforce Security
Nov 05, 2008	Justice LoVecchio's Receivership Order
Nov 07, 2008	Russ Gerrish emails re Kiewit contract
Nov 26, 2008	Incorporation of 1439442
Nov 27, 2008	Pattison Agreement executed with Brookfield and Tricap
Dec 10, 2008	Tricap Debenture acquisition from Pattison
Dec 12, 2008	Tricap Offer to Purchase Birch Mountain assets
Jan 05, 2009	Receiver's First Report re sale to Tricap
Jan 08, 2009	Justice LoVecchio's hearing re sale order to Tricap

Jan 28, 2009 1439442 name changed to Hammerstone Corporation

34. **CORPORATE HISTORY**

35. On August 26, 2005, Birch Mountain issued a Short Form Prospectus and completed a financing with RBC as the lead underwriter and the underwriting syndicate composed of RBC Dominion Securities Inc., TD Securities Inc., Acumen Capital Finance Partners Limited and Westwind Partners Inc. for 9,000,000 Birch Mountain common shares at \$4.00 per share for gross proceeds of \$36,000,000.

Exhibit 01, page 01

36. On June 26, 2006, Birch Mountain Press Release announced that it received the AMEC Report, an independent valuation report, that stated:

“The net present value (“NPV”) of Hammerstone in constant Q2 2006 dollars calculated with unescalated prices and costs, at a 7.5% discount rate is C\$1,655 million on a pre-tax basis and C\$1,089 million on an after-tax basis; the internal rate of return (“IRR”) is 29.4%.”

Exhibit 02, page 28

37. On August 01, 2006, AMEC published the AMEC Report as a national Instrument 43-101 Technical Report in accordance with Form 43-101F1 that stated:

“The Hammerstone Quarry contains sufficient reserves for over 50 years of production based on the updated product demand and sales forecast.

A viable market for the aggregate and reagent limestone products exists in the local Fort McMurray area.

Results from the base-case analysis (Table 1-6) estimate the project pre-tax NPV at a discount rate of 7.5% as C\$1,669 million and after-tax NPV as C\$1,099 million.”

Exhibit 03, page 57

38. On November 28, 2006, Birch Mountain issued a Short Form Prospectus and completed a financing with RBC as the lead underwriter and the underwriting syndicate composed of RBC, Westwind Partners Inc. and Acumen Capital Finance Partners Limited initially for \$30,000,000 secured by Unsecured Subordinated Convertible Debentures due December 31, 2011 and disclosed:

“The discounted cash flow net present value (“NPV”) of the Hammerstone Project in constant 2006 dollars, using a discount rate of 7.5%, is \$1.669 million on a pre-tax basis and \$1,099 million on an after-tax basis.”

Exhibit 04, page 72

39. At all material times, the Brookfield Code of Business Conduct and Ethics spoke to their fair dealing and stated:

“You must endeavour to deal fairly with securityholders, the company’s customers, clients, investees, suppliers, competitors and employees, and observe your fiduciary duties with investment management clients and related activities. You should not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other related unfair dealing practice.”

Exhibit 05, page 119

40. At all material times, the Brookfield website spoke to their restructuring expertise and stated:

“Brookfield’s restructuring operation invests in and provides strategic assistance to companies experiencing financial or operational difficulty.”;

“Tricap Partners Ltd. invests in companies where it can capitalize upon Brookfield’s operating experience and long term perspective to drive change and build value.

Investment candidates typically have attractive tangible assets with significant operating capacity and a proven operating history but are experiencing short term duress. Focus industries include real estate, financial, manufacturing, forest products metals and mining, energy, and power generation.”; and

“Tricap targets transactions in which it can invest between \$50 million and \$500 million in either debt and equity capital. When Tricap makes an equity investment, it seeks to play a meaningful role in the restructuring process and governance of the recapitalized company. Tricap has a 3 to 7 year investment horizon. Our team includes operating, finance and legal professionals with extensive experience in reorganizations under Canadian and U.S. legislation.”

Exhibit 06, page 128

41. On April 02, 2007, Birch Mountain announced it completed a \$15,500,000 senior secured credit facility with Brookfield Bridge Lending Fund Inc. to provide financing for the continued development and construction of the South Haul Road and stated:

“Birch Mountain has received regulatory approval to construct the South Haul Road to connect the Muskeg Valley Quarry with the planned East Athabasca Highway (the “Highway”). The survey work is complete and quotes for tree removal are being evaluated. Clearing will begin shortly and major construction work will commence when the proposed agreements are in place with the developers of the Highway.”

Exhibit 07, page 129

42. On September 18, 2007, Birch Mountain announced \$4.0 million draw down and stated:

“Birch Mountain ... announces that is has received additional funding through a \$4 million loan advance on its senior secured debt facility with Brookfield Bridge Lending Fund Inc. and has now drawn down \$12.5 million on the original \$15.5 million facility.”

Exhibit 08, page 131

43. On November 26, 2007, Birch Mountain Press Release announced \$3.0 million draw down

and stated:

“Brookfield has also advanced to Birch Mountain the remaining \$3 million under the existing loan facility.”

Exhibit 09, page 132

44. On December 21, 2007, the Loan Agreement was executed between Tricap and Birch Mountain and contained a comprehensive definition of “affiliate” and other key terms and stated:

“Affiliate” means, in respect of any Person, any Person which, directly or indirectly, controls or is controlled by or is under common control with such first mentioned Person; and for the purpose of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the power (including de facto control) to direct, or cause to be directed, the management and policies of a Person, whether through the ownership of voting shares or units or by contract or otherwise, and with respect to the Borrower includes each of HPL, Muskeg Valley, Dawson Bay and the Fort McKay JV”; (page 135)

“Convertible Securities” means all subscriptions, options, calls, warrants, commitments, contracts, pre-emptive rights, rights of first refusal, demands, conversion rights or other agreements, arrangements or securities of any character or nature whatsoever under which the Borrower is or may be obliged to issue any Common Shares or securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Shares”; and (page 136)

“Debenture Shares” means the Common Shares that may be issued from time to time upon any conversion or redemption of the Senior Secured Convertible Debenture in accordance with its terms.” (page 137)

Exhibit 10, page 135

45. On December 24, 2007, Brookfield and Tricap Press Release announced the investment in Birch Mountain and described the investment as follows:

“Tricap has acquired the Debenture for investment purposes, and in connection with the refinancing of the existing credit facility extended to the Corporation by an affiliate lender of Tricap.

Exhibit 11, page 159

46. On December 24, 2007, Tricap Press Release announced the issuance of the \$31,500,000 Senior Secured Convertible Debenture with Tricap described as follows:

“Tricap Partners Ltd. was established by Brookfield Asset Management to provide a source of patient, long term capital and strategic assistance to mid-market companies based in North America. With strong industry and financial management expertise, Tricap is well positioned to assist these companies in building value over the long term.”

Exhibit 11, page 160

47. On December 24, 2007, Tricap Early Warning Report with respect the issuance of a \$31,500,000 Senior Secured Convertible Debenture stated:

“Assuming conversion of the entire Debenture at an exercise price of \$0.80, Tricap would have ownership and control over 39,375,000 Common Shares representing approximately 31.4% of the aggregate issued and outstanding Common Shares as of December 21, 2007. The conversion price may be lower than \$0.80 depending on current market price at the time of conversion. Tricap does not own or control any outstanding Common Shares or other securities of the Corporation, other than the Debenture. (page 161)

Tricap acquired the debenture for investment purposes, and to refinance the existing credit facility extended to the Corporation by an affiliate lender of Tricap.” (page 162)

Exhibit 12, page 161

48. On December 24, 2007, Birch Mountain Press Release announced the issuance of a \$31,500,000 Senior Secured Convertible Debenture with Tricap and the reliance on the Tricap representation was repeated:

“Tricap Partners Ltd. was established by Brookfield Asset Management to provide long term patient capital to companies with the potential for value creation and need to recapitalize. With strong industry and financial management expertise, Tricap is well positioned to assist these companies in reaching their full potential.”

Exhibit 13, page 164

49. On June 06, 2008, Birch Mountain letter to Mr. Eng with respect to the SHR Agreement stated:

“We acknowledge receipt of a letter from your counsel, Macleod Dixon, yesterday in which you have refused to consent to the assignment of certain interests by Birch Mountain in support of the South Haul Road (“SHR”). In subsequent discussions between Rick Eng and Doug Rowe it seems apparent that the principal reason for this refusal relates to the “limited” put provision.

Based upon the foregoing we believe that it is a clear and compelling conclusion that the SHR Agreement is not only in the best interest of Birch Mountain, but pivotal in terms of its continuing sustainability and success. Should the SHR Agreement not be concluded as a result of your refusal to consent to the modest interests being assigned, Birch Mountain will almost certainly suffer irreparable damage to its economic sustainability and its commercial credibility. Accordingly we request in the strongest terms that you reconsider and reverse your decision and consent to and permit the assignment of the interests and the signature to the SHR Agreement by Birch Mountain as soon as possible. We remain available to discuss these or any other points at any time.”

Exhibit 18, page 249

50. On July 03, 2008, Birch Mountain email re meeting with Brookfield/Tricap stated:

“Jim responded that we had 30 days to rectify the payment and he was confident we could do it within this time. He seemed surprised to read the draft news release that we were waiting their approval to pay the interest. I noted that ComputerShare had the cheque and we had the funds set aside to make the payments.”

Exhibit 19, page 253

51. On July 03, 2008, Birch Mountain Press Release announced that it has not made the scheduled June 30, 2008 interest payment on the Unsecured Subordinate Convertible Debentures:

“As a consequence of the Company being in breach of a financial covenant under its senior secured credit facility, the lender, Tricap Partners Ltd., has exercised its right under the loan agreement to direct ComputerShare Trust Company not to make the scheduled interest payment until further notice from the lender. Birch Mountain is working to rectify the breach and secure the necessary additional liquidity to make the interest payment.”

Exhibit 20, page 255

52. On July 10, 2008, Tricap served a Notice of Default which, in part, stated:

“Further to our letter dated June 23, 2008 providing notice of default to you respecting Birch Mountain’s breach of the minimum shareholders’ equity covenant Section 6.3 (a) of the Loan Agreement (the “Default”), we hereby provide notice that you are currently subject to an Event of Default for same given that the Default has not been cured within 10 days after our written notice.”

Exhibit 21, page 257

53. On July 10, 2008, Birch Mountain issued a Press Release and Material Change Report which, in part, stated:

“The Company announces that it has received an order from a major oil sands producer to conduct a 4-month, full scale trial of the Birch Mountain’s reagent limestone for treating air emissions from a coke-fired power plant.”

Exhibit 22, page 258

54. On July 11, 2008, the SHR Agreement was executed between Suncor Energy Oil Sands Limited Partnership, Imperial Oil Resources Ventures Limited and Husky Oil Operations Limited which resulted in a payment to Tricap of \$4,800,100 as the party with the security on all Birch Mountain assets.

Exhibit 23, page 260

55. On July 11, 2008, Birch Mountain and Great Pacific Capital executed the Confidentiality Agreement which disclosed confidential information to Pattison related to a potential transaction and, in part, stated:

“4. Pattison agrees that all Confidential Information shall be kept in strict confidence and shall not be used, dealt with or exploited in any manner for any purpose other than a Potential Transaction and none of the Confidential Information shall be disclosed to any person other than your representatives assisting in the evaluation of the Potential Transaction.”

Exhibit 24, page 288

56. On July 17 2008, Birch Mountain(Sully) inquired as to the likely disposition of the SHR Agreement proceeds and a waiver of any default:

“Alternately, as long as they are keeping the \$4.8mm, it wouldn’t be unreasonable to request a waiver of breach. If so, a press release announcing the SHR and the waiver may be enough to lift our stock a bit (albeit in a crappy market). A that point, the material news would be out there, and we may be able to proceed with a \$2 - 5 million financing amongst insiders and others.”

Exhibit 25, page 294

57. On July 23, 2008, Birch Mountain Press Release and Material Change Report, in part, stated:

“The Company announces that the Special Committee of independent directors and

the Board have determined that it is imperative to pursue an immediate sale of the Company to unlock maximum value of the shareholders.”

Exhibit 26, page 296

58. On July 31, 2008, Birch Mountain Press Release announced that it had not made the scheduled June 30, 2008, interest payment on the Unsecured Subordinated Convertible Debentures as follows:

“As disclosed in the news release dated July 3, 2008, as a consequence of the Company being in breach of a financial covenant under its senior secured credit facility, the Lender, Tricap Partners Ltd., has exercised its right under the loan agreement to direct The Trustee, Computershare Trust Company of Canada, not to make the scheduled interest payment on the Debentures until further notice from the Lender. The Trustee has issued a notice of default to the Company under the trust indenture.”

Exhibit 27, page 299

59. On August 01, 2008, Mr. James Pattison at 5:04 pm filed a SEC 13G form claiming a 5.5% interest in Birch Mountain on August 29, 2007 and 10.1% interest in Birch Mountain on October 11, 2007 through New York filing agent Weil, Gotshal & Manges.

Exhibit 28, page 301

60. On August 01, 2008, Mr. James Pattison at 5:06 pm filed a SEC 13G/A form claiming a 12.4% interest in Birch Mountain on December 31, 2007 through New York filing agent Weil, Gotshal & Manges.

Exhibit 29, page 306

61. On August 01, 2008, Tricap at 5:07 pm filed a SEC 13D form claiming a 55.0% interest in

Birch Mountain for July 23, 2008 jointly owned by Brookfield, Brascan and Tricap, through New York filing agent Weil, Gotshal & Manges.

Exhibit 30, page 311

62. On August 01, 2008, the Amending Agreement was executed between Tricap and Birch Mountain which contained extremely restrictive terms and conditions designed to facilitate the Birch Mountain receivership. The Early Warning Report dated August 07, 2008 and the Birch Mountain Press Release dated August 27, 2008 summarize many of the restrictive provisions.

Exhibit 31 page 327

63. On August 07, 2008, Tricap's Early Warning Report announced:

“On May 30, 2008 the Corporation's shareholders approved the terms of the Debenture, including the anti-dilution adjustment provisions and conversion provisions. Consequently, the stock exchange requirements applicable to the Corporation would no longer limit the issuance of Common Shares to Tricap upon conversion of the Debenture to 20% or less of the outstanding Common Shares.”; and

Assuming conversion of the entire Debenture at an exercise price of approximately \$0.31, the conversion price in effect as at July 23, 2008, Tricap would have ownership and control over 102,960,197 Common Shares representing approximately 55.0% of the aggregate issued and outstanding Common Shares as of March 31, 2008. Tricap does not own or control any outstanding Common Shares or other securities of the Corporation, other than the Debenture.”

“Tricap is in discussions with the management and directors of the Corporation and its financial advisors regarding the event of default under the Debenture and the Loan Agreement.”

Exhibit 32, page 353

64. On August 27, 2008, Birch Mountain Press Release stated:

“the aggregate principal amount is increased from \$31.5 million to \$34.5 million to accommodate a \$3 million loan amendment fee;

the applicable interest rate is increased from a variable interest rate of prime plus 9% to an interest rate of 20%;

the conversion price pursuant to the Debenture is reduced from the lower of \$0.40 (reduced from \$0.80) per Common Share ... and the current market price at the time of conversion;

should the Company issue equity securities below \$0.40 per share, or securities convertible into equity securities with a strike or exercise price below \$0.40 per equity security, the Initial Price will be reduced to such lower amount per equity security ... ;

the restriction on conversion of the Debenture prior to December 31, 2008 will be removed, such that the Debenture will be convertible in whole or in part into Common Shares at any time throughout the term of the Debenture;

the minimum Change of Control Redemption Price ... pursuant to the Debenture will be amended from its current rate of 120% to 150%. On January 1, 2009, the Minimum Redemption Price will increase to 200%;

the reinstatement of the events of default under the Loan Agreement and the granting of certain board rights in favour of Tricap will occur in the event that a sale agreement or an equity financing of not less than \$10 million is not concluded on or before September 30, 2008 and a closing of the said transaction does not occur on or before October 31, 2008.”

Exhibit 35, page 361

65. On September 08, 2008, representatives of the Pattison Group, the Brookfield/Tricap group and the RBC group toured the Hammerstone Project from approximately 9:00 am through 5:00 pm:

“From: Hugh Abercrombie Date: September 08, 2008 Re: Final Itinerary - The Jim Pattison Group / Brookfield Fort McMurray Tour.
Participants ...
Itinerary”

Exhibit 36, pages 364

66. On September 08, 2008, representatives of the various groups were shown a slide presentation of the Hammerstone Project entitled:

“Birch Mountain Resources Ltd.
Limestone Products For
Alberta’s Oil Sands Industry September 2008.”

Exhibit 37, pages 366

67. On September 12, 2008, Birch Mountain announced that the South Haul Road proceeds were partially released and stated:

“The Company is utilizing proceeds from the sale of the South Haul Road for operations in support of continuing aggregate and reagent limestone sales and the business plan.”

Exhibit 38, page 379

68. On September 19, 2008, Brookfield Press Release again summarized the restrictive terms and conditions of the Amending Agreement designed to facilitate the contrived receivership; for example:

“the reinstatement of the events of default under the Loan Agreement and the granting of certain board rights in favour of Tricap will occur in the event that a sale agreement or an equity financing of not less than \$10 million is not concluded on or before September 30, 2008 and a closing of the said transaction does not occur on or before October 31, 2008.”

Exhibit 39, page 380

69. On September 19, 2008, Brookfield Press Release continued to represent to Birch Mountain that:

“Tricap Partners Ltd. was established by Brookfield Asset Management to provide a source of patient long term capital and strategic assistance to mid-market companies based in North America. With strong industry and financial management expertise, Tricap is well positioned to assist these companies in building value over the long term.”

Exhibit 39, page 381

70. As at September 19, 2008, Tricap’s investment can be summarized as follows:

total investment	\$34,500,000
minus Tricap loan amendment fee	3,000,000
minus Tricap non-refundable work fee	997,500
minus Macleod Dixon legal fees	120,000
<u>minus repayment of Brookfield bridge financing</u>	<u>15,500,000</u>
total new monies advanced	\$14,882,500

71. As early as September 19, 2008, Brookfield, Tricap and Pattison were cementing their plans to eviscerate and defeat the Amending Agreement by assuring that no sale agreement or \$10,000,000 equity was executed by September 30, 2008 as evidenced by the following facts:

Jul 11, 2008	SHR Road Agreement executed
Jul 11, 2008	Confidentiality Agreement executed
Aug 01, 2008	Brookfield and Pattison file jointly with SEC
Sep 08, 2008	Pattison, Eng attend the Hammerstone Tour
Sep 30, 2008	Amending Agreement time line allowed to expire
Oct 31, 2008	Amending Agreement time line allowed to expire
Nov 09, 2008	Tricap arranging to finance court appointed receiver

Nov 26, 2008	1439442 incorporated
Nov 27, 2008	Pattison Agreement executed

Exhibits assorted, pages assorted

72. Subsequent to October 03, 2008 and prior to November 05, 2008, Adair Morse law firm attention: Mr. Robb MacDonald was retained by Birch Mountain to conduct a complete investigation of the death spiral stock trading and the retainer was cancelled as soon as Tricap became aware of these events.

Exhibit 41, page 385

73. On October 03, 2008, the cover up effort of Brookfield and Tricap to hide from public view the arrangement with Brookfield, Tricap and 1439442 to be the sole purchaser of Birch Mountain is evidenced by the Macleod Dixon (Fedun) email to Lawson Lundell (Houghton) which speaks to the unexecuted Second Amending Agreement:

“With a view to bringing the agreement to conclusion we are prepared to revise Recital C as follows:

Notwithstanding the best efforts of the Borrower and its financial advisor and a fulsome process, no such transactions have been entered into and neither the borrower nor its advisor has identified any potential transaction that may be completed at any time in the foreseeable future.

We believe this is factually correct. We understand that BMR and its financial advisor have indeed run a fulsome process on a best efforts basis, presumably BMR has no issue with the correctness of this statement. We also understand that there are no potential transactions currently in view, and it is important to clarify that the extension is being granted not for the purposes of pursuing other transactions but rather for the purpose of permitting recapitalization to occur given the results of the process.

We have attached a revised form of Second Waiver Agreement incorporating this change. We look forward to receipt of a signed copy in accordance with the extension

provided yesterday. Thanks.”

Exhibit 42, page 391

74. On or about September/October, Lawson Lundell (Houghton) in various memorandum documented valuable agreements, applications and, in part stated:

“Further to our telephone call of yesterday, attached herewith please find a brief initial summary of the significant agreements and applications which are in place with Birch Mountain Resources that add considerable value to the Company but which may be in jeopardy in the event of the appointment of a receiver versus recapitalization of the Company.”

Exhibit 44, page 399

75. On November 04, 2008, Eng’s Affidavit is sworn and his affidavit withheld evidence required to be considered with respect to the appointment of a court appointed receiver:

- a. AMEC Report re \$1.6 billion appraisal withheld from Court;
- b. the environmental reports were withheld from the Court;
- c. the recent product shipments were withheld from the Court;
- d. the recent financial reports were withheld from the Court;
- e. Confidentiality Agreement was withheld from the Court;
- f. Tricap control of the receivership was withheld from the Court; and
- g. Pattison Agreement was withheld from the Court.

Exhibit 50, page 413

76. On November 04, 2008, Eng’s Affidavit is sworn and the affidavit contains several misleading statements, for example:

- a. paragraph 12, is misleading since the Confidentiality Agreement as executed, the SEC joint filings, the Hammerstone Project tour and the Pattison Agreement eventually executed were not disclosed to the Court:

“It was a specified term of the Waiver Agreement that Birch Mountain would, among other things, conclude a sale of the Company in its entirety or a sale of substantially all its property no later than September 30, 2008.”

- b. paragraph 13, is also misleading since the Waiver Agreement never expired as stated in the Eng’s Affidavit:

“As a consequence of the failure of Birch Mountain to conclude a sale of the Company or its assets, the Waiver Agreement **expired**. In and around the time that the Waiver agreement **expired**,”

- c. the Amending Agreement never expired and in fact several paragraphs refer to its continuation:

paragraph 2.1 (a): “The parties agree that for purpose of Section 2.10 of the Loan Agreement, if the Lender’s Counsel holds all or any portion of the SHR Agreement Proceeds (other than the AE Amount) after November 28, 2008”;

paragraph 2.1 (b) (ii): “the Lender otherwise directs, if the determination and documentation provided for in Sections 2.1 (b) (i) (A) and (B) are not made or provided for as the case may be, by January 1, 2009; in such event the AE Amount will be released in accordance with the Lender’s direction.”;

paragraph 3.3 (a): “The obligation of the Borrower to comply strictly with the Financial Covenants shall be re-instated for the reporting month of November, 2008 and shall apply at all times thereafter.”; and

paragraph 5.3 (b) (d.1): “If ... (the September 30, 2008 deadline is not met then the remedy is set forth) ... the Subscriber shall have the right upon Notice to the Corporation, to designate three representatives which the Corporation shall nominate for election to the Board”

Exhibit 50, page 413

77. On November 05, 2008, Tricap initiated through the Court of Queen's Bench of Alberta the appointment of PwC as the receiver of Birch Mountain, in order to transfer the assets of Birch Mountain to 1439442, a private wholly-owned subsidiary of Tricap.

Exhibit 51, page 417

78. On November 07, 2008, Birch Mountain Material Change Report signed by PwC (Don Roberts), in part, stated:

“No proceedings against or in respect of the Corporation or the Property can be commenced or continued except with the written consent of the Receiver or with leave of the court and any and all proceedings currently under way against or in respect of the Corporation or **the Property are stayed and suspended pending further order of the court.**” [emphasis added]

Exhibit 52, page 431

79. On November 07, 2008, Russ Gerrish email to PwC (Nakaska), in part, stated:

“Steve [Steve Bolen of Kiewit] asked what would happen if we got to mid-year and then dissolved. I responded by telling him if we are in business to commence the contract, the numbers by mid-year will be increasingly positive so that would not happen. Our financial position will steadily improve throughout the year as more sales materialize and unit costs decrease through sales.

The K2 contract is for three years with Imperial. Our contract will be for the first year, more will come if/when the first year is successful.”

Exhibit 53, page 433

80. On November 09, 2008, Tricap was in control of Birch Mountain and was in the process of

negotiating to fund the court appointed receivership and hide from immediate view the Kiewit Energy Canada supply agreement:

“ As Tim Nakaska may have mentioned to you, we are optimistic that we can receive some assurances that funding for the receiver would be in place, at least until a sale mandate is concluded. We are working towards that type of agreement with Tricap and hope to have it in place this week. As a result, we are somewhat reluctant to have a meeting with K2 tomorrow without having full assurance that we have access to funding. We are prepared to have this meeting, but we do not think we will have any assurances in place at that time. We suggest that the meeting be held early the week following, as if Steve Bolen is out of town the delay would hopefully not be of concern.”

Exhibit 54, page 439

81. On November 11, 2008, Tricap was in control of Birch Mountain and PwC and Tricap were well informed as to the importance of the Kiewit Energy Canada supply agreement:

“Once we have that done, we should start to do a monthly cash flow forecast for 2009. To start with, please incorporate the K2 contract. Russ is to receive a schedule of volumes by month. We should also consider whether the Suncor FGD in this forecast. Please speak to Russ as to a level of monthly sales that we can reasonably expect to see, similar to the confirmed order. Can we expect sales of \$500K per month as an example, then overlay the K2 contract.

Tim and I are trying to arrange a meeting with Tricap for early next week, so if this could be finalized by Monday that would be great. Can we shoot for a draft by Monday morning, then subject to revisions we can finalize later Monday?”

Exhibit 55, page 440

82. On or about November 18, 2008, Birch Mountain Acquisition Opportunity Report with PwC contact information, gave no information related to the value of the asset and any suggested sale price and range of sale prices which were known or should have been known by PwC at that time. The Acquisition Opportunity Report is silent with respect to environmental approvals and other important considerations.

Exhibit 57, page 443

83. On November 21, 2008, the Notice of Receiver records the Book Value of the Mineral Properties at \$51,402,006 and the Notice of the receiver is very careful not to mention the AMEC Report valuation of \$1.6 billion.

Exhibit 59, page 448

84. On November 21, 2008, the Notice of Receiver also lists all the unsecured trade creditors which records McDonald as an unsecured trade creditor for \$19,000 and others as follows:

“Debenture holders	\$ 5, 175,000
McDonald	19,000
<u>Pattison Group</u>	<u>29,325,000</u>
Total	\$38,375,877

The preferential treatment that was given to Pattison, a Brookfield director can be summarized as follows:

Total unsecured trade creditors	\$38,375,877
Pattison Group	<u>29,325,000</u>
Creditors not receiving preferences given to Pattison	\$ 9,050,877

Exhibit 59, page 450

85. On November 26, 2008, 1439442 was incorporated since both Tricap and 1439442 were required parties to the Pattison Agreement and 1439442 was to receive all of the assets of Birch Mountain to be jointly owned by Brookfield/Tricap and the Pattison Group as soon as

the receivership sale order was obtained.

Exhibit 60, page 453

86. On November 27, 2008, the Pattison indebtedness and security was assigned to Tricap and in return the Pattison Group received various preferences and options not available to other shareholders, creditors and debenture holders of Birch Mountain.

Exhibit 61, page 459

87. On December 10, 2008, 1439442 announced that it had acquired \$29,280,000 of the Unsecured Subordinated Convertible Debentures for nominal cash consideration and other non-cash consideration by way of private agreement and avoided all mention of Pattison and the preferential treatment afforded this Brookfield director:

“5. The Unsecured Debentures were acquired by way of private agreement. 6. 14394442 paid nominal cash consideration and other non-cash consideration to acquire the Unsecured Debenture. 7. The Unsecured Debentures were acquired to provide Tricap, as a creditor in the Corporation’s current receivership proceedings with greater flexibility.”

Exhibit 62, page 471

88. On December 12, 2008, the Tricap Offer to Purchase was made to PwC Attention: Don Roberts and the said Offer to Purchase is silent with respect to the Confidentiality Agreement, the SEC Joint Filings, the Hammerstone Tour and the Pattison Agreement and the favourable preferences and options granted to Pattison by Tricap.

Exhibit 63, page 473

89. On December 12, 2008, the counsel for Tricap was Macleod Dixon (now Norton Rose

Fulbright) the same law firm that drafted the Loan Agreement, the Amending Agreement, the demand pursuant to the BIA, the notice of intention to enforce security pursuant to the BIA, the additional receivership documentation, incorporated 1439442, drafted the Pattison Agreement and the defendant's present counsel.

Exhibits assorted, pages assorted

90. On December 16, 2008, Tricap, in a SEC filing, stated that it may be deemed to be the sole beneficial owner of 3.4 billion Birch Mountain common shares or 97.6% of the Birch Mountain common shares.

“As a result of both investments, Tricap may be deemed to be the sole beneficial owner of 3,458,872,727 Common Shares that would be issuable upon conversion of both the Unsecured Subordinated Convertible Debentures and the Senior Secured Convertible Debentures, which represent 97.6% of the Common Shares outstanding.”

Exhibit 64, page 484

91. On December 16, 2008, the PwC (Roberts) email confirms that PwC was accommodating Tricap, for example, arranging meetings for Tricap to discuss cash flow projections for the 2009 period”

“Gents, Tricap would like to arrange a meeting to discuss the commencement of cash flow projections for the 2009 period. This would likely be an 11 month projection from February 1, 2009 to December 31, 2009.

In order to facilitate discussions to start the project, it would be preferable to meet in person with Tricap (sorry Randy you will have to dial in). Would you advise your availability for an hour to hour and half tomorrow or Thursday? Give me a couple time spots so I can coordinate everyone activities, and then get Tricap to check their availability.”

Exhibit 65, page 501

92. On December 17, 2008, Tricap's offer to purchase all of the assets of Birch Mountain was accepted by PwC the receiver of Birch Mountain.

Applicant Affidavit, Exhibit B

93. On December 31, 2008, Tricap was in control of Birch Mountain and PwC and Tricap totally focussed on the closing of the Tricap sale agreement:

“We are currently working in a critical period of time to close the Tricap transaction as soon as possible. Additionally, Tricap has requested that management prepare a Business Plan. Frankly, we would think it would be of optimum benefit to be at the workplace where historic information would be available, and as well allow the group to meet to discuss proposed components of the Business Plan. Over the next couple weeks we suggest that all members of the team work from downtown so that you are not working in isolation, but as a team.”

Exhibit 66, page 504

94. On January 05, 2009, PwC's First Report was filed and PwC used the historical cost of the 1,000,000 acre leases as \$51.4 million and not the AMEC Report valuation of \$1.6 billion.

Applicant Affidavit, Exhibit C

95. On January 05, 2009, in PwC's First Report, PwC makes no reference to the Pattison Agreement and the anticipated sale to Tricap, Pattison and 1439442 as previously planned as early as July 11, 2008.

Applicant Affidavit, Exhibit C

96. On January 05, 2009, in PwC's First Report, which required Court approval, PwC withheld from the Court any and all information required by the Court to make an informed decision with respect to the sale of the assets to Tricap and the Pattison Group.

Applicant Affidavit, Exhibit C

97. On January 05, 2009, the Notice of Motion to convey all of the assets of Birch Mountain to Tricap, 1439442 and the Pattison Group was also filed but no reference whatsoever was made to the Pattison Agreement and other material documents.

Applicant Affidavit, Exhibit C

98. On January 28, 2009, 1439442 changed its name to Hammerstone Corporation and this corporation continues to develop and operate the Hammerstone Project.

Exhibit 68, page 529

99. During June 2010, the Natural Resources Conservation Board Decision NR 2010-01 confirmed that the shareholder expectations related to Birch Mountain were justified:

“The Hammerstone Project will extend Hammerstone’s currently operating Muskeg Valley Quarry in the Regional Municipality of Wood Buffalo. Hammerstone proposes to operate the Project and the MVQ as a single integrated quarry and aggregate production operation. The combined quarry operation will disturb 1,265 hectares, of which 1,010 hectares is attributed to the Hammerstone Project. Quarry operations are anticipated to average limestone product sales of 7,444,112 tonnes/year in the first 5 years of integrated operation, escalating to 24,415,028 tonnes/year of average sales over the final 10 years of operation. Mining operations are expected to conclude in 2060.”

Exhibit 72, page 541

100. On April 26, 2011, the Ontario Superior Court per Justices Perell in *Bond v. Brookfield* stated:

“62 In my opinion, it is not the case that Birch Mountain is an Ontario corporation and the Defendants are not affiliates of Birch Mountain. The Ontario *Business*

Corporations Act does not apply and the Ontario court does not have jurisdiction *simpliciter*.”

Eng Affidavit, tab Y

101. On November 16, 2011, the Ontario Court of Appeal per Justices Laskin, Rosenberg and Rouleau in *Bond v. Brookfield* stated:

“01 We agree with the motion judge that on this record Birch Mountain could not be an affiliate of Tricap simply because Tricap had an unexercised conversion right to obtain voting shares. Since Birch Mountain is not a corporation to which the OBCA applies and none of the other defendants are affiliates of Birch Mountain, it follows that even assuming the appellant held shares in Birch Mountain, she is not a complainant under the OBCA. She is not the holder of a security of a "corporation", meaning an Ontario corporation, since Birch Mountain is an Alberta corporation, nor of any affiliate of Birch Mountain **within that part of the definition of complainant in s. 245 relied upon by the appellant.**”; and [emphasis added]

“02 Accordingly, as held by the motion judge in para. 62 of his reasons, the OBCA does not apply so as to give Ontario jurisdiction.”

Eng Affidavit, tab Z

102. On November 16, 2011, the Ontario Court of Appeal restricted their decision solely to the jurisdictional issue but Justice Laskin did comment generally on the merits of the action as follows:

“You may have a terrific lawsuit but that’s not what’s before us.”

Exhibit 73, page 553

quote found at 1 hour 25 minutes 43 seconds

copy of disk forwarded to applicant

103. On November 16, 2011, the Ontario Court of Appeal did not comment on:

- a. the definition of “Affiliate” in the Loan Agreement dated December 21, 2007; or
 - b. on the basket provision although the Ontario Court of Appeal indirectly commented on the availability of the basket provision when the Court stated: “within that part of the definition of complainant in section 245 relied upon by the appellant (equivalent of section 239 (b) (i))”.
104. A corporate search was conducted on Brookfield which indicates that the corporation was incorporated under the Ontario *Business Corporations Act* and that its registered office and mailing address is 181 Bay Street, Suite 300, P.O. Box 762, Toronto, Ontario M5J 2T3.

Source of Information, McDonald Corporate Search

105. A corporate search was conducted on Brookfield Bridge Lending Fund Inc., which indicates that the corporation was incorporated under the Ontario *Business Corporations Act* and that its registered office and mailing address is 181 Bay Street, Suite 300, P.O. Box 762, Toronto, Ontario M5J 2T3.

Source of Information, McDonald Corporate Search

106. A corporate search was conducted on Brookfield Special Situations Partners Ltd. which indicates that the corporation was incorporated under the Ontario *Business Corporations Act* and that its registered office and mailing address is 181 Bay Street, Suite 300, P.O. Box 762, Toronto, Ontario M5J 2T3. The report shows that prior to November 18, 2009, the corporation was named Tricap.

Source of Information, McDonald Corporate Search

107. On Brookfield's website, "brookfield.com", Brookfield has posted its Tricap Restructuring Representations.

Source of Information, Internet Search

108. On Brookfield's website, "brookfield.com", Brookfield has posted its Code of Business Conduct and Ethics.

Source of Information, Internet Search

109. McDonald and Johnson maintain a website, "brookfieldclassaction.com" to communicate with the potential class members.

Source of Information, Internet Search

110. The substantial harm caused to Birch Mountain common shareholders will be fully developed should the action proceed to a certification hearing but one example is described to emphasize the human impact:

"Please, will you let me know what you need to register our shares held with TD Ameritrade for Birch Mountain: We lost all our savings of 20 years."

Exhibit 75, page 556

111. **COMMON SHARE PROSPECTUS DATED AUGUST 26, 2005**

112. The defendants knew, or should have known, that the Common Share Prospectus contained full, true and plain disclosure related to the Birch Mountain underwriting for 9,000,000 Birch Mountain common shares at \$4.00 per share for a total of \$36,000,000.

113. The Common Share Prospectus contained full, true and plain disclosure related to Capital Cost at page 12, Regulatory Status at page 13, and Use of Proceeds at page 16.

“Capital Cost The estimated cost to construct, install and commission the initial phase of the Hammerstone Project is \$130 million, which includes the capital cost of blasting, crushing and stockpiling equipment for operating the MVQ. ... The total capital cost estimate over the life of the project is \$291 million. (page 12)

Regulatory Status Birch has largely completed the geological and environmental fieldwork to be used in the regulatory filings for the Hammerstone Project EIA and application, which the Corporation expects to file later in 2005. Engineering, environmental and regulatory costs to complete and file this application in 2005 are projected to be approximately \$2.4 million. As this is a preliminary estimate, the final cost for regulatory approval of the Hammerstone Project could be higher if referred to a public hearing. (page 13)

Use of Proceeds The estimated net proceeds to the Corporation from the offering, ... will be approximately \$33,720,000. Birch intends to use the net proceeds of this offering to fund initial operations of the MVQ, the first stages in the development of the Hammerstone Project and for working capital purposes estimated as follows:

Site preparation of the MVQ	\$ 2,300,000
Initial operations of the MVQ	800,000
First stages of development of the Hammerstone Project	11,000,000
Aggregate processing equipment	8,000,000
Working capital	<u>11,620,000</u>
Total	\$33,720,000

None of the proceeds from the Offering will be applied to re-payment of the debt by the Corporation to the Lender.” (page 16)

Exhibit 01, page 12

114. **UNSECURED SUBORDINATED CONVERTIBLE DEBENTURES**

115. The defendants knew, or should have known, that the Short Form Prospectus dated November 28, 2006 contained full, true and plain disclosure related to the value of Birch Mountain resources on page 14 of the said Prospectus:

“Updated limestone reserves reported in the 2006 Technical Report are 1.0 billion tonnes (net of mining losses), with 460 Mt of proven limestone reserves and 539 Mt of probable limestone reserves. These reserves are consumed over the projected 55-year quarry life from 2006 to 2060. Initial development capital required prior to 2013 to construct the Hammerstone quarry and aggregate plant, the first activation and the first two calcining kilns, and the first hydrating plant, is estimated in the 2006 Technical Report to be \$270 million. Total development capital spending over the life of the project is estimated to be \$577 million, with a further \$443 million in sustaining capital to be spent over the life of the project.

The discounted cash flow net present value (“NPV”) of the Hammerstone Project in constant 2006 dollars, using a discount rate of 7.5%, is \$1,669 million on a pre-tax basis and \$1,099 million on an after-tax basis. The internal rate of return (“IRR”) pre-tax is 36.2% and after tax is 31.2% while the payback period is estimated to be 5.9 years from first production in January 2006. All operating and capital costs are deducted from revenues in calculating the annual cash flows used to arrive at the NPV.”

Exhibit 04, page 72

116. **BROOKFIELD/TRICAP REPRESENTATIONS**

117. The specific representations that were made on the joint web pages of Brookfield and Tricap are as follows:

“Brookfield’s restructuring operation invests in and provides strategic assistance to companies experiencing financial or operational difficulty.”;

“Tricap Partners Ltd. invests in companies where it can capitalize upon Brookfield’s operating experience and long term perspective to drive change and build value. Investment candidates typically have attractive tangible assets with significant operating capacity and a proven operating history but are experiencing short term duress. Focus industries include real estate, financial, manufacturing, forest products metals and mining, energy, and power generation.”; and

“Tricap targets transactions in which it can invest between \$50 million and \$500 million in either debt and equity capital. When Tricap makes an equity investment, it seeks to play a meaningful role in the restructuring process and governance of the

recapitalized company. Tricap has a 3 to 7 year investment horizon. Our team includes operating, finance and legal professionals with extensive experience in reorganizations under Canadian and U.S. legislation.”

Exhibit 06, page 128

118. Brookfield never changed its representation to the public and in its Press Release dated April 02, 2009 entitled “Tricap Announces Launch of Hammerstone Corporation and Appointment of its President” stated:

“Tricap was established by Brookfield Asset Management to provide a source of patient, long term capital and strategic assistance to mid-market companies based in North America. With strong industry and financial management expertise, Tricap is well positioned to assist companies in building value over the long term.”

Exhibit 69, page 532

119. Brookfield/Tricap continuously breached the representations as evidenced by the following particulars:
- a. no reasonable effort to drive change and build value;
 - b. no reasonable effort to resolve short term duress;
 - c. no investment between \$50 million and \$500 million;
 - d. no meaningful role in the restructuring process and governance;
 - e. no three to seven year investment horizon; and
 - f. no operating, finance and legal assistance.

Exhibits assorted, pages assorted

120. **LOAN AGREEMENT**

121. The Senior Secured Convertible Debenture does not define the word “affiliate” but refers to the Loan Agreement (incorrectly named the Credit Agreement):

“Affiliate” has the meaning ascribed to that term in the Credit Agreement;” and

“Credit Agreement” means the credit agreement dated December 21, 2007 between the Issuer (Birch Mountain) and the Holder (Tricap), as may be amended, restated or supplemented from time to time;”.

applicant affidavit, exhibit N

122. The Amending Agreement does not define the word “affiliate” but refers to the Loan Agreement:

“Recital A The parties entered into a loan agreement (the Loan Agreement”) dated December 21, 2007, and the Senior Secured Convertible Debenture ... (as those agreements are defined in the Loan Agreement)”

applicant affidavit, exhibit S

123. On December 21, 2007, the Loan Agreement was executed between Tricap and Birch Mountain which contained the following terms:

1.1 Definitions For the purposes of this Agreement:

“Affiliate” means, in respect of any Person, any Person which, directly or indirectly, controls or is controlled by or is under common control with such first mentioned Person; and for the purpose of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the power (including de facto control) to direct, or cause to be directed, the management and policies of the Person, whether through the ownership of voting shares or units or by contract or otherwise, and with respect to the Borrower includes each of HPL,

Muskeg Valley, Dawson Bay and the Fort McKay JV”; (page 135)

“Convertible Securities” means all subscriptions, options, calls, warrants, commitments, contracts, pre-emptive rights, rights of first refusal, demands, conversion rights or other agreements, arrangements or securities of any character or nature whatsoever under which the Borrower is or may be obliged to issue any Common Shares or securities directly or indirectly convertible into, or exercisable or exchangeable for, Common Shares”; and (page 136)

“Debenture Shares” means the Common Shares that may be issued from time to time upon any conversion or redemption of the Senior Secured Convertible Debenture in accordance with its terms.” (page 137)

Exhibit 10, page 135

124. Section 9.18 sets forth the entire agreement clause which means the definitions in the Loan Agreement are definitive:

“The Loan Documents constitute the entire agreement between the parties hereto pertaining to the matters therein set forth and supercede and replace any prior understandings or arrangements pertaining to the Credit Facilities, including the Term Sheet.”

Exhibit 10, page 158

125. Section 6.1 of the Loan Agreement defines the “Affirmative Covenants - General” which relate to *de facto* control pursuant to the terms of the contract; (page 139)
126. Section 6.2 of the Loan Agreement defines the “Affirmative Covenants - Reporting” which relate to *de facto* control pursuant to the terms of the contract; (page 149)
127. Section 6.3 of the Loan Agreement defines the “Financial Covenants” and is the *de facto* control related to cash flow and other financial considerations:

“So long as any Obligations remain outstanding and unless the Lender otherwise consents in writing, the Borrower covenants and agrees with the Lender that it will at all times maintain: (a) Minimum Shareholders’ Equity of not less than \$10,000,000; and (b) A Consolidated Working Capital Ratio of not less than 1.0 to 1.0.”; (page 152)

Exhibit 10, page 139

128. Section 6.4 of the Loan Agreement defines the “Negative Covenants” which are extremely restrictive and exercise *de facto* control of not less than 27 corporate decisions:

“So long as any Obligations remain outstanding and unless the Lender otherwise consents in writing, the Borrower covenants and agrees with the Lender that it shall not do, allow, permit or suffer to exist, and shall not permit any of the other Obligors to do, allow, permit or suffer to exist, any of the following in respect of any Obligor:”.

129. Section 6.4 restricts Birch Mountain from all of the listed acts, as follows:

- a. encumber property;
- b. disposal or surrender of assets;
- c. amend material contracts;
- d. purchase money security interest restrictions;
- e. subsidiaries restrictions;
- f. loan restrictions;
- g. acquisition and investment restrictions;
- h. corporate distribution restrictions;
- i. material change restrictions;
- j. change restrictions;
- k. unrelated business restrictions;
- l. indebtedness restrictions;
- m. merger, amalgamation or winding up restrictions;
- n. redemption of securities restrictions;
- o. issuance of share restrictions;

- p. transfer of shares restrictions;
- q. financial assistance restrictions;
- r. hedging arrangements restrictions;
- s. non arm's length transactions restrictions;
- t. capital expenditure restrictions;
- u. receivable restrictions;
- v. accounts restrictions;
- w. cash collateral account restrictions;
- x. material expenditures and financial commitments;
- y. production payment transactions;
- z. equipment warranties restrictions;
- aa. other loan document restrictions.

Exhibit 10, page 152

130. At all material times, Brookfield, Tricap and Pattison were thorough in calculating the percentage of ownership if the Debentures were converted to Birch Mountain common shares for the purpose of control:

Aug 01, 2008	Pattison SEC 13G filing as of Aug 29, 2007	5.5%
Aug 01, 2008	Pattison SEC 13G filing as of Oct 11, 2007	10.1%
Aug 01, 2008	Pattison SEC 13G/A filing as of Oct 11, 2007	12.4%
Dec 24, 2007	Tricap Press release re restriction to	20.0%
Dec 24, 2007	Tricap Early Warning Report	31.4%
Aug 01, 2008	Tricap SEC 13D filing as of Aug 29, 2007	55.0%
Aug 07, 2008	Tricap Early Warning Report	55.0%
Dec 16, 2008	Tricap SEC Form 13D/A filing	97.6%

Exhibits assorted, pages assorted

131. **CONFIDENTIALITY AGREEMENT**

132. On July 11, 2008, the Confidentiality Agreement was executed between Birch Mountain and Great Pacific Capital which contained the following recitals and terms:

“A. The parties wish to enter into discussions with respect to a potential transaction which will necessitate the disclosure of all or part of Birch Mountain's Confidential Information;”;

“B. Pattison acknowledges the value of the Confidential Information to Birch Mountain and the necessity to protect such information at all times upon the terms and conditions set forth herein;”;

“C. It is appropriate in connection with these considerations that the parties enter into this Agreement to constrain the purchase of Birch Mountain's securities, and to deal with certain other matters, all on the terms hereinafter set out;”;

“1. 1.1 (c) “Confidential Information” means any and all information disclosed to Pattison or any affiliate ... with respect to the identification and recovery of limestone deposits and production of lime products, the establishment and operation ... of quarries or other facilities for the mining, processing, development and sale of aggregate and industrial minerals from properties owned by Birch Mountain or otherwise;”;

“2. Birch Mountain agrees, from the date hereof and until terminated, to provide, or continue to provide, to Pattison information to allow Pattison to consider and/or determine to enter into the Potential Transaction.”;

“3. Pattison agrees that all Confidential Information made available is confidential and proprietary to Birch Mountain, will be so treated by Pattison and shall remain the property of Birch Mountain.”;

“4. Pattison agrees that all Confidential Information shall be kept in strict confidence and shall not be used, dealt with or exploited in any manner for any purpose other than a Potential Transaction and none of the Confidential Information shall be disclosed to any person other than your representatives assisting in the evaluation of the Potential Transaction.”;

“11. It is agreed that Birch Mountain will be irreparably injured by a breach of this agreement by Pattison, which injury could not be adequately compensated for by damages, and Birch Mountain shall be entitled to equitable relief, and injunctive relief and specific performance, in the event of any breach of this agreement. Such remedies shall not be deemed to be exclusive remedies for the breach of this agreement but shall be in addition to all other remedies available hereunder or otherwise at law or in equity.”;

“12. ... Notwithstanding the foregoing, in the event of any litigation regarding or arising from this Agreement, upon the final order of a court of competent jurisdiction, the non-prevailing party shall reimburse the prevailing party for its reasonable costs and expenses (including reasonable attorney fees) incurred in connection with any such litigation.”;

“14. This Agreement (notwithstanding Section 11) shall remain in full force and effect for a period of two years from the date hereof (notwithstanding that the Confidential Information may have been returned or copies or other reproductions thereof destroyed prior to the expiration of such period) and thereupon shall terminate.”; and

“16. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter of this agreement. No supplement, modification, waiver or termination of this agreement shall be binding unless executed in writing by the party to be bound thereby. For greater certainty and without limitation, Pattison acknowledges that this Agreement does not constitute any license of any of the Confidential Information.”

Exhibit 24, page 286

133. **AMENDING AGREEMENT**

134. On August 01, 2008, the Amending Agreement was executed between Tricap and Birch Mountain which contained the following terms:

“3.1 Existing Defaults and Events of Default

(a) The Borrower acknowledges that the following Defaults and Events of Default (collectively, the "Subject Events of Default") under the Loan Agreement:

(i) the Minimum Shareholders' Equity of the Borrower was: (A) \$9,402,784 for the period from April 1, 2008 to April 31, 2008; and (B) \$7,587,268 for the period from May 1 to May 31, 2008, in breach of Section 6.3(a) of the Loan Agreement, and that it received notice of same;

(ii) the Borrower's Consolidated Working Capital Ratio was 0.95 for the period from May 1 to May 31, 2008, in breach of Section 6.3 (b) of the Loan Agreement, and that it received notice of same;

(iii) the Borrower failed to pay the interest due June 30, 2008 under the Subordinated Convertible Debentures, in breach of Sections 6.1 (e) and 6.1 (u) of the Loan Agreement, and that it was at all times aware that this failure to pay interest was a default under the Loan Agreement; and

(iv) the Borrower failed to pay various trade creditors amounts when due to them in the ordinary course of business, in breach of Section 6.1 (j) of the Loan Agreement and that it was at all times aware that this failure to pay creditors was a default under the Loan Agreement.”

“3.2 Waivers of the Subject Events of Default

(a) The Lender confirms that the Subject Events of Default are hereby waived subject to the following conditions and the other terms of this Agreement” (see Amending Agreement for full reference)”;

“3.3 Financial Covenant Holiday

(a) Subject to the conditions. set forth in this Section 3.3 and the other terms in this Agreement, the Lender confirms that the Borrower shall not be required to comply with the Financial Covenants for the reporting months of June, 2008 through to and including October, 2008. The obligation of the Borrower to comply strictly with the Financial Covenants shall be re-instated for the reporting month of November, 2008 and shall apply at all times thereafter.”

(d) The compliance holiday granted in respect of the Financial Covenants pursuant to Section 3.3(a) shall not be effective if either:

(i) the Borrower has not:

(A) entered into a binding, unconditional (subject only to customary third party approvals) agreement (the "Sale Agreement") by no later than September 30, 2008 providing

for:

(1) the sale of the Borrower; or

(2) the sale, assignment or transfer of all or substantially all of the Borrower's Property ... ; and

(B) closed the transactions contemplated in the Sale Agreement by no later than October 31, 2008; or

(ii) the Borrower has not completed an equity financing by no later than September 30, 2008 pursuant to which it has raised no less than \$10,000,000 in gross proceeds and no less than \$9,000,000 in net proceeds, and pursuant to which such net proceeds can be used by the Borrower for its general corporate purposes.”

“4.1 Fee

“As consideration for the waivers, covenant holidays and other accommodations provided for herein, a fee of \$3,000,000 is payable by the Borrower to the Lender effective as of hereof. The Borrower has elected that such fee be added to the principal owing by the Borrower to the Lender under the Loan Agreement, and accordingly, as at August 1, 2008, the principal amount of \$34,500,000 is owing by the Borrower to the Lender under the Loan Agreement.”

“5.3 Amendments to the Investor Rights Agreement

Effective as of the date of this Agreement, the Investor Rights Agreement is hereby amended as follows:

(a) the reference to "nine" in Section 2.1(a) of the Investor Rights Agreement is deleted and replaced with "seven";

(b) the following is added as a new Section 2.1(d.1):

“(d.1) If the Corporation does not, by no later than September 30, 2008, enter into a binding, unconditional (subject only to customary third party approvals) agreement (the "Sale Agreement") providing for:

(i) the sale of the Corporation; or

(ii) the sale, assignment or transfer of all or substantially all of the Corporation's Property ...

or does not, by no later than October 31, 2008, close the transactions contemplated in the Sale Agreement, the Subscriber shall have the right, upon notice to the Corporation, to designate three Representatives which the Corporation shall nominate for election to the Board (or otherwise include in a management slate of directors proposed by the Corporation for election by its shareholders) at any meeting of the shareholders of the Corporation”

“8.4 Entire Agreement

This Agreement shall supercede and replace the Term Sheet.”

Exhibit 31, page 327

135. **TRANSCRIPT PROCEEDING FOR JAN 08, 2009 BEFORE JUSTICE LOVECCHIO**

136. The Transcript of the Proceedings in the Court of Queen’s Bench of Alberta, Courthouse, Calgary, Alberta (Certificate of Transcript dated October 29, 2012), in part, stated:

Page 2, line 10 Mr. Watson: Don Roberts, the Receiver, is in the courtroom.

Page 2, line 36 The Court: – I received everything and I even read the report. So, I’ve seen the prior history about how RBC Dominion tried to market the property. I’ve seen all of that.

Page 3, line 33 Mr. Gorman: Sir, and I – I – I guess my – my question is depending upon timing and if – if the – the order is approved and the sale goes ahead, I might become a whole lot more interested in – in –

Page 4, line 23 Mr. Watson: Sir, there's two significant issues to this application since the -- **the remaining issue really is just the approval of the actions of the Receiver in accepting the offer, the only offer, of Tricap.** The one is the sale process carried out by the Receiver/Manager. If you've read the Receiver's report, then you've seen that these assets have been out in the street for almost a year. At the beginning of January of '08 there was some internal strategizing trying to find a strategic partner. That failed. July there was a more public process - 98 parties contacted, some number of confidential agreements signed, and no interest, and then it was more or less rejuvenated in August of '08, but without much vigour.

The Receiver carried out its own sales process for a variety of reasons, but in a harsher economic environment than before, and although there were 18 people who kicked the

tires, no one wanted to buy the Chev. So, the only party who came up with the offer is Tricap, and they've done it in the form of forgiveness of debt offer.

The offer itself is acceptable to the Receiver and is recommended by the Receiver. It's all the assets. It's unconditional. It's for forgiveness of a significant amount of debt in the context when no one else was prepared to come up to that number, and it's the assumption of various Government liabilities and other liabilities. **So, it's clean in the sense of -- of terminating this receivership.**

Sir, let me provide to you a copy of the order sought. I believe you may have received from the diligent Ms. Fellows a copy of one version of the order, but we couldn't even black-line it, Sir. The changes were coming kind of fast and furious. But they more or less relate to the miscellaneous issues. But let me explain the structure of the offer in any event.

The order that we're -- sorry, the order -- the order that we're seeking is that -- the acceptance of the offer is approved, the vesting of the assets - and there's some qualifications about what those assets are - is approved today to occur on closing, wherein there will be a more formal purchase and sale agreement and -- and other closing documents executed. That's expected to be the end of this month. Upon the Receiver filing a certificate with the Court and serving it to interested parties that the closing has occurred, that's when vesting occurs. That avoids further court applications and -- and will allow us the two-week period in order to close this.

This order carves out, and you'll see reference in paragraph 4 to the order to something called alleged priority claims. The alleged priority claims are identified in schedule 1. [emphasis added]

Exhibit 67, page 506

137. Justice LoVecchio was not informed with respect to the following minimum issues:
- a. AMEX Report re \$1.6 billion appraisal withheld from Court
 - b. the environmental reports were withheld from the Court;
 - c. the recent product shipments were withheld from the Court;
 - d. the recent financial reports were withheld from the Court;
 - e. the Confidentiality Agreement was withheld from the Court;
 - f. Tricap control of the receivership was withheld from the Court; and

- g. the Pattison Agreement was withheld from the Court.
138. Any sale effort related to the Birch Mountain assets prior to September 01, 2008 would not have accounted for the following facts:
- a. the South Haul Road Agreement was not executed;
 - b. the Kiewit Supply Energy inquiries were not in play;
 - c. the profitable third quarter results had not yet occurred; and
 - d. the Brookfield/Tricap negotiation was not known to the public.
139. The “questions to discover” process will examine many of the statements that Justice Lovecchio was asked to rely upon, for example:
- a. the January 2008 strategizing to find a strategic partner;
 - b. the July 2008 sale process that contacted 98 parties;
 - c. the August 2008 sale process; and
 - d. the November 2008 sale process.
140. **PATTISON AGREEMENT**
141. On November 27, 2008, the Pattison Agreement was executed between Great Pacific Capital, 1439442 and Tricap which contained the following recitals and terms:
- “C. On October 31, 2008 Tricap demanded repayment of its loan under the Senior Loan Agreement, and a receiver was appointed by the Court of Queen's Bench of Alberta in respect of the Borrower on November 5, 2008;”;
- “D. The Assignee is a wholly owned subsidiary of Tricap;”;
- “2. Assignment of Assigned Interest ... (b) As consideration for the transfer of the Assigned Interests the Assignee has paid the Assignor the sum of Cdn \$10 and has granted the Option to the Assignor as set forth in clause 3 below.”;

“3. Grant of Option (a) Subject to clause 3(b), for the period commencing on the date hereof and ending November 7, 2011 (the "Option Period"), the Assignor shall have the option (the "Option") to: ... or (ii) if at the conclusion of the Borrower receivership proceedings the Assignee acquires the Borrower or substantially all of the Borrower's assets, acquire 30% of the shares in the capital of the Assignee;”

“5. Management and other Matters - During the period when the Assignor has the right to exercise the Option pursuant to clause 3(a)(ii), the Assignor shall use its commercially reasonable efforts to assist the Assignee in securing a qualified and experienced management team and to assist the Assignee in connection with other corporate and operational matters as the Assignee may reasonably request, .. .”; and

“10. Assignee Credit Decision The Assignee acknowledges to the Assignor that the Assignee has itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigations into the financial condition, creditworthiness, condition, affairs, status and nature of the Borrower.”

Exhibit 61, page 459

142. **TRICAP’S EARLY WARNING REPORT**

143. On December 10, 2008, Tricap’s Early Warning Report avoids all mention of Pattison, the Pattison Group, the Confidentiality Agreement, the Pattison Agreement and the preferential treatment afforded Pattison in his role as a director of Brookfield.

exhibit 62, page 470

144. On December 10, 2008, Tricap’s Early Warning Report confirms that the reason the Convertible Debentures were not converted is that Brookfield, Tricap, 1439442 and Pattison opted for the court appointed receivership procedure:

“4. (a) ... Given the Corporation’s current receivership proceedings, neither Tricap nor 1439442 currently intends to exercise any conversion rights under the Debenture or the Unsecured Debentures.”; and

“7. The Unsecured Debentures were acquired to provide Tricap, as a creditor in the

Corporation's current receivership proceedings, with greater flexibility.”

exhibit 62, page 470

145. **2008 CALENDAR**

146. The relevant calendar is summarized as follows:

Oct 31, 2008	Friday	Payment Demand and Enforcement Notice delivered
Nov 01, 2008	Saturday	weekend
Nov 02, 2008	Sunday	weekend
Nov 03, 2008	Monday	Birch Mountain announcement re default notices
Nov 04, 2008	Tuesday	Receivership Order application by Tricap
Nov 05, 2008	Wednesday	Receivership Order issued
Nov 06, 2008	Thursday	Receiver takes control
Nov 07, 2008	Friday	Gerrish email re 3 year Kiewit/Imperial agreement
Nov 08, 2008	Saturday	weekend
Nov 09, 2009	Sunday	PwC and Tricap negotiating both funding and sale

147. **CONVERTIBLE DEBENTURES HELD FOR INVESTMENT**

148. The Unsecured Subordinated Convertible Debentures and the Senior Secured Convertible Debenture were held by “way of investment” and not held by “way of security”.

149. The particulars that the Debentures were purchased and held as an investment follows:

a. Tricap per Jim Reid press release dated December 24, 2007, in part, stated:

“Tricap has acquired the Debenture for investment purposes, and in connection with refinancing of the existing credit facility extended to the

Corporation by an affiliate lender of Tricap.”;

- b. Tricap per Jim Reid early warning report dated December 24, 2007, in part, stated:

“Tricap acquired the Debenture for investment purposes, and to refinance the existing credit facility extended to the Corporation by an affiliate lender of Tricap.”;

- c. Birch Mountain press release dated December 24, 2007, in part, stated:

“Joel Jarding, Birch Mountain’s President and COO states, “Tricap has acquired the Convertible Debenture as an investment in Birch Mountain and we welcome their proven industry and financial expertise in value creation.”;

- d. Tricap’s Early Warning Report dated August 08, 2008 claimed ownership and control of 55.0% of the aggregate issued and outstanding Birch Mountain common shares and confirmed the investment nature of the Convertible Debentures;

- e. Tricap’s Early Warning Report dated December 10, 2008 filed pursuant to National Instrument 62-103 “The Early Warning System and Related Take-Over Bid and Insider reporting Issues” described both 1439442 and Tricap as an “offeror” et al which is a defined term that signifies an investment and would necessitate OSC and SEC take over bid filings;

- f. Tricap’s Securities and Exchange Commission Schedule 13D/A form filed December 16, 2008, in part, stated:

“As a result of both investments, Tricap may be deemed to be the sole beneficial owner of 3,458,872,727 Common Shares that would be issuable upon conversion of both the Unsecured Subordinated Convertible Debentures and the Senior Secured Convertible Debentures, which represent 97.6% of the Common Shares outstanding.”;

- g. Tricap’s representations set forth on the Brookfield website speak to the investment nature of any Tricap investment, for example:

“Tricap targets transactions in which it can invest between \$50 million and \$500 million in either debt and equity capital. When Tricap makes an equity investment, it seeks to play a meaningful role in the restructuring process and governance of the recapitalized company. Tricap has a 3 to 7 year investment horizon.”; and

- h. the Senior Secured Convertible Debenture and more specifically the “Debenture Shares” as defined in the Loan Agreement dated December 21, 2007 had been conditionally approved for listing on the TSX which is strong indication of the investment nature of the Senior Secured Convertible Debenture.

Exhibits assorted, pages assorted

150. **ENVIRONMENTAL REPORTS**

151. On August 26, 2005, the Short Form Prospectus stated:

“Regulatory Status Birch has largely completed the geological and environmental fieldwork to be used in the regulatory filings for the Hammerstone Project EIA and application, which the Corporation expects to file later in 2005. Engineering, environmental and regulatory costs to complete and file this application in 2005 are projected to be approximately \$2.4 million. As this is a preliminary estimate, the final cost for regulatory approval of the Hammerstone Project could be higher if referred to a public hearing.”

Exhibit 01, page 13

152. On May 05, 2008, Birch Mountain Material Press Release stated:

“We are proud to achieve this regulatory milestone and I congratulate the staff and consulting team that have worked so hard on the EIA,” says Joel Jarding, President

and Chief Operating Officer of Birch Mountain. “The Hammerstone Project includes a six-fold expansion of our approved and operating Muskeg Valley Quarry, and encompasses all of the limestone reserves and the processing facilities needed to make quicklime and hydrated lime defined in the 2006 Technical Report.

In addition, the Hammerstone Project includes plans to produce cement, and to provide facilities for the reprocessing and environmental management of limestone-based by-products produced by the oil sands industry. “Opportunities to create useful products from materials currently considered to be waste, and full life cycle management of other by-products within our reclamation plan, reflect Birch Mountain’s emphasis on effective environmental management and performance for our customers and our own operations,” adds Don Dabbs, Senior Vice President.

“The Hammerstone EIA completeness decision is a significant step in Alberta’s regulatory process, moving the application into the approvals phase. The Natural Resources Conservation Board will now make a “public interest” decision which, if favourable, clears the way to the final approval and operating permits for the Hammerstone Project,” explains Mr. Dabbs.”

Exhibit 16, page 221

153. On May 05, 2008, Birch Mountain Material Change Report stated:

“Birch Mountain Resources Ltd. announces that Alberta Environment (“AENV”) has declared the Hammerstone Project Environmental Impact Assessment (“EIA”) to be “complete”.

Exhibit 16, page 222

154. The Natural Resources Conservation Board Decision NR 2010-01 dated June 2010, in part, stated:

“The Hammerstone Project will extend Hammerstone’s currently operating Muskeg Valley Quarry in the Regional Municipality of Wood Buffalo. Hammerstone proposes to operate the Project and the MVQ as a single integrated quarry and aggregate production operation. The combined quarry operation will disturb 1,265 hectares, of which 1,010 hectares is attributed to the Hammerstone Project. Quarry operations are

anticipated to average limestone product sales of 7,444,112 tonnes/year in the first 5 years of integrated operation, escalating to 24,415,028 tonnes/year of average sales over the final 10 years of operation. Mining operations are expected to conclude in 2060.”

Exhibit 72, page 541

155. **PRODUCT SHIPMENT**

156. On or about October 2008, product quality, customer demand and product shipments were very positive for the first time in the history of Birch Mountain:

“Quality of product is excellent. It is working extremely well in many applications.

Suncor - \$6.0 m; Albian Sands 0 \$2.2 m; Carmacks - \$1.7 m; Thompson Bros. \$1.0 m (YTD including trucking revenues)

Currently have approximately 150,000 tonnes of blasted rock available to meet current orders (\$1 m+)

September product sales (excluding trucking): \$2452 k vs plan \$2351 k; 104% of plan (101 k F).”

Exhibit 43, page 398

157. On October 22, 2008, Birch Mountain Sales by Customer Summary reported on the following customers:

- a. Albian Sands Energy Inc.;
- b. Athabaskan Resource Company Inc.;
- c. Bauer Foundations Canada Corp.;
- d. Carmacks Enterprises;
- e. CBS Construction Ltd.;
- f. CH2M-Lockerbie Joint Venture

- g. Cross Oilsands Contracting Ltd.;
- h. Denman Industrial Trailers Ltd.;
- i. North American Construction Group;
- j. North American Pile Driving Inc.;
- k. PTI Travco Modular Structure Ltd.;
- l. Suncor Energy Services Inc.;
- m. Thompson Bros. Ltd.; and
- n. Waiward Construction Management Inc.

Exhibits 45, page 402

158. On October 22, 2008, Birch Mountain Sales by Product Category Summary reported category sales.

Exhibits 45, page 406

159. The Birch Mountain Quarterly Sales Trend in chart form exhibits the product shipments in the 2008 Third Quarter.

Exhibits 47, page 407

160. **THIRD QUARTER RESULTS (JULY, AUGUST, SEPTEMBER 2008)**

161. On or about October 2008, financial results were being compiled that product shipments and therefore financial results were breakeven and/or profitable for the first time in the history of Birch Mountain:

“Suncor - \$6.0 m; Albian Sands \$2.2 m; Carmacks - \$1.7 m; Thompson Bros. \$1.0 m (YTD including trucking revenues);

September product sales (excluding trucking): \$2452 k vs plan \$2351 k; 104% of plan (101 k F);

Generated a gross profit for Q3 and a positive EBIT for September (Company first);

Bottom line:

- * Sales continue to grow very aggressively
- * The quarry is operating in a very efficient manner
- * We continue to reduce our costs
- * We have identified more future cost reductions
- * Hammerstone approval is around the corner
- * The only thing holding this Company back are the interest payments and legal fees associated with the financial situation of the business. A recap (or buyout of Tricap) can fix this.”

Exhibit 43, page 398

162. **PwC SALES EFFORT**

163. The sale process conducted by PwC, the receiver and manager, was contrived and not reasonable in the circumstances.
164. The Confidentiality Agreement and the Pattison Group helicopter site tour with the Brookfield group, the Pattison Group and the RBC on September 08, 2008 was not disclosed to the Court.
165. The Pattison Agreement was not disclosed to the Court by Tricap or PwC in order that the potential transaction as disclosed in the Confidentiality Agreement could be evaluated by the Court.
166. On or about September 21, 2007, the Chinese Sovereign Wealth Fund potential purchase was presented by Mr. Jim Currie and this potential purchase was not investigated by RBC or PwC. Mr. Kent Ferguson was one of the participants on the September 08, 2008 helicopter tour of

the Hammerstone Project:

“September 21, 2007 Douglas Rowe wrote Jim Currie Further to our discussion last week and my email earlier this week, RBC will now co-ordinate inquires of this nature. I suggest you contact either of the following at RBC: Kent Ferguson 403-2999-6934 Rob King 403-299-6942.”

exhibit 58, page 445

167. On October 28, 2008, Birch Mountain (Jarding) Note of a Discussion with Acumen Capital is most revealing with respect to the strategy of Tricap and Pattison:

“I called Mike Stuart last week to see what his thoughts were on the possibility of raising capital around a re-cap of Birch with Tricap and Pattison. We discussed the background and events leading to the current situation with Tricap. Mike observed that he had seen similar situations on more than one occasion where Tricap had forced companies into analogous positions as Birch, and they are definitely not easy to deal with.

A second key point that encourages Acumen is the fact that the Company is essentially operationally breakeven in Q3. He feels this will give potential investors comfort that additional capital will not just go to long term support of deficits.”

Exhibit 48, page 408

168. On November 14, 2008, Donald Dabbs a co-founder of Birch Mountain in a reference letter to Joel Jarding stated:

“In Q3, 2008 the company achieved its first operating profit. Unfortunately, and without rational explanation, the secured lender called the loan and placed the company in receivership.

I continue to work with the receiver who has stated on more than one occasion that Birch Mountain Resources Ltd. is the “most viable business they have ever been put in charge of”

Exhibit 56, page 442

169. The potential purchase and the supply agreement with Kiewit Energy Canada Corp. was not investigated by RBC or PwC but preserved for Tricap after the receivership was completed:

“K2 (Kiewit)/Kearl Project have taken the first order from Birch and loved the product. Verbally indicated on 10/28 that we will receive a 60 kt (\$540 k) order in early November. We have a quotation under evaluation for 1.3 mt. Obviously, the timing of these orders and customer feedback are positive indication.”

exhibit 43, page 398

170. **DEATH SPIRAL STOCK TRADING**

171. The Birch Mountain common shareholders do not have the subpoena powers required to obtain the stock trading records but the evidence of death spiral stock trading that benefited Brookfield and Tricap is evident.

172. Subsequent to October 15, 2008 and prior to November 05, 2008, the Adair Morse law firm was retained by Birch Mountain to conduct an investigation of the death spiral stock trading and the retainer was cancelled by Tricap when Tricap became aware of these events.

“Robb Spoke with Hooper. “Going forward with agreement and 20K fee. I said I thought the initial fee was higher. He said “yes” but negotiated down to \$20K. I asked if that was prudent considering fiduciary responsibility and the hundreds of millions in price reduction.”

Exhibit 41, page 385

173. The death spiral stock trading of the Birch Mountain common shares during the period from May 25, 2006 to November 05, 2008 was critical to Brookfield and/or Tricap gaining effective control of Birch Mountain.

174. The death spiral stock trading of the Birch Mountain common shares during the period from May 25, 2006 to November 05, 2008 caused the share price of the Birch Mountain common shares on TSX to collapse from \$7.99 on May 25, 2006 to \$0.01 on November 05, 2008:

<u>Event</u>	<u>Trading Days</u>	<u>TSX Volume</u>	<u>TSX Price</u>
Davenport buy recommendation	Feb 16, 2006	1,546,400	\$8.15
Hammerstone application filed	May 25, 2006	215,100	7.99
TD securities front running	Jun 15, 2006	2,508,800	5.93
CERI valuation at \$1.6 billion	Jun 26, 2006	285,400	5.67
RBC = \$34.5 million	Nov 15, 2006	366,200	4.25
Brookfield = \$15.0 million	Apr 02, 2007	74,200	3.70
Brookfield = \$31.5 million	Nov 26, 2007	318,100	0.77
Tricap = \$31.5 million	Dec 24, 2007	415,900	0.68
South Haul Road funds	Aug 27, 2008	227,700	0.18
PwC appointed receiver	Nov 10, 2008	350,300	0.01
Tricap/1439442 ownership	Dec 10, 2008	000,000	0.01

175. The death spiral stock trading of the Birch Mountain common shares during the period from May 25, 2006 to November 05, 2008 caused the share price of the Birch Mountain common shares on AMEX to collapse from \$7.24 on May 25, 2006 to \$0.01 on November 05, 2008:

<u>Event</u>	<u>Trading Days</u>	<u>AMEX Volume</u>	<u>AMEX Price</u>
Davenport buy recommendation	Feb 16, 2006	3,024,000	\$7.06
Hammerstone application filed	May 25, 2006	356,400	7.24
TD Securities front running	Jun 15, 2006	3,356,500	5.33
CERI valuation at \$1.6 billion	Jun 26, 2006	1,977,400	5.06

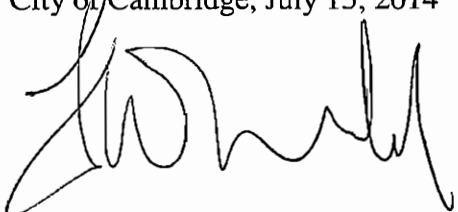
RBC = \$34.5 million	Nov 15, 2006	1,060,500	3.69
Brookfield = \$15.0 million	Apr 02, 2007	583,400	3.18
Brookfield = \$31.5 million	Nov 26, 2007	871,400	0.79
Tricap = \$31.5 million	Dec 24, 2007	529,450	0.66
South Haul Road funds	Aug 27, 2008	347,634	0.18
PwC appointed receiver	Nov 10, 2008	58,880	0.01
Tricap/1439442 ownership	Dec 10, 2008	286,294	0.01

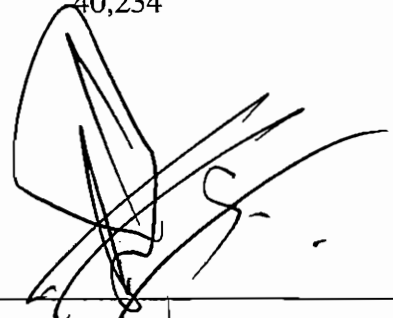
176. The death spiral stock trading of the Birch Mountain was exacerbated by the Canadian short sales of Birch Mountain common shares summarized as follows:

<u>Event</u>	<u>Trading Days</u>	<u>Can Short Positions</u>
Davenport buy recommendation	Feb 16, 2006	682,721
Hammerstone application filed	May 25, 2006	2,233,290
TD Securities front running	Jun 15, 2006	2,442,325
CERI valuation at \$1.6 billion	Jun 26, 2006	3,574,762
RBC = \$34.5 million	Nov 15, 2006	3,768,400
Brookfield = \$15.0 million	Apr 02, 2007	1,199,400
Brookfield = \$31.5 million	Nov 26, 2007	94,800
Tricap = \$31.5 million	Dec 24, 2007	105,100
South Haul Road funds	Aug 27, 2008	97,900
PwC appointed receiver	Nov 10, 2008	2,800
Tricap/1439442 ownership	Dec 10, 2008	000,000

177. The so called death spiral stock trading of the Birch Mountain common shares was exacerbated by the United States failing to deliver positions of Birch Mountain common shares summarized as follows:

<u>Event</u>	<u>Trading Days</u>	<u>US FTD Positions</u>
Davenport buy recommendation	Feb 16, 2006	21,632
Hammerstone application filed	May 25, 2006	12,958
TD Securities front running	Jun 15, 2006	7,000
CERI valuation at \$1.6 billion	Jun 26, 2006	7,000
RBC = \$34.5 million	Nov 15, 2006	346,890
Brookfield = \$15.0 million	Apr 02, 2007	31,057
Brookfield = \$31.5 million	Nov 26, 2007	41,853
Tricap = \$31.5 million	Dec 24, 2007	167,840
South Haul Road funds	Aug 27, 2008	64,600
PwC appointed receiver	Nov 10, 2008	118,998
Tricap/1439442 ownership	Dec 10, 2008	40,234

SWORN BEFORE ME at the)
 City of Cambridge, July 15, 2014)
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 A Commissioner for take oaths)
 in the Province of Ontario.)



 DAVID JOHNSON