

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Plaintiffs

- and -

BUCKINGHAM SECURITIES CORPORATION

Defendants

**FIRST REPORT
OF BDO DUNWOODY LIMITED IN ITS
CAPACITY AS RECEIVER & MANAGER OF
BUCKINGHAM SECURITIES CORPORATION
TO THE SUPERIOR COURT OF JUSTICE**

A. PURPOSE OF THE REPORT

1. This report of BDO Dunwoody Limited in its capacity as Court-Appointed Receiver and Manager (the “Receiver”) of the estate of Buckingham Securities Corporation (“Buckingham”) is filed in support of a Motion by the Receiver for an Order:

- (a) approving the Receiver’s actions to date;
- (b) authorizing the transfer of all securities held by third parties in the name of or for the account of Buckingham to a single brokerage house under the direct control of the Receiver; and

- (c) authorizing the Receiver to liquidate certain securities pledged to Buckingham by its clients as continuing collateral security for the payment of the indebtedness of such clients to Buckingham (the “Pledged Securities”)

2. This Motion will be made because brokerage houses which presently hold in their possession securities in the name of or for the account of Buckingham, including the Pledged Securities, have claimed a security interest therein as security for the indebtedness of Buckingham to such brokers. The validity of the security interest claimed by the brokers is in question, and following further consultation with all interested parties, the Receiver intends to seek the advice and direction of this Court with respect to a resolution of the issues relating to the security interest claimed by the brokers. At this time, the actions proposed by the Receiver are intended to assist the Receiver in its administration, without prejudicing the rights of creditors, including the brokers. In particular, the Receiver seeks an order of this Court declaring that the transfer of possession of the securities shall be without prejudice to any possessory lien or security interest claimed in such securities by third parties. In addition, the Receiver seeks an Order declaring that the liquidation of the Pledged Securities be without prejudice to the rights of any party to the net cash proceeds realized therefrom by the Receiver, and that any security interest in the Pledged Securities shall continue in the net cash proceeds thereof, in the same priority as they had with respect to the Pledged Securities.

B. BACKGROUND

3. Buckingham is incorporated pursuant to the laws of Ontario, and provided investment services to its clients, which number approximately 1000 on an active basis.

C. APPOINTMENT

4. The Receiver was appointed Receiver and Manager of the assets and undertaking of Buckingham by Order in these proceedings (the “Order”) of the Honourable Madame Justice Swinton dated the 26th day of July 2001. A copy of the Order is attached to this Report as Appendix “A”.

D. ACTIVITIES OF THE RECEIVER

(a) Taking Possession

5. The Receiver took possession of the premises of Buckingham located at 55 York Street, Toronto and certain storage facilities at 275 King Street East, Toronto on July 26, 2001. The Receiver secured the premises and also took steps to protect valuable computer information. In addition, arrangements were made to provide insurance coverage from Firstbrook Cassie to secure the value of the assets.

6. The Receiver also dealt with the landlord and made ongoing arrangements for occupation by the Receiver on a per diem rent basis.

7. All of the client records and accounting records of Buckingham are maintained on an external data center operated by IBM (“IBM”) Canada. In addition, critical market value information is provided by CGI Group Inc. through an integration of their system with IBM. The Receiver determined that continuity of service from both of these providers was required in order to give the Receiver access to online inquiry into clients’ accounts at current market values and positions. The Receiver therefore negotiated continuance of service with both of these providers.

(b) Continuation of Business

8. The activities of Buckingham had been frozen by the Ontario Securities Commissions (“OSC”) on July 6, 2001, a step which preceded the appointment of the Receiver and Manager. Accordingly, Buckingham had not transacted any business since that date and the Receiver has not attempted to continue the business or change the present trading status of Buckingham.

(c) Appraisals

9. The Receiver obtained two appraisals of the movable assets of Buckingham which are attached as Appendices “B” and “C” to this Report. The Receiver has reached agreement to liquidate the movable assets through Canam-Appraiz Inc. and has supervised the removal of these assets to facilitate the Receiver vacating the premises.

E. OTHER ASSETS

10. The Receiver conducted an analysis of the securities held by Buckingham on behalf of its clients and on its own behalf, as well as an analysis of the client accounts to determine, in part, the amounts owing by clients to Buckingham at July 26, 2001. These accounts totalled \$3,899,659 and are broken down into three categories:

- Amounts owing by clients totalling \$494,147 which, subject to any prior ranking security claims, appear to be fully secured by Pledged Securities held in Buckingham’s name, as detailed in Appendix “D” hereto.

- Amounts owing by clients to Buckingham totalling \$1,716,426 which, subject to any prior ranking security claims, are partially secured by Pledged Securities held in Buckingham's name with a trading value of \$239,970, as detailed in Appendix "E".
- Amounts owing by customers to Buckingham totalling \$1,689,086, for which Buckingham holds no security, as detailed in Appendix "F".

11. The Receiver has requested payment from all of the clients whom, according to Buckingham's records, are indebted to Buckingham by way of under-margin account or any other circumstance. To date, the Receiver has received only \$19,946 from such clients.

12. As noted above, the Pledged Securities are continuing collateral security for the payment of any indebtedness owing to Buckingham by its clients. The standard form Client Account Agreement Terms and Conditions between Buckingham and its clients, a true copy of which is attached hereto and marked as Appendix G provides, in pertinent part, as follows:

"As continuing collateral security for the payment of any Indebtedness which is now or which may in the future be owing by the Client to Buckingham Securities Corp., the Client hereby hypothecates and pledges to Buckingham Securities Corp. all his securities and cash, including any free credit balances, which may now or hereafter be in any of its accounts with Buckingham Securities Corp. (collectively, the "Collateral"), ...

If: (a) the Client fails to pay any indebtedness when due; ... then, in addition to any other right or remedy to which Buckingham Securities Corp. is entitled, Buckingham Securities Corp. may at any time and from time to time without notice or demand to the Client (A) apply monies held to the credit of the Client in any other account with Buckingham Securities Corp. to eliminate or reduce the indebtedness; (B) take the securities in payment or sell, contract to sell or otherwise dispose of any or all of the Securities held by Buckingham Securities Corp. for the Client and apply the net proceeds therefrom to eliminate or reduce

indebtedness; ... The Client shall remain liable to Buckingham Securities Corp. for any deficiency remaining ... ”.

13. In addition, pursuant to the terms of the standard form Margin Agreement entered into between Buckingham and its clients with margin accounts, a true copy of which is attached hereto and marked as Appendix H, the client agreed in favour of Buckingham as follows:

“Whenever and so often as the undersigned is indebted to you, all securities held or carried by you for or on the account of the undersigned, are hereby pledged and shall be continuing collateral security for the payment of such indebtedness as it may exist from time to time ...

Whenever and so often as you deem it necessary for your protection, you may without demand of any kind upon or notice to the undersigned and either on a stock exchange or commodity market or by private sale, buy in any or all securities of which the undersigned’s account is short and sell any or all securities which you are holding or carrying for or on account of the undersigned and cancel any outstanding orders. The net proceeds of any such sale shall be applied against the undersigned’s indebtedness to you without prejudice to the liability of the undersigned for any deficiency.”

14. The trading value of the Pledged Securities is approximately \$734,117 in the aggregate. The Receiver proposes to liquidate the Pledged Securities in order to provide a source of cash to fund the costs of the Receivership and to crystallize the position of the margin account clients. As the securities, including the Pledged Securities, are presently held in the possession of various brokerage houses, some of which have claimed a security interest therein, the Receiver proposes that any rights arising from the possession of securities or security interests in favour of the brokers or others be preserved by an Order of this Court declaring that

- (a) the transfer of possession and liquidation of the securities be without prejudice to any possessory lien claimed by any party;, and

- (b) any security interest, lien or encumbrance shall continue in the net proceeds realized by the Receiver upon a disposition of any securities transferred to the possession of the Receiver, including the Pledged Securities.

15. Pursuant to paragraph 19 of the Order, any expenditure or liability made or incurred by the Receiver, including its fees and disbursements and those of its legal counsel, are to be allowed to the Receiver in the passing of its accounts and form a first charge (the "Receiver's Charge") on all of the property, undertaking and assets held in the name of Buckingham, as principal or agent, beneficially or otherwise (the "Property"), in priority to any other charge, mortgage, lien, security interest or encumbrance.

16. Notwithstanding that it is proposed that the costs of the Receivership be paid out of the proceeds realized from the Pledged Securities and, at present, not other Property subject to the Receiver's Charge, the Receiver recommends that the burden of such costs should be borne equally by all of the Property. Accordingly, the Receiver proposes that the Receiver's Charge over the balance of the Property should be deemed to be assigned to any creditors entitled to security in the Pledged Securities. To the extent that any creditor with a valid security interest in the Pledged Securities has suffered a depletion of its collateral, such secured creditor will be subrogated to the Receiver's Charge over the balance of the Property.

F. INVESTMENTS

17. The Receiver has analyzed the statements of investments held in the name of Buckingham by various brokerage houses. The statements total \$8,535,209. The books and records of Buckingham indicate investments due to clients totalling \$8,938,489. The Receiver

therefore concludes that there is a shortage of investments amounting to \$403,280 in the investments held on account of clients. The Receiver has identified most of the specific investments which are short and the accounts to which these investments relate, although there is still a shortage of investments of approximately \$28,000 which remains as yet unidentified.

18. As stated, the total market value securities identified as being due to clients at July 26, 2001 amounts to \$8,938,489. The clients to whom these securities are owed have been analyzed into the following categories.

• Those clients who are not indebted to Buckingham.	6,466,146
• Those clients who are indebted to Buckingham to whom securities are owed with a value less than or equal to the value of their indebtedness to Buckingham	734,117
• Those clients who are indebted to Buckingham to whom securities are owed with a value which exceeds the amount of their indebtedness to Buckingham	1,738,226
FINAL TOTAL	<u>\$8,938,489</u>

19. Further analysis indicates to the Receiver that a total of \$1,389,901 is owing by Buckingham to its clients (as detailed in Appendix "I") for their cash balances, against which the Receiver holds \$140,028 in trust deposits and a further sum of \$85,159 in a general account which may have a trust component. The Receiver does not have any additional funds with which to reimburse these amounts due and owing to clients of Buckingham.

20. The Receiver is aware that a significant portion of investments held on behalf of clients consist of securities which are thinly traded. Buckingham's records provide valuations of these securities at their last trading value which may well vary significantly from the actual realizable

value should these investments be placed on the market for sale. It follows that unless a plan of action can be implemented which enables the Receiver to distribute these securities in specie to the clients, the shortfall between the amounts owing to Buckingham's clients, and the funds available to the Receiver to repay those amounts, will be considerably higher than the book figures reported herein.

G. OTHER LIABILITIES

21. The Receiver has determined that there are also liabilities due and owing by Buckingham to trade creditors as well as to brokerage houses.

22. The amounts due to trade creditors at July 26, 2001 according to Buckingham's books and records amounted to \$201,581. Of this, it appears that \$4,729 is secured, primarily by photocopy equipment. In addition to the above, the Receiver believes there may be an amount owing by Buckingham to a number of employees for vacation pay at the date of Receivership. However, the total of this liability has not yet been determined.

23. Buckingham is also indebted to two brokerage houses for what the Receiver believes to be under-margin amounts on Buckingham's account with those brokers. These are addressed as follows:

- W. D. Latimer Co. Limited claims an amount owing to them of \$1,902,642 less \$248,000 anticipated to be received from the sale of 20,000 shares in Gulf Resources. This \$248,000, if applied against Buckingham's indebtedness to Latimer when received, will serve to increase the amount owing by Buckingham to one specific client who is fully secured presently. W. D. Latimer Co. Limited has claimed security over the investments in its

possession held in the name or for the account of Buckingham in relation to the above indebtedness.

- Certain of Buckingham's clients have expressed concerns to the Receiver in connection with the security interest claimed by W. D. Latimer Co. Limited. In particular, certain of Buckingham's clients have notified the Receiver that they will take the position that third party brokers, including W. D. Latimer Co. Limited accepted stock orders from Buckingham without regard to whether or not Buckingham was trading on its own account and knew, or ought to have known, that the securities were not that of Buckingham to deal with or to pledge for Buckingham's own margin account. Copies of correspondence received by Blake, Cassels & Graydon LLP, the Receiver's solicitors, from legal counsel for certain of Buckingham's clients, are attached hereto as Appendix J.
- The Company's records also indicate an amount owing to Bear Stearns of US\$238,497, although the Receiver has not yet obtained confirmation of this amount from Bear Stearns.

24. Attached as Appendix "K" is a summary of the estimated realizable value of Buckingham's assets and the amount due to creditors, both clients and trade creditors. This estimate indicates a potential shortfall before costs of \$2,452,855. As already stated, in the event that the thinly traded securities are required to be realized, then this shortfall is almost certain to increase significantly.

H. RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

25. Attached as Appendix "L" is the Statement of Receiver's Receipts and Disbursements to date which includes a provision for costs for which the Receiver has made commitments but which have not yet been paid.

I. RECEIVER'S RECOMMENDATION

26. The Receiver recommends that the Pledged Securities, pledged to Buckingham as security for the indebtedness of certain clients to Buckingham be liquidated. Realizing on the Pledged Securities will enable the Receiver to pursue collection of specific amounts from clients, after crystallizing the amount of any deficiency outstanding after realization of the Pledged Securities and will also provide the Receiver with a source of cash to fund the conduct of the Receivership, and pursue collection efforts against clients who fail to make good on their indebtedness to Buckingham.

27. The Receiver recommends that all securities held in the name of or for the account of Buckingham, wherever held, be consolidated into a single brokerage house not currently involved with Buckingham. This will significantly facilitate administration of these investments by the Receiver, including the proposed realization upon the Pledged Securities.

28. The Receiver further recommends that an Order be made declaring that the transfer of possession of the securities is without prejudice to the rights of any party claiming a possessory lien or other entitlement by virtue of possession of the securities, and that the liquidation of the Pledged Securities be carried out without prejudice to the rights of any party to the net proceeds realized by the Receiver from the disposition of the Pledged Securities, and to the extent that

such proceeds are utilized to fund the costs of the Receivership, substituting therefor the Receiver's rights under the Receiver's Charge over the balance of the Property.

ALL OF WHICH is respectfully submitted this _____ day of August 2001.

BDO DUNWOODY LIMITED
In its capacity as Receiver and Manager of
all of the assets, property and Undertaking
of Buckingham Securities Corporation