

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

**B E T W E E N:**

**ONTARIO SECURITIES COMMISSION**

**Plaintiffs**

**- and -**

**BUCKINGHAM SECURITIES CORPORATION**

**Defendants**

**FIFTEENTH REPORT OF  
BDO DUNWOODY LIMITED, IN ITS  
CAPACITY AS RECEIVER AND 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) authorizing and directing the Receiver to enter into a proposed settlement agreement with W.D. Latimer Co. Ltd. (“Latimer”) for the purpose of resolving a dispute regarding the validity of Latimer’s security interest in certain “fully paid” and “excess margin” securities held by Buckingham for its clients, including

discontinuance of the Receiver's pending appeal to the Court of Appeal from the Judgment of the Honourable Mr. Justice Ground in relation thereto.

**B. BACKGROUND**

2. Buckingham was a securities dealer and provided investment services to its clients, which numbered approximately 1,000 on an active basis.
3. The Receiver was appointed Receiver and Manager of the assets and undertaking of Buckingham, including assets held in the name of Buckingham, as principal or agent, beneficially or otherwise (the "Property"), by Order of the Honourable Madame Justice Swinton dated July 26, 2001 (the "Appointment Order"). A true copy of the Appointment Order is attached hereto as **Exhibit "A"**. Paragraph 10 of the Appointment Order expressly empowers the Receiver to institute, defend, appear in and conduct all proceedings as may in its judgment be necessary for the proper protection of the Property, and the authority thereby conveyed extends to such appeals as the Receiver deems proper or advisable, and any settlement by the Receiver of any proceedings.
4. Prior to the appointment of the Receiver, the activities of Buckingham had been frozen pursuant to an Order of the Ontario Securities Commission dated July 6, 2001 (the "Cease Trade Order"). As a result, Buckingham has not traded any securities since that date.

**C. DISPUTE RELATING TO LATIMER'S SECURITY**

5. As previously reported in various of the Receiver's previous reports to the Court, and again in the Receiver's Fourteenth Report to the Court, Latimer has asserted a security interest over all of the securities held in Buckingham's account at Latimer, to secure Buckingham's indebtedness to Latimer. The Receiver has disputed Latimer's security interest in "fully paid" and "excess margin" securities held by Buckingham on behalf of its clients, on the basis that such securities were required to be segregated and held in

trust by Buckingham for its clients under Ontario securities law, and that Latimer ought to have known of Buckingham's failure to segregate. The Receiver moved for a trial of the issues relating to the validity of Latimer's security interest in fully paid and excess margin securities.

6. In preparation for that trial, the Receiver obtained reports using an accounting system provided by ISM, which identify the "fully paid" and "excess margin" securities which ought to have been segregated by Buckingham as at the date of the Cease Trade Order, July 6, 2001 (the "Disputed Shares"). Apart from the Disputed Portfolio, the Receiver does not dispute the validity of Latimer's security interest in the balance of the securities held in Buckingham's account at Latimer (the "Undisputed Shares").
7. Following the trial of the issues, the Honourable Mr. Justice Ground held that the security interest of Latimer in the Disputed Shares is valid and enforceable, and awarded costs of the trial payable by the Receiver to Latimer on a partial indemnity scale.
8. The Receiver has appealed from that Judgment, and the Appeal is scheduled to be heard by the Court of Appeal on May 20, 2004.
9. In light of the overall improvement in the securities markets, the Receiver, with the approval of this Honourable Court, recently entered into an Agreement with Latimer (the "Liquidation Agreement") with respect to the liquidation of the securities held by the Receiver, other than the securities located at Bear Stearns & Co. in the United States, in the hope that the liquidation of the securities into cash would facilitate the Receiver's efforts to resolve the outstanding dispute concerning the validity of Latimer's security interest and the pending appeal to the Court of Appeal in respect thereof.
10. Pursuant to the Liquidation Agreement, the securities sold by Latimer were divided into five categories, and the proceeds of realization upon the securities in each category are to be applied as follows:

- (a) The Undisputed Shares consist of those shares which the Receiver acknowledges to be subject to the security interest claimed by Latimer. The proceeds realized upon the sale of these securities are to be applied to reduce the indebtedness owing by Buckingham to Latimer.
  - (b) The Disputed Liquid Shares comprise those shares having a market value of over \$1.50, which the Receiver disputes are subject to the security interest claimed by Latimer. The proceeds, net of a sales commission of 1% of the proceeds to be paid to Latimer, are to be held in trust pending a determination or settlement of the dispute regarding Latimer's security.
  - (c) The Disputed Illiquid Shares consist of those shares having a market price of under \$1.50, which the Receiver disputes are subject to the security interest claimed by Latimer. Fifty percent (50%) of the first \$500,000 of the proceeds realized on the sale of the securities, and 75% of the proceed realized above \$500,000 are to be paid to Latimer in lieu of a commission, and applied to reduce the indebtedness owing to Latimer by Buckingham. The balance of the proceeds accrue to the account of the Receiver, for the benefit of the estate.
  - (d) Free Illiquid Shares comprise those shares having a market price of less than \$1.50 which are not subject to any security interest claimed by Latimer. The proceeds of these shares are to be applied in the same manner and using the same formula set out in (c) above.
  - (e) Free Liquid Shares are those securities having a market price of over \$1.50 which are not subject to any security interest claimed by Latimer. The proceeds of sale of the shares, net of a sales commission of 1% of the proceeds which is to be paid to Latimer, accrue to the account of the Receiver, on behalf of the estate. .
11. The Receiver has been informed by Latimer that as at April 26<sup>th</sup>, the sale of securities in each of the foregoing five categories had generated proceeds in the following amounts:

- (a) Undisputed Shares and cash: \$623,653;
  - (b) Disputed Illiquid Shares and Free Illiquid Shares: \$1,146,527, of which \$734,895 accrues to Latimer and \$411,632 accrues to the Receiver;
  - (c) Disputed Liquid Shares: \$3,174,690; and
  - (d) Free Liquid Shares: \$65,969
12. Latimer has informed the Receiver that as at April 16, 2004, the total amount outstanding on account of the indebtedness of Buckingham to Latimer was \$2,549,234, calculated as follows:
- (a) principal: \$1,910,364;
  - (b) interest calculated from July 26, 2001 to April 16, 2004 at the rate of prime plus 4%: \$513,870; and
  - (c) legal fees in respect of costs incurred in connection with the litigation between Latimer and the Receiver relating to the validity of Latimer's security interest: \$125,000.
13. After applying the proceeds realized to date in accordance with the terms of the February Agreement, the outstanding balance owing by Buckingham to Latimer has been reduced by approximately \$1,358,548, leaving a current outstanding balance of approximately \$1,190,686.
14. The realization upon the illiquid securities pursuant to the Liquidation Agreement has not yet been completed. The Illiquid Disputed Shares which have not yet been sold include approximately 350,000 common shares of Dynamic Fuel Systems Inc., with a current market price fluctuating between \$1 and \$2 per share, and other illiquid securities having, in total, a current market price of approximately \$90,000. In addition, the Undisputed Illiquid Securities which have not yet been sold by Latimer currently have a total market

value of \$15,600. Latimer and the Receiver anticipate that in order to maximize value upon the sale of the illiquid portfolio, the realization process will take at least one year to complete.

**D. TERMS OF PROPOSED SETTLEMENT**

15. Subject to the approval of this Honourable Court, the Receiver and Latimer have agreed to settle all issues relating to the dispute regarding the validity of the security interest claimed by Latimer, on the following terms:

- (a) The Receiver will pay to Latimer 50% of the current outstanding balance owing by Buckingham to Latimer, from the proceeds realized from the sale of the Disputed Liquid Shares. As the outstanding balance owing by Buckingham to Latimer is approximately \$1,190,686, this payment by the Receiver to Latimer will be in the amount of approximately \$595,343.
- (b) Latimer will continue to liquidate the balance of the illiquid securities and apply the proceeds in accordance with the formula provided for in the Liquidation Agreement such that Latimer will apply 75% of the proceeds to retire the outstanding indebtedness of Buckingham to Latimer, and 25% of the proceeds will accrue to the account of the Receiver for the benefit of the estate. In no event will Latimer's entitlement exceed the amount owing to it by Buckingham, such that any surplus over the amount owing to Latimer by Buckingham realized upon the liquidation of the remaining illiquid securities will accrue to the account of the Receiver, for the benefit of the estate.
- (c) The Receiver will abandon its appeal to the Court of Appeal from the Judgment of Justice Ground declaring Latimer's security interest in the Disputed Shares to be valid and enforceable.

- (d) Latimer and the Receiver will release each other from all claims, including all claims for costs of the Appeal and other proceedings relating to the dispute concerning the validity of Latimer's security.
16. A true copy of the Settlement Agreement entered into between the Receiver and Latimer subject to court approval, is attached and marked as **Exhibit "B"**.
17. The Receiver believes that the proposed settlement will achieve a fair and reasonable result for the estate. The Receiver therefore seeks approval of this Honourable Court to enter into and complete the Settlement Agreement with Latimer in order to resolve all issues relating to the validity of Latimer's security interest and the Receiver's pending appeal to the Court of Appeal in relation thereto, on the terms outlined above.

**ALL OF WHICH** is respectfully submitted this 30th day of April, 2004.

**BDO DUNWOODY LIMITED**  
in its capacity as Receiver and Manager of  
the assets, property and undertaking of  
Buckingham Securities Corporation  
Per:

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Uwe Manski, FCA, FCIRP